



# CLEARING THE PATH

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A First Nations Tax Commission Quarterly Publication

## *Improving Access, Administrative Efficiencies, and Investor Confidence: Development of FMA Amendments*

In December 2014, the FNTC completed its work in developing the details of legislative proposals aimed at improving the *First Nations Fiscal Management Act*. These proposals, along with proposals developed by the First Nations Financial Management Board and the First Nations Finance Authority, have been advanced to the Minister of Aboriginal Affairs and Northern Development Canada.

The proposed amendments are designed to improve First Nation access to the FMA, increase administrative efficiencies for participating First Nations, and promote greater investor confidence in First Nation debenture financing.

Of the forty three amendments advanced, below are the 15 amendments proposed by the FNTC.

- **Subsection 2(1)** - Expanding the definition of “local revenues” to include payments in lieu of taxation.

This amendment promotes greater investor confidence by increasing First Nations ability to participate in local revenue borrowing.

- **Section 5 and paragraph 36(1)(d)** - Clear authority to impose fees or charges for the provision of local services including water, sewer, waste management, animal control and recreational services.

This amendment provides efficiency and costs savings for First Nations. Stimulates investor confidence through greater transparency in revenues and expenditures for local services.

- **Paragraph 5(1)(e)** - Clear authority to recover First Nation costs associated with carrying out property tax enforcement proceedings (e.g., cost of preparing notices, serving documents, etc).

This amendment increases efficiency by removing disincentives for First Nation tax enforcement. Routine enforcement is important for a strong tax system and to encourage taxpayer compliance.

- **Subsection 5(4)** - Clarification that the requirement in subsection 5(4) for an appeal procedure in a law is limited to property assessment laws.

This amendment increases efficiencies by removing uncertainty regarding regulatory compliance.

- **Section 6** -Simplifying and reducing law-making notification requirements. Providing for Commission standards to augment notification requirements.

This amendment improves access to FMA and promotes efficiency. Removing the requirement for newspaper publication, mail-outs, and shortening the notice period will significantly reduce the administrative and financial burden on First Nations and their taxpayers, and will remove this significant inconsistency with provincial systems.

- **Subsection 6(1) and 6(4)** - Clarifying that section 6 notification does not apply to expenditure laws.

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## Message from the Chief Commissioner



First, I want to wish everyone the best in 2015 as we look forward to a productive year ahead. I can report that the First Nations Tax Commission and the other fiscal institutions are anticipating the passage of some much needed administrative amendments to the *First Nations Fiscal Management Act* (FMA) this year.

The FMA was passed almost 10 years ago on March 23rd, 2005. Clause 146 of the FMA required that a review of the FMA be conducted within seven years of that date. The review was completed on schedule in 2012 and identified a number of amendments to improve the efficiency and effectiveness of the FMA. A number of these amendments are discussed in this edition of *Clearing the Path*.

During the last year we presented the proposed FMA amendments to the First Nations Tax Administrators Association (FNTAA), the Canadian Property Taxpayers Association (CPTA), and the Canadian Energy and Pipeline Association (CEPA). The FNTAA, CPTA and CEPA all passed resolutions supporting the proposed FMA amendments and have also requested that government introduce amending legislation as soon as possible.

We are optimistic that legislation to amend the FMA will be introduced in the spring. In 2005, the FMA received all party support in House of Commons because it was First Nation led, optional, and provided clear economic benefits to First Nations and Canada. We hope that the proposed FMA amendments will also receive all party support. By uniting our joint efforts on these amendments, we have an opportunity to expand First Nation revenue options and borrowing capacity, make it easier to implement FMA laws, reduce administrative costs, improve local services, and finance more infrastructure at lower costs. This edition of *Clearing the Path* highlights the proposed amendments that the FNTC has advanced for these reasons.

I urge you to read our proposals, ask questions and lend your support to amending the FMA. With your support, I believe that these amendments can be passed and that 2015 will mark the beginning of the next era of FMA taxation.

Sincerely,

C.T. (Manny) Jules  
Chief Commissioner

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## Bill C-428 receives Royal Assent

Bill C-428, “An Act to Amend the *Indian Act* (Publication of By-laws) and to Provide for its Replacement” received Royal Assent on December 16. The FNTC has strongly supported this Private Members’ Bill since it was first introduced in 2012 because it provides needed changes to the *Indian Act* and underscores the importance of the *First Nations Gazette* (FNG) as a governance tool for First Nations. The FNG is published by the First Nations Tax Commission and the Native Law Centre of Canada, University of Saskatchewan.

“The changes to the *Indian Act* contained within the bill are a positive step forward and long overdue for a 21st century Canadian society,” said FNTC Chief Commissioner C.T. (Manny) Jules, who appeared before the Standing Senate Committee on Aboriginal Peoples on September 30 in support of the bill. “I would like to congratulate MP Rob Clarke, a member of the Muskeg Lake Cree Nation, on seeing the need and advancing these changes through his Private Member’s Bill.”

The mandate of the First Nations Tax Commission includes the approval of property tax laws passed by First Nations pursuant to the *First Nations Fiscal Management Act* (FMA). It also includes providing advice to the Minister of Aboriginal Affairs on the approval of property tax by-laws passed by First Nations pursuant to section 83 of the *Indian Act*, with the process clearly articulated in a Memorandum of Understanding between the FNTC and the Minister.

Bill C-428 does not change the requirement for Ministerial approval of section 83 by-laws or the mutual responsibilities within the MOU, However, the bill states that a by-law passed by First Nations pursuant to sections 81 or 85 will

come into force on the day it is first published, effectively removing the Minister’s authority to disallow these by-laws.

Further, the bill amends section 86 of the *Indian Act* by adding a new provision to deal with the publication of by-laws. It now includes the FNG as an option for First Nations to publish the by-laws they pass.

“*The Gazette has become an indispensable tool for Aboriginal peoples, First Nation governments, non-members resident on-reserve, legal practitioners, all other levels of government, and all others involved with or affected by First Nation legislation. The First Nations Gazette is ready to assist First Nations in meeting their by-law publication requirements, as we have done since 1997.*”

Sakej Henderson  
Native Law Centre of Canada Director

The FNG provides free access to First Nation public notices, FMA laws, *Indian Act* s.83 by-laws and FNLMA land codes. Close to 200 First Nations currently use the FNG to post their laws, by-laws, and notices. With a searchable database that currently houses close to 3,000 items, the FNG has been supporting the legal voices of First Nations in Canada since 1997. ■

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## Strengthening Institutional Working Relationships



In October, the First Nations Tax Commission and the First Nations Financial Management Board engaged in a series of meetings designed to strengthen the working relationship between the institutions and their staff, as well as improve their understanding of each organizations’ roles, functions, and responsibilities.

The first meeting was hosted by the FNTC in Kamloops. Through a series of short presentations, the FNTC began the one-day session with an introduction to First Nation property tax, followed by presentations on FNTC

functions and services, and concluded with a discussion on institutional coordination activities.

The second meeting was a half-day session hosted off-site by FMB and followed a similar format. Presentations from FMB described their organization and roles and functions. A presentation on FMB’s Strategic Partnerships Initiative was also provided. The meeting was followed by a tour of FMB offices and an opportunity to meet other FMB staff who were unable to attend the morning session.

Follow up items from both meetings included sharing FNTC’s client file management system and updating FMB/FNTC protocol, as well as cross referencing client files to improve law development coordination and a closer examination of each organization’s law review procedures. ■



# The First Nation/Resource Project Dilemma



Photo by Henrik Halen

FNTC has engaged the discussion about resource development and the challenges and opportunities that lay ahead for First Nations. Forecasters are projecting as much as \$650 billion in resource project investment in Canada over the next ten years. Canada needs this investment because provincial governments will otherwise be overwhelmed trying to meet the health care costs implied by an aging population.

First Nations and the federal government can work together to get this investment. Project proponents are examining how they should consult with, and in some cases receive consent from, First Nations before the investment is initiated.

First Nations have expressed that they expect to share the tax revenues these resource development projects generate. Currently, most do not collect these revenues and they know this is why their services and infrastructure are languishing. Some First Nations are sharing provincial resource tax revenues. Some are getting funding and revenues directly from companies. Some are receiving both. There is no clear or consistent approach on how these payments are made and how much revenue is available.

“Resource development is offering many First Nations an unprecedented new tax jurisdiction opportunity. Oil prices are currently falling but other resources remain strong. Forecasters are projecting that as much as \$650 billion in resource project investment is coming to Canada over the next ten years. This investment would create an enormous economic footprint that could greatly enrich the country and help us meet the tremendous funding challenge of societal aging,” said C.T. (Manny) Jules, FNTC Chief Commissioner

Arrangements that have been made are helping but First Nations want to do better. Royalty sharing with provinces is inadequate. First, many provinces do not want to do it because First Nations are a federal responsibility. Sharing provincial revenues may lead to them picking up the costs of declining federal support for First Nations. The First Nations that are sharing recognize that the amount of

revenues they receive is determined by provincial policy decisions, not their own. If a province offers a corporation a royalty holiday, their revenues fall.

Negotiating revenue arrangements with companies is bad for investment. It is time consuming, uncertain and expensive. It delays projects, adds to their costs and makes them less viable.

## A First Nation Tax on Resource Development

A better way to provide certainty for investors and a sustainable and predictable long term revenue stream would be to replace both these arrangements with a First Nations tax that could be applied by First Nations to resource development in their territories.

The tax should have three elements.

- First, it needs to be consistent throughout our respective territories and then be supported by strong tax laws and administrations.
- Second, it needs to be pre-specified and transparent. No one should have any doubts about tax rates and application. Nobody should have to invest years in a negotiation the way it happens now.
- Third, First Nations tax needs to be properly coordinated with other governments. If provinces share tax room, it should be made explicit that there are no federal penalties attached through offsets or programs such as Equalization. More importantly, the federal government should share tax room to provide assurance to both First Nations and provincial governments and to avoid a worsening of the fiscal imbalance.

The First Nations Tax Commission has been helping First Nations accomplish these objectives with property taxes and local revenues since 1988. First Nations communities have generated over \$1 billion in tax revenue.

The FNTC has been successful in working with railways to find a reasonable approach to implementing First Nations

railway tax jurisdiction. The Commission is responding to First Nations interest in Alberta from communities who are looking to implement well drilling tax jurisdiction.

Tax revenues collected by First Nations have built gyms, community centers and administrative buildings. They have paved roads, built sidewalks, provided clean water and parks. Tax revenues have been used to build infrastructure to support commercial business parks on reserves. They have supported self-government agreements and the purchase of additional lands.

The FNTC has been asked by a number of First Nations over the last year to work with them on resource development taxation. The FNTC presented its proposal for First Nation resource development taxation in its most recent pre-budget submission to Canada.

In FNTC's pre-budget submission we stress that if First Nations, other governments, companies and the FNTC can work together to implement a First Nation resource development tax, we can realize at least five benefits.

**Confirm First Nation participation in resource development** - The benefits from resource development need to be linked to the quality of services and infrastructure on First Nation lands just like it exists everywhere else. This could lead to more First Nation involvement.

**Reduce negotiation time needed to create benefit agreements** - A First Nation resource project tax could effectively replace the need to negotiate revenue arrangements with provinces and companies. This could facilitate the process of obtaining First Nation support and reduce negotiation times facing First Nations and companies.

**Support investment** - If negotiations are simplified and

the federal government contributes to the implementation of a First Nations tax with a tax credit, it would substantially improve the investment climate all across the country.

**Improve federal-provincial relations** - Using provincial revenues to accommodate First Nations is going to exacerbate the growing provincial fiscal imbalance resulting from rising health care costs. A federal tax credit to help ameliorate the costs of sharing tax room could reduce this fiscal imbalance.

**Administrative efficiency** - A First Nation resource project tax would follow principles of good tax policy. They would be pre-specified so investors knew rates and procedures. They would be supported by an institutional and regulatory framework provided by the FNTC.

"By doing this we create a number of benefits. First, our communities would have an independent stream of secure revenue from resource development or transportation projects. This will provide us with the revenues we need to close our infrastructure and service gap with other communities. This would allow us to build the employment and administrative capacity to realize our fair share of benefits from resource projects while managing environmental risks. Most importantly for other stakeholders, this will provide a real First Nation community benefit from resource development and lead to more community support," said C.T. (Manny) Jules, FNTC Chief Commissioner

Resource Development Taxation is an innovative proposal designed to respond to the needs of First Nations, industry and other governments. We encourage First Nations and other stakeholders to learn more about the proposal and how this jurisdiction can be established. ■



**Tulo Centre of  
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## Accepting Applications Now!

The Tulo Centre for Indigenous Economics is currently accepting applications for 2015/2016 Certificate in First Nation Tax Administration cohort beginning in the spring 2015.

This unique educational opportunity - delivered through a partnership between the Tulo Centre of Indigenous Economics, Thompson Rivers University and the First Nations Tax Commission - has been developed to build competitive First Nation markets. Each certificate program targets a specific First Nations legal, administrative or technical need.

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 at [www.tulo.ca](http://www.tulo.ca).



# Federal Court upholds First Nation Property Taxation Jurisdiction

First Nations' jurisdiction to enact property taxation laws, and the First Nations Tax Commission's authority to review and approve these laws has been upheld in a recent decision from Justice Douglas Campbell of the Federal Court.

The case concerns the taxation of lands at a residential/resort community on Buffalo Point First Nation's reserve at Lake of the Woods, in Manitoba. The Buffalo Point Cottage Owners Association brought the case because they were concerned about the transition from a fee for service arrangement to a system of property taxation.

The case dates back to 2010, when the Buffalo Point First Nation first began exploring the implementation of a tax regime. From 2010 to 2012 the First Nations Tax Commission met with the First Nation and the Cottagers several times to explain what implementing a tax regime entails, to review the procedures set out in the *First Nations Fiscal Management Act* (FMA), and to discuss potential impacts to the taxpayers. In early 2012 the First Nation passed its taxation laws, and submitted them to the Commission to review and approve. On June 25, 2012 the Commission approved the First Nation's assessment, taxation, rates and expenditure laws.

The case was the first time the FMA (which came into force in 2006) or the Commission's processes have been

reviewed by a Court. The FMA is legislation designed to clarify and enhance First Nations' taxation authorities. The Commission was created to support that jurisdiction, to take over the law approval function from the Minister, and to reconcile the interests of taxpayers with the responsibilities of Chiefs and Councils to govern the affairs of the Nation.

Justice Campbell noted that the First Nation had provided the Cottagers with a 48% reduction in their taxes in the 2012 tax year as a way to moderate the transition from a fee for service arrangement to a property taxation regime, and that tax rates going forward would be in line with the Commission's Standards.

The Court also noted that there had been a high level of consultation and engagement with the Cottagers during the law development stage.

In the result, the Court recognized and respected the Commission's mandate under the FMA. Justice Campbell dismissed the Cottagers' arguments and found that the Commission's decision to approve the First Nations' laws was "reasonable in all respects."

The Cottagers have appealed to the Federal Court of Appeal. A date for the hearing of the appeal has not yet been set. ■

## FNTC's newly designed Website



The First Nations Tax Commission has taken steps to update and improve the information on its website, and will continue to work to update the site to keep First Nations, taxpayers and other interested parties informed about FNTC services and First Nations who are implementing their property taxation jurisdiction.

The new home page includes current feature stories and important FNTC news and announcements. Under About FNTC, you can learn more about the Commission and its services.

Under Property Taxation, you can learn more about how First Nation property taxation works, the *First Nations Fiscal Management Act* and section 83 of the *Indian Act*, and toolkits with all the tools and steps needed to implement a property taxation system under the FMA or s.83.

In the News section, you can read articles about building First Nations economies, expanding First Nations jurisdiction and success stories from First Nations as a result of property taxation.

In the Resources section, you can access topical guides, information booklets, a map of First Nations with property tax jurisdiction in Canada, Frequently Asked Questions, and archives of FNTC's quarterly newsletter *Clearing the Path*.

The FNTC invites your feedback on the new site and will use suggestions to continually improve the website and ensure it meets your needs. ■

## FMA Amendments

This amendment ensures the notice requirements for non-annual expenditure laws support First Nations making expenditure laws during a taxation year that are not annual expenditure laws.

Eliminating this requirement would reduce the administrative burden on First Nations and improve the efficiency of the taxation system.

- **Subsection 8(4)** - Ensuring that requirements to provide evidence that a law was duly made applies to delegation of authority laws.

This amendment promotes investor confidence through improved certainty.

- **Paragraph 8(1)(d)** - Removing the requirement that First Nations submit copies of any written representations received during the section 6 notification process.

This amendment increases administrative efficiencies by eliminating unnecessary requirements and procedures.

- **Section 10** - Clarifying an annual rates law is only required where a First Nation has made a property taxation law that provides for a rate of tax to be set in each year.

This amendment promotes investor confidence and administrative efficiencies in providing clarity that annual rates law are specifically related to property tax laws requiring a tax rate.

- **Section 10** - Removing the requirement that the annual rates and expenditures laws be made in accordance with regulations and 14 days after adjacent local governments set their rates. The amendment would establish a requirement that the laws be made in accordance with Commission's standards which will accommodate regional variation on when these laws are made.

This amendment also promotes efficiencies by providing certainty in the taxation system by enabling clear timelines for making annual laws, and ensuring that First Nations can comply with the legislative requirements.

- **Subsection 11(1)** - Narrowing the prohibition of a repeal of a property tax law to situations where a repeal would adversely impact the First Nation's ability to meet obligations owed to the Finance Authority.

This amendment promotes efficiencies by clarifying the scope of the prohibition (by limiting it to the property tax stream) and reduces bureaucracy by limiting the prohibition to circumstances that support the policy reasons for the prohibition.

- **Subsection 13(2)** - Enabling First Nations to make authorized expenditures in the fiscal year before the annual expenditure law is made, and to enable First Nations to make emergency expenditures.

This amendment improves efficiency of the taxation regime and fills an operational requirement in First Nation expenditure authority, while maintain existing requirements for First Nation budgeting.

- **Section 14** - Enabling First Nations to meet section 14 audit requirements for their local revenue account by providing segmented information in the annual audited consolidated financial statements of the First Nation.

This amendment promotes efficiency by reducing audit costs and the administrative burden for First Nations, while still ensuring the transparent disclosure of the local revenue account activities.

- **Subsection 35(1)** - Providing the Commission with standard-making power respecting notification requirements for local revenue laws, and respecting the setting of time frames for the making of annual laws.

This amendment promotes efficiency and reduces administrative burden for First Nations, and would enable additional notification requirements in appropriate circumstances. Providing a standard-making power to set timelines for making annual laws under s.10 will create certainty in the taxation system by enabling clear timelines for making annual laws, and ensuring that First Nations can comply with the legislative requirements.

- **Section 36** – Allowing for delegation to panels for all local revenue laws, and to clarify that the Chief Commissioner designates the panels for section 31 law reviews and section 33 reviews.

This amendment promotes efficiencies by providing clarity to the system in designating panels, reduces the administrative burden on the FNTC in conducting law reviews, speeds up the process and provides clarity in the legislative framework.

As discussions with AANDC officials evolve, FNTC will continue to provide updates on the recommendations and any legislative timetable proposed by federal officials.

For more information on FNTC's legislative proposals or to provide comments, please visit our website at [www.fntc.ca](http://www.fntc.ca).

## *Celebrating First Nation Successes with Property Taxation - Digital Photo Contest*

The FNTC invites you to enter the 2015 Digital Photo Contest. We are looking for digital images that highlight community success as a result of exercising property tax.

For each photo received that meets the criteria, one entry will be added to the draw for a pair of Beats By Dre headphones. The more photos you send, the higher your chances are of winning! The deadline for photo submissions is Friday, March 20, 2015 and the prize draw will be held on March 27.

Photos that showcase the wide variety of infrastructure developed as a result of tax revenues, and people working with tax administration tools are of particular interest, such as:

- Administrators using the Tax Administration System (TAS) or the *First Nations Gazette*
- People reviewing architectural drawings or 3-D models
- Administrators in meetings
- Before and After photos of land being developed
- New water, sewer and other infrastructure
- Construction projects
- Photo tours of new buildings and infrastructure

For details on how to enter the contest, or if you have any questions, please contact:

Email: [communications@fntc.ca](mailto:communications@fntc.ca)  
Phone: 250.828.9857

## *Upcoming Events*

### **AFOA Canada National Conference**

**February 17-19, 2015**

AFOA Canada will be holding its 15th anniversary national conference at the RBC Convention Centre in Winnipeg, MB with a conference theme of business development and capitalizing on opportunities that lead to self-reliance and economic prosperity. Look for FNTC's exhibit on the tradeshow floor to learn more about how property taxation contributes to First Nation economic prosperity.

### **Saskatchewan Aboriginal Lands Technicians (SALT) Conference**

**February 24-25, 2015**

FNTC will be delivering a presentation on property taxation at the upcoming SALT conference in Saskatoon, SK.

## *14 More First Nations Added to the FMA Schedule*

Congratulations to the 14 First Nations that were added to the Schedule of the FMA through an amendment to the Act on October 8, 2014. There are now 138 FMA First Nations in Canada.

The fourteen First Nations added to schedule are:

- Black River First Nation, Manitoba
- Halalt First Nation, British Columbia
- Malahat First Nation, British Columbia
- Mohawks of the Bay of Quinte, Ontario
- Ochapowace, Saskatchewan
- Peters Band, British Columbia
- Pictou Landing First Nation, Nova Scotia
- Rolling River First Nation, Manitoba
- Saik'uz First Nation, British Columbia
- Saugeen First Nation, Ontario
- Saulteau First Nations, British Columbia
- Scowlitz, British Columbia
- Semiahmoo First Nation, British Columbia
- Ts'kw'aylaxw First Nation, British Columbia



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