



CLEARING THE PATH

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A First Nations Tax Commission Quarterly Publication

FNTC, FNFMB, and FNFA Urge All Parties to Amend the FMA



Nearly ten years after the passage of the *First Nations Fiscal Management Act* (FMA), the case to bring about much needed legislative changes was made directly to Parliamentarians at the March 12 meeting of the House of Commons Standing Committee on Aboriginal Affairs and Northern Development.

The Standing Committee, which is studying ways to improve First Nation access to capital, heard from each of the three First Nation fiscal institutions supporting changes that would make the FMA easier for First Nations to join, improve efficiencies, and strengthen investor confidence.

FNTC Chief Commissioner C.T. (Manny) Jules cited the FMA's ten year track record as a proven access to capital and why Committee members should support legislative change.

“ In 2005, it was passed by Parliament with all party support. Today close to 150 First Nations, 25% of all First Nations in Canada use this legislation. They have raised over \$220 million in local revenues and issued a \$90 million debenture. More than 50 First Nations have received financial management certification. Over 100 First Nation students have taken university accredited courses to use this legislation. More First Nations want to join, even some originally opposed to the legislation. This is an access to capital change that has worked.”

FNTC Chief Commissioner C.T. (Manny) Jules

Both Mr. Ernie Daniels (President/CEO, First Nations Finance Authority) and Mr. Harold Calla (Executive Chair, First Nations Financial Management Board) emphasized the important role FMA debenture financing can have in improving First Nation infrastructure, financial management, and economic growth. Mr. Calla called for “all party support” to facilitate the passage of legislation before June 2015.

The forty-three legislative proposals build on the 2012 Report to Parliament issued by the Minister of Aboriginal Affairs and Northern Development and reflect recommendations made by First Nations, First Nations institutions, and other stakeholders in improving the operational performance of the FMA.

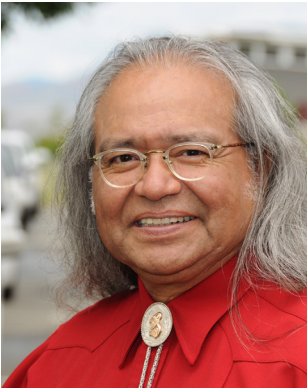
To read the entire transcript of the March 12, 2015 Standing Committee meeting, please visit <http://www.parl.gc.ca/HousePublications/>. ■



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Message from the Chief Commissioner



The start of the new fiscal year is always a busy time for First Nation tax authorities and the Commission. This is the time of year when our corporate plan is being finalized and tax administrators are finalizing assessment rolls and preparing local revenue budgets to support expenditure and tax rate laws.

This is also a historically significant time for tax collecting First Nations. Ten years ago on March 23, 2005 the FMA was passed. Three years ago in the spring of 2012, an evaluation of the FMA suggested a number of amendments to streamline access, improve investor confidence and raise administrative efficiency. We are hopeful in the spring of 2015, many of these amendments will be passed into law.

The proposed amendments will accelerate our progress by making it easier to join the FMA, expanding revenue options and improving access to capital. We are grateful for the support we have received for the amendments from First Nations, tax administrators and taxpayers.

At this time of year the Commission is beginning work on its 2015-2016 priorities to expand the number of FMA tax authorities, support new revenue options, publicize the new Tulo Centre textbook and expand the *First Nations Gazette*.

This year, we are looking forward to helping implement more tax systems in Saskatchewan, Manitoba, New Brunswick and Nova Scotia. The FNTC will be working throughout the year with First Nations interested in expanding their tax jurisdiction to hotel accommodation, property transfers, well drilling and resource development. We are excited by the recent release of the Tulo Centre open textbook *Building Competitive Investment Climates on First Nation Lands*. I encourage you to download this valuable resource at tulo.ca or opentextbc.ca. The First Nation Gazette will continue to expand this year to include more FMA laws and more *Indian Act* by-laws and provide notification and access for First Nation laws to First Nations, members, taxpayers and other users.

It has been an impressive first ten years for FMA First Nations. I am confident with the possible passage of the amendments, our joint efforts to expand First Nation tax jurisdiction and improved Tulo Centre and *First Nations Gazette* services to support and implement First Nation jurisdiction that the next decade will be even better.

Sincerely,

C.T. (Manny) Jules
Chief Commissioner

Connection between Lands Management and Property Taxation



In the past year, there has been growing interest in the relationship between taxation and land management as lands managers have begun to recognize the importance of taxation in the provision of services and infrastructure as part of a land and economic development strategy.

Graduates from the Tulo Centre of Indigenous Economics continue to share knowledge they've learned from their programs with their colleagues and are communicating the importance of taxation to lands managers, as well as the importance of lands management to fellow tax administrators.

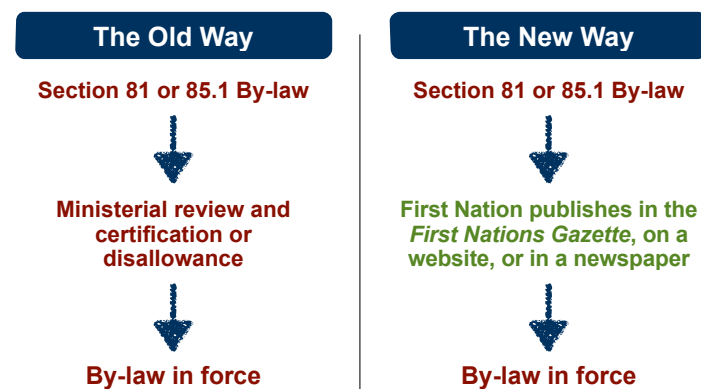
In the past few months, FNTC and the Tulo Centre have delivered workshops to help make the connection clear for lands managers and provide information on the tools and resources available to assist them. ■

First Nations Gazette: a Governance Tool for First Nations

Bill C-428 underscores importance of the FNG

Under recent changes to the *Indian Act*, First Nations now have the authority to enact by-laws using sections 81 and 85.1 that will come into force when the First Nation publishes the by-law.

As of December 16, 2014, First Nations are no longer required to forward these by-laws to the Minister, and the Minister no longer has the authority to disallow these by-laws. The amendments to the *Indian Act* eliminate Ministerial oversight and create new requirements for First Nations to publish all by-laws.



First Nations Bringing Their Own By-laws into Force

First Nation by-laws will now come into force when the First Nation provides public notice through publication. All by-laws made by a First Nation using sections 81 or 85.1 of the *Indian Act* must be published and will only come into force upon their publication or on a later date specified in the by-law.

First Nations have three options for the publication of their by-laws: in the *First Nations Gazette*, on a website, or in a newspaper that has general circulation in their community.

The *First Nations Gazette* is a free, web-based service that provides a quick, easy, secure and reliable permanent archive for First Nations to meet these new requirements.

Why do First Nations choose the First Nations Gazette?

First Nations use the *First Nations Gazette* (FNG) to provide public notice of First Nation laws, by-laws, land codes, elections, land designations, appointments, and other legal matters.

Close to 200 First Nations use the FNG to post their laws, by-laws, and notices. With a searchable database that houses close to 3,000 items, the FNG is also a powerful communication tool that First Nations can use to provide legal notices, research laws and learn how other First Nations have addressed key issues.

Why is the First Nations Gazette the best option to meet the new By-law publication requirements?

- **Convenience** - Submitting by-laws on the FNG is quick and easy.
- **Speed** - By-laws are published immediately after a posting submission is accepted and approved for publication.
- **Cost-effectiveness** - There is no charge to use any of the FNG's services, including account registration, postings and search functions.
- **Permanent Archive** - Documents posted on the FNG will be stored and accessible in a permanent archive.
- **Security** - The FNG uses an encrypted database and Tier 1 level security to ensure data is protected and will not be lost.
- **Reliability** - The FNG uses its own virtual private server, replicated in multiple locations in Canada, to create a stable platform with little risk of downtime. ■



First Nations Notice for
Laws and Codes
Financial Information
Elections
Land Requirements

www.fng.ca

FNTC Commissioner Profile - Céline Auclair



FNTC Commissioner Céline Auclair is the founder of the First Peoples Innovation Center, a non-profit Aboriginal organization that assists the development of social innovation for the First People communities in Quebec. Commissioner Auclair's extensive background includes working, both domestically and abroad, in international development, micro-finance development, First Nation taxation, property rights, human rights issues and good governance practices.

Clearing the Path recently had the opportunity to sit down with Commissioner Auclair to talk about her experience and involvement with the FNTC.

Prior to becoming an FNTC Commissioner, you were involved with FNTC's predecessor, the Indian Taxation Advisory Board (ITAB). Can you tell us about that experience?

After I completed my PhD, I began working for ITAB on the very first property taxation framework under section 83 of the *Indian Act*. A few months later, I started working with the team to create the *First Nations Gazette*.

When I first joined ITAB, the Gazette was a concept. ITAB was in the trial stage of developing the legal framework for First Nations laws to provide them with the legal stature that other laws in Canada had.

It was rewarding to see that First Nations leaders were recognizing the importance of developing the legal structure for First Nations laws as part of their governance architecture. Since then, the *First Nations Gazette* has grown substantially and the economic stature of First Nations has changed drastically.

At that time, the Chief Commissioner was working hard to convince First Nations that taxation was a building block of First Nation economies. While I was working toward my PhD in Geneva, we were taught that to become a recognized government, three things were needed: to have people recognize the government's authority, to have territory from which to base that authority, and to have the capacity to exercise jurisdiction.

While it was theoretical at the time, we've since seen what taxation does for a government. It provides independence and is a tool to build an economy. It is a tool for the future. Taxation provides stable, predictable revenue that allows for multi-year planning. Understanding the power of taxation was the biggest lesson I learned at ITAB.

Throughout your career, you've had extensive international experience. How does that experience relate to your work as a Commissioner?

The Forum of Federations, an international governance organization promoting intergovernmental learning on governance challenges in multi-level democracies that I co-founded. During my 10 years there, I learned about the power of a federal state. There are only 26 countries around the world that have a federal charter, which allows different components of the country to have their own jurisdiction or constitutional power.

In some countries, there is a two-level constitutional competency, while others have three orders of governments and governmental powers, such as monetary or foreign policy, which can be exclusive or shared between the levels of government. Many countries are innovating the way powers are shared and that can really sophisticate the way a country can govern.

I've applied what I've learned to my work with the FNTC by bringing that knowledge to the Commission so we can fully understand the advantage of a federal constitution and the flexibility it can bring for governments to exercise their jurisdiction independent from other governments. Canada's constitution, as it is written, provides First Nations with governmental powers that are exclusive from other governments in the country.

Taxation is a good example of that constitutional power. For decades, First Nations were not exercising powers on their lands, resulting in other governments doing so, which is still the case in some provinces today. By First Nations exercising their jurisdiction, they are also asserting their power under the constitution.

You also serve on FNTC's International Relations Committee. Can you tell us more about the work that committee does?

We formed an international advisory committee with First Nations from other countries, including the United States, Australia and New Zealand, that have dealt with the same taxation issues we face in Canada to learn from them. We met a number of times to discuss challenges and listen to experts from those countries discuss the successes and difficulties they encountered with taxation. Those meetings were conducted over a three-year period and were incredibly useful to us.

We also consulting with emerging First Nation governments in Brazil and Mexico and found those meetings to be very interesting as well. To see new leaders with fresh eyes looking at yet the same problem faced by First Nations around the world was a valuable learning experience.

Our committee also had a good working session with world-renowned economist Hernando De Soto from the Institute of Liberty and Democracy. Mr. De Soto is a Peruvian economist who wrote a book called “The Mystery of Capital”, which detailed how lack of legal title to property hinders economic development.

In our session, we discussed how formalizing property rights contributed to economic growth in Peru of 280 per cent and how other countries that have formalized property rights have experienced similar economic success. This demonstrated the power of property rights and underscored the important work the FNTC is doing on the First Nations Property Ownership Initiative here in Canada. While jurisdiction and taxation are the building blocks for First Nation economies, property rights are also at the heart of

the economy. If you can't own your own land, it can be very difficult to plan for the future.

Property ownership can be controversial but the FNTC has worked hard to learn from the successes and difficulties encountered by First Nations in other countries to create a viable property ownership system for First Nations in Canada.

I pay tribute to the Chief Commissioner for being a visionary and leading the work of the FNTC. I encourage more First Nations to work with us to develop independent, stable governments that are able to assert their constitutional competencies. It is uplifting to see the dynamism of First Nations around the country and I am very optimistic for the future. ■

Tulo Centre of Indigenous Economics releases first edition of new open textbook



The Tulo Centre of Indigenous Economics released the first edition of its open textbook *Building a Competitive Investment Climate on First Nation Lands*. It is the first open textbook on this subject. It is used in two of the Tulo Centre's three-credit courses – Residential and Commercial Development on First Nations (Applied Economics 264) and Facilitating Investment on First Nations Lands (Applied Economics 265). It was designed to complement learning activities, instructive role plays and assignments for courses delivered at the Tulo Centre.

This textbook was conceived and developed by the Tulo Centre and was inspired by the life work of Clarence T. (Manny) Jules, FNTC Chief Commissioner, whose vision has always been to restore First Nation and tribal jurisdiction and political power through economic development.

It is an open text book in two ways. First, anyone can use it as a resource on how to create the administrative, fiscal and legal framework to support markets on First Nations and in some cases tribal lands. This text is also open because the Tulo Centre is inviting comments to improve and enhance future editions. Tulo is particularly interested in case studies that are relevant to particular topics. In the near future, a supplementary case study chapter will be released to enhance this text for students of this subject.

Comments and suggestions can be sent to info@tulo.ca. ■

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.

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.

The Impact of Urban Additions-to-Reserves on Municipal Taxes

Urban Additions-to-Reserves (ATRs) represent a powerful tool to help reduce the economic disparity between First Nations and the rest of Canada. Some of the most successful First Nations in Canada have reserves that are located adjacent to municipalities.

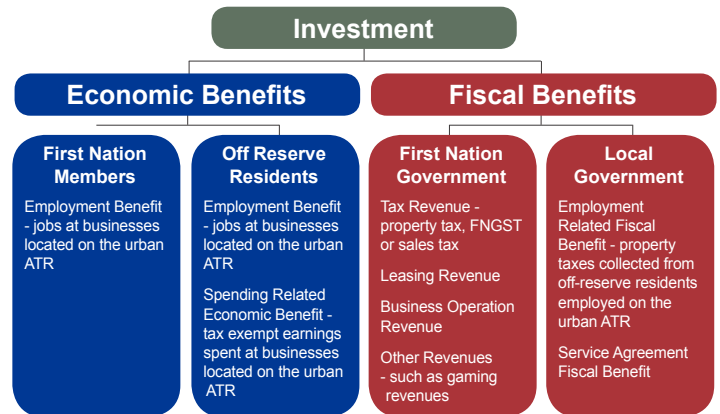
In December 2014, the FNTC completed research into the impact of urban ATRs on municipal property tax revenues.

The research was undertaken in response to some comments in reaction to the proposed revisions to the AANDC policy on ATRs and Reserve Creation from local government groups.

The following summarizes the findings in this report:

1. The potential for municipalities to lose property tax revenues when a First Nation acquires land within a municipality and converts it to reserve status is either zero or small and where it is small it is more than offset by other fiscal benefits.
2. Local governments in Manitoba and Saskatchewan are compensated by their provincial and/or federal governments for any reductions in property tax revenue not made up through service agreements under the Treaty Lands Entitlement (TLE) framework.
3. Local governments in BC can enter into service agreements with the First Nation and receive property tax equivalent payment for the services they are selling and achieve cost savings by not selling services for which the property tax cost is higher.
4. Investment on urban ATRs generates significant fiscal and economic benefits for First Nations and local governments. These benefits can be significantly higher than any possible tax loss.

Benefits from Investment on Urban ATRs



Tax Loss Concerns

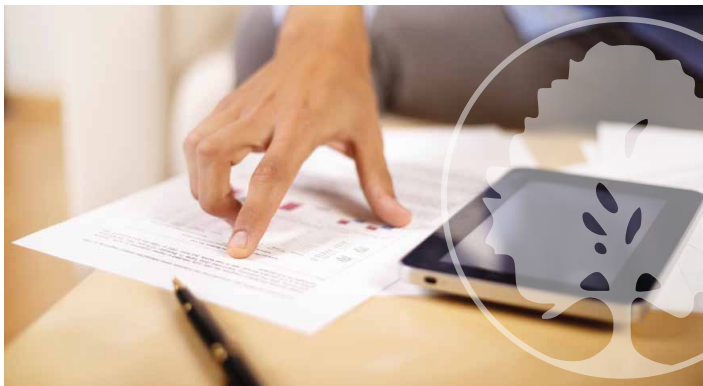
This research demonstrates that the more successful the urban ATR the better it is fiscally and economically for local and First Nation governments.

Urban ATR success requires a competitive investment climate, business grade infrastructure, good property rights, a strong tax system, and the legal and administrative framework to support markets.

The FNTC will continue to advance the recommendations it made to improve the urban ATR process, reduce the barriers to economic development on First Nation lands, and offer services to support to First Nations involved in urban ATRs related to property taxation, infrastructure financing, service agreement negotiations and administrative capacity development.

To read the entire report, please visit www.fntc.ca/resources. ■

Local Revenue Budget – A Key Element to the First Nation Property Tax System



The local revenue budget is one of the most visible and important elements of the First Nation property tax system. For the majority of taxing First Nations, it appears as a Schedule to the First Nation's Annual Expenditure Law or By-law, and is published in the *First Nations Gazette*.

Not only is it a planning tool and a way to explain how community objectives and expected levels of services will be met, it serves as a point of engagement with taxpayers and members who may want to provide input on how budget resources are allocated.

Local revenue budgets have evolved from their early more modest versions, reflected in Budget By-laws made in late 1980's and early 1990's. These budgets would often itemize expenditures such as "telephone" and "janitor supplies", a practice which may have stemmed from the level of detail associated with federal contribution agreements.

By the mid 1990's, the Indian Taxation Advisory Board (ITAB) developed nine standardized expenditure categories as a part of its Budget Based Tax Rates Policy. Nine categories were used because they were similar to those used by communities in submitted expenditure bylaws.

The categories were also similar to expenditure categories used by local governments while being comparable to government expenditure categories used by Statistics Canada. The ITAB advocated a standardized approach to facilitate the budget-making process, improve transparency for taxpayers, support First Nations tax administrators and promote investor confidence.

The advent of the *First Nations Fiscal Management Act* (FMA) in 2005, meant the introduction of a new First Nation local revenue budget template to reflect fiscal powers under the FMA. Since 2007, the FNTC has made modifications to its sample local revenue budget for both the FMA and section 83 of *Indian Act* tax system to reflect policy changes and new approaches to community economic planning, transparency, and budget reporting. First Nation budget reporting continues to evolve with advances in digital automation (Tax Administration System-TAS), increasing use of tax advisory groups, and online posting of proposed budgets for community input.

The First Nation local revenue budget has come a long way, but it has never wavered from striving to be a beacon of transparency and accountability in the First Nation tax system. ■

Consumer Price Index and First Nation Rate-Setting

Many local governments keep property tax increases at or near the one year change in the Consumer Price Index (CPI). The FNTC adopted the CPI rate setting method as a reasonable criteria to approve Annual Rates Laws and By-laws. The CPI for the 2015 First Nation tax year is 1.9%. This represents an increase over last year's 1.24%.

The FNTC Standards for Rate Setting indicate that a First Nation must establish tax rates that meet specific criteria. One of the criteria is that the average tax bill does NOT increase more than the annual rate of national inflation (the CPI) from the previous year. Many First Nations have chosen to use CPI-based rate setting.

The CPI is a statistical measure of prices. It is used to measure the change in prices of consumer goods and services purchased by households.

Data collectors base this on a "basket" of goods and services that a typical Canadian household would buy. They compare the costs of these goods and services from the same stores each month. Increases in prices are called "inflation" and decreases are called "deflation."

Prices can rise for a number of reasons such as an increase in the cost of labour, shortages of material, or increases in the price of raw materials such as gasoline. Canada's national rate of inflation is calculated by finding the percentage change in CPI over a 12-month period.

For more information about CPI and its history, please visit <http://www.statcan.gc.ca/pub/62-604-x/62-604-x2015001-eng.htm>. ■

Penticton Indian Band Development Corporation wins AEDC Award



Left: The Economic Advisory Board for Penticton Indian Band Development Corporation (PIBDC) reviews economic development plans for Penticton Indian Band's lands. Right: An aerial view of one of PIBDC's current developments, Skaha Hills along Skaha Lake.



The Penticton Indian Band Development Corporation is the winner of the CCAB Aboriginal Economic Development Corporation (AEDC) Award for 2015. The Penticton Indian Band Development Corporation (PIBDC) is a for-profit Corporation, incorporated under the provisions of the *British Columbia Companies Act* in 2007, owned by the Penticton Indian Band.

The Penticton Indian Band, implementing property taxation since 2007, is currently engaged with PIB Community

members and PIB Lands Department in finalizing an official Comprehensive Community Plan. This objective is to identify those lands to be protected and those lands to be designated for development such as residential, industrial, commercial, recreational, etc.

Economic development will increase the property taxation base, thereby increasing their property taxation revenues, which is being reinvested to improve community infrastructure and support economic growth. ■

FNTC Mobile App

The FNTC has created a new app for quick and immediate access to current news, announcements and updates.



To download the app to your device, scan the QR Code or search for "FNTC" in the Apple Store or Google Play Store.



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