CLEARING THE PATH

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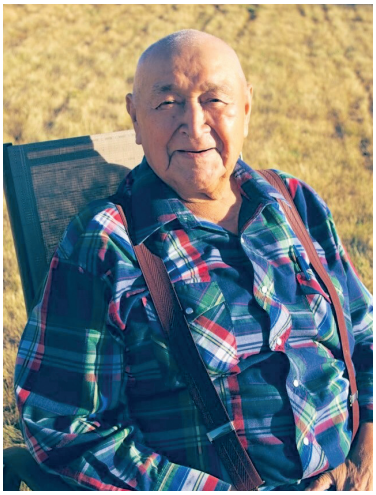
The Legacy of Chief Clarence Jules Sr.



On September 10, 2015, Chief Clarence Jules Sr. passed away. Chief Clarence Jules Sr. was born in 1926 on the Kamloops Reserve and was raised on his father's farm. He attended the Indian Residential School until he reached the ninth grade. While at the school he milked the cows and looked after the horses. When he was 14, he asked his father for a quarter to buy jeans. He was told to go get a job. He left school, worked haying for a rancher, milked cows by hand at a dairy, and spent seven years working at the Palmer Ranch.

In 1952, Chief Jules married Delores Casimir and continued to work on area ranches. They had nine children together. He worked as a range rider for the band, farmed hay and cattle and as stated in his induction to the BC Cowboy Hall of Fame in 2010 "always had a nice string of horses."

He worked hard for his family. As he said about working on the range "The hours were kind of rough on my wife, though, I often had to get up at two and three in the morning." Perhaps his most famous quote about working hard was "You can't fix a flat tire by yelling at it."

He was more, however, than a hardworking cowboy. As he said in 2010, "I think I was more of a Chief and Councillor than a cowboy."

Chief Jules lead the Kamloops Indian Band (now Tk'emlups te Secwepemc) from 1962-1971. He improved the irrigation system and started a band farm, hosted the founding meeting of the Union of BC Indian Chiefs in 1969 and advocated for First Nation owning their lands.

Perhaps his greatest legacy goes back to 1962 when his council passed a by-law to establish the Mount Paul Industrial Park – the first industrial park on First Nation lands. Chief Jules made sure the necessary infrastructure was built, and he personally convinced a number of businesses to invest and lease land on the reserve. His powers of persuasion must have been impressive, because securing a property right on Indian land in the 1960s was difficult. Lessees faced uncertainty about tenure, lease registration, tax liability, and local service provision; moreover, they had plenty of options on non-Indian lands. It is a testament to his vision that the Mount Paul Industrial Park has grown from 11 original businesses in 1964 to over 150 today, with annual sales of over $250 million. If there were a hall of fame for business deals, it would include Clarence Jules, Sr.

Chief Clarence Jules Sr. recognized very early that First Nations needed business on their lands and that the *Indian Act* system was getting in the way. When leasing was just starting on the Mount Paul Industrial Park he said, "We provide the services and the province collects the taxes. We should collect the taxes to pay for better services and infrastructure. Otherwise we can't compete for business."

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Chief Clarence Jules Sr. Continued

He was a very patient but determined man. It took twenty years for the federal government to catch up to him and pass the Kamloops Amendment of the *Indian Act* (Bill C-115) that gave Tk'emlups the property tax authority, largely due to his hard work and that of his son Manny. This created the modern First Nation tax system.

During the White Paper consultations of 1968, he was asked about how the *Indian Act* should be changed. His answer is still relevant today:

> *"We feel that we are in a better position to judge the needs of our people than officials of the Department located in Ottawa. We point out that much of the dissatisfaction with the present Act arises from the lack of power and authority to Band Councils. To give just one illustration: We operate an Industrial Subdivision on part of our reserve and lease lots in the Sub-division to various individuals and companies. Before a lease can be granted not only must the Band Council pass its resolution but the lease is then routed through the Kamloops Indian Agency, then to the Vancouver office and finally to Ottawa. The same process is followed on the return trip.*
>
> *We can document instances where months have gone by before a lease is finally issued. In many cases by the time the lease has been returned the lessee has gone elsewhere because people today require almost instantaneous decisions. These delays cost us money and we don't like it. There must be a change to grant more power and authority to Indian Band Councils. After all, our Indian people elect us to represent them; they do not elect officials of the Indian Department." (November 1968, Kelowna, BC).*

His ability to build bridges between communities, people and governments created the foundation for over $2 billion in investment in First Nations and over $1 billion in taxes collected by First Nations across Canada. It has led to thousands of jobs and many agreements between First Nations and governments. As he said, "We are here, we should all live together."

In September 2009, he was honoured by the First Nations Tax Administrators Association for his contribution to First Nation taxation. This was a well-deserved honor. Many recognize that without his work, devotion to family and dedication to establishing First Nation jurisdiction there would be no First Nation tax system, no First Nations Tax Administrators Association and no *First Nations Fiscal Management Act*.

His work has made a difference in many people's lives. He loved people and they loved him because he was coming from a very special place. Nobody could ever forget the twinkle in his eye, and the relish in his chuckle, when he told a particularly good story. But they were never just stories. He treated everyone with honesty and respect and there was always a lesson or a helping hand.

Thank you Chief Clarence Jules Sr. You will be dearly missed and never forgotten. Your legacy will live on. ■

Chief Clarence Jules Sr.
January 6, 1926 – September 10, 2015

FNTC Standards and Policies in Development

Work is currently underway to develop a series of proposed changes to the *Standards for First Nation Tax Rates Laws* and the *Standards for Property Taxation Laws* that take into account comments received from First Nations and associated policy analysis. Standards are a part of the *First Nations Fiscal Management Act's* regulatory framework supporting First Nation taxation, and are used by the Commission in the review of laws. The Commission is examining changes designed to improve clarity and effectively respond to several issues raised by taxing First Nations concerning tax rate-setting and property tax administration. Similar work is being carried out for changes to the *FNTC Property Tax By-law Policy* and *Rates By-law Policy* for First Nations taxing under section 83 of the *Indian Act*. Below is a brief summary of some of the key issues that are being addressed.

Standards for First Nation Tax Rates Laws

Average tax bill calculation - FNTC uses the "average tax bill" as a means to determine the real dollar impact a First Nation tax rate will have on taxpayers. It is a critical tool in reviewing First Nation tax rates laws. The FNTC is examining the use of a median "representative taxpayer" whose actual tax bill can be compared from year to year. This would simplify the average tax bill calculation for tax administrators. It would also provide a better tool to track real changes in the average tax bill.

Justification for exceeding tax-rate limits – Currently, First Nations can exceed tax-rate limits provided there is justification. Currently, section 7 of the Standards outlines circumstances for justification, and these include: special projects, incremental growth, local inflation growth, changes in assessment methods, and taxpayer support. The FNTC is considering a revision to the justification rationale so that there are three types of justification:

- significant increases to the cost of hard local services (e.g., water, sewer, fire, etc.);
- rate consistent with the First Nation's reference jurisdiction transition plan; or
- taxpayer support within the affected class.

Reference jurisdiction rates-setting - Used by many First Nations to establish rates for the year, reference jurisdiction rates-setting involves mirroring the tax rates of an adjacent reference jurisdiction. FNTC is examining a procedure for those First Nations wishing to move to reference jurisdiction rate-setting. The procedure would entail a tr*ansition pla*n, taxpayer notification, and consultation.

Standards for Property Taxation Laws

Establishing property taxation in formerly "fee for service" jurisdictions – FNTC is working on a transition mechanism for First Nations establishing taxation for the first time, and who have existing fee structures in place for the provision of services for existing leaseholders (typically residential and commercial). These service fees (typically used to pay for basic services such as road maintenance and garbage collection), are levied on a flat fee basis, and the introduction of the more progressive property taxation (or ad valorem taxation), invariably means some interest-holders will pay more and others less. To facilitate a smooth transition, the FNTC is considering a transition plan requirement to gradually introduce property value taxation over a 5 year period.

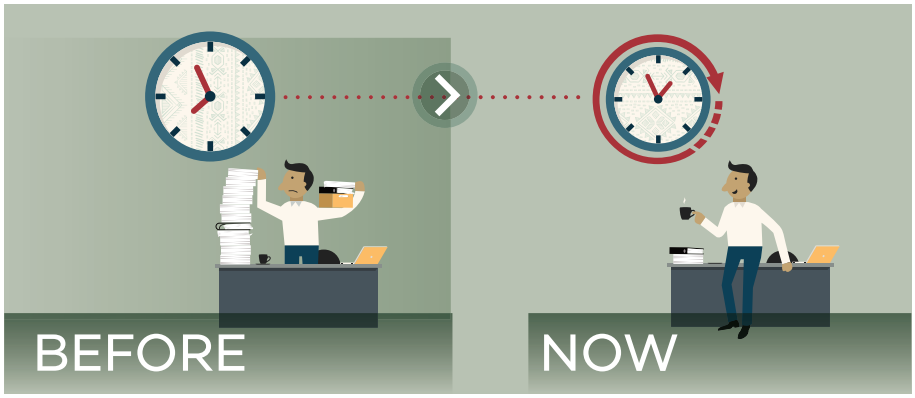
Property tax districts - Several First Nations use tax districts to better align rates with services, or to respect previous jurisdictional boundaries. FNTC is currently examining the use of minimum requirements on how tax districts are established in laws and on what basis they can be applied.

Use of reference jurisdictions- Reference jurisdictions are used in various FNTC policy instruments, and most notably in the review of First Nation tax rates laws. FNTC is working on changes to the Standards to clarify the definition of reference jurisdictions.

Proposed changes to the Standards would be subject to a public input process and comments from the public would be reviewed and considered before the Commission approves a final version of the Standards. ■

FMA Amendments: Positive Change for First Nation Property Taxation

In June 2015, amendments to the *First Nations Fiscal Management Act* (FMA) were passed by Parliament and given Royal Assent. The passage of this legislation was the culmination of a six-year effort by First Nations, First Nations institutions, FN tax administrators, and taxpayers. The amendments are expected to come into force in 2016, along with corresponding amendments to several FMA Regulations.



Here's a brief look at some of the key FMA changes involving First Nation property taxation:

Access to the FMA

1

- Minister of Aboriginal Affairs, rather than Governor in Council, can amend the Schedule for First Nation participation. This will reduce delays associated with adding new First Nations to the FMA Schedule.

Notification of Laws

2

- Shorter period of notification of laws or amendments (from 60 to 30 days).
- Mail out requirement to members and taxpayers eliminated.
- Newspaper publication requirement eliminated. Replaced with notification in the *First Nations Gazette*.
- Gives FNTC the ability to develop standards for notification.

Submission of Laws for FNTC Review

3

- Representations to Council no longer need to be sent to FNTC.

Property Taxation

4

- Local revenue includes payments in lieu of taxation.
- New fiscal power for collecting fees for water, sewer, waste management, animal control, recreation, and transportation, and other similar services.
- Clarifies that the recovery of costs for enforcement (including the costs of the seizure and sale of taxable property) are affirmed.

Annual Laws (Annual Rates and Expenditure Laws)

5

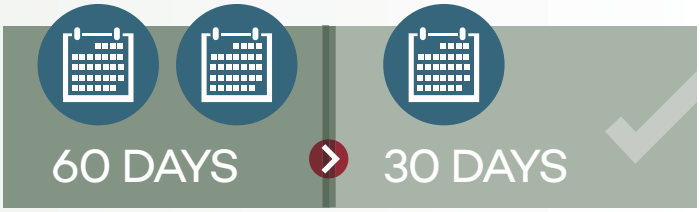
- Clarifies the ambiguity of when annual laws need to be made.
- Gives FNTC the ability to develop standards to facilitate the different timing requirements for First Nations.
- Clarifies the legislative authority for expenditure laws, and eliminates the need for interim budgets.

Local Revenue Account Management

6

- Clarifies that local revenues must be placed in a local revenue account with a financial institution, and separate from other moneys of the First Nation.
- Provides that certain First Nations may not need to conduct separate audits for the local revenue account.

To support the coming into force of the FMA amendments in 2016, the FNTC is working with the federal government to amend a number of the regulations supporting First Nation property assessment and taxation. Developed in consultation with all stakeholders, these changes will result in regulations that create efficiencies in the process and are smarter, and more responsive to First Nations and their taxpayers.



Shorter period of notification of laws or amendments

Amendments of particular significance to tax administrators include:

Amendments to the Assessment Appeal Regulations:

- Clarify that non-practising members of a law society can sit on the assessment appeal board.
- Eliminate the requirement that the assessor's address be included in the assessment law.
- Reduce the appeal timeline from 60 days to 45 days, the notice of hearing from 30 days to 10 days, and the commencement of a hearing from 90 days to 45 days.
- Provide for the Chair to provide documents to all parties in an appeal.
- Enable the First Nation to set a timeframe for assessment review board decisions, provided the time is not less than 90 days from the hearing date.
- Clarify the right to appeal a decision of the assessment review board, within 30 days of the board's decision.

Amendments to the Assessment Inspection Regulations to enable First Nations to use assessment inspection processes that are used in the province, instead of the processes set out in the Assessment Inspection Regulations.

Amendments to the Taxation Enforcement Regulations to clarify the content of the Tax Arrears Certificate, and to clarify when a Tax Arrears Certificate is required.

A full list of all proposed regulatory amendments advanced by the Commission can be found on fntc.ca. ■

Musqueam Indian Band Board of Review v. Musqueam Indian Band

Earlier this year, the B.C. Court of Appeal released its decision *Musqueam Indian Band Board of Review v. Musqueam Indian Band*, in which it considered the interpretation of certain provisions of Musqueam's Property Assessment Bylaw relating to restrictions placed on the use of land. The case may be of interest to taxing First Nations, as many First Nation property assessment laws and bylaws contain similar provisions.

The case came about as a "stated case" from the Band's Board of Review, which was considering an assessment appeal brought by the Band. The Board of Review asked the Court to determine whether the assessor could properly consider the use of the property as a golf course in assessing the value of the property.

The answer to this question turned on the interpretation of section 26(3.2) of the Band's Property Assessment Bylaw, which stated "the assessor may include in the factors that he considers under subsection (3), any restriction placed on the use of the land and improvements by the band." The lease to the Golf and Country Club specifically provided that the property is to be used "only for a golf and country club."

The Band argued that the assessor should not consider the lease restriction because that restriction was not "placed by the Band", but rather was placed by the Crown as negotiator of the lease. Because of this, the assessed value should reflect the highest and best use of the property as though it were residential, and not its actual use as a golf and country club. The Shaughnessy Golf and Country Club's position was that the restriction in the lease should be considered, because the Crown acts on behalf of the Band when negotiating and entering into a lease of reserve lands.

The Court of Appeal framed the key questions as follows:

1. Is there a "restriction" on the use of the Property; and
2. If so, was the restriction "placed by the band"?

The Court held that the lease does in fact restrict the use of the property to a golf and country club and that the Crown was acting on behalf of the band when it entered into the lease, thereby making the restriction in the lease one considered to be "placed by the band." As a result, the assessor can take this restriction into account when determining actual value in accordance with the bylaw.

Musqueam is currently seeking leave to appeal the decision to the SCC. The Commission is reviewing this decision with First Nation assessors, and considering any implications for the drafting of its sample property assessment laws. First Nations are encouraged to review their property assessment laws or bylaws to ensure they reflect the First Nation's intentions in respect of use restrictions included in leasing documents. ■

Ts'elxwéyeqw Tribe First Nations Communities to Tax Jointly-held Reserve

Nine Ch-ihl-kway-uhk Tribe Society First Nations communities are set to become the first in Canada to establish First Nation property taxation on a jointly-held reserve. Recently, the Ts'elxwéyeqw took an important step forward in asserting their tax jurisdiction over Grass IR #15, a 65 hectare reserve situated in Chilliwack, BC. The First Nation communities of Aitchelitz, Kwaw-kwaw-Apilt, Shxwhá:y Village, Skowkale, Skwah, Soowahlie, Squiala, Tzeachten, and Yakweakwioose each enacted a delegation law, delegating law making authority over the joint reserve to the Ch-ihl-kway-uhk Tribe Society (CTS). The laws are expected to be reviewed for approval at the next meeting of the FNTC.

Under the FMA, delegation of authority laws enable First Nations to delegate their property tax law-making authority over a reserve, to another body. The laws can be used to achieve greater efficiencies, Nation-building, or in the case of the Tribe communities, to enable a single property tax administration for a shared reserve.

Once these delegation laws are approved, the CTS will be able to establish a property assessment law and a property taxation law specific to the jointly held reserve and begin to carry out property taxation, likely starting in the 2017 calendar year. Under a management agreement signed with CTS, the taxation revenue raised will be used to pay for administration costs and local services, with the balance invested in a reserve fund for future capital infrastructure expenditures which will increase the development potential of the reserve.

Chief Willy Hall of the Skowkale First Nation commented,

> *"The process has taken some time, and isn't over yet, but we are happy that cooperation and unity on all sides will soon lead to us exercising our joint taxing jurisdiction on the Grass reserve via our own society."*

The FNTC estimates there are over seventy jointly-held reserves across Canada, and this groundbreaking work of the Ts'elxwéyeqw Tribe will serve as a prototype for other First Nations who wish to unlock property tax potential on their jointly-held lands. ■

FMB: Local Revenue Account Financial Reporting Standards – Exposure Draft

On August 1, 2015 the First Nations Financial Management Board ("the Board") issued its Exposure Draft of a proposed set of standards around the financial reporting of local revenues. This Exposure Draft consists of two documents, both of which are now available for review and comment on the Board's web site.

***D1** – Local Revenue Account Financial Reporting Standards*

***D2** – Illustrative Local Revenue Account Financial Statements*

The first document, *D1 – Local Revenue Account Financial Reporting Standards,* contains the complete set of proposed standards that a First Nation, who has implanted a property taxation regime under the *First Nations Fiscal Management Act* ("the FMA"), would follow when reporting annually on local revenues. The second document, *D2 – Illustrative Local Revenue Account Financial Statements,* is intended to supplement the standards as a resource for preparers of these annual financial statements. The primary objective of these financial statements is to allow a taxpayer to compare the approved local revenue budget against the actual results for the period. This is necessary to fulfil the principles of transparency and accountability over the collection and use of local revenues. These financial statements and the accompanying audit report are to be made available to members of the First Nation, other persons who have an interest in the First Nation's lands (i.e. taxpayers), the FNTC, the Board and the Minister of Aboriginal Affairs and Northern Development Canada.

These Exposure Draft documents have been issued by the Board under its authority to do so contained in paragraph 55(1)(d) of the FMA with the input of the FNTC. Both organizations encourage First Nation tax administrators, taxpayers, auditors and other stakeholders to review these documents and use the online survey to provide direct feedback in the form of any comments. **These Exposure Draft documents will remain open for comment until November 20, 2015.**

A final version of these standards is expected to be issued by the Board in January, 2016 and are proposed to become effective for reporting periods commencing on or after April 1, 2016. ■

Aboriginal Resource Tax: First Nations Assert their Jurisdiction

Many First Nations in BC are supporting the development of an Aboriginal Resource Tax (ART) as a means of addressing infringements on lands under an Aboriginal title claim. The Stk'emlupsemc te Secwepemc Nation (SSN), Whispering Pines, Simpcw, Upper Nicola, Sekw'el'was, and Shuswap Nation Tribal Council (SNTC) are among the groups advancing this issue. First Nations supporting the ART have asked the First Nations Tax Commission (FNTC) for advice in advancing, developing and implementing this proposal.

Some of these First Nations have been pioneers in the practice of sharing Provincial resource taxes. It may seem strange that they are now advocating to replace that convention, and instead want to tax projects directly.

The truth is it has always been their intention to implement a tax power over their entire territory. Revenue sharing was just a stop gap. These First Nations were taxing outsiders who used their land and resources for centuries before the Crown asserted its title. They never ceded the power to tax, just as they never ceded their title. They are not about to cede that power now, by accepting only revenue sharing, particularly after the Supreme Court has recognized their collectively held economic interest in the land.

There are also practical reasons for preferring to tax directly, rather than share another government's tax.

First, the current approach to reaching consent is very demanding on administrations and these First Nations are already very busy with economic development plans, community plans and service provisions and meeting the reporting requirements of other governments. It simply doesn't make sense to constantly negotiate unique financial arrangements every time there is a new project or project expansion. It's costly and time consuming. It is far simpler to establish a tax regime and collect revenues automatically, like every other government does.

Second, tax revenues are very different from shared revenues. With shared revenues, it is ultimately up to the Province to determine how much money a First Nation receives. It is relatively simple for them to reduce royalty rates or offer a royalty holiday to encourage investment but also reduce the royalty revenue they share. It is easy for them to forget that such policy changes can have very large financial effects on the First Nation who is sharing these same revenues. In fact, the changes will be far larger in relative terms on the First Nation than the Province simply because the Province is larger and has many more revenues. With a tax power, the rates and other determinants of the revenue potential will be in their own hands.

Third, by establishing a transparent tax regime, these same First Nations will improve investment throughout their territories. Companies will know what they are expected to pay right from Day One because, just like property taxes, they will know the tax rate. More investment will mean more revenues from all other sources, including property tax. It will mean more jobs and business opportunities for all their other economic development aspirations.

Finally, by developing their own tax power, they are becoming more politically independent. Shared revenues have the same political disadvantages as cash transfers: when another government sets out the terms and conditions for using the revenues, it is going to be very difficult to properly assert your interests in a negotiation about anything else.

The First Nations Tax Commission has been asked by these First Nations to help consider options that could be presented to other governments and industry. The experience and unique capacities of the FNTC will help the First Nations in the development of their proposals. The FNTC shares their interest in developing a tax power that improves investment, presents low administration and compliance costs, and is properly accommodated through fiscal adjustments by both the federal and provincial governments. ■

B.C. Treaty Taxation: The *First Nations Fiscal Management Act* Option

In British Columbia, First Nations entering into a treaty lose the power to tax under the Indian Act or the *First Nations Fiscal Management Act* (FMA), and the First Nation must thereafter operate its property taxation system in accordance with the terms of the Treaty. Under the current B.C. Treaty model, the Province is given taxing jurisdiction over non-members residing on First Nation lands, while the First Nation has taxing jurisdiction over its members. For property taxation, the practice is for the Province to delegate its jurisdiction to the First Nation under a "Real Property Tax Coordination Agreement." This agreement sets out the terms and conditions under which the First Nation can levy property taxes on non-members.

Although Treaty First Nations can no longer be scheduled to the FMA, they can access the FMA under a section 141 regulation. Section 141 of the FMA allows Canada to make a regulation to enable a First Nation to benefit from the FMA, or to obtain the services of any body established under the FMA. Since 2009, the Commission, the FMB, the FNFA, Canada and the Province have been working to develop a section 141 regulation to enable existing Treaty First Nations to access the FMA for the purposes of pooled borrowing. To date no regulation has been finalized.

More recently, a number of First Nations currently in Treaty negotiations have asked the Commission to explore a new option for Treaty property taxation. The proposal is to give Treaty First Nations the option to use the full scope of the FMA post-Treaty. This would enable a First Nation to levy property taxes under the FMA, to have a financial administration law under the FMA, and to access pooled borrowing with the FNFA.

Chief Clarence Jules Sr. and Chief Commissioner C.T. (Manny) Jules

Using the full scope of the FMA post-Treaty offers a number of benefits to taxing First Nations. First Nations would continue to have full taxing jurisdiction on their lands, the full scope of local revenue powers, strong tax enforcement provisions, institutional support from the Commission, the FMB and the FNFA, and access to capital through FNFA pooled borrowing. First Nations that have invested in their property taxation systems could continue to use those systems rather than dismantling their systems and creating new ones.

Implementing this option would require agreement and support from the federal and provincial governments and the First Nation. Changes would be required to the current treaty language, particularly in the taxation and financial administration chapters, and government fiscal policy review would be required to ensure the option is fiscally viable. The option would be enabled through either a section 141 regulation or amendments to the FMA itself.

The Commission is continuing to explore this option with interested First Nations, and to consider the specific implementation requirements. ■

First Nations Tax Commission

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