

CLEARING THE PATH

FIRST NATIONS TAX COMMISSION

VOLUME 4 ISSUE 3 SUMMER 2010



National Meeting for First Nation Tax Authorities: Opens Conference Series

On **October 19-21, 2010**, the FNTC will be hosting a national tax meeting for all First Nation tax authorities and will co-host a national conference on property ownership with the Indigenous Bar Association (IBA) in Vancouver, British Columbia.

October 19, 2010 will be dedicated to First Nation tax authorities. This National Meeting for Taxing First Nations is meant to provide an update in the area of property taxation, including important initiatives and services provided by the First Nations Tax Commission (FNTC). The meeting will provide First Nation tax authorities with an opportunity to dialogue with each other and the Commission. The evening will include a dinner for the First Nation delegates with world-renowned economist Hernando de Soto, who will be honoured for his work on Indigenous property rights.

On **October 20, 2010** a conference on First Nation property ownership and proposed legislation will feature Mr. de Soto as a keynote speaker. This day's agenda will include a legal and economic overview of the First Nation Property Ownership Act (FNPOA) concept, a First Nation panel on property rights and the IBA perspective on the proposal for legislation.

To close the conference series, the IBA will continue with the Forum on Land Tenure theme featuring presentations from well know legal experts and will also hold its annual meeting on **October 21, 2010**.

Alberta Taxation — Recognizing Al Fenton

One of the most notable professionals in the area of First Nation property taxation is Mr. Alan Fenton. For 38 years, Mr. Fenton has assisted First Nations in the development of property taxation in Alberta.

Mr. Fenton is an Accredited Municipal Assessor of Alberta, who received a 43 year membership award this year, making him the longest practising accredited assessor in the province. He has been in the field of First Nation property taxation since 1971, when he worked as a County assessor with the County of Sturgeon, assisting the Department of Indian Affairs and Northern Development (DIAND) with the drafting of a taxation by-law for the Enoch First Nation. The by-law followed the pattern of Alberta's taxation legislation.

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Message from the Chief Commissioner



Summer is a time when many of us enjoy holidays and events like Pow Wow with our families and friends. It's also a time when we can take a break and reflect on our work over the past year. In this regard, I am pleased to advise that the Commission is in the process of finalizing its Annual Report 2009-10, which will be posted on our website in August.

HST has been a hot topic over the past six months, particularly in Ontario and British Columbia. As with other taxes, the FNTC has responded to a number of inquiries from First Nations on the impact of the new HST.

Canada has long played a leadership role in the promotion of global standards for deficit reduction and financial regulation, as witnessed at the G8/G20 meetings last month. Similarly, the FNTC has also supported standards as a way to increase our economic opportunities. Standards improve economies because they provide confidence to our members and investors, they reduce the number of disputes, and they lower the costs of doing business. Standards also provide for administrative efficiency, as they make it easier for the Commission to develop sample laws that save taxing First Nations time and money. In the coming year, we will be working on a pilot project with four First Nations who are ready to implement laws based on standards related to development cost charges. FNTC will also be developing standards for taxes on business activities so First Nations can further expand their revenue options.

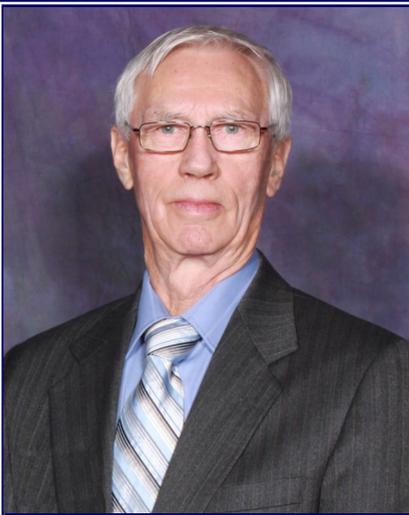
A key purpose of the Commission is the expansion of the First Nations economy through increasing investment on First Nations land. Property ownership standards are the foundation of the market economy: they ensure jurisdiction is protected; they allow individuals to realize the wealth in their lands; and, they allow land assets to be converted to capital to support business development. For the last 3 years, the FNTC has been promoting an option for First Nation property ownership, through federal legislation, to create these standards. The FNTC has completed a significant amount of research about First Nation property ownership and I have discussed the proposal with a number of interested First Nations.

This fall, in Vancouver, the FNTC will be hosting two conferences. The first, for all First Nation tax authorities, will give us an opportunity to report on the progress we are making in property taxation and consider strategic approaches to the many challenges before us. The second conference will focus on the First Nation Property Ownership Initiative. The internationally recognized economist, Hernando de Soto, will be a keynote speaker. I hope you plan to attend these meetings as it is important that we continue to work together to develop options to strengthen our economies and expand our revenues.

I hope you travel safely and I look forward to seeing you in the fall.

Sincerely,

C.T. (Manny) Jules
Chief Commissioner



Mr. Alan Fenton, Alberta Assessor.

Recognizing Al Fenton

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Since then, he has worked with many Alberta First Nations and the FNTC (Indian Taxation Advisory Board or ITAB at that time) since its inception.

He drafted the first model assessment and taxation by-law in 1988, prior to working with ITAB. Mr. Fenton first met Chief Commissioner Jules as a result of ITAB's involvement in getting assessment and taxation legislation changed in Alberta, following the passage of BC's *Self Government Enabling Act*. Later that year (1990), ITAB and Mr. Fenton began working together and still value the relationship today.

Commissioner Ken Marsh, who has worked with Mr. Fenton over many years in Alberta, said this about him: "Over the many years I've dealt with Al on assessment/taxation issues, whether it was when we worked together at Alberta Municipal Affairs, presenting an assessment appeal case to him during his tenure at the Municipal Government Board or to discuss assessment/taxation on First Nations, I knew I was going to be heard and dealt with to the highest standard. Al's ability to listen and provide clarity in order to resolve an issue as a result of his extensive knowledge of assessment/taxation is what makes him stand out in the assessment profession."

Mr. Fenton provides ongoing annual support to approximately twenty First Nations, some of which he has provided support to for over thirty-five years. He has personally worked with the Alexander First Nation since 1972. He also provides advice to many other First Nations in

Alberta, Saskatchewan and Manitoba regarding taxation including explaining property taxation, providing estimates of taxation revenue and expenditures, demonstrating how to administer taxation programs, and drafting by-laws.

Clearing the Path asked Mr. Fenton what benefits he has seen, over the years, for First Nations in property taxation. He stated that there are "the obvious financial benefits, locally generated revenue to improve the well-being of local residents, and it is an important step in the development of local government." He emphasized that the recognition by industry and commerce to promote and support self-government is one of the major benefits. He also sees a significant improvement in the way tax administrators oversee their tax program and deal with Council and their taxpayers.

Clearing the Path also asked: After a 40-year career in assessment and taxation, what do you think property tax will lead to for First Nations? Mr. Fenton stated that he hopes "it will lead to self-government and more economic development on the lands. That's what this jurisdiction is all about. The grassroots fears about tax among some members keeps some Councils from approving tax by-laws. This prevents those First Nations from raising significant tax revenue and benefitting from it." In this regard, he recognized the contribution made by the FNTC (and ITAB) to promote self-government. He stated: "I have worked with the organization for twenty years and I have the greatest amount of respect for the way they have encouraged economic development by way of taxation. Many First Nations are better off for their work."

The FNTC congratulates Mr. Fenton for a remarkable career and looks forward to his continued contribution to the success of First Nation property taxation.

Tax Dollars at Work from Coast to Coast

Property tax revenue generated by First Nations has helped First Nations build their economies and community infrastructure. Here are some real examples of quality infrastructure:



The Water Treatment Plant at the Kamloops Indian Band.



The Millbrook First Nation's Gym and Senior's Centre above.



Members of the Songhees Nation join together for an open song outside the Community Centre. Cooper Road.



The Community building at Tsawout First Nation.

Tulo Centre Calendar Update

The Tulo Centre of Indigenous Economics offered APEC 164 Administration: Tax Notices, Collection & Enforcement at Thompson Rivers University in June. It was the first time this course had been offered. Fifteen students successfully completed the one-week course. As with all Tulo Centre courses, curriculum is being updated to improve the successful activity based learning approach. The schedule for the remainder of the 2010-2011 academic year is as follows:

Classes offered at TRU:

- Aug 30 to Sept 3 - APEC 163 Assessment and Assessment Appeals
- Oct 4 to Oct 8 - APEC 165 Communications and Taxpayer Relations
- Nov 29 to Dec 3 - APEC 265 Investment Facilitation on First Nation Lands
- Jan 10 to Jan 14 - APEC 166 Service Agreements and Joint Contracts
- Feb 21 to Feb 25 - APEC 164 Administration: Tax Notices, Collection & Enforcement
- Mar 14 to Mar 18 - APEC 270 Economic Feasibility and Impact Analysis on First Nation Lands

Classes offered on-line through TRU Open Learning Agency:

- September – APEC 161 – Introduction to First Nation Taxation
- November – APEC 162 – Tax Rates and Expenditures
- January – APEC 163 – Assessments and Assessment Appeals
- February – APEC 164 – Administration: Tax Notices, Collection and Enforcement
- March – APEC 165 – Communications and Taxpayer Relations

For more information about the Tulo Centre or to enquire about registering for courses, contact Sarah Jules at 250-828-9857.

Proposed First Nation Property Ownership Act — It's Time

The First Nations Tax Commission is working with a number of tax collecting First Nations who are supporting the development of optional legislation that enables them to own their lands, escape the land sections of the *Indian Act* and have individual property rights like other Canadians. The proposed optional legislation is called the First Nation Property Ownership Act. One of the First Nation leaders supporting this initiative is Chief Michael Lebourdais of the Whispering Pines Indian Band. Chief Lebourdais said: "It's time for a change. It's time to move beyond the *Indian Act*." Here is a summary of what else Chief Lebourdais said about the initiative in an interview with *Clearing the Path*:

"It's time we owned our own land. Because of the *Indian Act* and other legislation, the federal and in some cases even provincial governments technically own our lands. The proposed First Nation Property Ownership Act would change this. It would transfer underlying title back to us so that we owned our own lands in the eyes of the law. It's time our jurisdiction was recognized and protected. FNPOA will do this. It will recognize our inalienable jurisdiction over our land.

It's time that we can do business on our land as easily as anywhere else. Right now, it takes 4 to 6 times longer to complete a private investment deal on our lands than in the rest of Canada."

It takes up to 100 times longer to register a land title transfer on our lands. We will always be poor unless this changes. FNPOA will change this. It will allow property transactions to happen as easily on our lands as anywhere else. It's time our people could own their own land on their own territory. We

had individual property rights for hunting, fishing and residential purposes long before contact. FNPOA will enable a range of individual property rights from rental to leasing to fee simple. FNPOA will allow us to create secure marketable tenure on our lands.

It's time we earned equity in our homes. It's time we could obtain loans like other Canadians to start up businesses. It's time we could generate wealth and pass it on to future generations. FNPOA will allow all this. It will raise property values for many Certificate of Possession holders up to ten times.

It's time we had an effective alternative to the *Indian Act*. The *Indian Act* was originally a temporary measure until we disappeared or were assimilated. This has not, and will not, happen. FNPOA will allow anyone who wishes, to move beyond the *Indian Act*.

It's time we could pass along our wealth to our children. FNPOA will mean we can bequeath our property to the next generation regardless of their status under the *Indian Act* and give them a head start on a better standard of living like other Canadians."

Chief Lebourdais and other First Nations, with the support of the FNTC, are leading the proposed FNPOA. Find out more about this initiative at the First Nation Property Ownership Conference on October 20th at the Hotel Vancouver. The world renowned economist Hernando de Soto will be a keynote speaker at this conference. He recently stated "You don't have to travel to Zambia or Peru to see dead capital. All you need to do is visit a reserve in Canada. First Nations people own assets, but not with the same instruments as other Canadians. They're frozen into an *Indian Act* of the 1870's so they can't easily trade their valuable resources."

Learn more: www.fnpo.ca.

Property Tax Based on Consumption of Service

The BC Municipal Sustainability Model Report

A central pillar of the FNTC mandate is to promote and safeguard First Nation property taxation jurisdiction. The FNTC monitors the development of provincial policy and related changes in the taxation and assessment of real property to determine the potential impact on the First Nations property tax system.

One such potential policy development is currently under consideration in BC. Catalyst Paper, western North America's largest producer of mechanical printing paper and a recognized leader in sustainable business practises, has led a long effort to reduce its tax liability and the tax liability of the industrial class generally. It has commissioned a report on its issues entitled: *The BC Municipal Sustainability Model Report*.

The report recommends an amendment to the BC Community Charter that would require local governments to submit to the Minister a sustainability strategy, a consumption of services report for each property class, a cost of service delivery report on five administrative performance measures, and a consumption-based property tax distribution policy for each class. The Province is expected to consider the Report's recommendations through a "joint review committee" that will examine the assessment and taxation of industrial property and report back to the Province in the fall of 2010.

The proposed consumption of service approach presents real challenges for First Nation tax authorities. Many of taxing First Nations have less diversified tax bases that derive a relatively high proportion of tax

revenue from a limited number of property classes. These often include the utility and industrial property classes, which consume a relatively lower level of local services than other classes (eg. residential and commercial).

The FNTC will meet with the Report authors to broaden the discussion and identify the potential impact on First Nation tax authorities, The FNTC will continue to monitor the development of BC provincial policy related to changes in the taxation and assessment of industrial property to ensure that the views of the FNTC and First Nations tax authorities are considered.

Assessment of Linear Properties in Alberta

Memorandum of Agreement between AMA and FNTC

A draft Memorandum of Agreement (MOA) between Alberta Municipal Affairs (AMA) Assessment Services Branch and the FNTC is under review. The Commission has reviewed the draft MOA and provided extensive comment. The Municipal Government Act (MGA) precludes the Designated Linear Assessor from preparing linear assessment on property on First Nation lands as per section 298(1)(t). The MOA is intended to assist First Nations in preparation of their linear assessment by providing information to the First Nation's appointed agent. Linear property includes all property as defined under the MGA section 284 (k), such as street lighting systems, telecommunication systems, and pipelines. The MOA, however would exclude certain properties such as electric power generation facilities. Once the final review by AMA and the FNTC is completed, it is anticipated that a formalized agreement should be in place in 2010.

Assessment in BC Board of Review Upholds Penticton By-law

"As though held in fee simple"

In May 2010, the Board of Review for the Penticton Indian Band considered the case brought forward by a taxpayer leasing a single family dwelling on the reserve. The property is part of a gated community located adjacent to the northwest border of the City of Penticton.

The taxpayer, representing himself, advised the Board that there had been a \$27,000 increase in the assessment of his land between the 2009 and 2010 assessment rolls. Despite the fact that the local paper mentioned a freeze in assessments for 2010, the Assessor had generally raised land values within his gated community. The taxpayer also took exception to the Assessor's use of comparable sales from a subdivision located at the south end of the City of Penticton. Those properties, the taxpayer argued, are held in "fee simple" while his own property is held by way of a lease on the Penticton Indian Reserve. Coupled with a real estate market that he felt was flat, an increase of \$27,000 could not be justified by the Assessor and that a land value somewhere between 2009 and 2010 would be more appropriate.

The Assessor advised the Board that while there had been a freeze of assessments under provincial jurisdiction in 2009, no such freeze had been provided for in the Penticton Indian Band Assessment By-law. In preparing for this appeal, the Assessor asked an expert witness (whose professional qualifications the Board of Review found acceptable to give "opinion" evidence) to inspect the subject property. In doing so, he relied on a market comparison approach to find the estimated value for the subject property, using four sales of single family

dwellings in the off-reserve subdivision as the comparables. Accordingly, the expert witness recommended the 2010 value be confirmed.

The Board asked the witness about the taxpayer's contention that the large increase over 2009 was an indication the Assessor had played "catch up" in setting the 2010 values. He acknowledged 2009 land values had been "conservative". The Assessor advised the Board that in view of this, the Assessor met with the Homeowner's Association in 2009 to discuss the fact that land values on the next assessment roll would be increasing, despite a flat real estate market.

The Assessor then provided the Board and taxpayer with a book of authorities which included excerpts from the Penticton Assessment By-law, as well several decisions in appeals involving the assessment of "occupied" lands as though they were held in fee simple.

In every case, be it a Property Assessment Appeal Board, or the Provincial or Federal Court, the decisions confirmed that the First Nation by-law or applicable assessment statute required the Assessor to value the occupied lands as though they were held in fee simple. The language in the Penticton Indian Band Assessment By-law is equally as clear.

Citing several cases, the Board of Review ruled that the Assessor was correct in valuing the subject property "as though held in fee simple". While considering matter of the correct value, the Board noted the taxpayer provided no evidence of fee simple sales of other comparables to support a lower value. As well, he failed to provide evidence the sales used by the expert witness were not comparable to his own property. Accordingly, the Board ordered that the Assessor's value be confirmed.

UPCOMING MEETINGS



FNTAA Annual National Forum

On **September 15 to 17, 2010** the First Nations Tax Administrators Association will hold its 17th Annual National Forum on First Nations Property Taxation. The forum will be held in Enoch, Alberta. Topics of discussion will include FSMA implementation, training opportunities, lands management issues, land tenure on First Nation land, and economic development. The FNTAA Annual General Meeting will be held on Friday, September 17th. For more information, you may visit the website at www.fntaa.ca.



CPTA 44th Annual National Workshop

On **September 26 to 29, 2010**, the Canadian Property Tax Association will hold its 44th Annual National Workshop in Québec City. The workshop is entitled "Kicking off a New Decade of Property Assessment and Taxation: Focus on Policy, Principles and Practice". The experienced speakers, panels and workshops will inform participants of recent developments in tax policy, explore creative approaches to vexing appraisal issues, and help to improve participants' skills as expert witness or advocate before CPTA assessment appeal tribunals. For more information, please visit the CPTA website at www.cpta.org.



IBA 22nd Annual Conference

On **October 20 to 21, 2010**, the Indigenous Bar Association will hold their 22nd Annual Conference in Vancouver, BC. This year's conference theme is Land Reform. IBA will co-host the October 20, 2010 meeting on First Nation Property Ownership with FNTC and will continue with the land reform dialogue and their Annual Meeting on October 21, 2010. For more information and registration contact IBA at www.indigenousbar.ca.



FNTC Annual General Meeting

On **September 22, 2010**, the FNTC will be holding its third annual general meeting at FNTC head office in Kamloops, BC. The FNTC Annual Report and Audit will be presented at the meeting. Review the Annual Report at www.fntc.ca.



First Nation Tax Authorities National Meeting

On **October 19, 2010**, the FNTC will hold the First Nation Tax Authorities National Meeting in Vancouver, BC. The meeting is intended for First Nations with tax jurisdiction under the FSMA or section 83 of the *Indian Act*. The event will provide the tax authorities with information about progress in property taxation and expanding revenue opportunities. For more information, contact the FNTC.



First Nation Property Ownership Conference

On **October 20, 2010**, the FNTC will be co-hosting a conference on the proposed First Nation Property Ownership Act. The conference, featuring keynote speaker Economist Hernando de Soto, will discuss property rights and an overview of FNPOA. For more information and registration go to www.fnpo.ca or www.fntc.ca.



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