

CLEARING THE PATH

FIRST NATIONS TAX COMMISSION

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Commission Convenes National Meeting for First Nation Tax Authorities

On October 19, 2010, the First Nations Tax Commission held a National Meeting for First Nation Tax Authorities in Vancouver, BC. The meeting provided tax administrators and other representatives from these First Nations with the opportunity to meet, discuss and learn about innovations in the property tax system, new ways to expand economic growth, and develop collective strategies to overcome common challenges. Sixty-seven First Nations attended.

The theme of the 2010 meeting was *Strengthening Tax Jurisdictions for Stronger Economies*. The meeting focused on four interrelated areas: protecting First Nation jurisdiction, expanding revenue options, enabling First Nation infrastructure financing, and building First Nation fiscal governance capacity.

A series of presentations and panel discussions

WHAT'S INSIDE

- 2 MESSAGE FROM THE CHIEF COMMISSIONER
- 2 SUPREME COURT TO HEAR PROPERTY TAX APPEAL
- 3 BC TREATIES AND THE FSMA
- 4 TULO CENTRE UPDATE
- 5 FIRST NATION PROPERTY OWNERSHIP CONFERENCE
- 6 STANDING COMMITTEE VISITS FNTC IN KAMLOOPS
- 6 CPTA 44TH ANNUAL WORKSHOP
- 6 FNTAA 17TH ANNUAL NATIONAL FORUM
- 7 REMEMBERING OUR FRIENDS AND COLLEAGUES
- 8 SAMPLE FSMA LAWS DEVELOPED FOR QUEBEC
- 8 NEW ON-LINE GAZETTE

were presented, providing innovative approaches to financing capital infrastructure, local revenue generating tools available under the *First Nations Fiscal and Statistical Management Act (FSMA)*, as well as recent developments in FNTC laws, standards, regulations, financial management, financing, and the status of First Nation property taxation across the country. Highlights of the meeting included presentations from the Commission and the other fiscal institutions, the First Nations Tax Administrators Association, and the Tulo Centre of Indigenous Economics.

Delegates learned about progress being made in expanding the First Nation property tax system and changes that have occurred since the FSMA and the Commission became operational in 2007. Presentations highlighted the Commission's ongoing support for taxing First Nations who are negotiating agreements under

Continued on page 3



Harold Calla, Squamish Nation, honoured by the FNTC for his significant contribution to the development of First Nation economies, revenue options and property ownership is seen here with Secepemc Elder Ernie Philip on October 20, 2010.

Message from the Chief Commissioner



I would like to extend my best wishes to you for the New Year. I always see each New Year as a time to reflect on achievements and plan for the future with optimism and resolve. As we enter 2011, property taxation on-reserve is changing. Our national First Nation tax authorities meeting in October, 2010 confirmed that the catalyst of that change is the FSMA. Two decades ago, the impetus for First Nation taxation was largely the need to address basic services associated with leaseholders on reserve lands. While that is still the case today, many First Nations are now using the tax system to respond to the demands of economic growth and to support the building of infrastructure. Nearly half of the 125 taxing First Nations are now using the FSMA, and it is the overwhelming choice of First Nations entering into taxation for the first time.

There is strong interest among First Nations in forming the first borrowing pool, and leading communities including Kamloops, Shuswap, Campbell River, and Squamish are developing new FSMA revenue laws to generate revenue to address the costs of needed infrastructure. Some are building better financial management systems through Financial Administration laws, while others are using the FSMA to improve taxpayer relations. These examples illustrate how First Nations are using the fiscal tools under the FSMA, in an effort to build stronger governments and economies. While taxation under the *Indian Act* remains a reliable legislative option, the FSMA provides a complete set of fiscal tools.

Our objective for 2011 is to continue to be responsive to First Nations and assist them in achieving their economic aspirations. In that regard, we are committed to working with them to expand their revenue options through the development of FSMA revenue laws like DCC's, service taxes, and business activity taxes, as well as working with First Nations who wish to establish FNGST. We will continue to assist those First Nations who wish to lever their property tax revenues to finance capital infrastructure through FSMA debenture financing. Finally, we will work with several First Nations and the federal government to create the opportunity of private ownership on reserve. The First Nation tax system has provided a reliable and stable source of revenue for First Nations in uncertain economic times. As a result, we expect the number of taxing authorities to increase over time, particularly with the threat of fiscal restraint looming. The FNTC will respond to that expected growth by developing improved communication strategies, offering greater learning opportunities through TULO, and streamlining access to the FSMA.

As with each New Year, I am confident that by working together, we will make this one better than last.

C.T. (Manny) Jules
Chief Commissioner

Rare Appeal of Property Tax Rates to Be Heard By Canada's Highest Court

Sometime in 2011, the Supreme Court of Canada will be hearing a claim by a BC company asserts that a municipality taxed it at too high a rate. Catalyst Energy's claim - that the tax rates set by the District of North Cowichan in North Vancouver Island, BC, were unreasonable - is premised on

its assertion that these rates bear no relationship to the municipal services it actually uses or consumes. The Supreme Court of Canada generally only hears appeals where a case has importance beyond the parties because the law is uncertain or in need of incremental development. Therefore, it is anticipated the court, in its eventual decision, to thoroughly address all the legal issues in regard to the setting of property tax rates. The Commission will be following the case closely and keep readers apprised of any outcome.

National Meeting

Continued from page 1...

the BC Treaty process and First Nations dealing with taxation of CP and CN railway rights of way.

Participants were also presented with a policy review of two revenue options – FSMA business activity taxes and FNGST. The challenges to implement the business activity taxes and the success by some tax collecting First Nations who have implemented the FNGST were discussed. The role of capital planning was examined, and in particular, how the tools available from the FSMA can help to expand resources and accelerate development. Presenters discussed the borrowing process and how capital planning, integrated with fiscal planning, can be used to create a sustainable infrastructure program. The First Nations Finance Authority was there to inform delegates how they can maximize their infrastructure revenues with bonds.

Mr. Dean Martin, CEO of Kinbasket Group of Companies, outlined how a water and sewer utility can be a catalyst for development and create spin offs for dynamic growth. Kinbasket Water Sewer Corporation (KWSC) has serviced water and sewer, both on and off reserve, for ten years. KWSC has been the foundation of the Shuswap First Nation's economic growth and is now negotiating an expanded servicing program off-reserve, which will grow its on-reserve facility.

The First Nations Financial Management Board (FMB) continued the bond discussion by reviewing the FMB certification process and summarizing the FMB financial management prerequisites for borrowing. The tax administrators professional organization, First Nations Tax Administrators



Elder Ernie Philip sings an honour song following the presentation to the Nisga'a Nation.

Association, outlined their objectives and the services it provides to members. Tax administrators also learned about the accredited certificate program in First Nation Tax Administration and First Nation Applied Economics being offered through the Tulo Centre of Indigenous Economics and reviewed a demonstration of the software updates for TAS (Tax Administration Software). A presentation on the *First Nations Gazette* summarized the *Gazette's* services and included an announcement introducing a new law search engine that is being added to the online gazette (www.fng.ca) to support research of the First Nation laws. The First Nations Statistical Institute outlined their current status and outlook.

Following the National Meeting, delegates attended a dinner where the FNTC honoured the Nisga'a Nation, Harold Calla (Squamish Nation) and economist Hernando de Soto for their work on Indigenous property rights. Elder Ernie Philip from Little Shuswap Band conducted the honouring ceremony which concluded with a spectacular performance by award-winning hoop dancer, Lisa Odjig, from Wikwemikong, Manitoulin Island.

BC Treaties and FSMA

First Nation tax authorities participating in BC Treaty negotiations are seeking to continue to work with the FNTC and maintain their access to the services that the FNTC provides. To date, federal and provincial mandates have not considered the regulatory framework of the FSMA for property taxation. The option being offered to Treaty First Nations has been to adopt the provincial property tax scheme and to be tied to a provincial agreement for the power to tax non-Members and for the ability to use property tax revenues as security for borrowing.

FNTC has received enquiries from a number of First Nations at various stages of negotiation and after extensive research, the FNTC has concluded that Treaty First Nations wishing to exercise their rights of taxation under the FSMA (in their treaty) face no constitutional impediment. Further, there is no legal impediment to the provincial government being able to provide the FSMA as a property taxation option for a Treaty First Nation.

Treaty First Nations interested in the benefits offered by the FSMA are encouraged to contact the FNTC for more information.

Tulo Centre Update

The Tulo Centre of Indigenous Economics has delivered three classes since the Summer. *APEC 1630: Assessment and Assessment Appeals* was held the week of August 30-September 3, 2010 with twelve students. *APEC 1650: Communications and Taxpayer Relations* was held the week of October 4- October 8, 2010 with 15 students. *ECON 2650: Investment Facilitation on First Nation Lands* was held the week of November 29-December 3, 2010 with 16 students.

Due to the growing demand for participation in the classes, Tulo adjusted the calendar for the remainder of the academic year to take advantage of a larger classroom space.

The new schedule is as follows:

- Jan 31 to Feb 4 - APEC 1660:
Service Agreements and Joint Contracts
- Feb 28 to March 4 - APEC 1640:
Administration: Tax Notices, Collection & Enforcement
- March 21 to March 29 - APEC 2700:
Economic Feasibility and Impact Analysis on First Nation Lands

For more information or the latest Tulo news, visit the Tulo website (www.tulo.ca).



Memorandum of Understanding Signed:

Hernando de Soto, President of the Institute of Liberty and Democracy and Chief Mike Lebourdais, Chair of the Tulo Centre Board of Directors, signed a Memorandum of Understanding between the two institutions on October 21, 2010. The institutions have agreed to "support each other to further their shared values and objectives relating to the legal and administrative framework to support markets and property rights on indigenous lands". They will also "work together to secure resources to develop and deliver training and education to indigenous people to support market compatible indigenous property rights systems" and "work together to secure resources to facilitate a transfer of knowledge related to property rights and economic development among indigenous people in the Americas". You may see the full content of the MOU at www.tulo.ca.



 **Tulo Centre of Indigenous Economics** *Building capacity so markets work on Indigenous lands*

First Nations have a long history of trading to create sustainable economies. The *Certificate in First Nation Tax Administration* will help First Nations implement new powers and develop a skill set for First Nation tax administration to rebuild the First Nation market economy using the *First Nations Fiscal and Statistical Management Act*.

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Presenters at the FNPO conference, from left to right: Don Worme (Co-Chair), Budd Smith, Diane Cragg, Paul Chartrand, Ernie Philip, James Hopkins, Clo Ostrove, Hernando de Soto, André LeDressay, Chief Commissioner Jules (Co-Chair), Mark Stevenson, Mel Bevan, Glen Clark, Justice Harry LaForme, and Chief Keith Matthew.

First Nation Property Ownership: It's Time

On October 20, 2010, the FNTC co-hosted the First Nation Property Ownership Conference with the Indigenous Bar Association (IBA), in Vancouver, BC. The meeting provided a public forum for First Nations and other interested delegates to learn more property ownership and the First Nation Property Ownership initiative (FNPO).

Chief Commissioner Jules co-chaired the meeting with Mr. Don Worme of the IBA. Mr. Jules introduced the theme of the conference by discussing the history of First Nation property rights, the necessity to move beyond the *Indian Act* and that it is time that First Nations owned their own land.

Keynote speaker Hernando de Soto discussed how property right administrative systems create secure relationships and how those relationships establish identity, confirm ownership and support trade and economic growth. He pointed out that, like many countries in the world, the current First Nation property rights system in Canada does not effectively establish relationships between First Nations and their property.

Other speakers included Chief Mike Lebourdais (Whispering Pines), Chief Keith Matthew (Simpco), and Mr. Mel Bevan (Kitselas), all of whom spoke about the benefits of FNPO to their own First Nation and First Nation communities in general. They noted the need for home equity, new solutions to poverty, and facilitating the creation of individual wealth.

Hon. George Abbott, Minister of Aboriginal Affairs for BC, expressed his government's unqualified support for FNPO and explained how it could help improve intergovernmental relations in the province. The delegates also heard from Mr. Mitchell Stevens (president of the Nisga'a Nation), Mr. Glen Clark (former premier of BC), Mr. Frank Quinn (on behalf of the financial industry), Justice Harry La Forme, among others, about the importance of clear property rights and what FNPO could mean for First Nations.

Expanding First Nation Financing Options

New regulations are expected to come into force in early 2011 which will enable First Nations to leverage non-property tax revenues in order to

Continued on page 8



House of Commons Standing Committee on Finance Visits FNTC in Kamloops

On September 28, 2010, the House of Commons Standing Committee on Finance visited the First Nations Tax Commission Head Office in Kamloops, BC. The Committee wanted to learn more about the proposed First Nation Property Ownership Initiative (FNPO) and included the FNTC visit in their pre-budget consultations.

Formal presentations were made to the Standing Committee by Chief Commissioner Jules, Chief Keith Matthew (Simpchw First Nation), Chief Mike Lebourdais (Whispering Pines First Nation), Mr. Mel Bevan (Kitselas First Nation) and Councilor Eddie Jules (Skeetchestn First Nation). Each presentation detailed the benefits that their community would realize from the proposed FNPO.

Chief Commissioner Jules emphasized the importance of First Nations having ownership of their own lands, with clear governance powers, so they could develop effective property rights systems similar to those in the rest of Canada. Chief Matthew spoke about the importance of education and how the proposed FNPO would give his community an opportunity to retain skilled labor.

Chief Lebourdais discussed his community's strong support for this initiative, how FNPO would eliminate the requirement for band or ministerial guarantees for mortgages, and how FNPO could support the long term survival of his community. Mel Bevan discussed how previous initiatives by the federal Department of Indian Affairs did not focus on generating individual wealth and so First Nation individuals remain poor. Mr. Bevan believes the proposed FNPO would help create individual wealth. Skeetchestn Councilor Eddie Jules stated that his community is interested in the proposed FNPO because it would support their agricultural and other entrepreneurs get access to capital.

CPTA 44th Annual Workshop

Over 150 delegates gathered in Quebec City on September 27-29, 2010 to attend the Canadian Property Tax Association's 44th Annual Workshop. The 2010 Workshop examined property mitigation and equalization, regional tax reform initiatives, the current state of property taxation, and how to be a good expert witness and expert advocate.

FNTC Deputy Chief Commissioner, David Paul, addressed the delegates by providing a brief overview of the First Nations Property Ownership initiative and noting the mutual benefits that have been achieved over the years from the strong relationship between the CPTA and FNTC.

The 2011 45th Annual Workshop will be held in Niagara Falls on September 25-28, 2010.

FNTAA 17th Annual National Forum

On September 15-17, 2010, the First Nations Tax Administrators Association held their 17th Annual National Forum. Presentations included a report on property taxation from the FNTC, maximizing infrastructure revenue with FNFA bonds, courses available through the Tulo Centre and the FMB, managing reserve lands under a land code, HST implications for First Nations, and creating First Nation property rights.

Dr. Robert Bish was recognized for his contribution to the inception of the FNTAA. In 1993, he was responsible for securing a grant from the Donner-Canadian Foundation which established the then First Nations Tax Administrators Institute. Dr. Bish continues to support the advancement of the First Nation tax administration profession through his involvement with the Tulo Centre.

A full report on the meeting can be found on the FNTAA website, www.fntaa.ca. The 2011 meeting will be held at Quaaout Lodge, Chase, BC, on September 14 to 17.

Remembering our Friends and Colleagues



John Jules (1954—2010)

John Jules, brother of Chief Commissioner Jules, passed away on Saturday, October 16, 2010. John showed his strength and courage over his last few months as he underwent treatment for cancer. John was born and lived all of his life on the Kamloops Reserve. Education was important to him and he earned an undergraduate degree from Simon Fraser University in Archeology and Linguistics and was working on a Masters Degree. A prominent community member and cultural leader, John worked as an Archaeologist, Cultural Resource Manager for the Kamloops Indian Band and more recently as Director of Operations for Stk'emlupsemc Te Secwepwemc Nation. A traditional knowledge keeper, John was a Keeper of the Flame, a sundancer, eagle whistle carrier, coyote whistle carrier, sweatlodge keeper and eagle feather carrier. John presided over repatriation ceremonies for over 400 ancestors. John will always be remembered for his hearty laughter, traditional drumming, powerful singing, generous spirit and artistic talent. The Commission will always remember John's contribution to the FNTC. His drum and words of wisdom brought a spiritual presence to the FNTC inauguration and the Commission's Heraldic ceremony. This is a great loss to the Jules family and our thoughts and prayers go to John, his parents Clarence and Delores, and the Jules family.



Noah Augustine (1971—2010)

Noah Augustine, former Chief of Metepenagiag First Nation, died suddenly on Saturday, November 13, 2010, as a result of a car accident. Noah struggled as a child, born and raised on reserve, and grew to complete a post-secondary education, become a prominent figure in First Nation politics, and Chief of his First Nation. He was a respected leader and an articulate spokesman for First Nations in the Atlantic. Over the years Noah supported the Commission in its various initiatives and worked with the Chief Commissioner and Deputy Chief Commissioner in advancing a vision of opportunity for the Atlantic First Nations. Our thoughts and prayers are with Noah's family, his parents, fiancé, Micheleine Legere, and three children.



Hugh Ryan (1946—2010)

Hugh Ryan died peacefully, at home after a valiant battle with cancer, surrounded by his family, on Tuesday November 16, 2010, at the age of 64 years. Hugh will be dearly missed by colleagues at the FNTC and will be remembered for his work to establish the Indian Taxation Advisory Board in 1989. Hugh was retired from Indian Affairs and Northern Development and was a member of the Indian Taxation Advisory Board staff during 1989 to 1993. Hugh will be remembered as a devoted husband, exceptional father and adoring grandfather. He had a zest for life, great intellect, and a passion for golf and flying.

Sample FSMA Laws for First Nations in Quebec

First Nations in Quebec now have the benefit of sample FSMA property tax laws that are tailored to reflect regional variation. In December 2010, the FNTC approved Quebec-specific sample FSMA assessment and taxation laws. These sample laws reflect Quebec-specific assessment practices, including provisions that assessments are undertaken on a three-year cycle, and appeals may only be brought in the first year.

As with the Quebec system, the impact on taxpayers in increases and decreases in assessed values is mitigated through phasing in those changes over the three years. This system offers the benefits of stability in the assessment over the three year period, as well as reduced costs of administration. Montreal lawyer and former CPTA President, Mr. Brent Muir, provided draft law review comments to ensure that the laws reflect current property assessment and tax practice in Quebec. A revised sample section 83 by-law for First Nations in Quebec is currently under development.

Since 2007, the FNTC has developed sample property tax laws for First Nations eight provinces. These samples provide for regional variations which, for the most part, are found in the assessment practices. Sample laws for Prince Edward Island and Newfoundland remain to be developed. Nearly all taxing First Nations have adapted FNTC sample laws/by-laws as they meet policy requirements and significantly reduce costs.

New On-Line Gazette to be Unveiled in February

A new on-line *First Nations Gazette* site has been developed and is currently in the testing phase. Once testing has been completed, the site will go live in February 2011. The updated site, at www.fng.ca, will allow users to search a broad

range of subjects in the FNG database which includes any First Nation law/by-law published in the *Gazette*.

Expanding First Nation Financing Options

Continued from page 5...

finance projects over the long term. Currently, under the FSMA, First Nations can pledge a portion of their property tax revenue to finance projects over the long term using the FSMA debenture financing system. The new regulations will expand First Nation access to debenture financing.

Under the FSMA, First Nations can borrow by following four steps. The first step entails implementing taxation under the FSMA, identifying an eligible project, developing the project design/costing, and ensuring that there is sufficient borrowing room. Secondly, First Nations develop a Financial Management Law, receive financial management certification from the FMB, verifying the competence of their financial management system. With the pre-requisites in place, the third step is to develop a borrowing law and borrowing agreement law to confirm the legal authorities. The final step consists of the First Nation becoming a borrowing member with the FNFA and making its borrowing request. This request is pooled with other borrowing member requests and the total borrowing request is "sold" in the form of a First Nation bond. The proceeds from the sale of the bond are then distributed to each First Nation based on their requests. To learn more, contact the FNTC or the FNFA (www.fnfa.ca).



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