

CLEARING THE PATH

INDIAN TAXATION ADVISORY BOARD



FALL 2001

First Nation Tax Commission Progress Report

During the last year, the Indian Taxation Advisory Board (ITAB) has engaged in an extensive consultation process with First Nations and taxpayer groups about the transition to a statute-based First Nation Tax Commission (FNTC). Many presentations, meetings and informal discussions have been held about the proposed FNTC and three other fiscal institutions – the First Nations Finance Authority (FNFA), the First Nation Statistics Institute (FNSI) and the First Nation Financial Management Board (FMB). It is proposed that the FNTC will be established, with these other fiscal institutions, as part of the First Nation Fiscal Institutions legislation.

Over the past year, ITAB Chairman C.T. (Manny) Jules and his staff have made presentations to numerous groups and at several meetings, including:

- The Senate Standing Committee on Aboriginal Peoples;
- Canadian Property Tax Association;
- National Meeting of First Nations with Taxation Authority;
- First Nations Tax Administrators Association;
- BC Linear Structures Council;
- First Nations Tenants Associations;
- Canadian Energy Pipeline Association;
- BC Civil Liberties Society;
- Union of British Columbia Municipalities (UBCM);
- Assembly of First Nations National Executive;
- Department of Indian Affairs and Northern Development (DIAND) Senior Policy Committee;
- Okanagan Mainline Municipalities; and
- the Atlantic Economic Summit.

A number of topics have been discussed about how the FNTC will serve the needs of various constituent groups during the First Nations consultation process. In addition, ITAB has been working in partnership with the FNFA for

continued on page 4



C.T. (Manny) Jules with Chief Joe Gilbert of Walpole Island in Ontario.

WHAT'S INSIDE

- 2 **Chairman's Message**
- 2 **Financial Management Bylaw Program**
- 3 **Building Agreements**
- 4 **Atlantic Economic Summit**

Chairman's Message

With the resolution of support from the Chiefs and their delegates at the recent Assembly of First Nations annual general assembly in Halifax this past July, we are now consulting extensively with First Nations and their organizations to determine how First Nation fiscal institutions will work on their behalf.



Working with the proponents of the institutions, the Indian Taxation Advisory Board (ITAB) has now embarked upon a legislative development process that will provide a statutory basis for the new agencies. In addition, we are exploring the potential for expanding First Nation jurisdiction in taxation in an effort to ensure that adequate resources will be available to support economic and community development. The quartet of fiscal institutions involved – the First Nation Tax Commission, the First Nations Finance Authority, the First Nation Statistics Institute and the First Nation Financial Management Board – will enable First Nations to access capital in a regulated taxation framework, while at the same time properly addressing the need for data collection and financial management standards.

These important national developments are happening at a critical point in our continuing journey toward self-sufficiency and autonomy.

Extensive consultation on this institutional development process is underway. I invite and encourage your participation in this exciting initiative. To take part, please contact me directly or visit our website for more information.

Sincerely,

A handwritten signature in black ink, appearing to read 'C.T. Jules'.

C.T. (Manny) Jules,
Chairman

Financial Management Bylaw Development Program

ITAB has initiated a financial management bylaw program to assist First Nations governments in taking charge of accountability, transparency and redress in aboriginal communities across the country. The program is available to all First Nations governments.

“First Nations governments have expressed a significant interest in developing financial management skills that support their internal operations, as well as their relationship to their band members, funding agents, institutions, and others,” says course instructor Gerry Hutchison. “This interest reflects the broadening scope of First Nations financial interest, beyond federal transfer payments and into the regimes of taxation, claims management and economic development. That is what this course offers First Nations governments.”

The ultimate goal of the program is to have First Nation participants develop a financial management bylaw for their own community, which would be registered under Section 83 of the *Indian Act*. Another program goal is to give participants practical skills and knowledge in actually drafting bylaws. Participants usually have a draft finished product at the end of the training session.

Courses are divided into two separate three-day sessions with a strong emphasis on hands-on learning and practical application of newly learned skills. The course provides a legislative framework for jurisdiction and autonomy, accountability, transparency, redress, borrowing procedures and conflict of interest.

For more information about ITAB's financial management bylaw program, please call (250) 828-9857 or (613) 954-9769.



Financial Management Bylaw trainees in Atlantic Canada. Seated left to right: Sheila Augustine, Lyndon Sappier, Ken Lennon, Janice Martin, Peraline Bonell. Standing from left to right: Jason Moulton, Kevin Augustine, Brad Sappier, Richard Levi, Anna Levi, Katherine Lambert, Karen Somerville and Gerry Hutchison (instructor). Missing is Ken Perley.

Building Agreements Through Negotiation

Property taxation, land claims and natural resource disputes are an ongoing part of Native/non-Native relations in Canada. To address this problem, the Indian Taxation Advisory Board (ITAB) is working with the Consensus Building Institute (CBI) and Harvard University to establish a Canadian centre that would specialize in resolving such disputes.

In 1998, ITAB began a policy development process to explore and create alternative dispute resolution mechanisms that would apply a mutual gains approach to resolving tax-related disputes. Because ITAB has had good success in using this approach, successfully demonstrating that mutual gains negotiations can work in a broader First Nations context will form an integral part of the new centre's program.

BC Hydro Agreement

The current status of negotiations between BC First Nations and BC Hydro provides a good example of the benefits of a mutual gains approach. Readers will recall that there has been a long-standing dispute between the two parties regarding the payment of a grant-in-lieu of taxes. Litigation of the issues proved both costly and fruitless, leaving the parties entrenched and facing an unjust reality.

In June 1999, First Nations asked ITAB to facilitate discussions between a special negotiating committee representing First Nations with tax jurisdiction in BC and BC Hydro. The interest-based negotiation process fell short of the desired grant-in-lieu agreement but resulted in a commitment by BC Hydro to provide all First Nations in British Columbia with community development grants totaling \$1.6 million annually. First Nations are in the process of finalizing their review and have begun ratifying the agreements.

While the matter of the grant-in-lieu payment remains for First Nations to resolve with the provincial government, the fact remains that the parties were brought to the negotiating table and agreed to a transfer of revenue that will assist in community development for First Nations.



Seabird Island Band Council Members: William Andrew, Margaret Pettis, Graham Allen (Legal Council for the Seabird, Cook's Ferry and Skuppa), Clement Seymour, Sally Hope, Jim Harris and Chief Wayne Bobb.

CP Railway Agreement

Another example of the benefits of the mutual gains approach can be found in the groundbreaking agreement reached between the Canadian Pacific Railway (CPR) and five BC First Nations over rights-of-way on First Nation lands. The five First Nations – Boothroyd, Matsqui, Cook's Ferry, Skuppah and Seabird Island – ultimately lost in a 1999 Federal Court of Appeal decision, but the Court was divided on different issues that resulted in the dismissal of the First Nations' appeal. This created uncertainty for the First Nations and CPR as to the nature of CPR's interest in the rights-of-way.

In response to the legal uncertainty created by the decision, CPR and the First Nations commenced negotiations to settle the litigation and harmonize the current land tenure with the findings of the Federal Court of Appeal. Under the settlement agreement, the parties agreed to establish the maximum tax rates that each First Nation can set within its taxation bylaw. This will be done by a federal regulation that will apply to the five First Nations involved. The tax rate will closely parallel those under provincial tax laws. In future, ITAB anticipates meeting with other First Nations with railway interests to discuss the approach used in settling this dispute.

Atlantic Economic Summit Opens Doors for Business

The Atlantic Economic Summit, held in Halifax this past September, provided a unique opportunity for the business community to meet, discuss and develop mutually beneficial relationships with Atlantic Canada's First Nations. Participants listened to presenters discuss their own perspectives on this topic and the challenges they have faced, as well as the opportunities they have been able to build upon. The conference goal was to "begin a process that will lead to direct economic benefits for First Nation people and enhance profits for the corporate sector." The consensus of the participants would indicate that this goal was definitely met.

Delegates to the Summit were able to see how First Nations can successfully partner with the corporate sector to develop opportunities which ensure the participation of the Mi'kmaq and Maliseet people within the regional workforce while enhancing profits for both the Aboriginal and corporate sector. It was heartening to hear the examples of Chief Lawrence Paul of Millbrook First Nation and Chief Terry Paul of Membertou First Nation as they explained how their communities have engaged the corporate sector in the economic development initiatives of their communities.

First Nation Tax Commission Progress Report

continued from page 1

the last six years to facilitate the issue of First Nation debentures based upon a property tax revenue stream. First Nations recognize the importance of the jurisdiction in developing a new fiscal relationship for themselves in Canada. In addition, the FNTC will respond to taxpayers' expectations that they receive quality services at a fair (tax) price and that the new commission provides for their representation.

Inquiries to date have dealt with: recognition of First Nation jurisdiction; development of policies with respect to property tax, practices of assessment and tax rate setting; the need to establish standards; and approaches for taxpayer input. Most parties have also recognized the significant work required to develop the appropriate legislation to support the FNTC.

Representatives from two multi-national corporations, Xerox and Syncrude, spoke of the benefits a corporate Aboriginal strategy can provide their companies and the enhanced profits which can result for their shareholders. The First Nation demographics facing the corporate sector seeking a labour market cannot and are not being ignored.

To many who attended the Summit, both within First Nation communities and from the corporate sector, the concept of engaging each other for mutual benefit is new. The successful models presented, however, clearly prove it is in everyone's best interest to continue with this process.

The challenge now is for participants to build on the relationships developed during the Summit and to continue creating wealth for both First Nations people and for investors in this region. Given that the Summit is the first in a series of conferences to be held annually, participants will have the opportunity to return next year and share success stories which have resulted from their interactions at this year's Summit.

For further information, please contact ITAB Board Member David Paul at (506) 273-6071.

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