

Participating in the FSMA

Since 1989, the Indian Taxation Advisory Board has assisted over 100 First Nations in exercising their property tax jurisdiction under s.83 of the *Indian Act*. Currently, 105 First Nations are generating \$46 million in annual property tax revenue. In addition to working with First Nations to develop property tax bylaws, ITAB has provided advisory services to the Minister of Indian Affairs with regard to property tax bylaw approval and otherwise safeguarding the integrity of the First Nation property tax system as a whole.

The First Nations Tax Commission will build upon the success of ITAB and assume ITAB functions under s.83 of the *Indian Act*. It will also have responsibility for regulatory oversight for First Nation property tax under the *First Nations Fiscal and Statistical Management Act*. The FNTC will:

- streamline the bylaw approval process and shorten approval times;
- provide greater representation for taxpayers and assurance to investors;
- offer increased training and educational opportunities for tax administrators; and
- offer an enhanced capacity for timely and professional dispute resolution.

The FNTC will be part of an overall system of improving First Nation economic growth as the FSMA will also create the First Nations Finance Authority, First Nations Financial Management Board, and First Nations Statistical Institute.

The FSMA is available to all First Nations, including those who are currently exercising their property tax jurisdiction under s.83 of the *Indian Act*. First Nations who add their name to the *First Nations Fiscal and Statistical Management Act* schedule will be able to take advantage of the new property tax powers and access the full range of services provided by the institutions.

In order to opt into the property taxation and borrowing provisions of the FSMA, the Chief and Council of an interested First Nation must provide a resolution of Council, to the attention of the Minister of Indian Affairs and Northern Development requesting to be placed on the Schedule. The First Nation may also contact the Indian Taxation Advisory Board for assistance in completing the process.

Note: First Nations that are party to a self-government agreement and are not a “band” as defined by the *Indian Act* may be able to opt into the property tax and borrowing provisions of the FSMA through the development of a regulation made under section 141 of FSMA.

Upcoming Events

**First Nations Tax Administrators Association
12th Annual Meeting**
October 24-25-26, 2005 in Vancouver, BC

**Canadian Property Tax Association
39th Annual CPTA National Workshop**
September 25-28, 2005 in Kelowna, BC

**Indian Taxation Advisory Board National Meeting
for First Nations Tax Authorities**
September 14 - 15, 2005 in Richmond, BC

**INDIAN
TAXATION
ADVISORY
BOARD**



**COMMISSION
CONSULTATIVE
DE LA FISCALITÉ
INDIENNE**

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CLEARING THE PATH

INDIAN TAXATION ADVISORY BOARD

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“A New Beginning” Bill C-20 Receives Royal Assent with All-Party Support

The *First Nations Fiscal and Statistical Management Act* (Bill C-20 or FSMA) received Royal Assent on March 23, 2005, with the consent of all parties in the House of Commons and the Senate.

“Bill C-20 is an important milestone, which presents taxing First Nations with an opportunity to improve their economic situation. For current and future First Nation property tax authorities, this is an important step beyond the *Indian Act* and a critical improvement to the First Nation property tax system. Today, these First Nations have a choice and new institutions to support economic growth,” said Chief Crowfoot, Indian Taxation Advisory Board Chairman.

C.T. (Manny) Jules, who led the development of the Act, called the passage of Bill C-20 “a new

beginning” and a “triumph for First Nations and Canada.” This also marked the second time that Mr. Jules has led the development of legislation for First Nations. The first time was with Bill C-115 in 1988, which established the modern *Indian Act* framework for First Nations to levy property tax on-reserve. Bill C-115 also received all-party support.

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ITAB to host National First Nation Tax Authorities Meeting

On September 14-15, 2005, the Indian Taxation Advisory Board (ITAB) will host a special national meeting for First Nations with tax jurisdiction in Richmond, BC. The meeting will be an opportunity for First Nation tax authorities to share information and consider the current and future state of First Nation taxation.

For First Nations who are interested in learning more about in the implementation of the *First Nations Fiscal and Statistical Management Act* and the establishment of the First Nations Tax Commission (FNTC), ITAB will present an overview of taxation under the FSMA and the implementation activities in establishing the FNTC.

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The Leaders: Ms. Deanna Hamilton, Mr. C.T. (Manny) Jules, Mr. Harold Calla, Chief Tom Bressette and Chief Strater Crowfoot

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Chairman's Message

Our long journey finally came to a conclusion on March 23rd, 2005 when Bill C-20, the *First Nations Fiscal and Statistical Management Act*, received Royal Assent. And the fact that the FSMA had the support of all parties in the House of Commons and the Senate made the FSMA's passage historic.

March 23rd, 2005 was also an important day for First Nations. For those First Nations currently collecting property tax, and those considering doing so, they now have an option to the *Indian Act*. While section 83 remains unchanged, the FSMA provides a strong alternative and, I believe, a key to prosperity for many First Nations. ITAB research has shown that it is ten times harder to attract private investment to First Nation land. As well, off reserve, private investment is five times larger than public investment. Establishing the four First Nation fiscal institutions will help to change this trend and will reduce some of the barriers to economic development on First Nation lands.

ITAB now begins the process of the transition to the FNTC. Much work remains to ensure the FNTC is fully operational for 2006. I would encourage you to visit our website to learn more about the FSMA, its associated regulations and to otherwise follow our progress in the months ahead.

I look forward to meeting with the leaders of First Nation tax authorities at our national meeting to exchange views on how to move forward.

Sincerely,



Chief Strater Crowfoot
Chairman



ITAB-FNTC Transition Under Way

With the passage of the *First Nations Fiscal and Statistical Management Act*, the Indian Taxation Advisory Board has officially begun the work on the transition to the First Nations Tax Commission. Chief Strater Crowfoot, ITAB Chairman, said: "Now that the FSMA has been passed, it is time to bring it to life. For ITAB, FSMA implementation means turning ITAB into the FNTC and preparing to offer First Nations the services they expect - the best services possible."

Upon the coming into force of the FSMA, the FNTC will approve First Nation local revenue laws, establish the policy and regulatory framework for a fair and accountable property taxation system, provide training, prevent and facilitate the resolution of disputes, certify First Nation borrowing capacity,

conduct research, and advise stakeholder groups on emerging issues. The services of the FNTC will build upon the strong foundation laid by ITAB, created in 1989.

First Nation governments choosing to exercise their property taxation jurisdiction are free to enact their laws pursuant to the FSMA or section 83 of the *Indian Act*. Current and future taxing First Nations can pick the system they wish to use. The FNTC will be responsible for regulating both property tax systems. Once operational, the FNTC will be working quickly to complete the policy, standard, and law development work necessary to provide services to First Nations and their taxpayers.

To meet this challenge, ITAB will undertake a number of specific initiatives. Specifically, these initiatives correspond to the functions and services set out in the FNTC business plan.

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March 23, 2005 - The Squamish Nation's BCR, the first request to be added to the FSMA schedule, is presented to The Hon. Sue Barnes by Councillor Harold Calla.

A New Beginning

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While the Act received Royal Assent in March, is not expected to come into force until 2006. ITAB will use this period to complete regulatory development and ensure a smooth transition to the First Nations Tax Commission (see related story on p. 2).

ITAB believes many First Nations will choose to collect property tax under the new legislation, once it is in force. Chairman Crowfoot expects many taxing First Nations will decide to move away from the *Indian Act* and take advantage of the economic tools available through Bill C-20.

Chairman Crowfoot urged First Nations wishing to collect property tax under Bill C-20 to ensure their name is added to the schedule. "While the process to be added to the Schedule is relatively simple, it still takes time," he said, "And we want to make sure that no First Nation is missed."

ITAB is available to assist those First Nations wishing to collect property tax through Bill C-20. A band council resolution is all that is required to be added to the Schedule, and a sample is available by contacting ITAB.

First Nations may continue to levy property taxes on-reserve through section 83 of the *Indian Act*, with the approval of the Minister of Indian Affairs. For taxing First Nations who are interested in improving their tax

powers, strengthening their jurisdiction, and accessing new revenue streams, the FSMA creates viable opportunities. Currently, 105 First Nations levy property tax across Canada.

The legislation will create four institutions which will be operated by and for First Nations: a finance authority, a tax commission, a financial management board and a statistical institute.

The First Nations Tax Commission builds upon the established reputation and expertise of the existing ITAB. It will provide stronger tax enforcement powers, greater clarity with respect to property tax laws, and mechanisms to improve taxpayer relations. First Nations exercising property tax jurisdiction under the FSMA will also be able to gain access to the full range of benefits offered by the other fiscal institutions including low cost long-term debt financing for infrastructure projects.

Transition Under Way

Continued from page 2

The initiatives are required to successfully augment existing ITAB policy and practices for application to FNTC operations in the FSMA context. They include:

- Policy Development
- Local Revenue Sample Law Development
- FSMA Regulation Development
- Education and Training
- Communications
- Dispute Management Program
- FNTC Planning & Management Framework
- FNTC Commissioner and Staff Training

The work plan is thorough and far reaching, and it will serve to establish the FNTC framework necessary to provide First Nations with the best possible services and fulfill the promise of the FSMA - to build a better future for First Nation communities. As Chief Crowfoot remarked:

"The main purpose of this legislation has always been to provide First Nations with the tools required to maximize economic development opportunities. We know that making the FNTC operational before next April is a very big job, but we have worked hard to get to this point and we will meet the challenges that lay ahead."

Public Consultations on the FSMA Regulations

The FSMA has a number of associated regulations which will be required to govern the development, approval, implementation and enforcement of local revenue laws, the operation of the borrowing and investment pools and the carrying out of the associated responsibilities of the FNTC, FNFA, FMB, and FNSI.

Of these regulations, nine have been identified as being required for the four institutions to commence effective operations. Five concern the Tax Commission, two concern the Finance Authority, one concerns the Financial Management Board and one the Statistical Institute.

ITAB, in conjunction with DIAND, FNFA and the First Nation advisory panels for FMB and FNSI are jointly conducting consultations on the nine proposed regulations. The purpose of these consultations is to inform First Nations, tax payers and other affected and interested parties about the regulations and to obtain feedback. The consultation period began in July 2005 and will conclude on September 30, 2005.

Consultation sessions will be held in September in Moncton (NB), Calgary (AB), Richmond (BC), and Kelowna (BC). For more information on the regulations and consultation sessions visit www.fnfi.ca or phone ITAB at (613) 954-6201.

The draft regulations required for the *First Nations Fiscal and Statistical Management Act* include:

1. First Nations Assessment Appeal Regulations
2. First Nations Assessment Inspection Regulations
3. First Nations Rates and Expenditure Laws Timing Regulations
4. First Nations Taxation Enforcement Regulations
5. First Nations Tax Commission Review Procedures Regulations
6. Debt Reserve Fund Replenishment Regulations
7. Short-term Pooled Investment Fund Regulations
8. Local Revenue Management Implementation Regulations
9. Statistical Data Disclosure Regulations

During the consultation period, you may forward any written comments on the regulations by: email to mail@fnfi.ca; fax to (819) 997-9541; or mail to The Honourable Andy Scott, Minister of Indian Affairs and Northern Development 21st Floor, 10 Wellington Street Gatineau, Quebec, K1A 0H4.



Delegates from NWT First Nations were at ITAB Head Office on July 20, 2005 learning more about real property taxation, ITAB program and services, and the application of the FSMA for communities North of 60.

National Tax Authorities Meeting

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In addition, the meeting will include a panel discussion on the legislation and the implementation activities of the other FSMA institutions: the First Nations Finance Authority (FNFA), First Nations Financial Management Board (FMB) and First Nations Statistical Institute (FNSI).

ITAB will also provide a First Nations taxation report on the progress that is being made in this field across the country. As in the past, ITAB will be reporting training initiatives, policy initiatives, and important recent legal developments in First Nation taxation. First Nations that have tax jurisdiction under section 83 of the *Indian Act* will be provided with an overview of the future approach to services currently provided by ITAB. The second day of the meeting will focus on getting feedback from First Nation tax authorities on the proposed FSMA regulations (visit www.fnfi.ca for copies of the regulations).

First Nation tax authorities seeking more information on the meeting, may contact ITAB at (250) 828-9857.

CPTA: “Bill C-20 provides transparency, stability, and regulatory certainty”

The Canadian Property Tax Association (CPTA) applauded the passing of the *First Nations Fiscal and Statistical Management Act*. The CPTA noted the legislation establishes positive regulatory reforms to the First Nation property tax system and provides for greater taxpayer representation.

Mr. Norm Stickelmann, President of the CPTA, said: “The Act is a significant step forward. The legislation not only improves taxpayer relations, but will go a long way in improving investor confidence in First Nation communities. Transparency, stability, and regulatory certainty will benefit First Nation governments and their taxpayers.”

The CPTA and the Indian Taxation Advisory Board have maintained a longtime relationship, beginning in 1988 when the modern era of First Nation property taxation began. Mr. Ken Marsh, past President of the CPTA, was a key party to many joint meetings and discussions between the two organizations, and became a strong supporter of the FSMA.

Mr. Marsh, who is a Certified Property Tax

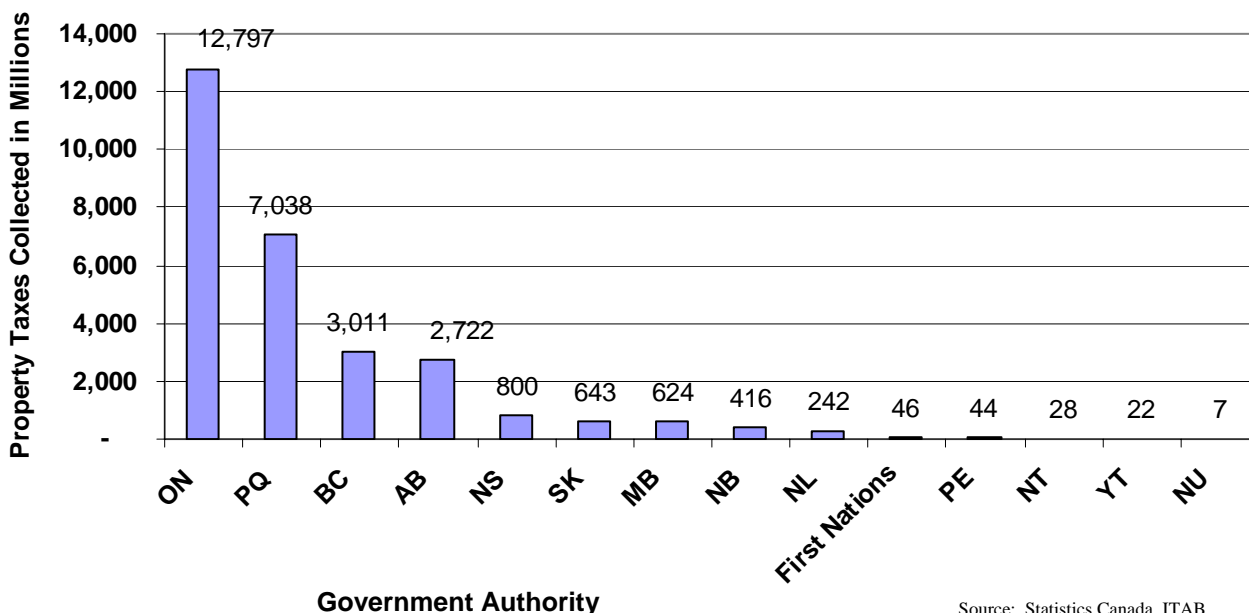
Professional and has worked in the property assessment/taxation profession for 25 years, was called by the Senate Committee on Aboriginal Peoples to testify on the *First Nations Fiscal and Statistical Management Act* on March 9, 2005, during the Committee’s study of the legislation. Mr. Marsh testified to the benefits the legislation will bring to taxpayers, by providing details of how the property tax regimes created under the FSMA will be stronger than the current regimes under the *Indian Act*.

The FSMA contains provisions to strengthen due process for concerns and disputes, and improve communications between taxpayers and First Nations. It allows for more formalized rules to ensure property tax revenues are spent only on local services and long term infrastructure improvements. The Commission will include Commissioners representing commercial, industrial, and residential taxpayer interests.

Formed in 1967, the Canadian Property Tax Association, Inc. is a national organization providing a forum for the exchange of ideas and information relating to both commercial and industrial property tax issues arising across Canada. The CPTA represents over 200 corporations.

The 39th Annual CPTA National Workshop will be held on September 25-28, 2005 in Kelowna, BC.

First Nation Property Tax Revenue- A National Comparison (2004)



Note:
This table demonstrates a comparison of First Nation property tax revenue with property tax collected by other local governments in Canada.

Source: Statistics Canada, ITAB

“Parliamentary Perspectives on the FSMA”

ITAB would like to acknowledge the many people who contributed to the debate on the *First Nations Fiscal and Statistical Management Act* in Parliament. The Act received all-party support. *Clearing the Path* takes a look back at what was said about the legislation in the House of Commons and Senate.

“In short, Bill C-20 outlines a balanced approach to long term financial health for first nations. Clearly, all Canadians stand to benefit.”

*The Hon. Sue Barnes,
Parliamentary Secretary to
Minister of Indian Affairs
-during Third Reading debate in
the House of Commons,
December 10, 2004*

“...this legislation, initiated and championed by First Nation leaders, will enable First Nations to take greater control of social and economic development in their communities...Honourable senators, Bill C-20 is good legislation, and I urge you to join with me in supporting it.”

*Senator Ross Fitzpatrick
Sponsoring Senator
-during Second Reading debate in
the Senate,
February 15, 2005*

“I am very pleased to rise on behalf of the NDP to speak to Bill C-20...It is important because it does a number of things. It takes a huge step forward in giving autonomous responsibility to the first nations people for their own future. At the end of the day, is that not what all people ask for...to be the authors of their own destiny?”

*David Christopherson, MP
New Democratic Party of Canada
-during Third Reading in the
House of Commons,
December 10, 2004*

“The *First Nations Fiscal and Statistical Management Act* is designed to offer participating First Nations more effective tools to build their own economies...the Prime Minister stated that we need to close the economic and social gaps that exist between First Nations and other Canadians. This piece of legislation takes us one step closer to that goal.”

*The Hon. Andy Scott,
Minister of Indian Affairs and Northern
Development
-at Royal Assent,
March 23, 2005*

“Once this legislation is enacted and this is a going concern, I think you will see many naysayers and many others cheering, because it is overdue.”

*Mr. Ron Jamieson
Vice-President, Aboriginal Banking,
Bank of Montreal
-during Senate Committee hearing,
February 23, 2005*

“When I went through the provisions of the bill in a detailed way, chapter and verse, paragraph by paragraph, I was struck by the fact that the provisions of the bill were well thought out, well crafted, and meticulously drafted... When we talk about Aboriginal Canadians standing up and taking responsibility for their own affairs, this legislation shows that it is exactly what is happening.”

*Jim Prentice, MP
Indian Affairs Critic,
Conservative Party of Canada
-during Third Reading in the House of
Commons,
December 10, 2004*

“The Bloc Québécois has decided to maintain its support for Bill C-20 because we sincerely believe that the legislation will be of benefit to a number of first nations in Quebec.”

*Bernard Cleary, MP
Indian Affairs Critic,
Bloc Quebecois
-during Second Reading debate in
the House of Commons,
November 19, 2004*

“By replacing ITAB with the First Nations Tax Commission, we are building a framework that provides greater transparency, stability and regulatory certainty to the benefit of First Nation governments and taxpayers.”

*Ken Marsh, Past President
Canadian Property Tax
Association
-during Senate Committee hearing,
March 9, 2005*

“It is intriguing because when you look at what you are describing and you look at the bill that we are examining, you ask ‘Why was this no done years ago?’”

*Senator Terry Stratton
Deputy Leader of the Opposition
-during Senate Committee study,
February 23, 2005*

“This is a long-awaited measure, and likely the most important bill relating to Aboriginal peoples that has been introduced in Parliament in the past five years.”

*Senator Stratton
March 21, 2005*

First Nations Fiscal and Statistical Management Act: **LEGISLATIVE HISTORY**

Date	Events
April 29 and June 16, 1999	First Nation tax authorities addressed challenges facing First Nations and endorsed the creation of the First Nations Tax Commission via resolution of support. The legislative development was also supported by the Assembly of First Nations through the National Table on Fiscal Relations.
August 15, 2002	Notice (Consultative draft legislation jointly released by First Nation leaders of the FSMA and the Minister of DIAND.)
December 2, 2002	Introduction and First Reading in the House of Commons (Bill C-19)
February 25, 2002	Second Reading and Referral to a Committee
June 9–12, 2003 and September 16-22, 2003	Study by House of Commons Standing Committee on Aboriginal Affairs, Northern Development, and Natural Resources
September 24, 2003	Report by Committee (Tabled with Amendments)
Prorogation of the 2 nd session of the 37 th Parliament ended the debate at Report Stage of Bill C-19 . The legislation was reinstated at that same stage in the next Parliamentary session as Bill C-23 . Bill C-23 included a revision, requested by then Minister of Indian Affairs, The Hon. Andy Mitchell, to clarify the optionality of the legislation. The debate officially ended with an election call on May 23, 2004.	
November 2, 2004	Introduction and First Reading in the House of Commons (Bill C-20 was introduced with amendments, one of which was to include a non-derogation clause proposed by the House of Commons Committee during its study of Bill C-19)
November 19, 2004	Second Reading and Referral to House of Commons Standing Committee on Aboriginal Affairs and Northern Development
December 7-9, 2004	Study by Committee
December 10, 2004	Report (Tabled with Amendments)
December 10, 2004	Third Reading and Referral to Senate (Passed with All-party support)
December 14, 2004	First Reading in the Senate
March 16, 2005	Second Reading
March 21, 2005	Third Reading (Passed with All-party support)
March 23, 2005	ROYAL ASSENT