

**FIRST NATION PROPERTY TAXATION REVIEW**

**2000-2001**

**ANNUAL REPORT**

**OF THE**

**INDIAN TAXATION ADVISORY BOARD**





The Honourable Robert Nault, P.C., M.P.  
Minister of Indian Affairs and Northern Development  
Les Terrasses de la Chaudière  
Room 2100, 10 Wellington Street  
HULL PQ K1A 0H4

Dear Minister Nault:

It is my pleasure to submit the 2000-2001 Annual Report of the Indian Taxation Advisory Board.

Regards,

C.T. (Manny) Jules  
Chairman





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***Background***

The Indian Taxation Advisory Board (ITAB) represents a unique institutional relationship between the Minister of Indian Affairs (Minister) and First Nation governments. Since 1989, ITAB has exercised its mandate to ensure the smooth and credible introduction of First Nations property taxation jurisdiction on reserve.

Because of its unique role in the drafting process, ITAB has become a bridge between First Nation bylaws and federal legislation. ITAB has streamlined the process and eased the manner in which First Nations can establish their own taxation regimes through the development of sample legislation, computer software, workshops, publications, and ITAB's own body of policies and procedures. Largely through ITAB's efforts, all governments have gained valuable expertise in the intricacies of First Nation law-making dynamics.

ITAB is widely recognized as the leading authority on First Nations property taxation in Canada and is committed to developing strong First Nation tax administrations. As the number of First Nations with real property tax regimes continues to increase, so too does the requirement for strong tax administrators to manage and administrate them. In addition, courses designed for municipal taxation regimes do not meet the unique requirements of managing and/or administering a real property taxation regime on reserve. As a result, ITAB has instituted education and training initiatives to establish a level of professionalism for First Nation tax administrators and facilitate their mobility between First Nations, and to serve as a model for future capacity development initiatives.

ITAB has also established partnerships and networks to foster a better understanding of First Nation property tax lawmaking — not only to reduce the potential for conflict between other affected parties and First Nations, but to generate support for new tax initiatives. When necessary, ITAB has repeatedly and successfully filled the role of mediator in conflicts between First Nations, third party interests and other levels of government.

The *First Nations Gazette*, produced in partnership with the Native Law Centre at the University

of Saskatchewan, is an excellent example of the type of alliance ITAB has sought to move the self-government agenda forward. The publication of First Nation's taxation bylaws through the *Gazette* ensures transparency of First Nation taxation initiatives to community members, on-reserve taxpayers and the public at large. More importantly, the *Gazette* provides First Nation lawmakers and the courts with a critical new tool for the notice and enforcement of their laws.

ITAB has been assigned a special role in helping to develop a new fiscal relationship between First Nations and Canada, through its participation in the Assembly of First Nations (AFN) *National Table on Fiscal Relations*. The ITAB Chairman acts as co-chair — along with AFN Vice-Chief Herb George — for the AFN Chiefs Committee on Fiscal Relations, which was formed in February 1999. In September 1999, ITAB and the AFN signed a protocol agreement to share information, research and expertise.

In accordance with the *Memorandum of Understanding* between ITAB and the Minister of Indian Affairs, work continued on the creation of the First Nation Taxation Commission (FNTC). This will change the organization from an advisory body reporting to the Minister to a statutory, legislated service agency. It will be directly accountable to the federal government through Parliament, and also to First Nation taxing authorities, taxpayers and other affected parties through performance measures in the same manner as other Crown authorities. It will report annually on its progress with respect to these measures. As a service agency, the FNTC will have an appropriate degree of independence from the federal government yet remain fully accountable.

The FNTC will be one of four First Nation fiscal institutions (First Nations Management Board, First Nations Finance Authority, First Nations Statistic Institute) in the proposed *First Nations Fiscal Institutions Act*. It is anticipated that the legislation will be introduced in Parliament in 2002.

## I. OPERATIONS

### *Authority*

In 1988, First Nation-led amendments to the *Indian Act* extended the taxing powers of First

Nations to their interests in conditionally surrendered or “designated” lands. This change to the *Indian Act* gave First Nations broad new powers to tax the interests within reserves, thereby establishing their jurisdiction, creating economic development opportunities and providing a basic tool for self-government. ITAB was established in 1989 to complement these amendments to the *Indian Act* and to facilitate the approval of First Nation taxation bylaws. As such, ITAB became the first independent, Aboriginal-controlled institution involved in the exercise of the Minister of Indian Affairs’ decision-making authority under the *Indian Act*.

### ***Mandate***

- § Promoting the exercise of First Nation real property taxation jurisdiction in support of self-government and self-reliance.
- § Examining taxation bylaws proposed by First Nations under section 83 of the *Indian Act* and recommending their approval to the Minister.
- § Advising the Minister on policy related to the taxation powers of First Nations.
- § Assisting First Nations interested in developing taxation bylaws.
- § Fostering harmonization between taxation by First Nations and by other authorities.
- § Hearing from taxpayers whose interests are affected by taxation under section 83, and considering this information in making recommendations to the Minister.
- § Providing mediation and alternate dispute resolution mechanisms to First Nations, governments, taxpayers and other affected parties with respect to matters related to the exercise of First Nations property tax jurisdiction.
- § Advising the Minister on means to improve the administration of the Minister's statutory responsibilities under section 83.
- § Ensuring First Nation tax bylaws are properly and adequately promulgated, and the context of the bylaws are accessible to the public, through the publication of the *First Nations Gazette*.
- § Continuing discussions with departmental officials on the Board’s further development in the area of new fiscal relations between First Nations and Canada.
- § Working with the Minister to develop legislative proposals for the establishment of a permanent body, which may include the Board as a statutory institution of self-government.

### ***Membership***

The five-member Board is composed of respected members of First Nations who possess knowledge and experience in the areas of First Nation government, intergovernmental relations, property taxation, reserve land development, economic development and the provision of government services. Each has been given a mandate by their regional/provincial political organization to serve as a member of the Board and to reflect the various perspectives of First Nations across the country.

The members are:

- § Clarence T. (Manny) Jules, Chair, Kamloops Indian Band, BC.
- § Strater Crowfoot, Vice-Chair and Rates Committee Chairman, Siksika Nation, AB.
- § David Paul, Tobique First Nation, NB.
- § Chief William (Bill) McCue, Chippewas of Georgina Island, ON.
- § Ricky Fontaine, Innu Takuaitkan Uashat mak Mani-Utenam (Sept Iles), QC.

### ***Process***

The Board has established policies, precedents and procedures regarding bylaw development, enactment, approval and implementation, including bylaw enforcement and assessment appeal procedures. All bylaws proposed under section 83 are reviewed to ensure conformity with the *Charter of Rights and Freedoms* and enabling legislation, comprehensiveness, equity and natural justice, fairness, adequacy of notification and appeal procedures, and the absence of ministerial liability.

In addition, a comprehensive analysis of issues reflecting the perspectives and interests of First Nations, on-reserve taxpayers and other affected parties is conducted when formulating recommendations to the Minister. First Nations governments must demonstrate evidence that they have consulted with potential taxpayers and other governments, and that all reasonable measures have been taken to ensure that there will be an orderly transition to the First Nation taxation regime. Furthermore, when necessary, ITAB requests comments from the appropriate federal government departments or sectors within the Department of Indian Affairs and Northern Development (DIAND) in order to provide the Minister with the assurance that all interests and perspectives have been considered.

Although all real property taxation systems are built upon the twofold foundation of the *tax base* and the *tax rate*, taxation of property by First Nations has raised unique concerns. For example, the fact that on-reserve taxpayers cannot vote in First Nation elections means that differences in perception often exist between First Nations, ratepayers, and municipal, provincial and federal authorities. These differences affect how each views their relationship with each other, as well as how they view tax and how they view land. As well, the differences between the fiscal and service requirements of a First Nation and that of a nearby municipal property taxation authority

within a province may result in a requirement to establish different rate structures. Finally, voting, which ordinarily acts as an influence on rates, will be replaced through other mechanisms such as taxpayer associations to ensure that taxpayer interests are considered.

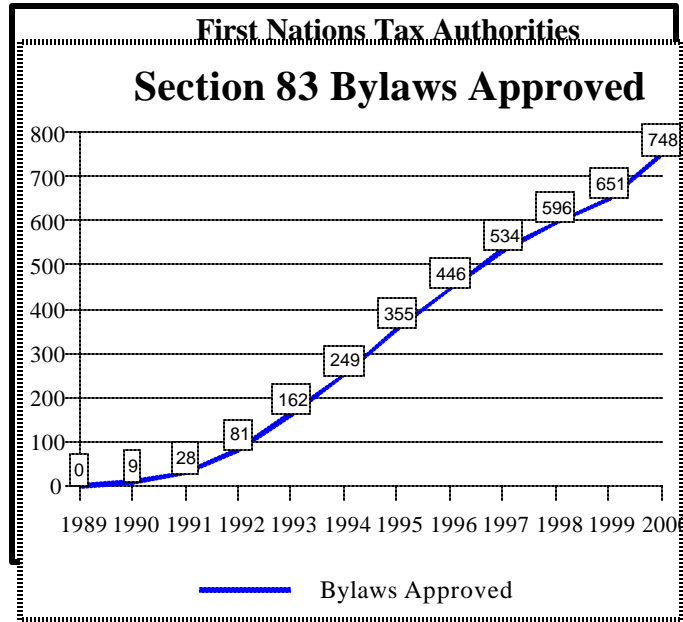
Recognizing these issues, the Board has established a Rates Committee. Its mandate is to develop policy and review each First Nation's proposed annual rates bylaw with the objective of balancing the need to respect on-reserve taxpayers' rights to fairness and equity with the need to respect the accountability of First Nation governments to their citizens.

### *Support*

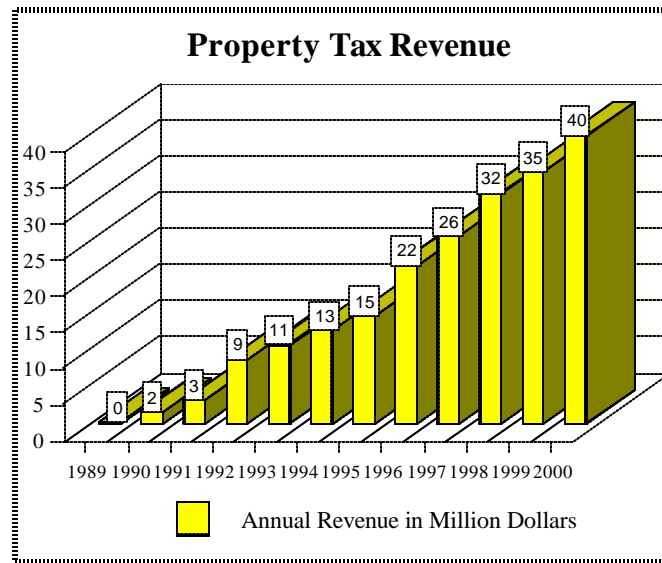
The Board is supported by a staff of ten employees located in the Eastern Office in Ottawa, Ontario and the Western (Head) Office in Kamloops, British Columbia. The Office of the Chairman is located within the Western Office. The staff provide professional and logistical support, and assist the Board by reviewing proposed taxation bylaws and developing related policy. The Board is also supported by a network of specialized consultants and First Nation advisors.

### *Results*

Eighty-eight First Nations were exercising taxation jurisdiction as of March 31, 2001. Over 13 percent of First Nations in Canada are now levying property taxes on reserve.



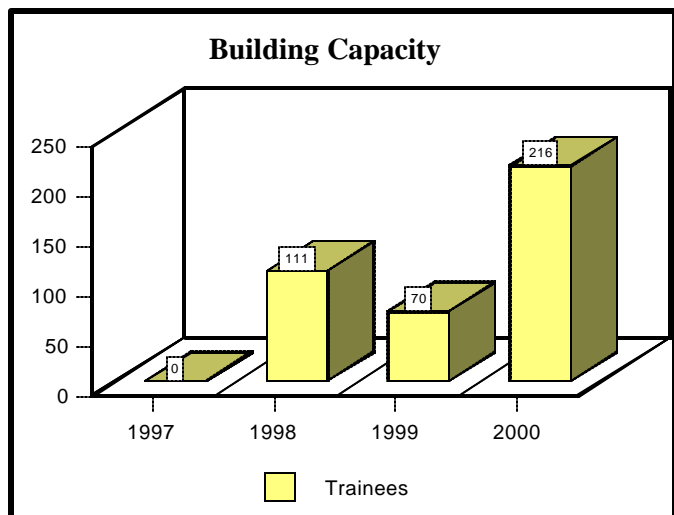
Annual revenues to First Nations from taxation exceeded \$40 million for 2000-2001. Since 1989, more than \$173 million has been generated through property taxation on reserve.



The variety, complexity and volume of bylaws processed by the Board each year, and approved by the Minister, has increased steadily. By the end of 2000, ITAB had reviewed 748 bylaws in the areas of property taxation, assessment, rates, expenditure, business licensing, financial

administration, telephone companies and related amendments.

In 2000, with a view to building the capacity of First Nation tax administration, 216 candidates received certification upon completing the ITAB *Mediation-Interest Based Negotiation, Budget-Based Tax Rates* or *Client Lands Assessment Services System* courses. Two hundred and fifty candidates are projected to receive training in 2001.







## II. PROGRAMS AND POLICIES

### 1. Bylaw Services

#### *First Nation Bylaw Development*

In 2000, the following First Nation communities submitted bylaws for review under Section 83 of the *Indian Act*:

(a) Property Taxation

- Red Bank First Nation, NB

(b) Expenditure

- Burns Lake First Nation, BC
- Nipissing First Nation, ON
- Songhees First Nation, BC
- Tl'azt'en Nation, BC

(c) Financial Administration

- Adams Lake First Nation, BC
- Duncan's First Nation, NS
- Pictou Landing First Nation, NS

As well, 72 amendments (including rates bylaws) to existing bylaws were reviewed by ITAB for policy compliance and forwarded to the Minister for approval.

#### *ITAB Policy Objectives*

- 1. Promote and Protect Jurisdiction.** A key objective of ITAB is to “clear the path” for First Nations wishing to occupy on-reserve tax jurisdictions. Challenges to the First Nation property tax jurisdiction have come from municipal, provincial and federal jurisdictions and court decisions. A paramount objective of ITAB policy is to proactively respond to these challenges to First Nation property tax jurisdiction through effective communication strategies.
- 2. Balance Interests.** ITAB policies are intended to prevent or mitigate local disputes. The tax policy interests of the First Nation government will be reconciled with the tax policy interests of the taxpayers.
- 3. Expand Revenue Jurisdiction.** ITAB policies create trust and capacity in First Nation

- property tax systems to facilitate the occupation of future revenue raising jurisdictions.
4. **Encourage Economic Development.** ITAB policies should promote tax administrative capacity and tax expenditure efficiency, thereby increasing local returns to investment through tax rate and tax revenue stability.
  5. **Protect Tax System Integrity.** ITAB policies seek to ensure that the tax policies of one First Nation enhance the tax policy environment of other First Nations.
  6. **Promote Efficiencies.** Property tax policies seek to achieve economic, technical and administrative efficiency throughout the First Nation property tax system.

### ***Budget-Based Property Taxation Rates/Policy Development***

The setting of property taxation rates based upon a property tax budget enhances the autonomy of First Nation governments and at the same time, better reflects the local conditions driving tax revenue requirements. It also enhances the transparency and accountability of Band Council expenditures to First Nation community members and provides the non-voting taxpayer with an accounting of, and rationale for, the expenditure of their real property tax monies.

### ***ITAB Rates Policy Amendment***

The prior rates policy required First Nations to adopt rates similar to those of comparable jurisdictions. Under this policy, First Nations were dependent on other jurisdictions for the setting of their tax rates. Taxpayers viewed the rate setting exercise as arbitrary and unresponsive to local conditions. This resulted in ongoing challenges by taxpayers and generally decreased First Nation assurance in the property tax regime.

Section 16 of the ITAB Rates Policy previously set the date for complete implementation of budget-based mill rates by all First Nations exercising property taxation jurisdiction "by the year 2001". In its review of policy compliance, the Board has found that while almost every First Nation property tax authority has adopted or is prepared to adopt budget-based mill rates, some are not yet able to comply. The reasons most often cited are administrative staff turnover and training requirements for tax administrators. Other unique factors, such as contractual or regulatory fixed rates, or minimal tax folios, may also constitute exceptional circumstances.

Therefore, an extension of time for the full implementation of Budget-based Tax Rate setting is required and was approved by the Board in November, 2000. In the interim, further consultation, communication and training with First Nation tax administrations will be undertaken.

Section 16 of the ITAB Budget Based Rates Policy has been amended to read:

“All First Nations currently exercising their property taxation jurisdiction will adopt budget-based mill rates by the year 2004. In the interim, any First Nation currently exercising property taxation jurisdiction may develop budget-based mill rates at any time but must provide the Board with notice of its intent to do so.”

Twenty-three First Nations now use the Budget-Based Tax Rates methodology.

### ***Tax Revenue and Expenditure Policy Development***

The feasibility of developing a national Tax Revenue and Expenditure Policy is also being assessed by the Rates and Policy Committee. The first step in developing this type of policy will be to establish expenditure classification categories.

A description and comparison of the classification systems adopted by Statistics Canada in their Financial Management System, the BC Municipal Affairs Statistics group, as well as those contained in ITAB's *Mill Rate Wizard* system was presented to the Committee in June 1999. It was recommended that the classification expenditure categories used in the Statistics Canada Financial Management System and ITAB's *Mill Rate Wizard* would be most appropriate.

The next step in the development of the Expenditure Classification System is to establish a work plan and enter into discussions with Statistics Canada with a view to correlating the two existing classification systems.

### ***Policy Development Process***

In 1997, ITAB introduced the budget based tax rate policy. The central component of this policy was the development of a property tax budget. ITAB provided First Nations with a copy of the Mill Rate Wizard software to facilitate the creation of budget based tax rates. In the budget making interface of the Mill Rate Wizard there are nine expenditure categories (General Government Services, Protective Services, Transportation Services, Recreational and Cultural Services, Community Development Services, Environmental Health Services, Fiscal Services, Other Expenditures, and Taxes for Other Governments). During the software development, these categories were chosen because they were similar to those used in submitted expenditure bylaws, and were also similar to expenditure categories used by municipalities while being comparable to national local government expenditure categories used by Statistics Canada.

The impetus for the policy review process were the numerous requests received from First Nations for property tax expenditure guidelines. Many First Nations inquired whether the Mill

Rate Wizard categories were acceptable expenditure guidelines.

The ITAB Rates Committee evaluated the requests for expenditure guidelines using ITAB policy objectives. Based on this review, the Rates Committee recommended the expenditure categories to the full ITAB Board which accepted the recommendation and an expenditure **category section** was added to the budget based rates policy.

### ***Policy Rationale***

1. These expenditure categories will help tax administrators in the property tax budget making process by providing standardized categories. This will make the budget making process quicker and more efficient. To provide even more guidance, detailed expenditures for each category are attached.
2. Standardized expenditure categories allow First Nation tax authorities to develop their own expenditure guidelines through comparison with other First Nation tax authorities. This will help to protect the integrity of the overall system.
3. Standardized expenditure categories will address some taxpayer concerns about insufficient transparency in the budget making process. It will also allow them to compare expenditures between First Nations. This helps to balance interests between taxpayers and tax collectors.
4. The new policy is also easily comparable to expenditure categories used by other governments. This will help First Nations and taxpayers evaluate the comparability of services across jurisdictions. This will be useful to First Nations seeking to expand revenue raising jurisdiction

## **2. Expand First Nation Tax Jurisdiction**

### ***Taxation of Utilities***

Over the years, the Board has initiated discussions and negotiations with various public utilities at the provincial level to expand potential revenue jurisdiction sources on behalf of all First Nations. Agreements have been concluded with: Ontario Hydro, Bell Canada (Ontario) and Union Gas (Ontario). Currently, ITAB is working in British Columbia with BC Hydro and the taxing First Nations with BC Hydro interests on reserve.

Since 1994, BC Hydro, as a Crown Corporation, has claimed exemption from taxation under

section 83 of the *Indian Act*; one level of government cannot impose taxes on another level (the taxation of Hydro assets on reserve land by First Nations). In 1999, the Supreme Court upheld this claim. Even with the ruling in its favour, BC Hydro entered into negotiations with ITAB's First Nations Negotiating Committee to find a methodology by which payments could be made to 45 First Nations.

The issues to resolve were many, various and complex, including: historic grievances; trespass; timber removal; date of commencement for payment; formulae and legislative instruments. Negotiations are now in the final stage on an agreement for a community development grant to be paid to First Nations by BC Hydro. The program will not be a grant-in-lieu payment but will instead be a measure of revenue sharing that will be provided by BC Hydro to assist First Nations. The program is available to all First Nations who agree to participate. Subsequently, in each calendar year, First Nations will receive a further \$1.6 million under the terms of the agreement.

### **3. Strengthening First Nation Tax Administration**

#### ***Education and Training***

The management of a real property taxation system is an emerging speciality within self-government. A broad set of skills is required to undertake bylaw management and maintenance of various pieces of legislation covering such things as rate setting, assessment, appeals, financial management and effective ongoing communications with community members and on-reserve taxpayers. However, institutional training in these unique subject areas, specific to the First Nation setting, has not been available and ITAB has acted to fill this void.

Consistent with the mandate of the Board and the capacity building objectives of *Gathering Strength*, the Board has focussed considerable attention on the training of tax administrators. Working with the University of Victoria, the Consensus Building Institute of Harvard University and others, ITAB has successfully developed a number of certificate courses in tax administration and mediation.

ITAB's courses have proven successful in improving the overall accountability to on-reserve taxpayers and First Nation members, implementing labour-saving technology, reducing disputes, improving administrative efficiency and facilitating First Nation tax administrator labour mobility.

#### ***Budget-Based Real Property Tax Rates Training***

The Board has adopted a national policy whereby real property tax rates on reserve must be established each year based upon an annual expenditure plan derived from an approved Band

Council budget. The setting of property tax rates based upon a property tax budget parallels the methodology used by municipalities in Canada. It enhances the autonomy of First Nation government and, at the same time, provides the non-voting on-reserve taxpayer with an accounting and rationale for the expenditure of their tax monies. This system replaces the former method of setting tax rates based upon those in an adjacent municipality.

A real property tax rates training course was developed in 1998 to teach First Nation property tax administrators the skills required to implement the policies, methodologies, systems and software operations of a budget-based real property taxation system.. Sixteen successful candidates received certificates of completion in the 2000-2001 fiscal year, bringing the total of certified Tax Administrators to 63. Two more courses are planned for 2001-2002.

Of the 85 taxing First Nations in Canada, 41 are now certified to run Budget Based Tax Rate Systems.

#### ***Client Lands Assessment Services System (CLASS)***

The Client Lands Assessment Services System (CLASS) is a database management system for the total administration and management of property tax folios including the calculation of property taxes. It is the result of research, development and consultation with First Nation tax administrators. The objective is to establish standards for all First Nation property tax systems in Canada. It eliminates the variety of methods of processing tax notices and payments, interests and penalties. CLASS is helping to define national tax administrative standards while accommodating regional variations, improving accountability to taxpayers and First Nation citizens, and further helping to increase the capacity of First Nation governments.

A comprehensive curriculum and cost recovery training course was developed for the implementation of CLASS. During 2000-2001, 13 on-site courses were held in twelve First Nation communities, bringing the total of certified tax administrators to 32.

#### ***Financial Management Bylaw Certificate Program***

In 2000-2001, ITAB offered the first Financial Management Bylaw Certificate Program to representatives of the seven British Columbia First Nations making up the Lillooet Tribal Council (February in Lillooet British Columbia) as well as the Tobique, Burnt Church and Big Cove First Nations (March in Fredericton, New Brunswick).

The ITAB Financial Management Bylaw Development Certificate Program is a capacity building program designed for First Nations who want to take charge of their financial administration by creating their own fiscal legislation. Covering six days, this certificate program provides participants with a basic draft financial management bylaw to review with

Chief and Council. The first day of the training is an orientation to the program and open to the public. The remaining five days are filled with an extensive program with a focus on financial management principles and techniques.

#### **4. Public Education**

The Board builds awareness and understanding by all parties about First Nation property taxation through its various communication activities. The goal is to enhance public knowledge and understanding of First Nation taxation on reserve lands.

[www.itab.ca](http://www.itab.ca)

The long-awaited revisions to the ITAB website were completed in 2000-2001. The website is more user-friendly and easier to navigate. It includes a stand-alone section on the First Nation Tax Commission, where *Responding to Challenges* is posted. Work on the French language side continues.

##### ***First Nations Gazette***

The *First Nations Gazette*, launched on Aboriginal Day, June 21, 1997, is published twice annually as a joint partnership of ITAB and the Native Law Centre at the University of Saskatchewan. The *Gazette* is the authoritative vehicle by which legal notice is given to the public of First Nations legislation. Publication on a regular basis is intended to increase awareness of Indian taxation initiatives among First Nations and the general public, and to assist First Nations in the enforcement of their tax laws by ensuring that regular notice is provided and that a register of all current tax bylaws is readily available. The target audience is the judiciary, members of the legal profession, First Nations and their citizens, provincial and municipal governments, on-reserve taxpayers and academic institutions. The *First Nations Gazette* is actively marketed on a subscription basis with the goal of becoming financially self-sustaining.

##### ***Clearing The Path***

ITAB's newsletter, *Clearing the Path*, is published quarterly and is designed to keep readers informed of the evolution and issues surrounding real property taxation on reserve. The circulation base of the newsletter now exceeds 2,000 readers.

#### **5. Mediation**

The smooth transition and transfer of real property jurisdiction to First Nation control is one of the Board's highest priorities. The concept of a First Nation administering the taxation of real property on reserve can be controversial. The process of reaching an agreement between a First

Nation and a municipal government for the continuation of services on reserve to taxpayers, and the resulting fee structure, can be complex.

A new First Nation property tax regime will, in many cases, replace the previous provincial or municipal property tax system in the collection of revenues and the delivery of services to lessees on First Nation land. Since most First Nations do not have the service delivery infrastructure or capacity required, a service agreement is necessary to continue providing the same level of services to taxpayers.

### ***Mediation Program Development***

ITAB has developed a number of processes that have proven effective in the resolution of disputes between First Nations, municipal governments, provincial governments and taxpayers on reserve. With more than 10 percent of First Nations collecting property taxes across Canada, there is greater pressure on this mediation service. In 1998-1999, the Board established mediation procedures and standards to be used to guide Board members and staff in dispute resolution.

With the assistance of the Consensus Building Institute (CBI) at Harvard University, ITAB established a mediation program that will provide the basis for third-party intervention to resolve tax-related disputes.

The Harvard University Native American Program, the Consensus Building Institute, the M.I.T.-Harvard Public Disputes Program and ITAB signed a Memorandum of Understanding in October 1999 to form a Partnership on Dispute Prevention and Resolution. The primary purpose of the partnership is to focus on dispute prevention and dispute resolution for matters related to taxation resulting from the establishment of First Nation jurisdiction. Dispute prevention and dispute resolution training materials and tools were also developed. The goal is to ensure that sound agreements are efficiently reached by promoting the fair and efficient resolution of disputes at the lowest possible level when conflict does arise.

### ***Mediation Training***

ITAB worked with CBI and the Canadian Energy Pipelines Association (CEPA) to present a negotiation and mediation training course delivered in Calgary, Alberta on May 23-26, 2000. Forty registrants participated and received certificates upon completing the course. Funds were provided by DIAND to ensure the participation of a representative from each of the First Nations with oil and gas interests.

ITAB delivered another course entitled "Mediation vs. Litigation" in Fredericton, New

Brunswick on June 21-22, 2000. The fifty-one participants included a good cross-section of First Nations, government and industry. Another workshop is planned for Calgary in November, 2001.

### **III. SPECIAL INITIATIVES**

#### **1. First Nations Taxation Commission**

Work continued on the creation of the First Nations Taxation Commission (FNTC) as a statute based institution to succeed the Indian Taxation Advisory Board.

The first outline for the creation of the FNTC has been developed as a component of the initial draft outline of the *First Nations Financial Institutions Act*. This proposed act will establish First Nation fiscal governance institutions such as the FNTC, the First Nation Financial Management Board (FNFMB), the First Nation Finance Authority (FNFA) and the First Nation Statistics Institute (FNSI).

The development of a draft outline to establish the four First Nation fiscal governance institutions is a major step in the establishment of a new fiscal relationship. The importance of this legislation cannot be understated. It will lay out the blueprint for each organization, determine the division of resources, powers, roles, and authorities among each institution and thereby define the future direction of the new fiscal relationship.

The Board adopted a set of key principles, derived from AFN resolutions and previous FNTC

policy development, that must be respected in the legislation developed to establish the four fiscal governance institutions. The legislative foundation of these proposed institutions must:

- (a) ensure institutional independence;
- (b) ensure First Nation control of institutions;
- (c) ensure the fiscal relationship is balanced between assertion of jurisdiction and economic development as well as accounting for funds and developing a new transfer system;
- (d) ensure decisions regarding financial accountability and transfer formula take full account of their impact on the tax system;
- (e) ensure an efficient decision of authority with respect to intergovernmental relations and the direction of the new fiscal relationship;
- (f) ensure the FNTC can maintain the integrity of the tax system;
- (g) ensure there is consultation with and consensus of affected parties including First Nation tax administrations;
- (h) ensure the FNTC can pursue initiatives with other governments with respect to tax and related expenditures; and
- (i) ensure an appropriate division of functional responsibilities so that each institution has the tools it requires.

## **2. *First Nations Fiscal Institutions Act (FNFIA): Progress Report***

On January 16, 2001, the Senior Policy Committee of DIAND committed to an expedited approach to possibly introduce the *FNFIA* in the fall of 2001. To meet this ambitious time frame, a great deal of work had taken place and much remains to be undertaken.

Accomplishments to date include:

1. Agreement among the advocates of the proposed institutions (the First Nations Taxation Commission, the First Nation Financial Management Board, The First Nation Finance Authority, and the First Nation Statistics Institute) on the functions, powers, scope and mandate of each fiscal institution;
2. A draft outline for the *FNFIA*;
3. An institutional coordination work plan setting out the work required to ensure that the proposed institutions can work together in an efficient and effective manner; and
4. A “think tank” (March 2001) held with the AFN Executive, selected AFN advisors, advocates of the proposed fiscal institutions and the Chiefs Committee on Fiscal

Relations achieved consent on the strategy to establish the fiscal institutions.

In support of this initiative, ITAB continued to address policy development and consultation work. This includes:

1. Resolving FNTC (and ITAB) specific issues such as institutional costing, selection criteria for Commissioners, outstanding policy issues relating to property tax expenditure, and tax and representation.
2. Resolving institutional coordination matters pertaining to debenture financing, the role of the First Nation Financial Management Board, enforcement and on-going relationships with other institutions.
3. Lending support to the legislative drafting and review process.
4. Participating in First Nations, other governments and public consultation processes.

## IV. SUPPORTING PROGRAMS

### 1. Research and Special Projects

ITAB's research activities are undertaken to enhance First Nations fiscal relationships with Canada and other levels of government, respond to taxpayer requests, expand taxation jurisdiction or sources of taxation revenue and those which will further investment for economic development on reserve. The following represent the highlights of ITAB's research activities for 2000-2001:

#### *Comprehensive First Nation Economic Development Strategy*

As part of its mandate to expand First Nation tax jurisdiction, ITAB is committed to economic development on First Nation lands. The ITAB body of research addresses the root causes of poor economic conditions on First Nation lands. Taken together, the findings of these projects specify a comprehensive First Nation economic development strategy that would assist First Nations in competing for investment in the new economy.

The body of ITAB research is comprised of the following projects:

- i. First Nation Taxation and New Fiscal Relationships;
- ii. Indigenous Peoples and Fiscal Relations - The International Experience;
- iii. Expanding Commercial Activity on First Nation Land;
- iv. Turning on the Taps - Facilitating Investment on First Nation Land;
- v. Comparing Municipal Boundary Expansion to Additions to Reserve; and,
- vi. Building Bridges - Towards a First Nation Development Cost Charge Policy.

It is proposed that this body of research be consolidated into a number of communication products to include an economic development reference binder, a searchable CD Rom, an economic policy evaluation guide and a formal First Nation Economic Development Strategy. The next step in furthering this initiative is to identify appropriate First Nation communities as pilot projects for the establishment of the ITAB economic development strategy. ITAB will be submitting a formal funding request in the new fiscal year to carry out this initiative.

#### *First Nations DCC Sample Bylaw Development*

Development Cost Charges (DCC) bylaws provide an important source of revenue to support economic development in the municipal setting. Studies have recently shown that DCC's have become an essential component in financing infrastructure for local governments. First Nations have begun to develop their own DCC bylaws and have asked the ITAB to review and recommend the bylaws for approval.

ITAB has undertaken extensive research to analyse the use of DCC bylaws in the municipal setting. The study provides a number of recommendations for the application of DCC's on First Nations land. The work is now complete and is ready to be released. DCC's would serve as a key component to sustainable economic development on reserve. As mentioned above, this type of revenue source would also form a pillar of the proposed First Nation Economic Development Strategy.

### *Expanding Property Tax Bases: Maximizing Returns to First Nation Leases*

First Nation land development principally occurs through leases. Although land leasing is common throughout Canada and the world, a number of issues unique to First Nation leases have arisen that are depressing demand for First Nation land and impeding economic development. Most of these issues are in regards to residential leases on First Nation lands:

- i. First Nation leases are perceived as less secure than other leases. The land registry system is different for First Nation land than that for freehold land. The unfamiliarity leads to uncertainty and serves to reduce demand for First Nation land thereby making it more difficult for First Nations to develop their lands.
- ii. There are concerns about the appropriate mechanism to assess the value of a lease on First Nation land. Specifically, the question becomes, should leaseholds on reserve be assessed at their comparable off-reserve freehold market value or at their market value as on-reserve leaseholds? Although this matter is before the courts, the methodology debate creates uncertainty that has a negative economic impact.
- iii. There is confusion about the relationship between property taxes and lease fees. Some lessees claim they are being double taxed on First Nation land because they are making a lease payment and property tax payments to the same entity, namely the band.
- iv. There is uncertainty about renewal provisions and processes in First Nation leases. This impacts the long term value of First Nation leases, reduces demand for residential property on reserve and creates perverse economic incentives for lessees and landlords as leases near the end of their term.

As long as First Nation lease instruments are clouded by mistrust and misunderstanding, economic development on First Nation land will be difficult. The ultimate purpose of this research study was to improve First Nation leasehold instruments to encourage local investment on reserve, increase the First Nation property tax base, decrease the potential for disputes, and further economic development opportunities on reserve.

## 2. Legal Issues

### *Supreme Court of Canada Decision: Musqueam v. Glass*

On November 9, 2000 the Supreme Court of Canada (SCC) rendered its decision in the *Glass* case which addressed the issue of valuation of leasehold land on reserve. While the context of the *Glass* decision was limited to the interpretation of the term “current land value” within a lease agreement, a number of First Nations have contacted ITAB to inquire about the possible property tax implications.

In the wake of the decision, public pronouncements of taxpayer perceptions indicate that many may view the *Glass* decision as “discounting” on-reserve property and that this practice is applicable to the valuation of leasehold interests for property tax purposes. Dr. Jonathan Kesselman, on behalf of the Musqueam tenants, requested ITAB to review current First Nation assessment practices. It may be that the basis of First Nation property tax assessments will be challenged at some point in the future.

The Board, therefore, began a review of its property assessment policy with a view of achieving a degree of certainty with respect to stakeholder acceptance of assessment practices. The ITAB Rates Committee identified stakeholders to participate in the policy development process. A meeting held on December 8, 2000 with taxing First Nations served to initiate consultation on the effect of the SCC decision.

The British Columbia Assessment Authority (BCAA), in response to the decision, reviewed the assessment bylaws of their First Nations clients. The BCAA concluded that a number of First Nation assessment bylaws require amendment to support current BCAA assessment practices of using fee simple off-reserve valuation benchmarks. The BCAA contacted ITAB and asked the Board to support the amendment of these bylaws. The BCAA requested that the bylaws be amended and approved by the Minister before December 31, 2000 in order to support their time frames for the completion of assessment rolls.

ITAB’s own review determined that eight bylaws could benefit from an amendment to provide certainty for the assessor. The urgency raised by the BCAA was important but not the only consideration in this matter. It was also important for ITAB to consider the policy implications of the *Glass* decision and the long-term direction that the Board should follow in responding to this issue.

### *Resolution of the CP Rail/Matsqui Issue*

The Canadian Pacific Railway (CPR) and the Matsqui, Seabird Island, Boothroyd, Cook's Ferry and Skuppah First Nations (the five First Nations) negotiated an out-of-court settlement resolving long-standing litigation regarding the taxation of railway rights-of-way on reserve in the Fraser Valley of British Columbia. The settlement agreement addresses the concerns raised by CPR and the five First Nations and opens the way to uncontested First Nation property taxation of CPR railway right-of-way interests.

The foundation of the settlement agreement is the determination that the subject rights-of-way are an interest in land in the reserves and subject to the five First Nations' property taxation jurisdiction. It also provides certainty with respect to the determination of assessed values for right-of-way interests held by CPR and utility licensees and the setting of initial and future tax rates by the five First Nations on real property interests in the right-of-way areas. This is achieved through regulation, under subsection 83(5) of the *Indian Act*.

The First Nations before the court in the CP cases were all granted extensions of time, to the end of November 2001, within which to pursue their appeals to the Supreme Court of Canada. The parties agreed to use this time period to explore the terms for a possible negotiated settlement. The proposed Settlement Agreement represents months of labourious negotiations by CP and counsel for the five First Nations. Both parties recognized that a negotiated settlement is preferable to further litigation.

Of importance to ITAB and DIAND is the proposed making of a regulation under section 83(5) of the *Indian Act*. This regulation would ensure that CP Rail would be subject to the same rate of taxation as found elsewhere in the province. This regulation would *only* apply to the five First Nations and CP Rail, as signatories to the agreement. ITAB supports a negotiated settlement and the concomitant regulation-making process.

Most of the major outstanding issues regarding the negotiated settlement of the CP Rail/Matsqui issue appear to be resolved to the satisfaction of each party to this important agreement. It was agreed that ITAB would lead the required consultation process with the BC provincial government, and the affected local and First Nation governments once all aspects of the negotiated settlement have been addressed.