



CLEARING THE PATH

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Building the First Nations Infrastructure Institution



First Nations Infrastructure Institution
Système d'infrastructures des premières nations



In the last year, the FNTC has been working with First Nations leadership and infrastructure experts on the concept of a First Nation Infrastructure Institution, which was presented at the national meeting of FMA/FNLMA First Nations in May 2018 and received broad support from the First Nations in attendance.

In August 2018, the Department of Indigenous Services approved the workplan for continued work on the development of this institution. Throughout the rest of the 2018/2019 fiscal year, the FNII Development Board (DB) that has been established to guide the initiative, will work toward the creation of an improved infrastructure service delivery model, both regionally and nationally, as well as the creation of innovation proposals and a technical development paper. To achieve these deliverables, a work plan has been created to identify areas of focus, including communications and engagement, partnering with regional initiatives, innovation design and development, and legislative design.

Communications

The FNII DB will continue to communicate with interested First Nations and will provide interested First Nations with information and materials regarding the initiative. The FNII website (www.fnii.ca) will serve as the main source of

communication on project progress and currently contains all materials presented to the FNII DB to date. Further, as awareness of FNII continues to grow, First Nations will continue to raise specific questions, issues and interests, which will be addressed and those answers will be posted to the FNII website regularly. *Cont. on page 3*



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Chief Commissioner's Message



This month, Canada will allow for the sale of recreational cannabis products. This historic event represents tremendous social change, and has the potential to bring about long-lasting fiscal benefits for Indigenous communities, and more importantly, an opportunity to clearly demonstrate a tangible act of national reconciliation.

Estimates suggest annual retail sales will likely be between \$4 and \$8 billion initially, then rise to \$10 billion within ten years. The bottom line is the industry is going to generate billions of dollars in sales and excise taxes. There's no doubting this will become a significant new revenue source for government.

Over the last several months, the federal government has expressed a degree of interest in exploring how these revenues could be shared with First Nations. It is my hope that the discussions will lead to First Nations cannabis tax jurisdiction.

Over the past few weeks the Commission has provided a report on its activities to the First Nations Tax Administrators Association's 25 Annual National Forum and the Canadian Property Tax Association's 52nd Annual Workshop. Our report highlights our work on cannabis tax jurisdiction, our proposed amendments to the *First Nations Fiscal Management Act*, research supporting expanding FMA fiscal powers, and establishing a First Nations Infrastructure Institution.

I have also participated in progressive discussions on a new fiscal relationship with the AFN and the Department of Finance. Participating in these events provides the Commission with important engagement and reinvigorates our commitment to a new fiscal relationship and expanding the First Nations tax base. As always, I encourage you to join the conversation in our public input process and I look forward to hearing your advice and comments on the work we are doing.

C.T. (Manny) Jules
Chief Commissioner



**"Our ancestors and leaders
have fought hard for our jurisdiction.
It is precious. We must assert it.
We must protect it and we must
continue to clear the path for others."**

— Chief Commissioner Jules

GET IN TOUCH WITH US TO LEARN MORE
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Partnering with Regional Initiatives

The FNII DB will continue to develop working relationships and explore partnership opportunities with regional service delivery organizations. The FNII DB will seek advice from these regional organizations on the design of the institution, potential efficiencies, the service delivery experience, and methods to maximize the value of arrangements. The FNII DB will also hold a working session with some technical service organizations to define an ideal regional service delivery model and identify options to maximize value through working with FNII. Based on the identified ideal service delivery model, the FNII DB will work with the regional and technical groups to develop standards for the delivery of infrastructure services. Finally, the FNII DB will engage with other groups, as appropriate, about the ideal delivery model and standards in other regions of the country.

Engagement Process


Upon request from an interested First Nation presentations on FNII may be made in those communities. Feedback received in these engagements will assist in the further design and development of FNII. The FNII DB will also continue work with the FMA institutions on the monetization of federal transfer design. The FNII DB will also continue to engage with qualified and knowledgeable experts on infrastructure, financing, procurement, etc., to add depth of expertise to the FNII DB.

Innovation Design and Development

A central purpose of FNII is to introduce innovations into the First Nation infrastructure system that reduce time and costs and increase durability. The FNII DB has identified a number of such innovations and the FNII technical working group will work toward developing more detailed design, implementation and evaluation strategies for each of these innovations for the FNII DB to review.

Legislative Design

The FNII DB will meet to discuss and propose FNII policy and design issues associated with FNII, including matters related to the transition and financial plans; service and innovation implementation; governance; regulatory and fiscal requirements; and coordination with FMA institutions. The DB will also develop and advance preliminary technical instructions for the legislative requirements for FNII, which will serve as the basis for a technical development paper that will include all the necessary materials to support the possible drafting of legislation for FNII. Finally, the FNII DB will develop the necessary materials to engage the government and to seek support to advance the work further and proceed with the development of legislation.

The FNTC looks forward to continuing the work on FNII for the remainder of the fiscal year. For more information about this important initiative, go to www.fnii.ca. 

Changes to Section 83 Financial Administration By-law Approval


Indigenous Services Canada (ISC) recently announced 10-year grant funding that would be made available to First Nations as early as April 1, 2019 if the First Nation provides a written request and meets eligibility requirements, which were co-developed with the Assembly of First Nations (AFN) and the First Nations Financial Management Board (FMB).

To be eligible for the 10-year grant, a First Nation must have in place a financial administration law (*First Nations Fiscal Management Act*) or by-law (*Indian Act*). If the First Nation chooses to pass a financial administration by-law, the by-law must obtain Ministerial approval. The same standards for a financial administration law or by-law will apply.

The FNTC is currently solely responsible for providing advice to the Minister on the approval of all s. 83 *Indian Act* by-laws under the current Memorandum of Understanding (MOU) with the Minister of Indian and Northern Affairs Canada (INAC). However, given the new requirement, the FNTC is working to transfer the specific responsibility for financial administration by-laws to the FMB. The FMB would become responsible for setting

standards and policies for all financial management by-laws, developing a sample by-law that fully complies with these standards, reviewing all financial administration by-laws submitted by First Nations, and recommending ministerial approval of these by-laws. FNTC will continue to support the policy, review and recommendation requirements for taxation under s.83 Indian Act.

In August 2018, FNTC and FMB met to discuss the issues around the transfer of responsibility to be finalized by the end of the year. This would include an amendment to the current FNTC MOU and the drafting of a separate FMB-INAC MOU that deals with ministerial recommendations for the approval of financial administration by-laws. Under the new arrangement, financial administration by-laws would continue to be registered by the FNTC and published in the *First Nations Gazette*.

Work continues to ensure First Nations that currently have enacted financial administration by-laws under s.83 are supported and informed in advance of the transition of these by-laws to the FMB. 

Changes to FNTC Policies and Standards

In August and September 2018, the FNTC approved a series of changes and proposed changes to several of its policies and Standards concerning *Indian Act* section 83 and *First Nations Fiscal Management Act* (FMA) taxation. Under section 83, the following policies were changed to improve clarity and consistency with the section 83 regulatory framework:

Dispute Resolution Policy

Taxpayers Relations Policy


Local Improvement Tax Policy

Proposed changes related to the FMA include amendments to the Standards for First Nation Taxpayer Representation to Council Laws, 2018. These changes are intended to bring the Standards in line with the current version of the FMA, recent changes to related Standards, and to remove reference to an arbitration option for First Nation dispute resolution. The use of arbitration for First Nation-taxpayer disputes has the potential for unlawful delegations, therefore the provision was revised. The deadline for comments on the proposed changes to the Standards is October 7, 2018.

The Commission is also revising the Standards for First Nation Property Taxation Laws, 2016. These amendments would address issues raised by several First Nations who are using partnerships for residential\

commercial developments, and wish to extend property tax exemptions to these partnerships. The proposed amendments to the Standards would introduce a new term, “First Nation Entity”, which means a First Nation corporation or partnership of which the First Nation has at least 50% beneficial ownership. The public input period for comments on the proposed changes to the Property Taxation Standards begins September 24, 2018 and concludes November 2, 2018.

Finally, the Commission is proposing changes to the Standards Respecting Notices Relating to Local Revenue Laws, 2018 to address notification of laws in situations where there are seasonal occupiers on reserve lands. Many First Nation communities have non-member residents who occupy on-reserve properties on a seasonal basis (e.g., cottagers, and secondary summer homes). Proposed amendments to the Standards would require First Nations to either adapt the timing of their law notification periods to a time of year when seasonal properties are actually occupied, or opt for a mail/email delivery of law notification. The public input period for comments on the proposed changes begins on October 8, 2018 and concludes November 9, 2018.

For more information on the changes in section 83 policy, or to make a comment on proposed changes to the FNTC Standards, please visit www.fntc.ca. 



Working toward a jurisdiction-based fiscal relationship


The federal government announced in its 2016 Budget that it would develop a “new fiscal relationship”. In July 2016, the AFN and INAC (now Indigenous Services Canada) entered into a Memorandum of Understanding to jointly develop recommendations for a new fiscal relationship between Canada and First Nations.

In December 2017, the AFN and Indigenous Services Canada reported on its progress and noted that, during regional engagement sessions, some engagement participants called for First Nations to be provided greater access to revenue generation tools, including taxation. The report also stated that the Government of Canada and the Assembly of First Nations would continue to explore approaches to pursuing taxation-related discussions and that they would report, by March 31, 2019, on their progress in identifying approaches to taxation discussion that support deeper collaboration in this area.

From that work, a Taxation Technical Working Group was created to discuss tax matters. The federal Department of Finance would be joined by the AFN, with INAC participating as observers. The FNTC was also asked to participate.

The FNTC has always championed the philosophy that improving the fiscal relationship should include expanding First Nation tax and other direct revenue collection options; reducing offsets or revenue caps; and, establishing a process where the range of responsibilities potentially subject to transfer-related conditions by the federal government is reduced.



The 2018 National Meeting of FMA and FNLMA First Nations made it clear that many First Nations and First Nation institutions support this philosophy and want more from an improved fiscal relationship than a longer-term transfer. There was strong support for expanded tax options and creating a stronger relationship between using revenues generated by tax powers to support specific service responsibilities of First Nations. This would allow a gradual reduction of the role of the federal government in First Nation communities. 



2018 National Meeting of FMA/FNLMA First Nations

Our Lands. Our Jurisdiction. Our Institutions. And Our Vision for the Future

- Meeting Summary
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www.fnleadingtheway.ca

For more information about the host institutions:



www.fnfmb.com



www.fnfa.ca



www.fntc.ca



www.labrc.com

Update on FMA Legislative Amendments

The First Nations Tax Commission, in conjunction with the First Nations Financial Management Board and the First Nations Finance Authority, have worked together to advance to Indigenous Services Canada (ISC) a number of proposed amendments to the FMA. These changes include some amendments to the FMA that were proposed, but not advanced, as part of the 2016 amendments to the FMA, as well as some additional proposals.

The amendment proposals are aimed at clarifying certain aspects of the legislation, addressing gaps in the legislation, increasing the flexibility of the legislation, and expanding access to the legislation.

To advance this work, the Institutions have participated in meetings with ISC over the last three years to review the proposed amendments being advanced by each Institution. ISC has now completed a detailed review of the proposals and work on the legislative drafting process has begun.

The amendment proposals are aimed at clarifying certain aspects of the legislation, addressing gaps in the legislation, increasing the flexibility of the legislation, and expanding access to the legislation.

The Commission has advanced amendments that include deleting the requirement for the “special levy” provision in subsection 5(6); adding standard-making powers for the approval of delegation laws and taxation laws related to joint reserves; correcting a drafting inconsistency in section 7 by including reference to laws made under paragraph 5(1) (a.1); correcting a drafting inconsistency between section 6 and subsection 31(2) in respect of written representations made to the Commission; providing protection from liability

for those acting on the Commission’s behalf; and modifying the Commission mandate to enable it to provide advice on “taxation matters” to the Minister rather than solely on property taxation.

Amendments advanced by the First Nations Financial Management Board include clarifying the Board’s role in third party management under section 53; enabling the Board to provide law review services, and financial performance and management review services, to First Nations that are not scheduled to the FMA; and, providing protection from liability for the Board and those acting on its behalf, including on intervention.

The First Nations Finance Authority has advanced amendments that include amendments to section 84 for internal consistency, and to enable First Nations to recover amounts owing to the Authority under a property taxation law or using other revenue sources; to enable the Authority to provide investment services to a broad range of First Nations and organizations; and to clarify that the Authority can finance capital assets, including capital infrastructure.

Additional proposed amendments include new powers for the Governor in Council to make regulations in respect of joint reserve taxation, to expand access to financing from the Authority to specified non-First Nation entities, and to enable the Board to provide services to those entities.

As part of the amendments to the FMA, ISC will also be reviewing the FMA to ensure that it is fully operational in both the common law and civil law jurisdictions. This “bijural” review is undertaken for all federal legislation that is being amended, with the objective being not to make substantive changes but to ensure the legislation makes sense under both common and civil law regimes. Additional amendments arising out of this review are expected.

More information on the proposed amendments can be found at www.fntc.ca. 




CLEARING the Path EXPANDING JURISDICTION & BUILDING VIBRANT ECONOMIES

AGM and 30th Anniversary of Bill C-115 Celebration

The FNTC held its Annual General Meeting on September 19th, 2018 in Kamloops, BC. The Annual Report was presented which provides an opportunity to report to First Nations, taxpayers and the federal government on the FNTC's progress on each element of its vision and to provide examples of how the work of the FNTC improves First Nation communities.

In 2017/18, the FNTC continued to support First Nations in implementing various property tax jurisdictions and has continued to maintain standards and processes that promote transparency and consideration for taxpayers. The Annual Report is available online.

In addition to the FMA institutions marking the 10th year of operations using the *First Nations Fiscal Management Act*, this year marks the 30th Anniversary of Bill C-115. The FNTC celebrated the "Kamloops Amendment" anniversary by honouring those who worked to make the amendment possible. 

“We stood on the shoulders of previous Chiefs and Councils who laid the foundation for us to carry on the work.”

— Chief Commissioner Jules
on the 30th Anniversary
of Bill C-115.



Kamloops Amendment 30th Anniversary of Bill C-115

This year marks the 30th Anniversary since Bill C-115, better known as the “Kamloops Amendment”, received Royal Assent. This indigenous-led amendment to the *Indian Act* made it possible for First Nations to begin implementing property taxation, significantly increasing revenue options and expanding jurisdiction.

In 1988, Bill C-115 created First Nation property tax jurisdiction. Since that time, First Nation communities across Canada have generated over \$1 Billion in cumulative tax revenues and have established new jurisdictions over revenues such as development cost charges, taxation for the provision of services and business activity taxes.

Chief Commissioner Jules to UBCM: Tax is the ‘Blood of Governments’


The Union of British Columbia Municipalities (UBCM) held its 2018 convention September 10 – 14, 2018 in Whistler, BC. The first day of the convention featured a morning policy session – Advancing Local Government Relations with Indigenous Peoples – with a presentation on legislative advancements in Indigenous governance and how they will affect relations between local and First Nation governments.

Panelists included FNTC Chief Commissioner Jules, Mr. Harold Calla, Executive Chair of the First Nations Financial Management Board, and Mr. Robert Louie, Chairman of the Lands Advisory Board. Each spoke about how the *First Nations Fiscal Management Act* and the *First Nations Land Management Act* have enabled many First Nations to profitably utilize the resources of their lands, which has created a positive investment climate and has increased collaboration between First Nations and municipalities. First Nations seek to be self-sustaining and contribute to the provincial economy.

As part of his presentation, Chief Commissioner Jules referenced the work of the FNTC with proponent First Nations and the federal government to ensure First Nations get a share of the taxes to be levied on cannabis, which is currently set to be split between the federal and provincial governments. Cannabis will be legalized in Canada on October 17, 2018.

Chief Commissioner Jules stated:

“That’s where the rubber hits the road. When we talk about tax – and tax is indeed the blood of governments – I know the (UBCM’s) position is you want more of the cannabis tax or at least some of it. We’re saying the same things as First Nation communities. It can’t just be divided between federal and provincial governments. We’re the ones who have to deal with all the social policies and the implementation issues. These include policing and other social matters.”

The UBCM was formed in 1905 to provide a common voice for local governments in BC. Its members include 189 local governments and 7 First Nations. 

REGIONAL WORKSHOP SERIES

This workshop series is presented by the First Nations Tax Commission and the Tulo Centre of Indigenous Economics. It focuses on the benefits of implementing First Nations Fiscal Management Act (FMA) taxation systems. The workshops are designed for First Nations who are interested in establishing tax jurisdictions and want to learn more about the process. It will be an opportunity to ask questions, to learn about strategies to undertake economic development and/or expand current jurisdiction.

Schedule:

- Thursday, July 19, 2018 in Manitoba
- Thursday, November 1, 2018 in Ontario
- Thursday, November 22, 2018 in Saskatchewan
- Thursday, January 24, 2019 in Alberta
- Thursday, February 21, 2019 in Ontario

Limited travel assistance is available. Please contact Lindsay for more information or to add your name to the information/registration list:

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