# 2001-2002

# 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 2001-2002 Annual Report of the Indian Taxation Advisory Board.

The 2001-2002 fiscal year marked the 13th anniversary of the Indian Taxation Advisory Board. Over the years, ITAB has had considerable success in the areas of bylaw development, accountability and the strengthening of First Nation tax administration capacity.

The past year was a productive and rewarding one with respect to furthering the First Nations Fiscal Institutions Initiative and the successor to ITAB, the First Nations Tax Commission. Along with the First Nations Finance Authority, each proposed institution now has a base from which it can be developed, ensuring their independence and demonstrating a commitment to their establishment and permanency. I was particularly pleased to note that the BC Summit and the Union of Ontario Indians have agreed to sponsor the Financial Management Board and the Statistical Institute, respectively.

Regards,

C.T. (Manny) Jules
Chairman

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# ANNUAL REPORT

# OF THE

# INDIAN TAXATION ADVISORY BOARD

## EXECUTIVE SUMMARY

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

Because of its unique role in the process of drafting real property tax bylaws, ITAB has been able to create a bridge between First Nation bylaws and federal legislation. ITAB has streamlined the process and made it easier for First Nations to establish their own taxation regimes by developing sample legislation, specialized software, educational workshops and publications, and through ITAB's own body of policies and procedures. It is widely recognized that all governments have gained valuable expertise in the intricacies of developing taxation legislation for First Nations.

ITAB is accepted as the leading authority on First Nation 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 administrations to manage and administrate them. ITAB's review of courses designed for municipal taxation regimes recognized that these do not meet the unique requirements of managing or administering a real property taxation regime on reserve. Like other government agencies, ITAB has instituted education and training initiatives to establish a level of professionalism for First Nation tax administrators, facilitate their mobility between First Nations and 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 mediated 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 taxation bylaws in the *Gazette* ensures that community members, on-reserve taxpayers and the public at large are aware of First Nation taxation initiatives. More importantly, the *Gazette* provides First Nation lawmakers and the courts with a critical new tool for communicating and enforcing their laws.

In accordance with the *Memorandum of Understanding* between ITAB and the Minister of Indian Affairs, work continued on the creation of the First Nations Tax 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 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 concerning 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, including the First Nations Financial Management Board, First Nations Finance Authority and First Nations Statistical Institute, in the proposed *First Nations Fiscal and Statistical Management Act*. It is anticipated that the legislation will be introduced in Parliament in 2002.

**Highlights of 2001-2002**

- **Bylaws:** 67 bylaws enacted under section 83 of the *Indian Act* were reviewed and recommended by the Board and approved by the Minister. To date, ITAB has recommended a total of 815 bylaws covering areas such as property taxation, assessment, rates, expenditure, business licensing, financial administration, telephone companies and other related amendments.

- **Accountability:** ITAB is a leading advocate for First Nation government accountability through the publication of the *First Nations Gazette* (99 bylaws were gazetted in 2001-2002) and the development and delivery of the Financial Management Bylaw Certificate Program.

- **Building Capacity:** To build the capacity of First Nation tax administration, 49 candidates received certification in 2001 after completing ITAB courses in the Financial Management Bylaw Certificate Program, Communications, and the Client Lands Assessment Services System. To maximize good relations between First Nation authorities and on-reserve taxpayers, 137 candidates received certification after completing the Mediation-Interest Based Negotiation course.

- **Canadian Pacific Railway/Matsqui et. al. Agreement:** The Canadian Pacific Railway (CPR) and five First Nations in British Columbia (Boothroyd, Cook's Ferry, Matsqui, Seabird Island and Skuppah) have reached an agreement over the taxation of CPR's railway, ending a five-year legal battle. On November 8, 2001, the *Property Assessment and Taxation (Railway Right-of-Way) Regulations* were passed. These are the first regulations under the *Indian Act* to assist in the valuation of property and the setting of property tax rates on reserve.

- **ITAB and DIAND — Memorandum of Understanding:** In March, the Minister signed a new MOU with the Chairman of ITAB, Clarence Thomas (Manny) Jules, which extends the Board's term for a period of five years, ending March 31, 2007. The MOU sets out ITAB's mandate and governs the relationship between the two parties.

- **First Nations Tax Commission:** Significant progress was made on developing the FNTC, as part of the *First Nations Fiscal and Statistical Management Act*. The detailed business plan for the FNTC has been finalized. Coordination issues with the other proposed institutions and legislative development requirements have been identified and are being addressed.

- **First Nations Fiscal Institutions Initiative (FNFI):** Many meetings were held over the past year involving the proponents of the proposed fiscal institutions and DIAND, the Department of Finance, the Department of Justice, Statistics Canada, the Assembly of First Nations, First Nation taxing authorities and other stakeholders. Through extensive cooperation and hard work, all parties have built support to develop the FNTC, the statute-based successor of ITAB.

- **Consultations:** ITAB has held extensive information sessions, meetings, trade shows and presentations with various stakeholders to fully explain the requirements and objectives of the proposed *First Nations Fiscal and Statistical Management Act*. These stakeholders included the Nexus Trade Show, the Assembly of First Nations Annual General Assembly, the Canadian Property Tax Association and taxing First Nations.

# I. OPERATIONS

***Authority***

In 1988, First Nations-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. The Indian Taxation Advisory Board (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 exercising the Minister of Indian Affairs' decision-making authority under the *Indian Act*.

***Mandate***

- Promote the exercise of First Nation real property taxation jurisdiction in support of self-government and self-reliance.
- Examine taxation bylaws proposed by First Nations under section 83 of the *Indian Act* and recommend their approval to the Minister.
- Advise the Minister on policy concerning the taxation powers of First Nations.
- Assist First Nations interested in developing taxation bylaws.
- Foster harmonization between taxation by First Nations and by other authorities.
- Hear from taxpayers whose interests are affected by taxation under section 83 and consider this information in making recommendations to the Minister.
- Provide mediation and alternate dispute resolution mechanisms to First Nations, governments, taxpayers and other affected parties concerning matters related to the exercise of First Nation property tax jurisdiction.
- Advise the Minister on improving the administration of the Minister's statutory responsibilities under section 83.
- Ensure First Nation tax bylaws are properly promulgated and available to the public through the *First Nations Gazette.*
- Continue discussions with departmental officials on the Board's further development in the area of new fiscal relations between First Nations and Canada.
- Work with the Minister to develop legislative proposals for establishing 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 are knowledgeable

and experienced in First Nation government, intergovernmental relations, property taxation, reserve land development, economic development and the provision of government services. They have been given a mandate by their respective regional/provincial political organizations to serve on the Board and reflect the various perspectives of First Nations across the country.

The members are:

- Clarence T. (Manny) Jules, (Chair), Kamloops Indian Band, British Columbia
- Strater Crowfoot, (Deputy Chair and Rates Committee Chairman), Siksika Nation, Alberta
- David Paul, Tobique First Nation, New Brunswick
- Chief William (Bill) McCue, Chippewas of Georgina Island, Ontario
- Ricky Fontaine, Innu Takuaikan Uashat mak Mani-Utenam (Sept-Îles), Quebec.

***Process***

The Board has established policies, precedents and procedures regarding bylaw development, enactment, approval and implementation, as well as bylaw enforcement and assessment appeal procedures. All bylaws proposed under section 83 are reviewed to ensure conformity with the *Canadian 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 Nation governments must demonstrate that they have consulted 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. When necessary, ITAB also requests comments from the appropriate federal government departments or sectors within the Department of Indian Affairs and Northern Development (DIAND) in order to assure the Minister that all interests and perspectives have been considered.

Furthermore, the ITAB Rates Committee develops policy and reviews each First Nation's proposed annual rates bylaw in order to balance 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***

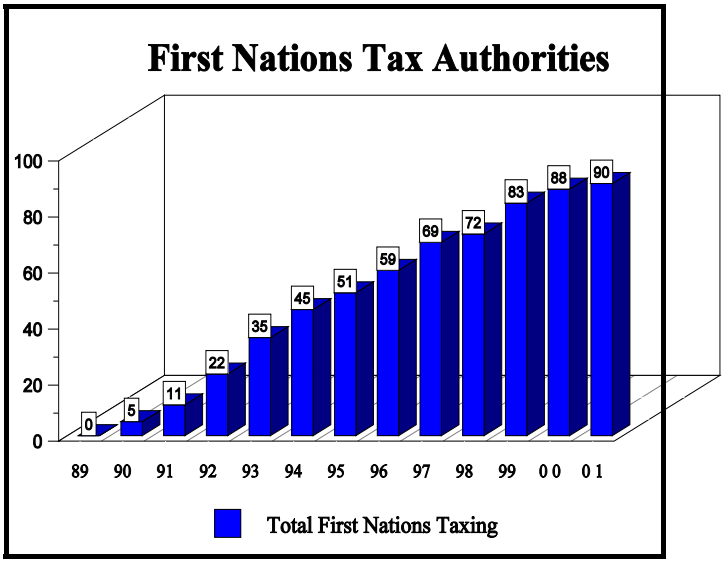
The Board is supported by a staff of 10 employees located in the Eastern Office in Ottawa and the Western (Head) Office in Kamloops, British Columbia. The staff provide professional and logistical

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.

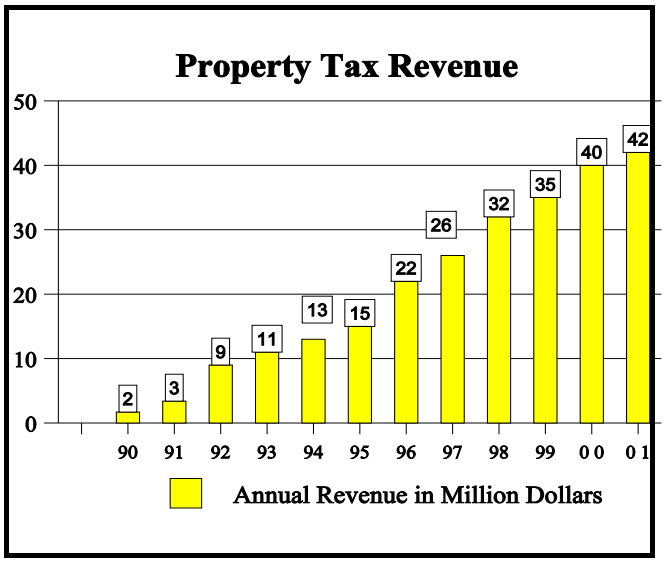
***Results***

**First Nations Tax Authorities**

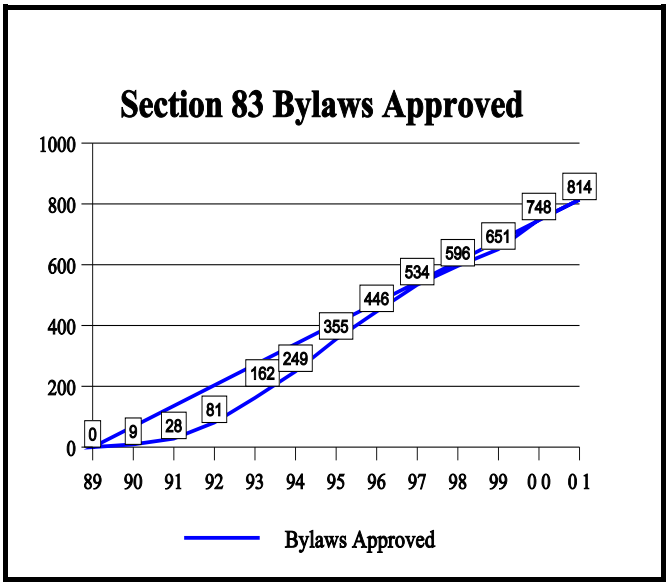
Ninety First Nations were exercising taxation jurisdiction as of March 31, 2002. Over 13 percent of First Nations in Canada are now levying property taxes on reserve.



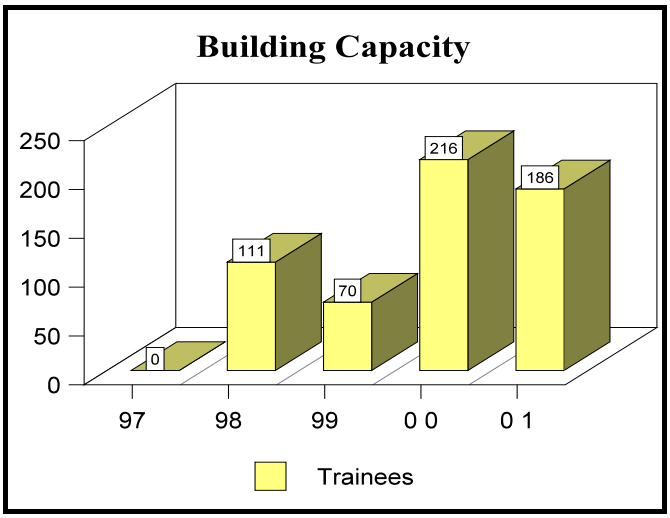

Annual revenues to First Nations from taxation exceeded $42 million in 2001-2002. Since 1989, more than $173 million has been generated through property taxation on reserve.



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 fiscal year 2001, ITAB had reviewed 814 bylaws concerning property taxation, assessment, rates, expenditure, business licensing, financial administration, telephone companies and related amendments.




To build the capacity of First Nation tax administration, 216 candidates received certification in 2000 after completing ITAB courses in Mediation-Interest Based Negotiation, Budget-Based Tax Rate Setting, the Client Lands Assessment Services System, Financial Management Bylaw Certificate Training and Communications. Approximately 186 candidates received training in 2001.



# II. PROGRAMS AND POLICIES

## 1. Bylaw Services

### *First Nation Bylaw Development*

In 2001, the following First Nation communities submitted bylaws for review under section 83 of the *Indian Act*:

a) Property Taxation
- Skidegate First Nation, British Columbia
- Whitecap Dakota/Sioux First Nation, Saskatchewan

b) Expenditure
- Fort Nelson First Nation, British Columbia

c) Financial Administration
- Chemainus First Nation, British Columbia
- West Moberly First Nations, British Columbia

d) Business Licensing
- Mississaugas of Scugog First Nation, Ontario

As well, ITAB reviewed 60 amendments to existing bylaws (including rates bylaws) for policy compliance and sent them to the Minister for approval.

### *ITAB Policy Objectives*

- **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 prime objective of ITAB policy is to address the issues behind these challenges through effective, proactive communication strategies.

- **Balance Interests**. ITAB policies are intended to prevent or mitigate local disputes. The tax policy interests of the First Nation government should be reconciled with the tax policy interests of the taxpayers.

- **Expand Revenue Jurisdiction**. ITAB policies create trust and capacity in First Nation property tax systems to facilitate future expansion into other revenue-raising jurisdictions.

- **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.

- **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.

- **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 on 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, which resulted in ongoing challenges and generally decreased First Nation confidence 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 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 meet the deadline. The most common reasons 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.

The deadline was extended, and ITAB has continued its communication and training activities with First Nation tax administrations.

Section 16 of the ITAB 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."

The budget-based tax rates methodology is now used by 26 First Nations.

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

ITAB continued its work in establishing tax revenue expenditure classification categories.

A description and comparison of the classification systems adopted by Statistics Canada in its Financial Management System, the BC Municipal Affairs Statistics group and those contained in ITAB's Mill Rate Wizard system was presented to the Rates 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 developing the expenditure classification system will be to establish a work plan and enter into discussions with the First Nations fiscal institutions and Statistics Canada to correlate 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 help create budget-based tax rates. There are nine expenditure categories in the Mill Rate Wizard's budget-making interface: 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 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 came from the numerous requests received from First Nations for property tax expenditure guidelines. Many First Nations asked whether the Mill Rate Wizard categories were acceptable expenditure guidelines.

Since that time, the ITAB Rates Committee has evaluated requests for expenditure guidelines using

ITAB policy objectives. Based on this review, the Rates Committee recommended to the full Board that the expenditure categories be implemented. The recommendation was accepted and an expenditure category section was added to the budget-based rates policy.

***Policy Rationale***

- These standardized expenditure categories will make the property tax budget process quicker and more efficient. Detailed expenditures for each category are attached to provide even more guidance for tax administrators.

- 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.

- Standardized expenditure categories will address some taxpayer concerns about insufficient transparency in the budget-making process. Taxpayers can also compare expenditures between First Nations, which helps to balance interests between taxpayers and tax collectors.

- The new policy is also easily comparable to expenditure categories used by other governments. First Nations and taxpayers can evaluate the comparability of services across jurisdictions. This ability will be useful to First Nations seeking to expand revenue raising jurisdiction.

**2. Expanding First Nation Tax Jurisdiction**

***Taxation of Utilities***

In accordance with its mandate, the Board has initiated discussions and negotiations with various provincial public utilities to expand potential revenue jurisdiction sources on behalf of all First Nations. Agreements have been concluded with Ontario Hydro, Bell Canada (Ontario), Union Gas (Ontario) and, most recently, BC Hydro.

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. First Nations in BC appealed to ITAB and asked if the Board could assist in opening discussions with BC Hydro. Even though the ruling was in its favour, BC Hydro entered into negotiations with ITAB's First Nations Negotiating Committee to develop a methodology for making payments to 45 First Nations.
The issues were many, varied and complex. They included historic grievances, trespassing, timber removal, date of commencement for payment, formulas and legislative instruments. The program will not be a grant-in-lieu of payment but will instead be a measure of revenue sharing that BC Hydro will provide to assist First Nations. The program is available to all First Nations in British Columbia who agree to participate. Subsequently, in each calendar year, First Nations will receive

a further $1.6 million under the agreement. More than 80 percent of First Nations have entered the program.

**3. Strengthening First Nation Tax Administration**

***Education and Training***

Managing a real property taxation system demands a broad set of skills. Administrators must manage bylaws, maintain various pieces of legislation covering areas such as rate setting, assessment, appeals and financial management, and keep up effective communications with community members and on-reserve taxpayers. However, institutional training in these unique subject areas, specific to a First Nation setting, has not been available. ITAB has acted to fill this void.

A number of training and education initiatives were completed in the 2001-2002 fiscal year, including the following: a communication workshop for the Shuswap Tribal Council; development work to make ITAB's training and educational material accessible to a greater number of First Nation clients through long-distance learning techniques (on-line tools, resources and program delivery mechanisms); and the Yukon First Nation Tax Training Program.

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

To help complete its Education Policy and support the design of a certificate-based professional training program, ITAB undertook a study led by Professor Bob Bish of the University of Victoria to identify the core competencies required of First Nation taxation administrators.

ITAB's courses have improved the overall accountability to on-reserve taxpayers and First Nation members and helped implement labour-saving technology, reduce disputes, improve administrative efficiency and facilitate 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 on an annual expenditure plan derived from an approved Band Council budget. The setting of property tax rates based on a property tax budget parallels the methodology used by municipalities in Canada. It enhances the autonomy of First Nation government and 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 on 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. To date, 63 individual tax administrators have been certified.

Of the 90 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 to implement CLASS. In 2001-2002, 28 CLASS trainees representing 19 First Nation communities were certified, bringing the total of certified tax administrators to 60.

***Financial Management Bylaw Certificate Program***

The fourth quarter of 2001 saw the first offerings of the ITAB Financial Management Bylaw Certificate Program to representatives of the seven British Columbia First Nations making up the Lillooet Tribal Council as well as the Tobique, Burnt Church and Big Cove First Nations in Atlantic Canada.

The Program is designed to build the capacity of First Nations that 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 the chief and council. The first day of the training is an orientation to the program and is open to the public. The remaining five days offer a comprehensive focus on financial management principles and techniques.

## 4. Public Education

Through its various communications activities, the Board builds public awareness and understanding of First Nation property taxation on reserve lands.

***www.itab.ca***

The ITAB website was upgraded in 2000-2001 to make it more user-friendly and easier to navigate. It includes a stand-alone section on the First Nations Tax Commission (FNTC), where *Responding to Challenges* is posted.

The bilingual FNTC website is currently under construction. It will include sections for current issues and a media room to keep audiences up-to-date on events relating to the FNTC. The site will also be linked to the First Nations Financial Institutions website, which offers links to the four fiscal institutions.

***First Nations Gazette***

The *First Nations Gazette*, launched on Aboriginal Day, June 21, 1997, is published semi-annually as a joint partnership of ITAB and the Native Law Centre, University of Saskatchewan. The *Gazette* is a tool for notifying the public of First Nation laws. Publication of these laws is intended to increase awareness of Indian taxation initiatives among First Nations and the general public, and to help First Nations enforce their tax laws by ensuring that regular notice is provided and that a register of all current tax bylaws is readily accessible. 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 distributed by subscription.

***Clearing The Path***

ITAB's newsletter, *Clearing the Path*, is published regularly to keep readers informed of real property taxation issues on reserve. Its circulation exceeds 2,000 subscribers.

## 5. Mediation

The smooth transition and transfer of real property jurisdiction to First Nation control is one of the Board's highest priorities. For some, 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. ITAB, in accordance with its mandate, provides mediation services where necessary.

***Mediation Program Development***

In 1998-1999, the Board established mediation procedures and standards to guide Board members and staff in dispute resolution. They have proven effective in resolving disputes between First Nations, municipal governments, provincial governments and taxpayers on reserve. With approximately 15 percent of First Nations collecting property taxes across Canada, there is greater pressure on this dispute resolution service.

With the assistance of the Consensus Building Institute 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 CBI, 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 resolution of taxation issues 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 reached by promoting the fair and efficient resolution of disputes at the lowest possible level when conflict does arise.

***Mediation Training***

ITAB and the Canadian Energy Pipeline Association (CEPA) agreed to provide a program of four courses for First Nations and energy pipeline taxpayers on the mutual gains process. Ninety-three participants attended the three courses offered in Calgary from November 7-8, 2001. They were very successful, and a fourth course is planned for the fall of 2002 to complete the program.

In preparation, ITAB will refine the training materials based on suggestions and comments made in end-of-session evaluations of the previous courses. This material, including lectures, negotiation simulations and vignettes, will be adjusted in keeping with traditional values and concepts and will be used in the fourth training session.

ITAB is working closely with the Consensus Building Institute to develop curriculum and course materials focusing on integrating values/identities with interest-based negotiation. CBI will prepare a draft agenda of proposed training along with a course outline and a complete course materials package ready for duplication.

***Third Party Neutral Mediation Training***

As part of its mandate to develop effective dispute resolution alternatives, ITAB sponsored a "Third Party" mediation training course from March 13-14, 2002, in Niagara-on-the-Lake, Ontario.

Twenty-six participants attended, including representatives of ITAB, First Nations from Atlantic Canada (Tobique, Burnt Church and Eskasoni), the Mohawk Council of Kanesatake and the Economic Development Commission of the First Nations of Quebec and Labrador.

The course was a five-day experimental, basic training session to prepare participants for involvement in conflict situations as a Third Party Neutral. Participants explored the differences between disputes, underlying conflict, deep-rooted conflict and fundamental conflict and were introduced to conflict resolution, mediation and group process skills, as well as the responsibilities of a Third Party Neutral. Participants were also given the opportunity to both mediate and lead a small group process.

The professional development program was an exciting opportunity for First Nation representatives to develop skills to face the challenges of their rapidly changing business and economic environments. ITAB will seek opportunities to provide similar training in 2002-2003.

***Advanced Mutual Gains Training***

Based on ITAB's success in introducing mutual gains training for First Nations in Canada, DIAND asked the Board to develop a proposal for coordinating the CBI-based training for headquarters staff. Eighteen participants attended the course, which was held March 26-27, 2001, in Halifax, Nova Scotia.

# III. SPECIAL INITIATIVES

## 1. *First Nations Fiscal Institutions Initiative* (FNFI)

ITAB has received support from DIAND to fund a substantial portion of its further consultation and development work and its continued participation in the FNFI process. ITAB has continued its policy review and development work in key areas such as tax revenue expenditure policy, communication policy, property assessment policy, mediation policy and the taxation and representation issue.

During the Annual General Assembly held in July 2001 in Halifax, the Assembly of First Nations (AFN) supported a resolution which called for its delegates to approve the proposed next steps in developing national First Nation fiscal institutions.

## 2. First Nations Tax Commission

Work continued on creating the First Nations Tax Commission as a statute-based institution to succeed the Indian Taxation Advisory Board, as part of the First Nations Fiscal Institutions Initiative. ITAB has drawn on its experience as the first independent, Aboriginal-controlled fiscal institution to provide leadership and play a mentoring role for the development of the other proposed First Nation fiscal institutions.

The First Nations Fiscal Institutions Initiative will establish First Nation fiscal governance institutions such as the FNTC, the First Nations Financial Management Board (FNFMB), the First Nations Finance Authority (FNFA) and the First Nations Statistical Institute (FNSI).

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

The Board adopted a set of key principles, based on several AFN resolutions and previous FNTC policy development, that must be respected in the legislation establishing the four fiscal governance institutions. The legislative foundation of these proposed institutions must ensure:

- institutions are independent;
- First Nation control the institutions;
- the fiscal relationship is balanced between assertion of jurisdiction and economic development, as well as accounting for funds and developing a new transfer system;
- decisions regarding financial accountability and transfer formulas take full account

of their impact on the tax system;
- authority is divided efficiently with respect to intergovernmental relations and the direction of the new fiscal relationship;
- the FNTC can maintain the integrity of the tax system;
- the affected parties, including First Nation tax administrations, are consulted and reach a consensus;
- the FNTC can pursue initiatives with other governments concerning tax and related expenditures; and
- functional responsibilities are divided so that each institution has the tools it requires.

# IV. SUPPORTING PROGRAMS

## 1. Research and Special Projects

ITAB and DIAND's Research and Analysis Directorate have worked together on a number of research projects over the last three years. This research has driven the development of ITAB and DIAND economic development policies and supported the emergence of the National Table on Fiscal Relations and the development of the fiscal institutions legislation package. In addition, a number of future research areas, beneficial to ITAB and DIAND economic development goals, have been identified.

Based on the success of the research partnership to date, work to develop a mid-term (five-year) research agenda has begun. These efforts will ensure that research is better coordinated between ITAB and DIAND and resources are focused more efficiently.

***Development of Public/Private Partnerships and First Nations***

ITAB, in partnership with DIAND, continued to explore issues that affect public/private partnerships in a First Nation context, as part of the development work for the proposed First Nation Tax Commission.

This research was particularly timely and significant given the need to increase development and build capacity among First Nations to minimize the social costs of poverty and develop a more inclusive economy and society. With the anticipated introduction of the First Nation fiscal institutions legislation, First Nations institutional development is well underway. This work will help address some of the perception problems currently hindering investment. There is a growing awareness in government that investment in First Nation infrastructure could yield enormous returns in this new institutional environment. Similarly, business is becoming more willing to consider investments in First Nations.

***Model Regional Economic Cooperation Protocols***

ITAB has long since realized that First Nation economic growth depends on regional economic cooperation. In recognition of this basic fact, First Nations have begun to develop protocol agreements with local governments. These agreements represent the first step towards greater regional economic cooperation and participation and serve mutual First Nation and federal interests with respect to First Nation economic growth.

An ITAB study researched existing regional economic cooperation protocols, highlighted best practices and identified potential models for First Nation/local government protocols. ITAB has always encouraged greater First Nation participation in regional economies and now recognizes that this can be advanced through regional political protocols based on economic cooperation. The findings of this research initiative represent the first effort to understand the importance of regional economic cooperation. Research will continue through the current year, with a view to developing ways for First Nations to participate further in regional economies and thereby enhance their opportunities for economic growth.

***Clarification of Additions to Reserve Policy***

DIAND requested this research project to give prospective Additions to Reserves (ATR) applicants more details on service areas and to possibly enhance the ATR evaluation process.

This project was designed to proceed in two phases, corresponding to two research objectives. The first phase addressed the development of:

- a guide for First Nations that specified the types of services and infrastructure normally provided to an ATR and the cost drivers associated with these services for different land uses; and
- an evaluation of probable marginal service costs associated with an ATR in different circumstances so that an objective, quick and transparent evaluation of proposals can be made.

Phase two, planned for 2002-2003, will address:

- the range of current services and infrastructure delivered to First Nations that can be considered in an ATR under various land use plans;
- the key cost drivers associated with these local services and infrastructure in different First Nation and municipal circumstances and in different land use plans; and
- the range of marginal or incremental costs associated with these local services and infrastructure in different First Nation and municipal circumstances.

Phases 1 and 2 of this research will let ATR evaluators and applicants make reasonable estimates of the anticipated incremental costs associated with ATR applications. Where these costs are unaffordable through regional core budgets or other means, the research will also specify alternative delivery and financing options.

**2. Legal Issues**

***Supreme Court of Canada Decision: Osoyoos Indian Band v. Oliver (Town)***

In December 2001, the Supreme Court of Canada released its decision in the case of *Osoyoos Indian Band v. Oliver (Town)* . It is the first case in which the Supreme Court of Canada interpreted section 35 of the *Indian Act*, often referred to as the "expropriation" provision.

ITAB reviewed the decision from both a legal and policy perspective. In addition to retaining the services of outside counsel to prepare a legal opinion, ITAB also contracted with a research firm to document transactions resulting from section 35 “takings” for each of its client First Nations. The results provided ITAB and taxing First Nations with a reference tool to better gauge the implications of the Osoyoos ruling.

***Property Assessment and Taxation Regulations: Railway Right-of-Way***

The *Property Assessment and Taxation (Railway Right-of-Way) Regulations* were registered as passed on November 8, 2001 and published in the *Canada Gazette*, *Part II*, on November 21, 2001.

The successful ratification votes in July by Matsqui, Boothroyd, Skuppah, Seabird Island and Cook’s Ferry speaks to the diligence of those involved in this process. The Indian Taxation Advisory Board proudly played a role in developing the first-ever regulation under section 83 of the *Indian Act.* The “negotiation over litigation” approach brought about a win-win solution for all parties.

# APPENDIX A: TAXING FIRST NATIONS

**Newfoundland**
Miawpukek First Nation

**Nova Scotia**
Eskasoni Band
Millbrook Band of Indians
Pictou Landing First Nation

**New Brunswick**
Kingsclear First Nation
Red Bank First Nation

**Quebec**
Innu Takuaikan Uashat mak Mani-Utenam

**Ontario**
Beausoleil First Nation
Chippewas of Georgina Island First Nation
Chippewas of Mnjikaning (Rama) First Nation
Fort Severn First Nation
Kasabonika Lake First Nation
Mississaugas of Scugog Island First Nation
Nipissing First Nation
Serpent River First Nation
West Bay First Nation (M'Chigeeng First Nation)
Whitefish Lake Indian Band No. 6

**Manitoba**
Fairford First Nation
Opaskwayak Cree Nation

**Saskatchewan**
Muskeg Lake Band of Indians
Ocean Man First Nation
White Bear First Nations
Whitecap Dakota/Sioux First Nation

**Alberta**
Alexander First Nation
Alexis First Nation
Dene Tha' First Nation
Duncan's First Nation
Enoch First Nation
Fort McMurray First Nation
Little Red River Cree Nation
Mikisew Cree First Nation
O'Chiese First Nation
Paul Band
Siksika Nation
Stoney Tribal Council
Sturgeon Lake Band of Indians
Tsuu T'ina Nation
Whitefish Lake First Nation

**British Columbia**
Adams Lake Indian Band
Ashcroft Indian Band
Bonaparte Indian Band
Boothroyd Indian Band
Burns Lake Indian Band
Chawathil Indian Band
Cheam Indian Band
Chemainus First Nation
Coldwater Indian Band
Columbia Lake Indian Band
Cowichan Indian Band
Cook's Ferry Indian Band
Fort Nelson Indian Band
Kamloops Indian Band
Kanaka Bar Indian Band
Kwaw Kwaw Apilt First Nation
Lakahahmen First Nation
Lheidli-T'enneh Band
Lillooet Indian Band
Little Shuswap Indian Band
Lower Kootenay Indian Band
Lower Nicola Indian Band
Lower Similkameen Indian Band
Matsqui First Nation
McLeod Lake Indian Band
Musqueam Indian Band
Nadleh Whut'en Indian Band
Nak'azdli Indian Band
Nanaimo Indian Band
Neskonlith Indian Band
Nicomen Indian Band
Osoyoos Indian Band
Pavilion Indian Band
Seabird Island Indian Band
Shuswap Indian Band
Siska Indian Band
Skeetchestn Indian Band
Skidegate Indian Band
Skowkale First Nation

Skuppah Indian Band
Sliammon Indian Band
Soda Creek Indian Band
Songhees Indian Band
Spuzzum Indian Band
Squamish Nation
St. Mary's Indian Band
Stellat'en First Nation
Tla-o-qui-aht First Nations
Tl'azt'en Nation Nation
Tobacco Plain Indian Band
Tsawout Indian Band
Tsawwassen First Nation
Tsleil-Waututh Nation (Burrard Indian Band)
Tzeachten First Nation
Upper Similkameen Band
Westbank First Nation
West Moberly First Nations
Whispering Pines/Clinton Indian Band

**Northwest Territories**
Hay River Dene Band

## APPENDIX B: CONTACT INFORMATION

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