

Introduction

We would like to acknowledge Minister Nault and the federal government for supporting the legislation that will transform the Indian Taxation Advisory Board (ITAB) into the First Nations Tax Commission (FNTC) and give life to three other First Nations fiscal institutions. This legislation is an important step towards creating real and successful self-government. These institutions will provide a framework for integrating First Nation governments into the Canadian system while, at the same time, supporting and enhancing each First Nation's individuality and local decision making authority. In the fullness of time, this initiative will be remembered as an important turning point in Canada's approach to First Nation issues and the well being of First Nation persons. We expect that one day it will be studied around the world as the "right" way to recognize the rights of indigenous people without compromising the integrity of the federal state.

However, like most important work these institutions have created controversy. This initiative has been attacked by those who advocate the assimilation of First Nations and those who advocate their total sovereignty. Despite their surface differences these groups have one thing in common. They don't realize that in a federal state like Canada it doesn't have to boil down to a question of "separate or assimilate". We can integrate governments instead of assimilating or separating people. And by integrating governments we maintain unique cultures and social support structures while retaining the advantages of a social and economic union.

These institutions are the means for achieving this integration. They allow us to realize advantages of small governments without increasing the cost and complexity of government. Conversely they provide small First Nation governments with the advantages of scale when they need it. In sum, they are quintessentially Canadian in that they will allow First Nations to maintain their unique attributes without compromising national principles. And ultimately, they will give First Nations the ability to address the root cause of their current disadvantage - an inability to compete for investment on an equal footing with other jurisdiction in Canada. However, we say "ultimately" because we have only taken the first few steps on the road to equality.

Building on the Institutions

Progress to Date

The mission of the Indian Taxation Advisory Board was to preserve the integrity and fairness of the First Nation tax system and to extend its benefits. ITAB has used property tax as a tool to both develop administrative capacity and initiate economic development. ITAB's work has therefore simultaneously developed resources for First Nation government and the capacity to use them properly. Furthermore, over time it has instilled a strong sense of the requirements and advantages of belonging to the country's economic union.



A key aspect of ITAB's economic development strategy has been using property tax revenues to finance improvements in infrastructure. These infrastructure improvements have then attracted more private investment. This has allowed a gradual broadening and deepening of the First Nation property tax base. At the ITAB we call this strategy the virtuous circle of wealth creation. The circle builds opportunity. It creates positive role models. It exposes Members to business. It builds pride in the community. It instils a sense of purpose. And ultimately it creates a stake in adhering to all the discipline which the market requires.

This core strategy will be enhanced with the passage of the legislation. These new institutions will enhance durability to improve the investment climate and greatly lower the threshold of financial viability for capital projects. Moreover, and this point is often lost, the actions of these four institutions will expand the number of First Nations who are able to use property taxes as a tool for infrastructure improvements.

New Challenges – Same Mission

We have accomplished a lot but it is only a beginning. Our challenges are as follows: (1) Extend the benefits of these institutions to more First Nations. (2) Develop new tools to make these institutions more versatile and powerful for First Nations. (3) Make it clear that these institutions are an acknowledgement of First Nations authority more plain. (4) Make the benefits of these institutions apparent to all Canadians.

Barriers to this Mission

1. Borrowing is limited to property tax

The integrity of our institutional strategy requires that borrowing be based only on property tax revenues and only for capital improvements that are associated with the property tax account. This is key to protecting taxpayers and ensuring sound financial management. However, it also limits the applicability of this initiative. Many First Nations are interested in extending the range of revenues upon which borrowing can be based and in extending the range of eligible projects.

However, such an expansion raises many difficult and complex questions. Difficult, but not insoluble. And solving them will expand the ability of these institutions to help First Nations and broaden their political support.

2. Fear of a political agenda

Some First Nations see the development of these institutions as the beginning of a process of "municipalization" of First Nations, with a consequent watering down of Treaty rights, fiduciary responsibilities and other jurisdictions. Thus, even while they see some benefit to the institutions they will not support them.



3. Start-up problems

Some First Nation governments wish to participate in the institutional framework but are unable to make the first step. They are either unable to meet the initial administrative requirements or they do not have the infrastructure in place to take advantage of their potential and develop a tax base.

Today start-up problems are a First Nation problem. However, many local governments faced exactly the same problem during their early years - they were too small to achieve that critical mass required for the virtuous circle of wealth creation.

4. Administrative capacity.

The administration of a property tax system requires resources which many First Nations lack. This requirement is exacerbated by uncertainties within the regulatory environment that create a need for ongoing negotiations and issues management. To some extent, ITAB has reduced these requirements by providing services and creating a stable and consistent internal regulatory environment. Nonetheless, it remains an issue.

5. Lack of awareness

There are still some First Nations who have the potential to develop self sustaining economies and tax systems but have not done so. Generally, they are unaware of their potential, or have received bad information, or do not know the steps that are be required to implement such a system.

6. Business apprehension

A key component of any First Nation economic development strategy is developing greater business presence on First Nation lands. There are many opportunities but at present many potential investors are unaware, or feel they are too risky and difficult to pursue. This limits the return on investments in public infrastructure and makes it more difficult to secure business participation in First Nation infrastructure projects.

Recommendations

Expand First Nation Authority

The current ability of the institutional structure to finance infrastructure is limited to property tax revenues and for good reason. This is the best means to protect taxpayers. This limitation also ensures that project assessments are made on the basis of high quality information under parameters that can be controlled through the mechanisms of the institutions. If financing was based on other revenue streams or applied to expenditures outside the property tax system these advantages would be negated.



However, this structure also limits the applicability of the institutional structure. Fewer First Nations are able to take advantage of it and some projects do not qualify for financing. This structure also prevents the optimal allocation of risk, optimal project design and optimal project size.

The long-term solution is to begin exploring how to extend the borrowing regime without compromising the interests of taxpayers. Taxpayers could also benefit if the existing regime prevents them from getting the best possible project under the best possible conditions.

Several questions need to be answered. First. How to extend the institutional regime to include new revenue sources such as the First Nations Sales Tax? Second. How to expand the First Nation service and capital responsibilities in conjunction with this? Third. How to secure taxpayer approval?

This expansion will have several positive results. It will expand the number of First Nations able to take advantage of this initiative. It will lower the threshold for project viability by making more risk diversification possible. It will allow a broader range of projects for consideration. It will visibly expand the range of First Nation authority.

Enhance First Nations Infrastructure Program

The federal government should develop an infrastructure program specifically for First Nations. It should be coordinated through the ITAB/FNTC whose role as Inspector for capital projects will allow it to ensure maximum efficiency in the use of funds.

The federal government has operated an infrastructure program since 1994. The program was developed out of a recognition that Canada's investments in public infrastructure had been in decline this was likely contributing to a productivity decline. The program was designed to support cost shared investments among municipalities, provinces and the federal government with a First Nations component. Federal expenditures were allocated through a formula which accounted for populations and unemployment rates.

Like any such program, this infrastructure program has faced challenges: (1) ensuring that federal expenditures earn the highest possible rates of return; (2) ensuring they do not simply subsidize investments that would have been made in any case; and, (3) ensuring they put idle resources to work and do not simply shift resources from one use to another.

In addressing these points, it should be noted that First Nations infrastructure is the most substandard in the country. Research undertaken by ITAB consistently identifies a lack of quality public infrastructure as one of three serious impediments to economic growth on First Nation lands. As a result, many high quality sites are under utilized and unemployment remains high on First Nation lands. And the chief reason for poor quality infrastructure remains an inability to



finance the initial improvements that are necessary to develop a self sustaining economy. This institutional strategy only partly addresses this infrastructure deficit.

Investments in First Nation infrastructure spending would earn a very high return. First, because they are improvements in basic physical infrastructure which are found to earn the highest returns. Second, they put idle resources to work and do not simply displace resources from other potentially higher returns. Third, they often create a tax base where none previously existed and thus start a process which reduces the costs of the social infrastructure.

The key to making such a program enhancement work would be to work through ITAB/FNTC. In its existing role as “Inspector” ITAB will be evaluating all capital projects that seek financing through the FNFA. This would give it the capacity to evaluate project proposals coming through this program. As well, ITAB/FNFA would also be well positioned to ensure funds are disbursed only to project or project enhancements that would not otherwise have taken place. Finally, ITAB/FNTC will be in a unique position to do due diligence on other aspects of the project and work with the other institutions to ensure a regime is put in place to allow the First Nation to capitalize on the project.

There should be room for two significant components within such a program.

PPP Component. A PPP component would dedicate funds to PPP projects. PPPs are used by many governments in the world as a means of improving risk management and bringing the advantages of the private sector to bear on public sector projects. PPP projects for First Nations would be particularly helpful in a First Nation context. They would improve the linkages between First Nations and the private sector and thus reduce business apprehension. They would develop expertise within the private sector with respect to First Nation projects and ensure efficiency in the use of program funds. They would create a vehicle for capacity development in First Nations through information exchange.

Start-up Fund. Many First Nations have the potential to develop their lands but lack the means to make the initial investments. The development of First Nation institutions will lower project thresholds by making financing more accessible. However, it will not address the problems of those First Nations that have not yet developed a tax base. A specific program, such as a fund earmarked for this purpose is required.

Business Assessment Function at DIAND

Another significant barrier to the development of the First Nation economy is a cumbersome and lengthy approval process with DIAND. To some extent this is understandable since the Department was not organized to meet the needs of First Nations needing to compete for investment. The key problems are that the necessary approvals are often too distant to have a clear understanding of the project, they are divided amongst different parts of the Department,



and funds supporting economic development are difficult to access. In a way this problem is similar to what has been addressed outside First Nation country by attempts to “reduce red tape” and establish “one stop shopping” for business.

First Nations Organization of Economic Cooperation and Partnerships (FNOECP)

First Nations interested in business development need a forum to advance their interests. At present, no such forum exists and so discussion is somewhat encumbered by discussion of other issues and by opposition from First Nations opposed to the development agenda. Nonetheless, considerable consensus is developing among First Nations with an interest in development about the benefit of harmonized policies and practices. This consensus could be both broadened to include more First Nations and deepened to include a more complete adherence to the principles of a national union through the development of the FNOECP.

The FNOECP would be comprised of those First Nations willing to adhere to its codes for maintaining a sound investment climate. It would develop policies and standards for all members. It would serve as a forum for the exchange of information, the development of information for potential investors and the development of mentoring and advisory services. The FNOECP would also provide a window for the private sector to seek out opportunities and provide advice.

