



## **A Pre Budget Submission from the Indian Taxation Advisory Board**

### **Overview**

This is the fifth year that the Indian Taxation Advisory Board (ITAB) has made a pre budget submission. We support this process. It provides us with an opportunity to articulate our interests within the federal context and make recommendations to the Standing Committee on Finance. We believe we have a strong working relationship with the Government of Canada in general and the House of Commons Standing Committee on Finance in particular.

The focuses of our past submissions have been the importance of national First Nation institutions to implement First Nation government and improve the First Nation and Canadian investment climate. We have asked for your support to transform the ITAB to the First Nation Tax Commission. We have asked for your support to create the First Nation Finance Authority, the First Nations Financial Management Board and First Nation Statistics. We are grateful that you have listened. The First Nation Fiscal and Statistical Management Act is now nearing legislative passage. We urge you to ensure that this important Act is passed through the House expeditiously.

The fiscal institutions represent a watershed in our relationship with Canada. They begin to provide us with the tools for building government – independent revenues, centralized expertise, administrative training, policy frameworks, debentures, statistics and strong systems of financial management – which the partners in the Canadian federation take for granted.

The fiscal institutions provide us with a recipe for implementing First Nation government. First, identify government services where First Nations have a strong comparative advantage. Second, design institutions that can provide the supportive services and policy framework that will allow First Nations to assume those powers from other governments. Finally, change federal and First Nation and if necessary provincial legislation to facilitate the transfer of jurisdiction to First Nations and their institutions.

We are writing this submission to suggest we work together to build another First Nation institution, the First Nation Organization for Economic Cooperation and Partnerships (OECP) and improve First Nation infrastructure. The First Nation OECP coupled with an improved infrastructure program would complement the Fiscal and Statistical Management Act and the expansion of the First Nation Land Management Act. It would improve Canada's international reputation and amplify the effectiveness of First Nation economic development initiatives. It would also take a large step towards creating a constituency of those First Nations wishing to advance their communities through cooperation with other governments and economic development.

## Past ITAB Pre Budget Submissions: What We Have Asked For

The table below summarizes the ITAB's past pre budget submissions from 1999-2002.

Proposal	Year of Submission	Rationale	Results
Expedite the establishment of the First Nation Tax Commission	1999	The FNTC will help First Nations realize the benefits of a market economy.	All Party Support
Revenue Options Should be Expanded	1999, 2000, 2001	The expanded powers of the FNTC will allow it to better guarantee the integrity of the First Nation property tax system and to take measures that improve the investment climate of First Nations.	
The federal government should continue to support the establishment of the First Nation Tax Commission	2000, 2001	The best means of improving First Nation productivity is to bring private investment to First Nation lands. The FNTC will facilitate investment by: (1) improving infrastructure and services; (2) providing investors with assurances regarding service quality and tax rates; (3) building administrative efficiency on-reserve and (4) reducing compliance costs associated with taxation and ensuring regulatory harmony.	No consultation held that year
All parties in the House of Commons should support the development of the First Nations Fiscal Institutions Act	2001	The fiscal institutions will facilitate investment by providing FN with the ability to finance necessary improvements to infrastructure and services; providing investors with assurances regarding service quality, tax rates, financial reporting and statistics to reduce search costs; building confidence in FN administrations, statistics, and financial information; reducing compliance costs associated with taxation and ensuring regulatory harmony; preventing disputes between First Nations and other government about services and depoliticizing the financial management issues.	No consultations held that year
Enhance First Nations Infrastructure Program	2002	Lack of quality public infrastructure is a major impediment 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.	Suggestion not accepted
Business Assessment Function at DIAND	2002	A significant barrier to the development of the First Nation economy is a cumbersome and lengthy approval process with DIAND. 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.	No specific response
First Nations Organization of Economic Cooperation and Partnerships	2002	A First Nations Organization for Economic Cooperation and Partnerships 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.	No specific response



## The ITAB Model

The accomplishments of the ITAB during the last fourteen years have served to create confidence in First Nation institutions as a transformative model for implementing First Nation government powers. We have helped First Nation realize over \$40 million in annual property tax revenues. We have ensured that First Nation taxpayers pay a fair price for quality local services. We have prevented and resolved numerous disputes relating to property tax jurisdiction. The ITAB serves as a model First Nation institution. We have trained and certified over 150 tax administrators. We have developed and maintained high standards for First Nation tax systems. We have developed a number of model First Nation laws including the model First Nation taxation law and the model First Nation financial management law.

Perhaps more importantly, during this time, the ITAB has been highly successful in contributing to transformative changes to the First Nation policy environment. In particular, we provided the research foundation for the National Table on Fiscal Relations. We helped lead the development of the First Nation Finance Authority, First Nation Statistics and the First Nation Financial Management Board. The ITAB led the development of the fiscal institutions legislation.

We believe that the ITAB and First Nation Tax Commission represent a two step recipe for the orderly implementation of First Nation government.

1. **Optional Authorities for First Nations** - Create the optional authority for First Nations to exercise governmental power. This was accomplished through the Kamloops amendment to the Indian Act in 1988 that facilitated First Nation property tax authority. Since that time over 100 First Nations have opted to use this authority.
2. **Institutional Framework** - Create a First Nation institution in legislation that prevents and resolves disputes, builds certainty and stability in First Nation administration standards, restores confidence in First Nation financial management and ultimately addresses the root causes of First Nation poverty. How the ITAB has accomplished this and the FNTC will improve this is described briefly below.



**Prevent and Resolve Disputes** - This has always been the purpose of the ITAB. We believe that we have been successful because we have built on the mutual interest of taxpayers and First Nations – higher on reserve property values. The mutual interest approach is the basis of our policy development process and the underlying philosophy of the FNTC. We have partnered with the Consensus Building Institute at Harvard to create mutual gains negotiation training modules for First Nations and taxpayers. Over 100 First Nations and taxpayers have participated in our agreement building courses. We have built supportive tools, model agreements, model taxpayer representation models and software to expedite agreements. With the passage of the First Nation Fiscal and Statistical Management Act, our services will be expanded to include a roster of mediators and if requested a formal FNTC review process.

**Certainty and Stability in Administrative Standards** – The ITAB has been successful in creating certainty in the First Nation tax system through transparent policy development processes, regular review and refinement of policies in consultation with First Nation and taxpayers, supportive training packages and software and tax administrator certification. Examples include the ITAB’s budget based rates policy and training program, the tax administrator’s software and mutual gains negotiation training program. The FNTC will be able to create even greater certainty in administrative standard. The FNTC will have the authority to develop standards. It will have the resources to develop and implement a comprehensive tax administration certification program. The FNTC will not only have transparent policy processes but also transparent standards and procedures process. In sum, the FNTC will represent a supportive regulatory framework similar to those in every province in this country.



**Restore Confidence in Financial Administration** - In the early 1990's, the Kingsclear First Nation in New Brunswick and the Shuswaps of Skeetchestn in BC each faced issues related to local financial management. In both cases, the communities responded by developing a financial administration by-law. These laws are similar to what would be called financial administration codes in the proposed Governance Act. Financial administration laws were one of many developments not envisioned in the Indian Act. The Department of Justice decided that they should be reviewed and recommended for approval by the ITAB. The ITAB accepted this role out of recognition that this was an essential component for developing sound First Nation tax administrations. A model by-law and comprehensive training course based on the Skeetchestn and Kingsclear laws was developed. Over the past four years, this course has been delivered to over 20 First Nations and 14 of them have implemented comprehensive financial management laws in their community. That is what a First Nation institution does. It provides models; expertise, training and support to help First Nation government effectively implement their authorities. We are tabling our comprehensive financial management law and training course for the review of the standing committee. We expect this to form the basis for the financial management standards developed by the First Nation Financial Management Board.

**Address the Root Causes of Poverty** - We have co-steered a 6-year research project into the root causes of First Nation poverty. We have concluded that First Nations are disadvantaged when it comes to attracting the engine of economic growth – private investment. There is no single reason for this disadvantage. First Nations are often victims of poor location and land base. They have not developed an entrepreneurial class as deep as other Canadians have. Their political and legal environment causes investor uncertainty. Their administrations have not developed the capacity to deal with the needs of investors. Their physical infrastructure is substandard. The regulatory regime is unfamiliar to investors and uncertain and the governance structure has been slow and unresponsive and is often seen as unstable. In sum, we have concluded that First Nations lack the public component and economic infrastructure required in an investment climate to give potential investors the confidence and security they require. We believe that this can be remedied by establishing a First Nation OECP and an improved First Nation infrastructure program as described below.

## **A First Nation OECP**

New initiatives have begun to address many of the deficiencies in the First Nation investment climate. In particular, the development of the First Nations fiscal institutions, self government agreements, new fiscal relationship and the expansion of the Land Management Act have created the potential to create a new institutional context for First Nations that is more investor friendly. The fiscal institutions will provide greater regulatory harmony, guarantees of stability beyond what a First Nation can individually provide and improved access to revenues and capital for improving services and infrastructure. The Land Management Act creates the potential for First Nations to devise investment friendly land codes that could considerably shorten lengthy times in getting approvals for projects.

Over time, these initiatives will greatly improve the ability of First Nations to attract investment and put them on a more level playing field with other local governments in Canada. It is important, during the design and implementation of these initiatives, to ensure that the highest economic benefit to First Nations and the Canadian economy is realized. This is in the interest of all parties, yet currently there is no institution representing the constituency of First Nations participating in these initiatives to ensure that this will happen. This proposal for a First Nation Organization for Economic Cooperation and Partnerships is intended to fill this vacuum.

### **First Nation OECP Description**

The OECP would help fill these gaps and enhance the success of mutual First Nation/federal fiscal, self-government and economic initiatives. The OECP would be an organization open to any First Nation that was willing to adhere to the requirements of membership. A natural initial constituency would be those First Nations working with the Fiscal Institutions, the Lands Advisory Board and/or negotiating comprehensive or sectoral self-government arrangements. Some preliminary objectives of the OECP are to:

1. Create a mechanism for further integrating First Nations into the national economic and federal union;
2. Provide a forum for First Nations to advance harmonized fiscal, self-government and economic policies;
3. Reduce costly re-learning by providing First Nations with access to other First Nations who have gone through the investment process;
4. Improve the First Nation investment climate by establishing membership criteria that provide support and certainty to investors.



5. Review and evaluate the economic performance of First Nation members in cooperation with the fiscal and statistics institutions.

The specific functions of the OECP would be as follows:

**Administrative** – The administration arm would provide a secretariat role. The secretariat would evaluate potential members, coordinate fiscal and economic research, provide a link between Canada and the fiscal and statistics institutions, and maintain national and international forums of the OECP. The research and forums would be pertinent for guiding the improved fiscal relations and self-government agreements that support economic development First Nations and helping in the development of codes of conduct and policies. These forums would also provide a means to coordinate related fiscal research among the First Nation fiscal, statistics and lands institutions. The secretariat would also oversee a private sector panel comprised of qualified business leaders and associations with an interest in First Nation business and institutional design. This panel would provide advice, guidance and feedback as required and serve as a conduit of fiscal and economic policy information between business and First Nations.

**Service Agency** – The Service Agency of the OECP would provide services specially tailored to the needs of the First Nation members and First Nation institutions. These services would include: institutional coordination, access to the private sector; maintenance of databases and pertinent to investors; advisory services related to administration, land management, domestic and foreign investment facilitation and promotion, and international promotion, and partnership building; and communications services as required

The proposed OECP will utilize a development strategy similar to the successful fiscal institutions development strategy for the First Nation Financial Management Board (FMB) and First Nation Statistics (FNS).

First, the OECP will be sponsored by the ITAB to provide it with supportive institutional development services and administrative support. The ITAB has spawned the FNFA and steered the development of the FMB and FNS. Second, the OECP present its business case and plan and begin consultations with experts and interested First Nations. Third, the OECP will develop its charter for participating First Nations. Finally, the OECP will implement its business plan and become an independent First Nation institution within two years.



The ITAB anticipates that like previous First Nation institutions that an independent OECP can be designed and implemented within 2 years for about \$1.5 million year. Ongoing operational costs will depend upon the OECP business plan, but it is expected that the OECP will also be supported by private sector and member contributions in addition to possible ongoing public support.

### **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 an 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. Firstly, 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. The ITAB believes that this fund should be \$150 million per year and should target 15 economically viable infrastructure projects per year. A similar program is used by some provinces to ensure that smaller communities have the infrastructure necessary to attract investment. These provincial governments recognize that by breaking the catch 22 of resources being required to build infrastructure to attract investment that they are creating more self sufficient communities and ultimately reducing their long term social costs. The federal government should work with the ITAB and implement a similar program for First Nations.