

Registration  
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FIRST NATIONS FISCAL AND STATISTICAL MANAGEMENT ACT

**First Nations Tax Commission Review Procedures Regulations**

P.C. 2007-1664 November 1, 2007

Her Excellency the Governor General in Council, on the recommendation of the Minister of Indian Affairs and Northern Development, pursuant to section 33, paragraph 36(1)(b) and subsection 36(3) of the *First Nations Fiscal and Statistical Management Act* ([see footnote a](#)), hereby makes the annexed *First Nations Tax Commission Review Procedures Regulations*.

**FIRST NATIONS TAX COMMISSION REVIEW PROCEDURES  
REGULATIONS**

INTERPRETATION

Definitions	1. The following definitions apply in these Regulations.
"Act" « <i>Loi</i> »	"Act" means the <i>First Nations Fiscal and Statistical Management Act</i> .
"applicant" « <i>demandeur</i> »	"applicant" means a person who requests a review under subsection 33(1) of the Act.
"business day" « <i>jour ouvrable</i> »	"business day" means a day other than a Saturday or holiday.
"intervenor" « <i>intervenant</i> »	"intervenor" means a person or organization added as an intervenor under section 14.
"party" « <i>partie</i> »	"party" means an applicant or a first nation that is the subject of a review.
"review" « <i>examen</i> »	"review" means (a) in sections 8 to 36, a review conducted under subsection 33(1) of the Act; and (b) in sections 37 to 42, a review conducted under subsection 33(2) of the Act.

REFERRAL TO PANEL

Referral to panel	2. (1) On receipt of a request for review made under subsection 33(1) of the Act, or on initiating a review under subsection 33(2) of the Act, the Commission may refer the review to a panel composed of one or more Commissioners.
Commission includes panel	(2) In these Regulations, a reference to the Commission includes a reference to a panel constituted under subsection (1).
Decision without hearing	3. The Commission may make a decision in any review without holding a hearing.

DELIVERY AND FILING OF DOCUMENTS

Methods of delivery	4. (1) Delivery of a document may be made personally or by sending it by registered mail, fax or e-mail.
Personal delivery	(2) Personal delivery of a document is made (a) in the case of an individual, by leaving the document with that individual or with a person at least 18 years of age residing at that individual's place

	of residence;
	(b) in the case of a first nation, by leaving the document with the individual apparently in charge, at the time of delivery, of the main administrative office of the first nation, or with the first nation's legal counsel; and
	(c) in the case of a corporation, by leaving the document with the individual apparently in charge, at the time of delivery, of its head office or one of its branch offices, or with an officer or director of the corporation or the corporation's legal counsel.
Time of delivery	(3) Subject to subsection (4), a document shall be considered to have been delivered (a) if delivered personally, on the day on which personal delivery is made; (b) if sent by registered mail, on the fifth day after it is mailed; (c) if sent by fax, on the day indicated on the confirmation of transmission; and (d) if sent by e-mail, on the day indicated in the electronic confirmation that the e-mail has been opened.
Date of delivery to Commission	(4) Documents filed with the Commission are considered to have been delivered on the date stamped by the Commission under subsection 5(2) or (3).
Filing with Commission	<b>5.</b> (1) A document related to a review is filed with the Commission when it is delivered to its head office at 321-345 Yellowhead Highway Kamloops, British Columbia V2H 1H1 fax: 250-828-9858 e-mail: review@fntc.ca
Delivery stamp	(2) Subject to subsection (3), each document filed with the Commission shall be stamped with the date on which it was delivered.
Day of delivery	(3) A document filed with the Commission on a day that is not a business day or after 17:00 local time on a business day shall be stamped as having been delivered on the next business day.
Delivery of copies	<b>6.</b> When a document is filed with the Commission, the Commission shall deliver a copy of it to all parties and intervenors.
Authorization	<b>7.</b> (1) Documents filed on behalf of a party shall be signed by a person authorized by the party and shall set out the nature of the person's authorization.
Proof of capacity	(2) The Commission may at any time require a person who has signed a document on behalf of a party to provide proof of the person's authority to act in that capacity.

REVIEWS UNDER  
SUBSECTION 33(1)  
OF THE ACT  
PROCEDURE

Filing a request for review	<b>8.</b> (1) A request for review shall set out (a) the name, address and telephone number, and any available fax number and e-mail address, of the applicant and of any representative acting on behalf of the applicant; (b) an address for the delivery of documents, if different from the address of the applicant or representative; (c) the name of the first nation, and the title of any local revenue law, in respect of which the request for review is made; (d) the grounds for the request for review; (e) a concise statement of the facts and any law on which the applicant
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	<p>intends to rely;</p> <p>(f) the remedy sought;</p> <p>(g) any other information that the applicant believes the Commission requires in order to conduct the review; and</p> <p>(h) if the review is requested on an expedited basis, the reasons for the urgency.</p>
Accompanying documentation	(2) A request for review shall be accompanied by two copies of the applicant's request for a remedy made to the council of the first nation pursuant to paragraph 33(1)(b) of the Act and any related correspondence with the council of the first nation.
Deficient request	<p><b>9.</b> If a request for review does not contain the information required under section 8, the Commission shall</p> <p>(a) identify what information is missing; and</p> <p>(b) advise the applicant that the information must be provided before the Commission will proceed with the request for review.</p>
Reply	<b>10.</b> (1) A first nation that is the subject of the review may file a reply to the request for review within 10 business days after the day on which the Commission delivers to it a copy of the request for review.
Content of reply	<p>(2) A reply to a request for review shall identify the request for review to which the reply relates and set out</p> <p>(a) the name, address and telephone number, and any available fax number and e-mail address, of the first nation and of any representative acting on behalf of the first nation;</p> <p>(b) an address for the delivery of documents, if different from the address of the first nation or its representative;</p> <p>(c) an outline of the position the first nation takes in response to the request for review;</p> <p>(d) an admission or denial of each allegation of fact contained in the request for review;</p> <p>(e) a concise statement of any additional facts and any law on which the first nation intends to rely;</p> <p>(f) any other information that the first nation believes the Commission requires in order to conduct the review; and</p> <p>(g) if the review is requested on an expedited basis, the reasons for the urgency.</p>
Failure to reply	<b>11.</b> If a first nation fails to submit a reply to a request for review, the Commission may conduct the review solely on the basis of the submissions of the applicant and any intervenors.
Filing of response	<b>12.</b> (1) The applicant may file a response to the first nation's reply within five business days after the day on which the Commission delivered a copy of the reply to the applicant.
Content of response	(2) A response to the first nation's reply shall identify the request for review to which the response relates and admit or deny any additional statements of fact contained in the reply.
Affected persons	<p><b>13.</b> Within 10 business days after the filing of a request for review that meets the requirements of section 8, the Commission shall</p> <p>(a) publish a notice of the review on an Internet site maintained by the Commission; and</p> <p>(b) deliver a copy of the request for review to the first nation that is the subject of the review and to the First Nations Financial Management Board.</p>
Adding intervenor	<b>14.</b> (1) Any person or organization may apply to the Commission to be added as an intervenor

	(a) if a hearing is to be held, at any time before the hearing begins; and (b) in any other case, at any time before a decision on the review is rendered.
Receipt of application	(2) On receipt of an application under subsection (1), the Commission may (a) add the person or organization as an intervenor; (b) direct the person or organization to provide the Commission with additional information in support of the application; or (c) reject the application.
Adding Board as intervenor	(3) If the First Nations Financial Management Board makes an application in accordance with subsection (1), the Commission shall add the Board as an intervenor for the purpose of making representations as to the impact of any requested remedy.
Role of intervenors	(4) An intervenor may make written submissions and, if a hearing is being held, oral argument to the Commission.
Delivery of documents	<b>15.</b> On adding a person or organization as an intervenor, the Commission shall deliver to the person or organization copies of the request for review, any reply filed under section 10 and any response filed under section 12.
Statutory declarations	<b>16.</b> (1) The Commission may require confirmation, by way of a statutory declaration, of any facts alleged in a request for review or reply that have not been admitted.
Cross-examination on declaration	(2) A party who has submitted a statutory declaration shall make the deponent of the declaration available for cross-examination on the content of the declaration by any other party.
Amendments to request for review	<b>17.</b> An applicant may file with the Commission a request that a review already under way address additional issues that would otherwise be the subject of a separate review.
Evidence and information	<b>18.</b> In conducting a review, the Commission may (a) accept evidence that is not given on oath or evidence that would not ordinarily be admissible in a court of law; (b) at the request of a party, require another party to provide the Commission with any documents necessary to the conduct of its review; and (c) direct that written submissions be filed.
Consolidation	<b>19.</b> The Commission may hold a single hearing in respect of more than one review or consolidate two or more reviews.
Required attendance	<b>20.</b> The Commission may require the parties to attend any conferences or meetings necessary to the conduct of a review.
<b>SETTLEMENT</b>	
Settlement conferences	<b>21.</b> (1) A settlement conference may be scheduled by the Commission or at the request of a party at any stage in a review.
Presence of party	(2) If a representative is acting for a party, the Commission may direct that the party be present at the settlement conference or available to instruct the representative at that time.
Informal resolution	<b>22.</b> (1) The Commission may make settlement recommendations to the parties and may suspend the review to enable the parties to attempt to resolve the subject of the request for review informally.
Referral to mediation	(2) The Commission may recommend to the parties that the request for review be referred to formal mediation, in which case the Commission shall provide to the parties a roster of mediators who are independent of the Commission.
Consent order	<b>23.</b> If the parties reach an agreement, the Commission may make an order

under paragraph 33(3)(a) of the Act embodying that agreement.

Recommencement of review **24.** If six months have elapsed since a review was referred to mediation or adjourned for other settlement discussions without a settlement being reached, the Commission shall recommence the review and notify the parties accordingly.

#### HEARINGS

Directed hearing **25.** (1) The Commission may at any time direct that a hearing be held in respect of a request for review.

Notice of hearing (2) If the Commission directs that a hearing be held, the Commission shall fix the time, date and place for the hearing and deliver a notice of the hearing to all parties and intervenors.

Conduct of hearings **26.** (1) The Commission may direct that a brief written summary of the submissions of any party or intervenor be filed in advance of a hearing.

Expediting hearing (2) With the agreement of the parties, the Commission may  
(a) proceed on the basis of an agreed statement of facts; or  
(b) limit the number of witnesses to be called at a hearing.

Teleconferencing (3) The Commission may hear oral evidence or oral submissions by teleconference.

Adjournments (4) The Commission may adjourn a hearing for any time and on any terms that it considers appropriate.

Failure to attend **27.** If a party or intervenor who has been given notice of a hearing in accordance with subsection 25(2) fails to attend, the Commission may proceed with the hearing and complete its review in the absence of that party or intervenor.

Subpoenas **28.** (1) A party may, at any time before the conclusion of a hearing, request the Commission to apply to a justice of the peace for a subpoena compelling a person to appear before the Commission to give evidence and to bring any documents specified in the subpoena.

Travel expenses (2) The Commission shall pay travel expenses, in the amount set out in Tariff A of the *Federal Courts Rules*, to every person compelled by subpoena to appear before it.

Pre-hearing conferences **29.** (1) If a hearing is to be held, a pre-hearing conference between the parties shall be scheduled by the Commission to  
(a) direct the pre-hearing production of documents by a party;  
(b) determine whether a subpoena will be required in respect of any person who may be required as a witness;  
(c) direct a party to provide further information regarding its position;  
(d) develop an agreed statement of facts or obtain admissions that might facilitate the hearing;  
(e) attempt to simplify the matters in dispute between the parties, including the resolution of some or all of them;  
(f) determine the conduct of the hearing, including the order in which the parties will proceed, the number and identity of witnesses and the estimated time required; or  
(g) decide any other matter that may aid in securing a just, expeditious or inexpensive disposition of the review.

Require attendance (2) If a representative is acting for an applicant, the Commission may direct that the applicant be present at the pre-hearing conference.

Single Commissioner (3) A pre-hearing conference may be conducted by a single Commissioner or an employee of the Commission.

Examination outside hearing **30.** (1) At the request of a party, the Commission may consent to the examination of a person outside a hearing, having regard to

	(a) the expected absence of the person at the time of the hearing;
	(b) the age or any illness or infirmity of the person;
	(c) the distance the person resides from the place where the hearing will be held; and
	(d) the expense of having the person attend the hearing.
Directions	(2) In giving its consent under subsection (1), the Commission shall give directions regarding the time, place and manner of the examination, the notice to be given to the person being examined and to the other parties, the attendance of any other witnesses and the production of any requested documents or other material.
Cross-examination	(3) Other parties may cross-examine any person examined outside a hearing.
Copies of transcript	(4) A party submitting transcribed evidence shall provide a copy of the transcript, at its own expense, to the Commission and to all other parties.
Adverse witnesses	<b>31.</b> (1) Subject to subsection (4), a party may call another party as a witness at a hearing by requesting that a subpoena be delivered and travel expenses be paid to that party in accordance with subsections 28(1) and (2).
Corporations	(2) If the other party is a corporation, it shall provide as a witness an officer or director of the corporation who has knowledge of the facts in issue.
First nation	(3) If the other party is a first nation, it shall provide as a witness the person who administers the taxes of the first nation or another person who has knowledge of the facts in issue.
Notice	(4) A party shall give another party at least five business days notice of its intention to call that party or a person referred to in subsection (2) or (3) as a witness, unless the other party or that person is in attendance at the hearing.

#### COMPLIANCE AND COSTS

Non-compliance	<b>32.</b> If an applicant fails to comply with these Regulations, the Commission may dismiss the request for review.
Time periods variable	<b>33.</b> The Commission may, on the application of a party, extend or shorten any period provided for in these Regulations.
Variances	<b>34.</b> If it is necessary to secure the just, expeditious or inexpensive hearing of a request for review, or to accommodate the customs or culture of the first nation in respect of which a hearing is held, the Commission may vary any procedure provided for by these Regulations.
Costs	<b>35.</b> No costs shall be awarded in any review.

#### DECISIONS

Decisions of the Commission	<b>36.</b> (1) All decisions and orders of the Commission in a review shall be issued in written form and shall be accompanied by written reasons.
Publication	(2) A decision or order of the Commission, and the accompanying reasons, shall be published in the <i>First Nations Gazette</i> or on an Internet site maintained by the Commission.
Provision of copies	(3) The Commission shall provide a copy of each decision, order and accompanying reasons to all parties and intervenors and make copies of them available for inspection by the public at its offices.
Compliance period	(4) An order made under paragraph 33(3)(a) of the Act shall set out the period within which the first nation shall implement the required remedy.

#### REVIEWS UNDER SUBSECTION 33(2) OF THE ACT

Notice of review	<b>37.</b> (1) If the Commission decides to conduct a review under subsection 33(2) of the Act, it shall deliver a notice of review to the first nation that is the subject of the review.
Content of notice	(2) The notice of review shall (a) if the Commission is of the opinion that the first nation has not complied with the Act or a regulation, identify the provision of the Act or regulation in question and the reason that the Commission believes it has not been complied with; and (b) if the Commission is of the opinion that the first nation has unfairly or improperly applied a law, identify the law in question and the reason that the Commission believes it has been unfairly or improperly applied.
Production of documents	(3) The notice of review may require a first nation to produce any documents set out in the notice relating to the subject of the review.
Publication of notice	(4) Within 10 business days after the delivery of a notice of review, the Commission shall publish a notice of the proposed review on an Internet site maintained by the Commission and deliver a copy of the notice to the First Nations Financial Management Board.
Reply by first nation	<b>38.</b> (1) A first nation that receives a notice of review may file a reply within 10 business days after delivery of the notice.
Content of reply	(2) A reply to a notice of review shall identify the notice to which the reply relates and set out (a) the name, address and telephone number, and any available fax number and e-mail address, of the first nation and of any representative acting on behalf of the first nation; (b) an address for delivery of documents, if different from the address of the first nation or its representative; (c) an outline of the position that the first nation takes in response to the allegations set out in the notice; (d) an admission or denial of each allegation of fact contained in the notice; (e) a concise statement of any additional facts and any law on which the first nation intends to rely; and (f) any other information that the first nation believes the Commission requires in order to conduct the review.
Failure to reply	(3) If a first nation fails to file a reply, the Commission may proceed with the review.
Statutory declarations	<b>39.</b> (1) The Commission may require confirmation, by way of a statutory declaration, of any facts alleged in a reply that have not been admitted.
Cross-examination on declaration	(2) A party who has submitted a statutory declaration shall make the deponent of the declaration available for cross-examination by the Commission on the content of the declaration.
Evidence and information	<b>40.</b> In conducting a review, the Commission may (a) accept evidence that is not given on oath or evidence that would not ordinarily be admissible in a court of law; (b) at the request of a party, require another party to provide the Commission with any documents necessary to the conduct of its review; and (c) direct that written submissions be filed.
Adding intervenor	<b>41.</b> (1) Any person or organization may apply to the Commission to be added as an intervenor (a) if a hearing is to be held, at any time before the hearing begins; and (b) in any other case, at any time before the decision on the review is rendered.
Receipt of application	(2) On receipt of an application under subsection (1), the Commission may

	(a) add the person or organization as an intervenor; (b) direct the person or organization to provide the Commission with additional information in support of the application; or (c) reject the application.
Adding Board as intervenor	(3) If the First Nations Financial Management Board makes an application in accordance with subsection (1), the Commission shall add the Board as an intervenor for the purpose of making representations as to the impact of any potential remedy.
Hearing	<b>42.</b> (1) The Commission may at any time direct that a review be set down for a hearing and, at the request of the first nation, shall hold a hearing.
Procedures for hearing	(2) Section 20, subsection 25(2) and sections 26, 27 and 33 to 36 apply, with any modifications that are necessary, to a hearing directed under subsection (1).
<b>COMING INTO FORCE</b>	
Coming into force	<b>43.</b> These Regulations come into force on the day on which they are registered.

### **REGULATORY IMPACT ANALYSIS STATEMENT**

*(This statement is not part of the Regulations.)*

#### **Introduction**

##### Background/Overview

A core group of First Nations led the development of the *First Nations Fiscal and Statistical Management Act* (the Act) which came into force on April 1, 2006. It establishes four institutions: the First Nations Tax Commission (FNTC), the First Nations Finance Authority (FNFA), the First Nations Financial Management Board (FMB) and the First Nations Statistical Institute (FNSI).

The FNTC approves First Nation real property tax laws made under the Act and reconciles First Nation community and taxpayer interests. The FNFA permits interested First Nations to work co-operatively in raising long-term private capital at preferred rates for roads, water, sewer and other infrastructure projects. The FMB assists all First Nations in strengthening their local financial management regimes and provides the independent financial management assessment services required for entry into the FNFA borrowing pool. The FNSI assists all First Nations in building their local information systems and works with Statistics Canada and provincial statistical agencies to improve the accuracy and completeness of First Nation information.

The establishment of the institutions responds to requests from First Nations to enhance the tools available to them to support good government, economic growth and ultimately the quality of life on reserve.

There are 13 priority regulations required in order for the four institutions to become operational. A staged approach to finalizing these 13 regulations has been adopted to ensure the four institutions become operational as soon as possible, while work with First Nation partners on outstanding policy and administrative procedures continues.

The four regulations in the first regulatory proposal, which are now in force, are required for the operation of the FNFA, the governance structure of the FNTC and the statistical relationships of the FNSI.

This second regulatory proposal includes seven regulations affecting the operations of FNTC and the FMB, and the property tax regimes established by the Act.

The final regulatory proposal will include adding, to the Schedule, the names of First Nations wishing to operate property tax systems under the Act, and the related *Property Assessment and Taxation (Railway Right-of-Way) Regulations*.

With respect to the seven regulations in this proposal, one set of regulations, the *First Nations Tax Commission Review Procedures Regulations*, establishes the use of panels made up of one or more FNTC commissioners in the review of complaints in respect of First Nation laws as well as the procedures to be used by the FNTC in the review of these complaints.

One set of regulations, the *First Nations Local Revenue Law Review Regulations*, establishes the use of panels made up of one or more FNTC commissioners for the approval of First Nation local revenue laws.

Three regulations establish requirements for the content of local revenue laws made by First Nations. These are the *First Nations Assessment Appeal Regulations*, the *First Nations Assessment Inspection Regulations* and the *First Nations Taxation Enforcement Regulations*.

The *First Nations Rates and Expenditure Laws Timing Regulations* establish the date participating First Nations must make the annual rates and expenditure laws related to their property tax regimes.

The *Local Revenue Management Implementation Regulations* address the implementation by the FMB of co-management and third-party management of a First Nation's local revenues to support both First Nation property taxation and the newly established bond regime.

Each set of regulations is described in more detail in the sections below.

#### Gender-based analysis

It is a policy of Indian and Northern Affairs Canada (INAC) to integrate a gender-equality analysis into all of its work, including the development of regulations and legislation. A complete gender-equality analysis of the impact of the initiative and its four institutions was undertaken and reviewed and approved by the Gender Equity group within INAC.

The analysis found that the Act and its associated regulations strengthen the ability of First Nations to respond to the needs of all of their community members. It is designed to support First Nations in improving economic and social conditions on reserve, to the benefit of stronger family units and women and children in particular. Lack of employment opportunities and bleak prospects are known to increase the incidents of violence and abuse in family units. The potential for the institutions to assist First Nations to improve the employment climate in certain communities could potentially have a positive impact on these situations. Therefore, the institutions are seen to have a positive gender-equality influence at the community level.

First Nation property tax regimes established under the Act would be harmonized with the corresponding provincial regimes which, for the most part, establish tax rates based on the budgetary requirements of the jurisdiction. Under a budget-based property tax system, female and male taxpayers are both charged on the basis of the assessed value of the property which they occupy. The standard manner in which taxes are calculated and charged does not seem to favour men or women, thus no inequities would be perpetuated by any property tax regimes created under the Act.

Within First Nation communities, there is a growing call for improvement to general financial and statistical management. First Nation women and First Nation womens' organizations are on the forefront seeking changes which allow greater transparency of process, stronger accountability of leadership, and actual citizen input to decision-making. The institutions are poised to help meet this identified need. For example, at the community level, FMB would support best practices and build capacity in financial management, while the FNSI would strengthen local data and information systems as essential elements of good decisionmaking and accountability. These improvements would benefit all members of First Nation communities, women and men alike, and ultimately, may assist in establishing a balance between the genders.

#### Overview of consultations

INAC, jointly with the Indian Taxation Advisory Board (ITAB), the First Nations Finance Authority Inc. (FNFA Inc.), and the First Nation Advisory Panels for the FMB and the FNSI, held public consultations on drafts of the regulations. The consultation period commenced July 11, 2005, and ended September 30, 2005.

First Nations were notified of the consultations by a letter from the Minister. The draft regulations, summaries of each and information outlining how comments could be submitted, were posted on the Web site for the legislation: [www.fnfi.ca](http://www.fnfi.ca). Consultation sessions, open to the general public, were held in Moncton, New Brunswick, and at Westbank First Nation in British Columbia. A focussed consultation session was held with taxing First Nations in Richmond, British Columbia, and another with the Canadian Property Tax Association in Calgary, Alberta. Provincial governments were consulted during the development of the Act and support the efforts to harmonize First Nation property tax regimes with those of adjacent municipal jurisdictions. Details on the results of the consultations are provided in the sections on the specific regulations.

The regulations were pre-published in the *Canada Gazette*, Part I, on May 26, 2007, for a period of 30 days to provide an opportunity to interested parties and the general public to comment. Comments were received from ITAB. The comments were of a technical nature and no one objected to the proposed regulations.

#### Overview of costs and benefits

There are no implementation and ongoing costs which can be directly associated with any of these seven regulations. The work which will be carried out by each of the institutions pursuant to the regulations is only a portion of the work undertaken by the institutions which will be covered under a funding arrangement between each of the institutions and the Government of Canada.

The annual funding for the FNTC is approximately \$4.5 million per year for the next three years. The annual funding for the FMB is approximately \$4 million per year for the next three years. The annual funding for the FNFA (not including start-up costs) is approximately \$500,000 per year for the next three years with a 10-million-dollar grant, subject to a future Treasury Board Submission, paid to the Authority to support the debt reserve fund. Finally, the annual funding for the FNSI is budgeted at \$5 million per year for the next three years.

Currently, there are over 100 First Nations taxing under the *Indian Act*. The total annual tax revenues are in excess of \$46 million. It is expected that a significant number of these First Nations will transfer to the Act and many more First Nations will be attracted to the Act by the opportunities it presents including access to private capital at attractive interest rates. Studies have indicated that the bond financing regime could raise \$125 million over the first five bond issues.

***First Nations Tax Commission Review Procedures Regulations, First Nations Local Revenue Law Review Regulations, First Nations Assessment Appeal Regulations, First Nations Assessment Inspection Regulations, First Nations Taxation Enforcement Regulations and First Nations Rates and Expenditure Laws Timing Regulations***

***Description***

Background

In 1988, amendments to the *Indian Act* clarified property tax jurisdiction by First Nations in respect of real property rights on their reserve lands, including newly-defined designated lands. ITAB was established in 1989 by the Minister to provide advice on the approval of real property taxation by-laws, and to promote and safeguard First Nation property taxation powers under section 83 of the *Indian Act*.

ITAB evolved into the FNTC in July/August 2007. The FNTC both assumes the new responsibilities under the Act and will carry on the advisory function of the ITAB in respect of section 83 of the *Indian Act*. The FNTC builds on the success of ITAB.

Specifically, the FNTC was created to

- ensure the integrity of the system of First Nations real property taxation and promote a common approach to First Nations real property taxation nationwide, having regard to variations in provincial real property taxation systems;
- ensure that the real property taxation systems of First Nations reconcile the interests of taxpayers with the responsibilities of chiefs and councils to govern the affairs of First Nations;
- prevent, or provide for the timely resolution of, disputes in relation to the application of local revenue laws;
- assist First Nations in the exercise of their jurisdiction over real property taxation on reserve lands and build capacity in First Nations to administer their taxation systems;
- develop training programs for First Nation real property tax administrators;
- assist First Nations to achieve sustainable economic development through the generation of stable local revenues;
- promote a transparent First Nations real property taxation regime that provides certainty to taxpayers;
- promote understanding of the real property taxation systems of First Nations; and
- provide advice to the Minister regarding future development of the framework within which local revenue laws are made.

***First Nations Tax Commission Review Procedures Regulations***

The *First Nation Tax Commission Review Procedures Regulations*, made pursuant to paragraph 36(1)(b) of the Act, provide the FNTC with the ability to use panels of one or more commissioners to resolve complaints under section 33 of the Act in respect of First Nation local revenue laws.

This will assist the FNTC to make the most effective and efficient use of the time of its commissioners in providing a highly responsive level of service.

These Regulations also establish procedures which will be followed if there is a complaint that a First Nation has not complied with the requirements of the Act or Regulations, or that a law created under the Act has been unfairly or improperly applied.

The Regulations outline how a complaint is filed with the FNTC. As a precondition to a review of a complaint by the FNTC, the complainant has to first attempt to resolve the matter directly with the First Nation. Evidence that this first step has been taken is required.

The FNTC has the power to hold hearings. The Regulations set out how such hearings will be conducted, who may be represented, and procedural matters including the subpoenaing of witnesses and documents.

#### *First Nations Local Revenue Law Review Regulations*

The *First Nations Local Revenue Law Review Regulations*, made pursuant to paragraph 36(1)(b) of the Act, provide the FNTC with the ability to use panels of one or more commissioners to review and approve First Nation local revenue laws under section 31 of the Act.

#### *First Nations Assessment Appeal Regulations*

The *First Nations Assessment Appeal Regulations*, made pursuant to paragraph 36(1)(a) of the Act, set out the requirements for establishing and implementing appeal procedures in respect of the assessment of property interests in the reserve.

The Regulations ensure that the means of appealing the assessment of real property

- are equitable, comprehensive, open and able to withstand public scrutiny;
- are applied uniformly by First Nation property tax authorities;
- are consistent with the requirements reflected in other jurisdictions; and
- are consistent with the principles of natural justice.

The scope of the Regulations encompasses the following areas:

- levels of appeal;
- the make-up of a First Nation assessment review board;
- assessment review board powers and functions;
- complainant and First Nation rights and obligations; and
- conflicts of interest.

#### *First Nations Assessment Inspection Regulations*

The *First Nations Assessment Inspection Regulations*, made pursuant to paragraph 36(1)(a) of the Act, are required to provide for the inspection of taxable properties.

The Regulations establish procedures for inspections, including such matters as notice, timing, and, in the event the assessor is denied the required access to the property, the ability to make the assessment based on the information otherwise available.

#### *First Nations Taxation Enforcement Regulations*

The *First Nations Taxation Enforcement Regulations*, made pursuant to paragraph 36(1)(a) of the Act, establish the conditions that a First Nation would meet and procedures that a First Nation would use in dealing with taxpayers on reserve who fail to pay taxes when taxes are due under a First Nation property tax law.

The remedial procedures outlined in the Regulations are on a continuum, starting with a demand for payment, and then, if the taxes remain delinquent, progressively move through the creation of a lien and ultimately, a sale of property. There are adequate time periods between each step, with sufficient notice to the delinquent taxpayer. Due process is required. If the taxes remain unpaid, the First Nation tax authority may enforce payment through the seizure and sale of the taxpayer's interest in the property and/or the seizure and sale of the personal property of the taxpayer located on the reserve. Discontinuance of services is also an option for a tax authority under certain conditions.

#### *First Nations Rates and Expenditure Laws Timing Regulations*

The *First Nations Rates and Expenditure Laws Timing Regulations*, made pursuant to paragraph 36(1)(a) of the Act, set out the required date for the making of First Nation tax rate and expenditure laws. These annual rate and expenditure laws establish the rate of tax to be applied to the assessed value of the property interests and establish budgets for the provision of those local services supported by the tax revenues received.

The Regulations ensure timely action by First Nation tax authorities and inform taxpayers and other stakeholder interests of the timing for the establishment of tax rates and tax revenue expenditure budgets.

The Regulations require a First Nation property tax authority to

- set the rate of tax to be applied to the assessed value of each class of property 14 days after similar rates are established by a comparative tax authority, subject to provincial jurisdiction, that is adjacent to the taxing First Nation; and
- establish a budget for the expenditure of local revenues on the same date as the tax authority is required to establish the rates of tax.

#### **Alternatives**

The development of the Act offers no available alternative other than to make the supporting regulations. These regulations are a necessary component to the successful and effective implementation and operation of the FNTC and the First Nation property tax regimes established under the Act. The *First Nations Tax Commission Review Procedures Regulations* and the *First Nations Local Revenue Law Review Regulations* will be limited in their application to the work undertaken by the FNTC pursuant to the Act. The *First Nations Assessment Appeal Regulations*, *First Nations Assessment Inspection Regulations*, *First Nations Taxation Enforcement*

*Regulations and First Nations Rates and Expenditure Laws Timing Regulations* will apply only to those First Nations that opt to exercise their property tax jurisdiction under the Act.

### **Benefits and costs**

These regulations do not require any additional funding, as the costs associated with these regulations are included in government funding for the operation of the FNTC. This funding is secured under the Act implementation plan and is part of the Department's existing financial resources. The average annual funding for the FNTC is \$5 million.

The regulations are seen by proponents and stakeholder interests supporting First Nation tax practices as being consistent with established property tax practices and thereby provide the level of predictability and certainty required to maintain the credibility of the First Nation property tax system. The regulations would ensure that First Nation governments can be free to implement their property tax jurisdiction while the interests of tax payers are protected.

The efficient and equitable operation of property taxation regimes and the resulting transparency and certainty attract more business and residential interests to locate on reserve and generate a greater level of investment in the local economy. A better property tax system, attracting investment, will result in a commensurate increase in the value of on-reserve real property, the timely development of further on-reserve infrastructure through improved access to capital markets and viable long-term debt financing and improved First Nation economic development opportunities.

The following benefits will accrue:

- First Nations

Regulations governing the essential components of a sound and fair property tax system would benefit First Nations by

- helping them attract investment by providing reassurance to taxpayers; and
- setting an important precedent for regulatory harmony and the creation of national standards in First Nation real property tax jurisdictions, further attracting local investment.

- Taxpayers

The regulations provide assurance to taxpayers about the stability of tax rates, the provision of local services, and the soundness of administrative practices on reserve. The regulatory framework related to appeals of property assessments further ensures that taxpayers are treated fairly and are not disadvantaged because of being located on reserve. The regulations would also govern the procedures where taxpayers could air their issues through a review process when issues arise.

- Federal government

Consistent with the External Advisory Committee on Smart Regulation (EACSR), the First Nations property tax system, supported by federal legislation and regulations, would greatly contribute to the government's policy goals for self-government, a new fiscal relationship, improved accountability, and economic development for First Nation communities.

In this context, the Regulations would

- improve the legislative framework for property tax on reserve;
- enable First Nations to more fully realize the benefits of investment in their communities;
- support First Nations in meeting the stringent accountability requirements of taxpayers and investors; and
- enable taxpayers to make comparisons between tax systems on and off reserve by harmonizing administrative practices.

The establishment of the FNTC, supported by the necessary regulations enhances Canada's social and economic union by promoting harmony among First Nation tax systems and between First Nations and adjacent jurisdictions.

- Provincial and local governments

Provincial and local governments would benefit through the delivery of regulatory harmony across Canada. Property tax harmony would ensure that initiatives to improve internal trade and maintain a level playing field are supported by self-government initiatives. The regulations would also help First Nation and local government tax jurisdictions to better interact.

The Act contains a number of safeguards to ensure accountability for revenues generated from property taxation. First, in accordance with section 13 of the Act, these revenues, which are maintained in a separate account, can only be expended through the authority of an expenditure law made under the Act which, in accordance with section 10 of the Act, must be made annually. Section 13 also provides that such an expenditure law cannot authorize expenditures that exceed the local revenues estimated for the year, over and above any deficit carried over from prior years. Finally, under section 14, the local revenue account will be audited at least once each calendar year, and reported separately from other accounts. The audit is made available to all taxpayers, First Nation members, the FNTC, the FMB, the FNFA and the Minister.

### **Consultation**

The *First Nations Tax Commission Review Procedures Regulations*, the *First Nations Assessment Appeal Regulations*, the *First Nations Assessment Inspection Regulations*, the *First Nations Taxation Enforcement Regulations* and the *First Nations Rates and Expenditure Laws Timing Regulations* were developed jointly with ITAB. Significant discussions were held with the FNFA and the Advisory Panel for the FMB.

Broader consultations, on these regulations, took place with the general public and selected focus groups as part of the initiative-wide consultation sessions that were held in Moncton, Westbank, Richmond and Calgary. Specific questions raised by the participants were general in nature and sought clarification on the how the FNTC would work and how the regulations would apply to property tax regimes already established under section 83 of the *Indian Act* should those First Nations decide to operate those regimes under the Act. As a result of the comments received and to accommodate the varying approaches to property taxation among First Nations, some changes to certain regulations were made.

More specifically, the request for reassessment provisions of the *First Nations Assessment Appeal Regulations* were made more flexible to ensure that First Nations with existing property regimes could follow the provincial models they had already adopted. For clarity, the *First Nations Tax Commission Procedures Regulations* were split into two sets of regulations. With this change, the *First Nations Tax Commissioner Procedures Regulations* now deal solely with the

review of complaints under section 33 of the Act. The new *First Nations Local Revenue Law Review Regulations* deal with the review and approval of laws under section 31 of the Act.

In addition, as a result of the comments received, further changes are anticipated to the *First Nations Taxation Enforcement Regulations*. Specifically, some First Nations expressed the desire to have greater clarity with respect to First Nation priority in the distribution of the proceeds from the sale of property in tax default situations. It is anticipated that, over time, further clarification would be made by amendments to the Act or the regulations or both.

### ***Compliance and enforcement***

The FNTC, through the Act, is mandated to examine and approve property tax laws drafted by First Nations. The FNTC, in its review and assessment of these laws, will ensure that they conform with the Act and regulations.

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### ***Local Revenue Management Implementation Regulations***

#### ***Description***

The FMB provides services to First Nations in areas relating to financial management, accountability, economic development and capacity building. To become a borrowing member of the FNFA, a First Nation must have a financial administration law in force that meets the FMB's review standards for such laws. In addition, the FMB must certify that the financial management system of the First Nation conforms to the FMB's financial management operational standards that apply to borrowing members, before a First Nation can borrow for capital infrastructure from the FNFA.

Another important role of the FMB is to intervene in the management of a First Nation's local revenues if a borrowing member of the FNFA defaults in an obligation to the FNFA and the FNFA requests FMB intervention, or if a First Nation fails to remedy a situation on completion of an FNTC review under section 33 of the Act and the FNTC requires FMB intervention. The FMB can

initiate intervention on its own, if it is of the opinion that there is a serious risk that a borrowing member will default on an obligation to the FNFA.

The *Local Revenue Management Implementation Regulations*, made pursuant to paragraphs 56(a) and (b) of the Act, deal with the implementation of co-management and third-party management of a First Nation's local revenues, and the charging of fees by FMB for these services. The FMB's authority to implement these forms of intervention are found in section 52 of the Act for co-management and section 53 for third-party management.

The FMB's ability to enter into either a co-management arrangement or third-party management is necessary to maintain the integrity of both a First Nation's local revenue laws and a First Nation's tax regime as a whole, as well as to ensure the credit worthiness of FNFA securities.

The Regulations establish procedures respecting remedial intervention and detail certain responsibilities of the First Nation and the FMB before and during remedial intervention, including:

- the appointment of a management agent by the FMB and the requirement to provide the scope of the agent's authority to the council of the First Nation in writing;
- requests for and exchanges of information required for a successful intervention;
- the delivery of notices to various parties including the First Nation, the FNFA, the FNFC and the Minister and to each financial institution with which the First Nation has ongoing financial arrangements;
- the close relationship between the FMB and the First Nation to ensure a successful intervention;
- requirements for management reports including a remedial management plan within 60 days of the commencement of intervention and the review of the intervention, including its continuation, at least every six months after the commencement of the intervention; and
- establishment of fees for intervention services which will be based on third-party costs associated with the performance of remedial management, plus a 10% administrative fee.

### ***Alternatives***

The only alternative considered was the possible incorporation of the model for remedial management established by INAC.

The INAC model applies to the moneys transferred annually by Canada to a First Nation to enable it to provide specified programs and services. These transfers for programs and services are part of contractual arrangements between Canada and First Nations. The contracts also include provisions on the triggering as well as procedures governing third-party management intervention. The associated third-party management plan covers all of a First Nation's expenditures out of the transfer funding.

After detailed analysis it was determined that the INAC model cannot be applied to potential FMB interventions under the Act. The INAC model applies to funds being transferred to the First Nation by Canada or another party under a contract. The local revenues generated under the Act are raised by the First Nation directly through taxation and similar levies under their own local revenue laws. The requisite authorities for FMB intervention must be provided for under the Act and the requisite procedures in the Act and the regulations.

### ***Benefits and costs***

These Regulations do not require any additional government funding for the FMB. Funding for the general operation of the FMB is secured under the Act implementation plan and is part of the department's existing financial resources. The average annual funding for the FMB is \$4 million.

The costs specifically associated with co-management or third party management will be charged on a cost-recovery basis to affected First Nations and will represent a direct recovery of such costs as the cost of the management agent engaged by the FMB, any cost associated with the obtaining of required information and documentation and a 10% administrative fee.

The Regulations provide the framework and the process for effective intervention. The certainty and protection of such a regulatory system will increase the integrity of the First Nation property taxation and borrowing regimes established by the Act and yield benefits to all parties, including taxing First Nations, taxpayers, potential investors and other First Nation institutions.

Taxing and borrowing First Nations will benefit from having a clearly defined process for the implementation of co-management and third party management. In addition, the Regulations also protect First Nations from undue intervention. This will serve to encourage greater investment on reserve and provide a stronger basis for a marketable credit rating for securities issued by the FNFA.

Taxpayers on reserve benefit from the clearly defined process for intervention provided by the Regulations. The FMB will act as a secondary component of rate-payer protection in the event of a dispute over the making or application of laws by a First Nation.

Potential investors benefit from the increased level of security for their investments provided by the FMB's intervention powers. For example, investors who choose to purchase bonds from the FNFA will know that the system protects against the possibility of a defaulting member adversely impacting the credit rating and lowering the rate of return.

### ***Consultation***

The *Local Revenue Management Implementation Regulations* were developed in conjunction with the First Nation Advisory Panel for the FMB. To ensure these regulations meet the needs of the FNTC and FNFA, drafts of the regulations were shared with ITAB and the FNFA.

The *Local Revenue Management Implementation Regulations* were also discussed at the consultation sessions in Moncton, New Brunswick; Richmond, British Columbia; Kelowna, British Columbia; and Calgary, Alberta.

During the course of these sessions, many of the issues raised related to the Act rather than the regulations. These included questions concerning the source and extent of the FMB's authority to intervene and the "triggers" for intervention: that is to say, what circumstances would lead to FMB intervention. These questions were responded to in terms of the provisions of the Act but did not generate any amendments to the regulations.

The one question that was asked that specifically referenced the Regulations involved the FMB charging fees for co-management and third party management services. Concern was expressed that a First Nation in remedial management may find it difficult to budget for the cost of an intervention on a monthly basis, and it was suggested that it might be more reasonable to accumulate the costs and assess them once a year.

It was clarified that the Regulations actually state that the costs would be assessed "no more than once a month". It was also clarified that the FMB will be developing further policy around the charging of fees and that the question of a First Nation's ability to pay may be a consideration in respect of the timing of the charging of fees. Further, the recovery of fees would be out of the tax base not out of funds transferred from the federal government.

There were no changes made to the *Local Revenue Management Implementation* Regulations as a result of the consultation sessions.

### ***Compliance and enforcement***

The FMB will seek voluntary cooperation by a First Nation that is under co-management or third-party management. Neither the Act nor the Regulations provide for penalties if a First Nation fails to cooperate with FMB or its management agent during intervention. If reasonable cooperation is not forthcoming, the FMB will rely on the management authorities provided under the Act and the procedures provided under the Act and the Regulations. The FMB may, in certain cases, also apply for a court order to compel First Nation compliance with the requirements of the Act, the regulations and First Nation laws made under the Act.

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### **[Footnote a](#)**

S.C. 2005, c. 9