

# NAEDB Special Session on Institutions and Governance

## Summary Report



Prepared for:

**The National Aboriginal Economic Development Board**

By: **Fiscal Realities Economists**

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## THE NATIONAL ABORIGINAL ECONOMIC DEVELOPMENT BOARD

Established in 1990, the National Aboriginal Economic Development Board (NAEDB) is a Governor in Council appointed board mandated to provide policy and program advice to the Minister of Aboriginal Affairs and Northern Development (AANDC), as well as other federal departments, on Aboriginal economic development. Comprised of First Nations, Inuit and Métis community and business leaders from across Canada, the Board plays an important role in helping the federal government develop and implement policies and programs that respond to the unique needs and circumstances of Aboriginal people. The Board also provides a vital link between policy makers, federal departments and Aboriginal and non-Aboriginal business and community leaders.

Information about the NAEDB can be found online at: <http://www.naedb-cndea.com>

Board members are:

**Chair: Chief Clarence Louie, British Columbia**  
Chief, Osoyoos Indian Band

**Vice-Chair: Dawn Madahbee, Ontario**  
General Manager, Waubetek Business  
Development Corporation

**Member-at-Large: Chief David Crate, Manitoba**  
Chief, Fisher River Cree Nation

**Member-at-Large: Chief Terrance Paul, Nova Scotia**  
Chief, Community of Membertou

**Hilda Broomfield Letemplier, Newfoundland  
and Labrador**  
President/Chief Financial Officer, Pressure Pipe  
Steel Fabrication Ltd.

**Dr. Marie Delorme, Alberta**  
CEO of The Imagination Group of Companies

**Adam Fiddler, Ontario**  
Former Chief, Sandy Lake First Nation

**Sharon Stinson Henry, Ontario**  
Former Chief, Chippewas of Rama First Nation

**Ruth Williams, British Columbia**  
Business Advisor/Project Manager of the  
Pathways to Technology Project with All Nations  
Trust Company



## Table of contents

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<b>Background</b> .....	4
<b>Context</b> .....	5
<b>Presentation 1 - Governance and Institutions Building for Economic Development</b> .....	6
Dr. Tim Raybould for Jody Wilson-Raybould – British Columbia Assembly of First Nations .....	6
<b>Presentation 2 - Aboriginal Resource Tax</b> .....	8
Manny Jules, Chief Commissioner of the First Nations Tax Commission .....	8
<b>Presentation 3 – The Vision and On-Going Evolution of the First Nations Fiscal Management Act</b> .....	10
Harold Calla, Chair of the First Nations Financial Management Board.....	10
<b>Presentation 4 - Asserting Jurisdiction through Expanded Revenue Streams</b> .....	12
Dr. Tim Raybould, KaLoNa Group.....	12
<b>Closing Comments</b> .....	14
<b>Appendix A – Abstracts as provided by Authors</b> .....	15



## Background

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On June 16<sup>th</sup>, 2015 the National Aboriginal Economic Development Board (NAEDB) held a special session on options and proposals to improve institutions and governance that support aboriginal economic development. Four presentations were made to the NAEDB on institutional and governance proposal.

1. Governance and Institution Building for Economic Development – Dr. Tim Raybould for Jody Wilson-Raybould
2. An Aboriginal Resource Tax – Clarence (Manny) Jules
3. The Vision and On-going Evolution of the *First Nation Fiscal Management Act* – Harold Calla
4. Asserting Jurisdiction through Expanded Revenue Streams – Dr. Tim Raybould

Each of the presenters provided either a summary paper or their speaking notes. These are attached as appendices. This report briefly summarizes the proposals and the discussion from June 16<sup>th</sup>. The premise and proposal(s) for each presentation is presented along with specific questions asked by NAEDB members. This summary also contains some recommended next steps for the NAEDB's consideration.



## Context

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All of the presentations and proposals were based on one or both of these two First Nation and aboriginal policy events:

- A.** In June 2014, the Supreme Court of Canada recognized Aboriginal title to a defined part of the Tsilhqot'in Nation. Options to implement this decision have generated a great deal of discussion among First Nations, lawyers, economists and the public. A summary of some of these opinions is attached in an appendix. The federal government released a report by Doug Eyford which discussed in part the implications of this decision on the federal comprehensive claims policy. The key question raised during the special session presentations was how can the Tsilhqot'in decision be implemented in a manner that optimizes economic and fiscal benefits for First Nation and aboriginals?
- B.** In March 2005, the First Nations Fiscal Management Act was passed. It created national First Nation institutions to support First Nation taxation, financial management, and long term financing. Over 160 First Nations have opted to use this legislation to increase their revenues, improve financial management, and get access to longer term and lower cost capital. Almost 80 First Nations have expanded their tax jurisdiction. Over 50 have been financially certified and last June the first debenture was issued for 14 First Nations. The FNFMA was amended in June to make it easier for First Nations to opt into and to further improve First Nation access to capital and revenues. These amendments and significant growth promoted the other key question asked during the presentations which was-what policy changes would allow more First Nations to use the services of the FNFMA institutions



## Presentation 1 - Governance and Institutions Building for Economic Development

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### Dr. Tim Raybould for Jody Wilson-Raybould – British Columbia Assembly of First Nations (BCAFN)

**NOTE** – This presentation was originally to be delivered by Jody Wilson Raybould but she was unable to attend.

**OVERVIEW** – The premise of this presentation was that First Nations are in the process of moving from the *Indian Act* governance to greater First Nation governance. Dr. Raybould made the point that First Nations have a continuum of options for moving away from governance under the *Indian Act*. The processes include sectoral self-government processes; such as the *First Nations Land Management Act* (FNLMA), the *First Nations Financial Management Act* (FNFMA), the *First Nations Oil and Gas Management Act* (FNOGMA) and the *First Nations Commercial and Industrial Development Act* (FNCIDA); self-government approaches; Treaties; and most recently, Aboriginal title.

Dr. Raybould noted that if First Nations successfully implement good governance using any of these approaches, it will lead to improved economic development. However, First Nations require the support of national and regional First Nation institutions to implement the best practice governance models. The problem is that the current federal and provincial policies with respect to these processes do not consider the potentially supportive role of First Nation institutions.

Some key presentation points:

- The Westbank First Nation has implemented a comprehensive legal and administrative self-government framework to accompany its self-government powers. This has led to significant economic and fiscal growth for that community.
- A significant challenge for First Nations in using this model is generating and sustaining political and community will. Significant governance changes take considerable time and resources. Interested First Nations are not adequately supported by regional and national institutions of support.
- The Aboriginal title decision has increased the number of governance areas that First Nations wish to implement. It may also be contributing to a shift in service delivery and governance structures from a local (one First Nation community) to a national (groups of First Nations with common language, territory, and culture) level.
- The BCAFN has completed a comprehensive overview and toolkit of First Nation governance models and options. A key element of this toolkit is a community assessment checklist so that First Nations are better able to identify and then implement governance priorities and models.
- A piece of legislation introduced in the Senate (Bill C228) could remove some of the time required to implement governance responsibilities and address the challenges associated with time and resources.



- The BC treaty process and perhaps self-government processes do not consider enabling the use of the FNFMA institutions. This put these First Nations at a disadvantage. It may prevent them from getting the full benefit of these processes or even participating in them.

## Summary of NAEDB Discussion

The following NAEDB questions and discussion followed this presentation:

1. Chief Clarence Louie – How do you move to the very long process of self-government when it is difficult to get community support for sectorial initiatives (FNLMA, membership, elections)?
  - A. Two points were made in response to this question. First, it was suggested that a community constitution may provide the basis for moving into more areas of governance without specific votes. Second, the BCAFN governance tool-kit provides communication support and lessons as necessary for First Nations and this could be a valuable resource.
2. Vice Chair Dawn Madahbee - How do you promote nation building (Anishnabeg) to support expanded government service responsibilities? A number of points were raised in response to this question.
  - A. The current self-government policy framework does not allow for support from regional and national First Nation institutions of governance.
  - B. It will be necessary to develop community, tribal, regional, and national level governance models, and institutions. It is possible to build on existing tribal councils. However, this is going to be further complicated by the perception that they compete with Band level government. It may also be difficult to overcome the perceived interests of individual certificate of possession holders.
  - C. There has to be a significant change to the federal comprehensive claims process to accommodate these traditional but broader models of governance. It is possible that the Eyford Report will begin these necessary changes.
  - D. First Nations need their own provincial type governance institutions and models such as those embodied in some of the FNFMA institutions.
  - E. Nation building will be difficult for First Nations but one option is to base governance on traditional concepts to reconstitute nations and then use modern best practice governance and service delivery methods.
  - F. It is may be necessary to generate labor mobility within a group of First Nations so that property rights are transferable.

### NEXT STEPS:

There were few specific next steps for NAEDB consideration. It is clear that more research is needed into the implications of the Tsilhqot'in decision and First Nation governance options. It was however suggested that federal and provincial policies and mandates should be adjusted to support use of the FNFMA options for BC Treaty and self-government First Nations.

## Presentation 2 - Aboriginal Resource Tax

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### Manny Jules, Chief Commissioner of the First Nations Tax Commission

**OVERVIEW** – The premise of this presentation is that an aboriginal resource tax (ART) is an effective first step to implement Aboriginal title and reduce investor uncertainty associated with the Tsilhqot'in decision.

Mr. Jules suggested that an ART provides a significant opportunity to expand First Nation revenues and authorities in a way that supports community based development. It is necessary to do this because without First Nation control of a revenue source, First Nation governments are going to see their ability to fund basic services and infrastructure fall further behind. The growth in revenue requirements is currently far greater than the growth of transfers and fiscal pressures on other governments make it very unlikely that this will be reversed, regardless of what party forms the government.

Mr. Jules outlined his preferred approach to Aboriginal title, which is to implement the collective economic interest that was confirmed by the Supreme Court as a First Nations tax power. First Nations holding title would be able to charge a tax on major resource projects and expansions rather than go through an extensive negotiation about financial arrangements for consent. Other conditions would be negotiated as before however.

A tax power would replace existing approaches, particularly the sharing of provincial revenues such as mining taxes or stumpages from specific projects. ART would be a more robust approach because it could be applied to projects, such as pipelines that do not generate royalties directly. It would also free First Nations from the economic and political revenue uncertainties that are inherent with provincial royalties.

### Summary of NAEDB Discussion

1. Chief Clarence Louie - What would be the appropriate tax rate?
  - A. It would depend on the type of project. It is anticipated that in some cases, existing revenue sharing arrangements could provide a benchmark.
  - B. The appropriate tax rate will also depend upon the fiscal context in which it is implemented. For example, the appropriate tax rate will depend, in part, upon whether there are service responsibilities attached to the tax. It will depend in part upon whether there are formal or informal transfer offsets attached to the tax.
2. Hilda Broomfield Letemplier - What about northern aboriginal resource tax?
  - A. The ART is definitely appropriate for Northern communities and the NAEDB should support a Northern ART.





3. Chief Terrance Paul - An Alberta First Nation wants to get into tax but afraid that subsequent councils will reverse decision. Is this possible?

A. It is possible to withdraw but very difficult in practical terms, once revenues have been committed.

4. Chief Clarence Louie - Will you send a resolution for NAEDB to support ART?

A. The resolution will be sent in near future

**NEXT STEPS:**

Mr. Jules suggested that a NAEDB proposed resolution of support for ART will be sent for the Board's consideration at their next meeting. He would also be available to make further presentations about progress toward the ART if requested by the NAEDB.

## Presentation 3 – The Vision and On-Going Evolution of the First Nations Fiscal Management Act

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### Harold Calla, Chair of the First Nations Financial Management Board

**OVERVIEW** – There were two premises to this presentation. First, the FNFMA provides an important institutional framework that supports economic development and access to capital for all First Nations. Second, the FNFMA institutional framework should be expanded to further close the legal and administrative gaps between First Nation and other governments in Canada.

Mr Calla began with a presentation about St. Theresa Point, a fly in Manitoba First Nation community. After 12 years of Departmental intervention, it used the FMB certification process to demonstrate its capacity to move beyond third party and co management. The certification came in Oct. 2013 and it participated in the first FNFA debenture in June 2014. Mr. Calla suggested that FMB certifications and support and improved access to capital could provide an effective strategy for First Nations to escape third party and co management and implement sustainable economic development processes.

A significant point advanced by Mr. Calla was that First Nations need support to develop the governance systems that allow participation in the modern economy. Centralized First Nation support can provide First Nations with better strategies for participating in resource projects and even taking equity positions. This is going to be important because major resource projects are going to provide opportunities for First Nations. They will provide political leverage to influence government, economic opportunities, and new fiscal resources. He cited one example where an equity position for 16 First Nations in a major energy related project could generate \$5.5 billion for these First Nations over 25 years.

Mr. Calla noted that to realize the potential of the FNFMA will require a significant expansion of the institutional mandates. He echoed the sentiments of Dr. Raybould where he noted that institutions are not being integrated into federal strategies to address aboriginal challenges. This was seen as problematic because First Nations are already administratively challenged and would benefit from the support of centralized First Nation institutions. Central agencies in the federal government cannot fill this role, and still largely view First Nations as agencies to be managed through cost containment.

He suggested that the FNFMA institutions could become central agencies for First Nations in two fundamental ways. First, they could provide a standardized transparency and certification framework that improved their access to capital and improved investor confidence. Second, they could advance and support First Nation led regulatory changes that improve First Nation economies and public finance.

### Summary of NAEDB Discussion

1. Chief Clarence Louie - How many First Nations are participating in the FNFMA?

A. 160 are participating and 62 were certified by the end of July.



2. Ruth Williams - How do you encourage First Nations to participate in resource development?
  - B. It is important to put the possibility of an equity position on the table at the project approval stage. However, it is difficult for the proponent to put up 100 per cent of the capital for 70 per cent of the profits. This will require federal support.
3. Dawn Madahbee – This is part of a long term strategy to support the next First Nation generation. How do you develop models and options that will outlive the current institutional leadership?
  - A. This is why the institutions need the mandate to grow as First Nations grow. Currently they can support some revenues and some elements of financial management and access to capital. They need the mandates to grow into the governance vision of First Nation which includes significantly expanded revenue, financial and public finance jurisdiction.
4. Dr. Marie Delorme – Is it possible to develop financial management curriculum to support the programs at the Banff Management Centre?
  - A. The FMB is already working with them to support their curriculum and has made presentations to their classes in the past.
  - B. A recent text book developed by the Tulo Centre of Indigenous Economics may also be of use to Banff Management Centre courses.
5. Chief Terrance Paul – First Nations are often referred to as a third order of government. Why are First Nations at the 3<sup>rd</sup> level and is a different term possible? How should First Nations revenues and service responsibilities and financing be sorted out among governments?
  - A. There are three governments in Canada with underlying title – federal, provincial, and aboriginal. It will require negotiations and a new governance infrastructure to implement aboriginal underlying title. Part of this governance structure is a central agency role that could be filled by the FNFMA institutions.
  - B. One of the reasons that First Nations are often called a third order of government is because they are dependent on transfers from other governments. It is important to explore options to remove the middle man in First Nation transfers (federal and provincial governments) and collect First Nation taxes directly as was proposed by the ART.

#### **NEXT STEPS:**

There were no specific next steps suggested to the NAEDB but it is expected that if the FNFMA institutions propose to expand their mandates that they will make a subsequent presentation to the NAEDB asking for specific support.



## Presentation 4 - Asserting Jurisdiction through Expanded Revenue Streams

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**Dr. Tim Raybould, KaLoNa Group**

**OVERVIEW** – The premise of this presentation was that First Nations need more revenues streams to support long term infrastructure financing. He noted there are currently three major untapped sources; Indian monies, federal capital transfers and a First Nations Goods and Services Tax (FNGST). The focus of this presentation was a recommendation that Indian monies should be made available to First Nation to support improved First Nation credit ratings and infrastructure financing.

Dr. Raybould discussed how capital transfers and a FNGST could be leveraged to support more infrastructure financing and that capital transfers were discussed as an important revenue source in a recent Senate report. He also mentioned that a FNGST revenues would be considered subject to a short term agreement with Canada and thus would not appropriate for long term financing. The focus of his presentation, however, was about Indian monies.

Dr. Raybould pointed out that there is currently \$833 million in Indian monies available. It is broken down into \$635 million in capital and \$198 million in revenues. However, it is not controlled by First Nations and so these assets cannot be used to improve the First Nations credit rating or to support debenture financing.

There are currently four efforts underway to turn these revenues over to First Nations through sectorial, *Indian Act* and self-government processes. First Nations can opt out of s. 69 of the *Indian Act* through an Order in Council. Second, they can join the *First Nations Land Management Act* and pass a land code that manages their Indian monies. Third, it can be a component of a self-government agreement. Fourth, First Nations can opt into the *First Nations Oil and Gas and Monies Management Act*.

Dr. Raybould asked for the NAEDB's support for (a) obtaining greater First Nation control over Indian monies (b) ensuring that once First Nations have control that these Indian monies are considered other revenues for FNFMA debenture financing and (c) advocating that other revenues (such as capital transfers and the FNGST) are available for infrastructure financing.

### Summary of NAEDB Discussion

1. Vice Chair Dawn Madahbee – The leases form cottages in a community that Ms. Madahbee is familiar become Indian Monies and that community does not benefit. How can they benefit from these revenues?
  - A. The methods to free these revenues from AANDC management were discussed as was the recommendation to ensure that once free that these revenues should be made available FNFMA supported debenture financing.



2. Chief Clarence Louie – Does the *First Nations Financial Transparency Act* apply to self-government First Nation?
  - A. This Act does not apply to self-government First Nations.
3. Chief Clarence Louie - What is specifically being asked of from the NAEDB?
  - A. It was suggested that the NAEDB follow up on its previous resolution of support to increase revenue options for FNFMA financing by:
    - a. Reducing conditions for transfers of capital portion of Indian monies to Indian control. It was noted that between 2006-2011 up to 1.7B in infrastructure could have been financed with Indian monies
    - b. One specific option that the NAEDB could support is the transfer of capital monies if the First Nation was scheduled on the FNFMA, they have a Financial Administration Law, and they are certified by the FMB. An amendment to the FNFMA would be required to facilitate this.
4. Ruth Williams – Where do Indian monies go?
  - A. The monies are transferred to consolidated revenue fund and there are ledger entries for each First Nation.
5. Chief Lawrence Paul - Is Ministerial guarantee influenced by Indian monies?
  - A. It is possible to access Indian monies if there is default on ministerial guarantee.

**NEXT STEPS:**

The NAEDB requested that Dr. Raybould provide a draft resolution with specific recommendations for the consideration of the Board at its next meetings.



## Closing Comments

Chief Clarence Louie thanked the presenters and asked that a summary report of recommendations be developed for the consideration of the NAEDB for their next meeting. The specific recommendations from the presentations are listed below:

PRESENTATION	RECOMMENDATIONS
<p><b>Governance and Institutions Building for Economic Development</b> <i>Dr. Tim Raybould for Jody Wilson-Raybould, BCAFN</i></p>	<ul style="list-style-type: none"> <li>• More research is needed into the implications of the Tsilhqot'in decision and First Nation governance options.</li> <li>• Improve institutions for economic development, increase revenues to support borrowing, resolutions to support recommendations</li> <li>• Federal and provincial policies and mandates be adjusted to support use of the FNFMA options for BC Treaty and possibly self-government First Nations</li> </ul>
<p><b>Aboriginal Resource Tax</b> <i>Manny Jules, Chief Commissioner of the FNTC</i></p>	<ul style="list-style-type: none"> <li>• The NAEDB should consider supporting the development of the ART proposal.</li> <li>• The FNTC will continue to work with proponent First Nations and make presentations to interested First Nations and governments</li> </ul>
<p><b>The Vision and Ongoing Evolution of the First Nations Fiscal Management Act</b> <i>Harold Calla, Chair of the FNFMB</i></p>	<ul style="list-style-type: none"> <li>• There were no specific next steps suggested to the NAEDB but it is expected that if the FNFMA institutions propose to expand their mandates that they will make a subsequent presentation to the NAEDB asking for specific support.</li> </ul>
<p><b>Asserting Jurisdiction through Expanded Revenue Streams</b> <i>Dr. Tim Raybould, KaLoNa Group</i></p>	<ul style="list-style-type: none"> <li>• Indian monies should be made available to First Nation to support improved First Nation credit ratings and infrastructure financing.</li> <li>• Ensure that once First Nations have control that these Indian monies are considered other revenues for FNFMA debenture financing</li> <li>• Advocate that other revenues (such as capital transfers and the FNGST) are available for infrastructure financing.</li> </ul>



## Appendix A – Abstracts as provided by Authors

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### Evolving Role of First Nations' Governance and Institutions to Support Economic Development

#### Abstract

#### Governance and Institution Building for Economic Development, Outgoing BCAFN Regional Chief Jody Wilson-Raybould

Societies that govern well simply do better economically, socially and politically than those that do not. First Nations are no exception. Strong and appropriate governance increases a society's chances of effectively meeting the needs of its people. Simply defined, "governance" means "establishing rules to coordinate our actions and achieve our goals." As societies, the institutions we create to make rules and then enforce them, we call "government." Governance and government come in many forms but are always needed. They can, of course, be done well or badly. Research and experts tell us that the quality of governance, much more than its specific form, has a huge impact on the fortunes of any given society.

In Canada, First Nations are in an important period of transition rebuilding and developing strong and appropriate governance in the wake of the colonial legacy. The long-term future of First Nations requires that this transformation be successful. During the colonial period, governance over "Indians" was based on models developed by the federal government to deliver its programs and services to Indians. In this context the powers of reserve based "band" governments were very limited. The effects of the *Indian Act* system have been debilitating and promoted an impoverished concept of government. "Government" for registered Indians became little more than managing programs (education, health, housing, social assistance, etc.) and distributing limited resources (money, jobs, influence and services). The concept of government as being about making laws, resolving disputes and generating the means to pursue a collective vision, including economic development, was smothered by the need for federal programs and services and the fact that the local "band office" was the instrument to deliver them.

Thankfully, this is changing, and a more robust concept of governance is re-emerging as First Nations slowly rebuild strong and appropriate governance both at the community level and through the creation of institutions that transcend local governance (either through tribal governments, as well as regional and national institutions). In these efforts to strengthen First Nations' governance significant progress has been made in the past two decades to facilitate the transition along a "continuum" of governance reform.

At one end of the governance continuum are options that are available to communities governing as legally defined "bands" under the *Indian Act* that strengthen local control and decision-making on-reserve. Moving along the continuum, there are also now a number of optional "sectoral" governance initiatives that facilitate and support a First Nation in assuming responsibility for a specific area of governance. For example, assuming responsibility for land or financial management. Today under these sectoral governance initiatives approximately a quarter of all *Indian Act* bands have to some degree taken over aspects of self-government and are exercising powers beyond those available under the *Indian Act*. At the far end of the continuum are comprehensive self-government arrangements.



The evidence suggests, predictably, that First Nations that are further along the governance continuum in moving away from the *Indian Act* are now generally healthier and stronger economically than non-self-governing communities.

Through the sectoral governance initiatives there are now a handful of national and regional First Nation institutions that have been established in recent years to support First Nations' governance that transcend the *Indian Act* band and potentially can support self-governing Nations. These initiatives have been led by First Nations and rely on federal legislation or agreements between First Nations and the Crown for their authority. Under the *First Nations Fiscal Management Act*, the FNFA, the First Nations Tax Commission and the First Nations Financial Management Board have been created. Under the Framework Agreement on First Nation Land Management that is brought into effect by the *First Nations Land Management Act* (FNLMA), a Lands Advisory Board and Lands Resource Centre have been established. An education authority under the *First Nations Jurisdiction over Education in British Columbia Act* has also been established. In the future other sectoral governance initiatives might conceivably result in the creation of new institutions to support First Nation governments; for example, as part of other regional or national initiatives across Canada addressing matters such education, child welfare, health, and so on.

Some of the national/regional First Nation institutions have a regulatory or oversight role. For example, the First Nations Tax Commission can approve First Nation local revenue laws and the Financial Management Board can approve Financial Administration Laws, certify financial administration systems and performance and, in special circumstances, intervene in the management of a First Nation's government in respect of finances. Other institutions are only advisory in nature. For example the Lands Advisory Board.

These institutions play an important role in supporting good governance among First Nations including capacity development. However, developing legitimate First Nations institutions beyond the "band" or "tribe" has its challenges, both legally and politically. There have been ongoing questions regarding the appropriate machinery of government to use and the relationship between these bodies and evolving post-*Indian Act* band government as well as questions regarding how best to implement the inherent right of self-government.





## Towards An Aboriginal (or First Nation) Resource Tax (ART)

### Manny Jules, Chief Commissioner of the First Nations Tax Commission

Briefing Note to the National Aboriginal Economic Development Board (NAEDB)

#### Background

Some First Nations wish to develop an aboriginal or First Nation resource tax (ART) as part of their implementation of Aboriginal title and Treaty rights. Resolutions of support representing a number of First Nations have been passed in support of ART.

The ART was initially proposed by a number of First Nations to meet the specific issues raised by Aboriginal title. However, similar issues are being raised all across the country. Proponent First Nations have requested in their resolutions that the First Nation Tax Commission (FNTC) support the design, development and implementation of the ART.

The Chair of the NAEDB invited the Chief Commissioner of the FNTC to make a presentation about ART for the information and consideration of the NAEDB.

#### First Nation Rationale

The proposed ART would apply to all major resource and resource infrastructure projects including mines, forest projects, pipelines, and other right of way projects taking place on a participating First Nation's territory.

First Nations are advancing this proposal for at least three reasons:

1. It is consistent with their Aboriginal title and treaty rights confirmed by Supreme Court decisions. It confirms a jurisdiction while agreements do not. It is also consistent with recent federal recommendations to develop interim measures that facilitate economic activity and advance the resolution of Aboriginal title and treaty rights.
6. First Nations want to generate both economic and fiscal benefits from resource development in their territories. Some First Nations are currently receiving only economic benefits, such as jobs for Members, but little or none of the government revenues generated by projects on their territories. The ART could provide revenues to First Nations currently receiving none of these, and could provide a more stable revenue flow to First Nations currently enjoying sharing agreements.
7. The ART would be administratively simpler than current approaches. It would reduce negotiation costs and ongoing management costs.

#### Benefits of ART proposal

The ART would mark a significant change in First Nations policy by the federal government and provide a number of fiscal and political benefits to First Nations and Canada:

1. It would provide a clear signal that governments are committed to an agenda of recognizing and clarifying First Nation jurisdiction and ownership. It respects Treaty rights and Aboriginal title.



8. It would support investment and business on the territories of First Nations charging the ART.
9. It would improve support for projects by giving First Nation communities a real fiscal stake in the success of resource projects on their territory.
10. ART could help First Nation communities improve services and infrastructure.
11. ART could reduce demands on First Nation administrations relative to other approaches.
12. ART could potentially be applied to projects not suited to royalty sharing such as pipelines and other utilities that cross borders.
13. ART would give First Nations more revenue certainty. Current revenue sharing and its policy parameters are determined by other governments and therefore revenues are political uncertain.

### **Suggested Next Steps**

- The NAEDB should consider supporting the development of the ART proposal.
- The FNTC will continue to work with proponent First Nations and make presentations to interested First Nations and governments.



# The Vision and On-going Evolution of the First Nations Fiscal Management Act Harold Calla, Chair of the First Nations Financial Management Board

## Presentation to the NAEDB

Osoyoos, BC  
June 16th, 2015

Thank you for the invitation to participate in your sessions today. We appreciate your ongoing support for the *First Nation Fiscal Management Act*, (FNFMA) and the three institutions created by the Act, the **First Nations Financial Management Board (FMB)**, the **First Nations Finance Authority (FNFA)**, and the **First Nations Tax Commission (FNTC)**. The connection and synergy between the efforts of the NAEDB and the institutions should be recognized. Our efforts are an important piece of a puzzle that supports community's efforts to move outside of the status quo of dependency and poverty. Our challenge today is to look to the future and develop a strategy that supports an acceleration of the process.

I will describe what I believe the future of the *First Nations Fiscal Management Act* is by making some observations based on experience, posing some questions and identifying some needs. The FMB is continuously doing an environmental scan to guide our corporate plan development.

Aboriginal people are asking themselves how they fit into the federation called Canada. How do our treaty and constitutionally protected self-government, aboriginal and title rights get recognized and implemented? How can we support the process and encourage the Federal and Provincial Government to consider a new policy framework that breathes life into recent Supreme Court decisions? How do we support efforts to build confidence in options that result from a policy discussion? What administrative infrastructure exists and what needs to be built that allow aboriginal communities to function as modern day governments?

Historical treaties, modern day treaties, non-treaty and self-governing communities create a different legal starting points in the eyes of stakeholders like the governments and general public. Aboriginals themselves must come to grips with this reality, and not see it as a reason to not work together.

These circumstances are not new. They have, however, shaped a central agency view and has established the foundation of the current relationship. Existing agreements are seen as high water marks and anything that goes beyond is strenuously resisted.

However, there may be an opportunity in the next few years to consider alternatives to the status quo. The convergence of Supreme Court decisions, the work of the Residential School Survivors and the Truth and Reconciliation Commission and growing influence our communities have over the harvesting of the resources in our traditional territories requires everyone do some deep thinking. Industry and governments are not going to be able to continue ignoring the recognition of our rights that is being confirmed by the courts.

What can organizations like ours do to support Aboriginal Communities as they implement their treaty and aboriginal rights in a modern day context, while responding to the enormous opportunities before Canada in the exploration, extraction and export of our natural resources?



The duty to consult and accommodate offers the opportunity for governments to insure that First Nations benefit from the economic growth. A failure by governments to embrace this opportunity will be interpreted by many as an unwillingness to address the social and economic deficits that persist in our communities.

The investment required to bring our communities to a comparable standard of living is now so significant it cannot be met from a single source, federal transfers. Developing economies that produce sustainable jobs and produce a wealth transfer into our communities is an absolute necessity. It is in the National interest for this to happen

Insuring our communities are prepared to recognize and realize on opportunities before them represents a very significant capacity gap for many if not most of our communities. Optional approaches that have been developed like the FNLMA, FNFMA, FNCIDA and the FNOGMMA have proven to be successful and need to be embraced by governments and incorporated into their strategies. These legislative pieces replace certain provisions of the Indian Act, and provide a platform to move away from dependency and poverty.

The challenges and opportunities before our communities today are so significant many of them are overwhelmed. The experience and expertise needed to respond to opportunities are not always present. The lack of human and financial resources do not allow people to examine how these opportunities can improve their social and economic situation. A fear of the unknown leads to an inevitable first response of putting up barriers or just saying no. By not engaging economic development opportunities are not realized. This results in a continued disproportionate reliance on federal transfers, a perpetuation of the status quo, poverty at third world levels.

Over the last three years the FMB has been working with communities from coast to coast to coast. What we have learned from this experience is that First Nation communities are crying out for help and are using the services of the institutions to support their efforts to develop the capacity they need to cope. They see they can gain access to capital on the same basis as other orders of government, with fixed rates and up to a 30 year term. They see having transparent and accountable financial management systems allows communities to move to processes and decision making models that can meet the demands of today. We are moving beyond thinking of finance as something we do to meet terms and conditions of AANDC funding agreements.

As we develop our lands and traditional territories we need to take the lead and position ourselves to provide the infrastructure and services required to make our lands an attractive place to invest and live. We cannot allow local and regional governments to control our land use through their provision of services. We need to raise the money to pay for these from the levy of fees, and/or taxes. We need to take control of Indian moneys and use them to support our economic development and improve the returns on these moneys.

We need to recognize that communities who find themselves in remedial management cannot be left behind. That the current program approach to managing these situations is not achieving the needed results. It does not support building the capacity needed to turn these communities around and allow them to start building economies.



If we were able to reconstitute our Nations in a modern day context and move beyond the Indian Band mentality we could pool our resources and needs. Creating critical mass would allow for the type of administrative and management support that simply is beyond the ability of Indian Bands to secure and resource. There are examples like the Education Steering Committee and the FNHA in BC that are proving to be more efficient in responding to the program needs and are producing better results and a lower cost.

The future of the FNFMA is to be a thinking partner with First Nations. I believe that First Nations need to come together and create a federal central agency like capacity that can influence the advice given to governments. We need to start thinking as Aboriginal Governments and not as program managers who are recipients to AANDC funding agreements.

The cornerstone required to make this happen will be found in solutions that support sustainable local, regional and national economic development. We are going to need to do the work, the research, and the implementation of strategies. It hasn't been and won't be done by others because it is not in their interests. For them the status quo is just fine.

This country needs to move beyond a policy approach to aboriginals that is intended to minimize the impacts of aboriginal rights and title, and is designed to extinguish them. We need to build the platform to remove the fear and demonstrate the reasonableness of a change.



## **Evolving Role of First Nations' Governance and Institutions To Support Economic Development**

**Special Session of the National Aboriginal Economic Development Board (NAEDB),  
Osoyoos, B.C., June 16, 2015**

### **Abstract**

#### **Practical Proposals – Asserting Jurisdiction through Expanded Revenue Streams, Dr. Tim Raybould, the KaLoNa Group**

In order for First Nations to be able to effectively govern and to carry out their remit they require stable and predictable revenue streams. While adequate federal transfers that are calculated based on a respect for the constitutional principle that no matter where a person lives in Canada they are entitled receive comparable programs and services, it is also critical that policy makers consider ways to expand the revenue streams available to First Nations. The need for expanding revenue stream in the context of supporting public debt financing for First Nations has recently been considered by the First Nations Finance Authority (FNFA). This objective is supported by the NAEDB as set out in the Board's 2012 recommendations that the federal government, "find ways to accelerate the process through which communities can benefit from the financing provided through the First Nations Finance Authority."

In addition to ensuring that all First Nations have the opportunity to use the FNFA regardless of where they are on the governance continuum, there are a number of ways that the FNFA could be made more effective at meeting the needs of First Nations today. The most obvious way is by ensuring that all stable revenue streams that are available to First Nations can be used to secure loans through the FNFA. In addition to helping First Nations, this would increase the business for the FNFA, reduce funding pressures on Canada, and generally help strengthen the credit of the FNFA through diversification. It would also mean that well run First Nations that today might not have any interest in using the FNFA or coming under the FNFMA because they currently do not have any revenues that can be used to secure loans, would have an interest in joining the FNFA. This is also good for diversification and the credit rating.

There are already a number of revenue streams available to secure loans through the FNFA. In addition to property taxes collected under the FNFMA there are revenues from many other sources listed in the *Financing Secured by Other Revenues Regulations* (SOR/2011-201) made under the FNFMA. In addition to these revenue streams there are other sources of revenue that should be available to secure loans through the FNFA but for a number of reasons are currently not available. Three other important areas for increasing leverage-able revenue generation through the FNFA that will be discussed are: 1) Federal Capital Contributions 2) Indian Moneys, and 3) the First Nations Goods and Services Tax.





## **The National Aboriginal Economic Development Board**

10 Wellington St., 17th floor

Gatineau, (Quebec) K1A 0H4

819-953-2994

[www.naedb-cndea.com](http://www.naedb-cndea.com)