Advisory Bodies and First Nation Property Taxation: Experiences and Recommendations

Dr T. J. Raybould

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Prepared by:
the K a L o N a group
9 – 2220 Horizon Drive East
Kelowna, BC
V1Z 3L4
tel: (250) 768-1313
fax: (250) 768 – 1329

NOTE: The views and opinions expressed and contained in this paper are solely those of the author and do not necessarily reflect the views and opinion of the Indian Taxation Advisory Board.

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Introduction

The Indian Taxation Advisory Board (ITAB) has commissioned a series of research projects exploring timely public policy questions concerning first nations' property taxation. Recent events at the Musqueam Indian Reserve in Vancouver over rent reviews have brought the issue to a heightened political and legal focus with much attendant publicity in the print and electronic media. Similarly, where first nations are negotiating governance outside of the *Indian Act* this has also drawn attention to issues of political representation by those persons subject to first nation property taxation. With growing national debate, it is important that first nations systematically address the issue of ratepayer input and develop appropriate mechanisms to address the political concerns. In developing mechanisms, there are a number of useful models to turn to that could, if first nations so choose, be adopted.

As part of the ITAB's research programme, ITAB commissioned this paper to explore, analyse and compare a representative sample of the mechanisms that first nations and other local governments have established (or are developing) to provide ratepayer input into local taxation systems where those ratepayers do not form part of the electorate for the governing councils. The paper also considers developments in the evolution of fist nations' governance in the context of contemporary land claims and self-government arrangements.

Specifically, the research team has asked the following questions in an effort to provide policy recommendations to the ITAB:

- What experiences have first nations had, both successful and not so successful, with establishing Advisory Bodies or other mechanism to provide input from ratepayers into the expenditure of property tax revenues and the passage of local tax (by)laws? What are the views of the first nations' representatives? What are the views of ratepayers?

- What are, if any, the legal and political considerations in establishing advisory bodies or other mechanisms for ratepayer input into the first nations' decision making processes?

- What is the relationship between property tax as a source of revenue for first nations and the move to self-government and what considerations might this relationship have for issues of ratepayer representation and first nations' accountability to those ratepayers?

- What other models for representation exist in non-reserve settings where significant numbers of ratepayers have no direct political representation?

- What role should the ITAB or any regulatory body play in recommending resolution in issues of ratepayer representation?

Part I: First Nations' Property Taxation

Chapter One:

History of first nations' local purposes' taxation

Many first nations are currently collecting property taxes, either under the *Indian Act*, or through self-governance arrangements, (which are usually an integral part of land claims packages), or through a combination of both. Property taxation and other sources of direct taxation are increasingly becoming important own source revenues for some first nation governments, although the portion of these revenues to the overall budget for running Indian government across Canada generally, is still very insignificant.

In the main the assumption of delegated local taxation powers by first nations over the past 10 years has been matched by a qualified acceptance by ratepayers subject to first nation jurisdiction even though in most cases they do not form part of the electorate for the first nations' governing councils.

There are approximately 28,000 such ratepayers living on-reserves throughout Canada, with over two-thirds of them living on-reserve in BC. In many cases the non-member ratepayers significantly outnumber the native residents. More recently, however, and particularly in BC, there has been an increased interest by ratepayers in questions of representation, an interest triggered by local issues and specific concerns[1].

When ratepayers are not members of a first nation they do not typically vote in council elections. This has raised concerns over what is known colloquially as "taxation without representation". The issue has been restated by some ratepayers in recent years as "representation without taxation" following a growing consciousness that often the members of first nations are exempt from taxation yet vote for the governing body that collects and spends the tax revenues. The benefits of expanded taxation powers, and in

particular powers with regards to property taxation, have been positive and a critical step in the path towards the realisation of first nations' aspirations for self-government, despite recent concerns with representation.

In 1988 the *Indian Act* was amended by Bill C-115 to clarify what is a reserve to include in the definition of 'reserves' those lands that have been 'designated' for leasing. This cleared up any confusion over whether first nations could tax these lands and provided first nations with clear and explicit powers to levy property taxes on non-native interests (leaseholds). In 1989 ITAB was established to advise the Minister of Indian and Northern Affairs Canada (INAC) on property taxation matters. Today there are 78 first nations in seven provinces that have passed taxation bylaws generating in the order of $26 million a year in own source revenues to first nations. In the process of establishing first nation tax administrations, ITAB has reviewed and processed over 575 first nation bylaws introduced pursuant to section 83 of the *Indian Act*. This includes bylaws covering property assessment, taxation, expenditure, rates, and business licensing, and utilities. In addition to its primary bylaw responsibilities ITAB has been instrumental in the development and dissemination of information concerning section 81 bylaws addressing financial administration and residential tenancy matters.

The issues arising from establishing systems of local taxation across Canada is reflective of a number of fundamentals that include the diversity of first nations, the history of local relations between first nations and their neighbouring communities which have been complex and manifold. In many cases, adjacent local governments to reserves were, prior to the assumption of first nation taxation authority, previously collecting revenues from the reserve lands. This gave rise to issues resulting from local government vacating the on-reserve tax room in favour of first nations. Additionally, in most cases there was now a need to make local service agreements between first nations and the adjacent local governments.

[1] Much of this interest was generated as a result of the issues at Musqueam. For a thorough account of these and other issues as expressed through the eyes of the ratepayers see Kesselman, 2000.

Another issue of concern to first nations has been how the collection of property taxes, as "own source revenue", fits into the broader fiscal relationship between the Crown and first nations. This is an issue that has yet to be resolved, as first nations' governments re-establish themselves as legitimate governing bodies following many years of INAC control and, in some cases, dependency.

Despite the opportunities and the progress made by made by those first nations that introduced property taxation regimes, to date only 12 % of the some 630 first nations in Canada have passed property taxation bylaws; over two thirds of these first nations are located in BC[2]. This is, in part, due to the fact that in BC the provincial government had always permitted local government to collect property taxes from non-Indian interests on-reserve. It is also reflective of the fact that many members of first nations are sceptical about taxation as such, or simply think that in their particular geographical and political situations it would not be of great benefit to them.

In the first ten years of implementing first nation property taxation the primary work of the first nations (with the support of the ITAB), has involved 1) establishing local community bylaws, 2) establishing administrative systems to run taxation offices (which has included the development of software to assist budget development and administration), 3) dealing with issue of appeals and setting up appeal bodies.

Considerable effort has been put into negotiating local service agreements where first nations entered into local service contracts with neighbouring municipalities in order to purchase services that were previously provided by that municipality or local government prior to the first nation assuming taxation authority.

Exacerbated by developments at the community of Musqueam over the issue of setting lease rates (discussed below), more recently, the question of ratepayer involvement on

[2] It should be noted that there are approximately just as many first nations that are collecting some form of grant in lieu or other charge from occupiers of reserve lands (and in particular from utilities) that are collecting property taxes under enacted bylaws.

issues of taxation and first nation government decision making have become more prominent and have received significant media attention.

When Canada and especially those first nations that have large numbers of non-member residents living on their reserve lands first contemplated expanding first nation tax powers there was considerable discussion about how to address ratepayers' concerns, although today very little in the way of articulated policy has been developed by the ITAB. The primary focus in the beginning was to get the tax administrations of the first nations off the ground and up and running.

Notwithstanding a lack of a clearly articulated general policy on the fundamental issue of 'taxation without representation', the specific question has been addressed in various individual self-government arrangements that have either been negotiated and implemented or are contemplated across Canada. The question has also been answered within several existing *Indian Act* tax regimes. The Case Studies presented in Part Two of this paper provide examples.

Chapter Two:
The Legal Framework

Indian Act

Since 1884 band councils have had the ability, albeit limited, to tax the fixed property of their members residing on-reserve as part of the *Indian Advancement Act*. This right to tax extended to the holders of 'location tickets' or an enfranchised Indian who had received an allotment of reserve land. This power was only applicable to bands deemed 'advanced' and was really designed at the time to establish municipal-type government within Indian communities in Eastern Canada.

These 'old' powers of taxation were continued through various versions of the *Indian Act* and are found today in Section 83 of the latest *Act*. One of the primary and misguided objectives of the *Indian Advancement Act* and the *Indian Act* has been to assimilate the first nations' peoples and the administration of their lands into Canadian society, while at the same time purportedly protecting Indian communities from the encroachment of settlers on those lands during the period of assimilation. It was not the intent of the Crown, and consequently not the intent of the policy makers or legislative drafters of the day, to continue with and establish a system of aboriginal 'self-government'. The intent of providing taxation powers to bands during the last century was to encourage band councils to tax their own members and to facilitate local governments on a municipal model that would eventually be administered outside of federal legislation pertaining to Indians. That is, once enfranchisement was wide-spread and assimilation complete, the need for special 'Indian' legislation and administrative structures would no longer be required.

Prior to 1988 Indian bands did not have the ability to tax lands that had been 'conditionally surrendered' for leasing purposes. While the early *Indian Act*s prohibited federal and provincial governments from taxing aboriginal interests or property located on-reserve, which is still in effect today, the legislation did not prohibit provinces and

municipalities from taxing leasehold interests of non-aboriginals located on-reserve. The provinces have not treated the taxation of non-aboriginal interests consistently. The provinces of Ontario, Manitoba, Alberta and Saskatchewan did not allow municipalities to tax non-aboriginal interests on reserve lands. On the other hand, Prince Edward Island permitted municipalities to tax non-aboriginal interests while New Brunswick and Quebec have nothing in their provincial legislation regarding the rights of municipalities to tax or not tax non-aboriginal interests.

Notwithstanding the various provincial approaches to taxation on-reserves, the *Indian Act* was amended by Bill C-115 *An Act to Amend the Indian Act (Designated Lands)* in 1988 in order to allow band councils to tax leasehold interests. The clarification and expansion of property taxation powers of first nations has become known as the 'Kamloops amendment' due to the work of the Kamloops Band and former Chief, Chief 'Manny' Jules, in promoting and championing the amendment. Kamloops was faced with the problem of having an industrial park on their reserve lands that was being taxed by the City of Kamloops with few services to the park being provided. The Band wanted to enhance the services to the park but had no way to levy any taxes because the park was located on leased lands and having been conditionally surrendered, Kamloops was unable to collect the taxes. Until the *Act* was amended Kamloops could do nothing.

The term 'designated lands' was introduced through the Bill C-115 amendment to include lands that had been conditionally surrendered for leasing and first nations taxation powers extended to these lands. The section of the *Act* states:

> S. 83. (1) Without prejudice to the powers conferred by section 81, the council of a band may, subject to the approval of the Minister, make bylaws for any or all of the following purposes namely,
>
> (a) subject to subsections (2) and (3), taxation for local purposes of land, or interests in land, in the reserve, including rights to occupy, possess or use land in the reserve;
>
> (a.1) the licensing of businesses, callings, trades and occupations;
>
> (b) the appropriation and expenditure of moneys of the band to defray band expenses;

(c) the appointment of officials to conduct the business of the council, prescribing their duties and providing for their remuneration out of any moneys raised pursuant to paragraph (a);
(d) the payment of remuneration, in such amount as may be approved by the Minister, to chiefs and councillors, out of any moneys raised pursuant to paragraph (a);
(e) the enforcement of payment of amounts that are payable pursuant to this section, including arrears and interest;
(e.1) the imposition and recovery of interest on amounts that are payable pursuant to this section, where those amounts are not paid before they are due, and the calculation of that interest.
(f) the raising of money from band members to support band projects ; and
(g) with respect to any matter arising out of or ancillary to the exercise of powers under this section.

(2) An expenditure made out of moneys raised pursuant to subsection (1) must be so made under the authority of a bylaw of the council of the band.
(3) A bylaw made under paragraph (1)(a) must provide and appeal procedure in respect of assessments made for the purposes of taxation under that paragraph.
(4) The Minister may approve the whole or a part only of a bylaw made under subsection (1).
(5) The Governor in Council may make regulations not inconsistent with this section respecting the exercise of the bylaw making powers of bands under this section.
(6) A bylaw made under this section remains in force only to the extent that it is consistent with the regulations made under subsection (5).

In BC, in order to address the issue of local governments retaining the power to levy property taxes on-reserve after the passage of Bill C-115, the provincial government introduced the *Indian Self-government Enabling Act*, which established the procedure for the withdrawal of municipal taxation when a first nation passed its own assessment and taxation bylaws. Without this legislation there would have been double taxation, which, of course, was of concern to all stakeholders and particularly the ratepayers affected.

Through their section 83 bylaws, first nations have significant latitude in establishing the parameters for their systems of property taxation. In essence, the taxation and assessment bylaws of bands are the equivalent of Provincial legislation setting out municipal systems of property taxation. Notwithstanding the requirement for ministerial approval for band

tax bylaws, first nations with powers analogous to a province can establish their own tax regimes, whereas municipalities must follow the legislation of their province.

While there is variation in first nation tax bylaws across the country, ITAB has developed sample bylaws that as a rule provide the core structure to most first nation's tax regimes[3]. The evolution of band bylaws is quite evident as communities become more experienced in maintaining and developing their community code and as court decisions resolve and clarify issues of dispute.

In the context of this paper it is important to note that there is nothing in Section 83 of the *Indian Act* that specifically addresses the question of ratepayer interests when subject to taxation or the participation by the non-members of a band in first nation local government. This is consistent with those sections of the *Indian Act* which specifically establish the band council as the sole governing body of the band.

The legislative history of section 83 and to a much lesser extent the proceedings surrounding the amendments to the *Indian Act* of 1951 may be seen as an effort by both the federal government and first nations to promote increased autonomy for first nations on their reserves. The 1988 amendments more particularly is a positive and very important step along the evolving continuum to more comprehensive self-government.

Given Canada's and the provinces' objective of recognising the distinct political nature of first nation communities, it would not be realistic that legislative amendments designed to foster first nations' autonomy, would do anything to undermine that autonomy. This 'given' would therefore preclude non-member residents on-reserve having a rights-based claim to membership in that community or a corresponding right to participate in its government.

Recognising the concerns of ratepayers when first nations assume taxation authority, the Minister of Indian Affairs retains the exclusive right to approve band bylaws and he can,

if he so chooses, pass regulations that among other things could address the issue of ratepayer input. While the Minister chooses not to pass regulations, Canada did establish the ITAB, which has the responsibility to advise the Minister on a range of taxation issues that includes the equitable and fair treatment of ratepayers.

The legislative regime for property taxation under Section 83 cannot be understood without an appreciation of the broader system of governance on-reserve as established under the *Act*. The issues of property taxation as discussed below are inextricably tied to other aspects of local governance that impact upon non-member ratepayers. In some instances, the issues that have arisen about non-member ratepayer concerns with property taxation are, in fact, issues of reserve governance that are neither addressed nor contemplated in section 83 and the first nation bylaws passed pursuant to section 83. As will be shown issues such as land use planning, land management and expenditure priorities are other equally important aspects of local government decision making that ratepayers routinely raise in the context of paying their taxes to a first nation in which they do not participate in the structure of government.

In addition to taxation regimes under section 83 of the *Indian Act* there are an increasing number of aboriginal communities that are now governing outside of the *Indian Act*, either through the operation of self government pursuant to land claim agreements or as specific stand alone self-governing arrangements.

Land Claims and Self-government arrangements

Following the 1973 split decision of the Supreme Court of Canada in *Calder* concerning whether or not aboriginal title had been extinguished following European settlement, Canada moved quickly to settle land claims in those parts of the country where the presumption of aboriginal title remained but where there were no treaties. While these areas were primarily in BC, Quebec and north of 60, negotiations proceeded more

[3] These sample bylaws can be found on ITAB website, www.ITAB.ca.

expeditiously with aboriginal groups in the north and in Quebec because the government of BC was not participating in the talks.

The existing legislated self-government agreements as part of these land claims following the *Calder* decision all include chapters or sections addressing directly or indirectly the question of property taxation. The James Bay and Northern Quebec Agreement signed in 1975 pertains to both the Cree and Inuit and is discussed more fully below. As the oldest and first of the modern claims, it dealt with the issue of property taxation and representation by importing provincial systems onto 'settlement lands' and for the most part included all residents living within the self-governing boundaries in local government decision making.

In 1986 the *Sechelt Indian Band Self Government Act* and the *BC Sechelt Indian Government Enabling Act* became law. The Sechelt model is more fully described below as one of the case studies to this report. The self-government legislation clearly establishes a regime for property taxation that links the Sechelt Indian Government District to the municipal government system in British Columbia. Non-member input to the Sechelt Indian Government District is through an advisory council established pursuant to the provincial enabling statute.

The Sahtu, Dene and Metis Comprehensive Land Claim Agreement was signed in September of 1993. This northern agreement establishes the authority for real property taxation on developed Sahtu municipal lands by the claimant groups and the withdrawal of jurisdiction by the federal, territorial or local governments.

In the Yukon the fourteen first nations negotiated self-government and land claims concurrently. The Umbrella Final Agreement between the Council for Yukon Indians and the government of the Yukon was signed in 1993. Pursuant to the Umbrella Agreement the individual first nations negotiated their own self-government arrangements. The Umbrella Agreement and the first four self-government agreements were approved by

federal legislation that received royal assent in July of 1994. Since then, three additional self- government agreements have been negotiated and implemented.

The Yukon Umbrella Agreement and the subsequent community agreements provide that each first nation has the authority to enact laws of a local or private nature on settlement land in a number of areas. The jurisdiction over taxation is treated independently of the core powers of the first nation communities. The taxation powers with respect to property parallel the powers of bands under Section 83 of the *Indian Act* with the some important distinctions.

Firstly, there is no requirement for ministerial approvals because the agreements are explicit that individual bands have concurrent jurisdiction with both Canada and the Yukon, which contemplates the needs for tax agreements between the parties. In this regard, secondly, the government of the Yukon undertakes to ensure a sharing of property tax room.

There is nothing explicit in the Yukon agreements addressing the issue of non-member residents' input into the decisions of the individual bands with respect to property taxation. The Yukon communities are in a similar situation to the James Bay Inuit and Cree, where the number of non-aboriginal residents, subject to the laws of the communities under self-government, are small.

The Yukon first nations that are signatories to individual self-government agreements have not, as of now, implemented any property taxation systems and are currently exploring their options in this regard. The issue of non-member input has, consequently, not been addressed in any meaningful manner.

The most recent modern land claim in Canada has been in British Columbia. The agreement was between the Nisga'a people and the governments of Canada and of British Columbia in 1998. Chapter 11 of the Nisga'a's Agreement establishes Nisga'a's self-government as an integral part of their land claim settlement. Consequently, it is the first

land claim settlement that provides for a constitutionally protected form of aboriginal self-government. Sections 19 to 23 of Chapter 11 establishes how relations will be handled with individuals who are not Nisga'a citizens. This is the first land claim agreement containing such provisions and where the issue has been dealt with in a holistic manner and not simply pursuant to a question raised in the context of taxation or land use etc. The key provision is that the Nisga'a's government will consult with individuals living on their lands but who are not Nisga'a when the decisions of the Nisga'a government directly and significantly affect them.

With respect to property taxation, the Nisga'a government has concurrent direct taxation powers with the province of British Columbia and the government of Canada, and this include property taxation. In order to avoid double taxation it is contemplated the parties will reach future agreements on taxation which will also address how Canada and British Columbia will provide the Nisga'a government with direct taxation authority over persons other then Nisga'a on Nisga'a lands. The important point established here under this new legislative regime is that the Nisga'a's direct taxation powers are limited to Nisga'a citizens on Nisga'a lands. Should the Nisga'a wish, for example, to collect property taxes from non-Nisga'a residents they will need to negotiate the terms of that authority with the province of British Columbia. This restriction of Nisga'a property taxation powers, which is quite different from the property taxation powers under section 83 of the *Indian Act*, along with the provisions of meaningful consultation with non-Nisga'a residents, provides a very strong mechanism to ensure that the interests of future ratepayers who are non- Nisga'a are taken into consideration in the decisions made by the Nisga'a government.

Prior to entering the treaty, the Nisga'a were not exercising property taxation authority under the *Indian Act* and as with the previous land claims in rural northern Canada there are only a handful of non-Nisga'a living on Nisga'a lands. At the time of writing the Nisga'a's have not introduced any property taxation regime or opened any negotiation with the province of British Columbia with respect to collecting property taxes of non-Nisga'a residents on Nisga'a land. Presumably, when these negotiations do take place,

given the terms of the treaty regarding non-Nisga'a consultation and the effective veto of the provincial government on the Nisga'a's ability to levy property tax on non-Nisga'a, there will be mechanisms put in place that provide for the participation of non-Nisga'a in the decisions concerning the collection and spending of property tax revenues.

Chapter Three:

Stakeholders and Commentators

First Nation government: Chief and Council

The primary obligation of each first nation government is to the members of its first nation community. However, under the system of government under the *Indian Act* the obligations and responsibilities are complicated**.** Councils are established under the *Act* and are analogous to federal boards and are creatures of the federal government. The local government powers of Councils are limited to bylaw making under section 81 of the *Indian Act* and section 83. However the Crown can delegate additional powers to first nations such as land management for both designated and non-designated reserve lands. Additionally, and outside of the *Act* and in some cases the responsibility of INAC, the Crown (by contract) can delegate local responsibility for managing federal programs and services such as social services and health care.

There are, therefore, two streams of first nation responsibility directly correlated to the degree of local authority first nations have chosen to assume either through contract with the Crown or through the exercise of bylaw making powers under the *Act*.

Contracts are typically in the form of fiscal transfer agreements of various kinds that set out the standards to which the first nation government will undertake program delivery and service provision. For the most part these contracts relate only to the provision of services to persons registered as Indians under the *Indian Act* and for some only to those registered as members of the particular band that has the contract. With respect to bylaws, (while vetted by the Crown in regards to section 81 bylaws and approved by the Minister in the case of money bylaws under section 83), the Crown assumes no direct responsibility for development, design, enforcement or defence of the validity of the law.

A Council when passing bylaws does so for reasons of good governance locally and in doing so assumes, by choice, a greater degree of administrative responsibility for the operation of the reserve. There is no federal funding to support the administration and enforcement of section 81 bylaws.

Whether under the bylaw or under contract the responsibility for service delivery rests for bands through their elected Chiefs and Councils. It is the Council (through the operation of its bylaws and whatever responsibilities the band has bestowed upon itself in the bylaw) which assumes the legal responsibility for programs and services when exercising bylaw-making authority. Councils also assumes responsibility for carrying out the terms of the contracts they have agreed with the Crown for the provision of programs and services on behalf of Canada.

Bylaws can be specific to a particular reserve, can apply only to certain groups, or, as is most typical, can be geographical in nature applying to all persons residing within the reserve boundaries. A key point is that the structure of government under the *Indian Act* does not explicitly provide for non-members to participate in the governing structure of the bands. Notwithstanding the obvious future potential problems, INAC began encouraging and approving residential leases on first nation lands in the 1950s at which time non-natives began to establish legal interests on-reserves.

Under the *Act* a Council has no political responsibility to the non-members and is not accountable to them through any political process. Council interests are to improve the quality of life for their members and property taxation is seen as a way to direct revenues to needed projects on-reserve; often after years of want. The reason for the Kamloops Band initially championing the amendments to the *Indian Act* was to raise revenue from the industrial park to provide services to tenants and thus maintain rents in the park and the quality of service. With control of local taxes comes the ability to plan and attract development through the planned and orderly expansion of infrastructure and amenities required by those desiring to invest capital on-reserve. Given the difficulties first nations have in attracting capital to their reserves, maintenance of a solid and stable local

government to provide adequate services instils confidence in the development community and helps attract quality capital. This results in increased rents to the first nation.

Another interest is to create a servicing strategy that will provide benefits to the first nation community as well as to non-member ratepayers. With financial planning, first nation own source revenues can be directed to improving community facilities such as community centres, parks as well as more advanced local programming in areas such as recreation. These are all 'quality of life improvements' where there are no federal funds available or if they are, they are not sufficient for providing local community facilities at comparable levels of service provided in adjacent non-native communities. First nation peoples must have equal opportunities with their non-native neighbours in 21st Century Canada. Property taxation is seen as one way to accomplish this.

Politically, own source revenues creates opportunities for dialogue with adjacent local governments about servicing strategies and priorities. With first nations controlling an increasing percentage of local resources, a more balanced playing field is created when there are discussions on regional or co-operative ventures between first nations and the adjacent non-native communities.

A Council should always be concerned that ratepayers or businesses located on-reserve will move away, resulting in property devaluation, loss of business potential and a shortage of revenues to maintain levels of servicing provided and expected, thus putting financial pressures on administrations.

The long-term objective of the first nation in taking over property taxation is practical recognition of its aspirations for greater local autonomy or self-government. It provides an opportunity for band councillors to debate and consider expenditure priorities that are of a local nature rather than simply administering a contract on behalf of the Crown and providing the Crown's programs and services on-reserve. This is one of the biggest incentives for today's first nation leaders who see a vision of aboriginal government

emerging into a fully functioning order of government within Canada responsible (within the parameters of an overall agreed system of governance) for local community decision-making without central government interference or priorities being imposed as has been the case for generations. Taxation raising rights empowers Chiefs and Councils and the band members they represent to achieve an equality of opportunity with non-native Canadians; an opportunity denied first nations for far to long and to the detriment of Canadian society.

First Nation community members

Members of first nation communities are primarily concerned about whether they will be paying taxes. In those communities where the first nation members' corporations pay local property taxes, they have similar concerns as other ratepayers as are discussed below, with the notable exception that the band members have the ability to elect new councils to replace those that do not address their priorities.

While members can see the benefits of property tax dollars being spent within their reserve boundaries, this is not without fear about how their government may spend those monies. In the absence of a local regulatory framework, as established where communities move out from under the *Indian Act,* members of first nations continue to have many questions about the responsibilities and powers of their governing body. At the same time, there is reluctance for wholesale change to governance structures outside of the *Indian Act* given the nature of the relationship with the Crown and the legacy of community government under the *Indian Act* which for may individuals is not a happy one. In a true 'catch 22', the symptoms of the deficient *Indian Act* structure are seen as the reasons for not moving out from under the *Act* whereas, in many cases, governance outside of the *Act* would address the symptoms if developed appropriately in a community context.

De facto first nation government has emerged very quickly, with communities taking over delegated authority through devolution. This rapid local take up has not been

without incident, as the overall framework for the governing bodies that have assumed responsibility for devolution has not been amended. The *Indian Act* system is still set up where primary accountability is from the Chief and Council to the Minister and not the Chief and Council to their members.

One of the biggest fears in communities where there are private landholdings on-reserve (through the issuance of certificates of possession) is that the members may be put in a position where they are asked to pay local taxes but have no means to pay them. Large properties on an 'urban' reserve may be in an individual's name but that individual has no desire to develop the lands and has no income to pay the 'holding cost' of the property, namely property taxes. In the typical municipal environment off-reserve the system of local property taxation works hand-in-hand with zoning to encourage economic growth through land development. If a person or a company has lands and sits on them, then he or they must pay a 'holding cost' which is a reflection of the potential build out value of the land. This charge serves as an incentive to develop. In a first nations context, this is not necessarily the philosophy. Families may have traditionally used a particular piece of land for a non-intensive activity and the very real fear is that if they are taxed, they will have to sell and move.

Currently most first nation tax bylaws do not tax undeveloped land held by members or the tax rate is zero. In the case of band member owned companies, where first nation members hold their land through leases, some first nations exempt their members' companies while others do not.

In other communities where there are a high percentage of local entrepreneurs, and in contrast with the 'traditionalists', members have expressed concern that if there are real or perceived problems with first nations taking over property taxation, they will have difficulty in attracting capital and business ventures. Uncertainty in taxes, services or both could result in individual members receiving less rent for their properties than previously, and this is a concern.

Ratepayers

Ratepayers expect to pay property taxes. Their primary concern is that they receive services for the taxes that they pay and that these services are what they want and good for what they pay. They also expect to be consulted when decisions are being made that directly and significantly impact their legal interests. Ratepayers are not concerned about the business of first nations that does not affect them unless that business has the potential for impacting the ability of a first nation to provide services to them from the monies that are collected in taxes.

The ratepayers are bound by the bylaws of the first nation and the terms of the instrument that gives them the right to locate on the reserve. This is either a lease or permit. Under the terms of the *Indian Act* only leases and permits that are vetted and approved by INAC or its delegate and registered formally, are legal. All other tenancies that may exist at the pleasure of individuals or of the Chief and Council are not enforceable. These are referred to as 'buckshee leases'. Depending on the community bylaws, all residents are required to pay local taxes whether they have a legal right to be on the reserve or not.

Ratepayers would be upset if services were to deteriorate and/or if their taxes went up. Where ratepayers have significant equity invested into homes or businesses it is difficult to move. However, if taxes become a real or perceived problem then ratepayers will move over time. If ratepayers wish to sell their property, then marketability of their property is critical. There is a concern by ratepayers that not all first nations may be interested in maintaining property values. A distinction is drawn between communities where there remains substantial property that can be leased or developed (by either the first nation or its members) and consequently there is an incentive to maximize property values and those communities where the reserve lands have already been extensively leased and developed and where maximizing values might not be so important.

Where there is uncertainty in local government this will reflect in a lower price for property. A concern with ratepayers is how to maintain their equity in their investments on-reserve when not having the ability to participate in the elections of Council. The stability of the tax system and the levels of tax rates is all important. This is, perhaps a bigger issue than quality of service provision. Lower services matched with less taxes is not typically a concern expressed by ratepayers. For ratepayers off-reserve living on the UBC Endowment Lands (discussed below) there is concern that by joining with the City of Vancouver there would be an increase in taxes because the residents would be responsible for contributing to a greater number of services and would be compelled to contribute. The current administrative structure for the University Endowment Lands while not providing the citizens with a direct vote in how their taxes are spent does keep their taxes lower.

Uncertainty over taxation and the reach of band legislation has resulted in some businesses locating developments on-reserve lands that are not capital intensive, such as manufactured home parks and RV sites. With certainty and equitable dealings, a higher quality of development will occur; a better class of developer and thus ratepayer will establish business on-reserve.

Canada

Canada is responsible for the overall structure of governance on-reserve in the absence of clear recognition of the inherent authority of first nations to govern themselves. Clearly, for band government under the *Indian Act,* (which includes property taxation under section 83) the Crown has a broad responsibility to maintain the integrity of the governance system. The nature of the relationship between the Crown and first nations is altering as Canada has moved away from the employment of the 'Indian agent' to administer reserves to increasing the delegation of authority to first nations. First nations have increasingly assumed greater bylaw governance powers or simply exercise authority outside of the *Indian Act* system. The Crown has a special fiduciary relationship with first nations. However, as the first nations take over decision making, either delegated or

not, the first nation assumes responsibility for its actions. Thus, while the fiduciary relationship remains, the nature of the relationship changes and there is a decreasing degree of fiduciary duty resting with the Crown. Simply put, when the Crown, for example, delegates land management powers to a first nation, that first nation is responsible for the decisions made under that delegation. At the same time, the fiduciary duty of the Crown decreases.

Because INAC has been keen, as a general policy, to stimulate first nation local governance, it has increasingly sped up the process of devolution to bands. Today over two-thirds of INAC's budget is transferred to first nations to administer programs and services[4]. For the most part, given that there are very few first nations with negotiated self-government agreements, this transfer of responsibility has been pursuant to the *Indian Act* system of council government at the band level.

Canada's interests are to continue to remove itself from first nation administration and at the same time reduce the legal exposure of the Crown. Canada seeks to have first nations responsible for providing their own governments and for contributing to the costs of that government. At the same time, Canada is mindful of its current fiduciary responsibility and the conflict this puts the Crown in. On the one hand, the Crown is negotiating with first nations to transfer authority and jurisdiction to them but simultaneously it is responsible for the welfare of first nations peoples until such time as the transfer is effected. With respect to property taxation this paradox is very significant when one considers that Canada has also assumed the role of protecting the interests of ratepayers who are not members of first nations but who are subject to the taxes and other fees levied by first nations. In discharging its responsibility in this area Canada has enlisted the services of the ITAB.

[4] Copies of the form of the funding agreements for these transfers can be found in the ***First Nations Gazette***, 2001 Vol.5, Special Edition. For funding levels and appropriations consult the yearly *INAC Budget Estimates* published by Canada.

However, the reverse is true for ITAB. That is, the ITAB is now an all-aboriginal board overseeing aboriginal taxation with Board members typically hailing from bands that have established property taxation regimes. As such, ratepayers question whether ITAB can objectively represent the interest of ratepayers; a perception that the Board will always have to overcome under its current structure and which is a consideration in establishing the composition of the proposed successor to ITAB, the First Nations Tax Commission discussed below.

Canada's interests on taxation are set out in its 1988 "Gathering Strength" document, which states:

- "A new partnership among Aboriginal people and other Canadians that reflects our mutual interdependence and enables us to work together to build a better future."
- "Financially viable Aboriginal governments able to generate their own revenues and able to operate with secure, predictable government transfers."
- "Aboriginal governments reflective of, and responsive to, their communities' needs and values."
- "A quality of life for Aboriginal people like other Canadians."

The "Gathering Strength" initiative followed on the heel of the publication of the report of the Royal Commission on Aboriginal Peoples (discussed below) with its comprehensive five volumes and hundreds of recommendations on how to improve the lives of aboriginal peoples.

In the light of the Musqueam issues and questions posed by the Opposition in the House, the Liberal government of Canada has come under increasing political pressure from ratepayers on-reserve. This pressure remains voiced by a minority and is not thought representative of the views of the majority of ratepayers who live on-reserve. Nevertheless, those majority ratepayers are watching very closely at how first nation governments continue to implement tax regimes and how their interests are protected through the ITAB and the Minister.

The two areas where the government of Canada has articulated its position on the question of non-member representation are in, 1) a draft working paper on Indian Taxation produced by the Department of Finance in 1993, and 2) in the Government approach to the implementation of the inherent right and the negotiation of Aboriginal self-government in 1995.

The Finance working paper recognised that those persons who are not members of a first nation and are subject to Indian government taxation will have limited political recourse to government; it therefore recommends that in negotiating Indian taxation the federal government should ensure that first nations do not tax non-members at more burdensome rates than it taxes its own people and that federal negotiators should ensure that established economic interests on-reserve are not subjected to punitive levels of tax. The paper, addressing the broader policy questions on taxation and not specifically property taxation, did not suggest how non-members may have input into decisions of Council but does appear to favour the concept of the advisory council.

Canada's approach to negotiating aboriginal self-government expresses Canada's interests in that federal negotiators must address the question of the rights and interests of non-members residing on aboriginal lands. The policy states that where first nations are to exercise jurisdiction or authority over non-members, then self-government agreements must provide for the establishment of mechanisms through which non-members may have input into decisions that will affect those rights and interests. There must also be provision for rights of redress. All federal negotiators negotiating self-government agreements must ensure such mechanisms are in the agreements before approval for signing off on self-government will be given by the senior policy committee at INAC.

Indian Taxation Advisory Board

The Indian Taxation Advisory Board's mandate was renewed in March of 1998. Under the renewed terms of the Memorandum of Understanding (MOU) with INAC, it is recognised that ITAB's remit is to balance the goals and objectives of first nations with

taxpayer's rights to natural justice. ITAB's primary mandate remains to advise the Minister on policy issues relating to the implementation of first nation bylaw making powers. When examining bylaws, the ITAB makes recommendations concerning a number of criteria, which include conformity with the charter of rights and freedoms, compliance with principles of equity and natural justice, and fairness and appeal procedures. Significantly, the ITAB is to advise on ministerial liability.

With respect to taxpayers' concerns, the MOU is explicit that the ITAB is to hear those concerns with respect to individual bylaws and to provide education and information on taxation to those affected by first nation taxation.

The ITAB is also empowered to provide mediation and alternate dispute resolution mechanisms where parties affected and involved in first nation property taxation have a dispute. The Board is also responsible for publishing and disseminating bylaws, which today includes the *First Nations Gazette*. The primarily function of the *Gazette* is to publish section 83 bylaws. However, it also publishes some section 81 bylaws and other legal documents relating to first nations' governance. The ITAB and the Minister under the current MOU (which expires in 2002) are actively working on establishing a permanent statutory body to undertake the functions of the current non-statutory ITAB and to expand its role in the pursuance and development of self-government beyond the *Indian Act*. The ITAB has a very important roll to play in the development of first nations government and a very significant responsibility in balancing the interests of first nation governments and ratepayers. Today the ITAB is responsible, on behalf of the Minister to address the issues of 'taxation without representation' by providing a mechanism to hear the views of ratepayers.

The ITAB interests are to provide a service to both first nation governments and to the ratepayers subject to their taxation regimes, while undertaking its responsibilities through its MOU. The ITAB interests are to develop solutions and models that first nations can adopt to address issues of representation to ensure fairness and equity in first nation tax jurisdictions.

In the future, to assist the ITAB in its challenging roles, the Board is pursuing statutory authority for its functions and to be reconstituted as the First Nations Tax Commission. The Assembly of First Nations supports this direction and the Tax Commission is one of four proposed national first nation fiscal institutions to be implemented by federal legislation in the fall of 2001. Today ITAB exists at the pleasure of the Minister pursuant to policy and has no underlying ability to compel compliance with its directives. In the future, as a distinct first nations' statutory national institution, the Tax Commission will oversee and assist first nations in the exercise of their taxation powers independent of the Minister of Indian Affairs[5].

Adjacent local governments

When first nations began exerting jurisdiction over property taxation some of the earliest feedback, both positive and negative, came from adjacent local governments. Some local governments were concerned that first nations would erode their tax base while others were sympathetic. The response typically depended on the history of each province and whether they allowed non-native local government to collect taxes off of reserve lands. Where local governments were collecting taxes the concern was often the most vocal. The biggest reaction came from local government in BC for the reason described above but also due to the political dynamics of negotiating modern treaties.

In British Columbia where there are few treaties between first nations and the Crown there has evolved in the past nine years since the BC Treaty Commission opened its doors quite a considerable consultation process with non-aboriginals who have indicated that they believe they have an interest in the outcome of treaty negotiations. Local governments as part of the BC Treaty process have indirect representation at the treaty table through advisory bodies established by the federal and provincial governments. Over the course of the past nine years as treaty negotiations have progressed very slowly

[5] See *Responding to Challenges –The Future of the Indian Taxation Advisory Board* May 2nd 2001.

there has been a significant articulation of third party views on a whole range of first nation issues; many of which bear no relation to settling the land question.

With regards to taxation on-reserves and the decisions of first nation governments, during a Union of British Columbia Municipalities meeting in April of 2000, a day long session on aboriginal issues was held, including a UBCM policy direction session on the issue of non-member representation. Officials representing local government indicated that they believed non-natives living on first nation land should, on most maters, have input into the decisions made by first nations' councils with the exception of first nation cultural matters, aboriginal healers, citizenship (membership in a first nation) and the promotion of aboriginal languages and culture. The issues of taxation and representation were raised. In general, most of the participants indicated that non-members should have input into a broad range of decisions including local service delivery, public health and safety, childcare, education, recreation, parks and community planning.

With regards to mechanisms for the input of non-members it was only on a minority of issues that the local government participants felt that their interests could be met with input through advisory bodies. There were suggestions that non-members should be allowed to vote for the council but not stand for office. Clearly the intent was for some degree of participation in the electoral process. There was almost unanimous support that a minimum requirement for non-member representation should be applied to all first nations where non-members resided. Comments indicated that basic requirements could be in the form of principles, the key among them being that if a resident is taxed by an authority he or she must have representation on that authority. It was also felt that it should be left flexible as to how representation of non-members was implemented at a local level. In most cases the participants felt that no input or only advisory means of input for non-members was not adequate.

While the situation in BC is unique in light of the on-going treaty process and the involvement in the process by local government, the above comments of local government representatives are insightful. One could speculate that local governments in

other parts of Canada hold similar views if not always so publicly articulated. With so many first nations collecting property taxes in BC, and with the vast majority of non-members residing on such reserves in BC, the views from the UBCM session are helpful in gauging opinion when developing policy.

Royal Commission on Aboriginal Peoples

In the wake of the Oka crisis the Mulroney government announced the establishment of a Royal Commission on Aboriginal Peoples (RCAP). The RCAP report was published in 1996 and consists of five volumes and is one of the most comprehensive discussions of aboriginal people ever produced. The report makes dozens of recommendations, many of which have not been implemented. For its part Canada responded to RCAP with "Gathering Strength" a policy aimed at beginning to address the recommendations. Volumes 2 (Part One) of RCAP comprehensively considers issues of first nations governance including taxation.

With respect to financing aboriginal government RCAP made a number of specific recommendations that have bearing on the relationship between ratepayers living on first nations lands and governance. A strong theme in RCAP is self-reliance. RCAP recognizes that aboriginal governments need access to independent sources of revenue and access to fiscal instruments such as taxation. It recognized that fiscal arrangements needed to be structured so as to provide for aboriginal self-reliance for first nations to meet their own governing responsibilities[6]. At the same time with respect to non-aboriginal residents on reserve lands it said, measures will have to be taken to ensure that non-aboriginal residents are represented in the decision-making processes of the aboriginal nation government[7]. RCAP recommendation 2.3.22 states:

> Non-Aboriginal residents be represented effectively in the decision-making processes of Aboriginal nation government.

[6] RCAP Vol. 2, Part 1, p. 281
[7] RCAP Vol. 2. Part 1, p. 293

BC Civil Liberties Association

Responding to a request by leaseholders on the Musqueam Indian reserve to investigate their complaints about unfair treatment under the Musqueam Band's property tax regime, the BC Civil Liberties Association prepared a position paper entitled, “Democracy and aboriginal self-government; considering the rights of non-aboriginal residents in First Nation jurisdictions”.

The document sets out six principles which are summarised in the Paper as follows:

> **Principle One:**
> Aboriginal authority to impose property taxes on non-Band/First Nations leaseholders under the Indian Act raises civil liberties concerns. The use of such authority is an example of a First Nation acting as a government authority, rather than as simply a party in a private contract. Aboriginal taxation authority is part of a greater trend to provide First Nations with greater autonomy culminating in self-government treaties.
>
> **Principle 2**
> People who live in aboriginal jurisdictions, but are not band members, have no right to membership in the aboriginal political community.
>
> **Principle 3**
> Residents of aboriginal jurisdictions have a right to participate in decision-making regarding matters that directly affect them.
>
> **Principle 4**
> Canadian citizens who are not members of an Indian band have a right to participate in government decision-making that affects them in aboriginal jurisdictions because they retain some significant degree, though it may be necessarily attenuated in aboriginal jurisdictions, of their sovereign status throughout Canada. The right of citizens to participate meaningfully in decision-making is a fundamental characteristic of Canada’s democracy.
>
> **Principle 5**
> To balance the competing principles of aboriginal self-government and non-aboriginal residents’ rights to participate in decision-making, when the non-Native population is close to, equals, or outnumbers the aboriginal population in an aboriginal jurisdiction, then procedures must be weighted to respect aboriginal self-determination.

Principle 6

Non-aboriginal residents' participation may reflect the process of decision making used by the aboriginal community. For example, if an aboriginal community uses a consensus-based decision-making process, then non-aboriginal residents might sit at the table and participate as equals in the deliberations. If the aboriginal community uses democratic institutions like voting or appointing representatives, non-aboriginal residents might participate in the same way as First Nations people. A purely advisory body for non-aboriginal residents will only be "meaningful" if the residents agree to forego other types of participation.

The BCCLA position is insightful as it clearly shows that there are many issues to the question of representation from an academic, legal and philosophical perspective. Notwithstanding this important debate it is equally important to consider what is working or not working across Canada where non-members of first nations live or conduct business on-reserve and what mechanisms for consultation are already in pace or contemplated. Part II, following, considers seven case studies looking at issues of representation; some first nations and some that are not.

Part II: Case Studies

Chapter Four:
Tsuu T'ina Nation
Townsite of Redwood Meadows – Calgary, Alberta

The Tsuu T'ina case is extremely interesting and currently unique among first nations in Canada[8]. Approximately twenty miles west of Calgary there is a residential subdivision called Redwood Meadows of some 350 homes, housing some 1200 people. The development was started in 1974 by the Sarcee Indian Band (as the Tsuu T'ina Nation was then known), by the Band's wholly owned development company Sarcee Developments Ltd.

In the early years of the development, Sarcee ran into financial difficulties. The residents who had already purchased their leases formed their own townsite of Redwood Meadows Administration Society. The townsite society began to manage the development as an enclave within the reserve governance structure. For its part the Band agreed with these arrangements as the residents of Redwood Meadows assumed the financial responsibility for managing the development and the provision of local services.

An administration agreement reached between Sarcee Developments Ltd. and the Townsite of Redwood Meadows Administration Society formalises the somewhat unorthodox legal relationship between the Development Company, the townsite and indirectly the Band. Practically speaking, today the townsite operates as a quasi-Albertan municipality. What is intriguing is that although there are unanswered legal questions regarding the unique arrangements, the townsite operates for all intents and purposes as if it were a provincial creature. The townsite elects its own mayor and councillors, levies

[8] The author would like to thank Ms. Debbie Field, Townsite Manager, for her time and assistance in providing the background information on Redwood Meadows.

and collects taxes from the residents, has its own budget, decides what services are to be provided and provides all the administration. The Alberta government has by Order in Council recognised Redwood Meadows Townsite eligible to receive municipal grants from the Province. The administration also routinely files reports with the Alberta Municipal Affairs Department. The Tsuu T'ina Council receive no taxes from Redwood Meadows but, conversely, provides no services.

A contracted Alberta property assessor assesses properties within the development, and tax notices are prepared locally. The townsite has recently built its own administration office and has two office staff. With regards to school service, the townsite formed a school district and collects provincial school taxes which are then transferred to the Government of Alberta.

The Redwood Meadows Administration Agreement purports to transfer jurisdiction over taxation and to assign local government jurisdiction to the townsite. Sarcee Developments Ltd., as a provincial company, does not have the authority to delegate governance powers which itself does not possess. Under the *Indian Act*, which governs the Tsuu T'ina Nation reserves, the Chief and Council, let alone a development company, does not have the authority to delegate its jurisdiction. Delegation as a power of self-government is only possible where a first nation is operating outside of the *Indian Act* under legislation that provides for delegation of law making jurisdiction or administrative authority or both.

Despite legal questions which are beginning to come to the surface in light of a recent decisions of the Alberta Energy and Utilities Board regarding the imposition of a recently imposed Tsuu T'ina property tax on utilities, the arrangements at Redwood Meadows appear to be working well for the ratepayers and relations with the Nation are good. It appears to be a case of 'out of sight out of mind'. Assuming that this type of model suited a first nation that did not wish to have any responsibility for the provision of services to non-members, this model can work if the authorities are properly constituted. For many first nations this may not be acceptable given that they are forgoing jurisdiction in favour

of non-members and could loose control of significant portions of their reserves. There are of course, limited benefits to the broader reserve community when enclaves within the reserve are collecting and spending tax dollars in those enclaves. The ability to use resources throughout for common local public purpose is taken away.

Chapter Five:

Westbank First Nation – Kelowna, BC

The Westbank First Nation (WFN) is located in South Central British Columbia on Okanagan Lake adjacent to the city of Kelowna. The Westbank Reserves are located on prime commercial development lands and currently home to approximately 8000 non-Westbank Band members. As indicated in Part One the non-native residents that live on reserves in British Columbia represent approximately 70% of the non-aboriginals living on-reserves across Canada. In British Columbia the non-native residents are really only living on a handful of reserves. Westbank First Nation alone accounts for one third of all non- natives living on reserves in BC. This means that approximately one quarter of all non-natives who live on Indian reserves in Canada live on Westbank's reserves; specifically Tsinstikeptum IR9 and Tsinstikeptum IR10.

The Westbank Band membership roll is approximately 550 people of which some 400 members live on-reserve which means that the non-native population is some twenty times greater than the native population. The non-native residents significantly outnumber the Band members. The non-native residents live in a variety of sub-divisions the first of which was built in 1973. Residential leases are typically 99 years in length and prepaid.

The majority of the non-member residents at Westbank live in some 13 manufactured home parks dotted throughout the reserves, many of which were established in the 1960s. There is also considerable commercial development that now contributes substantially to the property tax base and provides some balance on the tax roll that is still heavily skewed towards manufactured homes.

During the 1980s the Westbank First Nation was subject to a Federal Inquiry which resulted in the 1988 Report of John E Hall QC concerning certain matters associated with the Westbank Band. A significant part of the report concerned the relationship between

non-native residents and the Band Council and its administration. At the time of the Inquiry Westbank was not collecting property taxes which were being collected by the province of BC on behalf of the Central Okanagan Regional District. However, the pith and substance of the issues raised by the ratepayers in the Inquiry hearings had to do with questions of representation and equity.

The Inquiry considered issues of rent increases and land management and the role of the Council. The Inquiry concluded that Indian Band government "must be run in an orderly and business like fashion," continuing that, "this will create a climate of confidence among Band members insuring better relations between the Band and outsiders dealing with the Band.[9]" In looking at these issues, Hall remarked that there will be inevitable tensions between Indian and non-Indian groups and in practical terms this means conflict between Indians and Governments. He states, "some issues will be susceptible of a political solution, others may become the subject of litigation in the courts. These tensions are and will continue to be painful to all concerned, but they are doubtless a necessary concomitant to the passage of Indian people from a lesser to a greater status in Canadian Society".

Specifically with regards to taxation, at the time Hall was writing, the Kamloops amendments were being prepared for Parliament. In his recommendations, Hall supported the Kamloops amendments and he encouraged INAC to furnish technical and advisory assistance to Bands to enable the spirit of the amendments to be realised.

In making his recommendations, Hall noted that there was a need for care and caution with respect to the impact of the change on non-Indians holding interests on Band lands. He pointed out that existing commitments must be honoured bearing in mind that change is inevitable, reflecting on the fact that lessees on reserve are no different than people subject to municipal laws because these laws also change.

[9] Hall, 1988 p. xvi.

Hall wrote, " The Department has recognised that conferring taxation powers on Band Councils can give rise to an apprehension on the part of non-Indian lessees, that they may face taxation without the usual safeguards. It is as basic as the complaint that underlay the American Revolution – 'No taxation without representation'. This issue must be slowly (and fairly) resolved if controversy is to be avoided.[10]"

Westbank passed its first property assessment and taxation bylaws in 1990 following the passage of the Kamloops amendment[11]. Perhaps surprisingly, given the recent publication of the Hall Inquiry, there was very little ratepayer concern expressed over the Band assuming property taxation powers. In part this can be attributed to the manner in which the bylaws were introduced, with significant public discussion in the local media. It was made very clear that the rationale for assuming delegated authority over property taxation was to ensure that taxes from ratepayers on the reserve stayed on the reserve and were invested in community infrastructure. The fact that the regime was endorsed by INAC and overseen by the ITAB, with ultimate approvals for bylaws coming from the Minister, provided assurance to ratepayers that there would be no unexpected problems or surprises with the Westbank First Nation assuming taxation authority. This was in sharp contrast to the reaction of ratepayers at Musqueam (discussed below) where the issues of rent reviews clouded the transition to first nation's property taxation.

Since its problems during the 1980s with the manufactured home parks that in part led to the Hall Inquiry, WFN has been mindful of the importance of its relations with its on-reserve residents that are not band members. There was an explosion of residential development in the 1990s as sewer and water were brought to the reserve. This was in part attributable the assumption of property tax jurisdiction which enabled the Band to negotiate sewer service with the Central Okanagan Regional District and then use the tax proceeds to support the construction of water mains.

[10] Hall, 1988, p. 429.

[11] The author would like to thank Ms. Deanna Hamilton, the Surveyor of Taxes at Westbank since the inception of property taxation at Westbank for her assistance in preparing the background to the Westbank Case Study and to the members of Interim Advisory Council, Mr. Ray Manzer, Ms. Avril Bleiler, Mr. Nick Carter, Ms Katja Maurmann (Chairperson) and Mr. Jim Maxwell for their insights.

A distinction can be drawn between the perspectives of long-time residents at Westbank who had moved to the reserve prior to the Band's assumption of increased authority under the *Indian Act* and those who moved subsequent to the expansion of WFN local government under the *Indian Act* between 1990 and the present. Although there was no publicly articulated concerns by the residents from the older residential subdivisions on Westbank lands, namely Lakeridge Park, in private some residents did express apprehension as what was perceived as changes to the governance conditions that were in place when they purchased their 99 year lease, in some cases 17 years before. At the time these residents purchased their leases the province collected their taxes on behalf of the Central Okanagan Regional District. The residents who purchased their homes following the WFN assuming property taxation in 1990 were aware of the Band's bylaws given the system was already in place before they arrived. In fact, the newer residents can thank the property tax system for helping to establish the subdivisions they would ultimately come to populate.

The taxation office of the WFN has maintained an open relationship with the ratepayers since the onset of Westbank taxation. When the regime was established no formal advisory structures with ratepayers were set-up or requested. The Lakeridge Park sub-division had established for some time its own home-owners association as a registered society and subsequent residential developments established similar bodies. These bodies had free access to the Chief and Council and could have questions answered about the property tax system from the tax office which supplied basic statistics and information to the ratepayers and the general public.

As the WFN developed its tax system it was also continuing to pursue 'self-government'. In the mid 1970s Westbank, along with a number of other progressive communities including Sechelt, Tsawwassen, Musqueam, Squamish and Burrard, formed an alliance to pursue greater local government control over their reserves and to explore options for local self-government. At this time, the group was raising issues of taxation. Eventually Sechelt proceeded with its own community specific legislation as described below.

Westbank, while supporting Sechelt in their endeavours, did not complete self-government arrangements prior to the Hall inquiry.

Following the Hall Inquiry, which recommended structural changes to the way first nations government operated (self-government), Westbank renewed its pursuit for major structural reform through negotiations with Canada. Formal self-government negotiations commenced in 1989 and in 1990 a Framework Agreement was signed. This occurred at or about the same time WFN was developing its taxation system under section 83 of the *Indian Act* within the limitations of local governance under the *Act*.

The self-government negotiations at Westbank were well publicised and the non-native residents soon became aware of the negotiations. There was some confusion by the ratepayers who made the assumption that because the WFN was collecting property taxes they were already 'self governing' with the structures and procedures of government in place that are necessary to support the exercise of tax jurisdiction. Without the legal certainty of governance that specific self-government legislation provides, as in the case of Sechelt and the modern land claims successfully completed to date, Westbank as with most Bands runs its affairs based on the policy of the council of the day. The policies of the Band government are set out in resolutions of the Council and in the some 40 bylaws that various administrations have introduced over the years under section 81 and section 83 of the *Indian Act*. While this structure provides some certainty of governance, it is subject to being changed by subsequent councils of the Band and does not have the force and effect of a community constitution that can only be amended or appealed by a majority of the community members that approved it in the first place.

As the WFN moved closed to a self-government deal and the number of non-native residents increased as more residential lots were sold, so did the need for non-native involvement in the negotiation process similarly increase. In 1998, in response to a request by the Lakeridge Park Homeowners Association to the ITAB to facilitate a meeting between the Band, the homeowners and ITAB on various policy matters, it became clear to all involved it was time to formalise the relationship between the

ratepayers and the Band. This was particularly important as questions from homeowners about the participation of ratepayers in Band affairs following the passage of self-government legislation became more frequent.

The Westbank Self-government Agreement-in-Principle was signed in 1998 and makes specific provision for non-member representation. The language on non-member representation was modified for the Final Agreement that was initialled by negotiators in July of 2000. Under the terms of the Agreement, non-members living on Westbank lands (or having an interest in Westbank lands) will be provided in Westbank law with mechanisms through which they will have input into those laws that directly and significantly affect them. This will include the tax administration system. The Agreement also provides that this mechanism for non-member representation must be in place within 30 days of self-government coming into effect or prior to this date, whichever is sooner. Once the mechanism is in place it cannot be repealed without the consent of a majority of the non-native members.

With respect to property taxation, the Westbank Self-government Agreement maintains the status quo under section 83 of the *Indian Act*, which includes the requirement of outside approval of Westbank's property tax law. This was important to the ratepayers.

The mechanism that has been chosen at Westbank with the input of ratepayers, following a series of ratepayer meetings with representatives of the diverse non-native resident population, is the establishment of a formal Advisory Council. The Advisory Council has been modelled on Sechelt's that has worked well in that community for fourteen years and is described below. The significant difference with Sechelt is that the Sechelt Advisory Council is expressly set out in the Provincial legislation. At Westbank, the self-government agreement speaks only of a mechanism for non-members to have input where their interests are directly and significantly affected by the decisions of the Band Council. In this way the local community, including the non-member residents, can amend the mechanism if there is a mutual desire to do so.

The WFN Advisory Council, as at Sechelt, will not have a veto over the decisions of Council but may be delegated certain powers and responsibilities. Until such time as self-government is in place at Westbank, the Chief and Council have appointed an interim Advisory Council. In developing the Advisory Council the non-member residents wished to divide the Westbank reserves into five wards, each with approximately the same number of residents and each representing a distinct geographical community at Westbank. The interim Advisory Council is made up of representatives from each of these five wards. The duties of the Advisory Council are to assist in the development of a servicing programme for Westbank lands, including the cost of the plan and other matters of local government that effect them such as land use planning and community bylaw development.

The WFN interim Advisory Council meets monthly and since the members' appointment they have participated in discussions on the local taxation budget as well as the proposed capital projects of the Westbank First Nation. The Advisory Council is paid an honorarium of $150 a meeting plus reasonable expenses, has offices in the WFN administration building and is covered by the WFN's officers and directors liability insurance policy. Under self-government the Advisory Council will be elected. The ad hoc community group that developed the Advisory Council also assisted in the preparation of the procedures that will be used in the election of Advisory Council members. These procedures have been codified.

Without the passage of self-government, the mechanism for resident participation in the affairs of the Band remains subject to the policy discretion of the Band Council. The mechanism that has been established both on an interim basis and permanently contemplated under self-government will provide for ratepayer input that must be considered by the Chief and Council but it does not extend to the non-member ratepayers the franchise to participate in the elections fore Chief and Council.

Chapter Six:

Musqueam Indian Band – Vancouver, BC

The Musqueam Indian Band is located on Vancouver's affluent South Side. The Band has a membership of approximately 1000 with some half living on-reserve. There are approximately 700 non-member residents with most living in one of the two distinct sub-divisions. The non-member resident population at Musqueam is well organised.

Musqueam was one of the first Bands to express an interest in taking over property taxation on their reserves following the Kamloops amendment. When the residents realised that the Musqueam Indian Band was proposing to introduce property taxation bylaws in 1990, the residents expressed strong opposition[12]. The opposition at Musqueam can not simply be explained as a result of the band taking over control of property taxation but must be considered in light of what was to become by the middle of the 1990s a very serious issue at Musqueam to do with rent reviews under the leases for the residents of the Musqueam Park subdivision.

At Musqueam this was, and still is, a significant issue because the properties are very valuable ranging from $300,000 to $500,000 and their lease arrangements are controversial. The terms of the Musqueam sub-leases that began in 1965 specified that the rent for the first 30 years would increase from approximately $300 per year to approximately $400 per year. According to the lease the rent would be reviewed after the first 30 years and at that time set at fair market value. Therefore coincidental with the Musqueam Indian Band assuming taxation authority was the realisation by rate-payers that their rents would be going up significantly in 1995 having had exceptionally cheap rent by anybody's standards for the better part of two decades. The rent would be calculated as a percentage of the value of the land (not improvements) with rents somewhere in the range of $15,000 to $30,000 a year.

The legal details of the rent dispute are not necessary for the purposes of this paper sufficed to say that the situation at Musqueam was special in that the issue of taxation and the role of the ratepayers became inextricably linked to the setting of rents on the reserve for Musqueam Park.

The residents of Musqueam Park, it appears, began taking whatever action they could to create a body of evidence to support the position that leasehold land was not worth as much as non-leasehold land so that consequently their rents could be negotiated lower. With this in mind one can understand why in the last year of the BC Assessment Authority being responsible for property assessments on the Musqueam Reserve under the jurisdiction of the Province, en masse the residents appealed their assessments to the Court of Revision. They argued that their properties should be valued at levels below values off-reserve, given the terms of their leases and the fact they were on Indian land. They were successful in their appeal and the assessments were rolled back.

The BC Assessment Authority contemplated appealing the decision but chose not to do so. When the federal Minister of Indian Affairs approved the Musqueam's Assessment and Taxation Bylaws in February of 1991, the BC Assessment Authority restored the property values back to fair market value based on comparisons with off- reserve properties. This action was followed by another mass appeal by the residents of the very first Musqueam property assessments pursuant to the recently enacted Assessment Bylaw.

In the first year of Musqueam taxation the residents did not pay the $10 Board of Review filing fee and the Board dismissed their appeals. In the following year the Board of Review held in favour of the ratepayers and discounted the reserve assessments by 24%. Two years later revisions to the Assessment Bylaw were made to make it explicitly clear that properties on-reserve were to be assessed at fair market values as if off-reserve. This

[12] The author would like to thank Mr. Larry Fast for his assistance in providing the background to the events that transpired at Musqueam that led to the creation and operation of the Advisory Council.

amendment to the Musqueam Bylaw was consistent with other first nation assessment bylaws in British Columbia.

This amendment to the Musqueam Bylaw was one of a number that the Musqueam Band were making at the time. The BC Assessment Authority was reluctant to accept the package of amendments to the Musqueam Bylaw unless the amendment establishing fair market value at off-reserve levels was included. The amendments went through and the ratepayers were extremely upset, which triggered yet another series of mass appeals to the assessed values.

Despite the opposition of ratepayers to the Musqueam Band assuming authority over property taxation and the over-riding rent issues, the Musqueam Chief and Council established by resolution of their Council a formal resident advisory body; the Musqueam Indian Band Taxation Advisory Council.

The Advisory Council consisted of ten members, 50% Musqueam members (most of whom were on Council) and 50% ratepayers, (who were elected). Two ratepayers each represented the two primary subdivisions and one represented the commercial tenants. The Advisory Council was appointed for two year terms commensurate with the term of the Chief and Council. The Council had a floating chair and formal minutes were kept. The Advisory Council worked moderately successfully until the issues of the rent renewals became overwhelming. This issue created entrenched positions on both sides of the advisory structure and it broke down. Residents complained the Band member reps would not attend meetings and the Band member reps complained the residents would disagree with everything they proposed.

At the monthly meetings the ratepayers increasingly took the position that they had no authority and no power and consequently did not approve anything. The intention of the Advisory Council at the outset was that all matters concerning property taxation, including the setting of rates, expenditures and bylaw amendments, would be brought before the Advisory Council and that the Chief and Council would not proceed until there

was agreement of the Council. It was made very clear to the ratepayers that they would not be able to elect members of the Chief and Council and it was not possible to turn jurisdiction over to them. Nor, if it were possible, would the Council entertain this idea.

The ratepayers presented a paper to the Musqueam Chief and Council, which was shared with ITAB and the Minister. They proposed an amendment to the *Indian Act* to give them full voting powers on expenditures of taxation funds. Musqueam would retain voting exclusivity on non- taxation issues. The ratepayers would have 50% control and their involvement would be non-advisory and statutory. The ratepayers invited Musqueam to jointly propose these amendments to the government of Canada. This did not happen and the Advisory Council collapsed.

The Advisory Council is still technically in existence today at Musqueam but at the time of writing was not meeting. The issue of the rents is being resolved through the Courts and perhaps relations will improve in the near future. The experience for all involved could not been good although some lessons can be leaned from this experience.

The Musqueam case study for this paper on the role of Advisory Bodies clearly demonstrates that there are no simple solutions. In most instances where there is a fairly good relationship between ratepayers and a Band, as represented by Chief and Council and where there are no overriding issues, such as the rent review at Musqueam, Advisory Bodies are working. For instance, at Songees on Vancouver Island there is an ad hoc advisory structure, which while not formalised ensures that there is good communication between all parties. At Songees there is considerable discussion between the ratepayers and the Chief and Council.

When looking at what distinguishes Musqueam and Songees and other first nations with non-member residents, is not just the unique and controversial terms of the ratepayers' leases with the Crown, but the fact that the investment that the ratepayers have in their leasehold improvements is quite substantial. At Songees the ratepayers are predominantly manufactured homeowners where the level of investment is typically

under $75,000; in most instances where the manufactured homes are newer, the tenant has the ability to move their asset. Where the ratepayer is a commercial tenant with typically a lease of between 5 and 15 years, the investment horizon is significantly shorter and fundamentally different than the investment perspective of a homeowner purchasing a 99 year lease. The perception of the homeowner of a 99-year lease is analogous to the property owner across the street who is off-reserve, where the ratepayer treats the property as his or her own. This is a different conception of property than is held by the manufactured home owner or the business person with a commercial lease.

In examining options for ratepayer participation in decision making we must therefore distinguish between the types of stake the ratepayers have in the reserve. What may be acceptable and work in a situation where the ratepayers are predominantly manufactured home owners or commercial tenants may be quite different from what is emerging as necessary where there are long-term residential leases. The question of types of tenure on-reserve cannot be divorced from the issue of taxation and the designing of appropriate input into the decisions of Chief and Council that affect their legal interests. First nations must seriously consider the political impacts of long term residential leases.

The Musqueam case study shows how difficult it is, even with the best intentions, to develop advisory bodies that are acceptable to both ratepayers and the Council, when there are significant governance issues outstanding. As first nations are establishing their systems of local government it is harder to work through these issues where there are more interests involved and where there may be conflicting priorities and goals. The need for reform to first nation government and to establish systems of land tenure outside the *Indian Act* and INAC all will have an impact on the ability of first nations to implement property taxation systems that can address the full range of issue of ratepayers. There is no solution that is entirely satisfactory for this problem of a tenant with a long-term lease. Where ratepayers' interests are smaller in nature and not as emotional as 'home ownership' then the stress on political relationships is perhaps also less?

Chapter Seven:

Sechelt Indian Band/Sechelt Indian Government District – Sunshine Coast, BC

Sechelt was the first self-governing Band in BC in what is often referred to as quasi municipal model of self-government. It is unique in Canada[13].

In October of 1986 the federal *Sechelt Indian Band Self Government Act* came into force. The Province of British Columbia proclaimed *The Sechelt Indian Government District Enabling Act* approximately nine months later.

Sechelt's location on British Columbia's Sunshine Coast and its proximity to Vancouver has resulted in a number of economic developments on Sechelt lands and consequently a high number of non-Indian residents living on those lands that were affected by the self-government arrangements. There are a total of 450 residential leases and approximately the same number of non- band member residents as member residents.

Legal council for Sechelt for the self-government negotiations described the role of non-Sechelt members as follows:

> "What has essentially happened here is that the Sechelt Band Council has gone to its non-Indian residents and said: 'We're going to create a form of government for all the residents with whom you will be familiar. This has nothing to do with our Indian government…. It is merely a way of dealing with the fact that non-Indians are resident on our land and must be accommodated in a fair, reasonable manner.'

[13] The author would like to acknowledge the assistance of Mr. Harold Fletcher, Administrator, Sechelt Indian government District for his assistance in providing background material on the Sechelt Indian Government District and on the operations of the Sechelt Advisory Council.

The Sechelt Indian Band Self Government Act establishes the Sechelt Indian Band Council as the governing body of the Band with its members elected in accordance with the Constitution of the Band. The Council, to the extent that it is authorised under its Constitution, has the power to make laws in relation to all matters that concern the non-native residents living on Sechelt lands. This includes zoning and land use planing, expropriation, public order and safety, the construction and maintenance of roads and taxation for local purposes, including assessment, collection and enforcement procedures. The Council may also create administration bodies and agencies to assist in the administration of the affairs of the Band. This is not an exhaustive list but provides an indication of the level of final authority the Band Council has over its reserves.

In addition to the Band Council, the *Act* recognises the Sechelt Indian Government District. The District is a legal entity and the Council of the District consists of the members of the Band Council. The purpose of the District Council is to make a link to provincial statutes and specifically municipal law. The Governor in Council can transfer to the District Council any of the powers of the Band, or the Council, or the Constitution to the District, with the exception of powers relating to Band membership or the disposition of rights and interests in Sechelt Land.

The Sechelt Indian Government District Enabling Act then transports to Sechelt aspects of the municipal law of the province of BC. Consequently where in the exercise of its powers of self-government under the federal *Act* the District Council passes a law, or bylaw, that a municipality has the power to enact under an Act of the province, these laws or bylaws are treated to have been enacted under the authority of that Act of the province. This means that the regulatory structure surrounding the municipal bylaws applies to Sechelt Law. It means also that Sechelt becomes eligible for municipal benefits. With regards to taxation, the *Act* allows for the Lieutenant Governor in Council to suspend the liability of persons subject to taxation under the *Municipal Act* and the *Taxation (Rural Area) Act*. This is to stop double taxation.

Section 2 of the provincial enabling *Act* establishes an Advisory Council to be set through regulation. The purpose of the Advisory Council is to represent all the residents of the Sechelt Indian Government District. It is this Advisory Council which squarely addresses the issue of non-Indian representation on Indian lands. It is a unique and creative solution to the question of representation.

The Lieutenant Governor in Council's power to make regulations in relation to the Advisory Council includes: 1) the power to appoint or provide for the appointment of members of the Initial Advisory Council and for the election of their successors; 2) to authorise and empower the Advisory Council to receive from the District Council and to expend money required for the conduct of elections and for the conduct of the business of the Advisory Council, and; 3) the power to confer on the Advisory Council any powers, duties and functions considered necessary or advisable to carry out its purpose as an Advisory Council to the District Council.

The Sechelt Advisory Council consists of five individuals, four of whom are chosen on the ward system and one chosen at large. The members of the Council choose the Chairman of the council. Elections for representatives are conducted under parts 2 and 3 of the *BC Municipal Act*. Their elections are held every three years. Members of the Advisory Council receive approximately $240 per meeting.

The Advisory Council is responsible for planning servicing programs for Sechelt Lands, estimating the cost of the program, recommending the servicing program, including the proposed financing for it, to the District Council. The Advisory Council can also receive petitions from residents relating to the provision of a service. The servicing program can be for part or all of the District Lands and consequently can apportion costs accordingly for local service areas. In addition, the Advisory Council has a general power to consider or make recommendations to the District Council.

Perhaps the most interesting aspect of the Advisory Council is that it is authorised and empowered to receive money from the District Council to pay its expenses, including the holding of elections of its members and to pay for its servicing program.

The Sechelt Advisory Council currently administers its own budget and the Administrator of the Band can approve expenditures of the Advisory Council up to $5,000 with the Chief and Council approving expenditures above this. The Advisory Council meets once every six to eight weeks and operates as a small rural area might operate within the province. The District Council has a seat on the Sunshine Coast Regional District and there is a very close working relationship between the Band and the Regional District. There is also a very close working relationship between the Advisory Council and the Band. The Advisory Council does not participate directly on the Regional Board.

The Advisory Council has at its disposition the services of the Sechelt Band Council and the District Council Administration; that is to say they are directly linked to the Band's accounting personnel and administrator. From a review of the minutes of the Sechelt Advisory Council it is apparent that they are primarily involved with very local matters such as dog control, unsightly premises and planning etc.

From a structural perspective, the District Council retains considerable power over the Advisory Council. However, it is unlikely that this power would be wielded in a manner to undermine the role of the Advisory Council which has assumed the responsibility of many municipal functions that would otherwise have to be decided by the District Council. By being directly responsible for establishing a servicing plan, the Advisory Council is effectively setting its own tax rates for local services that the ratepayers deem important.

While the Advisory Council is only responsible for approximately a quarter of the taxes collected, it nevertheless represents an important degree of local control for the ratepayers. The openness of the District Council provides comfort to ratepayers on

knowing how the balance of the tax collected is administered. By coming under the provincial statutes, the Sechelt District revenues and expenditures are tabulated along with other municipal statistics in British Columbia and consequently comparisons can be made regarding priorities and efficiencies.

Notwithstanding the federally established Band Council, the Lieutenant Governor in Council has the jurisdiction to confer on the Advisory Council quite wide powers which through the operation of the provincial statues in respect of Sechelt bylaws, can influence governance at Sechelt through its control of municipal benefits. This is an effective balance of power which in practice has worked well as there have been no significant problems with the manner in which the Band Council, District Council and Advisory Council have functioned. In fact, it is an excellent example of co-operation and is a creative solution to the question of representation of taxpayers who are not Band members. As a model that could be applied elsewhere there are significant limitations.

Most significantly, the model requires provincial and federal co-operation in establishing a legislative base for a Band governance outside of the *Indian Act*. When Sechelt negotiated its municipal form of self-government it came under considerable criticism from other first nations that claimed the model of governance was not commensurate with their philosophical perspective on aboriginal self-determination. In short, the approach did not meet their aspirations for governance. In reality, the model developed at Sechelt satisfies the quasi-urban nature of the reserve, the high number of non-aboriginal residents and the community's desire to pursue economic development.

The powers conferred on Sechelt through the two complimentary provincial and federal Acts are far broader than the powers under the current *Indian Act*. While this has subjected Sechelt to provincial legislation that might otherwise not have applied, Sechelt has benefited from municipal revenue-sharing and being a part of the broader community of BC Municipalities. Sechelt participates in the Union of BC Municipalities and provides a voice from a first nation perspective as well as from the perspective of a governing entity that has a unique local government identity.

There are a number of lessons that can be learned from the Sechelt history. The first is that regardless of political apprehension at addressing the issue of non-member residents, by confronting the issue directly and establishing meaningful mechanisms for non-member participation, there is less chance for misunderstanding and confrontation. Relatively speaking, when the Sechelt legislation was enacted the number of non-native residents who had lived on the reserve for any significant period of time was limited. As the number of non-native residents increases and economic pressures become more of an issue, if there are no mechanisms to involve ratepayers in decision making then administration becomes increasingly difficult. The Advisory Council, therefore provides a solid base on which dialogue can be conducted between the Band Council and non-member residents.

Chapter Eight:

James Bay Cree and Inuit – Northern Quebec

The James Bay and Northern Quebec Agreement signed in1975 pertains to both the Cree and Inuit. The Cree consist of eight bands and the Inuit thirteen villages. This agreement was the first modern land claim in Canada and was ratified by Quebec in 1976 and by the federal government in 1977. The self-government provisions for the Cree pursuant to federal enabling legislation was not passed until 1984. The enabling legislation for the Inuit local government was passed by Quebec in 1978. A number of Inuit communities did not feel the agreement adequately addressed self-government and new negotiations began in 1990 with a framework agreement signed in 1994.

Notwithstanding the questions of implementation of self-government for the Inuit pursuant to the 1975 agreement, the governance package for the Cree and Inuit both addresses property taxation and (indirectly) the role of non-aboriginal residents living on settlement lands under the jurisdiction of the Inuit or Cree. With respect to the Inuit, the local government is not limited to membership. All residents, regardless of whether or not they are Inuit, may vote, be elected and participate in the government structure. In these remote northern communities almost 90% of the population is Inuit. Each of the thirteen villages is incorporated as a municipality under the *Quebec City and Towns Act*. Thus, subject to some modifications as set out in the 1975 agreement, the rules for maintaining and running the property tax system are the same as for any other Quebec municipality under the *City and Towns Act*.

With respect to the Cree, their local government is distinguished from the Inuit because the Cree have a form of local government that is ethnic in character and under federal jurisdiction; in addition, there is provision for local government on other lands which is not ethnic in character. This is accomplished by splitting what is referred to as ‘Category 1 lands’, (or to express it another way the primary lands where both the Inuit and the Cree have jurisdiction and where they live), into ‘1A’ lands and ‘1B’ lands. The 1A lands are

under federal jurisdiction and the 1B lands under provincial. Jurisdiction over 1B lands is through provincially-created corporations. At the time of writing there was no housing or other settlements on category 1B lands and consequently no need for day-to-day local government. Non-members can reside on Category 1A lands where permission is granted from a Cree Council. At this time, about 95% of the residents living in these Cree communities are Cree. There appears to be no provision for non-member participation in the statutory framework for governance on 1A lands.

The writer is not aware that either the Cree or the Inuit bands have established property taxation regimes pursuant to their self-governing authority, either under federal jurisdiction or pursuant to the *Quebec City and Towns Act.* The main point here, however, is that in the context of this first modern land claim the Cree and Inuit communities did address the issue of property taxation and representation.

Chapter Nine:

University Endowment Lands, UBC –Vancouver, BC

In British Columbia's rural and unincorporated areas, regional districts and improvement districts under the *BC Municipal Act* provide local government. In urban areas local government is provided by municipalities established under the *Municipal Act* and in the case of the City of Vancouver under the Vancouver Charter.

The University of British Columbia Endowment Lands are a special case[14]. These lands are situated in the unincorporated area west of the City of Vancouver between English Bay and the Fraser River. The lands include the Pacific Spirit Regional Park, the University Hill community and all the UBC lands with the University buildings, which constitute Electoral A of the Greater Vancouver Regional District (GVRD). Despite being an electoral area and attached to the GVRD, the residents, businesses and property owners of Electoral Area A, do not have local government typical of other areas and are covered by quite unusual arrangements which are unique in Canada.

The University of British Columbia is governed under the provisions of the *Universities Act* and as part of this Act provides a variety of services to its residents, tenants and those living on University Hill and Hampton Place. Hampton Place, located on campus, is an up-market residential sub-division of substantial and high priced homes. The permanent residents on UBC owned lands are ruled by the University's Board of Governors, rather than by an elected mayor and council. The UBC Board of Governors collects property taxes from Hampton Place residents and other UEL residents and oversees the provision of local services through its management arm, UBC Properties Ltd. Tenants buy a 99 year lease on their properties while title remains with the University.

Residents of Hampton Place have a voice through their strata councils, which meet regularly with UBC officials who manage the residential developments. Through their

strata councils 'access agreements' to use Vancouver libraries and UBC athletic facilities have been negotiated. These services are paid for through the annual property taxes which are levied by the UBC Board of Governors at the same rate as equivalent properties in the City of Vancouver.

Interestingly, a few years ago a governance committee for Electoral Area A was established by UBC, GVRD and the BC Ministry of Municipal Affairs to make recommendations for the future governance of the electoral area. The committee was made up of representatives from the GVRD the City and UBC. Significantly, the committee could not reach a consensus and did not make any recommendations to the Minister of Municipal Affairs regarding any changes. It did reach some interesting findings, in part, following a governance study commissioned from Coopers and Lybrand.

The residents of UBC owned land such as Hampton Place and University Hill will continue under the status quo and as their governance committee concluded, are in no rush to elect local politicians to conduct their business or to merge with the City of Vancouver. A Governor on the UBC Board commented that the residents "prefer democracy by contract rather that democracy by ballot".

The BC Civil Liberties Association (BCCLA) distinguishes the UBC Endowment Lands from first nations' governance and in particular to the neighbouring community of Musqueam in one major way, namely that the UEL residents have the opportunity to vote for the type of local government they desire and can, in the future, if they so desire incorporate and elect a mayor and council. However, and germane to this paper, there are marked similarities and other things being equal there is merit in alternative structures to participation in local democracy where residents are not property owners but are tenants.

[14] The author acknowledges the assistance of Mr. John Raybould, Special Projects and Consulting and Mr. Brice Stenning, Manager of Endowment Lands, in assisting the author in the research for this chapter.

What the UEL model tells us is that where local relations between residents and governing bodies are good and where there are no significant hurdles for the parties to overcome, then these types of representative systems can work as effectively as areas with directly elected local governments.

Chapter Ten:

National Parks: Banff and Jasper, Alberta

Canada's national parks are administered under the *Canada National Parks Act*. The *Act* sets out that the Governor in Council may pass regulations concerning a comprehensive array of local government administrative matters within the parks and affecting communities that are located within those parks. A superintendent is appointed to administer each national park and is responsible for local government. Under the *National Parks Act* it is explicit that powers in relation to land use planning and development in the park communities may not be exercised by a local government body except as provided for in the *Act*. The only park community that is such an exception is Banff[15].

In 1989 Canada and Alberta entered into the Town of Banff Incorporation Agreement which provided for the creation of the municipality of Banff within Banff National Park. While Canada retains underlying title to the land, the Town of Banff has all the powers and responsibility generally associated with a municipality in Alberta, including the authority to collect taxes from and provide municipal services to local residents and businesses.

The Town of Banff has bylaw making authority, similar to that of any other town in Alberta, however, the federal Minister for Parks retains the power of disallowance with respect to matters related to the environment and any other matter which might affect the integrity of the National Park, including development. The Town pays to Canada an annual rent of $500,000. This amount is set in the legislation. Canada also collects a nominal $1/yr from all residents, as a payment for leases. In return, Canada pays to the Town grants in lieu of taxes for federal properties within the community as it does in other communities.

[15] The author acknowledges the assistance of Ms. Christie Morgan, INAC for her help in conducting research within the government of Canada which aided in the development of this chapter.

The reason for the Banff Agreement was to give local interest holders in land the ability to govern themselves regarding land use and land development. Considerable growth has occurred in Banff since the Agreement, in part assisted by the change in governing structure.

Jasper, on the other hand, has not become a municipality although there are continued discussions leading in this direction. For Jasper the town site is managed by Parks Canada in accordance with the *National Parks Act* and regulations. *The National Park Act* provides that Canada shall, where applicable, provide opportunities for public participation at the local level (including representatives of park communities) in the development of parks policy and regulations, the formulation of management plans and land use planning and development in relation to park communities. In the parks community of Jasper there are two local Advisory Councils: an Improvement District Council and a Parks Advisory Council.

The Improvement District Council is essentially a provincial body which is responsible for collecting school taxes. It has no broad authority. The Parks Advisory Council makes recommendations to the Parks superintendent with respect to the management and administration of the town site. The superintendent then has the legal authority to make regulations to enact the recommendations which he accepts.

Parks Canada is responsible for tax collection (except school taxes) and provision of municipal services such as street works and physical improvements. Policing, ambulance service and community administration are not factored into the tax rate and are essentially provided free of charge to local ratepayers. Residents and businesses lease their land from Canada and pay a yearly lease amount.

Issues for residents of Jasper have focused on whether they would be better served as municipality like Banff, which would result in greater local control but perhaps higher taxes, or staying under the status quo. The proponents of development favour becoming a

municipality as it places greater control of the development process at the community level.

With respect to the question of taxation without representation these issues are raised but do not appear to be the primary driving force behind Jasper residents seeking municipal status. Clearly in Jasper, as tenants in the park, the ratepayers are involved in local government through their Advisory Council structure. Presumably, though if they no longer want to be under this structure they will apply to become a municipality like Banff.

Part III: The Future

Chapter Eleven:

Conclusions and Recommendations

The recommendations are divided into two parts. The first set of recommendations addresses solutions in the short term to questions of representation and the second set of recommendations addresses an approach for long term solutions.

In considering approaches to this issue there will have to be a distinction drawn between those first nations under self-government and those still under the *Indian Act*. The administration of the ITAB will need to reflect this as it relates to ratepayer representation. It is reasonable to assume that first nations that have made the step to greater local autonomy will ensure that systems for addressing residents' concerns are in place in advance in order to ensure a smooth transition to local autonomy. The experiences to date support this assumption.

Recommendations for Interim Change

There is clearly no simple solution of the issue as to what mechanism for non-member ratepayer input is the most effective or acceptable to the various stakeholders. A number of first nations exercising property taxation under section 83 have established advisory bodies. Others have maintained informal and ad hoc relations with ratepayers. In situations where relations between ratepayers and Band councils have been untainted by other issues of local concern of over-arching political importance then the less formal mechanisms have been successful over the last decade of first nation taxation.

However, when the sun is shining, metaphorically speaking then the need for protective clothing is not necessary. However, when a storm approaches whether from the East or the West, it is better to have protection. The necessity of formalising relations between groups that were previously not formalised sometimes only becomes apparent to the

groups involved when the storm passes through. There was already a storm at Musqueam so the Advisory Council never had a chance and was blown away before it could establish its roots.

The test for Sechelt will come if there is a significant disagreement in direction between the non-member residents and the Band Council. If the mechanism for input, which has been established, is effective in balancing the interests of the Band while preserving good relations with the ratepayers the system will endure and pass the test.

At this point in time with the emotive cry of 'taxation without representation' a growing issue, it would be prudent for the ITAB to establish a policy that provides practical guidance for band councils and for ratepayers on appropriate representation before stakeholder positions become polarised.

It is equally important that ITAB should allow individual communities to establish their own mechanisms for representation that reflect local circumstances and priorities. A sledge hammer is not needed to pound in a nail and where there is little concern of ratepayers (particularly where there are few resident ratepayers on-reserve) there is little need for an elaborate mechanism for input.

The issue of ratepayer representation is really only significant where there are long-term residential leases and where there is significant capital investment by the individual home-owners. There is also a more compelling need for appropriate mechanisms when Band taxation systems exempt their own members from property taxes and particularly where members are also exempted from paying taxes though their corporations. The perceived and real problem with 'taxation without representation' and with 'representation without taxation' can be partially mitigated with the establishment of effective mechanisms for ratepayer input.

I recommend that the Indian Taxation Advisory Board develop a policy setting out that where, in the future, first nations wish to exercise property tax authority under section 83 of the *Indian Act* those first nations should develop a mechanism to ensure input from ratepayers into the decisions of Band Councils that directly and significantly affect the ratepayers.

The mechanism for ratepayer input can be introduced by resolutions of Council or through the enactment of a specific section 83 bylaw. Based on the models considered in this study it would appear that most first nations with significant numbers of residential residents would favour an advisory body in much the same manner as has been developed at Westbank (with an Interim Advisory Council), Sechelt or at Musqueam, (despite the legal and political conflict over setting the new lease payments in Musqueam Park). For communities where there are few residential ratepayer, or perhaps only a handful of utility folios on the tax roll, then the type of mechanism established may not need to be as involved as a full blown Advisory Council. The type of mechanism has to be tailored to the situation of the taxing first nation with common sense dictating the degree of formal structure.

Attached to this paper is a sample Ratepayer Advisory Council Bylaw for consideration. The sample bylaw draws heavily from the Sechelt and Westbank models which establish elected advisory bodies. The amount of structure to the advisory body needs to be carefully considered. The sample bylaw assumes that a first nation will have its own code for elections that will be followed in electing the advisory body. Some communities may not deem it necessary to go to the lengths of conducting elections for Advisory Council members. Some first nations may prefer simply to appoint persons to advisory bodies by resolution of Council.

A central question that needs to be asked by any first nation when considering an advisory body is exactly what will the advisory body be advising on. It is very important that the advisory body deals only with those matters that directly and significantly affect the ratepayers and not the broader business of the Band. Therefore the section in any

bylaw or resolution that deals with what the advisory bodies responsibilities are needs to be considered very carefully.

Questions will also be asked regarding who can run, who can vote and whether voting is restricted just to residents. Do, for instance, businesses have a vote? There may also be issues regarding whether there should be wards or whether advisory council members should be elected at large. Decisions will also need to be made regarding the number of members on advisory bodies and how long the term of office is. How advisory bodies conduct their business will also need to be considered. This includes any formal rules of procedure for meetings, as well as how the body is accountable to other ratepayers on-reserve along with the Chief and Council. There will also be questions of conflict of interest and setting of remuneration that may need to be addressed. Finally, attention should be given to the manner in which disputes between the Advisory Council and the Chief and Council might be resolved. To this end, consideration should be given to the use of mediation and arbitration which could also be set out in the bylaw should this be deemed appropriate.

All these are issues, and there will be others, that first nations and their ratepayers will want to consider prior to the adoption of any bylaw or resolution establishing an advisory body and the sample bylaw should be read with this caveat in mind. The ITAB could establish a policy whereby prior to first nations entering property taxation they demonstrate the mechanism they will use for ensuring ratepayer input. This could take place as part of the initial review process by the ITAB and as a condition for first nations entering property taxation under section 83. Where first nations are already exercising jurisdiction over property taxation ITAB should encourage communities, where they have not already done so, to establish mechanisms to receive ratepayer input.

I recommend that for first nations currently exercising property tax authority, the ITAB should encourage those first nations to establish local mechanisms for ratepayer input where they have not already done so.

The Royal Commission on Aboriginal Peoples found that measures will have to be taken to ensure that non-aboriginal residents are represented in the decision–making processes of the Aboriginal nation governments. The Commission recommended that non-aboriginal residents be represented effectively in the decision–making processes of aboriginal nations' governments. In establishing a policy on ratepayer representation, ITAB would be implementing this recommendation of the Royal Commission on Aboriginal Peoples as it relates to property taxation under the *Indian Act*.

It is unlikely that first nations will opt for allowing non-aboriginal participation and voting rights on Council seeing it as a restriction on the ability of aboriginal governments to operate and contrary to the principles of self-government. However, in ensuring that ratepayers' voices are heard in matters that directly and significantly affect them first nations should begin to distinguish between those governance functions they perform exclusively for members and those they perform for all residents living on reserve whether members or non-members. Individual and collective responsibilities are not indivisible.

I recommend that ITAB assist first nations in distinguishing those functions of Chief and Council's business that are wholly concerned with the interests of members and those that concern other residents on-reserve by virtue of the fact that first nations have assumed authority to collect property taxes.

From a first nation's perspective, it is important that the business of the band members does not become confused or intertwined with the business of governing the reserve as a whole. The need to maintain this distinction increases as the number of non-residents on-reserve becomes greater. An objective of INAC is to reduce the level of transfers paid by the Federal Government to first nations. It is not inconceivable that Canada may view property tax revenues as a source of income to offset its responsibility to provide financial support to first nations when they deliver social programmes and service on Canada's behalf within their communities.

Canada provides no additional support to Indian Bands that collect property taxes under section 83 for the provision of local services to non-members. In British Columbia unless a first nation is recognised as an Indian District under *The Indian Self-government Enabling Act* then the first nation is not entitled to provincial revenue sharing. In BC for small local governments revenue sharing is an important and vital component of a local government budget. The smaller you are, the more significant the revenue sharing becomes. First nations should be concerned that they will not have sufficient tax revenues to provide comparable levels of service on-reserve that are found in adjacent communities. First nations must be very careful not to be caught in a 'devolution trap' or in a situation where their lands are less marketable because their local governments can not provide comparable service at comparable cost.

In order for Advisory Councils to be effective there must be acceptance of the Advisory Councils by the ratepayers, first nations and ultimately the market that dictates property values on-reserve. There is still mistrust between some first nations and their ratepayers and relations are strained. In order to build partnerships and alliances it would be beneficial for ITAB to expand its program of workshops and meetings to bring ratepayers, first nation leaders and policy makers together. The mutual interests of all parties need to be explored and articulated publicly in order to ensure confidence in the system that is being developed for on-reserve governance and the collection of property taxes. Where the interests of the players merge the potential for conflict decease.

I recommend that ITAB expand and sponsor a program of community workshops and forums to explore and discuss mutual interests between ratepayers, first nation leaders, first nation community members and policy makers, to support a relationship building exercise between ratepayers and first nations.

The importance for dialogue can not be understated. In its position paper the BC Civil Liberties Association qualifies its somewhat negative view on advisory bodies by stating that they can be "meaningful" forms of participation when the non-aboriginal residents agree to forego other types of participation. In cases where relations are strained, or

could become strained, it would seem prudent to work issue through community forums in order to determine whether there is consensus that the establishment of advisory bodies would be acceptable to both first nations and non-member ratepayers to address questions of representation.

Recommendations for Long-term Change

The operation of section 83 and the bylaws made pursuant to it cannot be divorced from the overall system of governance established in the *Indian Act*. There is little disagreement by all stake-holders that the *Indian Act* is an outdated and inappropriate vehicle for contemporary first nations' government. However, there is no agreement amongst stakeholders regarding what should replace the *Indian Act* and what elements of the Crown and first nation relationship under the *Indian Act* should be maintained.

While Bill C-115 in 1988 was the most significant amendment towards first nations self-government to the *Indian Act* since its original passage in 1876, the amendment stands out like new tyres on a rusty old vehicle.

I recommend the establishment of appropriate systems of first nations' governance to support first nations in the exercise of their property taxation powers.

There is no consensus among first nation leaders on what is the most appropriate expression of aboriginal self-government. The issues surrounding the debate are extremely complicated and involve a range of issues that at their core stem from the flawed relationship between the Crown and first nations

Over the short term it is reasonable to expect that first nations taxation under section 83 will continue to expand. However, at times situations that negatively impact on the exercise of property taxation powers will have more to do with general governance under the *Indian Act* than section 83. Where issues of the broader relationship with the Crown

remain unsettled it is hard to see how the certainty all stakeholders desire in regards to property taxation and representation can be reconciled.

It is not without significance that where the *Indian Act* has been replaced or its application modified by the self-government provisions of land claims agreements, or through stand alone self-government agreements, the relationship between the aboriginal government and the persons whom those governments serve, (be they first nation citizens or other residents) are clearly defined. As more first nations move away from the *Indian Act* of their own choice in realising the benefits of more stable and better defined government, then the ITAB or its successor ought to have an easier job.

Part and parcel of the move to increase first nation self-regulation is the need to clarify the fiscal relationship between the Crown and the re-emerging First Nations' governments. Although property taxation remains a relatively small portion of the overall budget for first nations' government across Canada for some First Nations this revenue is now a substantial and significant part of their communities' total budget. In order to address First Nation concerns with the off-loading and the shifting of financial responsibility for the provision of social services from the federal Government to local ratepayers, the ITAB should continue in its efforts to secure a new fiscal relationship between Canada and First Nations. One of the concerns of ratepayers that has given rise to the issue of participation in decision making is how local taxes collected are spent.

Support should be given to the first nations to establish their own systems of land management. In doing so first nations will be in a better position to determine what type of development takes place on their reserves. Whether or not First Nations move to establish their own systems of land management, they need to be ever mindful of what the impacts are of certain types of development on their lands.

In assisting first nations in the transition to local governance it is important that they be provided support. In this regard there is a need for strong first nations institutions, such as the ITAB to support the drive for greater self-government. National institutions can

provide support in a number of ways. These include; facilitating communication between first nations, coordinating and delivering training, disseminating timely information, sharing knowledge, technology and experiences, developing national standards and providing services that the client first nations request from time-to-time. The ITAB, in its current form has a responsibility to assist in maintaining the integrity of the property taxation systems on-reserves across Canada. It is anticipated from its business plan that the Tax Commission that will replace the ITAB will include Commissioners that represent ratepayers; one seat for utilities and one for taxpayers at large. While this structure may be controversial in some first nation circles it should provide comfort to ratepayers that they will have a voice at the table that allows or disallows first nation taxation bylaws and that sets national polices.

I recommend that the establishment of national institutions to support self-government, including the First Nations Tax Commission be supported as a necessary corollary to first nations local autonomy.

In conclusion, if first nations are concerned with diluting political power at the expense of non-member residents, then first nations will have to consider the pros and cons of residential property development and long term residential leases on their lands. Over the years INAC supported such economic development and encouraged it to stimulate reserve economies and to develop own-source revenues from the sale of leases to non-members. The simplest, but perhaps most controversial, long-term solution to the taxation without representation dichotomy is to discourage developing reserve land for residential purposes.

Clearly, many first nation leaders have identified the benefits of maintaining good relations with ratepayers. Across Canada, various mechanism, many of which are informal, have been established to provide administrative and political linkages between ratepayers and the Chief and Council. In some instances quite unique arrangements are in place while others are still developing.

While first nations recognize the need to maintain links with ratepayers, there is also a very strong desire not to abrogate responsibility for governance to these ratepayers. This is contrary to the objectives of self-determination. Many issues addressed by first nation councils are not 'municipal' or 'local' in nature, and consequently should be of no concern to ratepayers. In order to develop mutually acceptable arrangements between ratepayers and the representatives of the first nation community in which they reside, it is important to identify common interests and those that are not. This needs to occur locally. If the mechanisms that are established to provide for ratepayer input are accepted by the ratepayers and the governing body of the first nation, and provide meaningful input where input is warranted, then questions of political representation will remain a secondary concern to most.

ATTACHMENT ONE

_____FIRST NATION

BYLAW NO. _____

SAMPLE FIRST NATION RATEPAYER ADVISORY COUNCIL BYLAW

WHEREAS the Property Assessment and Taxation Bylaw was made pursuant to subsection 83 (1) of the *Indian Act* R.S.C. 1985 , c. I-5 for the purpose of taxation for local purposes of land, or interest in land, in the "reserve" (as defined in the Property Assessment and Taxation Bylaw), including rights to occupy, possess or use land in the "reserve";

WHEREAS pursuant to subsection 83(1) (g) of the *Indian Act* R.S.C. 1985, c. I-5 the Council of a Band may make bylaws with respect to any matter arising out of or ancillary to the exercise of powers under section 83 of the *Indian Act*;

WHEREAS the Chief and Council of the _____ First Nation deems it to be in the best interests of the _____ First Nation to provide ratepayers living on the reserves of the _____ First Nation, or having a legal interest in lands within the reserves of the _____ First Nation, a mechanism through which they may have input into proposed bylaws of the _____ First Nation that directly and significantly affect such ratepayers;

WHEREAS the Chief and Council deem it to be in the best interests of the Band to establish by bylaw a Ratepayers Advisory Council.

NOW BE IT HEREBY RESOLVED that the following bylaw be and is hereby enacted pursuant to the provisions of the *Indian Act* and in particular subsection 83(1)(g) for the purposes of establishing a Ratepayers Advisory Council.

Short Title

1. This bylaw may be cited for all purposes as the "Ratepayers Advisory Council Bylaw"

Establishment of Advisory Council

2. The _____ First Nation Advisory Council is established as an advisory body to the Chief and Council of the _____ First Nation and the following persons are appointed as the initial members of it until _____:

a) _____
b) _____
c)_____
d) _____

Establishment of Rules of Procedure for Advisory Council

3. The Chief and Council of the _____First Nation prior to the establishment of the Advisory Council shall by resolution of Council establish the rules of procedure for the Advisory Council.

Chairman of Advisory Council

4. (1) The members of the Advisory Council shall elect one of their members to be the chairman.

(2) In the absence or inability to act as chairman, the members present at the meeting shall elect one of their members to act as chairman of that meeting.

Elections

5. (1) Commencing on _____and every 3 years after that, an election shall be conducted in accordance with Part ____ of the Election Code of the _____ First Nation for the 5 members of the Advisory Council, who shall take office for a 3 year term commencing at the end of the term of the members appointed by the Chief and Council of the _____,

(2) For the purposes of an election,

a) the Advisory Council shall appoint a person to exercise the powers and duties exercised by the Elections Officer of the _____ First Nation, and

b) the Advisory Council shall exercise the powers and duties of the Chief and Council of the _____ First Nation under the _____First Nation Election Code.

(3) in an election,

a) one member shall be elected who resides in each of the areas of the_____First Nation Lands known as

i. _____
ii _____
iii _____
iv. _____

b) one member shall be elected who resides anywhere on _____ First Nation Lands.

(4) With respect to the election of the members referred to in subsection (3) (a), a person shall have only one vote for a candidate who resides in the same area in which the person voting resides.

Duties of Advisory Council

6. (1) The Advisory Council shall be responsible for reviewing and advising on the yearly property taxation servicing program and budget for the _____ First Nation and receiving and considering petitions from ratepayers relating to the provision of a service on _____ First Nations Lands.

(2) The Advisory Council may recommend servicing programs for all or part of the _____ First Nations Lands.

(3) In addition to the duties referred to in subsection (1), the Advisory Council may consider and make recommendations on any other matter relating to the administration of the _____ First Nation lands that the Chief and Council requests it to consider.

Expenses of Advisory Council

7. (1) A member of the Advisory Council is authorised and empowered to receive compensation for his or her services from the Chief and Council in an amount determined by the Chief and Council, together with reimbursement of actual expenses necessarily incurred in the discharge of his or her official duties.
(2) The Advisory Council is authorised and empowered to receive from the Chief and Council, and expend, the sums necessary to defray the expenses of the Advisory Council, including the holding of elections for its members.

Petitions to Advisory Council

8. (1) Any 50 residents may submit a petition to the Advisory Council asking that a certain service be provided to _____ First Nation Lands or to one area of it.
(2) In order to be valid, a petition must contain the names and residential addresses to the petitioners in full and must set forth with sufficient particularity the object of the petition.
(3) Where the petition asks that a service be provided to one area only of the _____ First Nation Lands, it is not valid unless it is signed by 2/3 of the occupiers of the parcels liable to be specially charged, and unless the signatories are the occupiers of parcels having a total assessed value of a least 1/2 of the

total assessed values of all parcels liable to be specially charged; and a description of the parcel occupied by each petitioner shall be set out in it.

(4) The sufficiency and validity of a petition to the Advisory Council shall be determined by a majority of the Advisory Council whose decision is final and binding.

(5) For the purpose of determining the validity and sufficiency of a petition, the advisory Council shall look at the situation as it existed on the day the petition was presented to it.

(6) Where a person who is the occupier of land is a petitioner, but does not appear by the last authenticated assessment roll of the _____ First Nation to be the occupier, he or she shall be deemed an occupier if his or her occupation is proved to the satisfaction of the majority of the Advisory Council, and in that case, if the person who appears by the last authenticated assessment roll to be a petitioner, his or her name shall be disregarded in determining the sufficiency of the petition.

(7) Where 2 or more persons are occupiers of a parcel, they shall be reckoned as one occupier only, and are not entitled to petition unless a majority of them concur.

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