WILLINGNESS OF METRO VANCOUVER FIRST NATIONS TO COLLECT INCOME TAX

by

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Abstract

This study investigates whether income tax powers would be an effective policy to reduce First Nations' dependence on federal transfers and thereby provide greater financial autonomy for self-governance. The research finds that income tax would be an effective policy so long as the tax base covered lessees as well as First Nations members. The research also points to the preferred format for First Nations' application of an income tax. Members and lessees would pay income tax to First Nations governments through an arrangement similar to that used by Yukon First Nations, in which the Canada Revenue Agency administers the tax and the rates and rules for taxation are identical to those in adjoining regions. First Nations income tax revenues would be subjected to a clawback against federal transfers to First Nations phased in over a specified period.

Executive Summary

The inclusion of Aboriginal and treaty rights in the Constitution Act 1982 renewed the process of Aboriginal self-government in Canada. First Nations entered into negotiations to resolve outstanding claims against the Crown as well as initiating court challenges. Constitutional guarantees of self-government have led to a proliferation of self-government agreements, treaties and land claims negotiations. One of the most contentious issues in First Nation negotiations has been self-government financing and taxation. The federal government's fiduciary relationship with First Nations includes sizable grants and transfers provided through Indian and Northern Affairs Canada and other departments. These funds constitute a large portion of FN government revenue and are used to finance governmental programs and services. The ongoing nature of the transfers provides few incentives for FNs to explore different methods of revenue generation, and the on-reserve Indian Act tax exemption encourages a dual tax system. Inadequate revenue for FN governments hinders private and public investment, thus discouraging economic development and creating dependency and low living standards.

This study examines under what conditions it would be desirable for First Nations (FNs) and governments to enter into income tax agreements. Under such agreements FNs would cede income tax immunity under the Indian Act in exchange for the right to collect income tax from FN members and leaseholders residing on reserves or Treaty Settlement Lands. My research focuses on four urban FNs: the Tsawwassen, the Tsleil-Waututh Nation, the Musqueam and Squamish. All four FNs are located in Metro Vancouver, British Columbia, an urban area comprising over 2 million people. Through elite interviews with former and current band councillors, administrators and government officials, I assess whether the ability of FN governments to collect income tax could have a positive benefit for urban FNs. I examine

whether FNs governments wish to receive this revenue stream and whether the tax burdens imposed on FN members including the clawbacks of incremental tax credits would make the imposition of income tax politically difficult. I formulate four policies, evaluate them against a set of criteria and derive policy recommendations.

The study reveals that significant opposition and uncertainty exists with the current federal policy relating to FN income tax. In particular the own-source revenue clawback policy is regarded by FN leaders as a major barrier to the assumption of income tax powers by FNs. The study also finds that even under current arrangements, FNs could significantly increase their revenues while gaining autonomy, becoming wealthier and more self-governing. This study recommends that governments and FNs enter into Fiscal Financing Agreements (FFAs) with a phased OSR clawback in order to reach agreements and harmonize the Canadian tax system

Dedication

For Bruce and Doug Andrew, who I miss every day.

Acknowledgements

“Everything was in confusion in the Oblonsky's house.”-Tolstoy

But I always knew that my Mum loved me. Through great sorrow when the weight of the world seemed to condense itself on us, without luck or fortune, but with cats and dogs. Thank you Mum, I love you.

“The sharp edge of the razor is difficult to pass over thus, the wise say the path to Salvation is hard” " -Katha-Upanishad

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Carolo: “Full of whisky, I bet”.

Nick Jenkins: “You bet”.

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Finally I would like to thank the four First Nations involved and interviewees of the provincial and federal governments.

Table of Contents

List of Tables

List of Acronyms

Agreement in principle (AIP)	An agreement reached between governments and First Nations. The fourth stage of the six stage BC treaty process
First Nation(s) (FN) or (FNs)	Communities or individuals who belong to the ethnic group sometimes called Native Indians or Aboriginals, who were the original inhabitants of British Columbia.
Own-Source Revenue (OSR)	Revenue generated from First Nation assets or tax room for the purpose of First Nations governance.
Treaty Settlement Lands (TSL)	Lands transferred to First Nations once a treaty is ratified. They are held in fee simple by the First Nation.
Indian Reserve number (IR #)	Lands set aside by the Crown for use exclusively by First Nations. They are held in trust for First Nations by the Crown in right of Canada. Reserves in Canada are assigned a number by the Department of Indian Affairs. In British Columbia the numbers recognize the order in which the reserves were created.

1: Introduction and Policy Problem

In 1991 the government of British Columbia dramatically reversed its position on First Nations (FN) land claims. After 120 years of denying that FN title and claim existed on the land, the province agreed to the principles set forth in the British Columbia Claims Task Force Report and entered into an era of negotiations. The government recognized for the first time that Aboriginal title had not been extinguished by the colonial administrations (BC Treaty Commission, 2004). The movement toward greater self-government was embraced by a sizable number of BC FNs, most notably members of the First Nations Summit (BC Treaty Commission, 2004).

Taxation is the major vehicle for financing public programs and services. According to the First Nations Summit, taxation is "the single most important factor determining the quality of future government services and infrastructure for members" (BC Treaty Commission, 2004). FNs have come to recognize the necessity of developing stable revenue streams in order to initiate their own programs and services. Taxation is also an important mechanism by which government is kept accountable to its electorate. Comparative government literature on fiscal theories of governance suggests that the dichotomy between government and citizen over taxes and programs produces greater deference towards both sides, "thereby enhancing both performance and accountability" (Graham and Bruhn, 2008, 16). Further anecdotal evidence suggests that FNs that collect taxes from their members experience increased citizen participation as "members of the taxing FN showed significantly more interest in spending decisions than those of the one that did not" (Graham and Bruhn, 2008, 26).

The fiscal relationship between the Crown and FNs has long recognized the fiduciary obligation the Crown holds towards FN people. It has meant that government services, programs and benefits usually delivered to the general public via their provincial government are delivered or paid for by the federal government to status Indians living on-reserve.[1] Local services for FNs such as garbage collection are often purchased under contract with the closest regional or municipal government.

A dependence on federal transfers hinders and constrains FN governments' ability to be autonomous and self-governing and weakens the connection between governors and the governed. This situation compromises efficient, honest and accountable governance. A government's autonomy hinges on its ability to act independently when making decisions, without the approval or financial support of other levels of government. FN governments currently receive too much of their revenue through federal transfers to achieve a great measure of autonomy, thus creating a cycle of dependency between the Crown and FNs, reducing their ability to be self-governing. Inadequate revenues and the associated low levels of public infrastructure create communities with low rates of business activity, employment, income, entrepreneurship and OSR, thereby fostering "the vicious cycle of transfer dependency," lack of political and economic autonomy and low standards of living (Fiscal Realities, 1998, 38). The lack of adequate financing from FN own-source revenue (OSR) and the fiduciary obligations of the Crown towards FNs create the need for federal financing of FN governments. These needs are exacerbated by current demographic trends that place an increasing burden on Canadian taxpayers (Fiscal Realities, 1998, 45). British Columbia's FN population grew by 18 per cent from 1996-2006. Of whom 75 per cent are under the age of 40 (Census, 2006). Federal transfers are likely to significantly increase unless new taxation/ funding arrangements develop.

[1] Status Indian or registered Indian is defined as a person of FN descent who is entitled to be registered with the Department of Indian and Northern Affairs Canada under the Indian Act and/or Bill C-31.

1.1 Study Outline

My research will focus on four urban FNs: the Tsawwassen, who have signed a treaty; the Tsleil-Waututh Nation, the Musqueam and, the Squamish Nation, all within the British Columbia Treaty Commission (BCTC) process. All four FNs are located in Metro Vancouver, British Columbia, an urban area comprising over 2 million people. This study assesses the political acceptability, administrative requirements, potential community and social effects, and effectiveness of income tax as a revenue source to FNs. Through elite interviews with former and current band councillors, administrators and government officials I examine the willingness of FNs governments to receive this revenue stream. I formulate four policies, evaluate them against a set of criteria, and derive policy recommendations.

2: Background

Since the beginning of European settlement in North America, European governments and settlers have tried to establish their claim to the land by working out agreements with the original inhabitants, FN people. In Canada the first formal recognition of a relationship between the Crown and FNs was the Great Peace of Montreal of 1701, which provided for peace between the English, French, Huron, Iroquois and Algonquians. Although the treaty did not provide for specific recognition of rights, it established a nation-to-nation relationship with the Crown that continues to this day (GrandQuebec, 2008).

The first document to recognize what we today would call FNs' rights is the Royal Proclamation of 1763, which established formal rules and procedures between the Crown, settlers and FNs regarding land and trade (Virtual Law Office, 1996). The Royal Proclamation, along with treaties, common law precedents and the Constitution Act of 1982, are the basis for on-going litigation to recognize FNs' right to self-government. Section 35 of the Constitution Act of 1982 stipulates: "The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed." Patriation of the Constitution subsequently led to court decisions on the subject of extinguishment of Aboriginal title.

Delgamuukw was the first case to recognize Aboriginal title. Lamer CJ, writing for the Supreme Court of Canada (SCC), ruled that Aboriginal title is inalienable and can compete with other property interests, arises through the continued occupation of Canada by FN peoples prior to the Royal Proclamation of 1763, and, held collectively by an Aboriginal nation (Parliament of

Canada)[2] . Lamer CJ, writing for the majority, defined Aboriginal title as "the right to exclusive use and occupation of land" (FONV, 2008). Since Delagamuukw, the onus has been on the Crown to resolve outstanding claims with FNs through negotiations.

The acknowledgment of Aboriginal title in British Columbia changed how FNs want their programs and services delivered. No longer do they wish to be simply recipients of services. FNs want a voice in program and service development and a role in the how those services are executed in order to address the specific cultural, social and economic needs of their communities. Under the modern treaty process, FNs that sign treaties are expected to provide services to their members. The Nisqa'a, the first FN to sign a modern treaty in 2000, assumed a wide array of powers to develop and finance programs and services in the fields of healthcare, education, economic development and social services including the National Child Benefit reinvestment (Nisqa'a, 2000).

Urban FNs are in a unique position to develop OSR due to their geographic location. Their proximity to major urban centres presents a variety of opportunities to develop OSR through economic initiatives such as FN-owned golf courses or tourist operations or through rents such as lease payments, administrative fees, and taxes that are usually the purview of other levels of government.

While urban FNs have been willing to levy some taxes, such as the FN Goods and Services Tax and property taxes, they have been far less willing to enter into Federal Financing Agreements (FFA) to collect income tax from their on-reserve membership and lessees. FFAs allow urban FNs to access large and diverse tax bases with revenue generation capacity sufficient to finance a significant share of band programs. The unwillingness of urban FNs to enter into FFAs to collect income tax from their lands creates a federal tax system that is inequitable, as

[2] Aboriginal title arises from (1) occupation of Canada by Aboriginal peoples prior to the *Royal Proclamation of 1763*: under common law principles, the physical fact of occupation is proof of possession in law; and (2) the relationship between common law and pre-existing systems of Aboriginal law.

some status Indians are subject to tax while others are immune simply by the situs of their work and/ or other "connecting factors" to a reserve community under Section 87 of the Indian Act (Pinder, 2000, 18). Since reserve land is federal Crown land, status Indians with income earned on-reserve are also immune from provincial income tax (Constitution Act, 1867, 91(24)).

Canada and British Columbia both use a progressive personal income tax system. The more money earned by the individual, the higher the rate at which that income is taxed. The federal tax offers a non-taxable basic personal amount that in 2008 excluded the first $9,600 per taxfiler plus $2,000 per dependent child from income tax (Canada Revenue Agency, 2008). After deducting the basic personal amounts, the tax system's progressive nature creates a hierarchy of rates dependent on income levels. For the first $37,885 of income a 15 per cent tax rate applied in 2008, on the next $37,884 the rate was 22 per cent, rising to 26 per cent on the next $47,415 and 29 per cent on incomes above $123,184. British Columbia levies its own income tax on residents in addition to federal income tax. British Columbia has five rates of income tax that in 2008 ranged from 5.06 per cent on the first $35,016 to 14.7 per cent on income above $97,636 (Canada Revenue Agency, 2008). Income tax returns are used to assess eligibility for a number of federal and provincial tax benefits and credits. Status Indians, who by virtue of Section 87 have no taxable income, qualify for various federal income-tested benefits, such as the GST rebate and the National Child Benefit, even if their true incomes are high and would otherwise disqualify them through clawbacks.[3]

In 1988 the Indian Act was amended to allow for the collection of property taxes by FNs on leasehold lands (Kesselman, 2000, 1525). The parties liable to these taxes are mainly non-FN leaseholders, FNs being exempt through FN by-laws (Ibid). The Indian Act mandates that revenues raised through property taxation be used for "local purposes" (Bish, 1988, 3). Since the

[3] Status Indians living on-reserve do have to pay income tax on investment income derived off-reserve. The situs or location of the income is the determinant whether tax is payable on income. Interest from a bank located off reserve or invested off reserve is subject to income tax for status Indians who reside on-reserve (Hamilton, 2005).

introduction of property tax authority in 1989, the number of FNs choosing to apply this tax has grown from 5 to 113 (INAC, 2008). In BC the province has ceded the property tax including the school portion to FNs that exercise property tax authority through the Indian Self-Government Enabling Act (1990) (Kesselman, 2000, 1540).[4]

Outside of property taxation, FNs have made few moves toward assuming other types of tax authority. The federal government is prepared to share other taxes with FNs, including ceding the GST to FNs. Several FNs in BC and elsewhere have pursued this option (INAC, 2008). Provincial governments have been more reluctant to vacate tax room to FNs, especially the ability to tax non-FN members residing on-reserve, although they have done so on a limited basis. The BC government has expressed a willingness to share half the provincial sales taxes collected on reserves and half the income tax revenue collected from FN members on-reserve or FN members on Treaty Settlement Lands (TSL) (Fiscal Negotiator, 2008).

The issue of taxing non-members residing on-reserve is of growing significance. Today, less than a quarter of the people who live on urban reserves in BC are Aboriginal. The population of urban reserves is growing at twice the rate of rural reserves in BC, and with this growth comes the need for expanded fiscal capacities to fund services and growing infrastructure requirements (BC Stats, 2001). Current federal and provincial policy aims to harmonize FN tax policy with that of other Canadians (Canada, 1993, 13). Although the on-reserve tax exemption on income could be removed by Parliament at any time, the federal government has been reluctant to do so. Instead, it has opted for an ad hoc policy of encouraging FNs to enter into negotiations to surrender their tax exempt status in exchange for receiving a portion of the revenues collected from the newly imposed tax(es). Taxation agreements, whether signed at the same time as a treaty or not, are always implemented outside of the treaty. Ultimate authority over taxation remains

[4] Education for FN children on-reserve is the responsibility of the Federal Government; children of on-reserve leaseholders are assured of free access to public schools in BC even though those families do not pay the province the so-called "school" property tax.

with either Ottawa or Victoria and under the authority of Parliament or the Legislature (Sr. Tax Policy Officer, Jan. 12, 2008). This authority means that while FNs are allowed to administer and collect their own taxes, they can only enter into tax room vacated by the province or federal government. Tax agreements are signed to allow FN governments to provide programs and services. Any tax agreement with the Crown will not be implemented as compensation for past wrongs or lost land (Federal Policy Guide, 1995).

Urban FNs with a land base are particularly well suited to gain financially by acting upon federal policy of relinquishing tax room. Though relatively land poor, urban FNs possess high-value real estate, both in terms of the tax base potential and leasing value, from which they are able to draw rents, fees, and fines (Indian Act S. 83).[5] Many Metro Vancouver FNs have sizable non-native population from which the potential exists to derive significant income tax revenues. Rural FNs, on the other hand, often possess vast tracts of land, but their revenue generation capacity is limited mainly to resource royalties and fees as demonstrated by the Nisqa'a and Gwitchin treaties (Rynard, 2002, 223). In most instances, the remote location and low population density of the reserve and TSL lands provide little opportunity for leasehold residential development. The incentives for rural FNs to assume income tax collecting powers while at the same time removing their own exemption are small. Based upon recent decisions such as the Williams case,[6] rural FNs have good reason to seek litigation to retrieve lost land, preserving their tax exemption, and acquiring a significant parcel of land from which to derive, as Mr. Justice Vickers stated in his decision, a "moderate livelihood" (FONV, 2007).[7]

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[5] The Treaty First Nation Taxation Act of 2007 confers similar powers on treaty First Nations in British Columbia.

[6] The Williams case of 2007 recognized the Tsilhqot'in First Nation (Chilcotin) Aboriginal title over 200,000 square hectares (2,000 square kilometres) of land in the interior of BC.

[7] The effects of the precedent-setting 2007 court decision involving the Tsilhqot'in Nation and British Columbia are not yet known though they may ultimately cause change to the current policy.

2.1 Musqueam Nation

Musqueam have inhabited the land along the Fraser River for several thousand years prior to the 1791 exploration of the Gulf of Georgia by the Spaniard Jose Maria Narvaez (Musqueam, 2003). Musqueam Indian Reserve #2, bordering Vancouver to the North and East, the Fraser River to the South and Pacific Spirit Park to the West, was confirmed by federal officials in 1876 (Musqueam, 2003).[8] The Musqueam land claim would essentially remain dormant for the next 100 years until June 10, 1976, when the Musqueam declared that "We the Musqueam People openly and publicly affirm that we hold Aboriginal title …" Over the next 31 years the Musqueam through court decisions, most notably *Guerin* and *Sparrow*, asserted and proved title over their traditional lands. Starting on December 22, 1993, Musqueam entered into the BCTC process and is currently in the fourth, having recently signed an agreement in principle (AIP) with the federal and provincial governments (MARR, 2008). In 2007, the Musqueam land claim made national headlines when it was announced that the province planned to transfer title of the University Golf Club to the Musqueam FN. This caused much disquiet among residents of Vancouver's West side and resulted in the Musqueam promising that the course would remain open to the public until 2083 (Fowlie, 2007). This is in stark contrast to the opening of the "second" Shaughnessy Golf Course on Musqueam land in 1960. The 75 year lease signed without Musqueam consent (though with the consent of the Indian agent)[9] had terms that were very favourable to the course owners. Rents can be increased only every 15 years and can only be raised by 15 per cent (Guerin, 1984).[10] Today, the course pays a trifling amount to rent land

[8] The establishment of the Musqueam Indian Reserve #2 contravened the federal reserve entitlement policy of 20 acres per family (Musqueam, 2003)

[9] In Canada the Indian Agent was a position under the Indian Act who held jurisdiction over a given area in relation to a particular FN. The Indian Agent was chief administrator, held quasi-judicial powers and was the representative of the Federal government to the FN.

[10] The original rent was $29,000 in 1958. It was raised by 15 per cent effective 1 January 1973 to $33,450, raised again by 15 per cent in 1988 to $38,467.5 and again by 15 per cent in 2003to $44,237(Guerin decision, 1984).

valued at over one-billion dollars. The Musqueam went to court for compensation, which it finally achieved in 1984 with the Guerin decision (Musqueam, 2003).

Currently, on Musqueam Indian Reserve #2 approximately 780 non-native individuals reside on leasehold properties along with 505 Musqueam members (Statistics Canada, 2001). These lessees would be the primary contributors to any prospective FN income tax. Already the lessees receive conventional municipal-type services from the band including garbage collection, which are supplied directly by the City of Vancouver under a servicing agreement with the band. In return, leaseholders are subject to the band's imposition of property taxes instead of payment to the province or municipality (Kesselman, 2000, 1540).

In 2006-2007 the Musqueam FN received a total of $5,251,100 in transfers from the federal government. The bulk of this funding came through the Department of Indian and Northern Affairs for a variety of programs and services including education, governmental support, Income Assistance, Community Infrastructure and Health (D and H Group, 2007).

2.2 Tsawwassen Nation

In July 2007 the Tsawwassen final agreement treaty was voted on and ratified by the Tsawwassen (with 70 per cent approval) and subsequently proclaimed by the BC Legislature and Parliament (Canada, 2008). The Tsawwassen treaty marks a significant achievement in the British Columbia land claim process as the first urban agreement of the modern era.

After the Second World War, Tsawwassen developed rapidly with the 1959 construction of the Massey tunnel and the building of ferry terminals and the Roberts Bank Coal Port in the 1960s and 1970s. In 1990, the Tsawwassen FN began development of the Tsatsu Shores condominium community units, which were sold on a leasehold basis to non-members. With treaty ratification Tsawwassen will gain approximately 724 hectares, of which 372 hectares was formerly provincial Crown land. An additional 62 hectares consisting of government right of

ways and BC Hydro land will be owned by the Tsawwassen (the Boundary Bay River parcels), but, under the jurisdiction of the Corporation of Delta. Tsawwassen will have first right of refusal on 272 hectares of the mainly agricultural Brunswick Point Lands, leaseholds owned by the Crown where current residents will have the option of renewal (MARR, 2007, 2).

The Tsawwassen treaty allows for direct taxation of members and future negotiations on the direct taxation of non-member residents and lessees on treaty settlement lands (TSL) including a portion of the federal income tax. The loss of tax exemption and the assumption of tax-raising powers are to be phased in over an 8 to 12 year period from the effective date of the treaty (Tsawwassen, 2007, 181). The total population of pre-treaty Tsawwassen lands was 430, of whom 160 were Tsawwassen members and 270 were non-FN residents. The majority of non-FN residents lease private homes in the Stahaken subdivision or reside in the Tsatsu Shores condominium complex, both areas being disjoint from the main part of the former reserve.[11]

The Tsawwassen FN received $3,898,000 in annual funding, with $3,202,000 of that sum coming from INAC. The monies are for various programs including self-government, infrastructure and education. Other federal departments contributed roughly $700,000 to the Tsawwassen FN including Health Canada, HRDC, Fisheries and Oceans and the Canadian Mortgage and Housing Corporation (Deloitte and Touche, 2007).

2.3 Tsleil-Waututh Nation

The Tsleil-Waututh Nation, formerly known as the Burrard Indian Band, has a total population of 443 individuals, 229 of whom live on-reserve. This FN's largest reserve is the Burrard Inlet Indian Reserve #3, located on the eastern side of the Iron Workers Memorial Bridge in the District of North Vancouver. This reserve has a population of 1,205 and a registered Indian

[11] Since effective date of the treaty, Tsawwassen land has ceased to be classified as a reserve as defined under the Indian Act; instead all land is referred to as TSL.

population of 215, with most non-FN residents being leaseholders (Aboriginal Canada Portal, 2008).

The Tsleil-Waututh Nation claims 1,150 square kilometres, from the Fraser River in the South to Mamquam Lake (near Whistler) in the North as part of their traditional territory. The most heavily utilized part of this territory is the water and land area around Burrard Inlet and Indian Arm where Burrard Inlet Indian Reserve # 3 is located (INAC, 2008).

In 2005-2006 the Tsleil-Waututh Nation had a budget of approximately $7,700,000; about $3,200,000 or 42 per cent of the budget was in the form of government transfers. Tsleil-Waututh direct transfers from government departments INAC, Health Canada and Fisheries and Oceans amounted to $1,600,000 (Reid, Hurst Nagy, 2006). Another $1,300,000 came indirectly from the federal government through the Ottawa Trust Fund and transfer (Ibid). The remaining $3,200,000 was revenue accrued through other sources, the largest being OSR of approximately $2,000,000. The largest share of OSR came from property tax and development fees of $862,000. Takaya Developments, a band-owned residential development company, contributed another nearly $600,000 (Ibid).

2.4 Squamish Nation

The Squamish FN is an amalgamation of 16 Indian bands formed in 1923. Squamish membership is 3,603 with an on-reserve status Indian population of 2,268 residing in 23 reserves along the North shore of Burrard Inlet encompassing 28 square kilometres. The largest Squamish reserve, Capilano Indian Reserve # 5, had a population of 2,885 of whom 1,075 were registered Indians and 1,815 were non-status Indians. In May of 2003, the Squamish won a BC Court decision awarding them 4.3 hectares in Kitsilano behind the Molson brewery that was expropriated by the Canadian government between 1886 and 1902 for use by the Canadian

Pacific Railway. The Squamish have also recently acquired the logging rights for leasehold 38, an area Northwest of Indian Arm that they plan to log and develop.

In fiscal 2005-2006, the Squamish FN received nearly $18 million in federal funding, the vast majority from Indian and Northern Affairs Canada for programs and services ranging from $4,700,000 for community economic activities to $1,600,000 for refurbishing education facilities. Squamish also received substantial funding from other federal departments including nearly $2,000,000 from Health Canada and $1.2 million from HRDC (Deloitte and Touche). The Squamish receive significant rents accruing from their ownership of the South side of the Park Royal Mall development in West Vancouver.

3: Concepts and Issues

Income taxation is a relatively new potential funding source for FN governments. Currently 12 FNs have income tax agreements with the Crown through the Yukon First Nations Land Claims Settlement Act 1994. Under this agreement the FNs receive 75 per cent of federal and 95 per cent of territorial income tax collected on their lands from both members and non-members. The tax is administered through the CRA and then remitted to the FNs. In 2005 the Tilcho Government of the Northwest Territories and the Nunatsiuvut of Labrador signed similar FN Personal Income Tax Administration Agreements with Canada (Finance Canada, 2008). This new instrument of FN taxation raises questions involving equity, accountability, transparency of spending and democratic representation in government. It also poses questions about the continuing funding relationship between the federal government and FNs and new emerging relationships with the provincial government.

While differences over the exact pith and substance of self-government have occurred both within and outside the Aboriginal community, general agreement exists that meaningful self-government requires reduced reliance on the federal government and greater responsibilities for FNs. Greater autonomy is linked to greater self sufficiency (Finance Canada, 1993, 12). This new mantra is continued in both the "New Relationship" and treaties such as Tsawwassen that have put emphasis on sustainable and self-sufficient FN communities.[12] Self-reliance and self-financing of programs and services are seen as the ultimate objectives in a long evolutionary process of Aboriginal treaties and self-government to create wealthier, healthier, more accountable and democratic FN governments and communities.

[12] A provincial government brochure states: "Treaties lead to greater self-reliance for First Nations communities and help to close the social and economic gaps that exist between Aboriginal people and other British Columbians" (MARR, 2007).

Many of the concepts, issues and ideas towards a new fiscal relationship originate from the federal Finance Department's 1993 *A Working Paper on Indian Government Taxation*. This green paper proposed six taxation principles that have found widespread acceptance in post-Charter Canadian jurisprudence and policy. These principles have subsequently formed the basis for financing agreements in the modern treaties and land claims agreements negotiated between Canada, British Columbia and FNs:

- The property of FN people situated on reserves should continue to be exempt from non-FN government taxation.
- A new tax relationship should be compatible with the overall approach to self-government in Canada.
- The decision to exercise tax powers are the prerogatives of FNs.
- Expanded FNs tax powers should operate concurrently with provincial and federal tax powers.
- The integrity of the Canadian tax system should be maintained.
- The recognition of FN government taxation powers should not be seen as an alternative to continued federal funding for FN people (Finance Canada, 1993, 14).

The purpose of the *Working Paper* was to develop principles for financial arrangements suitable to carry the burdens of FN self-government. To this end, it recommends opening up tax sources to FN governments by allowing FNs to impose concurrent and harmonized taxes upon their own members and lands including "all forms of direct taxation" (Finance Canada, 1993, 24). Coordination guarantees that the tax burden of FN taxpayers is equal to that of other Canadians. To date, a number of examples are in place such as the FNs GST and income tax agreements with signatories of the Yukon First Nations Land Claims Settlement Act.

As FNs become more self-governing and require the ability to institute and administer programs, new forms of taxation are needed. Income tax provides a large segment of revenue to both the federal and provincial treasuries; its capacity to raise revenues makes it an attractive option for FNs to explore. Under current policies income tax would still be paid to the federal government and a portion remitted to the FN government and province. Previously all taxes collected on-reserve were paid to the federal government, other taxes such as the property tax were either not collected or collected by the province when reserve land was surrendered and ceased being reserve land by virtue of being occupied by non-Indians (Jules, 1997, 161).[13] Under current arrangements governments that cede income tax room do so with constraints placed upon FNs. The federal and provincial government set the tax rate in accordance with the principles of concurrence and harmony to the federal or provincial tax regimes.

The *Working Paper* envisions FN self-government to be a "third tier" of government responsible for the health, well-being and prosperity of FN people through services and program delivery. It recognizes that self-government entails the assumption of greater responsibilities and control over FN lands of which taxation can be seen as "corollary" with the increase of self-government (Finance Canada, 1993, 25). As a constitutionally recognized government, FNs would become subject to section 125 of the Constitution Act 1867 preventing Crown property from being taxed (Finance Canada, 1993, 20).[14] Essentially, this is the same arrangement that exists under the Indian Act exemption and serves as a tangible example of the type of renewed relationship the *Working Paper* envisions—one based on a nation-to-nation relationship.

[13] Section 125 of the Constitution Act 1867 prevents one level of government from taxing the other's land or property.

[14] Land claims agreements are constitutionally entrenched under S. 25 (b) Constitution Act 1982. It should be noted that although federal land claims agreements and provincial treaties do enjoy constitutional protection, fiscal financing agreements remain under the purview of Parliament as statute law. Usually FFAs have a time limitation clause, often 20 or 25 years.

3.1 Constitutional Sources of the Right to Tax

A brief discussion of the constitutional nature of FNs' right to tax is useful at this point to provide context for negotiations about taxation. FNs' ability or right to tax originates as a delegated power of the federal government through section 91(3) of the Constitution Act 1867.[15] Alternatively, it may be viewed as an Aboriginal or treaty right as defined by section 35(1) of the Constitution Act 1982 "which assures recognition of 'existing Aboriginal or treaty rights'"[16] (Froese, 2007, 781). It does not originate through section 83(1) of the Indian Act, which provides bands the ability to tax.

The right to self-government has been recognized by the courts. With respect to taxation, the courts have held that in creating laws the purpose of FN taxation was "to facilitate the development of Aboriginal self-governments by allowing bands to exercise the inherently governmental power of taxation on their reserves" (Froese, 2007, 782). To date, taxation has not been proven to be an Aboriginal right, but there is nothing to preclude arguments that taxation derives from an FN right.[17] The potlatch ceremonies of the Pacific Coast are sometimes cited as examples of wealth redistribution, but the ability of potlatch ceremonies to act as a system of taxation is not proven. Still, there does not appear to be any "theoretical barriers to establishing an Aboriginal right" (Froese, 2007, 785). Establishing such rights rooted in section 35(1) of the Constitution Act 1982 could dramatically alter the current harmonized system of taxation in Canada. FNs would be free and constitutionally able to impose their own direct taxes upon individuals, corporations and governments without negotiation or prior warning (Froese, 2007,

[15] The full section is titled: "The Raising of Money by any Mode or System of Taxation." (Justice Canada, 2008).

[16] The full text of section 35(1) Constitution Act 1982 reads "The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed." Section 35(3) reads, "For greater certainty, in subsection (1) 'treaty rights' includes rights that now exist by way of land claims agreements or may be so acquired."

[17] *In R. v. Van der Peet*, Lamar CJ defined an Aboriginal right as follows: "[T]o be an Aboriginal right an activity must be an element of a practice, custom or tradition integral to the distinctive culture of an Aboriginal group claiming the right …". Therefore the exercise of the right must pre-date contact.

786-7). Such a right has the potential to diverge from the present arrangement of concurrency and harmonization including tax room ceded by the provincial and federal governments to FNs.

Treaty rights have been established that allow for the taxation of FN members and therefore fall under section 35 of the Constitution such as with Tsawwassen (Tsawwassen, 2007, 183). The Benoit case involving Treaty 8 FNs' tax exempt status is cited as an important precedent recognizing treaty rights and taxation (CCRA, 2002). Regarding the taxation of non-members, the federal government is unwilling or at least cautious of incorporating a constitutional entrenched right to tax non-member populations into the final treaty. Instead, side FFAs are signed devolving the right to Indian taxation from section 91(3) of the Constitution Act, 1867.

An important point is that the right to tax does not originate from statute law itself. While section 83(1) of the Indian Act provides the statutory and regulatory mechanisms for FN governments to tax, the constitutional basis of that right derives from the federal government's authority to tax through "The raising of Money by any Mode or System of Taxation" (Constitution Act, 1867, section 91(3)). As such, it is a delegated right as outlined in *Westbank v. BC Hydro*. FN taxation rights come through section 91(3), including taxes imposed on non-member residents of FN land and status Indians who are not members of the FN community imposing the tax (Froese, 797, 2007).

3.2 Indian Act Tax Exemption

Chief C.T. "Manny" Jules, Chief Commissioner of the First Nations Tax Commission, traces the history of the Indian Tax exemption to 1850, when the Parliament of the Province of Canada enacted a law that forbade taxation of FN people residing on FN land not ceded to the Crown (Jules, 1997, 155). This exemption continued in section 87 of the Indian Act of 1876 and to the modern day through court decisions such as *Nowegijick* and *Williams* (Jules, 1997, 156). From time to time questions as to the exact nature and scope of the tax exemption have been

raised in conjunction with a FN's ability to tax. Questions relating to the legal standing of the immunity lead us to examine the extent of its application and the purpose of the exemption itself.

3.2.1 Extent of the Indian Act Tax Exemption

The scope and extent of the Indian Act exemption has long been a question of debate. Various tax cases as well as court decisions have resulted from the ambiguity and multiple interpretations of the exemption. Arguments have been made that the exemption forbids the collection of tax from status Indians. Treaty 8 is often cited as evidence of this exemption as it gave assurances that "forced interference with their life, that it did not open the way for imposition of any tax." However, this would preclude only taxation by the federal government and not the FNs themselves (Jules, 1997, 155). Judges who have addressed the exemption usually base their reasoning on the situs of employment rather than constitutional precedent, treaty or Aboriginal right. Assessing the case of *Shilling v. The Queen,* Pinder notes that the section 87 tax exemption reflects "longstanding obligations of the Crown" towards FNs and that this obligation extends to protecting Indians from dispossession of land or property by non-natives, including the Crown (Pinder, 2000, 1496). The *Shilling* case focused on the extent of residency and its relevance to the section 87 income tax exemption. The question arose when Ms. Shilling, a member of the Six Nations Rama reserve, working for Native Leasing Services, which was located on-reserve, began doing work for a native organization in Toronto. The CRA claimed that earnings from her work were taxable. The courts determined that residency of the individual was not the primary motivation of taxation but that the location of the employer was paramount (Pinder, 2000, 1499). Since Ms. Shilling's employer was located on-reserve, her income was deemed not to be taxable.

Court decisions such as *R. v. Shilling, Nowegijick,* and *Williams* have ruled that the situs of the employer is paramount and that employment on reserve is not taxable by the Crown (O'Brien, 2002, 1576). Other cases such as *Sero, Frazer* and *Lewin* asked the Courts to rule

whether income derived off-reserve was taxable if the institution through which it was invested was located on-reserve. These cases agreed that situs is the deciding factor in determining the application of the exemption although in limited circumstances "connecting factors" may be used to tie employment to a reserve. These decisions stressed that the tax exemption for status Indians, like all Aboriginal rights, are held collectively and so, while the investment institution may be located on-reserve, the income derived through interest or through the stock market occurs off-reserve for individual gain and therefore is subject to taxation (O'Brien, 1579, 2002).[18]

We conclude that the exemption applies only to status Indians who either work on-reserve or who work off-reserve but whose employment has connecting factors to a reserve. Moreover, the situs of income is the paramount factor in determining whether the exemption applies, since income derived off-reserve is taxable.

3.2.2 Purpose of the Indian Act Tax Exemption

The exemption is best described as tax room being held in a state of abeyance until such time as agreement can be reached with the Crown. Judgments have been careful to state that the individual is not immune from tax due to his or her ethnicity but because the place where the income is derived is located on FN land and excluded from tax under statute law. The *Working Paper on Indian Government Taxation* notes that the purpose of the exemption is to "preserve the entitlements of Indians to their reserve lands and to ensure that the use of their property on reserve lands is not eroded by the ability of governments to tax" (Finance Canada, 1993, 10). The absence of the Crown in the sphere of FN taxation does not imply that status Indians have a right to be immune from tax but limits who may tax them to FN governments. The effect of the exemption is to provide wide-ranging taxation immunity from non-FN government taxation of

[18] Where it is established that employment income paid to an Indian is exempt from tax under s.87 of the Indian Act, the employee can ask his or her employer to waive the tax deductions at source. Form TD1-IN, *Determination of Exemption of an Indian's Employment Income*, will help employers determine the appropriate tax treatment for employees (CRA, 2008).

FN property on reserve lands (Finance Canada, 9, 1993). Courts have consistently concluded that the exemption is a part of the self-government right of FN people to control and regulate taxes imposed on their own territories.

3.2.3 Barriers Toward Elimination of the Indian Act Tax Exemption

FNs themselves have been reluctant to assert or gain income tax room from other levels of government. Anecdotal evidence and interviews suggest strong antipathy exists among FN populations (Fiscal Realities, 1997, 55). Objections include a belief that increased taxation powers would erode the fiduciary responsibility of the Crown and that taxation of poverty is counterproductive. Many FN people ardently oppose eliminating the exemption based on their belief that it is a FN or compensatory right (Graham and Bruhn, 2008, 8). In practical terms, the most pressing reason for opposition to FN governments assuming income tax powers is their members' desire to remain free from income tax at least on their reserve-connected earnings (Graham and Bruhn, 2008, 8).

An increase in FN tax revenues would almost certainly change the fiduciary relationship between the Crown and FNs. Under current federal policy, OSR is subject to a clawback rate of 50 per cent against federal transfers. Thus, a FN's total revenue would still increase albeit with augmented obligations to contribute to programs and services. Opposition to this approach is particularly strong among FN people who remember the devolution of services and programs from the federal government in the 1980s and 1990s without sufficient capacity building or funding. This policy was deridingly called the "dump and run" approach and was generally viewed as detrimental to FNs' interests (Graham and Bruhn, 2008, 8 footnotes). These opinions are corroborated by research that indicates core funding for FNs has not been adjusted for

inflation and population growth and currently falls below equivalent provincial funding for services such as education (Milke, 2006).[19]

A second argument surrounding the tax exemption involves the poverty facing many FN people. This argument rests on the notion that many FN people cannot afford to pay additional taxes.[20] However, loss of the income tax exemption for on-reserve status Indians would likely have minimal impact for two main reasons. First, status Indians who live on-reserve but work off-reserve are already subject to income tax. Second, high unemployment rates and low incomes prevalent on most Canadian reserves and the progressive nature of the Canadian tax regimes imply that removal of the tax exemption would impose small or nil burdens for most on-reserve status Indians. With a national median on-reserve income of $29,014, most families would still continue to receive government transfers and tax credits (Milke, 2008). For the average family of four this generates tax benefits of $6,885 annually (Graham and Bruhn, 2008, 43).

The final and biggest hurdle towards lifting of the Indian Act tax exemption lies with FN people, who are reluctant to give up the tax exemption often considered as a right (Graham, 2008, 8). The Benoit case of 2002 argued that tax immunity was granted along with the treaty (Treaty 8), although no mention of such a right exists within the treaty document. The case heard before Mr. Justice Campbell admitted oral histories that the Indian signatories were given oral promises: "Aboriginal signatories had bought the right to be exempt from tax for future generations and in perpetuity" (Ibid). Chief Jules views the exemption as "a right integral to the historic fabric of this country, a fundamental part of the understanding reached between the Aboriginal and non-Aboriginal people of this land when Aboriginal people were asked to share land and resources"

[19] FN mistrust of the federal government derives from past injustices most notably, widespread systemic abuse in federally funded church run Indian residential schools (IRSTRC, 2008). Mistrust could pose significant administrative barriers on income tax collection. FN people may be unwilling to give personal information to the CRA and or evade paying tax. The FN Taxation Commission or FN Financial Authority, who issue FN government bonds, may be able play a significant role in reassuring FN people of the efficacy of the CRA and Canadian tax system (FNFA, 2008).

[20] The national unemployment rate for status Indians on-reserve is 25 per cent. The employment rate on-reserve is 39.1 per cent (Statistics Canada, 2006).

(Jules, 1997, 157). Other Aboriginal advocates have claimed that a S. 35 right exists to the tax immunity characterized by the special and fiduciary relationship with the Crown. Finally, a segment of the Aboriginal population believes that taxation is incompatible with traditional Aboriginal ways of life. In total, then, there is disagreement as to the extent, scope and purpose of the tax exemption which has caused misperceptions regarding its usefulness among many in the FN population.

3.3 Taxation without Representation

Questions of fairness, democratic representation, accountability and governmental transparency are important themes in the discussions surrounding FN taxation of non-member leaseholders or residents (Kesselman, 2000). In Canada it is assumed that every citizen is entitled to a vote in his community of residence by virtue of his or her citizenship. Most Canadians feel "[t]hose taxed are entitled to some say in how they are taxed and what services they should receive from their taxes" (Graham, 2008, 30). "No taxation without representation!" This familiar mantra of the American Revolution summarized the legitimate grievances of the colonists and strengthened public support for independence. In Canada "the consent of the governed is a value that is basic to our understanding of a free and democratic society," and so any change to this long-held convention not only raises the ire of those being denied long-held rights, but puts into question the legitimacy of any agreement that sacrifices democratic rights (Froese, 2007, 793).

The convention whereby taxation is tied to representation traces its origins to Anglo-Saxon England. In its modern legal connotation, the Magna Carta of 1215 is thought to be the originating document. In that year, King John was forced to convene Parliament before taxes could be levied against the nobles or people (Starkey, 2006, 205).[21] This convention subsequently became the basis for modern parliamentary democracy—that those who pay tax are entitled to a

[21] King John was deeply unpopular among his nobility. The continuous war with France necessitated ever-rising tax rates. One tax that was particularly unwelcome was income tax, which netted the Treasury £70,000 per year, an enormous sum for that time.

voice in how that tax money is spent (Starkey, 2006, 205). Today that convention is disregarded when FNs collect property tax where lessees have no input into how their property taxes are spent, as they are not afforded representation on council. The FN band council is not accountable to lessees for their spending or for the provision of services. Its mandate is limited to members of their FN who ultimately hold the council accountable through elections.[22] This has raised legitimate concerns among lessees who fear their money may be misappropriated, spent unwisely or spent on band member needs rather than leaseholder needs. Objections to FNs collecting the BC portion of the property tax have been limited, though at times heated, often arising because unaccountable band councils are able both to collect tax and set the rate. Municipal services are provided to lessees by the FN (often contracted through a neighbouring municipality) and so the intention of the tax—to provide revenue for local services—is fulfilled regardless of who provides the service. Much more serious objections have been raised by leaseholders who feel that FNs have not adequately accommodated their democratic rights to participate within their community.

Some have argued that disputes of this nature between lessees and FN governments are nothing more than disagreements between landlords (FNs) and tenants (lessees). That is not the position of the British Columbia Civil Liberties Association (BCCLA), which considers "[t]he power to make rules regarding property taxes under the Indian Act or any self-government regime is an example of public governance in the fullest sense, not merely a matter between two private parties" (BCCLA, 2000, 2). The BCCLA argues against property taxation being merely a "fee for service" as taxes can be spent for the benefit of the whole community and not just taxpayers. Furthermore the BCCLA concluded that "[r]esidents of Aboriginal jurisdictions have a right to participate meaningfully in decision-making regarding matters that directly affect them" while recognizing the contradiction this poses for FN self-government (BCCLA, 2000, 3). The BCCLA

[22] It could be argued that ultimate authority or accountability rests with the Crown and the Minister of Indian Affairs since the minister is ultimately responsible for band governance.

bases their position on the inalienable rights of Canadians to participate meaningfully in the governmental decision making process as a fundamental characteristic of Canadian citizenship when those decisions directly affect leaseholders. The BCCLA argues the right of meaningful participation exists since both Aboriginal and non-FN peoples are members of a larger political community. FN sovereignty, while pre-dating Crown sovereignty, nonetheless is confined within the existing constitutional structures of Canada of which it forms an important part.[23]

I believe it is helpful to cite briefly the Supreme Court of Canada opinion *Reference re Secession of Quebec,* as it identifies the foundations of constitutionalism in Canada. The Supreme Court identifies four principles on which the "constitution is founded and which aid in its interpretation": democracy, federalism, constitutionalism and the rule of law, and respect for minority rights (Froese, 793, 2007). The Supreme Court notes that the consent of the governed is a basic value central to our understanding of a free and democratic society.

> [A] system of government can not survive through the adherence to the law alone. A political system must also possess legitimacy, and in our political culture, that requires an interaction between the rule of law and the democratic

[23] There is debate among constitutional scholars as to whether the Charter of Rights applies to FN bylaws. At present for bands under the Indian Act the body of jurisprudence suggests that FN councils are subject to the Constitution Act 1982 (see *R. v. Campbell*) since, under S. 32(1) the Charter applies to the federal government, acts of parliament, all provincial governments and provincial legislation. Under similar reasoning the Royal Commission on Aboriginal Peoples argued that the Charter should be applicable to Aboriginal governments. Debate arises in determining whether rights accrued through S. 35 of the Constitution Act 1982, are subject to the Charter as a plain language reading of S. 32(1) makes no mention of the Charter applying to Aboriginal governments and S. 25 of the Charter prohibits any the Charter of Rights and Freedoms from abrogating or derogating any Aboriginal rights and freedoms recognized by the Royal Proclamation of 1763 and any rights that now exist by way of land claim agreements or rights acquired through future land claim agreements (Froese, 2007, 795-799).

> principle. The system must be capable of reflecting the aspirations of the people (Froese, 2007, 793).[24]

The payment of taxes to a level of government that does not possess the cited attributes presents a paradox and severs the "nexus between taxes and benefits" (Bish, 1988, 2). The link between taxpayer and federal and the provincial government is weakened, and a direct correlation between taxes and services provided by these governments is replaced by indirect linkages.

Notwithstanding the BCCLA's argument, it should be noted that lessees who purchased their leases after the 1990 Kamloops amendment entered into their leases with full knowledge that their franchise and participation in regards to municipal or civic matters was limited. The lessees' mill rate and assessment provisions are determined by the FN band council in question and lessees have no input in how their money is spent (Interview clerk's office City of West Vancouver, Nov. 14, 2008). Resident leaseholders on Indian Reserves (IRs) in BC are allowed to vote in municipal or local elections in the municipality where the IR is located so long as they meet citizenship and residency requirements (Ministry of Community Development, 2008, 2). In regards to provincial and federal representation, no changes have occurred with FN assumption of property tax powers. Whether this is justification for the expunging of *Jus naturale est quod apud hominess eandem habet potentiam*, natural rights that have the same force among all

[24] Paragraph 67 reads: "The consent of the governed is a value that is basic to our understanding of a free and democratic society. Yet democracy in any real sense of the word cannot exist without the rule of law. It is law that creates the framework within which the 'sovereign will' is to be ascertained and implemented. To be accorded legitimacy, democratic institutions must rest, ultimately, on a legal foundation. That is, they must allow for the participation of, and accountability to, the people, through public institutions created under the constitution. Equally, however, a system of government cannot survive through adherence to rule of law alone. A political system must also possess legitimacy, and in our political culture, that requires an interaction between the rule of law and the democratic principle. The system must be capable of reflecting the aspirations of the people. But there is more. Our law's claim to legitimacy also rests on an appeal to moral values, many of which are imbedded in our constitutional structure. It would be a great mistake to equate legitimacy with the 'sovereign will' or majority rule alone, to the exclusion of other constitutional values."[*Reference Re: Separation of Quebec*, 1988 2 S.C.R. 217]

humankind, is open to debate.[25] Natural rights can not be abrogated and in BC the franchise was never an acquired right, such as through the ownership of property, but granted through citizenship and residency (Elections Canada, 2007).[26] The *Corbiere* decision of 1999 expanded the franchise for Indian band council elections to off-reserve FN members. In granting the franchise to off-reserve FN members, the Supreme Court of Canada found that the denial of voting rights was incompatible with equality provisions of the Charter of Rights and Freedoms (section 15). In its judgment the court made clear that the right to participation existed:

> Recognizing non-residents' right to substantive equality in accordance with the principle of respect for human dignity, therefore, does not require that non-residents have identical voting rights to residents… However, without violating s. 15(1), the voting regime cannot, as it presently does, completely deny non-resident band members participation in the electoral system of representation. Nor can that participation be minimal, insignificant, or merely token (SCOC, 1999, para 95).

If income tax were levied upon lessees, off-reserve FN members (non-residents) would have a say in how monies from on-reserve resident leaseholders are spent. Since, income tax is levied on a geographical basis off-reserve FN members may be entitled to services provided through income tax revenue without being subject to tax, this would seem to go against the Court's notion of "right to substantive equality" (Ibid). The BCCLA maintains that a just solution to non-FN taxation and self-government can only be achieved if meaningful non-Aboriginal participation occurs in matters that "significantly and directly affects them" (BCCLA, 2000,3).

3.4 Accountability, Good Governance and Revenue

Democracy's ability to provide government that is accountable and relatively free of corruption provides an environment that fosters enterprise and protects private investment, thus

[25] Black's Law Dictionary defines natural rights as: Those which grow out of the nature of man and depend upon his personality and are distinguished from those which are created by positive law enacted by a duly constituted government to create an orderly civilized society (Black's Law Dictionary, 1979, 925).

[26] Until 1920, provinces controlled the franchise for provincial as well as federal elections. Although no property qualifications existed for voting rights in BC, discrimination based on ethnicity prevented minorities from voting for much of the 20th century (Elections Canada, 2007).

producing stability. Such attributes foster societies with high living standards and are reflected in Western countries' ability to raise taxes to meet the collective needs of their citizens, particularly those who are less well off. FN communities in Canada present us with a paradox; most are democratic (even if decisions are still technically subjected to approval by the Minister of Indian Affairs); however, many reserves can hardly be described as prosperous or hotbeds of wealth creation. Democracy itself is not sufficient to produce good governance or the wise public policy decisions necessary for advanced standards of living. Fiscal theories of governance characterize the linkages between the governors and the governed, suggesting that "[s]truggles between citizens and governments over taxes and government services tend to produce greater deference—thereby enhancing both performance and accountability" (Graham, 2008, 16). Such interaction is currently lacking in FN governance.

Currently INAC has a budget of $6.2 billion, the vast majority of which is spent on transfers to FN communities and band councils (TBS, 2008, 1-7). In 2001 Fiscal Realities estimated that between 90 per cent and 95 per cent of FN revenues came from government transfers (Graham, 2008, 21). This figure does not include monies spent by other federal departments on-reserve such as Health Canada. In total the AFN estimated that $8.5 billion would be spent on FNs in 2003-2004, of which $5.36 billion was allocated to FN governments directly. This figure equates to approximately $18,000 per capita for the on-reserve population (AFN, 2004, 6-7).

Fiscal theories of taxation suggest that dependence on broad taxation, if fairly and effectively administered, should lead to predictable government outcomes including:

- More responsiveness and bureaucratic capacity with the focus on systematically taxing citizens (enhancing performance and voice)

- Increased state emphasis on prosperity of citizens, where rulers now have a direct stake in encouraging it (enhancing direction, performance)
- More political engagement of citizens, as they experience taxation and mobilize to either resist or monitor the way revenues are collected and spent (enhancing accountability, legitimacy and voice)

An outcome of these conditions is what Moore calls "revenue bargaining." Taxation becomes more acceptable and transparent to taxpayers as the collection process becomes more efficient and routine. Taxpayers begin to exchange compliance for institutionalized influence over the level and forms of taxation and the use of revenues (Graham, 2008, 17).

3.4.1 The Curse of Non-Tax Revenues

Many will be familiar with the idea found in international development literature of "the curse of oil." This literature examines the effect oil wealth has had on developing countries since the 1970's and suggests that "oil wealth impedes democratic governance" and that "large natural resource revenues tend to undermine democracy where it already exists" (Graham, 2008, 18). Deterioration in governance occurs for a number of reasons. The boom-bust cycle of commodities makes revenue streams unpredictable and often volatile on a year-to-year basis. Poor budgetary planning results in increased program spending during boom times bloating budgets to the point where they become inefficient and unsustainable when revenue yields stagnate or contract during periods of commodity price depreciation. This problem is often exacerbated by the spending habits during the boom when expenditures on non-essential or trivial programs increase far faster than those of basic investments (Ibid).

Spending on discretionary goods, services, programs or luxuries tends to depress electoral competition. High rates of voter apathy emerge from resource-rich countries as states overawe their populaces with "easy access to a source of wealth independent from domestic

taxes" (Ibid). This outside wealth, rather than "encouraging incumbent political parties to attract votes by delivering cost-effective services," encourages leaders with over-abundant public monies to buy votes instead (Ibid). Since public services are abundant, taxes low and the domestic economy strong, is the citizenry has little reason to engage in the politics of opposition and accountability. Instead "patronage politics become the more cost-effective option" (Graham, 2008, 19).

Fiscal transfers involving different levels of government often revolve around themes of affordability and equity. In most cases, transfers themselves are meant to address a deficiency in one of these key areas (Bahl and Wallace, 2004, 2). Transfers of an equity nature are often dubbed "equalization," the premise being that, ceteris paribus, there should be "equality of access to public services regardless of where a citizen lives" (Petchey and Levtchenkova, 2002, 14). This is done through equalizing the fiscal capacities of the sub-national regions within a federation so that efficient and effective public services can be delivered by sub-national regions with low fiscal capacity (Bird and Smart, 2001, 2).

In Canada this phenomenon has taken the primary form of the federal equalization program to provinces done through a representative tax system where money is redistributed to poorer regions so that the fiscal capacity of all provinces reaches a national minimum (Smart, 1998, 190). In federations that have an equalization transfer system, higher tax revenue results in lower transfers from the federal or national government. Thus, the higher a sub-national government's OSR in relation to expenditures, the lower the amount of transfer monies it receives (Baretti et al., 2002, 2). Canadian equalization payments are based on a province's fiscal capacity calculated using a 10-province average (Finance Canada, 2007). Transfers play a significant role in stabilizing local governments' OSR and have the ability to compensate them for tax base deficiencies (Smart, 2004, 197). "This is a desirable property of intergovernmental transfers,

since having stable net revenue aids governments in fiscal planning exercises and reduces the costs (whether economic or political) of short term deficit finance" (Smart, 2004, 198).

Many problems arise with intergovernmental financing. There can be serious disincentives to raise own-source revenue or find efficiencies within existing tax systems, creating "distortionary impacts" and dependence (Baretti et al., 2002, 16).

3.4.2 Own-Source Revenue

The definition of FN OSR has been debated in Canada. The World Bank definition of OSR is: "To be an own-tax or revenue source, the sub-national unit must, at the very least, legislate the rate" (Taliercio, 2005, 109). OSR can consist of taxes, levies and fees. Revenues raised should be based on assigned expenditures, avoid economic distortions by taxing the factors of production and follow the principle of subsidiarity; revenue-raising powers should be assigned to the lowest-possible level of government, except where such assignment would produce economic distortions or negative externalities (Taliercio, 2005, 108). In a Canadian context FN OSR is deemed to be revenue generated by FNs through their own rights or assets including income and sales taxes, government enterprise revenue, resource royalties, development fees, property taxes and lease revenues (Fiscal Realities, 2002, 15-17).

It is generally agreed that for governments to be autonomous a large portion of their revenues must be OSR. For local governments in Canada, OSR is most often generated through property tax. Most governments at all levels raise a significant amount of their revenues through various forms of OSR. British Columbia raises 85 per cent of its revenue through own-source revenue with only 15 per cent (some $5.5 billion) originating from federal transfers (BC Ministry of Finance, 2008, 46). In the United States property tax accounted for between 66 per cent and 92 per cent of OSR generation of local governments (Frank, 2006, 168).[27]

[27] This includes school districts, municipalities, counties, special districts and townships.

Throughout Canada OSR is the major funding source for programs and services of provincial and federal governments. In most provinces income tax accounts for the largest share of OSR, particularly Ontario, where it accounted for 47 per cent, and Quebec, where it accounted for over 42 per cent of revenues in 2008 (Statistics Canada, 2008). For two natural-resource-rich provinces, income tax accounted for 32 per cent of Alberta OSR and 27 per cent for BC. Natural resource revenues accounted for 11 per cent of OSR in BC. In Alberta non-renewable resource revenues contributed 32 per cent of total OSR (BC Ministry of Finance, 2008, 64; Alberta Ministry of Finance; 2008, 49). Revenue from "return on investment" in the form of trust, portfolios or revenue from Crown corporations also made up a significant portion of provincial OSR (ibid).

The federal government's policy toward OSR and FN self-government is based on the belief that the current fiscal transfers are not working well and that continued financing of the status quo will adversely affect "Canada's future fiscal capacity" (Fiscal Realities, 2002, 3). Federal policy includes all FN revenue streams as part of OSR with exceptions agreed to by the parties such as a capital transfer. These streams are subject to the OSR clawback of 50 per cent against federal transfer payments used to pay for programs and services (First Nations Summit, 2003).[28] The OSR clawback is meant to prevent the implementation of discriminatory FN tax policies that would disrupt the harmony of the Canadian tax system. The federal government wishes to prevent circumstances where FNs are immune from taxation yet receive the benefits of the tax revenue or to create a relationship where Ottawa both pays for services and cedes tax room without the FN entering into that space. Such gaps could give FNs an unfair competitive advantage as they would not be forced to collect tax. This could produce local economic distortions (businesses moving across municipal or regional borders).

[28] The Uchucklesaht OSR agreement reached in December of 2006 includes FN personal income tax, Uchucklesaht GST, fines, interest, and penalties, and other identified taxes.

The impact of the OSR clawback on the financing of FN government is important to consider. Fiscal theories of governance as well as the principle of subsidiarity imply that the government levying the tax should administer it and provide the services the tax is funding. Tax regimes should "create a neutral decision-making environment"—that is, avoid creating incentives for the migration of people or capital, or for the generation of certain revenue streams over others and the avoidance of dependence upon transfers vis-à-vis OSR (FN Summit, 2008). When discussing FN OSR, issues such as an upper OSR clawback rate, the included revenue streams and the purpose of the revenue are important considerations. Lack of an upper clawback rate may generate negative externalities for FNs by transferring costs from the federal government. FN communities would be denied the necessary funding for programs and services producing little "residual economic value for other purposes" (Falconer, 2000, 1834). This would put pressure on FNs to distribute the benefits of taxation in order to protect their economic worth (Ibid). The community aspect of FN OSR is also important to consider. Collectively held Aboriginal rights have brought about community owned FN corporations. If revenues from these corporations are included in OSR, they are disadvantaged relative to private businesses that are subject only to conventional taxes (Ibid).

4: Methodology

This study assesses the political acceptability, administrative requirements, potential community and social effects, and effectiveness of income tax as a revenue source to FNs, by addressing the following questions:

1. What is the importance of own-source revenue for First Nations both pre- and post-treaty?
2. What political barriers exist within First Nations communities or the government towards FNs collecting a portion of the income tax from members and lessees?
3. What social effects might withdrawing tax immunity have on FNs communities?
4. What is the ability of income tax collection to act as a trade-off in treaty negotiations?

I conducted interviews with former and current councillors, chiefs, and band administrators from the Musqueam, Squamish, Tsleil-Waututh, and Tsawwassen First Nations. I also conducted interviews with senior tax policy analysts and negotiators from the provincial and federal governments. All subjects have been interviewed more than once in order to determine what benefits they see to reaching agreements that include income tax collection provisions on Indian lands, both band-occupied and leasehold tenanted. Through interviews I have sought elite responses to my four main questions and ascertained whether the various groups share any common ground for my policy alternatives.

This approach is consistent with proper research design as negotiations involving treaties are conducted through a small circle of both FN and government officials. These groups create and determine the structure and wording of the treaties and assign the powers that will be retained or granted by each party. Thus, a study involving these individuals is the best way to uncover the preferences of FNs and governments and their policy goals. Usually treaties are subjected to referenda by FNs, but I do not believe a survey of band membership asking their positions on their Nation's ability to collect income tax would either be feasible or produce reliable results. Most individuals have scant knowledge of the tax system and government programs and even less about incremental tax benefits and clawbacks associated with own-source revenue generation and FN self-government. Conducting a survey asking FN memberships their opinions on such topics is unlikely to elicit informed opinion as to the pros and cons of such a policy, nor the positive and negative effects such a policy could have on their community or the increased complexity such tax agreements may impose on other levels of government.

I believe my preceding review of annual reports, statutes, briefs, memos, academic papers and analytical articles has provided the background needed to produce appropriate questions. The topic is relatively unstudied, with very little formal analysis of the underlying issues. Reviewing relevant legislation helps to understand the technical issues of tax collection and revenue transfers. Reviewing articles, annual reports, briefs and memos provides insight into the motivations of all negotiating parties. In addition, the literature provides insights into the effects of similar policies on FNs in the Yukon and their positive and negative effects.

4.1 Sample

My sample includes both elected and administrative First Nations officials and lay members of First Nations communities who have an interest in or were part of treaty negotiations and some members who were opposed. Interviews were also held with provincial and federal

government officials who possessed expertise in the fields of taxation policy, treaty negotiations and fiscal negotiations.

4.2 Survey Instrument

FN and government officials were asked questions relating to income tax generation, the importance of OSR for FNs, and the potential social impacts the loss of tax exemption could pose for reserves. They were also asked general policy questions relating to their objectives in land claims and treaty negotiations. The instrument and questions posed to the various groups are similar in scope but differ in a number of important respects. Government officials were not asked about specific cases, whereas FN interviewees were encouraged to provide answers reflecting their own and community experiences and preferences. A copy of the questions appears in Appendix A.

5: Interviews

The following 10 individuals were interviewed for the study:

Andrew Bak, Manager Lands and Natural Resources, Tsawwassen First Nation

Dale Komanchuk, Director of Administration and Public Works, Tsleil-Waututh Nation

H. Wade Grant, Leadership Council Policy Analyst, BC Assembly of First Nations; former Councillor, Musqueam First Nation

Employee, Squamish Nation

Government Official, Tsleil-Waututh Nation

Member 1, Tsawwassen First Nation

Member 2, Tsawwassen First Nation

Senior Tax Policy Officer, Finance Canada

Fiscal Negotiator, BC Ministry of Aboriginal Relations and Reconciliation

Manager, BC Ministry of Finance

Where names are not cited in the above list, the interviewees expressed a desire to remain anonymous. Interviewees were asked questions about the current revenue sources for FNs governments, the acceptability of various options, as well as fiscal challenges and possible implementation barriers that each policy option might encounter.

5.1 First Nations' Revenue Sources and Problems with Funding

First Nations at present have three main revenue streams to finance government: grants from federal departments; fiscal financing agreements with government that cede tax room; and

band-generated revenue from investments, fees or rents. All revenue streams are subject to a 50 per cent offset against federal government transfers. Most FN interviewees felt the clawback constrains the ability of First Nation-owned businesses to act as catalyst for economic development in their communities. In general, they felt this funding arrangement leaves FN governments highly dependent on revenue transfers and without the ability to enter into large infrastructure projects that carry a high debt load. Recently this barrier has been lessened through the First Nations Taxation Commission's issuance of bonds secured by future property tax revenue.

Mr. Dale Komanchuk from the Tsleil-Waututh administration noted the difficulty in the present funding arrangement and own-source revenues that sees OSR effectively taxed at 50 per cent.

> The federal government (position) is that they would tax back 50 per cent of the own-source revenue FNs make. The FN officials that I interviewed aren't opposed to the idea of paying taxes on their own-source revenues, but they want to do it when the social and economic conditions in our (Tsleil-Waututh) community are similar to the communities around them. (Komanchuk, 2008)

First Nation interviewees were quick to note that one problem with the current funding arrangements, particularly within the treaty context, is the lack of funding for negotiation, legal fees, litigation or archaeological investigation that could strengthen claims of inherent Aboriginal rights or territory. Monies for these activities are usually borrowed from the Crown and offset against a final settlement. Mr. H. Wade Grant of the Musqueam and Mr. Dale Komanchuk of the Tsleil-Waututh noted that litigation is often a more productive forum for resolving disputes with the Crown than the treaty process or negotiations. The Crown's unwillingness to give up sufficient amounts of land, tax room or money without prolonged negotiations or litigation has meant that insufficient resources are part of the treaty envelope to secure agreement among the parties.

5.2 Importance of Own-Source Revenue

All participants recognized the importance of own-source revenue generation. Both government officials and First Nations members and administrators were adamant that OSR generation was important for self-government to be effective and meaningful. Some First Nation members were critical of OSR. They viewed it as a way for FN officials to enrich themselves through corruption, mismanagement and nepotism (Tsawwassen interviewee 1, 2007). They were opposed not to own-source revenue per se, but the treaty process and self-government itself, as they thought that there were not adequate checks in place to guarantee accountability. Those who had concerns regarding the competence of FN administrations thought that cash transfers should be made directly to individual FN members as a way to initiate and recognize Aboriginal and treaty rights, similar in concept to treaty money (INAC, 2008, Treaty 8 payments).[29] These direct transfers would include the GST rebate and other incremental tax benefits.

Most interviewees including provincial and federal officials thought OSR was important to the long-term success and stability of negotiated treaties and FN communities. They thought that OSR was "a fundamental function and a necessity of government to raise funds from its constituency ... without an ability to raise revenue we wouldn't be able to provide services" (Bak, 2007). Other First Nation officials saw it as more important than a mere function of the administrative process of government but as the enabling mechanisms for autonomous self-government:

> It is most important I would say for reaching a permanent settlement or treaty cause, that's it own-source revenue that's what we've haven't had. So that is what is great about having this [the Tsawwassen treaty] is being able to do our own businesses and do our own plans. So it's important (Tsawwassen interviewee 2, 2007).

[29] FN members are entitled to annual treaty payments if they are registered as an Indian and a member of a First Nation that signed a treaty providing for annual treaty payments. Individuals may also be eligible if they have an affiliation with a Treaty First Nation. Treaty annuities are normally paid in cash at Treaty Day events.

OSR thus is viewed as not just the answer to funding services and programs for members but as a mechanism for FNs to remove themselves from the constraints of the Indian Act and Department of Indian and Northern Affairs; to be autonomous and financially independent. Most FN leaders viewed OSR generation as public recognition, legitimizing their inherent right to self-government in the eyes of mainstream Canadians (Bak, 2007).

Government officials took a much more cautious approach on the importance of OSR. Most officials viewed it as necessary for First Nations and the treaty process, but they did not see it as a make-or-break issue for treaty negotiations. To their minds, the benefit of OSR was its ability to provide financial resources to provide services for band members

5.3 Taxation of Non-First Nation Members

The ability to collect income tax from non-member leaseholders or residents was a more controversial issue. While it had the support of most FN officials, Mr. H. Wade Grant questioned what trade-off government would seek in exchange for taxation rights. Government officials were less willing to cede this tax room without specific commitments and were unwilling to entrench such agreements in a constitutional form such as a treaty. All interviewees viewed it as a stable source of revenue.

The federal officials made clear that negotiations or agreements on the ceding of income tax of lessees or non-FN residents would not be entered into until the FN or Aboriginal group involved was prepared to sign a treaty or land claims agreement with the Crown. Agreements between the federal government and FNs involving income tax powers are concluded through Tax Administration Agreements (TAA), government-to-government agreements negotiated separately albeit in tandem with a treaty. In this way, the TAA along with fiscal agreements do not have the protection of section 35 of the Charter of Rights and Freedoms or the constitutional status and protection this confers. The federal government uses this approach to maintain the

sovereignty of Parliament regarding the taxation of non-FN members. In effect, this approach is chosen to maintain at least the appearance that non-FN members are not taxed without representation.

> We're only prepared to vacate federal tax room and enter into these types of arrangements where the FN or Aboriginal tax is fully harmonized with the corresponding federal tax. So, the same rules, rate, base, effectively incorporation by reference of the corresponding federal tax. So that there is a kind of seamless fit with the national tax system and the federal government is prepared to administer taxes on that basis on behalf of the Aboriginal government at no charge. (Sr. Tax Policy Officer, Finance Canada).

FNs were concerned about the political ramifications of taxing non-members as taxation of non-members may lead to a public governance structure of self-government which FN leaders were reluctant to accept (Kesselman, 2000, 1554). FN officials acknowledged that through taxation, non-FN members would have cause to seek meaningfully participation in decisions that directly affect them.

5.4 Taxation As A Trade-off For Land

Opinion was unanimous among interviewees that taxation powers could not act as an incentive to accept less land in a final settlement or treaty. FN interviewees were more receptive to the proposition than government officials, but there was reluctance to entertain such discussions since FN leaders thought the amount of land on offer was too little to begin with. Government officials stated clearly that present policy does not include using tax room as a trade-off for land, particularly in urban areas and negotiation principles were uniform across all tables. As one government official put it:

> In the absence of a treaty we're not seeing it as a quid pro quo necessarily at all. We don't take a fundamentally different approach to an urban First Nation like Tsawwassen which may have a relatively small but high value land base as compared with a remote rural First Nation which might have a much larger geographic land base (that it is) composed of land on a per acre basis is considerably less expensive. (Manager, Ministry of Finance, 2008)

Provincial officials did not look at ceding tax room for land as a concession or trade-off at all, as provinces do not currently collect income tax from on-reserve status Indians. Therefore, any revenue from on-reserve Indians would be regarded as additional revenue from what the government usually receives (Interview, Fiscal Negotiator, BC Ministry of Aboriginal Relations and Reconciliation). A similar situation exists for the federal government except they "voluntarily" exempt on-reserve status Indian income and property from taxation, whereas provinces are barred under S. 125 (Constitution Act, 1867). There was guarded acknowledgement that while no direct trade-off between land and tax room exists, other trade-offs somewhat fulfil this objective, most notably in the form of cash transfers.

The reasoning applied by provincial officials for not trading tax room for land is the principle that governments should have a tax base proportionate to the services they provide. After treaty settlements, leaseholders will continue to receive the majority of their services from the provincial government. FN governments will provide "provincial type" services only to FN members on TSL; hence, FNs have no need to pursue provincial income tax space. The federal government through statute and fiduciary obligation is obligated to pay for "provincial type" FN programs and services costs and is willing to enter into much more generous income tax sharing arrangements with FNs. The province is willing to cede 50 per cent of TSL FN members' taxes to pay for services such as health, which post-treaty often become the responsibility of the signatory FN (Interview Fiscal Negotiator, Ministry of Aboriginal Relations and Reconciliation, 2008).

The federal position of ceding income tax room and its ability to act as a trade-off for less land or cash is similar. Officially, they deny that a direct trade-off with income taxation exists in land claims negotiations. They do recognize that the ability to raise revenue in general is an important factor in negotiations, including the economic and tax-raising potential of the land itself and industries on TSL. Their perspective is to look at the agreements as a package and not to offset one against the other but to negotiate a complete deal.

> [T]he demographic makeup of the population and the economic activity on that land, income circumstances and so forth would have a big bearing on the actual tax revenue potential and the revenues that would be flowing to the First Nation after a given tax arrangement. (Manager, Ministry of Finance, 2008)

While the governments of BC and Canada do not explicitly negotiate a trade-off between tax raising ability and land, a relationship between the two does exist in the sense that FN governments need to have the ability to pay for services and programs negotiated in the treaty. Since it is the government's treaty policy for FN governments to be self-financing over the long-term, an indirect quid pro quo exists between the tax base in general and land.

5.5 Repercussions of Taxation

Loss of the tax exemption could cause adverse effects among First Nations communities. One problem that FN interviewees identified is out-migration. Often the first to leave are those who have the highest qualifications and education. Those individuals have the highest on-reserve earnings and would be most affected by loss of tax immunity. Out-migration reduces the capacity of FN governments, administration and businesses and may force FNs to rely upon outside consultants or contractors for special skills. In communities with high unemployment and low income, the loss of monies to outside sources is hard felt and reduces the economic viability of the community itself as those left behind are less well off and unable to handle the economic burdens of government.

A second problem with removal of the tax exemption is the loss of incremental tax benefits such as the GST rebate or the Child Tax Benefit. This issue arises mostly for FN members at moderate to higher incomes who currently obtain undiminished benefits by virtue of their tax exemption but whose benefits would be partially or fully clawed back if their full incomes were considered taxable for the benefit determination. The loss of these incremental tax benefits would result in a reduction of income for these individuals and families. Of course, the imposition of tax itself would further reduce those households' disposable incomes.

Most FN and government officials did not think that within an urban context the imposition of income tax would trigger an exodus from reserve or TSL. Residence decisions are based on many complicated factors including access to family, job opportunities, house or land prices, with income tax being only one of many considerations. Proximity to family, friends and traditional culture are other factors that would impede out-migration in response to the loss of tax exemption.

Andrew Bak noted that from an urban FN perspective it seems unlikely that the imposition of income tax would cause out-migration for three important reasons. Many FN members work outside the reserve and are subject to tax already; therefore, the imposition of income tax on-reserve would have less effect in an urban environment than a rural community. Second, the purpose of treaties to which the extinguishment of the income tax exemption is linked is to promote economic opportunities for FNs. Finally, as more than one interviewee noted, if you look at the last 50 years when the exemption has been in place, out-migration from reserves has been commonplace. So if tax exemption did not entice people to stay, its relinquishment is unlikely to cause others to leave.

Despite these observations, the loss of tax-related benefits was a contentious and delicate issue among FN officials interviewed. The possible loss of the exemption with treaties will leave some members of FN communities worse off. The loss of incremental tax benefits is a real concern within Nations where unemployment is high and the standard of living below that of other Canadians. Exacerbating this concern is the high birthrate and young Aboriginals in general. The imposition of tax could result in many FN members losing the Child Tax Benefit, GST benefits, and the BC family bonus and other transfers that are dependent on income. The Child Tax Benefit starts to be claw backed over income of $37,885. The National Child Benefit Supplement begins to be claw backed at $21,287 although families with 4 or more children continue to receive the benefit up to $42,500 (CRA, 2008). The phase out threshold for the GST

credit is $31,524 for an adult in 2009 (CRA, 2008). While these benefits are not large, they do serve as important transfers in underprivileged communities. The general consensus of most interviewees was that the imposition of income tax would not have significant detrimental effects upon urban FN communities. The progressivity of the Canadian tax system insulates people at low incomes. Low-earning and unemployed FN members living on reserve would still access most of their current tax-related benefits even if they became taxable.

Poverty and unemployment remain widespread on reserves, with residents generally having a lower standard of living than other mainstream Canadians. According to the 2001 census, the employment rate for Aboriginal persons both on- and off-reserve was 16 percentage points lower than that of non-Aboriginal persons residing in Metro Vancouver (Siggner, 2005, 28). On- and off reserve Aboriginals received a higher percentage of their income from government transfers (14 per cent compared to 10 per cent for non-Aboriginals), and children were three times as likely to be from a single-parent household (Siggner, 2005, 29). Nationally the unemployment rate for status Indians living on-reserve was 23 per cent while unemployment for status Indians living off-reserve was only 13 per cent (Census 2006).

Aboriginal and government officials believed that the number of people adversely affected by the imposition of income tax would be relatively small and the overall income effect minimal for two reasons. The number of FN people able to claim an income tax exemption by virtue of working on reserve for an on-reserve organization or business is usually confined to employees of the FN government and Aboriginal owned business.[30] Most interviewees recognized that many barriers to working including education still exist within the Aboriginal population that result in lower incomes, higher dependence on government transfers, and higher unemployment rates. This lack of employment and lower incomes means that many status Indians on-reserve would keep receiving benefits and hence insulate them from the effects of losing their

[30] Dale Komanchuk thought that wages for FN employees would have to rise with the imposition of income tax.

tax-exempt status. Tsawwassen officials pointed out that the loss of the exemption may decrease income, but increase funding for program and economic development resulting in increased opportunities for members. Increased revenue could be used to offset any reduction in transfers through creation of Tsawwassen-based income transfer programs.

On the use of OSR for income transfers, federal and provincial government officials stated that treaty negotiated side agreements have a maximum 12 year implementation period and must be comparable to and harmonized with that of British Columbia and Canada.

> If for instance an Aboriginal government violated a term that was effectively rebating 100 per cent or the equivalent of 100 per cent of the tax that it was generating from the Aboriginal tax payers to those people and retaining without any conditions not based on needs or means or anything like that, but effectively was retaining only the revenues from the non-members residents I think we would regard that as effectively as discriminatory taxation and that would be a good reason for terminating a tax agreement (Sr. Tax Policy Officer, Department of Finance, 2008).

Taxation will give members access to decision and policy making at a unique first-hand level, as Tsawwassen has only 180 on-reserve members. Instead of policy being dictated from above, a deliberative policy formulation process was thought likely to develop in small communities that are or will be signatories to treaties

5.6 Advantages of Income Tax Collection

Interviewees cited a number of potential benefits for FN communities beyond simply the revenue associated with direct taxation powers.

5.6.1 Accountability

Accountability was often cited by both FN and government officials as a positive effect from the imposition of direct taxation. Even those who were less receptive to treaty negotiations in general or the idea of raising income tax noted that people who pay taxes have a vested interest in holding those who govern and spend tax revenue accountable to their interests. The assumption

that direct taxation could lead to better governance among FN communities is important both from a governmental and FN perspective. Questions regarding corruption and nepotism among Aboriginal communities were also raised (Tsawwassen 2, 2007). In 2008, the *National Post* highlighted the issue of corruption in an article on the sorry state of housing on the Piikani Nation in Alberta, where a recent a $64 million land claim settlement and an additional $500,000 earmarked for housing have resulted in 500 band members without adequate accommodation (Libin, 2008). The Chrétien government was so concerned about on-reserve corruption that it brought before Parliament the First Nations Governance Act, Bill C-7, which subsequently died on the order paper when Parliament was prorogued in early 2004. The Act was meant to enhance accountability of band governments by clearly outlining governance codes, definition of band fund and Indian monies, band councils, elections and eligible voters. The changes were intended to facilitate "effective band governance on an interim basis pending self-government; enabling bands to gain independence in managing their affairs; reducing ministerial involvement; and enabling bands both to respond to their individual needs and to design their own governance regimes in prescribed subject matters" (Parliament of Canada, 2004,8).[31]

> We also talk a lot about in this context the role that taxation can play in enhancing that accountability relationship between government and its citizens. Taxation can, although a lot of people are sceptical about this, can contribute to better and more responsible government. The idea that taxing government is motivated to be accountable and responsive to taxpayers that it depends on for revenues and the other side of the coin that, that taxpayers are motivated to hold a government accountable for the wise use of its funds, when it is coming from the taxpayer's own money. (Sr. Tax Policy Officer, Department of Finance, 2008)

Most interviewees thought that this would be a likely outcome of both self-government and increased taxation authority for FN governments.

[31] It should be noted that only 56 per cent of Registered Indians in Canada live on reserve or Crown land. The remaining 44 per cent fall outside the Indian Act (INAC, 2007).

5.6.2 Stability of Revenue Source

Revenue stability is important in order for any government to plan and manage their financial affairs over the medium and long term. The cyclical effect of economies necessitates a method by which potential or future revenues can be estimated in order for policy makers to have the tools and information to make prudent decisions. Volatility of revenue can cause a boom-bust effect in program delivery: in good economic times, programs and benefits are plentiful, but with bust, programs have to be cut. Such scenarios are detrimental to governments that acquire and then lose high quality workers or assets as their revenues fluctuate.

FN interviewees repeatedly expressed concern about the loss of federal financing and transfers that would occur with the acquisition of tax room. They expressed uncertainty as to whether the tax room gained would be sufficient to offset lost transfer revenue in good times as well as bad.

Stability of revenue sources was important for FN members as the services they wish to implement often are high cost such as health, education and justice programs and services. Therefore stable revenue streams were seen as important for future economic, governmental and community development. Income tax generation was viewed as a stable source of revenue among most elites depending upon the context in which it was applied. As one member of the Tsawwassen community expressed it, “income tax makes the world go round” (Tsawwassen 1, 2008). It was viewed as being a stable revenue stream in itself though not an effective one if only FN members were subject to it. From a governmental perspective, the ability to collect income taxes was also seen as a stable revenue source even though agreements involving income tax are not subject to constitutional provisions. Senior officials responded that while tax agreements are not subject to constitutional protection, violation or termination of them would be subject to considerable political costs. One official stated that the “arrangements between the federal government and the provinces whereby the tax point arrangements, the tax collection

arrangements between the provinces and territories also stem from government-to-government arrangements" (Sr. Tax Officer, Department of Finance, 2008).

5.7 Politics of Taxation

Interviewees were split on the politics associated with on-reserve status Indians giving up their historic exemption from income tax and with the taxation of non-member leaseholders. Two substantial problems exist according to all interviewees. First is the perception among FN people that the exemption is a treaty right, an Aboriginal right, or ultra-constitutional convention provided as partial reparation for loss of land, culture, and title. The second major political barrier related to this issue is the perceived objections of non-native leaseholders paying tax to FN governments without representation in those governing bodies.

Opinion as to the first question was split among the interviewees. Some FN councillors thought their members would be willing to lose their exemption if the revenues were used to finance economic development and the prosperity of their community. Andrew Bak explained the reasoning he used when explaining the value of the exemption to members of Tsawwassen before the treaty was voted on:

> [I]f you have no income, tax exemption it isn't priceless, it's worthless. If you have no economic prospects you could be totally tax exempt and it wouldn't mean a damn thing! We're, contemplating imposing tax because we see there will be economic opportunities for our members and that's the trade-off (Andrew Bak, Tsawwassen FN).

Others were equally confident that the introduction of tax corresponding with increased autonomy for programs and services would be beneficial to the social and economic well-being of their community. They felt that once the economic benefits were understood, people would be in favour of income taxation by FNs.

All interviewees acknowledged the difficulty of this issue inside FN communities. Some key stakeholders thought the change would prove too acrimonious and was unlikely to be

accepted by their membership. Dale Komanchuk thought that the loss of tax exemption would prove a particularly difficult sell among band employees whose pay is below market wages off-reserve, but competitive in view of the exemption. H. Wade Grant of the BC AFN and former Musqueam councillor was wary of what Musqueam would have to give up when securing income tax revenues. He stated that income tax liability along with loss of incremental tax benefits would be a "big blow to the community" (Grant, 2008) and may lead people to ask in the words of a Tsawwassen member "Why? Why is this happening? I used to get this before?" (Tsawwassen 1, 2007).

Regarding the taxation of lessees, all interviewees acknowledged the historic link with representation that extends back in common law to Runnymede and the Magna Carta. Leaseholders have no right to representation and franchise for local services and municipal government if they reside on Indian land. There is concern that leaseholders would become even more disenfranchised if a portion of their income tax payments were received by FN governments.

All participants acknowledged that this would be a contentious issue because of the perceived lack of representation and accountability between lessees and FN governments. Arguably lessees' political rights would be less adversely affected than when the province ceded the provincial property tax. Federal and provincial insistence that the overall integrity of the tax system be maintained through harmonization of taxation regimes so that any introduction of FN income tax would complement rather than conflict with the overall Canadian tax system (Finance Canada, 1993, 13). Implementation would not permit FNs to set the rates, which would remain the purview of provincial and federal governments where lessees would be represented by their M.P. or M.L.A. This is in stark contrast to the provincial property tax, where FNs' have considerable autonomy in setting the mill rates and specifying the property assessment regime and procedures.

6: Policy Alternatives

6.1 Implementation of Current Policies

Current policies with respect to FN income tax collection consist of two separate conventions. First, all status Indians who reside and work on-reserve are exempt from paying tax on property including income earned on-reserve or income earned off-reserve if connecting factors exist. Second, FNs can make agreements with the federal Crown to receive a portion of income tax from FN members and lessees so long as it is harmonized with the federal tax and the FN is in the advanced stages of a final agreement. Tax collection is executed by the CRA on behalf of the FN and a portion of the receipts remitted back. Just like provincial income tax, a FN taxpayer must fill out a separate FN income tax schedule (see appendix B) for federal, provincial and FN income tax. The one-page form is relatively simple with only minor computational requirements. FN income tax would be governed by the same rules and regulations that apply to off-reserve residents of the province, and income tax rates would remain identical to those of the federal and provincial government.

On-reserve Aboriginals receive the majority of their social services, such as healthcare and education, from the federal government either indirectly through transfer funding to provincial or municipal governments, or directly through their First Nation community. Band revenue is a combination of monies determined by the Department of Indian and Northern Affairs through Parliament and OSR generated by the individual FN.

The implementation of current policy alternative is presented assuming that both FN members and lessees on FN land would pay the federal portion of the income tax, and FN

members would pay 50 per cent of the provincial income tax. All revenues collected under this alternative are subject to the 50 per cent OSR claw back against federal transfers.[32]

6.2 Collect From Resident Members and Lessees

This alternative would increase the potential tax base for taxing First Nations by providing FNs full provincial and federal tax room on-reserve, collecting from both FN members and lessees. The CRA would handle collection and administration of the tax. No significant changes to the way these people pay income tax would occur. Tax rates, provisions, and regulations would be identical to those of the province and the federal government. Tax forms would be the same as for other filers except that they would include a simple designator for residence on a taxing FN. In 2003 the average British Columbian paid a total of $2,179 in personal income tax, demonstrating a potentially large revenue pool to First Nations governments with small resident member populations and a relatively large number of leaseholders (BC Ministry of Finance, 2003). In an urban context the potential revenue generated from collecting income tax or a portion thereof is significant. The potential could be further expanded in the future with the acquisition and development of TSL or FN lands for residential purposes. All four urban FNs studied have large property holdings, some in the form of leasehold lands. With real estate prices in Metro Vancouver among the highest in Canada and a relative dearth of undeveloped land, residential development on TSL will be welcomed by consumers. For Musqueam this could represent thousands of leaseholders if development commences on what is now the Shaughnessy Golf and Country Club, the current UBC Golf Course and land on Lulu Island.

In this option FN members are subject to income tax and all residents of TSL or leasehold lands would become part of the tax base. In addition I assume that the province would cede the

[32] The Province is willing to cede 50 per cent of the provincial income tax of FN members residing on reserve or Indian land (Interviews with Fiscal Negotiator, Ministry of Aboriginal Relations and Reconciliation).

entire share of income tax from lessees and on-reserve FN members. However the federal government would continue to claw back OSR at a rate of 50 per cent. The key difference between this policy option and the option of retaining current policies is the province relinquishes full tax room for both FN members and lessees. Whereas under current policies BC is only willing to relinquish 50 per cent of provincial income tax revenues from FN members on-reserve or TSL.

6.3 Elimination of the Own-Source Revenue Clawback

This policy option entails the federal government relinquishing their 50 per cent clawback on OSR. FN governments' generation of OSR would no longer result in reduced transfers from Health Canada, Indian Affairs or other government departments that provide services or grants to FN reserves. This policy option is applied to income tax collected on-reserve from FN members as well as lessees on FN land. For this alternative I assume the federal government surrenders their entire income tax to FNs, while the province retains their existing policy of ceding only half the income tax from status Indians on-reserve or TSL. The province would still provide services to lessees. Current provincial policy is that FN revenue should be proportional to the services they provide. Elimination of the OSR claw back would greatly increase OSR retained by the FN government.

6.4 Phased Own-Source Revenue Clawback

In 2006 The Uchucklesaht Tribe as part of the Maa-nulth treaty process signed a FFA with BC and Canada as part of their final agreement within the BC treaty process. An OSR side agreement was reached whereby the parties agreed to a 20 year graduated clawback system for OSR. In the first 5 years of the agreement the OSR clawback rate is 0 per cent. Thereafter it increases by 3.3 per cent per annum. In the 20th year the clawback rate is 50 per cent (Uchucklesaht 15-16, 2006). In addition to the phased nature of the OSR clawback the agreement

allows for an annual set exemption (Ibid). A similar system within an urban context regarding income tax could be envisioned whereby the province and/or federal government agree to cede their share of the income tax until the FN reaches an economic level similar to that of the surrounding non-Aboriginal population. The Tsawwassen treaty calls for the gradual reduction of government transfers in parallel with increased OSR (Aboriginal Relations and Reconciliation, 2007).

6.5 Summary of Policy Alternatives

Table 1 Summary of Policy Alternatives

Provision	Status Quo	Implement Current Policies	Collect from Resident Members and Lessees	Eliminate OSR Clawback	Phased OSR Clawback
FN Tax Exemption	Keep	Eliminate	Eliminate	Eliminate	Eliminate
Tax Lessees	NO	Yes	Yes	Yes	Yes
OSR Clawback	Retain	Retain	Retain	Eliminate	Phased
BC Cedes PIT on Lessees	No	No	Yes	No	No
BC Cedes PIT on FN Members	50%	50%	Yes	50%	50%

7: Criteria, Measures and Scoring

I have identified five criteria for assessing the desirability of each policy for FNs collecting a portion of federal and/or provincial income tax. The criteria are effectiveness, fairness, acceptability, cost to the federal government, and cost to the provincial government. All criteria and measures will be scored separately for each FN and then aggregated to produce an evaluation policy summary.

7.1 Effectiveness

Would a policy provide for a larger and more stable financial base than the FN currently possesses? When negotiating treaties, governments are seeking final agreements with FNs that end all claims against them. Accordingly, there may be agreement for short-term payment or even longer-term financial transfers from governments. It is hoped that in the long term any agreement reached will allow FNs to be self-financing. Accordingly, the ability to collect income tax may be part of that overall revenue generation policy. Effectiveness may be at odds with political acceptability; imposition of the tax will reduce disposable income for some FN members. Transfers from the Department of Indian Affairs will be adjusted in line with current policies regarding OSR. Income tax would have to generate enough revenue to mitigate this loss. Effectiveness will be measured through the estimated net revenue of a policy alternative, and the revenue yield will be scored separately for each FN studied (Aboriginal Canada portal).[33]

[33] Income and employment figures for on-reserve FN members based on 2001 employment and income statistics. Where on-reserve status Indian employment and income figures are unavailable a proxy is used. The proxy for employment is: total reserve population (FN and non-FN) with income divided by the on-reserve population of status Indians. Where possible this ratio is multiplied by the Aboriginal employment rate on-reserve or within the local community where employment rates for on-reserves are not available. Where income is unavailable for on-reserve FN members, income for the Aboriginal identity population in the surrounding community is used to determine the approximate FN income.

7.1.1 Scoring Effectiveness

A policy option generating 40 per cent or more of annual federal transfers, after netting out OSR clawbacks if they are applied, is scored 4 points. A policy option with the ability to generate 30-39.5 per cent of current government revenues scores 3 points. A policy option that can generate 20-29.5 per cent will score 2 points, with 1 point awarded for an option in the 10-19.5 per cent range.

The reason 40 per cent is chosen as the beginning of top tier for scoring is because the federal clawback rate is 50 per cent of OSR. Since revenues of 100 per cent of federal transfers would be clawed back to 50 per cent, an option that provided revenues of 40 per cent of federal transfers is an appropriate measure to determine high revenue and hence effectiveness. Subsequent scoring is done using intervals of 10 per cent of federal revenues.

7.2 Fairness

Does the policy treat both FN people and lessees equally in broadly similar circumstances? Questions of fairness arise in connection with how potential income tax revenues are spent and what programs and services they fund, particularly in regards to non-member lessees. Lessees would not lose services presently provided through the provincial or federal government, but the income tax paid to FNs would disproportionately originate from them and be expended on policy areas that are of primary benefit to on-reserve FN members. It would be deemed unfair if income tax monies simply went to FN members in the form of revenue transfers affording them the ability to not work or creating a situation whereby FN members become exempt from tax themselves as their tax burden is paid by non-member lessees who receive no services. It is likely that some monies raised through lessee income tax could directly or indirectly benefit lessees. Tax money invested in infrastructure or capital improvements has the ability to raise leasehold property values on pre-paid interests or improve living standards.

7.2.1 Scoring Fairness

The scoring for fairness is based on whether FN people and non-FNs residents on reserves will be treated similarly. A policy option that creates equality between the FN and non-FN tax regimes is scored 2 points. If a policy alternative allows for continued tax segregation of FNs and lessees under separate tax regimes, it scores a 0. If a FN agrees to the establishment of non-member governance or advisory councils, it will receive 2 points. Fairness is scored on a two-point scale with an aggregate of four; because there is no graduation in the criterion, a FN either receives a full 2 points for the sub-criterion or zero. Each FN will be scored separately and then the scores aggregated to produce a total score out of 16.

7.3 Acceptability

How many elites or stakeholders would be in favour of this position? This could be the most important criterion, since the land-claims treaty and self-government processes are driven by elites. A proposal without elite support in the form of council approval is unlikely to be accepted by FN membership. Approval by elites, however, may be in direct contrast to the effectiveness which examines the revenue yield, since FN elites may experience higher tax rates and loss of incremental tax benefits to a greater extent than the general membership of their FN.

The issue of lessee acceptance is difficult to incorporate into discussions surrounding FN treaty and fiscal negotiations. Strictly speaking, they are not “partners” or “stakeholders” in negotiations, and governments have shown a willingness to implement and negotiate treaties with minimal input from lessees or non-FN members. This is partly the nature of the negotiations, which are conducted behind closed doors with periodic updates being provided by negotiators. Their input is not needed for ratification of treaty or FFAs, and generally speaking lessee numbers are not great enough to provide large political opposition on their own. Still, lessee groups have a voice and through like-minded individuals and advocates have managed to get their issues on

governments' agenda from time to time, even launching court challenges that have delayed treaty negotiations or ratification.

Lessees' concerns are somewhat advanced by both levels of government. While not allowing lessee participation in the ratification process, recent treaties have given lessees the ability to provide non-binding input on band governance in the form of community advisory councils (Nisqa'a and Tsawwassen); in much, the same way as the University Endowment Lands is administered by the provincial government. My fairness criterion incorporates lessee participation in its scoring by giving additional points to FNs that include community advisory councils and/or other forums where lessees or non-members can participate in meaningful governmental discussions.

7.3.1 Scoring Acceptability

Acceptability will be assessed by the number of elite members interviewed who believe the imposition of income tax will have beneficial effects for their community. It will also include the degree of resistance they think such a proposal would generate from FN members.

Elites in favour of a policy alternative will score 1 point. Elites not in favour of a policy alternative will receive a score of zero. In total the acceptability measure is worth four. Each FN will be scored separately, then aggregated to produce a score out of 16.

7.4 Cost to the Federal Government

What are the operational requirements and burdens of each policy? A policy that involves the ceding of income tax room by the federal government may entail costs to set up and administer the program. In addition, various policy options may require the federal government to cede greater amounts of revenue than others. Currently, all FN OSR is clawed back at a rate of 50 per cent, excluding agreed upon exemptions. Some policy options may cause the loss of some or all of these revenues as well as significant administrative or start-up costs.

7.4.1 Scoring Cost to the federal Government

Cost to the federal government is measured through foregone revenue and administrative costs. For the purpose of this study, cost is determined by the amount of revenue the Canadian Government would forego per annum if it implemented a policy alternative using current on-reserve revenues as a base. A policy alternative that costs the federal government 70 per cent or more of anticipated annual revenues scores 1 point, an alternative entailing 50-69.5 per cent loss of annual revenues scores 2 points, an alternative with 30-49.5 per cent loss scores 3 and a policy alternative with 0-29.5 per cent loss will score 4 points. The inclusion of revenues from income tax room ceded by BC has the effect of lowering the amount of federal tax room ceded, since any money collected by ceding provincial income tax room is included in the OSR clawback against federal transfers; this effectively lowers costs for the federal government.

Scoring using a percentage of tax revenue collected provides uniform treatment between large and small FNs as well as between FNs with large versus small leasehold communities.

7.5 Cost to the Provincial Government

Provinces at present do not collect income tax from the on-reserve earnings of on-reserve status Indians. Therefore, any income tax revenue received by the province from this source would be an increase in provincial revenues (Manager, BC Ministry of Finance, Tax Policy Branch). The BC government will not experience administrative costs due to implementation of any of the policy alternatives outlined, as the federal government administers income tax collection on behalf of the BC Ministry of Revenue. However, depending upon the policy option, BC could forego significant revenues in the form of loss of tax collection from lessees.

7.5.1 Scoring Cost to the Provincial Government

Scoring for cost to the provincial government will be based on the amount of revenue a policy option cedes to individual FNs. Options that cost less revenue will score higher than policy

alternatives that forego greater amounts of revenue. Using the status quo as a base revenue projection, a policy alternative that costs the provincial treasury 50 per cent or more of anticipated annual revenues will score 1 point, an alternative whereby the provincial government forgoes 40-49.5 per cent of annual revenues scores 2 points, an alternative costing the province 30-39.5 per cent scores 3 and a policy costing the province 0-29.5 per cent will score 4 points. By scoring using a percentage of tax revenue collected, uniform treatment is afforded large versus small FNs as well as FNs with large versus small leasehold communities.

8: Evaluation of Policy Alternatives

In this section I evaluate the policy alternatives based on the relevant criteria. The evaluation uses the experience of many of the stakeholders as well as my assessment of the likely outcomes of each alternative. The criteria are effectiveness, fairness, political acceptability, cost to the federal government and cost to the provincial government. The policy options are evaluated separately for each FN based on the criteria. Each criterion is valued at up to 4 points each for a total of 20 points. Each policy alternative is then aggregated to give a final score per alternative. A detailed scoring for each policy alternative and individual FNs is presented in Appendix D. Computations for each policy alternative are presented in Appendix C.

In addition to the four policy alternatives I formally evaluate I considered a fifth option, FN Only income tax alternative that collected federal and provincial income tax from on-reserve FN members. This policy did not make it to formal evaluation because it failed to produce sizable revenues for FNs and had no support among FN leaders or community.

Table 2 Criteria Definition and Measures Summary

Criteria	Definition	Measure	Value
EFFECTIVENESS	How much revenue is generated from this policy?	Amount of money per year	>40% Fed transfers =4 30-39.5%=3 20-29.5%=2 10-19.5%=1
FAIRNESS	Does the policy treat FNs and lessees equally?	Are FNs and lessees under the same taxation rules	Yes=2 No=0
	Does the policy provide a forum for lessees?	Lessee representation	Yes=2 No=0
ACCEPTABILITY			
BC	Does this policy conform to existing negotiating positions?	Amount of income tax ceded for First Nations members and non-members.	Yes = 1 No=0
Canada	Does this policy conform to existing negotiating positions?	Presence of treaty and amount of income tax ceded.	Yes=1 No=0
FN government	Are policy makers in favour?	Number in favour?	Yes=1 No=0
FN community	How much does this policy affect the susceptibility of FN individuals to income tax payments?	Amount of susceptibility to paying income tax.	Lose exemption =0 Keep exemption =1
FEDERAL COST	How much will this policy cost the federal government in foregone revenue and administrative costs?	Percentage of foregone tax revenue with existing revenue as base minus transfer clawback.	0-29.5%=4 30-49.5%=3 50-69.5%=2 <70%=1
PROVINCIAL COST	How much will this cost the provincial government in foregone revenues	Amount of foregone tax revenue	0-29.5%=4 30-39.5%=3 40-49.5%=2 <50%=1

8.1 Implementation of Current Policies

8.1.1 Effectiveness

Implementation of the Current Policies alternative received medium scores for effectiveness with revenue yield estimates between $906,000 and $3,000,000 per annum. Effectiveness scored highest among the Tsleil-Waututh garnering a maximum of 4 points. This is a result of the potential annual revenue yield of the policy $2,500,000 and the relatively small amount of transfers the Tsleil-Waututh receive from the federal government, approximately $1,620,000 in 2005 (Reid Hurst Nagy, 2006, 4).[34] Under current policies the Tsleil-Waututh would raise 150 per cent of current transfers from INAC. Federal transfers would discontinue. Among the other three FNs studied, effectiveness had more mixed results, scoring only 1 out of 4 points for the Squamish Nation with potential revenue yield of approximately 17 per cent of federal government transfers, approximately $3,000,000 out of total transfers of nearly $18,000,000. Musqueam also received a high score of 4 with projected revenues of $2,200,000 on total federal transfers of approximately $5,300,000 or 41 per cent. The Tsawwassen FN scored 3 points. Under this alternative Tsawwassen could expect revenues of $906,000 or 23 per cent of federal transfers of $3,900,000 (D and H Group, 2007, 133; Deloitte and Touche, 2007, 2). All FNs studied would receive substantial increases in revenue under this alternative, particularly the Tsleil-Waututh's total budget increase of about 30 per cent. In aggregate across all four FNs, this option scored 12 out of a possible 16 points.

8.1.2 Fairness

Implementation of Current Policies received a medium score for fairness, garnering 8 points among all FNs. This policy alternative partially eliminates the dual tax regime in Canada, but it offers few incentives for FNs to establish community advisory councils. While the

[34] See Appendix C for calculation details.

alternative does create a harmonized tax system with other levels of government, the reluctance of FNs to endorse the policy, or the inability of other levels of government to convince them that current policies are in their best interest, has led to retention of the inequitable dual tax regime in Canada.

8.1.3 Acceptability

The acceptability of Implementing Current Policies is mixed. While it is acceptable insofar as the federal or provincial government is concerned, it is clearly unacceptable to most FNs. Only the Squamish expressed qualified satisfaction with current funding arrangements. Therefore, while the Implementation of Current Policies alternative scored the maximum 4 points for the Squamish evaluation, it scored only 2 out of 4 points for each of the other three FNs for an aggregated total of 10 out of 16 points.

8.1.4 Cost to the Federal Government

The Implementation of Current Policies alternative scored highly under costs to the federal government criterion and was the cheapest policy alternative for the federal government. Costs ranged from $ 2,400,000 for the Tsleil-Waututh Nation to $800,000 for the Tsawwassen FN. This alternative received 2 out of 4 points for the Squamish, Tsawwassen and Musqueam Nations. All three FNs would see their transfers from Ottawa cut by 50 per cent against OSR from income tax. The clawback includes revenue derived from FN members who pay a portion of the provincial income tax to their FN. For the Tsleil-Waututh Nation, Ottawa would effectively cede 100 per cent of its current tax revenues. The transfers that the Tsleil-Waututh receives from Ottawa are not large enough to offset revenue collected from income tax. Potential revenues of $4,000,000 far exceed the $1,620,000 the Tsleil-Waututh received in transfer from Ottawa in 2005. Under current policy of 50 per cent OSR clawback, these transfers would disappear entirely. Accordingly this policy alternative scored 1out of 4 for the Tsleil-Waututh. Even though

federal transfers would cease, the Tsleil-Waututh would still be able to garner roughly 78 per cent of current tax revenue from Ottawa. Among all FN, the Implementation of Current Policies alternative scored 7 out of 16 points on the criterion of cost to the federal government.

8.1.5 Cost to the Provincial Government

The Implementation of Current Policies was by far the cheapest policy alternative for the provincial government for all the FNs examined. Costs were minimized as a result of the provincial policy to cede only 50 per cent of the income tax for status Indians who live on-reserve or on TSL. In all cases the amount of foregone revenue is 0 per cent as currently the province does not collect tax from on-reserve FN members and is unwilling to cede any portion of the provincial income tax from lessees. Among all FNs the Implementation of Current Policies alternative scored 4 out of 4 points for cost to the provincial government for each of the four FNs, yielding a total of 16 out of 16 points.

Table 3 Evaluation summary Implementation of Current Policies

Implementation of Current Policies		
Effectiveness		12
Fairness		8
Acceptability		10
BC	4	
Canada	4	
FN Government	1	
FN Community	1	
Cost federal		7
Cost BC		16

Although this policy alternative received high marks, it fails to have the support generally of FN communities and elected officials. While it would increase revenue for all the FNs by a significant amount (perhaps by as much as 50 per cent above their current annual budget), the

reluctance of FNs to accept this option of relinquishing their members' tax exemption speaks volumes as to effectiveness and acceptability of the policy. For the Tsleil-Waututh this alternative is very promising as it would increase their revenues by approximately 50 per cent per annum after the OSR clawback. It is likely that an increase in revenues of this size would be more than adequate to offset any lost incremental tax benefits, such as the GST rebate, to individual members and more than exceeds current transfers from the Canadian government.

8.2 Taxing First Nations and Lessees

8.2.1 Effectiveness

This policy option generates the second highest annual revenues of all the policy alternatives examined: between $1,200,000 for Tsawwassen, 31 per cent of annual federal transfers, and $4,100,000 million for the Tsleil-Waututh FN after the OSR clawback. The Tsleil-Waututh would be the biggest beneficiary of such a program as the expected revenue generated would offset 250 per cent of federal transfers after the OSR clawback. This alternative has the ability to generate revenue equivalent to 60 per cent of federal government transfers for Musqueam roughly $3,200,000 per year. The Squamish Nation's revenue would be roughly 22 per cent of federal transfer funding, approximately $4,000,000. Due to the varying ability of this policy alternative to offset federal transfers for individual FNs, varying scores of effectiveness were assigned. The policy alternative scored 4 out of 4 points for the Tsleil-Waututh and Musqueam Nations, 2 points for the Squamish and 3 points for Tsawwassen. In total aggregate this policy alternative scored 13 out of a possible 16 points for effectiveness.

8.2.2 Fairness

Like other alternatives that end the separate tax regime for on-reserve status Indians, this alternative scores 2 out of 4 points on fairness per FN examined. In addition, since the

Tsawwassen has entered into a similar arrangement by their recent treaty with a community advisory council, they receive an additional 2 points for a total of 4 out of 4 points. In aggregate this policy alternative scored 10 out of 16 points on fairness.

8.2.3 Acceptability

This policy does not conform to provincial policy regarding taxation of lessees and receives 0 points on the BC sub-criterion for acceptability. It is, however, acceptable to the federal government, which has entered into arrangements with various bands to cede their portion of the income tax including those of leaseholders on TSL or Indian land. Therefore for acceptability to the federal government, it scores the full 4 points. Acceptability among FNs governments themselves was mixed. FNs such as Tsawwassen and the Squamish government were in favour of the policy alternative, whereas the Tsleil-Waututh and Musqueam were less receptive, both expressing reservations as to what type of trade-off would be expected in exchange for gaining income tax raising powers. The Musqueam, Squamish and Tsleil-Waututh FN communities were opposed to the proposal as it would extinguish the on-reserve tax exemption. Tsawwassen was the exception as their treaty calls for negotiations on a similar arrangement in the future. This alternative in aggregate scores 7 out of 16 points for acceptability.

8.2.4 Cost to the Federal Government

This policy received high scores on the criterion of cost to federal government. The OSR clawback and the ceding of provincial income tax room effectively diminish federal costs. Costs ranged from a high of $2,400,000 for foregone revenue to the Tsleil-Waututh to $150,000 for Tsawwassen. For the Squamish Nation the federal government would cede $2,700,000; however, once ceded provincial tax revenue is applied to the OSR clawback, federal transfers would be clawed back by $3,700,000 per annum. Of this amount, $1,100,000 derives from foregone provincial tax revenue. This diminishes total federal cost to just over $1,600,000, which is

approximately 30 per cent of estimated current federal tax revenues of $5,400,000. A similar pattern exists for all FNs studied.

The costs to the federal government for the Tsleil-Waututh amount to $2,400,000 annually or 73 per cent of current federal revenues after the OSR clawback of federal transfers are included. Unlike other FNs studied, ceding of the provincial income tax does not diminish federal costs, since ceded federal revenues after clawback amount to 150 per cent of current federal transfers. Therefore ceded provincial income tax would not be subject to the federal OSR clawback. A dramatic reduction of costs exists for Musqueam and Tsawwassen. For Musqueam ceded federal tax revenues amount to $1,700,000 annually. After ceded provincial tax revenue of $1,100,000 is applied to the OSR clawback, costs to the federal government fall to $600,000, representing just 18 per cent of estimated current federal revenues. For Tsawwassen foregone tax revenues amount to $500,000, which diminishes to just $150,000 after provincial tax is ceded and the OSR clawback applied. This represents 15 per cent of current estimated tax revenue.

The policy alternative scored 4 out of 4 points for Tsawwassen, Musqueam and the Tsleil-Waututh FNs and 3 for Squamish. In total the aggregate score for cost to federal government was 15 out of 16 points.

8.2.5 Cost to the Provincial Government

This alternative produces high costs for the provincial government, which would lose substantial revenue from lessees who at present pay provincial income tax. The province could expect to cede between $702,000 and $2,200,000 in income tax revenues per annum with the Squamish and Musqueam receiving the highest amount and the Tsawwassen the lowest. Due to the OSR clawback, this is higher than the expected ceded revenue of the federal government. In effect the province would carry 40 per cent-70 per cent of the total revenue costs for this policy alternative. The option scored poorly on the provincial government cost criterion; it received a

score of 1 out of 4 for the Musqueam, Squamish, Tsleil-Waututh and Tsawwassen, capturing 52 per cent-83 per cent of current provincial income tax revenues. In sum it had a total score of 4 out 16 points, the lowest of the policy alternatives examined.

Table 4 Evaluation summary FN and Lessees

Members & Lessees		
Effectiveness		13
Fairness		10
Acceptability		7
BC	0	
Canada	4	
FN Government	2	
FN Community	1	
Cost federal		15
Cost BC		4
Total		49

This option scored well in effectiveness and had the ability to significantly reduce dependence upon federal transfers. Costs were relatively low to the federal government and high for BC. Given that BC would in effect be subsidizing federal costs in the form of ceded income tax space, it is highly doubtful that such an alternative would be politically acceptable for Victoria. This policy alternative was acceptable for the federal government scoring 4 out of 4 points and had the backing of both the Tsawwassen and Squamish governments and the Tsawwassen community.

8.3 Elimination of the Own-Source revenue Clawback

8.3.1 Effectiveness

This policy option scored highest among all alternatives for effectiveness. Elimination of the OSR clawback raises the potential net revenue yield for FNs by 100 per cent compared with the implementation of current policies alternative. This policy has the ability to offset 40 per cent or more of federal government transfers for the Musqueam, Tsleil-Waututh and Tsawwassen FNs.

Accordingly it received the full 4 points in the individual FN analysis. The Squamish analysis scored 3 out of 4 points. The Tsleil-Waututh would benefit the most from this option with an estimated potential revenue yield of $4,100,000 far exceeding the $1,620,000 in funding it currently receives from Ottawa via transfers. Musqueam has the potential to receive $4,300,000 in estimated potential income tax revenue, which accounts for 81 per cent of current federal transfers. A less dramatic result exists for Tsawwassen with $1,900,000 or approximately 50 per cent of current federal transfers. The Squamish with transfers of almost $18,000,000 are the only FN under examination whose potential income tax revenue does not equal 40 per cent or more of federal transfers. Squamish has an estimated revenue yield of $6,000,000 per annum or approximately 33 per cent of current transfers from Ottawa. In aggregate this policy scores 15 out of a potential 16 points for effectiveness.

8.3.2 Fairness

This alternative like the previous two would end the on-reserve status Indian tax exemption. Accordingly it scores full points for fairness as the tax status for on-reserve status Indians would be harmonized with that of other Canadians, yielding 8 out of 16 points. In addition Tsawwassen receives an extra 2 points for instituting a community advisory council for a total of 10 out of 16 points.

8.3.3 Acceptability

The elimination of the OSR clawback would be received favourably by all FN governments, as the OSR clawback is seen as a major impediment to economic development and autonomy. It had support among all FN people interviewed. Therefore, it scores full marks both for FN government and FN community acceptability, 4 points for each group. It does not, however, receive support from the federal government and obtains a score of 0 for that sub-criterion. It does conform to the province's policy regarding income taxation and garners 4 out of

4 points in this sub-criterion. In aggregate, therefore, it receives 12 out of a potential 16 points for acceptability.

8.3.4 Cost to the Federal Government

This alternative scores the lowest among all options in cost to the federal government. The elimination of the OSR clawback increases the amount of foregone revenue for Ottawa while at the same time continuing their on-going commitments to a range of federal transfers through INAC and other government departments. Expected foregone revenues range from $5,900,000 from the Squamish Nation representing 109 per cent of current federal revenues, $4,000,000 for the Tsleil Waututh representing 163 per cent of current revenues, $3,300,000 for Musqueam or 97 per cent of federal revenues, and $1,000,000 for Tsawwassen or 99 per cent of current federal tax. Accordingly, it scored only 1 out of 4 points for the all the FNs under analysis as foregone federal revenue equals 100 per cent of current revenue yields from income tax. In aggregate this alternative scored 4 out of 16 points for cost to the federal government.

8.3.5 Cost to the Provincial Government

This policy alternative scores highly when evaluated using cost to the provincial government criterion. This policy alternative produces low foregone costs ranging from $84,000 for Squamish to $47,000 for the Musqueam. This alternative keeps the current provincial policy of ceding only half of provincial income tax revenue of on-reserve or TSL status Indians or FN members. This represents less than 10 per cent of current revenue yields; accordingly, this alternative scored 4 out of 4 points on this criterion for all FNs studied. In aggregate the option scored 16 out of 16 points.

Table 5 Evaluation summary Elimination OSR Clawback

Elimination OSR clawback		
Effectiveness		15
Fairness		10
Acceptability		12
BC	4	
Canada	0	
FN Government	4	
FN Community	4	
Cost federal		4
Cost BC		16
Total		57

Although this option had high costs for the federal government, it does garner unanimous FN government support. This option also has the support of the provincial government whose policy it conforms with and whose costs would be minimal. All FN interviewees agreed that the OSR clawback has a negative effect on economic development. Its elimination was expected to generate positive externalities not studied in this paper. This policy is able to generate the greatest amount of revenues for FN governments producing 50 per cent higher yields than the next highest option.

This policy raises significant questions of fairness. Although it eliminates the two-tiered income tax system, it also raises the questions as to whether FNs would benefit disproportionately from this alternative. Currently the federal government spends approximately $6,900 per Canadian per annum. This policy would significantly raise this ratio for the FNs studied. For Squamish for instance the ratio would be raised to almost $11,000 in foregone federal revenue and continuing transfers not including personal transfers such as Old Age Security or incremental tax benefits. The Musqueam, with approximately 500 members living on-reserve and currently receiving $5,300,000 annually in transfers, would gain another $4,300,000 annually through this

alternative and would see total federal spending increase to over $19,000 per capita. Such figures put into question the political acceptability of such an alternative. This is one reason that it had a poor acceptability rating from the federal government. While there is widely held sympathy for the disadvantages and the poverty afflicting many FN communities, a near doubling of federal transfers through the ceding of tax room is likely to be seen by many Canadians as not good value for money and promoting a lifestyle of dependence and lack of entrepreneurship. Such a policy may receive general acceptance in the short and medium term as a way for FN communities to "catch up" with the rest of Canada economically or in standard of living, but over the long term it is likely to prove unpopular as living and economic conditions improve and become more in line with those of "mainstream Canadians."

8.4 Phased Own-Source Revenue Clawback

8.4.1 Effectiveness

Since the timeline for this alternative ranges over many years, its effectiveness is speculative. Revenue projections would fall between that of the Elimination OSR alternative and Implementation of Current Policies alternative. At the beginning of the Phased OSR alternative, the clawback on federal transfers would be zero. Revenue therefore could be expected to be in-line with the Elimination of OSR alternative. If the Uchucklesaht FFA is taken as a guide, the OSR clawback would be suspended for a period five years, after which the OSR exemption would be phased out over the course of 15 years. If economic growth remains stagnant, revenue yields at the end of the Phased OSR period would be more in-line with expected revenue yield estimates of the Implementation of Current Policies alternative. It is hoped that the Phased OSR alternative would act as a catalyst jumpstarting economic development on-reserve so that the expected revenue yields at the end of the 20 year agreement would be greater than the Implementation of Current Policies alternative. In general for effectiveness I have scored the

alternative lower than the OSR clawback, since over time the net revenues for FN governments will diminish, but this policy still scores highly for effectiveness.

For the Musqueam and the Tsleil-Waututh this alternative scored the maximum 4 out of 4 points, while for Tsawwassen it received 3. For Squamish it scored 2 out of 4. In aggregate the option received 13 out of 16 points.

8.4.2 Fairness

This policy would over the course of time bring on-reserve status Indians with income into a tax regime comparable to that of other Canadians. Accordingly, it scores 2 out of 4 points for all FNs on this sub-criterion. Additionally the Tsawwassen receive the entire 4 points for the fairness criterion, since they have demonstrated a willingness to establish a community advisory council as part of their treaty. In aggregate then this policy alternative scores 10 out of 16 points for this criterion.

8.4.3 Acceptability

This alternative had mixed results in acceptability. While it had the support of the federal government, BC's position is more nuanced. Provincial officials were open to the possibility of the Phased OSR alternative but, reluctant to enter into agreements until certainty was reached on the service the province was expected to provide. BC was unwilling to enter into tax agreements that provide FNs with fiscal capacity disproportionate to their obligations. In addition there was concern that phased OSR may put additional responsibilities for programs and services upon BC for on-reserve FN members. In contrast the Eliminate OSR alternative received BC support as provincial officials were confident that BC would not become the main social services provider to FNs and that the federal government would retain their traditional fiduciary obligation. Therefore, while the alternative scores full marks for federal acceptability, it receives 0 points for provincial acceptability. Acceptability among FNs was also mixed. While generally it was acknowledged

that such a policy could have positive benefits, not all FNs were in favour. In total the alternative scored 8 out of 16 points.

8.4.4 Cost to the Federal Government

Since the policy pays out over a number of years, costs to the federal government are speculative. In general an average between Implementation of Current Policies and Elimination of OSR clawback was used. This option had medium high costs for the federal government with Squamish, Musqueam and Tsawwassen scoring 2 out of 4 points each. High costs were associated with this option for the Tsleil-Waututh scoring 1 out of 4 points. In aggregate this option scored of 7 out of 16 points.

8.4.5 Cost to the Provincial Government

Once again costs to the province would depend on the type of agreement negotiated and the speed of the graduated clawback. As with the previous criterion, results are somewhat speculative. A rough average was used of the Implementation of Current Polices costs and elimination of OSR costs to produce a score for FNs. In aggregate this option scored 15 out of 16 points for all the FNs examined as I assume that the 100 per cent of the provincial income tax collected from status Indians on-reserve or TSL will be ceded to the FN in question at least during the OSR clawback exemption period. This would essentially double provincial costs at least in the short term, but the amounts are small relative to the size of the current provincial revenue yield amounting to only 6 per cent of current provincial revenue for Musqueam, 8 per cent for the Squamish Nation, 11 per cent for Tsleil-Waututh and 36 per cent for the Tsawwassen FN. Accordingly it received 4 out of 4 points for all FNs except Tsawwassen where it scored 3 out of 4 points. It received a high scoring for provincial costs with 15 out of a possible 16 points.

Table 6 Evaluation summary Phased OSRClawback

Phased OSR Clawback		
Effectiveness		13
Fairness		10
Acceptability		8
BC	0	
Canada	4	
FN Government	3	
FN Community	1	
Cost federal		7
Cost BC		15
Total		53

8.5 Summary of Policy Alternatives Evaluation

Based on my evaluation of the policy alternatives, the Elimination of OSR alternative scored best. This was due to its high scores in effectiveness, cost to provincial government and highest political acceptability among FNs governments and communities. As the table below demonstrates, while it scored well on these criteria, it scored poorly in federal costs. The other policies of taxing FN and lessees and phased elimination of OSR clawback did not score as highly overall but had higher scores in federal costs and acceptability.

Depending on preferences for the weighting of criteria, the ranking of alternatives could change. Policy makers will have to decide through negotiations what tradeoffs are acceptable and in the best interests of urban FNs, the province of British Columbia and the federal government.

Table 7 Summary of Policy Alternatives evaluation

Criterion	Implementation of Current Policies	Taxing FN & Lessees	Elimination OSR Clawback	Phased OSR Clawback
EFFECTIVENESS	12	13	15	13
FAIRNESS	8	10	10	10
ACCEPTABILITY				
BC	4	0	4	0
Canada	4	4	0	4
FN Government	1	2	4	3
FN Community	1	1	4	1
COST FEDERAL	7	15	4	7
COST BC	16	4	16	15
TOTAL	53	49	57	53

9: Recommendations

Although the Elimination of OSR Clawback alternative scored highest in the evaluation, it lacked support from the federal government. It also raises serious question of fairness and equity due to continuing federal funding of FN programs and services even for FNs that are prospering. Continued transfers to FNs weaken the bond between taxpayers and governors and maintain a governance regime similar to the status quo. Therefore, while it scored highest with an unweighted sum of scores for the various criteria, this policy cannot be recommended.

The Phased OSR Clawback and Implementation of Current Policies tied for second place with scores of 53 points. Of these two alternatives, the Phased OSR Clawback scored slightly better for effectiveness and had greater support among the FN community. The political acceptability criterion should be viewed as a multiplicative of participants' acceptability since, all alternatives harboured varying degrees of opposition. An increase in political acceptability of this alternative may rise when discussion and debate take place in FN communities and the policy's merits better understood by both FN policy makers and their electorates. The lack of desire by FNs to implement current policies, even when they can substantially increase FN government revenue, showcases the need for incentives in order to garner participation and renounce the on-reserve tax exemption.

As a result I recommend the Phased OSR clawback alternative to federal policy makers and negotiators. This alternative provides a strong incentive to relinquish the section 87 exemption through its ability to address current inadequacies by giving FNs the fiscal capacity to invest in their social, economic and community well-being in the near term while preserving the interests of taxpayers over the longer term. I believe this balanced approach combined with overall general political acceptance and the ability to be adapted to various political, economic or

fiscal situations of FNs provides the flexibility to be acceptable and effective for both FNs and the federal government. In the long term it will significantly reduce costs for the federal treasury as tax room formerly in abeyance is used to fund FN governments and programs in lieu of increasingly expensive federal transfers.

10: Conclusion

First Nations governments receive billions of dollars every year from the federal treasury. The standards of living even on urban reserves are still below those of their mainstream Canadian counterparts. The fiscal dependence of FNs on the federal government blurs the lines of accountability, responsibility, and obligations between the governors and the governed. Clearly, the interest that FNs have expressed in the treaty process is indicative of the dissatisfaction of FN leaders and their membership with the status quo.

In the interviews undertaken for this research, FN leaders expressed a high desire for change in arrangements for funding and OSR. Government officials by and large were supportive of the need for change. However, thorough various programs, incentives and fiscal agreements, governments recognize that the future relationship between the Crown and FNs must be one based on sustainability of self-government. Accordingly, more tax room should be ceded in order to allow this change to occur. The young age demographic of FN populations represent an important funding source that is not currently utilized because of the s. 87 tax exemption. As on-reserve FN populations increase greater pressure will be exerted upon the federal treasury to meet its fiduciary obligations to FN people imposing higher and higher costs. Income tax is one way to meet these obligations. The jurisprudence suggests that in the future reserves or Indian land may expand in BC with or without negotiations. The applicability of the exemption is likely to grow as more job opportunities become available on-reserve due to both technology and greater economic resources. These trends place a high incentive on federal policy makers to arrive at agreements on tax, land and self-government.

Throughout this process I have learned that the ability to raise revenue is but one of the constraints faced by FN leaders and policy makers. The disincentives of economic development

in the form of OSR clawbacks, low socio-economic status and misconceptions—including the assumption that income tax immunity is a right—have narrowed the possible solutions to break the chain of federal financial dependence. Therefore, I believe that a reformulation of the OSR clawback—suspending it for a period and then gradually restoring it—is the best solution for urban First Nations in Metro Vancouver.

Appendices

Appendix A: Interview Questions

Government Tax Questions

1. Please outline the government's objectives regarding First Nations and own-source revenue generation.

2. What advantages, if any, do you see in direct taxation?

3. What is the government's policy regarding the vacating of income tax room and First Nations?

4. Please explain how current demographic trends affect income tax policy and First Nation treaty negotiations.

5. In an urban context please explain the difficulties when negotiating treaties.

6. Do you think that removing the on reserve income tax exemption will result in out migration from First Nation communities?

7. What is the government's position regarding First Nation's collecting a portion of the income tax from leaseholders on their land?

8. Does ceding tax space act as a trade-off for reduced land in treaty negotiations?

9. Is there anything you would like to discuss that I have not brought up?

FN Tax Questions

1. Please outline the importance of OSR generation and self-government.

2. What advantages, if any, do you see in direct taxation?

3. What disadvantages, if any, do you see in direct taxation?

4. Please explain how current demographic trends affect income tax policy and First Nation treaty negotiations?

5. In an urban context please explain the difficulties when negotiating treaties?

6. Do you think that removing the on reserve income tax exemption will result in out migration from First Nation communities?

7. Would you be willing to enter into an agreement whereby your FN collects a portion of the income tax from leaseholders on TSL or reserve land?

8. Does ceding tax space act as a trade-off for reduced land in treaty negotiations?

9. Is there anything you would like to discuss that I have not brought up?

Appendix B: Yukon First Nations Tax Form

Yukon Government / Gouvernement

Yukon First Nations Tax

YT432
T1 General – 2007

The Government of Canada and the Government of Yukon have concluded personal income tax administration agreements with many self-governing Yukon First Nations. The agreements provide that both the Government of Canada and the Government of Yukon will share the field of personal income tax with self-governing Yukon First Nations. They also provide for the co-ordination of the *Personal Income Tax Act of the Self-Governing Yukon First Nation* with the federal *Income Tax Act* and with the Yukon *Income Tax Act*. This co-ordination is done through the *Income Tax and Benefit Return* of individuals residing on the settlement lands of the self-governing First Nations. The transferred amount is referred to as "Yukon First Nations Tax." Yukon First Nations tax consists of a **federal abatement** and a Yukon First Nations income **tax credit**.

All individuals, including those who are not members of a self-governing Yukon First Nation, who reside within the settlement land of a self-governing Yukon First Nation have to identify themselves as residents of the settlement land of a particular self-governing Yukon First Nation.

Did you live on one of the following self-governing Yukon First Nation settlement lands at the end of the year?

First Nation name	Identification number	First Nation name	Identification number
Carcross/Tagish*	11001	Selkirk	11009
Champagne and Aishihik	11002	Ta'an Kwäch'än	11010
Kluane	11003	Teslin Tlingit	11011
Kwanlin Dun	11004	Tr'ondëk Hwëch'in	11012
Little Salmon/Carmacks	11006	Vuntut Gwitchin	11013
Nacho Nyak Dun	11007		

If *yes*, enter the self-governing First Nation name and identification number in the box called "Residency information for tax administration agreements" on page 1 of your return. If you have federal or Yukon tax payable, **attach a completed copy** of this form and Form YT428, *Yukon Tax*, and Form YT479, *Yukon Credits*, to your return.

Individuals, including members of a self-governing Yukon First Nation, who **do not** reside within the settlement lands of a self-governing Yukon First Nation should tick "**No**" in the box called Residency information for tax administration agreements on Page 1 of the Yukon 2007 *Income Tax and Benefit Return*, and should not complete this form.

The Canada Revenue Agency will use the information on this form to administer the personal income tax administration agreements with the self-governing Yukon First Nations.

Federal refundable First Nations abatement

Enter the amount from line 43 of federal Schedule 1			1	
Federal abatement rate	×	75%	2	
Multiply line 1 by line 2. Enter the result on line 441 of your return.	=		▶	3

Yukon First Nations income tax credit

Enter the amount from line 75 of Form YT428			4	
Enter the amount from line 27 of Form YT479	–		5	
Line 4 minus line 5 (if negative, enter "0")	=		6	
Yukon income tax credit rate	×	95%	7	
Multiply line 6 by line 7. Enter the result on line 28 of Form YT479.	=		▶ +	8
Add lines 3 and 8. Enter the result on line 432 of your return. **Yukon First Nations tax**			=	9

* At the time of printing, potential tax administration agreements were under discussion with the Carcross/Tagish First Nation which could lead to the sharing of personal income tax with the Carcross/Tagish First Nation. Such agreements may be implemented between the Government of Canada and the Carcross/Tagish First Nation and the Government of Yukon and the Carcross/Tagish First Nation on or before December 31, 2007. If so, the Canada Revenue Agency will use the Carcross/Tagish First Nation settlement lands information and the calculation of the federal refundable First Nations abatement and the Yukon First Nations income tax credit to administer the agreements with the Carcross/Tagish First Nation.

5011-C1

Appendix C: Calculations

Implementation of Current Policies

[All Persons with income FN & Lessees (average federal tax payable)] + [FN persons with income (average provincial tax payable) /2] =X /2 (OSR clawback or 50% on federal transfers)

Musqueam

[965(4,399.68)] + [200(472.79)/2]=4,292,970.2/2=2,146,485.1

Squamish Capilano Indian Reserve

[2340(2,499.3)]+[195(860.08) /2]= 5,932,219.8/2=2,966,109.9

Tsawwassen

[355(4,893)]+[142(1069.21)/2]=1,812,928.92/2=906,464.46

Tsleil-Waututh Burrard Inlet Indian Reserve

[905(4454.02)] + [163(888.01)/2]= 4,103,260.92-1,620,000=2,483,260.92

Collect From Resident Members and Lessees

[All persons with earnings-FN & Lessees (average federal tax payable)] +[All persons with earnings FN & Lessees(average provincial tax pay able)] =X /2 (OSR clawback)

Musqueam

[965(4399.68)] + [965(2304.83)]=6,469,852.15/2= 3,234,926.08

Squamish Capilano Indian reserve

[2340(2499.3)] + [2340(934.33)]=8,034,694.5/2=4,017,347.25

Tsawwassen

[355(4893)] + [355(1979.71)]=2,439,883.05/2=1,219,941.53

Tsleil-Waututh Burrard Inlet Indian Reserve

[905(4454.02)] + [905(1811.87)]= 5,670,630.45-1,620,000=4,050,630.45

Elimination of the Own-Source Revenue Clawback

[All persons with earnings FN & Lessees (federal tax payable)] +[on-reserve status Indians or TSL members(provincial tax payable)/2] =X

Musqueam

[965(4399.68)] + [200(472.79)/2]= 4,292,070.2

Squamish Capilano Indian Reserve

[2340(2499.3)] + [195(860.08)/2]= 5,932,219.8

Tsawwassen

[355(4893)] + [142(1069.21)/2]=1,812,928.91

Tsleil-Waututh Burrard Inlet Indian Reserve

[905(4454.02)] + [163(888.01)/2]= 4,103,260.92

Phased Own-Source Revenue Clawback

[All persons with earnings FN & Lessees (federal tax payable)] +[on-reserve status Indians or TSL members(provincial tax payable)/2] =X

Musqueam

[965(4399.68)] + [200(472.79)]= 4,292,070.2

Squamish Capilano Indian Reserve

[2340(2499.3)] + [195(860.08)]= 5,932,219.8

Tsawwassen

[355(4893)] + [142(1069.21)]=1,812,928.91

Tsleil-Waututh Burrard Inlet Indian Reserve

Appendix D: Evaluation Scores by First Nation

Musqueam (criterion)	Implementation of Current Policies	Taxing FN & Lessees	Elimination OSR Clawback	Phased OSR clawback
EFFECTIVENESS	4	4	4	4
FAIRNESS	2	2	2	2
Acceptability				
BC	1	0	1	0
Canada	1	1	0	1
FN Government	0	0	1	1
FN Community	0	0	1	0
Cost federal	2	4	1	2
Cost BC	4	1	4	4
Total	14	12	14	14

Tsawwassen (criterion)	Implementation of Current Policies	Taxing FN & Lessees	Elimination OSR Clawback	Phased OSR clawback
EFFECTIVENESS	3	3	4	3
FAIRNESS	2	4	4	4
Acceptability				
BC	1	0	1	0
Canada	1	1	0	1
FN Government	0	1	1	1
FN Community	0	1	1	1
Cost federal	2	4	1	2
Cost BC	4	1	4	3
Total	13	15	16	15

Tsleil-Waututh (criterion)	Implementation of Current Policies	Taxing FN & Lessees	Elimination OSR Clawback	Phased OSR clawback
EFFECTIVENESS	4	4	4	4
FAIRNESS	2	2	2	2
Acceptability				
BC	1	0	1	0
Canada	1	1	0	1
FN Government	0	0	1	1
FN Community	0	0	1	0
Cost federal	1	4	1	1
Cost BC	4	1	4	4
Total	13	12	14	13

Squamish (criterion)	Implementation of Current Policies	Taxing FN & Lessees	Elimination OSR Clawback	Phased OSR clawback
EFFECTIVENESS	1	2	3	2
FAIRNESS	2	2	2	2
Acceptability				
BC	1	0	1	0
Canada	1	1	0	1
FN Government	1	1	1	0
FN Community	1	0	1	0
Cost federal	2	3	1	2
Cost BC	4	1	4	4
Total	13	10	13	11

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