
Collection of School Taxes from Non-Members Living on Indian Reserves and Treaty Settlement Lands

*A Background Discussion Paper by the Lower Mainland Treaty Advisory Committee
(LMTAC)*

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*For Discussion Purposes Only - Without Prejudice
(This background discussion paper is intended to stimulate further
debate on the issues and does not present final, defined positions.)*

LOWER
MAINLAND
TREATY
ADVISORY
COMMITTEE

Lower Mainland Treaty Advisory Committee

4th floor, 4330 Kingsway, Burnaby, BC, Canada, V5H 4G8 Tel: (604) 451-6179, Fax: (604) 436-6860
E-mail: lmtac.lmtac@gvrd.bc.ca Web: www.lmtac.bc.ca

TABLE OF CONTENTS

INTRODUCTION2
Collection of School Taxes from Non-Members on Indian Reserves2
BACKGROUND.....2
Property Taxation on Indian Reserves in British Columbia2
School Costs of Aboriginal Members3
OVERVIEW.....4
The Provincial Government and Collection of School Taxes on Indian Reserves4
The Changing Environment.....4
IMPLICATIONS FOR LOCAL GOVERNMENT6
The Increased Burden on the Province, School Districts and Municipal Tax Payers.....6
Options7
Conclusion.....7
RECOMMENDATIONS8

INTRODUCTION

Collection of School Taxes from Non-Members on Indian Reserves

In 1988, Section 83 of the *Indian Act* was amended to provide Indian Bands the ability to collect property taxes from populations living on Indian Reserves¹. The amendment to the *Indian Act* did not remove the power of provincial governments and municipalities to tax non-members² living on Indian Reserves. However, to avoid a situation of double taxation, the provincial government of British Columbia (BC) passed the *Indian Self-Government Enabling Act* (ISGEA) in 1990, which fully removed provincial and municipal taxing rights from Indian Reserves.

In 2005, a second option for collecting property taxes became available to Indian Bands with the passing of the *First Nations Fiscal and Statistical Management Act* (FNFSMA). The FNFSMA created four new institutions, including the *First Nations Tax Commission* (FNTC). Under the FNFSMA, the property taxation by-laws of participating First Nations³ are subject to the approval of the FNTC. In comparison, the by-laws of First Nations collecting property taxes under the *Indian Act* were subject to the approval of *Indian and Northern Affairs Canada* (INAC).

In British Columbia, school taxes account for approximately 50% of property taxes.⁴ According to the BC Ministry of Finance, total school taxes collected account for nearly 33% of education funding.⁵ These taxes are collected by municipalities and remitted to the Province, which then places the funds into provincial general revenue. Under the current practise, the Province does not require the remittance of the school tax portion of property taxes collected by Indian Bands from non-members residing on Indian Reserves. While the Province had rationale for this decision at the time, the environment has dramatically changed in the last 20 years and the potential impacts of maintaining the *status quo* warrant a re-evaluation of the current situation.

BACKGROUND

Property Taxation on Indian Reserves in British Columbia

Under the ISGEA, there are three options for First Nations to collect property taxes on Indian Reserves including concurrent taxation, independent taxation, and Indian District taxation. All BC Indian Bands, that collect property taxes via the amendment to Section 83 of the *Indian Act*, have opted to do so under the independent taxation method. Currently, there are 50 Indian Bands in BC collecting property taxes this way.⁶ The independent taxation method allows Indian Bands to collect property taxes directly from residents.

The ability to collect property taxes under the FNFSMA operates similar to the independent taxation option of the ISGEA in that the taxes are collected directly by the Indian Band. There are 45 Indian Bands in BC collecting property taxes via this method. All Indian Bands collecting property taxes, via Section 83 of the *Indian Act* or the FNFSMA, have exempted their own members from such taxation, and only collect from non-members living on Indian Reserves.

¹ “On-reserve” refers to land set aside by the *Government of Canada* for the use and benefit of Aboriginal bands.

² In this paper, the term “**non-members**” is used to describe both non-Aboriginals and Non-Status Indians (Aboriginal people who are not registered under the *Indian Act*) living on an Indian Reserve.

³ The term “First Nations” came into common usage in the 1970s to replace the word ‘Indian’. “First Nations” refers to Aboriginal peoples of Canada who are not Métis or Inuit.

⁴ Kesselman, Jonathan R. “Aboriginal Taxation of Non-Aboriginal Residents: Representation, Discrimination, and Accountability in the Context of First Nations Autonomy,” *Canadian Tax Journal*: Vol. 48, No. 5 (2000).

⁵ BC Ministry of Finance,

http://www.sbr.gov.bc.ca/individuals/Property_Taxes/School_Property_Tax/about_school_tax.htm.

⁶ The *Sechelt Indian Band* is the only First Nation in BC that collects property taxes via the *Indian District Taxation* option. The *Sechelt Indian Band* has a non-treaty self-governing agreement and is not governed entirely under the *Indian Act*. A self-governing agreement is required to use the *Indian District Taxation* method.

School Costs of Aboriginal Members

Many Aboriginal⁷ members living on Indian Reserves attend public educational institutions in neighbouring municipalities.⁸ As these members do not pay property taxes to their Band, they also do not pay school taxes. However, two mechanisms are currently in place through which the federal government funds education for Status Indians⁹ living on reserves. Federal contributions are provided either to the Province or in some cases directly to Indian Bands who then remit the funding to School Districts. The two mechanisms include the *Master Tuition Agreement* (MTA) between the federal and provincial governments,¹⁰ and *Local Education Agreements* (LEAs) between Indian Bands and School Districts.¹¹

Under the *Master Tuition Agreement*, the federal government provides compensation to the Province, at a full-cost equivalent, for each status Aboriginal student attending provincial schools. If the student attends an Indian Band-run school, the compensation is given to the Indian Band.¹²

When an Indian Band and a School District have a *Local Education Agreement*¹³, compensation is given from the federal government to the Indian Band, which then remits the funding directly to the School District in accordance with the Agreement.¹⁴ In BC, there is an approximate 50/50 split of Indian Bands who have LEAs and those covered under the MTA.¹⁵

Treaty First Nations appear to operate in a manner similar to Indian Bands with regard to the educational costs of their members. For example, the *Tsawwassen First Nation* has an LEA to remit compensation for members attending provincial schools. The *Tsawwassen Education, Health and Social Development Act* requires the First Nation to provide education services to members via operating their own schools or through contracts with other institutions.

However, the Act makes no reference to non-members who live on *Treaty Settlement Land* and attend schools in neighbouring jurisdictions, while paying property taxes to the First Nation Government. *Tsawwassen First Nation* property tax bylaws state that School Taxes will be collected as part of property taxes, but kept by the First Nation government.

⁷ Aboriginal refers to a collective name to describe the original peoples in Canada including: First Nations, Métis, and Inuit.

⁸ INAC estimates that approximately 40% of Aboriginal students attend schools off-reserve. (<http://www.ainc-inac.gc.ca/edu/ep/ese/index-eng.asp>)

⁹ Status Indians are entitled to have their names included on the Indian Register, an official list maintained by the federal government. First Nations peoples include both Status and non-Status. Non-Status Indians do not enjoy rights and benefits that are granted to Status Indians. The benefits include the granting of reserves and rights associated with them such as an extended hunting season and an exemption from federal and provincial taxes. The Indian Register is the official record of Status Indians in Canada

¹⁰ The first such agreement was signed in 1969.

¹¹ *Local Education Agreements* were first contemplated in the 1988 *Master Tuition Agreement*. An amendment to Section 104 of the *BC School Act* in 1989 allowed for School Districts to enter such agreements directly with First Nations.

¹² Kesselman, Jonathan R.

¹³ LEAs are more than just tuition agreements, and often cover the incorporation of special Aboriginal education and cultural type programs.

¹⁴ *First Nations Education Steering Committee*.

¹⁵ Data is from the *First Nations Education Steering Committee*, as of 2009. More current data is not available. It should be noted, that several LEAs were scheduled to expire in 2009.

OVERVIEW

The Provincial Government and Collection of School Taxes on Indian Reserves

The Province had several reasons for not continuing the collection of school taxes from Indian Reserves when property taxation powers were delegated to Indian Bands, including:¹⁶

- The Province viewed the revenues from school taxes of non-members living on Indian Reserves to be insignificant due to small numbers of non-Aboriginal populations;
- The Province wanted to provide fiscal resources to Indian Bands for governance activities comparable to provincial grants provided to municipalities;
- The Province did not want to create any problems that might affect the MTA with the federal government; and
- The Province wanted to avoid double taxation on Indian Reserves and was uncertain about the legality of continuing to apply the school tax to Indian Reserves once they were already being collected by Indian Bands;

While this rationale may have had merit when property taxation powers were first delegated to Indian Bands, the environment has significantly changed in the last 20 years.

The Changing Environment

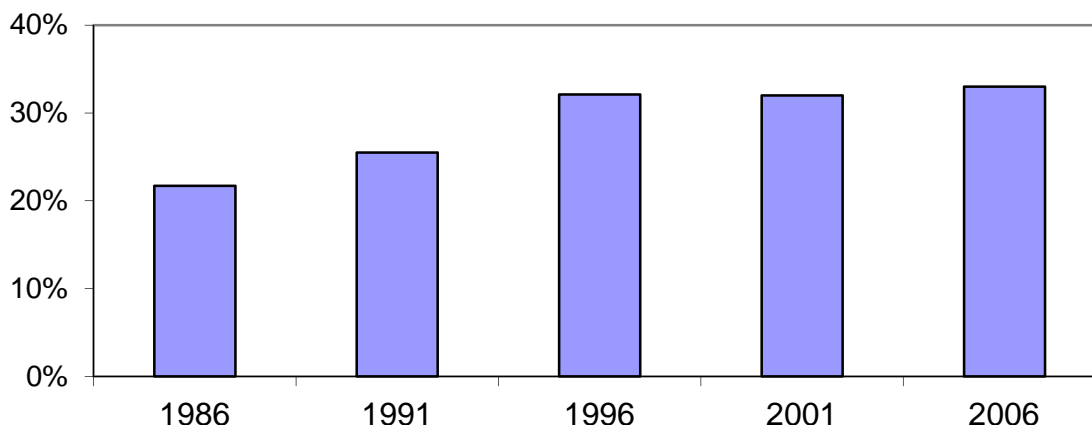
In 1990, the population of non-members living on Indian Reserves was much smaller than today. Furthermore, new legislation such as the *First Nations Commercial and Industrial Development Act* (FNCIDA), which will make Indian Reserves more attractive for development of residential market housing, could see the non-member populations on reserves substantially increase in the future. For example, the *Squamish Nation* has development plans under FNCIDA that could see an additional 25,000 non-members living on their Reserves in *Metro Vancouver* in the next 20 years.

The growing population of non-members living on Indian Reserves means that the school tax revenues obtained from such individuals would be more significant today than in the early 1990s and are likely to continue growing in the future. The chart below shows that between 1986 and 2006, the number of non-Aboriginals¹⁷ living on BC Indian Reserves has been gradually increasing as a percentage of the total population on Indian Reserves, from approximately 21% in 1986 to 33% in 2006. The actual population of non-Aboriginals living on Indian Reserves has increased from just over 11,000 in 1986 to nearly 26,000 in 2006.

¹⁶ Kesselman, Jonathan R.

¹⁷ When discussing population statistics, non-Aboriginals have been differentiated from non-members (non-status Indians). This is because the available data does not differentiate between member and non-member Aboriginals living on Indian Reserves.

Non-Aboriginal Population as Percentage of Total Population on Indian Reserves in British Columbia, 1986-2006



Source: *BC Statistics 2006*

As an example of urban Indian Reserves, in *Metro Vancouver* non-Aboriginals make-up an even larger proportion of the total Indian Reserve populations. In many cases, the population of non-Aboriginals outnumbers that of Aboriginals. The table below shows the population statistics of Indian Reserves in the *Metro Vancouver* area.

Aboriginal / Non-Aboriginal Populations for the Metro Vancouver Indian Reserves*, 2006				
First Nations	Aboriginals	Non-Aboriginals	Total Population	% Non-Aboriginals
Katzie	295	40	335	11.9%
Kwantlen	55	10	65	15.4%
Kwikwetlem	29	—	29	0.0%
Matsqui	70	350	420	83.3%
Musqueam	610	760	1,370	55.5%
Semiahmoo	55	50	105	47.6%
Squamish	1,445	1,695	3,140	54.0%
Tsleil-Waututh	298	1,107	1,405	78.8%
Tsawwassen*	200	475	675	70.4%
TOTALS	3,057	4,487	7,544	59.5%

Source: 2006 Census Community Profile from Statistics Canada

*Tsawwassen became a Treaty First Nation in 2009.

The context of the provincial government's justification for allowing Indian Bands to hold on to the school tax portion of property taxes, *in lieu* of comparable grants received by municipalities, has also changed. The Province discontinued the unconditional revenue sharing grants to municipalities, with a population greater than 19,000, more than 10 years ago.

The Province, however, might still be concerned about upsetting the MTA since Aboriginal members do outnumber non-members on most Indian Reserves across BC, *albeit* with significant exceptions occurring on the *Westbank First Nation Reserve*¹⁸ and some *Metro Vancouver* Indian Reserves. The MTA provides compensation on a full-cost per registered Aboriginal student for those Aboriginal students living on-Reserve; whereas, property tax (including school tax) is simply collected on a per household basis.

The full-cost per student amount paid by INAC for Aboriginal students¹⁹ is much larger than the average school taxes paid per household (approximately \$1,200 per household)²⁰ since school taxes paid on a per household basis do not take into account either the actual education costs per student or the number of students living in a household. Nonetheless, on many urban Indian Reserves, the non-Aboriginal population outnumbers the Aboriginal population and, therefore, the total amount of school taxes not being remitted from non-Aboriginals is still a significant amount that, in some cases, could surpass the total amount being remitted for the on-Reserve Aboriginal students, depending on the demographics of the Reserve in question.

Double taxation can be avoided when collecting school taxes from non-members living on Indian Reserves. The Province does not need to directly apply a school tax on non-members in addition to the property taxes that they are already paying to the Indian Band. Agreements, similar to LEAs and the MTA, could be used to transfer the school taxes paid by non-members living on Indian Reserves to the Province.

IMPLICATIONS FOR LOCAL GOVERNMENT

The Increased Burden on the Province, School Districts and Municipal Tax Payers

As the population of non-members living on Indian Reserves grows, the amount of school taxes not being remitted to the Province also increases. The lack of school tax revenues received from this population will result in an increased burden on the Province, School Districts, and/or neighbouring tax payers.

School taxes are placed into the general provincial revenue stream which is used by the Province to fund various services that fall under the provincial jurisdiction. From this revenue stream, the Province provides School Districts with funding on a per student basis, currently a province-wide average of \$8,357.²¹ (The base rate of \$6,740 per student, the rest is supplementary funding that varies based on a District's needs.) This provincial funding includes contributions for non-member students who live on Indian Reserves but attend schools located off-reserve. As the amount of non-remitted school taxes grows, it is ultimately the Province (BC tax payers) that is faced with a shortfall in its revenue stream.

In attempting to deal with such a shortfall, the Province could choose to decrease education funding and/or funding of any type of service that is funded via the provincial general revenue stream. If education funding is decreased, School Districts might struggle to balance their budgets and maintain adequate levels of service.

¹⁸ On the five *Westbank First Nation* reserves there are approximately 380 Aboriginal members and 8,000 non-members residing.

¹⁹ The current base per student funding the Province provides School Districts is \$6,740 (BC Ministry of Finance, <http://www.bced.gov.bc.ca/k12funding/funding/10-11/recalculation/welcome.htm>)

²⁰ Property taxes and school taxes can vary by region and property type, for example in the *City of North Vancouver* the average detached residence paid approximately \$1,200 in school taxes (2010), while the average strata property paid approximately \$650 in school taxes.

²¹ O'Connor, Naoibh, "Provincial cash injection buoys Vancouver School District budget," *Vancouver Courier*, March 16th, 2011.

If provincial taxes are raised to deal with the shortfall, the burden of covering this deficit will fall on the BC taxpayers. One option is to increase the amount of school taxes collected via property taxes by municipalities. This could be achieved by either increasing the real amount of school taxes paid via property taxes (and therefore total property taxes), or increasing the portion of current property taxes remitted as part of school taxes.

In the first option, municipal taxpayers will be “subsidizing” the contributions, of non-members living on Indian Reserves, to the general provincial revenue stream. In the second option, municipalities will find themselves left with a smaller portion of total property taxes while trying to maintain their own levels of services.

Other provincial taxes, such as income tax, could also be increased to deal with the shortfall in general revenues. In this situation, the burden would be spread across all provincial taxpayers, including those that live on Indian Reserves. However, in this scenario, as non-member populations continue to grow on Indian Reserves, the tax increases would have to grow accordingly, in order to continue covering the financial shortfall.

Options

Assuming that the decreasing provincial revenue stream results in a smaller per-student funding for School Districts (resulting from either a decrease in education funding specifically, or as part of a decrease in funding of all provincial services), there are various options that could be explored to help deal with this shortfall:

- 1. Local Education Agreements (LEAs) for Non-Members** — Agreements between Indian Bands and School Districts could be used for non-member students living on Indian Reserves. Indian Bands could provide school taxes directly to School Districts for non-member students. The Province would then decrease the total funding it gives to School Districts on a *pro rata* basis for students who have a registered address on Indian Reserves.

For example, if *Indian Band A* collects \$10,000 in school taxes from its non-member residents and has 10 non-member students living on its reserves, under this scenario it would be remitting \$1,000 per student to the School District. The Province would then decrease its per student funding to the affected School District by \$1,000 for these 10 students, or \$10,000 in total.

- 2. Master Tuition Agreement (MTA) Between the Province and Indian Bands** — Agreements between Indian Bands and the provincial government similar to the MTA for Aboriginal students could be used as a mechanism for First Nations to remit school taxes, collected from non-member residents, directly to the Province. The Province would then provide funding to School Districts. Again, this would help maintain the level of per-student school funding provided to School Districts while decreasing the impact on the general provincial revenue stream.

Conclusion

The Province’s decision to allow Indian Bands, with property taxation powers, to retain school taxes collected from non-member residents living on-reserve, may have had merit when Indian Bands were first given the ability to collect property taxes over 20 years ago. However, as non-member populations on Indian Reserves continue to grow, the collection and remittance of school taxes from non-members living on Indian Reserves needs to be re-evaluated in an effort to ensure equitable and transparent treatment between non-Aboriginal taxpayers residing on-Reserve and taxpayers living off-Reserve.

While the school tax portion of property taxes is not used directly to fund School Districts, as the tax is part of the general provincial revenue stream, it is, nonetheless, a contributing source for the general provincial revenue that accounts for 33% of all education funding. Furthermore, budgetary shortfalls experienced by many School Districts in BC may signify that the Province is currently struggling to provide sufficient funding for education out of general revenue, which will only be exasperated by not collecting school taxes from growing non-member populations living on Indian Reserves.

It follows that school taxes collected from non-member populations living on Indian Reserves should be remitted to the Province, unless the First Nation provides educational opportunities on-reserve for non-members,²² as the provincial government has a fiduciary responsibility to BC taxpayers to ensure that the cost of services is recovered in a fair and equitable manner. As First Nations enter into agreements with local School Districts to provide education to their own Band members, they also should enter into similar agreements to fund education for non-members living on Indian Reserves.

If the Province decides to pursue options that allow Indian Bands to continue retaining part or all of the school taxes they collect from non-member residents, such agreements should be explicit and transparent. The Provincial and Federal governments need to address the issue of hidden tax transfers to First Nations governments, and the potential impacts this could have on neighbouring local government taxpayers and School Districts.

In the interest of such transparency, it would be prudent for the Province to consider renaming school taxes as “Provincial Property Taxes” in order to better reflect the fact that school taxes are not used directly to fund education services; rather are placed into the general provincial revenue stream.

RECOMMENDATIONS

In view of the foregoing, the following are recommended remedies:

1. FNCIDA Projects — In the case of market housing developments that are pursued under the FNCIDA and FNCLTA legislation, the Federal / Provincial / First Nation tripartite agreement should require the First Nation to enter into a *Local Education Agreement* (LEA) with the School District for all non-members living on the reserve lands, to collect and remit school taxes to the Province, and to collect and remit *School Site Acquisition Charges* to the School District. Accordingly, the Provincial FNCIDA implementation legislation should include the *School Act*, the *Education Statutes Act*, and the *School Site Acquisition Regulation of the Local Government Act*.

2. Servicing Agreements — In the case of First Nation governments that have service agreements with neighbouring local governments, the First Nation should agree to enter into a *Local Education Agreement* (LEA) with the School District for the non-members living on reserve lands, to collect and remit school taxes to the Province for the non-Aboriginal residents, and to collect and remit *School Site Acquisition Charges* to the School District as a pre-requisite to entering into a servicing agreement.

3. Property Tax Notices — In the interest of taxation transparency, it would be prudent for the Province to consider renaming “School Taxes” on local government property tax notices as “Provincial Property Taxes”. This change would better reflect the fact that “School Taxes” are not used to directly fund education services in British Columbia; rather, “School Taxes” are part of the Province’s general revenue fund.

²² There is a mechanism in the *Tsawwassen Final Agreement* that, should the First Nation government provide an educational system for its members, an agreement may be necessary with the Province to extend those opportunities to non-members living on Treaty Settlement Land.