

**ARE YOU ON THE LIST?
DO YOU WANT TO BE ON THE LIST?
FIRST NATIONS FISCAL AND STATISTICAL MANAGEMENT ACT
("FNFSMA")
By Jack Woodward
Woodward & Company**

When the FNFSMA was enacted, in May, 2005, there were no First Nations listed on the schedule – it was blank. A First Nation can be added to the schedule if the council of the band passes a band council resolution requesting that the name of the band be added. At this point in time (July, 2005) it is not known which First Nation will be the first to be added, or how many First Nations will ask to be added to the schedule. The system is described as voluntary, meaning that no First Nation will be added to the schedule unless they ask.

2. (3) At the request of the council of a band, the Governor in Council may, by order, amend the schedule in order to
 - (a) add or change the name of the band; or
 - (b) delete the name of the band, as long as there are no amounts owing by the band to the First Nations Finance Authority that remain unpaid.

What should a Band Council consider when deciding whether or not to ask to be added to the schedule of the F.N.F.S.M.A.? This is a discussion about the potential positive reasons to be on the schedule and the potential surprises for a Council to look out for.

Two of the best plain language discussions about the need for FNFSMA are prepared by ITAB and by the First Nations Financial Management Board. Both of these papers are attached for your reference.

1. Section 89 – Protection from seizure, and First Nations Borrowing

89. (1) Restriction on mortgage, seizure, etc., of property on reserve –
Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or a band.

Section 89 of the *Indian Act* protects the personal property of Indians and Bands from execution, seizure, and foreclosure. However, banks are hesitant to loan Bands money if they are not allowed to seize or foreclose on Band property in case of default. A reserve cannot be used as collateral to secure financing. But, under FNFSMA, tax revenues can be posted as security for a loan. The FNFSMA provides access for participating Bands to the same kind of financing and capital that municipal levels of governments have. This allows a Band to escape the problem caused by section 89 of the *Indian Act*, without giving up the benefits of section 89 in matters other than tax revenue.

The FNFSMA expands the potential capital available to a Band through loans and outside capital investments, because the money generated through the taxation of reserve land is used as security for repayment of the loans

2. First Nations Property Tax Revenue – a choice between the Indian Act, or FNFSMA? Is it better to go through the First Nations Tax Commission (“FNTC”), or the Minister?

In 1988 through Bill C-115, the taxation authority of First Nations under the *Indian Act* was broadened. These ‘Kamloops Amendments’ allow Bands to enact property tax by-laws. The FNFSMA is also now available to Bands on an opt-in basis. Bands seem to have a choice of how to enact property taxation measures. They can do so under the *Indian Act* or the FNFSMA (once they opt-in).

Note: Once the name of the First Nation is added to the schedule its existing by-laws under the relevant portions of section 83 of the *Indian Act* will be deemed to be laws under the FNFSMA.

A land tax by-law under the old s. 83 requires approval by the Minister, while under FNFSMA, requires approval by the FNTC. Each band council might ask: Which system is better?

In reality, it is likely that the Minister wants to get out of the business of approving tax by-laws under s. 83. The Minister used to delegate that function to ITAB, and ITAB has now become FNTC. Will the FNTC take over the role that ITAB used to exercise for those bands who want to stay under s.83? And if so, will the Minister continue to approve those by-laws on FNTC’s recommendation? One possibility is that all taxing bands will inevitably be nudged to come under the FNFSMA umbrella.

3. What changes should a band council watch out for under the new First Nations Tax Commission (“FNTC”) process?

(a) rights of taxpayers

5. (4) A law made under paragraph (1)(a) shall include
 - (a) an appeal procedure in respect of assessments, incorporating such procedures as are prescribed by regulation; and

6. (1) The council of a first nation shall, at least 60 days before making a law under any of paragraphs 5(1)(a) to (c), including a law repealing such a law or an amendment to such a law other than one referred to in paragraph 10 (a) or (b),
 - (a) publish a notice of the proposed law in a local newspaper;
 - (b) post the notice in a public place on the reserve lands of the first nation; and
 - (c) send the notice, by mail or electronic means, to the First Nations Tax Commission, to members of the first nation, to others who have interests in those lands or rights to

- occupy, possess or use those lands and to every government, organization and individual who, in the opinion of the council, may be affected by the proposed law.
- (2) The First Nations Tax Commission may exempt a first nation from the requirements of subsection (1) in respect of an amendment of a law if the Commission considers that the amendment is not significant.
 - (3) A notice referred to in subsection (1) shall
 - (a) describe the proposed law;
 - (b) state where a copy of the proposed law may be obtained;
 - (c) invite representations regarding the proposed law to be made, in writing, to the council within 60 days after the date stated in the notice; and
 - (d) if the council is to review the proposed law at a public meeting, state the time and place of the meeting.
 - (4) Before making a law under any of paragraphs 5(1)(a) to (c), the council of a first nation shall consider any representations that were made in accordance with paragraph (3)(c) or at a meeting referred to in paragraph (3)(d).
7. When the council of a first nation sends a property taxation law or a law made under paragraph 5(1)(c) to the First Nations Tax Commission for its approval, the council shall
 - (a) provide a copy of the law to any persons who made representations under paragraph 6(3)(c); and
 - (b) invite those persons to make written representations to the Commission within 30 days after the day on which they receive the copy of the law.

FNFSMA places some new requirements on Band Councils. Prior to creating a property taxation law a Band must consider any non-Native representations made to it. In order for a property taxation law to be approved by the FNTC under the FNFSMA the FNTC requires that a tax law submitted by a Band to the FNTC must be accompanied by a description of the notices that were submitted to the Council by non-Native ratepayers and any consultations undertaken before making the law.

(b) expenditure by-law must pay FNFA first

11. (1) A borrowing member shall not repeal a property taxation law.
 - (2) A law made under paragraph 5(1)(b) by a borrowing member shall not authorize the expenditure of local revenues unless the borrowing member's budget provides for the payment of all amounts payable to the First Nations Finance Authority during the budget period.
 - (3) The borrowing member shall, in every year, reserve such local revenues as are required to ensure that all amounts authorized to be paid to the First Nations Finance Authority in the year are actually paid in that year.
12. For greater certainty, for the purposes of Part 4, a borrowing member has the capacity to contract and to sue and be sued.
13. (1) Local revenues of a first nation shall be placed in a local revenue account, separate from other moneys of the first nation

- (2) Local revenues may be expended only under the authority of a law made under paragraph 5(1)(b).
- (3) Expenditures provided for in a law made under paragraph 5(1)(b) shall not exceed the local revenues estimated for the year in which those expenditures are to be made, less any deficit accumulated from prior years.

A borrowing Band cannot make a law authorizing the expenditure of local revenues unless its budget provides for the payment of all amounts payable to the First Nations Finance Authority (“FNFA”) during the budget period. Further, local revenues must be kept in a separate bank account and must be audited at least once a year.

(c) risk of co-management or third party management

5. (1)(g) delegating to the First Nations Financial Management Board any other of the council’s powers that are required to give effect to a co-management arrangement entered into under section 52 or to give effect to third-party management of the first nation’s local revenues.

One potential risk that a Band Council must be aware of is the possibility of the FNTC requiring the imposition of a co-management arrangement or the assuming of third-party management of the Band’s local revenues. This flows from the reviewing function of the FNTC. The Commission must review written allegations that a First Nation failed to comply with parts of the FNFSMA or allegations that a law has been improperly applied, provided that the Band Council has not remedied the situation at the request of the complainant. Most notable is that a review can be undertaken independently by the FNTC if it is of the opinion that the same failure to comply or improper application has occurred. Also, FNFA can trigger these same remedies if there is a default. The risk of third-party management of a Band’s local revenues is something that a Council must be aware of.

4. Certificate from the First Nations Financial Management Board (“FMB”)

A band council wanting to borrow money from the FNFA must obtain a certificate from the FMB.

32. (1) The Commission shall not approve a law made under paragraph 5(1)(d) for financing capital infrastructure for the provision of local services on reserve lands unless
 - (a) the first nation has obtained and forwarded to the Commission a certificate of the First Nations Financial Management Board under subsection 50(3);

The FMB works in association with the FNTC and the FNFA. The FMB must issue a certificate stating that the Band is compliant with the standards of the financial administration laws. Without the certificate, the FNTC is precluded from approving a law respecting the borrowing of money from the FNFA for financing capital infrastructure for local services on reserve lands. The FMB is allowed to revoke the certificate on

notice if it is of the opinion that there has been a material change to the circumstances on which the certificate was granted. As there is no appeal from the FMB's opinion, this may be of concern to a Band Council. The FNFSMA is tailored to facilitate the appeal process for tax payers, so it is of concern that there is no redress for First Nations that feel the FMB made a poor or incorrect decision. A question of what constitutes a 'material change to circumstances' is also of concern.

The FMB also works with the FNTC and FNFA as it provides co-management and third-party management services when recommended by the FNTC and FNFA. As noted above, this imposition of third-party management services may be of concern to a Band Council. However, it also provides security to the investor and Band Council alike, providing some assurance that the Band will be held accountable to a level of financial management that the investor can find off reserve.

The benefits of the FMB are numerous. It provides First Nations with financial expertise and advice they may otherwise be lacking. It also ensures that the Band is ready to take on a debt load by demanding compliance with established standards. The FMB may also provide advice as to how a Band may improve its situation so it can comply with the standards necessary to receive a certificate. This protects a Band's interest as it prevents it from taking on a greater debt load than it has the resources to manage.

The FMB is only available to those First Nations who opt-in to the FNFSMA and are scheduled bands under the legislation. Non-scheduled Bands do not benefit from a statutory entitlement to avail themselves of the advisory or counselling services and functions of the FMB.

5. How does the band access the cash? First Nations Finance Authority ("FNFA")

The FNFA is a non-profit corporation whose mandate includes securing various types of financing for its borrowing member Bands. It replaces the First Nations Financial Institute, whose primary objective was to provide investment opportunities for First Nations, with a view of providing long-term financing to Bands for their public debt. The FNFA will provide these and additional services to those Bands who choose to opt-in to the legislation.

The FNFA will secure a variety of funding options for a Band using property tax revenue to secure its debt. This will be of benefit to a participating Band as the tax revenue increases the actual spending power of a Band because it can leverage funds greater than the actual tax revenues available in each year. The FNFA can provide long-term financing, lease financing, short term financing, re-finance a short-term debt, and secure the best possible credit terms for its borrowing member Bands. It will also provide investment services and advice for the development of long-term financial goals of First Nations communities.

In order to become a borrowing member, a Band must apply to the FNFA. In order to be accepted as a borrowing member, the FMB must have issued a certificate stating that the Band complies with all standards established by the FMB. However it must be noted that for a Band to cease being a borrowing member the consent of all other borrowing members is required.

76. (1) A first nation may apply to the Authority to become a borrowing member.
 - (2) The Authority shall accept a first nation as a borrowing member only if the First Nations Financial Management Board has issued to the first nation a certificate under subsection 50(3) and has not subsequently revoked it.
77. A first nation may cease to be a borrowing member only with the consent of all other borrowing members.

The FNFA also plays a part in the potential for a Band to have co-management or third-party management imposed upon it. If a borrowing member fails to make a payment or fails to fulfill another obligation, the FNFA must notify the FNTC and the FMB. If a borrowing Band has failed to fulfill an obligation other than failing to make a payment, the FNFA can require the FMB to review and report on the failure. It must be noted that the FNFA can require that the FMB impose a co-management arrangement or assume third-party management. This appears to have the potential for creating a significant risk for the Band to lose control over its local revenues for something as minor as missing a loan payment. One would assume that third-party management would be reserved for only the most serious of cases. While a loan payment may indeed be a significant sum of money, it does not seem logical for a Band to lose control over its local revenue for missing a single loan payment. A bank does not foreclose on a house if the owner misses a mortgage payment. One would think the same concept should apply here. This may be something that a Band Council should have discussions about with FNFA, and perhaps be wary of, when deciding whether or not to request to be added to the FNFSMA schedule. Perhaps contractual arrangements could be entered into which would confine the broad scope of FNFA's discretion in this regard.

The FNFA allows First Nations to collectively issue bonds and raise long-term private capital at preferred rates for roads, water, sewer and other infrastructure projects on reserve lands. Some have expressed concerns that the Department of Indian Affairs and Northern Development might pressure First Nations communities to take part in the legislation's regime in order to gain access to major capital projects. Some would argue that this is an attempt by the government and Indian Affairs to shirk its fiduciary duty to provide First Nations with adequate roads, water and sewer infrastructure. However, the loans accessible through the FNFA are not to be directed at making First Nations communities supply their own infrastructure for band member use and well being. FNFA loans are directed at the development of infrastructure for the use of non-Native leaseholders on reserve land.

6. Some “pros” and “cons”.

Band Councils may wish to consider the ‘pros’ and ‘cons’ of the legislation to determine whether they would like to be added to the FNFSMA schedule.

a) Loans. The most significant aspect of the legislation is that it allows access to capital that would otherwise be hindered by the *Indian Act*. The FNFSMA will provide Bands with access to financial loans and expert advice. This would allow participating First Nations to fund infrastructure projects through private capital at competitive borrowing rates

b) Loss of control to 3rd Party Management. A Band Council must be aware of the potential for the imposition of co-management or third-party management of their local revenues. The FNTC, FMB, and FNFA can order this. This risk of outside control of local Band affairs may be something First Nations communities are unwilling to subject themselves to.

c) Risk of overspending. One potential drawback to the legislation is the risk and uncertainty that is involved in capital investment and projects. Assuming that a Band secures a significant debt-load to finance a major project like a shopping centre or hotel complex for example, what happens if the Band does not receive adequate leasehold interests on the reserve land? With no significant income from taxation revenues, a Band may encounter difficulties in repaying their loan to the FNFA. One failed project could subject a Band to a significant period of outside control and third-party management.

d) Legal and Administrative costs. Another issue that a council may wish to consider is the cost of the FNFSMA. Will there be additional legal and administrative costs associated with using this statute? If the Band enters into a failing business venture would they be subjected to additional administrative cost imposed by the four institutions.

e) Probably not useful for isolated bands. This legislation can be seen as a significant advantage to Bands that are located near urban centers or hold ‘prime real estate’ reserve lands. This would likely ensure that the Band had a large pool of would-be investors and builders and market to draw from. This legislation may of little use or benefit to more isolated Bands or reserves with a smaller land base.

f) Effect on self-government process. Some critics of the FNFSMA argue that the legislation is either not needed or will hinder efforts for First Nations to attain self-government. Some argue that due to the inherent right to self-government First Nations do not need outsiders to tell them how to run their own business affairs. Whether a First Nation enters into a self-government agreement or not, it will still need to secure outside funding for infrastructure projects. Banks will not loan money to a Band without

security. The FNFSMA provides that security and opens the door to investment and borrowing opportunities to participating First Nations.

g) Municipal-style government. Critics of the legislation also warn of the conservative bias of the nature and scope of the self-government that the FNFSMA will provide for. They warn that the language of the FNFSMA reflect a strong municipal approach to First Nations self-government. A Band Council must consider this and contrast it to it's own self-government aspirations. Municipal-style First Nations self-government successfully exists in Canada. Provisions in the *Sechelt Act*, for example, free the Band from many of the restrictions inherent in the *Indian Act*. If a Band has aspirations of a self-government model different from a municipal style of government, then they may be wary of opting-in to the FNFSMA.

7. Potential Litigation

Is there a section 35 argument? An issue left unresolved in the *Large* case is the question of whether or not s. 35 of the Constitution Act enshrines a right of self-government which includes taxation powers, and therefore excludes the powers exercised by Parliament under legislation such as FNFSMA.

Large v. Canada (Minister of Justice)

Judicial Review of the Tax Commission. The vast powers of review possessed by the Commission might invite various forms of judicial review. In fact, the legislation actually contemplates this. See subsection 32(3).

31. (1) The Commission shall review every local revenue law.
 - (2) Before approving a local revenue law, the Commission shall consider, in accordance with any regulations made under paragraph 36(1)(b), any representations made to it under paragraph 7(b) in respect of the law by members of the first nation or others who have interests in the reserve lands of the first nation or rights to occupy, possess or use those lands.
 - (3) Subject to section 32, the Commission shall approve a local revenue law that complies with this Act and with any standards and regulations made under this Act.
 - (4) The Commission shall maintain a registry of every law approved by it under this section and every financial administration law made under section 9.

32. (1) The Commission shall not approve a law made under paragraph 5(1)(d) for financing capital infrastructure for the provision of local services on reserve lands unless
 - (a) the first nation has obtained and forwarded to the Commission a certificate of the First Nations Financial Management Board under subsection 50(3); and
 - (b) the first nation has unutilized borrowing capacity.
- (2) On approving a law made by a first nation under paragraph 5(1)(d) for financing capital infrastructure for the provision of local services on reserve lands, the Commission shall provide the First Nations Finance Authority with
 - (a) a true copy of the law registered under subsection 31(4); and

- (b) a certificate stating that the law meets all the requirements of this Act and the regulations made under this Act.
 - (3) If the Commission becomes aware that judicial review proceedings have been undertaken in respect of a law made by a first nation under paragraph 5(1)(d) for financing capital infrastructure for the provision of local services on reserve lands, the Commission shall without delay inform the First Nations Finance Authority of those proceedings.
 - (4) A certificate referred to in paragraph (2)(b) is, in the absence of evidence to the contrary, conclusive evidence in any judicial proceedings of the facts contained in it.
33. (1) On the request in writing by a member of a first nation, or by a person who holds an interest in reserve lands or has a right to occupy, possess or use the reserve lands, who
- (a) is of the opinion that the first nation has not complied with this Part or Part 1 or with a regulation made under either Part or section 141 or 142 or that a law has been unfairly or improperly applied,
 - (b) has requested the council of the first nation to remedy the situation, and
 - (c) is of the opinion that the council has not remedied the situation,
- the Commission shall conduct a review of the matter in accordance with the regulations.
- (2) If the Commission is of the opinion that a first nation has not complied with this Part or Part 1 or with a regulation made under either Part or section 141 or 142 or that a law has been unfairly or improperly applied, it shall conduct a review of the matter in accordance with the regulations.
 - (3) If, after conducting a review, the Commission considers that a first nation has not complied with this Part or Part 1 or with a regulation made under either Part or section 141 or 142 or that a law has been unfairly or improperly applied, the Commission
 - (a) shall order the first nation to remedy the situation; and
 - (b) may, if the first nation does not remedy the situation within the time set out in the order, by notice in writing, require the First Nations Financial Management Board to either — at the Board’s discretion — impose a co-management arrangement on the first nation or assume third-party management of the first nation’s local revenues to remedy the situation.
34. (1) All local revenue laws approved by the Commission and all standards and procedures established by the Commission under section 35 shall be published in the First Nations Gazette.
- (2) The Commission shall publish the First Nations Gazette at least once in each calendar year.

Judicial Review of the Financial Management Board. The legislation seeks to shield the Board from appeals of its decisions. The courts have always been adept at getting around such provisions when there are fundamental errors of natural justice.

50. (1) On the request of the council of a first nation, the Board may review the first nation's financial management system or financial performance for compliance with the standards established under subsection 55(1).
 - (2) On completion of a review under subsection (1), the Board shall provide to the first nation a report setting out
 - (a) the scope of the review undertaken; and
 - (b) an opinion as to the extent to which the first nation was in compliance with the standards.
 - (3) If after completing a review under subsection (1) the Board is of the opinion that the first nation was in compliance with the standards, it shall issue to the first nation a certificate to that effect.
 - (4) The Board may, on giving notice to a council, revoke a certificate issued under subsection (3) if, on the basis of financial or other information available to the Board, it is of the opinion that the basis upon which the certificate was issued has materially changed.
 - (5) The Board may determine the form and content of certificates issued under subsection (3), including any restrictions as to the purposes for which, and the persons by whom, they are intended to be used.
 - (6) If a borrowing member's certificate is revoked, the borrowing member shall, without delay, take any measures required to re-establish its certification.
 - (7) An opinion of the Board referred to in this section is final and conclusive and is not subject to appeal.
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51. On receipt of a notice from the First Nations Tax Commission under paragraph 33(3)(b) or from the First Nations Finance Authority under subsection 86(4), the Board shall either require the first nation to enter into a co-management arrangement in accordance with section 52 or assume third-party management of the first nation's local revenues in accordance with section 53, as the Board sees fit.
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52. (1) The Board may, on giving notice to the council of a first nation, require the first nation to enter into a co-management arrangement in respect of the first nation's local revenues, including its local revenue account,
 - (a) if, in the opinion of the Board, there is a serious risk that the first nation will default on an obligation to the First Nations Finance Authority; or
 - (b) on receipt of a request or demand to do so under paragraph 33(3)(b) or subsection 86(4).
 - (2) Under a co-management arrangement, the Board may
 - (a) recommend amendments to a law of the first nation made under this Act;
 - (b) recommend changes to the first nation's expenditures or budgets;
 - (c) recommend improvements to the first nation's financial management system;
 - (d) recommend changes to the delivery of programs and services;
 - (e) order that expenditures of local revenues of the first nation be approved by, or paid with cheques co-signed by, a manager appointed by the Board; and
 - (f) exercise any powers delegated to the Board under a law of the first nation or under an agreement between the first nation and the Board or the first nation and the First Nations Finance Authority.
 - (3) The Board may terminate a co-management arrangement with a first nation on giving notice to its council that the Board is of the opinion that

- (a) there is no longer a serious risk that the first nation will default on an obligation to the First Nations Finance Authority;
 - (b) where the first nation was in default of a payment obligation to the First Nations Finance Authority, the first nation has remedied the default;
 - (c) a co-management arrangement requested or demanded under paragraph 33(3)(b) or subsection 86(4) is no longer required; or
 - (d) third-party management of the first nation's local revenues is required.
- (4) **An opinion given by the Board under this section is final and conclusive and is not subject to appeal.**
- (5) The Board shall advise the First Nations Finance Authority and the First Nations Tax Commission of the commencement or termination of a co-management arrangement.
53. (1) The Board may, on giving notice to the council of a first nation and to the Minister, assume management of the first nation's local revenues, including its local revenue account,
- (a) if, in the opinion of the Board, a co-management arrangement under section 52 has not been effective;
 - (b) if, in the opinion of the Board, there is a serious risk that the first nation will default on an obligation to the First Nations Finance Authority; or
 - (c) on receipt of a request or demand to do so under paragraph 33(3)(b) or subsection 86(4).
- (2) If the Board assumes third-party management of the local revenues of a first nation, the Board has the exclusive right to
- (a) subject to subsection (3), act in the place of the council of the first nation to make laws under paragraphs 5(1)(a) to (f);
 - (b) act in the place of the council of the first nation under laws made under paragraphs 5(1)(a) to (e) and manage the first nation's local revenue account, including any necessary borrowing;
 - (c) provide for the delivery of programs and services that are paid for out of local revenues;
 - (d) assign rights or interests under subsection 5(7); and
 - (e) exercise any powers delegated to the Board under a law of the first nation or an agreement between the first nation and the Board or between the first nation and the First Nations Finance Authority.
- (3) The Board shall not make a law under paragraph 5(1)(f) that delegates a power to a person or body to whom a power was not delegated at the time the Board assumed third-party management of the local revenues of a first nation, unless the council of the first nation gives its consent.
- (4) The council of the first nation shall not, during the time that the board assumes third-party management of the first nation's local revenues, repeal any law made under paragraph 5(1)(g).
- (5) Where the Board has assumed third-party management of a first nation's local revenues, it shall review the need for third-party management at least once every six months and advise the First Nations Finance Authority, the First Nations Tax Commission and the council of the first nation of the results of its review.
- (6) The Board may terminate third-party management of a first nation's local revenues, on giving notice to the council of the first nation, if

- (a) it is of the opinion that there is no longer a serious risk that the first nation will default on an obligation to the First Nations Finance Authority and the Authority consents to the termination in writing;
 - (b) where the first nation was in default of an obligation to the First Nations Finance Authority, it is of the opinion that the first nation has remedied the default and the Authority consents to the termination in writing; or
 - (c) it is of the opinion that the situation for which third-party management of the first nation's local revenues was required under paragraph 33(3)(b) or subsection 86(4) has been remedied.
- (7) An opinion given by the Board under this section is final and conclusive and is not subject to appeal.
- (8) The Board shall advise the First Nations Finance Authority and First Nations Tax Commission of the assumption or termination of third-party management of a first nation's local revenues.

54. At the request of the Board, a first nation that has made a local revenue law shall provide to the Board any information about the first nation's financial management system and financial performance that the Board requires for a decision regarding a co-management arrangement or third-party management of the first nation's local revenues.

Judicial Review of the First Nations. As the *Large* case illustrates, taxpayers are litigious, and are willing to attack tax laws on any pretense. Section 32(3) also suggests that First Nations may be subject to lawsuits.

Judicial Review of the First Nations Finance Authority. No doubt the imposition of third party management would be a controversial step, and might subject the FNFA to a lawsuit if that was to happen. However, lawsuits against FNFA seem less likely than those against other actors in this process.

86. (1) If a borrowing member fails to make a payment to the Authority, to fulfil any other obligation under a borrowing agreement with the Authority or to pay a charge imposed by the Authority under this Part, the Authority shall
- (a) notify the borrowing member of the failure; and
 - (b) send a notice of the failure to the First Nations Financial Management Board and the First Nations Tax Commission, together with evidence of the failure and a copy of any relevant documents and records.
- (2) If a failure referred to in subsection (1) relates to an obligation other than payment, the Authority may require that the First Nations Financial Management Board review and report on the reasons for the failure.
- (3) On receipt of a notice referred to in paragraph (1)(b) in respect of a failure related to an obligation other than payment, the First Nations Financial Management Board shall advise the Authority in writing of its opinion on the reasons for the failure and recommend any intervention under section 52 or 53 that it considers appropriate.
- (4) The Authority may, by notice in writing, require the First Nations Financial Management Board to either — at the Board's discretion — impose a co-management arrangement on a borrowing member or assume third-party management of the first nation's local revenues

- (a) where the borrowing member fails to make a payment to the Authority under a borrowing agreement with the Authority, or to pay a charge imposed by the Authority under this Part; or
- (b) on receipt of a report of the Board under subsection (3) in respect of the borrowing member.

Judicial Review of the Crown. You will not be surprised to see that Parliament has done its best to insulate the Crown from all manner of lawsuits in connection with this legislation.

133. (1) No person has a right to receive any compensation, damages, indemnity or other relief from Her Majesty in right of Canada in respect of any claim against the First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority or First Nations Statistical Institute arising from its exercise of, or its failure to exercise, any of the powers or functions of that Commission, Board, Authority or Institute, as the case may be, including any claim against the First Nations Tax Commission as an agent of Her Majesty in right of Canada.