

**STANDARDS FOR
FIRST NATION FEE LAWS, 2017**

[Consolidated to 2019-03-27]

**PART I
PREAMBLE**

WHEREAS:

- A. Section 35 of the *First Nations Fiscal Management Act* gives the First Nations Tax Commission the authority to establish standards respecting the form and content of First Nation local revenue laws enacted under subsection 5(1) of the Act;
- B. Standards are established by the Commission to further the policy objectives of the Commission and the Act, including to ensure the integrity of the First Nations property taxation system and to assist First Nations to achieve economic growth through the generation of stable local revenues; and
- C. Section 31 of the Act requires the Commission to review every local revenue law and subsection 5(2) of the Act provides that such a law has no force and effect until it is reviewed and approved by the Commission.

**PART II
PURPOSE**

These Standards set out the requirements that must be met for First Nation fee laws enacted under paragraph 5(1)(a.1) of the Act. These Standards are used by the Commission in its review and approval of First Nations' fee laws, pursuant to section 31 of the Act. The requirements established in these Standards are in addition to those requirements set out in the Act.

The Commission recognizes that each First Nation's property taxation system operates within the broader context of its fiscal relationships with other governments. These Standards are intended to support a more comprehensive First Nation fiscal framework within Canada.

**PART III
AUTHORITY AND PUBLICATION**

These Standards are established under subsection 35(1) of the Act and are published in the *First Nations Gazette* as required by subsection 34(1) of the Act.

**PART IV
APPLICATION**

These Standards apply to every law enacted under paragraph 5(1)(a.1) of the Act submitted to the Commission for approval.

**PART V
CITATION**

These Standards may be cited as the *Standards for First Nation Fee Laws, 2017*.

**PART VI
DEFINITIONS**

In these Standards:

“Act” means the *First Nations Fiscal Management Act*, S.C. 2005, c. 9, and the regulations enacted under that Act;

“Commission” means the First Nations Tax Commission established under the Act;

“Council” has the meaning given to that term in the Act;

“First Nation” means a band named in the schedule to the Act;

“holder”, in relation to an interest or right in reserve lands, means a person

- (a) in possession of the interest or right,
- (b) entitled through a lease, licence or other legal means to the interest or right,
- (c) in actual occupation of the interest or right, or
- (d) who is a trustee of the interest or right;

“interest”, in relation to reserve lands in Canada elsewhere than in Quebec, means any estate, right or interest of any nature in or to the lands, including any right to occupy, possess or use the lands, but does not include title to the lands that is held by Her Majesty;

“Law” means a law enacted under paragraph 5(1)(a.1) of the Act;

“reserve” means a reserve of a First Nation within the meaning of the *Indian Act*;

“right”, in relation to reserve lands in Quebec, means any right of any nature in or to the lands, including any right to occupy, possess or use the lands and any right of a lessee, but does not include title to the lands that is held by Her Majesty;

“service” means

- (a) an activity or work provided by or on behalf of a First Nation,
 - (b) a facility operated by or on behalf of a First Nation, or
 - (c) a regulatory process, permit, licence or other authorization,
- in respect of which a fee will be levied under a Law;

“tax administrator” means a person appointed by Council to administer and enforce a Law;

“tax district” means a tax district established in a First Nation’s taxation law; and

“taxation law” means a law enacted under paragraph 5(1)(a) of the Act respecting the taxation of interests or rights in reserve lands, but does not include a property transfer tax law.

For greater certainty, an interest or right, in relation to reserve lands, includes improvements.

Except as otherwise provided in these Standards, words and expressions used in these Standards have the same meaning as in the Act.

[am. FNTC Resolution 2019-03-27.]

PART VII STANDARDS

1. Administration of Law

The Law must provide for

- (a) the appointment, by resolution, of a tax administrator, or
- (b) the tax administrator appointed under the First Nation’s taxation law,

to oversee the administration and enforcement of the Law.

2. Description of Service

The Law must describe the service respecting which the fee is levied.

3. Basis of Fee

3.1 The Law must state the basis on which the fee will be levied, in accordance with subsection 3.2, 3.5 or 3.7, as applicable.

3.2 Where a fee is for a service provided to an interest or right in reserve lands, the Law must establish the fee based on one or more of the following:

- (a) a single amount for each interest or right;
- (b) a single amount for each service or aspect of the service;
- (c) the use or consumption of the service;
- (d) the taxable area of the interest or right or buildings located on the interest or right ;
- (e) the frontage of the interest or right.

3.3 In establishing the fees under subsection 3.2, the Law may classify different types or uses of interests or rights and set different rates or levels of fees for each class, provided

- (a) the rates or levels of fees are reasonably connected to the costs of providing the service to each class; and
- (b) the same rates or levels of fees apply to all interests or rights within a class.

3.4 As an exception to paragraph 3.3(b),

- (a) where a First Nation has established tax districts and the cost of providing the service to the tax districts varies, the Law may provide for different rates or levels of fees within a class for each tax district; and
- (b) where a First Nation has more than one reserve and the cost of providing the service to the reserves varies, the Law may provide for different rates or levels of fees within a class for each reserve.

3.5 Where a fee is for a service not provided to an interest or right in reserve lands, including for the use of a facility, the Law must establish the fee based on the use or consumption of the service.

3.6 In establishing the fees under subsection 3.5, the Law may establish categories of uses or users and may establish different rates or levels of fees for those different categories.

3.7 In establishing the fees for a regulatory process, permit, licence or other authorization, the Law may establish different rates or levels of fees based on one or more factors set out in the Law.

[am. FNTC Resolution 2019-03-27.]

4. Cost of Service

4.1 The Law must establish rates and levels of fees that reflect the projected cost of providing for the administration, operation and maintenance of the service or portion of the service that is to be funded by the fee.

4.2 The Law must establish rates and levels of fees that are supported by a report respecting how the fees levied under the Law were determined, and that includes the projected cost of the service, how the cost of the service was determined, and the proportion of the total cost that the First Nation will recover through the fee.

4.3 The Law must require the tax administrator to make the report referenced in subsection 4.2 available to any person, either on the First Nation's website or at the First Nation's administration offices.

4.4 Where

(a) a First Nation has a service agreement with another government under which that government provides a service to the First Nation or its reserve lands, and

(b) the First Nation's Law levies fees in respect of that service,

the Law may establish fees for that service using the same rates and levels of fees set by the other government for the service within its boundaries.

5. Fee Collection

The Law must set out

(a) the manner in which the fee will be levied and collected; and

(b) where fee payments must be made and the acceptable forms of payment.

6. Fee Exemptions

6.1 Where a First Nation wishes to provide for an exemption from a fee, the exemption must be set out in the Law.

6.2 A Law may provide for a full or partial exemption from a fee on the basis that the person is a member of the First Nation provided that

(a) the Law requires the First Nation to pay from its general revenues into the local revenue account the fee that would have been payable by the member for the service; or

(b) the service is partially funded by the fees and partially by the First Nation's general revenues, and the report referenced in subsection 4.2 indicates that the portion funded by general revenues pays for the provision of the service to the members of the First Nation.

7. Refunds

7.1 The Law must set out procedures for providing refunds of fees and the circumstances under which refunds will be given.

7.2 The Law must include at least the following provisions:

(a) a refund of a fee paid where a person has paid a fee when a fee was not payable, or has made an overpayment of a fee; and

(b) for refunds required under paragraph (a), payment of interest on refunds at a rate of two percent (2%) below the prime lending rate of the principal banker to the First Nation on the fifteenth day of the month immediately preceding the calculation of the interest for the following three (3) month period.

8. Revenues and Expenditures

8.1 The Law must provide that all revenue collected by the First Nation under the Law, and interest earned on it, only be used for the provision of the service for which the fee is levied.

8.2 The Law must require the First Nation to account separately for the fee revenues from each service for which a fee is imposed.

9. Records and Reporting

9.1 The Law must require the tax administrator to keep records of

- (a) the amount of all fees levied under the Law;
- (b) the amount of all fees collected under the Law;
- (c) the amount of all refunds paid under the Law;
- (d) any complaints received under the Law; and
- (e) any enforcement proceedings taken under the Law.

9.2 The Law must require the tax administrator to report annually to Council on the administration of the Law during the previous fiscal year, which report must include the matters referenced in subsection 9.1.

10. Complaints to Tax Administrator

The Law must provide for a complaints process that allows a person to object to a fee on at least the following grounds:

- (a) there is an error or omission respecting the application or calculation of a fee; and
- (b) where the Law provides for exemptions, that an exemption has been improperly allowed or disallowed.

11. Penalties and Interest

11.1 Where the Law provides for a penalty to be imposed in respect of an unpaid fee, the Law must set out

- (a) the manner in which the penalty is calculated;
- (b) the amount of the penalty, which must not exceed ten percent (10%) of the amount of the unpaid fee; and
- (c) the date that, or time frame after which, a penalty will be imposed if the fee remains unpaid.

11.2 Where the Law provides for interest to be charged on an unpaid fee, the Law must set out

- (a) the manner in which the interest is calculated;
- (b) the amount of the interest, which must not exceed fifteen percent (15%) per year; and
- (c) the date that, or time frame after which, interest will be levied if the fee remains unpaid.

12. Enforcement

12.1 The Law must provide for the enforcement measures that may be taken by the First Nation to collect unpaid fees.

12.2 Where a fee is levied for a service provided to an interest or right in reserve lands, the Law may provide that unpaid fees in respect of that service may be collected in the same manner and with the same remedies as taxes levied under the First Nation's taxation law.

12.3 Where a fee is levied for a service provided to an interest or right in reserve lands, the Law may provide for the First Nation to use the enforcement measures set out in the *First Nations Taxation Enforcement Regulations*, provided the Law

- (a) requires the First Nation to follow the procedures for those enforcement measures that are set out in the First Nation's taxation law; or
- (b) incorporates into the Law the procedures set out in the *First Nations Taxation Enforcement Regulations* with respect to each enforcement measure.

[am. FNTC Resolution 2019-03-27.]

13. Confidentiality

The Law must provide for the confidentiality of information and documents obtained by the tax administrator and any other person who has custody or control of records obtained or created under the Law, except that disclosure may be made

- (a) in the course of administering the Law or performing functions under it;
- (b) in proceedings before a tribunal having jurisdiction or a court of law;
- (c) where a holder gives written authorization for his or her agent to obtain confidential information relating to an interest or right in reserve lands;
- (d) by the tax administrator to a third party for research (including statistical) purposes, provided the information or documents do not include any information that is in an individually identifiable form; or
- (e) by Council to a third party for research (including statistical) purposes.

[am. FNTC Resolution 2019-03-27.]

PART VIII COMING INTO FORCE

Coming into Force

These Standards are established and in effect as of December 13, 2017.

PART IX ENQUIRIES

All enquiries respecting these Standards should be directed to:

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Kamloops, BC V2H 1H1
Telephone: (250) 828-9857