

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE BRITISH COLUMBIA COURT OF APPEAL)

BETWEEN:

MUSQUEAM INDIAN BAND

Appellant
(Appellant)

-and-

**MUSQUEAM INDIAN BAND BOARD OF REVIEW, ASSESSOR OF THE MUSQUEAM
INDIAN BAND, and SHAUGHNESSY GOLF AND COUNTRY CLUB**

Respondent
(Respondent)

FACTUM OF THE INTERVENER
COUNCIL FOR THE ADVANCEMENT OF NATIVE DEVELOPMENT OFFICERS
Rule 42 of the Rules of the Supreme Court of Canada

Council for the Advancement of Native
Development Officers, Intervener

Avnish Nanda
NANDA & COMPANY
3455 Manulife Place
10180 – 101 Street NW
Edmonton, Alberta T5J 4K1
Tel: (780) 801-5324
Fax: (587) 318-1391
Email: avnish@nandalaw.ca

ORIGINAL TO: THE REGISTRAR OF THE SUPREME COURT OF CANADA

COPIES TO:

Musqueam Indian Band, Appellant

Agent for the Appellant

**Maria Morellato, Q.C., James I. Reynolds
and Leah Pence**

Mandell Pinder LLP
422 - 1080 Mainland St.
Vancouver, British Columbia V6B 2T4
Tel: (604) 566-8563
FAX: (604) 681-0959
E-mail: maria@mandellpinder.com

Guy Régimbald

Gowling Lafleur Henderson LLP
26th Floor, 160 Elgin Street
Ottawa, Ontario K1P 1C3
Tel: (613) 786-0197
FAX: (613) 563-9869
E-mail: guy.regimbald@gowlings.com

Musqueam Indian Band Board of Review,
Respondent

Raymond J. Richardson

Barrister and Solicitor
3340 Garibaldi Drive
North Vancouver, British Columbia V7H 2S4
Tel: (604) 924-3994
FAX: (604) 924-3995
E-mail: rayr@telus.net

Assessor of the Musqueam Indian Band,
Respondent

R. Bruce Hallsor and Greer Jacks

Crease Harman & Company
8th Floor 1070 Douglas Street
Victoria, British Columbia V8W 2S8
Tel: (250) 388-5421
FAX: (250) 388-4294
E-mail: hallsor@crease.com

Shaughnessy Golf and Country Club,
Respondent

Agent for the Respondent

John J. L. Hunter, Q.C. and Lumila Herbst

Hunter Litigation Chambers Law Corporation
2100 - 1040 Georgia St. W.
Vancouver, British Columbia V6E 4H1
Tel: (604) 891-2401
FAX: (604) 647-4554
E-mail: jhunter@litigationchambers.com

Marie-France Major

Supreme Advocacy LLP
100- 340 Gilmour Street
Ottawa, Ontario K2P 0R3
Tel: (613) 695-8855 Ext: 102
FAX: (613) 695-8580
E-mail: mfmajor@supremeadvocacy.ca

TABLE OF CONTENTS

PART I: OVERVIEW OF POSITION AND STATEMENT OF FACTS..... 1

PART II: STATEMENT OF POSITION WITH RESPECT TO THE APPELLANT’S QUESTIONS 1

PART III: STATEMENT OF ARGUMENT..... 2

 Motivations Behind the Legislative Framework: Aboriginal Self-Government and On-Reserve Economic Development 2

 Enhancing Aboriginal Sovereignty and On-Reserve Economic Development Through First Nations Assessment, Taxation, and Regulation of Reserve Lands 4

 Purpose and Context: Incorporating the Legislative Framework into the Interpretation of the Disputed Provision 7

 Furthering Economic Reconciliation Through Recognizing Aboriginal Sovereignty and Jurisdiction Over Traditional and Reserve Lands 9

PART IV and V: COST SUBMISSIONS and ORDER SOUGHT 10

PART VI: TABLE OF AUTHORITIES..... 11

PART VII: STATUTES AND REGULATIONS..... 13

PART I: OVERVIEW OF POSITION AND STATEMENT OF FACTS

1. First Nations have an inherent right to self-government. The Crown has long recognized this right and worked collaboratively with First Nations to establish the mechanisms through which First Nations are able to exercise their governmental authority. This includes the mechanism for First Nations to assess and tax reserve lands.

2. Beginning in the 1980s, Parliament passed a series of legislative reforms and enactments that empowered First Nations to tax reserve lands through a statutory mechanism that involved the dynamic interplay between Parliament, legislatures, and First Nations communities. This appeal examines the specific statutory mechanism that enables the Appellant to tax its reserve lands. The Council for the Advancement of Native Development Officers (“Cando”) submits that the precise meaning of the specific provision at issue in this appeal can only be informed by understanding and incorporating the purpose behind the broader legislative framework into any statutory reading. This legislative framework was developed with the purpose of fostering Aboriginal self-government by providing the Appellant with the mechanism to tax and regulate reserve lands. For this reason, the term “by the band” at s. 26(3.2) of the *Musqueam Indian Band Property Assessment Bylaw* (“Bylaw”) cannot be interpreted to mean both restrictions imposed on reserve lands by the Appellant and those imposed by the Crown on behalf of the Appellant. Such an interpretation fails to differentiate between First Nations and Crown conduct, and runs counter to Parliament’s intention of developing a legislative framework through which First Nations are able to exercise governmental authority over the taxation of reserve lands.

3. Cando accepts the Statement of Facts set out in the Factum of the Appellant.

PART II: STATEMENT OF POSITION WITH RESPECT TO THE APPELLANT’S QUESTIONS

4. Cando submits that the proper approach to interpreting s. 26(3.2) of the Bylaw is one that incorporates both the purpose and context behind the legislative framework into any statutory reading of the provision. A contextual reading of the provision that accords with the intentions of its drafters supports the Appellant’s position that “by the band” in s. 26(3.2) should be confined to restrictions imposed on reserve lands directly by the Appellant and not indirectly through the Crown.

PART III: STATEMENT OF ARGUMENT

5. The argument proceeds by first setting out the motivations behind the legislative framework. Then, the specific components of the legislative framework are considered in relation to the intentions of its drafters. Afterwards, the provision in dispute is interpreted in accordance with the purpose and context of the broader legislative framework. The argument concludes with an examination of how a purposive interpretation of the disputed provision furthers economic reconciliation between First Nations and the Crown.

Motivations Behind the Legislative Framework: Aboriginal Self-Government and On-Reserve Economic Development

6. The legislative framework at issue in this appeal was drafted with the purpose of empowering First Nations to assume jurisdiction over taxation and regulation of reserve lands. The Crown has [long recognized the inherent right First Nations have to self-government](#), and has identified reserve land taxation as a governmental power that can be used to foster the principles of self-government within First Nations communities and increase on-reserve economic development.¹ First Nations, for their part, consider reserve land taxation as a method to generate revenues that will allow for greater fiscal and governmental autonomy.

7. In *Canadian Pacific Ltd. v Matsqui Indian Band*,² this Court determined that the purpose of the legislative scheme is to foster First Nations self-government:

Here, the evidence indicates that the purpose of the tax assessment scheme is to promote the interests of Aboriginal peoples and to further the aims of self-government. Although the scheme resembles the kind of tax assessment regime we see at the municipal level of government in Canada, it is more ambitious in what it sets out to achieve. The scheme seeks to provide governmental experience to Aboriginal bands, allowing them to develop the skills which they will need for self-government.³

8. The Crown's motivation behind this legislative framework is also informed by its recognition that sovereignty is a means to promote on-reserve economic development. Social science research, such as the [Harvard Project on American Indian Economic Development](#)

¹ Canada, *The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*, online: Government of Canada <<http://www.aadnc-aandc.gc.ca/eng/1100100031843/1100100031844>>, Cando's Book of Authorities (**Cando's Authorities**), Tab 10.

² [1995] 1 SCR 3 [*Matsqui*], Appellant's Book of Authorities (**Appellant's Authorities**), Tab 9.

³ *Matsqui*, at para 43.

(“HPAIED”), has recognized the relationship between Indigenous nation building and on-reserve economic development.⁴ Economic outcomes for Indigenous communities, particularly those living on reserve, are significantly improved when communities themselves have agency and ownership over the nature and scope of economic development on their lands, and are able to assert development through their own internal, culturally grounded government institutions.⁵ According to HPAIED, the exercise of sovereignty over reserve lands is a “necessary” condition for sustained economic development within Indigenous communities.⁶ In the words of Stephen Cornell, founder and co-director of HPAIED:

We have yet to find a single case in the United States of sustained economic activity on indigenous lands in which some governmental body other than the indigenous Nation itself is making the decisions about governmental structure, about natural resource use, about internal civil affairs, about development strategies and so forth.⁷

9. In the Canadian setting, HPAIED’s findings regarding sovereignty and on-reserve economic development have been [promoted](#) by the British Columbia Treaty Commission.⁸ The findings are also evident in the federal government’s on-reserve First Nations economic development policy. Over the past three decades, the federal government has enabled First Nations to [assume jurisdiction over the management of reserve lands](#) as part of a deliberate attempt to [encourage greater economic development through direct community control](#).⁹ In fact,

⁴ The Harvard Project on American Indian Economic Development (“HPAIED”) is the longest and most extensive study of “the conditions under which sustained, self-determined social and economic development is achieved among American Indian nations through applied research and service.” Since 1987, academics and researchers at the HPAIED have examined and documented Indigenous economic development in the American context with the purpose of identifying and understanding which development models are most effective.

⁵ The Harvard Project on American Indian Economic Development, *About Us*, online: < <http://hpaied.org/about>>; Stephen Cornell and Joseph K. Kalt, *Sovereignty and Nation-Building: The Development Challenge in Indian Country Today* (Cambridge, MA: Harvard University, 1998), Cando’s Authorities, Tab 9; and Stephen Cornell and Joseph K. Kalt, *Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations* (Cambridge, MA: Harvard University, 2003), Cando’s Authorities, Tab 8.

⁶ Stephen Cornell, *The Harvard Project Findings on Good Governance – Speaking Notes* (Vancouver: British Columbia Treaty Commission, 2002), at page 2, Cando’s Authorities, Tab 7.

⁷ *Ibid.*, at pages 2–5.

⁸ British Columbia Treaty Commission, *There are Compelling Governmental Reasons*, online: British Columbia Treaty Commission <http://www.bctreaty.net/files/gov_ed1.php>, Cando’s Authorities, Tab 12.

⁹ Indigenous and Northern Affairs Canada, *Lands and Economic Development Services Program*, online: Indigenous and Northern Affairs Canada <<https://www.aadnc-aandc.gc.ca/eng/1100100033423/1100100033424>>, Cando’s Authorities, Tab 14. Indigenous and Northern Affairs Canada, *Fact Sheet: Aboriginal Self-Government*, online: Indigenous and Northern Affairs Canada <<http://www.aadnc-aandc.gc.ca/eng/1100100016293/1100100016294>>, Cando’s Authorities, Tab 15: “Lands and resources under the control of these Aboriginal governments are more attractive to investors, and this facilitates partnerships between Aboriginal governments, other governments and the private sector.”

a recent study by Indigenous and Northern Affairs Canada on improving economic development on reserve lands found that on-reserve economic outcomes are improved when there is:

a high degree of control over local decision-making, which results in First Nations having the necessary autonomy and freedom to pursue their own goals, in their own way, and arises from timing and methods that make sense for the local conditions and for the goals and aspirations of their community.¹⁰

10. For First Nations communities, taxation is a means to achieve greater fiscal autonomy, which can allow for more effective self-government. Through the taxation of reserve lands, First Nations can develop a stable revenue source that can be used to foster financial independence — a view encapsulated in the Report of the Royal Commission on Aboriginal Peoples:

attaining a significant measure of fiscal autonomy is a fundamental prerequisite for effective self-government. A people that does not possess the means to finance its own government will be dependent on the priorities of others... Hence the importance of own-source revenues and authority for Aboriginal nations to tax their own resources and citizens... Aboriginal nation or public governments will find it necessary to tax economic activity on their territory.¹¹

Enhancing Aboriginal Sovereignty and On-Reserve Economic Development Through First Nations Assessment, Taxation, and Regulation of Reserve Lands

11. There are two constitutional sources that recognize the right First Nations have to tax reserve lands. The first source is found in section 35(1) of the *Constitution Act, 1982*, which recognizes and affirms “existing aboriginal and treaty rights of the aboriginal peoples of Canada.”¹² Aboriginal peoples lived in complex political societies prior to the arrival of Europeans, and engaged in a variety of methods to collect and redistribute resources among members in pursuit of collective goals.¹³ Resource collection and redistribution is necessary to the functioning of any political community, including pre-contact Aboriginal communities in

¹⁰ Canada, *Creating the Conditions for Economic Success on Reserve Lands* (Ottawa: Her Majesty the Queen in Right of Canada, represented by the Minister of Aboriginal Affairs and Northern Development, 2013), at pages 4-5 and 15-20, Cando’s Authorities, Tab 16.

¹¹ Canada, *Royal Commission on Aboriginal Peoples. Report of the Royal Commission on Aboriginal Peoples*, vol. 2, Restructuring and Relationships (Ottawa: The Commission, 1996), at page 276, Cando’s Authorities, Tab 17.

¹² Devrin Q. Froese, “Exploring the Constitutional Sources of a First Nation’s Right to Tax” (2007) 55 *Canadian Tax Journal* 777 at 783, [Froese], Cando’s Authorities, Tab 5, and John J. Borrows and Leonard I. Rotman, “Taxation,” *Aboriginal Legal Issues: Cases, Materials & Commentary*, 4th edition (Markham, ON: LexisNexis Canada, 2012), at pages 1034-35, [Borrows and Rotman], Cando’s Authorities, Tab 6.

¹³ Froese at 785, and Borrows and Rotman at pages 1034-35: examples of Aboriginal wealth distribution include: potlatches, feasts, give-aways, gift-givings, etc.

Canada, whose resource redistribution practices share continuity with modern forms of reserve land taxation.¹⁴

12. This right is also found at section 91(3) of the *Constitution Act, 1867*. Parliament is authorized to raise money by any mode or system of taxation under section 91(3). Parliament has used its jurisdiction over taxation with amendments to the *Indian Act*¹⁵, and passage of the *First Nations Land Management Act*¹⁶ (“FNLMA”) and *First Nations Fiscal Management Act*¹⁷ (“FNFMA”) to empower First Nations to tax reserve lands. Through this legislative framework, First Nations are able to enact taxation bylaws and land codes that allow them to exercise greater control over reserve lands and enhance on-reserve economic development. In British Columbia, the Legislature also participates in this legislative framework by virtue of the *Indian Self Government Enabling Act (ISGEA)*.¹⁸ The *ISGEA* provides First Nations in the province with taxation models that allow First Nations to exercise greater control over reserve lands.

13. Parliament has recognized the right First Nations have to tax reserve lands since the 1980s, and has worked collaboratively with First Nations to develop a legislative process through which this right can be exercised. This legislative framework was devised “to promote the interests of Aboriginal peoples and to further the aims of self-government.”¹⁹ It was intended to further economic reconciliation through the implementation of a stable revenue generation model for First Nations communities, and expand the exercise of First Nations self-government through the taxation and management of reserve lands.²⁰

14. Amendments to the *Indian Act* in 1985 first provided First Nations with the ability to tax reserve lands. However, this mechanism did not offer meaningful exercise of First Nations taxation powers. In 1988, after extensive consultations between First Nations and the Crown, Parliament greatly expanded the scope of the powers First Nations had to tax reserve lands by extending the exercise of this right to non-Aboriginal interests in reserve lands.²¹ As a result of these amendments, referred to as the Kamloops Amendments, taxation bylaws developed by

¹⁴ *Ibid.*

¹⁵ RSC 1985, c I-5, Appellant’s Factum, Part VII, Tab K.

¹⁶ SC 1999, c 24, Appellant’s Factum, Part VII, Tab J.

¹⁷ SC 2005, c 9, Appellant’s Factum, Part VII, Tab I.

¹⁸ SBC 1990, c. 52, Respondent’s Book of Authorities (**Respondent’s Authorities**), Tab 41.

¹⁹ *Matsqui* at para 43.

²⁰ *Matsqui* at para 18.

²¹ Froese at 782.

First Nations could now apply to the vast majority of interests found on reserve lands through section 83(1) of the *Indian Act*.

15. First Nations can also tax reserve lands through the *FNFMA*. Enacted in 2005, the *FNFMA* provides First Nations with the governmental authority to raise revenues through on-reserve property taxation. The preamble of the *FNFMA* clearly sets out the purpose of the legislation, which is essentially to promote First Nations sovereignty:

Whereas the Government of Canada has adopted a policy recognizing the inherent right of self-government as an aboriginal right and providing for the negotiation of self-government;...

Whereas the creation of national aboriginal institutions will assist first nations that choose to exercise real property taxation jurisdiction on reserve lands;...

Whereas first nations led an initiative that resulted in 1988 in an amendment to the Indian Act so that their jurisdiction over real property taxation on reserve could be exercised and the Indian Taxation Advisory Board was created to assist in the exercise of that jurisdiction.²²

16. First Nations bylaws are incorporated into law under s. 83(1) of the *Indian Act* or through the *FNFMA*. Through these federal statutes, First Nations bylaws assume and occupy jurisdiction over reserve land taxation pursuant to s. 91(3) of the *Constitution Act, 1867*.²³ In British Columbia, the province vacates all or some of the authority it has to tax non-members on reserve lands through the *ISGEA*, allowing First Nations to expand its jurisdiction over reserve land taxation. This dynamic legislative scheme is comprised of laws enacted by Parliament, the Legislature of British Columbia, and First Nations communities, and empowers First Nations to exercise greater governmental authority and economic control over reserve lands.

17. However, the ability to assess and tax reserve lands does not represent the full scope of powers required to develop an effective property taxation policy. In addition to assessment and taxation powers, the ability to develop land codes and regulate land uses is integral to exercising economic agency over reserve lands.

18. The *FNLMA* was enacted to provide First Nations with the legislative means to engage in more substantive economic development initiatives on reserve lands by providing First Nations

²² *supra*, note 17, "Preamble".

²³ Borrows and Rotman at pages 1037-1038.

with the ability to develop land codes and exercise greater decision-making powers over reserve lands and the resources found on them.²⁴ Similar to the Kamloops Amendments and *FNFMA*, the *FNLMA* was the result of many years of consultation between First Nations and the Crown.²⁵ As a result of the *FNLMA*, First Nations can now develop their own land codes, allowing them to regulate land use and development on reserves as they see fit. This allows First Nations to exercise more meaningful control over how their reserve lands will be used, which is critical to guiding on-reserve economic development. This allows First Nations to authorize or restrict land uses depending on the economic activity they want to promote in specific areas on reserve. For example, portions of reserve land could be designated as industrial zoning, restricting commercial and residential land use, and taxed at different rates according to its designation.

Purpose and Context: Incorporating the Legislative Framework into the Interpretation of the Disputed Provision

19. The principles of statutory interpretation are well defined in Canada. The key principles relevant to this appeal can be summarized as follows:

- a. “the words of an Act be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”,²⁶
- b. “context must inevitably play when a court construes the written words of a statute... where the provision under consideration is found in an Act that is itself a component of a larger statutory scheme, the surroundings that colour the words and the scheme of the Act are more expansive”,²⁷ and
- c. there is a presumption of “harmony, coherence, and consistency between statutes dealing with the same subject matter.”²⁸

20. Parliament devised the legislative framework at issue in this appeal as part of a deliberate attempt to increase on-reserve economic development by recognizing the inherent governmental authority First Nations have over reserve lands and enhancing the ability to exercise this authority.

²⁴ Framework Agreement on First Nation Land Management, Appellant’s Authorities, Tab 24.

²⁵ *Ibid.*

²⁶ *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42, [2002] 2 SCR 559 at para 26, Cando’s Authorities, Tab 1.

²⁷ *Ibid.*, at para 27, quoting *R v Ulybel Enterprises Ltd.*, 2001 SCC 56, [2001] 2 SCR 867 at para 52, Cando’s Authorities, Tab 4.

²⁸ *Ibid.*

21. First Nations participate in this legislative framework in order to exercise greater governmental authority over reserve lands. The legislative framework provides First Nations with a stable revenue source, as well as the agency to pursue economic development policies that reflect their interests through the ability to tax and regulate reserve land use.

22. The legislative scheme operates in the following manner. First Nations enact bylaws to assess and tax reserve lands. These bylaws apply to reserve lands through s. 83(1) of the *Indian Act* or *FNFMA*: federal legislation that empowers First Nations to assume jurisdiction over reserve land taxation. In British Columbia, the province vacates all or some areas of taxation through the *ISGEA*. This allows First Nations to be the exclusive governmental entity to tax its reserve lands, or if this power is exercised concurrently, collect more than the province.

23. The purpose, scheme and object of the legislative framework are designed to enhance and extend First Nations sovereignty over reserve lands by having First Nations assume jurisdiction over taxation and land use regulation.

24. The parties in this appeal dispute the intent and meaning behind the words “by the band” in s. 26(3.2) of the Bylaw (emphasis added):

(3.2) The assessor may include in the factors that he considers under subsection (3), any restriction placed on the use of the land and improvements **by the band**.²⁹

25. First Nations sovereignty serves as the focus for Parliament in the amendments and enactments that comprise this legislative framework. Similarly, for First Nations enacting bylaws to exercise governmental authority over the assessment, taxation, and regulation of reserve lands, sovereignty also plays a prominent role. The Legislature of British Columbia goes further by vacating all or some its authority over reserve land taxation under the *ISGEA* as part of a deliberate attempt to expand First Nations jurisdiction over this area. Given the clear emphasis on First Nations sovereignty, Cando submits that “by the band” was not intended and should not be interpreted to mean both First Nations conduct and Crown conduct on behalf of First Nations. Such an interpretation conflicts with the plain language reading of the provision, as well as any contextual reading that accords with its broader statutory framework and the intentions of its drafters.

²⁹ *Musqueam Indian Band Property Assessment Bylaw*, PR-96-01, s. 26(3.2), Appellant’s Factum, Part VII, Tab N.

26. Clear, unequivocal language would have been included in the provision had there been the intention to incorporate restrictions imposed by the Appellant and Crown in any assessment and taxation of reserve lands. It was not. Instead, restrictions under s. 26(3.2) were limited to those imposed by the Appellant itself, as a deliberate attempt to differentiate the conduct of the Appellant from that of the Crown. This is apparent from any reading of the provision that accords with the intentions of the legislative framework.

Furthering Economic Reconciliation Through Recognizing Aboriginal Sovereignty and Jurisdiction Over Traditional and Reserve Lands

27. The legislative framework at issue in this appeal was drafted with the purpose of furthering reconciliation between Aboriginal and non-Aboriginal peoples in Canada. Reconciliation is the process of bringing together the unique cultural, economic, legal, political, and spiritual dimensions of each respective society into harmony with one another. In the economic context, this specifically refers to harmonizing economic interests, opportunities and benefits between Aboriginal and non-Aboriginal communities. Now, the objective is on fostering economic agency, self-sufficiency and sustainability within Aboriginal communities, in contrast to the dependency, exclusion and paternalism that was once was the norm.

28. The foundation to meaningful economic reconciliation between Aboriginal and non-Aboriginal peoples in Canada begins with recognition of Aboriginal sovereignty and jurisdiction over traditional and reserve lands. The ability to exercise control and agency over lands is the basis for Aboriginal communities to create lasting and sustainable economic opportunities for its members and future generations.

29. Parliament has acknowledged the relationship between on-reserve economic development and First Nations sovereignty, and has worked with First Nations to establish statutory mechanisms for them to exercise their inherent governmental authority over traditional and reserve lands. Since 1989, over 120 First Nations have used this legislative framework to raise over \$800 million in band revenues.³⁰ These revenues are allowing First Nations to attain fiscal autonomy and realize effective self-government.

³⁰ Borrows and Rotman at page 1037.

30. An interpretation of s. 26(3.2) that holds that “by the band” refers to both the Appellant and Crown conflicts with the intention, objectives, and scheme of the legislative framework. However, this reading also undermines the nation-to-nation relationship that the Crown has fostered with First Nation communities in Canada through legislative frameworks such as the one at issue in this appeal. These legislative frameworks are the result of years of negotiations between Aboriginal communities and the Crown, and are designed to address real challenges facing Aboriginal peoples in Canada.

31. In this particular case, a finding that First Nations and Crown conduct are the same for the purposes of restrictions imposed under s. 26(3.2) has additional consequences. It financially penalizes the Appellant on the basis of Crown conduct that this Court has found to constitute equitable fraud and be in breach of the fiduciary duty owed to the Appellant.³¹ This result perpetuates the economic disenfranchisement and paternalism that Parliament and First Nations have worked to address in collaboration over the past three decades.

32. In *Guerin v The Queen*,³² this Court charted a new relationship between Aboriginal communities and the Crown — one that ensured that First Nations would benefit from the economic activities that occurred on their reserve lands. Now, more than three decades later, this Court can continue to ensure that First Nations are able to maximize the economic opportunities available to them on their reserve lands. This can occur by interpreting s. 26(3.2) in a manner that limits restrictions imposed “by the band” to those directly imposed by the Appellant.

PART IV and V: COST SUBMISSIONS and ORDER SOUGHT

33. Cando seeks no costs and respectfully requests that none be awarded against it. Cando requests that it be allowed 10 minutes to provide oral submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: Thursday, April 7, 2016

Avnish Nanda, Counsel for the Intervener
Council for the Advancement of Native
Development Officers

³¹ *Guerin v The Queen*, [1984] 2 SCR 335 at pg. 354, 356, and 389, Cando’s Authorities, Tab 3.

³² *Ibid.*

PART VI: TABLE OF AUTHORITIES

TAB	Cases	¶
1	<i>Bell ExpressVu Limited Partnership v Rex</i> , 2002 SCC 42, [2002] 2 SCR 559	19
	<i>Canadian Pacific Ltd. v Matsqui Indian Band</i> , [1995] 1 SCR 3	7, 13
2	<i>Guerin v The Queen</i> , [1984] 2 SCR 335	31, 32
3	<i>R v Ulybel Enterprises Ltd.</i> , 2001 SCC 56, [2001] 2 SCR 867	19
	Secondary Authorities	
4	Devrin Q. Froese, “Exploring the Constitutional Sources of a First Nation’s Right to Tax” (2007) 55 Canadian Tax Journal 777	11, 14
5	John J. Borrows and Leonard I. Rotman, “Taxation,” <i>Aboriginal Legal Issues: Cases, Materials & Commentary</i> , 4 th edition (Markham, ON: LexisNexis Canada, 2012)	11, 16, 30
6	Stephen Cornell, <i>The Harvard Project Findings on Good Governance – Speaking Notes</i> (Vancouver: British Columbia Treaty Commission, 2002)	8
7	Stephen Cornell and Joseph K. Kalt, <i>Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations</i> (Cambridge, MA: Harvard University, 2003)	8
8	Stephen Cornell and Joseph K. Kalt, <i>Sovereignty and Nation-Building: The Development Challenge in Indian Country Today</i> (Cambridge, MA: Harvard University, 1998)	8
	Other Sources	
9	Canada, <i>The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government</i> , online: Government of Canada http://www.aadnc-aandc.gc.ca/eng/1100100031843/1100100031844	6
10	The Harvard Project on American Indian Economic Development, <i>About Us</i> , online: http://hpaied.org/about	8
11	British Columbia Treaty Commission, <i>There are Compelling Governmental Reasons</i> , online: British Columbia Treaty Commission http://www.bctreaty.net/files/gov_ed1.php	8
	Framework Agreement on First Nation Land Management	18
12	Indigenous and Northern Affairs Canada, <i>Lands and Economic Development Services Program</i> , online: Indigenous and Northern Affairs Canada https://www.aadnc-aandc.gc.ca/eng/1100100033423/1100100033424	9
13	Indigenous and Northern Affairs Canada, <i>Fact Sheet: Aboriginal Self-Government</i> , online: Indigenous and Northern Affairs Canada http://www.aadnc-aandc.gc.ca/eng/1100100016293/1100100016294	9
14	Canada, <i>Creating the Conditions for Economic Success on Reserve Lands</i> (Ottawa: Her Majesty the Queen in Right of Canada, represented by the Minister of Aboriginal	9

Affairs and Northern Development, 2013)

- 15 Canada, *Royal Commission on Aboriginal Peoples. Report of the Royal Commission on Aboriginal Peoples*, vol. 2, Restructuring and Relationships (Ottawa: The Commission, 1996) 10

Statutes and Bylaws

- 16 *Constitution Act, 1867*, 30 & 31 Vict, c 3, s 91, reprinted in RSC 1985, App II, No 5 11, 12, 16
First Nations Fiscal Management Act, SC 2005, c 9 12, 15, 16, 18, 22
First Nations Land Management Act, S.C. 1999, c. 24 12, 18
Indian Self Government Enabling Act, SBC 1990, c. 52 12, 16, 22, 25
Musqueam Indian Band Property Assessment Bylaw, PR-96-01 2, 4, 24, 26, 30, 31, 32

PART VII: STATUTES AND REGULATIONS

TAB Legislation

- A *First Nations Fiscal Management Act*, SC 2005, c 9
- B *Indian Act*, RSC 1985, c I-5
- C *Musqueam Indian Band Property Assessment By-Law*, PR-96-01

TAB A



CANADA

CONSOLIDATION

CODIFICATION

First Nations Fiscal Management Act

Loi sur la gestion financière des premières nations

S.C. 2005, c. 9

L.C. 2005, ch. 9

Current to March 16, 2016

À jour au 16 mars 2016

Last amended on January 29, 2016

Dernière modification le 29 janvier 2016



S.C. 2005, c. 9

L.C. 2005, ch. 9

An Act to provide for real property taxation powers of first nations, to create a First Nations Tax Commission, First Nations Financial Management Board and First Nations Finance Authority and to make consequential amendments to other Acts

Loi prévoyant les pouvoirs en matière d'imposition foncière des premières nations, constituant la Commission de la fiscalité des premières nations, le Conseil de gestion financière des premières nations ainsi que l'Administration financière des premières nations et apportant des modifications corrélatives à certaines lois

[Assented to 23rd March 2005]

[Sanctionnée le 23 mars 2005]

Preamble

Whereas the Government of Canada has adopted a policy recognizing the inherent right of self-government as an aboriginal right and providing for the negotiation of self-government;

Whereas this Act is not intended to define the nature and scope of any right of self-government or to pre-judge the outcome of any self-government negotiation;

Whereas the creation of national aboriginal institutions will assist first nations that choose to exercise real property taxation jurisdiction on reserve lands;

Whereas economic development through the application of real property tax revenues and other local revenues to support borrowing on capital markets for the development of public infrastructure is available to other governments in Canada;

Whereas real property taxation regimes on reserves should recognize both the interests of on-reserve taxpayers and the rights of members of first nations communities;

Whereas first nations led an initiative that resulted in 1988 in an amendment to the *Indian Act* so that their jurisdiction over real property taxation on reserve could be exercised and the Indian Taxation Advisory

Préambule

Attendu :

que le gouvernement du Canada a adopté une politique aux termes de laquelle il est reconnu que le droit inhérent à l'autonomie gouvernementale constitue un droit ancestral et que cette politique prévoit des négociations portant sur l'autonomie gouvernementale;

que la présente loi n'a pas pour but de définir la nature et l'étendue de tout droit à l'autonomie gouvernementale ou d'anticiper l'issue des négociations portant sur celle-ci;

que l'établissement d'institutions autochtones nationales bénéficiera aux premières nations qui choisissent d'exercer une compétence relative à l'imposition foncière sur les terres de réserve;

que d'autres gouvernements au Canada bénéficient de ce levier de développement économique que représentent les recettes fiscales foncières et d'autres recettes locales utilisées pour contracter des emprunts sur les marchés financiers en vue de l'établissement d'infrastructures publiques;

que les régimes d'impôts fonciers des réserves devraient tenir compte à la fois des intérêts des contribuables qui vivent dans une réserve et des droits des membres des collectivités des premières nations;

Board was created to assist in the exercise of that jurisdiction;

Whereas, in 1995, the First Nations Finance Authority Inc. was incorporated for the purposes of issuing debentures using real property tax revenues and providing investment opportunities;

Whereas, by 1999, first nations and the Government of Canada recognized the benefits of establishing statutory institutions as part of a comprehensive fiscal management system;

And whereas first nations have led an initiative culminating in the introduction of this Act;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

2005, c. 9, Preamble; 2012, c. 19, s. 657.

Short Title

Short title

1 This Act may be cited as the *First Nations Fiscal Management Act*.

2005, c. 9, s. 1; 2012, c. 19, s. 658.

Interpretation

Definitions

2 (1) The following definitions apply in this Act.

borrowing member means a first nation that has been accepted as a borrowing member under subsection 76(2) and has not ceased to be a borrowing member under section 77. (*membre emprunteur*)

council has the same meaning as ***council of the band*** in subsection 2(1) of the *Indian Act*. (*conseil de la première nation*)

first nation means a band named in the schedule. (*première nation*)

First Nations Finance Authority means the corporation established under section 58. (*Administration financière des premières nations*)

que les premières nations ont entrepris une initiative par suite de laquelle la *Loi sur les Indiens* a été modifiée en 1988 de façon qu'elles puissent exercer leur compétence relative aux impôts fonciers dans les réserves et que la Commission consultative de la fiscalité indienne a été créée pour les aider à exercer cette compétence;

qu'en 1995, la First Nations Finance Authority Inc. a été constituée en personne morale afin d'émettre des débetures au moyen des recettes fiscales foncières et d'offrir des possibilités d'investissement;

qu'en 1999, les premières nations et le gouvernement du Canada ont reconnu les avantages de l'établissement d'institutions par voie législative dans le cadre de systèmes globaux de gestion financière;

que les premières nations ont entrepris une initiative qui a mené à l'élaboration de la présente loi,

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

2005, ch. 9, préambule; 2012, ch. 19, art. 657.

Titre abrégé

Titre abrégé

1 *Loi sur la gestion financière des premières nations*.

2005, ch. 9, art. 1; 2012, ch. 19, art. 658.

Définitions

Définitions

2 (1) Les définitions qui suivent s'appliquent à la présente loi.

Administration financière des premières nations L'administration constituée par l'article 58. (*First Nations Finance Authority*)

Commission de la fiscalité des premières nations La commission constituée par le paragraphe 17(1). (*First Nations Tax Commission*)

Conseil de gestion financière des premières nations Le conseil constitué par le paragraphe 38(1). (*First Nations Financial Management Board*)

conseil de la première nation S'entend au sens de « conseil de la bande » au paragraphe 2(1) de la *Loi sur les Indiens*. (*council*)

TAB B



CANADA

CONSOLIDATION

CODIFICATION

Indian Act

Loi sur les Indiens

R.S.C., 1985, c. I-5

L.R.C. (1985), ch. I-5

Current to March 16, 2016

À jour au 16 mars 2016

Last amended on April 2, 2015

Dernière modification le 2 avril 2015

(b) there was a contravention of this Act that might have affected the result of the election; or

(c) a person nominated to be a candidate in the election was ineligible to be a candidate.

R.S., c. I-6, s. 79.

Regulations respecting band and council meetings

80 The Governor in Council may make regulations with respect to band meetings and council meetings and, without restricting the generality of the foregoing, may make regulations with respect to

(a) presiding officers at such meetings;

(b) notice of such meetings;

(c) the duties of any representative of the Minister at such meetings; and

(d) the number of persons required at such meetings to constitute a quorum.

R.S., c. I-6, s. 80.

Powers of the Council

By-laws

81 (1) The council of a band may make by-laws not inconsistent with this Act or with any regulation made by the Governor in Council or the Minister, for any or all of the following purposes, namely,

(a) to provide for the health of residents on the reserve and to prevent the spreading of contagious and infectious diseases;

(b) the regulation of traffic;

(c) the observance of law and order;

(d) the prevention of disorderly conduct and nuisances;

(e) the protection against and prevention of trespass by cattle and other domestic animals, the establishment of pounds, the appointment of pound-keepers, the regulation of their duties and the provision for fees and charges for their services;

(f) the construction and maintenance of watercourses, roads, bridges, ditches, fences and other local works;

(g) the dividing of the reserve or a portion thereof into zones and the prohibition of the construction or main-

b) qu'il s'est produit une infraction à la présente loi pouvant influencer sur le résultat de l'élection;

c) qu'une personne présentée comme candidat à l'élection ne possédait pas les qualités requises.

S.R., ch. I-6, art. 79.

Règlements sur les assemblées de la bande et du conseil

80 Le gouverneur en conseil peut prendre des règlements sur les assemblées de la bande et du conseil et, notamment, des règlements concernant :

a) les présidents de ces assemblées;

b) les avis de ces assemblées;

c) les fonctions de tout représentant du ministre à ces assemblées;

d) le nombre de personnes requis à ces assemblées pour constituer un quorum.

S.R., ch. I-6, art. 80.

Pouvoirs du conseil

Règlements administratifs

81 (1) Le conseil d'une bande peut prendre des règlements administratifs, non incompatibles avec la présente loi ou avec un règlement pris par le gouverneur en conseil ou par le ministre, pour l'une ou l'ensemble des fins suivantes :

a) l'adoption de mesures relatives à la santé des habitants de la réserve et les précautions à prendre contre la propagation des maladies contagieuses et infectieuses;

b) la réglementation de la circulation;

c) l'observation de la loi et le maintien de l'ordre;

d) la répression de l'inconduite et des inconvénients;

e) la protection et les précautions à prendre contre les empiétements des bestiaux et autres animaux domestiques, l'établissement de fourrières, la nomination de gardes-fourrières, la réglementation de leurs fonctions et la constitution de droits et redevances pour leurs services;

f) l'établissement et l'entretien de cours d'eau, routes, ponts, fossés, clôtures et autres ouvrages locaux;

tenance of any class of buildings or the carrying on of any class of business, trade or calling in any zone;

(h) the regulation of the construction, repair and use of buildings, whether owned by the band or by individual members of the band;

(i) the survey and allotment of reserve lands among the members of the band and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use, if authority therefor has been granted under section 60;

(j) the destruction and control of noxious weeds;

(k) the regulation of bee-keeping and poultry raising;

(l) the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies;

(m) the control or prohibition of public games, sports, races, athletic contests and other amusements;

(n) the regulation of the conduct and activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise;

(o) the preservation, protection and management of fur-bearing animals, fish and other game on the reserve;

(p) the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes;

(p.1) the residence of band members and other persons on the reserve;

(p.2) to provide for the rights of spouses or common-law partners and children who reside with members of the band on the reserve with respect to any matter in relation to which the council may make by-laws in respect of members of the band;

(p.3) to authorize the Minister to make payments out of capital or revenue moneys to persons whose names were deleted from the Band List of the band;

(p.4) to bring subsection 10(3) or 64.1(2) into effect in respect of the band;

(q) with respect to any matter arising out of or ancillary to the exercise of powers under this section; and

(r) the imposition on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a

g) la division de la réserve ou d'une de ses parties en zones, et l'interdiction de construire ou d'entretenir une catégorie de bâtiments ou d'exercer une catégorie d'entreprises, de métiers ou de professions dans une telle zone;

h) la réglementation de la construction, de la réparation et de l'usage des bâtiments, qu'ils appartiennent à la bande ou à des membres de la bande pris individuellement;

i) l'arpentage des terres de la réserve et leur répartition entre les membres de la bande, et l'établissement d'un registre de certificats de possession et de certificats d'occupation concernant les attributions, et la mise à part de terres de la réserve pour usage commun, si l'autorisation à cet égard a été accordée aux termes de l'article 60;

j) la destruction et le contrôle des herbes nuisibles;

k) la réglementation de l'apiculture et de l'aviculture;

l) l'établissement de puits, citernes et réservoirs publics et autres services d'eau du même genre, ainsi que la réglementation de leur usage;

m) la réglementation ou l'interdiction de jeux, sports, courses et concours athlétiques d'ordre public et autres amusements du même genre;

n) la réglementation de la conduite et des opérations des marchands ambulants, colporteurs ou autres personnes qui pénètrent dans la réserve pour acheter ou vendre des produits ou marchandises, ou en faire un autre commerce;

o) la conservation, la protection et la régie des animaux à fourrure, du poisson et du gibier de toute sorte dans la réserve;

p) l'expulsion et la punition des personnes qui pénètrent sans droit ni autorisation dans la réserve ou la fréquentent pour des fins interdites;

p.1) la résidence des membres de la bande ou des autres personnes sur la réserve;

p.2) l'adoption de mesures relatives aux droits des époux ou conjoints de fait ou des enfants qui résident avec des membres de la bande dans une réserve pour toute matière au sujet de laquelle le conseil peut établir des règlements administratifs à l'égard des membres de la bande;

p.3) l'autorisation du ministre à effectuer des paiements sur des sommes d'argent au compte de capital

term not exceeding thirty days, or both, for violation of a by-law made under this section.

Power to restrain by order where conviction entered

(2) Where any by-law of a band is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

Power to restrain by court action

(3) Where any by-law of a band passed is contravened, in addition to any other remedy and to any penalty imposed by the by-law, such contravention may be restrained by court action at the instance of the band council.

R.S., 1985, c. I-5, s. 81; R.S., 1985, c. 32 (1st Supp.), s. 15; 2000, c. 12, s. 152.

82 [Repealed, 2014, c. 38, s. 7]

Money by-laws

83 (1) Without prejudice to the powers conferred by section 81, the council of a band may, subject to the approval of the Minister, make by-laws for any or all of the following purposes, namely,

- (a)** subject to subsections (2) and (3), taxation for local purposes of land, or interests in land, in the reserve, including rights to occupy, possess or use land in the reserve;
- (a.1)** the licensing of businesses, callings, trades and occupations;
- (b)** the appropriation and expenditure of moneys of the band to defray band expenses;
- (c)** the appointment of officials to conduct the business of the council, prescribing their duties and pro-

ou des sommes d'argent de revenu aux personnes dont les noms ont été retranchés de la liste de la bande;

p.4) la mise en vigueur des paragraphes 10(3) ou 64.1(2) à l'égard de la bande;

q) toute question qui découle de l'exercice des pouvoirs prévus par le présent article, ou qui y est accessoire;

r) l'imposition, sur déclaration de culpabilité par procédure sommaire, d'une amende maximale de mille dollars et d'un emprisonnement maximal de trente jours, ou de l'une de ces peines, pour violation d'un règlement administratif pris aux termes du présent article.

Pouvoir de rendre une ordonnance

(2) Lorsqu'un règlement administratif d'une bande est violé et qu'une déclaration de culpabilité est prononcée, le tribunal ayant prononcé la déclaration de culpabilité et tout tribunal compétent par la suite peuvent, en plus de toute autre réparation et de toute peine imposée par le règlement administratif, rendre une ordonnance interdisant la continuation ou la répétition de l'infraction par la personne déclarée coupable.

Pouvoir d'intenter une action en justice

(3) La violation d'un règlement administratif d'une bande peut, sans préjudice de toute autre réparation et de toute peine imposée par celui-ci, être réfrénée par une action en justice à la demande du conseil de bande.

L.R. (1985), ch. I-5, art. 81; L.R. (1985), ch. 32 (1^{er} suppl.), art. 15; 2000, ch. 12, art. 152.

82 [Abrogé, 2014, ch. 38, art. 7]

Règlements administratifs

83 (1) Sans préjudice des pouvoirs que confère l'article 81, le conseil de la bande peut, sous réserve de l'approbation du ministre, prendre des règlements administratifs dans les domaines suivants :

- a)** sous réserve des paragraphes (2) et (3), l'imposition de taxes à des fins locales, sur les immeubles situés dans la réserve, ainsi que sur les droits sur ceux-ci, et notamment sur les droits d'occupation, de possession et d'usage;
- a.1)** la délivrance de permis, de licences ou d'agréments aux entreprises, professions, métiers et occupations;
- b)** l'affectation et le déboursement de l'argent de la bande pour couvrir les dépenses de cette dernière;

viding for their remuneration out of any moneys raised pursuant to paragraph (a);

(d) the payment of remuneration, in such amount as may be approved by the Minister, to chiefs and councillors, out of any moneys raised pursuant to paragraph (a);

(e) the enforcement of payment of amounts that are payable pursuant to this section, including arrears and interest;

(e.1) the imposition and recovery of interest on amounts that are payable pursuant to this section, where those amounts are not paid before they are due, and the calculation of that interest;

(f) the raising of money from band members to support band projects; and

(g) with respect to any matter arising out of or ancillary to the exercise of powers under this section.

Restriction on expenditures

(2) An expenditure made out of moneys raised pursuant to subsection (1) must be so made under the authority of a by-law of the council of the band.

Appeals

(3) A by-law made under paragraph (1)(a) must provide an appeal procedure in respect of assessments made for the purposes of taxation under that paragraph.

Minister's approval

(4) The Minister may approve the whole or a part only of a by-law made under subsection (1).

Regulations re by-laws

(5) The Governor in Council may make regulations respecting the exercise of the by-law making powers of bands under this section.

By-laws must be consistent with regulations

(6) A by-law made under this section remains in force only to the extent that it is consistent with the regulations made under subsection (5).

R.S., 1985, c. I-5, s. 83; R.S., 1985, c. 17 (4th Supp.), s. 10.

c) la nomination de fonctionnaires chargés de diriger les affaires du conseil, en établissant leurs fonctions et prévoyant leur rétribution sur les fonds prélevés en vertu de l'alinéa a);

d) le versement d'une rémunération, pour le montant que le ministre peut approuver, aux chefs et conseillers, sur les fonds prélevés en vertu de l'alinéa a);

e) les mesures d'exécution forcée visant le recouvrement de tout montant qui peut être perçu en application du présent article, arrérages et intérêts compris;

e.1) l'imposition, pour non-paiement de tout montant qui peut être perçu en application du présent article, d'intérêts et la fixation, par tarif ou autrement, de ces intérêts;

f) la réunion de fonds provenant des membres de la bande et destinés à supporter des entreprises de la bande;

g) toute question qui découle de l'exercice des pouvoirs prévus par le présent article, ou qui y est accessoire.

Restriction

(2) Toute dépense à faire sur les fonds prélevés en application du paragraphe (1) doit l'être sous l'autorité d'un règlement administratif pris par le conseil de la bande.

Précision

(3) Les règlements administratifs pris en application de l'alinéa (1)a) doivent prévoir la procédure de contestation de l'évaluation en matière de taxation.

Approbaton

(4) Le ministre peut approuver la totalité d'un règlement administratif visé au paragraphe (1) ou une partie seulement de celui-ci.

Règlement relatif au pouvoir réglementaire

(5) Le gouverneur en conseil peut, par règlement, régir l'exercice du pouvoir réglementaire de la bande prévu au présent article.

Maintien des règlements administratifs

(6) Les règlements administratifs pris en application du présent article ne demeurent en vigueur que dans la mesure de leur compatibilité avec les règlements pris en application du paragraphe (5).

L.R. (1985), ch. I-5, art. 83; L.R. (1985), ch. 17 (4^e suppl.), art. 10.

TAB C

Part 4

Valuation

Valuation and Status Dates

25.1(1) *For the purpose of determining the actual value of property for an assessment roll, the valuation date is July 1 of the year during which the assessment roll is completed.*

(2) *The actual value of property for an assessment roll is to be determined as if on the valuation date:*

- (a) *the property and all other properties were in the physical condition that they are in on October 31 following the valuation date, and*
- (b) *the permitted use of the property and of all properties were the same as on October 31 following the valuation date.*

Valuation for Purposes of Assessment

26.(1) *In this bylaw "actual value" means the market value of the fee simple interest in land and improvements as if the interest holder held a fee simple interest located off reserve.*

(2) *The assessor shall determine the actual value of land and improvements and shall enter the actual value of the land and improvements within each named reserve in the assessment roll.*

(3) *In determining actual value, the assessor may, except where this bylaw has a different requirement, give consideration to present use, location, original cost, replacement cost, revenue or rental value, selling price of the land and improvements and comparable land and improvements both within and without the reserve, economic and functional obsolescence, the market value of comparable land and improvements both within and without the reserve, jurisdiction, community facilities and amenities, and any other circumstances affecting the value of the land and improvements provided such considerations do not conflict with subsection (1).*

(3.1) *Without limiting the application of subsections (1) to (3), where an industrial or commercial undertaking, a business or a public utility enterprise is carried on, the land and improvements used by it shall be valued as the property of a going concern.*

(3.2) *The assessor may include in the factors that he considers under subsection (3), any restriction placed on the use of the land and improvements by the band.*

(3.3) *The duration of the interest of an interest holder, or the right of an interest holder or any other person to terminate that interest, is not a restriction within the meaning of subsection (3.2).*

(4) Notwithstanding this or any other bylaw of the band, where land and improvements are exempt from taxation, unless ordered by the council, the assessor need not, in respect of the exempt land and improvements:

- (a) assess the land and improvements, or
- (b) prepare an annual assessment roll.

(5) Notwithstanding this or any other bylaw, improvements designed, constructed or installed to provide emergency protection for persons or domestic animals in the event of a disaster or emergency within the meaning of the **Emergency Program Act**, of the Province of British Columbia, are exempt from assessment.

(6) Land and improvements shall be assessed at their actual value.

(7) Council hereby establishes in Schedule "IV" to this bylaw classes of property for the purpose of administering property taxes and in Schedule "IV" defines the types or uses of land or improvements, or both, to be included in each property class.

(8) The actual values of land and improvements determined under this section shall be set down separately on the assessment notice and in the assessment roll together with information specified pursuant to section 2(2).

Major Industry Valuation

26.1(1) In this section:

"cost of industrial improvement" means the cost of replacing an existing industrial improvement with an improvement that:

- (a) has the same area and volume as the existing industrial improvement,
- (b) serves the same function that the existing industrial improvement was designed for, or where the existing industrial improvement is no longer used for that function, serves the same function that the existing industrial improvement now serves, and
- (c) is constructed using current, generally accepted construction techniques and materials for the type of improvement being constructed,

and, for the purposes of determining cost, council shall prescribe those manuals establishing rates, formulae, rules or principles for the calculation of cost prescribed in Schedule "V",

"industrial improvement" means an improvement that is part of a plant that is designed, built and can be used for the purpose of one or more of the following:

- (a) mining, extracting, beneficiating or milling of metallic or non-metallic ore,
- (b) mining, breaking, washing, grading or beneficiating of coal,
- (c) producing of aluminium,
- (d) smelting or refining of metal from ore or ore concentrate,