

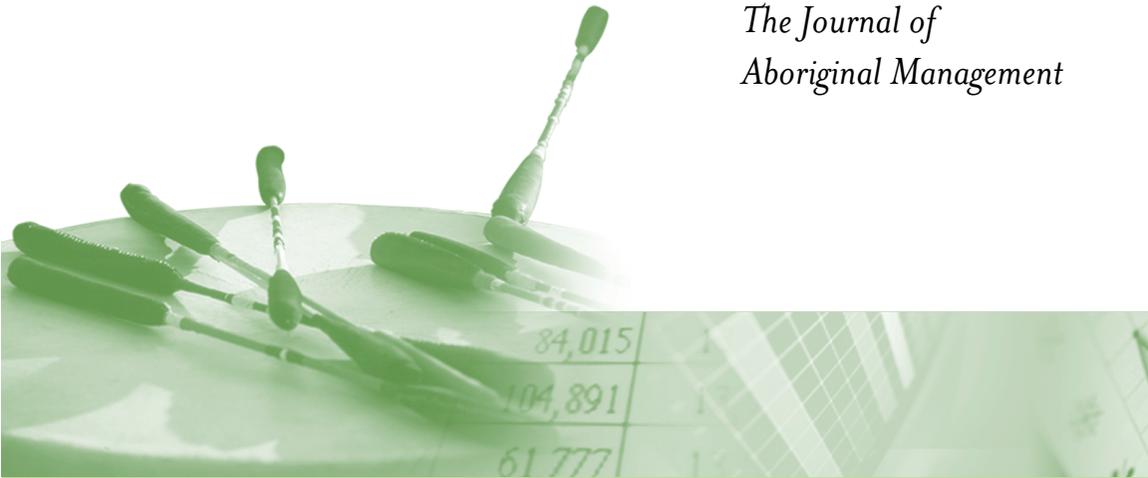


AFOA

Aboriginal Financial Officers Association of Canada

JAM

*The Journal of
Aboriginal Management*



*AFOA – the best source of information and
training on Aboriginal finance and management.*

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The National Centre for First Nations Governance

A Conversation with Herb George, Chair,
The National Centre for First Nations Governance

The National Centre for First Nations Governance will develop programs and services that are culturally enriched and empowered by First Nations traditions, customs, laws and inherent governing powers.

The Centre has a two-pronged mandate:

1. to support First Nations as they seek to implement their inherent rights of self-government, and
2. to assist First Nations in the further development of their day-to-day government operations.

The Centre will support First Nations in their efforts to implement and put into practice their jurisdictional authorities and to achieve the well-designed characteristics of good government.

The Centre is based upon the principle of choice. First Nations may draw upon its services as they see fit and will not be required to do so by legislation or any other means. The Centre will operate under the control and direction of First Nations and is designed to be completely independent from the Government of Canada as well as First Nations political organizations.

www.fnsgovernance.org

Q. *When did the National Centre for First Nations Governance begin operating?*

A. During the development phase of the Centre we conducted a lot of research to get ourselves ready to identify issues and challenges that might exist on the ground.

Number one we looked at what is the situation with regard to First Nations right now – that is, the status quo under the *Indian Act*. What's important to First Nations in terms of the change that they would like to see, the direction that they would like to go, given that, of course, there have been huge changes in the law in the last several years. Of course, the big issues there are financial management, administration, leadership selection, citizenship, constitutions, and so on.

There was another large group that was sort of straddling the *Indian Act* and the inherent right, saying 'We've got to go beyond where we are right now given the changes that are there.' The big question there is the extent of the jurisdiction or the extent of the inherent right. There's a legal obligation on the part of Canada and the Provinces and the Territories to consult and accommodate Aboriginal and treaty rights when they're being infringed.

The third area that we found was that, of course, most people want to get out of the *Indian Act* altogether and look at the inherent right. In that area the first question that arises is, number one: what's a government? Number two: how does it work? Number three: what does it look like? Number four: who does what? The key thing there was what does it look like structurally? In that area we've got to look at developing appropriate structures of government that meet the needs of the people. So, that's one bit of work we've done.

The second bit of work we've done is to look at a community that's moving from the *Indian Act* directly to the inherent right under their own system. What we did was to provide the services to tell their story and to look at the issues and challenges that they face as they move forward and ultimately how are they successful.

The third bit of work that we've done is to look at one community in the BC Treaty Commission Process that has an Agreement-In-Principle. So, we went into the community as a joint effort between ourselves and the Native Nations Institute out of Harvard and said, 'Okay, let's look at and identify the challenges and issues that might exist for anybody who is moving in this direction.'

We've also done work around research that is required within the governance context – structures of governance, how they work, the policy issue, management and administration issues, as well as research on what are the outstanding issues regarding Aboriginal entitlement and treaty rights relating to the land, relating to the economy, and relating to our own governments as a whole. We've done a lot of work to establish an agenda that we think comes directly from the community.

Q: *It sounds like you've been doing preliminary work for what – a couple of years?*

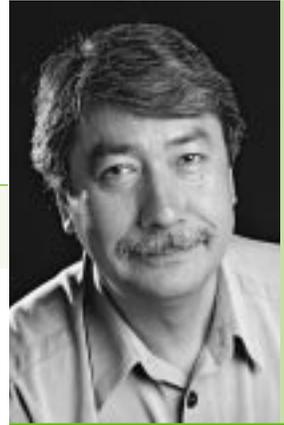
A: Yes, and in that process we've gone directly to the communities. We've traveled right across this country from coast to coast to coast talking to people about governance, the inherent right, the future, rebuilding our economies, taking care of ourselves, taking back our own responsibilities. This work has been done always in concert with work in our communities.

Q: *How do you foresee your organization working with the AFOA and its members to improve professional development?*

A: As we've moved along we've been talking to AFOA. I've spoken at their national conference and several of their regional conferences about how we need to work together to address these issues. In terms of the Governance Centre, one thing that we say is that we don't want to reinvent the wheel. When issues arise that are in the ballywick of AFOA then we will engage AFOA and work in a partnership approach. I think if we can do that then we'll expedite the situation.

Q: *In the context of the challenges and developments that are affecting First Nations people, particularly the drive for self-governance, what do you think are the most important areas of management capacity that need to be addressed and improved among First Nations?*

A: When we look at management on a band level our tendency is to look at it from the perspective of business administration but people don't really know a lot about public administration – which is where we need to be looking. We need to look at this from the inside out, from the community itself. I think when we do that the first building block is financial management. That has to be the key in order to promote trust from our own community and trust when we deal with other governments. I think that's the lynchpin, the key building block to building our own governments.



HERB GEORGE

In terms of the Governance Centre, one thing that we say is that we don't want to reinvent the wheel. When issues arise that are in the ballywick of AFOA then we will engage AFOA and work in a partnership approach. I think if we can do that then we'll expedite the situation.

The other area we've got to be looking at desperately, by that I mean we need to be doing it now, is lands and resources and, as well, the economic opportunities that exist out there for us.

Q: *What are the most common challenges at the community level in order to develop the needed capacity?*

The first building block is financial management. That has to be the key in order to promote trust from our own community and trust when we deal with other governments. I think that's the lynchpin, the key building block to building our own governments.

A: The biggest challenge is to create and build a dialogue around self-government and realize that this is a right we have that exists now. We don't need to be struggling and languishing within the *Indian Act*, dependent on somebody else for our day-to-day survival. More than that, we need to go beyond surviving. We need to go and look at this as living to the full extent possible and creating the best possible future for our children. The most common challenge that I see is that most of our people are just not talking about self-government. We need to promote that dialogue.

Q: *What do you think is causing that? Do you think that people are just caught up in the daily grind?*

A: One of the business lines of the Centre is public education. The assumption when you see that would be that we're going to go out there and convince the general Canadian public that we need to do this, that they need to understand, and that they need to support it. In fact, what we're looking at is to engage our own people about the right so that they can start looking towards the future on their own terms. There's a gap in communications that exists regarding Aboriginal and treaty rights and the inherent right to self-government and we've got to close that gap.

Q: *What needs to be done to get people at the community level discussing these issues in an informed way?*

A: I think you've got to get to the community. That's the only way it can be done. You've got to put it in the proper perspective. I don't think it makes any sense, or that anyone would listen, if you went into a community and told them what you think is good and best for them. They'll tell you 'We've heard enough of that.'

If you come to the regions, looking at this from the perspective of professional development and public education, and engage our people in a discussion about 'what did our grandparents fight for? Why was this issue so important to them?' then everybody gets connected because everybody remembers. That memory is not lost. It's there. Once we do that then we can start talking about Aboriginal rights and title.

Then we need to start talking about how we have the opportunity to begin to rebuild our economies now. We have the

opportunity to address the poverty that exists in our communities now. We have the opportunity to put in place the proper infrastructure and development in our communities now. We can address the serious housing shortage that exists in our communities now. We can address the serious health problems and healing that are required now.

When you bring that kind of hope to people they will respond to it. It's critical to create that dialogue. I don't think we can be successful without it.

On the other hand, we've got people who are calling us on a daily basis saying 'When are you going to be ready to go?' We need to begin now.

Q: *How do you see the Centre working with First Nations Fiscal Institutions, such as the First Nations Financial Management Board, that have been set up recently?*

A: Our mandate in the Governance Centre is to work with all existing and future institutions that are our own and we intend to do that because the funding we have to operate is not limitless. We know that it's not enough to do everything that we wish we could do. However, if we could, working with others, get the job done then it makes sense for us to do that. We're looking forward to that.

Q: *How do we go about meeting the challenge of building public awareness at the community level?*

A: It's clear that we have jurisdiction to the extent of our territories, number one. Number two it's clear that we have an inescapable economic component that exists out there. Number three, it's clear that we have the right to use the land at our own discretion. Number four, the bottom line is that Canada, the Territories, and the Provinces have a legal obligation to us in these areas.

Then we can start talking about how do make this happen? What's our strategy? We need to talk about clear goals and objectives. We need a clear and aggressive time frame. We need to put in place procedures to evaluate progress, and to be able to amend and adapt as we move forward so that we can meet our goals and objectives.

We need to demonstrate to our people what a difference this can make. We need to demonstrate to them by being able to put something tangible in their hands so they see that it can make a difference. That's the big challenge for leadership overall. If we engage the people in that dialogue and create a movement for change, then I think we'll see ripple effects throughout our nations.

We have the opportunity to address the poverty that exists in our communities now. We have the opportunity to put in place the proper infrastructure and development in our communities now. We can address the serious housing shortage that exists in our communities now. We can address the serious health problems and healing that are required now.

Q: *What capacity development is needed amongst First Nations representatives with regard to due diligence and financial stewardship?*

A: If we look at it in the context of the inherent right, and we say, 'We have the right to govern ourselves'... then of course, the first issue we come to is accountability to our people because in our own traditional systems that was always inherent. It was always there. It was key to our survival.

Q: *So, how can managers in the communities help community leadership make sound decisions based on the financial and other information that they receive?*

A: I think that when AFOA does its work, for example, that it necessarily needs to include the leadership. I'd love to be able to see AFOA and any other First Nation Institution when it's doing its business ensure that leadership is there, that they're understanding why it's important, and they're supporting it. I think we've got a ways to go as far as that is concerned.

Q: *How can we get Aboriginal youth pursuing careers in community management and governance?*

We now have a recognition of Aboriginal and treaty rights sufficient to engage all of our people and in that context I would argue that we don't have enough educated and experienced people. We need our young people, we need their education and experience to be successful in taking back the responsibility for ourselves, governing ourselves, and rebuilding our economies.

A: We now have a recognition of Aboriginal and treaty rights sufficient to engage all of our people and in that context I would argue that we don't have enough educated and experienced people. We need our young people, we need their education and experience to be successful in taking back the responsibility for ourselves, governing ourselves, and rebuilding our economies.

We talk about capacity and our lack of it – I've begun to see it as a crutch. People say, 'We can't do this right now because we don't have the capacity.' I say, 'Yes, you do. You might not have all of the capacity that you need, but you do have capacity, and you can get it done. We can build the capacity that we need as we move forward.' I think that the future is bright for our young people because for the first time in a long time there is something real and

tangible for them to come home to and for them to do. But unless and until we get organized to implement the right that we have, that won't be true. The status quo will prevail and the status quo will continue to rule.

We've got to realize that if we're serious about our youth, and all of our children, and their futures then we've got to get busy.

Q: *Are there any other messages you want to get out to Aboriginal management professionals?*

A: One of our Wet'suwet'en Chiefs said 'We've got to put a new memory in the minds of our children.' I think that our job when we do our work is to always promote hope amongst our people. We can get this done. We can be successful.

'We've got to put a new memory in the minds of our children.'

Herb George is a Wet'suwet'en Hereditary Chief of the Frog Clan. He is the Chair of the First Nations Governance Centre, a First Nations-controlled initiative designed to help First Nations achieve their inherent right to self-government. He was interviewed in December 2005 by Kateri Akiwenzie-Damm.

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GST Rebates

Use Them or Lose Them!

Twila Riffel



TWILA RIFFEL

Senior Manager,
PricewaterhouseCoopers LLP

It is surprising that after 14 years of living with the federal Goods and Services Tax (“GST”) there are still elements of the GST that create uncertainty within the general populace, including First Nation communities. This uncertainty suggests the need to have a detailed knowledge of the GST in order to understand the exemption from tax that is accorded First Nations in the *Indian Act (Canada)*.

Section 87 of the *Indian Act* exempts from taxation, the personal property of an Indian or an Indian Band that is situated on a reserve. The basic concept of how this exemption applies to the individual status Indian seems to be common knowledge – if a status Indian buys a good off of the reserve, the good must be delivered to the reserve to have the exemption apply while anything the status Indian buys on the reserve is not taxable.

What is not common knowledge is how often GST is hidden in purchases by Indian Bands. What also appears to be common is how often Indian Bands are not taking full advantage of their ability to recover all or at least a portion of the GST paid. This is “found” money that the federal government ends up keeping unless the Bands claim it back. In the writer’s experience, most Chiefs and Councils are shocked at the amount of unclaimed GST rebates accumulated over the course of a year.

This article discusses the exemption from GST provided to Indian Bands as defined in the *Indian Act* and Canada Revenue Agency’s (“CRA”) policies, the ability to recover GST through the rebate provisions in the Excise Tax Act (“ETA”) and the tips and traps in filing rebate claims.

Exemption from GST for Indian Bands

As one would expect, an Indian Band includes a band council (the primary unit of an Indian government) and a tribal council (the grouping of bands with common interests who have joined together to provide advisory or program services for two or more bands). Also included in the GST exemption is a “band-empowered entity”. This is an organization that is either owned 90% or more by, or controlled by, a band, tribal council or group of bands. The organization can be an “unincorporated band-empowered entity” or an “incorporated band-empowered entity”. However, where it is incorporated, it will only qualify for the GST exemption where it is purchasing for “band-management activities”.

While the term “band-management activities” is used often for these purposes, it can lead to some confusion. Simply stated, these are activities or programs that relate to the management of the band itself. Broadly interpreted, this includes the majority of the operations of the band, except for commercial enterprises. However, CRA considers certain

activities that are for an individual band member (such as driving the member off reserve to a medical appointment) not to relate to the management of the band.

For the purposes of this discussion, we will use the term First Nation to signify all of the qualifying Indian Band purchasers.

In general terms, the tax implications of purchases by First Nations are as follows:

1. The purchase of goods on the reserve or from a remote store¹ is not subject to GST.
2. Except for off-reserve purchases of transportation, short-term accommodation, and meals and entertainment, the purchase of services, whether on or off a reserve, for Band management activities or for real property on reserve, is not subject to GST. The First Nation may be entitled to claim a rebate to recover the GST paid on these other types of services.
3. The purchase of goods made off the reserve is taxable unless the goods are delivered to the reserve by the vendor or a vendor's agent.
4. Goods imported into Canada are subject to GST at the border even if the property is delivered to the reserve. The First Nation may be entitled to claim a rebate to recover the GST paid.
5. An incorporated entity must pay GST on goods purchased for use in its operations, whether purchased on or off the reserve, unless the goods are purchased for band-management activities or for real property on reserve. The incorporated entity may be entitled to recover the GST paid as an input tax credit on its GST return.

Recovery of GST by Rebate

The ETA provides for rebates to be claimed in situations where GST has been paid by the First Nation. There are three major rebates available to First Nations.

1. GST paid on all travel expenses and allowances ("Code 8 Rebate")
2. GST paid on all services or where tax was paid in error ("Code I Rebate")
3. Any other GST paid ("NPO Rebate")

¹ The requirement to deliver goods to a reserve in a remote location may be difficult to meet, either due to prohibitive cost or lack of public transportation. In recognition of this, CRA has developed the concept of a "remote store" which is not situated on the reserve but from which Indians and Indian bands may make their purchases exempt from GST.

Code 8 Rebate – Travel Expenses

This rebate recovers GST on all travel expenses incurred by band officials. Generally, these band officials may be employees, officers, chiefs, members of the band council and other band members who are representing First Nation in the delivery of band management activities. It does not include contractors who are providing services to the First Nation.

These types of expenses that qualify under this rebate include meals, hotel, airfare, taxi fares and travel allowances.

There are two aspects of this rebate that are often missed by First Nations.

Allowances

A vast majority of First Nations have developed procedures whereby band officials are paid a pre-determined allowance for travel such as mileage and hotel and meal per diems. This eases the administrative burden on the First Nation since the band official is not required to submit receipts for the expenses incurred.

Where such allowances are paid, the allowance includes a GST component of 7/107th of the allowance paid. This means that for every \$1.00 paid by way of an allowance, \$0.65 of GST can be recovered as a rebate. Note that allowances that are paid for **on reserve travel only** are not eligible for the rebate since no GST/HST would have been paid on the expenses incurred by the band official. However, allowances that are either for **off reserve travel or for both on reserve and off reserve travel** will qualify for the rebate of tax.

Simplified Method for GST Paid

Where GST is actually paid for off reserve hotel, meals, and taxi expenses, the First Nation has the option of recording the actual GST paid or choosing a simpler method to ease the administrative burden of recording these amounts. Rather than record the actual GST paid on each of these types of expenses, this simpler method allows the First Nation to record the total expense paid and then calculate the GST portion by multiplying the total expense amount paid by 6/106th. Note that the invoice for the expense must show that GST was actually paid.

Code 1 Rebate – Tax Paid in Error Rebate

This rebate is used to recover GST on services, whether purchased on or off the reserve, or where GST was charged by the vendor (either by mistake, or because the vendor could not ensure that goods purchased were delivered to the reserve).

The documentation for the GST claimed must clearly show that GST was charged, the nature of the purchase and, if it relates to goods purchased, that the goods were delivered to the reserve in accordance with CRA's policy.

NPO Rebate – All Other GST

It is likely that the First Nation will have paid GST on transactions other than those that qualify for the Code 8 or Code I rebates. For example, where a band official picks up office supplies off reserve and brings the supplies to the reserve, GST is charged by the vendor at the point of sale.

Under this rebate, the First Nation may be able to recover 50% of the GST that is not otherwise recovered by another rebate or as an input tax credit. In order to be eligible for this rebate, the First Nation will be required to prove that it is a not-for-profit organization that receives at least 40% of its funding from government grants.

The documentation for the GST claimed must clearly show that GST was charged, the nature of the purchase and, if it relates to goods purchased, that the goods were delivered to the reserve in accordance with CRA's policy.

Filing Frequency

The Code 8 and Code I rebates may be filed once every calendar month.

If the First Nation is a GST registrant, the NPO rebate may be filed once in each of the First Nation's reporting periods (monthly, quarterly or annually, as applicable). If the First Nation is not a GST registrant, the NPO rebate may be claimed twice a year for the periods January to June and July to December.

Filing Limitations

It is CRA's policy that after December 2001, the Code 8 and Code I rebates are available for a period up to two years from the date that the GST was paid.

If the First Nation is a GST registrant, the NPO rebate is available for a period of up to four years from the date the GST return for the period was due. If the First Nation is not a GST registrant, the NPO rebate is available for a period of up to four years from the last day of the claim period – either January to June or July to December.

Hopefully this article has demonstrated additional GST recoveries available to First Nations. The basic concepts of the rebates, as outlined above, can help First Nations maximize their rebates. Any First Nation that is not fully recovering these rebates is missing out on "found money". This is money that is at the First Nation's discretion to spend – that is, the First Nation is not usually required to report the receipt of these rebates to the federal or provincial departments that provide them with other funding.

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