

*Moving at the Speed of Business:  
A Possible Path to First Nation  
Prosperity Starts with Efficiency*

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Andre Le Dressay  
Jason Reeves  
Normand Lavallee

TULO CENTRE OF INDIGENOUS ECONOMICS

**AUTHORS' NOTE**

Andre Le Dressay is the director of the Tulo Centre of Indigenous Economics, while Jason Reeves and Normand Lavallee are lecturers and significant contributors to Tulo Centre curriculum and courses.

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## ABSTRACT

First Nation economic self-determination strategies are constrained by high investment facilitation transaction costs and high jurisdictional implementation switching costs. This paper summarizes a First Nation-led strategy to overcome these constraints. This strategy, which began 55 years ago, uses federal legislation such as the *First Nations Fiscal Management Act* (FMA) and the *Framework Agreement on First Nations Land Management* (FA). It is supported by First Nation institutions such as the First Nations Tax Commission, First Nations Financial Management Board, First Nations Land Management Resource Centre, First Nations Finance Authority, and the newly established First Nations Infrastructure Institute. Preliminary observations suggest the FMA-FA strategy has successfully reduced transaction and switching costs on First Nation lands and could accelerate economic self-determination for interested First Nations.

**KEYWORDS:** Economic self-determination, land management, fiscal management, theory of change

In 1968, during consultations leading to the federal government's White Paper proposal,<sup>1</sup> Clarence Jules Sr.<sup>2</sup> asserted that First Nation governments were at a competitive disadvantage with other governments when competing for investment. As he put it,

*We feel that we are in a better position to judge the needs of our people than officials of the Department located in Ottawa... To give just one illustration: We operate an Industrial Subdivision on part of our reserve and lease lots in the Sub-division to various individuals and companies. Before a lease can be granted not only must the Band Council pass its resolution, but the lease is then routed through the Kamloops Indian Agency, then to the Vancouver office and finally to Ottawa. The same process is followed on the return trip.*

We can document instances where months have gone by before a lease is finally issued. In many cases by the time the lease has been returned, the lessee has gone elsewhere because people today require almost instantaneous decisions. These delays cost us money and we don't like it. There must be a change to grant more power and authority to Indian Band Councils. After all, our Indian people elect us to represent them; they do not elect officials of the Indian Department. (Jules & Kamloops Indian Band, 1968)

This observation's importance is difficult to overstate. It articulates the longstanding First Nations political objective to restore self-determination, diagnoses the economic constraints related to that objective function, and explains how to reduce these constraints and reestablish self-determination.

The objective function is for First Nations to obtain more fiscal powers and jurisdictions to generate more economic and fiscal benefits from their lands. Economic benefits flow to individuals through jobs, income, and business profits. Fiscal benefits flow to communities through public revenues and are expended on individuals in the form of public services and infrastructure: fiscal benefits are always a subset of economic ones.

In this paper, we refer to this objective function as *economic self-determination*. This is an economic cycle where First Nations generate fiscal means from investment on their lands and use the resultant revenues to efficiently implement jurisdictions, public services, and infrastructure that reduce transaction costs to facilitate more investment, thus allowing them to generate even more economic activity, fiscal means, and jurisdiction. We use the term economic self-determination for two reasons. First, as the economy increases, so too will self-determination because First Nations will be able to exercise more jurisdictions using their independent revenues. Second, economic growth is caused by investment in the comparative advantages of an area, e.g., favourable location, access to natural and human resources, and tourism. This means the investment climate matters because it is an important link between the exercise of jurisdictions and the economy—a fact that Jules Sr. recognized in 1968 when he stated that one way to achieve economic self-determination was for First Nations to have more fiscal powers and jurisdictions so they could create a competitive investment climate.

He also identified two principal barriers to economic self-determination on reserve lands in Canada. First, investment facilitation costs are too high—an observation we confirmed thirty years later. In our research of investment projects on First Nations lands with clear location advantages, we found it takes about four to six times longer to complete a residential or commercial investment transaction, from proposal to construction, on First Nations reserve lands compared to off-reserve lands in Canada (Le Dressay, Richard, & Calla, 2008). Second, Jules Sr. understood it would be difficult to advance First Nations jurisdictions in the colonial framework of the *Indian Act*. We call these *jurisdictional switching costs*. Jurisdictional switching costs are the amount of time and professional costs it takes to implement a First Nation strategy, system, or jurisdiction to restore self-determination and reduce investment transaction costs. Switching costs are relatively high because colonial jurisdictions and institutions occupy the jurisdictions First Nations governments require to reduce transaction costs.<sup>4</sup> In some ways, this paper is simply a 55-year progress report on the original strategy suggested by earlier by Jules Sr.

Going forward, though, the First Nations-led work that will be most relevant to this paper is the 1988 Kamloops Amendment to the *Indian Act*.<sup>7</sup> This amendment facilitated property tax systems for interested First Nations, providing them with greater fiscal powers. It led to the passing of the *First Nations Fiscal Management Act* (FMA) in 2005. The FMA, in turn, established the First Nations Tax Commission (FNTC), First Nations Financial Management Board (FMB), First Nations Finance Authority (FNFA), and, most recently, the First Nations Infrastructure Institute (FNII). Additionally, the *Framework Agreement on First Nations Lands Management* (FA) of 1996, and the First Nations Land Management Resource Centre (RC) support interested First Nations in

establishing independent jurisdiction over lands management. Finally, the Tulo Centre of Indigenous Economics, although not formally established in legislation, is of relevance. The Tulo Centre was created in 2008 and provides accredited university programs to First Nations administrators to support participating First Nations in realizing greater benefits from the FMA-FA framework. Ultimately, the framework and analysis in this paper draw heavily from applied economics research, exploring the systematic causes of the high transaction costs that raise the costs of facilitating investment on First Nations lands.<sup>10</sup>

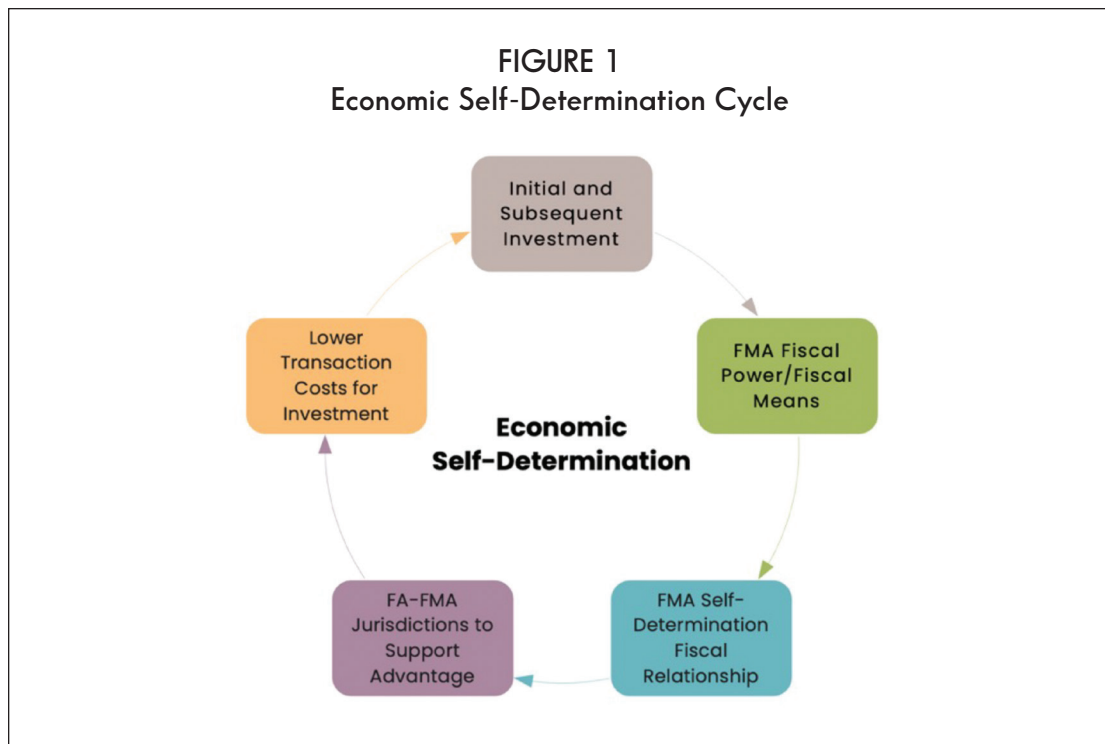
Going forward, this paper will summarize a proven and successful First Nations-led institutional economics strategy<sup>11</sup> to more quickly reduce high First Nations switching and transaction costs, furthering economic self-determination. There are five distinct sections: the first focusses on explaining the theoretical framework and its key terms – *economic self-determination*, *investment climate*, *transaction costs*, and *switching costs*. The second section provides the origin of the economic self-determination strategy referred to as the *FMA-FA* or *FMA-FA-Tulo Centre strategy*.<sup>12</sup> The third section describes how the FMA-FA-Tulo Centre strategy reduces transaction and switching costs, while the fourth section provides observations demonstrating this strategy's successes. The final section presents ideas to expand and accelerate this strategy.

## **Key Terms for the FMA-FA-Tulo Centre Theory of Change**

### ***Economic Self-Determination***

First Nations were the first governments of Canada. They practiced economic self-determination prior to contact, fostering open markets and institutions that supported lower transaction costs and promoted trade and investment (see Tulo Centre, 2014; Le Dressay, Lavallee, & Reeves, 2010; PolicyEd, 2020b; and Tulo Centre, 2021). To this day, First Nations have retained the four necessary conditions for an economic self-determination strategy:

- There is a cultural, language, and identity foundation for First Nations government.
- There are First Nations lands for First Nations government jurisdictions.
- There is a treaty, legal, legislative, economic, or political basis for First Nations jurisdictions.
- There are First Nations leaders and governments interested in pursuing economic self-determination.



This economic self-determination strategy is illustrated in Figure 1. The cycle begins with an investment that generates fiscal means for a First Nations government. Fiscal means can be generated from direct tax powers applied to economic activity or, in some cases, they can be generated from the profits of First Nations government business enterprises. These means can be used to implement independent First Nations jurisdictions with a supportive fiscal relationship that facilitates the association of independent revenues and jurisdictions. First Nations could then choose to implement jurisdictions that support their location advantage and, as is discussed at the end of this paper, potentially resource advantages as well.

The jurisdictions most likely to support a location advantage are land, infrastructure, service, and investment facilitation related (see *Fiscal Realities Economists*, 1999; Le Dressay, Richard, & Calla, 2008; and Le Dressay, 2018). If the switching costs for First Nations jurisdictions are low enough, First Nations could occupy these jurisdictions in a manner that reduces transaction costs. These lower transaction costs would facilitate more leasehold investment, and the cycle would repeat itself to increase economic self-determination, fiscal means, and jurisdiction.

Economic self-determination is a function of a government's independent fiscal means and the jurisdictions supported by these revenues. There are direct relationships between the amount of fiscal means a government has and its fiscal powers and economic activity. The more fiscal powers a government has, and the greater economic activity they can tax, the greater their fiscal means. Governments with larger economies and many fiscal powers have more fiscal means and can finance and design more jurisdictions themselves. For example, the United States and China are the two most

self-determining nations on earth because of their fiscal means and economic activity. This is one of the key benefits of a revenue-focused fiscal relationship.

Thus, by this logic, the greater a First Nation's independent revenues, the greater their self-determination. When there is a direct association between a government's fiscal means and the jurisdictions it exercises, the logic of this statement is straightforward—but for most First Nations, there is little clarity with respect to expenditure responsibilities, revenues, and transfers. This lack of clarity has resulted in a transfer-based fiscal relationship instead of a revenue-focused fiscal relationship (FMB, 2020).<sup>13</sup> It also leads to service responsibility disputes between First Nations, provinces, and the federal government; insufficient revenues to pay for services and infrastructure; and substandard services and infrastructure, resulting in significant emigration from First Nations. Most distressingly, the lack of clarity related to jurisdictional responsibilities, as well as between revenues and expenditure jurisdictions, means First Nations cannot implement the same economic self-determination strategy framework used throughout the rest of Canada.

The only exception to this rule is in the FMA local revenue system, which demonstrates a direct relationship between First Nations revenues and independent expenditures. This is important because as these First Nations' economies grow, so do their FMA revenues, which they can then use to finance more jurisdictions for their community objectives. This is why FMA First Nations pursuing their economic self-determination use a dual strategy that increases their fiscal powers to receive a greater fiscal share of economic activity and grows their economies to increase their fiscal means and jurisdiction. A simplified representation of this strategy is depicted in (1).

$$\begin{aligned} \Delta (\text{Economic Self-Determination}) = & \\ & \Delta (\text{Fiscal Power} + \text{Jurisdictional Development}) \\ & + \Delta (\text{Fiscal Power} + \text{Jurisdictional Implementation}) \\ & + \Delta (\text{Economic Growth}) \end{aligned}$$

(1)

In plain English, the speed of economic self-determination depends on the speed of jurisdictional and fiscal power innovation, the speed to implement these jurisdictions and fiscal powers, and how fast First Nations economies grow as a result. As a result, the FMA-FA-Tulo Centre's economic self-determination strategy addresses three main challenges: (a) speeding up the process to secure more First Nations fiscal powers and jurisdiction, (b) supporting interested First Nations to more quickly and effectively implement those fiscal powers and jurisdictions, and (c) using these increased fiscal powers and jurisdictions to accelerate economic growth. We think a useful starting point for these challenges is an appreciation of the differences between First Nations and non-First Nations investment climates.



## The Investment Climate

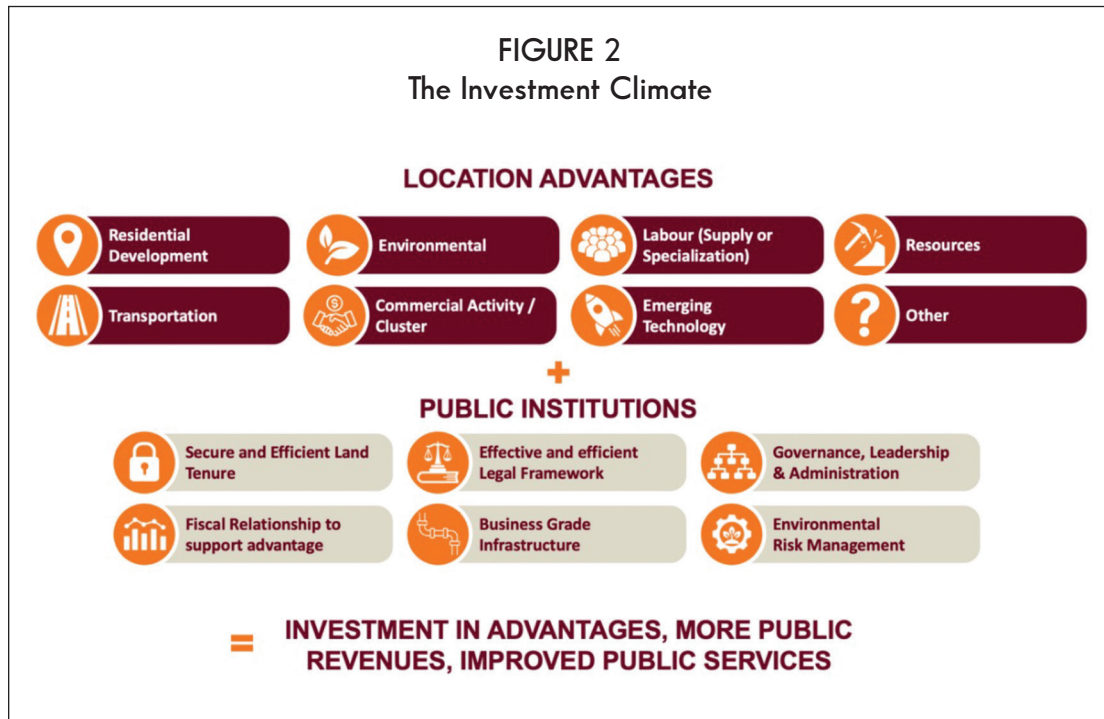


Figure 2 illustrates an investment climate model encompassing the private and public sectors that comprise the generalized local investment climate for off-reserve areas in Canada. The top section represents the potential comparative advantages of a local, regional, national, or Indigenous economy. This is where the private sector competes and uses advantages to realize profits. These advantages include access to (a) locations that are close to markets, a port, or other transportation hubs; (b) resources; (c) emerging or existing technology; (d) specialized labour; and/or (e) opportunities to reduce greenhouse gas emissions or otherwise improve the environment. In a First Nations context, private investors can include First Nations members, non-status members, and First Nations government business enterprises (GBEs).

The second section depicts the public institutions and sectors in an investment climate. This includes secure and efficient land tenure, effective and efficient legal frameworks,<sup>15</sup> business-grade infrastructure, responsive administrations that provide quality information, fiscal relationships that allow local governments to utilize their advantages,<sup>16</sup> and a clear and efficient environmental risk management system.<sup>17</sup>

The private and public sectors are symbiotic within an investment climate. The private sector generates economic activity to support the public sector’s fiscal requirements, and the public sector creates a competitive framework for private sector investment. The success of the working relationship between public and private sectors is calculated by two measurements: transaction costs and credit ratings.

The importance of an investment climate that creates lower transaction costs and higher credit ratings is difficult to overestimate and helps explain the nature of much

investment on First Nations land. To illustrate, consider the following simplified decision evaluation equation from an investor's perspective. The investor is comparing expected returns from an investment in a given jurisdiction to other investments and jurisdictions. Equation (2) shows one way an investor might conduct this evaluation by comparing the expected net present value (ENPV) of their simple returns to investment (revenues minus project costs minus taxes) over a given time ( $X$ ) in two places. For illustrative purposes, the differences between the two places ( $i$  is off First Nations land,  $j$  is on First Nations land) are the time it takes to generate revenues ( $X_i$  versus  $X_j$ , which is a proxy for transaction costs), the differences in taxes ( $tx_i$  and  $tx_j$ ), and the differences in the probability of success in the two ( $p_i$  vs.  $p_j$ ):<sup>18</sup>

$$\begin{aligned} & (\text{ENPV}_i)(X_i)(p_i)(\text{revenues} - \text{project costs} - \text{taxes}[tx_i]) \\ & \quad \text{vs.} \\ & (\text{ENPV}_j)(X_j)(p_j)(\text{revenues} - \text{project costs} - \text{taxes}[tx_j])^{19} \end{aligned}$$

(2)

If revenues minus project costs and taxes are equal in both locations, then investment will flow to the lower transaction costs ( $X_i < X_j$ ) or the higher probability of success ( $p_i > p_j$ ). This means that for similar investment opportunities the investment will flow away from First Nations lands (higher  $X_j$  and lower  $p_j$ ). This helps to explain not only the lack of investment on First Nations lands but also their strategies to attract investment.

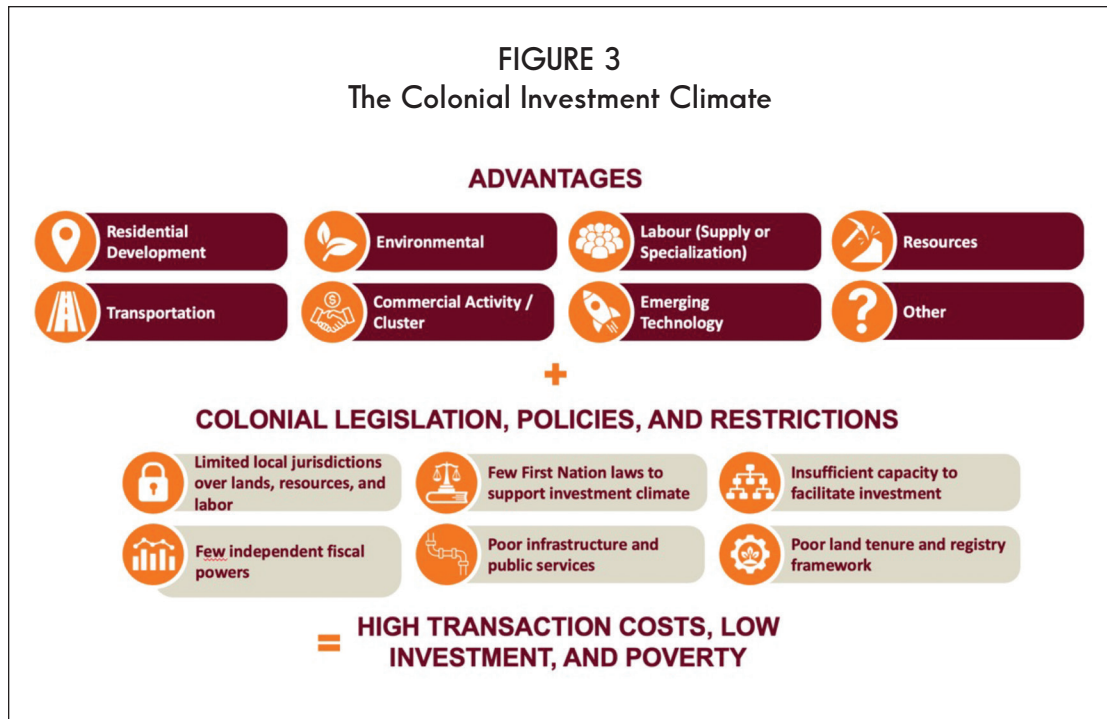
When transaction costs are higher and probability of investment success is lower, it is necessary to (a) reduce taxes to attract investment, (b) support investments that have regulatory advantages and potential higher profit margins, or (c) both (although this observation is not unique to First Nations).<sup>21</sup> To avoid the development trap, it is necessary to use available fiscal powers and jurisdictions to reduce transaction costs.

This leads to two more questions. Firstly, which jurisdictions do we mean? And second, how can they be implemented?

### ***Higher First Nations Transaction Costs***

First Nations have higher transaction costs because of colonial policies and legislation in service of an extractive colonial economy<sup>22</sup> that deliberately created uncompetitive First Nations investment climates (Tulo Centre, 2014; First Nations Leading the Way, 2019b; and Tulo Centre, 2021b). First Nations were legislated out of the economy and excluded from the federation from 1867 to 1927 (Tulo Centre, 2014; First Nations Tax Commission, 2023; and PolicyEd, 2020a). Figure 3 summarizes how colonialism impacted facilitating investment on First Nations lands (while colonialism impacted both the economic advantages and public sector elements of the investment climate, this paper primarily focuses on colonial impacts on First Nations public sector elements).<sup>24</sup>





Starting with the problem of limited local jurisdictions, consider that colonialism removed almost all land tenure certainty elements and an efficient and trustworthy land registry to support potential transactions. To demonstrate this transaction cost, we conducted a search of the Indian Land Registry (ILRS) for every mortgage registered in 2022. This search found 332 such entries. On average, the difference between the Received Date and the Registered Date is 36 days, with 96 of the mortgages (29%) taking 60 days or more.<sup>26</sup> The longest was 333 days. In comparison, it takes one day to register a mortgage in British Columbia’s Land Titles system: this is a significant transaction cost difference.

Next are the problems caused by having few independent fiscal powers: a transfer-based fiscal relationship stifles the development of jurisdictional innovations aimed at improving this framework. In 2020, the FMB completed a major research project on the revenues of over 450 First Nations (FMB, 2020). Two observations from their research are relevant here. First, approximately 67% of First Nations revenues are from government transfers, compared to 36.5% for local governments and 18.4% for provincial governments in Canada. Second, 16.9% of First Nations government revenues were derived from First Nations government business enterprises (GBEs), whereas only 0.86% and 0.61% of local and provincial government revenues arise from this source, respectively.

Moving on, consider the relative lack of First Nations laws supporting the investment climate. Most First Nations government, legal, and administrative frameworks were frozen in time by the 1876 *Indian Act*, in contrast to the innovations in the provincial, federal, and local legal systems that created competitive investment climates. The differences between the legal and regulatory certainty created off First Nations lands

to that on First Nations lands is overwhelming, and the impact on transaction costs is considerable. Consider that legislation for Canadian local, provincial, and federal governments to support jurisdictions off First Nations lands is significantly greater than legislation that allows First Nations to support their jurisdictions. For example, the Indian Land Registry System's (ILRS) statutory foundation is based on two short sections in the Indian Act, whereas there are approximately 400 sections in the British Columbia *Land Title Act*.

Poor infrastructure and public services also cause problems for First Nations. Administrative frameworks are oriented to the reporting requirements of a transfer-based fiscal relationship instead of reducing transaction costs and raising credit ratings to support an economic self-determination fiscal relationship. As well, insufficient capacity to facilitate investment and poor land tenure and registry frameworks mean less business-grade infrastructure,<sup>27</sup> lower-quality public services, and insufficient environmental review and risk management frameworks. Taken together, these colonial impacts significantly raise the costs of doing business for potential investors, whether they are First Nations members or not—we estimated that it costs four to six times more to facilitate investment on the best First Nations lands (Le Dressay, et al., 2008).

Missing investment climate elements prevented First Nations from accessing finance and credit ratings and reduced the probability of successful investments. It was not until the creation of the FMA and the work of the FMB and FNFA that First Nations governments obtained an A credit rating in 2014—a rating that has since increased to an Aa3 at Moody's and an A+ at S&P (First Nations Finance Authority, 2023). Colonialism prevented First Nations economic competition, which could be considered an anti-competitive—or even predatory<sup>28</sup>—action against entire governments and people.

To make the challenge of high transaction costs clear, consider the example of someone interested in making a commercial investment on First Nations lands in this environment.<sup>30</sup> This individual would first have to identify developable lands within a First Nation's land base and estimate the expected returns to their investment, as described in (3):

$$(ENPV_j)(X_j)(p_j)(R - C - t_j)$$

(3)

If the First Nation has a colonial investment climate in place, the investment will likely end here because the investor will quickly realize they have minimal information to complete this calculation, and they will experience uncertainty about taxes, land tenure, infrastructure and services, and the legal and administrative frameworks supporting investments. This uncertainty will reduce the probability of returns to investment and will raise the transaction costs needed to complete the investment. Meanwhile, similar investment options in non-First Nations jurisdictions will have higher probabilities of a positive return because there is typically investment certainty, which means less time is needed to complete a project or execute an opportunity.

The following hypothetical scenario demonstrates the significant economic cost of these higher First Nations transaction costs and costs of capital. Suppose there is a manufacturing project in the non-residential construction industry that has a development phase with a one-time change in output of \$5 million spread out over two years and an ongoing operations phase with a recurring change in output of \$1.5 million beginning in Year 3 and carrying on through Year 30. Using national StatsCan direct and indirect input-output multipliers at the summary level for three variables (jobs, labour income, and GDP) during the most recently available period (2020), then the one-time impact is 35.2 jobs, \$2.5 million in labor income, and \$3.7 million in GDP, while the cumulative net present value impacts from recurring elements are 89.6 jobs, \$4.8 million in labor income, and \$8.3 million in GDP.<sup>31</sup>

Now suppose higher transaction costs cause a five-year delay in the project at a higher cost of capital. In this scenario, there is about a 19.8% loss in the one-time benefits and about a 45.3% loss in the recurring benefits. Stated simply, high transaction costs reduce investment and are a likely root cause of First Nations economic disparities (World Bank, 2017; UN Trade and Development, 2018; and International Monetary Fund, 2019). As Liam Kelly explains in “Institutional Explanations for the Persistence of Poverty on First Nations Reserves in Canada,”<sup>32</sup>

the Canadian federal government holds reserve lands in trust. The Indian Act defines an Indian reserve as a “tract of land, the legal title to which is vested in Her Majesty, that has been set apart ... for the use and benefit of a band.” This arrangement has been frequently cited as a barrier to economic development, as it creates uncertainty and raises the cost of transacting reserve land. (2023).

XXX Smith and XXX Hall continue with this theme, noting that “high costs in facilitating investments act as a significant deterrent to economic development, leading to increased poverty rates particularly in developing regions” (2019). This leads directly to another question—if transaction costs are so high and so important for First Nations economic self-determination, why does it take so long to reduce them?

### ***High Switching Costs***

As previously mentioned, the Canadian Constitution and subsequent colonial legislation and policies spanning at least 1867-1931 excluded First Nations governments from the federation (Tulo Centre, 2017; Tulo Centre, 2018; and Tulo Centre, 2023). This created two sources of high jurisdiction switching costs for First Nations. First, federal and provincial governments need to accommodate the fiscal powers and jurisdictions of First Nations governments in the federation. Second, First Nations governments need to implement those fiscal powers and jurisdictions in a manner that reduces transaction costs, a process that needs to address the following elements:

- **Proposal Development.** Develop fiscal and jurisdictional proposals that reduce transaction costs.

- **Proposal Support.** Generate sufficient First Nations political support for a proposed First Nations fiscal, financial, infrastructure, or lands jurisdiction.
- **Legislative Development.** Develop federal and provincial legislation proposals to accommodate First Nations fiscal powers and jurisdictions.
- **Legislative Support.** Generate all-party political support to pass the proposed legislation and ensure jurisdictional permanence.
- **Legal Frameworks.** Implement legal frameworks for interested First Nations to assume jurisdictional space.
- **Administrative Frameworks.** Implement administrative frameworks for First Nations jurisdictions.
- **Capacity Development.** Build capacity for interested First Nations to use these jurisdictions to reduce transaction costs.
- **Fiscal Relationship Frameworks.** Create a fiscal relationship framework to sustain First Nations jurisdictions.
- **Innovation Processes.** Evaluate and improve these First Nations frameworks to continually innovate and sustain a competitive investment climate.

With that said, jurisdictional change is challenging and mistrust raises jurisdictional switching costs.<sup>33</sup> This mistrust comes from at least six sources: First Nations leaders, First Nations community members, First Nations administrations, federal and provincial politicians, federal and provincial bureaucracies, and the federal and provincial electorate. Using a simplified risk-reward evaluation for First Nations and the federal governments will help clarify the costs associated with the mistrust of jurisdictional change (for brevity, we will focus on the risk area of the evaluation).

To begin, consider a First Nation's increase in risk from more jurisdiction versus the federal government's decrease in risk from transferring that jurisdiction to the First Nation. The expected risk value ( $r_f$  for federal and  $r_{fn}$  for First Nations) for a jurisdictional transfer would be the product of the scope of liability ( $l_f$  for federal and  $l_{fn}$  for First Nations), the probability of a negative event ( $pn_f$  for federal and  $pn_{fn}$  for First Nations), and the financial magnitude of the negative event (N\$). The two formulas for comparison are shown in (4):

$$\begin{aligned} r_{fn} &= l_{fn} * pn_{fn} \times N\$ \\ r_f &= l_f * pn_f \times N\$ \end{aligned}$$

(4)

Since N\$ is usually fixed, jurisdictional proposals preferred by First Nations must reduce  $pn_{f1}$  to  $pn_{fn2}$  (subscript 1 is before transfer, subscript 2 is after transfer) to justify the transfer of responsibility and liability ( $l_{fn}$ ). Stated differently, the First Nation proposal must, at minimum, contain an improved risk management framework

to justify their assumption of more risk. It also usually contains an offsetting fiscal and economic benefit to justify the potential increase in responsibility and liability ( $l_{fn2} * pn_{fn2} \times N\$$ ).

Options that reduce probabilities of negative events ( $pn_{fn2} < pn_{f1}$ ) and contain a stronger risk management framework (potentially reducing  $l_{fn2}$ ) would be preferred by the First Nation, especially if they also increased their probability of economic growth by reducing switching and transaction costs. This would occur when the switching costs are low, helping to achieve the conditions for greater economic self-determination discussed in the previous sections. Conversely, when the switching and transaction costs are high there will be greater uncertainty about jurisdictional changes and these options will receive less support.

Options that reduce liability ( $l_{fn2} > 0$ ) and risk ( $pn_{fn2} < pn_{f1}$ ) are preferred by the federal government since this reduces their liability. If an option also leads to economic growth from lower switching and transaction costs, then the federal government benefits even more. (As an aside, when this occurs, the federal government could support even lower switching costs for a particular jurisdiction by subsidizing insurance up to the sum of their decreased liability plus their fiscal gain from a successful economic investment on First Nations lands.)

Conversely, suppose there is a situation where potential federal liability may increase, such as adding lands to First Nations reserves. In this case, the federal government may delay the process to add lands and increase the switching costs to pursue options that reduce their liability. It is not coincidental that the process to add land to reserves is four to eight times longer than the similar process to expand municipal boundaries (NIEDB, 2015)—and this is despite the considerable economic benefits that are generated from additions to reserves. The opportunity cost of higher switching costs is estimated at 36 lost jobs and \$283,900 lost expenditures off First Nations lands per acre of added lands (NIEDB, 2015).

Ultimately, high jurisdictional switching costs are delaying First Nations' economic self-determination and reducing potential benefits to all Canadians and governments. This is because First Nations' economic self-determination increases when they grow their economies and receive a greater share of fiscal benefits from that growth. Other governments and citizens benefit from the First Nations economic growth that occurs when their investment climates improve from implementing their own jurisdictions to reduce investment transaction costs. But this mutually beneficial process is being held back by high First Nations jurisdictional switching costs, which can be reduced by the following improvements that accelerate economic self-determination:

- fiscal relationships that support First Nations jurisdictional choices to reduce transaction costs,
- efficient jurisdiction implementation and administrative capacity development systems,
- risk management frameworks that increase trust or reduce liabilities,



- institutional arrangements that benefit First Nations collective action (e.g., higher credit ratings, lower transaction costs, increased fiscal powers, or greater jurisdictions), and
- jurisdictional innovations to continually reduce transaction and switching costs.

For example, a framework that supported lower switching costs to propose and implement First Nations fiscal powers and land jurisdictions and that reduced investment transaction costs and probabilities of negative events through better environmental and financial risk management and standards would generate more support from First Nations and other governments, thereby accelerating First Nations economic self-determination. The rest of this paper focusses on a First Nations-led institutional proposal intended to accomplish this.

### ***The Origin Story of an Economic Self-Determination Strategy***

The modern economic self-determination strategy<sup>34</sup> was inspired and informed by the rejection of government funds in the spring of 1975 in Chilliwack, BC, and the subsequent grudging acceptance of government funds in fall of 1975.<sup>35</sup> In the late 1970s, a group of First Nations with location advantages and some leasehold investment realized that if they wanted to reduce their dependence on transfers from other governments, they needed their own fiscal powers, jurisdictions, and successful economies. This group was known as the Alliance Tribal Council and included the Westbank First Nation, Musqueam First Nation, Tk'emlúps te Secwe pemc (TteS), Squamish First Nation, and Sechelt First Nation.

The Alliance Tribal Council recognized that translating an institutional theory of economic development into a practical realization would take a significant amount of effort (see Tabarrok, 2016; Tulo Centre, 2021b; and Tulo Centre, 2014). To address this, they used the principles of specialization and efficient division of labour, allocating the issue of securing fiscal powers to TteS, lands jurisdiction to Westbank, other jurisdictions to Sechelt, and infrastructure and services to Squamish and Musqueam (First Nations Leading the Way, 2019b).

It is no coincidence that these five First Nations were the first to implement a self-determination strategy, as they had already partially addressed its initial constraints. All five First Nations had previously attracted investment, despite high transaction costs: that is, they had taxable economic activity on their lands to start the economic self-determination cycle—although all taxes from these investments were collected by other governments. (When asked what these First Nations received in return for these taxes, the answer was “good government.”<sup>36</sup>) This further highlights the high switching costs faced by these and all First Nations when moving from the fiscal powers and jurisdictions of other governments to their own fiscal powers and jurisdictions. The strategies developed to overcome high switching costs are discussed later, but for now, the focus is on the initial efforts of these five First Nations to create legislative and institutional templates that reduce switching and transaction costs:<sup>38</sup>



- **Sechelt Self-Government (1986).** This agreement provided the first basis for a First Nation to exercise local fiscal powers to support local services and infrastructure and to pass land use laws reducing investment costs. Although it was not copied again, it was an important step in the renewal of First Nations jurisdiction.<sup>39</sup>
- **Kamloops Amendment to the *Indian Act* (1988).** This amendment enabled optional First Nations property tax systems across Canada and established the first national First Nations institution to support First Nations tax jurisdiction.<sup>40</sup> It also created a precedent for an optional orderly process to establish First Nations jurisdiction,<sup>43</sup> which included British Columbia's *Self Government Enabling Act* and led to the FMA, FNFA, FMB, FNTEC, and, most recently, the FNII, the Tulo Centre of Indigenous Economics, and the First Nations Tax Administrators Association (FNTAA).<sup>44</sup> It established the precedent for a standards-based First Nations jurisdiction framework to reduce jurisdiction implementation costs, lower investment costs, and support an investment-grade First Nations credit rating. It also established the precedent for the fiscal relationship for economic self-determination described earlier, where First Nations use independent local revenues to pay for independent local service jurisdictions.
- **Early Adopters (1990-1992).** Westbank, TteS, Musqueam, and Squamish were all early adopters of the Kamloops Amendment. Because of their locations adjacent to Vancouver and North Vancouver respectively, Musqueam and Squamish attracted considerable attention, and their successful implementation of property tax systems created important momentum and trust for other First Nations.
- **Framework Agreement on Land Management (1996).** Westbank and twelve other First Nations led the creation of the *Framework Agreement on Land Management* (FA), which effectively removed 44 sections of the *Indian Act* related to lands and environmental management and transferred these jurisdictions to the authority of individual First Nations in accordance with their Land Code, ratified by community vote. This enables participating First Nations to establish land tenure, land and environmental management laws, and administrative systems. Additionally, First Nations participating in the FA receive capacity, sample laws, legal templates, and other supports from the First Nations Land Management Resource Centre (RC), whose mandate is to support the efficient and effective implementation of these jurisdictions. The FA has been amended many times since 1997 to strengthen lands and environmental jurisdictions for participating First

Nations and has recently begun to develop a new First Nations land registry system to further reduce transaction costs.

The FMA-FA framework is our focus for three reasons. First, it supports the First Nations economic self-determination strategy. Second, it allows First Nations-led institutions to focus on lowering switching costs and participating First Nations to focus on lowering transaction costs. Third, it seems to have the lowest switching costs compared to other options.

This efficient division of labor allows national Indigenous institutions in legislation to focus on lower switching costs and support participating First Nations in lowering transaction costs and represents a possible solution to the problem of (a) maximizing First Nations economic self-determination, (b) minimizing investment transaction costs, and (c) minimizing jurisdictional switching costs.

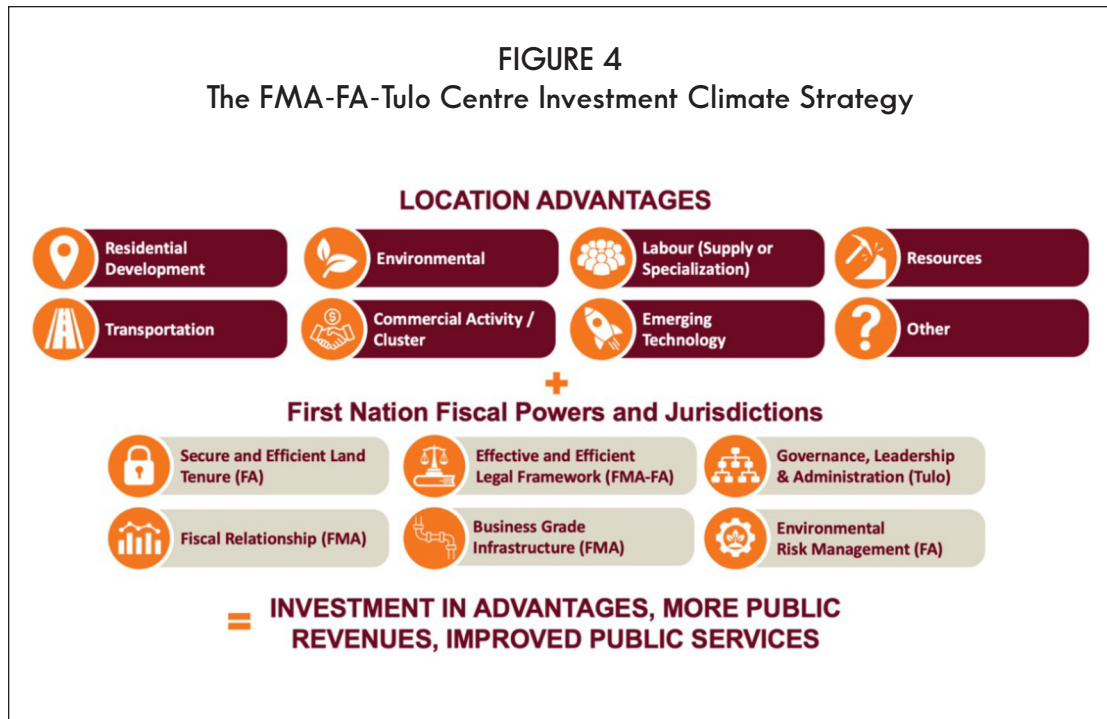
### ***The FMA-FA-Tulo Centre Strategy***

It is important to note that the FMA, FA, and other First Nations jurisdictional implementation options like comprehensive modern treaties and self-government arrangements would not have been possible without the success of the strategy to recognize rights and titles. This strategy has led to many First Nations legal victories, the recognition of First Nations treaties and Aboriginal rights and titles in the Canadian constitution, and, most recently, the commitment by the federal and some provincial governments to implement the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) (Le Dressay, 2016). All this determined effort and success has created space in the federation's legal framework to implement the First Nations FMA-FA-Tulo Centre economic self-determination strategy described in this paper.

### ***Transaction Costs Reduction Strategy***

Transaction costs reduction strategies are unique because they are dependent on the regional economic advantages and existing endowments of a First Nation investment climate. For example, the investment climate requirements for a residential, commercial, resource, or industrial advantage are all different with respect to land tenure, as well as fiscal, environmental, and infrastructure and land management legal and administrative requirements. The appropriate strategy for a First Nation will depend on what they already have in place and which missing elements will most reduce transaction costs, subject to the switching costs of implementing that chosen strategy.

If we return to another investment climate picture, the strategy of the FMA, FA, and Tulo Centre to help First Nations reduce transaction costs for their unique requirements should become clear.



Starting with secure and efficient land tenure, the FA provides an improved land tenure framework by developing an improved land title registry system and providing legal templates for land and environmental laws. The FMA provides the self-determination fiscal relationship so First Nations can associate independent revenues with independent jurisdictions. In combination with financial management performance evaluation certification and capacity support, the FMA framework provides a Aa3 stable credit rating for FNFA debentures. Lower capital costs support a better infrastructure system, which in turn is supported by FNII standards and many financial, tax, infrastructure, and borrowing laws. The FMA-FA-Tulo Centre approach also includes considerable capacity development to implement jurisdictions, templates, and laws in support of a competitive investment climate.

Furthermore, the Tulo Centre supports improved administrative capacity with its three university-accredited certificate programs. The applied lands management program helps First Nations use the FA to increase investor land tenure certainty, develop efficient land management, legal, and administrative frameworks, and support improved environmental frameworks. The tax administration program strengthens First Nations' legal and administrative capacity, creating a better fiscal framework and improved public services and infrastructure. The applied economics program focuses on applying FMA-FA frameworks to reduce transaction costs for specific economic advantages, as well as reducing the switching costs required to implement these frameworks. The Tulo Centre has also recently proposed to expand its certificate programs to support infrastructure and asset management and financial and information management, with ladders between the programs to support diplomas, a bachelor's degree, and a graduate

program: taken together, these programs support a comprehensive investment climate strategy for interested First Nations.

Table 1 summarizes transaction cost measurements and how the FMA-FA-Tulo Centre's framework reduces them. The FMA-FA-Tulo Centre strategy has helped reduce transaction costs and, in some First Nations, has led to higher rates of investment. This is positive, but it is important to note that this is only one of the inefficiency constraints facing First Nations: the other is high switching costs to design and implement First Nation jurisdictions.<sup>45</sup>

**TABLE 1**  
**The FMA-FA-Tulo Centre Approach to Reduce High Transaction Costs**

Source of Cost	Preliminary Research	FMA-FA-Tulo Strategy
Land Administration and Tenure	<ul style="list-style-type: none"> <li>Federal administration takes too long and is too risk averse</li> <li>Instrument registration takes too long</li> </ul>	<ul style="list-style-type: none"> <li>FA land management frameworks</li> <li>FA proposed land registry</li> <li>RC and Tulo Programs</li> </ul>
Legal Framework	<ul style="list-style-type: none"> <li>Fewer laws and certainty</li> <li>Higher search costs</li> </ul>	<ul style="list-style-type: none"> <li>FA-FMA sample laws</li> <li>First Nations Gazette</li> <li>Tulo Centre certificates</li> </ul>
Infrastructure	<ul style="list-style-type: none"> <li>Longer processes and higher costs<sup>a</sup></li> <li>Less durable infrastructure</li> <li>Less access to long-term financing</li> </ul>	<ul style="list-style-type: none"> <li>FNII standards and laws</li> <li>FNII certification</li> <li>FMA, FNFA and FNII</li> <li>FNII-Tulo program</li> </ul>
Administration	<ul style="list-style-type: none"> <li>Four to six times longer</li> <li>Little financial and statistical information</li> </ul>	<ul style="list-style-type: none"> <li>FMA-FA-framework</li> <li>FMB and FMA amendments</li> <li>Certificate in Applied Economics at Tulo Centre</li> </ul>
Fiscal Tools	<ul style="list-style-type: none"> <li>Transfer dependent</li> <li>Large fiscal tools gap</li> <li>Lower credit rating and less access to finance and financial services</li> </ul>	<ul style="list-style-type: none"> <li>FMA and FNFC framework</li> <li>FMA fiscal powers and relationship</li> <li>FMA, FMB and FNFA</li> </ul>
Environmental Risks	<ul style="list-style-type: none"> <li>Few environmental laws</li> <li>Few environmental review processes</li> </ul>	<ul style="list-style-type: none"> <li>FA legal templates</li> <li>FA templates and training</li> </ul>

*Note.* <sup>a</sup> There is a significant amount of material to support the FNII business case at [www.FNII.ca](http://www.FNII.ca). See Le Dressay, Calla, & Reeves (2022) for more details on high infrastructure transaction costs and lower rates of infrastructure durability.

### ***Switching Costs Reduction Strategy***

The 1988 Kamloops Amendment to the *Indian Act* created a three-part precedent to address the two-part switching cost requirement, namely that First Nations jurisdiction must be accommodated in the federation and First Nations must choose to implement their jurisdiction. This approach proved successful and was used and expanded by the FA (1996) and FMA (2005). The steps include:

1. **Legislative Development.** Pass federal provincial legislation that cedes fiscal and jurisdictional space to First Nations in an optional manner, subject to Part 2.
2. **Jurisdictional Space.** First Nations occupy the ceded space with their own laws, in accordance with their community processes.
3. **Institutional Support.** Provide institutional support to help First Nations implement and protect their jurisdictions in a manner that supports economic growth through lower transaction costs.

This approach has created an orderly<sup>47</sup> legislative process for the FMA and FA to carve out fiscal and jurisdictional space for interested First Nations within Canada.<sup>48</sup> As discussed previously, there are many additional unique jurisdictional switching costs within this process and the strategy of the FMA-FA-Tulo Centre, described in Table 2, is intended to reduce each of them.

National FMA-FA institutions are key to reduce switching costs.<sup>51</sup> First, they have strong political leadership.<sup>52</sup> Second, they work with proponent First Nations to design and advance jurisdictional innovations. Third, they develop appropriate templates, standards, samples, and systems to help implement new jurisdictions for interested First Nations. Fourth, they support First Nations capacity development through education, accredited training, and direct legal and administrative framework development. Fifth, they work with First Nations to protect their jurisdictions when challenged. Sixth, they provide a national forum for First Nations to exchange ideas, successes, proposals, and challenges (e.g., First Nations Leading the Way National Meeting). Finally, and perhaps most importantly, they are incentivized to support participating First Nations' economic growth and low jurisdictional switching costs because otherwise, First Nations would choose other options.

The role of the Tulo Centre to reduce these FMA-FA switching costs is straightforward: build local First Nations' legal and administrative capacity to reduce jurisdictional switching costs in a manner that reduces transaction costs. There are approximately 200 Tulo Centre graduates in total across the three current programs. These programs benefit from a unique feature of three FMA institutions (FNTC, FMB and FNII<sup>53</sup>) that should be discussed further: namely, their power to design and implement standards related to their fiscal, financial, and infrastructure mandates. These standards can significantly reduce switching costs for participating First Nations because they support templates, administrative software systems, sample laws, capacity development, and accredited courses at the Tulo Centre. For example, the FNTC has developed at least 23 standards and 38 sample laws to support First Nation tax systems.<sup>54</sup>

**TABLE 2**  
**The FMA-FA-Tulo Centre Approach to**  
**Reduce First Nation Jurisdictional Switching Costs<sup>50</sup>**

Switching Cost	FMA-FA-Tulo Centre Approach
First Nations Political Support	<ul style="list-style-type: none"> <li>• First Nations led (FMA-FA) political leadership</li> <li>• First Nations institutions (FMA and RC)</li> <li>• First Nations Leading the Way National Conference on Shared Innovations and Knowledge</li> </ul>
Innovation Design	<ul style="list-style-type: none"> <li>• Developed with First Nations proponents and FMA-FA institutions</li> <li>• Detailed business case focused on reduction of transaction and switching costs and risk management for First Nations</li> </ul>
Legislative Design	<ul style="list-style-type: none"> <li>• Based on innovation design and business case</li> <li>• Developed by First Nations proponents and institutions (FMA and RC)</li> </ul>
Other Government Support	<ul style="list-style-type: none"> <li>• First Nations proponents and institution support and advocacy</li> <li>• Focus on all-party support for jurisdictional certainty</li> </ul>
Legal Implementation	<ul style="list-style-type: none"> <li>• Institutions provide sample laws, standards, and legal templates</li> <li>• Institutions and Tulo Centre support and training</li> </ul>
Administrative Implementation	<ul style="list-style-type: none"> <li>• Institutions provide standards, templates, and software</li> <li>• Tulo Centre and institutions provide training and support to reduce transaction costs</li> </ul>
Fiscal Implementation	<ul style="list-style-type: none"> <li>• FMA fiscal relationship to enable jurisdictional choices for advantages</li> <li>• FMA regulatory framework to support lower transaction costs and higher credit rating</li> <li>• Tulo Centre and institutional training and support</li> </ul>
Continual Innovation	<ul style="list-style-type: none"> <li>• FMA-FA-Tulo Centre institutional innovation process</li> <li>• Institution statistics and review</li> </ul>

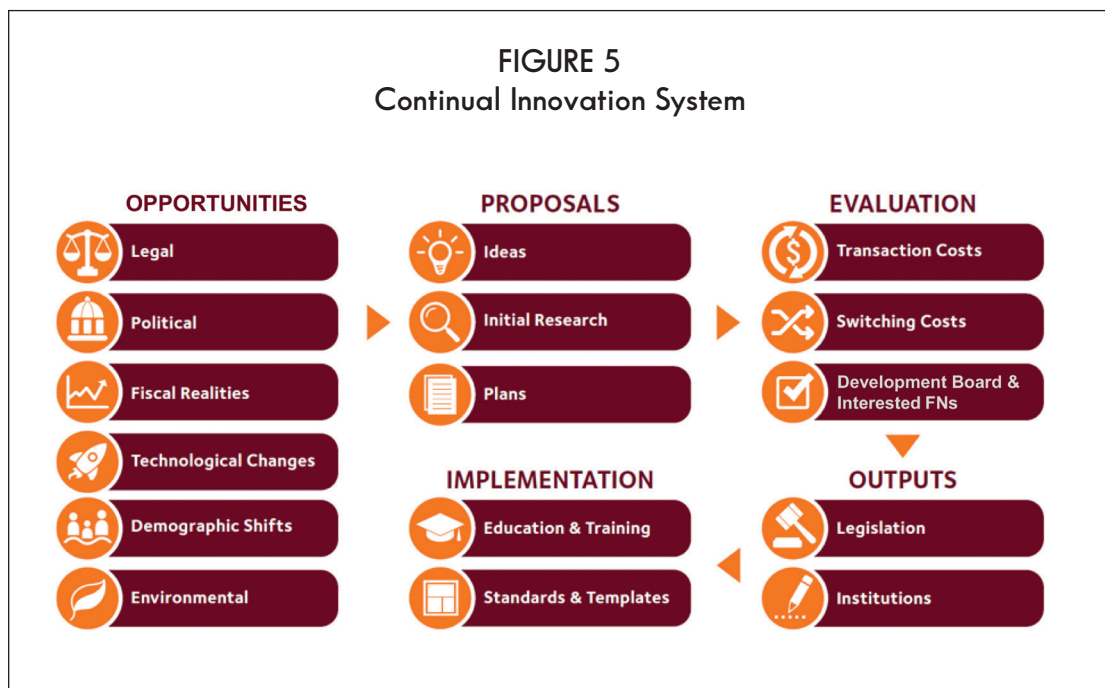
Another FMA-FA-Tulo Centre initiative that reduces switching costs is the annual First Nations Leading the Way (FNLTW) National Meeting<sup>55</sup> organized by the FMA-FA institutions for participating First Nations.<sup>56</sup> This meeting focuses on sharing FMA-FA successes with other interested First Nations and presenting jurisdictional proposals and innovations being advanced by FMA-FA institutions and proponent First Nations. Specifically, the annual FNLTW meeting reduces switching costs in at least four ways. First, it provides a networking and knowledge sharing opportunity for interested



First Nations<sup>58</sup> to learn from each other, share successes, and create partnerships to advance jurisdictions within their communities. Second, it provides a forum to present and discuss common challenges and options to address them. Third, it acts as an innovation hub among the institutions and participating First Nations where ideas are shared and improved. Finally, it develops and expands coalitions of First Nations who are supportive of jurisdictional innovations. In sum, these four elements generate First Nations leadership and support for jurisdictional innovations that significantly reduce the costs and time of advancing a legislative proposal to, for example, other governments.

Another key switching cost reduction feature is the FMA fiscal relationship. It ensures that participating First Nations can choose to associate their independent fiscal powers with independent jurisdictions and by doing so can create a better investment climate for their economic advantages.<sup>65</sup> This allows participating First Nations to choose local service and infrastructure requirements that most reduce transaction costs. This type of fiscal relationship also facilitates an orderly expansion of the FMA framework by adding fiscal powers to more transaction costs and thereby reducing jurisdictions to accelerate economic self-determination. As such, the FMA fiscal relationship is about betting on First Nations governments and institutions to innovate better and sooner than the federal (and sometimes provincial) governments to grow their economies faster.

Finally, with respect to switching costs, the FMA-FA-Tulo Centre framework supports a continual First Nations jurisdiction development and implementation system, as represented in Figure 5. This system's purpose is to develop a structured, repeatable process to efficiently design and implement renewed First Nations fiscal powers and jurisdictions (low switching costs).



The Opportunities column details occasions for change, such as a legal case, political commitment, or technological innovation. Once an opportunity is identified, First Nations or the institutions associated with FMA-FA-Tulo Centre develop ideas, plans, and proposals, as shown in the Proposals column. Comparative system research is often used because it is effective at identifying inefficiencies and opportunities for improvements. The third stage of the process, Evaluation, is the most important because this is where proposals are judged on how well they reduce transaction and switching costs. It is also where dialogue is encouraged to improve design. Ideas that pass the evaluation stage develop into legislation and institutions which then help to develop First Nation laws, standards, and education programs and are represented by the Outputs and Implementation columns. When the world changes, this process starts again. The faster this process occurs, the lower the switching costs.<sup>66</sup>

It should be noted that Indigenous institutions created via federal legislation to support economic self-determination is not unique to Canada. For example, in 1988 a similar framework was built in the United States through the *Indian Gaming Regulatory Act*, which created the National Indian Gaming Commission. This Commission developed standards and supported the efficient implementation of Tribal gaming jurisdiction and laws. It supported capacity development and innovations to protect and expand Tribal gaming jurisdiction. Given the similarities to the institutional model developed in Canada, it is noteworthy that the American version for gaming created a significant increase in Tribal economic self-determination.

### ***Lowering FMA-FA Switching and Transaction Costs***

This section contains four observations demonstrating that the FMA-FA framework is helping First Nations grow their economies by increasing their efficiencies via lower transaction and switching costs. These observations support the strategy to speed up economic self-determination described earlier:

$$\begin{aligned} \text{The speed of First Nation economic self-determination} = & \\ & \text{speed of fiscal power and jurisdiction implementation} \\ & + \text{speed of fiscal power and jurisdictional development} \\ & + \text{speed of economic growth} \end{aligned}$$

(5)

- **Rapid Growth Rate of Participation.** The growth rate in the number of First Nations participating in the FMA and FA framework has been more rapid than other First Nations jurisdictional expansion methods and is national in scope.
- **Rapid Growth Rate of Law Development.** The growth rate in the number of FMA and FA laws is significantly larger than in other frameworks. This supports lowering switching costs to increase the rate of jurisdiction implementation for interested First Nations.

- **Expedient Legislative Change.** A major legislative amendment to the FMA in June 2023 completed the legislative process significantly faster than other First Nations legislative initiatives during the last eight years. This suggests that First Nations working in the FMA-FA-Tulo Centre framework can efficiently develop effective jurisdictional innovations.
- **Significant Investment Successes.** At least 16 First Nations are using portions of the FMA-FA-Tulo Centre framework to achieve higher rates of investment than the BC provincial average. This suggests there is potential for faster economic growth using this framework.

### *FMA and FA Participation Growth*

Two tables are presented below to demonstrate growing participation in the FMA during the last 15 years (2008-2022) and how these observations relate to lower FMA switching costs. For reference, a First Nation must be formally added through a Ministerial Order to a schedule attached to the FMA. This involves a formal political commitment by the First Nation through a council resolution requesting to be added to this schedule and a federal Ministerial Order to amend the schedule to the FMA.<sup>67</sup>

Table 3 presents the annual growth in the number of participating First Nations and the cumulative FMA participation. In 2016 and 2018, 46 First Nations joined the FMA. This is most likely a result of lower switching costs (FMB financial performance certifications and FNFA innovations to support “other revenues” borrowing) and greater economic and fiscal incentives (10-year grant options for First Nations and an improved FNFA credit rating). The average annual growth in the number of participating FMA First Nations is 21, representing 53.6% (342/638) of all First Nations in Canada, as of the end of 2022.

**TABLE 3**  
**FMA Participation (2008 to 2022)**

Year	'08	'09	'10	'11	'12	'13	'14	'15	'16	'17	'18	'19	'20	'21	'22
New FMA FNs	12	9	6	12	26	13	30	20	46	16	46	18	27	8	25
<b>Total</b>	<b>45</b>	<b>54</b>	<b>59</b>	<b>70</b>	<b>95</b>	<b>108</b>	<b>138</b>	<b>158</b>	<b>204</b>	<b>220</b>	<b>266</b>	<b>282</b>	<b>309</b>	<b>317</b>	<b>342</b>

Table 4 presents participation in the FA over the last 15 years. To assert land jurisdiction using the FA, First Nations must receive community ratification in favor of their proposed FA land code. This is a higher, but necessary, switching requirement than participation in the FMA. Participation in both the FMA and FA, however, likely justifies switching costs as there are 89 First Nations that are fully participating in both frameworks. The requirement for a community vote to implement a code governing their lands and, in many cases, specifying individual ownership rights should be obvious and we do not propose that this switching requirement be changed.

**TABLE 4**  
**FA Participation (2008 to 2022)**

<b>Year</b>	<b>'08</b>	<b>'09</b>	<b>'10</b>	<b>'11</b>	<b>'12</b>	<b>'13</b>	<b>'14</b>	<b>'15</b>	<b>'16</b>	<b>'17</b>	<b>'18</b>	<b>'19</b>	<b>'20</b>	<b>'21</b>	<b>'22</b>
New LC FNs	2	5	5	4	0	2	8	10	8	12	5	10	8	3	2
<b>Total LC FNs</b>	<b>22</b>	<b>27</b>	<b>32</b>	<b>36</b>	<b>36</b>	<b>38</b>	<b>46</b>	<b>56</b>	<b>64</b>	<b>76</b>	<b>81</b>	<b>91</b>	<b>99</b>	<b>102</b>	<b>104</b>
New FA FNs	11	0	0	0	19	0	36	0	6	8	27	0	12	0	0
<b>Total LC-FA FNs</b>	<b>57</b>	<b>57</b>	<b>57</b>	<b>57</b>	<b>74</b>	<b>74</b>	<b>109</b>	<b>109</b>	<b>115</b>	<b>123</b>	<b>150</b>	<b>150</b>	<b>162</b>	<b>162</b>	<b>162</b>

The term “full participants in the FA” is used because there are two potential forms of FA participation: First Nations that have successfully received community support for their land jurisdiction and First Nations who are in the process of developing and passing a land code. There are now 101 First Nations who have passed a land code with their communities and another 61 First Nations who are in the process of developing their land codes. As a result, there are 368 First Nations participating in the FMA, the FA, or both. This represents 57.7% of all First Nations in Canada. (It is important to note that it is not appropriate to directly compare the switching costs of FMA-FA participation to the BC Treaty Process since the latter involves many more jurisdictions and the comprehensive settlement of a land claim. However, to demonstrate the impact of high switching costs consider the following. Since the beginning of the BC Treaty Process in 1992 only eight First Nations out of 106 participants, or 7.5%, have completed and implemented a Treaty.)

Table 5 presents the current number of FMA and/or FA participating First Nations by province by the end of 2022 and the proportion of First Nations in that province participating in the FMA or FA. As shown, there is rather strong participation in these frameworks across Canada.<sup>68</sup>

**TABLE 5**  
**FMA and/or FA Participation by Province (2022)**

Province	BC	AB	SK	MB	ON	QC	PE	NB	NS	NL	NT
FNs in FMA and FA	142	21	48	39	64	18	2	11	12	4	7
% of all in province	71.4	43.8	68.6	61.9	45.7	45.0	100.0	73.3	92.3	100.0	26.9

***Growth in FMA Laws Passed***

Table 6 presents the number of laws passed under the FMA frameworks over the last 15 years: the data comes from the *First Nations Gazette*, in which all First Nations FMA laws are published. The *First Nations Gazette* is the most complete source of First Nations laws in Canada. It was created by the predecessor to the FNTC and the

**TABLE 6**  
**FMA Laws Passed and Published in the  
First Nations Gazette – 2008-2022**

Year	New FMA Laws	Cumulative FMA Laws
2008	79	79
2009	89	168
2010	89	257
2011	93	350
2012	149	499
2013	158	657
2014	159	816
2015	223	1,039
2016	232	1,271
2017	268	1,539
2018	285	1,824
2019	281	2,105
2020	263	2,368
2021	249	2,617
2022	268	2,885

FNTC continues to maintain and operate it. As of December 17, 2023, the *First Nations Gazette* contained 8,702 First Nations laws and bylaws, including 2,776 section 81 bylaws and 2,351 section 83 bylaws.

Returning to Table 6, there are three key takeaways: (a) 2,885 FMA laws have been passed since 2008, (b) over the last 15 years, an average of 192 FMA laws were passed per year, and (c) the volume of FMA laws passed each year is growing. One reason for this growth is that when a First Nation implements property tax jurisdiction, it must pass an annual tax rates law and expenditure law. So as more First Nations implement these systems, more FMA laws will be passed each year.

Unlike FMA laws, FA laws can be published in the *First Nations Gazette* or on First Nations' own websites. As such, the *First Nations Gazette* does not offer a comprehensive source of FA laws. But it did allow us to identify 14 laws that Ch'iyáqtel (Tzeachten) First Nation has passed under the authority of its land code since 2008,<sup>70</sup> with an additional draft law currently pending.

In comparison, consider the number of bylaws published in the *First Nations Gazette*. Section 81 of the *Indian Act* provides First Nations with many bylaw-making powers relating to local regulations and services. These bylaws are developed by a First Nation, passed by their Chief and Council, and then submitted to the Minister of Indigenous Services (who can disallow them but rarely does). The *First Nations Gazette*, which includes all the bylaws passed under section 81 of the *Indian Act* since 1961, reports that there have been 2,776 section 81 laws passed in the last 62 years, for an average of 45 per year. Compare this to an average of 192 FMA-FA laws per year.

### ***FMA Amendment and Legislative Process Speed***

On June 20th, 2023, Bill C-45, *An Act to Amend the First Nations Fiscal Management Act*, received Royal Assent after receiving all-party support in both the House of Commons and the Senate, which is key in providing long-term jurisdictional certainty to participating First Nations (Narine, 2023). This was a major amendment to the FMA because it significantly expanded the mandates of the FNTC and FMB and established the First Nations Infrastructure Institute as a new federal institution. Of note is the time needed to introduce and pass this legislation: the total time to pass Bill C-45 was 89 days, in contrast to the average time of 291 days.<sup>71</sup> This is beyond two standard deviations of the average and represents a tangible measure of lower switching costs.

### ***Closing Economic Gaps Faster: Sixteen FMA First Nations***

Since the FMA became operational in 2008, all FMA expenditure laws have been published in the *First Nations Gazette*, creating a database to judge the success of the FMA fiscal relationship and FMA-FA frameworks. Table 7 presents preliminary observations for 16 specific First Nations: these First Nations have location advantages,<sup>76</sup> are projected to collect more than \$200k annually in property tax revenues, and have property tax revenues growing faster than the BC provincial average from 2008-2022.<sup>77 78</sup> This third criterion, property tax revenues growing faster than the BC average, was chosen for three reasons. First, 13 of the 16 First Nations in this subset are from BC. Second, the



comparative property tax revenue data was available during this time series. Third, real estate inflation and investment were higher in BC during this time series than other provinces, so it represented a higher comparative bar.

**TABLE 7**  
**Summary of FMA First Nations with Higher Rates of Growth Owing to a Location Advantage**

<b>First Nation</b>	<b>Average Annual Growth</b>	<b>Tulo Grads</b>	<b>Service Agreement<sup>a</sup></b>	<b>FAL<sup>b</sup></b>	<b>FPC<sup>c</sup></b>	<b>LC<sup>d</sup></b>
Squiala First Nation	49.8%	Y	Y	2013	2013	2008
Tsartlip First Nation	41.3%	Y	Y	2018		
Beecher Bay	18.2%	Y	Y	2019	2022	2003
Penticton Indian Band	13.9%	Y		2017	2013	
Osoyoos Indian Band	10.7%	Y	Y	2018	2011	
Cheam	10.3%	Y				2016
Skowkale First Nation	9.0%	Y	Y	2018	2017	2014
Tzeachten First Nation	8.5%	Y	Y	2015	2011	2008
Tsuu T'ina Nation	6.8%	Y	Y			
Enoch Cree Nation #440	6.5%	Y	Y	2019	2017	
Tk'emlúps te Secwépemc	6.3%	Y	Y	2019	2013	
Sumas First Nation	6.2%	Y		2015	2015	2011
Millbrook Band	5.7%		Y	2015	2015	
Tsleil-Waututh Nation	5.1%		Y	2015	2012	2007
Leq'á:mel First Nation	4.8%		Y	2022	2015	2010
Cowichan First Nation	4.2%	Y	Y	2018	2013	2019
All BC Municipalities	4.0%					
<b>Count</b>		<b>13</b>	<b>13</b>	<b>14</b>	<b>13</b>	<b>9</b>
<b>Proportion of Total (%)</b>		<b>81.3%</b>	<b>81.3%</b>	<b>87.5%</b>	<b>81.3%</b>	<b>56.3%</b>

*Note.* <sup>a</sup> A service agreement indicates the completion of an agreement to provide public services and sometimes shared infrastructure between a First Nation and a local government. <sup>b</sup> A FAL is a Financial Administration Law and is required to support longer term grant funding and borrowing from the FNFA. <sup>c</sup> A FPC is a financial performance certificate from the FMB to support entry into the FNFA borrowing pool and a higher credit rating. <sup>d</sup> A LC is a land code ratified by that First Nation's voting members to form the basis of land management jurisdiction within that First Nation.

Property tax revenue growth arises when assessed values increase, tax rates increase, or investments increase (resulting in more residential and commercial properties). The 16 First Nations under study are particularly interesting because their assessment growth and tax rate growth is virtually identical to other municipalities,<sup>80</sup> so any extraordinary growth rates would be mainly driven by investment rates higher than the provincial average.<sup>81</sup> As is evident in Table 7, many of these First Nations are also building their economic administrative capacity (and have government representatives who are graduates of Tulo programs), improving their financial management frameworks and implementing land jurisdictions.<sup>82</sup>

These observations and correlations are interesting because we have hypothesized that improving the legal, financial, and administrative frameworks in these communities could reduce investment facilitation transaction costs. More study is necessary, but these FMA First Nations appear to be using the FMA and FA to reduce the transaction costs for leasehold investment to facilitate more investment and grow their economies and revenues.

As a preliminary evaluation of our hypothesis, we have used publicly available audited financial statements and publicly available First Nations information describing their economic projects to confirm that almost all these First Nations have invested in economic infrastructure one to three years before the largest amount of property tax revenue growth. The receipt of FMB certifications, Tulo graduation, or LC passage also typically precedes periods of robust property and revenue growth by one to three years. In other words, these First Nations would appear to be following the economic self-determination cycle described earlier to generate more self-determination from each dollar of ‘taksis’.

### ***Conclusions and FMA-FA Proposals to Accelerate Economic Self-Determination***

For at least the last 55 years, many First Nations have been advancing an economic self-determination strategy intended to overcome two economic constraints resulting from colonialism: high investment transaction costs and high jurisdictional switching costs. The successful recognition of First Nations’ legal rights and titles during the last 50 years helped overcome these constraints. Our research provides preliminary support demonstrating that the FMA-FA-Tulo Centre framework provides First Nations with a successful economic self-determination option that overcomes high investment transaction and jurisdictional switching costs. We assert this success is related to the following four unique design features of the FMA-FA-Tulo Centre framework:

- **Jurisdictional Options.** The FMA-FA framework provides a range of jurisdictional options to reduce transaction costs and create a competitive investment climate with unique economic advantages to generate economic growth, as seen in the 16 FMA-FA-Tulo Centre First Nations generating investment at a faster rate than BC municipalities.

- **Risk Management for First Nations.** The FMA-FA-Tulo Centre framework embodies an improved risk management framework for participating First Nations, reduce their switching costs. Key features of this framework include First Nations leadership, standards, templates, capacity support, and accredited training. Tellingly, the growth of FMA-FA participation far exceeds other First Nations jurisdictional initiatives. Further, the rate of FMA-FA jurisdictional implementation (as measured in laws) is faster as well.
- **Risk Management for Other Governments.** The FMA-FA-Tulo Centre framework provides an improved risk management and economic framework for other governments, lowering their switching costs to cede jurisdictional space to First Nations. We observed that a recent major FMA legislative amendment received all-party support and proceeded through the legislative process much faster than other First Nations and non-First Nations federal legislation.
- **FMA Fiscal Relationship for Self-Determination.** The FMA fiscal relationship supports First Nations self-determination where the magnitude of independent First Nations fiscal means is equal to the amount First Nations can spend on their chosen expenditure jurisdictions. This incentivizes participating First Nations to increase their fiscal powers, build economic infrastructure, implement more land jurisdictions, and build administrative capacity to grow their economies faster and achieve greater self-determination sooner.

In November 2023, at the most recent First Nations Leading the Way National Meeting, the FMA-FA institutions and proponent First Nations advanced at least five ideas to accelerate economic self-determination for participating First Nations:

- **Faster, Better Additions to Reserve (ATR) Process.** Many First Nations are adding lands to their reserves via specific claims, treaty land entitlements (TLEs), or economic developments. These facilitate location advantages for First Nations near urban areas and generate significant fiscal and economic benefits.<sup>83</sup> But ATRs take too long, which is just another form of high switching costs.<sup>84</sup> The RC advanced a comprehensive proposal under the FA framework to reduce ATR barriers such as long federal review processes, local government service agreement requirements, difficult transfers of pre-existing third party interests, and surveying requirements.<sup>85</sup> The benefits from facilitating more ATRs sooner are considerable.<sup>86</sup>

- **The First Nation Resource Charge (FNRC).** The success of the rights and title strategy has meant that few resource projects in Canada will legally advance without the support of impacted First Nations. Despite this, compared to other governments, First Nations receive the fewest fiscal benefits from resource projects in their territories. This is particularly troublesome because First Nations arguably suffer the most environmental and land use opportunity costs from resource projects, owing to their greater land use for economic, cultural, and traditional purposes. This hinders First Nations support for these projects, as First Nations are less likely to support resource projects unless their fiscal benefits are increased and their environmental costs and risks are reduced. To address this challenge, proponent First Nations and the FNTC are proposing a standardized pre-specified First Nations resource charge (FNRC) to be applied to resource projects in their territories.<sup>87</sup> The FNRC would be accommodated by ceded federal and provincial tax room to maintain a competitive investment climate. It would be supported by the FMA fiscal relationship so First Nations could choose transaction cost reducing jurisdictions such as improved environmental review, management using the FA, and improvements to local labour training.
- **An FA First Nations Land Registry.** The Indian Lands Registry System (ILRS) is the worst land registration system in Canada. It is the least reliable system, handling registrations and transactions at a slow pace and offering the lowest level of investor and land tenure certainty. The RC and FA First Nations are working to develop a new First Nations land registry system based on successful provincial models to replace the ILRS.<sup>88</sup> Once developed, this First Nations-led innovation has the potential to significantly reduce transaction costs, increase investor certainty, improve the ATR process, and as a result, speed up economic self-determination.
- **A First Nations Pooled Insurance Framework.** The FNFA and proponent First Nations have begun to explore a pooled insurance system for First Nations.<sup>89</sup> The proposal is in development, but it could speed up economic self-determination in two ways. First, it could be supported by FMA-FA risk reduction frameworks and certifications to reduce First Nations switching costs. Second, it could provide insurance related to liability issues to reduce the switching costs of the federal and provincial governments.
- **An FMA Fiscal-Economic Data and Statistics Framework.** The FMB is leading an FMA initiative to improve the economic and fiscal data and statistics framework for the FMA, First Nations, and, potentially, FA First Nations.<sup>90</sup> This initiative will improve

the economic, fiscal, and investor information that First Nations provide, reducing investor- and lender-related search costs. It can also help First Nations make better economic self-determination jurisdiction prioritizations with their scarce time and capital resources.

These ideas represent just a few of the innovations being advanced by First Nations proponents and institutions to accelerate economic self-determination (for example, the First Nation Infrastructure Institute isn't included in this list). That said, the included proposals do demonstrate that creating an efficient First Nations public sector innovation system is arguably the most important feature of the FMA-FA-Tulo Centre framework, supporting continual jurisdictional innovations to renew the competitive First Nations investment climates that colonial policies and legislation tried to destroy.

#### END NOTES

- <sup>1</sup> In 1969, Indian Affairs Minister Jean Chrétien (and member of Pierre Trudeau's Liberal government) released a White Paper proposing the elimination of First Nation governments in Canada and the assimilation of First Nation citizens into the Canadian federation. The near-universal opposition to the proposal by First Nation leadership is often cited as the beginning of the modern rights and title strategy. This strategy is credited with many legal victories, changing the Canadian constitution, and encouraging the *United Nations Declaration on the Rights of Indigenous Peoples* to recognize Indigenous nations' rights, title, and jurisdiction.
- <sup>2</sup> Clarence Jules Sr. (1926-2015) was a Chief and longtime councilor at Tk'emlúps te Secwe pemc, who started what we believe to be the first Industrial Park on First Nation lands in 1964. He was integral in the formation of the Union of British Columbia Indian Chiefs in 1969 and was elected to the Cowboy Hall of Fame in 2010. He also clearly understands the time value of money.
- <sup>4</sup> For example, consider these jurisdictional switching costs: 1) it takes approximately six times longer to convert federal or provincial lands to reserves than it takes for a municipal boundary expansion, and 2) it can take decades to negotiate a self-government agreement, modern treaty, or a specific claim settlement. For more information see the National Indigenous Economic Development Board's *Improving the Economic Success of Urban Additions to Reserves* (2015) and the Government of Canada's online tool *Reporting Centre on Specific Claims*.
- <sup>7</sup> The number of leaders involved in this work and strategy are far too many to list but include at least the following chiefs and leaders from the past and present: Clarence Jules Sr, Clarence Joe, Willie Morgan, Andrew Paul, Fred Kelly, Rick Jules, Ron Ignace, Don Moses, Clarence Joe, Joe Mathias, Mary Leonard, George Manual, Bob Manual, Art Manual, Mel Bevan, Wayne Haimila, Phil Fontaine, Matthew Coon Come, Ovide Mercredi, Rickey Fontaine, Elijah Harper, Strater Crowfoot, Howard Grant, Robert Louie, Harold Calla, Deanna Hamilton, Ernie Daniels, Allan Claxton, Joe Miskokomon, Tom Bressette, Bill McCue, Oscar Latholin, Terrance Paul, Keith Matthews, Mike Lebourdais, Gerry Daniels, Angela Lavasseur, Satsan (Herb George), Celine Auclair, Terry Babin, Ken Marsh, Leslie Brochu, Don Ryan, Clarence Louie, Derek Epp, and so many others.
- <sup>10</sup> This research agenda was initiated by the then Indian Taxation Advisory Board in 1997, headed by Manny Jules, and much of it can be found at [www.fntc.ca](http://www.fntc.ca) and [www.fiscalrealities.com](http://www.fiscalrealities.com). Also see the Tulo Centre's *Building a Competitive First Nations Investment Climate* (2014).
- <sup>11</sup> The definitive article "a" was purposefully used to describe the proposals in this paper to demonstrates respect for creative destruction (see Le Dressay, 2018).
- <sup>12</sup> As a matter of potential interest, the Chinook word "Tulo" means "profit" or "to earn".
- <sup>13</sup> The First Nations transfer-based fiscal relationship can be traced back to a time when the federal

government's goal was to assimilate First Nations peoples and dissolve old political structures. This goal assumed that First Nations could not make good decisions themselves and therefore needed federal guidance and oversight.

- <sup>15</sup> As Jamie Baxter explains, "Rules, in other words, are presumed to generate the kind of security of property demanded by private interests and thus required for strong economic investment" (2013, p. 58).
- <sup>16</sup> As noted earlier, there are two general types of First Nations fiscal relationships (FMA and transfer) and a variety of options between these two types. The FMA fiscal relationship is an important part of the strategy because it allows participating First Nations to choose jurisdictions that could lower transaction costs.
- <sup>17</sup> This investment climate representation and its components are further discussed in Tulo Centre, 2014; Fiscal Realities, 1999; Flanagan and Alcantara, 2003; Fiscal Realities, 2004; Alcantara, 2007; Anderson and Parker, 2009; Flanagan, Alcantara, and Le Dressay, 2010; Aragon, 2015; Feir, Gillezeau, and Jones, 2018; Aragon and Kessler, 2020; and Chernoff and Cheung, 2023.
- <sup>18</sup> It is important to note that this simplified analytical framework omits the discount rate in its calculations, which could be represented by the differences in the cost of capital in the two frameworks. It is almost always true that borrowing costs are higher for First Nations because of a less competitive investment climate. Higher capital costs on First Nations land would make the comparative differences even larger as the eNPV would be discounted more on First Nation lands.
- <sup>19</sup> This is a formulaic simplification for demonstration purposes. We appreciate that, properly specified, this formula would be a summation of each period within X. However, using the precise version of eNPV would make it difficult to demonstrate the impacts of transaction costs because their impacts in this formula are a delay in revenues being generated in year four instead of year one, for example. In this case the transaction cost would be the net present value of the forgone revenues in years one, two, and three.
- <sup>21</sup> For further reading on development economics and strong investment climates, see de Soto's *The Mystery of Capital* (2000). For information on how a weak and extractive investment climate is a significant factor in state failure, see Acemoglu and Robinson's *Why Nations Fail* (2012).
- <sup>22</sup> Acemoglu and Robinson further detail the relationship between (neo)colonialism and extractive economies, as well as the development trap created when transaction and switching costs are too high to escape, in *Why Nations Fail* (2012). The proposed FMA-FA-Tulo Centre strategy is intended to address these issues and provide a practical option for interested First Nations: if successful, this strategy would put participating First Nations on the Narrow Corridor to an inclusive economy (see Acemoglu and Robinson's *The Narrow Corridor: States, Societies, and the Fate of Liberty* [2019]).
- <sup>24</sup> To cite just one example of how colonialism impacted economic advantages consider the recent work of Waiser and Hansen's *Cheated: The Laurier Liberals and the Theft of First Nation Reserve Land* (2023).
- <sup>26</sup> This measurement is in actual days, not business days.
- <sup>27</sup> A March 2023 Assembly of First Nations (AFN) briefing document estimated that the infrastructure investment needs of First Nations in Canada, along with the associated operation and maintenance costs, is \$349 billion. The estimate considers capital, operations, and maintenance costs and makes regional and other adjustments to ensure no double counting (BTY, 2023).
- <sup>28</sup> These actions could be classified as predatory if it is assumed that all governments compete for investment based on their transaction costs using their fiscal power and jurisdictions and that colonial governments purposely excluded competition from First Nations in this area through legislation and other means to prevent the exercise of their fiscal powers and jurisdictions.
- <sup>30</sup> This analysis applies equally to both member (status) and non-member (non-status) investors.
- <sup>31</sup> These calculations are based on simple national multipliers at the summary level for 2020 of \$0.785 in gross domestic product at market prices and \$0.543 in labour income per dollar of change in output, 7.047 jobs per one million dollars change in output for Canada's non-residential building construction industry, \$0.621 in gross domestic product at market prices, \$0.362 in labour income per dollar change in output, 4.597 jobs per one million dollars change in output of Canada's manufacturing industry, a discount rate of 4.5%, and a 15-year period of analysis.



- <sup>32</sup> Even if an investment was not made on First Nation lands, it is probable that it would be made in another Canadian jurisdiction with lower transaction costs and lower costs of capital and therefore unlikely that the investment benefits would be lost to the Canadian economy.
- <sup>33</sup> In this regard, one of the most often used quotes from Clarence Jules Sr. is, “you can’t fix a flat tire like the *Indian Act* by yelling at it.”
- <sup>34</sup> The historical origin of this strategy can be traced back to First Nations political actions in Ontario, British Columbia, and Alberta. The Tyendinaga and Six Nations communities in Ontario fought for First Nations tax jurisdiction in the 1870s and 1910s, respectively. Several BC First Nations made a presentation to Sir Wilfred Laurier in 1910, and eight Ontario First Nations sought tax jurisdiction in the late 1960s (McCue and McCue, 2021). And the Alexander and Paul First Nations in Alberta were the first to implement tax systems in the early 1970s.
- <sup>35</sup> In 1975, a meeting was held at Chilliwack, BC, by the Union of British Columbia Indian Chiefs, which, at the time, represented all First Nations communities in the province. Its purpose was to restore First Nations independence and reject government funds, and many prominent Indigenous leaders attended. Willis Morgan, representing the Kitamaat Indian Band, cautioned that First Nations lacked the economic base and tax systems to pay for local services, education, health, and welfare. Morgan’s caution was ignored, and First Nations throughout BC rejected government funding in the late spring of 1975 (Union of British Columbia Indian Chiefs, 1975). There is a direct connection between the rejection of government funds by BC First Nations and the development of the economic self-determination strategy presented here. For more information, see Tulo Centre, 2014; and First Nations Leading the Way, 2019a and 2019b.
- <sup>36</sup> This quote is from a story told often by Clarence Jules Sr. and is the response of Phil Gaglardi, then BC Minister of Highways, when asked, “What did TteS receive for the taxes that the provincial government collected on their lands?”
- <sup>38</sup> While this strategy was originally conceived of and led by these five First Nations, they would not have been successful without the support of many other First Nations. It is noteworthy that many other First Nations are now leading new innovations and ideas within this framework and beyond.
- <sup>39</sup> There are two likely reasons why this approach was not used again. First, negotiation time is a good proxy for switching costs and these may have been too high. Second, legal victories and precedents may have increased economic (and fiscal) benefits from other strategies. It is also noteworthy that in 2003, Westbank First Nation established a self-government precedent that supported more fiscal and other jurisdictions than Sechelt’s, but until 2023 when the Whitecap First Nation adopted a similar model to Westbank, it also was not widely copied. This is possibly owing to high switching costs. Regardless, both Sechelt and Westbank have used their jurisdictions to lower transaction costs and create competitive investment climates.
- <sup>40</sup> The Indian Taxation Advisory Board (ITAB) created an institutional solution to the tax and representation issues within First Nations property tax systems as non-member lessees pay taxes to First Nations but cannot vote in First Nations elections.
- <sup>43</sup> First Nations must formally opt-in to the FMA-FA framework. Their use of any element of the framework is voluntary. The importance of optionality in this orderly process is difficult to overestimate. First, and perhaps most importantly, it demonstrates respect for the First Nations’ right of self-determination. Second, it requires a formal political commitment to an economic strategy and the legal and administrative framework to implement that strategy. Third, it creates an important incentive to the First Nations institutions that support the strategy: they cannot join if they do not help First Nations achieve economic self-determination.
- <sup>44</sup> The FNTAA is the organization that professionally certifies First Nations tax administrators and meets annually to share knowledge and innovations. The National Aboriginal Lands Managers Association (NALMA) also hosts meetings of professional First Nations land administrators. These organizations and networks certainly contribute to lower switching and transaction costs.
- <sup>45</sup> It should be noted that the initial investment development trap question caused by high transaction costs needs to be addressed: what is the best strategy to start the cycle of economic self-determination when investment facilitation transaction costs are too high? The World Bank, International Monetary

Fund, and many development banks are addressing this issue, so it is noteworthy that the FMB recently completed a series of papers to support more economic self-determination and proposed the creation of an Indigenous Development Bank (First Nations Financial Management Board, 2022). In Canada there are at least two other emerging opportunities that could help First Nations escape this trap: the creation and expansion of the number of urban reserves that provide a location advantage to First Nations and the growing participation of First Nations in the fiscal and economic benefits from resource and energy projects near them.

- <sup>47</sup> It may be of interest to future legal scholars to determine if this is also an effective and efficient method to implement s. 35 of the Constitution inherent rights. In this regard, consider the Supreme Court of Canada's statement in the *Canadian Pacific Railway Ltd v the Matsqui Indian Band* case: "...it is important that we not lose sight of Parliament's objective in creating the new Indian taxation powers. The regime which came into force in 1988 is intended to facilitate the development of Aboriginal self-government by allowing bands to exercise the **inherently governmental** power of taxation on their reserves" (1995, emphasis added)
- <sup>48</sup> For further information about taxation using the FMA, see Icton and Mescall (2021) and McCue and McCue (2021); the articles include two case studies that provide significant detail about the switching costs to establish a First Nations tax system. See also Boissoneault (2021) and Le Dressay (2021).
- <sup>50</sup> As one indication of lower switching costs, consider that in the last 15 years there are almost 400 First Nations participating in at least part of the FMA-FA framework and there have only been a few modern treaty, self-government, and comprehensive self-government agreements during that same period representing less than 20 First Nations. This comparison illustrates that the switching costs to complete a modern treaty or comprehensive claim are higher than to participate in the FMA-FA framework. These higher switching costs may well be justified for a First Nation if there are fiscal, economic, resource, and jurisdictional benefits arising from their modern treaty or comprehensive claim settlement, but even after a treaty or self-government agreement is completed, jurisdiction implementation switching costs remain.
- <sup>51</sup> Calculating the number of First Nations public sector innovations developed by the RC, FNFA, FMB, and FNTC to lower switching costs would be another method to demonstrate the value of First Nations institutions, but that is beyond the scope of this paper. But note that some of the most important innovations include the strong land code development support, capacity development, and legal templates provided by the RC; the financial performance certifications, standards, and capacity and financial system support of the FMB; the other revenues borrowing framework by the FNFA; and the standards, sample laws, and advisory and capacity support by the FNTC.
- <sup>52</sup> The importance of the political leadership of Manny Jules, Robert Louie, Harold Calla, Ernie Daniels, and Allan Claxton is difficult to overestimate. Their political reputations and ability to generate trust among First Nations communities and leaders, as well as other government politicians, has been one of the most significant switching cost reductions for FMA-FA proposals. To provide some perspective, in the last 30 years we estimate that Jules has led the development and passage of at least 14 pieces of First Nations legislation, made presentations to almost 500 First Nations, and appeared before committees of the Senate or the House of Commons almost 100 times. The numbers for Robert Louie and Harold Calla would be similar. As a result, they have built considerable First Nations and other government trust.
- <sup>53</sup> The FNFA and RC provide templates and sample laws that achieve many of the benefits of standards.
- <sup>54</sup> Visit the FNTC's FMA Toolkit at [www.fntc.ca/fma-toolkit-resources](http://www.fntc.ca/fma-toolkit-resources) for all the FNTC standards and sample laws. Additionally, see the Federal Court Decision from the judicial review brought by the Ontario Lottery and Gaming Corporation about the importance of FNTC standards for First Nations tax jurisdiction (*Ontario Lottery and Gaming Corporation v. Mississaugas of Scugog Island First Nation and First Nations Tax Commission*, 2019 FC 813).
- <sup>55</sup> For more information visit [www.fnleadingtheway.com](http://www.fnleadingtheway.com)
- <sup>56</sup> Each of these national institutions also have national meetings with their participating First Nations with respect to specific proposed innovations: for example, the Lands Advisory Board and faster ATRs or the FNTC and the First Nations Resource Charge.

- <sup>58</sup> This is not unlike the oral tradition for sharing information among First Nations described in many First Nation cultures.
- <sup>65</sup> This paper focuses on location advantages, but interested First Nations could use the FMA-FA-Tulo Centre framework for resource, environmental, labor, and other advantages as identified in Figure 2.
- <sup>66</sup> This institutional design system has been used by several of the initiatives discussed in this paper, including the FMA in 2005 and the recent FMA amendment that established the FNII in 2023.
- <sup>67</sup> This commitment is indicated by a First Nations council resolution signed by the Chief and Council requesting to be added to the FMA.
- <sup>68</sup> The head offices of the FNTC, FMB, FNFA, and the Tulo Centre are in BC so it could be assumed that jurisdictional switching costs might be lower for BC First Nations, but that wouldn't explain the high FM-FA participation rates across Canada.
- <sup>70</sup> For more information, see *Ch'iyáqtel (Tzeachten) Land Laws & Policies* at <https://www.tzeachten.ca/lands/laws#land-laws-downloads>.
- <sup>71</sup> We conducted a review of all bills introduced in the House of Commons beginning with the 42nd Parliament, 1st Session: data was obtained from LEGISinfo, Parliament's online database of bills. During this time, 210 bills originating in the House of Commons were introduced by the Liberal House Government (bills originating in the Senate and Private Member's bills were excluded from analysis, as they rarely receive Royal Assent). A further 61 bills were excluded from analysis owing to their time-sensitive nature, e.g., acts related to Covid response and benefits and back-to-work legislation (the parliamentary legislative review and consideration processes for these types of bills is much shorter, with some receiving Royal Assent in as little as one day). This left 149 bills for analysis. Of these 149, only 82 bills (55%) received Royal Assent: for these bills it took, on average, 291 days to proceed from Introduction to Royal Assent.
- <sup>76</sup> Location advantages are defined as being within 50 km of a service area with year-round access where services include construction and office suppliers, an adequate pool of skilled and semi-skilled workers, at least one financial institution, provincial services related to health, education and environmental services, and a federal Employment Centre.
- <sup>77</sup> Our original database contained 113 FMA First Nations that collected property tax between 2008-2020. Of these First Nations, we identified a subset of 48 that collect more than \$200k annually in property taxes and of those 48, we identified 31 as being a service area (location advantage). From those 31, we then identified 16 (or 51.6% of this subset) FMA First Nations that have grown their property tax revenues faster than the local government average in BC.
- <sup>78</sup> For clarity, where possible we also compared BC First Nation property revenue growth rates to the comparable growth rates of their nearest BC municipality, and it did not change these results.
- <sup>80</sup> Rates and assessment growth are similar because these First Nations use the same tax rate as their adjacent local government and First Nations property assessment values are the same as fee simple properties in their adjacent local governments, as specified in First Nation assessment laws.
- <sup>81</sup> This analysis uses expected property tax reported in annual First Nations expenditure laws. There should be a high degree of confidence in these expected revenues because they are calculated by multiplying certified property assessment data for each property within a class to the tax rate of the class passed in law by the First Nation and then aggregating these results for all property classes. Every First Nation obtains the aggregate magnitude of their expected annual property tax revenues using customized tax administrative software or other software. This is the same method used by local governments in BC to obtain their property tax revenue estimates and probably the same used by local governments throughout Canada.
- <sup>82</sup> This list contains only one of the five original First Nations who began this project in the 1970s, which is partly because both Sechelt and Westbank are self-governing and not FMA First Nations. It should also be noted that the Squamish Nation is well into the planning phase of the largest residential development on First Nation lands in Canada and will certainly exceed the growth rate of Vancouver. For more information visit [www.squamish.net/senakw](http://www.squamish.net/senakw).

- <sup>83</sup> The National Indigenous Economic Development Board (NIEDB) published research in 2015 showing that urban ATRs for First Nations generated greater economic benefits than similar well-located historical reserve lands (NIEDB, 2015).
- <sup>84</sup> In 2015 NIEBD research, the urban ATRs examined in the case studies took an average of 4.2 years to complete. This research found that these specific urban ATRs took 3.2 to 3.7 years longer than a typical municipal boundary expansion (0.5 to 1 year). However, this is a significant underestimate. In 2015, additional NIEDB research looked 117 urban ATR applications under active review. The federal government's database had start dates for 70 of the 117 applications. The average length of time those 70 applications had been in the ATR process was 8.6 years, or already 7.6 to 8.1 years longer than a typical municipal boundary expansion. And those 70 applications were ongoing and had not yet been converted to reserve status.
- <sup>85</sup> See workshop material from the First Nations Land Management Resource Centre and Tulo Centre (2021).
- <sup>86</sup> In 2015, we estimated the potential impacts resulting from a hypothetical scenario in which just 1% of the TLE in Saskatchewan is converted to reserve and developed over a 15-year period. We projected an estimated \$2.4 billion in investment, which could generate the over 13,500 direct person years of employment, annual property taxes of about \$32.7 million and annual lease revenue of about \$8.3 million (residential) and \$36.5 million (non-residential).
- <sup>87</sup> For more information, visit <https://fnrc.ca/fnrc/> and <https://firstnationsresourcecharge.ca/>.
- <sup>88</sup> In Budget 2023, the federal government committed \$35.3 million over three years to a new First Nations-led National Land Registry that will provide communities in First Nations Land Management with more opportunities to realize the economic benefits arising from local control of their lands (Government of Canada, 2023a).
- <sup>89</sup> Please visit the FNFA's website to view a brochure on the insurance model at <https://www.fnfa.ca/en/projects/fnfa-bfl-insurance/>.
- <sup>90</sup> See section 35.1 of the FMA for the FNLC's new powers relating to data, section 55.1 for the FMB's new powers relating to data power, and section 113.9 for FNII's powers relating to data (S.C. 2005, c. 9).

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