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PROGRAM REVIEW

LANDS and MEMBERSHIP

BRANCH

1977

E92
C343

Program Review and Forecast

presentation by

Lands and Membership Branch

to

Mr. P.C. Mackie

Assistant Deputy Minister

Indian and Eskimo Affairs

on February 15 and 16, 1977

commencing at 09:00 hrs.

in the Conference Room 1423

Lands and Membership Branch

Program Review

1. This review of the Lands and Membership Branch program will be conducted as follows:

   Phase I - Verbal and graphic presentation by managers.

   Phase II - Syndicate discussion by those attending, of each activity area, assisted by the managers concerned, who will act only as resource persons.

   Phase III - Syndicate reports and a plenary session under the Chairmanship of the Director, Lands and Membership.

2. The printed material which has been distributed has been organized in two sections:

   Section 1 - Major Concerns

   An outline of the presentation to be made by each manager has been provided under headings as follows:

   - Role
   - Objectives
   - Focus of activities and priorities
   - Long-term initiatives
   - Issues

   Section 2 - Elaboration

   This material should be read at the earliest opportunity, as it will provide detailed background information on the operations of each activity area, which will be of value in discussions.

3. A timetable of events is attached.

4. It is requested that participants retain any questions until all presentations have been completed. A discussion period has been provided for this purpose. Syndicates for discussion will be established, with the composition being provided later.

5. Each syndicate will select its own Chairman and Secretary.

6. Managers will rotate between syndicates according to the attached schedule. They will act only as resource persons, so that syndicate members can become fully involved.

7. Topics for syndicate discussion will be:

(a) Role - Should there be any revision(s) in the functions performed.
- Action to be taken and by whom.

(b) Objectives - Are they correct: Should they be increased or decreased in number; expanded or contracted in content, revised, deleted and replaced.
- Action to be taken and by whom.

(c) Focus of Activities and Priorities - Are they correct; should they be changed, revised, amended, re-arranged.
- Action to be taken and by whom.

(d) Long Term Initiatives - Are they correct; should they be changed, revised, amended, re-arranged, increased, decreased.
- Action to be taken and by whom.

(e) Issues - Are they correct; should they be revised, amended, changed.
- What action can be taken to resolve them and by whom.
- What action can be taken until they are resolved and by whom.
- What can be done if they cannot be resolved.

8. The plenary session will receive reports and recommendations from each syndicate. This will be followed by general discussion on the reports and recommendations, under the chairmanship of the Director, Lands and Membership, who will sum up at the end of the session.

TIMETABLE

15 February 1977

09:30 - 09:50	Branch Review	G.A. Poupore
09:50 - 10:10	Membership Review	H.H. Chapman
10:10 - 10:30	Lands Admin. Review	H.R. Phillips
10:30 - 10:50	Coffee	
10:50 - 11:10	Prop. & Est. Mgt. Review	J. Wilkins
11:10 - 11:30	Minerals (Oil & Gas - Mining) Review	E.C. Moore S.A. Crandall
11:30 - 11:50	Advisory Services Review	K.K. Sarin
11:50 - 12:00	Summation	G.A. Poupore
12:00 - 13:30	Luncheon	
13:30 - 14:30	General Discussion	G.A. Poupore (Chairman)
14:30 - 15:00	Syndicate Discussion	
15:00 - 15:30	Coffee	
15:30 - 16:00	Syndicate Discussion	

16 February 1977

9:00 - 10:00	Gen Disc.	
10:30 - 12:00	Syndicate Discussion	
~~12:00 - 12:30~~	Syndicate Discussion	
~~12:30~~ - 13:00	Syndicate Discussion	
13:00 - 13:30	Coffee	
13:30 - 14:30	Syndicate Reports	G.A. Poupore (Chairman)
14:30 - 16:00	Plenary Session	G.A. Poupore (Chairman)

SYNDICATES

SYNDICATE 1

15/2/77	14:30 - 15:00	Lands Admin.
	15:30 - 16:00	Prop. & Est. Mgt.
16/2/77	11:30 - 12:00	Minerals
	12:00 - 12:30	Membership
	12:30 - 13:00	Advisory Svcs.

SYNDICATE 2

15/2/77	14:30 - 15:00	Prop. & Est. Mgt.
	15:30 - 16:00	Minerals
16/2/77	11:30 - 12:00	Membership
	12:00 - 12:30	Advisory Svcs.
	12:30 - 13:00	Lands Admin.

SYNDICATE 3

15/2/77	14:30 - 15:00	Minerals
	15:30 - 16:00	Membership
16/2/77	11:30 - 12:00	Advisory Svcs.
	12:00 - 12:30	Lands Admin.
	12:30 - 13:00	Prop. & Est. Mgt.

SYNDICATE 4

15/2/77	14:30 - 15:00	Membership
	15:30 - 16:00	Advisory Svcs.
16/2/77	11:30 - 12:00	Lands Admin.
	12:00 - 12:30	Prop. & Est. Mgt.
	12:30 - 13:00	Minerals

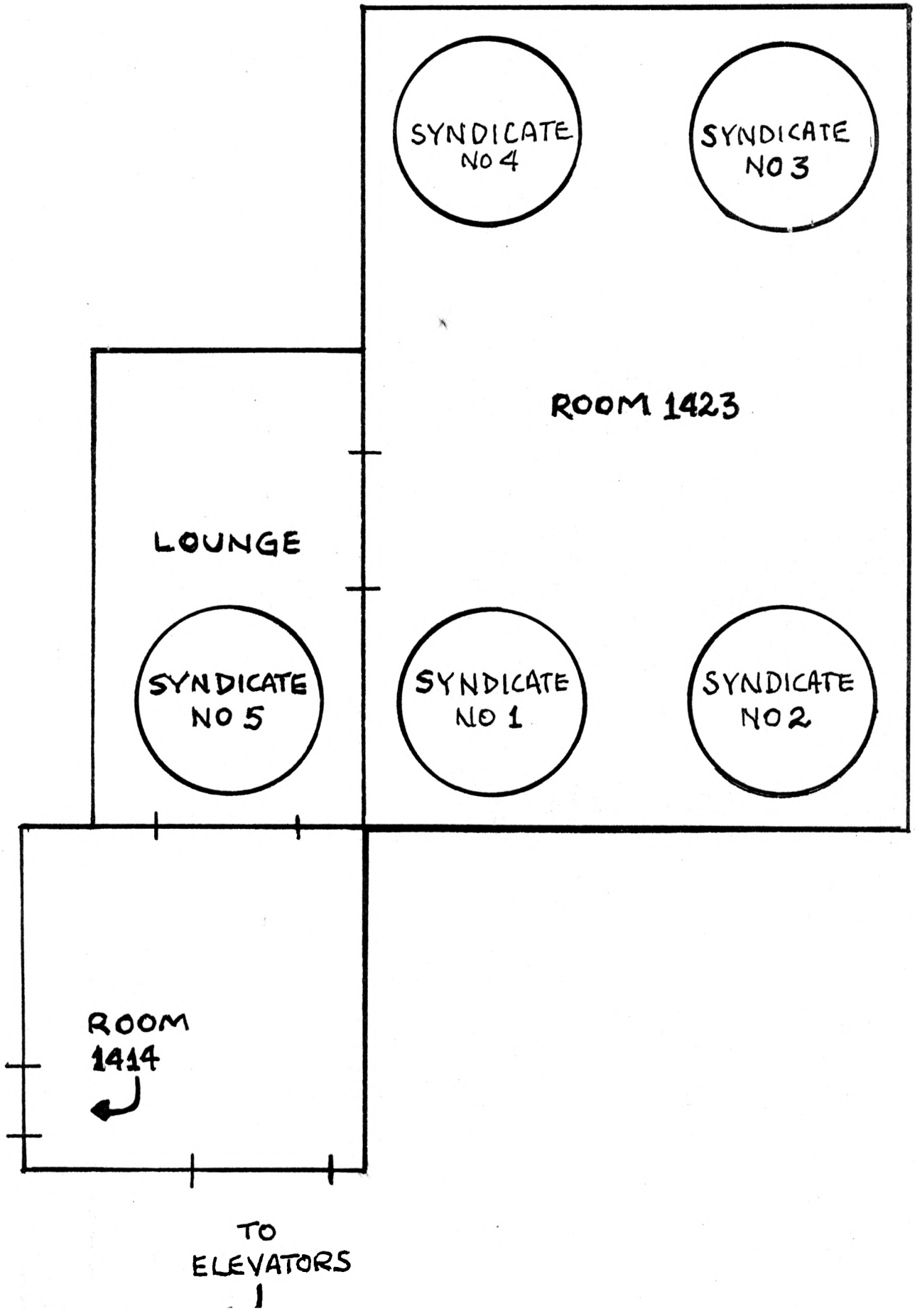
SYNDICATE 5

15/2/77	14:30 - 15:00	Advisory Svcs.
	15:30 - 16:00	Lands Admin.
16/2/77	11:30 - 12:00	Prop. & Est. Mgt.
	12:00 - 12:30	Minerals
	12:30 - 13:00	Membership

N.B. See diagram at page 2 showing locations for syndicates. Room 1414 will be available for syndicate 5 to use on February 16 only.

....2

SYNDICATE LOCATIONS



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FOREWORD

What follows is Lands and Membership Branch's interpretation of its responsibilities in serving the needs of both the government and the Indian people in the identification of management and resources which have, by government action, been dedicated for their use and benefit. It must be seen that the Branch problems are constantly under scrutiny by other program managers and by the Indian people as to the extent to which the objectives of the department programs and the aspirations of the Indian people are made.

It is the norm that day to day decisions taken in the lights of constraints imposed by statutory provisions and legal interpretation are subject to legitimate challenge at any time; in fact, in complex matters, challenge is the norm. These constraints invariably give rise to issues to which there is no certain or defined answer and problem solutions must be sought, notwithstanding an inability in the short range to resolve these issues.

The thrust of the program as a whole and of the government is seen to be towards freeing the Indian people of their dependance upon the program. The practical ramifications of this thrust is seen by the Indian to be a denial by government of its responsibilities towards them. Eventually, this situation leads to a demand for flexibility to the maximum degree possible and a preparedness to compromise on fine points in order to achieve greater objectives.

It is with this in mind that the following review of the Lands and Membership Branch and the short and long range forecast of its activities and initiatives is presented for consideration.

G.A. Poupore,
Director,
Lands and Membership.

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SECTION I

MAJOR CONCERNS

LANDS AND MEMBERSHIP BRANCH

ROLE

Administers

Crown Owned Land set aside for the use and benefit of Indian Bands, exercising the Government's responsibility as opposed to the proprietor.

Membership of Indian Peoples under provisions of the Indian Act which relate specifically thereto.

Mineral Resources under Indian lands and some surrendered lands. (Land in this context refers to SUB-SURFACE LAND as opposed to the SURFACE LAND commonly recognized in the Program.)

Manages

The use and benefits of the Lands and Mineral Resources held by the Crown for the Indian people as their proprietor.

OBJECTIVES

To ensure Treaty and other obligations are met insofar as they relate to membership matters and land issues.

To ensure fulfillment of statutory responsibilities under the Indian Act with regard to membership, administration and management of Indian lands.

To assist in obtaining maximum involvement of and benefit in the mineral sector of the national economy on behalf of the Indian people.

BASIS IN LAW

Indian Act 1970

Indian Oil and Gas Act 1974/75

Other Statutes (14)
Such as the Public Lands Grants Act 1970 and acts relating to land and natural resources in various provinces and some reserves, dating from 1916.

WHAT IS INVOLVED

Acreage	- 6.3 million acres - up to 15 million acres of surrendered land - plus James Bay, Manitoba, Saskatchewan, British Columbia, Yukon and Territories
Reserves	- 2196 plus 79 settlements
Bands	- 568
Population	- 286,000

WHO IS INVOLVED

All Regions and N.W.T.

All Operations and Program Development branches in the Program

Other Departmental Program and Federal Departments, Provincial Governments, native people Associations, ecological groups, private industry

WHY

Land is the first and foremost factor to be considered in any transaction involving any people. In the Indian context, Land is their only asset which is held by the Crown for their use and benefit.

FOCUS OF ACTIVITIES AND PRIORITIES

Administrative

To establish the most effective and up to date measures to fulfill the statutory responsibilities set out in the Indian Act relating to membership matters and land issues.

A major thrust is in motion to establish a valid, reliable and effective land information base.

To increase the acquisition and facilities the dissemination of land facts to the field for operational management purposes.

Training for and transfer of membership functions to Bands while maintaining a centralized registry of membership information in tandem with decentralization to Regions of that which cannot be transfered to Bands.

- extension of data base
- improve methods of transm. of info

Developing operational policy and functional guidance for decentralizing operational management.

Improving centralized control and support measures for decentralized managerial operations in Regions.

Managerial

Decentralization of property and estates operational management has been the main thrust of our activity in the past two years. It has been accomplished to various degrees in the regions.

Proprietary management of Indian minerals has taken on an entirely new "cloak of importance" since the energy crisis in the fall of 1973. Oil and Gas Royalty revenues have soared to an annual figure of 60 million dollars.

An estimated 10 million dollars in revenue to the Indian people has been lost through the shortfall in managerial resources.

Mining interests have followed a similar pattern and project a significant growth pattern in future years.

FOCUS OF IMMEDIATE FUTURE

Administrative

Enhance our effectiveness in fulfilling our statutory obligations by:

Revising priorities

Restructuring our organization to accommodate the need for professionalism or expertise on a competitive level with the private sector.

Re-inforcing activities which are productive in material terms.

Restricting non objective oriented activity. Do we meet our statutory responsibilities or provide the Indian people with the material to challenge those responsibilities? What is our primary objective?

Examining avenues for maximum decentralization and further transfer of the responsibility for Membership functions to the field and maximum deployment of centralized lands administration services in support of Regional operations.

upgrading road management
capabilities & staff

& transfer (to Bands)

Managerial

Further decentralization of Property and Estates responsibilities and functions to the maximum extent permissable under the statutes.

Re-inforce the mineral activity in the Oil and Gas and Mining sectors realizing:

Uniqueness
- Not represented in Program Development or Policy Research and Evaluation

- Both offices are HQ units outside NCR

- we do not given review full extent of what's there

Development
- Of resources for Have Not bands

- Mineral ownership criteria

- Indian involvement and participation

LONG TERM INITIATIVES

Those necessary to maintain the basic thrust of Indian involvement and ultimate control of the resources government has dedicated for their use and benefit.

ISSUES

(1)

(2) Differences in viewpoint as to what constitutes: use and benefit, effective control.

PROGRAM / PROGRAMME: INDIAN AND ESKIMO AFFAIRS

DEPARTMENT / MINISTÈRE: INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

ACTIVITY / ACTIVITÉ: LANDS AND MEMBERSHIP

PROJECT / PROJET: ACTIVITY MEMORANDUM

NATURE OF ACTIVITY

his activity administers the government responsibility for Crown owned land set aside for the use and benefit of Indian Bands, dminister the membership provisions of the Indian Act and mineral resources under Indian lands and some unsurrendered lands. dministration, in this context, means those functions and activities required by statute, regulations under statute, or treaty, o meet the Ministerial obligation and that of the Government: management means the application of those activities required to ealize in material terms, through the exercise of proprietary process, the use and benefit to the Indians of the land and ineral resources held by the Crown for them.

he objectives of the activity are to:

) ensure that Treaty and other obligations insofar as they relate to Lands and Membership matters are met.

) ensure proper fulfillment of statutory responsibilities under the Indian Act with regard to membership and administration an management of Indian lands.

) assist in obtaining maximum possible involvement of and benefit for Indians in the mineral sector of the national economy.

BASIS IN LAW

ndian Act, R.S.C. - 1970, C 1-6 - Sections: 5 to 17, 19 to 21, 23 to 28, 30, 31, 35 to 53, 55 to 58, 93, 109, 110 and 124. t. Peter's Reserve Act - 1916 - S.C. - Chapter 24. The British Columbia Indian Lands Settlement Act - 1920 - S.C. - Chapter 5 n Act for the settlement of certain questions between the Governments of Canada and Ontario respecting Indian lands - 1924 - S. hapter 48. St. Regis Islands Act - 1926/27 - S.C. - Chapter 37. The Alberta Natural Resources Act - 1930 - S.C. - Chapter 3. he Manitoba Natural Resources Act - 1930 - S.C. - Chapter 29. The Railway Belt and Peace River Block Act - 1930 - S.C. - hapter 37. The Saskatchewan Natural Resources Act - 1930 - S.C. - Chapter 41. An Act respecting the Caughnawaga Indian eserve and to amend the Indian Act - 1934 - S.C. - Chapter 29. The British Columbia Indian Reserves Mineral Resources Act - 943 - S.C. - Chapter 19. An Act to confirm an Agreement between the Government of Canada and the Government of the Province of ew Brunswick respecting Indian Reserves - 1959 - S.C. - Chapter 47. An Act to confirm an Agreement between the Government of anada and the Government of the Province of Nova Scotia respecting Indian Reserves - 1959 - S.C. - Chapter 50. Public Lands rants Act - 1970 - R.S.C. - Chapter P-29. Canada Lands Surveys Act - 1970 - R.S.C. - Chapter L-5. Indian Oil and Gas Act - 1974 · S.C. - Chapter 15.

GEOGRAPHICAL DISTRIBUTION OF OPERATIONS

he Lands and Membership activity is performed in all provinces and territories of Canada. The operational policy and functiona uidance is centralized at Ottawa with eight regional offices and a representative in the North West Territories responsible for he operational management of the activity. The administrative aspect of the activity is centrally based in Ottawa, except for hose aspects of administration which are necessary to control and support decentralized managerial operations.

FEB - 8 1977

Director, Lands & Membership Branch

MEMBERSHIP

ROLE

The administration of a number of related programs most of which result from various statutory obligations under the Indian Act. These include determining who are entitled to be registered as Indians and to membership in an Indian band; maintaining a continuous Register of persons who are entitled to Indian status, the enfranchisement of Indians; the administration of trust funds of enfranchised minors and Indian children who have been adopted by non-Indians; the amalgamation, division and constitution of Indian bands and the collection and coding of Indian population data for computer application.

OBJECTIVES

Transfer responsibilities for field administration of membership functions from District offices to bands. Transfer responsibility for amalgamation, division and constitution of bands to Regions. Delegate responsibility for monitoring the effectiveness of field administration of membership to Regions.

FOCUS OF ACTIVITIES AND PRIORITIES

Decentralizing membership administration from Headquarters to Regions.
Production of population data for program planning and review.
Establishing entitlement of natives of Labrador and Newfoundland to be registered as Indians.

LONG TERM INITIATIVES

Explore the feasibility of implementing a computerized system providing instantaneous access by Regional and District offices to the Indian Register.

ISSUES

The significance of delays in membership administration for individuals, bands and for various programs and services developed for Indians.

Source of this list. info

27% of population (2.9" land)
now covered by Board.
(& 6% low 0%)

Currently - our membership register is up to 18 months behind.

Current Activities

1. Long field & Bank staff
2. Jamaica Bay Agreement
3. Liaison with Park Activ
4. Investing & Research
5. Membership listings & Tuesday Bulletin
6. Residence Survey

LANDS ADMINISTRATION

ROLE

In accordance with specific statutory requirements, this element fulfills the role normally occupied by government in the government - proprietor relationship in respect to lands.

OBJECTIVES

To identify lawful interests in Indian Lands, to identify and/or clarify legal boundaries for Indian Lands and to maintain a system to protect lawful interests in Indian Lands.

FOCUS OF ACTIVITIES AND PRIORITIES

Identification of interests (Indian or otherwise) in Indian Lands, clarification of the entitlement to those interests and, by careful record-keeping, protection of the interests.

Priorities include completion of land histories to enable settlement of treaty entitlements and verification of records created before 1970. Improved delivery of valid, reliable land information to the field and the public.

LONG TERM INITIATIVES

Detailed ground work on land histories leading to both the settlement of outstanding land entitlements and to an ultimate statement of land accountability.

Facilitation of information delivery in respect to the record of interests in Indian Lands.

ISSUES

Are these initiatives desirable and to be pursued? Is the role of the element understood and acceptable?

Land admin is part of govt, but
management — part of proprietor

There are situations where even though the Department is committed to a program or policy for the benefit of the Band, we are handicapped in its implementation because of the legal constraints under the Act and we find it difficult to accommodate the Bands' wishes.

In the absence of juris-prudence or legislative provisions under the Act for every conceivable situation, conflicting opinions create situations where the Department's programs and policies have to be compromised.

PROPERTY AND ESTATE MANAGEMENT

ROLE

This Division fulfills the role of proprietor and owner in the disposition of Indian interests in Reserve land to non-Indian applicants and users. In respect of matters testamentary as well as guardianship of mentally incompetent and juvenile estates, this Division, on behalf of the Minister exercises the role of a Surrogate and Family Court.

OBJECTIVES

To provide the means and mechanics through which property and estates management may be undertaken by Indian Bands in their own behalf and to provide counselling direction and other services to enable Indian and other next-of-kin and friends to function in the devolution of estates and guardianship of interests.

FOCUS OF ACTIVITIES AND PRIORITIES

Co-operative evaluation of Regional capability to undertake additional responsibility and authority for property and estates management in those phases not constrained by Statute; and simultaneously to explore avenues for achievement of complete decentralization where statutory prohibition appears to be a barrier.

To provide the facilities by which Regional Offices may be trained to undertake the responsibilities and duties associated with delegated authority.

To provide an on-going property and estates management function in those areas of the process where Regions are either not equipped to undertake the responsibilities or are prevented by statute from accepting any further delegation.

Priorities include the training of estates management advisers in the Region and Districts, and the bringing into currency of a backlog of estates and land transactions built up during the period of transition from Headquarters authority to Regions.

LONG-TERM INITIATIVES

Explore with Regional property and estates management officials in consultation with representatives of interested Indian Bands and leaders of Indian organizations the aspects of property and estates management which can be delegated and ultimately transferred to Indian bands. Such an exploration would include:

Identification of the functions capable of delegation or transfer without statutory restraint,

Evaluation of the resources both financial and human available to each Band,

Estimating the scope and volume of training necessary to achieve the identified objectives.

ISSUES

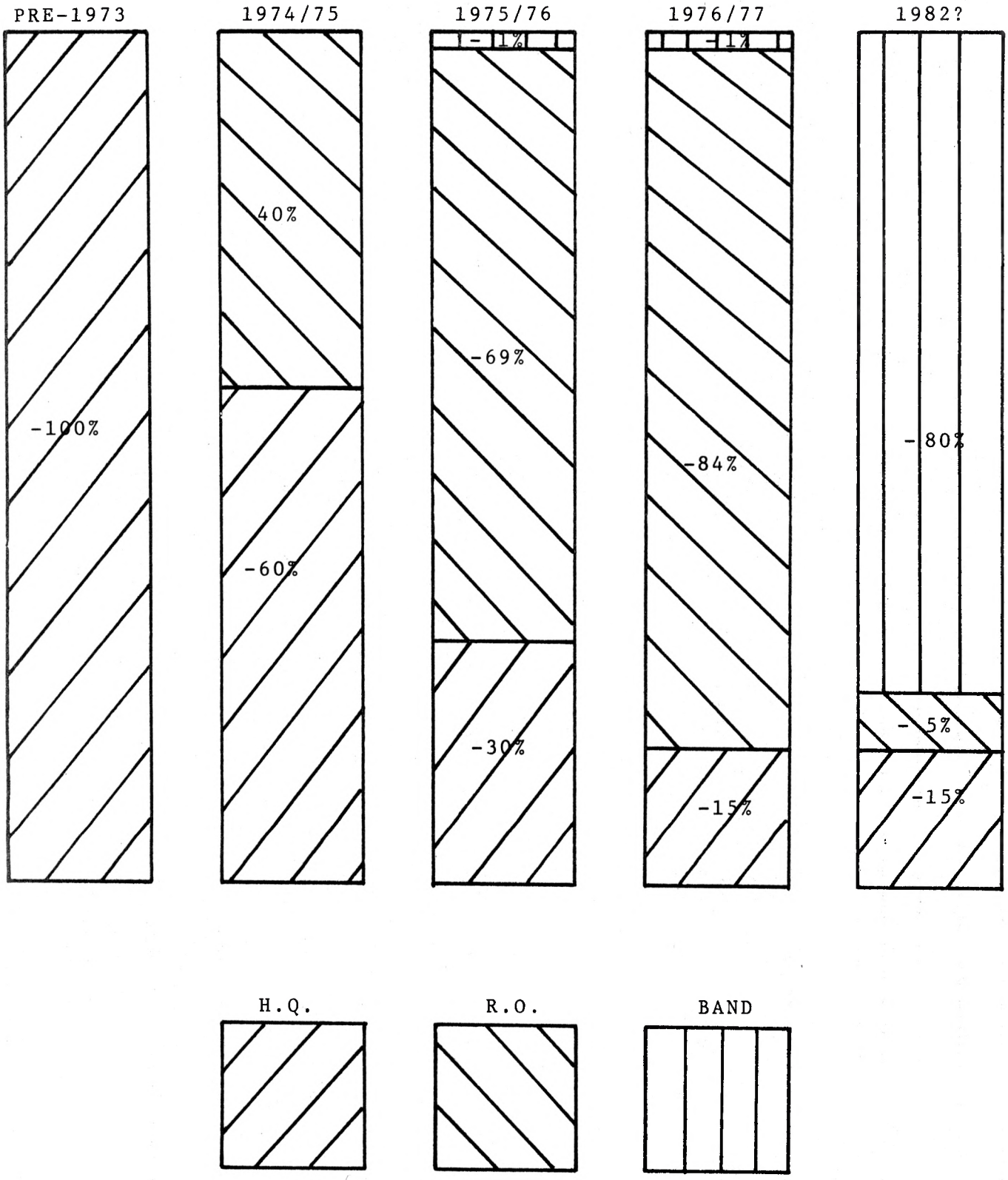
Are the initiatives in line with expectations of the particular Band or Bands of Indians who will be affected? Is the Division's understanding and thrust of endeavour directed toward achievement of those expectations or are they directed toward an administrative expediency?

80% of Ind estates are still run by the Department's employees, although since Sept. 1976 Ind people themselves can do that.

Indians save cost of administration if handled by the Department's employees (suggested that Dept takes care of backpay fees)

Ind. Bros. control of outlining?

who pays? no funds - extra for 2-5 yrs



PROGRESS OF DECENTRALIZATION

MINERALS

OIL AND GAS - MINING

ROLE

To provide mineral-oriented advice and assistance to Indian and Inuit bands, individuals, and associations; offices at Headquarters, Regional and District levels; other governmental agencies at all levels; and to industrial and other private agencies.

To plan, organize, and manage a national mineral program for the Indian and Inuit peoples by implementing the recommendations of the "Colborne Report" within the identified functional divisions of:

- Mineral Development
- Mineral Management
- Training and Employment
- Policy, Planning, and Research, and
- Program Administration

To provide functional direction to the program on a sectorial basis by mineral categories:

for oil, gas, and other fuels, by the Oil and Gas Division in Calgary,

for metallic, non-metallic, and structural minerals, by the Mining Division in Toronto.

To provide operational direction to the program on a regional basis by:

the Oil and Gas Division, for British Columbia, Alberta, Saskatchewan, and the Territories, and

the Mining Division, for Manitoba, Ontario, Quebec, and the Maritimes.

OBJECTIVES

To develop, in consultation with Indian and Inuit councils and associations; Departmental offices; other governmental agencies at all levels; and industrial agencies and associations, a most favorable environment for the improvement of the native position and role within the mineral sector of the national economy.

To identify, promote, and develop, in consultation with the Indian and Inuit owners, their mineral resources in a manner that will provide maximal benefit as determined by them from revenues, employment, and involvement.

To identify, administer, and manage the sub-surface mineral component of statutory Indian and Inuit lands.

To participate, with related offices of this Department, Canada Manpower, and related governmental, industrial, and educational agencies, in the provision of mineral-oriented training, employment, and counselling services to Indian and Inuit people.

FOCUS OF ACTIVITIES AND PRIORITIES

To deal on a "priority of crisis" basis with the "here and now" problems as they arise from client demand and from statutory and contractual requirements in on-going established activities.

To apply resources when available to dealing with those backlogged items of business which are considered to be most potentially explosive and so reducing the incidence of "crises".

To initiate and accelerate the provision of the mineral program's services to "have not" bands.

To develop and promulgate the documentary and operational procedures as required to implement and enforce the new Indian Oil and Gas Regulations.

LONG-TERM INITIATIVES

To identify the total mineral potential of all Indian reserves and surrendered lands and other native lands across Canada so as to describe the mineral component of comprehensive profiles for native peoples.

To establish and maintain a current geological and engineering data base to support functional activities.

To establish and maintain a record of the sub-surface mineral component of land entitlement.

To negotiate with provincial governments for the amendment or removal of those provisions in their acts, regulations, measures, and agreements which restrict, prevent, or unreasonably tax mineral development on Indian lands.

ISSUES

Some provincial governments do not consider that mineral rights underlying Indian lands were ever set aside for the exclusive benefit of the Indians holding surface title. The 1924 Indian Land Agreement with Ontario is still being amended to provide for full Indian benefit from mineral development. The British Columbia Indian Reserves Minerals Resources Act is so restrictive as to be virtually unworkable. There is no inter-governmental agreement with Quebec governing Indian mineral rights.

Policies, regulations and laws, especially in taxation, of some provincial and federal governmental agencies inhibit or unfairly impose on the development of Indian mineral resources.

Policy and scope have never been clearly defined for the mineral program, especially with respect to off-reserve responsibilities and activities.

The legal restraints have not been clearly defined in the interfacial area between the authority/autonomy of Band Councils and the statutory responsibility of the Minister.

LAND ADVISORY SERVICES

ROLE

Land Advisory Services provides technical, administrative and advisory services on management of reserve, surrendered and Crown lands to management at Headquarters, Regional Directors General, Bands, etc.

OBJECTIVES

Develop policies and programs aimed at assisting Bands to assume management of their lands.

Provide senior advisory and technical services in land matters to senior management at Headquarters, Regional Directors General, Bands, Band Councils, and Indian organizations with respect to Indian reserves and surrendered lands.

FOCUS OF ACTIVITIES AND PRIORITIES

During the last four years, Land Advisory Services participated in the process of decentralization of the land management function to the Regions, assisted in the development of tools necessary for bringing about decentralization and assisted Bands in their efforts to achieve management of their lands.

Continue to provide this service till such time the powers under the Indian Act are eventually transferred to the Bands and expertise is developed at the Regional or local level.

Support decentralization by assisting the Regions in the exercise of the delegated authority and thereby provide models to the Bands to assume management and control of the land management function.

LONG TERM INITIATIVES

Develop and perfect tools necessary for the management of reserve and surrendered lands on an ongoing basis.

Assist Regions and Bands to develop expertise to deal with land problems through training, consultation and visits to the Regions and Bands.

ISSUES

How far can we reconcile a Band demand or lack of it with Departmental policies and legal constraints?

How far can we compromise our policies and programs with the role of the Department of Justice vis-à-vis the administration of the Act?

SECTION II

ELABORATION

MEMBERSHIP

ROLE

Maintenance of the Indian Register

Prior to 1948, there was no central record of the members of the various Indian bands and in the case of many bands, there was no accurate list of their members. The Joint Committee of the Senate and the House of Commons which investigated Indian Affairs in 1946, 1947 and 1948, recommended that action be taken to prepare and maintain lists so that only persons properly entitled should benefit from money voted by Parliament for Indians. The 1951 Indian Act provided for the establishment of an Indian Register and provisions for determining who were entitled to be registered as Indians. It also provided for a Registrar who would be in charge of the Indian Register and for a procedure for appealing the Registrar's decisions to the courts. The Indian Register is maintained at Headquarters through material provided by field offices. A duplicate of the Indian Register for each band is maintained by the responsible field office.

Administration of the Enfranchisement Process

Sections 109-113 of the Indian Act make provision for enfranchisement of Indians by voluntary application, marriage of an Indian woman to a non-Indian, and by voluntary application of an entire band. Individuals are entitled to a share of band funds and twenty years annuity (if applicable) when they are enfranchised.

Administration of Funds for Minors

The funds of enfranchised children and those adopted by non-Indians are held in trust and paid to the children on application at any time after they come of age. Withdrawal before the age of 21 may be permitted in exceptional circumstances where it can be shown that the interests of the child will suffer if assistance from his savings account is not provided.

Amalgamation and Division of Indian Bands

Section 17 of the Indian Act makes provision for the Minister to amalgamate bands and constitute new bands from existing bands. The role of the Membership Division really consists of providing guidance to Regional or District Offices in procedures which will assure that the groups concerned are fully involved in the definition of their problems and in their resolution. They must also assure that the solutions are equitable, consistent with the legal framework in which they must operate, and are in accordance with the wishes of the people concerned.

Collection and Coding of Population
Data for Computer Application

All information in the Indian Register is coded and fed into the computer for the production of various types of listings and demographic data. This information is utilized in program planning and evaluation involving housing, education, health, socio-economic studies, production of treaty paylists, and identification in day to day administration.

OBJECTIVES

Transfer of Responsibilities for Field Administration of Membership Functions from District Offices to Indian Bands

This program was initiated in 1970 in response to a number of requests from Indian bands to take over responsibility for membership administration. The procedures in effect today for bands wishing to take over responsibility for local administration of membership from District Offices are essentially the same as those developed in 1970. When a request is received, a representative of the Membership Division meets with the Band Council to review our respective legal and administrative responsibilities to ensure they are fully understood and acceptable to the band. This is also important from the point of view of the band administration staff who are responsible to the band council but who will be required to carry out instructions from the Registrar with respect to membership. It is also essential that the Council be given an opportunity to discuss costs of administering the program. If there is dissatisfaction with this aspect, it may be desirable to delay the transfer of responsibilities until the District or Regional Office, which is responsible for financing the program, is in a position to make appropriate arrangements. This is the primary reason for having a representative of the District or Regional Office present at these meetings so that questions of this nature can be dealt with on the spot.

Another important prerequisite to transferring District responsibilities to bands is the training of the band staff. They cannot be expected to cope with the wide variety of subject matter and the rather complex and exacting procedures connected with divorces, legitimations, adoptions, protests, enfranchisements, residence surveys and other related activities without appropriate training. To meet this need, a training program was developed and courses of two weeks duration are conducted in Ottawa providing concentrated on-the-job training in all aspects of membership.

With the transfer of membership functions from Districts to bands, there is no reduction of delegated authority and responsibility. It is emphasized that the bands have all the responsibilities and authority relating to membership matters formerly held by District Managers. A list of these responsibilities is provided in Appendix "A". Communication is then between the bands and Ottawa without reference to District Offices. The reasons for this should be clear -- the duplicates of the Indian Register are maintained by the bands so the District Offices are unable to contribute significantly. Also, it is important that bands feel a high degree of responsibility which may not be achieved if they retain their dependence on departmental field offices.

Transfer of Responsibility for Amalgamation, Division and Constitution of Bands to Regions

The procedures for amalgamation and division of bands have been developed and tested over the past ten years, and have proven to be quite effective. It normally involves agreement by the Indian groups on the disposition of land assets, band funds and people. Once an acceptable agreement has been reached by the Indians, an order is prepared and recommended for signature by the Minister. There is no statutory impediment to delegating this responsibility to the Regions. Presumably, the Minister's authority under Section 17 could be delegated and eliminate the necessity of any reference with Ottawa. However, this is a requirement that may not be felt in some Regions for years at a time, and it may be difficult to develop and sustain an expertise at the Regional level.

Delegation of the Responsibility for Monitoring the Effectiveness of Field Administration of Membership Functions to Regions

A system has been developed to provide a means of determining if acceptable levels of activity are being generated by field offices to properly maintain Indian Registers for various bands across the country. On the assumption that a given population size should generate approximately the same number of changes in the Indian Register to keep it properly updated, an acceptable level of activity can be established and related to the activity for each region, district and band.

Attached as Appendix "B" is a set of charts indicating the number of changes in the Indian Register per 100 population and providing a comparison of the activity generated by region, district and band, and also with the National average. These charts should assist field offices in identifying weaknesses in their membership administration. For example, where the level generated is below the national level indicated on the chart, it is considered insufficient to properly maintain the Indian Register. The possible exception is where the band population is very small.

Just what action can be taken to increase the level of activity will depend upon the circumstances. Low activity may result from a lack of communication with the various sources of information and documentation which must be continuously developed and maintained. This, in turn, may be due to insufficient resources being allocated to membership administration. Whatever the cause, it should be identified as soon as possible and appropriate action taken to correct the situation. This function can probably best be done by the Region since it often involves resource allocation.

PRESENT STATUS

Maintenance of the Indian Register

There has been a constant increase in the number of outstanding enquiries related to the entitlement of individuals to be registered as Indians. During the past year, the number of outstanding pieces of correspondence has increased from under 600 to 1070. Some of this correspondence has been outstanding up to eighteen months. It is impossible to justify delays of this nature to the public or to avoid harsh criticism of non-performance. It is a situation that should be corrected if at all possible. (Graph 1.)

Transfer of Responsiblities for Field Administration of Membership Functions from District Offices to Indian Bands

As of December 31, 1976, there were 85 bands responsible for the local administration of their membership, representing a registered Indian population of nearly 78,000. This includes approximately 15% of the total number of bands and 27% of the total registered population. (Graph 2.) There could be a problem of financing in this area, since it appears that Regions have not identified funds in their budgets to cover the bands' administration costs.

Administration of the Enfranchisement Process

The Committee of the Privy Council has discontinued processing submissions for the enfranchisement of Indian women who have married non-Indians. This has the effect of negating the requirement of preparing submissions to the Governor-in-Council except where applications for enfranchisement are involved. However, much of the same supporting documentation is still required to verify the information relating to marriages to non-Indians before payments of shares of band funds and annuities are made.

Section 12(1)(a)(iv) of the Indian Act

No action has yet been taken to implement Section 12(1)(a)(iv) of the Indian Act which came into affect on September 4, 1972. It is expected that implementation of this Section will make significant demands upon our resources.

CURRENT ACTIVITIES

Training of Field Staff

A comprehensive training program for Band and District staff responsible for local administration of Membership is being conducted in Ottawa by this Division. Approximately 70% of the available training time is now devoted to the training of replacement band staff.

James Bay Agreement

Considerable time and effort is being devoted to the enrollment process under the James Bay Agreement.

Liaison with Provincial Authorities

Liaison is continuing with Provincial Welfare Departments, Directors of Vital Statistics and adoption agencies to secure the necessary documentation to protect the rights of adopted Indian children and resolve other matters of entitlement.

Investigation and Research

Investigations and research are continuing to determine the entitlement of individuals claiming Indian status and of others whose membership has been protested.

Membership Listings and Treaty Paylists

Membership listings and treaty paylists are produced from the computer and distributed to Regional and District Offices, bands and to organizations and individuals providing services to Indians.

Survey

An annual survey is conducted to determine the residence of Registered Indians for computer application.

FOCUS OF ACTIVITIES AND PRIORITIES

Decentralizing Membership Administration from Headquarters to Regions

This will be examined in the context of costs, effectiveness and possible requirement for changes in the Indian Act. It may be remembered, for example, that the position of the Registrar and his function originated in the present Indian Act and were designed to bring order out of the chaos that had developed from an inadequate mechanism for applying the criteria as it existed in law. In effect, there was no centralized activity in regard to the determination of membership. Field staff were largely responsible for applying the existing criteria according to their understanding of it. The products of this were a lack of up-to-date band lists, no central record of band membership, admittance to band membership of persons lacking entitlement to Indian status and the reverse of this situation -- a lack of concern for individual rights and the rights of bands.

As for the Registrar's function, an amended Act could provide for a series of Registrars, one for each Region, but they would be reverting to the decentralization which occasioned problems in the past and would leave the door open to the lack of uniform application of the criteria to the possibility of individual and band rights not being adequately protected and to local pressure being exerted upon Registrars to perform their functions in certain ways. However, in band membership work the question of alternatives, policies, etc., does not enter the picture. The Registrar simply applies the law as it appears in the statute or may be interpreted by the law officers of the Crown. He has the responsibility to make the decision subject to the normal processes of the law in respect to appeals, and he is not subject to direction from anyone up to, and including, the Minister.

It might be possible, however, to think in terms of having sub-registrars in the field, one for each Region. Decisions would be subject to automatic review by the Registrar and would not be final until approved by him. His decision on the review, whether approval or rejection, would be the decision that is appealable to the courts. The advantages, which are more apparent than real, would be to place the responsibility for initiating action closer to the local level and yet retain a control which would ensure uniform application of the law and the maintenance of an up-to-date master record of band membership. In effect, this really is what is taking place today at the district and band level.

Production of Population Data for
Program Planning and Review

The computer application of membership data is possibly one of the most highly developed in the Indian-Eskimo Affairs Program. It is utilized for the production of Indian demographic material, treaty paylists, various types of listings by band, district, region and national, and for many other uses to facilitate the planning and administration of programs for Indians by this Department and other government departments and agencies. This development has been achieved largely because the present system of centralized control of membership has made it possible to respond in a co-ordinated manner to the needs of the various programs of this Department and other organizations administering programs that relate to the Indian people. However, the usefulness of this material has reduced severely in recent years because of the delays incurred by the Membership Division in processing and coding the information for computer application. A concerted effort will be made to correct this unfortunate situation.

Establishing Entitlement of Natives of Labrador and Newfoundland

The native organizations of Labrador and Newfoundland claim there are a large number of people in the communities of Northwest River, Davis Inlet and Conne River who are entitled to be registered as Indians under the Indian Act. Efforts are being made to train personnel from these communities to carry out investigations to assist people in establishing their entitlement.

LONG TERM INITIATIVES

To explore the feasibility of implementing a computerized system that will provide instantaneous access to the Indian Register for use by Regional and District offices. It is believed that such a system will facilitate the day-to-day administration of various programs.

ISSUES

The significance of delays in membership administration for individuals, bands and for various programs and services developed for Indians is difficult to assess. For some it can best be understood by those who are forced to give up their jobs in the United States for the lack of a work visa and must move their families back to Canada. For others, it could be expressed by their frustration at losing out on the cash distributions they would otherwise receive from oil rich bands. Still others are unable to benefit from special tax concessions, housing and educational and health assistance for themselves and their families while waiting to be registered as Indians. For these people, and many more, it amounts to a denial of their rights and fosters bitterness and resentment.

The Department's day-to-day administration is also seriously affected by questions of entitlement. The administration of estates, land titles, leases, loans, housing, welfare and educational assistance are held up when questions of entitlement are involved.

An up-to-date Indian Register is also important as a source of statistical information used in planning programs. There is a need for projections of population for planning economic and social development, both public and private. There is also a requirement for demographic information in planning school facilities, recreational and social services, welfare, housing and health services.

This question also has serious implications for our present policy of transferring responsibilities for field administration of membership functions to bands. If the Department cannot properly maintain an Indian Register, for which there is a statutory responsiblity, the bands should probably not be involved in our failure or their staff in the criticism that goes with it.

APPENDIX "A"

Responsibilities of Bands Administering the Membership Program

1. Provide monthly reports of all events relating to membership registration to the Registrar and record these events in the duplicate register maintained by the band.

2. Obtain and examine documentation to verify events related to band membership including births, deaths, marriages, divorces, legitimations and other events and forward appropriate documentation to support recommended amendments to the Indian Register.

3. Develop and maintain communications with the Provincial Registrar of Vital Statistics, local Deputy Registrars of Vital Statistics, church officials, hospitals, district and other band offices and individuals to ensure that all events concerning the Indian population are reflected in the Indian Register.

4. Determine reasons for inconsistencies in the field copy of the Indian Register and computerized semi-annual band lists provided by Ottawa.

5. Produce Band Membership Reports for perusal by band members.

6. Review claims to Indian status and band membership and conduct research and investigations to obtain relevant information and documentation to determine relationships of individuals.

7. Prepare reports and make recommendations to the Registrar concerning entitlement of individuals to Indian status and band membership.

8. Advise band members and other interested parties concerning the application of the Indian Act and other legislation in determining the entitlement of individuals to Indian status and band membership and also of the policies and procedures with regard to protests, divorces (both Canadian and foreign), legitimations, changes of name, adoptions, transfers between bands and all other matters affecting band membership.

9. Advise band members and interested individuals and their legal representatives concerning legislation, policies and procedures relating to enfranchisement.

10. Review Applications for Enfranchisement to ensure that they contain all appropriate information including family relationships, custody of children, employment history and income.

11. Make recommendations concerning enfranchisements on the basis of local information as it applies to eligibility in accordance with the provisions of the Indian Act.

12. Advise individuals and their legal representatives concerning the legislation, policies and procedures relating to the administration of the funds of enfranchised persons.

13. Maintain an accurate filing system for subjects relating to band membership in accordance with the Departmental filing system since they are an integral part of the Indian Register.

14. Carry out appropriate procedures for the issuing of Certificates of Indian Status and maintain a Certificate Register for the band.

15. Collect appropriate statistical data concerning band population.

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

APPENDIX "B"

MEMBERSHIP
ACTIVITY ASSESSMENT CHARTS

Membership Division
Lands and Membership Branch
Ottawa, Ontario

LEGEND

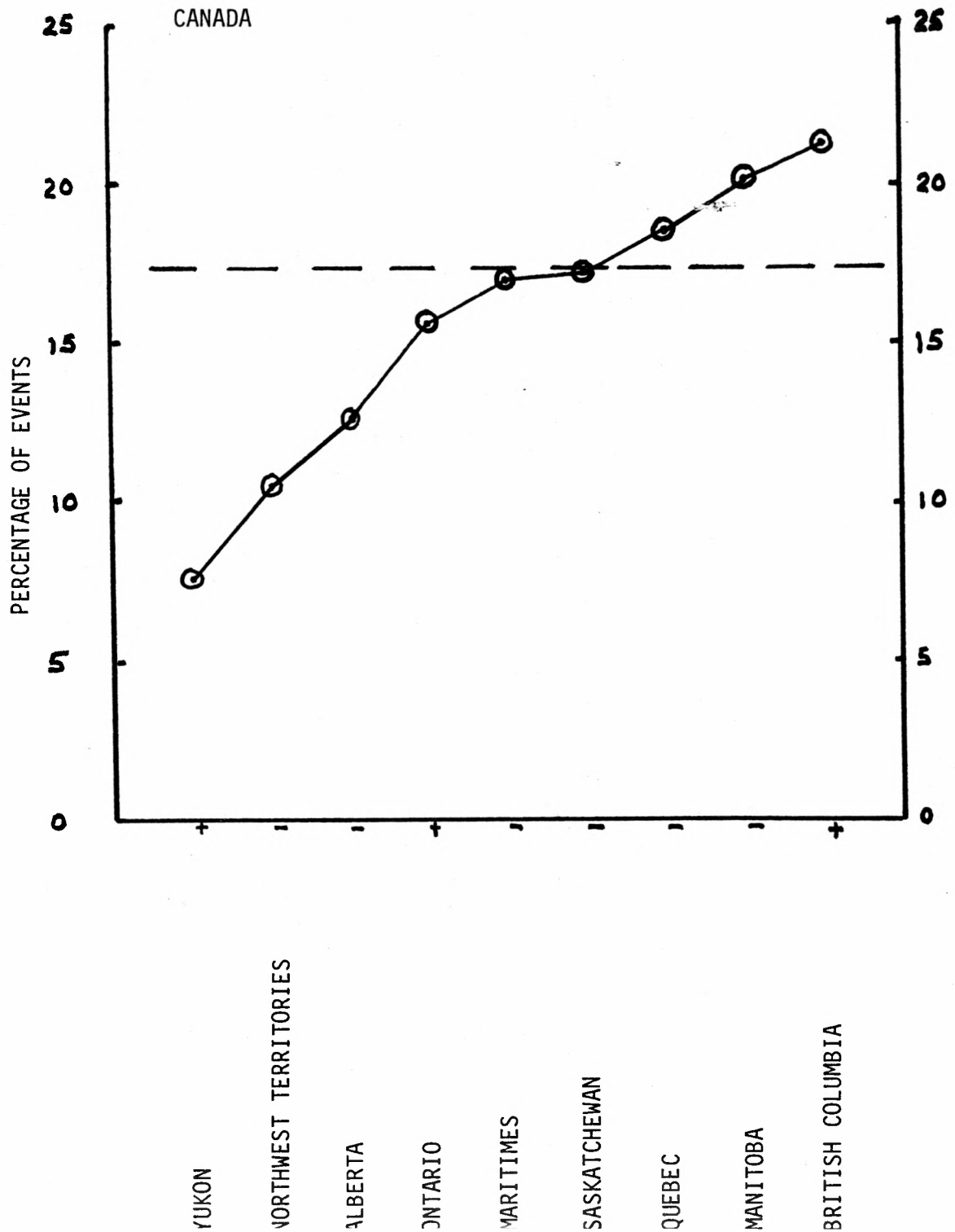
- : LESS THAN 30% OFF RESERVE

+ : MORE THAN 30% OFF RESERVE

UNDERLINING : POPULATION LESS THAN 100

- - - : NATIONAL AVERAGE

SCALE : 5 % PER INCH



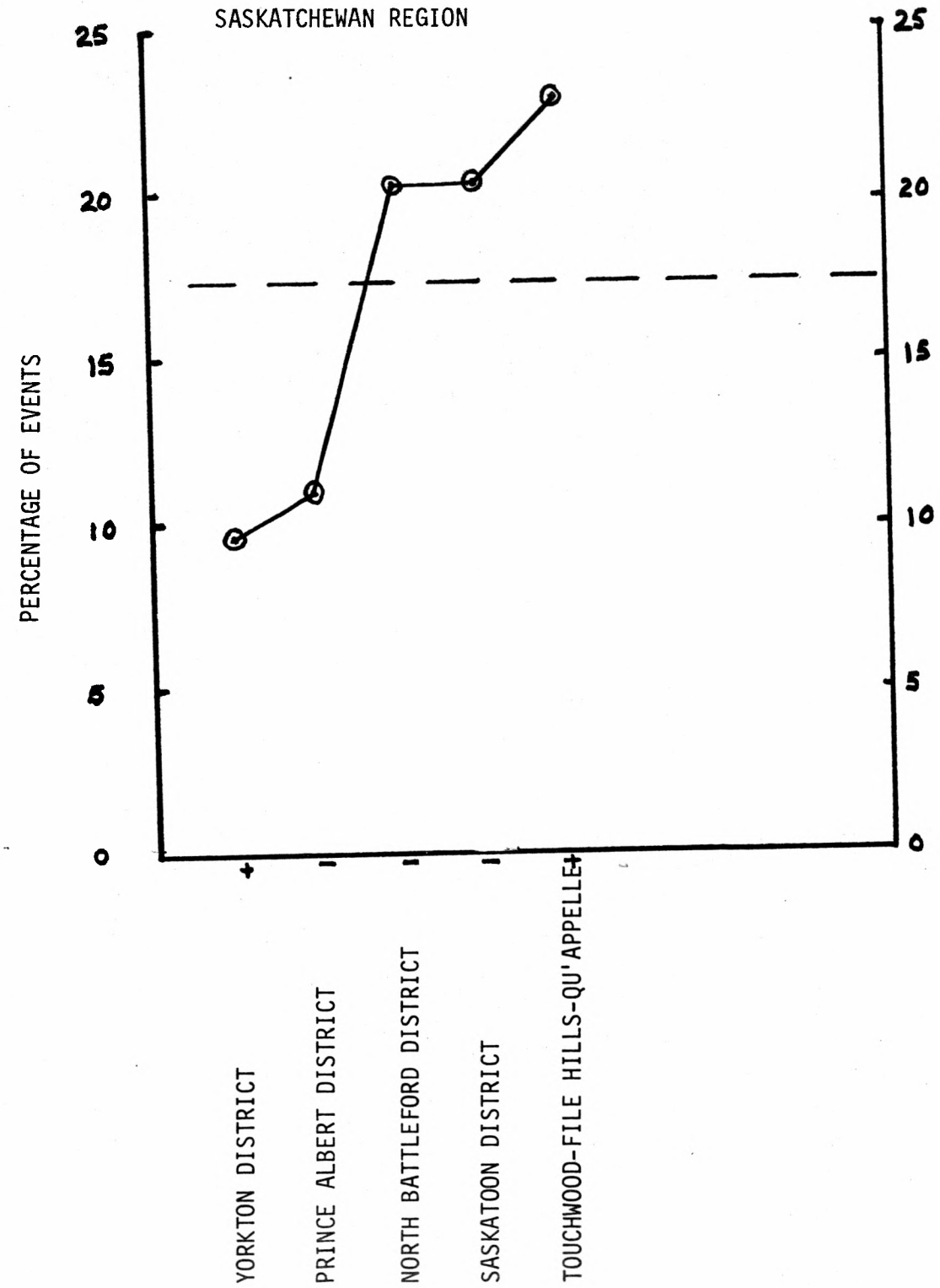
LEGEND

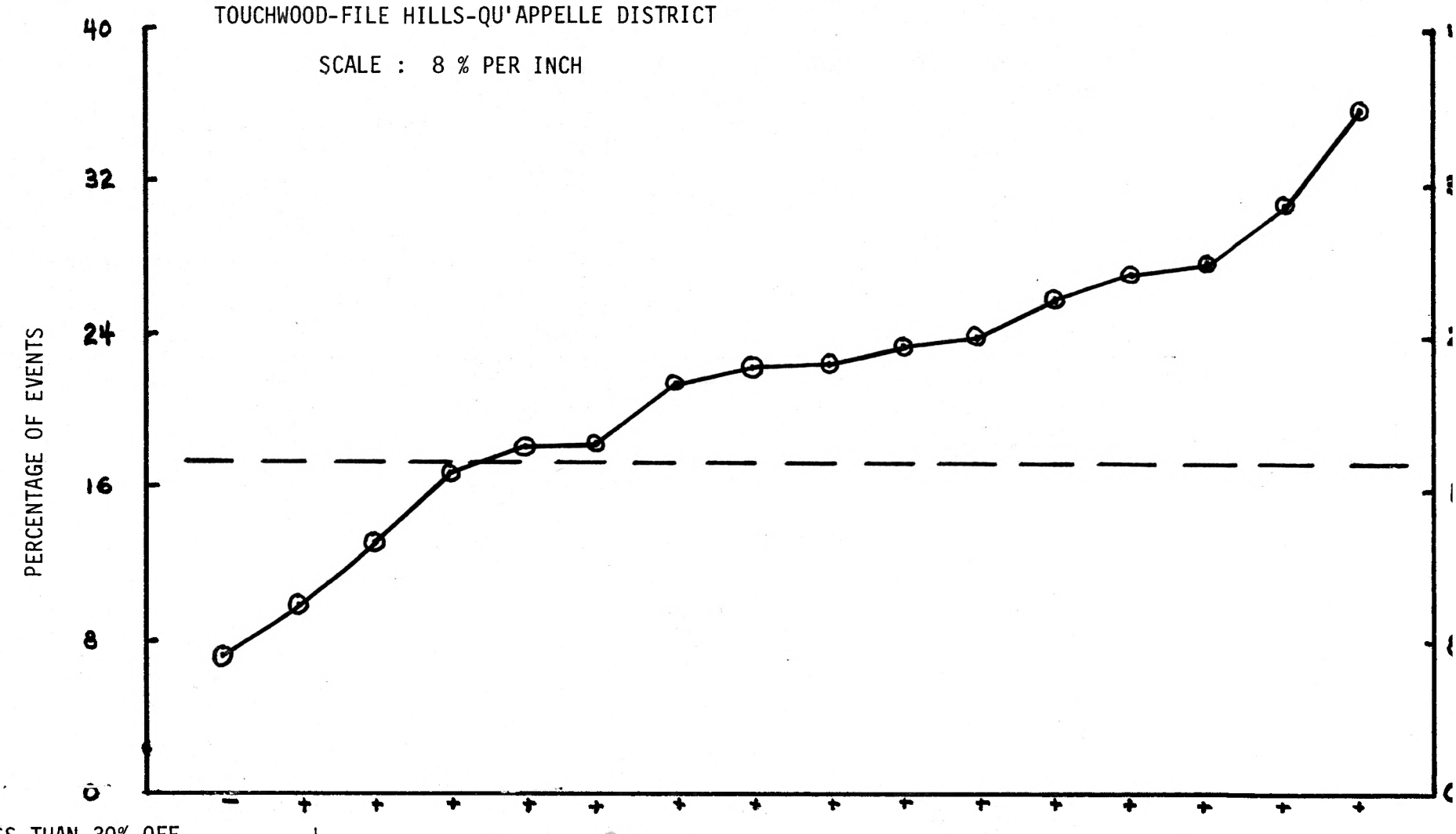
- : LESS THAN 30% OFF RESERVE

+ : MORE THAN 30% OFF RESERVE

- - - : NATIONAL AVERAGE

SCALE : 5 % PER INCH





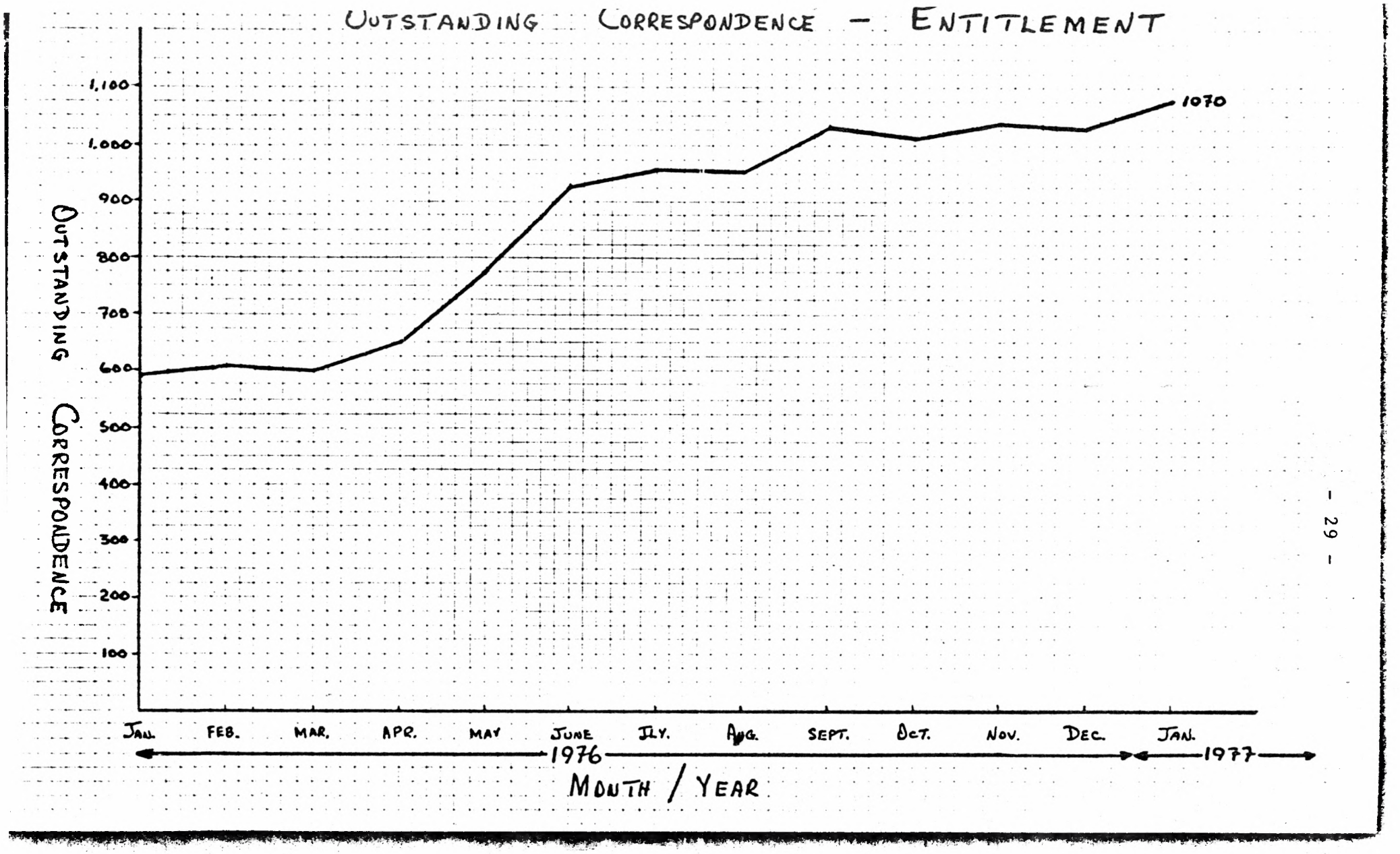
LEGEND

- : LESS THAN 30% OFF RESERVE

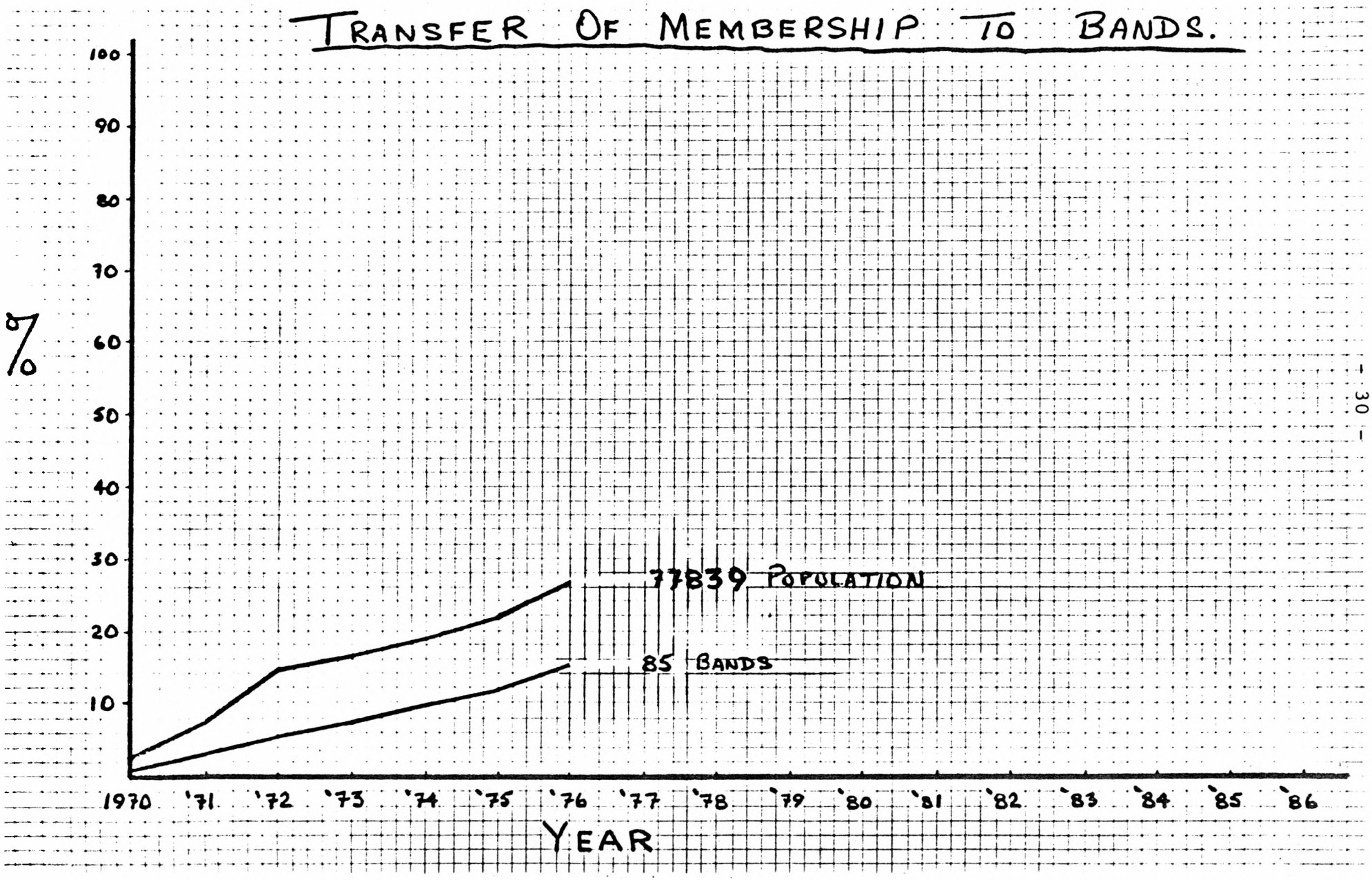
+ : MORE THAN 30% OFF RESERVE

UNDERLINING : POPULATION LESS THAN 100

- - - : NATIONAL AVERAGE


OUTSTANDING CORRESPONDENCE - ENTITLEMENT
OUTSTANDING CORRESPONDENCE
1,100
1,000
900
800
700
600
500
400
300
200
100
1070
JAN.
FEB.
MAR.
APR.
MAY
JUNE
JLY.
AUG.
SEPT.
OCT.
NOV.
DEC.
JAN.
1976
1977
MONTH / YEAR

GRAPH 1


TRANSFER OF MEMBERSHIP TO BANDS.
%
100
90
80
70
60
50
40
30
20
10
77839 POPULATION
85 BANDS
1970
'71
'72
'73
'74
'75
'76
'77
'78
'79
'80
'81
'82
'83
'84
'85
'86
YEAR

GRAPH 2

LANDS ADMINISTRATION

ROLE

Historically and traditionally the manipulation and exploitation of land has always had two aspects: administration and management. Land administration, in Canada, is the task and role of the Provincial governments, setting land legislation and providing protective services. Land management on the other hand, is the prerogative of the proprietor, acting as he wills within the frameworks set out by government.

Indian Lands, however, are different. They are Crown Lands (generally) reserved for the use and benefit of the Indian people. Thus the Government of Canada, to date, has been forced to carry out the task of administration (government) while trying to manage (as real proprietor) to the ultimate and continuing benefit of the Indians. The practice, at the divisional level, is not difficult, but it becomes a monstrous problem of misunderstanding and maladministration, both historically and currently, once removed from the central responsibility.

Land Administration Division, containing elements charged with land research, land surveys and the land registry, tries, in the absence of detailed and specific legislation, to act in respect to Indian Lands as the Agency for "government".

OBJECTIVES

To continue a program to identify lawful interest in Indian lands by investigating, clarifying and recommending resolution of:

Entitlements of Indian Bands under Treaty or other agreement.

Unfilfilled obligations under Treaty or agreement.

As yet unidentified entitlements.

To respond to questions, issues, claims and disputes referred from Regions, Indian Associations, Indian Bands and the Office of Native Claims by providing research services, information and, in some cases, recommendations.

To continue to identify residual Indian interests in unsold surrendered lands.

(While the total amount of such interest is unknown the number of parcels identified is recorded).

To continue the investigation of the feasibility of photogrametric means to obtain useable surveys of land.

To study and resolve the difficulties now constraining the transfer to Regions of management and administration of all legal surveys of land.

To develop a quality control system for decentralized surveys.

To investigate the problem of the effect on legal rights caused by changes of boundaries of Indian reserves (accretions, erosions, etc.) and to propose a general policy in this regard.

To plan, staff and provide an internal service of inspection and verification of land descriptions to be used in land transactions.

To exercise financial control of all entitlement surveys, and to devise procedures to transfer that control to regions.

To continue to increase performance in the provision of registiations of interests.

To devise, implement and monitor a system to increase performance in the areas of:

Delivery of basic land data base information to field locations;

Delivery of specific data and documentation to applicants;

Reduction of time-in-transit for all queries addressed to the Land Registry.

To explore, identify and develop methods for the establishment of a statutory base for the existing administrative land registry system.

To provide assistance to the Department of Justice in drafting the land provisions of the Federal legislation necessary to put the James Bay Agreement into effect and the Orders-in-Council necessary for receiving Provincial Crown Land to be set aside as reserves.

To provide support, if necessary, to the future negotiations involving Federal administration of land for the Maskapi Indians of Schefferville.

To observe and contribute, to a limited extent, in the finalization of the Inuit land regime and land selections. Administration and cost-sharing of survey may be necessary in the event that Inuit lands come under Federal administration.

To ensure the continuation or records of lease-hold and other existing interests within the territory covered by the James Bay Agreement.

To devise interim methods of recording James Bay lands and interests therein.

To assist those charged with the responsibility by devising systems, methods and procedures for funding and managing the legal survey of the lands involved.

To advise those so charged upon the complexities associated with arranging for legal surveys and to review completed work for acceptability.

To investigate questions of individual entitlement of Indians to interests in lands in Indian Reserves.

To provide a service of land information and certification in response to correspondence received from legal firms, Band legal counsel and Regional staffs.

To maintain all existing records within the Indian Land Registry and verify the validity and reliability of each entry as well as edit the records to present a true chronological land history in uniform language.

To administer the management needs of the Division.

PRESENT STATUS

In the last ten years, as a result of careful and detailed research and a nationwide and continuing program of legal surveys in clarification of entitlements, an effective land registry has been developed and maintained. Research has been primarily the reaction to questions and problems raised in the management of Indian Lands rather than a program of identification of land parcels. Surveys work is also based upon field requirements and, although basically programmed, stimulated and oriented to field needs rather than to the clarification of problems arising out of a central program.

By nature and by design the Land Registry is a continuing service not only to the Department and to the Indian people, but also to the public. Every transaction affecting Indian lands which has been entered into since 1970 is of record in the Indian Land Registry, which includes, at worst, a boundary plan of most reserves and detailed plans of the most active reserves.

CURRENT ACTIVITIES

Because documentation created 25, or more, years ago (and not yet included in the Indian Land Registry) are, for the most part, located in various repositories in the Ottawa area (Public Archives, the Records Center, Departmental Records, etc.) most land questions, raised in field locations and locally unanswerable, are referred to Lands Administration

Division. Similarly, background research in resolution of land claims, provincial enquiries in the interests of taxation revenue, utility companies enquiries relative to encroachment on possible Indian rights or interests, are also referred to this element. These search and research activities occupy over three-quarters of available skilled resources. The other quarter of the investigative capacity of the Division, is normally engaged in studies initiated to meet the needs of senior management, other Branch elements and finally, a projected program to create exhaustive land histories of each reserve.

Another element of the division is engaged full-time in verification of the records of the Indian Land Registry and attempting to fill the gaps in the chains of entitlement, parcel by parcel. The surveys team, besides monitoring and controlling the national surveys annual program, is engaged in providing accurate descriptions, both verbal and graphic, of land parcels, illustrating difficult land problems and creating basic property maps.

The Indian Land Registry continues to register all transactions executed on reserve and surrendered lands and, in response to an average of sixty enquiries each day, provides information and copies of documents and issues certificates.

FOCUS OF ACTIVITIES AND PRIORITIES

Continued attempts to program search and research programs and projects to meet basic needs rather than to respond to immediate demands, yet to maintain a capability to deal with such demands.

Improvement of registry services (quicker registration action, readier and more reliable access to information).

Verification of the records prior to 1970 and capture of missing documentation from 1763 to 1970.

Development of regulations to govern the registration and protection of interests in Indian Lands.

Completion of land histories for each reserve.

LONG TERM INITIATIVES

Land Administration as an element of government rather than a service to the Department, provides the human resources enabling the Minister to account to Parliament and to Canada for the responsibilities of the stewardship of Indian Lands. The Division would be hard put to provide such an accountability, except in a minority of instances. It is therefore a long-term task to develop and complete land histories for each reserve and for all surrendered lands.

While the service provided by the Indian Land Registry is more than adequate in quality and goes much further in effectiveness than was envisaged when the Indian Act was framed it lacks the ability to respond to changing physical conditions, such as the provision of accurate, current information on short notice and even shorter delivery to distant enquiries. To the end that this aspect of the service shall be improved by modern systems and facilities, a project to enhance the services is continuing.

ISSUES

In order that goals and objectives, initiatives and, more basically, the role of the Division can be pursued and achieved, the question of divisional orientation (which has changed over ten years from a question-answering service to the "government" land element) must be clearly understood by all and must be accepted and supported by all. From this statement certain other questions arise, all of which require answers of a definite and lasting nature, and all of which, whatever the answer may be, require full acceptance and full support.

The questions, briefly are:

> Given that the divisional role is adequately and properly defined, are the goals and objectives, and the initiatives and activities now in hand, those desired by the Department?
>
> If the objectives and initiatives are adequately and properly followed, what is the acceptable time-frame for completion of the basic ground-work, and will division efforts to reduce intrusions into the project resources be resisted?
>
> While increased (in excess of 10%) in human resources are not envisaged for the continuance of the present role and initiatives, present load estimates preclude any reduction in human resource commitments for at least five years. Because this is a trend diametrically opposed to the present concern for reduction of staff and decentralization, can such reduction and deployment be delayed until the central task is complete?

there are
15 mill acres of
surrendered land

PROPERTY AND ESTATE MANAGEMENT

ROLE

The Property and Estate Management Division under many differing designations and directional thrusts over many years, has managed the proprietary interests of Indian Bands and individual Indians in lands set apart for the use and benefit of Indians as well as the estates of deceased, mentally incompetent, and infant Indians, in accordance with the provisions of the Statute, its associated Regulations and Departmental Policies promulgated from time to time. In earlier years the primary goal was to manage property and estates of Indian people in a manner designed to provide for their eventual integration into the main stream of Canadian society. Generally speaking the goal remains essentially the same today as it was then, with the exception that instead of non-Indian administrators assuming the responsibility for deciding "how" the goal was to be achieved, the posture is now that of encouraging Indian people to become involved in deciding how the goal is to be achieved, within the constraints imposed by Statutory authority.

OBJECTIVES

To design and develop with Indian people, national policies and administrative procedures with respect to the management of Indian lands to:

aid in the realization of the social aspirations of Indian communities; and

increase employment opportunities and economic benefits to Indian communities.

To develop with Indian people, national policies and administrative procedures with respect to the administration of the estates of deceased and mentally incompetent Indians for the purpose of increasing Indian family control over, or participation in the administration of the estates of deceased family members together with guardianship of the interests of mentally incompetent and/or minors.

To maintain the surrogate function for Indian estates and provide effective management of those proprietary and usufructuary interests in Indian lands, which, in law, cannot be decentralized or turned over to Indian Bands under existing legislation.

PRESENT STATUS

Except for dispositions of Indian interests in land for industrial or commercial uses for terms in excess of 25 years; the acquisition of parcels of private or public lands for addition to existing Indian

reserves or for the use and benefit of Indian people; and the function to enable other Federal Departments or Agencies to use and occupy parcels of Indian land for a variety of purposes over any term; authority and responsibility for management of proprietary interests in Indian lands was decentralized to Regional Offices during the early part of 1976. Decentralization of functions as set out above is seen to be the initial step toward eventual transfer of similar authority and responsibility to Indian Bands.

As a result of a Supreme Court judgement concerning Departmental management of matters testamentary in relation to Indian people, the Department adopted a less paternalistic posture than had been the case heretofore, to the extent that Indian and other next-of-kin and friends of deceased Indians are encouraged to undertake execution of Wills and administration of estates. Concurrent with the postural change and as a necessary adjunct to the performance of duties associated with the devolution of estates by non-Departmental people, authority and responsibility for performance of all estate functions except those which seem to be reserved specifically to the Minister and are generally referred to as the Surrogate function, was decentralized to all Regions in mid-summer of 1976.

The decentralization of land management and estate functions heretofore referred to, has pointed up the need to monitor the decentralized functions of Regional offices as a means of ensuring uniformity of service to Indian people. Having regard for this requirement, the Division set up a unit, designated as Estate and Land Documentation, Policy and Audit, and proceeded to staff it late in 1976. The function of this unit, when it is operating, will be to monitor performance against Statutory provisions, Regulations, Policy guidelines, and good conveyancing practise, and in addition to recommend the promulgation of new policies where indicated and/or the revision and updating of existing policies and procedures affecting the disposition of Indian proprietary interests in land and estates.

In January 1976, as a result of the on-going process for decentralization of Headquarters functions to Regions, in line with the recognition that such action is preliminary to eventual transfer of authority and responsibility to Indian Bands, this Division took action necessary to enable the management functions associated with lawful possession of parcels of land in Indian reserves by individual Indians, to be performed by Regional offices. Since decentralization of this function is not one which lends itself readily to a monitoring procedure in the fullest sense of the word, arrangements were made for Regions to report and comment upon the adequacy or otherwise of the policies and procedures associated with this aspect of Property Management by December 1, 1976. Regional comments have been received and are at present being analyzed to determine if remedial procedures are required and the extent of such remedial action where indicated.

The process of wide decentralization of authority and responsibility has not progressed without affect on the functions, morale, and efficiency of those Headquarters personnel who formerly carried out a

highly centralized and specialized property and estates management operation. A large number (in excess of 50%), sought employment in other divisions of the program, others left the Department altogether and went to other Departments or Agencies, others qualified for similar functions in Regional Offices, and still others simply retired from the Government service. The overall effect of this fluidity has had a demoralizing effect on those who remained to carry out the aspects of land and estate management which up to now have not been capable of decentralization due to statutory restraint and/or inability for various reasons of Regional Offices to fully perform the functions for which responsibility and authority has been decentralized. Furthermore, since those aspects of property and estate management which formerly comprised 70% of the workload performed by specialists at Headquarters, is now being performed at Regional Offices, those who remain have been obliged to widen their scope of expertise to include aspects of property and estate management outside of their former specialization. In consequence, all remaining duties have been re-defined and action to staff them is currently in process. The net effect of all the foregoing has been a backlog of uncompleted property and estate management transactions which, together with a diminishing input from Regions as more functions are undertaken and completed, should be capable of, and having regard for present staff numbers, being completed within a period of 18 months to 2 years.

CURRENT ACTIVITIES

Since the process of decentralization of Property Management functions to Regions has not progressed with an equal degree of completion in every Region, the Division is currently and in direct consultation with Regional property managers, evaluating the capability of each Region to undertake fully decentralized responsibility and authority for the balance of the functions presently being performed at Headquarters but which are not statutorily prevented. The most significant of these functions being the authority and responsibility to dispose of interests in Indian land for purposes of industrial and commercial development for terms in excess of 25 years. Where Regional Offices indicate they are equipped with expertise in this sensitive area of property management and their volume of activity in this warrants the acquisition of additional expertise, appropriate delegation of authority and responsibility together with stepped-up auditing activity from Headquarters auditing group, will be recommended. Similarly, in the area of estates management, an evaluation of Regional capability to adequately fulfill the estates advisory function to individual Indian or non-Indian executors and administrators, will be undertaken after adequate training of Regional and/or District estates advisers has been completed. In this connection, because of the unique statutory provisions of the Indian Act and its associated Estates Regulations, there is no source from which Regional Directors can draw their necessary supply of personnel equipped to fulfill the duties to be performed. Recognizing therefore, that the program has a responsibility to either provide expertise to advise Indian and other non-Departmental people in the

management of matters testamentary, or perform the function ourselves on their behalf, a training proposal is being implemented which will ensure that all Regional and District employees whose duties require an ability to administer estates or execute Wills are equipped with the knowledge essential to the performance of their duties. This proposal will entail a contract instructor going to each Region in turn to conduct a seminar-type of learning process for a period of at least 5 working days, approximately 50 working days in all.

The Operations Section of Property Management is currently bringing the backlog of land and estate transactions into currency as well as performing the on-going functions not yet decentralized to Regions or those functions which statutorily are not capable of decentralization - vis - submissions to the Governor-in-Council, and the Surrogate function of Estates management. As indicated earlier, there is reason to believe that within 18 months to 2 years this aspect of Headquarters involvement with purely operational functions should diminish to the point where 3 or 4 "generalized specialists" can perform all the workload. At the present the Operational Section is staffed as follows:

2 Senior Land and Estates Officers
7 Land and Estates Officers
6 Clerical assistance shared with the Policy and Audit Section

Staffing of the Policy and Audit Section has not been completed at the present moment, with the result that no current activity is in process. When staffed, it will consist of the following:

1 - Head Policy and Audit Section
2 - Senior Policy and Audit Officers
3 - Policy and Audit Officers together with research and clerical assistance shared in 6 clerical employees as noted above

FOCUS OF ACTIVITIES AND PRIORITIES

In respect of the evaluation of ability to undertake additional responsibilities pertaining to property management by Regions, it is expected that within 6 months, all permissible functions will be initiated and completed at the Regional Office level. The effect will be that the Operational Unit at Headquarters will be relieved of the most complex and time-consuming activity with the anticipated target of a partially redundant number of staff in a further 1 year or 18 months.

The training of estates management advisers in each Region will facilitate an assumption by Regional personnel of the largest portion of the estate management function -- except the Surrogate function. Performance of estate management functions by Regional and District personnel will create a source of future expertise capable of training or advising Indian Bands when their situation is such that transfer to a Band is feasible and desireable.

Following reclassification of duties performed in the Operations Section and performance by the incumbents of the prescribed duties a replenished source of expertise in Indian Property and Estates will be available to the program when, in 18 months to two years their positions become redundant as a result of complete decentralization to Regional authorities. The program is at present in a precarious position as a result of the unavailability of a source of supply of potential employees having suitable skills in this particular area of work.

LONG-TERM INITIATIVES

Over the period of the next five years it is planned that discussions and thrusts of endeavour will be initiated between Property and Estate Management at Headquarters, their counterparts at Regions, and interested representatives of Indian Bands to explore the particular aspects of Property and Estate Management which Bands expect will be transferred to their responsibility. In the first year, it is expected those Regions which have become proficient in exercising land management skills will initiate a dialogue with the leadership of Indian Bands in their Region with the view to identifying the specific functions of management which particular Bands want to undertake. In this connection the role of Property and Estate Management Division at Headquarters will be supportive rather than management oriented. Nevertheless, the Division must be retained in being until a fail-safe mechanism for transfer of functions to Bands has been put into effective operation. Furthermore, until all Indian Bands have indicated the land and estate management functions they expect to undertake, the Headquarters Division appears to present the only source from which an intensive Band training program can be staffed. Certainly, unless Regions undertake a massive in-house training programme to obtain an available nucleus of trained expertise they cannot undertake to provide instructors of the calibre required to train Band members in performing the functions they expect to undertake. It is expected that within 5 years most Bands will have identified their expectations and training programmes will have been put into operation.

ISSUES

The Indian Act presently provides authority for delegation of Ministerial functions to Bands or individual members of a Band, but does not provide, except in certain specific instances, for a transfer of responsibility to Bands.

The financial and human resources available to the Property and Estate Management are inadequate to provide the training required to effectively prepare all Indian Bands to undertake responsibility and authority for management of property and estate functions presently performed on their behalf by civil servants.

ELABORATION ON ISSUES

On an experimental pilot-project type basis, the Department delegated authority to one Band for performance of the majority of Property Management functions previously carried out on their behalf by civil servants. Essentially, the program in one way or another, provided funds for the payment of non-Band employees to carry out the work. Similarly, in any proposed delegation of authority that does not include a transfer of responsibility, there can be no meaningful achievement of the program's goal. Unless revision of the Statute can be undertaken so as to enable the delegation and transfer of authority and responsibility to Indian Bands, the program will always be in the position of having to double-bank every Indian Band with civil servants capable and able to perform those functions which the Band's either cannot or will not perform.

There are many Indian Bands and Indian organizations constantly belaboring the Indian Affairs program for its continued paternalistic stance in refusing to authorize delegation or transfer of Property and Estate functions to Bands. It would appear that most of these strident cries are not supported by well defined plans for the means whereby such a transfer could take place.

There are few Bands who have, within their own membership, an adequate source of expertise in the area of property and estates management to perform the highly skilled and technical functions necessary to effective management.

The program, over many years, has initiated training seminars etc. for Band members who wish to gain expertise in this sensitive field. Most of these endeavours have not resulted in preparing any particular Band to undertake any but the most routine functions. Furthermore, there are few Bands who have identified specifically the functions for which they wish to be trained. Recent experience in the very narrow, and insignificant area of estates management, indicates that 80% of Indian next-of-kin and friends of deceased Indians prefer that the program provide all the functions for devolution of Indian estates. Whether it is because they feel untrained or they feel better protected when the Department assumes this function, is not clear. But it is indicative that while some Indian leaders and representative groups seem to be asking for a complete transfer of management authority and responsibility, such may not be the case when the chips are down. Accordingly, unless individual Indian Bands have identified the functions they expect to perform and until a means of training members of their Band in the performance of these functions is achieved, progress toward achievement of the Program's goal will be slow and long drawn out. Unless the matter of identifying functions and training Indian people to perform them is resolved, the progress toward ultimate management of their own affairs by Indian people cannot move forward.

MINERALS (OIL AND GAS)

ROLE

History

The present Indian Minerals Program had its beginning in 1956 at a time when there was a high degree of drilling activity on Indian reserves. Since that time, the program has increased to include all forms of minerals across Canada.

In October 1976 a re-establishment and re-organization of existing facilities resulted in the establishment of two field offices (Calgary and Toronto) with the Division Managers delegated all the powers, duties and responsibilities within the Minerals Regulations except appeals to the Minister and approval of special royalty agreements. The two Divisions are unique in that they are Headquarters Divisions situated outside the National Capital. There are no minerals specialists in any of the Regions or Districts nor are there any in Policy, Planning and Research or Program Development at Headquarters.

There is a very active oil and gas program, principally in Alberta, which will generate over $300 in revenue for every dollar spent during the current fiscal year. For various reasons, the mining component of the program has not been very active; nevertheless there is a high potential for revenues and employment and in fact, there are a number of active projects and a number of others in the serious negotiation stage.

This program review, therefore, relates to a newly established organization where the roles, objectives and activities, etc. are in a state of flux. Much of the material presented herein is based on a proposed program making assumption that the roles and objectives will be approved and that the resources in staff and budget will be provided to accomplish them.

Definitions

A knowledge of the following definitions is believed essential to understanding of the operations under the Indian Minerals Program:

> Land - In minerals parlance 'land' means all the sub-surface component of the earth's crust necessary to extract the mineral in question together with the necessary surface rights required for the particular exploration, development, production, processing, transportation and sale of that mineral.
>
> Minerals - A mineral is a substance as defined in the act, regulation or policy concerned. A 'mineral' may be the mineral containing the desired element or may include the

waste rock containing the mineral. There is no unanimity in definitions even within a particular agency. For example, the regulations and acts of Northern Program of this Department have a number of totally different definitions of the word 'oil'. Minerals are grouped in various combinations, including:

Liquids, gases, solids
Oil & Gas, Metallics, Non-Metallics, Structurals
Fuels, Metallics, Non-Metallics
Consolidated and Unconsolidated

Mineral Sale - A sale of the right to explore for, develop, produce, treat, transport and sell. Transfer does not take place until produced. Non-conformance lends to cancellation of rights. We do not have to go to court to re-possess as in the case of most sales.

Migratory - Liquid minerals such as oil and gas migrate to the area of lowest pressure. The law gives you the opportunity to get your fair share but it is up to the owner to drill and produce to get that share.

Gas - Gas is defined as anything produced from a well that isn't oil, i.e. raw gas, marketable gas, methane, ethane, propane, butane, condensates, sulphur, etc. and unfortunately, even water, but not the liquid that goes into the gas tank of a car.

Surrendered Lands - For the purposes of this paper, these are defined as parts of former Indian Reserves which were surrendered for outright disposal but where residual rights such as minerals were subsequently reserved on behalf of the Indian Band but not reconstituted as an Indian Reserve. These do not include Indian Reserves or parts thereof where certain rights were surrendered for a specific purpose.

General Role

To provide functional direction to the Indian Oil and Gas Program for all regions across Canada.

To provide operational direction to the Indian Minerals Program (both mining as well as oil and gas) within the Saskatchewan, Alberta, British Columbia, Yukon and Northwest Territories regions.

To provide advice and assistance to Bands, Indian and Inuit organizations, headquarters, regions, districts, other governmental agencies and companies where a component of minerals management is involved or where expertise related to minerals would be useful.

Oil & gas royalties - 1976 - Council

1957	1967	1977
IMD total	Band (consult informal)	Regional call for consult

Est. mineral potential

Metallics	3 677 000 000
non-metal	666
stone	662
oil & gas	2 635
Tar sands	10 500
	16 080 000 000

To assist in the training and education of Indian people to enable them to take over the management and administration of their mineral affairs consistent with legal constraints as they may vary from time to time.

Direct Role

To manage, administer, monitor and provide advice respecting the development of minerals underlying Indian Reserves.

To manage, administer, monitor and provide advice respecting the development of minerals underlying surrendered lands where such minerals were retained for the benefit of the Indian people.

To assist Indian people to obtain best possible benefits from employment, involvement, allied infrastructure related to the development of their mineral resources.

To assist Indian people in minimizing the adverse ecological and sociological effects associated with development.

To assist in mineral evaluation of present or proposed new lands in the event of trades due to conflicting uses such as major hydro dams.

To provide forecast of revenues to assist Bands in annual as well as long range planning.

Indirect Role

To assist in the establishment of mineral ownership in provinces such as the general cases in British Columbia or on individual reserves or portions thereof.

To assist in employment, training, involvement in the mineral industry regardless of ownership of minerals.

To advise on ecological and sociological affects of major developments outside but near to Indian Reserves.

To assist in establishment of new reserves where such involves minerals or mineral evaluation.

OBJECTIVES

In consultation with Indian and Inuit organizations, departmental, regional and field offices; other government agencies (Federal and Provincial); and industry organizations, to develop a most favourable environment for improvement of the native position within the mineral sector of the national economy.

In consultation with Indian Bands, to assist in the development of their mineral resources in a manner which will provide maximum benefit from revenue, employment and involvement for the Indian people.

To identify, manage and administer the statutory component of Indian and Inuit sub-surface mineral interests.

In collaboration with Indian people, the education and employment services of the Department, Canada Manpower, other similar agencies and industry to foster training and placement services for employment of Indian people in the mining and petroleum industries, particularly, but not restricted to, on reserve developments.

PRESENT STATUS

Accomplishments

Objective Oriented

We have a very active oil and gas program which will generate about $60,000,000 in revenues to Indian people principally in Alberta during the current fiscal year. The total future revenues to Indian Bands from current producing oil and gas pools is calculated to be in excess of $800,000,000 using current market prices. There are a number of known pools which are not yet producing and no doubt a number of pools which have not yet been discovered, both of which will swell the above quoted figure. The total estimated value of remaining recoverable oil and gas from known petroleum reservoirs (including heavy crude or bitumen) is estimated to be in excess of ten billion dollars, again using present prices and what is expected to be conservative estimates as to percentage recovery.

We have a major pilot test project for recovery of heavy crude bitumen at the Gregoire Lake Indian Reserve. Very recently, our lessee entered into an agreement with the Alberta Government to contribute equally to a $46,000,000 extension to a project which has already cost about $30,000,000.

A start has been made on the completion of a comprehensive oil and gas geological and engineering data base for our management purposes and provision of an economic development profile for Band Management. Profiles have been completed for a number of the major oil and gas producing reserves.

At Calgary, our mining program has been held to a minimum as a result of greater pressures from the oil and gas section. At present, we have one active quarry and lime plant employing fourteen people on one reserve. We are involved in a number of sand and gravel projects at varying stages of development. One major coal project is at an advanced stage of negotiation which could conceivably generate many jobs in addition to revenues. Several other projects are under consideration. Considerable time has been devoted to a combined Helium-Uranium prospect on an Indian reserve in Saskatchewan.

We were intimately involved in the establishment of the Fond du Lac Indian Reserve No. 128 where minerals had been previously disposed of

by the Saskatchewan government and where an interesting uranium deposit had been discovered. We were able to negotiate with the company to accept an Indian Mining lease in lieu of their Saskatchewan provincial rights, thereby making it possible to establish the Indian Reserve.

New Indian Oil and Gas Regulations which have absorbed a large amount of time are almost ready for promulgation. We are now preparing, in consultation with legal advisers, new permit, lease, surface lease, easement and various application forms.

Stage One literature search, which would have cost in excess of $500,000 at consulting rates, has almost been completed for all British Columbia reserves by our minerals staff.

Non-Objective Oriented

We have had limited success with employment of Indian people at mining and petroleum developments on reserves; however, since our endeavours have been incidental to other work due to lack of manpower, we do not consider this indicative of the potential. In the case previously cited, fourteen jobs at a relatively small mining project contributes a significant economic benefit to the Band.

We have been involved in a number of situations involving establishment of new Indian reserves and mineral ownership at all reserves. A number of these are still under consideration such as Fort Nelson in B.C. and Southend in Saskatchewan. Success stories relate to Fond du Lac Indian Reserve No. 128 in Saskatchewan (previously mentioned) and to establishment of oil and gas rights at certain parcels for the Hobbema Group and the Saddle Lake Band where minerals ownership in surrendered Band lands was in doubt.

Specific areas not accomplished

The attempts at re-negotiation of the British Columbia Indian Reserves Mineral Resources Agreement has almost come to a complete impasse. The B.C. Government appears to be attempting to delay negotiations awaiting settlement of other, perhaps more urgent, problems.

Attempts at establishing Mineral ownership for the Fort Nelson reserves and arranging for right-of-entry to companies to continue development during the interim period, have been sporadic.

We have some 250 reserves in British Columbia which show potential for mineral development and justify further evaluation. We are only managing to complete about three reserves per year with our present resources.

We have devoted very little time to employment and involvement.

Very little attention has been paid to development of oil and gas or mining at the 'have not' reserves.

Most of our work is directed to management of the existing developments rather than promotion of new activities.

Build-up of backlog

It is estimated that, through lack of manpower in our oil and gas program, we have been unable to enforce provisions of regulations, leases and policies which would have generated about $10,000,000 additional revenue over the past year. We are unable to estimate losses related to the mining program or to revenues which might have been generated through employment.

It is particularly unfortunate that due to lack of both man years and expertise, we have not had the facilities to properly inform and involve Indian people. As a result, even the exceptional performance is not received as such because they read our lack of information as an attempt to withhold information for ulterior purposes. All too often, we are forced into requesting Band Councils to approve major developments involving many millions of dollars at a single short meeting instead of being able to carry out proper informational and involvement sessions.

We do not have proper geological and engineering data to operate on a continuing business-like basis. We are often faced with a battery of company experts from geological, engineering, land and legal disciplines with insufficient data and manpower to fully evaluate the problem at hand. Further, we do not have the budget to employ consultants on an ad hoc basis.

We have a very large backlog of work related to posting of mineral rights for sale, drilling commitments, production commitments, mineral potential evaluation and many other miscellaneous projects. The backlog increases visibly week by week.

Stage II mineral evaluation in B.C. alone at the rate we are progressing will take about 80 years to complete.

We are concerned with gas prices for royalty gas in Saskatchewan where we get about one dollar per Mcf less than in Alberta but do not have facilities to push this problem with the province.

CURRENT ACTIVITIES

Current activities in oil and gas relate almost entirely to the administration and monitoring of existing contracts, both mineral and surfaces. As in the past few years, there has been very little time available for promotion of new business. Forward planning depends upon the infusion of new resources in manpower and money.

Developing a computer program which will: a) minimize manipulation of physical production and revenue and b) eliminate errors in calculation of royalties.

Attempting to clean up gas processing charges for a number of gas unitization schemes with assistance of a consultant.

Retaining consultants to estimate potential of gas on Cold Lake Reserve and to assist Band in rural gasification scheme obtaining gas from their own wells or from the Alberta government scheme.

Negotiating between Industry and Indian Bands on mineral leases.

Negotiating on behalf of and with the Indian Bands on oil export tax.

Coal project at Blackfoot.

Helium and Uranium project at Red Earth, Saskatchewan.

Uranium developments at Fond du Lac.

Several sand and gravel projects.

Completion of geological and engineering data base and Band economic development profile.

FOCUS OF ACTIVITIES AND PRIORITIES

Simply to attempt to deal with the more critical of the 'here and now' problems forced on us by current and continuing operations and by our more vocal clients on a crisis to crisis basis.

To complete the recent re-organization by re-assigning and re-classifying all staff and hiring appropriate new staff as and when permitted.

To eliminate the more critical items from the backlog.

Concentrate on providing for more services to the 'have not' Bands.

Provide for new Oil and Gas Regulations and a batch of public tender disposals by preparing new forms for required documentation, by education of Bands and companies as to new requirements and responsibilities, and by assembling necessary data.

To continue and enlarge on our attempts to provide for involvement and employment of Indians in the mineral industries particularly in those developments on Indian Reserves.

LONG-TERM INITIATIVES

1977-78

Primarily to eliminate the critical backlog.

To provide continuing management services.

To assemble a geological and engineering data base upon which to base an efficient program.

To identify the mineral potential for all minerals in the Calgary Division and to assist the Indian Bands to build up the minerals component of a comprehensive Reserve profile.

To attempt to gradually turn activities towards 'have not' Bands.

To resume oil and gas rights sales upon passage of new Oil and Gas Regulations.

To resume negotiations with provincial governments where minerals ownership underlying reserves is in question or conflicting provincial regulations and policies are hampering development of Indian minerals.

To continue in-training and education of Indian people to become more involved in management decisions and promote the active and final take-over by Bands consistent with legal constraints.

1978-79

To continue on backlog problem.

To place emphasis on developing an effective mining program.

To emphasize B.C. ownership negotiations if not already settled.

To attempt to emphasize oil and gas development activities in other provinces, i.e. 'have not' Bands.

1979-80

To emphasize consultation and involvement with the view of turning over as much of the responsibility and authority to Indian Bands as possible consistent with the laws related to Indian Reserves at the time.

To emphasize Indian involvement in the Industry as a whole regardless of mineral ownership.

1980-81 and 1981-82

Continue to develop program.

Possible change from Separate Minerals Programs to assimilation in the individual Regional Programs depending upon state of mineral development.

ISSUES

Some Provincial governments do not recognize ownership of minerals underlying Indian Reserves as being set aside for the benefit of Indians, e.g. the British Columbia Indian Reserves Minerals Resources Agreement is virtually unworkable.

Quebec

Some Provincial and Federal governmental agencies have policies, regulations, and laws (notably taxation) which affect development.

Lack of definition as to scope of the program.

Lack of a clear definition as to legal constraints respecting the authority and autonomy of the Band Council and the trust responsibility of the Minister.

ELABORATION ON ISSUES

Since inception of the program about 1956, it has been inadequately staffed and budgeted. Development has been largely forced upon the program with little resource provided for promotion purposes. For the last twelve years, there has been a concentrated effort in trying to get the Department to recognize that the potential was barely being scratched.

In that twelve-year span the minerals unit has been juggled from one reporting unit to another without remaining long enough in any one unit for the senior staff to gain an appreciation of the work and responsibility, or to fit into the budgeting process. In addition to the general Departmental re-organizations, the minerals unit has been individually transferred having been involved in a transfer between two Departments, three different DIAND Programs, several branches and at least seven different Divisions.

The relative ease, as compared to mining, with which oil and gas can be developed and the insistent demands of industry has led to active development of the oil and gas resources within Alberta. The many changing conditions now demand a much greater degree of management. Mining on the other hand has and is being virtually overlooked.

The B.C.I.R.M.R. Agreement must be re-negotiated in order to obtain benefits to B.C. Bands.

A clear direction must be given as to scope of operations in order that plans can be formulated as to the program to be followed and the resources required. By scope, amongst other things, we refer to the depth of involvement of the Minerals Division in areas such as employment, training, education, environmental affects and sociological affects of mineral developments both on and off reserves as well as in the actual development of non-Indian owned minerals.

Never being long enough with one adviser body to establish definite policy & scope

MINERALS (MINING)

ROLE

Background

The Mineral Sector of the National Economy

The mineral sector (production only, not processing) now rivals manufacturing as the leading contributor to the National Real Domestic Product. By categories of minerals and Departmental Regions, the value of the national mineral product in 1975 was:

NATIONAL MINERAL PRODUCTION - 1975
($ x Millions)

	Metallics	Non-Metallics	Structurals	Fuels	Totals
Maritimes	758.8	59.4	55.0	54.8	918.0
Quebec	656.6	251.2	234.6	----	1,142.4
Ontario	1,963.7	61.1	303.0	11.6	2,339.4
Manitoba	457.7	3.7	40.1	31.7	533.2
Saskatchewan	18.5	375.3	18.7	414.0	826.5
Alberta	-----	96.3	76.7	5,828.0	6,001.0
B.C.	588.7	50.3	78.5	506.4	1,223.9
Yukon	196.7	32.0	----	.2	228.9
N.W.T.	181.8	----	----	7.7	189.5
TOTALS	4,812.5	929.3	806.6	6,854.4	13,402.8

Native participation in the mineral sector can occur through the utilization of their (a) human resources and/or (b) mineral resources. To date, Indian participation in either of these areas has not reached any major level except in the production of conventional oil and gas from their lands. This involvement, essentially passive except for consultation, is restricted primarily to about 30 Bands in Alberta and Saskatchewan, but has generated revenues of about $60 million dollars this year. The conventional oil and gas sector is not labour-intensive, although the new tar sand activities are.

On the other hand, mining and quarrying on or near reserves may generate substantial but indirect Band income through the wages earned by the Band members in those activities. In on-reserve activities, earned wages may exceed Band revenues from royalties and rentals many times over.

Mineral Potential of Indian Reserves

The potential mineral endowment of the established Indian reserves of Canada (surrendered lands are not included) has been evaluated on the basis of geological data and probability forecasts. It must be realized that these values will be diminished by costs of exploration, development, mining, processing and marketing before profits or other benefits may be calculated. Subject to this, direct Band benefit will be generated through royalties and possibly through sharing in profits if an equity position is held.

Since these values are based on the laws of probability, there is no guarantee that the mineral resources of Indian Reserves either singly or collectively in any one province would attain a pro-rated share of these theoretical totals. In fact, the entire forecast could be realized through the discovery of one or two major mineral deposits on as many reserves anywhere in Canada.

The estimated values, at present mineral prices and by Departmental Regions are:

ESTIMATED MINERAL POTENTIAL ON INDIAN LANDS
($ x Millions)

	Metallics	Non- (1) Metallics	(1) Structurals	Fuels	Totals
Maritimes	34	6	6	---	46
Quebec	112	20	19	---	151
Ontario	2,406	438	401	50	3,295
Manitoba	203	37	34	5	279
Saskatchewan	418	76	70	550 (2)	1,114
Alberta	170	30	28	12,500 (2)	12,728
B.C.	324	59	54	30	467
Yukon (3)	---	---	---	---	---
N.W.T. (3)	---	---	---	---	---
TOTALS	3,667	666	612	13,135	18,080

Notes:

Not specifically identified, but estimated by extrapolation of national statistics and geological data. (Note 1)

Including estimated value of tar sand and heavy crude deposits of $500 million in Saskatchewan and $10,000 million in Alberta. (Note 2)

No forecast due to non-resolution of native land claims. (Note 3)

Definitions

A knowledge of the following definitions is believed essential to understanding of the operations under the Indian Minerals Program:

Land - In minerals parlance "land" means the sub-surface component of the earth's crust in which mineral deposits occur and in which mining may take place, but it must also provide for the surface rights that may be required in the process of exploration, development, production, processing, transportation and sale of that mineral.

Minerals - The definition of "minerals" may vary from act to act, regulation to regulation, but is usually defined in each statute, specifically for its own purpose.

The Indian Act, however, treats the term "minerals" in a loose manner, as in Sections 58(4)(b) and 92, without attempting to define it. This fact leads to considerable confusion at times, since minerals can be solid, liquid or gaseous, and "solid" minerals can be consolidated (as in rock) or unconsolidated (as in sand and gravel).

Section 58(4)(b) of the Indian Act is especially inadequate since it provides for disposal without surrender of "non-metallic substances" - which term technically applies to about 98% of the current mineral production in monetary terms. It is frequently misapplied, with unfortunate consequences.

The Indian Minerals Program deals with minerals in four categories, grouped by section as:

"Oil and Gas", means "hydrocarbons" or "fuels", and includes conventional oil and natural gas, heavy crude, tar sands, and a variety of by-products such as condensates and sulphur. In the fuel context, it usually includes coal, lignite and uranium.

"Mining" includes:

Metallic minerals, such as nickel, iron, gold, copper, and zinc.

Non-metallic minerals, such as gypsum, salt, asbestos, silica, sodium sulphate and certain minerals such as dolomite and limestone that have metallurgical uses.

Structural minerals serve the construction industry and comprise sand, gravel and loose stone. They also include consolidated non-metallics such as marble and quarry stone whose extraction is a mining operation to which the Indian Mining Regulations should apply but frequently may not because they apply only to surrendered minerals.

Mineral Sale - A sale of the right to explore for, develop, produce, treat, transport and sell. Transfer does not take place until produced. Non-conformance leads to cancellation of rights. We do not have to go to court to re-possess as in the case of most sales.

Surrendered Lands - For the purposes of this paper, these are defined as parts of former Indian Reserves which were surrendered for outright disposal but where residual rights such as minerals were subsequently reserved on behalf of the Indian Band but not reconstituted as an Indian Reserve. These do not include Indian Reserves or parts thereof where certain rights were surrendered for a specific purpose.

History

In 1956 the Indian Minerals Program (sic) originated on a modest scale in Calgary, organized and managed by Dr. A.B. Irwin with two assistants to protect and administer the interests of a few Indian bands whose oil and gas rights were being heavily exploited following discovery of such major pools as Leduc and Bonnie Glen. The original mandate has persisted to this day with few major changes other than the introduction of the mandatory requirement for formal consultation with Bands and Councils - a concept which Dr. Irwin had developed as an operational procedure in the early 1960's.

The emergence of the mining role commenced with the appointment of a Senior Mining Engineer to the Western field unit in Calgary in 1968, and of a Mining Development Engineer to the Indian Minerals Section, Lands Division at Headquarters in 1970. In the same year, an Eastern unit was established under the latter engineer to serve Eastern bands whose potential mineral resources are found preponderantly in the mining sector and has been based at Headquarters to this day.

In late 1973, an Indian Minerals Information Group was convened to study and report on the Indian mineral position in Canada, the role that the Departmental Mineral Program plays in developing and improving that position; the mineral-related views and aims of Indian bands and associations; and the general opinions of mineral-based industrial agencies. The Group held two successive rounds of consultation with Indian groups from coast to coast, and based its conclusions and recommendations on observations and opinions gathered in the tours. The Group's final report, named the "Colborne Report" after its chairman, found general acceptance. Implementation of most of its recommendations, while still underway, are reflected in the present re-structuring of the former program, the organization of two mineral-activity centers of the Lands and Membership Branch located and operating from outside the National Capital Region, and the establishment of a Mining office in Toronto as a counterpart of the Oil and Gas office in Calgary.

Functional Role

Effects functional implementation of the national mining component of the Indian Minerals Program comprising metallic, non-metallic, and structural categories of minerals by:

- advising the Director, Regional Directors General, other Departmental officers; Indian Bands, Councils, and Associations; and officials of governments and industries with respect to mineral-related Indian affairs within the mining sector.

- advising and guiding the Manager of Indian Minerals (Oil and Gas) and his Assistant Manager (Mining) in the operational management of their regional activities in the mining sector.

- ensuring effective fulfillment of responsibilities imposed by the Indian Mining Regulations, related provisions of the Indian Act, and other laws, regulations and measures.

- formulating, recommending and subsequently implementing amendments to the Indian Mining Regulations and related measures as deemed advisable.

- monitoring and evaluating existing and proposed policies, legislation and measures of federal and provincial agencies as they relate to or may affect Indian mining rights and resources; formulating and recommending amendments thereof; and planning and recommending parallel or reciprocal action to maintain an optimal Indian position.

- establishing liaison and facilitating collaboration with counterpart agencies of industry, government and other institutions.

- maintaining a technical, political, ecological and operational overview of the mining sector of the national economy.

- formulating and recommending any modification of policy or procedure that would tend to ensure an optimal Indian position within the mineral sector of the national economy.

Operational Role

Effects operational implementation of the Indian Minerals Program on a regional basis in the Maritimes, Quebec, Ontario and Manitoba in collaboration with Indian Bands and Councils and Departmental offices, and in accordance with established legislation, regulations, policies, and procedures through:

- identification and evaluation of Indian mineral rights and resources in response to Band requests and to priorities developed with Regions.

- promotion and development of Indian mineral resources, both on and off reserves, in consultation with Bands, Regions and Districts and through joint participation in management and financing by Band Councils, industrial corporations and governmental agencies.

- negotiation, documentation, administration and monitoring of agreements governing development and disposal of mineral resources.

- identification of potential mineral-related environmental hazards to Bands and reserves and, in concert with competent authorities and Departmental agencies, formulation, implementation, monitoring, and enforcement of preventive or remedial measures.

- provision of technical and financial information to Bands, Regions and Districts to assist in the comprehensive planning of multiple land use, budgets, and economic development on both short and long-term bases.

Mobilizes resources for the planning, initiation, and co-ordination of projects in collaboration with Education and Employment Branches, Canada Manpower, and other governmental, industrial, and educational agencies to provide mineral-oriented training, employment, and counselling services to Indian Bands and individuals, on and off reserves.

Participates with Regions in the formulation of regional policies and in the planning, implementation, and monitoring of regional programs and projects where a mineral-related Indian interest is evident or implied.

Indirect Role

Provides other mineral-related services to Bands, Regions, and Districts, such as:

- assistance in establishment of new reserves where minerals or mineral rights are involved, usually in negotiation with provincial land agencies.

- evaluation of resources, both real and potential, of present or proposed new lands in the event of land swaps or granting of rights-of-way.

- to provide forecast of revenues to assist Bands in annual and long-range planning.

OBJECTIVES

To maintain, enhance, and accelerate an established process, with its related facilities, by which mineral-oriented advice and assistance are provided to Indian and Inuit peoples in their efforts to achieve maximal benefit as determined by them from employment and resource-utilization within the mineral sector of the national economy, through:

- promotion of a more favourable environment for their national involvement in mineral-related activities;

- identification, recording, and administration of their sub-surface mineral land rights;

- identification, development, and management of their mineral resources in collaboration with industrial agencies; and

- mobilization and co-ordination of mineral-oriented training, placement, and counselling services in collaboration with Education Branches, Canada Manpower, and related governmental, industrial, and educational agencies.

To develop, implement, and maintain an effective process, in consultation and collaboration with Regional Directors General and their staffs, and with Indian and Inuit councils and associations for implementation of:

- functionally, the mining component of the minerals program on a national basis; and

- operationally, the minerals program on a regional basis in Manitoba, Ontario, Quebec, and the Maritimes.

To design and establish an effective technical service organization; to equip it with the necessary resources; to develop and maintain its technical and administrative capabilities; and to manage it in a manner that will meet the requirements of program policy, branch objectives, and client need.

PRESENT STATUS

Accomplishments

From 1970 to 1975, the Eastern Minerals Unit was a one-man operation, supported by a single Indian on-job trainee afforded by the Indian-Eskimo Recruitment and Development Program of the Department. In 1975, a newly-graduated Mining Geologist was recruited, and in 1976, a Minerals Technician of equal experience was added to the staff. The I.E.R.D. trainee position has been continuously and is presently filled.

Judicious use of consultants has been the mainstay of the Eastern operation, largely applied to Mineral Development, Mineral Management and Training.

Objective-Oriented Accomplishments

For Mineral Development, a "staged identification" system was designed and imple-

mented. Its purpose is to provide an orderly method and procedure for identifying and evaluating the potential mineral resources of Indian reserves. Essentially, it provides for identification in four sequential study stages of increasing work complexity, each dependent on its predecessor for its priority of implementation and choice of geotechnical method to be employed.

Briefly it comprises:

Stage 1: Literature Research

- Preliminary assessment of a reserve by evaluation of all available information on its geology and mineral history.

Stage 2: Field Reconnaissance Surveys

- Field assessment or prospecting of a reserve's potential mineral resources, based on either favourable indications derived in Stage 1 or band request.

Stage 3: Detailed Field Surveys

- In-depth exploration of an indicated or inferred mineral deposit by geoscientific methods.

Stage 4: Pre-production

- The precise identification, both qualitative and quantitative, of a specific mineral occurrence or potentially economic deposit, and the determination of its feasibility for production.

Under Stage 1 of this system, the mineral potential of the reserves in Eastern Canada was assessed through research of all available reports, maps, governmental and industrial records, and accounts of personal sources. The information was evaluated, and a schedule of priorities for follow-up field work, where warranted, was established. In response to requests from Bands, Regions, Districts, and industrial agencies, field studies at senior stages were conducted. The indicated mineral resources of some reserves proved inadequate to the need; others were taken under permit by industrial agencies for detailed evaluation.

Follow-up action on the most promising reserves at Stage 2 and senior levels has not been feasible under any pre-determined schedule because of resource non-availability. Where field work has been carried out, it has been done by industrial agencies, or by the Division in response to urgent requests of Bands, Regions, or Districts, but not necessarily on the better prospects.

Negative-result evaluations have been made on 9 reserves in Eastern Canada and 3 in the West, in all three mineral categories.

Positive-result evaluations have been partially completed on 5 Eastern reserves and on 16 Western reserves (4 for coal), but further action is suspended temporarily

pending decision-to-proceed by potential industrial developers; decision to employ Departmental resources as opposed to promote development by private enterprises; the outcome of on-going consultation or negotiation with Band Councils; or freezes imposed by Band Councils, usually arising from Band dissatisfaction with provincial restrictions.

There are currently five major mining operations underway on Indian reserves in Canada - two limestone quarries in Quebec, a gypsum mine in Ontario, a major gravel quarry in Manitoba, and a limestone quarry in British Columbia. There is also an undetermined number of active sand, gravel, and loose stone quarries in operation across the country, but their identity and status are unrecorded by the Departmental Mineral Divisions.

Under Mineral Management, on-going servicing of permits, leases, and other agreements have been maintained at a satisfactory level.

Major negotiations with industrial agencies were conducted with respect to a potential salt mine at Sarnia, and two base-metal prospects in the Kenora area. In two cases, the agencies withdrew in the face of too stringent requirements as seen by them. In the third instance, the agreement was concluded, but the agency's exploration work proved negative.

In Southwestern Ontario, permits and leases for oil and gas development on three reserves were negotiated, documented, and subsequently terminated due to negative exploration results.

In the field of Training and Employment, one-week prospector training classes were organized for the Indian communities of Northwestern Ontario under an arrangement with the then Department of Mines. Then, in more recent years, the Eastern Minerals Unit collaborated with a provincial vocational-training institution and local offices of Canada Manpower in providing 15-week courses in prospecting and geophysical survey techniques in Northwestern Ontario. In 1976, a specialized one-week course in uranium prospecting techniques, organized, funded, and directed by the Eastern Minerals Unit, was held in 13 Indian communities of Northwestern Ontario.

Long-range benefits from the foregoing training projects did not materialize as planned. The major factors in the shortfalls are considered to be a lack of sufficient or capable follow-up action and counselling; provision of effective placement services; provision of financial support ventures in self-employment as private prospectors; and perhaps a lack of general savoir faire and personal contacts within the mining sector.

Non-Objective-Oriented Accomplishments

In the settlement of the Trout Lake Land Claim in Northwestern Ontario, the inclusion of full mineral rights in the 8 newly-created reserves was successfully negotiated with provincial and private agencies.

Specific Areas Not Accomplished

It is felt that the most significant areas of non-accomplishment and non-commencement lie in Mineral Development and Training/Employment - the two functions that specifically

provide for activities oriented toward socio-economic improvement of the Indian position. The foregoing description of "Accomplishments" touches on this deficiency.

The principal factor leading to this unsatisfactory position is considered to be staff - its relative weakness in numbers and senior capability in terms of technical and industrial background. The employment of consultants is not a solution in itself, since this senior capability is also required in the evaluation, engagement, and direction of consultants and in the assessment, and interpretation of their service's product.

Build-Up of Backlog

The foregoing sections on accomplishment and non-accomplishment provide adequate background for this topic.

The major backlogged items include (a) Stage 1, identification of potential mineral resources on 13 newly-created reserves in Ontario; (b) Stage 2, identification projects on 8 reserves in Eastern Canada in response to Band request; (c) arrangement of mineral-oriented training courses (15-week type) in response to 7 requests from Indian communities; and (d) drafting and recommendation of a proposal to provide financial support (grub-staking) to individual Indian prospectors, to respond to 4 specific requests.

There are also 6 permits, leases, or agreements whose servicing state is now in arrears or heading that way, mostly in the non-objective-oriented categories of activity.

CURRENT ACTIVITIES

Non-Objective-Oriented

Over the last six months, the Divisional Manager has been required to devote about 80% of his available time to the rectification of a problem on the Caughnawaga Reserve in Quebec. A newly elected Band Council demanded suspension of an existing quarry permit until re-negotiation of terms and conditions and rectification of documentation had been effected, despite the fact that the Permittee had already procured plant and equipment worth about $1.5 million and had it 80% installed by election day. Resolution of the problem has involved investigation (with extensive consultative support), mediation between the parties; ministerial arbitration; legal action; extensive consultation and joint action between Region, District, Headquarters, Justice, Minerals, the Band-member Permittee, and the Band Council.

Another current project is the regularization of an illegal sand and gravel operation of the Pas Band in Manitoba. The need is becoming acute as the Band and its newly-formed "sand and gravel" corporation begin to sense the implied and potential effects of Manitoba's Mining Royalty and Tax Act.

Objective-Oriented

The case of the Pas Band's sand and gravel operation also involves the provision of technical and operational advice and assistance which will serve to increase the profitability of an operation whose feasibility and viability are proven and coincidentally to initiate planning for site restoration, environmental impact, and spin-off enterprise.

A classic example of the ideal mineral project is developing on Wikwemekong Reserve in Ontario, where the field component of a Stage 2 identification project has just been completed. A Toronto consultant - an old acquaintance of the Divisional Manager - mentioned that his client - a major Great Lakes shipping company - wanted to develop structural-mineral properties on the Lakes which would represent cargoes supplying markets in Southern Ontario and States bordering the Lakes where existing sources are being strangled or curtailed by environment-oriented legislation and regulation. The Manager, by reference to the Stage 1 identification data, pin-pointed four reserves on Manitoulin Island which had the necessary resource potential. The consultant selected Wikwemekong because it had in addition to conventional limestone, deposits of a dolomite having favourable qualities for both structural and metallurgical application.

Joint meetings were held with the Band Council, the Departmental Area Superintendent of Economic Development, and the local agency and a plan of action and financial support was developed. The Regional and District Economic Development funded the work of diamond-drilling while the Mining Manager provided technical direction and hired an Indian mining engineer to provide field supervision and active involvement of the Band Council.

The work to date indicates an orebody of adequate tonnage but preliminary determination of feasibility depends on the assay results of the drill core sampling and an estimate of infrastructural requirements.

The project has reached the critical point at which the Band Council, Economic Development, and Minerals must decide whether Stage 3 work - the detailed geological evaluation and feasibility determination - should be funded and conducted by the steamship company or by the Department. Another critical factor must be resolved - formal acceptance and approval of the overall concept by the Band.

Coincidentally, it is reported that two Band members received on-job training by the drilling contractor with financial assistance of Canada Manpower.

A project exhibiting similar characteristics is being conducted in Saskatchewan for the identification of a potential helium-uranium resource.

Special Category

A coincident non-objective-oriented project has been the on-going organizational and logistical planning and mobilization of the Mining office in Toronto.

FOCUS OF ACTIVITIES AND PRIORITIES

Present

- To rectify, through consultation, mediation, and arbitration those unsatisfactory or unacceptable situations which arise from inadequate contractual provisions, illegal practices, or incomplete or irregular documentation, all as identified, challenged or rejected by Band Councils, permittees, lessees, or Departmental officers.

  The required activities are non-objective-oriented, highly disruptive to objective-oriented work schedules, and usually required as "crisis" action.

- To regularize, through organization or re-organization, documentation, installation of financial and/or operational controls, and designation of responsibilities, certain mineral-related activities and resource disposals which have been initiated and are being conducted without due process.

  The required activities again are non-objective-oriented and disruptive.

- To maintain the provision of mandatory services, as prescribed by contractual and statutory responsibilities, in administering, monitoring, and servicing current permits, leases, and other agreements.

- To initiate activities and projects, when resource availability permits, whereby backlogged requests of bands, councils, or individuals and other items of outstanding business may be dealt with, usually on a stop-gap basis or to schedules of priorities based on estimated potentialities for crisis.

Future

Efforts and hopes will be aimed at creating, if possible, more frequent and better opportunities for the initiation and conduct of objective-oriented activities.

Unfortunately, there is little or no Divisional control of the actions, omissions, and circumstances that create the situations requiring these types of remedial action on which recent and current activities have largely been focused.

The nature of the planned long-term initiatives listed hereinafter reflects the future focus which it is felt that Indian people want and need to have applied to their Minerals Program.

LONG TERM INITIATIVES

1977-78 and 1978-79

In view of the re-structuring of the minerals program and the establishment and deployment of the Minerals (Mining) Division in Toronto, with attendant dislocations, unforseeable complications, loss of efficiency during the recruitment and orientation of additional staff, the first two years are treated as a single period.

- To organize and equip the Toronto facility with the authorities, resources and capabilities essential to the effective discharge of designated responsibilities and conduct of activities.

- To develop and maintain an improved process of communication, consultation, and collaboration with Regions and Districts, Band Councils, and Indian associations.

- To promote with mining companies the utilization of the human and mineral resources of Indian bands but in step with the planned enhancement of Divisional capability for follow-up action.

- To continue to provide on-going managerial and technical advice and assistance to Indian bands of the four Eastern Regions.

- To identify through literature research (Stage 1) the mineral potential of any newly-created Indian reserves and distribute the resultant information to bands, Regions, and Districts.

- To reconsider the unresolved recommendation of the "Sand and Gravel Study Group" (1974) for the formal regulation of pits and quarries operating on Indian lands with or without a surrender of the mineral rights.

- To continue the process of providing guidance and assistance to bands and councils in the negotiation, documentation, administration, and monitoring of agreements governing disposal, development, and production of their mineral resources under the Indian Act and its Regulations.

- To plan, initiate, and maintain a more collaborative and effective process involving local offices of the Department, Canada Manpower, and mining companies and the Mining Division for the recruitment, employment, and counselling of Indians in mining activities.

- To continue to plan, organize, and conduct geotechnical field projects and studies for the identification and evaluation of commercial mineral occurrences on and surrounding reserves in response to band requests for information on their potential mineral resources, and from regional offices for data on mineral deposits as a factor in community planning.

- To continue to mobilize resources for the planning, initiation, and co-ordination of projects to provide training to individual Indians and Inuit in prospecting, geophysical surveying, and diamond-drilling techniques in collaboration with Education Branches and their field counterparts; Canada Manpower field offices, provincial agencies, and educational institutions.

- To negotiate and arrange greater participation of Indian bands and the Mining Division in the activities of such regional mineral programs as those of DEVCO and DREE-provincial agreements.

- To explore ways and means by which greater use may be made of CESO in Divisional activities.

- To plan, recommend, and implement a program to provide technical guidance and physical support (grub-staking) to individual Indians and Inuit in their desire to search for and test mineral occurrences both on and off their lands, in logical sequence to past achievements in the prospector-training program.

1979-80

- To promote a more favourable climate for the incorporation and operation of Indian mining ventures in terms of laws, regulations, and conditions affecting Band freedom of choice and action, incorporation, taxability, environmental protection, and resource conservation.

- To review provincial positions with respect to Indian resource ownership and utilization and to negotiate improvements therein if necessary or desirable.

- To emphasize off-reserve Indian involvement in the mining sector.

- To promote and solicit the participation of industrial agencies in the senior stages of the staged identification process.

- To enlarge the scope of responsibility for Mineral Development by acquiring authority for the provision of services to Indians with respect to any of their mineral rights, whether held on reserves or acquired off reserves.

- To review the present Indian Mining Regulations for adequacy and relevance in the light of current affairs and trends, and to define and recommend amendment as deemed desirable or necessary.

- To continue the staged identification and evaluation of potential Indian mineral resources.

- To create a mineral presence or "portfolio" within Regions so as to facilitate the co-ordination of program planning and activities, and to serve as a prelude to certain plans for integration as outlined for the following year. This concept probably merits active consideration at an earlier date, possibly even in 1977-78.

- To accord even greater scope and priority to Band and Divisional activities in the field of structural minerals, especially with respect to Band-management of their resources and transfer to qualified Bands of administrative authorities and responsibilities, all within statutory constraints.

1980-81

- To continue on-going review of the program and planning for improvement where the need is identified.

- To continue to negotiate with provinces, as necessary, a more equitable status for Indian mineral rights and their explorations.

- To emphasize on the Stage 2 evaluation.

- To initiate collaboration and joint action with the federal Department of Energy with respect to its National Mineral Inventory System and the incorporation of the accumulated data on Indian mineral resources, as Band opinion permits.

- To consider, plan, and recommend special arrangements for joint funding and management of mineral development by DREE, Indian-Inuit associations, and the Department, using as a model the current DREE-provincial agreements which do not serve to afford any substantial provisions for Indian people. Consideration of this concept may well merit re-scheduling to an earlier period.

- To implant a "minerals person" in each Region to act as a special assistant to the Director of Operations in the provision of advice and the co-ordination of the Mining Division's activities within the respective Region. This level of assignment is considered advisable since the Mining Division in the normal pursuit of its business becomes involved with each functional division of the Region, and the "minerals person's"effectiveness would probably be diminished if his/her position were established with the Assistant Regional Director; Lands and Membership.

1981-82

- To transfer to Regional Directors General the ministerial authorities for administering mineral rights and managing resources as currently delegated to Managers of Indian Minerals.

- To establish technical field sections within the Mining Division, each with responsibilities for a specific Region and, when each has attained adequate capability, translate it into its respective Region.

- To maintain the Mining Division in Toronto as a central source of guidance and technical counsel to each Regional "field section" for as long as may be considered necessary, or

- To merge the Mining Division into the host Region's organization, so as to serve that Region in an operational sense while still providing functional guidance and support to the mineral-oriented components of other Regional organizations. The coincidence of the Toronto location and Ontario's predominance in the Mining Sector may be considered fortuitous.

ISSUES AND ELABORATIONS THEREON

Compliance with the "Sand and Gravel Guidelines" and relative provisions of the Indian Act is a myth in certain areas. This leads to:

- unauthorized disposals of sand and gravel from reserves, frequently without the Band enjoying any financial benefit;

- failure to make contributions or to deposit royalties to the Band capital account on account of such depletion of non-renewable band resources (wasting assets);

- destruction of the land surface to a serious or irreparable degree;

- generation of serious environmental hazards to the reserve and its environs;

- tedious, non-objective-oriented remedial or regulatory action by Departmental officers, especially in the Mineral Divisions.

"Security of tenure" is an essential condition for mining ventures which cannot always be guaranteed on Indian reserves. This means that:

- terms, conditions, and schedules for royalty and rental under existing agreements are sometimes challenged by newly-elected Band Councils which may also demand that the Minister alter or cancel these components of even the agreement proper;

- imposition of additional and sometimes onerous terms and conditions are sought during the currency of an agreement;

- Departmental officers are sometimes required to engage in involved consultation or negotiation and to divert valuable resources to resolving the problem.

In some provinces, there is either unsatisfactory or non-existent federal-provincial agreement as to Indian ownership to minerals underlying reserves; Indian realization of full financial benefits deriving from disposal of such minerals; and Departmental right and responsibility to administer those mineral rights. As a result:

- Indians in British Columbia are reluctant to develop their mineral resources and in some cases even to permit the Mineral Division to explore for minerals on their reserves before the British Columbia Indian Reserves Minerals Resources Agreement is amended in their favour.

  The same reaction is met with in a few Bands in Ontario, where amendment of the 1924 Ontario Indian Land Agreement is still underway.

- Indians in Quebec, where there is no agreement on Indian mineral rights and Indian entitlement to benefits generated by disposal of the resources, cannot surrender their mineral rights to Her Majesty for her disposal on their behalf without losing them to the province the reversionary provisions of various Acts and ancient decrees.

- Indians in these provinces, sometimes aided by Departmental officers, are forced to devise and employ evasive strategies in their efforts to develop and dispose of their mineral resources, especially metallics. Alternatively, Section 58(4)(b) of the Indian Act is employed in a manner suiting the need.

LAND ADVISORY SERVICES

ROLE

In 1970 a study team examined the working of the then Lands Division and recommended certain organizational changes including the creation of a special services component to deal with major land projects, negotiate land agreements, recommend land policy, recommend guidelines and analyze other issues which in their complexity are considered beyond the scope of the normal or routine. The Land Advisory Services as an adjunct of 'Lands' was created in 1973. Its major role has been to provide technical, administrative and advisory services on land matters to the management at Headquarters, Regions, Bands, Band members, Band organizations, other institutions and departmental agencies.

The Land Advisory Services is wedded to the following goals and objectives:

Goals

To review, vet and approve complex documentation emanating from Headquarters, Regions, and Indian Bands or their solicitors as to form and content to ensure compliance with departmental policies, procedures, Indian objectives and statutory obligations and restraints imposed upon the Minister and the Department;

To maintain a current index of legal opinions and ensure the dissemination of legal and policy information to Headquarters and Regional staffs;

To develop and maintain in current standing manuals and other publications concerning the management and administration of Indian reserve and surrendered lands;

To provide liaison with the Department of Justice concerning litigation arising from management of lands, contracts and agreements, and to suggest and develop solutions, review policies and procedures and recommend changes to effect resolution of problems;

To develop and maintain expertise capable of resolving problems arising from management of Indian lands;

To liaise and co-ordinate with other levels of government, Indian organizations, Band Councils, Department of Justice, interdepartmental committees and others on matters concerning reserves and surrendered lands;

To prepare, monitor and advise on complex submissions, documentation, contracts, agreements, reports, résumés,

summaries; briefings for Treasury Board, Privy Council and senior management concerning surrenders of reserve lands, acquisition and disposal of reserve lands and other properties, rights of way, and easements in accordance with the Indian Act, Financial Administration Act and other statutes and guidelines;

To advise and give direction to Regions on surrender of reserve lands and to ensure that surrender documentation meets the prescribed legal standards and requirements;

To recommend new policies, revision of existing policies, legislation and Orders-in-Council concerning management of Indian lands and proprietary rights;

To devise projects, arrange seminars and meetings with a view to training field staff and Band administrators on aspects of land management and property rights in Indian lands;

To provide advice on the development and maintenance of systems, samples and checklists for drawing up documentation to facilitate and improve upon the management of Indian lands; and

To provide analytical services and models on areas of land management to the Regions and Bands in the exercise of the authority delegated to them.

OBJECTIVES

To develop policies and programs aimed at assisting Indian Bands to assume management of their lands; and

To provide senior advisory and technical services in land matters to departmental officers at Headquarters, Regions, Bands, Band Councils and Indian organizations with respect to Indian reserves and surrendered lands.

PRESENT STATUS

Because of the very peculiar nature of our function, it is difficult to quantify everything done to date since the inception of this unit. In order to achieve the foregoing objectives, the Land Advisory Services was closely involved in the management studies undertaken in 1973/74 by John Louis Bolduc for the purposes of bringing about decentralization of land management function from Headquarters to the Regions and through the Regions to the Bands. Apart from participating in the consultative process, the Land Advisory Services was instrumental in the preparation of special guidelines, Land Manuals, and checklists for measuring the ability to exercise decentralized powers; for the actual exercise of authority when decentralization is in place, and for the points to be taken into consideration when dealing with land transactions.

We have developed and established Land Operations Handbook, Land Transactions Manual, Legal Opinions Index, policy guidelines on use and development of locatee lands, and use of permits. We have revised and updated surrender procedures, and assisted in the development by Bands, procedures for obtaining loans from the FCC, initiated and co-ordinated litigation arising from management of lands and matters incidental thereto.

CURRENT ACTIVITIES

The Advisory Services continues to provide the technical and advisory services to Headquarters and the Regions with the only difference that the Regions now receive direct advice and assistance because most of the operational functions are now performed in the Regions. Certain areas of our work are in the nature of ongoing projects to wit: the updating of Land Operations Handbook, Land Transactions Manual, Legal Opinions Index, Decided Cases Index and Litigation, in addition to the ad-hoc projects and problems like Turton Penn, Building of airstrips on reserve lands, Use of Section 28, Land Tenure on Indian Lands, Amendment and Revocation of Old Surrenders, Revisions of Checklists and Guidelines, Polysar, Walpole Islands Surrender, Capilano PEC, Sechelt Delegation under Section 60 of the Act, Beauvais Quarry Permit, Pheasants Rump, Additions to Indian Reserves and Rights of Superfecie and the like which we deal on a regularly regular basis.

FOCUS OF ACTIVITIES AND PRIORITIES

The Land Advisory Services is expected to play a much greater role in the post-decentralization era. There are generally two roads leading to the objective of decentralization. The first one dictates that we first train people, test them and then hand over authority to them and watch their performance. The other route which we seem to have followed is to give authority to Regions, without caring about the necessary wherewithal for the exercise of that authority. This to our mind, was necessary to quicken the pace of delegation down to the Band level and also to give the Regions an opportunity of learning while exercising their decentralized authority. Looked at either way, the Regions will need support firstly in the exercise of their authority by themselves and secondly when they are ready to decentralize their authority to the Band or District levels. In this view of the matter, the Land Advisory Services is expected to play a vital role in the decentralization process. It is admitted on all hands that there are certain aspects of land management which are beyond the local or Regional level and it is too much to expect a Band to be experts in the field of mines and minerals, land matters, estates or land administration all at the same time, when it is difficult to look for that kind of capsule expertise elsewhere. The process requires continued assistance, training, development of expertise at the local level, for handling complicated problems and evidently the process is slow and painful. Our first priority is therefore to make decentralization work and to make the ultimate objective attainable by working in close co-operation with the Regions, Bands and Headquarters.

LONG TERM INITIATIVES

We often ask ourselves if the Land Advisory Services can be phased out in the foreseeable future. It is generally recognized that the nature, quantum and diversity of the problems confronting the Regions or the Bands (when the power is taken over by the Bands) are such that these problems do not lend themselves to simple answers. One way of looking at the question would be to think of the institution of an advisory services unit at each Regional level. Be that as it may, the question of availability of local expertise, the quantity of demand, and the requirement of uniformity of approach in dealing with land matters so that Ministers' authority and responsibility are not compromised would make such a decision unworkable. There will remain at Headquarters the need for a 'think tank' to deal with Regional problems in the national perspective, and to assist the senior management in providing answers and taking vital decisions. Keeping therefore in mind, there will be a need for such a unit on an ongoing basis, we are anticipating a need to boost the expertise of the unit in those areas of work where expertise is not readily available to us at Headquarters and the Regions at this point of time. We are expecting to provide direct service to the Regions in the discharge of their new responsibilities as also adding expertise on estates, pure research, acquisitions and disposals of rights of way, and appraisals so as to deal with questions and problems to be addressed to us as present decentralization progresses and further decentralization is undertaken. On a long term basis, there will be a need for a unit assisting in the resolution of problems arising under decentralization and to keep such tools as we have like Land Operations Hand Book, Legal Opinions Index, Transactions Manual, Checklists, Surrender Procedures, updated. We propose to achieve this goal through training and further studies with a view to develop, maintain and improve upon the available expertise so as to foresee and deal with problems as they arise.

ISSUES

How far can we reconcile a Band demand or lack of it with Departmental policies and legal constraints?

How far can we compromise our policies and programs with the role of the Department of Justice vis-à-vis the administration of the Act?

Use and misuse of Advisory Services.

ELABORATION ON ISSUES

In deference to the wishes of Indian organizations and the objectives and policies to which the Department is committed, we in the Department examine with an open mind any proposal by a Band or Bands to assume responsibility of land management functions under the Act. We run into problems where we are asked to do something for which the Department has no mandate from the parliament, nor expertise, nor funds to do the same, and the Indian Act

and its administration does not permit that. To illustrate: a Band wants to collect revenue monies due to the Band under the scheme of Section 69 of the Act. The Department is committed to such a delegation of authority. There are extant regulations which name that particular Band as one having authority under Section 69 to control, manage and expend revenue monies. The problem arises when the Band, at the instance of an independent advice, insists that such authority should be given by way of an Order-in-Council which must specify that the Band has power to collect revenue monies. An Order-in-Council elaborating such a power could be construed an amendment of the Act and so we are told we cannot do so. The Band is not satisfied and insists upon an Order-in-Council. Hence the stalemate! There are scores of similar instances where we run into a quagmire and there are no instant solutions that we can suggest for the resolution of such demands and problems because of legal constraints. In the same vein, there are Bands across the country who are not willing to avail of the programs available to them under the auspices of the Department where a surrender is involved, despite all our efforts to convince that a surrender of lands does not mean loss of reserve lands to the Band. The examples of most progressive Bands do not mean anything to them nor our explanations that surrender documents could have inbuilt protection for the restoration of reserve lands back to reserve status after the lands are no longer required for the purpose for which they are being surrendered.

We also run into similar situations where the Department is committed to a program for the betterment of economic situation of individual members of the Band and there are legal views which would not permit that. We do what is required to be done to implement that program either at the instance of an outside agency or under the mechanics set up under the program. These are issues for which we have no ready-made answers; we, therefore, have to marshall the order of priorities: forget the wood for the trees and have the issues resolved first or implement the program. The question that looms large is as to where do we draw the dividing line.

Take for instance a dispute arising under a lease. The Department is obliged to protect the interest of the Indian, even if the case in point is weak from a purely legal point of view. We desire that it should be taken to a court of law for vindication of our point of view or our responsibility to the individual. The Department of Justice does not report to the Minister of Indian Affairs and they derive their mandate under the Justice Act. Therefore, whatever be our stance: administrative clarification, future guidance in similar situations, clarification of a point of law, or the discharge of our responsibility under the Act, we are stuck and cannot do anything to seek a resolution of the problem. This is not to suggest that the attitudes taken up by Justice are arbitrary or without valid reasons but the administrative jurisdiction is such that we are left without any avenue of redress in such a situation. Since the Department of Justice represents Her Majesty the Queen in right of Canada in all litigation matters where Her Majesty is the

(1) action plan - priorities

(2) how well we are doing - evaluation externally

(3) how we identify & provide resources for forward planning by Board,

Plaintiff or Defendant, there is no way that we can take the matter on our own to a court of law and seek adjudication of our point of view and seek a valid acquittance of our responsibility for the administration of the Act and our trust responsibility to the Band or the individual Indian.

The other area where we run into a situation of 'to be or not to be' is the use of Advisory Services. Sometimes for the sake of general rapport within the Department we have to assume extra responsibilities for the simple reason that 'lands' happen to have been mentioned in the context of a problem which strictly speaking is an area entrusted to another Program, Division or Directorate. Furthermore, in the wake of decentralization, it was assumed that each Region would either at the time of decentralization, or within a reasonable period of the coming into effect of decentralization, acquire a modicum of expertise required to handle problems relating to land management. The Advisory Services do handle certain queries for which the answers should be with the Regions and situations do arise where we are put in a situation of adversary relationship with another department. A timely and co-ordinated approach at the initial stage of any major development could avoid that situation and loss of face either for us or the other department and spare everybody the embarrassment to which one is subjected. These situations are more often than not the result of somebody else's actions, nevertheless, it is always our privilege to get tarnished into the bargain.

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