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DESK BOOK INTERGOVERNMENTAL RELATIONS

Saskatchewan

Canada

INTERGOVERNMENTAL RELATIONS

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FEDERAL POSITION

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DEPARTMENT OF INDIAN & NORTHERN AFFAIRS
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STATEMENT BY THE

HONOURABLE JOHN C. MUNRO

MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

TO THE

FEDERAL/PROVINCIAL/TERRITORIAL CONFERENCE

ON INDIAN ISSUES

FREDERICTON, NEW BRUNSWICK

MAY 4, 1982

(Check against delivery)

I am very pleased to be able to participate today together with Ministers of the Provincial and Territorial Governments and Indian leaders, in this Federal-Provincial-Territorial Conference, on Indian issues. We will be focussing our attention today on Indian issues of immediate mutual concern to all levels of Government and the Indian people of Canada.

I am particularly pleased that in this first formal meeting of Federal-Provincial Ministers on this subject in over 15 years, we are joined by Indian leaders. Our meeting today is not a decision-making meeting but instead is an opportunity to share in a preliminary way, information in respect of various priority issues and initiatives and to discuss possible areas for future consultation and co-operation.

I should emphasize, at this point, that as we move into our discussion of the substantive agenda today I will be particularly concerned with the question of Indian representation in any future discussions, particularly discussions which may be of a decision-making nature. I feel that this must be a matter of priority attention on the part of all Governmental representatives. As indicated in the Federal discussion paper, the Federal Government views effective working relationships between Indian people and all levels of Government as critical if progress is to be made on the major issues facing Indian people today.

We are all aware that our discussions here today do not relate in any way to Phase II Constitutional discussions. It should be emphasized, however, once again that the Federal Government does not see the information discussions that will take place at this Conference as dealing in any way with the future constitutional process or the substantive issues and concerns that will likely be addressed at that constitutional process including the important question of future identification and definition of Aboriginal Rights. My general hope, however, is that we can today establish the kind of spirit which we will be able to carry forward into our discussions with representatives of the various aboriginal groups in respect of the Constitution at future dates.

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I would mention that I have read the "Provincial Task Force Report on Native Issues" with considerable interest. I appreciate that this document reflects a number of questions and concerns that the Provincial Governments have in respect of present and future Federal policies in relation to Canada's Status Indian population. The Federal Public Document which I have tabled with this Conference attempts to indicate my views and my perceptions of general Federal Government directionl thrusts respecting most of the items which are listed on our agenda today. I have attempted in that document to give a general indication of Federal perceptions and views in the main areas which Provincial Ministers have touched upon in their report.

I have been encouraged by a number of recent developments which demonstrate to me that the two levels of Government can work effectively with Indian people in addressing major policy concerns. Recent examples of this type of co-operation include:

- The conclusion of an Agreement in February of this year between the Governments of British Columbia and Canada involving the Penticton Band which saw the settlement of the first and largest of the so-called cut-off land claims to be negotiated in British Columbia.

- The Agreement recently concluded between the Federal Government and the Government of Ontario and representatives of the Indian people of Ontario to develop amendments to the Ontario Fishery Regulations.

- The recent Agreement between the Governments of Canada and Manitoba and the Four Nations Confederacy of Manitoba respecting Indian Child Welfare Services.

- The Agreement concluded between the Governments of Newfoundland and Canada involving the various Native groups of Newfoundland and Labrador providing for a range of programs and services to the various Native communities in Newfoundland-Labrador.

In addition, I would mention that I am encouraged by the level of dialogue and progress that has been made in respect of a number of important issues in the province of Ontario through the Ontario Tripartite structure which involves both levels of Government and the Indian

.../3

Associations of that province. While the items that I have mentioned are not comprehensive of all of the advances that have been made in the last two years, I feel that they do indicate that we are making increasing progress as Governments in dealing co-operatively with Indian people on the pragmatic issues that face them on a day-to-day basis. I feel that our presence here today is a further acknowledgement of the fact that we seek to discuss issues and arrive at solutions through co-operative arrangemments.

Our agenda today involves many of the key Indian issues which involve Federal, Provincial and Territorial Governments in varying degrees. The Federal Government approaches these issues separately and together with the following overall objectives:

(a) A desire to see the definition and enhanced respect for the special rights of Indian people, in the context of the special relationship that exists between the Federal Government and Indian people.

(b) A desire to meet obligations and settle grievances as well as Comprehensive and Specific Claims of Indian people.

(c) A desire to foster economic development and self-reliance on the part of Indian people, and in this context to strengthen Indian Band Government on reserve and to encourage and sustain sound foundations for comprehensive, social and economic growth.

Of particular interest to me is our agenda item on fishing, hunting and trapping issues. I have received many representations from Indian people that this is an important issue to them, and it is for this reason that I have proposed this as an agenda item.

I will leave my comments on specific agenda items until we commence our discussions in more detail but I would like to emphasize my feeling that evidence of a continuing Federal commitment to work towards positive solutions in the areas covered by the agenda is abundant. For example, by March 31, 1981, 385 bands across Canada were administering programs on reserve. Almost all bands are now delivering some programs themselves under the direction of their Councils. In

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British Columbia, for example, 60% of the Department of Indian Affairs Regional budget is now administered by Indian bands and Indian organizations. In the area of economic development, the Federal Government has set aside $358 Million in economic development funds specifically directed towards Native peoples. The allocation in the November budget accounted for $345 Million of this. An additional $8 Million was earmarked last year to ensure that particularly deserving economic opportunities were not lost for lack of funds. In addition, $5 Million was allocated to help Indian people take advantage of major resource developments.

On land claims the Federal Government realizes that the major impetus for the successful economic and social development of Native communities will come in many parts of the country from the equitable settlement of outstanding land claims. Our faith in this process which is based upon recognition of legitimate claims of Native people is demonstrated by the fact that our base for loans to Native claimants in the fiscal year 1982-83 has been increased from $8.4 Million to $14.3 Million. In looking at the critical area of services, a number of important strides have been made. In the area of housing, we have nearly doubled funding in the last two years and have made important adjustments to the housing program to ensure quality construction.

In the area of child care, I am encouraged by recent developments particularly in the province of Manitoba. Since July 1, 1981 Canada has had its first all-Indian agency (the Dakota-Ojibway Tribal Council) assume legal responsibility under the Manitoba Child Welfare Act for the provision of child care services. On February 22, 1982 Canada, Manitoba and the Four Nations Confederacy of Manitoba signed a new Child Welfare Agreement under which significant control in respect of Indian child welfare services was turned over to the Indian authorities. In the area of strengthening Indian Band Government, I anticipate that I will continue to receive more Indian positions on suggested parameters for local government. I have had numerous discussions in the past on this important subject and Federal thinking is beginning to take some shape. I am in the process of finalizing proposals respecting changes that could occur in this area and it is my hope that these proposals will be complete and be considered and hopefully accepted by the

.../5

Federal Cabinet as a basis for future discussions with Indian people and with other interested and affected parties including other levels of government. I would emphasize that full opportunity will be provided for consultations on this important subject before any new changes are effected. In addition, I can assure you that any legislation, if it is introduced, will be optional, i.e. Indian Band Government will only be made available to those bands desiring it while leaving the Indian Act in place for those bands preferring the present situation. I will leave my more specific comments for our discussion on each of the agenda items.

In closing, it is my hope that we can develop and maintain a spirit of joint co-operation in our discussions of the important issues on the agenda today and it is my further hope that spirit of co-operation will be maintained significantly beyond this particular Conference. For the Federal Government's part I can commit myself to making the best effort possible to share with you information relating to the agenda topics which we will be discussing and to answering as many of your questions as I can in a positive and open manner. I look forward to our discussions over the rest of this day.

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INTERGOVERNMENTAL AFFAIRS

DESK BOOK

SASKATCHEWAN REGION

MAY, 1982

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EXECUTIVE SUMMARY

SECTION I

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

It is the purpose of this Intergovernmental Affairs Desk Book to highlight to internal DIAND personnel the status of relationships between the Department, particularly the Saskatchewan Region, and the Province of Saskatchewan.

Indian conditions on Saskatchewan Reserves do not appear to be markedly different from those on many other Reserves in Western Canada. Most notably, a high level of dependence on the Department, high social assistance rates, lack of educational and skill development, and lack of economic development present the Department with a wide range of programming requirements.

In Saskatchewan, however, an active Indian political structure, the Federation of Saskatchewan Indians, an active DIAND policy of turning increasing levels of responsibility for program delivery to Bands, and the progress of the land entitlement program have focussed attention on a wide range of social, economic and resource development issues.

In coming to grips with these issues, the senior levels of government, together with Indian organizations have acknowledged that intergovernmental cooperation is an essential ingredient for the improvement of Indian welfare.

Federal-Provincial cooperation has been effective in addressing a wide range of issues, including:

- delivery of social services to off-Reserve Indians;
- land entitlement;
- education;
- skill development;
- agricultural development;
- road construction and maintenance
- forest fire
- community infrastructure; and
- environmental impacts

Federal-Provincial negotiations have been based upon interpretations of the British North America Act, the Indian Act, and the 1930 Resources Transfer Agreement. In spite, however, of the legal positions adopted by both Canada and Saskatchewan, Saskatchewan has provided a greater level of service to Indians than the legal position suggests. It is uncertain at this time how The Canada Act, 1981 will affect Federal-Provincial affairs in respect to Indian development.

This Intergovernmental Affairs Desk Book reveals, that while there are outstanding issues which have not been, but will require to be, settled with the Province of Saskatchewan, there is optimism that the past level of Federal-Provincial cooperation will continue to serve as a model for the future.

INDIAN
CONDITIONS

SECTION II

INDIAN CONDITIONS

INDIAN CONDITIONS

DEMOGRAPHY

The Saskatchewan Region serves 49,489 registered Indians in 69 Bands and 153 Reserves. 38.4% of the population lives off-Reserve. See Table 1 . By 1985, the total Indian population is expected to grow to 58,248 persons, with 67% living on-Reserve and 33% living off-Reserve.

Saskatchewan's registered Indian population is approximately 5% of the total Provincial population, which is the highest percentage of any of the 10 provinces. It is anticipated that by 1986 this percentage will increase to 5.6%.

In 1981, approximately 44% of the population was 0 - 14 years of age, 32% was 15 - 29 years of age, 21% was 30 - 64 years of age, and 3% was 65 years of age or older. By 1986, the 0 - 14 age group will have dropped to 39% of the total, the 15 - 29 and 30 - 64 age groups will have increased to 35% and 23% respectively, and the over 65 age group will remain close to 3%. (See Figure 1).

The natural population increase rates for registered Indians in 1980 is 21.8 per 1,000 population. This is made up of a birth rate of 27.8 per 1,000 and a crude death rate of 6 per 1,000. All three of these rates are considerably higher than the total provincial rates.

The natural increase rate has decreased steadily from 45.8 per 1,000 population in 1971, at which time the birth rate was 56.0 and the death rate was 10.2.

TABLE 1

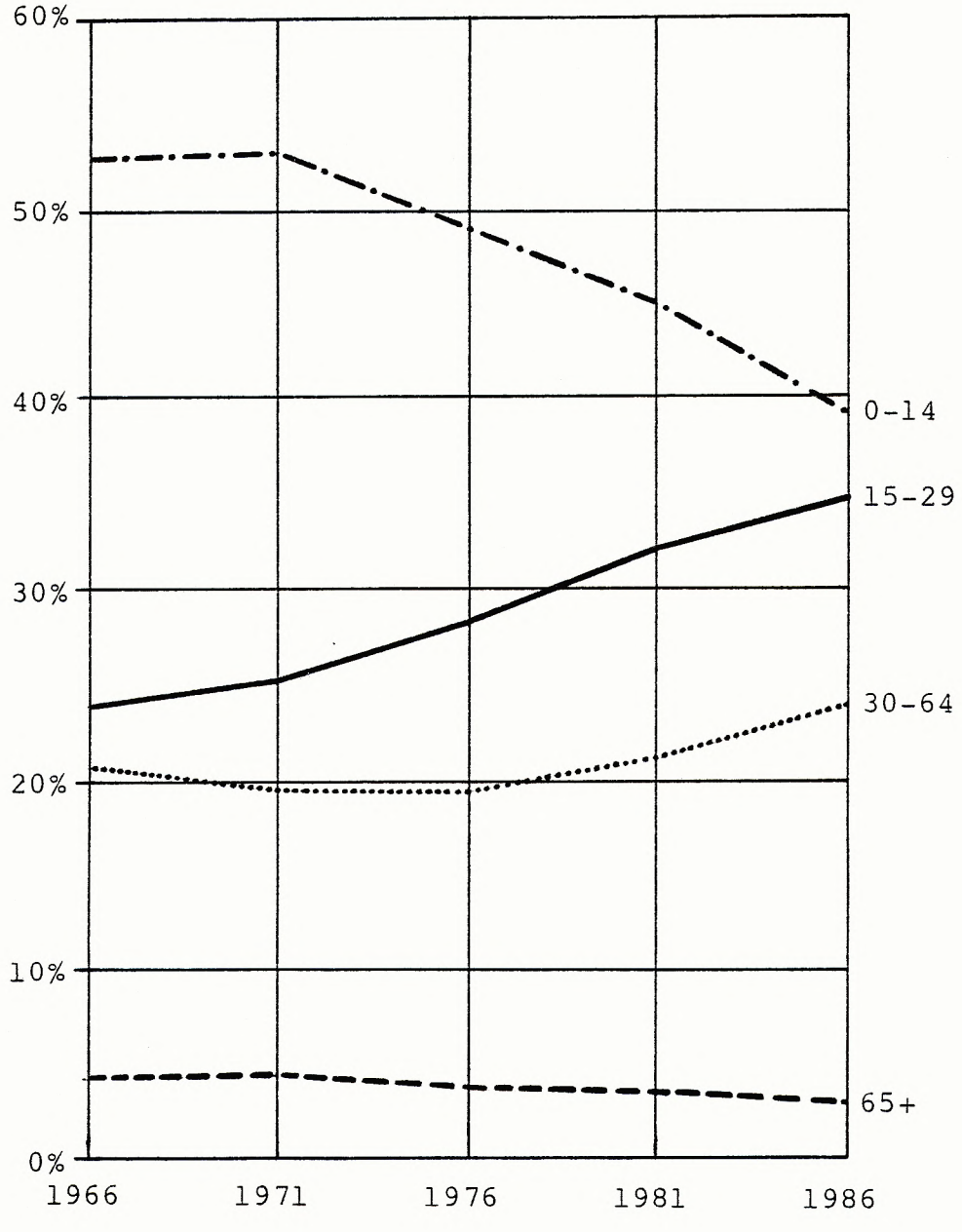
Population, 1981

District	On-Reserve	Off-Reserve	Total	% Off-Reserve
Meadow Lake	3,340	1,085	4,425	24.5
North Battleford	4,771	2,409	7,180	33.6
Prince Albert	8,604	3,578	12,182	29.4
Saskatoon	3,155	2,343	5,498	42.6
Shellbrook	2,458	577	3,035	19.0
Touchwood File Hills Qu'Appelle	4,386	5,346	9,732	54.9
Yorkton	3,761	3,676	7,437	49.4
Total	30,475	19,014	49,489	38.4

Source: Head Count by Estates and Membership, Saskatchewan Region, DIAND. Data for some of the Bands was projected from 1979.

FIGURE 1

Percentage Distribution by Age Group for
Registered Indians in Saskatchewan, 1966-1986



Source: A. Siggner and C. Locatelli. An Overview of Demographic, Social and Economic Conditions Among Saskatchewan's Registered Indian Population. 1980

Although the birth rate has experienced a considerable decline, the number of births has declined only marginally, as a result of the increase in the number of females of childbearing years.

The general fertility rate has decreased from 300 births per 1,000 women aged 15 - 44 in 1966 to 178 in 1976, and is expected to continue decreasing to 129 in 1986.

HEALTH

Of the 286 deaths reported in 1980, 40% were due to injury and poisoning, 18% due to diseases of the circulatory system, 10% due to diseases of the respiratory system and the remaining 32% due to other causes.

The suicide rate is presently 37.6 per 100,000 population, with the majority occurring to males between 15 - 29.

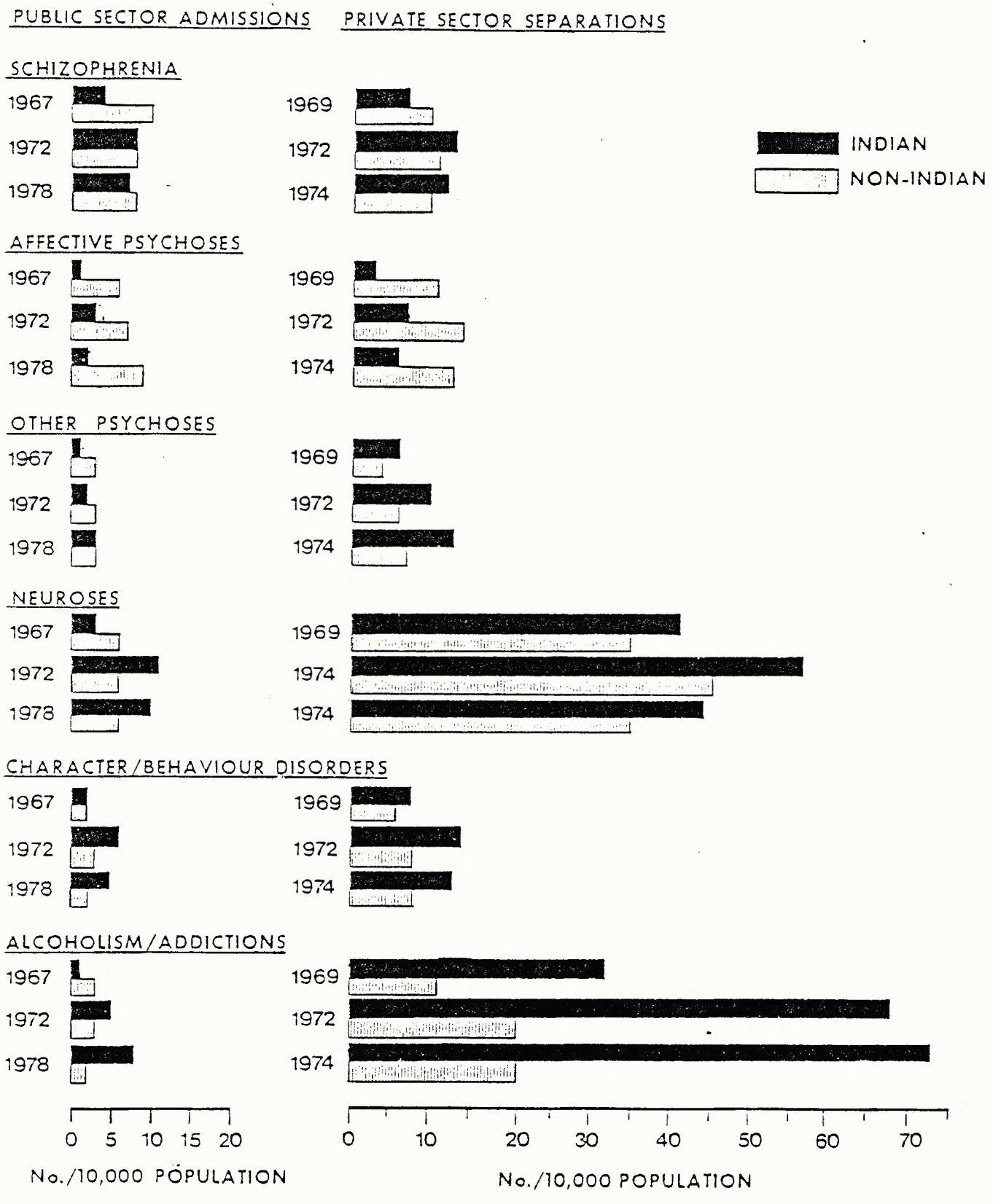
The infant mortality rate has decreased from 68 per 1,000 births in 1961 to 31.6 per 1,000 births in 1980. This rate is considerably higher than the provincial average.

The incidence of tuberculosis among registered Indians is approximately 1.6 per 1,000 population, which is much higher than the provincial average of 0.2 per 1,000 population.

The rate of psychiatric admissions in Saskatchewan is somewhat higher for Indian people than for non-Indian people. The rate of admissions for alcoholism/addiction is over three times higher for the Indian population. (See Figure 2).

FIGURE 2

Number of Psychiatric Admissions per 10,000 population.



Source: W. Fritz and C. D'Arcy. Comparisons: Indian and Non-Indian Use of Psychiatric Treatment Services, 1980.

SOCIAL ASSISTANCE

The average cost per case month of social assistance was $365.00 in 1978-79 which was 36% higher than the national Indian average.

In 1981-82, 87,857 case months of social assistance were paid to Indians by DIAND at an average unit cost of $356.30. Almost 87% of these case months were paid to on-Reserve Indians, with the remaining 13% being paid to off-Reserve/urban registered Indians who left the Reserve in the previous year. Social assistance for Indians who have been living off-Reserve for more than one year is administered by the provincial government.

It is estimated that approximately 40% of Saskatchewan's Indian population beyond the age of 19 is dependent upon social assistance.

Projected welfare needs are projected at $28 million for 1980-81.

EDUCATION

School enrollment of registered Indians has been increasing steadily from 11,077 in 1971-72 to 14,578 in 1979-80. Of the 14,578 students in 1979-80, 35% are attending Federal operated schools, 11% are attending Band operated schools, 53% are attending Provincial schools, and 0.4% are attending private schools.

6.7% of the total school enrollment are Division IV students.

Retention to Grade XII enrollment for registered Saskatchewan Indians is much lower than that for the total Canadian population (in 1975-76, the rates were 8.6% and 75.2% respectively).

In 1976, 77.7% of the 5 - 13 age cohort were enrolled in primary grades; 20.3% of the 14 - 18 age cohort were enrolled in secondary grades.

In 1975, 23.6% of the 19 - 29 age cohort was enrolled in post-secondary and adult education courses.

In a selected survey of 18 joint schools (offering complete Kindergarten to grade 12 programs for both Native/Indian and non-Indian students), the percentage of Native/Indian students was much lower in Division IV than in other Divisions, indicating a low retention rate. The percentage of Native/Indian Students in Special Education programs was much higher. (See Figure 3).

In only 4 Provincial School Districts were more than 20% of the total enrollment in rural schools Native/Indian students. (See Figure 4).

EMPLOYMENT

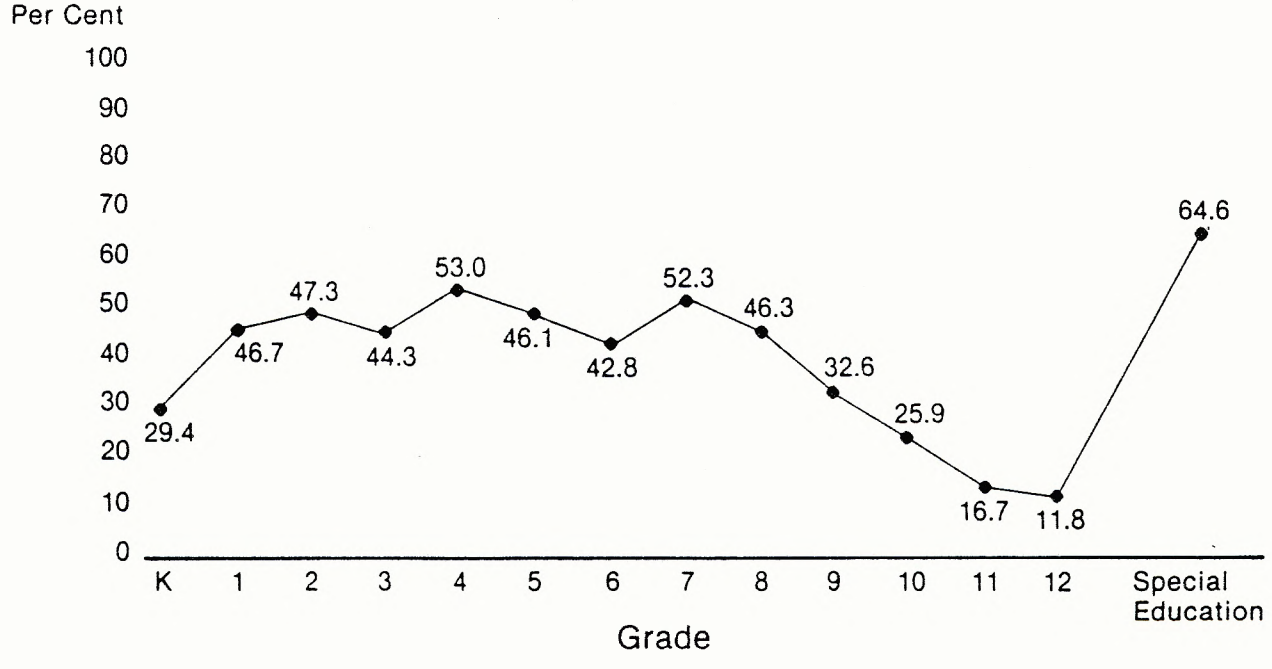
Little statistical data is available describing either the current unemployment or employment levels among Indians in Canada. However, the level of unemployment for Indians living on-Reserve in Saskatchewan in 1979 has been estimated at 80%. These estimates also indicate that there was a total of 1,632 Indians living on-Reserve in Saskatchewan who were employed, of which 82% were working on-Reserve and 18% were working off-Reserve.[1]

It is estimated that 21% of entrants into Saskatchewan's labour force in the 1980's will be of Indian ancestry.

1. In discussing levels of unemployment in the Indian population the reader should realize there are conceptual difficulties with the term unemployment. Statistics Canada definitions, for example, are not meaningful for Indian people who follow a traditional way of life. There are also conceptual problems with respect to what constitutes "full" versus "part" time employment. Thus, considerable caution is suggested when comparing an average unemployment rate of 4 to 5% for the provincial population in 1977 with one which is variously "guesstimated" as being in the range of 50 to 80% for the Indian population.

FIGURE 3

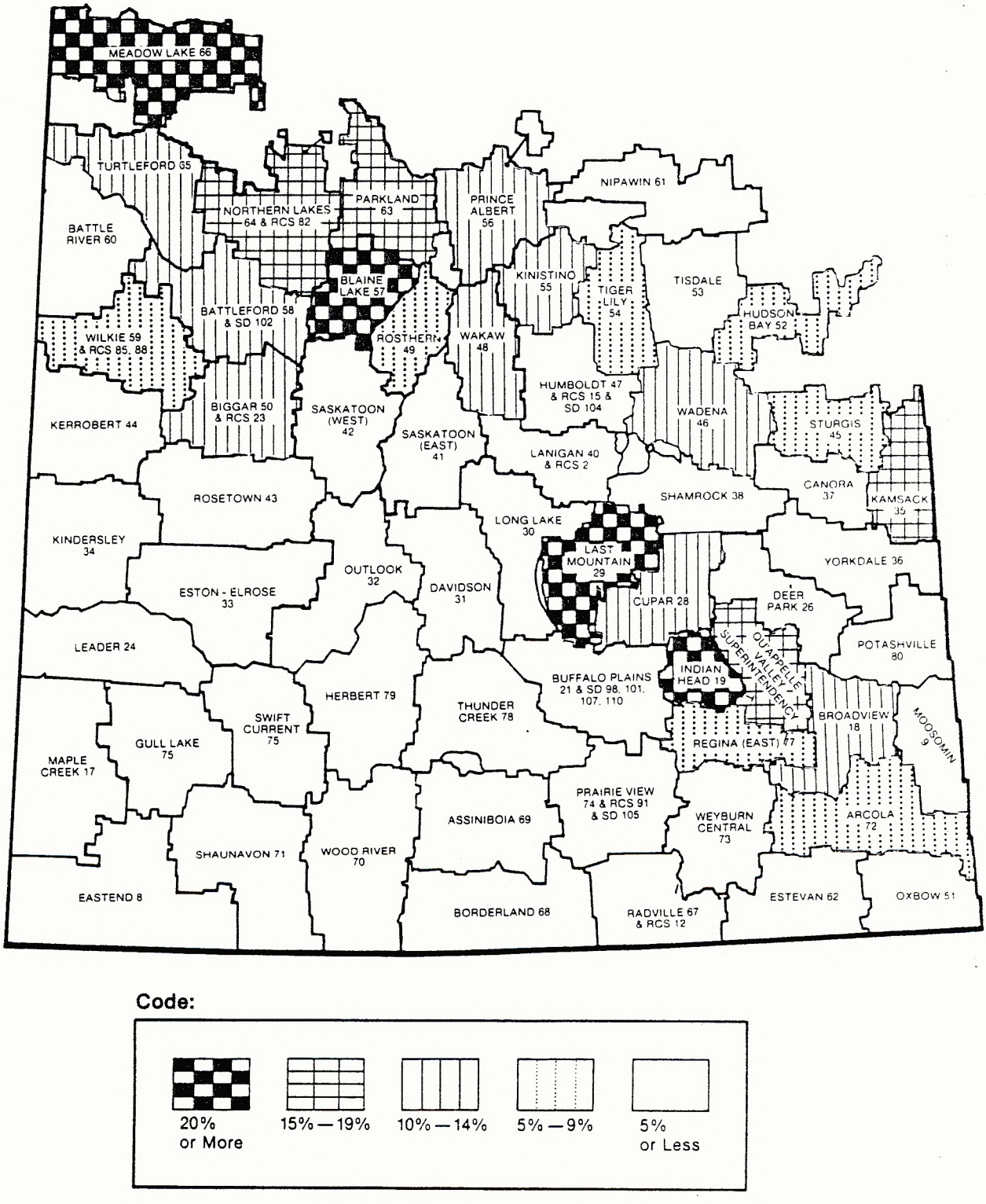
Percentage of Native/Indian Students
in Eighteen Selected Schools



Source: Saskatchewan Education. Rural Education: Options for the 80's. 1981.

FIGURE 4

Percent Native/Indian Enrolment 1980



Source: Saskatchewan Education. Rural Education: Options for the 80's. 1981

INDIAN CONDITION

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File Sources

DIAND
PROGRAMS

SECTION III

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

Introduction

The Saskatchewan Region of DIAND, through six districts and one agency, serves registered Indians in all 69 Bands and 153 Reserves in Saskatchewan. The Region administers major programs through a series of Program Managers in the Regional Office, with much of the actual program delivery being handled by District Managers. (See Figure 5).

The Region's 1981-82 operating budget was $137.0 million, an increase of 7% over the previous year. Resource allocation for 1982-83 by program area are displayed on Table 2 . The resource allocation by Districts in 1981-82 is displayed in Table 3 .

The major program areas of DIAND which provide service to Saskatchewan Indians are:

- Reserves and Trusts
- Community Affairs
- Band Government
- Economic and Employment Development
- Social Development
- Education
- Planning and Review
- Engineering and Architecture
- Information Services

Each of these is discussed below.

FIGURE 5

Organizational Structure
Saskatchewan Region

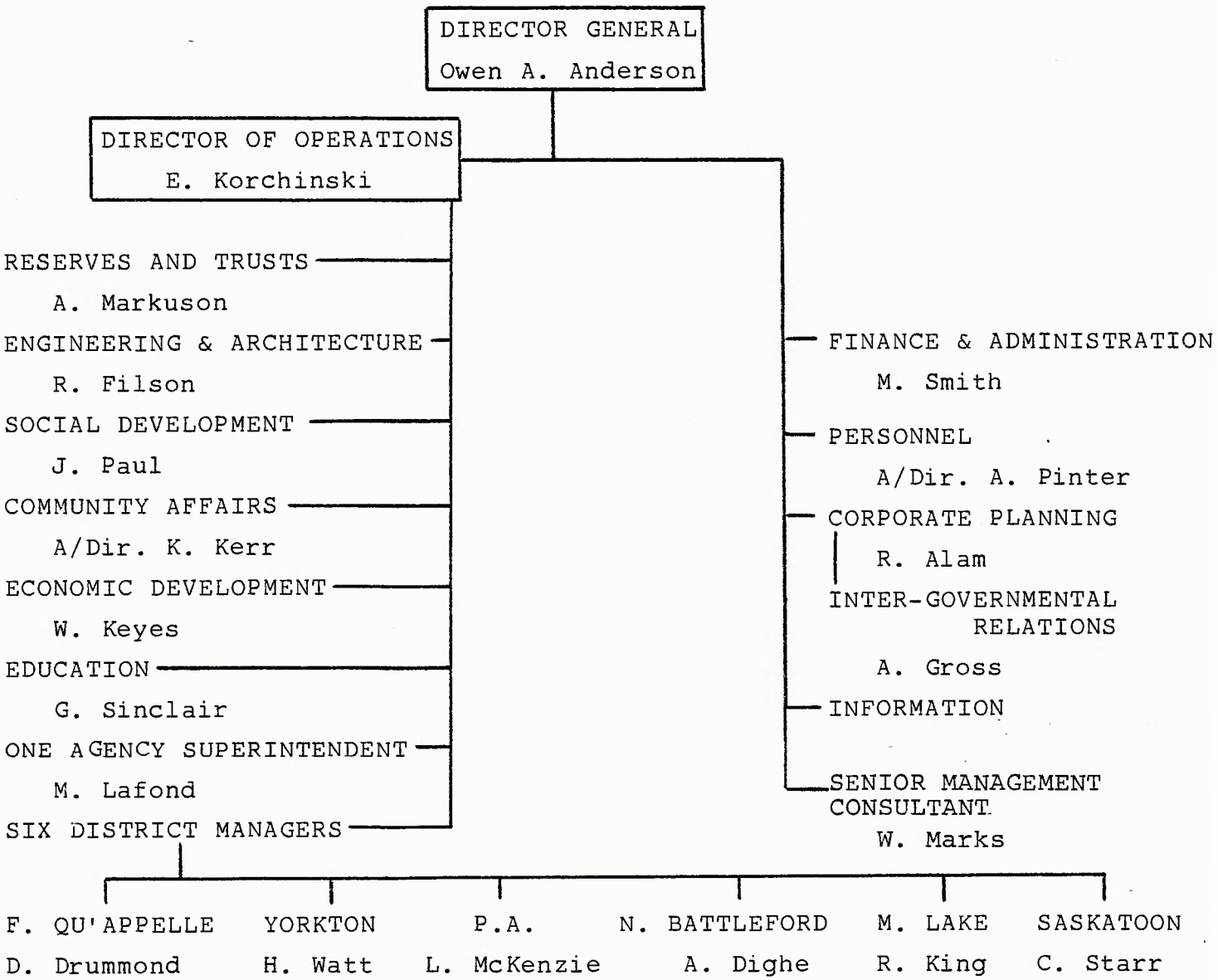


TABLE 2

Resource Allocation by Program, 1982-83

Program	Capital ($000)	Operation and Maintenance ($000)
Program Administration	311	2,606.9
Reserves and Trusts		939.7
Education	10,473.4	45,621.3
Employment and Economic Development		5,448.7
Social Services		36,819.8
Community Infrastructure and Services	18,925.9	3,295.
Band Government		9,311.5
TOTAL	29,710.3	104,042.9

TABLE 3

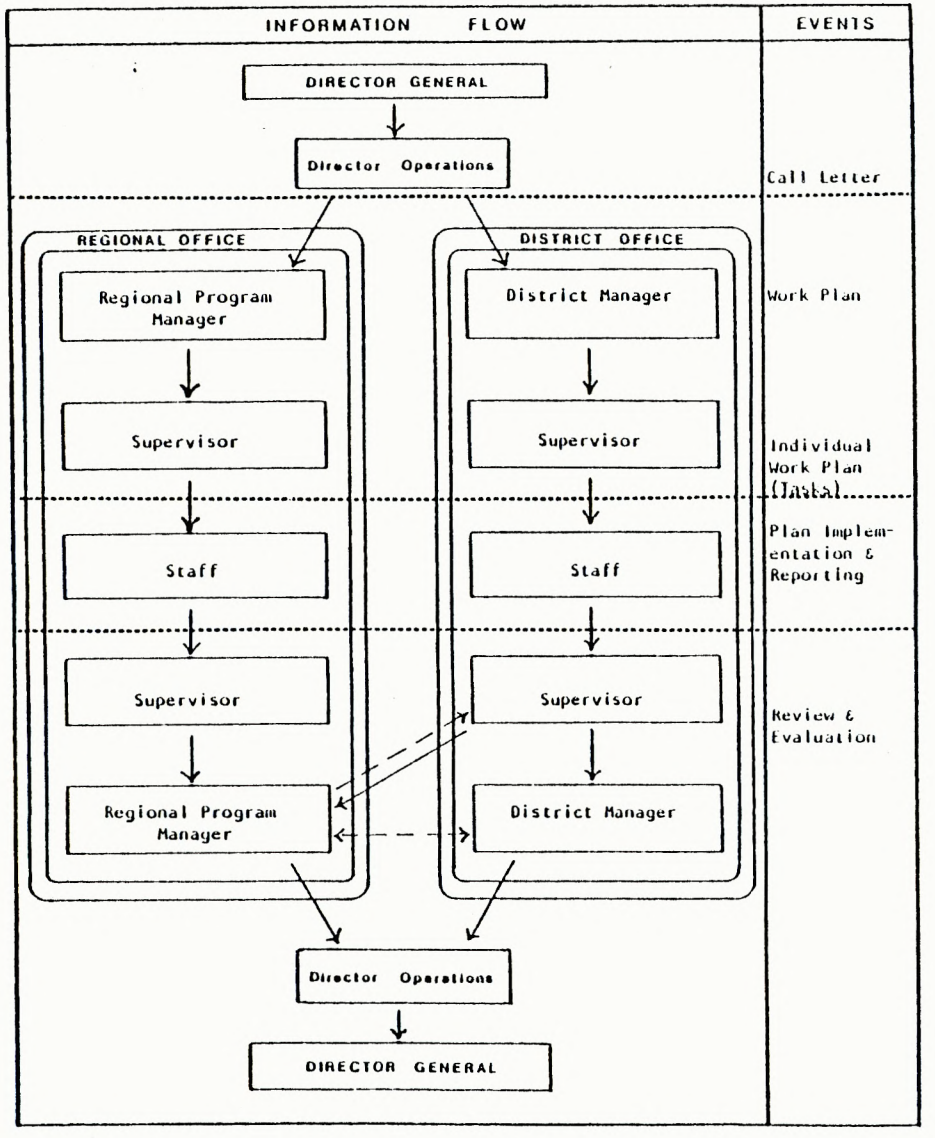
Saskatchewan Regional Resource Distribution

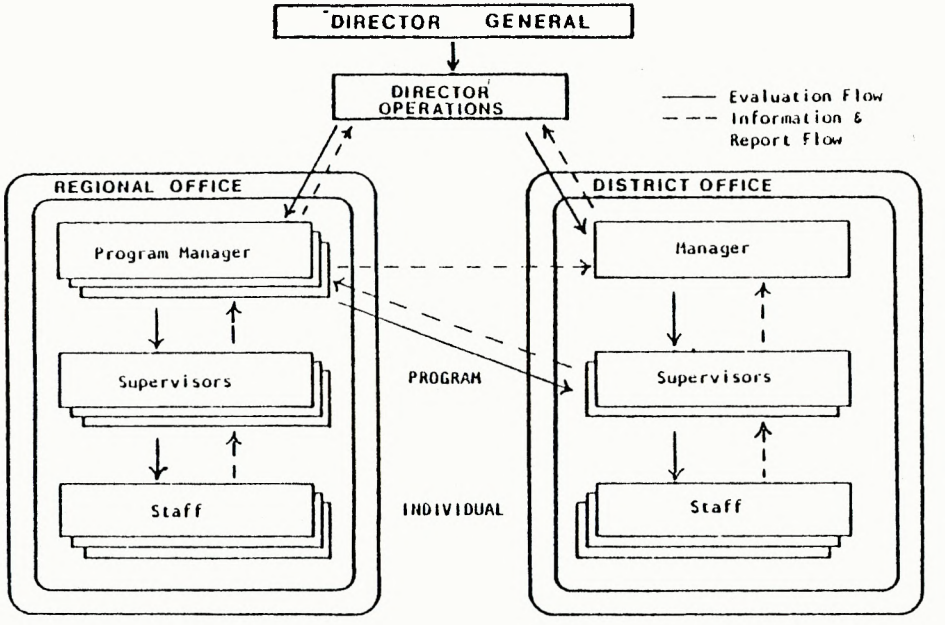
	REGIONAL OFFICE	Districts/Agency								REGION TOTAL
		NORTH BATTLEFORD	PRINCE ALBERT	YORKTON	SASKATOON	TFH/ QU'APPELLE	MEADOW LAKE	SHELLBROOK	DISTRICT TOTAL	
O & M	8,112.7	2,714.1	6,937.0	3,772.3	3,228.4	8,399.6	5,009.4	3,337.6	33,398.3	41,511.0
G & C	8,082.8	10,423.9	16,952.8	4,447.8	6,939.4	9,778.1	5,619.5	2,096.5	56,258.0	64,340.8
Capital	11,142.5	2,604.9	4,982.3	2,791.3	2,035.3	4,112.3	1,938.8	1,117.8	19,582.7	30,725.2
TOTAL	27,338.0	15,742.9	28,872.1	11,011.3	12,203.1	22,290.0	12,567.7	6,551.9	109,239.0	136,577.0 (408.8) 136,985.8
Indian Population	On Reserve (Off Reserve)	4,630 (2,234)	9,645 (1,822)	3,096 (4,050)	3,200 (2,154)	5,183 (4,133)	3,217 (970)	2,307 (630)	-	31,278 (15,993)
	Total	6,864	11,467	7,146	5,354	9,316	4,187	2,937		47,271
Per Capita	On Reserve	3.4	2.99	3.56	3.81	4.30	3.91	2.84	-	4.38
	Total	2.29	2.52	1.54	2.28	2.39	3.00	2.23		2.90

Source: DIAND. Work Plan 81/82. 1981

FIGURE 6

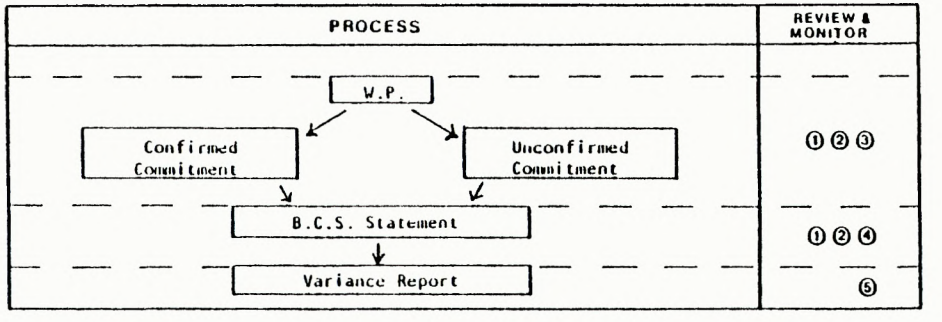
Work Plan Process, 1981-82





1981-82 WORK PLAN:

FINANCIAL CONTROL ACCOUNTABILITY FOR THE PLAN IMPLEMENTATION:



Review and Monitor by: ① District Program Manager ② District Manager and Regional Program Manager ③ Regional Program Manager with District Functional Counterparts ④ District Manager with Regional Program Manager ⑤ Director of Operations with Regional Program Manager.

Source: DIAND. Work Plan 81/82. 1981

Reserves and Trusts

The Reserves and Trust program is responsible for the administration and management of Indian Lands. In particular, some of its major functions include:

- Negotiating and implementing settlements related to the Land Entitlement Process.
- Developing and offering band training programs.
- Maintaining Reserve and membership statistics.
- Managing and administering Indians lands and estates.
- Providing support services relating to the identification and utilization of natural resources on Indian lands.
- Administering the statutory requirements of the Indian Act relating to elections and bylaws.
- Providing survey and mapping services on new and existing Reserves.
- Maintaining a forest fire agreement with the Province.

Community Infrastructure

The Community Infrastructure program deals with the administration and financing requirements for the development of physical facilities in Indian communities, and strengthens the communities' abilities to function independently of the Department. The major responsibilities of the program are:

- To provide housing support to Districts, Bands and individual Indians.
- To provide housing assistance to off-Reserve Indians.
- To assist in the planning and financing for all necessary roads, community facilities, and sewer, water, and power requirements, including operation and maintenance costs.

Funding for the Community Infrastructure Program totalled over $22 million in 1982-83. Approximately one half of the funds went towards capital expenditures on housing, with much of the remaining going towards other capital requirements.

Band Government

In the 1981-82 Work Plan, both Band Government and Community Infrastructures were sub-components of the Community Affairs program. However, in light of the importance of the Band Government component, this has been considered as a separate component. The major roles of this program include:

- To provide direct departmental administration costs needed to support Band government.
- To provide Core Funding to support Band government.
- To provide contribution payments to Band Councils to cover overhead costs for administering Band Programs and services.
- To provide funds for consultation and policy development to both Bands and Indian agencies.
- To develop Band leadership and management expertise.

DIAND funding for Band Government in the 1982-83 fiscal year is estimated at close to $10 million.

Economic and Employment Development

The Economic and Employment Development program is involved with promoting economic development for Indian Bands through the provision of advice and assistance to Bands, individuals and Indian institutions and agencies. The major functions of this program include:

- The creation and support of Indian-owned and managed development institutions.
- Supporting the development of economically viable Indian enterprises.
- To develop improved access to employment for Indian people through existing federal-provincial programs, supplementary programs and affirmative action measures.

Funding for this program in 1982-83 was almost $5.5 million. Over half of this amount went towards the Indian Equity Fund.

Social Development

The Social Development program of DIAND provides financial assistance to Indian people in need, and encourages them to regain or develop social, physical or mental well-being. The five specific activities of this program are:

- social assistance.
- child care
- adult care (for the aged and disabled)
- rehabilitation (for the disabled)
- care and counselling

The Social Development program had a total 1982-83 budget of almost $37 million, of which the majority was allocated to the social assistance component of the program.

Education

The Education program is the largest DIAND program in terms of expenditures. It is involved with all aspects of education for Indian people, including:

- Providing comprehensive elementary and secondary education services for students at federal, band-operated, provincial or private schools.
- Providing the required accommodation and other services to students.
- Providing career counselling services to students.
- Providing post-secondary education financial assistance to eligible Indians.
- Providing or assisting Indians with training in literacy, social and leadership skills, occupational skills, or any other continuing education programs.
- Providing cultural grants to individual artists.

Funding for this program in 1982-83 exceeded $55 million. Capital expenditures were almost $10 million, with much of the remainder going towards elementary and secondary education.

Engineering and Architecture

The Engineering and Architecture Program is responsible for:

- providing technical advisory services to Bands for projects identified by Bands;
- operation and maintenance of schools and other departmentally managed facilities;
- provide technical training for Bands to take over the capital management process;
- implementing a Regional fire prevention and protection program.

Total funding for this program in 1981-82 is almost $7 million.

Planning and Review

The Planning and Review program is responsible for Band planning

support services, as well as for two other programs, Intergovernmental Relations and Information Services. The function of the program includes:

- Community and land use planning for Bands;
- Data base development;
- Socio-economic and environmental studies;
- Resource development impact assessments;
- Other program planning and review and evaluation services as required.
- the settlement of outstanding treaty land entitlement;
- coordination of support from other agencies;
- an information network between the Region and the Indian Community;
- the flow of information to the public;
- the internal information network to inform management staff on National and Regional policies and objectives.

The total resource allocation for Regional Planning and Review in 1982 - 83 is $480,000. In addition, District Planning accounts for $280,000.

Recent Departmental Thrusts

1. Devolution of DIAND program funds and services

At the present time 60% of Saskatchewan DIAND program funds and 40% of DIAND services are now under Band administration and the intention of the Regional Operational Plan is to increase significantly the Band control of program funds and service during the five-year period. The strategy for the increased Band control of programs is based in the short term on:

- Establishment of an integrated Band staff training program;
- Creation of a pool of Band development advisors, at the District level, with professional expertise;
- To establish an integrated Regional corporate function including Inter-Governmental Relations, Information Services, Organization and Management Improvement, and Planning and Evaluation to increase management capability and effectiveness;
- Intensifying tripartite negotiations in respect to resource developments, education and socio-economic development.
- Intensified negotiations with Bands to effect devolution through transfer of student residences, Federal Schools, non-Federal school tuition, and infrastructure agreements.

The devolution of DIAND Programs is a complex two tiered process. It includes:

- Negotiation Processes
- Actual Implementation of the Agreement. For the most part the Department and the Indian community in Saskatchewan have agreed on the pace of devolution within the Region. A number of problems, however, have arisen in the implementation of the process. These problems include the aspects of training, accountability, assessment and control mechanisms.

More importantly, a smooth devolution transition will not occur unless an adequate and corresponding revenue base accompanies all the phases of the process.

DIAND has determined that it will negotiate devolution with Bands and organizations in program and service areas that have a high chance of success even though the devolution mechanism is not in place. The Department will hold off on negotiations on devolution in those areas that depend on a strong transfer base and mechanism process.

To facilitate devolution, DIAND is clarifying the responsibility of Bands in devolution. Priorities are set by DIAND on a national basis for program funding that is finally administered and delivered by Bands. Due to the present process of setting

national priorities, with funding only being available for specific areas and government control on expenditures, Band councils are finding that they cannot set community priorities but can only develop projects and programs on the basis of DIAND national priorities. This results in the Chief and Council becoming an extension of the Department rather than being an autonomous Band government that sets priorities and expenditures on behalf of the community and the electorate. Since Chief and Council are elected their responsibility to their electorate, rather than to DIAND, will be enhanced.

In support of devolution DIAND has undertaken the following initiatives:

- turning over many Departmental functions to Bands;
- Band control of social assistance programming;
- improvement/strengthening of Band government structure;
- development of independent, multi-agency programs such as SIAP;

2. Community Based Planning and Development

Continuing devolution of DIAND programming has led the Department to reconsider the manner in which it responds to Band requests for planning and development services. Substantially, new response mechanisms are being identified through the Department's support of the community based planning and development concept.

Community based planning and development are processes which emphasize the role of the Band in defining the goals, objectives and programming of development.

Community based development offers a range of options for development. These options include:

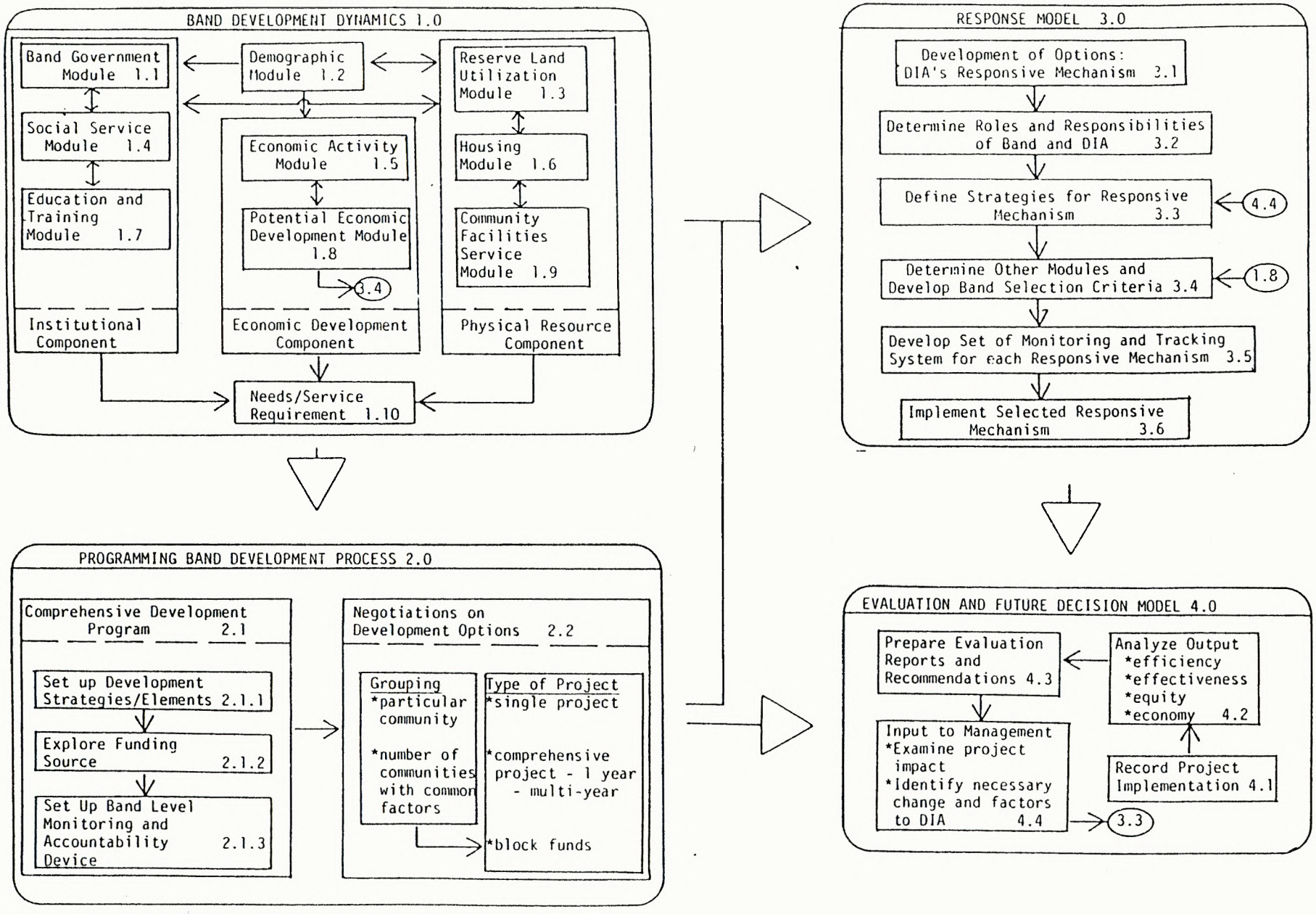
- the incorporation of Bands into the external Canadian economy;
- Band self-sufficiency where practicable;
- more limited Band goals of institutional, social, economic, or infrastructure development.

To implement community based development, Bands must be prepared to choose between alternatives.

Community based planning and development dynamics are displayed on the following page.

FIGURE

INDIAN SOCIO-ECONOMIC DEVELOPMENT PROCESS



3. DIAND as Development Agency

Current DIAND programming and Departmental structure will do little to encourage Bands to undertake their own development programs and to achieve self reliance. Current management practices are heavily remedial/maintenance oriented and do not give high priority to development.

Further, the existing structure is organized to deliver specific programs including housing, education, health, and infrastructure services.

The existing DIAND structure is single purpose oriented; current structures will maintain dependency syndrome. Through community based planning and development, DIAND will have the means of adopting a stronger development capability. Adoption of such a role will require:

- new delivery structures
- new or strengthened Band structures and DIAND response mechanisms
- redefinition of Band and DIAND roles, and expectations of each other
- improved capability to respond to local and regional variations.

4. New Legislation

New legislation is being considered for Indian Government under which the Bands could become responsible for all areas now covered under the Indian Act, such as referendums and land. Under this new legislation DIAND would negotiate funding for all programs and arrange transfer payments to each Band as opposed to the present contribution arrangement system for providing funds to Bands. Under the proposed legislation Chiefs and Councils would be responsible to the electorate rather than to DIAND. Bands would have to hold a

referendum before theyome under the new system. Bands voting for the new sysd no longer come under the Indian Act.

The Region supports the of action. This approach would support Indian Gt and give Bands complete autonomy. Chief and Could be responsible to their electorate in all areaver, as long as they no longer come under the Indian w if any Saskatchewan Bands would go this route. e, change would be necessary in the proposed legislati

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

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INDIAN BAND
INSTITUTIONS

SECTION IV

INDIAN BAND INSTITUTIONS

INDIAN BAND GOVERNMENT

INTRODUCTION

The primary unit of government for registered Indians is the Band government, headed by Chiefs and Councils. Band governments are aggregated into District Chiefs Councils to promote a collective forum to resolve common on-Reserve problems, and to provide a unified Indian government institution for jurisdiction within treaty areas both for Crown Lands, and off-Reserve citizens.

The major political organization spearheading the drive for self-determination through Indian self government is the Federation of Saskatchewan Indians (F.S.I.). It is through the F.S.I. that most major Indian institutions have been established.

These Indian government organizations, and the major Indian government issues and positions are discussed in the subsequent chapters.

BAND GOVERNMENT

The Chief and Band Councils of the 69 Bands in Saskatchewan constitute the primary unit of Indian Government. It is from Band government that the other major Indian political institutions of the District Chiefs Councils and the Federation of Saskatchewan Indians obtain their mandate.

The major governing responsibilities of the Chief and Councils are:

- Negotiations to ensure the social, economic and educational rights under Treaty are delivered to their people.
- Guarding the Treaty obligations and developing policies and programs to advance Indian interests.
- Conducting negotiations and dialogues with Canada, Saskatchewan, municipal governments, and a variety of formal and informal authorities and vested interest organizations.

Each Band has one Chief, and between 4 and 12 Councillors. A complete list of Band Chiefs and Councils is found in Chief and Councillors; Saskatchewan Region. Funding for operational costs and administrative support is provided by DIAND core funds and contribution arrangements.

One of the major thrusts relating to Band Government is that of devolution from DIAND to the Bands. In particular, DIAND will strengthen Band Government by developing and implementing a process which will enable the Bands to assume responsibility for Capital Program planning and implementation and the operation and maintenance of physical facilities on Reserves such as housing, infrastructure, schools and public facilities.

Bands will be encouraged to take over a number of socio-economic programs and activities through devolution, in order to bring Indians closer to the goal of self government.

DISTRICT CHIEFS COUNCILS

The District Chiefs Councils consist of 7 councils, each with an executive representing the Bands in the District or Agency. This organization is primarily political in nature, although direct service programs are coming increasingly under the authority of the District Chiefs Councils.

The District Chiefs Councils serve a dual political function:

- To promote a collective forum and alliance for the resolution of on-Reserve common problems and the development of common initiatives.
- To provide a unified Indian government institution for the exercise of jurisdiction in the treaty areas of Saskatchewan, both in terms of Crown lands and resources, and its off-Reserve citizens.

The Board of Directors of the District Chiefs Council includes six executives who form the executive, and six district representatives.

The District Chiefs Representatives are, by District:

Fort Qu'Appelle	Irvine Starr
Saskatoon	Chief Andy Michael
Yorkton	Norman Stevenson
North Battleford	Chief Gordon Albert
Meadow Lake	Percy Durocher
Prince Albert	Allen Bird
Shellbrook	Gordon Ahenakew

It has become increasingly apparent that this primary level of collective Indian government requires a permanent administrative centre with executive and administrative personnel. The concept of the Treaty Area Administration Centre has been developed to address this need.

Community based direct services would emanate from these Treaty Area Administration Centres, thus ensuring that the policies agreed on by Chiefs will be implemented in accordance with what is intended in Treaty. The Province of Saskatchewan has indicated

support for this concept through a willingness to cost share for the establishment of these centres, as well as for on-going maintenance, particularly with regards to the off-Reserve Indian population.

Funding for the District Chiefs Councils comes from the Federation of Saskatchewan Indians in that the District Representatives and support staff are paid employees of the F.S.I. Funding for District meetings is provided by DIAND through District Office Consultation Funds.

THE FEDERATION OF SASKATCHEWAN INDIANS

The Federation of Saskatchewan Indians (F.S.I.) has led the way in demanding that DIAND place its primary objectives to deliver services to Indian people in ways which respect Indian aspirations. In the past, relationships between the Federation and Regional management were strained. More recently, however, interaction has assumed a mutual consultative rather than a confrontational temper. In part, this is due to a shift in policies of the Indian program in general, and in those of the Saskatchewan Region in particular.

The objectives of the Federation are fourfold:

- To protect Indian Treaties and Treaty Rights.
- To promote the welfare of Indian people of Saskatchewan.
- To foster progress in the economic development, education and social life of Indian people.
- To cooperate with civil and religious authorities in matters pertaining to Indian interests.

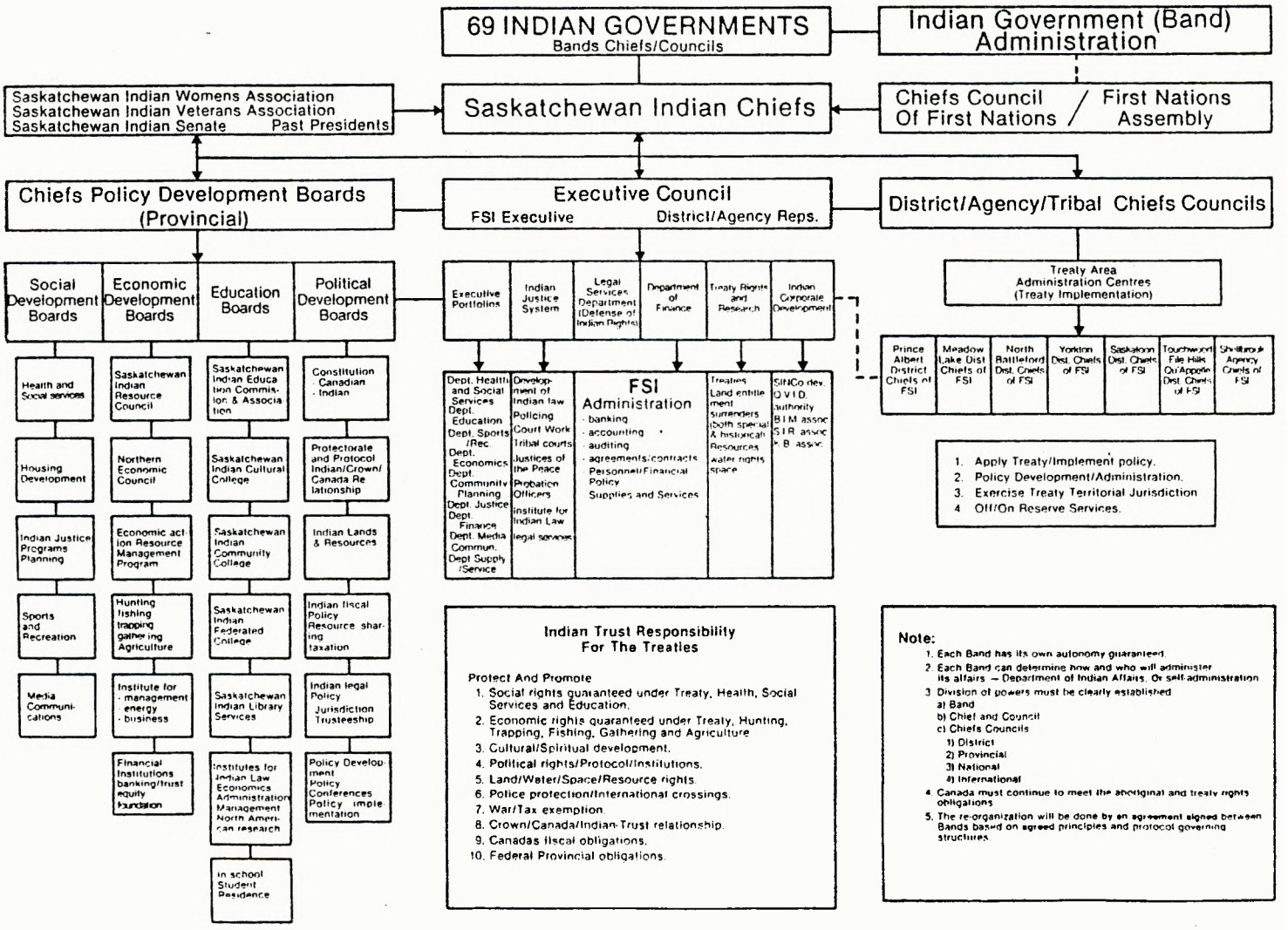
Direction for the F.S.I. is provided by the 69 Indian Band Governments through Band Chiefs and Councils. The executive of the Federation is as follows:

Chief	Sol Sanderson
First Vice-President	Doug Cuthand
Second Vice-President	Steve Pooyak
Third Vice-President	Ron Albert
Fourth Vice-President	Ray Ahenakew
Fifth Vice-President	Cyrus Standing
Secretary	Melvin Isnana
Treasurer	Wayne Ahenakew

A flow chart of the proposed structure of the F.S.I. is provided on the following page. Although this is the only proposed structure, it is anticipated it will be implemented shortly.

FIGURE 8

Federation of Saskatchewan Indians: Proposed Structure



Source: DIAND Files

As Saskatchewan Chiefs have taken increased responsibilities for the social, economic, educational and political development of their Bands, the Federation is now tending more towards policy development and support services rather than the provision of direct program services. The centralization of the Federation of Saskatchewan Indians administration is an example of streamlining which will enable the Federation of Saskatchewan Indians to better provide support as Bands move to providing more community based direct service. Community based direct services will emanate from and be coordinated from the Treaty Area Administration Centres.

The proposed structure, as outlined in Figure 8 would be as follows:

- The 69 Indian Band governments would provide the required direction. The F.S.I., the Treaty Area Centres and the Bands would provide the necessary administrative support.

- Saskatchewan Indian Chiefs would have advisory support from the following Provincial and National bodies:

Provincial	Saskatchewan Indian Women's Association
	Saskatchewan Indian Veteran's Associaton
	Saskatchewan Indian Senate
	Federation of Saskatchewan Indian Past Presidents
National	Chiefs Council of First Nations
	First Nations Assemblies

- The organization of the Federation of Saskatchewan Indians under the Saskatchewan Chiefs would have three main components.
  A. Chief's Policy Development Boards.
  B. Executive Council
  C. District Agency, and Tribal Chief's Councils.

  A. Through the Provincial Policy Development Boards, the Chiefs would direct the development of Policy governing the social, economic, educational and political development of Indian Government Programs and Services in Saskatchewan. 24 Boards are required to carry out policy development.

  B. Through the Executive Council consisting of the Federation of Saskatchewan Indians Executive, District, and Agency representatives, the necessary centralized support services would be provided to Bands, Development Boards, and Treaty Area Administration Centres. These services would fall within one of six broad areas:

1. Executive Portfolios
2. Indian Justice System
3. Legal Services Department
4. Department of Finance
5. Treaty Rights and Research
6. Indian Corporate Development

C. Through the District Agency and Tribal Chief's Councils, Treaty Area Administration Centres would be directed in the implementation and administration of community based Indian Policy, Indian Programming and the fulfillment of the Spirit and Intent of Saskatchewan Indian Treaties and Indian Rights.

Perhaps the area where the F.S.I. has had the greatest direct impact has been in the establishment of a number of Indian institutions in various areas, such as:

- Indian Colleges and Student Residences
- Economic Action and Resource Management Program
- Indian Equity Foundation
- Saskatchewan Indian Nations Company (SINCO)
- Saskatchewan Indian Agricultural Program (SIAP)
- Joint Ventures
- Management Associates
- Health and Social Services Task Force
- Housing Commission
- Indian Health Centre
- Saskatchewan Indian Women's Association
- Qu'Appelle Valley Indian Development Association
- Association of Saskatchewan Indian Resorts
- Prairie Indian Water Rights Commission
- District Chiefs' Councils
- Saskatchewan Indian Cultural College
- Others

Considerable economic, social, cultural and political developments have been experienced through these institutions.

The F.S.I. is funded through a number of different Government Agencies. Much of the administration funding comes from Secretary of State Canada, Health and Welfare Canada, Canada Employment and Immigration Commission, and the Department of Regional Industrial Expansion (through the Special ARDA Program) provide funds for certain F.S.I. programs. The F.S.I. also receives substantial funding from DIAND for meetings, policy development and assorted administrative functions.

ISSUES AND POSITIONS

Introduction

It is the purpose of this Section to highlight the key concerns and issues of Bands within Saskatchewan. These issues include:

- Entrenchment of aboriginal rights in the Canadian Constitution;
- Payment of salaries to Chiefs, Councillors, and other Band representatives;
- Autonomy;
- Core funding;
- Administration of justice;
- By-laws and court system;
- Taxation;
- Resource sharing.

In this Section, the issues above are described from the perspective of the Federation of Saskatchewan Indians, as the political agency of Saskatchewan's Indian Bands.

Entrenchment of Aboriginal Rights in the Canadian Constitution

Historically, Treaty Indians have not accepted the right of the Parliament of Canada to legislate laws affecting Indians. Rather, Indians believe the treaties were signed between themselves and the Crown, and that the Crown is the only body Indians can legitimately accept as sovereign.

During the constitutional debates leading up to patriation of the Canadian Constitution in April, 1982, the Federation of Saskatchewan Indians articulated a position that the Government of Canada has recognized treaty and aboriginal rights but has not made adequate provision for the entrenchment of these rights in The Constitution Act, 1981.

To achieve that entrenchment, the Federation, in association with the National Indian Brotherhood with the Indian Association of Alberta, proposed an amendment to the Constitution Act. The amendment proposed the following sets of principles as a basis for reaching agreement with the Government of Canada:

1. Formal acceptance and confirmation of all aboriginal, treaty and other rights and freedoms recognized by the Royal Proclamation of 7th October 1763 and recognized and confirmed by:

   a) the various treaties made between the Crown and nations or tribes of Indians; and

   b) the various settlements and agreements made or entered by the Crown with Indian peoples, including declarations, covenants and judgements accepted by Indian peoples.

2. Formal recognition of the inherent right to Indian Government within the Canadian confederation, including:

   a) the right to determine the nature of Indian nationhood and to identify and define Indian citizenship;

   b) the right of access to the Crown; and acknowledgement that Indian government powers and responsibilities exist as a permanent and integral feature of the Canadian policy.

3. The identification, definition and implementation of the rights referred to above:

   a) by the establishment and operation of an office for the protection of aboriginal and treaty rights; and

   b) by the requirement that any amendments to the Constitution of Canada which affect the aboriginal peoples shall be made only with the formal consent of the aboriginal peoples so affected.

   c) notwithstanding anything in the Canada Bill including the Charter of Rights which may abrogate, derogate or otherwise infringe on aboriginal and treaty rights shall not apply to the Nations.

   d) by passing the necessary legislation providing for reasonable access to that information and documentation solely within the possession of the Federal Government and/or the several provinces where such information

and documentation are necessary and proper to more adequately litigate a case or controversy in law or equity when required by the party aggrieved or when requested by a court of competent jurisdiction.

e) by passing legislation recognizing the inherent right of Indian Governments of the First Nations to immunity against all actions in law or equity in case or controversy where said actions of Indian Governments are in accordance with their duties and responsibilities as provided by their constitutions, statutes, regulations, traditions and customs.

In pursuit of the entrenchment of these rights in the Canadian Constitution, the Federation of Saskatchewan Indians sponsored and participated in a major lobbying program in Great Britain. In spite of the lobbying effort, and court challenges to The Constitution Act, 1981, the Indian effort to entrench aboriginal rights in the Constitution failed.

With patriation of the Constitution, Indian aspirations to entrench rights must be followed through the process of amending the Constitution. With patriation of the Constitution, the focus of lobbying efforts will turn to Ottawa and the provincial governments.

Payment of Salaries to Band Representatives

a) Band Government

When the Crown originally signed Treaties with the Indian Bands of Saskatchewan, the Crown insisted on meeting with recognized national Indian leaders, which were, for each Band, the Chief and Four Headmen. In recognition of the ongoing Treaty obligations of both parties, the terms of the Treaties provided the salaries annually for the Chiefs and the Headmen - a practice which continues to this day at the annual annuities ceremony.

Since the signing of the Treaties, Indian organization has developed beyond the Band level to include District, Provincial and National organizations. The Federation of Saskatchewan Indians believes the Band representatives who participate in such District and Provincial organizations should be remunerated for their labour and expenses. The Federation believes that both Canada and Saskatchewan should provide such funds. The Federation believes that funding is justified on the basis of the following principles:

1) It is recognized and provided for by the Treaties;
2) By virtue of the Constitution, Indian Governmental jurisdiction must be afforded the proper forum and political process to lead effectively;
3) The first founding Nation of Canada, the Indians, must share in directing Canadian development and the leadership required to do this must be adequately financed from the general wealth of this country to properly conduct the Indian political process;
4) Indian resources provide a significant portion of the general revenue of Canada and Saskatchewan;
5) It is in the vested interest of Canadian society to now recognize the financial requirements of the Indian leadership provided by the Treaties.

The Federation believes that the financial requirements of contemporary Chief and Band Councils must satisfy the following basic needs:

1) Chief's Salary - in accordance with comparable political office today must be scaled from a base of $30,000 per annum in order to enable the Chief to effectively conduct his duties;
2) Headmen Salaries - the Treaties recognize <u>four</u> positions. they are the senior elected leaders of the Band Council and are the policy core of the Indian governmental process.

   In today's terms, such a "Cabinet" position must command a base salary, to be annually scaled, of $20,000 per position;
3) Travel and meeting expenses for Chiefs, Headmen and other Band Councillors;
4) Executive staff essential for the effective operation of Band governments;

5) Planning for systematic political, economic, and social advancement of the Bands to attempt to correct the present conditions found in Indian communities and in urban situations:

6) Consultation and negotiation with Federal and Provincial government leaders and officials as well as a variety of economic and social institutions which impact on Indian people and their governments.

As proposed by the Federation of Saskatchewan Indians, the payment of salaries to Chiefs, Councillors and support staff would, according to the Federation, amount to an estimated $12 million annually. Additionally a $2 million overhead budget would be required.

b) District Chiefs' Councils

In addition to the request that Canada and Saskatchewan pay salaries to Band Chiefs, Councillors and executive officers, the Federation of Saskatchewan Indians has also proposed that both levels of government pay salaries to executive and support staff employed at each of the seven District Chiefs' Councils. The Federation has estimated that such salary costs will amount to slightly in excess of $1 million annually. The Federation has further estimated that an additional $900,000.00 would be required to provide for overhead costs.

To varying degrees the District Chiefs' Councils have secured interim funds to maintain a minimum administrative structure to provide technical and administrative support to the operation of the Councils. As with the financial requirements at the Band government level, the District Chiefs' Councils require a permanent, predictable and realistic level of funding for proper operation of the Treaty Area Administration Centres. The Federation belives that without the establishment of this level of Indian government administration the ability of the District Chiefs' Councils to carry out their responsibilities and obligations will be significantly and unacceptably limited.

F.S.I.
POSITIONS

Autonomy

As part of its preparation for and negotiations with the Federal Government on the entrenchment of aboriginal rights in the Canadian Constitution, the Federation of Saskatchewan Indians prepared position papers which articulated a high degree of internal sovereignty for Bands. With internal sovereignty, Bands would have the power to:

- determine the form of government.
- grant citizenship in the nation.
- administer justice and enforce laws.
- regulate domestic relations of its members.
- tax.
- regulate property use.

The Federation believes that internal sovereignty is necessary in order that Bands be able to exert the powers noted above.

Core Funding

Discussions relating to Band salaries have introduced concerns that F.S.I. have about the inadequacy of DIAND's Core Funding program to absorb the staff salaries and administrative costs that could be incurred through greater funding of Band and District government. Over and above the use of Core Funding to support such services, Core Funding is an issue in its own right.

The Federation posits that the Core Funding program is inadequate to maintain the existing administrative requirements of Saskatchewan's 69 Bands. The Federation acknowledges that discretionary funds totalling $3.5 million in 1981-82 have been employed to help cover Band administrative costs. The Federation argues that funds allocated to Band government should be consolidated into one account for ease of access and accountability, and that Core Funding should be increased to offset more adequately the accrual costs of Band government.

Administration of Justice

The Bands have requested that the F.S.I. develop a code of Indian laws, the bodies to enforce those laws and administer justice and the development of legislation to recognize such laws. Indian nations must have the power to:

a) make laws governing the conduct of persons, both Indians and non-Indians, within Reserves,

b) establish bodies such as band police forces and courts to enforce those laws and administer justice,

c) regulate traditional rights such as hunting, fishing, trapping, and gathering.

An Indian Justice Commission will be appointed to conduct the work of implementing the above.

Customary laws governing marriage, divorce, illegitimacy, adoption, guardianship, and support of members must supersede all other laws. The cultural, religious values and all forms of social order existing among Indians must be given due regard. The values and institutions of the Indian people must be safeguarded unless they are replaced by appropriate substitutions which the Indians and their governments are willing to accept.

Indian governments must assert control over their members and regulate their domestic relations. The regulations can be codified in the laws of the band.

By-Laws and Court System

The Federation of Saskatchewan Indians has presented arguments that Bands have the right to regulate the use of property by their citizens and by non-Indians within their jurisdiction. Licensing provisions, zoning laws and rules for the inheritance of property must be developed. Examples are the licensing of business enterprises, planning and zoning of the Reserves to

encourage maximum utilization of the resources in a well regulated manner. With the exercise of powers over citizens and members, the individual inheritance of property, with due regard to the principles of the Reserve being held in common for the use and benefit of all members, must be regulated properly.

The regulation of property rights has further been described by the Federation as a part of its proposals to revise Band government.

Taxation

The F.S.I. believes that taxation is a vested treaty right to self-government derived from aboriginal Indian sovereignty. Reference was rarely made in treaties and statutes of the tax exempt status of Indians in Canada and the concomitant right of Indian governments' right to tax because it was a clear attribute of their status as distinct nations. This attribute of sovereignty must be exercised by Indian governments by instituting their own systems of taxation.

Taxation is a means of raising revenue to provide services for members, regulating business activities on the Reserve, and preventing the imposition of federal or provincial taxes of Indians and their property.

The F.S.I. believes that to the extent that Indian Government financial resources are to be generated from the internal wealth of Indian nations, Indian law must be formalized to implement authority for direct resource taxation, personal and corporate taxation. Federal and Provincial Government must be legislatively and constitutionally required to respect such areas of jurisdiction and to cease all present practices which interfere with the exercise of such jurisdiction.

Resource Sharing

Off-Reserve - The continuing Indian interest in the lands and resources of Canada and Saskatchewan must be expressly recognized constitutionally and legislatively.

The F.S.I. believes that such recognition must permit Indian Governments the same rights of access to Crown resources for the purposes of management, exploitation and taxation, that are enjoyed by the Crown in right of Canada and Saskatchewan. Indian Governments must exercise jurisdiction in the form of federal and provincial agreements for the direct management and exploitation of Crown resources as well as joint forms of management and development.

On-Reserve - Indian Governments will be required to exercise jurisdiction over resources in areas other than taxation, including allocation, management, and environmental protection. Agreements with the governments of Saskatchewan and Canada related to the joint management and development of common territories will be required.

INDIAN GOVERNMENT

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JURISDICTIONAL

SECTION V

JURISDICTIONAL ISSUES: THE SETTING

SETTING

JURISDICTIONAL ISSUES: THE SETTING

INTRODUCTION

Arising from the agreement by the Conference of Provincial Ministers with Responsibility for Native Affairs, it was directed that a meeting between the Provinces and Territories on the one hand, and the Federal Government on the other, should be convened in order to clarify current federal initiatives and policy directions including the Directional Plan for the 80's.

The respective Deputy Ministers, at their May Meeting in Quebec, established a special Task Force on Native Affairs. The Task Force, coordinated by Gaston Moisan of Quebec, consisted of officials from four other provincial governments: Ken Boutillier (Alberta), John Anderson (Ontario), Tom Dore (Saskatchewan) and Richard Fuchs (Newfoundland).

With responsibility to submit its report to the Deputy Ministers by July 15, 1981, the Task Force held three meetings and received extensive written and oral submissions from all jurisdictions. Due to the fact that major federal policy developments and revisions were being planned without the benefit of consultation with the provinces, the Task Force directed its activities at identifying the common issues and concerns of the jurisdictions in order that a meaningful policy focus would be available to the Ministers for the planned meeting with their federal counterparts.

Although the Federal Government has a special trust relationship with the Indians as well as a responsibility for "Indians and lands reserved for Indians" arising from both The BNA Act and treaty obligations, federal policies have significant impacts on Indian people and Provincial governments alike. The Task Force report reflects an initial attempt by the provinces to fill the vacuum created by the absence of meaningful consultations by initiating discussions with the Federal Government on a broad range of policies and programs aimed at enhancing the

status of Indian people in Canada.

Recent federal policy developments indicate a disposition to reduce federal expenditures for Indian program delivery, to gradually transfer Native welfare program costs out to the provinces and withdraw from fiscal and jurisdictional responsibilities for Indian people. Within this policy environment, the Task Force report has highlighted, Indian local government, land issues and delivery of programs and services as the major issues for consideration and discussion.

In order to set the context for major jurisdictional issues in various thematic areas, it is necessary to discuss the proposed Indian local government legislation and land issues, and the substantial agreement between the Government of Canada and the Government of Saskatchewan on these issues.

FEDERAL POSITION

The issue of past and future Federal-Provincial-Territorial-Indian Consultation and Coordination Mechanisms (reflects)... the importance DIAND attaches to the need for both levels of Government and Indian people to work co-operatively and for Governments to correlate policies and programs. The consideration then is that of the mechanisms through which this co-operation and discussion can most effectively occur.

DIAND has one premise which guides the Federal Government's input into the existing and future mechanisms. Discussions of any issue in which Provincial Governments and/or Indian people have a definable interest can only proceed on the basis of full involvement by all affected parties from the time of initiation of discussions. The Department is pleased to note that most provinces have also accepted this premise. Tripartite discussions on a variety of topics are now proceeding in some form or impending in 8 of the 10 provinces. In most instances, the mechanisms have been established at the request or initiative

of Indian Associations and Bands and, in some other cases, at the request of both Provincial Governments and Indian people.

Many of the issues which are presently being addressed in tripartite processes have policies that have not been resolved in the past because of a lack of full consultation with the participation by Indian people in policy and program development. In addition, the identification of Provincial dimensions and the involvement of provinces where such dimensions are identified are important.

The issues under consideration in the current mechanisms have a range affecting individual Bands, groups of Bands, or all Indians in a given province.

The established tripartite structures differ significantly from one province to another in accordance with the type of issues under consideration and the level of representation of each of the parties....

There are mechanisms more regionally based involving program officers dealing with locally defined operational type issues.

While the notion of such mechanisms to address Indian problems is not new, the present mechanisms, while not without their difficulties, offer some real hope for a successful resolution of complex issues in the longer term. DIAND attributes this potential to a number of factors, including the genuine willingness on the part of all parties to look for innovative, more viable solutions to problems; the fuller development and articulation of Indian aspirations; and a willingness on the part of a number of Provinces to attempt to work co-operatively with the Federal Government and Indian people on issues which are of a shared concern.

The intangible benefits already associated with these processes include access by Indian people to both levels of government at senior levels on a regular basis, and increased sensitization

LEGISLATION

on the part of the Federal and Provincial Governments to Indian needs and aspirations. The processes provide a forum where the realities of government capacities and the needs and aspirations of Indian people and communities can be blended and worked on in a co-operative manner.

DIAND is pleased to report that new broad innovative approaches to deal with the problems confronting Indian communities are emerging from some of the processes. Examples are the Canada-Manitoba-Indian Child Welfare Agreement, and the Ontario Social Services Review. The Department appreciates that difficulties associated with the resolution of complex problems and deep-bedded historical grievances cannot be under-estimated. DIAND is, however, optimistic that with an openness of mind and willingness to work co-operatively, positive results will be forthcoming. The Department would be interested in the assessment by Provincial Ministers of the presently established process, and any suggestions offered in respect of future consultation requirements and mechanisms.

PROPOSED LOCAL INDIAN GOVERNMENT LEGISLATION

BACKGROUND

In the fall of 1978, the Department of Indian and Northern Affairs prepared a number of discussion papers proposing changes to the Indian Act. One of the major changes involved the establishment of a three-tier system of "tribal government" which would enable Indian communities to exercise increased authority and responsibility at the Band, district and regional levels.

This process of Indian Act revision was halted, however, as a result of pressure by Indian organizations. These organizations were reluctant to pursue changes to The Indian Act which might ultimately prejudice the outcome of discussions concerning the more fundamental changes being contemplated with respect to the constitution.

Federal initiatives in the area of Indian government reemerged in July of 1980 with the Deputy Minister of DIAND issuing the directives contained in the "Directional Plan for the 1980's". The Directional Plan explicitly identified as a major objective the introduction of a "legislatively defined option for Indian self-government by 1982.

Subsequently there have been indications from internal departmental documents that active measures are being taken to achieve this objective. Most recently, the attempt was made in July of 1981 by DIAND to submit these proposals to the Federal Cabinet for approval-in-principle and permission to draft legislation. In view of concerns raised in a number of areas, such as the administration of justice by Bands, the decision was made to defer until Fall submission to Cabinet, pending further discussion and clarification.

Although it is difficult to determine precisely the nature of these proposals prior to the actual introduction of legislation, the major elements under consideration have been made apparent as follows:

1) Indian Bands would be provided with the option of coming under the provisions of the proposed legislation. Opting-in would require both Band approval, through referendum, and Federal Government approval, based on assurances that the Band possessed adequate capability to manage its own affairs. Once a Band had opted-in, the provisions of The Indian Act would no longer apply. Furthermore, there would be no residual fiduciary trust responsibility with the Minister.

2) The proposed legislation is intended to provide a clearer legal identity and status for those Bands for whom the provisions apply. The intention is that these Bands would be able to enter directly into contract or agreement and to sue or be sued in their own name. Accountability would be to Band members through the provisions outlined in the Band's Constitution.

3) Bands operating under the proposed legislation would acquire expanded powers and responsibilities, primarily through increased authority to pass by-laws, the power to adopt

other pertinent laws by reference, the ability to enter into agreements with other government authorities and agencies to provide services on-Reserve, the power to enter into agreements with banks and other financial institutions, and the power to raise revenues by levying taxes on both Indian and non-Indian interests within their jurisdiction. The most significant areas in which authority to pass by-laws would be expanded would include program and service delivery, land management, Band membership and law enforcement.

4) The proposed legislation would create an independent, quasi-judicial Local Indian Government Authority which would be concerned with matters relating to Band Constitutions and by-laws.

The revised timeline for legislation now anticipates submission to Cabinet in the Fall of 1981. It is considered unlikely that the legislation will be introduced prior to Spring session. Following introduction, it is intended that cross-Canada hearings will be held by the Standing Committee of the House.

Indian Opposition

In January of 1981, a Work Plan for the development of the proposed legislation was made public by Indian organizations. The major criticisms voiced by the Indians at that time concerned:

1) the lack of consultation in the early planning stages;

2) the potential that the legislation was in reality an attempt to by-pass the "moratorium" on Indian Act revisions; and

3) the possibility that the legislation might impinge on treaty and aboriginal rights.

In this latter regard, the emerging Indian concept of sovereignty assumes particular importance. Increasingly, certain Indian political organizations have advanced the view that, by virtue

of their original occupation and the existence of the Treaties, Indians hold a right to political sovereignty and a high degree of self-determination. Within the context of constitutional revision, this view has resulted in proposals to establish Indian government as a third order of government within the Canadian confederation.

In spite of the criticism which the proposal for legislation has received, and in an attempt to alleviate the pressures for more extreme forms of Indian self-determination, the Federal Government is proceeding on the basis of requests received from individual Bands. The Department of Indian Affairs estimates that approximately 50 Bands out of the 570 in Canada would be in a position to assume greater responsibility in the immediate future, with possibly 100 opting-in over the next five years.

The issue for the Federal Government is whether it responds to the interest of this relatively small number of generally more affluent and better organized Bands or accedes to the pressures of the political organizations.

Provision of Adequate Financial Resources

The delegation of increased powers and responsibility to Indian Bands is unlikely to be effective unless a corresponding provision is made for adequate financial resources to discharge these expanded responsibilities. In this regard, a Federal discussion paper only suggests that Bands would acquire the responsibility and authority to "enter into multi-year, formula-based financial transfer agreements with the department" and to "seek additional financial resourcing where expenditure plans exceed departmental agreements (e.g. through raising local taxes, expenditure of accumulated Band resources, agreements with other agencies, etc.)".

At the present time, DIAND is subject to severe expenditure restraints which, including inflation entail no or negative real growth. At the same time, Indians on-Reserve tend in general to receive fewer and lower quality of services than other Canadians.

With local Indian governments assuming responsibility for the provision of services to Band members, it can be anticipated that they will begin to receive increasing pressure to provide a level of service which cannot be supported by Federal allocations. In this regard, there are already indications that expenditures rise significantly when responsibilities are transferred to the Bands, particularly in the early stages when Band management systems are developing and, hence, less efficient.

In effect, the transfer of responsibility coupled with long-term formula-based funding agreements, potentially shifts from DIAND to the Band government, and potentially indirectly to the Provinces, the problems of financial restraint.

Political Isolation of Indian People

One of the basic concerns which the Directional Plan for the 1980's identifies is the "need to reduce the economic and political dependence and isolation of Indians and Inuit as a means of assisting them to improve their economic and social conditions and ensuring equitable participation in Canada".

The potential of the proposed Indian self-government legislation, however, is to aggravate rather than reduce the political isolation of Indian people. Although mechanisms are proposed for putting the Indian people at arms length from the Federal Government, there is no corresponding provision to enable them to relate to the surrounding constitutions of local government

in the provinces and territories.

The issue for the Federal Government is how to increase the local authority of Indian communities without increasing their isolation. While the proposals concern themselves with aspirations towards greater local control, it does not appear that adequate attention has been given to the relationship between local Indian governments and the various provincial, regional and municipal structures which surround them.

Increased Jurisdictional Complexity

One of the principles which has been adopted in developing Indian local government legislation is that it be sufficiently flexible to meet the varying needs, aspirations and circumstances of the different Indian Bands across Canada.

In this regard, it can be questioned whether it is possible to encompass the many provincial and regional variations under national umbrella legislation. Conversely, should the legislation be sufficiently flexible to accommodate all circumstances, the question arises as to the manageability of the variation which will result.

This potential variation is even more significant when examined in relation to its impact on Provincial laws of general application. In effect, the authority of Bands to pass by-laws within their sphere of jurisdiction possesses the potential for displacing the application of certain Provincial laws (e.g. environment, etc.). However, there is no assurance that the Band by-laws replacing Provincial laws will be necessarily uniform or compatible with Provincial law. Moreover, because of the opting-in provision, Provincial laws will apply in certain cases, but not in others. This problem is further compounded by the authority of Indians Bands to enter into agreements with

other government authorities and to incorporate existing law by reference.

A draft of the background paper being prepared for Cabinet submission suggests that a purpose of the proposed legislation is to clarify and define more clearly the extent and nature of the powers exercised by local Indian governments in order to:

1) fill existing vacuums, and

2) reduce the jurisdictional conflicts between Band Councils and Federal, Provincial and Municipal governments. Given the potential for idiosyncratic arrangements, however, it is possible that the confusion will increase.

FEDERAL POSITION

What DIAND has learned is that many Indian people perceive the present Indian Act as an impediment in their desire to strengthen Band Governments on Reserves. At the same time, however, many Indian people would oppose any significant changes to the Indian Act, partly because that Act has come to represent their special status in Canada, and also because they feel any changes to the Act should come at their own initiative. Other Indian leaders, especially those of the national organizations, wanted the strengthening of Indian Band Governments to begin with a recognition of Indian Government in the Constitution of Canada. A number of Indian Bands, finally, asked DIAND to pass enabling legislation which would allow them to move beyond the limitations of the Indian Act if they chose to do so but which would leave the Act in place for those who preferred to continue developing Indian Government under the provisions of the Act or to wait for constitutional change.

Faced with this divergence of views, and persuaded that those Bands which wish to assume more powers should be able to do so, the Department agreed to study the alternative of Indian Government legislation. Basic principles have been that such legislation would have to leave the present Indian Act in place and be optional in nature. This would not be legislation which replaces the Indian Act for all Indians and Indian Bands in Canada, therefore, but would give interested and qualified Bands the option of moving out from under the Indian Act to enjoy more powers of self-government than are possible under the Act.

DIAND would also like to emphasize its commitment not to proceed with Indian Government legislation until after full consultations with the Indian people have been held. DIAND has indicated that it hopes to accomplish this through consultations on a draft piece of legislation by a Parliamentary Committee, but this is certainly not the only possible means. Direct consultations between the Federal Government, Indian people, and Provincial Governments are also possible. During those public consultations,

the Indian people, concerned citizens, and municipal and Provincial Government representatives will be invited to propose amendments, fundamental revisions, and even total rejection of whatever Indian Government proposals DIAND may have developed.

At this point in time, DIAND is not yet ready to move to the stage of public consultations. The Department is still looking at some of the key policy issues which might be raised if optional Indian Band Government Legislation were to be passed in Canada, and the Department does not expect to have concluded this preliminary work before mid-summer.

It is possible that the Department may have proposals ready for public discussion by the late summer or early fall, but DIAND cannot give a firm commitment in this regard because the Minister would first want to obtain Cabinet's concurrence with the proposals....

First, Bands would have to have at least the same powers they now can acquire under the Indian Act. That, of course, is only logical. To these could be added the powers currently exercised by the Department and other Departments on behalf of Indian Bands, the powers enjoyed by modern local governments elsewhere in Canada, and the Minister would foresee the possible expansion of Indian Band Government powers into additional areas of long-standing concern to Indian people, such as child welfare.

Second, the interfacing between strengthened Band Governments, the provinces, and neighbouring Governments is a critical issue. How Bands would move into additional power areas is a subject which will be of great interest to Provincial Governments, and DIAND foresees that any workable approach will have to involve consultations between Bands and Provincial Governments, and the Federal Government. The Department, on its part, has undertaken to study this issue in depth and to ask interested Indian Bands for their own ideas. DIAND would also like to invite the provinces and concerned municipalities to suggest how such interfacing could best be managed, and suggest that some provinces, such as British

Columbia, may be able to draw from their own ongoing experiences. DIAND would expect that interfacing mechanisms would have to be looked at on a case-by-case basis, and that some of the mechanisms, already in place in many cases will be adequate, with minor adjustments, to deal with the kind of changes in Band powers which strengthened Indian Government might bring about. DIAND's only guiding principle is that any such mechanism should also take into account the effect that actions of other Governments within the province may have on the bands themselves.

Finally, regarding the funding of Band Governments, DIAND accepts the general principle that a power to govern must be accompanied by adequate resources to do the job. Band enjoying strengthened Indian Government powers would have to have assured adequate funding to meet agreed upon program goals and national standards. Where Bands might seek to do innovative work of their own, without reference to the Federal Government, they should have the legal status required to seek additional funding.

Returning now to the Indian Band Government Legislation.... it may be helpful to point out what any proposed legislation on Indian Government would not do. Such legislation would not pre-empt constitutional discussions on internal native self-government, at which the constitutional status of Indian Governments will likely be a key issue.

The legislation would also not upset the special relationship between Canada's Indian people and the Federal Government. Only in the specific areas where Indian Governments become responsible for their own affairs would the "special" responsibility of the Federal Minister of Indian and Northern Affairs be affected. The special status of Indian peoples is a constitutional reality which has recently been strengthened by the Constitution Act and would not be changed by any Federal legislation on Indian Government.

Finally, and to emphasize an earlier point, the proposed legislation would not be introduced in haste or passed without adequate consultation. However, DIAND's ideas are changing,

and may continue to change for awhile yet, and until such time as an integrated set of proposals are in place, which can accommodate as much of the diversity of Indian bands in Canada as possible and still be consistent with each other, DIAND would prefer to avoid a public debate on specifics.... The Department is not yet ready to place any specific Federal Government proposals on the table.

POTENTIAL PROVINCIAL CONCERNS

Provincial Jurisdiction

It is clearly recognized that the Federal Government, under the provisions of Section 91(24) of The B.N.A. Act, possesses jurisdiction in relation to "Indians and lands reserved for Indians". Moreover, it is similarly recognized that a special trust relationship prevails between the Federal Government and Indians living both on- and off-Reserve.

In proposing increased authority for Indian Bands, however, the Federal Government is contemplating a framework for Indian self-government which could seriously curtail the effective power of provincial and territorial governments to enact legislation affecting Indians within their respective boundaries. In this regard, there may be concerns about the constitutionality of the proposed legislation, particularly in relation to Sections 92(8) and 93(13) of The B.N.A. Act. More specific concerns about intrusion might arise depending on whether the intended definition of "Band lands" exceeds that of "Reserves".

In general, the major question concerns the specific nature of the powers which are to be granted to Indian Bands.

Increased Financial Pressures on Saskatchewan

A concern of the Province is that the increased authority and responsibility provided in the proposed legislation be accompanied by the provision of adequate financial resources to the Band affected by the Federal Government. This concern is particularly acute in view of the unsatisfactory nature of many existing Federal/Provincial financial arrangements in the area of services to Status Indians.

In this regard, the question is: What assurances will be provided by the Federal Government that local Indian governments will be adequately financed?

Relations With Provincial, Regional and Municipal Structures

Greater attention needs to be given to the relationship of the proposed local Indian governments to the surrounding Provincial, Regional and Municipal authorities and structures. Provincial concerns in this regard would be particularly pronounced in relation to regional planning; the interfaces between Band and other law enforcement systems; and problems of taxation.

The question which needs to be asked is: What is the Federal Government's intention in addressing the potential problems arising from increasing jurisdictional interface?

Lack of Consultation

Despite the advanced state of this proposed legislation, there

has not been any significant consultation with the Provincial government concerning these proposals. In view of the potential impacts, such an increased pressure for financial support and compounded jurisdictional problems, it is questionable whether an opportunity to appear before the Standing Committee will be sufficient.

Specifically, the question is: What measures are proposed by the Federal Government to ensure that adequate opportunities exist for consultation with Indian groups and other governments?

POSSIBLE COMMON POSITIONS

Within the context of the proposed legislation and provincial concerns, a potential common ground for further discussion is outlined as follows:

1) Saskatchewan supports in principle measures intended to increase the level of authority and responsibility exercised by local Indian governments. This support however does not extend to the concept of sovereign Indian nations.

2) At the same time, in the absence of an opportunity to review actual legislation plans, the Province possesses a number of potential concerns with the manner in which this is to be accomplished:

   a) The proposed legislation should not, in any way, diminish the Federal Government's special trust responsibility for Indians.

   b) Any transfer of responsibility must be accompanied by a corresponding transfer of financial resources sufficient to discharge those responsibilities.

   c) Legislation should not be introduced in haste without adequate attention to the jurisdictional interrelationships involved.

   d) Provision must be made for adequate consultation prior to the introduction of legislation.

LANDS

LAND-RELATED ISSUES

LAND ENTITLEMENT

Background

Under the terms of the treaties, Canada is obliged to provide Reserves in the amount of 128 acres per capita. Research undertaken by native people revealed that one band received no treaty lands and others less than their lawful entitlement.

In 1930, Canada transferred the natural resources to Saskatchewan. Section 10 of the Natural Resources Transfer Agreement requires the Province to make available, out of the unoccupied lands transferred, sufficient acreage to enable Canada to fulfill its outstanding treaty obligations.

On August 8, 1973, the Federal Government announced a policy on the comprehensive claims of Native peoples in Canada. This policy statement was relatively brief and general in nature. Recently, there has been some indication that the Federal Government will attempt to deal with some policy questions which were not addressed in the 1973 policy statement. Until such time as a new policy statement is issued, the Federal policy is to be discerned from the 1973 policy statement and Federal actions to date.

In 1976, Saskatchewan offered to negotiate a final settlement of the treaty land entitlements based on the Band population as at December 31, 1976. Because of the limited quantity of unoccupied land available, the Province agreed to open both occupied and unoccupied lands for selection, providing Canada did the same. In the case of occupied lands, the rights and interests of third parties were to be satisfactorily discharged through compensation or other arrangement.

The Saskatchewan offer was accepted by Indian Bands. By Cabinet Directive No. 81-77 of March, 1977, Canada accepted the Saskatchewan Formula as the basis for settling outstanding treaty land entitlement in the Province.

Out of a validated entitlement of 1,066,640.36 acres, Bands have selected a total of 776,880.36 acres, representing 73% of the validated entitlement. The remaining 289,760 acres, representing 27% of the validated entitlement remains to be selected (See Figure 9).

A number of Bands have submitted claims to outstanding treaty Reserve lands which to date have not been validated. However, preliminary review of the Band claims suggests that the entitlement acreage shown above could be increased by no more than 300,000 acres.

After Bands make their selections, the selected land will be transferred to Bands under the following conditions:

a) The owner of the selected lands (Saskatchewan or Canada) must agree to the transfer.

b) Rights and interests legally acquired by third parties occupying or using the lands must be respected.

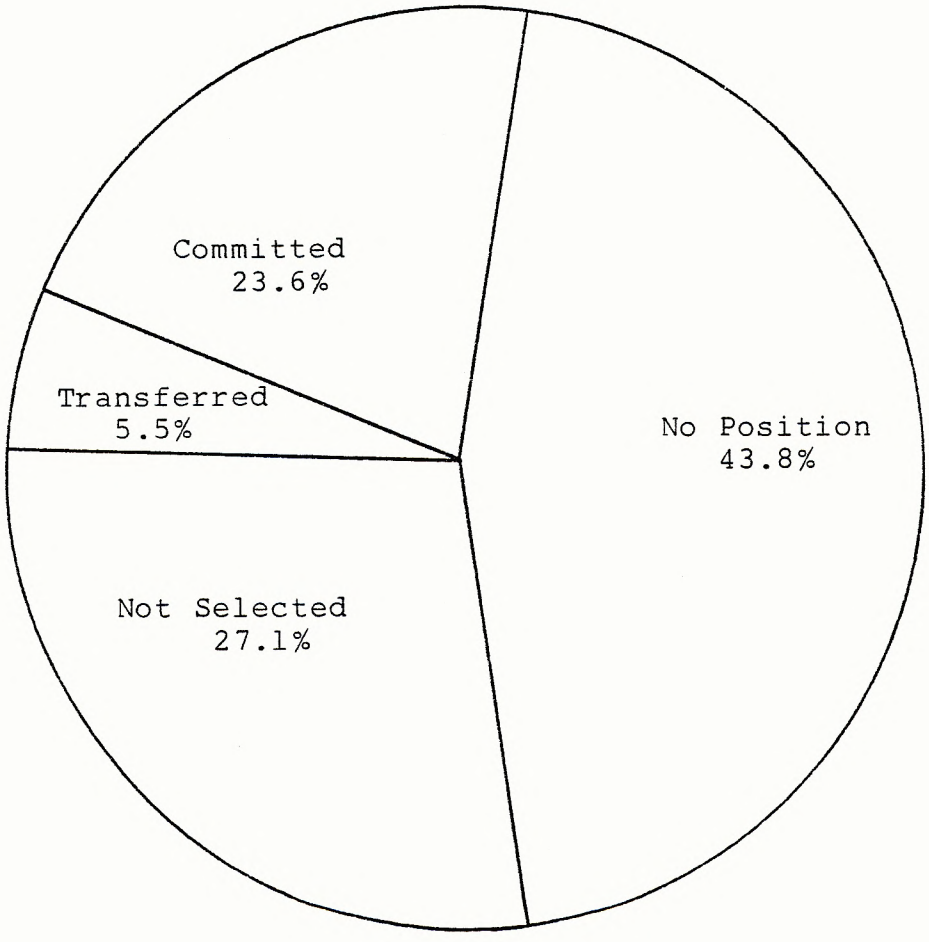
c) Every effort will be made to obtain the consent of the third parties concerned but they shall not have the right to veto land selections.

d) Any compensation for improvements on occupied lands is the responsibility of the Band and Federal Government but the Band may exchange part of its entitlement acreage for such improvements.

Lands with proven mineral potential are available for selection. Properties in production, working properties and those in developmental stage, however, are not available for selection. No mineral selections will be accepted after June 30,1982. Saskatchewan lands will be committed on condition to the Minister of Indian Affairs and Northern Development. Once the Province

FIGURE 9

Status of Land Selections



Total Entitlement	1,066,640.36 acres
Transferred	58,494.87 acres
Committed	249,415.16 acres
No Position	468,970.33 acres
Not Selected	289,760.00 acres

commits and the Federal Government accepts, the selection cannot be altered or withdrawn and no further commitments for use will be made unless under terms of pre-existing legal agreements. Saskatchewan expects Bands to be fully responsible for third party negotiations. The Province will advise both the Band and the third party interest in a fair and just manner.
Figure

Several Bands have selected private lands in the vicinity of their Reserves pending a purchase policy decision by the Government.

Despite the public support, there has been strong opposition from non-Indian groups having rights or interests in Crown lands selected by Indian Bands. The Saskatchewan Wildlife Federation and similar public interest groups are using the treaty land entitlement question as a lever to persuade government to change existing legislation to place Indians on the same basis as other Canadian citizens with respect to hunting, trapping and fishing. Municipal authorities have expressed concern about the impact of Reserve creation on their tax base. While agreeing that there is a debt to be settled, third parties are urging that this debt be settled by having Bands either select unoccupied lands, or accept a cash settlement.

Outstanding Policy Decisions

Since the acceptance of the Saskatchewan Formula, a settlement process has been developed in cooperation with the Province and Indian leaders which has been working well. No change in this process is deemed necessary. However, experience over the years has led to the conclusion the treaty land entitlement question cannot be settled without policy decisions on the following matters:

- Purchase of private lands.
- The need for adjustment of acreage where lands selected contain valuable improvements.
- The creation of Indian Reserves in non-Indian communities, particularly urban municipalities.
- The effect of creating Indian Reserves on the tax base of municipalities, urban and rural.
- Compensation for third party interests in Crown lands selected by Indian Bands.
- Cut-off date to finalize validations.

Progress in Settling Claims

To date, the land claims by the Stony Rapids and Fond du Lac Bands have been extinguished. It is anticipated that further Band entitlements will be completed in accordance with the schedule below:

- 1982/83 - 2 Bands Finalized
- 1983/84 - 3 Bands Finalized
- 1984/85 - 5 Bands Finalized
- 1985/86 - 6 Bands Finalized
- 1986/87 - 7 Bands Finalized

SASKATCHEWAN CONCERNS

While considerable progress has been made in selecting, committing, and transferring lands to Saskatchewan Bands, Saskatchewan has recently expressed concerns about the transfer program. These are described below:

The Principle of Finality

One of the principles stressed by the 1973 Federal policy was that existing Indian Treaties would be upheld and that comprehensive claims settlements would be final.

Through recent actions there are some indications that the Federal Government may be departing from the policy of finality with respect to Aboriginal Rights.

Aboriginal Rights are yet to be fully defined by the Courts. It is quite clear that the Federal Government entered Treaties and Agreements with Indian Peoples in order to extinguish those Rights and to acquire full title to the treaty lands.

As current negotiations develop and in light of the proposed entrenchment of Aboriginal Rights, the policy of extinguishment of rights may be in question.

In the event that the Federal Government intends to maintain its policy of extinguishment through settlement, how can this be reconciled with the proposed entrenchment of Aboriginal Rights?

If the policy of the Federal Government is to selectively extinguish certain Aboriginal Rights, what Rights are to be extinguished through settlement?

Specific Claims

This refers to those claims being asserted for specific tracts of land. To date there are in excess of two thousand such claims before the Federal Office of Native Claims. In many instances, the claims cover areas that have been settled, alienated, developed or otherwise dealt with since the act or acts of first alienation. One particular category of claim calls for the return of non-Reserve lands to Reserve status. The claims assert that these lands, previously Indian lands, were withdrawn from Indian Title by improper surrenders, trickery, bribery and other unlawful means. The implications of such claims are far reaching in that current landholders' title to these lands may be in jeopardy. As well, the settlement of such claims by the Federal Government may impose financial burdens upon Provinces.

To date, settlements of specific claims arising out of improper surrenders have produced two different results. In one instance, eviction of the third party interest.

Has the Federal Government devised a policy or formula to resolve these types of claims and if so what protection is to be afforded to the third party interests?

POSSIBLE COMMON POSITIONS

Given the above background to land entitlement and provincial concerns, the following common ground for further discussions can be ascertained:

1) Indian Treaties are to be upheld and settlements reached should be final. There must be certainty that the settlements concluded will not be opened in the future;

2) Claims cannot be resolved in a vacuum. Adequate protection must be afforded to all third party interests, as well maintaining consistency with earlier settlements and a coherent non-diversive policy must be available for the resolution of extra-territorial claims;

3) Land settlements cannot be viewed by the Federal Government as a major solution to Indian Economic and Social Development. Settlements will not absolve the Federal Government of all financial responsibilities and obligations to Indians;

4) The Federal Government, when devising land claim policies, both comprehensive and specific, should consult the affected Provinces and Territories.

BAND MANAGEMENT OF RESERVE LANDS

Section 60 of The Indian Act makes provision whereby Bands can administer their own land under the terms outlined in the Act. Saskatchewan has one of the few Bands in Canada that exercises full control of their land in this fashion. However, skill training is taking place at other Bands so that they also will be able to exercise this control and this is in keeping with the overall Regional program of devolution.

When Bands exercise control of land under Section 60, Bands have then assumed a statutory requirement on behalf of the Minister and they are then accountable to parliament. They have the agreed right to use the Department of Justice as they are acting as Agents of the Crown. As such it would seem that the Department would have some obligation to fund Bands on the basis of the duties assumed.

A land base is one of the most important items that Bands agreed to in the signing of the treaties. Likewise, control of this land by Bands as outlined under Section 60 is vital to Bands in the devolution process as a sign of their control over their future. However, if DIAND can not develop a process whereby Bands can be funded for the responsibility they assume under the Act,little or no takeover under Section 60 will result.

FLOODING

Saskatchewan Indian Bands have expressed concern over two types of flooding situations. The first relates to flooding associated with Ducks Unlimited (Canada) Project; the second relates to flooding along the Qu'Appelle River.

Ducks Unlimited (Canada) Projects

Ducks Unlimited projects have flooded or have the potential to flood lands belonging to the Big River and the Sakimay Bands. The Bands negotiate directly with Ducks Unlimited. In the instance of Big River, flooding occurred and the Band and Ducks Unlimited are negotiating a damage settlement.

Qu'Appelle Valley Flooding

After several years of research, planning and discussion, the Federal and Provincial governments entered into the Canada/ Saskatchewan Subsidiary Agreement on the Qu'Appelle Valley in 1975. This Agreement is "subsidary" to the General Development Agreement between the Department of Regional Economic Expansion and the Province of Saskatchewan. The Qu'Appelle Agreement was signed by the Federal Ministers of Indian and Northern Affairs, Environment, Industry and Commerce, and Regional Economic Expansion; and the Provincial Ministers of Environment, Industry and Commerce, and Tourism and Renewable Resources.

On June 20, 1979, at a meeting of the Chiefs of the Qu'Appelle Bands and officials from the Regional Office of the DIAND, the Chiefs passed, unanimously, a resolution to form an organization to deal with the issues and concerns described above. They further decided to hold a three-day workshop to formulate the directions and structure of that organization. That workshop was held on July 18-20,1979. The Chiefs developed and approved

a statement of goals during the workshop. Among those goals were:

- To protect water rights, land and resource rights, riparian rights and Treaty rights of Indian people in the Qu'Appelle Valley.

- To predict and evaluate the impact of immediate and future development in the Qu'Appelle River Conveyance system as it affects Indian Bands and their land.

- To assess past damages of water resource developments to Indian Bands in the Qu'Appelle Valley, and to take appropriate actions with a view to resolving these outstanding issues.

- To exercise effectively the authority and responsibility which is rightful to Indian people in controlling changes in the water regime of the Qu'Appelle Valley.

As a consequence of the meetings, the Qu'Appelle Valley Indian Development Authority (QVIDA) was established. Eight Valley Bands participate in the Authority.

Since its establishment, QVIDA has prepared a report on past damages that may have accrued from the construction of flood control works. The report is designed to substantiate QVIDA's position that the early (1977) Band agreements with DREE/PFRA were unfair. Earlier agreements and permits are coming up for renewal and QVIDA wishes to renegotiate those agreements.

QVIDA's damages' report has been presented to DREE, which will review the document. If the report provides sufficient documentation that earlier compensation was inadequate, DREE may be prepared to make a presentation to the Minister with regard to increasing compensation.

PROGRAM
DELIVERY

JURISDICTIONAL ISSUES AND PROGRAM DELIVERY RESPONSIBILITY: AN OVERVIEW

BACKGROUND

The DIAND document entitled "Directional Plan for the 80's", aside from the sections on local government and land claims, establishes two main objectives related to the delivery of programs and services. The first of these is "an increased take-up by status Indians, of financial resources from other Federal Departments and Provincial Governments". The second is "a reduction, by a factor of 30%, in the programs and service staff providing services to status Indians", by the fiscal year 1984-85. These objectives bring to the surface several obvious points of contention between the Federal and Provincial Governments.

The fundamental problem between the levels of government in this context stems from continuing differences of interpretation concerning responsibilities for the provision of services by the governments for Indian people generally and particularly in relation to the off-Reserve Status Indian population.

The Federal Government adopts the view that Sec 91(24), B.N.A. Act, is an assignment of permissive legislative authority. Through both specific legislature provision and policy, the Federal Government has chosen to limit its actual fiscal responsibility for the provision of services to on-Reserve Status Indians, with some exceptions (e.g. post-secondary education assistance, etc).

Of relevance to the off-Reserve situation is Section 88 of The Indian Act which provides that, subject to the terms of any Treaty or any other Act of Parliament, all Provincial laws of general application apply to Indians in the Province except to the extent that they are inconsistent with the provisions of The Indian Act. Accordingly, for the purpose of the application of Provincial laws described in Section 88

an Indian person is generally in the same position as other residents of the Province except insofar as those laws deal with matters specifically dealt with by Parliament as they refer to Indian people.

The Federal Government takes the position that it has responsibility both on and off-Reserve, but that the responsibility is discharged differently in the off-Reserve context. While a special relationship continues to exist between Indians living off-Reserve and the Federal Government and such Indians maintain their Status, they are also residents of the Province and as such are included in the population figures used at arriving at various Intergovernmental transfer payments, and contibute in many instances to provincial tax revenues, some of which are also used in calculating Provincial entitlements under other programs (in particular Equalization transfers). Consequently Indians have a legitimate claim on Provincial Governments for services available to all residents, without discrimination.

Saskatchewan disavows any legal responsibility for the provision of services to Indians on the basis that Section 91(24) of the British North America Act confers mandatory legal and financial responsibility on the Federal Government in this area. Increasingly, there is concern that in reviewing total expenditures on Status Indians, the proportionate share of the costs of the Provincial Government has increased markedly and is projected to continue to increase in the immediate future. Specific problems from the provincial perspective include social services off-Reserve, and health care and administration of justice (on and off-Reserve). In these areas higher utilization and higher per capita costs attributable to Native peoples have resulted in the provinces spending large sums of direct provincial money for programs and services the full cost of which are not recoverable under existing Federal-Provincial fiscal arrangments.

Indian positions on service delivery differ widely among National and Provincial Indian leadership elements. The essential position is that the Federal Government has a trust responsibility, and specifically a responsibility for the provision of services for all Indian People. The position rejects the drawing of artificial distinctions between the on and off-Reserve populations. This position translates into acceptance of the provincial position by some Associations (i.e. total federal responsibility); others are prepared to contemplate provincial participation in delivery of services and in their financing on a variety of different bases. (Usually accompanied by conditions re: no loss of Status, rights and entitlements).

Out of these conflicting opinions has come an uneven and uneasy practice of a split or dual responsibility with an unclear delineation of legal authority or responsibility. While the Province has on occasion more formally protested, denied, or opposed, delivery of services without total compensation by the Government of Canada, Saskatchewan has extended some Provincial services to Status Indians in the areas of social services, education, health, law enforcement, housing, re-creation and roads.

The gaps in services that exist as a result of this situation have limited Department of Indian Affairs and Northern Development's capacity to deliver adequate programs/services and have led to unfavourable publicity.

In addition, several other constraints impede working co-operatively on the substantive issues in the off-Reserve (and equally applicable on-Reserve) context.

1) A lack of consultation with and participation by Indian people in the development of provincial policies and programs.

2) Lingering suspicion by Indian people that discussions on Indian access to provincial programs is tantamount to implementation of the 1969 White Paper.

3) The ability of the Federal Government to bring about major changes in Indian programs within its own resources is severely limited during present fiscal restraint periods. Expansion of services in one program and/or province is usually only achieved at the expense of service adjustments in other areas.

To understand and appreciate fully the context for discussions regarding responsibility for program delivery, it is necessary to highlight issues relating to the financing of services, quality and accessibility of services, and Indian aspirations related to service provision.

Financing for Service Provision

Local government for Indians bears implications relating to service provision or delivery which impact on Provincial concepts of service delivery and on the financing of those services. If, for example, the service is one which in a Province is not ordinarily provided to the citizens by local government but by the Province itself, in what way will the Federal government recognize the financing obligation to the Province - on a direct basis or through a mechanism involving the local government as a conduit?

In either case, it would appear that this should be a matter for negotiation and development through current considerations of revised fiscal agreements.

Certainly there should be clear understanding of whether the Federal Government will confer service delivery authority on local Indian government which exceeds current municipal governmental authority or supersedes Provincial service legislation in any Province.

Assuming that local Band government is established with powers equal to, or exceeding those of a municipal government, numerous questions are raised from the provincial perspective regarding payment for services including: provision of services and cost-sharing agreements between levels of governments. The Provincial government wishes to clarify if any of the changes proposed by the Federal government with regard to local government would lessen the latter's current responsibilities for services. Because of possible program and financial changes, the provinces must urge greater consultation with the federal government as a means of rectifying any potential differences between the two levels.

The Province also wishes to have any shifts in financing, attendant upon program delivery changes, the subject of full consultation to ensure the integrity of program and administrative funding.

Quality and Accessibility of Services

While this topic relates directly to the financing of services, it requires consideration in itself. The currently uneven and disparate programs provided have created great variation in quality and accessibility for services to status Indians both within and between provinces.

Proposed budget cuts on the part of DIAND would likely aggravate this situation unless these resources were replaced by monies from other Federal departments or from Provincial governments.

The Province would be pressured to respond to federal budget costs to assure at least a base level of service for Indians residing within provincial boundaries. This might entail engaging in services not previously provided to Indians, or in some circumstances, an extension of responsibilities for services already provided. Movement in this direction necessarily raises once again the fundamental question of locus of responsibility

between the two levels of government.

While Saskatchewan is, generally, prepared to provide services and programs to Indians, the shift in delivery responsibility should not result in monetary gain to the Federal government; and in fact the Federal government would need to acknowledge fully an awareness and acceptance of the potential for cost growth relating to these shifts relating to inflation, provincial standards and increased uptake. A prime qualification would be that the transfer of delivery locus had the consent of the Indian people affected.

Given current discrepancies in quality and accessibility of services, further devolution of responsibility leaves the Province increasingly vulnerable to status Indian demands for service provision. This concern of the province would be heightened if the Federal government failed to divert sufficient funds into economic development which would ultimately lessen Indian dependency on Provincial services such as welfare. Given the inevitable pressure which will flow from the Indians to the province, the Federal Government should be made aware if the province is prepared philosophically or financially to extend services where need arises.

Two questions arise from this point. Will the Federal Government carry out continuing review with the Provinces on the development of services, to determine Provincial plans and capability for development? Will the Federal Government reinforce a commitment to service development with funding for Indian Economic Development?

Expressed Indian Aspirations As They Relate of Services

The Indian people have always emphasized the importance of their relationship to the Federal govenrment. Further, provincial involvement in Indian Affairs is resisted by some native groups because it detracts from their historical relationship

with the Federal government and expedites what they see as the evil of assimilation. While this is not a consistent or universal position among either the Indian leaders or the Indian groups, it does warrant consideration in the examination of service delivery. The issue for the Provinces is how they wish to respond to federal objectives which appear to enhance provincial responsibility while, in the process, further eroding the Federal/Indian relationship.

In essence, Indian aspirations and a provincial position based on paramount federal responsibility for services are mutually supportive whereas the federal policy of devolution could ultimately put Indians in conflict with provincial and territorial governments.

FEDERAL POSITION

In the document Federal Report to the Federal-Provincial-Territorial Conference the Federal government reaffirmed its recognition of its unique responsibilities for and special relationship with Status Indian people, in respect of the provision of services. The Federal Government noted that while accepting this responsibility it takes the position that Indian people can legitimately look to both levels of Government for certain types of services, especially those Indian people who reside off-Reserves.

The Federal Government acknowledges that there is a difference of opinion between governments on this issue. However, it believes that the issue, as a truly national question, must be resolved in a National Constitutional forum.

Pending discussions in that forum the challenge for Federal, Provincial and Territorial Ministers is to focus on ways and means of dealing with the immediate problems involved in improving services to Indian people.

The Federal Government recognizes that Indians are still disadvantaged relative to the rest of the Canadian population. The lack of policy, program and service co-ordination and communication between the two levels of government contributes to this unacceptable situation. In order to achieve equality of opportunity Indian people should have access to appropriate services equal to those applicable to non-Indians. Federal and Provincial policies and responsibilities for health, social assistance, education, community development and other essential services need to be correlated.

For its part DIAND has established as an overall objective to assist and support Indian people in achieving their cultural, social and economic needs and aspirations and to ensure that Canada's constitutional and statutory obligations and responsibilities to Indians are fulfilled.

The Provincial Governments appear to be operating under two mistaken impressions, which DIAND wishes to correct. The first impression is that the Federal Government is attempting to transfer its service responsibilities and costs to Provincial Governments. This impression is <u>not</u> accurate.

The Federal Government is not attempting to transfer its service responsibilities and costs. What Provinces may be perceiving is the continuing clarification of respective Federal and Provincial jurisdictions and program arrangements for services to the Indian population. In addition, some confusion in perceptions which may arise when the administration of identical programs and services for Indian people involves numerous and differing arrangements between the Federal Government and the various Provincial Governments.

One example of this clarification of program arrangements is the recently concluded Canada-Manitoba, Indian Child Welfare Agreement... This agreement reflects the complementary nature of Federal and Provincial jurisdictions in the provision of services to Indian people and is an example of the mutually supportive arrangements and joint Federal-Provincial-Indian cooperations which are

possible in meeting the very real needs of Indian people. The Federal Government has not cut-back services.

The second inaccurate Provincial impression is that the Government is reducing the services provided to Status Indians. While the Department of Indian Affairs has reduced program and service staff, this reflects a policy of transferring responsibility for actual service delivery to Indian people. In 1979, 519 of 573 Bands were administering one or more local programs or services with a total budget of $227.2 million, representing 34.5% of the program budget. Today Indian Bands administer approximately $0.5 billion in program contributions, almost 50% of the Indian Program budget. Commensurate with this transfer has been a reduction in the total number of departmental employees.

In contrast to an alleged reduction the Federal Government has;

a) increased the capital subsidy of the on-Reserve housing program;

b) announced a new National Native Alcohol Abuse Program which makes important strides toward providing a level of care to Status Indians comparable to Canadian standards, taking into account the higher level of abuse among the Indian population and responsive to the special needs of Indian people;

c) Since 1964 the Federal Government has adopted Provincial social assistance rates and regulations on Reserves, thus upgrading the range of assistance to Indians to that of other needy Canadians. In dollar terms federal budgetary requirements for this purpose rose from $8.8 million in 1963-64, to almost $142 million in 1980-81. While some portion of the increase can be attributed to changes in the client population the most significant factor is the application of improved provincial standards to federal administration of social assistance on-Reserves; and

d) Direct increases in Federal expenditures)excluding administrative overhead) for Indian services have exceeded increases in Federal expenditures in other program sectors. For example, for at least the last six years funds allocated to the Indian and Inuit Affairs program have risen an annual average of 17.5% compared to an average of 14% for total non-statutory federal expenditures. In some years this increase has even significantly exceeded that for other government program sectors.

The Federal Government has treated seriously its responsibilities for service delivery to Status Indians.

In addition, significant real increases have been achieved. The total Indian and Inuit Affairs Program budget has increased from $41.1 million in 1960-61, to $986 million in 1981-82, an increase in real terms of 739%. Since 1979 the budget has increased 18% in real terms.

In conclusion, DIAND welcomes the willingness on the part of Indian people and provinces to attempt to work cooperatively with the Federal Government on service issues which are of a shared concern to all parties and the Department is optimistic that further progress can be achieved. For its part the Federal commitment to Indian self-reliance and the elimination of social dependence of Indian people entails a willingness to re-orient policies and programs, and to accept the necessity of enhanced funding for this purpose. This commitment, however, also requires joint and commensurate efforts by all parties. In this regard the Federal Government would like to focus on "interim" or "pragmatic" ways and means of dealing with the immediate problems involved in improving services to Indian people, pending the addressing of the responsibility issue in other forums.

SOCIAL SERVICES TO OFF-RESERVE STATUS INDIANS: A CASE EXAMPLE OF JURISDICTIONAL ISSUES

Prior to the late 50's most Status Indians lived on Reserves with the Federal Government providing basic services. The 1960's and 70's saw major expansion in types, quantity and quality of Provincial Government social programs to their citizens. There were consequent requests by Indians for comparative delivery of Federal programs.

Increasing migration off the Reserves and a developing federal position that the provision of services to Indians who leave the Reserve was a matter of provincial responsibility lead to heightened provincial concerns as the demand for and cost of delivering provincial services to the off-Reserve population grew.

While the trend of increasing off-Reserve migration has slowed, Western Canada in particular now has a significant Status Indian population concentrated in the more depressed areas of the major cities, including Regina, Saskatoon, and Prince Albert.

Off-Reserve Indian people are often faced with fragmented, unresponsive and, in some instances, inappropriate services. Special transition services to facilitate adjustment by those who move off the Reserve and programs to support Indian identity in the off-Reserve context are generally not available. Beyond the apparent lack of capacity of many off-Reserve programs to meet Indian needs, Indian people often have access to such programs denied or impeded as a result of continuing differences between the two levels of government on the financial responsibility for such services.

The issue is particularly manifested in the broad range of areas where Federal-Provincial social services interface occurs - child welfare, social assistance, income maintenance, etc.

Since 1973, DIAND and the Province of Saskatchewan have disputed the Province's demand that the federal government provide social assistance and services during the first year that Indian people reside off-Reserve, and that Indian people living off-Reserve must thereafter choose to receive social assistance from the Province rather than from the federal government. This policy position of the Saskatchewan Government appears to be in contradiction of the provisions of the Canada Assistance Plan Agreements, Part I.

Until 1973, the Province of Saskatchewan provided social assistance and services to Indian people who were living off-Reserve in places such as Saskatoon and Regina. However, in that year, the Province notified the Minister of Indian Affairs and Northern Development, the Honourable Jean Chretien, that it would expect this Department to provide such assistance during the first year that Indian people had moved off the Reserve. Mr. Chretien replied that this Department would do so in order to prevent hardship, but that the temporary provision in no way implied agreement with the policy put forth.

The issue respecting the imposition of a residency requirement is further complicated by the Provincial government encouraging Indian people living off-Reserve for more than one year to seek federal assistance. The Saskatchewan Regional Office now refers such applicants to the Provincial government for aid after one year. Although the Province is generally accepting these referrals, they insist that the person specify that they wish to receive assistance from the Province in lieu of the federal government. The present situation remains unstable and controversial.

Pending Canada-Saskatchewan negotiations to resolve this issue, the federal government is continuing to provide social assistance to Indian People who are in need during the first twelve months that they are resident off the Reserve in a Provincial municipality and expects the Province to assume its responsibility the following year after that.

FEDERAL AND PROVINCIAL PROGRAMMING

The magnitude of service delivery, exculsive of DIAND, to on-Reserve and off-Reserve Indians, or to any qualified applicant regardless of Indian status, provides an indicator of the extent to which the Federal and Provincial governments are involved in Indian and Metis assistance programs. Regardless of the formal Provincial position on Service delivery to Indians, it is clear that the Province has gone beyond that position and offers a wide range of assistance programs.

It is also clear, however, that the extensive Federal and Provincial involvement leads to a broad range of Federal-Provincial jurisdictional issues.

A list of Federal and Provincial programs, exclusive of DIAND programs, is noted on the following pages.

TYPE: 1 GOVERNMENT DIRECTED PROGRAMS
2 TRANSFER PAYMENTS ON BEHALF OF INDIVIDUALS
3 TRANSFER (THIRD PARTY PAYMENT)

CODE NO.	PROGRAM	DEPARTMENT	FED	PROV	TYPE 1 2 3	ELIGIBILITY METIS/ NON-STATUS	STATUS	GEN	FINANCIAL ASSISTANCE	MANAGEMENT COUNSELING	EMPLOYMENT	TRAINING	DEVELOPMENTAL
Ec.Dev	ECONOMIC DEVELOPMENT												
#1	Special Arda	Industry & Commerce/DREE	x	x	2	x	x		x				
#2	Product Development Program	Industry & Commerce		x	2	x			x				
#3	Employment Opportunities	Industry & Commerce		x	2	x			x				
#4	Small Bus. Int. Abatement Prog.	Industry & Commerce		x				x		x			x
#5	Small Industry Development Program	Industry & Commerce		x	2			x	x	x			x
#6	Management Development Program	Industry & Commerce		x	2			x		x			
#7	Tourism & Planning	DTRR		x	1			x	x	x			
#8	Financial Services Program	SEDCO		x	2			x	x				
#9	Economic Development Branch	DNS		x	1			x	x	x			
#10	Economic Development Loan Fund	DNS		x	2			x	x				
#12	Management Consulting Division	SRC		x	1			x		x			
#13	Regional Development Incentives Act (RDIA)	DREE	x		2			x	x				
#14	Canadian Native Program	DREE/DIAND	x		2	x	x		x	x		x	
#15	Industry Energy Research & Development Program	ITC	x		1			x					x
#16	Enterprise Development Program	ITC	x		½			x	x				x
#17	Indian Economic Develop't Fund	DIAND	x		2		x		x	x			
#18	Indian-Inuit Financial Service	Bank of Nova Scotia				x	x		x	x			
#19	Financial Services	FDBD	x		2			x	x				
#20	Counselling Assistance for Small Enterprise (CASE)	FDBD	x		1			x		x			
#21	Management Training	FDBD	x		1			x		x		x	
#22	Information Services	FDBD	x		1			x					
#23	Small Business Information Service Directory (SBIS)	FDBD	x		1			x					
#24	Business Information Centre	ITC	x		1			x					
#25	Small Business Loans	ITC	x		3			x	x				
#26	Technical Information Services												

TYPE: 1 Government Directed Programs
2 Transfer Payments on Behalf of Individuals
3 Transfer (Third party payments)

CODE NO.	PROGRAM	DEPARTMENT	FED	PROV	TYPE 1 2 3	ELIGIBILITY METIS/ NON-STATUS	STATUS	GEN	FINANCIAL ASSISTANCE	MANAGEMENT COUNSELING	EMPLOYMENT	TRAINING	DEVELOPMENTAL
E & T	EMPLOYMENT & TRAINING												
# 1	Office of Native Career Development	Continuing Education		x	1	x			x		x	x	
# 2	Native Employment in Government Program	Public Service Commission			1	x	x				x	x	
# 3	Non-registered Indian & Metis Program (NRIM)	Continuing Education			1	x			x			x	
# 4	Office of Native Employment	Public Service Commission	x		1	x	x				x	x	
# 5	Outreach	CEIC	x		3	x	x		x		x		
# 6	Native Employment Division	CEIC	x		2	x	x		x		x		
# 7	Affirmative Action	CEIC	x					x			x		
# 8	Federal Contracts Program	CEIC	X		1			x			x		
# 9	Native Opportunities Training	CEIC	x			x	x		x		x	x	
#10	Canada Manpower Industrial Training Program (CMITP)	CEIC	x		½			x	x		x	x	
#11	Canada Manpower Training Program (CMTP)	CEIC	x		½			x	x			x	
#12	Language Training	CEIC	x		½			x	x			x	
#13	Apprentice Training Program	CEIC	x		½			x	x			x	
#14	Occupational Skill Training	CEIC	x		½			x	x			x	
#15	Basic Job Readiness Training	CEIC	x		½			x	x			x	
#16	Work Adjustment Training	CEIC	x		½			x	x			x	
#17	Basic Training for Skill Development	CEIC	x		½			x	x			x	
#18	Local Employment Assistance Program (LEAP)	CEIC	x		2			x	x		x		
#19	New Technology Employment Program	CEIC	x		2			x	x		x		x
#20	Canada Community Services Projects	CEIC	x		2			x	x		x		
#21	Community Development Project	CEIC	x		2			x	x		x		
#22	Critical Trade Skills Training	CEIC	x		2			x	x		x	x	
#23	Summer Youth Employment	CEIC	x		2			x	x		x		

TYPE: 1 GOVERNMENT DIRECTED PROGRAMS
2 TRANSFER PAYMENTS ON BEHALF OF INDIVIDUALS
3 TRANSFER (THIRD PARTY PAYMENT)

CODE NO.	PROGRAM	DEPARTMENT	FED	PROV	TYPE 1 2 3	ELIGIBILITY METIS/ NON-STATUS	STATUS	GEN	FINANCIAL ASSISTANCE	MANAGEMENT COUNSELING	EMPLOYMENT	TRAINING	DEVELOPMENTAL
	EMPLOYMENT & TRAINING CONTINUED												
#24	Employment Orientation for Women	CEIC	x		2			x	x			x	
#25	Manpower Consultative Services (MCS)	CEIC	x		2			x	x	x			
#26	Canada Manpower Mobility Program	CEIC	x		2			x	x		x		
#27	Choices	CEIC	x		½			x			x		
#28	Canada Farm Labour Pool	CEIC	x		2			x	x		x		
#29	Job & Labour Market Information	CEIC	x		1			x			x		
#30	Job Counseling & Placement Services	CEIC	x		1			x			x		
#31	Creative Job Search Technique	CEIC	x		1			x			x		
#32	Employment Tax Credit Program	CEIC	x		2			x	x		x		
#33	Diagnostic Services	CEIC	x		1			x			x		
#34	Services to Employers	CEIC	x		1			x			x		
#35	Student Mobility	CEIC	x		1			x			x		
#36	Canada Manpower Centre for Students	CEIC	x		1			x			x		
#37	Unemployment Insurance Benefit	CEIC	x		2			x	x				
#38	Local Economic Development Assistance	CEIC	x		½	x	x		x		x		x
#39	Occupational Career Counselling Service	CEIC	x		1			x			x		
#40	Native Employ. Contrib. Program	CEIC	x					x	x				
#41	Prospector's Training School	Mineral Resources	x		1	x	x					x	
#42	Training-on-the-Job (Special Needs)												
#43	Voc. Rehab. of Disabled Persons												

TYPE:
1 GOVERNMENT DIRECTED PROGRAMS
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CODE NO.	PROGRAM	DEPARTMENT	FED	PROV	TYPE 1 2 3	ELIGIBILITY METIS/ NON-STATUS	STATUS	GEN	FINANCIAL ASSISTANCE	MANAGEMENT COUNSELING	EMPLOYMENT	TRAINING	DEVELOPMENTAL
AGR	AGRICULTURE												
#1	Farm Mortgage Loans	Farm Credit Corporation	X		2			X	X				
#2	Farm Syndicate Credit Act	Farm Credit Corporation	X		2			X	X				
#3	Farm Credit Act	Farm Credit Corporation	X		2			X	X				
#4	Farmstart - Loan & Grant Program	Agriculture		X				X	X				X
#5	Agriculture Development On Indian Reserves	Agriculture		X			X			X			X
#6	Regional Program Development	Agriculture		X	3			X	X				
#7	Road Construction	Agriculture		X	1			X					

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	HOUSING												
HOUSE													
# 1	Acquisition of Existing Housing for People of Native Ancestry	SHC		x	1	x			x				
# 2	Public Housing Program	SHC			1			x	x				
# 3	Rural & Native Housing Program	SHC/CMHC			1	x			x				
# 4	Senior Citizen Home Repair Program	SHC			½			x	x				
# 5	Urban Native Housing Pilot Project	SHC		x	1	x			x				
# 6	Residental Rehabilitation Program	SHC		x	1			x	x				
# 7	Co-operative Housing Building Program	SHC		x	1			x	x				
# 8	Residential Rehabilitation Assistance Program	SHC/CMHC	x	x	½			x	x				
# 9	Emergency Repair Program	CMHC/PMSHA	x		2/3	x			x				
# 10	Sustaining Grants	CMHC	x		3	x			x				
# 11	Project Funds	CMHC	x		3	x			x				
# 12	Secondment Project	CMHC	x		1	x				x			
# 13	Client Participation in Construction	CMHC	x		1	x						x	
# 14	Client Training Seminars	CMHC	x		1	x						x	
# 15	RNH Counseling Services	CMHC	x		1	x						x	
# 16	Native Cadre Program	CMHC	x		1	x					x	x	
# 17	Client Training Material/ Equipment	CMHC	x		1	x			x				

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3 TRANSFER (THIRD PARTY PAYMENT)

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L S	LEGAL SERVICES												
#1	Native Courtworker Program	Attorney General		X	1/3	X	X						
#2	Indian Special Constable	Attorney General		X	X		X						
#3	Indian Justice of the Peace Program	Attorney General		X	X		X						

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3 TRANSFER (THIRD PARTY PAYMENT)

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Cult.	CULTURE												
#1	Language Opportunities Program	Culture and Youth		X	3			X	X			X	
#2	Sask. Multicultural Act Support	Culture and Youth		X	1			X					
#3	Cultural Activities Grant	Culture and Youth		X	3			X	X			X	

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REC	RECREATION												
#1	Community Recreational Support Program	Culture & Youth		x	3			x	x				
#2	Indian Recreation Director	Indian Community College		x	3		x		x				
#3	Recreation & Culture Facilities Capital Grant Program	Culture & Youth		x	3		x		x				
#5	Youth Employ. Services Grant	Culture & Youth		x	3		x		x				
#6	Provincial Support Grant	Culture & Youth		x	3			x	x				
#7	Program Assistance	Culture & Youth		x	3			x	x				
#8	Provincial Hosting Grant	Culture & Youth (Sport & Rec. Branch)											

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S S	SUPPORT SERVICES												
#1	Core Funding Program	Dept. of Secretary of State	X		3	X	X		X				X
#2	Native Social & Cultural Development Program	Dept. of Secretary of State	X		3	X	X		X				X
#3	Native Women's Program	Dept. of Secretary of State	X		3	X	X		X				X
#4	Migrating Native Peoples Program	Dept. of Secretary of State	X		3	X	X		X				X
#5	Native Communications Program	Dept. of Secretary of State			3	X	X		X				X

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I/R	INFORMATION/RESEARCH												
#1	Community Switchboard (and Telewriter)	Community Switchboard											
#2	Directory of Services Available to Native People in Regina	Archdiocese of Regina R.C. Church Directory											
#3	Provincial Inquiry Centre	Executive Council		X									
#4	Catalogue of Sask. Gov't. Grants	The Sask. Chamber of Commerce											
#5	A Directory of Justice Services for Persons of Indian Ancestry in Man., Sask., & Alta.	Prairie Justice Research Consortium											
#6		The Frontier College											
#7	Research on the Impact of Urban Institutions on People of Indian Ancestry	Institute for Research on Public Policy											
#8		The Donner Canadian Foundation											
#9		The Regina Community Foundation											
#10	Canada Council Grant	Canada Council		X									

Areas of Federal-Provincial Cooperation

While the provision of social services to off-Reserve Indians represents one area where Federal-Provincial conflict has been notable, there has been substantial Federal-Provincial cooperation in the resolution of a wide range of other problems through the development of tripartite negotiation mechanisms to address specific issues.

Tripartite Mechanisms

A number of tripartite processes have been established over the past years involving the Federal and Provincial Governments and provincial Indian associations in an attempt to address in the short term a broad range of jurisdictional issues.
As a longer term solution the Federal Government has proposed that:

- the question of "Federal-Provincial Responsibility for Services to Indian People" be one of the subjects of consideration in the Post Patriation Constitutional Conferences under the agenda head 'Natives and the Constitution".
  In the meantime, the Provincial Tripartite Processes will focus on "interim" ways and means of dealing with the immediate problems involved in improving off-Reserve services to Indian people pending resolution of the longer term constitutional questions.

Canada-Saskatchewan - Indian tripartite mechanisms in place are noted below:

TRIPARTITE MECHANISMS

ORGANIZATION	PARTICIPANTS	PROCESS FUNDING	ISSUES
Land Entitlement	DIAND, Province F.S.I.	$45,000 (1982-83)	- third party interests negotiations - overall land entitlement settlement policies - negotiations and development.
Reserve Roads	DIAND, Province F.S.I.	Unfunded	Negotiations and development of an agreement for internal road systems and access to Reserves.
Forest Fire	No formal committee, informal tripartite process	Unfunded	- Agreement in place - Covers fire suppression and fire prevention on Reserves in the forest belt.
Farm Start	Federal-Provincial committee liaises with Indian interests	Unfunded	- Developing an agreement to extend provincial farm start services to Indian farmers.
Tax Rebate for Petroleum Products	Province, F.S.I.	NIL	- Agreement is in place whereby Band councils are reimbursed gas tax paid by their members for petroleum products utilized on Reserve.
Saskatchewan Indian Federated College	Federal, Provincial, F.S.I.	Unfunded	- Committee is monitoring a Federal-Provincial agreement under which the Saskatchewan Indian Federated College is jointly funded.
Environmental Resource Impacts	Federal, Provincial, F.S.I.	Unfunded	- Assessing potential socio-economic inputs and development opportunities of major enternal projects on Indian Reserves.
Evaluation of Western Northlands	F.S.I., Province, DIAND, DREE	Process funding $25,000 per annum	- Plans the development of Western Northlands Agreement and directs and monitors the delivery of the Agreement.
Sipanok Lease	F.S.I., Province, DIAND	Unfunded	- Development of resource area for forestry, fur and game production.

Process of Tripartite Mechanisms

Of the tripartite mechanisms in place, only Land Entitlement has a formally structured Coordinating Committee comprised of F.S.I., Provincial and DIAND representatives. Other tripartite mechanisms are informal and unstructured but function effectively.

Tripartite discussion may be opened where Federal-Provincial cost sharing arrangements may be affected, or where Federal-Provincial relations may be affected. Bands, Indian organizations, and either senior level of government may present issues for discussion.

Where Federal-Provincial contacts and relationships already exist, no new tripartite structure is required, and such discussion and negotiation that may be required is undertaken by the relevant Departmental personnel. When issues arise where there are no interdepartmental contacts, Intergovernmental Affairs broaches the Minister of the appropriate Provincial Department to identify a suitable Departmental contact.

With this context setting information, it is now possible to examine in more detail substantive jurisdictional issues. These are presented in three separate sections: Social Development; Education and Skill Development; and Resource Development.

SOCIAL
DEVELOPMENT

SECTION VI

JURISDICTIONAL ISSUES: SOCIAL DEVELOPMENT

JURISDICTIONAL ISSUES: SOCIAL DEVELOPMENT

INTRODUCTION

For the approximately 30,000 persons of Indian ancestry who reside on Indian reservations in Saskatchewan, social conditions are deplorable. Less than 2 percent of houses on Reserves have sewers, septic tanks, indoor baths, indoor toilets, or even running water. The average number of persons per house on the Reserves is twice that for off-Reserve housing. Life expectancy, a reflection of health standards, is still ten years less than the national population. Violent deaths are three times national levels, and suicides are six times national rates. There are higher divorce rates, more births outside marriage and more children in care. Living conditions are characterized by overcrowding and there are high levels of alcohol abuse and welfare dependency.

While conditions on Reserves are a particular cause for concern, the problems faced by persons of Indian ancestry who live off Reserves are very considerable as well. It is estimated there are some 50,000 persons of Indian ancestry in Saskatchewan who do not reside on Reserves. For this, the majority of the Indian ancestry population, problems related to socio-economic conditions abound. These problems are exacerbated by the increasing numbers of persons of Indian ancestry who are migrating to urban areas such as Regina, Saskatoon, Prince Albert, and North Battleford. It has been estimated, for example, that by the year 2000, 40% of the Regina population will consist of persons of Indian ancestry.

Persons of Indian ancestry are often ill-equipped to cope with the urban environment, and the urban environment fails to provide even a modicum of support services. Persons of Indian ancestry frequently lack social and cultural linkages because they find themselves in an unfamiliar environment. Rates of unemployment and welfare dependency frequently range over 30%, even though one of the main reasons persons of Indian ancestry migrate to

urban areas is to find employment. On top of this, the problems of widespread racial discrimination must be considered.

The conditions awaiting persons of Indian ancestry in urban centres are clear. Some 60% of Indian ancestry children are behind their proper grade in school. As many as 70% of Indians may not have completed Grade 9, while as few as 3.5% have completed high school. Even today, access to post secondary education is extremely limited. Moreover, training monies spent on behalf of persons of Indian ancestry represent about one-tenth the monies available for the non-Indian population. For these reasons, Indian people are poorly equipped to cope with the job market in urban or, for that matter, rural settings. The average annual wage among persons of Indian ancestry is estimated to be one-seventh the corresponding figure for non-Natives. All these factors are complicated by the failure of governments to resolve jurisdictional disputes and to provide basic services to persons of Indian ancestry in urban and other off-Reserve environments. [1]

It is clear that social and economic conditions for the Indian ancestry population, whether Treaty Indians, Metis, or Non-Status Indians, whether on-Reserve or off-Reserve, represent major underlying causes of social problems. Improvements of social and economic conditions will require increased levels of Federal-Provincial-Band cooperation.

1. J. Hylton, W. Fritz, O. Brass and G. King. Fostering the Mental Health of Persons of Indian Ancestry in Saskatchewan, 1980.

ISSUES

Erosion of Health and Social Conditions

Since 1977 the Federation of Saskatchewan Indians (F.S.I.) has been negotiating with both the federal and provincial governments to support the establishment of a Task Force to address the above issue encircling the Indian communities and various levels of government through the coordination of the F.S.I.

Two separate Agreements have been signed concurrently with the Department and the Province of Saskatchewan for contributions to establish an Indian Health and Social Services Task Force.

This Task Force will formulate policies and recommendations on Indian health and social services, and a delivery mechanism for Indian communities and individuals that meet the needs of their people. The Saskatchewan Region has assigned the Director of Operations, Planning, and Social Development to participate on this steering committee.

The Federal and Provincial Agreements include fundings of $50,000 and $35,000 from the Department and the Province respectively during the 1980-81 fiscal year. The amount will be expended for: the services of researchers to be employed by the Federation; a consultative process with the Indian communities; and operational expenses of the Task Force. The Agreements are due to expire on March 31, 1981.

The task undertaken and initiated by the Task Force is important and crucial to the program service delivery/responsibility to Saskatchewan Indians. The Task Force has commitments from the province and the federal departments of Health and Welfare Canada and Indian and Inuit Affairs.

The Task Force is operational through 1981-82 and will also be working during 1982-83 with funding from Medical Services and the Province while negotiating for further IIA funding commitments.

Provincial Services to On-Reserve Children

Saskatchewan has had child welfare legislation since 1908 but due to a lack of a formal federal-provincial agreement, Indian children have not had a full range of child welfare services provided to them unless the situation is very serious. The province had 823 Treaty Indian children-in care as wards of the Minister of Social Services as of March 31, 1981 and DIAND Saskatchewan Region had 523 children-in-care with no wardship.

The Department of Social Services and Department of Northern Saskatchewan provides, on and off Reserve, full adoption services, limited services to juvenile delinquents and counselling services to unmarried parents. Day care and homemaker services are not delivered on Reserves.

Due to jurisdictional disputes proper planning and action do not take place.

The Federation of Saskatchewan Indians has developed the position that they want to deliver child welfare services in all of Saskatchewan through Indian government.

The Department is continually reviewing their caseloads' practices and procedures and working with parents to return children to them. DIAND does not have the mandate nor funds for social development programs. DIAND is ready to start tripartite negotiations with the provincial government and the Federation of Saskatchewan Indians.

Rights Under the Saskatchewan Assistance Plan

Up until 1973, the Province of Saskatchewan provided social assistance and services to Indian people who were living off Reserve in places such as Saskatoon and Regina. In that year, the Province notified the then Minister of Indian Affairs and Northern Development, the Honourable Jean Chretien, that henceforth they would expect the Department to provide social assistance during the first year that people were off Reserve. Mr. Chretien replied that in order to prevent hardship to Indian people, they would provide assistance, but that this in no way implied agreement with the policy of the Province. The Province of Saskatchewan then added a further provision in their regulations that the Indian must state that he/she wishes to receive service from the Province rather than Indian Affairs.

Based on the right of Indian people to receive services from the province and the Canada Assistance Plan, Indian people who live off Reserve for more than one year and require social assistance are referred to the province. This position has been supported by the Honourable John Munro. Further, the Minister of Health and Welfare Canada, the Honourable Monique Begin, has supported the Minister. Her position is that "if a province were to deny assistance and services under Part 1 of the Act to Indian people who have been living off Reserve for a period of more than 12 consecutive months, there would be a violation of the Agreement. In such circumstances, I would of course take whatever steps necessary to ensure that the province met its contractual obligations under the Canada Assistance Plan Agreements."

Level 4 Care

As of July 1981 the Saskatchewan Social Services Department unilaterally decided to place Level 4 patients (those in need of intensive skilled nursing care and who are in nursing homes), under the administration of that Department as opposed to receiving benefits from the Saskatchewan Hospital Services Plan and the provincial Health Department. The Federal Government is attempting to deal with the Province without legal clarification.

The province wishes to have shared funding under the Canada Assistance Plan for all Saskatchewan patients except Treaty Indian people.

Background

In spite of Canada Assistance Plan Agreement and Established Finance Program Act the provincial Government wishes DIAND to pay the actual per diem costs of patients in all nursing homes.

DIAND has paid per diem rates for Levels 1, 2 and 3 for Indian patients who have moved from the Reserve to a nursing home facility since April 1, 1979 when monthly subsidies were dropped for Treaty Indian patients.

DIAND and Health and Welfare Canada have begun discussions to understand and resolve this. The two federal Departments meet to decide on definitions of care, policy on which Department is responsible for what level of care; and which Department is financially responsible.

Saskatchewan Indian Justice Programs

The F.S.I. have presented a program proposal for the development of a comprehensive Indian justice system to federal and provincial authorities. (hereunder described). The Department's initial response was to acknowledge the utility of such proposals but to defer program commitments until the development of a more refined policy position on Indian justice issues. This development would be in concert with colleague federal agencies having a shared responsibility for such issues. i.e. Department of the Solicitor General and Justice.

The thrust of Indian Justice Programs is to co-ordinate the comprehensive simultaneous development of all the component services needed in the formation of an Indian Justice System for Saskatchewan Indian people.

The component services would assist the Federation of Saskatchewan Indians to achieve the final objective: an Indian Justice System to administer, interpret, and enforce Indian Law.

The component services and the Programs under which they are provided are as follows:

1) Policing - Indian Special Constable Program
2) Court Work - Indian Court Workers Program
3) Legal Assistance - Indian Legal Services Program
4) Judicial - Indian Justices of the Peace Program
5) Probation - Indian Probation Program
6) Law - Indian Law Development Program
7) Tribal Court - Indian Tribal Court Development Program

The overall planning for the ongoing development of these component services is the responsibility of the Indian Justice Program Planning Committee (formerly Indian Criminal Justice Co-ordinating Committee). This committee has been restructured to consist of representation from the Program Director or Program Co-ordinator. These seven representatives will each have responsibility for liaison with a District or Agency as part of the planning process.

Each program will have a four member advisory committee consisting of two permanent representatives appointed by the Federation of Saskatchewan Indians and two permanent representatives appointed by the primary funding agency. Non-permanent members may be appointed to the committee from time to time. The permanent members of the committee will choose a Chairperson and Deputy Chairperson, and will utilize the Program Director or Program Co-ordinator as a permanent resource person to the committee. The role of the resource person will include acting as Secretary to the committee.

The focus of the component services as the point of departure for the development of a community based Indian Justice System is towards movement in three directions. They are:

- Towards the improvement of the provision of justice services to members of Saskatchewan Indian Bands by having trained Indian people provide such services;
- Towards the comprehensive planned development of a community based Indian Justice System of which the central structure in the administration, interpretation, and enforcement of Indian Law will be the Tribal Court,
- Towards assisting Saskatchewan Indian people in developing a greater awareness and understanding of the justice system as it presently functions.

The process to be utilized by the Federation of Saskatchewan Indians in moving in these directions will combine the following processes of communication:

- Community Education, aimed primarily at the Indian community in Saskatchewan but also at Provincial and Federal Government communities presently involved in the provision of justice services.
- Liaison with Indian, Provincial, and Federal Governments presently responsible for the administration and/or funding of justice services.
- Community Involvement in the ongoing planned development of an Indian Justice System in Saskatchewan.

The Indian Policing Program and the Indian Probation Program have developed and expanded to the degree that these two components can be considered a base for developing, training, and implementing Indian responsibility for Indian services.

The other five programs are at differing stages of development. There is a pressing need to quickly expand the total integrated concept by planning and implementing the Indian Court Worker, Indian Legal Services, Indian Law Development and Indian Tribal Court Development Programs, and by revitalizing the Indian Justice of the Peace Program. Details on the requirements for seven programs are provided below.

1) Policing - Indian Special Constable Program

This program requires the services of a Program Co-ordinator to facilitate the development of closer linkages between the Federation of Saskatchewan Indians Program Staff and the following:

a) Saskatchewan Police Commission
b) Saskatchewan Attorney General's Department
c) R.C.M. P.
d) Indian Special Constables.

This person would perform a mediation role in disputes between Indian Band members and police and would assist in the recruitment, training, and placement of the Indian Special Constables. The co-ordinator would also assist municipal police in dealing with problems encountered by migrating Indian Citizens.

2) Court Work - Indian Court Workers Program

This program requires planning and implementation. The program proposal has been submitted previously with a request for funding to the Attorney General's Department of the Saskatchewan Government. The proposal calls for twenty-six court workers to provide court work services to Indian Band members throughout the province.

3) Legal Assistance - Indian Legal Services Program

This program requires extensive research and planning to determine the parameters for the development of Indian legal assistance services in Saskatchewan.

4) Judicial - Indian Justices of the Peace Program

This program requires revitalizing to make it a viable service. As a result, Program Co-ordinators are required, one for the Northern area of the Province and one for the Southern area of the Province. A process of staff development as well as for program evaluation is also required.

5) Probation - Indian Probation Program

This program requires a major emphasis in the area of staff development. Continuing consideration is also being given to the extension of the services of this program to all Indian Bands in Saskatchewan.

6) Law - Indian Law Development Program

This program requires a major research and planning thrust. The information obtained during this phase of development will be coupled with the information base for the Tribal Court Development Program to assist Indian Bands in Saskatchewan to determine the jurisdictional areas of responsibility to be assigned through the Indian Justices of the Peace to the Tribal Courts. This information is also required as the base for developing a program of Indian Law studies to be offered through the Indian Federated College as a para-professional training program for individuals contemplating employment, or employed in the Indian Justice System.

7) Tribal Court - Indian Tribal Court Development Program

The program requires extensive planning if a total unified program of Indian Justice Services is to be developed. The Federation of Saskatchewan Indians wishes to conduct a thorough study of existing Tribal Court and Indian Justice Programs in Canada and the United States. This knowledge base is required to facilitate the efficient operation of the Indian Justice System once all the component services are in place.

Indian Special Constable Program

The Indian Special Constable Program began operation in 1974. With the staff allocation for the current fiscal year there are 39 positions available within the R.C.M.P. for Indian Special Constables to be posted throughout Saskatchewan. An additional 7 positions were allocated for the 1980-81 fiscal year. The Department recently communicated its intention to extend the federal/provincial agreement through to the end of the fiscal year 1981-82, to provincial Ministers subject to their approval. Treasury Board Ministers subsequently approved a further extension of the program with possible growth in person years to the end of the fiscal year 1982-83. The possibility of additional person years will be discussed with the Province. Concerns expressed by program staff have resulted in two independently carried out evaluations being done on the program in 1977 and 1978. The first was done by a committee consisting of Federation of Saskatchewan Indians' representatives: Cliff Starr and Fred Starr, Attorney-General's Department Representative; Bill Logan, amd R.C.M.P. Representative, Tom Light. Many of the eleven recommendations of the committee were implemented, however; there is continuing concern from Bands that the Special Constables are unable to effectively spend 30% of their time doing liaison work with the Bands. The second evaluation was done by Evalucan and was received recently by the Federation. Program funding is supplied by the Department of Indian Affairs of Ottawa.

EDUCATION,
SKILL DEVELOPMENT

SECTION VII

JURISDICTIONAL ISSUES: EDUCATION AND SKILL DEVELOPMENT

JURISDICTIONAL ISSUES: EDUCATION AND SKILL DEVELOPMENT

INTRODUCTION

The Province of Saskatchewan is on the threshold of a major natural resource boom which is expected to extend throughout the 1980's and 1990's. This natural resource development may generate thousands of new job opportunities in Saskatchewan.

An analysis of the expected labour requirements with the available labour pool indicates that there is a significant labour supply shortfall especially in the skilled trades and technical groups. If Saskatchewan's Indians are to capitalize on these projects and employment opportunities they must gain access to relevant, high quality occupational skill training.

The need for increased emphasis on employment related training is further reinforced if an examination of the current Indian employment situation is included. For example, recent DREE studies estimate the cost of job creation programs at $55,000 per job. Many of the jobs created from these programs are short lived. Secondly, an analysis of on-Reserve jobs clearly indicates that the vast majority of these positions are linked directly to federal funds. In short, permanent more productive jobs are needed for Indian people. Occupational directed training is an effective and efficient method for this to occur.

Due to budget restrictions and program restraints, the Saskatchewan Region has been unable to fund extensive occupational skill training and other adult education required for job readiness. Moreover, CEIC funding has not made any significant impact in this area.

While there is an obvious need for occupational and technical skill training, many prospective Indian technical students are denied access to provincial institutions because of inadequate spaces in the trades and technology programs. Presently, some 60% of all applicants to provincial technical institutions are denied access due to lack of space.

Acknowledgement of further investment in education and skill development has encouraged DIAND and a broad spectrum of other Federal and Provincial agencies to provide for additional educational and skill development programs.

FEDERAL POSITION

Economic development is considered by Indian people to be an important tool for achieving self-reliance.

The improvement of Indian communities cannot be achieved without comprehensive and accelerated economic development. DIAND believes this must be regarded by all levels of government as a priority.

To this end $345 million has been earmarked for native economic development in the November Federal budget for the period 1982-83 to 1985-86, in addition to that already provided through existing programs.... Final program details are still being developed. DIAND expects soon to be in a position to enter consultations in recognition that Provincial and Territorial Governments must be involved cooperatively with the Federal Government in efforts to enhance the economic status of native people.

It is the Department's view that Indian economic development must encompass a broad range of endeavours which facilitate the optimum utilization of the entire resource base of the Indian community and the surrounding area. The result will be enhanced individual self-reliance and community self-sustaining growth providing greater options for individuals and families to pursue livelihoods and careers in the location and cultural milieu of their choice. Given the serious dimensions of the current social dependency in Indian communities, any single-focus solution will not succeed. Success will only be achieved through a comprehensive effort controlled by the Indian communities which, over time, can address the continuum of their needs.

DIAND is convinced that a reaffirmation of integrated small-scale development, focused on viable projects, is essential to achieve economic growth at the Band level and to avoid further social and cultural disintegration and escalating dependence-

related government expenditures.

A number of successful approaches and programs indicate the significant potential benefits of future Indian economic development initiatives.

a) Natural resource-based sectoral development programs, such as the Manitoba and Saskatchewan Indian Agriculture Programs. An extension of programs of this type could lead to significant economic expansion.

b) Community wealth may be increased by expanding the existing resource base through programs like the Pacific Salmonid Enhancement Program. The freshwater fishery, the caribou and fur resources, and the wild rice industry are all suited to "enhancement" approaches....

The second aspect of Indian economic development is the potential contribution of major resource development. Many of these projects, particularly in Western Canada and the North are adjacent to Native communities. While attention has been given to a range of issues related to these projects, little attention has been placed on the people. Past Indian experience with resource development projects has been discouraging because of the limited benefits obtained, as well as the adverse socio-economic and environmental costs. [1]

Indian people have usually been employed on an intermittent basis in jobs requiring low skills. Traditional livelihood activities such as hunting, trapping, fishing and gathering have been disrupted. However, perhaps the most significant impact is the speed and magnitude of the change inflicted by rapid resource development. This longer-term threat is posed by the new roads, pipelines, etc. that are built to support these developments. These new arteries have the potential of speeding up the process of change in a way which can undermine the stable social patterns Indian people have maintained for generations.

1. Saskatchewan Region believes that optimism about the employment implications of western Canadian resource development must be muted in light of recent circumstances.

However the potential these projects offer should not be underestimated. Many projects under development offer Indians the prospect of a renewed livelihood without requiring them to abandon their communities or traditions. Some Indian communities have the potential to be linked to opportunities in such areas as tourism, recreation, manufacturing, transport, or resource harvesting. These, and many other economic opportunities are attracting the interest of increasing numbers of Indians as potential business ventures and as a means to multiply jobs. Strategies, designed by Indian communities, Governments and the Private Sector, have and can be implemented to allow the communities to share in the benefits of large-scale resource development.

It is important to give priority assistance to those Indian communities about to be affected by large developments to enable them to deal with the impacts of these projects. DIAND has established a Resource Development Impacts unit within the Indian and Inuit program as a focal point for this assistance and have allocated $5 million since 1981 to help Indian communities to take advantage of these developments.

Movement forward on major resource development projects must involve the balancing and integration of legitimate aspirations of native people (especially in respect of claims, environmental protection and the national interest)....

The Federal Government's strong commitment to Indian economic development includes a willingness to re-orient our policies and programs to accommodate co-operative efforts between Governments, the private sector and Indian people. DIAND's commitment of financial resources to this area speaks for itself and we look forward to the development of future co-operative arrangements.

ISSUES

Education

The major jurisdictional issue in the educational field concerns post-secondary schooling. Presently, Government of Canada transfer funds in the form of Established Program Financing (E.P.F.) are provided to offset the post-secondary education costs of the province. The calculation of these transfer payments is based on total provincial populations, including registered Indians. Notwithstanding, this substantial Federal financial input, tuitions and other special costs of post-secondary Indian students are several times that of non-Indian students. Since Indian student expenses at post-secondary institutions are borne by the Department of Indian Affairs, the Government of Canada is effectively double billed for Indian post-secondary education.

It may also be anticipated, however, that the Province of Saskatchewan will raise with DIAND a number of issues related to the education of on-Reserve Indians in off-Reserve schools. As specified in Saskatchewan Education's Discussion Paper entitled "Rural Education: Options for the 80's" the Province may wish discussions with the Federal government on two major issues:

- the funding of special programs within joint schools; and
- the funding for the development of quality education programs for Metis and Non-Status Indians in rural Saskatchewan schools.

Saskatchewan Education believes that the continued underachievement of Native/Indian students represents the clearest example of inequality of educational opportunity in Saskatchewan. Several reasons for the failure to achieve full equality of educational opportunity were noted.

In the first instance there has been limited parental participation within the school system. This situation has had the effect of limiting the opportunity for Native/Indian parents to define

a more culturally-relevant educational program for their children.

Secondly, the program of studies within the school was often inappropriate to the cultural knowledge base of Native/Indian students.

Thirdly, there has been a lack of trained Native/Indian teachers who could combine an intimate knowledge of their community and culture with a technical knowledge of education and learning. In addition, there was a lack of specialized preservice or inservice training in cross-cultural education for non-Native or non-Indian teachers who were teaching students of Indian ancestry.

Effective participation by Native/Indian parents in the education of their children is a necessary step in achieving relevant and effective educational opportunities for Native/Indian students. Since existing legislation allows for Treaty Indian participation on divisional boards, Saskatchewan education option is considering the introduction of legislation which allows Treaty Indians to participate on local boards of trustees. This would have the effect of allowing a more "local" participation process than at present.

There is near universal agreement on the need for better Native/Indian curriculum materials and resources. Support of the Saskatchewan Indian Cultural College and Gabriel Dumont Institute of Native Studies in the production of curriculum materials will be considered by Saskatchewan Education.

As a long-term strategy, Saskatchewan Education believes the most promising option for Native/Indian education in the province appears to be the provision of trained and committed Native/Indian educators. Continued support of existing Native/Indian teacher training programs will be considered.

A second need expressed by teachers was the need for a cross-cultural inservice program. The inclusion of a strong "community participation" component within this inservice program would be valuable. The development and implementation of a comprehensive inservice program in cross-cultural education may be required.

Underlying the development of the programs suggested above should be a comprehensive review of funding and financial aspects of the provision of Native/Indian education programs.

Saskatchewan Education believes one option would be to initiate discussions with the Federal Government concerning the funding of special programs within joint-schools.

A second option could be a major provincial review of funding for the development of quality educational programs for Metis and Non-Status Indians in rural Saskatchewan schools.

Saskatchewan Indian Federated College

Funding for the Saskatchewan Indian Federated College, which was established in 1976 as the result of negotiations between the Federation of Saskatchewan Indians and the University of Regina, remains an outstanding issue.

The Province of Saskatchewan, despite its jurisdiction over education, believes that the Federal Government should accept responsibility for the long-term financial support of the College in that the College primarily serves Indians.

The Federal Government believes that the financing of post-secondary educational institutions is a provincial jurisdiction and, if it accepted responsibility for the Federated College, that it would be paying twice for a program covered by the Established Program Financing Act of 1977.

The Federation of Saskatchewan Indians holds that the Federal Government has a general obligation to contribute to this post-secondary educational institution; it will not say that the Province should not contribute as well. The F.S.I. feels strongly that the Federated College is an important Indian "demonstration project" that serves a necessary role in Indian education/ training and in responding to Indian peoples' social concerns on campus, it is willing to discuss this issue in a tripartite forum. It also feels that the Federated College merits federal funding as it operates outreach courses to serve on-Reserve Indians.

The Federal Government currently provides year-by-year contributions totalling $1,300,000 over four years. Also the Province has contributed funding support of approximately $754,000 in the same period. An extension of the governing Treasury Board authority, for the year ending March 31, 1981, committed $500,000 to the College on the condition that a federal-provincial agreement for long-term funding was negotiated.

Those negotiations commenced January, 1981. The issue revolves around the federal government's assertion that post-secondary education is a Provincial responsibility for which the Province is compensated through federal-provincial fiscal transfers (Established Programs Financing); and the provincial government's contention that Status Indians are exclusively a federal responsibility, outside the coverage of EPF.

While it is generally perceived that the Indian Federated College at the University of Regina is the most pressing Indian Educational issue for tripartite discussion, it should be noted that the Federation is also pressing for the resolution of funding arrangements for the Indian Community College and the Indian Cultural College.

ECONOMIC
DEVELOPMENT

SECTION VIII

JURISDICTIONAL ISSUES: ECONOMIC DEVELOPMENT

JURISDICTIONAL ISSUES: ECONOMIC DEVELOPMENT

INTRODUCTION

The Province of Saskatchewan has tremendous potential for natural resource development in many areas, particularly agriculture, heavy oil, potash and uranium. To date, however, Saskatchewan Indians have received only limited benefits from resource develo-ment, largely in agriculture and off-Reserve employment in mining.

The extent to which Indians will be able to take advantage of development opportunities will depend on a number of factors. One major requirement will be increased levels of skill training. Another major factor will be the land entitlement process, which could provide Bands with a number of parcels of land with some mineral, forestry and/or tourism potential. More importantly, perhaps, is that if a purchase policy is negotiated, as much as 200,000 acres of prime agricultural land could be made available to Bands.

Resource development represents an area of economic activity which is intimately associated with improvement in social, and educational and skill development areas. Nevertheless DIAND has been involved in a number of resource development initiatives which have involved Federal-Provincial negotiation. These initiatives are described on the following pages.

ISSUES

Saskatchewan Farm Start Corporation

The objective of this Federal-Provincial negotiation is to allow provisions for Saskatchewan Indian farmers to have access to Saskatchewan Farm Start Corporation.

Farm Start plays an important role in Provincial agricultural programs. The need to diversify and intensify farm operations is great for Saskatchewan Indian farmers.

Farm Start is a credit program designed specifically to assist farmers in developing profitable livestock enterprises. This kind of diversification is a necessary part of increasing return per acre of the land,thus enabling producers to limit the need for ever increasing land base.

Indian agricultural development in Saskatchewan has the potential to be one of the cornerstones to Indian economic prosperity. The major problem which precludes the extension of Farm Start loans to Indian Reserves is that of loan security. Section 89 (1) of the Indian Act prevents Indians or Bands from pledging any real or personal property located on a Reserve as security for a loan. Since Indian farmers are unable to pledge property, they are unable to have access to Farm Start cheap credit (at present 10%).

For quite some time intensive discussions have been going on between Department officials and Saskatchewan Farm Start Corporation. It has been proposed that the Federal Government, or one of its agencies, i.e., DIAND, provide guarantees for Farm Start loans to Indian farmers on Reserve land. As a result of discussions between officials of the Department of Indian Affairs and the Federal Department of Finance, the concept of making Farm Start loans available between a Federal-Provincial Agreement has been agreed upon. The negotiating process with the province will continue with the expectation that a draft Agreement be available for the Minister's consideration by March 31,1982.

Reserve Roads

Since the Spring of 1980, the Regional Office (Saskatchewan) and the Province have had formal discussions directed to an eventual shared-cost agreement for the construction and maintenance of access roads to Indian Reserves and roads internal to Reserves. The status of the negotiations as of February, 1981 indicates:

1) Federal-Provincial disagreement on the need to await Indian Band designation of main access roads and interior Reserve roads; the Federal Government is insistent that Indian input, already requested, is requisite for proceeding.

2) Provincial pressure at the Ministerial level to accept, as part of the agreement, a federal contribution to pay 50% of maintenance costs of provincial access roads to Indian Reserves; no precedent currently operates for such a federal contribution in Saskatchewan.

Forest Fire Control

In 1978, Canada and Saskatchewan signed an agreement governing the protection of Indian Reserves from forest fires.

By terms of the Agreement, Saskatchewan would in co-operation with the Department of Indian and Northern Affairs staff and with councils of Indian Bands provide:

- training in fire prevention and suppression for Indians: and
- caches of fire fighting equipment at such locations as Saskatchewan considers necessary.

Further, and without cost to Canada, Saskatchewan would provide the same standard of fire prevention and detection services for protected land as are provided to adjacent Forest Reserve land in Saskatchewan.

Canada agreed to pay to Saskatchewan the direct costs actually incurred by Saskatchewan in suppressing any wild fire originating on protected land, whether or not Saskatchewan acted on the request of Canada.

Petroleum Development Taxation on Indian Lands

The current burden of federal taxes, provincial taxes, and Indian royalties discourage development of oil and gas prospects on Indian lands. Developers of oil and gas reserves face an almost insurmountable economic liability and, therefore, prefer to explore and develop prospects off the Indian Reserves. Because the tax and royalty policies are interrelated, it is ineffective for Indian Bands to modify their royalty in an attempt to encourage oil and gas development.

Resource Development Impacts

The end of the seventies saw the start of a major resource and economic development boom in Saskatchewan. While the projects being proposed spell many benefits to Bands, some also have the potential to adversely affect the living environment of Reserves and the land Bands normally use in pursuit of their traditional way of living off the land. As a result, efforts will be made through several projects to establish an environmental review policy with the province that assures Bands' early involvement in the environmental assessment of potential large projects affecting Reserve lands and traditional lands. The other area to be clarified as part of this process is the whole issue of Indian water rights when Reserves are affected by hydro and dam projects, water diversion, water draining, and changes in water quality.

In Saskatchewan the economy is experiencing a boom due to the development of resources such as uranium, potash, oil, coal, agriculture and water. Projects vary in size from small to large and vary in their state of development from the construction stage, planning and design stage to futuristic proposals. The proponents for the various projects vary from individual entrepreneurs, large multi-national corporations to the provincial government and crown corporations.

Most of the projects have environmental, social and economic consequences. Many directly impact on Reserves or affect the regional area used by Bands around Reserves. The impact of a single small project may be fairly predictable; however, the impact of small projects or combinations of various projects are less predictable due to unexpected linkages and multiplier effects. Indian people are often forced to bear many of the costs, yet reap few of the benefits of development which are occurring off-Reserves. They bear the impacts both on their Reserves and on traditional hunting, fishing and trapping areas off the Reserves; yet they usually benefit little from the economic spin-offs and potential employment opportunities.

Indian Reserves and their communities are located in or near the major resource development corridors. Indian lifestyles in most parts of the province are still rural oriented, primarily resource based and they are tied to the land, water and the accompanying flora and fauna. The type of dependence varies from agricultural activities in the south to hunting, trapping, fishing and gathering in the north with its more fragile environment. As a result, any disruption of the ecosystem can have a severe impact on the health, welfare, lifestyle and livelihood of the Bands within the region, but intervention in developments having potentially significant impacts has in the past been on an ad hoc basis.

Given the limited funds available, intervention by or on behalf of Indian people has been supported wherever possible.

Where large resource development projects have existed for a number of years, local communities become very dependent upon the continued operations of the industry. If and when these industries cease their operations, severe socio-economic impacts are felt by local communities again, the "boom-bust" cycle of single-industry towns.

In Saskatchewan Region, a tripartite approach is being utilized

to deal with this problem. As an example of this, the Department is currently working on the development of an effective intervention process. There is representation on this committee from both federal and provincial levels of government, as well as the Federation of Saskatchewan Indians.

In an attempt to ensure that Bands and the Department are aware of significant projects, an inventory of environmentally-related projects is maintained and updated at least quarterly. This will be incorporated into the intervention strategy which is being developed.

The number and magnitude of projects having significant impacts upon Indian people is not expected to decrease in the near future in Saskatchewan. It is important that recognition be given to the importance of these potential impacts before they actually occur. This means that sufficient manpower and funding needs to be allocated, and these must be applied effectively if Indian people are to benefit along with the rest of the province's people, rather than suffer the effects of poorly-planned projects.

The Department should continue to monitor developments which may impact upon Indian people and their communities, attempt to anticipate impacts and opportunities associated with these developments and assist Bands to prepare for these.

DIAND supported impact assessments are described on the following pages.

Resource Development Impact

MAIN OBJECTIVE: 1031 OPERATIONAL PLANNING

GOALS	TASKS	PRIORITY	RESOURCES	INDICATORS TIMEFRAME	INDICATORS CRITERIA
Environmental Protection Strategy					
To establish procedures for the systematic notification of DIA of large potential projects that may impact on reserves and the involvement of bands in the early assessment of the impact of the projects prior to the public hearings.	- establish contacts with federal and provincal agencies responsible for initiating and approving major projects in Saskatchewan - establish systematic reporting procedures - establish impact review procedures - verify sources of funds for review - formalize an agreement.	1	25.0	31/3/81	- reporting procedures established - impact assessment procedures established - sources of funding verified - agreement negotiated.

* 1982-1983 Action Plan is under preparation.

Resource Development Impact

MAIN OBJECTIVE: 7010 PLANNING STUDIES

GOALS	TASKS	PRIORITY	RESOURCES	INDICATORS TIMEFRAME	INDICATORS CRITERIA
Qu'Appelle Valley Indian Development Authority					
To provide support and assistance to the eight bands in their preparation of a resource strategy and development plan.	- to assist QVIDA in the development of their administration and planning framework.	1	60.0	31/3/81	- administration and planning framework in place
	- to assist in the preparation of a development plan			31/3/83	- plan completed
	- to assist in the preparation of a resource strategy			31/3/83	- strategy in place.
	- to provide technical monitoring and on-going advisory assistance.				

* 1982-1983 Action Plan is under preparation.

Resource Development Impact

7014 MAIN OBJECTIVE:	ENVIRONMENT - To assist bands in assessing the impact of large projects on reserve lands, in presenting the band's position in public hearings, and in negotiating affirmative action into agreements prior to the commencement of the projects.				
GOALS	TASKS	PRIORITY	RESOURCES	INDICATORS TIMEFRAME	CRITERIA
Cold Lake Heavy Oil Socio-Economic & Environmental Development Strategy					
To assist Waterhen Lake and Joseph Bighead bands in joining forces with Alberta bands to negoitate a long term socio-economic and environmental agreement with Imperial Oil Limited.	- formation of joint planning committee - preparation of terms of reference - studies initiated - studies approved - start negotiations	1	20.0	31/3/81	- negotiation of long term agreement.
Cumberland Housing-Sturgeon Landing Road Impact Assessment					
To provide Cumberland House and Peter Ballantyne bands with technical studies to negotiate a road location with DNS between their two communities.	- studies were initiated in 1979-80 - monitor results of sectorial reports - provide bands with advisory assistance	1	Ø	30/6/80	- studies completed - road location finalized

* 1982-1983 Action Plan is under preparation.

Resource Development Impact

MAIN OBJECTIVE: 7014 ENVIRONMENT

GOALS	TASKS	PRIORITY	RESOURCES	INDICATORS TIMEFRAME	INDICATORS CRITERIA
Assiniboine River Channel Widening and Water Control Structure					
To provide Yorkton bands affected by proposed structures and channelling of the Assiniboine River with technical information on the projects and their impact on the reserve land so that they can negotiate with the provincial government.	- assist bands in setting up of a planning committee		20.0	30/6/80	- committee formed
	- assist in preparing a terms of reference				
	- select consultant				
	- monitor progress				
	- comment on preliminary draft				
	- final presentation				
	- approval of final report.			31/3/81	- final report

* 1982-1983 Action Plan is under preparation.

Resource Development Impact

MAIN OBJECTIVE: 7014 ENVIRONMENT

GOALS	TASKS	PRIORITY	RESOURCES	INDICATORS TIMEFRAME	INDICATORS CRITERIA
Rapid River Power Project					
To assist the Lac La Ronge Band in assessing the impact of the proposed power project on Indian reserve lands and providing the band with data for a technical report to the provincial hearings on the project.	- project started in 1979/80 - assist band in preparing a terms of reference - monitor and review technical studies - provide band with advice on how to present the information to the Province - assist band in any followup negotiations with the Province	1	Ø	30/5/80 31/11/80	- study initiated - study initiated
Key Lake Mining Socio-Economic Strategy					
To assist the northern Prince Albert District Bands in joining forces to develop strategy and negotiate a long term sobio-economic development agreement with the province and the mining companies.	- assist bands in forming a planning committee - assist bands in preparing a terms of reference - select consultant - monitor progress - comment on preliminary draft - final presentation - approval of final report.		20.0	30/6/80 30/9/80 31/3/81	- committee formed - study initiated - study completed

* 1982-1983 Action Plan is under preparation.

Resource Development Impact

MAIN OBJECTIVE: 7014 ENVIRONMENT

GOALS	TASKS	PRIORITY	RESOURCES	INDICATORS TIMEFRAME	INDICATORS CRITERIA
Makwa Lake Water Level Control Structure Impact Assessment					
To assist Makwa Lake Band in assessing the impact of the control structure and the fluctuating water levels on the reserve lands surrounding the lake.	- develop terms of reference - select consultant - monitor progress - comment on preliminary draft - final presentation to band and government departments - obtain necessary approvals of final report.	3	Ø	30/1/81 30/9/81	- initiate study - study completed.

* 1982-1983 Action Plan is under preparation.

HUNTING, FISHING
GATHERING

SECTION IX

JURISDICTIONAL ISSUES:
HUNTING, FISHING AND GATHERING

INTRODUCTION

Wildlife management of non-migratory species is a provincial responsibility. All registered Indians, however, are exempt from this provincial legislation and are free to hunt for food in any fashion and at any time during the year. Abuses of this right by a few Indian individuals has caught media attention and subsequently strained relations between the Indian and non-Indian community. This is particularly true in rural Saskatchewan.

DIAND is becoming increasingly concerned with respect to the mounting pressure being exerted on the government and the public by associations of sportsmen and environmentalists to reduce or eliminate the special rights that Indian people have in different parts of the country.

The Federal Government is committed to examining, with the provinces and the Indian leadership, the question of aboriginal and treaty rights in the second phase of the Constitutional discussions.

Provincial Governments and Indian people have, in the past, encountered some difficulty in determining whether the positions articulated by various Federal Departments and agencies constitute the definitive consolidated Federal position on a given issue. The Minister has raised this issue with Cabinet, particularly with the Minister of Fisheries and Oceans and the Minister of Environment. Interdepartmental consultations at the official level are also being carried out in order to reconcile policy differences and to consolidate the Federal position.

Encouraging the initiatives of Indian groups for whom hunting, fishing or trapping are important activities to make them more economically viable has had positive economic results. The financial investment required is usually not substantial.

These remote groups are normally most difficult to help economically while the most capable of managing community-based projects. However, to do this, these Indian groups must have priority to harvest the wildlife in their region.

FEDERAL POSITION

Hunting, fishing and trapping represent activities integral to the cultural, social and economic well-being of Indian people who continue to pursue their traditional way of living and working off the land. While the economic importance of these activities may be less relevant for those Indian people who have adopted non-traditional lifestyles and are engaged in non-traditional pursuits, the activities nevertheless retain for many of them, a vital social and cultural significance.

The Department has had the opportunity to discuss a variety of important issues with Indian Associations and Bands across the country. The frequency and regularity with which hunting, fishing and trapping issues have been raised during these discussions attests to the significance with which they are regarded by the Indian people.

As all are aware, hunting, fishing and trapping activities are under considerable pressure today and represent an increasing source of tension and potential confrontation as more and more people in society compete for a diminishing supply of the resources. In addition, the pressures brought to bear by the growing population are often exacerbated by disruptive and adverse environmental effects of major development projects, such as pipelines and mining operations, by improved hunting and fishing methods, and by increased access to previously remote hunting and fishing areas. Strong sentiment has also been expressed by some non-Indian people, many of whom hunt and fish for sport and recreation, that as conditions change and Indian people increasingly join the mainstream of Canadian life, treaty rights are no longer required and should therefore be discontinued. These pressures

are compounded by the fact that Governments must deal with several different groups of native people, as well as the fact that there are significant variations between regions in the relative abundance of fish and wildlife resources and in the relative importance of species sought by both native and non-native people.

A general lack of public awareness or public understanding in Canada, about the origin and application of treaty rights, has contributed to a growing non-Indian reaction against the concept of special rights. Indian people believe that Governments are more responsive to those who oppose special hunting and fishing rights than they are to treaty concerns. Regrettably, there may be a basis to that belief- at least in the sense that the growing power of conservationists, wildlife organizations, environmentalists, large scale tourist operators and other third-party interests as influential lobbyists represent a political reality which cannot be discounted.

All too often, the relationship between the provinces and the Indian people over hunting and fishing rights has been adversarial in nature, with day-to-day problems arising from the interaction of treaty rights and exigencies or management and conservation being deferred to the courts for settlement. While litigation has frequently been the ultimate forum for the resolution of issues, the judicial process is, as we are all aware, costly, time consuming and not conducive to the development of good working relationships. In addressing outstanding questions it is obvious that, because situations and jurisdictions vary, the solutions will vary. The complexity of the various treaties and the legislation involved is but one example of the differences that will have to be accommodated.

In view of present jurisdictional and political circumstances, the furthering of legitimate Indian rights and interests cannot rest solely with one Government. The challenge is to strike the proper balance whereby legitimate Indian rights and

interests are accommodated within the jurisdictional and policy frameworks of Governments, and to strike this balance through co-operative work.

While Indian rights to hunt, fish and trap may be further defined at a later date in the Constitutional context, DIAND believes that some of the problems which currently exist can be alleviated, at least on an interim basis.

A proposed approach, from DIAND's perspective, would reflect the following fundamental principles:

- a respect for Indian rights to hunt, fish and trap;
- disputes regarding the nature or existence of Indian rights to hunt, fish and trap should be addressed in a non-litigious manner; and
- in areas where disagreements flow from policy as opposed to legal considerations, alternative policies should be developed to accommodate not only the special importance with which hunting, fishing and trapping activities are regarded by Indian people, but also the overriding need for sound management and conservation of the resource.

Examples of interim solutions that might usefully be explored include increased Indian involvement in wildlife management boards and schemes, recommendation of interim enforcement procedures and possible changes in licensing and quota determination schemes that affect Indian communities.

Issues in the area of Indian hunting, fishing and trapping are as complex as they are numerous, and that solution will not come easily. DIAND is hopeful, however, that through a concerted and cooperative effort, differences can be resolved to the benefit and satisfaction of all concerned.

FEDERAL -
INTERDEPARTMENTAL

SECTION X

FEDERAL INTERDEPARTMENTAL RELATIONS

FEDERAL INTERDEPARTMENTAL RELATIONS

THE DIRECTORS GENERAL GROUP

Formalized in 1977 the Directors General Group, an informal association of Federal inter-departmental Directors General, meets occasionally with Provincial Deputy Ministers to discuss, among other items, areas of concern, operating procedures, and changes in policy.

In the past the Directors General Group has discussed with their Provincial counterparts such concerns as social services delivery to off-Reserve Indians, and the agreement on urban native issues.

The informal, intergovernmental relationships established by the Director Generals' Group with Provincial Deputy Ministers has served to provide a forum through which each level of government has been able to define and establish negotiating positions. Where concerns have proven to be such that more formal, tripartite, relationships have been judged necessary, individual Departments have proceeded with detailed negotiations.

WESTERN NORTHLANDS EVALUATION

As a consequence of developing the Northlands Subsidiary Agreements it became evident that a special mechanism was required to deal with the circumstances which prevail on Indian Reserves. Indian Reserve Components of the Agreements were added to the Northlands Agreements to deal with Indian Community Services, with DREE sharing in project costs with DIAND in precisely the same manner in which cost sharing is done with the provinces.

The arrangement was designed to assist DIAND in overcoming the difficulty it faced in meeting the needs of northern Reserves while also assisting in efforts to co-ordinate improvements

in mixed Reserve and non-Reserve northern communities. In effect the system provides a means for financing the needs of northern communities through DREE assistance without disturbing the longer-run DIAND - Indian Band financial arrangments generally in force for Indian community development.

The federal-provincial Northland Agreements which are operative in Manitoba, Saskatchewan and Alberta were an outgrowth of federal-provincial deliberations at the Western Opportunities Conference in 1973. Based on a joint commitment to encourage social and economic development of the Western Northlands, Manitoba, Saskatchewan and Alberta signed federal-provincial General Development agreements and subsequently signed Interim Northlands Subsidiary Agreements. Longer term Agreements for Northern development have now been signed in Manitoba and Alberta, while the Saskatchewan Agreement is in the final stages of preparation.

When the Saskatchewan Northlands Long Term Agreement is signed, each of the three provinces will be engaged in joint programming for northern socio-economic development. Each of these Agreements will contain a special Indian Reserve Component involving joint cost sharing between the Department of Regional Economic Expansion and the Department of Indian and Northern Affairs for Community Services and Facilities.

Saskatchewan also entered into an Interim Northlands Agreement. This took place in 1975 and has been operative for 3 years. But unlike the Interim Agreements in Manitoba and Alberta, the Saskatchewan Interim Agreement contained a special provision for Indian Reserve Projects with a $5,000,000 allocation which was cost-shared between DREE (60%) and DIAND (40%).

The Canada-Saskatchewan Long Term Northlands Agreement, with a five year term, is rapidly approaching the signing stage. The draft Agreement contains an Indian Reserve Program which is

designed to support community improvements and is proposed to allocate $18.0 million to be shared between DREE (60%) and DIAND (40%). DIAND has implementation and O & M responsibilities.

INTEGRATED FEDERAL FUNDING

Overview of Issues

In Saskatchewan, the Indian Bands, the F.S.I. and other Indian associations are actively negotiating funds from a number of Federal departments such as DREE, CMHC, CEIC and NHW. The associations are many, including groups such as SIAP, EARM, Association of Saskatchewan Resorts and the Social and Health Task Force, and the use of funds vary depending on the association involved.

At the Band level, development funds are often negotiated with several agencies for a single project such as community facility, housing, Band farm and feasibility studies. However, each agency has their own special funding programs that Band projects must be tailored to in order to be approved. In addition each agency has its own set of rules regarding accountability, monthly reports, method of funding and purpose the funds can be used for. As well, the time in which the funds have to be spent vary as some can only be used in winter months for hiring unskilled and unemployed labourers.

Due to the complexities that exist regarding each funding agency's rules and regulations often the Bands waste much time and money negotiating with organization on a separate basis. Often funds from one agency are conditional on obtaining commitments from other agencies for funding and sometimes the timing of programs and funds cannot be made to coincide. As well, each agency has its own funding approval process, and some are allotted and approved on a federal constituency basis.

As a result of the frustrating funding process currently in existence, Bands and their associations have identified the need to streamline the federal funding process.

A multiplicity of Federal Departments and Agencies make funds available to various Indian and Metis organizations. For 1982-83, for example, nearly $26 million has been allocated for economic and employment development. District and Region allocations are shown below:

North Battleford	4,809,144
Prince Albert	3,988,466
Yorkton	3,425,109
Saskatoon	3,137,734
Touchwood/File Hills	4,727,282
Meadow Lake	2,693,373
Shellbrook	985,709
Regionally Allocated	4,018,200
	25,785,017

Of the District allocations, the following funding sources apply:

DIAND contribution	1,159,700
Special ARDA	3,648,929
LEAP	2,531,805
CESO	300,000
Trappers	80,000
IEDF Loans	8,991,990
IEDF Guarantees	140,442
FCC Guarantees	337,451
MSED Special Projects	717,700
Commercial Funding	3,025,000

Additionally, the following funds have been made available:

SIAP	2,498,000
EA RM	220,000
SIEF	400,000
ASIR	5,000
Employment	100,000
Printing	40,000
Special Projects	185,000
Contracts	30,000
Telephone	10,000
Legal Fees,Collections	50,000
Caribou Expenses	10,200
Kisbey Ranch	70,000
Salaries (PY - 11)	360,000
CESO	40,000
	4,018,200

Implications of Community Based Planning and Development

In substantially accepting the recommendations of the Beaver Report and of the Hobbs Report on Economic Development, DIAND has adopted a long term development focus and strategy which will facilitate Bands' control of their own affairs. This policy of devolution and the adoption at the Band level of a community based planning and development approach bear implications not only on DIAND response mechanisms, but also on funding sources available to Bands.

In as much as Community based planning and development will be Band operated, the success of the program will depend upon ease of access of development funding. A DIAND response mechanism to satisfy the requirements for community based planning and development will need to possess the following objectives:

- to deliver integrated programming to attain specified goals and objectives determined at the BAND Level.
- to accommodate variations in objectives, goals, programming and projects to reflect regional and local variations in economy, level of development, socio-economic circumstantces, etc.
- to provide base level of services especially to those Bands which may be incapable of coping with the development planning process
- to encourage use of funds for development rather than for remedial and maintenance programs
- to encourage BAND control, self-reliance, responsibility, accountability, economic improvement
- to ensure an adequate level of monitoring and program evaluation to
    - satisfy Treasury Board, and Cabinet
    - to provide guidance to DIAND in allocation of funds
    - to provide Bands with required monitoring capability.

Community based planning and development will require a level of integrated programming heretofore not achieved. Integrated Programming is conceptualized on the following pages.

FIGURE 10

Community Based Planning Process
Integrated Programming

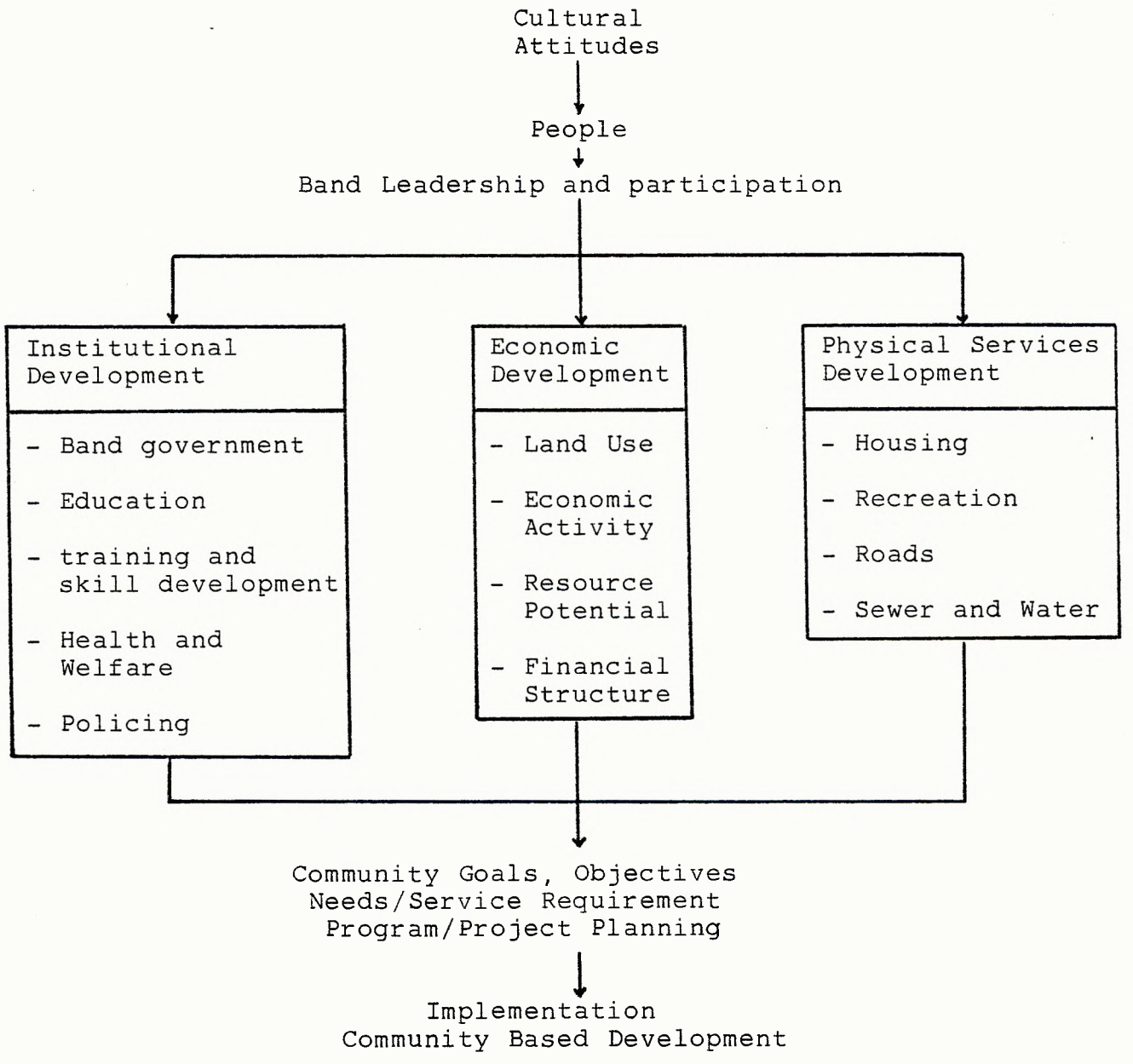
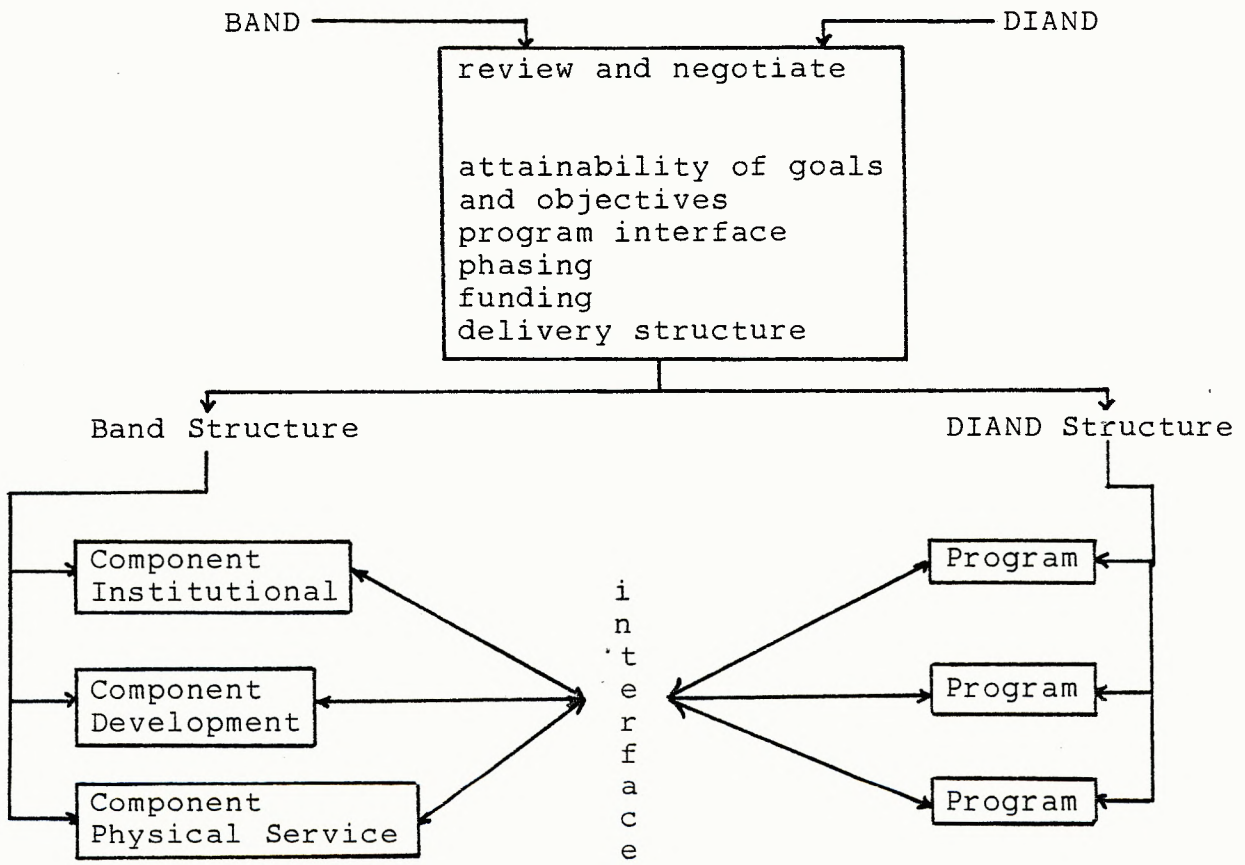


FIGURE 11

Department/Band Interface
To Implement Community Based Development Program



Integrated programming implies a high level of integrated funding to ensure that dollars can be effectively applied to address various components of a particular problem. In acknowledging the complexity of Indian development issues, single centralized control of all Indian development funds is essential to ensure the following financial considerations:

- ease of access to funds by Bands, and increased awareness of sources by Indians;
- allocation of funds to program elements which relate to the achievement of larger goals;
- flexibility of fund allocation between programs;
- ease of financial monitoring;
- greater control of funding in accordance with Band priorities;
- greater ability to control the funding of contradictory programs; and greater ability to support complementary programs.

DIAND would act as a central coordinator and enter into one integrated agreement on behalf of all federal government departments. The agreement would allow projects and programs to be funded on a Band by Band basis, group of Bands and Indian Associations. The agreement would specify the type of projects and programs that could be funded, the dollars available in each year and the cost sharing between the departments. Each department would budget for their own funds and DIAND would act as the clearing house and be responsible for assuring funds were properly spent. The framework to establish this process should be initiated by Headquarters. A successful example of the above process was the five year Western Northland Agreement.

APPENDIX

APPENDIX

INTERGOVERNMENTAL RELATIONS

GOVERNMENT OF SASKATCHEWAN POSITION

PROVINCIAL
POSITION

INTRODUCTION

Arising from the agreement by the Conference of Provincial Ministers with Responsibility for Native Affairs, it was directed that a meeting between the Provinces and Territories on the one hand and the Federal Government on the other should be convened in order to clarify current federal initiatives and policy directions including the Directional Plan for the 80's.

The respective Deputy Ministers, at their May Meeting in Quebec, established a special Task Force on Native Affairs. The Task Force, coordinated by Gaston Moisan of Quebec, consisted of officials from four other provincial governments: Ken Boutillier (Alberta), John Anderson (Ontario), Tom Dore (Saskatchewan) and Richard Fuchs (Newfoundland). It was given the following directives:

- that discussion or position papers be prepared;
- that these papers be developed with a positive rather than a reactive approach;
- that constitutional matters be left to the Prime Ministers;
- that the papers would not deal with detailed discussions but rather on a more philisophical level that could be agreed on.

With the responsibility to submit its report to the Deputy Ministers by July 15, 1981 the Task Force held three meetings and received extensive written and oral submissions from all jurisdictions. Due to the fact that major federal policy developments and revisions were being planned without the benefit of consultation with the provinces, the Task Force directed its activities at identifying the common issues and concerns of the jurisdictions in order that a meaningful policy focus would be available to the Ministers for the planned meeting with their federal counterparts.

Although the Federal Government has a special trust relationship with the Indians as well as a responsibility for "Indians and lands reserved for Indians" arising from both the BNA Act and treaty obligations, federal policies have significant impacts on Indian people and Provincial governments alike. The Task Force report reflects an initial attempt by the provinces to fill the vacuum created by the absence of meaningful consultations by initiating discussions with the Federal Government on a broad range of policies and programs aimed at enhancing the status of Indian people in Canada.

Recent federal policy developments indicate a disposition to reduce federal expenditures for Indian program delivery, to gradually transfer native welfare program costs out to the provinces and withdraw from fiscal and jurisdictional responsibilities for Indian people. Within this policy environment, the Task Force report has highlighted, in that order, Indian local government, delivery of programs and services and finally land claims, as the major issues for consideration and discussion. On each of these subject matters, the Task Force has provided a background summary, a synthesis of shared issues, concerns and points for clarification. Furthermore, the report proposes areas of possible broad provincial policy agreement.

COMMON PROVINCIAL/TERRITORIAL ISSUES CONCERNS AND POINTS OF CLARIFICATION

1. Indian Local Government

a) What is the specific nature of the powers which are to be granted to the local Governments?

b) Are the powers and responsibilities that are contemplated merely a delegation of those presently held by DIAND or do they extend beyond these?

c) In what ways would the powers of local Indian Governments extend beyond those of a Municipality?

d) What assurances will be provided by the Federal Government that local Indian governments will be adequately financed?

e) What are the Federal Government's intentions in addressing the potential problems arising from increased jurisdictional interface?

f) What measures are proposed by the Federal Government to ensure that adequate opportunities exist for consultation with Indian groups and other governments?

2. The delivery of Programs and Services

a) Will the government of Canada continue to accept responsibility for the provision of services to status Indians?

b) Where the Government of Canada chooses to obtain the delivery of services through provincial, band or local authorities, will the Government of Canada accept full responsibility for the cost of such services?

c) Will the Government of Canada arrange for thorough consultative arrangements to include both Provincial and Indian representatives to ensure adequate and continuing financing relative to delivery of services at either the Band or Provincial levels?

d) Will the Federal Government carry out a continuing review with the Provinces on the development of services to determine Provincial plans and capabilities for development?

e) Will the Federal Government reinforce a commitment to service development with funding for Indian economic development?

f) Will the government maintain a dialogue of reassurance with the Indian people to preserve the historical responsibility which the Indian People expect?

3. Indian Land Claims

a) In the event that the Federal Government intends to maintain its policy of extinguishment through claims settlement, how will this be reconciled with the proposed entrenchment of aboriginal rights?

b) If the policy of the Federal Government is to selectively extinguish certain aboriginal rights, what rights are to be extinguished through settlement?

c) In the event that the Federal Government intends to renegotiate Treaties 8 and 11, will the same policy apply to all other pre and post Confederation Treaties? If so, will the Federal Government bear all the costs of settlement and afford protection to existing third party interests?

d) In lieu of renegotiation, is the Federal Government looking to a reinterpretation of existing treaties?

e) In the event of renegotiation or reinterpretation, what portion or portions of the Treaties will be opened?

f) Does the Federal Government have a specific formula for comprehensive settlements and if so is there adequate protection of existing third party interests?

g) Does the Federal Government view land claims settlements as a major solution to Indian economic and social problems?

h) Has the Federal Government devised a policy or formula to resolve land surrender based claims and if so what protection is afforded to third party interests?

POSSIBLE COMMON POSITIONS

1. Indian Local Government

a) The Provinces and Territories support in principle measures intended to increase the level of authority and responsibility exercised by local Indian governments. This support however does not extend to the concept of sovereign Indian nations.

b) At the same time, in the absence of an opportunity to review actual legislation plans, the Provinces and Territories, nonetheless, possess a number of potential concerns with the manner in which this is to be accomplished:

- The proposed legislation should not, in any way, diminish the Federal Government's special trust responsibility for Indians.

- Any transfer of responsibility must be accompanied by a corresponding transfer of financial resources sufficient to discharge those responsibilities.

- Legislation should not be introduced in haste without adequate attention to the jurisdictional interrelationships involved.

- Provision must be made for adequate consultation prior to the introduction of legislation.

2. Delivery of Programs and Services

a) Any transfer to a Province of existing Federal services or programs, or financial support for an existing Indian Band service or program, must be the subject of mutual consent among the Federal Government, the Province concerned and the Indians of that Province who are affected by the change. These arrangements may vary from one Province to another.

b) The Provinces recognize that in some cases Indian and Inuit people do not enjoy the same standard of services as other citizens. The Provinces therefore are prepared, if the Federal Government so requests, to discuss the delivery of Provincial services to Indian and Inuit people.

This extension of provincial programming could only be undertaken with full assurances from the Federal Government that they share the objective of providing equality in the standard of services available to Indian people and that federal constitutional and financial responsibility for Indians will be maintained.

c) No transfer in delivery locus may result in a withdrawal of federal financial commitment or can be assumed to change federal responsibility. Consequently, any such transfer must be conditional on a corresponding tranfer of funds from the Federal Government to the province concerned or to the bands, with a recognition of the implications for change implicit in provincial standards.

3. Indian Land Claims

a) Indian Treaties are to be upheld and settlements reached should be final. There must be certainty that the settlements concluded will not be opened in the future;

b) Claims cannot be resolved in a vacuum. Adequate protection must be afforded to all third party interests, as well maintaining consistency with earlier settlements and a coherent non-divisive policy must be available for the resolution of extra-territorial claims;

c) Land settlements cannot be viewed by the Federal Government as the major solution to Indian Economic and Social Development. Settlement will not absolve the Federal Government of all financial responsibilities and obligations to Indians;

d) The Government of Canada, when devising land claim policies, both comprehensive and specific, should consult the affected Provinces and Territories.

PROPOSED LOCAL INDIAN GOVERNMENT LEGISLATION

BACKGROUND

In the fall of 1978, the Department of Indian and Northern Affairs prepared a number of discussion papers proposing changes to The Indian Act. One of the major changes proposed involved the establishment of a three-tier system of "tribal government" which would enable Indian communities to exercise increased authority and responsibility at the Band, district and regional levels.

This process of Indian Act revision was halted, however, as a result of pressure by the Indian organizations. These organizations were reluctant to pursue changes to The Indian Act which might ultimately prejudice the outcome of discussions concerning the more fundamental changes being contemplated with respect to the constitution.

Federal initiatives in the area of Indian government reemerged in July of 1980 with the Deputy Minister of DIAND issuing to the Department the directives contained in the "Directional Plan for the 1980's". The Directional Plan explicitly identified as a major objective, the introduction, by 1982, of a "legislatively defined option for Indian self-government".

Subsequently, there have been indications, primarily from internal departmental documents, that active measures are being taken to achieve this objective. Most recently, the attempt was made in July of 1981 by DIAND to submit these proposals to the Federal Cabinet for approval-in-principle and permission to draft legislation. In view of concerns raised in a number of areas, such as the administration of justice by Bands, the decision was made to defer until Fall submission to Cabinet, pending further discussion and clarification.

Although it is difficult to determine precisely the nature of these proposals prior to the actual introduction of legislation, the major elements under consideration have been made apparent.

a) Indian Bands would be provided with the option of coming under the provisions of the proposed legislation. Opting-in would require both Band approval, through referendum, and Federal Government approval, based on assurances that the Band possessed adequate capability to manage its own affairs. Once a Band had opted-in, the provisions of The Indian Act would no longer apply. Furthermore, there would be no residual fiduciary trust responsibility with the Minister.

b) The proposed legislation is intended to provide a clearer legal identity and status for those Bands for whom the provisions apply. The intention is that these Bands would be able to enter directly into contract or agreement and to sue or be sued in their own name. Accountability would be to Band members through the provisions outlined in the Band's Constitution.

c) Bands operating under the proposed legislation would acquire expanded powers and responsibilities, primarily through increased authority to pass by-laws, the power to adopt other pertinent laws by reference, the ability to enter into agreements with other government authorities and agencies to provide services on-Reserve, the power to enter into agreements with banks and other financial institutions, and the power to raise revenues by levying taxes on both Indian and non-Indian interests within their jurisdiction. The most significant areas in which authority to pass by-laws would be expanded would include program and service delivery, land management, Band membership and law enforcement.

d) The proposed legislation would create an independent, quasijudicial Local Indian Government Authority which would be concerned with matters relating to Band Constitutions and by-laws.

The revised timeline for legislation now anticipates submission to Cabinet in the Fall of 1981, with drafting to occur subsequently. It is considered unlikely that the legislation will be introduced prior to Spring session. Following introduction, it is intended that cross-Canada hearings will be held by the Standing Committee of the House.

ISSUES

Indian Opposition

In January of 1981, a Work Plan for the development of the proposed legislation was made public by Indian organizations. The major criticisms voiced by the Indians at that time concerned:

a) the lack of consultation in the early planning stages;

b) the potential that the legislation was in reality an attempt to by-pass the "Moratorium" on Indian Act revision; and

c) the possibility that the legislation might impinge on treaty and aboriginal rights.

In this latter regard, the emerging Indian concept of sovereignty assumes particular importance. Increasingly, certain Indian political organizations have advanced the view that, by virtue of their original occupation and the existence of the Treaties, Indians hold a right to political sovereignty and a high degree of self- determination. Within the context of constitutional revision, this view has resulted in proposals to establish Indian government as a third order of government within the Canadian confederation.

In spite of the criticism which the proposal for legislation has received, and, to some extent, in an attempt to alleviate the pressures for more extreme forms of Indian self-determination, the Federal Government is proceeding on the basis of requests received from individual Bands. The Department of Indian Affairs estimates that approximately 50 Bands out of the 570 in Canada would be in a position to assume greater responsibility in the immediate future, with possibly 100 opting-in over the next five years.

The issue for the Federal Government is whether it responds to the interest of this relatively small number of generally more affluent and better organized Bands or accedes to the pressures of the political organizations.

The Provision of Adequate Financial Resources

The delegation of increased powers and responsibility to Indian Bands is unlikely to be effective unless a corresponding provision is made for adequate financial resources to discharge these expanded responsibilities. In this regard, a Federal discussion paper only suggests that Bands would acquire the responsibility and authority to "enter into multi-year, formula-based financial transfer agreements with the department" and to "seek additional financial resourcing where expenditure plans exceed departmental agreements (e.g. through raising local taxes, expenditure of accumulated Band resources, agreements with other agencies, etc.)".

At the present time, the Department of Indian Affairs is subject to severe expenditure restraints which, accounting for inflation entail no or negative real growth. At the same time, Indians on-Reserve tend, in general, to receive fewer and a lower quality of services than other Canadians.

With local Indian governments assuming responsibility for the provision of services to Band members, it can be anticipated that they will begin to receive increasing pressure to provide a level of service which cannot be supported by Federal allocations. In this regard, there are already indications that expenditures rise signficatntly when responsibilities are transferred to the Bands, particularly in the early stages when Band management systems are developing and, hence, less efficient.

In effect, the transfer of responsibility, coupled with long-term formula-based funding agreements, potentially shifts from the Department of Indian Affairs to the Band government, and potentially indirectly to the Provinces, the problems of financial restraint.

Political Isolation of Indian People

One of the basic concerns which the Directional Plan for the 1980's identifies is the "need to reduce the economic and political dependence and isolation of Indians and Inuit as a means of assisting them to improve their economic and social conditions and ensuring equitable participation in Canada".

The potential of the proposed Indian self-government legislation, however, is to aggravate rather than reduce the political isolation of Indian people. Although mechanisms are proposed for putting the Indian People at arms length from the Federal Government, there is no corresponding provision to enable them to relate to the surrounding constitutions of local government in the provinces and territories.

The issue for the Federal Government is how to increase the local authority of Indian communities without increasing their isolation. While the proposals concern themselves with aspirations towards greater local control, it does not appear that adequate attention has been given to the relationship between local Indian governments and the various provincial, regional and municipal structures which surround them

Increased Jurisdictional Complexity

One of the principles which have been adopted in developing the Local Government legislation is that it be sufficiently flexible to meet the varying needs, aspirations and circumstances of the different Indian Bands across Canada.

In this regard, it can be questioned whether it is possible to encompass the many provincial and regional variations under national umbrella legislation. Conversely, should the legislation be sufficently flexible to accommodate all circumstances, the question arises as to the manageability of

the variation which will result.

This potential variation is even more significant when examined in relation to its impact on Provincial laws of general application. In effect, the authority of Bands to pass by-laws within their sphere of jurisdiction possesses the potential for displacing the application of certain Provincial laws (e.g. environment, etc.). However, there is no assurance that the Band by-laws replacing Provincial laws will be necessarily uniform or compatible with Provincial law. Moreover, because of the opting-in provision, Provincial laws will apply in certain cases, but not in others. This problem is further compounded by the authority of Indians Bands to enter into agreements with other government authorities and to incorporate existing law by reference.

A draft of the background paper being prepared for Cabinet submission suggests that a purpose of the proposed legislation is to clarify and define more clearly the extent and nature of the powers exercised by local Indian governments in order to:

a) fill existing vacuums, and
b) reduce the jurisdictional conflicts between Band Councils and Federal, Provincial and Municipal governments. Given the potential for idiosyncratic arrangements,however, it is possible that the confusion will increase.

POTENTIAL PROVINCIAL/TERRITORIAL CONCERNS

Provincial and Territorial Jurisdiction

It is clearly recognized that the Federal Government, under the provisions of Section 91(24) of the B.N.A. Act, possesses jurisdiction in relation to "Indians and lands reserved for Indians". Moreover, it is similarly recognized that a special trust relationship prevails between the Federal Government and Indians living both on and off-Reserve.

In proposing increased authority for Indian Bands, however, the Federal Government is contemplating a framework for

Indian self-government which could seriously curtail the effective power of provincial and territorial governments to enact legislation affecting Indians within their respective boundaries. In this regard, there may be concerns about the constitutionality of the proposed legislation, particularly in relation to Sections 92(8) and 93(13) of the B.N.A. Act. More specific concerns about intrusion might arise depending on whether the intended definition of "Band lands" exceeds that of "Reserves".

In general, the major question concerns the specific nature of the powers which are to be granted to Indian Bands. More specifically, the question is: Are the powers and responsibilities being contemplated merely a delegation of those previously held by DIAND and its Minister or do they extend beyond this?

Increased Financial Pressures on Provinces

A concern is shared by the Provinces and Territories that the increased authority and responsibility provided in the proposed legislation be accompanied by the provision, by the Federal Government, of adequate financial resources to the Bands affected. This concern is particularly acute in view of the unsatisfactory nature of many existing Federal/ Provincial financial arrangements in the area of services to Status Indians.

In this regard, the question is: What assurances will be provided by the Federal Government that local Indian governments will be adequately financed?

Relations with Provincial, Regional and Municipal Structures

Greater attention needs to be given to the relationship of the proposed local Indian governments to the surrounding Provincial, Regional and Municipal authorities and structures. Provincial concerns in this regard would be particularly pronounced in

relation to regional planning; the interfaces between Band and other law enforcement systems; and problems of taxation.

The question which needs to be asked is: What is the Federal Government's intention in addressing the potential problems arising from increasing jurisdictional interface?

Lack of Consultation

Despite the advanced state of this proposed legislation, there has not been any significant consultation with Provincial or Territorial governments concerning these proposals. In view of the potential impacts, such as increased pressure for financial support and compounded jurisdictional problems, it is questionable whether an opportunity to appear before the Standing Committee will be sufficient.

Specifically, the question is : What measures are proposed by the Federal Government to ensure that adequate opportunities exist for consultation with Indian groups and other governments?

POSSIBLE COMMON POSITIONS

The Province and Territories support in principle measures intended to increase the level of authority and responsibility exercised by local Indian governments. This support however does not extend to the concept of sovereign Indian nations.

At the same time, in the absence of an opportunity to review actual legislation plans, the Provinces and Territories, nonetheless, possess a number of potential concerns with the manner in which this is to be accomplished:

a) The proposed legislation should not, in any way, diminish the Federal Government's special trust responsibility for Indians.

b) Any transfer of responsibility must be accompanied by a corresponding transfer of financial resources sufficient to discharge those responsibilities.

c) Legislation should not be introduced in haste without adequate attention to the jurisdictional interrelationships involved.

d) Provision must be made for adequate consultation prior to the introduction of legislation.

DELIVERY OF PROGRAMS AND SERVICES

BACKGROUND

The federal document entitled "Directional Plan for the 80's", aside from the sections on local government and land claims, establishes two main objectives related to the delivery of programs and services. The first of these is "an increased take-up by status Indians, of financial resources from other Federal Departments and Provincial Governments". The second is "a reduction, by a factor of 30%, in the programs and service staff providing services to status Indians", by the fiscal year 1984-85.

ISSUES

The issues which follow are set out as they are perceived by Provincial staff reactions across Canada:

Legal or Jurisdictional Responsibility for Service Provision

The first objective would seem to be based on the assumption by Federal authorities of a jurisdictional responsibility on the part of the Provinces to provide or deliver services to status Indians. While the Provinces would generally disagree with this assumption and insist that the B.N.A. Act does not impose a positive obligation on the Provinces to provide services to Indians, most Provinces have given some support in varying degrees to the assumption through a practice of extending some services in many circumstances. The Federal people have reinforced their assumption with the legal argument that there is a fundamental eligibility for Provincial services

which includes all residents and cannot discriminate against status Indians.

The laws of general application are cited by Federal staff as applying to status Indians (see 88 Indian Act) and as contradictory to a Provincial position which supports a total Federal responsibility in this service area. The Provinces have countered that this section does not of itself confer responsibilities on them.

Out of these conflicting opinions has come an uneven and uneasy practice of a split or dual responsibility with an unclear delineation of legal authority or responsibility. While some Provinces have more formally protested, or denied, or opposed, delivery of services without total compensation by the Government of Canada, all have in varying degrees extended some Provincial services to status Indians particularly in the following areas:

- Social Services
- Education
- Health
- Law Enforcement
- Housing
- Recreation

Details of extent of participation and variation by Province are provided in an appendix to this report.

Financing for Service Provision

While the concept of local government for Indians is dealt with elsewhere in this report, there are implcations relating to service provision or delivery in this concept which impact on Provincial concepts of service delivery and on the financing of those services. If, for example, the service is one which in a Province is not ordinarily provided to the citizens by local government but by the Province itself, in what way will the Federal government recognize the financing obligation to the Province, on a direct basis or through a mechanism

involving the local government as a conduit?

In either case, it would appear that this should be a matter for negotiation and development through current considerations of revised fiscal agreements.

Certainly there should be clear understanding of whether the Federal Government will confer service delivery authority on local Indian government which exceeds current municipal governmental authority or supersedes Provincial service legislation in any Province.

Quality and Accessibility of Services

While this topic relates directly to the preceding issue, it requires consideration in itself. The currently uneven and disparate programs provided have created great variation in quality and accessibility for services to status Indians both within and between provinces.

Proposed budget cuts on the part of DIAND would likely aggravate this situation unless these resources were replaced by monies from other Federal departments or Provincial government.

The Provinces would be pressured to respond to this federal initiative to assure at least a base level of service for Indians residing within provincial boundaries. For some provinces this might ential engaging in services not previously provided to Indians, or in some circumstances, an extention of responsibilities for services already provided. Movement in this direction necessarily raises once again the fundamental question of locus of responsibility between the two levels of government.

While the Provinces, generally, are prepared to provide services and programs to Indians, the shift in delviery responsibility should not result in monetary gain to the

Federal government; and in fact the Federal government would need to acknowledge fully an awareness and acceptance of the potential for cost growth relating to these shifts relating to inflation, provincial standards and increased uptake. A prime qualification would be that the transfer of delivery locus had the consent of the Indian people affected.

Expressed Indian Aspirations as they relate to Services

The Indian people have always emphasized the importance of their relationship to the Federal government. Further provincial involvement in Indian Affairs is resisted by some native groups because it detracts from their historical relationships with the Federal government and expedites what they see as the evil of assimilation. While this is not a consistent or universal position among either the Indian leaders or the Indian groups, it does warrant consideration in the examination of service delivery. The issue for the Provinces is how they would wish to respond to federal objectives which would appear to enhance provincial responsibility while, in the process, further eroding the Federal/Indian relationship.

PROVINCIAL/TERRITORIAL CONCERNS

Legal and Jurisdictional Responsibility for Service Provision

It would seem that all provinces are concerned with federal erosion of, or withdrawal from, full constitutional and, coincidentally, financial responsibility for services to status Indians.

While Provinces have accepted officially or informally many of these service responsibilities and costs, there would be a major objection to the Federal government taking the step of formal withdrawal and shifting Federal financial problems to the Provinces.

The presenting question is: Will the Government of Canada continue to accept or undertake to accept responsibility for the provision or cost of providing services to status Indians?

Financing for Service Provision

Assuming that local band government is established with powers equal to, or exceeding those of a municipal government, numerous questions are raised from the provincial perspective regarding payment for services; provision of services; cost-sharing agreements between levels of governments, etc. The provincial governments would wish to clarify if any of the changes proposed by the Federal government with regard to local government would lessen the latter's current responsibilities for services. Because of possible program and financial changes, the provinces must urge greater consultation with the Federal government as a means of rectifying any potential differences between the two levels.

The Provinces would wish to have any shifts in financing, attendant upon program delivery changes, the subject of full consultation to ensure the integrity of program and administrative funding.

Will the Government of Canada arrange for thorough consultative arrangement to include both Provincial and Indian representatives to ensure adequate and continuing financing relative to delivery of services at either the Band or Provincial levels?

Quality and Accessibility of Services

Given the current discrepancies in quality and accessibility of services further devolution of responsibility leaves the provinces increasingly vulnerable to status Indian demands for service provision. This concern of the provinces would be heightened if the Federal government failed to divert sufficent funds into economic development which would ultimately lessen

Indian dependency on provincial services such as welfare. Given the inevitable pressure which will flow from the Indians to the provinces, the Federal Government should be made aware if the provinces are prepared philosophically or financially to extend services where need arises.

Two questions arise from this point. Will the Federal Government carry out continuing review with the Provinces on the development of services, to determine Provincial plans and capability for development? Will the Federal Government reinforce a commitment to service development with funding for Indian Economic Development?

Expressed Indian Aspirations as they relate to Services

Indian aspirations are, at least in the short term, tied to a federal recognition of responsibility towards Native people, a position which the provinces have historically supported. Whereas federal implementation of their recently stated strategy would be contrary to Native aspirations, in so far as it would potentially shift certain service responsibilities to the provinces and territories, the provinces and territories may expect support from Native groups if they decide to oppose the federal proposals on this basis.

In essence, Indian aspirations and a provincial position based on paramount federal responsibility for services are mutually supportive whereas the federal policy of devolution could ultimately put Indians in conflict with provincial and territorial governments.

Finally, will the Government of Canada maintain a dialogue of reassurance with the Indian people to preserve the historical responsibility which the Indian people expect?

POSSIBLE COMMON POSITIONS

The provincial positions here are quite simlar to those expressed for local government. More specifically it is proposed that:

a) Any transfer to the province of existing federal services or programs must be the subject of mutual consent of the Federal Government, the province concerned and the Indians of that province who are beneficiaries of these services. The arrangements may vary from one province to another.

b) The Provinces recognize that in some cases Indian and Inuit people do not enjoy the same standard of services as other citizens. The Provinces therefore are prepared, if the Federal Government so requests, to discuss the delivery of Provincial services to Indian and Inuit people.

   This extension of provincial programming could only be undertaken with full assurances from the Federal Government that they share the objective of providing equality in the standard of services available to Indian people and that federal constitutional and financial responsibility for Indians will be maintained.

c) No transfer in delivery locus may result in withdrawal of Federal financial commitment for the Federal Government. Consequently, any such transfer must be conditional to a corresponding transfer of funds from the Federal Government to the province concerned or to the Bands, with a recognition of the implications for change implicit in provincial standards.

LAND CLAIMS

Some issues and concerns respecting Indian Land Claims

COMPREHENSIVE CLAIMS

BACKGROUND

On August 8, 1973, the Federal Government announced a policy on the comprehensive claims of Native peoples in Canada. This policy statement was relatively brief and general in nature. Recently, there has been some indication that the Federal Government will be attempting to deal with some policy statement. Until such time as a new policy statement

is issued, the Federal policy is to be discerned from the 1973 policy statement and Federal actions to date.

Since 1973, the Federal Government has been a party to the James Bay and Northern Quebec Agreement, the COPE Agreement in Principle and has commenced discussions relating to comprehensive claims of numerous Indian groups across Canada.

ISSUES AND CONCERNS

The Principle of Finality

One of the principles stressed by the 1973 Federal policy was that existing Indian Treaties would be upheld and that comprehensive claims settlements would be final.

Through recent actions, there are some indications that the Federal Government may be departing from the policy of finality in two respects:

a) Aboriginal Rights:

Aboriginal Rights are yet to be fully defined by the Courts. It is quite clear that the Federal Government entered Treaties and Agreements with Indian Peoples in order to extinguish those Rights and to acquire full title to the treaty lands.

As current negotiations develop and in light of the proposed entrenchment of Aboriginal Rights, the policy of extinguishment of rights may be in question.

In the event that the Federal Government intends to maintain its policy of extinguishment through settlement, how can this be reconciled with the proposed entrenchment of Aboriginal Rights?

If the policy of the Federal Government is to selectively extinguish certain Aboriginal Rights, what Rights are to be extinguished through settlement?

b) Treaties

Since 1975, the Federal Government has agreed to enter into land claims negotiations with the Indian and Metis Peoples of the Western Northwest Territories. Most of these people are descendants of thos who signed Treaties 8 and 11 with the Federal Crown in 1899 and 1921.

The fact that the land claims research of the Indian and Metis Peoples of the Western Northwest Territories is funded by the Federal Government raises the possibility of a renegotiation of Treaties 8 and 11.

It would appear that the rationale to be used for the purpose of entering into new negotiations will be that the compensation as set out in Treaties 8 and 11 has not yet been received in the Northwest Territiries. Although it is true that for the most part, the land component of the promised Treaty compensation has not yet been received, that approach of renegotiation of an entirely new comprehensive settlement casts new light on other Treaty areas.

In the event that the Federal Government intends to renegotiate Treaties 8 and 11, will the same policy apply to all other pre and post Confederation Treaties?

If so, will the Federal Government bear all the costs of settlement and afford protection to all existing third party interests?

In lieu of renegotiation, is the Federal Government looking to a reinterpretation of existing Treaties?

In the event of renegotiation or reinterpretation, what portion or portions of the Treaties are to be opened?

c) Claims Precedents

On August 13, 1871, the Canadian Government signed the first of several Treaties with the Tribes and Bands of the West. These Treaties were fairly standard in form.

Treaties 3, 4, 6, 7, 9 and 10 provided 0.2 square miles per capita. The Alaska Native Claims Settlement Act provided 0.8 square miles per beneficiary.

The James Bay and Northern Quebec Agreement provided 0.348 square miles per Cree and 0.78 square miles per Inuit. The COPE Agreement in Principle would provide 14.8 square miles per beneficiary.

As settlements progress, it would appear that the Federal Government may be departing radically from the pattern of previous settlements may be anticipated and expected owing to peculiar and individual circumstances. However, the quantum leap in the land component of the porposed COPE settlement may inflate the expectations of other claimants, render settlements more dificult, provide Treaty Indians with an invitation to insist upon a renegotiation of their Treaties, as well ignoring the impact of such settlements on third

parties (governments, industry and the general public).

Additionally as claims are developed and settlements discussions proceed it becomes abundantly apparent that the claims may encompass areas in more than one territorial jurisdiction asserting claims or being entitled to receive benefits in another territorial jurisdiction. One current example of such a claim would be the claims being evolved by British Columbia Indians to lands within the Yukon.

This then leads to the question: Does the Federal Government have a specific formula for comprehensive settlements and if so, is there adequate protection of existing third party interests?

d) Settlement Rationale

As previously set out, the departure from the pattern of previous settlements in the COPE Agreement in Principle and recent trends in Federal activities raises the question of the Federal Government attempting to use the land component of claims settlements as a major solution to Indian economic and social problems.

Land bases acquired through claims settlements may provide some economic benefits to Bands. The benefits in many cases may not be immediate or long lived. The settlements are unlikely to be effective unless there are corresponding provisions for financial resources to take advantage and make use of the land base.

In attempting to discern a Federal comprehensive claims formula, it must be determined if the Federal policy is to use the land component of the settlements as a major solution to Indian economic and social problems.

Proposed entrenchment of Aboriginal Rights

Although the group has not been mandated to broach the issue of the proposed entrenchment of Aboriginal Rights, it was nonetheless the consensus of the officials attending the July 23rd meeting in Halifax that this issue must be brought to the attention of the Ministers.

It is clear that the 1973 Federal policy has its foundation in the encouragement and settlement of comprehensive claims.

By apparently subjecting new settlements to the cumbersome

requirement of constitutional amendment and offering Indian People the prospect of constitutional litigation as an alternative to negotiation, the Federal Government's proposed constitutional entrenchment of Aboriginal Rights would seem to impede the settlement of comprehensive claims.

How then, can the Federal Government's proposed entrenchment of Aboriginal Rights be reconciled with the policy of encouraging and securing the settlement of comprehensive claims?

SPECIFIC CLAIMS

BACKGROUND

This heading refers to those claims being asserted which refer to specific tracts of land. To date there are in excess of two thousand such claims before the Federal Office of Native Claims. In many instances, the claims cover areas that have been settled, alienated, developed or otherwise dealt with since the act or acts of first alienation.

Based on the number of specific claims before the Federal Government, various Provinces may be affected to a greater or leser degree than others.

Surrenders and Unilateral Federal Actions

Claims asserted under this heading call for the return of non-Reserve lands to Reserve status. The claims assert that these lands, previously Indian lands, were withdrawn from Indian Title by improper surrenders, trickery, bribery and other unlawful means. The implications of such claims are far reaching in that current land holders' title to these lands may be in jeopardy. As well, the settlement of such claims by the Federal Government may impose financial burdens upon Provinces.

To date, settlements of specific claims arising out of improper surrenders have produced two different results. In one instance, financial compensation was used, the other, resulted in the eviction of the third party interest.

Has the Federal Government devised a policy or formula to resolve these types of claims and if so what protection is to be afforded to the third party interests?

The following issues address a number of topics that may be of particular interest to some and non-issues to others. Approaches and interests may vary from province to Province and are included for the information and assistance of the Ministers.

a) Traditional Land Usage

Claims under this heading encompass:

- Ceremonial sites;
- Burial sites;
- Historical sites;
- Lands of religious significance;
- Hunting, fishing and trapping areas;
- Trade areas;
- International diplomatic lands (tribal meeting lands)

b) Land Exchanges

Occasionally, there are requests made to Provincial governments by individual Indian Bands to exchange existing Indian Reserves for lands elsewhere. Such requests are made for a variety of reasons including inaccessibility of Reserve lands, correction of boundaries, etc.

c) Land Entitlements

This Issue is restricted to the three Prairie Provinces, having its foundations in Treaties and the Natural Resources Transfer Agreements. All three jurisdictions have adopted different methods of resolving the issue.

There are no uniform approaches or concerns expressed by the Provinces and Territories in dealing with the three above noted items. These issues are dealt with individually as they may

arise from time to time.

SPECIAL RESERVES

This issue can not by definition be categorized as being within the ambit of specific or comprehensive claims. The foundation of the issue is set out in Section 36 of The Indian Act, which provides as follows:

> " Where lands have been set aside for the use and benefit of a Band and legal title thereto is not vested in Her Majesty, this act applies as though the lands were a Reserve within the meanings of this Act".

The intent of this Section of The Indian Act is to bring into the ambit of The Indian Act those lands which have been set aside for the use and beenfit of Indians but the title of which is not vested in the Federal Government. Examples would be the Church created Indian Reserves in the Province of Quebec.

The legislation does not address the question of who can set aside lands for the use and benefit of an Indian Band, nor does it address the question of when such a setting aside must take place.

The Federal Government has not thus far presented their interpretation or intentions regarding this section of The Indian Act.

POSSIBLE COMMON POSITIONS

Indian Treaties are to be upheld and settlements reached should be final. There must be certainty that the settlements concluded will not be opened in the future.

Claims cannot be resolved in a vacuum. Adequate protection must be afforded to all third party interests, as well maintaining consistency with earlier settlements and a coherent non-divisive policy must be available for the resolution of extra-territorial claims.

Land settlements cannot be viewed by the Federal Government as the major solution to Indian economic and Social Development. Settlements will not absolve the Federal Government of all financial responsibilities and obligations to Indians.

The Federal Government, when devising land claim policies, both comprehensive and specific, should consult the affected Provinces and Territories.

Extent of participation and variation of services delivered by provinces.

Social Services

Existing agreements vary from province to province, e.g. Saskatchewan has taken a hard-line with regard to federal responsibility while Ontario has entered into an Indian Welfare Agreement which leaves wider than usual parameters for provincial responsibility. While all provinces are involved to some degree in the delivery of services, DIAND has maintained the greater responsibility for "on-Reserve" provision. All provinces expect 100% reimbursement from the Federal Government for services provided, but many bills remain unpaid as criteria for cost recoverability are applied in a highly inconsistent fashion e.g. DIAND subsidizes child care costs 100% in B.C. but refuses to acknowledge most similar bills in Saskatchewan and Manitoba.

Saskatchewan, Manitoba and Alberta apply residency criteria to determine eligibility of off-Reserve Indians.

Education

While Section 91(24) of the B.N.A. Act provides for the exclusive legislative authority of the Parliament of Canada for "Indians and land reserved for Indians", Section 93 states that "In and for each Province the Legislature may exclusively make Laws in relation to Education". Numerous conflicts in interpretation have followed from these sections. In the majority of cases, however, federal dollars cover the cost of on-Reserve schooling while education off-Reserve has been assumed as a provincial responsibility. There are exceptions though, e.g. Saskatchewan and British Columbia among others, recover costs for off-Reserve services by way of a special agreement. Gray areas exist in the criteria in cases such as registered Indian children living off-Reserve or non-registered Indians residing on-Reserve.

With regard to post-secondary education, Indians have access to all universities and community colleges on the same basis as non-Indians. The Indian Affairs program provides individual Indians with tuition and maintenance support. However, no additional capital or operating funds are provided.

Health

Status Indians theoretically have access to the normal range of provincial health services. In some provinces, these are provided through National Health and Welfare while in others the provincial Ministry responsible for health acts as the service deliverer. In the latter case, the province may or may not receive funding for services provided e.g. Quebec and New Brunswick subsidize costs without charge to the Federal Government; Saskatchewan will provide services, in the absence of their availability through NHW, only on the condition that financial responsibility remains 100% federal. The Department of Health and Welfare has adopted a policy of devolution and transfer of health programs to Bands and Tribal groupings which is now underway.

Law Enforcement

Most provinces utilize R.C.M.P. officers for law enforcement purposes on-Reserve. Ontario is an exception to this as it uses the services of the Ontario Provincial Police (O.P.P.). Cost-shared programs providing for Band constables have been established in several provinces. The western provinces as well as Quebec recognize Band authority for enforcement of Band by-laws. In general, the R.C.M.P. appears to be the predominant but not exclusive service deliverer. Some efforts have been made to integrate Indians in the exercise of law enforcement but agreements with regard to cost-sharing remain somewhat disparate.

Housing

Several provinces are involved directly in the area of on-Reserve housing. British Columbia, for example, extends home purchase assistance grants while the North West Territories Housing Corporation includes Reserve lands in its programs. Non-status Indians in Prince Edward Island are eligible for cost-shared housing programs while in Nova Scotia off-Reserve Indians are eligible for loans under such programs as Rural and Native Housing as well as through C.M.H.C. (By contrast, provinces such as Quebec, Manitoba and New Brunswick have not specific on-Reserve housing programs.)