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Affairs Canada

Affaires indiennes  
et du Nord Canada

# MANUAL FOR THE ADMINISTRATION OF BAND MONEYS



Indian Moneys, Estates, and Treaty Annuities Directorate (IMETA)  
Individual Affairs Branch  
Resolution and Individual Affairs Sector

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## Preamble

The *Manual for the Administration of Band Moneys* and “moneys” related provisions of the *Indian Act* (the Act) are issued under the authority of the Assistant Deputy Minister (ADM) of the Resolution and Individual Affairs (RIA) sector, Department of Indian and Northern Affairs Canada (INAC<sup>1</sup>). This manual and subsequent chapters is intended to authorize and provide direction to INAC headquarters, regional and district offices, and in particular, Regional Directors General and persons designated by them to carry out specific tasks and responsibilities related to carrying out the administration of the moneys provisions of the *Indian Act* and its regulations.

This manual is composed of directives that set out the *National Expenditure Request Procedure Guidelines* for the administration of Band moneys.

With regard to these guidelines, regional and district offices should either follow the guidelines when carrying out the moneys provisions of the *Indian Act* and its regulations, or at the least, be prepared to explain why there were deviations from the guidelines and the specifics surrounding a particular expenditure request.<sup>2</sup>

Where there are requests that represent a large or complicated proposal, such as economic development, the region is encouraged to consult with Indian Moneys, Estates and Treaty Annuities Directorate (IMETA) early and often to assist with processing the proposed expenditure request.

For consistency, this manual and its directives, including the *National Expenditure Request Procedure Guidelines* chapters, follow common language usage<sup>3</sup> unless otherwise prescribed.

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<sup>1</sup> Where reference is made to INAC, it will also possess the same meaning as the Department of Indian Affairs and Northern Development (DIAND).

<sup>2</sup> It is important to note that the guidelines distinguish between directives and guidelines by using the word "must" to indicate a directive and "should" to indicate a guideline.

<sup>3</sup> Where reference is made to “Indian moneys” and “moneys”, it will possess the same meaning as identified in the General Definitions section of this manual.



## 1.0 Purpose

The purpose of this manual is to authorize and outline the directives, responsibilities and procedures with respect to the administration of Band capital and revenue moneys.

## 2.0 Application

This manual and related directives and procedures are intended to apply to all departmental employees and anyone working on behalf of the Department, and First Nations, as well as affirm the application of those directives, responsibilities and procedures with respect to the administration of Band capital and revenue moneys.

## 3.0 Issuing Authority

This manual is issued under the authority of the Assistant Deputy Minister of the Resolution and Individual Affairs (RIA) sector. It replaces and supersedes all previous direction given on this subject, including Program Circular H-12 dated March 15, 1983 on the expenditure of Band capital moneys.

## 4.0 References

*Access to Information Act*, R.S.C. 1985, c. A-1  
*Canadian Environmental Assessment Act*, S.C. 1992, c. 37  
*Employment Insurance Act*, S.C. 1996, c. 23  
*Financial Administration Act*, R.S.C. 1985, c. F-11  
*First Nations Lands Management Act*, S.C. 1999, c. 24, s. 5  
*First Nations Oil and Gas Moneys Management Act*, S.C. 2005, c. 48  
*Indian Act*, R.S.C. 1985, I-5  
*Indian Oil and Gas Act*, R.S.C. 1985, c. I-7  
*Privacy Act*, R.S.C. 1985, c. P-21

Indian Bands Revenue Moneys Regulations, [1993] C.R.C., c. 953  
Indian Oil and Gas Regulations, [1995] S.O.R./94-753  
Indian Referendum Regulations, [1978] C.R.C., c. 957  
Receipt and Deposit of Public Moneys Regulations, [1997] C.R.C. c. 728, as amended by S.O.R./98-128, 83-828 and 94-402.

*Gilbert v. Abbey*, [1992] 4 C.N.L.R. 21.  
*Moon v. Campbell River Indian Band*, [1996] 3 F.C. 907.

INAC, *Financial Management Manual*, Volume 3, Part 6, Chapter 6-3 Receipt and Deposit of Public Money, December 1, 2000  
INAC, *FNOGMMA Moneys Implementation Policy*, November 2006  
INAC, *Records Management Policy*, September 29, 1999  
Order in Council (P.C. 1981-3/255) dated January 29, 1981  
Treasury Board Comptrollership, Chapter 3-3, *Policy on Deposits*, July 1, 1995

## 5.0 Glossary of Terms and Definitions

In this manual,

- “the Act” means, the *Indian Act*;
- “Band” means within the meaning of section 2 of the Act;
- “Band council” means the council of a Band within the meaning of section 2 of the Act;
- “band council resolution (BCR)” refers to the resolution or authorizing document approved by quorum of the council of a Band at a duly convened meeting of the Band council;
- “Band List” means a list of persons that is maintained under section 8 of the Act by the Band or the Department;
- “change-of-purpose BCR” refers to a new BCR requesting unilateral change to a previous BCR from a Band council that wishes to change the purpose for which Band moneys are to be used;
- “commercial farm” is the expression of an undertaking, which is deemed to be a viable farm operation and which normally produces sufficient income to support a farm family;
- “Consolidated Revenue Fund” (CRF) refers to the aggregate of all public moneys that are on deposit at the credit of the Receiver General, as defined under the *Financial Administration Act* (FAA);
- “Department” means the Department of Indian Affairs and Northern Development (DIAND) and/or Indian and Northern Affairs Canada (INAC);
- “dependent adult” has the same meaning as “mentally incompetent Indian” as defined in section 2(1) of the Act;

- “environmental assessment”, in respect of a project, refers to an assessment of the environmental effects of the project that is conducted in accordance with *Canadian Environmental Assessment Act* (CEAA) and subsequent regulations;
- “environmental audit” refers to a review of the existing environmental condition of land proposed to be acquired as an addition to reserve under 64(1)(d), and/or the acquisition of off-reserve lands by a First Nation under 64(1)(k) of the Act;
- “environmental screening” refers to an environmental assessment that is conducted pursuant to section 18, and that includes a consideration of the factors set out in subsection 16(1) of CEAA;
- “expenditure” refers to the action or process of disbursing funds from the CRF at the request of a First Nation by BCR for a specified purpose in accordance with sections 64, 66 and 69 of the Act;
- “First Nation” means, a ‘Band’ within the meaning of section 2 of the Act;
- “Indian moneys,” “Band moneys” and “moneys,” means all moneys collected, received or held by Her Majesty for the use and benefit of Indians or Bands, within the meaning of section 2 of the Act;
- “membership vote” refers to the approach and method suggested in the *Indian Referendum Regulations* regarding a vote and paragraph 2(3)(a) of the Act, which specifies that “a power conferred upon a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of the majority of the electors of the band”; however, as long a Band can provide evidence (i.e. meeting minutes) of how membership consent was obtained, the method may be accepted to satisfy this requirement.
- “mentally incompetent Indian” means an Indian who, pursuant to the laws of the province in which he resides, has been found to be mentally defective or incompetent for the purposes of any laws of that province providing for the administration of estates of mentally defective or incompetent persons;
- “Minister” means, the Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians;

- “negotiated cheque” means a cheque or other written order to pay drawn on the Receiver General or on the account of the Receiver General, or for cashing or negotiating any other instrument issued as authority for the payment of money out of the Consolidated Revenue Fund, or on a cheque drawn in favour of the Government of Canada or any of its departments and tendered for deposit in the Consolidated Revenue Fund.
- “new First Nation” refers to a new Band that has been established from an existing Band or any part thereof, such portion of the reserve lands and funds of the existing Band as the Minister determines shall be held for the use and benefit of the new Band within the meaning of section 17 of the Act;
- “ordinarily resident on a reserve” means, residence in customary mode of life of person, as opposed to special, occasional, casual residence<sup>4</sup>;
- “pay list” refers to a list of all individuals entitled to receive a share of a per capita distribution (PCD) as of the date of a distribution complied either by the Department or the First Nation. This list must also identify the minors, children-in-care, adoptees, mentally incompetent Indians; deceased individuals who were members as of the effective date of the distribution and those individuals who will be absent on the date the distribution is made or identify their whereabouts as unknown.
- “per capita distribution” refers to the distribution of equal share of capital moneys to every person who is a member of a Band, on the Band List of that Band, and/or is entitled to be on that Band List at the time of the distribution;
- “permanent improvements or works” refers to improvements related to infrastructure, where it is evidenced there is permanent value to the First Nation or, if not, evidence that the expenditure is a capital investment;
- “regulations” means, the Indian Bands Revenue Moneys Regulations, unless otherwise identified;
- “remedial management plan” (RMP) refers to the strategy for addressing the various financial issues faced by a First Nation;
- “surrendered lands” means a reserve or part of a reserve or any interest therein, the legal title to which remains vested in the Crown, that has been released or surrendered by a Band for whose use and benefit it was set apart;

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<sup>4</sup> Supreme Court of Canada, *Attorney General of Canada et al. v. Canard*, [1976] 1 S.C.R. 170.



- “suspense account” refers to an ‘interest-earning account’ for moneys received, which cannot be credited to a First Nation or individual account.

## 6.0 Band Moneys

The *Indian Act* defines Band moneys<sup>5</sup> as "all moneys collected, received or held by Her Majesty for the use and benefit of Indians and bands". Under section 62 of the Act these moneys are referred in two categories as:

- Capital moneys - derived from the sale of surrendered lands or the sale of the capital assets of a First Nation. These moneys include royalties, bonus payments and other proceeds from the sale of timber, oil, gas, gravel or any other non-renewable resource.
- Revenue moneys - defined as all Indian moneys other than capital moneys. They are primarily derived from a variety of sources which include, but are not limited to, the interest earned on Band capital and revenue moneys, fine moneys, proceeds from the sale of renewable resources (i.e., crops), leasing activities (i.e., cottages, agricultural purposes, etc.) and rights-of-way.

It should be noted that Band capital and revenue moneys are not funds which have been appropriated (i.e., approved by vote from time to time) by Parliament. They are public moneys held by the Crown on behalf of First Nations and are managed under an entirely different administrative regime.

## 7.0 Nature of Relationship

The Department has taken the position to apply a high standard to the administration of Band moneys. It is this high standard that departmental officials act impartially and in the best interests of First Nations and their members. Department officials must act honestly and show the same care and skill in administering these moneys as would a prudent person in administering his or her own affairs.

The decisions in the *Guerin*<sup>6</sup> and *Sparrow*<sup>7</sup> litigation have found that a fiduciary relationship exists between the Crown and Indians in certain cases where there

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<sup>5</sup> Band moneys are considered to be "public moneys", also defined in the *Financial Administration Act* as all money that is paid to or received or collected by a public officer under or pursuant to any Act, trust, treaty, undertaking or contract, and is to be disbursed for a purpose specified in or pursuant to that Act, trust, treaty, undertaking or contract.

<sup>6</sup> *Guerin v. R.*, [1984] 2 S.C.R. 335, [1984] 6 W.W.R. 481, 59 B.C.L.R. 301, 36 R.P.R. 1, 20 E.T.R. 6, 13 D.L.R. (4th) 321, [1985] 1 C.N.L.R. 120, 55 N.R. 161 (S.C.C.).

<sup>7</sup> *Sparrow v. R.*, [1990] 1 S.C.R. 1075, [1990] 70 D.L.R. (4th) 385, [1990] 4 W.W.R. 410, [1990] 56 C.C.C. (3d) 263, [1990] 3 C.N.L.R.

is a trust like relationship established such as in the administration of reserve lands.

In hindsight, the 1992 court decision in the *Gilbert v. Abbey*<sup>8</sup> case addressed the matter of the fiduciary duty of chiefs and councillors. The case attests to the fact that duly elected chiefs and councillors are fiduciaries for all members of the First Nation. Elected councillors who breach their obligations can be held liable if their decisions are found to be not in the best interest of the First Nation or its members.

In June 1996, in the case of *Moon v. Campbell River Indian Band*<sup>9</sup>, the Federal Court Trial Division made a similar ruling and characterized the relationship of Band councils, who accepted moneys from the Crown on the express trust condition that they be paid to the members of the First Nation, as that of “trustees” towards those members who have not been paid these funds.

## 8.0 Roles and Responsibilities

INAC is responsible for administration of the Band moneys provisions of the Act. The Resolution and Individual Affairs (RIA) sector carries out the majority of these functions on behalf of the Department. However, other areas of INAC including at the regional and district level, such as the Finance Branch, Corporate Services sector, also support or contribute to the moneys management activities. The following sections provide descriptions of the roles and responsibilities of those areas also involved in the administration of Band moneys.

### 8.1 Headquarters

Headquarters is primarily responsible for the development of national directives, policies, procedures and training courses, and for the national computerized systems which are needed to manage the work.

Under the direction of the Assistance Deputy Minister (ADM) of RIA, the area having overall responsibility for Band moneys management is the Indian Moneys, Estates and Treaty Annuities Directorate (IMETA) within the Individual Affairs Branch.

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160, [1990] 46 B.C.L.R. (2d) 1.

<sup>8</sup> *Gilbert v. Abbey*, [1992] B.C.S.C.

<sup>9</sup> *Moon v. Campbell River Indian Band*, [1996] 3 F.C. 907, 136 D.L.R. (4th) 383, [1997] 1 C.N.L.R. 77, 114 F.T.R. 269.

Indian Oil and Gas Canada (IOGC) and the Lands Branch, Lands and Economic Development (LED) sector, also have important responsibilities related to the collection of Band moneys.

In addition, the Trusts, Loans and Corporate Accounting Services Directorate (TLCAS), Finance Branch, under the direction of the ADM of Corporate Services is involved with the financial and accounting aspects of moneys management.

#### 8.1.1 Indian Moneys, Estates and Treaty Annuities (IMETA)

The Indian Moneys, Estates and Treaty Annuities Directorate (IMETA) develops and establishes national program directives, policies related to the administration of sections 61 to 69 of the Act. IMETA also provides advice to regions and First Nations on the implementation of these policies and related procedures, as well as provides training to regional staff.

IMETA works with the regions in reviewing submissions requesting the release of capital moneys to First Nations under paragraphs 64(1)(d) and (k) of the Act; and provides assistance in seeking Ministerial approval for such expenditures where it can be established that such a disbursement will benefit the First Nation.

Where a region recommends that a First Nation be given section 69<sup>10</sup> authority over its revenue moneys, IMETA is responsible for the assessment of the submission and to seek Ministerial recommendation to the Governor General in Council (GGIC) for approval by Order in Council (OIC).

#### 8.1.2 Trusts, Loans and Corporate Accounting Services (TLCAS)

The TLCAS Directorate is primarily responsible for the ongoing operations of the departmental Trust Fund Management System (TFMS). Its duties include maintaining the existing computer system and developing any modifications to TFMS.

TLCAS coordinates the semi-annual deposit of interest into Band moneys accounts. It also conducts research, copies trust accounting records and provides other information related to Band accounts (i.e., historical account balances, interest rates).

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<sup>10</sup> *Indian Act*, s.69 Management of revenue moneys by Band.

### 8.1.3 Other Headquarters Areas

The following organizational units within INAC carry out other moneys management related responsibilities:

- Treaty and Aboriginal Government (TAG) sector: negotiates the terms of claim settlements;
- Audit and Evaluation Sector: auditing of INAC's administration and practices;
- Corporate Secretariat (CS) Sector, Access to Information and Privacy Unit: responds to information requests;
- Chief Financial Officer (CFO) Sector, Information Management Branch (IMB): provides support for computer systems and holds and maintains records.

### 8.2 Regions and District Offices

Most operational responsibilities for the administration of Band moneys have been delegated to the Regional Director Generals. Each region has its own legal instrument, approved by the Minister, which sets out the authorities it has been delegated.

Among the responsibilities delegated to the Regional Director Generals are the making of decisions on the expenditure of all capital moneys (except those falling under paragraphs 64(1)(d) and (k) of the Act) and all revenue expenditures under sections 66 and 69.

The responsibilities of district or regional Band Moneys officers include consulting, training and providing advice to First Nations on all aspects of the administration of Band moneys. Departmental staff must also analyze expenditure requests, review annual Band money budgets, make recommendations on the approval or denial of expenditure requests, prepare submissions for granting section 69 authority to First Nations and review annual audited financial statements.

Departmental staff is encouraged to consult with the Band Moneys Advisors in IMETA, at headquarters, for policy clarification or to seek advice at any stage of their assessment of Band moneys expenditures and in preparing submissions. Regions are encouraged to consult with and provide advance documentation to IMETA as early as possible to expedite the processing of expenditure requests.

### 8.3 First Nations

All members of a First Nation have an interest in Band moneys which are held in common for their use and benefit.

Band councils should plan for the expenditure of Band moneys as part of their overall financial management of First Nation resources, seeking independent legal and financial assistance when necessary. In managing Band moneys expenditures, the Band council should:

- weigh the pros and cons of proposed expenditures, identifying how they would benefit the First Nation and its members and giving consideration to whether other funding sources would be more appropriate for the intended purpose;
- ensure that any apparent conflict of interest related to an expenditure proposal is properly considered;
- consult with regional or district staff on departmental requirements;
- prepare expenditure request submissions for review by INAC;
- manage moneys once they have been released by INAC from the CRF; and
- account for all Band capital and revenue trust moneys received.

First Nations must provide the Department with a full justification and all necessary information in support of expenditure requests other than for the use of Band revenue moneys under section 69 of the Act.

First Nations are encouraged to involve the Department at the earliest stage of an expenditure proposal so that the appropriate documentation requirements can be identified in order to facilitate prompt consideration of the request by INAC.



## 1.0 Purpose

The purpose of this directive is to authorize and provide general direction to INAC headquarters, regional and district staff, and First Nations on the collection of Band moneys.

## 2.0 Scope

This directive applies to any First Nation requesting payment of moneys in accordance with the moneys collection provisions of the *Indian Act*.

## 3.0 Authority

This directive is issued under the authority of the Assistant Deputy Minister of the Resolution and Individual Affairs (RIA) sector.

## 4.0 Accountability

Overall accountability for departmental conformance with this directive rests with the Assistant Deputy Minister and Regional Director Generals, and persons designated by them to carry out to specific tasks and responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

## 5.0 Guiding Principles

- The collection of Band moneys is a joint process between First Nations and the Minister, each having certain responsibilities to satisfy the requirements of governing legislation.
- Collection responsibilities of the Department include ensuring that the correct amounts of funds are collected and that the funds are attributed to the proper account (capital or revenue) of the appropriate First Nation.

## 6.0 Sources of Band Moneys

Band moneys are derived from a variety of sources which, except for the payment of interest, are associated with the following types of activities:

- lands and natural resource activity;
- oil and gas activity;
- settlement funds; and
- fine moneys.

## 6.1 Lands and Natural Resource Activity

6.1.1 Regional and district Lands staff must ensure that all terms of resource related transactions for reserve lands are met, including the collection of all moneys prescribed in the relevant sale, lease or license agreements. The Departments' Netlands System, a computer application which is used in the management of land transactions on reserve land, was designed and developed to help INAC regional and Band staff manage lands projects and associated land instruments including the receipt of all moneys due.

6.1.2 Staff in the Lands Operations and Registration Directorate (LOR), Lands Branch, is responsible for administering the instruments for First Nations to manage resource activity related to timber, sand, gravel, limestone and other minerals on reserves. Regional and district officers have been delegated ministerial authority to collect Band capital and revenue moneys derived from lands and other natural resources.

## 6.2 Oil and Gas Activity

The *Indian Oil and Gas Act* and regulations, provide the authority for Indian Oil and Gas Canada (IOGC) to enter into agreements with private sector companies to extract oil and gas from reserve lands. Under this legislation, IOGC is responsible for negotiating, issuing and managing oil and gas permits and leases. It also verifies oil and gas production and provides forecasts of projected royalties which are used by First Nations in managing their finances.

6.2.1 Resulting revenues from oil and gas royalties, bonuses and so on, are deposited into the appropriate First Nation's capital or revenue account by IOGC. However, a First Nation will still need to seek Ministerial approval to expend or manage these capital and revenue trust moneys.



6.2.2 As an alternative option, any First Nation that has capital and/or revenue moneys held for them in trust by Canada may apply to opt into the moneys portion of the *First Nations Oil and Gas Moneys Management Act* (FNOGMMA).<sup>1</sup> Under FNOGMMA, a First Nation will no longer need to seek Ministerial approval to expend or manage their capital and revenue trust moneys. As well, a First Nation can also opt to manage and regulate on-reserve oil and gas activities through the Act.

### 6.3 Settlement Funds

First Nations are increasingly receiving significant sums of money from treaty land entitlement and specific claim settlements<sup>2</sup>.

The Treaty and Aboriginal Government sector is responsible for negotiating the terms of the claim settlements. Band Moneys staff within RIA must be consulted whenever settlement funds are to be deposited into a Band capital or revenue account.

The following sets out departmental practice concerning the disposition of settlement funds:

6.3.1 Settlement agreements must be ratified by referendum based on the informed consent of the membership. The decision concerning the placement of settlement funds (either in external trusts or in the CRF) must also be based on the informed consent of the First Nation, by means of a referendum.

6.3.2 Specific clauses must be included in settlement agreements which must include: stating where the funds are to be placed; whether or not the funds are considered to be Band moneys (depending on the First Nation's decision); and, that Canada assumes no fiduciary obligations regarding the use of settlement funds placed in outside trusts.

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<sup>1</sup> For further details on policies and procedure relating to FNOGMMA, see the FNOGMMA Moneys Implementation Policy and Indian Oil and Gas Canada's First Nations Oil and Gas and Moneys Management Act Implementation Policy.

<sup>2</sup> Funds derived from settlements are not Band moneys and do not have to be managed pursuant to the Act. These funds would only become Band moneys if, at the time the agreement is signed, the membership of the First Nation decides to place their settlement funds into the CRF to be managed by the Crown. In some cases, the Crown pays settlement funds directly into trusts outside of the CRF. On other occasions, settlement funds are paid into Band capital or revenue trust accounts within the CRF to be administered under sections 61 to 69 of the *Indian Act*.

6.3.3 Settlement funds not deposited into the CRF may be placed directly into external trusts<sup>3</sup> provided that certain procedural steps are followed, namely: the trust agreement is ratified with the informed consent of the membership; the First Nation and its members obtain independent legal and financial advice; and the trust is designed so the funds are used for the benefit of the First Nation.

The following applies to the subsequent use of settlement funds deposited into Band capital and revenue accounts:

6.3.4 Where a settlement agreement is silent on the use of Band capital and revenue moneys, these funds will be released in accordance with sections 64, 66 and 69 of the Act.

6.3.5 Some settlement agreements set out specific terms for the use of settlement funds deposited in Band trust accounts. For example, settlement funds may be used specifically to purchase land for the use of the Band or as an addition to a reserve, or for a per capita distribution to the members of the Band. Such terms must be honoured by the Department in addressing requests for the expenditure of those funds under sections 64, 66 and 69.

6.3.6 A First Nation having section 69 authority may transfer into an external trust any revenue moneys received from a settlement agreement, if it provides informed consent through a second referendum.<sup>4</sup> The request for transfer must be forwarded to the Department in the form of a BCR.

6.3.7 Band capital moneys cannot be transferred into an external trust, unless the courts rule that the trust arrangement removes the Crown from any further responsibility for those funds following the transfer.

## 6.4 Fine Moneys

Section 104, provides the authority for the disposition of fine moneys<sup>5</sup> relating to offenses committed under the Act (including Band council by-laws) and its regulations. This section stipulates that:

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<sup>3</sup> INAC will not review the performance of an outside trustee after such moneys are paid into an external trust. The Crown will have no further involvement with these funds because they cease to be Band moneys and fully become the responsibility of the First Nation and the trustee.

<sup>4</sup> This second vote is required since the settlement moneys were originally deposited into the CRF on the basis of a referendum which ratified the terms of the settlement agreement. However, a second vote is not needed if the original settlement agreement contained a clause expressly allowing for the use of section 69 for this specific purpose.

<sup>5</sup> Most fine moneys are generated as a result of the violation of Band by-laws. A by-law is a local law that is passed by a Band council to help control certain activities within the reserve, as set out in sections 81, 83 and 85.1 of the Act.

- 6.4.1 *“(1) Subject to subsection (2), every fine, penalty or forfeiture imposed under this Act belongs to Her Majesty for the benefit of the band, or of one or more members of the band, with respect to which the offence was committed or to which the offender, if an Indian, belongs.*
- 6.4.2 *(2) The Governor in Council may from time to time direct that a fine, penalty or forfeiture described in subsection (1) shall be paid to a provincial, municipal or local authority that bears in whole or in part the expense of administering the law under which the fine, penalty or forfeiture is imposed, or that the fine, penalty or forfeiture shall be applied in the manner that he considers will best promote the purposes of the law under which the fine, penalty or forfeiture is imposed, or the administration of that law.”*
- 6.4.3 Pursuant to section 62, fine moneys received by INAC under section 104 of the Act are considered to be Band revenue moneys. Fine moneys resulting from other laws (i.e., from other federal or provincial legislation) do not fall under section 104 and are not deposited into Band trust accounts.
- 6.4.4 In accordance with section 104, fine moneys paid by individuals for the infraction of by-laws are generally collected by the provincial government and are eventually turned over to the federal government and to INAC, for deposit into Band revenue accounts on behalf of the First Nation. In practice, the disposition of these moneys varies from province to province.
- 6.4.5 Once the fine moneys have been deposited into the Band’s revenue account, the First Nation may access these funds by requesting their release under sections 66 or 69 of the Act.

## 7.0 Consolidated Revenue Fund

Band capital and revenue moneys collected by the Crown are deposited into the Consolidated Revenue Fund (CRF) which is the single fund used to receive all moneys belonging to Canada.

Accordingly, all Band moneys collected by the Crown are deposited into the CRF. Within the CRF, specific accounts have been set aside for First Nations and certain individuals:

- Band capital and revenue accounts;
- individual accounts for minors, adoptees, deceased individuals,

dependent adults and missing individuals; and

- suspense accounts for First Nations and individuals.

### 7.1 Band Capital and Revenue Accounts

Capital and revenue moneys are held in separate interest-bearing accounts under the name of the particular First Nation concerned. The Department generally maintains one capital account and one revenue account per First Nation (approximately 1,200 accounts in total).

### 7.2 Individual Accounts

Primarily by means of per capita distributions (PCD) to members of a First Nation, Band moneys are sometimes deposited into departmentally administered accounts in the CRF for certain individuals, especially for dependent adults, infant children of Band members and adoptees.

### 7.3 Suspense Accounts

When Band moneys are received which cannot be directly credited to a First Nation or individual account they are temporarily deposited into an interest-earning suspense account. Each region has one Band moneys suspense account. Moneys placed in suspense accounts may include receipts for unidentified First Nations or persons, receipts for moneys under litigation, and amounts received for unapproved or expired leases.

## 8.0 Payment of Interest

Subsection 61(2) of the Act, provides for the payment of interest on Band capital and revenue moneys. Band moneys earn a rate of return set by the Governor General in Council (GGIC) through an Order in Council (OIC). Actual interest rates for subsequent periods can be obtained by contacting the Trusts, Loans and Corporate Accounting Services Directorate (TLCAS), Finance Branch, at headquarters.

The method for determining the interest rate currently payable on Band accounts is pursuant to OIC (P.C. 1981-3/255) dated April 1, 1980. Interest rates are based on Government of Canada bonds having a maturity of ten years or over, using the weekly yields published by the Bank of Canada.

Based on the month-end balances on deposit in the First Nation's account, interest is calculated quarterly and compounded semi-annually. Every six months (April and October), the TLCAS Directorate uses the Trust Fund Management System (TFMS) to calculate and deposit interest amounts payable on Band capital and revenue accounts.

Interest earned on balances in a Band's capital and revenue account is deposited into the Band revenue account.

## 9.0 Trust Fund Management System

The TLCAS Directorate is responsible for managing the financial and computer functions of the TFMS including all systems maintenance and development.

The TFMS maintains a record of all moneys collected for and expended by all First Nations. It also generates monthly and year-end financial reports for the Department and First Nations in which all transactions against the capital and revenue accounts are detailed.

Full access to TFMS is provided to regions and districts responsible for administering Band moneys accounts. Departmental staff use TFMS to update account information, journal voucher moneys between Band and individual accounts, make disbursements from accounts and generate account history reports. Detailed information on TFMS is available from regional Corporate Services staff.



## 1.0 Purpose

The purpose of this directive is to authorize and provide general direction to INAC headquarters, regional and district staff, and First Nations on the moneys provisions of the *Indian Act* specific to the expenditure of Band moneys.

## 2.0 Scope

This directive applies to any First Nation requesting payment of moneys in accordance with the moneys expenditure provisions of the Act.

## 3.0 Authority

This directive is issued under the authority of the Assistant Deputy Minister of the Resolution and Individual Affairs (RIA) sector.

## 4.0 Accountability

Overall accountability for departmental conformance with this directive rests with the Assistant Deputy Minister and the Regional Director Generals, and persons designated by them to carry out to specific tasks and responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

## 5.0 Guiding Principles

- Band moneys which are held "in common" for all members of the First Nation must be used for the benefit of its members.
- Current members of a First Nation have an interest in Band capital and revenue moneys. Whenever possible consideration should be given to use or conserve existing moneys in such a way as to benefit not only current members but also future generations;
- First Nations authorized to control, manage and expend its revenue moneys under section 69, assumes full responsibility for all revenue expenditures that are requested by the First Nations council. This includes determining whether any given expenditure will be for the general progress and welfare of the First Nation and its members.

## 6.0 Section 61 – Indian Moneys to be Held for Use and Benefit

This subsection affirms that Band moneys must be used for the benefit of its members.

### 6.1 Subsection 61(1) - General

Subsection 61(1) is a general provision which states, *“Indian moneys shall be expended only for the benefit of the Indians or bands for whose use and benefit in common the moneys are received or held, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which Indian moneys are used or are to be used is for the use and benefit of the band.”*

## 7.0 Section 64 – Capital

This provision provides the Minister with the authority, subject to the consent of a Band council, to authorize and direct the expenditure of capital moneys for a number of specific purposes that are itemized in paragraphs 64(1)(a) through (k) of the Act.

### 7.1 Subsection 64(1) – Expenditure of Capital Moneys with Consent

- 64(1)(a) - per capita distributions (PCDs) to Band members not exceeding fifty percent of the capital moneys of the Band derived from the sale of surrendered lands;
- 64(1)(b) - constructing/maintaining roads, bridges, water courses on the reserves or surrendered lands;
- 64(1)(c) - constructing/maintaining outer boundary fences on reserves;
- 64(1)(d) - purchasing land to be set aside as an addition to a reserve;
- 64(1)(e) - to purchase for the Band the interest of a member of the Band in lands on a reserve;
- 64(1)(f) - purchasing livestock, farm implements, equipment and machinery for the Band;



- 64(1)(g) - constructing/maintaining permanent improvements and works, in the opinion of the Minister will be of permanent value to the Band or will constitute a capital investment;
- 64(1)(h) - providing loans to Band members not exceeding one half of the total value of:
  - i) chattels owned by the borrower,
  - ii) land with respect to which the member holds or is eligible to receive a Certificate of possession,
- 64(1)(i) - paying for expenses incidental to managing reserve lands and Band property;
- 64(1)(j) - constructing houses, providing housing loans and guarantees for building purposes; and
- 64(1)(k) - any other purpose that in the opinion of the Minister is for the benefit of the Band.

7.2 Subsection 64(2) - Expenditure of Capital Moneys in accordance with by-laws.

This subsection provides that where a by-law, under paragraph 81(1)(p.3) of the Act, is in force for a First Nation, the Minister is authorized to make payments of capital moneys to persons whose names are deleted from a Band List.

8.0 Section 66 – Revenue

8.1 Subsection 66(1) - Expenditure of Revenue Moneys with Consent

This provision allows revenue moneys to be expended for any purpose that in the opinion of the Minister, *“will promote the general progress and welfare of the band or any member of the band”*.

8.1.1 This subsection provides First Nations with a wide range of possible expenditure purposes for which a release may be authorized, but only with the consent of the Band council.

8.2 Subsection 66(2)<sup>1</sup> – Minister may Direct Expenditure

This provision allows the Minister to make expenditures out of revenue moneys under subsection 66(2), “to assist sick, disabled, aged or destitute Indians” and “for the burial of deceased indigent members of the band”. Expenditures may also be approved in respect of contributions under the *Employment Insurance Act*.

8.2.1 Where a by-law under paragraph 81(1)(p.3) of the Act is in force for a First Nation, subsection 66(2.1) allows the Minister to authorize payments of revenue moneys, but not greater than one per capita share of the revenue moneys, to any person whose name was deleted from a Band List.

8.3 Subsection 66(3) - Expenditure of Revenue Moneys with Authority of the Minister

This provision allows the Minister to expend revenue moneys for the following specified purposes, without Band council consent:

- 66(3)(a) - to destroy noxious weeds and prevent the spread of insects, pests or disease that may destroy or injure vegetation on reserves;
- 66(3)(b) - to prevent, mitigate and control the spread of disease on reserves whether or not the diseases are infectious or communicable;
- 66(3)(c) - to provide for the inspection of premises on reserves and their destruction, alteration or renovation;
- 66(3)(d) - to prevent overcrowding of premises used as dwellings on reserves;
- 66(3)(e) - to provide for sanitary conditions in private premises and in public places on reserves;
- 66(3)(f) - to construct and maintain boundary fences.

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<sup>1</sup> Subsections 66(2) and 66(3) of the Act, as well as sections 67 and 68, allow the Minister to expend revenue moneys for other specified purposes. These expenditures do not require council consent, although in practice such consent would normally be sought by departmental officials in advance of the release of any revenue moneys. These provisions are rarely used, since a First Nation may request the expenditure of funds for these purposes under the authority of section 66(1).

## 9.0 Section 69 – Revenue

### 9.1 Subsection 69(1) – Management of revenue moneys by Band

This provision enables a First Nation to, “*control, manage and expend in whole or in part its revenue moneys*”. However, this subsection does not give a First Nation the authority to collect Band revenue moneys.

9.1.1 Once a First Nation receives section 69 authority over its revenue moneys, it assumes full responsibility for all revenue expenditures that are requested by the Band council. This includes determining whether any given expenditure will be for the general progress and welfare of the First Nation and its members.

9.1.2 INAC will not require substantiation that a release of revenue moneys will benefit the First Nation, but will rely on the expenditure decision made by the Band council.

### 9.2 Subsection 69(1) - Membership Distribution - Revenue

First Nations having subsection 69(1) authority may use their revenue moneys to make per capita distributions (PCD) to their members. When making a distribution, the Band council is responsible for protecting the interests of all of its members, including those who are mentally incompetent, minors and adoptees.

9.2.1 Any concern raised by a member with respect to his or her eligibility for a revenue PCD payment is to be resolved between the individual and the Band council.

9.2.2 For such a distribution, the Band council does not need to provide the Department with a pay list, or the names of those who will be paid, except in the following situations:

- Pursuant to section 51, the Minister has exclusive jurisdiction over the property of mentally incompetent Indians. For those mentally incompetent members who ordinarily reside on reserve, RIA staff must ensure that their PCD shares are withheld for deposit in CRF accounts established by the region or district on behalf of those individuals.

- Where the Department maintains the Band List, the Minister may also have to withhold the shares of any children who have been adopted by non-First Nation parents. The names of these adopted children appear on an Adoptee List maintained by the Registrar at headquarters. These names are not entered on the departmental Band List and cannot be released to a Band council for reasons of confidentiality. Since the interest of these adopted children should also be considered in the distribution, the Department must inform the Band council of the number of those adopted children and deposit their PCD shares into individual trust accounts in the CRF.

### 9.3 Subsection 69(2) – Revenue Regulations

This provision affirms that the Governor General in Council (GGIC) has established the *Indian Bands Revenue Moneys Regulations* and that these regulations require that:

- First Nations establish separate accounts in a bank, trust company or other financial institution to manage these moneys;
- First Nations authorize three persons (at least two Band members) to sign for the withdrawal of funds from the account;
- every payment from the account be authorized by at least two authorized persons;
- revenue payments from the CRF be paid into the First Nation's account;
- First Nations engage an auditor and render an annual report; and
- copies of the auditor's annual report be posted on reserve and supplied to the Minister of INAC.

### 10.0 Indian Band Revenue Moneys Order

Prior to 1990, separate Order in Council's (OIC) were made when First Nations were granted section 69 authority. In May 1990, the Indian Band Revenue Moneys Order (SOR/90-297) was made granting approximately 90 First Nations authority over their revenue moneys in whole.

In May 1993, the OIC was amended and effectively consolidated all previous Orders related to the granting of section 69 authority. As of September 1997, a total of approximately 440 First Nations were listed in the schedule to the Order.

As a result, the current process for granting a First Nation authority over its revenue moneys in whole involves seeking GGIC authority to add a First Nation's name to the schedule to the existing Indian Band Revenue Moneys Order.

Where a First Nation is seeking partial authority over its revenue moneys, a separate OIC must be sought. The Order cannot be used for this purpose, since it only applies to First Nations having full authority.

#### 11.0 Members Transferred from One First Nation to Another

- Prior to April 17, 1985, when a member transferred from one First Nation to another, section 16 of the Act prescribed that one per capita share of the former Band's capital and revenue accounts were to be transferred to the new First Nation's CRF accounts.
- If the per capita share of the former First Nation exceeded the share of the new First Nation, the difference was paid directly to the individual member.
- On April 17, 1985, Bill C-31 came into force and these provisions no longer were in force. Therefore, no transfer of Band moneys is made following the transfer of membership. A person who ceases to be a member of one First Nation by reason of becoming a member of another is not entitled to any moneys held by the Department on behalf of the former First Nation.



## 1.0 Purpose

The purpose of this directive is to authorize and provide general direction to INAC headquarters, regional and district staff, and First Nations on the granting and revoking of section 69 authority over the management of revenue moneys.

## 2.0 Scope

This directive applies to any First Nation that consents to acquire section 69 authority in accordance with the moneys management provisions of the *Indian Act*.

## 3.0 Authority

This directive is issued under the authority of the Assistant Deputy Minister of Resolution and Individual Affairs (RIA) sector.

## 4.0 Accountability

Overall accountability for departmental conformance with this directive rests with the Assistant Deputy Minister and Regional Director Generals, and persons designated by them to carry out to specific tasks and responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

## 5.0 Guiding Principles

- The Department will ensure that the First Nation membership is formally advised about the implications of such an authority.
- The First Nation should have a reasonable understanding of the nature and scope of its responsibilities and powers.
- The Band council assumes the role of fiduciary and must conduct itself accordingly in managing its revenue moneys.
- Revocation should be used as a measure of last resort, where the issue is significant and all other avenues to address the particular problems have been considered.

## 6.0 General Process for Granting 69 Authority

The process for granting section 69 authority to a First Nation may be summarized as follows:

### 6.1 First Nation BCR

The process begins when the members of a First Nation provide their informed consent to acquire section 69 authority. A BCR along with supporting documentation is submitted to the regional office.

### 6.2 Regional Review

The First Nation's request is reviewed. If satisfied that approval requirements have been met, the regional office submits the request<sup>1</sup> to the Indian Moneys, Estates and Treaty Annuities Directorate (IMETA) at headquarters.

### 6.3 Headquarters Assessment

The regional submission is assessed by IMETA. If the submission is incomplete, or if the First Nation's request has not met departmental policy requirements, it will be returned to the regional office.

6.3.1 Once a decision is reached that the First Nation has met departmental requirements, IMETA will prepare an OIC submission<sup>2</sup>. It involves obtaining revisions from and the consent of various departmental offices (Assistant Deputy Minister of RIA; ADM of Corporate Services, Director General of Individual Affairs, Executive Support Services Directorate, INAC Legal Services, Deputy Minister, Minister, the Office of Privatization and Regulatory Affairs and the Privy Council Office (PCO)).

6.3.2 The approval process ends when the Governor General signs the OIC. The related statutory instrument is subsequently published in the Canada Gazette. Headquarters will advise the region of the outcome of the submission and the region will inform the First Nation.

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<sup>1</sup> The recommendation of the Regional Director General must accompany the request.

<sup>2</sup> The process headquarters must follow for obtaining an Order in Council (OIC) is prescribed by central agencies and is time consuming, given detailed the documentation requirements that apply to this type of approval and the need to consult with numerous offices. First Nations should be made aware that it may take several months to obtain the OIC.



## 7.0 General Documentation Requirements<sup>3</sup> for Regional Submissions

Documentation provided to headquarters by regional offices must include the following:

- evidence of informed Band membership consent;
- an original, duly authorized and complete BCR<sup>4</sup>;
- evidence demonstrating that the First Nation exercises consistent financial responsibility; and
- a letter from the Regional Director General recommending that the First Nation be granted section 69 authority, including statements explaining the rationale behind the decision to recommend.
- In support of the recommendation, regions may also wish to include opinions expressed by program managers (i.e., Funding Services, Capital Management, Finance, etc.).

## 8.0 Department Records of Band Membership Consent

Since section 69 authority rests with the First Nation, departmental records must show that the consent of the membership has been obtained.

### 8.1 Informing Band Membership

The membership of a First Nation should be informed of the implications of section 69 authority by the Band council and its own independent legal and financial advisors. This would preferably occur at a general council meeting which would have been convened for that purpose, following sufficient advance notification of the membership.

#### 8.1.1 The membership should be informed of the following:

- what revenue moneys are;
- Minister's current duties under section 66;

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<sup>3</sup> See Appendix J – General Documentation Requirements.

<sup>4</sup> An original band council resolution (BCR) must be authorized at a duly convened meeting of the council.

- present limits on the council's powers when operating under section 66;
- new duties of the First Nation/council (including the need to meet the requirements of the revenue moneys regulations) and the remaining obligations of the Minister, if the First Nation receives section 69 authority; and
- advantages, disadvantages and implications of a First Nation's revenue moneys being managed under sections 66 or 69.

8.1.2 Departmental officials may not provide advice or direction to the First Nation, but may attend meetings<sup>5</sup> convened for such purposes to clarify or explain departmental policies and procedures.

8.1.3 A First Nation should have a reasonable understanding of the nature and scope of its responsibilities and powers. The basic concepts which a First Nation should be aware of in managing its revenue moneys are:

- moneys must be used for beneficial purposes which "*promote the general progress and welfare of the band or any member of the band*" (that is, in a manner consistent with section 66);
- First Nations must adhere to the provisions of the Indian Bands Revenue Moneys Regulations;
- those carrying out the section 69 duties on behalf of the First Nation must be fully accountable to the membership for the management of these moneys;
- First Nations must annually offer full disclosure of its management of revenue moneys to the Minister; and
- failure to adequately carry out its obligations could result in the Crown revoking the First Nation's section 69 authority.

8.1.4 Based on existing case law (i.e., the *Gilbert v Abbey* decision), the Band council assumes the role of a fiduciary and must conduct itself accordingly.

- Failure to properly exercise their responsibilities could leave them in breach of their fiduciary duty and subject to legal action from the members of the First Nation.

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<sup>5</sup> By attending these meetings departmental officials can also attest to the method used by the First Nation to reach its decision on the request for section 69 authority and that the membership was informed.

- The chief and council should seek out independent legal and other advice, when appropriate, to ensure they are properly carrying out their duties.

8.1.5 As an internal measure, the membership of the First Nation may wish to impose certain guidelines (i.e., budgetary approval procedures) which the Band council would be expected to follow when exercising section 69 powers on their behalf.

## 8.2 Membership Meeting for Voting Requirements

The consent of the membership must be given through a general Band membership meeting (membership vote). The basis for requiring a membership vote is in paragraph 2(3)(a) which specifies, "*a power conferred upon a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of the majority of the electors of the band*". The approach suggested in the Indian Referendum Regulations may be used for the vote, however, as long a Band can provide evidence (i.e. meeting minutes) of how membership consent was obtained, the method may be accepted to satisfy this requirement.

8.2.1 The regional submission to headquarters should include a description of the method used to obtain consent and detail the results of the vote, namely:

- the wording of the question posed to the voters;
- the total number of eligible voters;
- the total number of members who actually voted;
- the number in favour;
- the number opposed; and
- the number of spoiled ballots (if applicable).

## 9.0 Evidence of Consistent Financial Responsibility

The regional submission will contain statements on the amount of moneys currently in the First Nation's revenue account as well as a description of any moneys expected to be deposited into the First Nation's revenue account in the near future (i.e., settlement claims or major leasing agreements which may be pending, etc.).

### 9.1 Audits

The submission should include copies of the last three financial audits<sup>6</sup> of the First Nation. Departmental assessments which were conducted on these three audits should also be provided which consider whether the First Nation has otherwise:

- demonstrated good financial control;
- used Band moneys for the purposes for which they were authorized; and
- been diligent and consistent in the management of its funds.

### 9.2 Newly Created First Nations

A newly created First Nation will have been unable to establish a past track record on which its financial performance can be assessed.

9.2.1 The First Nation should provide evidence that effective financial systems and procedures are in place and that it is able to carry out all of the duties imposed by section 69 and the Indian Bands Revenue Moneys Regulations.

9.2.2 Such an assessment may be obtained by regional or district staff following an on-site review of the First Nation's systems and records. The assistance of staff from other program areas may be required for this purpose.

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<sup>6</sup> The audits should be unqualified. If the audit is qualified, evidence must be provided to the effect that the First Nation has taken acceptable corrective measures to remedy any problems.

## 10.0 Amendments of an Existing Authority

After a First Nation has been granted section 69 authority, it may later request changes to its powers such as asking for full, rather than partial authority over its revenue moneys.

- The First Nation will need to conduct a new referendum for this purpose and submit a change-of-purpose BCR and supporting documentation to the Department. A regional submission will be required and the Governor General in Council authority will be sought.

## 11.0 Band Divisions

Occasionally a First Nation having section 69 authority is divided to form two or more First Nations. In such cases, the “parent” First Nation, which originally was granted section 69 authority will automatically retain these powers.

- The newly formed First Nation must apply for the authority to exercise section 69 powers. An OIC will be sought for the First Nation once it is established that all the requirements described in this directive have been met.

## 12.0 General Process for Revoking 69 Authority

The process for revoking section 69 authority of a First Nation may be summarized as follows:

### 12.1 INAC Assessment

Revocation may be considered where it comes to the attention of the Department that a First Nation:

- has not established the requisite machinery and procedures set out in the revenue regulations; or
- does not properly exercise the powers conferred upon it; this would include evidence of mismanagement or misuse of revenue moneys.

## 12.2 Corrective Measures

Significant revenue moneys concerns may first come to the region's attention during the audit review process.

12.2.1 Regions should promptly take whatever steps are appropriate to rectify the situation. Failure to correct the identified problems may eventually lead to a regional recommendation for revocation.

12.2.2 Rather than revoke a First Nation's section 69 authority, a region may temporarily appoint an independent receiver-manager to receive all income and issue all cheques on behalf of the First Nation.

12.2.3 The Band council should initiate the expenditure request by BCR and the region would then conduct a full assessment of the proposed expenditure.

12.2.4 A release of revenue moneys would only be authorized by INAC if the region can establish that the expenditure would benefit the First Nation and its members.

## 12.3 Recommendation for Revocation

Such action would be preceded by a regional submission to headquarters outlining the problem, its significance, corrective measures attempted, and an assessment of options to revocation. The recommendation of the Regional Director General must accompany the submission.

## 12.4 Headquarters Concurrence

If headquarters concurs with the regional recommendation, the Indian Moneys, Estates and Treaty Annuities Directorate (IMETA) will prepare the necessary OIC submission.

## 1.0 Purpose

The purpose of this directive is to authorize and provide general direction to INAC headquarters, regional and district staff, and First Nations on departmental audit requirements for all expended capital and revenue moneys.

## 2.0 Scope

This directive applies to any First Nation expending Band moneys in accordance with the moneys management provisions of the *Indian Act*.

## 3.0 Authority

This directive is issued under the authority of the Assistant Deputy Minister of the Resolution and Individual Affairs (RIA) sector.

## 4.0 Accountability

Overall accountability for departmental conformance with this directive rests with the Assistant Deputy Minister and Regional Director Generals, and persons designated by them to carry out specific tasks and responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

## 5.0 Guiding Principle

- The Minister has responsibilities with respect to the approval and expenditure of Band moneys. In line with these responsibilities, it is essential that all approved Band money expenditures be accounted for.

## 6.0 Audit Requirements

### 6.1 Financial Statements

First Nations should provide the Department with financial audits, for all expended capital and revenue moneys (whether or not they have been granted section 69 authority over their revenue moneys), within 120 days from the end of the fiscal year.

- 6.1.1 If a First Nation provides capital or revenue moneys to a corporation owned by the First Nation, as either a loan or as an increase in equity, the financial statements of the corporation must also be submitted.
- 6.1.2 In addition to any requirements contained in this manual, the general reporting guidelines for the annual audit are described in the *Year-End Reporting Handbook for DIAND Funding Arrangements*.
- 6.1.3 First Nations must prepare their financial statements in accordance with generally accepted accounting principles (GAAP) as defined by the Canadian Institute of Chartered Accountants (CICA), unless recommended otherwise.
- 6.1.4 Non-compliance by a First Nation regarding departmental audit requirements should be informed that future capital or revenue moneys may be delayed until such time as the matter is satisfactorily resolved. The Regional Director General may refer the matter to the Director General of Individual Affairs Branch at headquarters for further consideration and action.

## 7.0 Accounting for Expended Funds

When an expenditure of Band moneys is approved, the First Nation council is fully accountable to the Minister and the members of the First Nation for the subsequent use of those funds.

## 8.0 Unauthorized use of Funds - Corrective Action

In line with the approval and expenditure of Band moneys responsibilities and with the Departments Management Accountability Framework<sup>1</sup>, it is essential that all approved Band money expenditures be accounted for. Any variances identified between authorized and actual expenditures should be raised promptly with the First Nation and the necessary corrective action should be taken to address any concerns. Corrective action may include:

- submitting a 'change-of-purpose' BCR;
- refunding the trust account; and
- deferring to the next fiscal year any funds not used in a given year.

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<sup>1</sup> MAF Assessment: Indian and Northern Affairs Canada - 2005, Treasury Board of Canada Secretariat.



## 8.1 Change-of-Purpose BCR

In all cases where a Band council wishes to ‘change the purpose’ for which Band moneys are to be used it must first seek the consent of the Minister. The Band council is not authorized to proceed with any change until it is approved in advance by the Minister.

8.1.1 Upon receipt of a change-of-purpose BCR, regional officials must analyze the request in the same manner as they would any other expenditure proposal. If the subsequent analysis determines that the actual use of funds is not appropriate, the region must seek the return of these moneys from the First Nation.

## 8.2 Return of Approved Moneys

Where it is determined that approved capital or revenue moneys expended by the First Nation were used for unauthorized purposes, the region must request that the First Nation return any such moneys for deposit in the capital or revenue account.

8.2.1 In the alternative, the First Nation may be asked to expend other funds, not Band moneys, to finance the expenditure item that was originally approved by the Department.

## 8.3 Moneys Deferred to Next Fiscal

For on-going programs or unfinished multi-year projects, Band moneys can be carried forward to the next fiscal year for the same purpose.



## Introduction

First Nations may request of the Minister or his/her delegate, to authorize the expenditure of their capital or revenue moneys by submitting a formal request to the Department by way of a band council resolution (BCR).

Regional and district staff are responsible for assisting Band councils in understanding the Department's administrative requirements for processing and assessing such requests for recommendation of approval or denial. However, it should be noted that the Minister, or the delegated official, makes the final decision on the release of funds.

Given the nature of the Minister's duties and various litigation before the courts, the Department must ensure that the best interests of First Nation members are kept in mind when considering requests for the release of Band capital and revenue moneys.

This Chapter of the manual is **Part 1** of the *National Expenditure Request Procedure Guidelines Process Overview*. It describes the general steps involved in processing an expenditure request from the receipt of a BCR in the Department to the release of funds, as well as affirms the authority to which this directive applies.

The steps involved in processing an expenditure request are documented in two sections. This first section (Section 1 – Process Overview) provides a general overview of the phases required in processing requests. The second section (Section 2 - Processes and Procedures) is prescriptive in nature and illustrates the procedure to undertake the processes related to the administration of Band moneys.

Chapter (7) of this manual, Part 2 of the *National Expenditure Request Procedure Guidelines Process Overview*, expands on the specific sections and purposes for which Band capital or revenue moneys can be utilized, as well as identifies any pertinent documentation requirements. It is recommended that Chapter (6) be referenced in conjunction with Chapter (7).



## Preamble

This chapter of the manual describes the steps involved in processing an expenditure request from the receipt of a BCR in the Department to the release of funds.

### 1.0 Purpose

The purpose of this directive is to authorize and provide a standard for INAC headquarters, regional and district staff on the processes and procedures required in the administration of Band moneys in the form of National Expenditure Request Procedure Guidelines.

### 2.0 Scope

This chapter shall apply to any First Nation and/or persons designated to carry out to specific tasks and responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

### 3.0 Authority

This directive is issued under the authority of the Assistant Deputy Minister of Resolution and Individual Affairs (RIA) sector.

### 4.0 Accountability

Overall accountability for departmental conformance with this chapter rests with the Assistant Deputy Minister and Regional Director Generals, and their responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

### 5.0 Guiding Principles

- The Department must ensure that the best interests of First Nation members are kept in mind when considering requests for the release of Band capital and revenue moneys.

- Regional and district staff are responsible for assisting Band councils in understanding and adhering to the Department's administrative requirements for processing such requests.

## **Section 1 - Process Overview**

- The process is initiated when a Band council adopts a band council resolution (BCR) requesting a release of funds which is then sent to the appropriate regional or district office of INAC for analysis and assessment of whether the expenditure would benefit the First Nation, including approving or denying the request within the scope of its delegated authority.
- If it has been identified that an expenditure request falls under paragraphs 64(1)(d) and (k), where this authority has not been delegated, the region must forward its recommendation to the Indian Moneys, Estates and Treaty Annuities Directorate (IMETA), Individual Affairs Branch (IAB), for review and preparation of the final submission for ministerial approval.
- Once an expenditure request is approved by INAC, the funds are then released to the Band council or financial institutions responsible for making the authorized expenditure.
- At the end of each fiscal year, First Nations must submit an independent audit of their funds to INAC. This audit includes sections pertaining to the use of Band capital and revenue moneys.

### **Phase 1 - Formal Request**

The expenditure of Band capital or revenue moneys is first initiated through a BCR.

### **Phase 2 - Departmental Assessment**

Departmental assessment<sup>1</sup> of an expenditure request consists of:

- the initial review;
- the assessment of benefit<sup>2</sup>; and
- the recommendation.

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<sup>1</sup> Appendix O - BCR Requirements - lists the minimum information required in the BCR, including a narrative from the First Nation explaining "how" the expenditure request will benefit the membership.

<sup>2</sup> Ibid.

The manner in which an expenditure request is assessed<sup>3</sup> will differ according to whether the First Nation proposes to use its capital or revenue moneys and, in the case of revenue moneys, whether the First Nation has been granted section 69 authority.

- For release of capital moneys under section 64, as well as revenue moneys under section 66, departmental staff must conduct an initial review and an assessment of the overall benefit for the First Nation.
- If the review and an assessment is satisfactory, departmental staff must then prepare the appropriate approval documentation, with their recommendation.
- For revenue expenditure requests from First Nations having section 69<sup>4</sup> authority, the Department must ensure that an environmental screening and, where necessary, an assessment or audit of the proposed expenditure has been completed.

### **Phase 3 - Release of Band Moneys**

Once approval has been given for a release of Band moneys the departmental officer processes the release in compliance with the terms of the decision that is either full, partial or conditional. The Trust Fund Management System (TFMS) is then used to record the issuance of any cheques.

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<sup>3</sup> The results of the initial review and the assessment of benefit must be documented on file by departmental staff. At any step of the process, it may be necessary to contact the Band council or Band staff to obtain additional supporting information or seek clarification of matters related to the proposal.

<sup>4</sup> Under section 69 a Band has the authority to “expend” its revenue moneys. Therefore, it is the responsibility of the Band council to determine whether a proposed use of revenue moneys will benefit the community and its members. Departmental staff is not responsible for assessing benefit for section 69 expenditures. When the submitted documents are satisfactory departmental staff prepares a recommendation for approval.



## **Section 2 – Processes and Procedures**

### **Phase 1 – Formal Request**

#### **1.0 Initiating the Process**

The expenditure of Band capital or revenue moneys is initiated through a BCR.

#### **1.1 Duly Convened Meeting**

Generally a Band council may hold general meetings<sup>5</sup> of its membership or may conduct a referendum to determine whether the community supports a proposed use of capital or revenue moneys.

#### **1.2 Referendum**

A referendum is required under section 69 and/or where large, risky or controversial proposals are involved, or where a possible conflict of interest situation may arise. The Department recommends the approach and methods in the Indian Referendum Regulations for holding a referendum.<sup>6</sup> Band councils are encouraged to seek the assistance of independent financial or legal advisors. Band councils are also encouraged to involve the Department at the early stages of their development of an expenditure proposal, so that proper documentation requirements can be identified and to facilitate the expeditious release of funds.

#### **1.3 Submitting BCR**

The Band council adopts a BCR requesting a release of funds under the related section of the Act. The BCR is then sent to the appropriate regional or district office of INAC. The Department is then responsible for analysing the request and assessing whether the expenditure would benefit the First Nation and its members (except for section 69 requests), and approving or denying the request within the scope of its delegated authority.

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<sup>5</sup> See Chapter 4, Section 8.2 – Membership Meeting for Voting Requirements.

<sup>6</sup> It should be noted that in rare instances a second referendum vote may be required, however unlikely. In most cases, if the First Nation membership does not support the proposed request at a general meeting or at the first referendum, it is highly unlikely that it will be supported at a second referendum. Also to note, the First Nation bares all costs associated with conducting a referendum and will be unlikely to bare the additional costs of holding a second referendum. Even though the approach and methods identified in the Indian Referendum Regulations are recommended for holding a referendum, it must be noted that INAC does not recognize the lower threshold of a simple majority in a second vote.

#### 1.4 Other considerations

A Band council that has section 69 authority usually, for routine expenditures<sup>7</sup>, may submit a BCR only. However, other considerations will want to be included such as the Band seeking support from the community from a general meeting, to posting a notice for a referendum, a narrative from the First Nation explaining how the expenditure request will benefit the community, etc..

### Phase 2 – Departmental Assessment

#### 2.0 Initial Review<sup>8</sup>

##### 2.1 Acknowledgement Letter

When a BCR requesting the expenditure of Band moneys is received within the Department the Band council will be sent an acknowledgement letter to acknowledge receipt of the expenditure request. The assigned officer actioning the BCR then begins the initial review by examining the following aspects of the request.

##### 2.2 BCR Review

Have the minimum information (BCR information requirements) been met? (See Appendix D).

##### 2.3 BCR Deficiency

Where the BCR is determined to be significantly deficient, or where the purpose of a proposed expenditure is not permissible it will be returned to the Band council unapproved, with a letter specifying the areas of concern. The council may later wish to resubmit a new BCR to address these deficiencies.

##### 2.4 Minor Clarification Requirement

Should the BCR not have all of the required information (i.e., BCR does not mention the audit clause) or there exists an inconsistency between the expenditure request and BCR information provided, it may not be necessary to return it to the Band council. In such cases, the council or an authorized member

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<sup>7</sup> The 'routine expenditure' applies to section 69 Band requests.

<sup>8</sup> Appendix D - provides a checklist which can be used by departmental staff to carry out the initial review.

of the First Nations' administration would only need to provide this information or any minor clarification in writing to the region which clarifies the discrepancy or minor change.

## 2.5 Section of the Act

Based on the nature and purpose of the expenditure request, departmental officers must assess the submission for the section or paragraph<sup>9</sup> of the Act under which the submission references.

2.5.1 Departmental officers must assess under which section or paragraph an expenditure can actually be authorized; establish whether the Band council has submitted all necessary documents in respect of the type of request it has made; and, determine that the departmental official has been delegated the signing authority for authorizing such expenditures.

2.5.2 Capital moneys expenditures made under paragraphs 64(1)(d) and (k) of the Act, require the Minister's approval and, therefore, need to be supported by a recommendation from the Regional Director General.

## 2.6 Supporting Documentation

Supporting documentation must be provided by the Band council for section 64 and 66 expenditures to enable Department officials to make an informed decision on the merits of an expenditure request. Requirements for support documentation depend on the specific purpose and nature of the expenditure request (see section 3.0 following). Support documentation may not be required for section 69.

## 2.7 Availability of Funds

Departmental staff must determine whether the First Nation has sufficient funds<sup>10</sup> in its trust account to satisfy the amount of the request at the time of the request. The TFMS must be used to obtain current balances and financial commitments against First Nations trust funds accounts (i.e., housing loan guarantees, or other approved BCRs which have not yet been funded).

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<sup>9</sup> Chapter 7, Part 2 of the National Procedural Guidelines provides detailed descriptions of the types and purposes of expenditures described in sections 64 and 66. Section 69 is covered in chapter 4.

<sup>10</sup> It may also be necessary to contact other sources such as Indian Oil and Gas Canada, Lands or Natural Resources to obtain future income projections of Band moneys.

## 2.8 Insufficient Funds

If Departmental staff determines that there are insufficient funds in the Bands account to cover the expenditure request, then the departmental officer must send the BCR back to the Band council for appropriate action.

## 3.0 Assessment of Benefit

After completing the initial review, the departmental officer begins a detailed analysis of the expenditure requests that fall under section 64 or 66. An Indian Moneys Expenditure Request Template (Appendix N) has been created for use by the departmental office when conducting this analysis.

- As required by the Act, this analysis must determine whether the intended use of funds will benefit the First Nation or promote the general progress and welfare of the First Nation members.
- Departmental staff may need to contact the Band council or other interested parties (i.e., other areas within INAC, other government departments) to obtain further information or additional support documentation.
- The assessment must examine all aspects of the expenditure request which includes the financial, socio-economic, environmental and legal considerations.

## 3.1 Financial Considerations

This assessment must establish whether the proposed expenditure is a prudent use of trust moneys and that the amount requested is reasonable for the type of expenditure being proposed.

3.1.1 Staff must ensure that the relevant financial documentation is on file. This includes establishing whether anticipated costs have been sufficiently broken down, such that there is a clear understanding of the specifics of how the funds are to be used.

3.1.2 The financial assessment must compare the total amount requested with the balances in the Band capital or revenue account. Irrespective of the amount requested departmental staff must consider the impact of the release of trust funds on the account balance (i.e., the release of funds may deplete the account or adversely impact future generations).

3.1.3 The Band council should provide evidence that alternative sources of funding were considered in financing the expenditure request (i.e., alternative funding sources include appropriated funds from INAC, other federal or provincial programs, financial institutions, etc).

### 3.2 Socio-Economic Considerations

The analysis of the expenditure request should illustrate the benefits to the community as a whole such as demonstrating reduced dependence on existing programs and services (i.e., social assistance), and/or may result in the creation of possible employment opportunities for members either on or off-reserve.

### 3.3 Environmental Considerations

Environmental impacts<sup>11</sup> must be considered for all Band moneys expenditures, however, it is understood that many expenditures will have no impact on the environment (i.e., Band office salaries).

3.3.1 Band councils must provide the Department with an environmental screening and depending on the nature of the expenditure an assessment or audit of its environmental impact, for expenditure requests under sections 64, 66 and 69.

3.3.2 The First Nation will bear all costs associated with producing the screening, assessment or audit. Such costs can be included in the amount requested from the capital or revenue account or may also be financed by the regional offices of INAC, if appropriated funding is available for the specified purpose.

### 3.4 Legal and Other Considerations

The departmental officer, in consultation with Legal Services, must assess whether there are any potential legal issues that may need to be addressed. For example, the proposal may set a precedent which may have to be assessed in light of the Minister's statutory responsibilities. In such cases, IMETA Directorate at headquarters may be consulted to determine if the matter has any national policy implications.

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<sup>11</sup> Ministerial decisions to release Band moneys do not trigger the application of the *Canadian Environmental Assessment Act* (CEAA). As a matter of policy, the Department will apply CEAA requirements to all Ministerial expenditure decisions made under sections 64, 66 and 69. This is appropriate, given the nature of the Minister's responsibilities over Indian moneys and the need to determine whether the release of funds is of overall benefit to the First Nation.

3.4.1 In terms of other considerations, Departmental staff should ensure that the council members did not allow their personal interests to conflict with their duty to the First Nation. For issues involving the use of reserve land, it may be necessary to consult with the Lands Branch.

### 3.5 Annual Operating Budget under 64(1) (*where applicable*)

The assessment should include a review of the First Nation's previous years annual operating budget and audited financial statements. This review should include a review of each expenditure item by program area (i.e., housing, administration, agriculture, summer students) and a confirmation of addition and carry-forward totals.

## 4.0 Regional Draft Submission Expenditure Request

A written draft submission expenditure request indicating the results of the assessment must be prepared by the departmental officer for the consideration and recommendation by the person responsible for authorizing the release of funds.

IMETA at headquarters has prepared an "Indian Moneys Expenditure Request Template"<sup>12</sup> to assist with this aspect of the process. This expenditure request should reflect the assessment results and must contain the following information, including a recommendation on whether the requested moneys should be released.

### 4.1 Expenditure Description

Outlines the proposed expenditure, its purpose, the amount requested, as well as provides a breakdown of the expenditure cost components.

### 4.2 Overview

Should contain a summary of whether the intended use of funds will benefit the First Nation or promote the general progress and welfare of the First Nation members<sup>13</sup>. The positive and negative aspects of the request must be addressed.

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<sup>12</sup> See Appendix N - Indian Moneys Expenditure Request Template.

<sup>13</sup> Summary can be minimal or extensive depending on the nature of the request.

### 4.3 Financial Summary

Provide an analysis of the financial aspects of the proposal including an assessment of the reasonableness of the amount requested. It should also include general factual information related to the Band's capital and/or revenue account. Any outstanding audit issues potentially impacting on the expenditure proposal should be noted.

### 4.4 Recommendation

The report must contain the recommendation from the departmental officer for approval or denial of the expenditure request and must be based on the results of the assessment. A recommendation may be made for full, partial or conditional approval (i.e., release of moneys based on progress reports for the project, submission of a satisfactory environmental assessment, subject to the availability of funds). The recommendation must also state the section or paragraph of the *Indian Act* which authorizes the release of funds including the amount requested.

## 5.0 IMETA Assessment Process (64(1)(d) and (k)) Only

### 5.1 Preliminary Assessment

Once a draft expenditure request is complete, the region will contact an IMETA designate by either telephone or by email indicating that a submission will be sent shortly.

5.1.1 IMETA will open a file regarding the submission and then assess it to verify all required documentation (as stated previously in section 4.0) is present.

5.1.2 Upon review, any questions or concerns regarding this submission will be documented.

5.1.3 IMETA will then contact the region and set up a conference call to discuss the submission. (This should be done within a week of receiving the draft submission).

5.1.4 After the conference call, if additional information is required, IMETA will follow up with the regional officer by email and list the information to be received, including any other comments or concerns.

5.1.5 IMETA will compose a draft Decision Briefing Note for Ministerial approval and wait for the additional information requested, or changes to the expenditure request analysis, BCRs, etc., yet to be received.

5.1.6 If no additional information is required from the region, IMETA will inform the region of this during the conference call and inquire as to when headquarters will receive the 'original' documentation (i.e., BCR signed by chief and council, approved expenditure request by RDG, support documentation, etc.) and then proceed to compose a final Decision Briefing Note for Ministerial approval.

## 5.2 Receipt of Original Documentation

Once the original documentation is received IMETA will confirm with the region receipt of the submission documentation, including whether all the documentation is received or there is documentation missing.

5.2.1 IMETA will begin the finalization of the submission and then route for headquarter approvals (i.e., manager, IMETA Director, DGO, ADM, etc.)

5.2.2 Once Ministerial approval has been granted, or not, the region will be notified by email of this decision.

5.2.3 An official letter will then be composed by IMETA to the regional officer indicating the final decision.

5.2.4 The letter and subsequent documents will then be faxed to the regional officer with a copy of the signed band council resolution, Ministerial Letter of Authorization and Decision Briefing Note. Copies<sup>14</sup> of these documents will then be mailed to the regional officer.

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<sup>14</sup> All original documentation must stay with headquarters. IMETA must keep this file on hand unless otherwise directed.



### **Phase 3 – Release of Band Moneys**

#### **6.0 Approval**

Once approval has been given, the departmental officer processes the release of moneys in compliance with the terms of the decision that are either full or partial. The Trust Fund Management System (TFMS) is then used to record the issuance of any cheques.

#### **6.1 Capital Moneys and Section 69 Bands (Revenue)**

For all capital moneys and section 69 revenue expenditures, a cheque is issued pursuant to what it has requested in its BCR (i.e., usually deposited into the First Nation's bank account).

For revenue expenditures to First Nations that do not have section 69 authority, the payment is made by the Department either directly to the supplier or if the First Nation has already incurred the expenses and has submitted copies of original negotiated cheques to the Band council for reimbursement.

#### **6.2 Periodic Release**

For Band moneys budgets, or for certain projects (i.e., construction of community buildings), moneys are periodically released from the First Nation's account according to a prepared cash flow statement or a specified work schedule. This ensures that certain predetermined work is completed before further moneys are released.



## Preamble

This chapter (**Part 2**) of the manual expands on the specific sections and purposes for which Band capital or revenue moneys can be utilized, as well as identifies any pertinent documentation requirements. The following information concerns the specifics of processing disbursements from Band capital and revenue accounts pursuant to paragraphs 64(1)(a) to (k), subsections 64(2) and 66(2.1) and sections 66 and 69 of the Act.



A. Paragraph 64(1)(a) - Capital Per Capita Distributions (PCDs)

*“to distribute per capita to the members of the band an amount not exceeding fifty per cent of the capital moneys of the band derived from the sale of surrendered lands;”*

- Provides for the distribution of an equal share of capital moneys to every person who is a member of the First Nation, or is entitled to be a member of the First Nation at the time of the distribution.
- Identifies the total amount of moneys that can be released from a Band capital account, which cannot exceed 50 percent of the capital moneys derived from the sale of surrendered lands (which also represent an interest in land and includes royalties from the sale of oil, gas, timber, etc.).
- In considering whether a First Nation wishes to consent to a PCD, the First Nation must assess the impact the distribution would have on the members of the First Nation who may be in receipt of social assistance payments.

1.0 Limitation - Bill C-31 Reinstateses<sup>1</sup>

An individual, who had lost their Indian status prior to Bill C-31, could apply to be reinstated and regain membership in their First Nation. Subsections 64.1(1), (2) and (3) were introduced as part of the 1985 Bill C-31 amendments and apply only to those reinstateses who:

- previously ceased to be members of their First Nation under the circumstances set out under paragraphs 6(1)(c), (d) or (e); and
- had previously received a total amount of more than \$1,000 as their per capita share of Band moneys, upon loss of their Indian status and membership in the First Nation.

1.1 Administration of Reinstateses

In administering this subsection, departmental officers will:

- determine whether a reinstatee falls under paragraph 6(1)(c),(d) or (e);
- establish the amount that was previously paid to the individual, if any;

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<sup>1</sup> Prior to the Bill C-31 1985, individuals who lost their Indian status and Band membership were entitled to receive one per capita share of the moneys held in their First Nation's capital and revenue accounts.

- calculate the amount that needs to be repaid or forgiven, including interest;
- inform the individual and the Band council of the results of the research; and
- if applicable, take whatever action is required to ensure that the necessary amounts are repaid or forgiven.

1.1.2 If it has been determined that an individual owes moneys to his/her First Nation, departmental staff will use the information provided by IMETA to calculate the interest amount that may also be owed.

1.1.3 The region will send a letter to the individual and the Band council informing them of the results of this assessment.<sup>2</sup>

1.1.4 An individual who does not owe moneys to his/her First Nation is immediately entitled to receive PCD back payments.<sup>3</sup>

## 2.0 Documentation Requirements

In addition to the general documentation requirements<sup>4</sup>, the BCR requesting the PCD to First Nation members must also include a pay list<sup>5</sup> and the following information:

- specific amount of Band capital moneys that are payable to each member;
- effective date of the payment<sup>6</sup>;
- date on which the distribution is to be paid out;
- statement identifying whether the First Nation wishes the distribution to be administered by the Band council or by INAC; and

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<sup>2</sup> Reinstatement is not responsible for repaying any amounts owing under subsection 64.1(1) from their personal funds. In cases where it is determined that an individual owes an amount exceeding the forgivable amount, the region will take necessary steps to withhold future capital PCDs until the appropriate amount is recovered. Once the amount owed has been completely recovered, PCDs would commence for that individual.

<sup>3</sup> Refer to Section A - 64(1)(a) of this Chapter, Section 5.3 - PCD Back Pay - Establishing Entitlement.

<sup>4</sup> Refer to Appendix O - BCR Requirements.

<sup>5</sup> Identifies all individuals entitled to receive a share of a PCD as of the date of the distribution. This pay list must also identify the minors, children-in-care, adoptees, mentally incompetent Indians; deceased individuals who were members as of the effective date of the distribution and those individuals who will be absent on the date the distribution is made or identify their whereabouts as unknown.

<sup>6</sup> Those persons who are members of the First Nation on this date will be entitled to receive a share of the distribution.

- where minors' shares are to be paid "in trust" to their parents or legal guardians pursuant to section 52.1 of the Act:
  - a clear statement and evidence<sup>7</sup> that the Band council has complied with all the requirements of subsections 52.1(1) and (2);
  - where the Band council administers the PCD, the names of council members designated to sign the receipt for moneys received under section 52.1; and
  - a statement<sup>8</sup> that the children on whose behalf payments are being made are in the actual care and custody of the persons to be paid.

### 3.0 Administration of Band Moneys Responsibilities

The responsibilities related to the administration of Band capital PCDs will vary according to:

- whether the Band List is maintained by the Department under section 11 of the Act, or is controlled by the First Nation under section 10;
- whether the distribution of the per capita payments to each Band member will be made by either the Department or the Band council; and
- whether the Band council has made a determination under section 52.1 of the Act that, for certain minor members of the First Nation, all or a part of their PCD payments will be paid to the parent or guardian on behalf of the children.

### 4.0 Authority to Compile the PCD Pay List

A pay list must be compiled to identify the names of all individuals who are entitled to receive a PCD.

#### 4.1 INAC Controlled Band List

Where INAC controls the Band List under section 11 of the Act, the departmental regional staff must compile a pay list which may be composed of the following sub-lists:

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<sup>7</sup> A copy of the minutes of the general meeting of the membership of the First Nation.

<sup>8</sup> A complete list containing the minor's names, their Band numbers, the amount of the payment, and their parents or legal guardians names should be attached to the BCR.

- 4.1.1 *Family Group* - lists all members of the First Nation according to their family grouping;
- 4.1.2 *Children-in-Care*<sup>9</sup> - identifies any children who have been removed from their parental homes and are in foster care or reside in a provincially-funded home or centre;
- 4.1.3 *Adoptees*;
- 4.1.4 *Mentally Incompetent Individual* – lists those for whom the Minister has jurisdiction under section 51 of the Act;
- 4.1.5 *Deceased Individuals* – lists those who were members of the First Nation as of the effective date of the distribution, but who are now deceased; and
- 4.1.6 *Absent Individuals* – lists individuals whose whereabouts are unknown.
  - Regional staff may compile the above noted lists by accessing the names of all First Nation members on the Indian Registry System (IRS); by searching the TFMS for the names of mentally incompetent Band members; or by contacting other sources.

#### 4.2 First Nation Controlled Band List

Where the First Nation controls its Band List under section 10 of the Act, the Band council is solely responsible for determining who is entitled to receive the PCD, including:

- Preparing a list containing the names of all individual members who are entitled to receive a share of the distribution.
- Providing a copy of this list to the Department.
- The list must identify the names of those individuals whose shares are to be deposited into an individual trust accounts maintained by the Department (i.e., adoptees, mentally incompetent individuals, minors, children-in-care and absent individuals).
- All additions and deletions to the pay list must be confirmed by the Band council to ensure validity of the data.

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<sup>9</sup> The Children-in-Care List should be obtained from the membership staff and the social workers of the First Nation. Their input is sought because they have first-hand knowledge of any children removed from their natural family.



## 5.0 Process and Procedure of PCD Payments

The payment of a PCD to First Nation members may be administered by either the Band council, or the Department on request of the Band council, and/or where determined to be appropriate.

### 5.1 PCDs Administered by INAC

Pay lists of all persons entitled to receive a PCD must be compiled by either INAC or the Band council, depending on who controls the Band List.

5.1.1 Once the lists have been finalized, a departmental officer must deposit the PCD shares into the individual departmental trust accounts.

5.1.2 The TFMS is then used to record a requisition of PCD cheques for all other members of the First Nation and are made payable to the individual member or, for payments under section 52.1, “in trust” to the parent or legal guardian of those minors.

5.1.3 After making arrangements with the council, departmental staff will travel to the Band office and distribute the cheques to each individual listed on the pay list.

5.1.4 Upon receipt of their shares, the members must sign the pay list.

### 5.2 PCDs Administered by a Band council

In its BCR, the Band council may ask to administer the distribution to its members (i.e., for everyone other than for those whose PCD shares will be withheld by INAC for deposit into individual CRF accounts).

5.2.1 On receipt of a BCR request from a Band council, regional staff must assess whether the First Nation would be able to effectively carry out the various administrative responsibilities related to the making of PCD payments.

5.2.2 Regional staff must examine whether the First Nation has established a good track record for managing its finances and accounting for its spending. This can be determined through discussions with staff from Funding Services by evaluating the outcome of past audit reviews, or by

assessing distributions the Band council may have administered in the past.<sup>10</sup>

- 5.2.3 Where it is determined that the Band council may administer the distribution, departmental staff will issue only one cheque payable to the Band council representing the total amount payable to all entitled members whose funds have not been withheld by INAC in individual accounts.
- 5.2.4 The Band council is responsible for depositing the cheque and using those funds to prepare and distribute individual cheques to the members.
- When distributing these cheques the Band council must obtain the signature of the members on the pay list.
  - Where a Band council has made a determination under section 52.1, it is suggested that a receipt<sup>11</sup> from each minor's parent or guardian be obtained by the Band council during the distribution and kept within its office. This receipt discharges the council members from liability for the loss or misapplication of these minors' shares.
- 5.2.5 After the distribution the Band council must send all negotiated cheques, bank statements and the original copy of the signed pay list to the Department for reconciliation and audit purposes. All unpaid moneys must be returned to the Department for deposit into individual trust accounts by regional or district departmental officers who must then reconcile all payments made against the documentation provided by the council.<sup>12</sup>

### 5.3 PCD Back Pay - Establishing Entitlement

After a distribution of Band capital moneys has been paid out to the members of a First Nation, a member who was not paid at that time may be found to be entitled to a share of that PCD.

- 5.3.1 It must be determined that a person must have been, or was eligible to be registered, as a member of a First Nation at the effective date of the distribution in order to be eligible to receive his or her share of a PCD.

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<sup>10</sup> Despite the request of the Band council, departmental staff may determine that it is more appropriate for INAC staff to administer the distribution

<sup>11</sup> Refer to Appendix L – Payment to a Parent/Guardian on Behalf of a Minor.

<sup>12</sup> All uncollected moneys must be deposited into departmental trust accounts in the name of the individual.

- 5.3.2 PCD arrears may be paid to a new born child if the birth occurred on or before the effective date of the distribution and the child was registered on the Band List within one (1) year after the event. If not, the date of registration should be used to establish the child's eligibility to a distribution.
- 5.3.3 Where the First Nation controls its Band List at the time of the distribution, departmental officers must obtain written confirmation from the Band council that the person was a member of the First Nation in accordance with the membership rules that existed at that time. The Band council must also confirm the effective date on which the person became a member of the First Nation. Unless this information is provided to INAC, departmental staff cannot establish an individual's entitlement to a distribution.
- 5.3.4 Where the Department administers the Band List at the time of the distribution, departmental officers must: confirm with the Indian Registrar that the person is registered; and/or obtain the date the application to be entitled for registration was received by the department in order to establish his or her entitlement to a distribution. The registration date must be on or before the date of the distribution.<sup>13</sup>

#### 5.4 Calculating and Making Payment

The departmental officer must research each case individually to ensure that a duplicate payment is not made and that the member receives the appropriate amount. The payment does not include any amounts for interest since the *Indian Act* contains no such authority.

- 5.4.1 In processing a PCD arrears payment, the same process and procedure for administering PCDs by a Band council or INAC is applied, however, the following information may also be required:
- confirmation by INAC or the Band council of the date the person was reinstated/registered and the date he or she became a member of the First Nation;
  - a calculation of the back pay owed; and

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<sup>13</sup> There are some exceptions to this general rule. For instance, reinstated members are eligible for a distribution from the date of their application, as long as this application was received in headquarters within 30 days after it was signed. For individuals whose application was received after this period, they become eligible for the distribution as of the date the application was received in headquarters.

- a copy of the 'Calculation of Amount Owning Under Section 64.1 of the *Indian Act*' form.<sup>14</sup>

5.4.2 Departmental officers will also review the information related to the arrears payment to verify the amounts and distribution dates and send a letter to the Band council notifying it of the payment that is being prepared. A copy of the letter is attached to the relevant background information and forwarded for review and approval.

## 6.0 Section 52.1 – Minors' PCD Shares Directed by a Band council

Normally, a full share of a capital PCD that is payable to a minor is deposited into a departmental trust account on behalf of that child. However, under section 52.1 of the Act, the council of a First Nation may determine that all or a portion of a minor's share of a capital PCD under paragraph 64(1)(a) will be paid to the parent or legal guardian of that child.

- The legislation provides that a limit of up to \$3,000 of a minor's PCD share may annually be paid to the parent or legal guardian, as directed by the First Nation under section 52.1.

### 6.1 Determination by the Band council

The Band council must determine that such payments are "necessary or proper" for the maintenance, advancement or other benefit of the child. Any such determination by the Band council must be proceeded by:

- 6.1.1 the Band council posting in a conspicuous place on the reserve, fourteen days before the determination is made, a notice that it proposes to make such a determination; and
- 6.1.2 the Band council giving the members of the First Nation a reasonable opportunity to be heard at a general meeting of the First Nation before the determination is made.

### 6.2 Deciding When a Payment is Necessary or Proper

The Band council is solely responsible for deciding when a payment is necessary or proper for the maintenance, advancement or other benefit of a child.

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<sup>14</sup> Refer to Appendix E. This form is only necessary for members reinstated after April 1985 in accordance with paragraphs 6(1)(c) or (d) of the Act.

- 6.2.1 The Band council is solely responsible for developing its own guidelines or criteria for making a determination in any specific case.
- 6.2.2 The Department has no role in a Band council's exercise of its discretion or in carrying out its duties under subsections 52.1(1) and (2).
- 6.2.3 It is the responsibility of the Band council to determine and select a "conspicuous place" on reserve for the posting of a notice to the members.
- 6.2.4 It is the responsibility of the Band council for determining when "a reasonable opportunity to be heard" has been afforded to the members.
- 6.2.5 The Department must not recommend one location over another for the posting of the notice to the members, or define what is considered a "reasonable opportunity to be heard."
- 6.2.6 Complaints from members of a First Nation should be directed to the Band council.
- 6.2.7 Where the Band council makes a determination under section 52.1 that payments on behalf of minors are "necessary or proper", it must, under subsection 52.1(3) notify the Minister of its decision.

### 6.3 Subsection 52.1(3) - Ministerial Notification

This notice must meet the following conditions:

- 6.3.1 Notice must be given at the same time that the council gives its consent to a distribution under paragraph 64(1)(a).
- 6.3.2 Notice must be in the form of a BCR.
- 6.3.3 Where the Band council notifies the Minister that it has made a determination under subsection 52.1(3), and the notice to the Minister complies with the conditions set out above, the Minister must provide for the payment of the children's shares as directed by the Band council.

#### 6.4 PCD Shares to be Withheld by INAC

Where a Band council has not made a determination under section 52.1 each minor's per capita share must be withheld by the Department and deposited into individual trust accounts in the CRF.

6.4.1 PCD shares of adoptees, children-in-care or absent individuals must be withheld by the Department and deposited directly into individual trust accounts in the CRF.

6.4.2 Where the Minister's jurisdiction has been established, the PCD shares of "mentally incompetent Indians", who are members of the First Nation, must also be withheld by the Department and deposited into CRF accounts that are established on behalf of those individuals.

#### 7.0 Section 51 – Mentally Incompetent Indians (Dependent Adults)

Pursuant to section 51 of the Act, the Minister has exclusive jurisdiction over the property of mentally incompetent Indians when all of the following criteria are present:

- The person is a registered Indian within the meaning of the Act;
- The person is ordinarily resident<sup>15</sup> on a reserve;
- The individual has been found to be mentally incompetent according to provincial law.

#### 7.1 Consultation with Regions

Consultation with regional departmental staff involved in the application of section 51 is required to determine if the Minister has assumed jurisdiction over the property of any mentally incompetent Indians who are eligible to receive a share of the PCD.

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<sup>15</sup> Department of Justice, Memorandum (8222-13-2), Geographic Jurisdiction over Minors, Mental Incompetents, and Estates dated March 27, 2008.

## 7.2 No Ministerial Jurisdiction

Where the Minister does not have jurisdiction, but the individual is proven to be mentally incompetent, the person's PCD share will be directed to the Provincial Public Trustee, or the person appointed under provincial law to administer the individual's property.





B. Paragraph 64(1)(b) - Roads, Bridges, Ditches, Water Courses

*“to construct and maintain roads, bridges, ditches and watercourses on the reserves or on surrendered lands;”*

- Applies to expenditures related to the construction and maintenance of roads, bridges, ditches and water courses located on reserves, or on surrendered lands.<sup>16</sup>
- May provide for the following types of expenditure:
  - construction: materials, labour, heavy equipment purchase or rental, consulting fees, engineering fees, etc.; and
  - maintenance: minor and major repairs, snow ploughing, bush-cutting, painting, clearing, summer employment to cover removal of roadside garbage, etc.
- May authorize the purchase of heavy equipment when the equipment will be primarily used to construct or maintain roads, bridges, ditches and water courses on reserves, or on surrendered lands.<sup>17</sup>

1.0 Documentation Requirements

In addition to the general documentation requirements<sup>18</sup> that apply to this paragraph the following information is required:

- Documentation related to the construction project which demonstrates that all applicable federal and provincial codes and standards will be met and the land on which the project will be undertaken is free and clear of any encumbrances.
- For tendered projects, this information would be found in the tender document; First Nations should consult with INAC regional/district staff on applicable standards.
- A narrative explaining how the maintenance will be carried out and financed.

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<sup>16</sup> Does not apply to the construction or maintenance of provincial, federal or private roads, ditches and water courses.

<sup>17</sup> If analysis shows that the heavy equipment is to be used for a new or existing Band owned business, ministerial approval is required under paragraph 64(1)(k).

<sup>18</sup> Refer to Appendix J, which provides a general list of 'General Documentation Requirements' for paragraphs 64(1)(b) to (k) including a general list for 'Demonstrating Benefits' criteria. Each paragraph and section may have additional documentation requirements and will be identified as indicated.

- A copy of the capital plan which illustrates the First Nation's and/or the Department's commitment to the project.

## 2.0 Demonstrating Benefit

In addition to general list for demonstrating benefit criteria<sup>19</sup>, the following factors should also be considered:

- Paragraph 64(1)(g) may also be applied in conjunction with this paragraph when the asset is used primarily to construct and maintain improvements that are of permanent value to the First Nation or where it is a capital investment.
- If the equipment is for a combination of purposes, the appropriate paragraph that best reflects the purpose of the expenditure should be selected.

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<sup>19</sup> Ibid.

C. Paragraph 64(1)(c) - Outer Boundary Fences

*“to construct and maintain outer boundary fences on reserves;”*

- Provides for the construction and the maintenance of outer boundary fences on reserves.<sup>20</sup>
- The costs related to such expenditures may be broken down as follows:
  - Construction costs: materials, labour, equipment rental, fees for design, etc.; and
  - Maintenance costs: paint, repairing fence breaks, replacing fence posts and wire, clearing bush, etc.

1.0 Documentation Requirements

In addition to the general documentation requirements that apply to this paragraph the following information is required:

- A map indicating the intended location and size of fencing area;
- A statement that provides a breakdown of costs including materials/labour and identifies other sources of funding that will be used to finance the project; and
- Confirmation that the expenditure is required and that the costs are reasonable and in accordance with established funding service agreements terms and conditions; this information may be obtained through the appropriate departmental officer, responsible organization and/or service delivery agent.

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<sup>20</sup> It excludes expenditures for off-reserve and inner boundary fences.



D. Paragraph 64(1)(d) - Land Purchase For Reserve Or Addition to Reserve (ATR)<sup>21</sup>

*“to purchase land for use by the band as a reserve or as an addition to a reserve;”*

- Provides for the purchase of lands that will be set aside as a reserve or as an addition to reserve for the use and benefit of the First Nation.
- The expenditure must be personally authorized by the Minister.<sup>22</sup>
- The regional or district Lands staff responsible for additions to reserves must be consulted when this provision is considered.
- IMETA is responsible for conducting an initial review of the regional moneys submission and then prepare a briefing and/or recommendation from the Director General of Individual Affairs Branch to the ADM of RIA.
- After review, the ADM will forward any concerns or recommendations to the RDG of Lands and Economic Development for consideration prior to the conduct of the addition to reserve review.

#### 1.0 Documentation Requirements

In addition to the general documentation requirements that apply to this paragraph the following information is required:

- The BCR must also provide a detailed description of the land (i.e., location, lot numbers, number of hectares) and a justification (citing the specific section of the ATR Policy) as to why the land should be added as reserve, or as an addition to reserve; and
- A Decision Briefing Note signed by the Regional Director General recommending the release of the Band moneys for the purchase of land for reserve or as an addition to reserve, including a narrative that highlights the benefits to the First Nation.

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<sup>21</sup> INAC's Additions to Reserves Directorate must be consulted at the onset when this provision is considered.

<sup>22</sup> The approval of such expenditures has not been delegated due to the various implications associated with setting aside land as a reserve.

## 2.0 Addition to Reserves Policy Application

The process and application of the ATR Policy and its site-specific criteria depend on how proposals are categorized. Separate site-specific criteria are set out for proposals falling under each of the ATR policy categories in the Department's Lands Management Manual, Chapter 10 – Additions to Reserve/New Reserves.<sup>23</sup>

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<sup>23</sup> [http://www.collectionscanada.gc.ca/webarchives/20071122053840/www.ainc-inac.gc.ca/ps/lts/lmm\\_e.html](http://www.collectionscanada.gc.ca/webarchives/20071122053840/www.ainc-inac.gc.ca/ps/lts/lmm_e.html)

E. Paragraph 64(1)(e) - Member's Interest in Land

*“to purchase for the band the interest of a member of the band in lands on a reserve;”*

- Applies to situations where a First Nation member has a lawful interest in land as defined by sections 20 to 29 of the Act, and relevant court cases, including members who have a certificate of possession, a certificate of occupation or a location ticket.
- If the member of the First Nation is also a member of the council, the question of whether Band capital moneys can be used for this purpose must be brought before the First Nation members for a vote to avoid any conflict of interest problems.

1.0 Documentation Requirements

In addition to the general documentation requirements that apply to this paragraph the following information is required:

- Information outlining the value of permanent improvements, mineral rights, leases, etc.;
- Evidence that fair value has been established for the lot (for land or housing purposes, this can be based on an assessment from an independent certified real estate appraiser, or from Canada Mortgage and Housing Corporation (CMHC); for the value of oil and gas rights<sup>24</sup>);
- Confirmation from the district or regional Lands staff that the correct lot number is quoted and that the member has a lawful interest in the land;
- Evidence in the form of an affidavit that the member has consented to the purchase; and
- Where the person is also a member of the Band council, evidence that a referendum of the membership supported the expenditure request.

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<sup>24</sup> This information can be obtained from Indian Oil and Gas Canada; for mineral rights, the Lands Branch should be contacted.





F. Paragraph 64(1)(f) - Livestock, Farm Implements, Equipment

*“to purchase livestock and farm implements, farm equipment or machinery for the band;”*

- Provides for the purchase of farm assets<sup>25</sup> (i.e., livestock, tractors, trailers, combines, trucks, etc.).
- The expenditure must be for a tangible asset that is purchased and not constructed.

1.0 Documentation Requirements:

In addition to the general documentation requirements that apply to this paragraph the following information is required:

- For farm equipment and machinery: price quotations from qualified sources for new/used equipment or a quotation of fair market value from an independent source; an explanation of how the equipment will be maintained, stored and disposed of in future (i.e., trade-in or write-off); and
- For livestock: a sale report indicating the value of the livestock; an explanation of how the livestock will be managed, and details on the intended use of the livestock (i.e., beef or pork for consumption, cattle to be used for breeding).

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<sup>25</sup> This paragraph does not provide for the construction of farm buildings, which fall under paragraph 64(1)(g), and farm related expenses of Band-owned companies or businesses since such expenditures fall under paragraph 64(1)(k).



G. Paragraph 64(1)(g) - Permanent Improvements/Works

*“to construct and maintain on or in connection with a reserve such permanent improvements or works as in the opinion of the Minister will be of permanent value to the band or will constitute a capital investment;”*

- Provides for the construction and maintenance of permanent improvements or other works to buildings, central water and sewer systems, churches, lagoons, filtration plants, schools, day care centers, arenas, rural electrification, gasification, where appropriated capital funding is insufficient to cover total project costs.<sup>26</sup>
- All activities must be on reserve or in connection with a reserve.<sup>27</sup>

1.0 Documentation Requirements

In addition to the general documentation requirements that apply to this paragraph the following information is required:

- A written statement issued from a Band council or authorized agent of the Band that demonstrates that all applicable federal and provincial codes and standards related to the construction or maintenance project will be met,
- The land on which the project is to be undertaken is free and clear of any encumbrances.
- For tendered projects, this information would be found in the tender document; First Nations should consult with INAC regional/district staff on applicable standards.
- A recommendation from regional/district Technical Services.
- A copy of the capital plan which illustrates the First Nation’s and/or the Department’s commitment to the project.

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<sup>26</sup> This paragraph does not provide for the purchase of moveable assets and activities related to off-reserve property. Costs related to the operation of community facilities such as day care centers would fall under paragraph 64(1)(k).

<sup>27</sup> For example, permanent improvements or works to water or electrical lines extending beyond reserve boundaries may be considered to be in connection with a reserve and therefore fall under this paragraph. Such situations should be thoroughly investigated to ensure that alternative sources of funding are used in priority to capital trust moneys and that all other users of the line contribute their fair share.

## 2.0 Construction and Maintenance

Construction expenditures may include material, labour, equipment purchase/rental and consulting fees.

### 2.1 Application

For the purchase of heavy equipment, this paragraph will apply when the asset is used primarily to construct and maintain improvements that are of permanent value to the First Nation or where it is a capital investment.

- When the asset is used primarily to construct or maintain roads, bridges, ditches and water courses, paragraph 64(1)(b) will apply.
- If the equipment is purchased for a combination of those purposes, the appropriate paragraph that best reflects the purpose of the expenditure should be selected.
- If analysis shows that the heavy equipment is to be used for a new or existing Band owned business, ministerial approval is required, paragraph 64(1)(k) will apply.

## 3.0 Demonstrating Benefit

In addition to general list for demonstrating benefit criteria<sup>28</sup> the following factors should also be considered:

- Maintenance expenditures may include both minor and major repairs to houses owned by a First Nation.
- Costs devoted to the purchase of immovable assets such as heating, water, ventilation, refrigeration and security systems may also be included.

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<sup>28</sup> Refer to Appendix J.

H. Paragraph 64(1)(h) - Band Member Loans

*“to make to members of the band, for the purpose of promoting the welfare of the band, loans not exceeding one-half of the total value of*

*i) the chattels owned by the borrower, and*

*ii) the land with respect to which he holds or is eligible to receive a Certificate of Possession,*

*and may charge interest and take security therefor;”*

- Includes personal or business loans not exceeding half the value of the chattels and land (i.e., certificate of possession, Location Ticket and Certificate of Occupation) held by the individual member.
- It is optional to charge interest or take security on the loans.
- It excludes loans granted to First Nation enterprises or corporations and loans made by First Nation corporations to members of the First Nation.<sup>29</sup>

1.0 Documentation Requirements

In addition to the general documentation requirements that apply to this paragraph the following information is required:

- A written loan agreement and promissory note in which the terms and conditions of borrowing are detailed.
- A repayment plan by the individual including an undertaking that the funds be redeposited to the First Nation’s capital account.
- Where items are used as security, the value of such items must be verified by qualified sources.

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<sup>29</sup> Refer to Section K - Paragraph 64(1)(k) of this Chapter.



I. Paragraph 64(1)(i) - Expenses Incidental to Managing Lands/Property

*“to meet expenses necessarily incidental to the management of lands on a reserve, surrendered lands and any band property;”*

- Provides for expenditures directly associated with the management of lands on a reserve or surrendered lands and Band property.<sup>30</sup>
- Band capital moneys may be released under this paragraph to fund the costs of a land manager, environmental protection officer, forest ranger, fire protection officer, security guards (not law enforcement officers), surveyors, the insurance of assets (including local works), legal fees related to collecting rent, negotiating leases and accounting fees, if related to collecting rent, and reasonable travel costs.
- May also cover expenses associated with that portion of administrative and governance costs directly related to the time spent managing lands or properties.
- The purchase or replacement of major appliances for housing owned by a First Nation may fall under this paragraph.<sup>31</sup>
- May also provide for expenditures related to natural resource and environmental management activities which are directly incidental to managing lands and properties. Such activities may include:
  - the development or maintenance of resource inventories;
  - pre-commercial mineral exploration:
  - development of land use plans;
  - fire prevention and suppression:
  - silviculture;
  - forest protection against diseases and insects;
  - mine site rehabilitation;
  - environmental remediation and responses to environmental emergencies;

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<sup>30</sup> “Band property” is real estate situated on a reserve or on surrendered lands which belong to a First Nation. Land management expenditures for off-reserve properties of the First Nation may fall under paragraph 64(1)(i) or (k).

<sup>31</sup> There are five major appliances that may be funded, namely, a washer, dryer, stove, refrigerator and dishwasher.

- protection and preservation of Band property.

#### 1.0 Documentation Requirements

In addition to the general documentation requirements that apply to this paragraph the following information is required:

- A detailed breakdown of the expenditure request and a description of how it directly relates to lands and property management.
- A budget outlining salaries, benefits, administrative costs, travel costs and other planned costs.
- If applicable, cost estimates from two or more sources when purchasing assets.



J. Paragraph 64(1)(j) - Housing Construction, including Loans and Guarantees of Loans for Building Purposes

*“to construct houses for members of the band, to make loans to members of a band for building purposes with or without security and to provide for the guarantee of loans made to members of the band for building purposes; and”*

- Provides for the construction of houses for members of the First Nation and may include any major renovations or additions to existing houses.<sup>32</sup>
- Authorizes the Department to grant loans to members for residential building purposes. Such loans may be granted with or without security.
- Loan payments for on-reserve Canada Mortgage Housing Corporation (CMHC) projects or other housing projects may be funded using Band capital moneys.<sup>33</sup>
- Allows Band capital moneys to be used to guarantee loans to members for housing purposes should only be authorized under these specific and limited circumstances.<sup>34</sup>

1.0 Documentation Requirements

In addition to the general documentation requirements that apply to this paragraph the following information is required:

1.1 Construction of houses for members of the Band.

- A legal land description.
- Site plan and a statement that the use of the land complies with the community plan or zoning by-law.
- Project documentation demonstrating that all applicable federal and provincial codes and standards will be met (this information will be found in the tender document).
- A recommendation from regional/district Technical Services staff.
- Land is unencumbered for building purposes.

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<sup>32</sup> It would not include the building of a non-residential structure. Construction costs generally encompass material, labour, electrical, plumbing and project management fees.

<sup>33</sup> Alternative financial sources must be explored and, if available, be applied in priority to Band capital moneys. For instance, funds from the social assistance program may be used to reduce the total amount of a housing loan.

<sup>34</sup> Capital or revenues moneys cannot be otherwise used for loan guarantees.

1.2 Housing renovations

- A detailed breakdown of the proposed expenditure including budget and project costs.

1.3 Loans to a First Nation member

- A written loan agreement and promissory note in which the terms and conditions of borrowing are detailed;
- The agreement must direct that all payments be redeposited to the First Nation's capital account; for loan payments, justification must specifically address the expenditure of band moneys as opposed to First Nation members paying rent or rent being covered under the social assistance program.

1.4 Loan Guarantees

- A full justification and supporting documentation for the housing loan and its intended use<sup>35</sup> (i.e., a copy of the loan agreement, including amount of the loan, interest rates to be charged, repayment amounts and duration).
- Where a loan guarantee is approved, the moneys in the First Nation's account must be set aside or "frozen", until such time as the loan has been fully paid off.
- The analysis of a request for a housing loan guarantee is treated the same as any other proposed expenditure, even though the requested funds may never actually leave the CRF.
- The Minister must be assured that the member is able to afford the loan and that the proposed use of the moneys is acceptable and complies with this paragraph.
- Except for loan guarantees relating to housing, the use of capital or revenue trust funds to guarantee a loan or provide for a line-of-credit is not permissible.

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<sup>35</sup> When members are independently borrowing funds (i.e., from a bank, trust company, etc.), the lender may seek a "guarantee" from the Minister that moneys held by the Crown will be used to secure the loan. These moneys would only be expended from the First Nations capital account if the member later defaults on his or her loan payments.

K. Paragraph 64(1)(k) - Any Other Expenditure

*“for any other purpose that in the opinion of the Minister is for the benefit of the band.”*

Covers other expenditure purposes that benefit First Nations. It may encompass the following types of expenditures:

- the purchase, start-up or operation of a business;
- loans or contributions made to or by corporations or enterprises owned by First Nations;
- operating costs of a commercial farm (salaries, seed, hay, fertilizer, spraying, maintenance of equipment, insurance, etc.);
- the purchase of off-reserve lands not to be set aside as a reserve or as an addition to a reserve;
- legal costs related to litigation or support of a specific claim by or against a First Nation;
- other items of a discretionary nature where "benefit" can be established including recreation, daycare and family services; and
- incurred debts when certain conditions are met.

1.0 Regional Submissions Recommending Ministerial Approval

Regions and districts should consult with IMETA Directorate at headquarters when processing 64(1)(k) proposals to ensure that all relevant requirements are considered in the regional recommendations that will have to be submitted for ministerial approval.<sup>36</sup> Regions shall use the expenditure request template.<sup>37</sup>

2.0 Documentation Requirements

In addition to the general documentation requirements that apply to this paragraph the following information is required, where applicable:

- letters of intent;
- list of inventory;

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<sup>36</sup> Refer to Chapter 6, Section 2, Phase 2, 5.0 IMETA Assessment Process (64(1)(d) and (k)) Only.

<sup>37</sup> Refer to Appendix N - Indian Moneys Expenditure Request Template.

- list of leasehold improvements;
- list of fixed assets;
- price lists;
- description of insurance coverage;
- accounts receivable/accounts payable summary;
- copies of legal agreements;
- annual financial statements for the past three years;
- appraisals;
- financial statements for associated Band owned companies; and
- lease agreements.

Where required, the regional submission should also contain the following information and documentation for expenditure proposals relating to: Band indebtedness; purchase of off-reserve land; Band owned businesses; operation of community facilities; and, the purchase of assets and equipment.

## 2.1 Business Plan Assessment

Regions must review the First Nation business plan and provide IMETA at headquarters with their assessment by completing a Regional Business Plan Assessment Report.<sup>38</sup> Alternatively, the regional or district office may choose to engage the services of an independent financial expert to undertake the assessment on behalf of the Department. This is especially appropriate where the proposal is large or complex and the type of business is relatively specialized.

## 2.2 Band Indebtedness

Band councils experiencing financial difficulties or indebtedness situations may request the expenditure of Band capital moneys to reduce or eliminate their indebtedness. Such expenditure requests require the Minister's approval. The

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<sup>38</sup> Refer to Appendix F - Regional Business Plan Assessment Report.

Minister will consider the expenditure of Band capital trust moneys to offset any incurred debt under section 64(1)(k) when satisfied that all of the following conditions are met:

- cause of the debt is explained;
- the expenditure is consistent with any Remedial Management Plan (RMP);
- the use of Band moneys is the most appropriate alternative for funding the debt;
- the membership of the First Nation demonstrates consent<sup>39</sup> of the expenditure, and
- the percentage the amount requested will impact the First Nations account is identified.

#### 2.2.1 Cause(s) of debts

- In all cases of indebtedness the Band council must clearly identify and document the cause(s) of its debts and establish a satisfactory action plan to ensure that similar debts do not reoccur.

#### 2.2.2 Remedial Management Plan

- Band councils experiencing financial difficulty may be under a RMP which sets out strategies for addressing the various financial issues they are facing.
- Where a RMP is in place departmental staff, in cooperation with the FSO and/or third party manager, determine whether the expenditure request is consistent with the requirements of the RMP and the terms and conditions of established service funding agreements.
- If the expenditure is not consistent with the RMP or cannot be adequately addressed by approving the requested release of Band capital moneys the appropriate departmental officer and Funding Services Officer may need to meet with the Band council to discuss the necessity of the proposed expenditure.<sup>40</sup>

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<sup>39</sup> See Chapter 4, Section 8.2 - Membership Meeting for Voting Requirements.

<sup>40</sup> In some instances, it may be appropriate to revise the RMP, or to return the BCR to the Band council unapproved.

### 2.2.3 Appropriateness of Using Band Trust Moneys to Finance the Debt

- The overall financial position of the Band council should be examined by departmental officers, in cooperation with Funding Services, to determine whether the use of Band capital moneys is the most appropriate alternative for funding the debt.
- Departmental analysis of the request will focus on whether the proposed use of funds is for the “benefit of the Band”, as required by paragraph 64(1)(k).

### 2.2.4 Membership Consent<sup>41</sup>

- Evidence should be provided to the membership of the First Nation of the amount of the debt, how it was incurred, and identify the corrective measures taken to rectify the problems encountered.
- In some circumstances (i.e., where recurring debts, large sums or a high percentage of the Band’s capital account are involved), departmental staff may require that a membership meeting or referendum be held. The region should consult with IMETA where deemed necessary.

## 2.3 Purchase of Off-Reserve Land

When a proposal involves the purchase of off-reserve land, the regional submissions should contain the following information and documentation:

- an appraisal of the land and property from a registered or certified land appraiser, to establish that the price to be paid for the land is fair and reasonable;
- the total purchase price of the land, the proposed financing arrangements and written confirmation that any other sources of funding are in place;
- a brief description of the land including the number of hectares, the structures on the land, any improvements needed, the type of land (forested, farm land, residential);
- identification of zoning restrictions, if applicable;

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<sup>41</sup> Refer to Chapter 4, 8.2 Membership Meeting for Voting Requirements.

- since the land will not be added to the reserve, the name(s) of those holding the land on behalf of the First Nation must be identified; these individuals should also sign a document stating they are holding these lands in trust for the First Nation;
- details of economic, socio-economic and other benefits to the First Nation (i.e., job creation);
- identification of the impact the expenditure will have on First Nation capital and revenue accounts;
- an environmental screening and, where necessary, an environmental assessment and/or environmental audit.
- a description of the intended use of the land, specifically:
  - a) If the land is to be used for farming:
    - an outline of farming plans;
    - a summary of the relevant experience of individuals who will be managing and operating the farm; and
    - other confirmed funding sources.
  - b) If the land is to be used for development purposes (i.e., for a business or a business park).
  - c) If the land is to be used for other purposes (i.e., cottage development):
    - an outline of development plans;
    - a summary of the relevant management experience of individuals involved in the project;
    - a summary of any contingency plans (i.e., for major repair costs, demolition costs, well drilling costs, servicing costs, zoning restrictions, etc.); and
    - a three-year cash-flow projection.

## 2.4 Band Owned Business

When a proposal involves the development, purchase or expansion of a First Nation owned business or corporation, the regional submission should contain the following information and documentation:

### 2.4.1 Business Plan

- The Band council must submit a current business plan<sup>42</sup> with its BCR.
- The business plan should enable departmental staff, or lending institution, to better understand the various components of the business.
- The business plan should provide the fundamental information on the business and the specific nature of the expenditure request and sets out the goals the business is expected to achieve over a stated period of time. It contains the following components:
  - profile of the business (ownership particulars and type of business);
  - approach to marketing (industry, target customer, competition, product, etc.);
  - operations (site, facilities and equipment, production process or service operation, labour force);
  - management (qualifications, competency and reliability); and
  - financial summary (financial requirements, proposed financing, historical financial results, current financial position, operating forecast, cashflow requirements).

## 2.5 Operation of Community Facilities

Even though building costs of community facilities fall under paragraph 64(1)(g), all costs related to the operation of these facilities fall under 64(1)(k).

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<sup>42</sup> Funding for the preparation of a business plan can sometimes be obtained from other provincial or federal programs. Such costs may also be covered through the use of Band capital or revenue moneys and as long as the business plan costs do not exceed standard industry project costs of that time.



- The operation of a community facility may be authorized under 64(1)(k). In reviewing such a proposal, the region will verify that the building meets all provincial requirements (i.e., running of a daycare is generally an area that is heavily regulated).
- The First Nation should demonstrate that it will have sufficient funds to operate the facility for the foreseeable future and identify confirmed sources of funding.

## 2.6 Purchase of Major Equipment or other Assets

When a proposal involves the purchase of major equipment or other assets, the regional submission, in addition to the general list for demonstrating benefit criteria, the following information and factors should also be considered:

- a description of the equipment or asset that is being purchased and its intended use<sup>43</sup>;
- since First Nations cannot own property (in most provinces), the name(s) of those holding the equipment on behalf of the First Nation must be identified; these individuals should also sign a document stating they are holding this property in trust for the First Nation; and
- a description of the benefits<sup>44</sup> for such expenditures, which may include job creation over a specified period of time and possible revenue generation.

## 3.0 Land Designation

Whenever reserve lands are to be used by a third party (which includes a Band corporation) for a business, or economic development venture located on reserve, those lands must be designated for this purpose.

- Regional lands and Indian moneys staff must jointly address this requirement with the Band council before any Band moneys are released to a First Nation.

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<sup>43</sup> If the equipment is for a combination of purposes, the appropriate paragraph that best reflects the purpose of the expenditure should be selected. See Section G - Paragraph 64(1)(g), 2.1 Application.

<sup>44</sup> Refer to Appendix J.

- These lands are set aside by the Crown for the use and benefit of the First Nation and not for any third party. Therefore, Crown consent to such a use of the reserve lands is essential. The refusal of a First Nation to designate the land would mean that the expenditure request could not be approved.

**Subsections 64(2) and 66(2.1) - Payments to Members Deleted from a Band List**

*“64(2) The Minister may make expenditures out of the capital moneys of a band in accordance with by-laws made pursuant to paragraph 81(1)(p.3) for the purpose of making payments to any person whose name was deleted from the Band List of the band in an amount not exceeding one per capita share of the capital moneys.”*

And

*“66(2.1) The Minister may make expenditures out of the revenue moneys of a band in accordance with by-laws made pursuant to paragraph 81(1)(p.3) for the purpose of making payments to any person whose name was deleted from the Band List of the band in an amount not exceeding one per capita share of the revenue moneys.”*

- Paragraph 81(1)(p.3) authorizes a Band council to pass a by-law which authorizes the Minister to make payments out of capital or revenue moneys to persons whose names were deleted from the Band List of the Band.
- Where such a by-law is in force, the Minister may authorize payments of Band capital and/or revenue trust moneys pursuant to subsections 64(2) and 66(2.1) respectively.
- The payment must not exceed one per capita share of the First Nation's capital or revenue moneys.

**1.0 Documentation Requirements**

In addition to the normal processing requirements and the general documentation requirements that apply to these subsections a departmental officer will ensure that INAC also has:

- a copy of the by-law adopted by the Band council and confirmation that it is in force, and
- an Account History Report (from TFMS) which details the balances in the First Nation's capital and revenue accounts on the effective payment date.
- The departmental officer will also calculate the individual's share of the capital and/or revenue account and will submit a written summary of the calculation with a recommendation for approval to the person having delegated ministerial signing authority.

## 2.0 Authorized Payment

When a payment is authorized pursuant to subsections 64(2) and 66(2.1), a cheque is requisitioned and made payable to the individual.<sup>45</sup>

- A letter is also sent to this individual, with a copy to the Band council, explaining the payment and requesting the signature of a release form, and
- It is mandatory that this release be signed by the individual in order to discharge the Crown from any liability that may be associated with the payment.

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<sup>45</sup> Refer to Chapter 6, Section 2, Phase 3 - Release of Band Moneys, 6.0 Approval.

**Subsection 64.1(2) - Recovery of Other Benefits, and 64.1(3) - Determining Interest**

*“(2) Where the council of a band makes a by-law under paragraph 81(1)(p.4) bringing this subsection into effect, a person who has received an amount that exceeds one thousand dollars under paragraph 15(1)(a), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, by reason of ceasing to be a member of the band in the circumstances set out in paragraph 6(1)(c), (d) or (e) is not entitled to receive any benefit afforded to members of the band as individuals as a result of the expenditure of Indian moneys under paragraphs 64(1)(b) to (k), subsection 66(1) or subsection 69(1) until the amount by which the amount so received exceeds one thousand dollars, together with any interest thereon, has been repaid to the band.”*

- Paragraph 81(1)(p.4) authorizes a Band council to pass a by-law to bring subsection 10(3) or 64.1(2) into effect in respect of the Band.
- Where such a by-law is in force, subsection 64.1(2) applies to reinstateses.<sup>46</sup>
- Until an individual repays the amount exceeding \$1,000 to the First Nation, including any interest, he or she is not entitled to receive any benefits flowing to individual First Nation members from the expenditure of Band moneys under paragraphs 64(1)(b) to (k), subsections 66(1) and 69(1).

**Subsection 64.1(3) - Determining interest**

- Regulations have been adopted that prescribe the manner in which interest is calculated for the purpose of subsections (1) and (2).

**1.0 Documentation Requirements**

In addition to the general documentation requirements that apply to these subsections, the following will also apply and should be noted:

- subsection 64.1(1) and subsections 64(2) and 66(2.1);
- including the calculation of the amount owing under these provisions.

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<sup>46</sup> Refer to Section A, Paragraph 64(1)(a), Section 1.0 Limitation – Bill C-31 Reinstateses.



### **Subsection 66(1) - Expenditures**

*“With the consent of the council of a band, the Minister may authorize and direct the expenditure of revenue moneys for any purpose that in the opinion of the Minister will promote the general progress and welfare of the band or any member of the band.”*

This subsection provides First Nations with a wide range of possible expenditure purposes.<sup>47</sup>

- It must be demonstrated that the expenditure is beneficial and that the First Nation has the resources to fund the request.
- The use of Band revenue moneys to guarantee a Band council loan or line-of-credit is not permissible.<sup>48</sup>

#### **1.0 Documentation Requirements**

In addition to the general documentation requirements that apply to this subsection the following information, where relevant and obtainable from the FN, or other sources, is required:

- Documentation needed to substantiate any request must be customized to meet the specific requirements of that request.

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<sup>47</sup> Refer to Chapter 3, Section 8.0 – Section 66 -Revenue.

<sup>48</sup> Ibid.





1.0 Purpose

The purpose of this directive is to provide direction and clarity to INAC headquarters, regional and district staff, and First Nations on the preservation of capital trust funds.

2.0 Scope

This directive applies to any persons designated to carry out specific tasks and responsibilities related to the administration of capital trust funds in relation to the Band moneys provisions of the *Indian Act*.

3.0 Authority

This directive is issued under the authority of the Assistant Deputy Minister of the Resolution and Individual Affairs (RIA) sector.

4.0 Accountability

Overall accountability for departmental conformance with this directive rests with the Assistant Deputy Minister and Regional Director Generals, and persons designated by them to carry out to specific tasks and responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

5.0 Guiding Principles

- Hold and maintain the Crown to a high standard in its affairs with First Nations in a fiduciary/trust like duty that is well established and applicable to Band moneys.
- To ensure the expenditure requests from First Nations are in the best interest of the Band and its membership as directed by Section 61(1) of the *Indian Act*.
- Band moneys shall be expended only for the benefit of the Indian or Bands for whose use and benefit in common the moneys are received, held, and subject to the Act.

- To prudently protect and maintain the balance of First Nation capital moneys, given the non-renewable source of Band moneys and the nature of these funds that are held “in-common” for current and future members of the First Nation.

## 6.0 Preservation of Capital Trust Funds Policy

It has been a long standing practice and policy<sup>1</sup> in the Alberta region to adhere to a policy of strongly recommending that Bands **limit annual capital expenditures to a level of known, or expected income for a given year, give:**

- the non-renewable asset, and
- the need to demonstrate benefit of the expenditure for both current and future generations.

### 6.1 Duty to Administer Band Moneys

While recognizing that capital trust funds are the First Nation’s moneys, a balance between the existence of the Act, past practices relating to expenditures, and the Minister’s fiduciary duty to the beneficiaries of these funds are all factors that must be considered when reviewing an expenditure request.

6.1.1 In the administration of Band moneys under the Act, the designated departmental official should:

- gather all the relevant facts;
- have or develop knowledge of the operation;
- develop a relationship and knowledge of the administration of the First Nations he or she is working with;
- examine the proposed expenditure in light of the above; and
- assess and decide as to whether a departmental official would make the expenditure with his or her own money with the above knowledge.

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<sup>1</sup> The practice and later policy was put in place to prevent the depletion of a Band’s capital account, June 23, 1992 letter G. Wouters, RDG Alberta to Gregor MacIntosh, DG RRBG.

## 7.0 Creation of New First Nations

Section 17 of the Act, allows the Minister to constitute new First Nations from an existing First Nation or any part thereof, such portion of the reserve lands and funds of the existing First Nation as the Minister determines shall be held for the use and benefit of the new First Nation.

### 7.1 New First Nation Moneys

Where a new First Nation is established from an existing one, the capital and revenue moneys held for the existing First Nation are generally divided on a per capita basis among the members of both First Nations.

7.1.1 The calculation of funds to be attributed to each First Nation shall be based on the total population of those First Nations, as well as the balances in their capital and revenue accounts, as of a specific pre-determined date.

7.1.2 All details pertaining to the disposition of funds (such as the effective date for dividing the capital and revenue moneys) should be addressed and resolved by the parties prior to the establishment of the new First Nation, with the full knowledge and consent of their members.

## 8.0 Inherent Right to Self-Government

The Treaties and Aboriginal Government (TAG) sector of INAC is primarily responsible for negotiating self-government arrangements between First Nations and the federal government.

The self-government process ultimately results in the signing of an agreement with a First Nation and the passage of specific legislation to give effect to the agreement. Each negotiation is unique to the particular First Nation involved. Although the form and wording of the various arrangements will vary to reflect the specific needs of First Nations, there are several aspects which should be common to all agreements from a Band moneys perspective.

### 8.1 INAC Duty to Review

Regional staff have a duty to review any proposed inherent right/self-government arrangements by First Nations in their region to ensure that the terms relating to Band moneys are consistent with the following conditions.

- 8.1.1 The Department will negotiate the full transfer of Band moneys it holds on behalf of a First Nation, subject to the passage of specific legislation which fully relieves the Minister from all duties related to the subsequent management of those moneys.
- 8.1.2 The federal government will be liable for any errors or omissions that occurred while these funds were under its administration.
- 8.1.3 The federal government will not be liable for any errors or omissions in the administration of these moneys subsequent to their transfer to a First Nation.
- Following such a transfer, the future liability of the Crown with respect to those assets is extinguished. Band councils will be fully accountable to their people for the future management of those funds.
- 8.1.4 Authority over the administration and management of these moneys will be transferred only if there are adequate provisions for the protection of the individual interests of all members of the First Nation.
- For departmental staff, addressing this point involves reviewing the Band membership provisions contained elsewhere in the proposed agreement.
- 8.1.5 Capital and revenue moneys are no longer considered to be “Indian moneys” after they have been transferred to a First Nation pursuant to an inherent right/self-government legislation.
- 8.1.6 The First Nation has complete discretion in determining the manner in which these transferred funds<sup>2</sup> will subsequently be managed.

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<sup>2</sup> The transferred trust funds do not need to be segregated by the First Nation as “capital” or “revenue” moneys.

## 1.0 Purpose

The purpose of this directive is to authorize and provide general direction to INAC headquarters, regional and district staff, and First Nations on the release of Band moneys information it holds on behalf of First Nations.

## 2.0 Scope

This directive applies to any persons designated to carry out specific tasks and responsibilities related to the administration of capital trust funds in relation to the Band moneys provisions of the *Indian Act*.

## 3.0 Authority

This directive is issued under the authority of the Assistant Deputy Minister of the Resolution and Individual Affairs (RIA) sector.

## 4.0 Accountability

Overall accountability for departmental conformance with this directive rests with the Assistant Deputy Minister and Regional Director Generals, and persons designated by them to carry out to specific tasks and responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

## 5.0 Guiding Principles

- The *Access to Information Act* and *Privacy Act* govern the disclosure of information held by the federal government and should be made available to the public, subject to limited and specific exceptions.
- Departmental programs have the responsibility to research, compile the required information or records and to prepare recommendations on whether complete or partial disclosure should be authorized.
- The release of information from departmental files and records should be provided through ordinary channels whenever possible and practical.

## 6.0 Formal Request vs. Informal Request

### 6.1 Formal Request

A request for information is formal when an application is sent to the Access to Information and Privacy (ATIP) Secretariat at INAC headquarters, or when a written request explicitly refers to one of the two Acts.

6.1.1 The ATIP Secretariat coordinates the preparation of responses to formal requests to ensure there is compliance with the above-noted legislation and related policies and procedures.

6.1.2 Normally a departmental program provides the information, along with its recommendations on the release of information, within seven calendar days.<sup>1</sup>

### 6.2 Informal Request

A request is informal when it is not made under either one of these two Acts. The release of information from departmental files and records should be provided through ordinary channels whenever possible and practical.

6.2.1 Prior to transmitting the documentation to the applicant, the Department has to ensure that any specific information, records or portions thereof that have been excluded or exempted under these Acts (i.e., legal opinions), are not released to the person making the request.

Since the department could be sued for inappropriate disclosure, advice should be sought from the departmental ATIP Secretariat to clarify any questions on the proper way to deal with an informal request.

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<sup>1</sup> Under exceptional circumstances, extensions can be obtained for providing a formal response. These extensions should be discussed with the ATIP Secretariat.

## 7.0 Access to Information Act<sup>2</sup>

The department must protect the interests of First Nations when dealing with requests for trust moneys information or records. These records<sup>3</sup> can be released to a Band council since it is the official representative of the First Nation. However, any other entities (persons/researchers) must provide the Department with a written consent from the Band council (a recent letter from the chief or a BCR adopted during the current mandate of the council) to have access to these records.

### 7.1 Access to Records Only by Band council

Members of a First Nation may request copies of Band trust records, however they must first obtain the consent of their Band council. Even though registered members have an interest in the moneys held in trust on behalf of their communities, only their Band councils represent the First Nation as a whole and therefore have access to these records.

### 7.2 Council Duty to Account to Band Members

A Band council likely either originated the information now contained on departmental files, or it was provided with copies of this information by the Department sometime in the past. A Band council has a general duty to account to its own members for prior moneys management and the moneys management decisions it has made.

## 8.0 Privacy Act

The *Privacy Act* deals with all personal information that is collected by the federal government on Canadians.

- This legislation protects that information against unauthorized disclosure and applies to individuals' requests for information about themselves.
- This legislation gives any individual the right to access the information held by the government on his or her behalf.

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<sup>2</sup> This Act applies to requests that are made by individuals to access information about another entity, that is, about a "third party" (some other person, group of persons or organization).

<sup>3</sup> It should be noted that the trust records of First Nations often contain personal information on individual members. The department does not have to review these records and remove such personal information they may contain.

- Consequently, departmental staff may informally release such requested information to the individual alone. It is important to ensure that only the information relating to that person is released.

### 8.1 Written Consent of Release

In a case where a person requests information about someone else, a written consent of release from the other individual must be obtained prior to the disclosure of personal information.

8.1.1 When there is a separation or a divorce, only the parent with legal custody of the child can access the child's records.

8.1.2 The duly appointed administrator (i.e., the legal guardian) of a mentally incompetent Indian may have access to any information regarding that individual.

### 8.2 Deceased Individuals Information

Information on a person that has been dead for more than 20 years cannot be protected under this legislation and must be released upon request.

8.2.1 Proof of the individual's death must be obtained prior to the disclosure of information.

8.2.2 Where the death cannot be confirmed, the applicant should be asked to present a formal request for information under the *Privacy Act*.

## 9.0 Personal Information Release Authority

Paragraph 8(2)(a) of the *Privacy Act* authorizes disclosure of personal information when the release is consistent with the purpose for which the information was obtained.<sup>4</sup>

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<sup>4</sup> The department holds trust records to account for its management of First Nations moneys. Consequently, all personal information contained in these records should be released to Band councils so that they might have a complete record of what is on their files.



## 1.0 Purpose

The purpose of this directive is to provide direction and clarity to INAC headquarters, regional and district staff on the re-depositing of Indian moneys into the Consolidated Revenue Fund (CRF).

## 2.0 Scope

This directive applies to Indian moneys released to a First Nation in accordance with sections 64, 66 and 69 of the *Indian Act*.

## 3.0 Authority

This directive is issued under the authority of the Assistant Deputy Minister of the Resolution and Individual Affairs (RIA) sector.

## 4.0 Accountability

Overall accountability for departmental conformance with this directive rests with the Assistant Deputy Minister and Regional Director Generals, and persons designated by them to carry out to specific tasks and responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

## 5.0 Guiding Principles

- The Crown has the same authority at law as any person to act as a trustee of property for the benefit of another party.
- While there is no explicit statutory authorization to act as a trustee over Indian moneys, no such provision is necessary. The Crown may agree to act as a trustee of any person's moneys without specific statutory authority.
- The *Indian Act* does not preclude the Minister from accepting moneys to be re-deposited into a First Nation's trust account. The Minister is not obligated to accept a re-deposit or refund of the trust account, however may do so at his/her discretion.

- It is the government's policy<sup>1</sup> to ensure that public money it receives is promptly deposited to prevent and reduce, to the extent possible, instances of error, fraud, or omission and to decrease the government's need to borrow.

## 6.0 Policy

The 2009 Manual for the Administration of Band Moneys<sup>2</sup> authorizes and provides greater direction and clarity to INAC headquarters, regional and district offices, and in particular, Regional Directors General and persons designated by them to carry out specific tasks and responsibilities related to carrying out the administration of the Band moneys provisions of the *Indian Act* and its regulations.

### 6.1 Re-deposit of Approved Funds

Approved funds which have originated as a release of Indian moneys which were not expended (in whole or in part) on the purpose for which the release was approved, are eligible for re-deposit into the Consolidated Revenue Fund (CRF).

- 6.1.1 A re-deposit of moneys into a First Nation's capital or revenue trust account within the CRF may only be permitted if such capital and revenue moneys were released pursuant to sections 64, 66 and 69 of the *Indian Act* and the First Nation's year end audit indicates that the capital and/or revenue moneys were unexpended.
- 6.1.2 Should the First Nation's year end audit indicate that the moneys released had been expended by the First Nation on the purpose for which the release of moneys was approved; no requests for re-deposits will be accepted.
- 6.1.3 The First Nation must submit a band council resolution (BCR) requesting the re-deposit of unexpended moneys referencing the original BCR request for the release of capital and/or revenue moneys.
- 6.1.4 Re-deposits shall be deposited into the First Nation's account in the CRF which the prior release had originated from, either the First Nation's capital or revenue trust account.

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<sup>1</sup> Treasury Board Comptrollership, Chapter 3-3, Policy on Deposits, 1995. and *Receipt and Deposit of Public Money Regulations*, 1997.

<sup>2</sup> Refer to Chapter 1 – Introduction, section 5.0 Glossary of Terms and Definitions.

## 7.0 Unauthorized use of Funds<sup>3</sup>

In line with the approval and expenditure of Indian moneys responsibilities and with the Departments Management Accountability Framework<sup>4</sup> it is essential that all approved Indian money expenditures be accounted for. Any variances identified between authorized and actual expenditures should be raised promptly with the First Nation and the necessary corrective action should be taken to address any concerns.

## 8.0 Procedures

### 8.1 First Nations Request for Re-deposit

Upon receipt of the First Nation's request to redeposit unexpended moneys, the First Nation will be advised that should its request be approved, such re-deposits of funds shall be made to the First Nation's account which the prior release originated.

8.1.1 Region departmental staff must review the First Nation's year end audit, specifically the statement of receipt and expenditure of Indian moneys for both capital and revenue trust moneys prescribed by the Department's *Year-End Reporting Handbook for First Nations, Tribal Councils and First Nation Political Organizations*.

8.1.2 Identify the unexpended capital and/or revenue moneys which have been released to the First Nation and are requested for re-deposit.

8.1.3 Determine that moneys requested for re-deposit have not been expended by the First Nation.

8.1.4 Where the request for a re-deposit is for a surplus of moneys released to the First Nation through *Indian Act* sections 64, 66 and 69, the expended portion must be verified to ensure moneys released was expended on the purpose for which the release was originally approved.

8.1.5 Once the region has determined that the request for re-deposit has complied with all provisions of this directive, the region may approve the request.

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<sup>3</sup> Refer to Chapter 5 - Auditing, section.8.0 Unauthorized use of Funds - Corrective Action.

<sup>4</sup> MAF Assessment: Indian and Northern Affairs Canada - 2005, Treasury Board of Canada Secretariat.

8.1.6 Upon regional approval of the request for re-deposit, such funds are to be re-deposited into the First Nation's capital or revenue account within the Consolidated Revenue Fund, depending on which account the moneys were previously released.

## 8.2 Return of Approved Moneys used for Unauthorized Purposes

Where it is determined that approved capital or revenue moneys expended by the First Nation were used for **unauthorized purposes**<sup>5</sup>, the region must request that the First Nation return any such moneys for re-deposit in the capital or revenue account.

## 9.0 Responsibilities

- Regional departmental staff are responsible for ensuring that a First Nation's request meets the requirements set out in this directive.
- Regional departmental staff are responsible for ensuring payment and re-deposit of moneys into the First Nation's trust account within the Consolidation Revenue Fund.
- Indian Moneys, Estate and Treaty Annuities Directorate (IMETA) at INAC Headquarters is responsible for providing policy direction, guidance and implementation of this directive.

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<sup>5</sup> Chapter 5 - Auditing, section 8.0 provides the procedure for corrective action to be followed.

## *Appendix A - Rick Gilbert et al v. Alice Abbey Decision*

### SUMMARY

#### Duty Of Chief And Councillors To Act In A Fiduciary Capacity:

The British Columbia Supreme Court (BCSC) addressed the matter of the fiduciary duty of chiefs and councillors in its June 28, 1992 decision on the Rick Gilbert et al. v. Alice Abbey case. The decision stated that:

- a) "a fiduciary duty exists if one person undertakes to act in relation to a particular matter in the interests of another, and has been entrusted with a power or discretion to affect the other's interest, in a legal or practical sense, so that the other is in a position of vulnerability"; and
- b) "a duly-elected chief as well as members of the band council are fiduciaries as far as all other members of the band are concerned."
- This case also attests to the fact that litigation can be successfully brought against elected chiefs and councillors who breach their fiduciary obligations.

#### Conflict Of Interest:

In addition, the case clarified that one effect of being a fiduciary to the members of a First Nation is that the actions of chief and councillors, while in office, are subject to scrutiny. There must be no question of these elected representatives allowing their personal interests to conflict with their duty to the First Nation.

This means that in a potential conflict of interest situation the individual chief or councillor has an obligation to make full disclosure of his or her interest and to abstain from participating in the related discussions and vote.

## Appendix B - Rates of Interest on Capital and Revenue Accounts

From 1867 to March 1980

From Confederation to December 31, 1882, the annual interest rate was fixed by Order-in-Council at 5%.

From January 1, 1883 to June 30, 1892, the annual interest rate was fixed by Orders-in-Council dated January 12, 1883 and June 4, 1883 at 4%.

From July 1, 1892 to December 31, 1897, the annual interest rate was fixed by Order-in-Council dated September 29, 1892 at 3 ½%.

From January 1, 1898 to March 31, 1917, the annual interest rate was fixed by Order-in-Council dated December 24, 1897 at 3%.

From April 1, 1917 to March 31, 1969, the annual interest rate was fixed by Order-in-Council dated June 5, 1917 at 5%.

From April 1, 1969 to March 31, 1980, the interest rate was fixed by Order-in-Council dated October 8, 1969 as follows:

<b>Fiscal Year</b>	<b>Average Interest Rate for the Month of March</b>	<b>Interest Rate Adjustment re Previous Year at March 31</b>	<b>Interest Rate Applied on April 1 Opening /March 31 Carryover Balance</b>	<b>Yearly Average Interest Rate</b>
1969-1970 <sup>1</sup>	7.24%	---	7.24%	7.79%
1970-1971 <sup>1</sup>	8.05%	+ 0.55%	8.60%	7.59%
1971-1972 <sup>1</sup>	6.80%	- 0.46%	6.34%	6.97%
1972-1973 <sup>1</sup>	7.07%	+ 0.17%	7.24%	7.30%
1973-1974 <sup>1</sup>	7.30%	+ 0.23%	7.53%	7.70%
1974-1975 <sup>2</sup>	7.92%	+0.40%	8.32%	9.00%
1975-1976 <sup>2</sup>	8.25%	Not Applicable	8.25%	9.27%
1976-1977 <sup>2</sup>	9.47%	Not Applicable	9.47%	9.03%
1977-1978 <sup>2</sup>	8.76%	Not Applicable	8.76%	8.81%
1978-1979 <sup>2</sup>	9.15%	Not Applicable	9.15%	9.43%
1979-1980 <sup>2</sup>	9.91%	Not Applicable	9.91%	10.81%

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1.0 From April 1, 1980 to present, the interest rate has been fixed by Order in Council dated January 29, 1981.

	<b>First Quarter</b>	<b>Second Quarter</b>	<b>Third Quarter</b>	<b>Fourth Quarter</b>	<b>Compounded-yearly Semi-annually<sup>4</sup></b>
1980-81 <sup>3</sup>	2.95%	3.04%	3.23%	3.29%	12.9005%
1981-82 <sup>3</sup>	3.69%	4.11%	3.88%	3.86%	16.1437%
1982-83 <sup>3</sup>	3.78%	3.68%	3.05%	2.97%	13.9291%
1983-84 <sup>3</sup>	2.8387%	2.9996%	2.9571%	3.075%	12.2225%
1984-85 <sup>3</sup>	3.3847%	3.258%	3.0213%	2.9694%	13.0313%
1985-86 <sup>3</sup>	2.795%	2.7169%	2.63%	2.5356%	10.9622%
1986-87 <sup>3</sup>	2.351%	2.3196%	2.3446%	2.2652%	9.4957%
1987-88 <sup>3</sup>	2.4266%	2.6025%	2.6291%	2.4748%	10.3897%
1988-89 <sup>3</sup>	2.5711%	2.6156%	2.569%	2.6034%	10.6274%
1989-90 <sup>3</sup>	2.4989%	2.4023%	2.4171%	2.5889%	10.1526%
1990-91 <sup>3</sup>	2.7837%	2.7221%	2.7156%	2.5152%	11.0246%
1991-92 <sup>3</sup>	2.4944%	2.5061%	2.3017%	2.2522%	9.7821%
1992-93 <sup>3</sup>	2.3062%	2.0737%	2.1373%	2.1006%	8.8034%
1993-94 <sup>3</sup>	2.0358%	1.8977%	1.8308%	1.8300%	7.7383%
1994-95 <sup>3</sup>	2.1777%	2.2819%	2.3058%	2.2589%	9.2279%
1995-96 <sup>3</sup>	2.0687%	2.0866%	1.9375%	1.9079%	8.1605%
1996-97 <sup>3</sup>	2.0048%	1.9310%	1.6952%	1.7229%	7.4884%
1997-98 <sup>3</sup>	1.7213%	1.5665%	1.4656%	1.4017%	6.2494%
1998-99 <sup>3</sup>	1.3731%	1.3720%	1.2998%	1.3129%	5.4295%
1999-00 <sup>3</sup>	1.3760%	1.4462%	1.5517%	1.5440%	6.0053%
2000-01 <sup>3</sup>	1.4938%	1.4508%	1.4302%	1.4177%	5.8764%
2001-02 <sup>3</sup>	1.4887%	1.4738%	1.4112%		

<sup>1</sup> From April 1, 1969 to March 31, 1974, interest was calculated in the beginning of the fiscal year by using the March monthly average of those market yields of Government of Canada bond issues as published each Wednesday by the Bank of Canada as part of its weekly financial statistics which have terms to maturity of 10 years or over, together with an interest rate adjustment to correct for the amount by which rates during the course of the previous fiscal year will have varied from the rate established at the commencement of that year. This Interest rate was applied to the April 1 Opening Balance of the account (Capital and Revenue) and the resulting interest was credited to the Band Revenue Account in the beginning of the fiscal year.

<sup>2</sup> From April 1, 1974 to March 31, 1980, an interest advance was credited to the Band Revenue Account in the beginning of the fiscal year by multiplying the March monthly average of those market yields of Government of Canada bond issues as published each Wednesday by the Bank of Canada as part of its weekly financial statistics which have terms to maturity of 10 years or over to the account's (Capital and Revenue) year-end carryover amount. At the end of the fiscal year, the actual interest for the fiscal year was calculated by multiplying the yearly average of those market yields of Government of Canada bond issues having terms of maturity of 10 years or over to the annual average month-end account (Capital and Revenue) balance with interest advance deducted. The difference between the interest advance and the actual interest is then credited or debited to the Band Revenue Account. For 1974-1975, an interest advance was calculated as

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*described in (1) above, but an adjustment was made to reflect the actual interest earned at the end of the fiscal year.*

<sup>3</sup> *From April 1, 1980 to the present, interest has been calculated on quarterly average month-end balances on deposit and compounded semi-annually. The interest rate has been based on the quarterly average of those market yields of the Government of Canada bond issues as published each Wednesday by the Bank of Canada as part of its weekly financial statistics, which have terms to maturity of 10 years or over.*

<sup>4</sup> *The last column is an annualized interest rate that is shown for information purposes only. Calculations of interest must be based on month-end account balances which generally vary from month to month.*



2.0 Order-in-Council (P.C. 1981-3/255) dated January 29, 1981.

## Order in Council P.C. 1981-3/255

Order in Council P.C. 1981-3/255



CANADA  
PRIVY COUNCIL • CONSEIL PRIVÉ

(T.S. Rec.  
(Rec. du C.T.)

P.C. 1981-3/255  
29 January, 1981

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL,  
on the recommendation of the Minister of Indian Affairs and  
Northern Development and the Treasury Board, pursuant to subsection  
61(2) of the Indian Act, is pleased hereby to revoke Order in  
Council P.C. 1969-1934 of the 8th of October, 1969 and to fix  
the rate of interest to be allowed, commencing the 1st day of  
April, 1980, on Indian Bands' Revenue and Capital moneys held  
in the Consolidated Revenue Fund at the quarterly average of  
those market yields of the Government of Canada bond issues as  
published each Wednesday by the Bank of Canada as part of its  
weekly financial statistics, which have terms to maturity of 10  
years or over.

CERTIFIED TO BE A TRUE COPY - COPIÉ CERTIFIÉ CONFORMÉ

CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVÉ

## *Appendix C - Indian Bands Revenue Moneys Regulations*

### Regulations Respecting Revenue Moneys of Certain Bands of Indians

#### Short Title

1. These Regulations may be cited as the Indian Bands Revenue Moneys Regulations.

#### Interpretation

2. In these Regulations,  
"account" means, the account of a band established pursuant to section 5;  
"band" means,
  - (a) a band listed in the schedule to the Indian Band Revenue Moneys Order, or
  - (b) any other band permitted to control, manage or expend its revenue moneys in part pursuant to subsection 69(1) of the Indian Act.

#### (Title Revoked)

3. Section 3 is revoked.

#### General

4. Any expenditure by a band of its revenue moneys shall be subject to the Indian Act.
5. Every band shall establish an account with a chartered bank, a trust or loan company or a credit union or caisse populaire.
6.
  - (1) Every band shall authorize three persons, two of whom shall be members of the band, to sign cheques or orders for payment of money drawn on its account.
  - (2) Every cheque or order for payment of money drawn on the account of a band shall be signed by at least two of the persons authorized by the band pursuant to subsection (1).
7. Where the Minister has, pursuant to section 66 of the Indian Act, authorized or directed the expenditure of revenue moneys of a band, the amount of moneys so authorized or directed to be expended shall be paid to the band's account out of the Consolidated Revenue Fund.
8.
  - (1) Every band shall engage an auditor to audit its account and to render an annual report in respect thereof.
  - (2) A copy of the auditor's annual report shall, within 7 days of its completion,
    - (a) be posted in conspicuous places on the band reserve for examination by members of the band; and
    - (b) be supplied to the Minister of Indian Affairs and Northern Development.

## Appendix D - Checklist for Completing the Initial Expenditure Review

- | 1. Adequacy of Information Contained on the BCR: |  | Yes | No  |
|--|--|-----|-----|
| a)   | First Nation name is identified?                           | ___ | ___ |
| b)   | BCR is dated and numbered                                  | ___ | ___ |
| c)   | Source of funds is identified (capital or revenue moneys)? | ___ | ___ |
| d)   | Amount requested is indicated?                             | ___ | ___ |
| e)   | Purpose of expenditure is mentioned?                       | ___ | ___ |
| f)   | Membership vote requested?                                 | ___ | ___ |
|  | If yes, results of the vote received?                      | ___ | ___ |
| h)   | Council meeting held was duly convened?                    | ___ | ___ |
| i)   | BCR duly signed?   | ___ | ___ |
| j)   | Statement that audit will be given to Minister/members?    | ___ | ___ |
| k)   | Statement that proper records will be kept?                | ___ | ___ |
2. Other Information
- a) Under what section/paragraph of the Act does the proposal fall?
- b) Who has delegated signing authority (district, region or Minister)?
- c) What are the amounts in band's capital and revenue accounts?
- Are there sufficient funds available to finance the expenditure request?  
Yes \_\_\_ No \_\_\_
  - If 'No', can the First Nation demonstrate that there will be a level of known, or expected income for a given year, or throughout the year to finance the expenditure request and such that the expenditure request is not greater than current of projected receipts?  
Yes \_\_\_ No \_\_\_
- d) Has all required supporting information been submitted? Yes \_\_\_ No \_\_\_
- If not, what additional information is required?

From the First Nation: \_\_\_\_\_

From other sources (e.g. DIAND Technical Services, Funding Services, etc.): \_\_\_\_\_

- e) Is First Nation council under a Remedial Management Plan? Yes \_\_\_ No \_\_\_
- If yes, obtain a copy.

## Appendix E - Calculation of Amount Owing Under Section 64.1 of The *Indian Act* Calcul Du Montant Dû Selon l'Article 64.1 De La *Loi Sur Les Indiens*

1. Name of person / Nom de la personne	
2. (a) Date of signature on application for reinstatement / Date de signature sur la demande de réinscription	2. (b) Date of receipt of application for reinstatement in Office of Registrar / Date de réception de la demande de réinscription au Bureau du registraire
3. Date of reinstatement letter / Date de la lettre de réinscription	4. Reinstated under section / Réinscrit(e) selon l'article :
5. Last band member of / Membre de quelle bande (dernière)	
6. Date of loss of status / Date de la perte du statut	7. Date of loss of status payment / Date du paiement pour perte de statut

8. Amount of payment on loss of status / Montant du paiement lors de la perte du statut	
a) Treaty / Traité	
b) one per capita (Capital) / une part par personne (Capital)	
c) one per capita (Revenue) / une part par personne (Revenu)	
<b>TOTAL</b> ▶	

9. Amount not required to be reimbursed - Montant non exigible pour remboursement	
a) Treaty / Traité	
b) Section 64.1 / Article 64.1	\$1,000.00
<b>TOTAL</b> ▶	

10. Principle amount required to be reimbursed / Montant de capital non exigible pour remboursement	(8.) - (9.) = ▶	
--	-----------------	--

11. Total amount owing to Band as of / Montant total dû à la bande à partir de	Date ▶	Amount / Montant	\$
12. Total amount owing to the individual as of / Montant total dû à la personne à partir de	Date ▶	Amount / Montant	\$
Band council by-law under paragraph 81(1)(p.4) to bring subsection 64.1(2) into effect / Règlement administratif du Conseil de bande selon l'alinéa 81(1)(p.4) pour mettre en vigueur le paragraphe 64.1(2)		Yes / Oui <input type="checkbox"/>	No / Non <input type="checkbox"/>

13. Comments / Remarques
--------------------------

Trust funds clerk / Commis des fonds en fiducie	Authorized officer / Fonctionnaire autorisé
Date ▶	Date ▶

**Regional Business  
Plan Assessment  
Report**

Prepared by the \_\_\_\_\_ Region for:

the Indian Moneys, Estates and Treaty Annuities (IMETA) Directorate  
Individual Affairs Branch (IAB), Headquarters  
Resolution and Individual Affairs (RIA) Sector

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Paragraph 64(1)(k)

Band Name & Number:	
Name of Business/Corporation:	

ISSUE:	Should the Minister authorize and direct the release of \$ _____ of capital moneys to the _____ First Nation pursuant to paragraph 64(1)(k) of the <i>Indian Act</i> ?
--------	--

BUSINESS NAME:	
ADDRESS:	

TYPE OF BUSINESS:		DEVELOPMENT STAGE	
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PURPOSE OF REQUEST:	
PROJECT:	

PROGRAM	FINANCING
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ITEM	\$	%	SOURCE	\$	%
TOTAL:			TOTAL:		

BCR DATE: (dd/mm/yy) _____	DATE APPLICATION RECEIVED AT REGION: (dd/mm/yy) _____
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DISTRICT	REGION	HEADQUARTERS
Recommended                      20____ AMOUNT: NAME: TITLE Signature:	Recommended                      20____ AMOUNT: NAME: TITLE: Signature:	Recommended                      20____ AMOUNT: NAME: TITLE: Signature:
AMOUNT: NAME: TITLE Signature:	AMOUNT: NAME: TITLE: Signature:	AMOUNT: NAME: TITLE: Signature:
AMOUNT: NAME: TITLE: Signature:	AMOUNT: NAME: TITLE: Signature:	<b>MINISTER'S OFFICE</b>
		DATE: NAME: Signature:

FINANCIAL STATEMENTS FOR:	
PREPARED BY:	

AUDITED <input type="checkbox"/>	REVIEW ENGAGEMENT <input type="checkbox"/>	YEAR-END <input type="checkbox"/>	COMBINED <input type="checkbox"/>
YEAR ESTABLISHED: _____	OTHER <input type="checkbox"/>	INTERIM <input type="checkbox"/>	CONSOLIDATED <input type="checkbox"/>

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**SAMPLE BALANCE SHEET**

ASSETS	\$	PROFORMA	LIABILITIES	\$	PROFORMA
CASH			BANK		
RECEIVABLES					
INVENTORY			ACCRUALS		
PREPAID EXPENSES			TERM DEBT - CURRENT		
OTHER:			OTHER:		
			UNEARNED REVENUE		
TOTAL CURRENT			TOTAL CURRENT		
LAND IMPROVEMENTS			LONG TERM DEBT		
BUILDING					
Deprec. (\$)					
MACHINERY & EQUIPMENT			SHAREHOLDER LOANS		
			EQUITY & GRANTS		
VEHICLES			Grants:		
LEASEHOLD IMPROVEMENTS					
FURNITURE & FIXTURES					
			EQUITY		
OTHER:			Preferred Shares		
			Common Shares		
			Proprietors		
INTANGIBLES			RETAINED EARNINGS(Deficit)		



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BANK		LINE OF CREDIT BEFORE PROGRAM		AFTER PROGRAM	
------	--	-------------------------------------	--	------------------	--

FINANCIAL STATEMENTS FOR: PREPARED BY:			
AUDITED <input type="checkbox"/>	REVIEW ENGAGEMENT <input type="checkbox"/>	YEAR-END <input type="checkbox"/>	COMBINED <input type="checkbox"/>
YEAR ESTABLISHED:	OTHER <input type="checkbox"/>	INTERIM <input type="checkbox"/>	CONSOLIDATED <input type="checkbox"/>

SAMPLE INFORMATION





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1. HISTORY

History should be limited to key facts: the year when the business was founded, change of ownership (if any), physical expansions, growth and important factors that influenced the business. A description of past departmental involvement in the business is also required (eg, past expenditures, etc.).

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2. OWNERSHIP STRUCTURE

Identify whether business is an incorporation, partnership, limited partnership, sole proprietorship, not for profit.

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3. DIRECTORS

Based on the detailed analysis of the Board of Directors, an assessment is required of the Board's ability to oversee the management and managers of the business.

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4. MANAGEMENT

Based on the detailed management analysis, an assessment is required of the management team's ability to successfully run and plan every facet of the business.

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5. DESCRIPTION OF OPERATIONS,  
PRODUCTS OR SERVICES

Assessment is required on whether the description of operations convey a clear idea of the nature and size of the business and its product or service.

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6. SUPPLIER/PURCHASING

Assessment is required of the adequacy of or dependency on supply sources, as well as the aging of payables as compared to industry standards and terms with suppliers.

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7. MARKET SERVED/MARKET OPINION

Geographic market, advertising, potential market volume, pricing policy.

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8. COMPETITION

In the case of a new business, what effects will the proposed business have on existing operations? What is the company's competitive advantage and position versus those of its competitors?

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9. FINANCIAL ANALYSIS

**HORIZONTAL ANALYSIS:**

The horizontal analysis is the examination of elements in the financial statements over a period of time - usually two or more fiscal periods.

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**VERTICAL ANALYSIS:**

The vertical analysis provides on a percentage basis the fluctuation of expenses as compared to sales. In summary form, present your conclusions on fluctuations of expenses and your comparison to the industry.

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**RATIO ANALYSIS:**

The ratio analysis provides quick financial measures of a company's performance. These ratios are usually compared to the industry, but also provide valuable information on their own. A summary of conclusions from the ratio analysis should be stated.

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**CASHFLOW STATEMENT ANALYSIS:**

Summary conclusions on the adequacy of receipts to meet disbursements in a timely fashion. Does the client's cashflow address all requirements or have there been any oversights on their part?

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**INSURANCE ANALYSIS:**

Summary conclusions on adequacy of coverage that is available to protect the client's investment.

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**OPERATING & WORKING CAPITAL ANALYSIS:**

Summary conclusion that adequate working capital has been budgeted to meet up-front costs.

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**10. ENVIRONMENTAL ASSESSMENT**

Any environmental concerns? How will they be mitigated?

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**11. FACILITIES**

Confirm that facilities are adequate to meet the business objectives of the company.

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**12. HUMAN RESOURCES**

Breakdown the number of existing full-time, part-time positions prior to funding from the trust fund account, with a dollar value for payrolls. Breakdown of positions after assistance based on the proposed project. Provide an opinion of the qualifications of human resources to meet the goals and objectives of the business.

EXISTING:  
FULL TIME \_\_\_\_\_ PART TIME \_\_\_\_\_  
TOTAL \_\_\_\_\_ DOLLAR VALUE \_\_\_\_\_

AFTER ASSISTANCE:  
FULL TIME \_\_\_\_\_ PART TIME \_\_\_\_\_  
TOTAL \_\_\_\_\_ DOLLAR VALUE \_\_\_\_\_

COMMENTS:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**13. ECONOMIC, SOCIAL BENEFITS**

What impact will the project have on the community if band capital moneys are provided or refused by the Minister of DIAND? What factors were considered in support of the recommendation?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**14. SECTION 64(1)(K) DATA**

Itemization of past expenditures made from the band's trust accounts that may relate to the current proposal.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**15. RETURN ON INVESTMENT (R.O.I.)**

A breakdown of historical and projected return on Investment for the business. Compare to DIAND trust account's return on Investment.

YEAR:	200_	200_	200_	200_
R.O. I.:	___	___	___	___

**16. PREVIOUS GOVERNMENT SUPPORT**

Provide details of funding from other government programs that were used to support the project since inception. Confirmation that conditions were met with the agencies upon completion of program

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**17. OTHER SOURCES OF FUNDING**

Confirmation that for the current proposal, there are no other funding sources that the band may be able to utilize to finance its request.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**18. STRENGTHS**

Point form remarks on the strength of the business in terms of its management, operation, market or products.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**19. WEAKNESSES**

Point form remarks on the weak points of the business in terms of its management, operation, market or products.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**20. OTHER REMARKS**

Use this section to cover any points that may not have been included elsewhere, but may have material impact. It may also be used to highlight key points that will reinforce any recommendations.

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**21. RECOMMENDATIONS/RATIONALE**

State the recommendation(s) and explain the rationale on which the recommendation is based to support or decline the expenditure request.

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SAMPLE INFORMATION

## Appendix G - Checklist for Processing Section 69 Authority Submissions

### Evidence of Informed Band Membership Support:

- Statement on method used to inform membership.
- Minutes of meeting at which the membership were informed.
- Statement on voting process followed.
- Results of referendum vote

### Band Council Resolution (BCR):

- Original BCR submitted and duly authorized.
- First Nation has clearly requested section 69 authority.
- BCR specifies whether whole or partial authority requested.
- Membership informed.
- Band Council agrees to meet requirements of revenue moneys regulations.
- Band Council agrees to exercise its powers for general progress/welfare of the Band.
- Band Council named to exercise Band powers.
- Band Council agrees to fully inform and disclose the particulars of its management of revenue moneys to the membership.
- Band Council agrees to fully disclose to the Minister its management of revenue moneys.

### Evidence of Consistent Financial/Fiscal Responsibility:

- Audits for most recent three years obtained.
- Departmental assessment of these audits obtained and reviewed.
- Band Council has corrected any problems noted in previous audit assessments.
- Letters from other program areas (if applicable).

### Regional Recommendation:

- Full rationale supporting regional recommendation included.
- Recommendation signed by RDG.





**Appendix I - Sample Release Form For Payments  
To Persons Deleted From A Band List**

FROM: \_\_\_\_\_

(Hereinafter referred to as the “Applicant”)

TO: \_\_\_\_\_

(Hereinafter referred to as the “Band”)

WHEREAS the *Indian Act* R.S.C. 1970 C.1-6 as amended, provides that a Band Council may authorize the Minister to make payments out of the capital or revenue moneys to persons whose names become deleted from the Band list of the Band; and

WHEREAS pursuant to this power the Band Council has passed a By-Law Respecting Payments of capital and revenue moneys to persons whose names become deleted from the Band list of the Band; and

WHEREAS the applicant desires to receive such a payment; and

NOW THEREFORE BE IT AGREED that in consideration of the Band Council authorizing the Minister to make a payment out of the capital and revenue moneys held by the Minister for the benefit of the Band, as set out herein, it is agreed as follows:

1. Upon execution of the Release, the Band through its Band Council will pass a Band Council Resolution in a form as set out in the attached BCR.
2. The Applicant shall not ever reside on the \_\_\_\_\_ reserve.
3. The Applicant shall not ever apply for membership in the \_\_\_\_\_ Band.
4. The Applicant shall withdraw any and all applications which have been made for membership in the Band.
5. The Applicant hereby applies to the Band Council to have the Applicant’s name deleted from the Band List.
6. The Applicant hereby surrenders the Applicant’s membership in \_\_\_\_\_ Band.
7. The Applicant agrees that the payment out of the capital and revenue moneys held by the Minister for the benefit of the Band shall constitute a complete and full payment to the Applicant for all of the rights, interests, benefits and other attributes of the Band Membership which the Applicant is hereby applying to surrender, and for any and all rights, interests, and benefits which are incidental to, connected with or which flow from that membership. Without restricting the generality of the foregoing this clause shall apply notwithstanding that the Applicant may have been or have become entitled to a greater

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Appendix I – Sample Release Form for Payment to Persons Deleted from a Band List

sum in light of the determination of litigation surrounding the validity of the 1985 amendments to the *Indian Act* and the membership granted by those amendments.

THIS RELEASE made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by the Applicant.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
(Applicant)

THIS RELEASE accepted by the \_\_\_\_\_ Band Council

this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
Chief

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

\_\_\_\_\_  
Councillor

SAMPLE INFORMATION

## Appendix J – General Documentation Requirements

### 1.0 General Documentation Requirements

The following are general documentation requirements described for the expenditure of Band capital moneys under paragraph 64(1)(a) through (k) depending on the proposed use of funds.

- \*BCR<sup>1</sup> for the Minister's signature.
- If the First Nation is receiving funding from the Department, a copy of the funding arrangement which identifies all sources of funding, the scope of work, schedule and budget.
- Justification in the form of appraisals, cost estimates and financial projections from qualified sources to show that the First Nation is paying a fair price and the proposal will lead to economic benefits.
- Where necessary, all submissions must include an environmental screening and an environmental assessment or audit of the proposal.

### 2.0 Demonstrating Benefit – General Criteria

In formulating a recommendation, for the purchase of heavy equipment or where demonstrating benefit is required, it must be demonstrated that the proposed expenditure will be of overall benefit to the First Nation. The following general criteria should be considered:

- price (fair and reasonable);
- annual operating and maintenance costs;
- primary and secondary uses of the equipment;
- other sources of funding to be accessed;
- owner and insurer of the asset.

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<sup>1</sup> Refer to Appendix O - Band Council Resolution (BCR) Requirements. A BCR generally should not be more than one year old from time of passing at a Band council meeting to the time it is received at INAC. If the BCR is more than one year old when received by INAC, departmental staff must contact the chief and council, through correspondence or electronic mail, to verify whether the BCR is still valid and/or if the First Nation wishes to cancel the BCR.

## Appendix K – BCR Request for PCD where the Minister is directed to make a payment for the benefit of minors

- 1.0 A First Nation council may use the following wording in its BCR to give notice to the Minister that payments on behalf of minors are necessary or proper:

We, \_\_\_\_\_ (name of First Nation) \_\_\_\_\_, do hereby request funds of approximately \_\_\_\_\_ (amount) \_\_\_\_\_ from our capital account in order to issue a per capita distribution (PCD) under paragraph 64(1)(a) of the *Indian Act*.

By \_\_\_\_\_ (date) \_\_\_\_\_, the PCD payments will be issued in the amount of \_\_\_\_\_ (amount and frequency) \_\_\_\_\_ to each of the \_\_\_\_\_ (number) \_\_\_\_\_ First Nation members on the Band list as at \_\_\_\_\_ (date) \_\_\_\_\_.

We, \_\_\_\_\_ (name of First Nation) \_\_\_\_\_, council will administer the PCD and will be responsible for preparing and distributing the individuals cheques to all members (*this is an optional clause and may be subject to INAC approval*).

We, \_\_\_\_\_ (name of First Nation) \_\_\_\_\_, council have made a determination under section 52.1 of the *Indian Act*, do hereby direct the Minister to make a payment for the maintenance, advancement or other benefit for those minors specially named in the attached Band list. Children on whose behalf such payments are being made are in the care and custody of the persons identified in the Band list.

We, \_\_\_\_\_ (name of First Nation) \_\_\_\_\_, council have complied with all the requirements of subsections 52.1(1) and (2) of the *Indian Act*, in that #? \_\_\_\_\_ days prior to making our determination, we did post in a conspicuous place on the reserve a notice of our intention to make a decision under section 52.1 and First Nation members were given a reasonable opportunity to be heard at a general meeting of the First Nation held prior to the determination (this is an optional clause).

We, \_\_\_\_\_ (name of First Nation) \_\_\_\_\_, council have designated the following council member(s) to sign the prescribed receipt on our behalf for all moneys received under subsection 52.1(3) of the *Indian Act*.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Name of Councillor(s))

The books and records will be kept in accordance with generally accepted accounting principles. The \_\_\_\_\_ (name of First Nation council) \_\_\_\_\_ will provide audited financial statement to the department within 90 days of the end of the fiscal year.

Any unexpended funds will be returned to the department as a debt due to the Crown.

## Appendix L – Payment to a First Nation Council on Behalf of Minors

- 1.0 A receipt must be signed by the council members identified in a BCR that requested the distribution, to discharge the Minister from liability for the loss or misapplication of a PCD payment. The following receipt form is suggested:

Receipt Form	
Payment to a First Nation Council on Behalf of Minors	
We,	_____
	_____
	_____
	_____
duly elected members of the _____ First Nation Council	
acknowledge on behalf of the members of the First Nation Council receipt of _____	
_____ dollars, made payable to the members of the _____ First	
Nation Council "in trust" for the express purpose of _____	
_____	
-	
_____	
-	
Pursuant to subsection 52.5(2) of the <i>Indian Act</i> 1985 R.S.C. c. I-5, we further acknowledge that this receipt given in respect of said moneys is a sufficient discharge for the moneys and effectively exonerates Her Majesty, Her representatives and officials, from seeing to the application of the said moneys or from being answerable for its loss or misapplication.	
	First Nation Council
_____	Signatures: _____
Witness	_____
	_____
	_____
Dated this _____ day of _____, 200__ .	

## Appendix M - Payment to a Parent/Guardian on Behalf of a Minor

### Receipt Form

Payment to a Parent/Guardian  
on Behalf of a Minor

I, \_\_\_\_\_, being a member of the           (name of First Nation)          ,  
acknowledge receipt of the sum of \$ \_\_\_\_\_, which sum represents payment to me for  
myself and the following listed children, each of whom is a member of the  
          (name of First Nation)          .

CHILD'S NAME

BIRTH DATE


I represent that I am the parent or legal guardian of the above named children and that the funds received in respect to each such child will be used for his or her benefit or will be deposited in a trust account maintained for that child.

I, on behalf of myself and the above-named children, in consideration of the payment, do hereby release and forever discharge and indemnify the Department of Indian Affairs and Northern Development, the Chief and Council of the           (name of First Nation)          , their agents, employees, heirs, executors, administrators and assigns, from any and all manner of action, cause of action, suit, cost, debt, demand or claim of whatever nature or kind which the undersigned or any other person shall or may have by reason of or relating to the payment of moneys to me or to members of the           (name of First Nation)          .

SIGNED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

CHEQUE NUMBER \_\_\_\_\_

SIGNATURE \_\_\_\_\_





## Principles of Governance

Provide an explanation of how the community is made aware of the decisions made by the Band council, by general council meetings, communications/bulletins or otherwise. If possible, provide a general overview of the political and socio-economic environment of the First Nation.

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## PART D - ANALYSIS

### 1.0 Background

Explain the purpose(s) of the expenditure request in detail. Include background information that supports the need for the use of capital/revenue funds for this purpose. (Refer to specific supporting documentation when detailing the purpose(s) of the expenditure.) For each capital expenditure requested in the BCR the following must be provided:

- a) the purpose & the amount requested;
- b) a clear need and benefit statement, and;
- c) an indication that the expenditure request is a prudent, reasonable and provide sufficient evidence to support this statement.

### 2.0 Assessment of Benefit

Provide a summary of the benefit to the First Nation for this expenditure request. Include any employment statistics for band members, economic benefits, number of members that will directly or indirectly benefit from the request to the First Nation or other tangible benefits as a result of this expenditure.

If this is a re-occurring expenditure, details are required as to how successful the program/expenditure has been. Or if there is an increase in the request, there should be a corresponding rationale as to why the need for additional funds (i.e., increase in participation, etc).

### 3.0 Cross Sectoral Linkages

Do any other sectors/Departments have roles to play for this expenditure request? Describe how this role may affect the assessment process, if at all. Provide comments from the FSO regarding this expenditure request (*is a requirement*).

### 4.0 Legal and Other Considerations

Include any legal factors affecting this expenditure request, such as current litigation, land claim issues, governance issues or other considerations.

**5.0 Environmental Assessments**

Is an environmental assessment or screening needed for this request? If yes, provide a brief explanation. If no, has an assessment/screening taken place? What are the results? Do these results affect this expenditure request? Or, not applicable.

**PART E - FINANCIAL ANALYSIS**

**1.0 First Nation Capital/Revenue Trust Account**

Opening balance as of April 1, YYYY	\$ _____
Year to Date Revenue	\$ _____
Sub-total	\$ _____
<u>Less: Approved BCR Requests</u>	
BCR #, Date & Purpose	(\$) _____
<u>Less: Outstanding BCR Requests</u>	
BCR #, Date & Purpose	(\$) _____
<b>Total Commitments &amp; Outstanding BCR Requests</b>	<b>(\$) _____</b>
<b>Balance Remaining</b>	<b>(\$) _____</b>

**2.0 Financial Projection**

Please include any information on the estimated income from any activity on reserve for the fiscal year in which the expenditure request is taking place.

Provide any other financial detail here. Include outstanding payables that may have an affect on the account balance (i.e., IOGC forecast, impact request will have on account (percentage %)).

**3.0 Other Sources of Funding**

Include all other sources of funding provided for the purpose of this expenditure request. If none exist, please indicate that as well.

**4.0 Historical Account Activity**

Have Indian moneys been released for this purpose previously? If yes, please provide 1 or 2 sentences to explain. Is the First Nation maintaining its balance? Has there been a general decline over the last five (5) years? If so, has this been communicated to the First Nation's membership?

**5.0 Capital/Revenue Trust Account Balance**

Fiscal Year	Opening Balance	Receipts	Expenditures	Closing Balance
YYYY - **				
YYYY - 4				
YYYY - 3				
YYYY - 2				
YYYY - 1				
Total				

\*\* Include last 5 years account balances.

**6.0 Remedial Management Plan (RMP)**

Is the First Nation under an RMP? What is the level of intervention (self-imposed, third party manager)? What is the status of the RMP? How many years has this RMP been in place? When will the RMP no longer be necessary?

**7.0 Audit Information**

Did the First Nation receive a qualified/unqualified opinion from its auditor with respect to the Nation's financial standing? If a qualified opinion was given, what measures are being taken to resolve those issues? How will the Nation address outstanding financial issues?

**PART F - RECOMMENDATION**

*(For capital requests of this type to be recommended, it must be a prudent use of funds, promote the general progress and welfare of the First Nation, and be a reasonable expenditure.)*

Based on the information provided, I recommend approval of this expenditure request in accordance with [subsection 64(1)/section 66] of the *Indian Act* in the amount of \$ \_\_\_\_\_ for the purpose of *(insert purpose of expenditure request)*.

\_\_\_\_\_  
(sign here)  
( print name here )  
Regional Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
(sign here)  
( print name here )  
Regional Manager

\_\_\_\_\_  
Date

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Appendix N – Indian Moneys Expenditure Request*

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I concur with the recommendation.

I do not concur with the recommendation.

(sign here)

\_\_\_\_\_

( print name )

Regional Director

I concur with the recommendation.

\_\_\_\_\_

Date

I do not concur with the recommendation.

(sign here)

\_\_\_\_\_

( print name here )

Regional Director General

I concur with the recommendation.

\_\_\_\_\_

Date

I do not concur with the recommendation.

SAMPLE INFORMATION

## Appendix O – Band Council Resolution (BCR) Requirements

A BCR must contain the following information:

- a clear statement indicating that the BCR was passed at a duly convened meeting of the council and the date of that meeting; copies of council minutes where the expenditure was considered may be included as supporting documentation;
- a statement of the number of council members constituting a quorum and the signatures of at least the council members that supported the motion;
- a clear indication of whether capital or revenue funds are required, the exact amount requested and a clear statement of the specific purpose(s) of the proposed expenditure;
- if a Band membership vote and/or any other form of duly convened meeting was held in support of the request, the results of the decision should be stated, along with the wording of the motion or question that was posed to the members;
- a statement that books and records will be maintained according to generally accepted accounting practices and that departmental staff will be permitted access, at reasonable times, to all relevant books, records and the project site for audit, inspection or any other reasonable purpose;
- a statement that audited financial statements will be provided to the Department for all trust funds within 120 days of the end of the fiscal year; and
- an indication of the date(s) on which the funds are required and where the negotiated cheque should be directed.