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Indian and Northern  
Affairs Canada

Affaires indiennes  
et du Nord Canada

## Self-Government

## Autonomie gouvernementale

**SELF-GOVERNMENT  
ON ESSENTIAL AND  
OPTIONAL SUBJECT  
MATTERS**

**Policy Directorate  
Self-Government Sector  
DIAND**

Aussi disponible en français



These tables were designed and inputted  
by Lucille Chartrand

## Self-government on Essential and Optional Subject Matters

### Introduction

This is a draft set of tables on the 7 essential and the 16 optional subject matters permitted by Cabinet for negotiation under the federal self-government policy (see "Indian Self-government Community Negotiations Guidelines"). These tables provide an overview of the sub-fields of each subject matter, their key components, precedents, and some general comments. Naturally, community specific negotiations require detailed responses. These tables do not provide such responses. However, they may assist those exploring with bands the most promising avenues of negotiation.

### Caveat

A full comprehension of these subject matters requires a detailed understanding of each sub-field. Readers should refer to the self-government legislation, constitutions, agreements, and other legislation identified in the tables, to gain a closer understanding not only of the direct references referred to herein, but also to related sections and clauses which may have a bearing on the sub-fields.

The contents of these tables are not a statement of federal policy. Federal policy is found in the Cabinet approved "Guidelines".

While every attempt has been made to ensure the accuracy of the citations in these tables, readers should check references carefully.

### Key components

The key components of each sub-field are listed to provide an appreciation of the essential elements suggested by the nature of the sub-field itself; the sub-fields' components are those suggested by an understanding of the subject matter from an overall perspective of modern public administration. In some cases, the components are particular to the Indian setting; however, for the most part they are generic.

### Precedents

The primary precedents to date are the Cree-Naskapi and Sechelt acts. The former has to be treated with caution, however, given that it fulfills ss.9-11 of the James Bay and Northern Quebec Agreement (JBNQA), which is constitutionally-protected (s.35(3), Constitution Act, 1982). The Cree-Naskapi Act is not constitutionally protected. Legislatively-protected self-government arrangements cannot contain every aspect found in Cree-Naskapi. Note that elements of the key components may be found in ancillary precedents such as the James Bay and Northern Quebec Agreement (JBNQA). These, too, require treatment with caution. Where useful, elements of the Indian Act are also noted.

It should also be noted that in many subject-matters (e.g., Justice), while there may be no self-government legislative precedents, federal and provincial governments have instituted discretionary program precedents which encourage Indian participation and influence on decision-making. These may be taken as useful suggestions which could serve as a basis for proposing options towards negotiating self-government arrangements.

Finally, readers should not necessarily view precedents as limits. Self-government arrangements are tailor-made outcomes of each set of negotiations. The "Guidelines" provide federal principles for negotiations. Indian negotiators should take as creative an approach to proposing self-government arrangements as they wish. The final outcome will be mutually agreeable self-government arrangements.

Comments

This column provides a brief indication of major observations necessary to develop community specific negotiations.

Comments from readers

Any comments would be most welcome. Please address them, and any errors or omissions in these tables, to:

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#### Glossary

G: 1

- \* E = Essential Subject Matter
- \* O = Optional Subject Matter

SELF-GOVERNMENT IN  
LEGAL STATUS AND CAPACITY

Legal Status and Capacity

As the Indian Act does not define the legal status and capacity of bands or band councils, nor their interrelationship, bands are limited in their ability to act as a natural person. The advantages of having legal status and capacity equivalent to a natural person are understood by the sub-fields of this subject matter, namely:

1. general
2. related to business
3. financial
4. judicial
5. related to land

## LEGAL STATUS AND CAPACITY

E: 1-2

<u>SUBFIELD</u>	<u>KEY COMPONENT</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
1. <u>General</u>	Authority delegated in legislation. Description of government powers. Link between the band and band members. Link between law and Constitution. Sub-delegation may be specified.	Capacity, rights, powers and privileges of a natural person ( <u>Sechelt</u> , s.6 and <u>Cree-Naskapi</u> , s.22(1)).	Acquiring the capacity of a natural person confers legal status and capacity. Incorporation is an alternative, but it does not address the current uncertainty of Indian bands and band councils.
2. <u>Related to Business</u>	To contract and conclude agreements. More generally an ability to execute enforceable security agreements in business dealings. Offer guarantees.	A band may own shares in corporations ( <u>Cree-Naskapi</u> , s.22(3)) ( <u>Sechelt</u> , s.6(a))	Incorporation might be sufficient to facilitate business dealings if business (i.e. to earn profit) was sole motivation.
3. <u>Financial</u>	To borrow money. To raise, spend and invest money. To manage and expend certain Indian money.	Loan or borrowing to be approved by a band by-law ( <u>Sechelt</u> , s.6(d) and Constitution, Part II, Divisions (4) to (8); Part I, Division (5), and <u>Cree-Naskapi</u> s.97.)	Limits may be provided in legislation or preferably the Constitution.
4. <u>Judicial</u>	The capacity to sue or be sued.	Included in the capacity and rights of a natural person ( <u>Cree-Naskapi</u> , s.22) and mentioned in <u>Sechelt Act</u> , (s.6(e)).	As a natural person the band may take legal action on contracts and agreements, and will be subject to the same.
5. <u>Related to land</u>	Acquire, hold, manage and dispose of lands. (See also Lands and Resources tables).	<u>Sechelt</u> , ss.6(b), 7, 8, 9, 10 and 23-26. <u>Sechelt Constitution Part I</u> , Division (2), s.4 describes the powers related to lands in the Band Land Regime including access, zoning, planning and expropriation covered under Part III, Division (1). A band may manage and administer its lands (1A or 1A-N) ( <u>Cree-Naskapi</u> , ss.21-22).	Power may be restricted by band members but without it, no flexibility for the band to deal with these issues.

### General comments

In general, it would not be acceptable to stay within the ambiguous status of the Indian Act.

The band cannot describe itself as being only a commercial entity. It would not be acceptable that many corporations be created without control by band members and a minimum of transparency (See accountability in E:2 and E:5).

Bands cannot have their own legislative scheme, for incorporating businesses akin to the Canada Business Corporations Act or the Canada Corporation Act or similar provincial legislation. Band business will have to be incorporated under appropriate federal or provincial law.

SELF-GOVERNMENT IN  
STRUCTURES AND PROCEDURES

Structures and Procedures

Structures and Procedures are key to contemporary governance and public administration. The accountability of the rulers to the ruled, leadership selection, the role and rights of the band member, the functions of the band council and other institutions, and methods of decision-making, form central aspects of band legislation and more particularly, band constitutions.

Sub-fields discussed below include:

1. political accountability
2. elections
3. constitution
4. structures and institutions
5. processes

See also the sub-field "Rule of Law", pp. O: 4-2.



STRUCTURES AND PROCEDURES

E: 2-2

<u>SUB-FIELD</u>	<u>KEY COMPONENT</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
1. <u>Political</u> <sup>1</sup> <u>accountability</u>	Accountability to membership. Special recourse or appeal (Commission, Minister, GiC or others)	Process for band members action in <u>Cree-Naskapi Act</u> . Creation of a Cree-Naskapi Commission to report on the implementation of the Act and investigate (ss.157 - 172).  The Sechelt Band shall act through the Council ( <u>Sechelt Act</u> , s.9). Legislative powers of council (s.14) defined in Constitution (Part III., Division (1)).	The band government is expected to respect democratic principles in fulfilling its responsibilities.
2. <u>Elections</u> <sup>2</sup>			
o Principle	To be Inspired by democratic values, and be free, fair and equitable.		Canadian Charter of Rights and Freedoms provides protection for individual freedoms and enshrines the principle of a democratic society.
o Right to vote	Available to adults without discrimination. Includes right to be informed.	Elector defined by the <u>Cree-Naskapi Act</u> as member of a band who is eighteen years of age or over and not declared mentally incompetent under the laws of the Province (section 2).  Sechelt Constitution says 18 years old and ordinarily resident on Sechelt Lands (Constitution, definition).	Restrictions on participation should be non-arbitrary and reasonable.
o Custom	To revert to tradition implies some codification and application of some criteria. The need to codify depends on what would be legislated, and on the consequences of leaving aside the issue.	259 bands operate according to custom instead of the <u>Indian Act</u> regime. Some Cree communities have included traditional features.	Elections would have to be free and fair according to Canadian democratic principles and practices. Minimum requirements might depend on the proposal and its implication. In any event, clarity should remain a goal to ensure custom is knowable and workable.
o Procedure	Participation of citizens. Information. Effective choice. Elections held periodically. Removal of government members. Dispute resolutions and appeal mechanisms. Amendment.	Cree and Naskapi bands have all enacted election by-laws (under s.64), which have been approved by Minister. Appeals under Sechelt are made to the Supreme Court of B.-C. (Part I, division (4), s.27, for referenda, and Part II, Division (1), s.44, for elections).	Advantage of flexible procedures that can be amended by the membership. Internal appeal mechanisms may be useful when tradition covers many aspects. Judicial route also offers some advantages.

1 Readers are invited to consult "Concepts of Political and Financial Accountability in an Indian Government Setting" (DIAND, Policy Directorate: January 1990)

2 Readers are invited to consult, for a detailed treatment, "Leadership Selection Regimes Under Self-Government" (DIAND, Policy Directorate: January 1990).

## STRUCTURES AND PROCEDURES

E: 2-3

<u>SUB-FIELD</u>	<u>KEY COMPONENT</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
o Eligibility	Eligible members shall be admitted as voters. Other criteria are usually added to ensure membership will be appropriately represented.	Cree-Naskapi eligibility provides a list of exclusions (s.68). The Nemaska election by-law calls for a woman and an elder among the council members.	Bands might propose hereditary chiefs, clans, elders or other categories to be specifically represented on some or all council positions. Each proposal will require careful review to ensure that, in balance, the overall election regime is fair and reasonable.
3. <u>Constitution</u>	Role of band members. Powers and duties to be carried out have to be described. Amendment procedures.	Sechelt Constitution sets powers and procedures to be followed for election (Part II) and membership (Part I), for instance. Amendment process also described in <u>Sechelt</u> (ss.11-12). Band approval plus OIC. For amendment, <u>Cree-Naskapi Act</u> has to go to Parliament, which is time-consuming and cumbersome.	A band constitution accepted by a reasonable proportion of band members appears a useful tool to develop and use in addition to detailed legislation. Flexibility to amend its Constitution within certain limits would meet both future needs and protection of the band interests.  The <u>Cree-Naskapi</u> legislative detail is not preferable; band constitutions provide greater flexibility.
4. <u>Structures, Institutions</u>	Efficiency. No duplication or overlapping. Linked to membership for consultation, approbation and other purposes.	All Cree and the Naskapi bands are incorporated (ss.12 & 14). Cree Regional Authority created by Quebec is also recognized (definitions), Band Council (ss.25-27). Sechelt Indian Band is established (s.5), and Band Council (s.8).	Other government models and practices are useful to explore and adapt to specific situation.
5. <u>Processes</u>	Enactment or disallowance of by-laws. Enforcement. Information of band members. Administration and management of band affairs.	Cree-Naskapi Council meetings, committees, by-laws and resolution making and challenges are described (ss.30-57). Sechelt Constitution (Part II, division (2)) describes band meetings and conditions of decision-making.	Proliferation of structures and overcentralization and overdecentralization should be avoided.  Other government models and practices are useful to explore and adapt to specific situation.

SELF-GOVERNMENT INMEMBERSHIPMembership

Who is a member of a band affects both individual rights and the band collectivity. The number of status Indians affects departmental base level funding. Creativity in this subject matter is constrained by existing membership codes and C-31 provisions protecting persons with acquired rights to membership. In certain cases, it is possible that an acceptable code for an Indian Act band may be problematic should that band opt for self-government.

Sub-fields include:

1. membership code
2. reinstatement
3. membership list
4. structure (appeals)



SELF-GOVERNMENT IN MEMBERSHIP

E: 3-2

<u>SUB-FIELD</u>	<u>KEY COMPONENT</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
1. <u>Membership code</u>	<p>Power of the band to enact written code recognized. Subject to negotiations and Charter of Rights and Freedoms.</p> <p>Democratic principles and non arbitrary exclusion shall prevail in a code that will become the basis of self-government membership.</p>	<p>Eligibility measures referred to in chap. 3 of JBNQA are confirmed by the <u>Cree-Naskapi Act</u> (s.17). Sechelt membership code is included in the Band Constitution (Part I).</p> <p>Membership codes established following C-31 might be used.</p>	<p>Bands under a self-government legislation are expected to have their membership code.</p> <p>In cases where bands whose membership codes have failed to meet the requirements of the <u>Indian Act</u> necessary for the Minister to give the band control of membership, negotiation will be required to ensure that the code under a self-government regime is fair and non-arbitrary.</p> <p>When the Minister continues to be responsible for program delivery and remains accountable, the membership code does not have the same consequences as when the band comes under a self-government legislation.</p>
2. <u>Reinstatement</u>	<p>(C-31) plus membership code dispositions.</p>	<p>Membership conditional to electors approval (<u>Sechelt</u>, s.10 (d) establishes need for membership code. Constitution, Part I, elaborates).</p>	
3. <u>Membership list</u>	<p>Management and updating of the Band list.</p>	<p>The Sechelt Band List is maintained by the Band Council (Part I, division (1), s.1).</p>	<p>Bands with a membership code will manage their list. Bands will be vested with the continuous enrollment responsibility based on predetermined eligibility criteria.</p>
4. <u>Structure</u>			<p>Appeal mechanism to be provided. Appeal to the Supreme Court of B.C. for Sechelt; decision of the Band Electors final and binding (Part I, division (1), s.10).</p>

SELF-GOVERNMENT IN  
LANDS AND RESOURCES

Lands and Resources

Lands and Resources lie at the heart of Indian-State relations in Canada. Whether it be through treaties, comprehensive claims, the Indian Act, or self-government legislation (to name a few conferring instruments) a close appreciation of lands and resources is essential to understanding Indian issues. For further information, readers are invited to consult "Property Rules for Indian Lands Under Self-Government", Policy Directorate, Self-government Sector, DIAND, January, 1990.

Sub-fields in lands and resources are wide ranging, given the all-encompassing nature of the subject matter. The sub-fields include:

1. title, ownership, and other proprietary interests
2. land use and management
3. legislative jurisdiction
4. possession
5. security of tenure
6. access
7. disposition (surrenders, sales, leases, permits, estates)
8. land registry
9. third party interests
10. fiscal issues
11. non-reserve lands
12. minerals
13. oil and gas
14. timber
15. water
16. fish
17. wildlife
18. environment
19. off-reserve issues
20. environmental protection
21. major project review
22. impact mitigation

LANDS AND RESOURCES: LANDS

SUB-FIELD

KEY COMPONENT

PRECEDENT

COMMENT

1. Title, Ownership, and Other proprietary interests

Clear ownership, and role of Minister must be clear.

- the nature, type or category of lands over which title/ownership or proprietary interests is affirmed must be specified. Reserve lands, surrendered lands, lands acquired through comprehensive or specific land claims (for instance the category of the James Bay and Northern Quebec Agreement), treaty lands, all suppose different kind of estates.
- who holds the various estates will be a factor in other key elements to all sub-fields.

Under Cree-Naskapi, Quebec retains bare ownership of 1A and 1A-N lands (s.109(1)).

Sechelt has fee simple (ss.23-25).

Management by the band, with all the responsibility on the Minister, is not possible. In most cases ownership of the underlying title to Indian lands is not a key to assuming administration of those lands. In the provinces of Quebec, Ontario, Manitoba, Saskatchewan, and Alberta the bare legal title to Indian lands rests with the province. It is therefore not possible for the federal government to unilaterally transfer legal title to these reserves to Indian bands.

The federal Crown does, however, have jurisdiction (under s.91(24) of the Constitution Act 1867) over lands reserved for Indians in all provinces, regardless of ownership of legal title. The present responsibilities of the federal Crown for administration of Indian lands have arisen out of the Indian Act, enacted pursuant to this federal jurisdiction.

2. Land Use and Management

A coherent land use planning (LUP) scheme should take into account: existing physical environment; potential for economic development; potential social impact; land capability; existing land uses; land tenure; population needs; existing infrastructure; environmental issues.

Cree-Naskapi (s.21(b)) (ss.46-47) have power to use, manage, administer and regulate 1A or 1A-N land and natural resources.

Sechelt has power under s.26 and Part I, Division (2) and (3), of the Constitution.

The band should have full power. A mixed regime will make conduct of LUP more complex. Under the Indian Act (s.81(1)) bands already have access to virtually all the powers necessary to regulate land use by way of zoning by-laws. The ability to regulate land use is independent of legal ownership. As an example, municipalities have the power to regulate land use within their boundaries even though most of the land under their jurisdiction would be privately owned.



LANDS AND RESOURCES: LANDS

<u>SUB-FIELD</u>	<u>KEY COMPONENT</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
3. <u>Legislative Jurisdiction</u> (general legislative authority and application of federal and provincial laws)	<p>Powers of the band having an impact on lands and resources should be spelt out. Coherent lands and resources powers probably require a fairly broad range of band powers.</p> <p>Laws of federal and provincial governments should apply where necessary.</p>	<p>Cree-Naskapi powers are linked in ss. 45, 46-48, 82-86, 99, 103-105, 153.</p> <p><u>Sechelt</u> powers are listed in s.14.</p> <p>Federal and provincial laws of general application apply except where inconsistent with <u>Sechelt Act</u> (ss.37-38).</p> <p>Under Cree-Naskapi, provincial laws of general application apply except where inconsistent with <u>Cree-Naskapi Act</u> or a regulation thereunder (ss.3-4). Federal and provincial laws apply except where inconsistent with <u>JBNQ Native Claims Settlement Act</u>. Various provincial acts govern forestry, gravel and mining. Civil code apply except where inconsistent.</p> <p>Under <u>Sechelt</u>, laws of general application apply except to the extent they are inconsistent with treaties, Acts of Parliament, band constitution, or a law of the band (ss.37-38). Band may adopt BC laws if authorized by the band constitution (<u>Sechelt</u>, s.14 (3)). Legislative power may be delegated to the Council by BC legislature (<u>Sechelt</u>, s.15).</p>	<p>It will be in the band's interests to ensure compatibility of its lands and resources activities with that of the province. It will be in the provinces' interest not to take action harmful to band lands and resources. Some form of permanent official consultation may be useful.</p> <p>One should note that the <u>Indian Act</u> term "reserve" does not necessarily cover full ownership over lands and all its renewable and non-renewable resources. This has to be sorted out in each self-government proposal as ownership varies even within the same province.</p>

LANDS AND RESOURCES: LANDSSUB-FIELDKEY COMPONENTPRECEDENTCOMMENT

4. Possession  
(. possession  
  . allotment  
  . residence)

Well-established and understood system for: members possession of land; allotting land; residence.

Indian Act Bands under certain conditions may make by-laws under: s.81(1)(i)/s.60 regarding the allotment of reserve lands among members, as well as establish a register of Certificates of Possession and of Occupation; under s.81(1)(p.1) regarding residence.

Ensure existing rights of members are respected; an appeal procedure must be available from decisions of the councils.

5. Security of Tenure  
(expropriation,  
  seizure)

Expropriation is an essential component of land management. However, rights of residents and third parties need protection, and require compensation.

Sechelt, s.14(1)(b); Part III, Division (1), s.3, covers expropriation. Cree-Naskapi, ss.153-155. Under s.156, GiC may make regulations governing procedures.

Should require approval by council, with the possibility of appeal against expropriation and/or compensation.

The Indian Act provides for expropriation of reserve or locatee land by a band pursuant to subsection 18(2) and which also provides for payment of compensation to locatees in possession. The Act does not, however, enable the band to expropriate rights held by non-Indian third-parties, such as leasehold interests.

6. Access

These provisions should dovetail with those dealing with residence. Access is necessary for provincial and federal persons duly authorized.

Under Cree-Naskapi Act, access is restricted to beneficiaries, and until expiry of that right for those having pre-1975 rights of occupancy (ss.101-108).

Categories of access should be clearly defined and publicly posted at major points of entry to a reserve, and at the band office.

Sechelt Act, s.14(1)(a). Sechelt Constitution, Part III, Division 1, s.1.

(See Indian Act, ss.30-31.)

LANDS AND RESOURCES: LANDS

<u>SUB-FIELD</u>	<u>KEY COMPONENT</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
7. <u>Disposition</u>			
<ul style="list-style-type: none"> <li>a) surrenders</li> <li>b) sales</li> <li>c) leases</li> <li>d) permits</li> <li>e) estates</li> </ul>	Provisions for surrender must be clear. It should specify the nature, the type and the extent of the interest surrendered such as land, type of renewable or non-renewable resources, etc.	Under <u>Cree-Naskapi Act</u> , a band may make a cession only to Quebec, after referendum (ss.141-149).	Various approvals by band referendum and governmental authorities are required. Referendum procedures should be rigorous.
7A. <u>Surrenders</u>		<p>Under <u>Sechelt</u>, band has full power to dispose of lands (s.26), subject to the Constitution, Part I, Division (2), s.4.</p> <p>Under C-115, land can be designated for leasing and economic development without losing its reserve status.</p>	
7B. <u>Sales</u>	Sales procedures should be spelt out.	Under <u>Sechelt Act</u> , s.26, and Constitution, Part I, Division (2), s.4, band may sell land subject to referendum provisions. Part I, Division (4) spells out procedure for referendum.	Various approvals by band referendum and governmental authorities are required. Referendum procedures should be rigorous.
7C. <u>Leases</u>	Leasing provisions provide an economic tool for potential growth. Restrictions on leasing should not be as rigorous as on sales or surrender provisions.	<p>Under <u>Cree-Naskapi Act</u> a band may, subject to ss.130-140, grant a lease (s.132) for up to 75 years; non-residential leases of ten or more years require referendum.</p> <p>Under <u>Sechelt Act</u>, s.26 and Constitution, Part I, Division (2), s.5, band may grant leases, subject to 2/3 band council approval. Division (2), s.6, provides referendum requirements where lease is for over 99 years.</p>	Maximum flexibility might be accorded to the council by 2/3 or more approval by councillors, for short-term leases. Long term leases should be treated more rigorously, i.e., a referendum.



LANDS AND RESOURCES: LANDSSUB-FIELDKEY COMPONENTPRECEDENTCOMMENT7D. Permits

A permit system should contain a detailed approval process, which might include the following general steps:

- . designation of band office as applicant entry
- . description of application
- . technical requirements set by the band
- . environmental considerations
- . public review under certain conditions
- . fees/rentals

The Cree-Naskapi Act provides for various approvals for forest resources exploitation (s.111); minerals (s.113), although Quebec permits are required given the province's underlying title.

Under Sechelt Act, s.14(1)(b), and s.14(1)(j), and Constitution, Part I, Division (2), s.5, and Division (3), ss.3-4, band council may grant permits for land use including for timber, minerals, etc. up to 5 years without referendum by band electors.

Permits granted under s.28(2) Indian Act are considered to be equivalent to licences, and are usually of a relatively short term.

The band constitutions need not provide details on how permits operate. Such details could come through band laws. However, these procedures should be publicly available, and understandable, for the mutual benefit of the council, band members and applicants.

The approval process which might be contemplated for permits of this sort would likely be similar to that required for leases of an equivalent term.

7E. Estates

Allotments of real property need to take into account rights of heirs. Authority should include: procedures for granting administration; designation of powers, responsibilities, obligations and liabilities of administrators; procedures for devolution of estates; procedures for appointment of an administrator by Council; provisions with respect to rules of law, legal procedures, evidence and appeals with respect to the administration of estates.

Under Cree-Naskapi Act, estates related to land are dealt with in ss. 173-186.

Under Sechelt Act, estates related to land are dealt with in s.14(1)(q), and referred to in the Constitution, Part II, Division (7), s.8(1)(k). Part III, Division (1), s.14, refers to band council right to make laws in relation to succession of real property, subject to the council adopting BC laws.

The question arises as to the balance between the rights of heirs who are members, and the right of the band to make decisions. To the extent that a band decided to follow Canadian estate practices, agreement will be facilitated.

LANDS AND RESOURCES: LANDS

<u>SUB-FIELD</u>	<u>KEY COMPONENT</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
8. <u>Land Registry</u>	<p>A land registry system must contain the following components:</p> <ul style="list-style-type: none"> <li>formalized system of recognition of legal interests giving possessory rights (such as leases or Certificates of Possession)</li> <li>formal procedures for the legal conveyance of the "interest" whether by contract, referendum, wills, council approval, governor-in-council approval, traditional modes, or a combination.</li> </ul>	<p>Under <u>Cree-Naskapi Act</u>, (s.151) the Governor-in-Council may make regulations for establishing and maintaining a land registry system under the control of the Minister IAND.</p> <p>Under <u>Sechelt Act</u>, s.27 lands are registered in the Reserve Land Register, s.21, <u>Indian Act</u>, except those lands which may be registered in accordance with the laws of B.C.. SS.28-30 cover registration under laws of B.C..</p>	<p>Bands may wish to retain DIAND's Reserve Land Register, or adopt a provincial registry system for certain purposes, or develop their own registry system. The latter would be a heavy draw on band resources. The first two may be preferable for most.</p> <p>It should be noted that the DIAND Reserve Land Registry does not describe all types of alienation such as mineral surrenders, permits, leases, etc.</p>
9. <u>Third Party Interests</u>	Band control of lands must respect existing third party interests (if any), and rights of lessees and permittees.	<p>Under <u>Cree-Naskapi Act</u>, (s.104), pre-1975 access rights are recognized; see also s.105(5) covering forestry and mineral rights. See also ss.113-117 regarding pre-1975 lease, permit rights.</p> <p>Under <u>Sechelt Act</u>, s.23(1) and s.24 transfer the fee simple title subject to prior existing rights or interests. Constitution, Part III, Division (1), s.1, is to the same effect regarding access to and residence on Sechelt lands.</p>	Appeal from council decisions is a right.
10. <u>Fiscal Issues</u>	A financial administration regime related to lands must enable the authority to raise revenue, control expenditures, subject to review by elected institutions.	<p>Financial administration is covered under ss.89-100, <u>Cree-Naskapi Act</u>. Bands have power to tax interests in 1A or 1A-N lands and tax occupants and tenants, except those of Canada and Quebec, otherwise than by means of income tax.</p> <p>Under <u>Sechelt Act</u>, band administers its funds (s.32). Constitution, Part I, Division (5), ss.1-5, indicates sources of band revenue and capital money and its expenditure, control and management requirements.</p>	A key component to the financial administration of lands is a revenue accounting system which monitors revenue received from land management and identifies overdue payments requiring action. Such a system must be available for inspection by band members as well. See Structures and Procedures of Government (E:2, above)

LANDS AND RESOURCES: LANDSSUB-FIELDKEY COMPONENTPRECEDENTCOMMENT11. Non-reserve lands

Bands may wish to purchase land for investment, as well as influence decision-making on off-reserve matters which impact on reserves, such as environmental management, major project development.

Under Cree-Naskapi Act, there are no provisions for direct purchase of non 1A - 1A-N lands. But because s.22(1) makes the band a natural person, it can therefore buy lands if it is within those objects listed in s.21. And also because of authority for bands to own shares in corporations, indirect ownership of non-reserve lands may occur. A variety of devices in JBNQA enable bands to influence wildlife and environmental issues on Category II and III lands.

Off-reserve investments should be made possible. The federal government is willing to assist bands explore the possibility of participation in off-reserve provincial decision-making structures.

Any decisions regarding the addition of non-reserve lands to the reserve land base will continue to be reserved to Governor in Council.

12. Minerals

- I. Land Management
- II. Project administration
- III. Prospecting
  - . Exploration
  - . Development
  - . Production
  - . Close-out
- IV. Environmental regulation
- V. Employment, and impact benefits
- VI. Royalties/rentals/fees/taxation
- VII. Business opportunities
- VIII. Joint ventures
- IX. Regulation/Legislation
- X. Inventory

Under Sechelt Act, s.6, band has capacity of a natural person, and can therefore purchase non-reserve lands. In addition, through the BC parallel legislation, the band is a member of a regional council of municipalities, and can therefore influence decisions on adjacent lands.

Under ss. 113-116, Cree-Naskapi, Quebec retains ownership. Holders of Quebec exploration permits must obtain consent of the band and make payment to bands satisfaction. Under ss.46-47, the band can make by-laws for land and resource use.

Under Sechelt Act, band has fee simple title (s.23); B.C. Indian Reserves Mineral Resources Act (SC) applies - Sechelt, s.40. The Indian Reserves Minerals Resources Act (RSBC) applies, Sechelt, (s.41), Sechelt Constitution, Part I, Division (3), ss.1-4.

Creating a unique regime for a reserve is not practical. Adoption of provincial practices preferable. Depends on underlying title. At the very least, bands may wish to have more control over mineral development than under the Indian Act. However, putting this into practice will require a detailed case by case implementation.



LANDS AND RESOURCES: LANDS

<u>SUB-FIELD</u>	<u>KEY COMPONENT</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
13. <u>Oil and Gas</u>	I. Land Management II. Project administration III. Exploration <ul style="list-style-type: none"> <li>. Development</li> <li>. Production</li> <li>. Phase-out</li> </ul> IV. Environmental Regulation V. Employment, and impact benefits VI. Royalties/rentals/fees/taxation VII. Business opportunities VIII. Joint ventures IX. Regulation/legislation X. Inventory	<p>No separate provisions in <u>Cree-Naskapi</u>, so ss.113-116 apply.</p> <p>Under <u>Sechelt Act</u>, band has fee simple title (s.23). <u>Indian Oil and Gas Act</u> applies (s.39).</p>	<p>Same comments above, point 12, apply. Continued role of Indian Oil and Gas Canada may be preferable. However, negotiation of greater control, and items IV-VII may not be dependent on self-government arrangements.</p>
14. <u>Timber</u>	I. Land Management II. Forest Management III. Exploitation IV. Legislation/Regulation V. Environmental Regulation VI. Revenues VII. Employment and Impact Benefits VIII. Joint ventures IX. Inventory	<p>In <u>Cree-Naskapi</u>, s.111 governs forest resources. Band has exclusive right to exploitation, but it has to get a permit from Quebec (no dues required). Band meetings have to approve commercial exploitation by others.</p> <p>Under <u>Sechelt Act</u>, band has fee simple title (s.23). Constitution, Part I, Division (3), ss.1-4.</p>	<p>Full band control is feasible. However, band may wish to be aware of provincial views on potential impact on immediate adjacent off-reserve lands.</p>

LANDS AND RESOURCES: RENEWABLE RESOURCES

- 15. Water
  - 16. Fish
  - 17. Wildlife
- )  
) covered under optional subject matters 9 & 12.  
)  
)

LANDS AND RESOURCES: ENVIRONMENT

- 18. See optional subject matter no. 12.

LANDS AND RESOURCES: OFF-RESERVE

- 19. Land Use Planning
  - 20. Environmental Protection
  - 21. Major Project Review
  - 22. Impact Mitigation
- )  
)  
) Covered under optional subject matter no. 12.  
)  
)

SELF-GOVERNMENT IN  
FINANCIAL ARRANGEMENTS

Financial Arrangements

Financial arrangements are to outline the responsibilities which will be fulfilled by the self-government agency and to outline the funding that the federal government agrees to provide. Financial arrangements are not included in self-government legislation. Financial arrangements can be negotiated in different ways to accommodate specific situations.

Negotiations to establish the financial arrangements between the federal government and the self-government community will be held within overall self-government negotiations. A financial transfer agreement must be reached with the community before the new Indian government may be proclaimed. This financial transfer agreement will be subject to approval by Treasury Board.

Sub-fields covered here include:

1. Financial Accountability
2. Transfer Arrangements
3. Financial Powers
4. Cost-Sharing
5. Other Issues

**Prepared in conjunction with  
the Implementation Directorate**

Bands requiring further elaboration on Financial Arrangements should address their concerns to:

The Director  
Implementation  
Self-Government Sector  
Department of Indian Affairs and Northern Development  
10 Wellington Street, Room 2008  
North Tower,  
OTTAWA, Ontario (K1A 0H4)  
(819) 994-7432  
Fax: (819) 953-3855

## FINANCIAL ARRANGEMENTS

<u>SUB-FIELD</u>	<u>KEY COMPONENTS</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
1. <u>Financial Accountability</u>	<ul style="list-style-type: none"> <li>- <b>Financial accountability:</b> <ul style="list-style-type: none"> <li>o to community members;</li> <li>o general oversight by Parliament and Minister on institutions and mechanisms in place; audited consolidated financial statement to be submitted to the Minister within three months following the end of each fiscal year;</li> <li>o consistency with Canadian democratic traditions;</li> </ul> </li> <li>- <b>Responsible financial administration:</b> <ul style="list-style-type: none"> <li>o Appropriate financial systems, institutions and mechanisms;</li> <li>o Audit report or accredited financial statements;</li> <li>o Services to meet applicable minimal national, provincial or other specified standards;</li> <li>o Access to records;</li> </ul> </li> <li>- <b>Non-performance measures to be taken by the Minister</b> (in case of financial breakdown or disorder caused by mismanagement):           <ul style="list-style-type: none"> <li>o inspection of financial records;</li> <li>o appointment of auditor;</li> <li>o appointment of administrator.</li> </ul> </li> </ul>	<p>The <u>Cree-Naskapi Act</u> includes extensive provisions on financial administration of Bands (Part IV, ss.89 to 97 dealing with fiscal years, budgets, access to records and books, annual financial statements, audit, borrowing, contracts, appointment of administrator). Cree and Naskapi bands also approve the budget by resolution (s.90).</p> <p>The <u>Sechelt Act</u> includes a brief section on funding (ss.33-34) describing the financial arrangement between the Minister and the Band and states (s.10(1)(d)) that financial accountability of the Band Council is defined in the Constitution. Details of financial accountability are included in the Constitution (Part II, Div.(4),(7),(8),(9)).</p> <p>Upon approval by the Band Council, the Sechelt budget is submitted to the band electors for review and amendment before ratification. (Constitution, division (7)).</p> <p>Auditors are appointed in both cases (<u>Cree-Naskapi</u>, s.93 and <u>Sechelt Constitution</u>, Part II, division (9)). The <u>Cree-Naskapi Act</u> requires bands to provide budgets to the Minister. In both cases audit reports must be provided to the Minister. Annual reports are covered in: <u>Sechelt</u>, Part II, Division 4, s.7; <u>Cree-Naskapi Act</u>, s. 91,(2) and s. 92).</p> <p>Under the <u>Cree-Naskapi Act</u> s.100, the Minister can intervene if financial affairs are in serious disorder. He can also appoint an administrator if financial conditions warrant.</p>	<p>Consideration must be given to the way band members will be involved in financial management. This includes information, approval and review mechanisms for decisions impacting on the community. Financial management must be described either in the legislation, constitution, or self-government agreement. However, we should be careful to put in legislation only the general principles and leave operational details for the constitution or financial arrangement. This is to ensure that a band would not have to request Parliament's approval each time an amendment is required to a financial procedure.</p> <p>Quick recourse mechanisms should be contemplated by band members in case of mismanagement or financial difficulty.</p> <p>Legislation and financial agreements should establish ministerial responsibilities for financial oversight and describe the course of action in the event of financial breakdown.</p>



FINANCIAL ARRANGEMENTS

<u>SUB-FIELD</u>	<u>KEY COMPONENTS</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
2. <u>Transfer Arrangements</u>	<ul style="list-style-type: none"> <li>- Multi-year funding (number of years to be determined).</li>   <li>-Calculation of base year funding:               <ul style="list-style-type: none"> <li>o Current funding level, plus;</li> <li>o Adjustments to average out variable expenditure items;</li> <li>o Minor increases to support implementation;</li> <li>o Start-up costs.</li> </ul> </li>   <li>- Adjustments:               <ul style="list-style-type: none"> <li>o Annual adjustments for price and volume;</li> <li>o Additional funding for new or improved programs introduced by DIAND.</li> <li>o Contingencies.</li> </ul> </li> </ul>	<p>The Sechelt financial agreement has a 5-year term expiring at the end of 90/91.</p> <p>Existing agreements use Consumer Price Index (CPI) as the price escalator and year over year change in population as volume index. On reserve status Indian population is used for Sechelt; on reserve JBNQA beneficiary population for the Cree and Naskapi.</p>	<p>Transfer arrangements are based on current levels of funding.</p> <p>Financial agreements are not part of a self-government legislation but are approved by Treasury Board. New self-government financial arrangements as well as renewals are subject to Treasury Board approval.</p> <p>Funding for start-up costs and supplementary funding to cover new on-going administrative costs may be considered on a case-by-case basis. If such additional funding is required, it will have to be approved by Cabinet when the self-government legislation is submitted because they represent an increase to A-base.</p> <p>The agreements include Indices that will be considered and approved by Treasury Board. This leads to changes in funding levels over the life of the agreement. Where formula funding is based on population, the population base is defined as status Indians living on community lands. Financial assistance for contingencies continue to be available in the event of fire, flood or natural disasters. To date there have been no claims by SG communities on contingency allowances.</p>

FINANCIAL ARRANGEMENTSSUB-FIELDKEY COMPONENTSPRECEDENTCOMMENT

- Services and programs included or excluded in the multi-year transfer agreement.

Not all departmental or federal funding programs are covered in the existing agreements. Bands continue to be eligible for funding for excluded programs, subject to the currently applicable terms and conditions governing them. In the Sechelt case the agreement includes DIAND capital and O&M funding as well as some limited funding from NH&W.

Access to those on-going programs not included in the self-government financial arrangement is subject to DIAND program criteria currently in effect.

For the Cree and Naskapi there is no funding included from other departments and there are separate arrangements for capital and O&M. Funding for education for the Cree and Naskapi is provided to the province through a separate federal-provincial arrangement pursuant to the James Bay and Northern Quebec Agreement.

Education funding is included in the Sechelt arrangement. A Sechelt/provincial agreement replaces the federal-provincial tuition agreement formerly in effect.

- Annual appropriations.

Financial arrangements should coincide with the government budgetary cycle. The Initial Sechelt agreement has been modified accordingly.

- Form of payment.

Payments to Sechelt, James Bay Cree, and Naskapi are in the form of a specific recipient class grant.

Funding may be provided as a grant which may include both operating and capital funds.

FINANCIAL ARRANGEMENTSSUB-FIELDKEY COMPONENTSPRECEDENTCOMMENT3. Financial Powers

- Terms of payment (cash management policy).

Sechelt receives its funding in a discounted lump sum payment at the beginning of the fiscal year. The discount factor is specified in the arrangement and is constant (6.75%) over the five-year term of the arrangement.

The terms of payment for Cree and Naskapi have recently changed. For O&M, the Cree receive a discounted lump sum at the beginning of the fiscal year. The Naskapi chose to receive O&M funds in 12 equal monthly instalments. Capital payments to Cree and Naskapi are made as follows: a 75% advance is paid at the beginning of the fiscal year; the final 25% instalment is paid on receipt of the previous year's audit and details related to capital expenditures are discounted in accordance with a complex procedure established by TBS.

Some bands have expressed some concerns regarding the government cash management policy. **Exemptions to this policy are extremely unlikely** notwithstanding the precedents which may have been established. A lump sum can be provided at the beginning of the fiscal year as long as funds are "discounted". Other ways to effect payments can be explored, for example payments could be based on a plan's cash flow.

- Expenditures: Authorizations through by-laws or resolution.

Band has the capacity to expend or invest money under Sechelt Act, (s.6(c)). Expenditures to be authorized under Cree-Naskapi Act, (s.90(5)).

Communities will allocate resources according to locally determined priorities. Limits may be established. Flexible and manageable process.

- Legal capacity.

Not in financial arrangement but in legislation. See subject matter E:1 for more information.

FINANCIAL ARRANGEMENTSSUB-FIELDKEY COMPONENTSPRECEDENTCOMMENT

## - Access to revenue:

## . Borrow money;

Long term borrowing regulations have been developed pursuant to the Cree-Naskapi (of Quebec) Act.

See subject matter O:6 for more information.

Process to borrow and ceilings up to band members.

## . Sale of goods and services (to community members and non-members);

## . User fees;

All self-government bands have the power to collect user fees and do so.

## . Investments;

## . Taxation (community members and non-members) of interests in reserve lands and other related local taxes (including flat rate taxes);

Taxation for local purposes otherwise than by means of an income tax (Cree-Naskapi Act, s.45.(1)(h). (Sechelt Constitution, Part III, div.1, s.5). Indian Act, s.87.

Double taxation should be avoided.

## - Sale of licenses and permits.

See subject matter O:5 for more information.

## - Raising money from community members to support community projects;

## - Natural resource royalties;

## - Transfer arrangements with other governments.

Both Cree-Naskapi and Sechelt control their own money from sources outside DIAND.

Within the framework of applicable federal and provincial legislation.



FINANCIAL ARRANGEMENTS

<u>SUB-FIELD</u>	<u>KEY COMPONENTS</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
4. <u>Cost-Sharing</u>	<p>Revenue to which the band will have access may be taken into account in the calculation of future financial arrangements.</p> <ul style="list-style-type: none"> <li>- Government of Canada's level of funding is determined from: <ul style="list-style-type: none"> <li>. historical funding pattern;</li> <li>. economic situation;</li> <li>. Indian communities' revenue generating capacity.</li> </ul> </li> </ul>	<p>The Sechelt arrangement includes a MOU between the Minister and the Band requiring the consideration of cost-sharing principles in the renewal of the arrangement. No cost-sharing provisions have been explicitly included in Cree or Naskapi arrangements; however, in establishing the base level funding, the revenue generating capacity of bands were considered.</p>	<p>During the first funding agreement, any augmented revenues generated by an Indian government under its self-government legislation will not affect the level of the federal contribution. Revenues of corporations will not be taken into account. Criteria to be established to balance cost-sharing with incentive to revenue generation.</p>
5. <u>Other Issues</u>	<ul style="list-style-type: none"> <li>- Renewal processes;</li> <li>- Information requests;</li> <li>- Amendments.</li> </ul>		

REFERENCES

Indian Self-Government Community Negotiations Guidelines

SELF-GOVERNMENT RELATED TO  
APPLICATION OF THE INDIAN ACT,  
OTHER LAWS, AND AUTHORITIES

Indian Act and Other

Even though a band ceases to be an Indian Act band, many provisions of the Act will continue to apply, for example, definition of Indian status. Both federal and provincial laws will continue to apply on reserves, except where specifically indicated or where inconsistent with the legislation creating the self-government band. Self-government legislation (i.e., Sechelt) can provide consequential amendments to federal legislation. [For further information on this last point, see "Implementation", Table E:7]

**APPLICATION OF THE INDIAN ACT,  
OTHER LAWS, AND AUTHORITIES**

<b><u>SUB-FIELD</u></b>	<b><u>KEY COMPONENT</u></b>	<b><u>PRECEDENT</u></b>	<b><u>COMMENT</u></b>
1. <u>Indian Act</u>	Where particular matters, such as guardianship and intoxicants, are not dealt with in the self-government legislation, the provisions of the <u>Indian Act</u> dealing with these matters may continue to apply.	<p>The <u>Indian Act</u> applies except if inconsistent (<u>Sechelt</u>, ss.35-36). Indian Referendum Regulations apply for approving Sechelt Constitution.</p> <p>The <u>Indian Act</u> does not apply except for determining who are Indians (<u>Cree-Naskapi</u>, s.5)</p>	<p>Indian status will continue to be based on the <u>Indian Act</u>.</p> <p>What will or won't continue to apply should be as clear as possible.</p> <p>It would not be acceptable that a band maintain most of the <u>Indian Act</u> features in self-government legislation. Changes should be substantial.</p>
2. <u>Provincial laws</u>	General and specific application. Incorporation by reference would be possible.	Apply except if inconsistent ( <u>Cree-Naskapi</u> , s.4, <u>Sechelt</u> , s.38). Sechelt Council has the power to adopt any law of B.C. if the Council is authorized to make laws in relation to the same subject matter <u>B.C. Indian Reserves Mineral Resources Act</u> affects Sechelt fee simple title. ( <u>Sechelt</u> , s41).	Provincial laws of general application will apply to Indians, except to the extent that specific limitations such as those found under the current section 88 of the <u>Indian Act</u> are included in self-government legislation. The federal government could assist negotiations between the provincial government and the band, at the request of the latter.
3. <u>Federal laws</u>	General application and adjustments. Incorporation by reference would be possible.	<p>Apply except if inconsistent (<u>Cree-Naskapi</u>, s.3), <u>Sechelt</u>, s.37). <u>Statutory Instruments Act</u> does not apply to a Sechelt law. Sechelt lands are s.91 (24) lands under <u>Constitution Act, 1867</u> (<u>Sechelt</u>, s.31).</p> <p>(Note s.88, <u>Indian Act</u>, on general provincial laws applicable to Indians.)</p>	

APPLICATION OF THE INDIAN ACT,  
OTHER LAWS, AND AUTHORITIES

SUB-FIELD

KEY COMPONENT

PRECEDENT

COMMENT

4. Minister and  
Governor-in-Council

Their authority to be clearly stated.

Roles are referred to in both self-government Sechelt Act and the Sechelt Constitution. They include approval of band decisions in specific cases and enactment of regulations. For example, Governor-in-Council approves the Constitution and amendments and the Minister must be informed of laws authorizing the registration of estates or interests in Sechelt lands (Sechelt, s.12, & s.29).

In Cree-Naskapi, Governor-in-Council may make regulations respecting long-term borrowing by bands (s.98).

[Readers are advised to read the legislation and Sechelt constitution for more extensive references to the roles of Minister and GiC].

Roles to be defined. Under self-government the continuing role of the Minister and GiC is to be restricted to a few essential matters only. For example, some amendments to constitutions may require approval of the Minister or GiC to ensure that carefully negotiated matters cannot be overturned without consideration by the federal government.

It is not acceptable to negotiate a substantial involvement of the Minister or GiC in band's affairs. Self-government means this will have to be limited. For example, when a band assumes control of land management matters, it will not be possible for the Minister to retain the same degree of responsibility and accountability for land management matters as exists under the current Indian Act.



**SELF-GOVERNMENT RELATED TO THE**  
**IMPLEMENTATION PLAN<sup>1</sup>**

**Implementation**

The subfields and components of an implementation plan outlined in the following table have been developed on the basis of experience to date in implementing the Cree-Naskapi (of Quebec) Act and the Sechelt Indian Band Self-Government Act. Although they are in much less detail, they parallel the components of the Comprehensive Claims implementation guidelines. Detailed implementation plans as anticipated by these tables were not developed in either case. However, as noted in the precedents some of the items were addressed.

Bands desiring more detailed information self-government implementation, should contact:

The Director  
Implementation  
Self-Government Sector  
Department of Indian Affairs and Northern Development  
10 Wellington Street, Room 2008  
North Tower  
OTTAWA, Ontario  
K1A 0H4  
(819) 994-7432  
Fax: (819) 953-3855

**Prepared in conjunction with  
the Implementation Directorate**

**IMPLEMENTATION PLAN**

<b>SUB-FIELDS</b>	<b>COMPONENTS</b>	<b>PRECEDENTS</b>	<b><u>COMMENT</u></b>
1. <u>Implementation Activity and Priority Determination</u>	<ul style="list-style-type: none"> <li>o Overall and subject-by-subject implementation</li> <li>o Identification of commitments by the parties in terms of               <ul style="list-style-type: none"> <li>o activities required to fulfill obligations</li> <li>o priorities amongst commitments</li> <li>o timeframes to implement each commitment</li> </ul> </li> <li>o responsibilities for the implementation of each commitment</li> </ul>	<p>Neither the Sechelt nor the Cree-Naskapi precedents included a subject by subject implementation plan.</p> <p>In the Sechelt case, the Band has been provided with powers to act in a variety of fields at its discretion. Until the Band occupies the field the <u>Indian Act</u> applies.</p>	<p>Implementation negotiations must establish a mechanism for the transition from the <u>Indian Act</u> to the new self-government legislation in situations where the Band may exercise discretion in occupying in jurisdictional field.</p> <p>Implementation negotiators will be required to review the full range of powers and authorities that the community plans to assume and develop a strategic Implementation plan outlining the points listed in the components column for each. Some of the items that have been problematic to date include:</p> <ul style="list-style-type: none"> <li>- application of the <u>Indian Act</u></li> <li>- estates</li> <li>- land registration</li> <li>- services to off-reserve members</li> <li>- services to non-members on-reserve</li> <li>- membership</li> <li>- application of new or on-going federal programs not included in the financial arrangements</li> <li>- plan for exercise of new powers (i.e. when does the SG community plan to occupy new fields of jurisdiction)</li> <li>- transition plans for moving from the <u>Indian Act</u> to new legislation</li> </ul>
2. <u>Implementation Funding Determination</u>	<ul style="list-style-type: none"> <li>o financial transfer agreement prior to proclamation of new community government</li> </ul>	<p>In the case of the Sechelt, the financial transfer arrangement was completed concurrently with the proclamation of the <u>Sechelt Act</u>. The <u>Cree-Naskapi (of Quebec) Act</u> preceded self-government financial arrangements with the James Bay Cree bands or the Naskapi.</p>	<p>The financial transfer arrangement will be negotiated in parallel with the other subjects for negotiation. The arrangement must incorporate the financial implications of each subject and therefore cannot be finalized prior to the completion of other self-government negotiations. The arrangement will be subject to Cabinet and TB approvals. The parameters governing such negotiations are outlined in the "Guidelines for Financial Arrangements".</p>

### IMPLEMENTATION PLAN

#### SUB-FIELDS

#### COMPONENTS

#### PRECEDENTS

#### COMMENT

- o develop estimate of implementation costs

Special implementation costs were identified for both the Sechelt and Cree-Naskapi. Implementation costs included both one time costs and implementation negotiation costs for self-government. Additionally the Cree were given funding to contribute towards the on-going implementation costs of the land claim settlement (JBNQA). On-going self-government implementation funding was not explicitly identified for either the Sechelt or the Cree-Naskapi bands. Implementation costs for the Sechelt Act included contract, survey, travel, and other one-time costs incurred by the federal government in addition to Sechelt Band costs.

Implementation costs must be identified in the final agreement and should include consideration of negotiation costs, one time costs, and on-going costs for both the self-government communities and the federal government.

- o short-term financial support to defray costs of establishing the legal and administrative framework needed for self-government

As noted above, both existing SG arrangements included one-time costs.

Until specific implementation funding guidelines are developed, the short term financial support for SG communities will be considered individually.

- o sources of funding to operationalize implementation

New funding was identified for both the Cree-Naskapi and Sechelt to 'operationalize implementation'. The new funding supplemented funding identified within existing programs.

Implementation negotiators must examine all existing funding programs before proposing new funding to 'operationalize implementation'.

IMPLEMENTATION PLANSUB-FIELDSCOMPONENTSPRECEDENTSCOMMENT

	o funding mechanism	Both the Cree-Naskapi and the Sechelt received one time implementation and implementation negotiation funding through contributions. In both cases, the self-government financial arrangement provides funding through a grant. In both cases as well, the bands continue to receive contributions and other payments separate from and in addition to the self-government grant for programs that were not included in determining the grant amount.	This component requires a detailed review of all existing funding programs, a decision as to whether or not the program should be included in the grant amount, and if so, the amount that should be included in accordance with the financial guidelines. For those programs not incorporated within the grant, funding will be provided in accordance with program criteria in effect at the time. Bands may elect to use one of the other existing funding mechanisms (i.e. AFA, contributions, other transfer payments) in place of grants. No other new funding mechanisms are anticipated.
3. <u>Provincial/Territorial Role</u>	o identify where and when provincial/territorial governments need to be involved	In the case of the Cree, Naskapi, and Inuit of Northern Quebec, the provincial role in self-government is defined in the JBNQA as well as in companion provincial legislation. For the Sechelt, the role of the province is described in the band constitution, provincial legislation, and related regulations. In both cases implementation of the self-government arrangement required the co-ordination of activities between the Band(s), the federal government, and the province.	Dependant on the nature of the subjects negotiated, Implementation negotiators may be required to enter into discussion with provincial representatives in order to plan and co-ordinate federal activity to give effect to negotiated self-government arrangements. In all cases, the implementation plan must include a section describing aspects of the implementation plan that may impact on the provinces.
4. <u>Federal agencies' roles</u>	o identify where and when other federal departments and agencies need to be involved	Other federal departments that were involved in Cree-Naskapi and Sechelt arrangements included Justice, NHW, CEIC, DOE, DFO, MOT, Sec State, EMR, DRIE, and CMHC as well as the central agencies (TBS, Finance, FPRO).	



### IMPLEMENTATION PLAN

<u>SUB-FIELDS</u>	<u>COMPONENTS</u>	<u>PRECEDENTS</u>	<u>COMMENT</u>
5. <u>Legislative or Regulatory Review</u>	<ul style="list-style-type: none"> <li>o preparation of detailed drafting instructions and assigning of responsibilities</li> <li>o drafting of bill(s) and consequential amendments</li> <li>o regulatory regimes applying to the community</li> <li>o changes needed to existing federal and provincial regulations to implement the agreement</li> </ul>	<p>Both <u>Sechelt</u> (ss.47-60) and <u>Cree-Naskapi</u> (ss.204-214) include sections dealing with consequential amendments to federal legislation. BC reviewed its legislation and identified an extensive listing (over 160 items) of legislation which should be in place for Sechelt Indian Band Self-Government. In the case of the Cree and Naskapi a situation has occurred where subsequent amendments to the <u>Indian Act</u> provided other bands with greater jurisdiction in a field (control of alcohol on reserves) than was provided through the self-government legislation. As a result the Naskapi with support from the Cree initiated a proposal for an amendment to their self-government legislation.</p> <p>In the case of <u>Cree-Naskapi</u> there have been a series of federal regulations under the act which have been developed in collaboration with the communities and other departments (notably Justice). The process is complex and time consuming. In the case of the Sechelt the act does not anticipate regulations by the Governor-in-Council, however orders-in-council for amendments to the constitution and others required in the legislation are subjected to the same regulatory review process. In one case (the creation of the Sechelt Indian Government District Council) there was a direct linkage between a federal regulation activity and the proclamation of provincial legislation requiring close co-ordination among all involved parties.</p>	<p>The implementation plan must take into account provincial legislative and regulatory requirements to put the self-government arrangement into effect.</p> <p>During the implementation negotiations, the impact of future changes in the <u>Indian Act</u> or other self-government legislation must be considered.</p> <p>Implementation negotiators must become familiar with the regulatory review process and include suitable provisions in the implementation plan.</p>

IMPLEMENTATION PLAN

**SUB-FIELDS**

**COMPONENTS**

**PRECEDENTS**

**COMMENT**

6. Training Requirements

- o select and/or adapt existing training programs to meet needs of the community
- o identify orientation requirements and delivery methods
- o establish timeframes for training
- o execute training

No specific provisions were made in either of the existing self-government arrangements to address training needs of the communities as they moved to assume self-government functions. In their presentations to the Cree-Naskapi Commission in the summer of '88, some Cree bands emphasised the requirement for staff development activities prior to and after assuming self-governing responsibilities.

Negotiators may wish to identify those training requirements which will be necessary to implementation.

SELF-GOVERNMENT IN  
INFRASTRUCTURE AND PUBLIC WORKS

Introduction

The Department's obligation to provide services with regard to Infrastructure and public work services is discretionary (the Minister voluntarily undertakes to provide services) and contractual (treaty obligations, funding and service agreements with bands and provinces). Statutory authorities are DIAND Act and Appropriation Acts. The following sections of the Indian Act relate to infrastructure and public works: s.18(2), use of reserves for schools, etc; s.19, surveys and subdivisions; s.34, roads and bridges; s.73(1)(i),(j),(l),(m), Governor in Council's regulations; and s.81(1)(f),(g),(h),(i),(j),(k),(l), powers of the council.

Sub-fields in infrastructure and public works are divided as follows:

1. Jurisdiction
2. Services
3. Standards
4. Funding
5. Authority

**INFRASTRUCTURE AND PUBLIC WORKS****SUB-FIELD****KEY COMPONENT****PRECEDENT****COMMENT**1. Jurisdiction

- List of ministerial powers exercised by bands.
- Ways of exercising jurisdiction (laws, by-laws) or application of general provincial laws.

Sechelt Act, s.14.(1)(a),(b),(c),(d),(f),(m) covers the legislative powers of the Council. Sechelt Constitution: Part III, Div(1),s.2: - The Band Council has the right to make laws in relation to zoning subject to provisions of the Municipal Act of British Columbia; s.3. gives the Band Council the right to make laws in relation to expropriation, for community purposes, of interests in Sechelt Lands; s.4 on use, construction, maintenance, repair and demolition of buildings and structures on Sechelt Lands; s.6 on administration and management of property belonging to the Band; and, s.10 on roads.

Approximately 86% of federally-funded programs in this field are administered by bands; however they have limited input into program design.

Under the Indian Act, Bands can pass by-laws to provide for services (eg. construction and maintenance of water works system, payment of water rates, regulation of the use of water supplies).

Consequential amendments to federal and provincial laws might be required (see Sechelt Act s.47 to 60).

Cree-Naskapi Act: S.47(1) on zoning. S.120(1) on expropriation for the establishment of public services and structures. S.136 on the surface rights.

An Act Respecting the Land Regime in the James Bay and New Quebec Territories: S.122 & 191.15, allocation of lots of land for community purposes. S. 123 & 191.18, expropriation for public services. S.141, immoveables of the Crown. Lands for community services.

2. Services

Program/service design and delivery.

- a. Capital construction: Covers planning, design and construction of roads and bridges; wastewater collection, treatment and disposal systems; water supply, treatment and distribution systems; electrical power supply and distribution systems.

Cree-Naskapi Act: S.139 on land to be allocated for community services.

Sechelt Constitution, Part III, Division (1)4. covers the powers of the Sechelt Band Council to make laws in relation to use, construction, maintenance, repair and demolition of buildings and structures on Sechelt Lands. Part III, Div.(1)6. gives the Band Council the right to make laws with respect to control and management of property belonging to the Band. Part III, Div. (1)10. gives the Band Council the right to make laws in relation to construction, maintenance and management of roads and the regulation of traffic on Sechelt Lands.

Service delivery is presently determined on the basis of policies which lead to the creation of programs for various services. It is discretionary, being determined from time to time in accordance with current policy guidelines, current standards and available funding.

The federal government is prepared to negotiate band control over community infrastructure and public works. A statement of services bands will provide, technical codes, health and safety standards, and review processes are required.

Capital projects might require environmental impact assessments if detrimental effects are anticipated or if concerns are expressed by the population. Cf. Table 0:12.

- b. Operations and Maintenance of items specified above.

INFRASTRUCTURE AND PUBLIC WORKS

<u>SUB-FIELD</u>	<u>KEY COMPONENT</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
	<ul style="list-style-type: none"> <li>c. Housing: subsidies toward capital and O&amp;M costs for new construction and renovation of houses; loan guarantees cover loans to individuals, bands, corporations, association of Indians; CMHC programs cover renovation, new construction, band-operated projects and loans to individuals; capital covers infrastructure activities; O&amp;M covers support programs to bands (inspections, training, management support, technical assistance, planning and demonstration projects).</li> <li>d. Other services include: recreation, fire prevention, transportation, energy facilities, electrification, garbage disposal, etc.</li> <li>e. Eligibility of non-members on-reserve to services funded by DIAND.</li> <li>f. Eligibility of off-reserve members (eg. housing).</li> </ul>		<p>National Housing Act - Loans to Indians, s.6(4), 34(1)(c), 56(1), 59 must be taken into account.</p> <p>In some cases, contractual arrangements with neighbouring municipalities would be more cost-efficient. Minimum standards must be respected in delivery of services</p>
3. <u>Standards</u>	<ul style="list-style-type: none"> <li>- Development of health and safety standards and compliance with those of provincial and federal governments.</li> <li>- Compliance with National Building Code.</li> </ul>		<p>The regulation of standards involves, in part, the federal power over reserve lands as contained in the <u>Indian Act</u> various ministerial powers and regulations and by-laws enacted under the <u>Indian Act</u>. Health and safety standards may also involve areas of provincial jurisdiction.</p>
4. <u>Funding</u>	<ul style="list-style-type: none"> <li>- Funding for non-members on-reserve.</li> </ul>	<p>Sechelt Constitution: Part III, Div. (1)s.1(a) covers residence on Sechelt Lands.  C-N Act: S. 103 &amp; 104, residence rights.  <u>An Act Respecting the Land Regime in the James Bay and New Quebec Territories:</u> S. 191.44, residency.</p>	<p>Actual DIAND funding is for services delivered to status Indians living on reserve. No additional base level funding is available.</p>



INFRASTRUCTURE AND PUBLIC WORKS

SUB-FIELD

KEY COMPONENT

PRECEDENT

COMMENT

5. Authority

- Authority to manage and administer services through the exercise of legislative and financial jurisdiction.

Sechelt Constitution: Part I, Div(5), s.4 re expenditure of band capital money. Part II, Div(7), s.6.(1)(b),(c),(f),(j); and s.7.(a),(b),(e),(f); and s.9.(1)(a),(b),(c),(f), (g),(h),(i).  
C-N Act: S. 90, financial administration.

The authority will have to be described in the federal legislation and the band constitution. The band institution responsible for delivery of infrastructure and public works services will have to be accountable to band members for matters such as cost efficiency and effectiveness, quality of services.

6. Traffic and Transportation

Covered under optional subject matter O:15.

## SELF-GOVERNMENT IN

### EDUCATION

#### Introduction

Although education is an optional topic in self-government negotiations, it is considered by Indians as a priority issue. Education is the cornerstone to a better life, better employment and business opportunities and greater political control. Federal and provincial governments play a role in education. The Constitution Act, 1867, places the responsibility for education exclusively with the provincial governments. However, the federal government provides financial support for post-secondary education and occupational training (the National Training Act determines the level and type of occupational training to be financed by Canada, by the purchase of seats in training institutions). Provincial governments and locally-elected school boards are responsible for the establishment and funding of elementary and secondary education. However, the federal government is responsible for ensuring that elementary/secondary education is provided to status Indians living on reserve.

Sub-fields in education have been divided as follows:

1. Jurisdiction
2. Kindergarten, elementary, secondary level
3. Trade level
4. Post-secondary level
5. Adult education
6. Resourcing
7. Education authority
8. Control of facilities

EDUCATION

<u>SUB-FIELD</u>	<u>KEY COMPONENTS</u>	<u>PRECEDENTS</u>	<u>COMMENT</u>
1. <u>Jurisdiction</u>	<ul style="list-style-type: none"> <li>- Legal status of First Nations (FN) education authorities;</li> <li>- Acknowledgement of FN education authorities by provincial and territorial authorities;</li> <li>- Need for new legislation or amendment to <u>Indian Act</u>;</li> <li>- Capacity to negotiate with other governments, institutions and private sector.</li> </ul>	<p><u>Sechelt Act</u>, s.14.(1)(g) gives legislative powers to the Council to make laws on education of Band members on Sechelt lands. No additional authorities are defined in the Constitution. <u>Sechelt Act</u>, s.6(a) gives the Band power to enter into contracts and agreements. The band is using this power to provide education services. Education authorities may be further defined following discussion with the Province.</p> <p><u>Cree-Naskapi Act</u> does not mention education. Cree and Inuit education are covered in JBNQA, ss.16 and 17, and Naskapi in NEQA, s.11; Cree and Kativik school boards have jurisdiction and responsibility for elementary and secondary education (s.16.0.6 &amp; s.17.0.3).</p>	<p>First Nations want to have jurisdiction over all levels of education with DIAND retaining the obligation to provide funding.</p> <p>S.114-123, <u>Indian Act</u> as qualified by s.4(3), empower the Minister to operate schools and to enter into agreements with provincial governments, school boards, religious or charitable organizations for the education of registered Indian children, from ages 7-16 inclusive, living on reserves or on Crown lands. Registered Indians living on and off reserve are contributors to local and provincial taxes; like all other provincial residents they have a basic claim to the full range of provincial educational programs and services. Under Cabinet decisions and Treasury Board authorities, DIAND has extended its educational and support services to include pre-K, K and post-secondary programs.</p>
2. <u>Kindergarten, Elementary, Secondary Level</u>	<ul style="list-style-type: none"> <li>- Parity in standards with provincial schools;</li> <li>- Curricula (selection of courses, textbooks and teaching materials);</li> <li>- Curriculum development;</li> <li>- Teaching methodology;</li> <li>- Programs (academic, commercial, technical, special [eg. preschool, handicapped, re-entry, computer, university entrance preparation]);</li> <li>- Standards;</li> <li>- School calendars and number of instructional minutes per day;</li> <li>- Teachers' certification;</li> <li>- Cultural components of programs (aboriginal languages, traditional culture, spiritual beliefs);</li> <li>- Evaluation of education system;</li> <li>- School conduct rules;</li> <li>- Personnel management (hiring of staff, appointment, removal, collective agreements, benefit package);</li> <li>- Selection of students (admission, discharge);</li> <li>- Student maintenance (allowances, payments, reimbursements associated with education expenses);</li> <li>- Transportation;</li> <li>- Provision of supplies, books, etc.;</li> <li>- Teacher training (adapted to native culture);</li> </ul>	<p><u>Sechelt</u>: N/A. Powers of the <u>Cree and Kativik School Boards</u>:</p> <ul style="list-style-type: none"> <li>- determine use of standardized tests</li> <li>- determine school year and calendar</li> <li>- hiring of teachers (number &amp; qualifications)</li> <li>- selection of courses, textbooks and teaching material</li> <li>- development of regular &amp; native curriculum</li> <li>- programs &amp; methodology</li> <li>- teachers' training</li> <li>- teaching languages</li> <li>- school committees</li> <li>- parity with the provincial system</li> <li>- student maintenance</li> <li>- working conditions of employees (with exceptions).</li> </ul> <p><u>Declaration of Political Intent</u>: Anishinabek has presented to the Indian Commission of Ontario (ICO) several education models to take control over education. Communities are being consulted to select the most appropriate models. Nishnawbe Aski Nation (NAN) and Six Nations of the Grand River are also supposed to submit education models.</p>	<p>There is no obligation to use provincial curricula in band and federal schools. However, in the absence of any other programs for practical matters such as access of Indian students to other provincial education institutions, provincial programs are used. The federal government has historically supported the provincial presence in Indian education.</p> <p>The transfer of the Minister's powers to bands (<u>Indian Act</u>) can be negotiated.</p> <p>Other matters that fall under provincial jurisdiction would have to be negotiated with the province. Generally, provincial departments (or ministries) of education are responsible for the supervision of teacher competency and the granting of teacher certificates; the evaluation of school programs; the establishment of courses of study and prescription or approval of textbooks; the provision of financial assistance; the setting out of rules and</p>

EDUCATION

SUB-FIELD

KEY COMPONENTS

PRECEDENTS

COMMENT

- Student/Teacher ratios;
- Education related needs (libraries, gymnasias, science laboratories, cafeteria, academic and personal counselling, career orientation).

regulations for the guidance of trustees and education officials of school boards; and delineating the duties of school principals and teachers.

Tribal Councils or bands have the authority to hire staff on reserve. Whatever the band negotiates with the province, it would be desirable to consider some levels of compatibility with provincial systems in order not to make it too difficult for students who would like to pursue further training in provincial schools and universities.

Several key components in this sub-field could require negotiations with the province. These are: Curricula, curriculum development, teaching methodology, programs, standards, school calendars and number of instructional minutes per day, teachers' certification, cultural components of programs, evaluation of education system, personnel management, and teacher training. Some components are dependent on the level of funding available (e.g. student/teacher ratios, parity). Bands may wish to maintain differences in certain areas to maintain cultural factors.

3. Trade Level

- Practical training at:
  - elementary/secondary level
  - post-secondary level;
- Certification.

Sechelt: Not addressed.

Cree-Naskapi: Not addressed.

Apprenticeship programs provide both on-the job training and formal instruction in a classroom setting, generally at community colleges. The three largest apprenticed trades are carpentry, construction electronics and motor vehicle repair. The federal responsibility rests at the elementary/secondary levels (see sub-field 1 above). For post-secondary level, trade training arrangements could be negotiated between bands and the province or the private sector. Funding for post-secondary trade training would be provided along the same rules as other post-secondary training.

Training programs and trade certification are not amenable to negotiation.

EDUCATIONSUB-FIELDKEY COMPONENTSPRECEDENTSCOMMENT4. Post-Secondary Level

- Scholarships;
- Student allowances;
- Authority to enter into agreements with post-secondary institutions;
- Grants to post-secondary institutions;
- Funding formula.

Sechelt: Post-secondary funding is included in the five-year funding agreement. The level of funding is based on historical data.

JBNQA: Cree School Board can make agreements for post-secondary education (s.16.0.9(c)). Cree School Board is responsible for the provision of post-secondary assistance funding to Cree students. Canada and Québec shall jointly ensure the continuation of education services and programs that existed at the time of signing the agreement (including living, tuition, transportation, and allowances for post-sec. students).

SASKATCHEWAN INDIAN FEDERATED COLLEGE: (SIFC) DIAND contributes approx.\$ 4.7M. Province contributes approx. \$.5M for non-Indian students. Contribution not tied to tuition fees. A minor portion of funding comes from endowments. SIFC is federated with University of Regina and takes its standards from the Senate of U of R. College offers general arts program focussed on Indianness of program (e.g. native studies, Indian communication).

Other Indian colleges exist. However, they use programs of provincial institutions. First Nation Institute of Technology in Ontario is financed by DIAND. It is part of Loyalist College but does not get any funding from the province. About 5 institutions exist in Alberta that provide vocational and post-secondary education ( Yellowhead Tribal Council; Hobbema; Red Crow, Blood Reserve; Old Sun, Black Foot; and Blue Quils). They are financed by DIAND and CEIC.

The only aspect that DIAND can negotiate pertains to funds for implementing the actual post-secondary policy. Funds could possibly be transferred to an "Indian Education Authority" that would administer them according to its own criteria and particular situation, for on reserve students. Other aspects of post-secondary education (eg: special native programs) could be negotiated with the province or a post-secondary institution. Bands could be encouraged to develop their own policy/criteria/formula for post-secondary funding. However, economies of scale might suggest that such programs could be more efficaciously administered at the tribal council level or any other larger level.



EDUCATION

SUB-FIELD

KEY COMPONENTS

PRECEDENTS

COMMENT

5. Adult Education

- Description of education programs for adults:
- Literacy
  - Academic
  - Skill

Sechelt: Not addressed.

JBNQA: Cree and Kativik School Boards have jurisdiction and responsibility for adult education (s. 16.0.6 and 17.0.3).

DIAND (and the federal government) does not have any responsibility regarding adult education. However, the federal government finances programs for adult occupational training in areas of national importance and in which a shortage of skilled workers exists or is anticipated. Federal effort is concentrated in the six programs of the Canadian Jobs Strategy.

6. Resourcing

- Funding formula;
- Multi-year funding arrangements;
- School Board Taxes;
- Federal/Provincial/First Nation Cost-Sharing;
- Funding off-reserve members;
- Provision of education to non-members on-reserve.

Sechelt Funding Agreement: Funding is provided in the form of grants for 5 years. Funding level is determined by a formula. Sechelt Band is currently sharing in the self-government costs. Education contributions, inclusive of university and professional services, are included in the funding base. Funding is provided for Kindergarten to high school; funding is also provided for aboriginal languages. DIAND transfers funds to Sechelt who transfers them to the province for services received. Constitution, Part III, Division (1), s. 5 empowers the band to make laws providing for taxation.

Cree-Naskapi Act, Section 45(1) provides for taxation for local purposes.

JBNQA: Same level of quality and quantity of education services (s.16.0.22 and s.17.0.84). Funding provided by Québec & Canada (Cree: Que, 25%, Cda 75%; Inuit: Que 75%, Cda 25%) to be reviewed every 5 years and includes post-sec. funding (s.16.0.28 & s.17.0.85). Québec and Canada are currently finalizing a 5-year funding agreement which will cover all educational services for the Cree, Inuit and Naskapi, including post-secondary education. Funding based on a formula (JBNQA s.16.0.23 & s.17.0.85). Cree and Kativik school boards not obliged to levy school taxes (s.16.0.26 & 17.0.78). Budget to take into account the unique characteristics of the Cree School Board (s. 16.0.27).

Economies of scale will have to be considered. Certain aspects of education such as curriculum development require significant resources and cannot be funded on an individual band basis. Taxation could be considered as a source of revenue to provide education services. Bands may wish to pool resources to make this feasible.

Cost-sharing amongst bands is possible.

<u>SUB-FIELD</u>	<u>KEY COMPONENTS</u>	<u>EDUCATION</u>	<u>PRECEDENTS</u>	<u>COMMENT</u>
7. <u>Education Authority</u>	<ul style="list-style-type: none"><li>- Definition of powers;</li><li>- Management structure;</li><li>- Composition of authority;</li><li>- Rules for election or appointment of members;</li><li>- Accountability;</li><li>- Honoraria for members of Band Education Authority.</li></ul>	<u>EDUCATION</u>	<p><u>Sechelt</u>: Band Council has the authority to enter into contract to provide education services.</p> <p><u>C-N</u>: Cree School Board and Kativik School Board created in 1978, as a result of provincial legislation in the Québec National Assembly. S.16 and s.17 of JBNQA respectively establish the CSB and the Kativik School board under the <u>Education Act</u> of Québec, and set out their powers and authority in the area of Cree and Inuit education. School Boards have by-law powers. By-laws require the Québec Minister of Education's approval (JBNQA, s.16.0.11 and s.17.0.65). School boards have power to make agreements for education purposes with person, group, community, institution or corporation; also power to make agreement with other school boards regarding teaching staff (s.16.0.9 &amp; s.17.0.67). SS.16.0.12, 16.0.13 and ss.17.0.6-17.0.56, and s.17.0.71 of <u>JBNQA</u> outline the requirements of school board commissioners (elections, qualifications, membership, age, term, allowances, etc.) Certain provisions of the <u>Education Act</u> (taxes, parents' committees, etc.) do not apply to Cree school board. Provisions for amendments included in ss.16-17.</p>	<p>There is a wide range of possibilities in establishing education authorities. The authority can be recognized in a framework legislation and described in a constitution. Bands also would have the option of taking control over education in a phased approach. Again economies of scale should be considered in deciding on the structure of an education authority. Preference would be to have a grouping of communities when population does not justify an elaborate structure for a single band. However, community grouping might not be possible in remote areas.</p> <p>Recognition of education authority by provinces is probably advisable.</p>

EDUCATION

<u>SUB-FIELD</u>	<u>KEY COMPONENTS</u>	<u>PRECEDENTS</u>	<u>COMMENT</u>
8. <u>Control of Facilities</u>	<ul style="list-style-type: none"> <li>- Construction;</li> <li>- Maintenance;</li> <li>- Acquisition of land for education purposes (playgrounds, schools, etc.);</li> <li>- Property taxes;</li> <li>- Upgrading of facilities.</li> </ul>	<p><u>Sechelt</u>: Act, s. 14(1)(d) and Constitution, Part III, Division (I), s.4: Band has right to make laws in relation to use, construction, maintenance, repair and demolition of buildings. Must adopt National or Provincial Codes.</p> <p>Band has powers in zoning, land use planning (<u>Sechelt</u>, s.14(1)(b) and Constitution, <i>idem</i>, s.2), expropriation (<u>Sechelt</u>, s.14(1)(c) and Const., <i>idem</i>, s.3) and administration and management of property (<u>Sechelt</u>, s.14.1.f) and Const. <i>idem</i>, s.6). See also <u>Sechelt Constitution</u>, Part II, Division 7, s.(7)(f).</p> <p><u>Cree-Naskapi Act</u>, s.109(2): a band has exclusive use and benefit and may administer, manage, control, use, and enjoy that land for community and other purposes.</p> <p><u>JBNQA</u>: Power to acquire, build and maintain residential facilities for teachers (s.16.0.9 (d) and s.17.0.75). School buildings, facilities, residences and equipment of Québec and Canada shall be transferred or leased at nominal cost to the Cree SB (s.16.0.14, ss.17.0.76-17.0.77). Cree SB not proprietor of any lands (s.16.0.15)</p> <p>School boards may incur expenditures for construction (ss.16.0.14, 16.0.15, 17.0.75). School boards are not obliged to levy school property taxes (s.16.0.26, s.17.0.78).</p>	

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SELF-GOVERNMENT IN  
SOCIAL AND WELFARE SERVICES  
INCLUDING CUSTODY AND PLACEMENT  
OF CHILDREN

Introduction

The field of social and welfare services, and benefits has become a highly developed element of government programs in Canada over the last 50 years. Broadly speaking, jurisdiction falls within the provincial sphere. The fact that DIAND has accepted to fund or provide services and benefits does not mean that it is done within federal legislation. It is a field of some importance to bands because of the impact of social service program design and delivery on the fabric of the community. More importantly, control over child custody remains a central issue in this field.

There have been significant developments in recent years in the introduction of Indian-related services and agencies under the aegis of federal, provincial and band governments. Considerable practical experience has been established. However, for child welfare, Cabinet has confirmed that Canada will not displace provincial authority and responsibility in this field.

Subfields:

1. Jurisdiction - General
2. Child Welfare
3. Adult Care
4. Social Services Programs
5. Income Support Social Assistance
6. Public Housing

SOCIAL AND WELFARE SERVICES INCLUDINGCUSTODY AND PLACEMENT OF CHILDREN

<u>SUB-FIELD</u>	<u>KEY COMPONENTS</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
1. <u>Jurisdiction</u>	<ul style="list-style-type: none"> <li>- child welfare and custody</li> <li>- guardianship</li> <li>- design of programs</li> <li>- legal status of agency</li> <li>- standards (professional and services)</li> </ul>	<p><u>Sechelt Act</u>, s.14(l)(h) gives legislative powers to the Council to make laws related to "social and welfare services with respect to band members... including the custody and placement of children of band members". However, the Constitution, (Part III, div.1, 18) mentions that "no additional authorities are being defined for subsection 14(1)(h) on social and welfare services... The development of legislative authorities in this regard will not be pursued at this time. These authorities may be further defined following further discussion with the Province."</p> <p><u>Cree-Naskapi Act</u> does not mention social services. Section 14 of the JBNQA establishes a Cree Regional Board of Health and Social Services in order to exercise powers and functions of a Regional Council within the meaning of the provincial act respecting Health Services and Social Services.</p>	<p>Jurisdiction over social services and child welfare is negotiable with provinces. There are a number of considerations. In particular, there is potential for conflict between individual and community interests, especially in child welfare. Also, many services such as child welfare or rehabilitation are most effective if delivered through multi-band or off-reserve agencies requiring compatibility with provincial services systems.</p>
2. <u>Child Welfare</u>	<ul style="list-style-type: none"> <li>- prevention</li> <li>- youth protection</li> <li>- custody and placement of children</li> <li>- day care</li> <li>- adoption.</li> </ul>	<p><u>Sechelt Act</u> s.14(l)(h) gives band council law making powers; those are not yet defined and used.</p> <p>Development of community based child welfare agencies through federal-provincial agreements affecting 1/3 of bands.</p> <p>Transfer of management to Indian agencies under provincial control (federally funded).</p> <p>Delivery of services in Quebec through provincial Centres des Services Sociaux (CSS).</p>	<p>This area falls under provincial jurisdiction. Many provinces provided only protective, custody and placement services in the past. The present policy is to develop provincial and band agencies under provincial control. Jurisdiction can be delegated under self-government but not to the detriment of co-operative efforts to provide support services to communities. Professional and service standards are important. Use of high criteria can be encouraged in funding agreements (i.e. as in federal-funding of provincial social and health services such as CAP).</p>



**SOCIAL AND WELFARE SERVICES INCLUDING**  
**CUSTODY AND PLACEMENT OF CHILDREN**

<b><u>SUB-FIELD</u></b>	<b><u>KEY COMPONENTS</u></b>	<b><u>PRECEDENT</u></b>	<b><u>COMMENT</u></b>
		Cree-Naskapi Act (s.174) recognizes traditional adoptions for purposes of succession.	Adoption falls under Child Welfare legislation. Traditional adoption would have to be discussed with provinces since it falls under Child Welfare legislation which is a provincial responsibility. Care must be taken with regard to the relationship between band powers and provincial family law.
3. <u>Adult Care</u>	<ul style="list-style-type: none"> <li>- residential care</li> <li>- nursing home care</li> <li>- aids to living (home maker care, etc.)</li> </ul>	<p>Sechelt Act s.14(l)(h) gives band council law making powers (not yet implemented).</p> <p>Some programs funded by DIAND.</p>	Adult care as well as placement are considered by DIAND as a mandatory service. Jurisdictional considerations include health and safety standards of residential care.
4. <u>Social Services Programs</u>	<ul style="list-style-type: none"> <li>- counselling services</li> <li>- drug and alcohol programs</li> <li>- rehabilitation programs</li> </ul>	<p>Sechelt Act s.14(l)(h) (reference above). Native Alcohol and Drug Abuse Program of Health and Welfare Canada.</p> <p>Some programs funded by DIAND.</p>	Discretionary services. Availability based upon funding. Largely non-regulated by provinces. Subject to criteria developed by funding body (e.g. National Native Alcohol and Drug Abuse Program (NHW)). Funding availability and criteria are more significant than jurisdiction.
5. <u>Income Support/Social Assistance</u>	<ul style="list-style-type: none"> <li>- design of program</li> <li>- eligibility</li> <li>- funding</li> </ul>	<p>Sechelt Act s.14(l)(h) (reference above).</p> <p>Indian Services Sector provides financial and special needs allowances using applicable provincial/local rates.</p>	Programs can be transferred. Jurisdiction remains provincial. Potential to maintain or add to community designed programs sensitive to local needs (e.g. combining welfare with training or work programs).
6. <u>Public Housing</u>	<ul style="list-style-type: none"> <li>- availability and eligibility</li> <li>- standards</li> </ul>	Sechelt Act s.14(l)(d); use and construction of buildings and (h) social and welfare services, gives the band potential jurisdiction. In the first case, laws of the province and higher standards can be adopted. In the second case, powers remain to be defined.	

SELF-GOVERNMENT IN THE  
ADMINISTRATION OF JUSTICE

Administration of Justice

The administration of justice is one of the most complex of the optional subject matters negotiable under the Indian self-government policy. There are several reasons for this. First, justice is a matter which cross-cuts all other subject-matters. It is fundamental to running a modern nation state, indeed any organized society. Concepts and practice of justice may differ amongst nations, but the application of law through a recognized system is a prerequisite, especially in parliamentary democracies. Second, principles of natural justice dear to Canadian legal inheritance, and enshrined in the Canadian Charter of Rights and Freedoms, may not necessarily be equivalent to Indian traditions. Third, administration of justice is a shared field; any community arrangements will entail close federal-provincial-community collaboration. Fourth, most of the so-called "precedents" in this field are program discretionary "precedents"; there is little to draw on from Sechelt or Cree-Naskapi acts. Adaptation of these program precedents to a self-government setting is not impossible, but further work remains to provide options in this regard.

The sheets which follow should be treated with caution given the above caveats. They attempt to provide a brief understanding of what may be entailed in the negotiation of the administration of justice.

Sub-fields covered below include:

1. Rule of law
2. Enacting local laws
3. Enforcement
4. Prosecution
5. Representation
6. Adjudication
7. Sentencing
8. Corrections
9. Rehabilitation

Administration of JusticeSUB-FIELDCOMPONENTSPRECEDENTSCOMMENT1. Rule of Law

- o The restriction on arbitrary authority in government and the necessity for all acts of government to be authorized by reasonably precise laws as applied and interpreted in the courts.

For greater clarification:

- The right to bring government before the courts of law to answer for its conduct.
- Close sympathy between legislative and executive branches of government.
- Decisions emanating from powers delegated to an administration are subject to public scrutiny and interpretation by the courts.
- A process for the calling to account of administrative decisions by those other than the decision-maker.

Certain aspects of the rule of law, are entrenched in the Charter of Rights and Freedoms. Of particular interest are the juxtapositions of ss.15, 25 and 33(1).

2. Enacting local laws

The traditions and practices of administrative law apply throughout. Among the most important in self-government would be:

- o role of chief and councillors in signing by-laws
- o adoption of resolutions by council
- o approval of resolutions by band members
- o posting of by-laws and of notices of appeal process
- o effective dates of by-laws
- o access to information on by-laws
- o application to courts to challenge by-laws

One can assume that the Sechelt and Cree-Naskapi acts were drafted with the rule of law in mind.

The rule of law is fundamental to Canada's constitutional and legal inheritance and current practice.

The components must be kept in mind at all times, but nowhere more evidently than in examining the relationship between key proposed institutions such as Band Councils, Elders' Councils, General Councils, Judicial/Tribal Courts, and band membership.

Customary law is not by definition at odds or contrary to the rule of law. However, where customary values are to be embodied in institutions and procedures, not only must they be understandable by band members but they must be decipherable by the courts in the event that decisions by band institutions are appealed to outside courts.

- o Bands have by-law powers under ss.81, 83, 85(1), Indian Act.
- o Sechelt, powers listed s.14. Procedures for enacting laws are found in the Constitution, Part II, Division (5).
- o Cree-Naskapi, powers listed in s. 45. SS.49-57 list procedures for enacting laws.

Review Sechelt and Cree-Naskapi sections for guidance. This is fairly straightforward sub-field which, in a democratic society, governed by the rule of law, does not allow for a great deal of variation.

## Administration of Justice

<u>SUB-FIELD</u>	<u>COMPONENTS</u>	<u>PRECEDENTS</u>	<u>COMMENT</u>
3. <u>Enforcement</u> *	<ul style="list-style-type: none"> <li>o provincial and federal roles</li> <li>o by-law enforcement</li> <li>o local police - extent of authority</li> <li>o provincial police (or RCMP)</li> <li>o RCMP - criminal law</li> <li>o Interpretation of law</li> <li>o training of enforcement officers</li> <li>o s.24, Charter of Rights and Freedoms (recourse to courts)</li> </ul>	<ul style="list-style-type: none"> <li>o Special Constable RCMP "3b" Program</li> <li>o Band Constable Circular 55 Program</li> <li>o OPP Special Constables</li> <li>o Quebec Special Constables under JBNQA</li> <li>o Policing of reserves adjacent to municipalities</li> <li>o Quebec Amerindian Policy Program</li> <li>o Band policing (i.e. Maniwaki, Blood Tribal Force; Hobbema, Enoch, Stoney and Saddle Lake; Kahnawake; Dakota-Ojibway; Louis Bull)</li> <li>o Provisions in JBNQA that administration of justice should reflect the distinctive values of native societies</li> <li>o Provisions in JBNQA to amend federal Criminal Code and Quebec Code of Civil Procedures</li> <li>o enforcement of by-laws under ss.81, 83, and 85(1) of the <u>Indian Act</u>.</li> </ul>	<p>Band policing is a negotiable item, but it will have to take into account the results of consultation pursuant to the <u>"Indian Policing Policy Review"</u> (Ottawa: January, 1990).</p> <p>Under the <u>Indian Act</u>, the following provisions create offences:</p> <ul style="list-style-type: none"> <li>o s.30; trespass</li> <li>o s.81(2)&amp;(3); enforcement of by-laws</li> <li>o s.90(3); restriction on transfer of property</li> <li>o s.91; trading</li> <li>o s.92; trading without a licence</li> <li>o s.93; removal of materials from a reserves.</li> </ul> <p>An adequate enforcement system on reserve under self-government would require prosecutorial, enforcement, and adjudicative powers.</p> <p>A prosecutorial power depends on whether there is a local court system. Otherwise, bands will have to use provincial or federal courts to decide penalties for contravention of local laws.</p>
4. <u>Prosecution</u>	<ul style="list-style-type: none"> <li>o guarantees provided in s.11(a-c), Canadian Charter of Rights and Freedoms</li> <li>o ability to initiate actions in a local adjudicatory structure</li> </ul>		
5. <u>Representation</u>	<ul style="list-style-type: none"> <li>o Canadian Charter of Rights and Freedoms, ss.10(b), right to counsel; s.13 (incriminating evidence); s.14 (right to an interpreter).</li> <li>o Charter, s.7, Right to life, liberty &amp; security of the person</li> </ul>	<ul style="list-style-type: none"> <li>o Native Courtworker Programs</li> <li>o Legal Studies for Aboriginal People Program</li> <li>o Legal aid (i.e., Ft. Nelson, B.C.; Thompson, Man.; Iqaluit, NWT)</li> <li>o Paralegal projects (i.e., Manitoba)</li> <li>o Adaptation of Quebec legal aid provisions per JBNQA</li> </ul>	<p>Establishing band legal-aid systems is not out of the question, but the "existing funding" constraint may limit funding options to this end. The need may be linked to any local court arrangements arising from negotiations. Otherwise, legal aid for outside courts might be addressed at a tribal council level in conjunction with the province.</p>

\* Interested readers may wish to consult: Lang, Michener, Lash, Johnston, "LRT Review: Phase II Report - By-Laws Enforcement; Legal Opinions/Possible Options related to by-laws and enforcement" (December, 1988).

Administration of JusticeSUB-FIELD6. AdjudicationCOMPONENTS

- o s.101 Constitution Act, 1867 establishes
  - o Courts of appeal (Supreme Court)
  - o Federal court
- o Provincial courts (s.92(14), Constitution Act, 1867)
  - o superior courts (trial and appeal division)
  - o district and county courts (Ont, BC, Nfld, NS)
  - o Inferior courts (Incl. JPs)

Superior, District and County Courts adjudicate over all federal, provincial or constitutional law, subject only to s.101 (right to establish additional courts). Under s.96, federal government appoints judges to these courts. Provincial courts constitute criminal courts although Parliament has constitutional authority over criminal law and procedure. Except for some matters expressly reserved for the Federal court under the Indian Act, and except for challenges to a band council's jurisdiction, provincial courts can hear cases on Indians and lands reserved for Indians. These courts would hear customary law cases.

Inferior courts have jurisdiction over family law matters, small civil claims, provincial offences, surrogate matters, and the majority of criminal code offences.

PRECEDENTS

- o Justices of the Peace appointed under s.107 Indian Act (Pointe Bleue, Kahnawake, Akwesasne). Under s.107, JPs may exercise power and authority with regard to offences under the Indian Act, and any offence against the provisions of the Criminal Code relating to cruelty to animals, common assault, breaking and entering and vagrancy, where the offence is committed by an Indian or relates to the person or property of an Indian.
- o Justices of the Peace appointed provincially. In Ontario JPs do not hear Criminal Code trials but do hear provincial offence trials. In Manitoba, JPs may hear guilty pleas for provincial offences and Criminal Code summary conviction offences
- o Peace-maker courts (mediation) (i.e., Oneida)
- o Longhouse (Kahnawake)
- o Local justice committees (Sandy Lake, Ont.)
- o Lay assessors program (Christian Island, Ont.)
- o Youth Court System (St. Theresa's Point, Man.; judge elected by community; handles minor offences)
- o Itinerant courts agreed to under JBNQA.

COMMENT



Administration of Justice

<u>SUB-FIELD</u>	<u>COMPONENTS</u>	<u>PRECEDENTS</u>	<u>COMMENT</u>
	<ul style="list-style-type: none"> <li>o Federal courts are restricted to hearing matters of federal law; however, note, as in <u>Secheft</u>, appeal may be specified as going to a provincial court.</li> <li>o Adjudication must follow Charter principles: s.11(a&amp;b), speedy information on charges, trial without unreasonable delay; s.11(d), Innocent until proven guilty by a court.</li> </ul>		
7. <u>Sentencing</u>	<ul style="list-style-type: none"> <li>o equity</li> <li>o comparability</li> <li>o equality</li> <li>o Charter provisions (s.11(g)(h)(i); no retroactivity; no trial twice for the same offence; benefit from the lesser punishment.</li> </ul>		Assuming local courts (if established) stick to local matters (e.g. family law, child welfare, etc), one would be looking for intra-band equity, equality and comparability. Ultimately, it would be the passage of time which would determine the "fairness" of local case law. Appeals to outside courts would be essential.
8. <u>Corrections</u>	<ul style="list-style-type: none"> <li>o safety of the community</li> <li>o accountability of the offender to the community</li> <li>o severity of and amount of offences locally</li> <li>o responsibility for non-member and non-resident offenders</li> <li>o economies of scale (band or tribal council)</li> <li>o reparation to the victim</li> <li>o provision of information</li> <li>o severity of sentences</li> <li>o comparability of sentences</li> <li>o denunciation and incapacitation</li> <li>o parole and parole boards</li> <li>o gender specific treatment</li> </ul>	<ul style="list-style-type: none"> <li>o National Parole Board-Working Group on Aboriginal Offenders</li> <li>o Community Residential Centres (BC, Alta, Man., Ont.)</li> <li>o Native Brotherhood/Sisterhood (within CSC Institutions)</li> <li>o Elders counselling</li> <li>o Native Liaison Worker Program (CSC)</li> <li>o Native Courtworker Program</li> <li>o Native Spiritual Leaders Program</li> <li>o Dakota Ojibway Tribal Council</li> <li>o Parole and probation supervision on reserves (i.e., Nova Scotia, Alberta, Manitoba, Ontario)</li> <li>o Wilderness/Forestry camps (i.e., Alberta, Manitoba, Saskatchewan, Ontario)</li> <li>o JBNQA provisions to establish correctional centres in James Bay region (ss.18, 20)</li> </ul>	<p>One could conceive of local correctional practices to match local courts handling of family law, child welfare, etc.</p> <p>Many bands already practise traditional remedies for offenders. Not all of these might necessarily be compatible with Canadian legal traditions.</p>

Administration of Justice

SUB-FIELD

9. Rehabilitation

COMPONENTS

- o safety of the community
- o accountability of the offender to the community
- o severity of offences
- o responsibility for non-member and non-resident offenders
- o economies of scale (band or tribal council)
- o community service orders
- o alternative sentences
- o victim-offender reconciliation
- o special rehab programs (i.e., alcohol/drug treatment, counselling, etc)
- o gender specific treatment

PRECEDENTS

- o various aftercare programs (i.e. Native Counselling Services of Alberta)
- o Dakota-Ojibway Probation Service

COMMENT

Similar considerations to those in corrections (above) apply.

**SELF-GOVERNMENT IN**  
**LICENSING, REGULATION AND OPERATION OF BUSINESS**

1. General Description:
  - This field is an optional subject matter listed in the Indian Self-Government Community Negotiations Guidelines.
  - This field is intended to cover a community's ability to regulate commercial activities and to obtain non tax-revenues from business activities.
  - The other fields which are considered to establish a community's potential gross general revenue are: tax revenue for local purposes (optional); transfers from other governments which are covered under the Financial Arrangements and Implementation fields (essential), and management of Indian Monies (optional).
  - The orientation of this field is revenue generation and expenditures and constant cross-references are required with the other mentioned revenue generation fields and essential fields such as Legal Status and Capacity, Structures and Procedures of Government, Lands and Resources, etc.
  
2. Field description:
  - This field includes 8 sub-fields:
    1. Natural Resource Charges
    2. Business or occupational licenses and permits
    3. User charges
    4. Sales of Goods and Services
    5. Government enterprises
    6. Contributions to pension plans
    7. Grants in lieu of taxes
    8. Other non-tax revenues

Note: This table should be read in conjunction with the table "Taxation for Local Purposes" (O:6) in order to avoid overlapping, duplication or confusion with tax revenue sub-fields.

## LICENSING, REGULATION AND OPERATION OF BUSINESS

### SUB-FIELD

#### 1. Natural Resources Charges

##### Description

This sub-field concerns revenue derived from the exploration, development and exploitation of natural resources (other than revenue received under income tax legislation or through a government enterprise engaged in natural resource-oriented operations).

It specifically includes (1) revenue from fish and game, hunting and fishing licences and permits and royalties on fur and fish; (2) revenue from forests, including levies on logging operations; leases and rentals of lands; and all royalties, rentals, stumpage, licences, and other fees derived from timber and forest management; (3) revenues from mines, including levies on mining operations, acreage levies, rentals and lease payments, and royalties on mineral production; (4) revenue from oil and gas, proceeds from the sale of oil and gas leases, levies on oil and gas production, royalties, freehold levies, lease rentals, and fees and permits; (5) water power rentals and (6) all types of revenue from sand and gravel, peat, and quarry pits, park and campground permits and rentals, sales of leases and rentals of lands; and other various natural resource levies and fees.

It is the most important sub-field for economic and development opportunities and a possible basis for economic reliance and self-sufficiency.

### KEY COMPONENTS

- Generation of revenue within this sub-field and the majority of the following sub-fields supposes a realm of various powers and capacities.
- The power and capacity to use, manage, administer and regulate revenue sources.
- The power and capacity to establish or incorporate various standards and regulatory schemes for the various type of natural resources.
- The power and capacity for financial management, planning, budgeting and assessing revenue generation capabilities.
- The power to control and enforce standards and various requirements.
- The power to manage, invest or expend revenues.

### PRECEDENT

Under Cree-Naskapi Act, ss.21(b),(c) and 109(2) confer the necessary powers over land and natural resources. S.46(1) gives by-law making powers relating to permits; s.48(1) relating to hunting; fishing and trapping; ss.6-8 gives the status and scope of band by-laws i.e. requirements of licences, permits and related fees. S.22(3) authorizes the band to own shares incorporations that carry on commercial activities.

Under Sechelt Act ss.6, 1(f),(k), n),(p),(r),(t),(u), 22-26 give the band the necessary powers to deal with its lands and natural resources. Sechelt Constitution, Part I, Division (2) Band Land Regime ss. 5-6 express the procedure for the granting of lease, licence, permit, and other interests in lands. Division (3) Natural Resources s. 1 gives the band full power to dispose of any right or interests, to control them (s.2) to grant permits ss.3-4 to enforce s.6 and how to proceed s.5. Part III Division (1) exposes the legislative prescriptions for access and residence to lessees and permittees s.1. SS.7-8 describe how the Band Council can incorporate the various B.C. legislative schemes and standards to regulate and manage non-renewable natural resources.

Part I, Division (5), concerning Band Money, governs the management, control and expenditures of Band Money as prescribed for in Division (7) of Part II.

### COMMENT

- To draw revenue from this source, it is important for a community to have full ownership and control of its lands.
- This sub-field is the most significant revenue generation source. A community is in a better position to assess when and how this source should be developed according to its own values and attachment.
- The potential revenue from this source should be assessed and incentives to occupy the field should be had or offered, rather than simply adjusting the financial arrangements or transfers with the potentiality of tax and non tax sub-fields.
- Acquired third party rights should be respected.
- Tenure and particular provincial proprietary interests and restrictions in lands or resources (uranium, or other sub-surface minerals) must be sorted out.

Licensing, Regulation and Operation of Business

<u>SUB-FIELD</u>	<u>KEY COMPONENTS</u>	<u>PRECEDENT</u>	<u>NEGOTIATION COMMENT</u>
<p>2. <u>Business or occupational licences and permits</u></p> <p>Description</p> <p>These are set charges imposed by government as prerequisites to the performance of certain activities. This includes (1) concessions and franchises i.e. revenue obtained from the granting of exclusive rights (2) business and occupation i.e. revenue from building permits, licences of status, professional and occupational licences or permits, etc. Revenue from privileges, licences and permits pertaining to natural resources are included in the natural resources charges sub-field.</p>	<p>As for the other revenue generation sub-fields it is necessary to</p> <ul style="list-style-type: none"> <li>- have the powers to establish adequate governing structures to manage, regulate, control and enforce business, construction and professional or occupation activities;</li> <li>- have the power and capacity to create administrative bodies and invest them with adequate power and authority or to enter into contract or agreement with an existing regulatory body for the performance of various administrative tasks or functions;</li> <li>- have minimum standards adopted (like Building Codes, Public Health and Safety Standards) established or incorporated by reference;</li> <li>- Have links with powers and other governing structures for coherent and consistent coordination, planning, management and regulation of interrelated activities. (i.e. land use planning and community infrastructure and public works - incompatible business, construction or trade activities)</li> <li>- have the powers for permits issuance, control and enforcement of by-law violation.</li> </ul>	<p>Under <u>Sechelt</u>, s.14(1)(n), Council has the power to make laws in relation to the operation of businesses, professions and trades on Sechelt lands. Part III, Division (1), s.11 subjects this power to the adoption of the <u>B.C. Municipal Act</u>, minimum parallel standards requirements of procedures for licensing, fees imposition and collection and classification of businesses by type.</p> <p>Under <u>Cree-Naskapi Act</u> s.45(1)(a)(b) and (k) gives the bands by-law making powers for the administration of band affairs and the operation of businesses and the carrying on of trades. SS.89-100 establish the financial administration legal framework of the bands. By reference to sections 21 (objects and powers of bands); 22 (legal capacity of a natural person); 45 (1) (by-law making powers); and 40, 41 the bands have the possibility to establish the required structures to regulate and administer this field subject to the procedural requirements for by-law making and resolutions (ss.49-57). It is important to note that the Cree and Naskapi bands are also corporations (ss.12,14).</p>	<ul style="list-style-type: none"> <li>- This sub-field can also be used to control or prohibit certain kind of activities.</li> </ul>



Licensing, Regulation and Operation of Business

SUB-FIELD

KEY COMPONENTS

PRECEDENT

NEGOTIATION COMMENT

3. User Charges

Description

This sub-field concerns the revenue generated through the collection of fees or charges related to the use of utility services like electricity, heating, sewage, water supply, garbage, etc. They should not be confused with taxation levies. These services can however be provided through community enterprises or corporations. They can be related to a community infrastructure or public works but the fees or charges are only associated with the use of the services. Finally, it is not a profit oriented sub-field as it concerns only essential community services.

To deal with this sub-field requires

- by-law making powers to implement and to provide these services to establish proper tariffs, fees or charges
- to collect fees and enforce their payment
- For non profit oriented services, communities have to consider various factors such as the nature of the service, existing structures, the community's location, the advantage of cost-sharing arrangements with other communities, etc.
- The power for resolution or by-law approval is essential.

Under Sechelt Act, ss.6, 14 and Sechelt Constitution, Part II and III, establish the framework to govern this field although there is no specific reference as in C-N Act.

Under Cree-Naskapi Act, s.45(1)(i) and specifically 45(5) establish equity as the leading principle when differentiating categories of users or categories of land benefitting from the services. S.45(1)(i) gives a description of a list of type of services where the band has by-law making powers relating to their establishment, maintenance and operation.

- The authority to manage this field is already available under existing legislation.
- Incentive for a full and articulated field occupation which is important. It is not the user charges themselves that are significant, but the infrastructure itself and the idea that appreciation of local government responsibilities is only possible through members' contribution for their essential services.

4. Sales of Goods and Services

Description

This category of revenue is derived directly from transactions of a commercial nature.

It includes revenue from rental of real property, the rental or sale of lands acquired or held on the community's behalf, franchises or concessions of a commercial nature, catering or amusement operators, charges for use of recreational facilities (skating rinks, swimming pools, etc.). The distinction between this sub-field is the nature of the service. Here the members have latitude to use or not to use the service; facility or goods.

- Although of a different nature than services described under the user charges sub-field, the requirements to deal with this sub-field are the same as those indicated under sub-fields no. 2 and 3.
- Generally, local communities retain powers to regulate sub-fields through their executive institutions and contract out service delivery on a cost efficiency basis.
- For non-profit oriented services, communities have to consider various factors such as the nature of the service, existing structures, the community's location, the advantage of cost-sharing arrangements with other communities, etc.
- The powers for resolution or by-law approval is essential.

The basic legal framework described in sub-field 3 for Sechelt and Cree-Naskapi is applicable to this sub-field. Sechelt can prohibit the sale, barter, supply, manufacture or possession of intoxicant (Part III, Division (1), s.12); the Cree-Naskapi Act, 45(1).

- This sub-field could have been amalgamated with user charges, community enterprises, business and occupational licences or permits sub-fields. However, it may be important to distinguish or differentiate these sub-fields. Essential services and related financial arrangements or transfers are not to be considered in the same light as non-essential services, or services which can be offered with profit generation capabilities.

Licensing, Regulation and Operation of Business

<u>SUB-FIELD</u>	<u>KEY COMPONENTS</u>	<u>PRECEDENT</u>	<u>NEGOTIATION COMMENT</u>
<p>5. <u>Government or Community Enterprises</u></p> <p><u>Description</u></p> <p>Most of these local enterprises are alternatives to carry on the activities of the local government itself.</p> <p>They include corporations that provide and administer water supply systems, community airports, housing authorities, development commissions, natural resources, and various local utilities. The revenue of this sub-field is not therefore the user charges themselves or the revenue from the sale of goods and services but the net annual operational surplus or deficit of these community enterprises.</p>	<ul style="list-style-type: none"> <li>- It is essential to be able to create, regulate and control the activities of these administrative or corporate entities.</li> <li>- It is necessary to have the power to amend or modify their objects and structures including their extinction.</li> <li>- It is for the elected community representatives to account to members for these entities, but enterprises must render account for their operations.</li> </ul>	<p>Under <u>Sechelt Act</u>, s.14(1)(t) permits the creation of administrative bodies and agencies to assist in the administration of the affairs of the Band and, as a natural person (s.6), the band can create corporations. The Cree-Naskapi bands have legal capacity under s.22, and s.23 imposes restriction on the band(s) commercial activity, although it can own shares in corporations that carry on commercial activities.</p> <ul style="list-style-type: none"> <li>- S.83, <u>Indian Act</u> provides, through by-law making, for revenue generation and expenditures. The GiC under s.83 may revoke this power.</li> </ul>	<p>These public enterprises are generally used to provide or administer goods or services (monopoly or in competition) such as water supply systems, local airports, housing authorities, boards or commissions for electricity, transport transit, gas distribution, etc.</p> <p>The <u>Indian Act</u> regulates and provides standards for this revenue generation sub-field.</p> <ul style="list-style-type: none"> <li>- A community should be empowered to manage the field i.e., create these public enterprises and regulate the activities or contract for these goods or services. Pertinent regulatory powers held by the GiC under s.73.</li> <li>- Powers of governing structures should be linked.</li> </ul>
<p>6. <u>Contributions to pension or other collective plans</u></p> <p><u>Description</u></p> <p>It includes money received from public servants, teachers, government employees or community members. The revenue is the return on investment. See Table concerning the management of Indian Money.</p>	<p>The essential elements required in this area (and for the management of Indian Monies) are:</p> <ul style="list-style-type: none"> <li>- the power for such specific type of management</li> <li>- the adoption of strict and rigid standards. It can be through incorporation by reference and these must be at least equal to standards required for financial institutions (such as banks, trust funds etc.) concerning cash flow, capital, insurance, etc.</li> <li>- the power to negotiate on behalf of the collectivity with existing institutions for the management of the fund or plans and conditions of its re investment, etc.</li> </ul>	<p>Under <u>Sechelt Act</u>, s.14(1)(u), and Constitution, Part II and its divisions, specify the various requirements for financial controls - budgets and borrowings.</p> <p>Under <u>Cree-Naskapi Act</u>, s.43 makes the band treasurer responsible for receipt and deposit of band monies and for all aspects of the financial administration of the band.</p>	<p>This sub-field can be an economic development tool. The fund itself at community level may not be significant, but it may serve as a training ground in investment, business and financial management and permits small community projects.</p>

Licensing, Regulation and Operation of Business

SUB-FIELD

KEY COMPONENTS

PRECEDENT

NEGOTIATION COMMENT

7. Grants in lieu of taxes

Description

These are Intergovernmental; transfers to compensate for the tax exemption status of certain provincial or federal property. It can be in lieu taxes on property or business taxes. See tables on financial arrangements, Implementation, taxation.

- the capacity to enter into agreements
- financial management and control

Sechelt ss.6, 14, and Constitution, Part II Divisions (4) and (6), relate to financial control and federal transfer requirements.

8. Other non-tax revenues

It includes fines, penalties, interest on investments, loans and capital funds, donations and other money not included in the above sub-fields or the pertinent other fields.

The components are the financial management and control powers and structures associated with these types of revenue.

Sechelt Act, ss.6, 14(7) and Part III of the Sechelt Constitution give the essential powers for these type of revenues.

Under Cree-Naskapi Act ss.21-22 and 89-100 contain provisions for financial administration.

SELF-GOVERNMENT RELATED TO  
TAXATION FOR LOCAL PURPOSES

General Description

- This field is an optional subject matter.
- Other fields which are considered to establish a community's potential gross general revenue are: licensing, regulation and operation of business (optional), transfers from other governments which are covered under the Financial Arrangements and Implementation fields (essential) and management of Indian Monies (optional).
- The orientation of this field is revenue generation and expenditures through taxation. Constant cross-references are required with the other mentioned revenue generation fields and essential fields such as Legal Status and Capacity, Structures and Procedures of Government, and Lands and Resources.

Field Description

This field includes 4 sub-fields:

1. Consumption taxes
2. Corporation taxes
3. Personal taxes
4. Real Property taxes and reliefs

NOTE: It is important to read this table in conjunction with the table "Licensing, Regulation and Operation of Business" (O:5) to avoid overlapping, duplication or confusion between what is qualified in these tables as tax revenue sub-fields and non-tax revenue sub-fields. It is important to note that since the summer of 1988, the Kamloops amendment (Bill C-115) is in force and has amended The Indian Act. It clarifies the legal status of the conditionally surrendered lands (now called "designated lands"), gives the band a property taxation power for any interest in these lands (reserve lands and designated lands) and permits the mortgaging of leasehold interests in these designated lands, thus helping to secure the borrowing of money. Also significant is the abandonment of the notion called "an advanced stage of development", s.83, which was not defined in The Indian Act.



## TAXATION FOR LOCAL PURPOSE

O: 6-2

### SUB-FIELD

### KEY COMPONENTS

### PRECEDENT

### COMMENT

#### 1. Consumption taxes (1)

- general sales taxes
- automotive fuel
- tobacco
- amusements and entertainment

- the power to institute and levy on band members, sales taxes (retail and manufacturers); general sales taxes, fuel taxes, tobacco taxes and taxes on amusements and entertainment.

- the power to levy the same taxes on non-Indians.

- the regulatory power for the exercise of taxation by-law making powers.

Regulations required would concern the basic elements e.g., assessment, tax rates, appeal procedures, collection and enforcement.

Sechelt Act, s.14(1)(e), and Constitution Part III, Division (1), s.5, specifies the power and requirements relating to taxation for local purposes, including assessment, collection and enforcement procedures and appeals, and is subject to adoption of pertinent B.C. legislative provisions (also may be applied to non-Indians on reserve).

Under Cree-Naskapi, s.45(1)(h), a band may make by-laws respecting taxation for local purposes, otherwise than by means of an income tax.

S.45(6) permits payment of taxation in a form other than money.

For Sechelt these regulatory requirements are expressed in Part III, Division (1), s.5 of their constitution.

No precedent.

These powers may currently exist under s.83 of the Indian Act. It is suggested that the wording of this section i.e. "the raising of money from band members to support band projects" may include by-law making power for these categories of consumption taxes.

Is it not likely that a similar scheme would apply for this type of tax. However it is important to note that, for property taxation, the Indian Taxation Advisory Board plays a significant role in helping a community design taxation by-laws.

-This might be used as important economic development incentive or tool.

-Discussions with the federal Department of Finance and the province would be necessary to assess and balance the feasibility and advantage of such an approach in lieu of certain financial arrangements, grants or contributions

- Presently, only federal and provincial governments have the power to impose such taxes.

#### 2. Corporation taxes

##### Description

The application and collection of an income tax on corporations.

- all elements of an income tax system
- powers to grant relief or exemption

(1) For more precision see Richard H. Bartlett, Indians & Taxation in Canada, 2nd ed., University of Saskatchewan Native Law Centre, 1987.



**O: 6-3**

SUB-FIELD	KEY COMPONENTS	PRECEDENT	COMMENT
3. <u>Personal taxes</u>	Assuming that a delegation of such power would be acceptable, it would require the same infrastructure already available to the federal or provincial governments to exercise these powers.	For Sechelt Constitution, Part III, Division (1), s.5(d), restricts the band council from imposing an income tax on residents, occupants or tenants on Sechelt Lands.  Under Cree Naskapi, s.45(1)(n), a band has by-law-making power for the taxation for local purposes, otherwise than by means of an income tax (i) of interest in its lands,...., and (ii) of occupants and tenants of its lands	- Negotiations with respect to income should be approached in the context of a tax sharing agreement.  This is an area which would have to be discussed with the Department of Finance.
4. <u>Real Property taxes</u>  a) property taxation and relief	<ul style="list-style-type: none"> <li>- the two basic components of property taxation are the tax base which is the assessed value upon which the tax is levied and the tax rate which is applied to the assessed value to arrive at the quantum of tax owed.</li> <li>- the powers to levy, and regulate the exercise of appeal procedures, for the assessment or the taxation, collection and enforcement</li> <li>- the power to grant tax relief or exemption on an equity or other basis.</li> </ul>	<p>Sechelt Act s.14(1) (e) and Constitution Part III, Division (1), s.5 cover the basic power and requirements.</p> <p>Under Cree-Naskapi, ss.45(1)(h), 45(2) and 45(4), cover the essential powers and requirements and the GiC has the power to make regulations which are a pre-requisite to the exercise of taxation band-by-law making.</p>	Real property taxation is already available under s.83, of the Indian Act. Indian bands currently have a broad power to tax under this section of the Indian Act. This does not require any change in legal capacity and status or a change in the structure of government. S.83 has empowered each and every band with the authority to tax its land and interests in land as a function of responsible government. The only requirement now for exercising this authority is a validly enacted by-law approved by the Minister. The Kamloops amendment (Bill C-115) has amended the Indian Act. It clarified the legal status of conditionally surrendered lands, gives the band property taxation power over these lands and permits the mortgaging of the leasehold interest in these designated lands and reserve lands.
b) <u>Special Assessment levies (1)</u>  <u>Description</u>	The power to levy taxes for local improvements on streets, sewers, water lines, sidewalks, etc, are part of the general taxation power for local purposes.		

(1) These special assessment levies are normally considered as taxation for local purposes. However they have been described under user charge sub-field of table covering the licensing, regulation and operation of business (O:5), because of their direct relation with specific services provided.

TAXATION FOR LOCAL PURPOSE

O: 6-4

SUB-FIELD

KEY COMPONENTS

PRECEDENT

COMMENT

c) Business taxes (2)

Description

This tax is levied on the occupier of property rather than on the owner. This tax is also a property-based taxation.

(2) Business taxes also are described in the table covering licensing, regulation and operation of business (O:5).

SELF-GOVERNMENT RELATED TO  
PUBLIC ORDER, SAFETY AND SECURITY

General

This table covers basic and fundamental powers required by any community to maintain peace, order, safety and security of its members and their interests.

This table has three sub-fields:

1. peace, order and good government
2. safety and security of persons and property
3. fire protection

PUBLIC ORDER, SAFETY AND SECURITY

<u>SUB-FIELD</u>	<u>KEY COMPONENTS</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
a) <u>Peace, order and good government</u>	<ul style="list-style-type: none"><li>- linked with description of powers and governing structures</li><li>- ancillary or residuary power to cover what has not been specified</li><li>- linked with safety and security, policing and justice. See table on the Administration of Justice (O:4).</li></ul>	<p>Under <u>Sechelt Act</u>, ss.6(f), 10(h) and 14(u), ancillary dispositions give to band and council the power to deal with matters related to the good government of the band, its members and lands.</p> <p>SS.35-42 cover the application of the <u>Indian Act</u> and other pertinent federal and provincial acts, whereas ss.44-46 express the transitional provisions which apply until the new regime is in place.</p> <p>The <u>Cree-Naskapi Act</u> has no specific ancillary provisions similar to <u>Sechelt</u>, although the introduction paragraph 45(1) looks like a general by-law amongst making power for matters of a local nature for the good government of its lands and unhabitants.</p> <p>SS.3-5 establish and indicate the respective status of federal and provincial laws and their application.</p> <p>Such ancillary power is expressed in the <u>Constitution Act, 1867</u> s.91 and has helped the Supreme Court of Canada to ensure that there was no vacuum in the assignment of the totality of legislative powers of the parliament and legislatures.</p> <p>The approach chosen to describe power is of importance as it may result in a lack of power to control an activity.</p>	<p>Peace, order and good government is a general phrase, also to be found in Canada's <u>Constitution Act, 1867</u>. However, in the self-government context it should be read more narrowly as referring to the need for the band law-making authority to make decisions in the best interests of band members and band lands.</p>

PUBLIC ORDER, SAFETY AND SECURITY

<u>SUB-FIELD</u>	<u>KEY COMPONENTS</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
b) <u>Safety and security of persons and property</u>	<ul style="list-style-type: none"><li>- linked with policing, justice and governing structures</li><li>- observance of law and prevention of crime. Description of desired sharing arrangements with existing police networks, services, (federal-provincial).</li></ul> <p>See enforcement sub-field within the table "Administration of Justice" (O:4).</p>	<p>Under <u>Sechelt Act</u>, s.14(1)(l) empowers the band council to make laws in relation to public order and safety. <u>Sechelt Constitution</u>, Part III, Division (1), s.9 specifies the inclusion of control of noise, animals, waste disposal and places of amusement. For waste disposal, equivalent standards to those of B.C. are required.</p> <p>S.45(1)(d), <u>Cree-Naskapi</u>, gives the band by-laws making power for public order and safety including (i) establishment, maintenance, and operation of fire departments; (ii) firearms or arms generally; (iii) the keeping of animals; (iv) curfews; (v) prohibition of the sale or exchange of alcoholic beverages; (vi) the possession or consumption of alcoholic beverages in public places, and (vii) the control of public games, sports, races, athletic contests and other amusements.</p> <p><u>Indian Act</u>, s.81(1)(c) refers to the observance of law and order. However, the meaning of this section is unclear.</p>	<p>Many agreements or arrangements could be negotiated with the community concerning civil safety, crime prevention, etc (see table "Administration of Justice", O:4), but the cautionary provisos of that table apply.</p>
c) <u>Fire safety</u>	<p>In addition to the basic powers indicated in the structure and procedures of government table, the power to create administrative bodies or to enter into contract or arrangements with other communities or public entities are essential.</p>	<p><u>Sechelt Act</u>, s.14(1)(t) specifies the power to create administrative bodies but there is no specific mention of that power in the <u>Cree-Naskapi Act</u>, although a band may pass a by-law under s.45(1)(d)(i) regarding the establishment, maintenance and operation of fire departments.</p>	<p>In addition to community, an important aspect of fire protection is forest fire prevention, protection and services with various levels of governments.</p> <p>See table on protection and management of the environment (O:12). See user charge sub-field under licensing regulation and of business table (O:5). Negotiation of this sub-field may require provincial participation, depending on the nature of the proposal put forward by the community.</p>



SELF-GOVERNMENT REGARDING  
INDIAN AND NORTHERN HEALTH SERVICES

Indian and Northern Health Services

The Medical Services Branch (MSB) at the Department of National Health and Welfare (NHW) is responsible for Indian and Northern Health Services. NHW ensures the availability of health services for Inuit and Status Indians in Canada. The area is complex with overlapping jurisdictions. DIAND's role is limited to assisting with the creation of community health by-laws, and promoting communication between the Indian communities and NHW. The following activities comprise the Indian and Northern Services Program:

1. Insured Indian Health Services (medically necessary services)
  - federal authority
  - provincial authority (and additional provincial benefits)
  - Indian authority
    - a) existing schemes
    - b) under transfer
2. Non-Insured Health Benefits (NIHB) and Services (supplementary components)
3. Northern Health Services Transfer
4. Indian and Inuit Health Careers Program
5. Primary Health Care Training Program
6. DIAND'S role

INDIAN AND NORTHERN HEALTH SERVICES

O: 8-2

SUB-FIELD	KEY COMPONENT	PRECEDENT	COMMENT
1. <u>Insured Health Services</u>	<p>Insured health services consist of the following:</p> <ul style="list-style-type: none"><li>- community health services;</li><li>- National Native Alcohol; and Drug Abuse Program (NNADP);</li><li>- dental health;</li><li>- hospital services.</li></ul>	<p><b>Federal Authority</b></p> <p>The <u>Department of National Health and Welfare Act</u> makes provision for its Minister's responsibilities to include health and social welfare matters of the people of Canada over which Parliament has jurisdiction which would include Indian people.</p> <p>In the <u>Constitution Act, 1867</u>, Parliament has exclusive legislative authority over "Indians and lands reserved for Indians" (s.91(24)).</p> <p>Under the <u>Indian Act</u>, the federal government has regulatory powers to control the spread of diseases on reserves, to provide medical treatment and health services, and to provide for compulsory hospitalization and treatment for infectious diseases (s.73), and the Minister can allow bands to make health by-laws (s.81).</p> <p>The <u>Canada Health Act, 1957 and 1966, (CHA)</u> established the universal hospital and medical care insurance system which was followed by the enactment of compatible provincial legislation in every province. The CHA also establishes the criteria under which the provinces qualify for funding with respect to health insurance plans.</p> <p><b>Provincial Authority</b></p> <p><u>Constitution Act, 1867, s.92(7)</u> gives provinces the responsibility to establish, maintain and manage hospitals, asylums, charities and eleemosynary institutions. In the absence of other federal statutes, regulations, or by-laws with regard to Indian matters, the <u>Indian Act</u> provides (s.88) "that all laws of general application in force in any province are applicable to and in respect of Indians in the province.."</p> <p>Band by-laws made in accordance with the <u>Indian Act</u>, can render provincial laws neutral. However, section 4 of the <u>Indian Health Regulations</u> requires that health by-laws comply with provincial laws.</p>	<p>Negotiations of health services must involve NHW and provinces.</p> <p>The federal government has a mediating and representational role in discussions between the provinces and Indian communities. This is the case in discussions with provincial governments with regard to the delivery of health services on reserves, and the provision of additional provincial benefits (described under provincial authority) to status Indians, whether on-or off-reserve.</p> <p>In negotiating transfer of health services, attention should be given to economies of scale.</p>

INDIAN AND NORTHERN HEALTH SERVICES

O: 8-3

SUB-FIELD

KEY COMPONENT

PRECEDENT

COMMENT

**Additional provincial benefits**

Additional provincial benefits are those services which are provided by provinces outside the CHA funding scheme. These services vary from province to province and include such things as drug benefits, ambulance services, chiropractic, and dental treatment. Some of these services are provided in conjunction with the provincial health insurance plans while others are delivered separately, or with other plans administered by the province. The provinces can choose to deliver additional provincial services to any group of its insured residents (i.e. children under a certain age; person 65 and over; sufferers from specific diseases; social assistance recipients), or any target resident group, insured or not.

Indian Health Regulations, which include quarantine measures on reserves in relation to Indian people with infectious diseases, subject Indians to provincial laws.

**Indian Authority**

a) existing schemes

Indian people residing permanently off-reserve normally receive health services from the province or municipality where they live.

JBNQA provided for a Cree Regional Board responsible for the administration of appropriate health and social services for all persons within their region (s.14.0.3).

Section 14 is devoted to the details of "Cree Health and Social Services".

Chapter 14 and 15 of the JBNQA have been legislated by the provincial government. Institutions created under these chapters are comparable to other provincial institutions.

Section 15 of JBNQA concerns "Inuit Health and Social Services". A Kativik Health and Social Services Council works in conjunction with the regional government to provide the Inuit with health and social services.

INDIAN AND NORTHERN HEALTH SERVICES

O: 8-4

SUB-FIELD

KEY COMPONENT

PRECEDENT

COMMENT

b) under transfer program

NHW, in keeping with the Indian self-government initiative, is encouraging Indian people to assume management and accountability of Indian health services.

This encouragement comes in the form of "Transfer Programs" policy which functions under present legislation. Insured Indian health services and programs can be transferred over to community control.

Extensive consultations on the transfer process have been held with Indian leaders across the country. More than 54 pre-transfer planning projects have been approved, involving over 250 Bands.

The Nisga'a Valley Health Board and Nuu-Chah-Nulth Tribal Council in British Columbia received full control of health responsibilities for their communities in 1988.

A joint Branch (NHW)-community assessment of facilities, vehicles and equipment needed to support the health program is done. Once a community has received a capital transfer, the community determines the management of funds.

As a result of the 1987 National Conference on Transfer of Health Programs, coordinated by the Assembly of First Nations (AFN), a formal consultation mechanism has been established between the AFN and the Minister of NHW. This process is actively supported by a similar mechanism at the officials level.

With the transfer program, bands can get a valuable experience in that field.

Under transfer, Indian communities will be expected to administer and control the delivery of local health services in a manner consistent with the applicable legislation, and to recognize that the communities' health programs come under the broad umbrella of the Canadian health system.

## INDIAN AND NORTHERN HEALTH SERVICES

O: 8-5

<u>SUB-FIELD</u>	<u>KEY COMPONENT</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
2. <u>Non-Insured Health Benefits and Services</u>	<p>Non-Insured health services are supplementary services such as eyeglasses, escort transportation, prescribed drugs, dental services, and Insurance premiums and user fees (where applicable).</p> <p>Non-insured health benefits are negotiated separately from transfer agreements.</p>		<p>Where services are denied, the federal government undertakes to ensure their provision.</p> <p>These exclusions from transfer arrangements will not preclude consideration of transfer options in the future.</p>
3. <u>Northern Health Services Transfer</u>	The transfer of northern health services goes to the Territorial governments. This differs with the process found in the provinces, where the transfer of services and programs goes to the Indian communities.	<p>The transfer of health services to the Government of the Northwest Territories (GNWT) was signed and transferred in 1988.</p> <p>Transfer of health services in the Yukon is being discussed with the Yukon government and Council for Yukon Indians. The transfer of the Whitehorse General Hospital is the main focus of these early discussions.</p>	Both the Territorial governments have "Formula Funding" provided by their AIPs.
4. <u>Indian and Inuit Health Careers Program</u>	This NHW Program is increasing Native participation in health careers. There are 246 students enrolled in upgrading and preparatory courses for entry to various health sciences programs. The success of this program is strongly supportive of the goal of greater Indian control over their own health services.		
5. <u>Primary Health Care Training Program</u>	This is intended to upgrade the clinical skills of community health nurses providing treatment services. The first phase of a national program was implemented in September 1988.		
6. <u>DIAND's Role</u>	The major thrust of DIAND's role is currently to assist NHW in development of health by-laws for communities.		Facilitating discussions with NHW, bands and provinces in the context of self-government negotiations will increase.



SELF-GOVERNMENT RELATED TOWILDLIFE AND WILDLIFE HABITATIntroduction

Though the management of wildlife and wildlife habitat is not one of the 'essential' negotiating topics, it is given high priority by Indian bands. This topic is integrated closely with that of environment. Different categories within the wildlife regime vary, crossing and overlapping federal/provincial jurisdictions. Added to the confusion is the migratory nature of animals and fish, and these combined elements affect self-government negotiations.

The following sub-fields can be found under **Wildlife and Wildlife Habitat**:

- o management and conservation of wildlife and wildlife habitat

- a) General
- b) Migratory Birds
- c) Migratory Animals
- d) Fish
- e) National Parks

- o economic development including outfitting and harvesting of natural resources

- a) General
- b) Research
- c) Compensation

WILDLIFE AND WILDLIFE HABITATSUBFIELDKEY COMPONENTPRECEDENTCOMMENT

1. MANAGEMENT AND CONSERVATION OF WILDLIFE AND WILDLIFE HABITAT

A. GENERAL

The condition of wildlife environments influences the quality of life. An example of the need to maintain wildlife environment is that of wetlands. Wetlands serve as modifiers of water chemistry through the storage of shoreline erosion and sedimentation. The effects of regional drought and flooding are substantially moderated by wetlands. They also contribute to ground water supplies.

Wildlife habitats provide essential environments for many species of waterfowl, fish, furbearers, and other wildlife, including rare and endangered species. Social benefits include subsistence, maintenance of tradition, recreational, educational, scientific and aesthetic opportunities for Indian people.

The conservation and management of wildlife and wildlife habitat consist of research and management practices which allow for the preservation of the environment and wildlife. It includes topics such as fishing, migratory animals and birds, marine mammals and endangered species. All these concerns are provided for in federal legislation, but provincial support is needed for the implementation and monitoring of the legislation. Provinces also have their own jurisdictions in some of these fields.

Under Sechelt, the band has the power to make laws regarding the preservation, protection and management of fur-bearing animals, fish, and game on Sechelt lands (s.14(1)(k)).

The Sechelt band has control over resources (s.24,35) subject to sections 39-41 and existing rights of B.C. (Part I, Div.3,(1) and (2) of the Constitution).

Sechelt can adopt any laws of BC as its own (s.14(3)).

Details of measures dealing with unlawful exploitation of band resources are stated in Part I, Div.3,(6) of the Constitution.

The Cree-Naskapi Act has no mention of the preservation of wildlife, however the JBNQA included a hunting, fishing, and trapping regime (s.24). Quebec modified the Wildlife Conservation Act (L.Q. 1969 c.58 as amended) and any other Provincial Act to comply with section 24.3.29 of the JBNQA. The creation or existence of wildlife sanctuaries shall operate to exclude all or part of such sanctuaries from the right to harvest but only with respect to those species whose protection is needed and for such periods of time and or seasons when such protection is required (s.24.3 (6)(b)).

On reserve, the management of wildlife may be under the band responsibility. Off-reserve, with some exceptions it is usually under provincial authority.

Off-reserve management is important as traditional activities are not restricted to reserve lands. Treaty rights include, in many cases, the right to hunt and fish on unoccupied Crown lands.

WILDLIFE AND WILDLIFE HABITATSUBFIELDKEY COMPONENTPRECEDENTCOMMENT

Through federal/provincial agreements, provincial resource management expertise can be applied to federal lands rather than duplicating the provincial machinery.

In the JBNQA, every beneficiary has the exclusive right to hunt, fish, or trap except species requiring protection.

A Hunting, Fishing, Trapping Committee, consisting of Native people and federal and provincial government members is established to review and manage these activities in the whole James Bay and Northern Quebec Territory. There are areas where Native and non-Native people can hunt. These areas are specified in the land regime (section 5) of the JBNQA.

The Dene-Metis Comprehensive Land Claim Agreement-in-Principle (AIP) has set aside a section (s.13) which deals with wildlife harvesting and management specifically. This section consists of the details of the responsibilities and goals of the Wildlife Management Board, the rights of the Dene-Metis, and non-profit harvesting of wildlife.

Agreements between Canada and the NWT have been designed to plan and develop more access to traditional and non-traditional natural resource activity for northern residents. DIAND, DFO, and DOE as well as the GNWT are committed to delivering support and assistance under such agreements.

The Tungavik Federation of Nunavut (TFN) has a sub-agreement in their land claims Agreement-in-Principle which relates specifically to wildlife and wildlife habitat. Federal/NWT/TFN discussions included a proposal to initiate a Wildlife Management Board in which the government, DIAND, and members of each designated Inuit organization will participate.

The Inuvialuit Final Agreement (IFA) provides for the establishment of a Wildlife Management Advisory Council for the Yukon North Slope. The Yukon hosts an annual North Slope Conference, whose purpose is to promote communication between the public, Natives and the government.

This arrangement under a comprehensive land claim settlement is not a model per se but some features may be duplicated should parties agree.

The Committee is an example of joint management, with advisory and decision-making components.

Specific schemes and references to wildlife illustrate the importance wildlife and wildlife habitat has in the eyes of Natives. Wildlife issues will no doubt be dealt with in future settlements and include joint management features.

Such agreements serve as examples of how the resource management process can evolve in a way which recognizes native interests. Natives are encouraged to support themselves through a variety of traditional and non-traditional activities.

WILDLIFE AND WILDLIFE HABITATSUBFIELDKEY COMPONENTPRECEDENTCOMMENT

In Inuvik, the GNWT and the Inuvialuit Game Council established a Joint Secretariat. Between the GNWT and the Department of Renewable Resources, implementation funding for the secretariat and for Hunters and Trappers Committees is provided.

The Inuvialuit, the GNWT, and DOE share responsibility for a Wildlife Management Advisory Council in the NWT (WMAC-NWT). It is a recent advisory body, yet has prepared a regional Wildlife Conservation and Management plan and has begun work on a Community Conservation and Management plan for Paulatuk. The WMAC-NWT has also undertaken a review of wildlife research proposals and, in conjunction with the Inuvialuit Game Council, has developed a mechanism for reviewing requests for legislative changes to wildlife legislation affecting the settlement region.

WILDLIFE AND WILDLIFE HABITATSUBFIELDKEY COMPONENTPRECEDENTCOMMENT

## B. MIGRATORY BIRDS

Under the Migratory Birds Convention signed with the U.S.A. In 1916, both Canada and the U.S.A. have the responsibility for protecting migratory birds and their habitat.

The purpose of protecting birds is to ensure maintenance of a balanced ecosystem, and to provide a continued supply of birds for those who wish to hunt, or enjoy them in non-consumptive ways. Plans for wildlife management and habitat are designed to maintain or enhance the populations of migratory birds. The collaboration of territorial, provincial, and federal governments is necessary as the responsibility lies with the federal government but must be enforced through territorial and provincial governments.

The Migratory Birds Convention Act (MBCA) establishes mechanisms for the federal government to establish Migratory Bird Sanctuaries (MBS), and provide other forms of protection such as the setting of hunting seasons and bag limits, which are enforced by federal and provincial/territorial wildlife officers, and the RCMP. Similar protection, and habitat management can be achieved through the establishment of National Wildlife Areas (NWA), under the Canada Wildlife Act.

The federal government has the ultimate responsibility to ensure that the Canada Wildlife Act is implemented, but the provinces and territories play important roles in research, the creation of regulations, enforcement and habitat management.

In the Dene-Metis AIP, the management plan for migratory birds indicates that the responsibility is shared between the federal government and the Dene-Metis (s.13.6). The AIP restricts the Dene-Metis traditional hunting activities with respect to non-game birds and migratory birds defined in the MBCA (s.13.3.6)).

The total allowable harvest of migratory game birds will be the responsibility of the Wildlife Management Board. The specifics are found in section 13.5.15 of the Dene-Metis AIP.

In the future, before any amendments are made to the MBCA, the government will consult with the Dene-Metis (s.13.12.2).

Off-reserve enforcement involves provincial governments and negotiation regarding Indian participation in the wildlife management process would require collaboration of these governments.

As the Migratory Birds Convention is an international document, Canada's power to negotiate arrangements under self-government might not be unlimited. This observation would also apply to comprehensive land claim settlements.



WILDLIFE AND WILDLIFE HABITAT

SUBFIELD

KEY COMPONENT

PRECEDENT

COMMENT

C. MIGRATORY ANIMALS

Migratory animals Include species such as bison, muskox, moose, caribou, and sheep. These animals cross territorial, provincial, and federal boundaries. Much co-ordination and cooperation are needed to ensure the future existence of these creatures. One way is to set up Wildlife Management Boards consisting of Native and government participants alike.

In the JBNQA, section 24.14.3 contains the commitment that best efforts will be made to amend the MBCA. The TFN has proposed similar concerns (Part V, s.5.1 of the TFN draft AIP).

The management and preservation of marine mammals is considered in section 24.14 of the JBNQA. Native participation will be encouraged regarding the enforcement of wildlife management and protection practices (s.24.10.1).

In the NWT, the management and conservation of bison, muskox, etc., would fall under the jurisdiction of the Wildlife Management Board (s.13.5 of the Dene/Metis AIP).

Designated Dene-Metis organizations have exclusive rights to commercially harvest bison and muskox (s. 13.5 of the Dene-Metis AIP).

The Inuvialuit have the exclusive right to harvest all game on 7(1)(a) and 7(1)(b) lands, bears, and musk-oxen throughout the entire settlement region. They also have the preferential right to harvest for subsistence use all other wildlife, including marine mammals and fish, except for migratory birds.

Joint agreements such as the Canada/Manitoba/Saskatchewan/Northwest Territories Caribou Management Agreement is an agreement which finances the cost of a caribou management board made up of the four government jurisdictions and native hunters representing the nine affected communities.

The management of the Beverly and Kaminuriak caribou herds is crucial for the Caribou Management Board.

The type of right that has been negotiated under comprehensive land claims may go as far as exclusive rights in zone areas. Guiding services and harvesting opportunities to non-residents may be provided with respect to some species. However, outside claim settlements the context for negotiation will vary considerably.

Provinces, Territories, native groups, and the federal government are working together for a common goal. The responsibility is shared between the governments and Native users of caribou herds. The complexity of the management is compensated by the participation of key representatives.

WILDLIFE AND WILDLIFE HABITATSUBFIELDKEY COMPONENTPRECEDENTCOMMENT

## D. FISH

The topic of fish and fisheries is an intricate one. Jurisdictional boundaries are constantly being contested and challenged. Often it is a tug-of-war between varying groups to see who can claim control over more territory or fishing zones.

Conservation and economic development influence fish and habitats.

Proprietary right gives the owner of the bed of a water body the exclusive right of fishing in waters over that bed, subject to regulation of the manner of fishing by the federal government.

Under the Constitution Act 1982, the federal government has authority for all fisheries in Canada, and it retains direct management control of fisheries resources in Newfoundland, New Brunswick, Nova Scotia, and Prince Edward Island; for the marine and salmon fisheries of British Columbia; for the marine fisheries of Quebec. The Yukon and NWT have made provisions in the form of sub-agreements in comprehensive land claims agreements referring specifically to fish.

By authority of Section 91(12) respecting "Sea coast and inland fisheries" of the Constitution Act 1867, the federal government has responsibility for the regulation of the fisheries in all parts of Canada as well as responsibility for the administration of the fisheries in tidal waters in all provinces, where federal control extends to waters navigable from the sea. These powers are exercised by the Minister of Fisheries and Oceans. Federal jurisdiction extends to navigation and shipping as well (s.91(10) of the Constitution Act, 1867.

A proprietary right of fishing in inland waters is vested in the province according to Section 92(13) respecting "Property and Civil Rights" of the Constitution Act, 1867.

Generally, when negotiating self-government in the provinces, the provincial government as well as the federal government will have to be included unless salmon or offshore issues are the concerns (these two areas are federal responsibility). It must be noted that each case will need specific attention as the interpretation and implementation of laws can differ.

Though the Constitution Act, 1867 provides for both federal and provincial jurisdiction, many court cases have recognized other rights in specific areas (i.e. Squamish Band, B.C).

WILDLIFE AND WILDLIFE HABITATSUBFIELDKEY COMPONENTPRECEDENTCOMMENT

## D. FISH (cont'd)

The federal management of fish and fish habitat is under the Fisheries Act of 1868. However, the Fisheries Act does not apply in National Parks. Fishing band by-laws enacted in conformity with Section 81(1)(o) of the Indian Act prevail over the Fisheries Act.

The Department of Fisheries and Oceans (DFO) is responsible for making the necessary policy and regulatory changes and support programs created according to comprehensive land claims agreements.

Further references on fish and fish habitat can be found in the following sub-field of "economic development" or in "water management" under the Protection and Management of the Environment table O:12.

In general, land claims agreements will clarify band and government positions regarding rights to, and responsibilities for fish and fish habitats.

The federal government has made special arrangements concerning day-to-day management for the in-land fisheries of Ontario, Manitoba, Saskatchewan and Alberta, and for some fisheries in the provinces of Quebec and British Columbia. In these six provinces (or parts thereof), federal fisheries legislation is administered by the provincial fisheries management agency, although provincial fisheries regulations must be promulgated by the federal government.

DFO has programs such as the Salmonid Enhancement (F&O 16) Program (1984/85), which are designed to increase fish production through low-technology, community oriented production techniques. A component of this program, the Community Economic Development Program has located more than 50 per cent of these projects in native communities.

The Fisheries Joint Management Committee (FJMC) was formed by the DFO and the Inuvialuit. It exists to develop research program priorities and harvesting quotas.

The legislative powers of the Sechelt Band Council includes the protection and management of fish (s.14(1)(k)) of the Sechelt Act.

Inter-agency referrals and other forms of federal-provincial-territorial cooperation will continue to be used where DFO administers fisheries legislation directly. How Indian bands could be integrated into those schemes remains to be determined.

Offshore areas and Native people are federal responsibilities as well as areas where such responsibilities have not been delegated (i.e. B.C.; New Brunswick, etc).

Where possible, several bands with common goals might wish to organize their positions under one banner for negotiations with governments. Such efforts would decrease duplication in the parliamentary and implementation processes and ensure better conservation and management of the resources.

Where no treaty nor land claims agreements exist, the Indian Act and by-laws made pursuant to s.81 apply nevertheless.

WILDLIFE AND WILDLIFE HABITAT

SUBFIELD

KEY COMPONENT

PRECEDENT

COMMENT

E. NATIONAL PARKS

National Parks are federal lands. **Parks Canada** has its own management policies and guidelines regarding their lands.

Parks Canada policy has evolved to include Native participation in the planning and management of Parks.

In clause 4, section 5(7) of the National Parks Canada Act it is stipulated that traditional resource harvesting activities in the parks by the local people are allowed when no alternatives exist outside the "new" national park boundaries. Gros Morne, Newfoundland; and Pukaskwa, Ontario are ready to embrace this new policy.

Dene-Metis AIP harvesting and wildlife management rights apply in new national parks established within the settlement area, including Nahanni National Park Reserve, in accordance with the Chapter on National Parks (Dene/Metis AIP).

A National Parks Management Committee will be established in each park and joint involvement by the Dene-Metis and the government is the approach taken.

The Mingan Archipelago National Park has a Management Council created by Parks Canada, the Mingan Band and the Municipality of Mingan. The federal and B.C. governments negotiated an agreement which would establish a national park in South Moresby, B.C.

Wood Buffalo National Park located in Northern Alberta and southern NWT, has a specific harvesting and management scheme outlined in section 13.8, 13.9 and 18 of the Dene-Métis AIP.

This type of arrangement might be confirmed in other settlements.

Agreements between the federal government and Native people running parallel to the federal-provincial agreement might be feasible when a tripartite agreement is not considered realistic.

Specific management schemes reflect the pertinent needs of each band involved in correspondence to the physical elements in the area.

WILDLIFE AND WILDLIFE HABITAT

SUBFIELD

KEY COMPONENT

PRECEDENT

COMMENT

2. ECONOMIC DEVELOPMENT

A. GENERAL

Recreation, tourism, and commercial harvesting are fundamental components of economic bases in Native communities. Outfitting, logging and soap-stone carving are a few examples of the economic activities which may occur in Native communities in terms of wildlife and wildlife habitat. In some instances, domestication of wildlife creates new markets such as the establishment of fish hatcheries.

Notwithstanding Section 22.2 of the Cree-Naskapi Act, a band may own shares in corporations that carry on commercial activities (s. 22.3).

Section 261 of the Canada Business Corporation Act and the Canada Corporations Act do not apply to bands which the Courts have found are not bodies corporate.

Sections 23(1) & (2) of the Cree-Naskapi Act specifically exclude those bands from applications of s.261 of the CBCA and the CCA.

In section 5.2 of the JBNQA, the rights of Native and non-Native people on different categories of land are described.

Quebec can appropriate Category II lands for development provided that these lands are replaced or the Native people are compensated. Mineral exploration and other under ground rights are not considered "development" and may be carried out without compensation subject to the Environmental and Social Protection Regime of JBNQA.

Economic development is not a subject matter identified for self-government negotiations. However, increased control and general participation in wildlife management and uses of the renewable resources might be part of powers negotiated under an agreement.

Conflict with harvesting activities should be avoided as much as possible.



WILDLIFE AND WILDLIFE HABITAT

<u>SUBFIELD</u>	<u>KEY COMPONENT</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
2. <u>ECONOMIC DEVELOPMENT</u> (cont'd)		<p>The establishment of the Cree Outfitting and Tourism Association and the Cree Native Arts and Crafts Association is mentioned as are their goals and responsibilities in sections 28.6 and 28.7 of the JBNQA.</p> <p>The James Bay Native Development Corporation will assess opportunities and develop projects or activities which will directly benefit the James Bay Crees in the fields of outfitting, tourism, native arts and crafts (s. 28.32).</p> <p>The Council of a band may make by-laws under the <u>Indian Act</u> or with any regulation made by the GiC or the Minister of DIAND regarding the mentioned wildlife.</p>	<p>This will still apply where bands don't have a Comprehensive Land Claim or Treaty or other legislation.</p>
B. <u>RESEARCH</u>		<p>In Quebec, authorization by the province is necessary before studies can proceed. Once authorization has been given, the native people will be advised as such (s.5.2.6(b) and 24.2.29(d) of the JBNQA).</p>	<p>Most research will be overseen by Wildlife Management Boards where they exist, i.e. the GNWT and the Department of Renewable Resources jointly support a research staff for the NWT; both the Yukon government and the Department of Renewable Resources fund and initiate research studies in the Yukon North Slope area.</p>
C. <u>COMPENSATION</u>		<p>The Cree and Inuit of Quebec have reached an agreement by which the native people receive monetary compensation for losses incurred by development (s.25.2 of the JBNQA).</p> <p>In section 20 of their Comprehensive Land Claim AIP, the Dene/Metis can receive compensation for loss of wildlife harvesting for personal or commercial use.</p> <p>The Inuvialuit Final Agreement (IFA) provides for compensation payments to Inuvialuit harvesters from developers for actual losses that occur as the result of any development undertaken in the Settlement Region.</p>	<p>The Inuvialuit Game Council (IGC) represents the collective Inuvialuit interest in wildlife. It was active in negotiating an important wildlife compensation agreement with Gulf Canada.</p>

SELF-GOVERNMENT RELATED TOINDIAN MONIESIntroduction

Indian monies refers to capital and revenue monies derived from the disposition (e.g. sale or use) of band assets. These are often referred to as capital and revenue trust funds under the Indian Act.

Apart from sound financial administrative practices, the issues at hand relate, as with reserve land, to the control and/or management of trust accounts under self-government. As these assets belong to the band, there is in principle no difficulty in transferring control to communities. While most bands have insignificant trust accounts, there are many important exceptions. The principle concern should be that the Minister and the government exercise due process and good stewardship in the transfer of rights ensured through appropriate internal accountability mechanisms. This table should be read in conjunction with Tables E:2 and E:5 which deal, in part, with accountability.

## Subfields:

1. Band money (capital and revenue)
2. Individual money

INDIAN MONIES

<u>SUBFIELD</u>	<u>KEY COMPONENT</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
1. Band Money			
a) Capital money	Funds derived from the sale of surrendered/designated land, or capital assets of a band. These moneys include oil royalties, oil bonus payments and proceeds from the sale of land, timber, gravel or any other non-renewable resource. Each band capital account is managed by LRT (Minister) for the band.	<p>Monies have been transferred to the Sechelt Band (<u>Sechelt</u>, s.32).</p> <p>Under both the <u>Cree-Naskapi</u> (s.21(c)(e) and Part IV, Financial Administration), and <u>Sechelt Act</u> (s.14 and Division (4), Constitution), bands have authority to manage money from all source subject to legislated controls and administrative procedures.</p>	Monies can be transferred to bands if authority is given in legislation. The band Constitution will need to specify decision-making procedures and provide for adequate measures of accountability to band members.
b) Revenue money	Money from leases and other non capital interests in accounts managed by LRT (Minister) for band.	<p>Same comment as above applies to Cree-Naskapi and Sechelt.</p> <p>Bands may already manage revenue monies under <u>Indian Act</u>, s.69.</p>	<p>Authority to administer those monies to be included in legislation.</p> <p>The definition of capital and revenue monies is found in the <u>Indian Act</u>, s.62. However, this distinction may not be useful for self-governing bands once funds are transferred.</p>
2. Individual money	Private accounts of minor and mentally disabled persons.	See succession table O:13.	Minister's present responsibility is to individuals, and should be transferred only with provision for adequate protection of individual interests. Accountability provisions will be important, as indicated above.

## SELF-GOVERNMENT IN

### AGRICULTURE

#### Introduction

The Parliament of Canada and the provincial legislatures have concurrent powers of legislation respecting agriculture. The Constitution Act 1867, Section 95 states that each province may make laws in relation to agriculture. The Parliament of Canada may from time to time make laws in relation to agriculture in all or any of the provinces. Provincial laws have effect in and for the province as long and as far they are not repugnant to any Act of the Parliament of Canada. In practice, the division of powers is based on product destination. Import and export are regulated by the federal government. Because of its strategy to develop the western economy, the federal government has historically played a greater role in the grain area. In research and assistance, both provincial and federal levels intervene. However, in the National Strategy for Agriculture, it is recognized that resource management is a provincial responsibility. Agriculture is an area where cooperation is essential between federal and provincial governments as well as with the private sector.

Band Councils can make by-laws in two areas, namely the trespass of cattle and matters related to pounds (Indian Act, s.81.(1)(e)), and bee-keeping and poultry raising s.81.(1)(k). Eight by-laws have been passed in Manitoba with regard to s.81.(1)(k), and 196 by-laws throughout the country with regard to s.81.(1)(e). Other references are the Indian Act, s.32 and 33 on sale or barter of produce, and s.71 on the Minister's powers with regard to farms.

Presently, DIAND's role is limited to providing assistance under economic development programs. In the 1986 Census, 1,465 registered Indians reported that they were involved in the agriculture industry, which represents 3.8% on the registered Indian labour force. Indian involvement in agriculture, by region, in descending order, is Saskatchewan, British Columbia, Alberta, Ontario, Manitoba, Quebec.

Sub-fields discussed below include:

1. Jurisdiction
2. Standards
3. Funding

Hectares Under Cultivation on Indian reserves: 820,158.6

N.B. Not all reserves are classified according to land use.

AGRICULTURE

<u>SUB-FIELD</u>	<u>KEY COMPONENT</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
1. <u>Jurisdiction</u>	<ul style="list-style-type: none"> <li>- Legislative barriers to the development of agricultural lands on Indian Reserves (federal, provincial, municipal).</li> <li>- Interprovincial/international trade and commerce.</li> <li>- Environmental assessment and land use planning (covered under optional subject matter no. 12).</li> </ul>	None	Sections 32,33 and 71 of the <u>Indian Act</u> are an impediment to First Nations' full control of the agricultural resource. The outcome of self-government negotiations on legal status and capacity and management of lands and resources will provide the basis for FN to control agricultural development on reserves.
2. <u>Standards</u>	Federal and provincial standards to allow for the sale of farm products.	None	This component will have to be negotiated with the appropriate level or organization (eg.: Canadian Wheat Board).
3. <u>Funding</u>	Financing of agricultural ventures. Access to federal and provincial grant programs.	None	<p>Financing of agricultural projects is part of an economic development strategy. DIAND has pursued economic development for status Indians and Inuit as part of its comprehensive mandate. Other federal departments are involved in aboriginal economic development (DIST, CEIC). Programs under the new Canadian Aboriginal Economic Development Strategy (July 1989) are designed to support economic self-reliance for aboriginal people.</p> <p>Various provincial assistance programs are available and would have to be negotiated with the province.</p> <p>The legal status of a band under self-government will allow for a more productive interchange with the Canadian business community.</p>

REFERENCES

1. The Canadian Aboriginal Economic Development Strategy, DSS Cat. No. C2-118/1989
2. National Agricultural Strategy, Department of Agriculture.
3. Census Canada, 1986



SELF-GOVERNMENT IN  
THE PROTECTION AND MANAGEMENT OF THE ENVIRONMENT

Introduction

The protection and management of the environment is a factor of fundamental interest for Indians in the context of self-government because of their traditions and values. Environmental issues under self-government fall under both provincial and federal authority depending on the specific topic. Therefore, a cooperative atmosphere between governments and Indians is necessary to successful resolution of concerns. There are two major elements of the federal environmental protection regime. The Canadian Environmental Protection Act (CEPA) is a major piece of legislation which provides for national standards to protect the environment. The development of regulations for CEPA is still underway. The second element is the Environment Assessment and Review Process (EARP) which requires the consideration, early in the planning stages, of the impacts of any project on the environment. The government proposes that EARP be legislated within 1990.

The protection and management of the environment (which may include municipal infrastructure development, resource development, industrial operations and major infrastructures e.g. utility structures, hydro, rail and gas), due to its complexity in nature, is composed of an array of issues which are found under the following sub-fields:

1. land use planning, including renewable and non-renewable resource development (incorporating social and physical elements and impacts)
2. environmental assessment (EA) (major and minor project review)
3. hazardous waste
4. solid waste
5. air (standards, pollution)
6. water (standards, management)

This table should also be read in conjunction with E: 4 (Lands and Resources).

PROTECTION AND MANAGEMENT OF THE ENVIRONMENT

SUB-FIELD

KEY COMPONENTS

PRECEDENT

COMMENT

1. Land Use Planning, including renewable and non-renewable resource development, and management

A coherent land use planning (LUP) scheme should take into account the existing physical environment, the potential for economic development, social impacts, population needs, existing and potential infrastructure and environmental issues. Renewable and non-renewable resource development, the establishment of roads, water distribution, waste disposal, health and safety institutions, and government infrastructure are a few examples of elements which constitute land use planning and management.

Provinces have control over off-reserve lands and resources and have often delegated responsibilities to municipalities for the organization of the lands and resources.

Under Sechelt, the Band has the power to make laws regarding LUP and the preservation and management of natural resources on Sechelt land as well as taking on the establishment of necessary infrastructures (s.4).

The band has full power to dispose of any rights or interests in natural resources on, in, and under the Sechelt Lands, subject to sections 24, 35, 39-41. (See also Constitution, Part I, Division (3), s.1).

The band controls the administration of these resources but is subject to existing rights of British Columbia. (Constitution, Part I, Division (3), s.2).

In Cree-Naskapi, the objects and powers of 1A and 1A-N lands are listed in sections 21, 22, 45, and 46. These include the ability to act as the local government and to use, manage, and administer and regulate Category 1A and 1A-N lands, the natural resources thereof, and services and programs found under a municipal government.

Under the James Bay and Northern Quebec Agreement (JBNQA), band authority over lands and the details of municipal government infrastructure is in sections 10-13(d); 22-23.

The Land Regime in the James Bay and New Quebec Territories Act gives further details of Native and government (Quebec) responsibilities and powers which are described in JBNQA.

Management of lands that will be transferred in fee simple to an Indian band will have to be transferred as well. When land is not transferred, the band may also want to play a role in planning and management. The regime in this case will need to be designed with care in regard to a balance between the Minister's liability and band's authority.

This provincial regime was negotiated with the Quebec government, and implemented with provincial or federal-provincial resources. It is part of a comprehensive land claim settlement and is not likely to be duplicated.

PROTECTION AND MANAGEMENT OF THE ENVIRONMENTSUB-FIELDKEY COMPONENTSPRECEDENTCOMMENT

Under the James Bay Region Development Act, the James Bay Regional Zone Council shall exercise its municipal powers and will have been deemed all municipal powers of the James Bay Municipality in respect to Category II lands (s.36).

Under the Indian Act, the Minister of DIAND retains authority with respect to physical land planning on reserves (s.19). The council of a band has the power to make by-laws regarding the zoning of the reserve. (S.81g).

Roads and bridges and general control and management of services within the communities are the bands responsibilities, but the Minister has over-riding authority (ss. 34, 69, 66.3, 73, 81).

Also in existence are agreements between bands and neighbouring municipalities for shared servicing.

Provincial laws of general application are applicable except where inconsistent with the Indian Act (or by-laws, regulations etc) (s.88). Land Use Regulations that are effective in a province may be adopted by an Indian band, and enforced under certain conditions.

Bands may wish to develop LUP regime. They could develop their own model, or decide that land use regulations effective in the province could be adopted.

## PROTECTION AND MANAGEMENT OF THE ENVIRONMENT

### SUB-FIELD

#### 2. Environmental Assessment

### KEY COMPONENTS

#### FEDERAL LEVEL

Under the federal Environmental Assessment Guidelines Order-in-Council, departments have a statutory obligation to assess projects that may have adverse effects on the environment when: it makes a financial commitment, or the proposal takes place on federally administered lands, is undertaken by a federal department or agency, or may impact environmentally on an area of federal responsibility.

Development proposals and changes involving environmental effects must undergo Environmental Assessment of which Social Impact Assessment has become a large part. The federal process, the Environmental Assessment Review Process (EARP) applies to federal proposals, and even to a provincial undertaking (Rafferty-Alameda case) where the federal government has a decision making responsibility.

EARP is administered by the Federal Environment Assessment Review Office (FEARO). The office is Independent of Environment Canada but its Executive Chairman reports to the Minister of the Environment.

At the federal level, FEARO has established guidelines for the various stages of assessment. Environment Canada will also give technical advice to departments. Self assessment of proposals within the concerned department occurs. This means all departments assess potential environmental impacts. However, the affected public is informed during this stage and may be consulted. Also, a public review may take place.

A proposal to legislatively entrench EARP has been put forward. It would include provisions for the development of a special regulation recognizing the unique circumstances on Indian reserves.

### PRECEDENT

The Minister's responsibility under such arrangements as Block Funding agreements, economic development agreements and AFA is being studied. The study should clarify the issue.

There are no self-government precedents. However, land claims does provide a potential indication of possibilities. The CYI AIP states that a development assessment process shall provide for the assessment and review of the environmental and socio-economic effects of all industrial and commercial undertakings, all Government Development Projects and all Development Projects in the Yukon which receive government funding (s.2.1).

The screening and project review bodies will have Yukon First Nations representatives appointed by the Government (s.3.6).

The Government and CYI will take cooperative action with regards to development projects whose impacts affect both settlement lands and non-settlement lands. EARP Guidelines Order was proclaimed under the Government Organization Act (1984). These Guidelines are in the process of being changed, and will become law. As a result of the Rafferty-Alameda Dam case, EARP guidelines have the effect of law.

In relation to the EARP process, DIAND is involved in the screening of projects. In order to identify whether or not they might be assessed and go to an Environmental Evaluation.

It is during the 'self assessment' process where Indians must voice their concerns on Indian-related matters [if no other provision is provided] (i.e. land claims may specify the degree of participation the Native people have). Indians may also participate into public review phase and may be represented on Panel.

In the Dene-Metis AIP, a board that is established for the purpose of environmental impact assessment will provide for Dene-Metis participation (s.28.1.4(b)).

### COMMENT

These AIPs embrace all the fundamental issues for environmental assessment. Bands may desire to refer to these as models, though the whole agreement is most likely too large to incorporate adequate environmental assessment processes in smaller regions. In formulating their own environmental assessment processes, bands may undertake to meet the federal and/or provincial standards which would be executed under their control.

The band could assume responsibility for initial screenings; however, federal responsibility and decision-making authority would not be fully delegated, where the government would remain partly liable (where it retains any authority in decision-making, funding, licensing etc). The government encourages band involvement.

Costs of maintaining a parallel process might be prohibitive for a band. The band may wish to maintain federal procedures or borrow acceptable provincial procedures; this will require careful consideration.

The role of bands in the process remains to be defined, especially when they are the proponent.



PROTECTION AND MANAGEMENT OF THE ENVIRONMENT

SUB-FIELD

KEY COMPONENTS

PRECEDENT

COMMENT

PROVINCIAL LEVEL

Aboriginal persons who are Involved in adjacent lands and land claims shall have the right to representation on any of the following Boards: LUP Board; Land and Water Management Board; and the Environmental Impact Review Board (s.28).

In the TFN claim, it is Intended that a Nunavut Impact Review Board (NIRB) shall be established . Members of the Board will be appointed by the Federal Minister(s) as well as by the Territorial Government (s.7).

To date, the Quebec government is the only province which makes special reference to Indian/Inuit involvement. The federal and provincial governments and the Cree and Inuit have set up special procedures to assess and review the social and physical impacts involved of JBNQ development. These procedures, the terms of which make up Ch. II of the Environment Quality Act (RSQ, CQ-2), provide for consultation with the native people through committees who advise the Quebec Deputy Minister of the Environment before a decision is made.

The Cree Regime applies "south of the 55th parallel" (JBNQA, s.22). The Inuit regime applies north of 55 (s.23). The Naskapi are also considered in the Quebec Environmental Assessment Process, following the pattern established with the Inuit regime.

In Cree-Naskapi, the bands may make by-laws concerning the protection of the environment including natural resources and the prevention of pollution. (s.45 (e),(f)).

The Province of Ontario is prepared to negotiate environmental impact mitigation with Nishnawbe-Aski. Canada is participating. This illustrates the possibilities of tripartite negotiations.

The environmental regime applies to the whole territory, with different processes in place depending on the location of the project.

Without provincial involvement, the approach could not be repeated as is.



**PROTECTION AND MANAGEMENT OF THE ENVIRONMENT****SUB-FIELD****KEY COMPONENTS****PRECEDENT****COMMENT**3. Hazardous Waste Management

Hazardous wastes are those that cause or help to cause illness or death, or that, in the absence of proper management, represent a significant threat to either human health or the environment. Hazardous and toxic waste are defined in the Transportation of Dangerous Goods Act and Canadian Environmental Protection Act. Provinces also have some useful definitions.

Hazardous waste management and disposal involves a process in which the generation, collection and storage, transportation, processing and disposal of waste require safe practices and current data for safest environmental and human health measures.

No specific references are made to toxic waste management in Sechelt or Cree-Naskapi.

Toxic waste management is regulated under Part II of the Canadian Environmental Protection Act (CEPA), which applies to everyone and everywhere in Canada.

Environment Canada is looking to secure funds for clean-up operations at hazardous waste sites in Canada. Before this is in place, consultation will occur in order to ensure DIAND's concerns may also be considered.

The Canadian Council of Resource and Environment Ministers (CCREM) has representatives from both the federal and provincial governments who cooperate to ameliorate the "cradle to grave" process involved in hazardous waste management.

With regard to hazardous waste problems on reserves, Indians presently must deal with provincial ministries when laws or regulations in place aim at controlling substances and their use, rather than lands per se.

The application of CEPA regulations to reserve lands will be the subject of negotiations by CEPA, DIAND and First Nation representatives and progress should be monitored.

In Part IV of CEPA, not related to toxic waste S.54(2) applies only to departments, boards and agencies of the government and does not include Indians. S.54(1) applies to federal lands including Indian lands, and allows the GiC, on the recommendation of the Minister of the Environment with the concurrence of the Minister who has administration and control of, or duties and functions in relation to, to regulate those lands. No regulations concerning application of CEPA to reserve lands have been developed nor has Indian participation in enforcement occurred. Indian consultation is a key component of developing s.54(1) regulations.

## PROTECTION AND MANAGEMENT OF THE ENVIRONMENT

<u>SUB-FIELD</u>	<u>KEY COMPONENTS</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
4. <u>Solid Waste Management</u>	<p>The term "solid waste" is a broad one referring to non-liquid materials that have been discarded. Solid waste is composed of sub-categories. It may be classified by point of origin (such as agricultural waste, domestic waste or construction waste) or by the kind of waste involved (such as rubbish, ashes, garbage, special waste or abandoned automobiles). This category is not necessarily different from toxic or hazardous waste.</p> <p>Management of solid wastes involves the collection, process, disposal or recycling of solid wastes.</p>	<p>A memorandum of understanding, dated 16.02.1984, among DIAND, DOE and NHW addresses the issue of solid waste management on reserves and settlements for projects or programs implemented through any of the said departments.</p> <p><u>Indian Reserve Waste Disposal Regulations (Indian Act, Ch. 960)</u>. These regulations deal specifically with waste disposal on Indian reserves. (Waste is defined as: garbage; liquid; semi-liquid substances; land-fill, and scrap of all kinds and any combinations of any of the foregoing.)</p> <p>The enforcement of the regulations is now being tested. Shortly, it will be determined if these regulations are enforceable.</p>	<p>The proposed regulations pursuant to s.54(2) of CEPA may address solid waste management issues such as leaking underground storage tanks, incinerators, waste water treatment and environmental emergencies. Progress of the regulations should be monitored.</p>
5. <u>Air Pollution</u>	<p>Air pollution deals with the introduction of man-made or natural contaminants into the atmosphere. Contaminants such as smoke, fumes, odours, that are of sufficient quantity, concentration, or duration as to have a negative effect on human, animal or plant cause problems and must be ameliorated.</p>	<p>Air pollution is not mentioned in the <u>Indian Act</u>.</p> <p><u>CEPA</u> supercedes the <u>Clean Air Act</u>. (s.145).</p>	<p>Joint federal-provincial responsibilities in control, monitoring, regulation and enforcement. The role of bands would be limited to the local component of the air pollution control.</p> <p>The applicability of provincial legislation on Indian reserves is in question. If applicable, whether provinces want enforcement or not remains to be answered.</p>
6. <u>Water</u>	<p>Water distribution and uses envelop a myriad of subject topics. Private use, commercial use, industrial use will all be a part of a LUP scheme for a certain area. These uses depend on water management issues such as water levels and flood plain zones incorporated in the LUP (look under sub-field LUP).</p>		<p>Local water service is a desirable power under self-government. Broader hinterland water management will likely require recognized tribal council input into provincial and/or federal management schemes. This will require tripartite negotiations involving the province.</p>
a) <u>Water Uses and Distribution</u>	<p><u>1987 Federal Water Policy</u> and (draft) <u>Federal Wet-Lands Policy</u></p> <p>Native Water Rights and Uses are explained under Water Management below.</p>		<p>The <u>Federal Water Policy</u> states that where native rights are affected there should be co-management of the resource.</p>

## PROTECTION AND MANAGEMENT OF THE ENVIRONMENT

<u>SUB-FIELD</u>	<u>KEY COMPONENTS</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
b) <u>Water Quality</u>	<p>Water quality consists of the inspection and treatment of surface and ground water, and recycling where possible. Research is also an element.</p> <p>Responsibility for the majority of water quality issues lies at the provincial and municipal levels. The exceptions are waters on reserves and other federal lands.</p> <p>The Department follows DOE water quality guidelines (domestic and waste water infrastructure) and will comply with the proposed <u>Drinking Water Safety Act</u>.</p> <p>DOE is also developing Waste Water Treatment Regulations under <u>CEPA</u>.</p>	<p>Many aspects of water quality issues can be found under the Land Use and Management sub-field.</p> <p>Under the <u>Canada Water Act</u> waste cannot be deposited in water systems unless a licence or authorization (by the regulations) is given. (s.6.(1) and (2)).</p> <p>The DIAND, Health &amp; Welfare and Environment Canada MOU of 84-02-16 addresses management of federal water and waste water projects on reserves and settlements, and the establishment, meeting and monitoring of environmental standards.</p> <p>In <u>Sechelt</u>, the Band Council has the power to make laws for the preservation and management of natural resources on Sechelt lands. (s.14(1),(j)).</p>	<p>Water quality is a key concern for bands. Given its nature, however, quality control limited to reserves may not be effective.</p> <p>Band or tribal council involvement in hinterland water quality maintenance is desirable. This will require tripartite negotiations involving the province.</p>
c) <u>Water Management</u>	<p>Water management includes the planning of any physical alteration or use of water and water habitats as well as its preservation.</p> <p>The <u>Federal Water Policy</u> assigns to DIAND a lead role in the protection of Indian lands and waters. A balancing of the maintenance of natural conditions with resource and economic development shall be achieved through: the negotiation of land claim settlements that define use and management powers for waters within claimed areas; identifying with native people water-related issues and interests with respect to treaty lands and those subject to land claims; and encouraging native participation in water allocation and management decisions and resource management programs.</p> <p>Water management activities must be consistent with the principles of the <u>Boundary Waters Treaty</u>.</p>	<p>In <u>Cree-Naskapi</u>, a band may use, manage, administer and regulate its Category 1A or 1A-N land and the natural resources thereof. In addition, the band can also control the disposition of the rights and interests pertaining to the previously mentioned lands. (s.21).</p> <p>An amendment to the <u>Northern Inland Waters Act (NIWA)</u> is presently in the consultation stage of the amendment process. There is major concern regarding "instream uses". "Instream uses" include the trapping of water mammals, fishing, native uses, and recreational activities for commercial use. A recommendation arose during the drafting stages which embraced the idea of licensing instream uses. This recommendation would ensure the legal recognition of instream uses which would then be included in the prioritization process for potential licencees of water uses. However, in the proposed amendments of <u>NIWA</u>, instream uses will be recognized and must be considered when issuing licences of other users.</p>	<p>A comprehensive water management program will involve off-reserve waters. Therefore, water management on-reserve will probably be restricted to local management. The possibilities of band or tribal council involvement in off-reserve schemes might be explored.</p> <p>It should be noted that comprehensive land claim settlements will supercede this amendment. The amendment will clarify certain aspects where not elsewhere covered.</p>

PROTECTION AND MANAGEMENT OF THE ENVIRONMENTSUB-FIELDKEY COMPONENTSPRECEDENTCOMMENT

As well, where instream use is adversely impacted by another water use, payment of compensation will be provided. The amendment would also clarify that both licencees and non-licensed water users are eligible for compensation.

There are two Water Boards established, one for each Territory. The Minister appoints the members. (s.7 and 8).

Water Quality Standards which are not included in the NIWA are covered in the Canada Water Act (superseded by CEPA). Other conditions concerning regulations and licences authorized by the GiC are mentioned in section 26.

The GiC may reserve from disposition of territorial lands for the protection of a water resource. (s.27(1)(a)).

Northern Inland Water Regulations (NIWR)

NIWR have been developed under the NIWA. In section 11, water may be used without a licence having been issued if the controller is satisfied that the proposed use will meet subsection 10(1) of the NIWA (s.11 of NIWR).

Section 26(g) of the NIWA enables the GiC to make regulations authorizing the use of water without a licence.

The Canada Water Act (CWA) does not mention territories or Indian Water Rights specifically. Research, the collection of data, the establishment of inventories, all concerned with water resource management may be done by or in cooperation with the federal government and any other government, institution or person (s.7).

The federal government may enter into an agreement with one or more provincial governments that have an interest in the water quality management of any federal waters or any waters, other than federal waters, the water quality management of which has become a matter of urgent national concern. (s.11(1)).

The waters on reserves are federal waters, however the boundary between on and off-reserve waters is not always clear.



PROTECTION AND MANAGEMENT OF THE ENVIRONMENT

SUB-FIELD

KEY COMPONENTS

PRECEDENT

COMMENT

The GiC may, on recommendation of the Environment Minister, designate any federal waters as a water quality management area and authorize the Minister to name an existing corporation as a water quality management agency to plan, initiate and carry out programs described in section 15 in respect of those waters (s.13(3),(4)).

Powers of these quality management agencies are described in section 15 of the CWA.

The GiC may make regulations regarding water treatment and the alteration of water courses (s.18). Yet, no regulation that the GiC makes with respect to water quality management areas for which there is an agency, is of any effect unless the regulations are made on the recommendation of the agency. A joint compromise may take the place of the initial proposal (s.18(3)).

The Fisheries Act states that the GiC may make regulations concerning proper management and control of seacoast and inland fisheries or area within the coastal waters of Canada where harvesting is to be carried out or not to be carried out (s.34). Specifically mentioned in section 34.5, is the note that section 34.1-34.4 shall not be construed to prevent harvesting plants by natives for their use as food.

In inter-governmental agreements, the responsibilities of each of the parties must be specified and stated in the agreement (s.12). Such foreplanning will diminish potential problems of overlapping jurisdiction in the future.

This could be a 'window' for Indian influence in the management of their water supply or water basin area.

Section 28 of the CWA states that the Environment Minister may establish advisory committees for the purpose of advising and assisting him with this Act. For Indian issues that arise, it may be beneficial for the Environment Minister to have Indians on the committees. However, this is not self-government.



**SELF-GOVERNMENT IN REGARD**  
**TO SUCCESSION**

**Introduction**

Succession refers to the devolution of title to property under laws of descent and distribution upon the death of the owner of rights to the property. Although otherwise falling within the competence of the provinces, jurisdiction on succession with respect to property of Indians falls within the authority of the Minister under the Indian Act.

For comprehensiveness, guardianship and administration of the property of mentally incompetent adults and of minors is included in this field.

Bands may seek jurisdiction over succession and administration of succession rules, or may seek delegated authority to administer the current regime.

**Sub-fields:**

1. Jurisdiction Over Succession
2. Administration
3. Descent and Distribution
4. Hereditary Succession
5. Guardianship Over Property

SUB-FIELD

KEY COMPONENTS

SUCCESSION

PRECEDENT

COMMENT

1. Jurisdiction Over Succession

- band members
- residence
- interests in land on reserves
- interests in personal property on reserve

Indian Act, s.42, Minister has all jurisdiction and exclusive authority with respect to property of deceased Indians. The Minister may delegate jurisdiction to a probate (provincial) court under s.44. The court cannot enforce any authority without consent of the Minister. The Certificate of Possession of reserve lands is an asset of estate that can go to band members who are heirs. The will cannot dispose of land contrary to the interests of the band or Indian Act (s.46)

Sechelt Act s.14(1)(q). The band council has authority as authorized by the constitution to make laws of succession of real property of band members on Sechelt lands and personal property of band members ordinarily resident on Sechelt lands.

The Sechelt Constitution (Part III, Division (I), s.14) s.14(d) (1) to (6) requires the incorporation by reference of such laws of the Province of British Columbia as are necessary.

Cree-Naskapi Act, s.173. Succession rules apply only to Cree or Naskapi beneficiaries domiciled on IA or IA-N land (equivalent to reserve land). Rights of accession by non-band members to IA or IA-N lands are restricted (ss.134, 138).

Bands may seek legislative authority to determine and administer rules of succession or may seek delegated authority to administer the current regime.

Jurisdiction over succession of property of Indians is within the competence of the federal government to transfer under self-government. Both the Sechelt and Cree-Naskapi Acts provisions establish authority over descent of real property of band members on reserves and personal property of Band members ordinarily resident on reserve lands. Care should be taken to ensure that the rules of succession for interests in reserve lands are compatible with the land regime (i.e. that it remains reserve land). This restricts the type of interests that can be devolved and to whom depending on the land regime under self-government. Succession of personal property of non-Indians or non-band-members on reserve and real property of band members off reserve would not fall within the authority of the Indian governments.

SUCCESSION

<u>SUB-FIELD</u>	<u>KEY COMPONENTS</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
2. <u>Administration</u>	<ul style="list-style-type: none"> <li>-execution</li> <li>-appeals</li> </ul>	<p>The Sechelt Constitution gives the Band Council power to appoint administrators with reference to equivalent standards and rights prevailing in the Province of British Columbia. Presumably appeals could be made to provincial courts.</p> <p>There is reference to the Minister of Indian Affairs in s.176 in the <u>Cree-Naskapi Act</u> as having the authority to accept wills as valid. S.180 permits the lawful heirs to nominate the band as administrator upon intestacy.</p>	<p>Under the <u>Indian Act</u>, the Minister administers the succession provisions but may delegate his authority to a provincial court. In any negotiated agreement there is a need to establish provision for outside review or appeal.</p> <p>Where administrative powers are exercised by the band, there must be co-ordination with the provincial court system regarding property over which the band does not have jurisdiction. If responsibility is transferred for estates in process, the Minister and his administrators must be indemnified.</p>
3. <u>Descent and Distribution</u>	<ul style="list-style-type: none"> <li>-testate refers to succession through a will</li> <li>-intestate refers to succession in the absence of a will</li> <li>-vacant succession refers to death of a beneficiary leaving no heirs</li> <li>-distribution of property to lawful heirs</li> <li>-third party rights</li> </ul>	<p>The Sechelt Band Constitution incorporates the laws of British Columbia concerning testate or intestate succession.</p> <p>The <u>Cree-Naskapi Act</u> accepts as valid a will valid under provincial law or accepted by the Minister (s.176). Upon vacant possession, (s.179) the deceased's property becomes the property of the band.</p> <p>Under the <u>Cree-Naskapi Act</u>, there are specific provisions with respect to lawful heirs on intestate succession (s.175). S.174 defines child and consort to include adopted children as per provincial law or Cree/Naskapi custom.</p>	<p>Possible options would include reference to the <u>Indian Act</u>, or provincial legislation, with or without modifications.</p> <p>Third party rights, such as off reserve creditor's rights in relation to personal property of members ordinarily resident on reserve, should be addressed.</p>
4. <u>Hereditary Succession</u>	<ul style="list-style-type: none"> <li>-traditional rights and traditional property</li> <li>-administration</li> </ul>	<p><u>Cree-Naskapi Act</u>, ss.181-186, provide for disposition of traditional property when a beneficiary dies intestate. Family council is convened to distribute property (administer estate).</p>	<p>Hereditary succession can be within jurisdiction of the Indian government.</p>

SUCCESSION

SUB-FIELD

KEY COMPONENTS

PRECEDENT

COMMENT

5. Guardianship

- property of minors
- property of mentally incompetent adults
- (see Indian moneys)

Indian Act (s.52, adults, s.51 minors) gives Minister all jurisdiction and authority over administration of property of mentally incompetent adults and of minors.

Cree-Naskapi Act, s.178, establishes parents of a child as legal guardians with respect to inheritance.

As the Minister has authority under the Indian Act as guardian of property, it could be delegated to bands subject to provisions for protection of interests of the individual.

## SELF-GOVERNMENT OVER CULTURE

### Introduction

This optional subject matter includes many components bands may want to negotiate under a self-government agreement. The scope will vary depending on band proposals.

### Field Description

The following sub-fields have been identified:

1. Language
2. Customs, traditions, religious practices
3. Heritage
4. Arts and crafts
5. Communication and diffusion

Depending on proposals that will be submitted, other elements might be added.



**SELF-GOVERNMENT OVER CULTURE**

<b><u>SUB-FIELD</u></b>	<b><u>KEY COMPONENT</u></b>	<b><u>PRECEDENT</u></b>	<b><u>COMMENT</u></b>
1. <u>Language</u>	Use of Native language In different sectors of community life, Including public meetings, education and cultural activities. Translation.	Council or band meetings may use Cree or Naskapi, and by-laws and resolutions may be enacted in those languages (plus French or English). ( <u>Cree-Naskapi Act</u> , ss.31 and 80).	Native language may be officialized but should not be exclusive.
2. <u>Customs, traditions, religious practices</u>	Local and traditional uses could be Included or Integrated in future arrangements. Protection of the tradition and values may be Included as collective goals or powers.	JBNQA confirms that Cree and Inuktitut (ss.16 and 17) are the teaching languages and NEQA (s.11) the Naskapi.	Teaching languages to be dealt with under Education matters.
3. <u>Heritage</u>	Preservation of architecture, cemeteries and other culturally valuable sites and monuments. Archeological research and exhibition.	Examples found under other headings such as elections. Adaptation of programs to meet traditional values (Cree Income Security Program, JBNQA, s.30).	The main cautionary note here is that while it will be acceptable for a band to have promotional powers, it will be another matter altogether if it seeks regulatory powers over matters which can be highly individualistic (i.e. religious practices, spiritual beliefs).
4. <u>Arts and crafts</u>	Promotion and diffusion of products. Role in selection for exhibitions based on local criteria. Support creation.	Archeological sites and cemeteries are to be taken into account in the environment regime (JBNQA, s.22) and <u>Quebec Environment Quality Act</u> .	Band role In heritage preservation and improvement may be defined with other players responsible.
5. <u>Communication and diffusion</u>	Participation In media production and adaptation (newspaper, radio, T.V.).		Band role to be defined In discussion with appropriate provincial and federal agencies. Regulatory authority resides with the CRTC.

SELF-GOVERNMENT IN  
TRAFFIC AND TRANSPORTATION

General Description

This field covers the transportation physical infrastructure, its construction, maintenance, operation and control.

This table includes the 3 following sub-fields:

1. Control of traffic
2. Roads and waterways
3. Airports, harbours, wharves and other related works

**TRAFFIC AND TRANSPORTATION****SUB-FIELD****KEY COMPONENTS****PRECEDENT****COMMENT**1. Control of traffic (all kinds)

- power to regulate, control and enforce are necessary
- linkage of powers with governing and administrative bodies
- capacity to adopt or incorporate by reference minimum regulations and standards pertinent to traffic of all kinds

Under Sechelt Act s.14(1)(m), the council may make laws to regulate traffic.

Under Cree-Naskapi Act s.45(1)(j), a band may make by-laws respecting roads, traffic and transportation including (i) the operation and speed of vehicles, (ii) the regulation of traffic of all kinds, (iii) the transportation of dangerous substances.

Sechelt Constitution, Part III, Division (1), s.10, subjects the power to the adoption of pertinent B.C. equivalent regulations, standards or rights.

Under Indian Act s.73, GIC may make regulations for the control of the speed, operation and parking of vehicles on roads within reserve, and the council of a band may under s.81(1)(b), make by-laws for the regulation of traffic.

The Indian Reserve Traffic Regulations, RRC, c959, s.6, states that provincial laws and regulations relating to motor vehicles must be complied with on reserves unless they are inconsistent with the Regulations.

- It is desirable that traffic regulations and standards parallel provincial codes. For consistency, this approach shall be maintained, and any change should be negotiated with the province.
- For enforcement see this sub-field under Administration of Justice table (O:4).

## TRAFFIC AND TRANSPORTATION

### SUB-FIELD

### KEY COMPONENTS

### PRECEDENT

### COMMENT

#### 2. Roads and Waterways

The key components for the design, construction, management, use and maintenance of local related works like bridges, ditches, fences, etc. are those expressed above.

Under Sechelt Act, s.14(1)(m), the council may make laws for the construction, maintenance and management of roads. Sechelt Constitution, Part III, Division (1), s.10, subjects the power to the above minimum requirements.

Under Cree-Naskapi Act s.45(1)(j)(ii), a band may make by-laws respecting roads, including the maintenance, construction and operation of roads.

Under Indian Act s.81(1)(f), the council may make by-laws for the construction and maintenance of water courses, roads, bridges, ditches, fences and other local works.

It is to the advantage of a community to adopt or incorporate standards which are equivalent or superior to those of the province.

#### 3. Airports, harbours, wharves and other works

In addition to the components mentioned in the previous sub-fields, it is important to have the power to create administrative bodies or corporate entities.

Under Cree-Naskapi Act s.45(1)(j)(v), there is a by-law making power for the establishment, maintenance and operation of wharves, harbours, drydocks and other landing places. **[N.B. English readers are cautioned to read the French text of s.45(1)(j)(v) to understand the true meaning of this section].**

The Indian Act makes no reference to harbours or airports.

The construction and operation of harbours and airports are federally regulated (permits and licences) by Transport Canada and the Canadian Transport Commission. But these requirements do not impair the power to establish, maintain or operate harbours and airports once pertinent standards are incorporated.

SELF-GOVERNMENT IN REGARDS TO  
ACCESS TO AND RESIDENCE ON RESERVE

Introduction

This table, although listed as an optional matter, deals with essential elements of governance. (See also table, "Lands and Resources", E:4). The power to determine and control who has access and can live on Indian lands is linked with membership and/or eligibility criteria. This table contains three sub-fields:

1. Residency
2. Access
3. Trespass



ACCESS TO AND RESIDENCE ON RESERVESUB-FIELDKEY COMPONENTSPRECEDENTCOMMENT1. Residency

- the power to define who has a right of access and residence
- the power to control, administer and enforce rights of access and residence
- publication of the conditions of access and residence
- appeal mechanisms for denial of access and residence
- see table on membership

Under Sechelt Act, s.14(1)(a) gives the council the power to make law on access to and residence. Constitution, Part III, Division (1), s.1(a), protects the right of residence of - lessees - permittees, - band members, lawfully married husbands or wives of band members subject to certain conditions. All other may reside subject to band council law.

Under Cree-Naskapi Act, there is a general prohibition against residence (s.101). S.102 gives the band by-law making power relating to the exercise of rights of access and residence conferred by ss.103-106. S.103(1),(2) stipulate who have a right of residence: members, member's consort as per s.174, the family to the first degree of members and consort, person authorized by the band or band by-law, by grant under Part VIII, administrator as per S.100, a person engaged in administrative or other approved duties.

Cree-Naskapi Act s.104 protects rights of residence or occupancy acquired before Nov. 11, 1975 for persons who are not Cree or Naskapi beneficiary.

Indian Act s.81.(1)(p.1), (p.2) gives by-law making power for the residence of band members and other persons.

See comments found in Lands and Resources table (pp. E: 4-1/E: 4-20).

ACCESS TO AND RESIDENCE ON RESERVE

<u>SUB-FIELD</u>	<u>KEY COMPONENTS</u>	<u>PRECEDENT</u>	<u>COMMENT</u>
2. <u>Access</u>	The components for residency apply for right of access.	<p>Under <u>Sechelt Act</u>, s.14(1)(a), the council has the power to make law in relation to access and residence and Part III, Division (1), s.1(b), protects the right of access of: lessees and his or her invitees, permittees and those authorized under the permit, band members, lawfully married husbands or wives of band members, persons legally authorized to perform public functions, persons seeking access to public facilities or installations, person authorized in writing by the band or a law of the band.</p> <p>Under <u>Cree-Naskapi Act</u>, s.105(1)(4) and s.107 gives a right of access to Cree and Naskapi beneficiaries, their consorts, family to first degree and Indian Cree non-beneficiary.</p> <p>S.105(5) gives a right of access to categories of persons who have rights or functions to exercise like public functions or operations, holder(s) of interest in land(s) or building(s), commercial forest exploitation, mining rights; person(s) authorized in writing by the band or band by-law, and s.106 gives the public access to public facilities.</p> <p><u>Indian Act</u>, s.81.(1)(p.1),(p.2) gives by-law making power for residence (spouses and children).</p>	
3. <u>Trespass</u>	See Administration of Justice table, enforcement sub-field.	<p>Under <u>Cree-Naskapi Act</u>, s.108(1) makes every person guilty of an offence for unlawful interference with a person's residence or right of access or resides on, enters or remains on 1A or 1A-N land other than in accordance with Part V - Residence and Access.</p> <p><u>Indian Act</u>, s.81(1)(p) gives by-law making power for the removal and punishment of persons trespassing upon reserve or frequenting it for prohibited purposes.</p>	

## GLOSSARY

<b>AFA</b> Alternative Funding Arrangements	<b>CRTC</b> Canadian Radio Television and Telecommunications Commission	<b>Kamloops</b> See C-115
<b>AFN</b> Assembly of First Nations	<b>CSC</b> Correctional Services Canada	<b>LRT</b> Lands, Revenues & Trusts (part of DIAND)
<b>AIPs</b> Agreements-in-principle	<b>DFO</b> Department of Fisheries & Oceans	<b>LUP</b> Land use planning
<b>C-115</b> Amendment to the <u>Indian Act</u> permitting taxation of surrendered lands ("Kamloops" amendment)	<b>DOE</b> Department of the Environment	<b>MOT</b> Ministry of Transport
<b>CAP</b> Canada Assistance Plan	<b>EARP</b> Environmental Assessment Review Process	<b>MOU</b> Memorandum of Understanding
<b>CEIC</b> Canada Employment and immigration	<b>EMR</b> Energy, Mines and Resources	<b>NEQA</b> Northeastern Quebec Agreement
<b>CEPA</b> Canadian Environmental Protection Act	<b>FEARO</b> Federal Environmental Assessment Review Office	<b>NH&amp;W</b> Department of National Health and Welfare
<b>CHA</b> Canada Health Act	<b>FPRO</b> Federal-Provincial Relations Office	<b>O&amp;M</b> Operations and Maintenance
<b>CMHC</b> Canada Mortgage and Housing Corporation	<b>GIC</b> Governor in Council	<b>Sechelt</b> <u>The Sechelt Indian Band Self-Government Act</u>
<b>CPI</b> Consumer Price Index	<b>"Guidelines"</b> "Indian Self-Government Community Negotiations Guidelines", the federal policy on self-government	<b>Sec State</b> Department of the Secretary of State
<b>Cree-Naskapi</b> <u>The Cree-Naskapi (of Quebec) Act</u>	<b>JBNQA</b> James Bay and Northern Quebec Agreement, 1974	<b>SG</b> Self-government
	<b>Justice</b> Department of Justice	<b>TB(S)</b> Treasury Board (Secretariat)