

Bish, Robert L
Property taxation and the provi-
sion of government services on
Indian reserves in B.C.

E78.B9
B57
c.1

LIBRARY
DEPT. OF
INDIAN AFFAIRS
&
NORTHERN DEVELOPMENT
OTTAWA, ONTARIO
K1A 0H4
AFFAIRES INDIGENES
&
DU NORD

PROPERTY TAXATION AND THE PROVISION OF
GOVERNMENT SERVICES ON
INDIAN RESERVES IN BRITISH COLUMBIA

By

Robert L. Bish

Prepared for the Department of Indian and Northern Development

(Contract no. 90-86-0019)

Center for Public Sector Studies
School of Public Administration
University of Victoria
Victoria, B.C. V8W 2Y2
604 - 721-8055

March 16, 1987

CONTENTS

	Page
INTRODUCTION	1
BACKGROUND	2
THE TAXATION OF LEASEHOLD-LANDS	7
TAX ADMINISTRATION AND TAX DELINQUENCY	11
TAXATION IN RELATION TO SERVICE DELIVERY	13
Provincial Rural Taxes	14
School Taxes	16
Municipal Taxes	18
Local Service Taxes	25
Summary - Taxes and Services	27
OBSERVATIONS	29
Integration	30
Strengthening Band Government	31
NOTES	34
APPENDICES	37
I. Tax Revenue from Leased Land on Indian Reserves (Municipal)	
II. Tax Levies on Leasehold Lands - Rural Reserves	
III. Services Provided by Municipalities to Bands	
IV. Legal Issues	

ACKNOWLEDGEMENTS

This report was prepared with cooperation from the B.C. Government Surveyor of Taxes, the Union of B.C. Municipalities, the Ministry of Municipal Affairs, the Department of Indian and Northern Development, and a number of municipal and Band officials.

Assisting with data collection and analysis were:

Larry Fast, Paul Freeman, Alixe Knighton, Pamela Lewis, Glen Perkins, Mark Ruttan, and Anita Sanchez. Useful comments on the review draft were provided by Susan Anderson, Diane Johnstone, Manny Jules, John McHenry, Gary Paget, Ken Vance and Dale Wall.

The analysis and conclusions are the responsibility of the author and do not necessarily reflect the views of cooperating governments or the Department of Indian and Northern Development.

INTRODUCTION

The British Columbia provincial government and local governments - municipalities, regional districts, school districts, hospital districts and improvement districts - all levy property taxes on lands leased by corporations and non-Indians on Indian reserves. These taxes have a direct effect on Indians and Indian bands because the leasehold tax burden reduces the lease price, and hence the revenue that Indians or bands can obtain from the lease of reserve lands to non-Indians.

While property taxes reduce lease prices, the availability of government services - good roads, fire protection, water supply, etc. - makes leasehold lands more desirable to leaseholders so that higher prices can be charged. Thus the availability of services can lead to higher revenues to Indians and bands from leasehold lands. Whether or not the value of services outweighs the cost of taxes is always an empirical question. Questions concerning the balance between taxes on leasehold lands and the value of services provided have been the focus of previous studies¹ - and those questions will be treated in this report using a broader data base than has previously been available for such analysis. In addition, following the analysis of taxes and services, some limited observations will be made as to how problems identified in the analysis of the tax-service balance might be resolved.

The first section of this report provides background information on the tax treatment of leasehold lands on Indian reserves and the perspectives brought to bear on this issue by bands, the federal, provincial, and municipal governments. The second section summarizes the taxes levied on leasehold lands by provincial, school district, municipal, regional district, hospital district, and other local governments. The third section analyzes the services provided by those governments to leasehold lands and Indian reserves. For municipalities, regional districts and hospital districts this process is quite straightforward. For school districts entire school funding arrangements must be considered, and for provincial property taxation only those services that provided to rural areas and that are largely funded by provincial rural property taxation (e.g. rural local roads and rural policing) will be examined. As part of these analyses the issues surrounding property assessments and property tax administration are also examined. These separate analyses are then combined to determine whether any changes in current policy would appear warranted.

BACKGROUND

Under the B.N.A. Act (1867) and the Canada Constitution Act (1982), Indians and Indian reserves are subject to federal government jurisdiction. Under the federal Indian Act, provincial laws of general application are applicable to Indians unless the federal government has preempted the field. Under the

Indian Act, provisions are made for Indian bands or individual Indians who hold Certificates of Possession to particular lands or who conditionally surrendered lands to the Federal Crown, which in turn may lease those lands to corporations or non-Indians. For lands conditionally surrendered by bands the lease revenues accrue to the band government. For leased Certificate of Possession lands the revenues accrue directly to the Indian possessing the Certificate of Possession. These leased lands, however, remain as Indian reserve lands and are subject to Indian band and Department of Indian and Northern Development (DIAND) governing authority under the Indian Act. Because the Indian Act is a comprehensive act, the B.C. provincial and local governments have very limited control over these leased lands. For example, planning, zoning, building codes or other land use regulations are not applicable to either leased lands or to any other part of an Indian reserve. One area of jurisdiction that the Indian Act does not preempt, however, is taxation authority over non-Indians who possess leaseholds on Indian reserves. During the 1970's Alberta, Saskatchewan, Manitoba and Ontario all vacated this field of taxation but British Columbia continues to levy provincial property taxes on these leaseholds and permit them to also be taxed by local governments, including municipalities, school districts, regional districts, hospital districts and improvement districts.

The tax treatment of Indian lands, including the taxation of leaseholds and the tax exemption for all other Indian reserve

lands, can be viewed from several different perspectives, including those of 1) bands and taxpaying leaseholders, 2) the federal government, 3) the provincial government and 4) municipalities, regional districts and other local governments.

The view of many band governments and taxpaying leaseholders is that the levying of provincial or municipal property taxes on leaseholds is both unfair and lowers the value of the economic base on the Reserve. This is because the services commonly financed with those taxes are often not provided to the leaseholds.

The lack of services, however, is only one of the current concerns. Band governments also dislike not having any voice in the policy-making, through which the taxation of leasehold lands is determined. Thus, from their perspective, other governments are not only taxing their economic base without providing services, but there is nothing the Band government can do about it. Many band officials are highly critical of DINA and the federal government - which does have ultimate legislative authority over this issue² - for permitting the existing situation to arise and persist. As data presented below will demonstrate, there is considerable accuracy to the Indian Band perspective.

The federal government approach toward provincial and local government taxation of reserve leasehold lands has been very cautious. Current federal policy appears directed toward increasing the degree to which band governments control their own

reserves and to facilitate a band government's ability to control its own affairs by increasing the economic base and revenue sources of its reserve. This, however, appears to be contrary to present provincial and local government taxation of leasehold lands.

The perspective of the provincial government and of local governments toward Indian reserves focuses more on the entire reserve than on leasehold lands themselves. From the provincial perspective rural property taxation is simply general legislation not tied to any particular services - and where the provincial property tax has been identified with the provision of rural services - primarily rural roads and policing - Indian reserves are treated like all other areas in B.C. Policing is provided and roads are maintained wherever they have been dedicated to the Provincial Crown.

The provincial government position on school taxes is that education is available to all children in local schools, and thus everyone should pay school taxes regardless of their location, making it unfair to exempt businesses and residents (who are largely non-Indian) on leasehold lands from this general taxation. It is also important to recognize, with regard to schools, that the federal government pays the provincial government for the schooling of all status Indian children, whether they reside off-reserve with their families paying all taxes, or whether they reside on Indian reserve lands where their families are not subject to school property taxation.

Local governments have still a different perspective, especially those municipalities that include Indian reserves within their boundaries. Municipalities view the expectation that municipal services be provided to reserve lands as an unreasonable burden on municipal taxpayers because leased lands are usually mixed in with other reserve lands, and no property taxes are levied on the Indian occupantss of reserve lands. Their position is that if municipal services are expected on reserve lands then either all reserve lands should be taxed, or the federal government should be paying grants-in-lieu of taxes to municipal governments as it does for other federal property within municipal boundaries. This same viewpoint exists for other local governments - such as regional, hospital, and improvement districts. As will be seen below, the relationship between individual local governments and Indian reserves is extremely complex partly because of the diversity of local government services, and partly because of the different amounts and locations of leasehold, and other reserve, lands within local government boundaries.

In summary:

1. Many leaseholders on Indian reserves feel that they pay taxes and do not receive services comparable to those received by taxpayers not located on reserves; at the same time as bands feel the economic value of leaseholds is reduced by taxation without equivalent services.
2. Present federal government policy is to promote Indian self-government and economic development on reserves. Provincial government cooperation is viewed as important to these ends.

3. The provincial government follows uniform policies with regard to rural property taxation, school taxation and the provision of rural services. If there is a problem it is because of reserve and DINA policies on road dedication.
4. Municipalities and other local governments feel it is unfair for their taxpayers to finance services on reserves when all reserve lands are not taxed nor grants-in-lieu of taxes received.

Each of these perspectives is reasonable. The objective of this analysis is 1) to determine exactly what the situation is with regard to taxation and service delivery on Indian reserves and 2) to determine if there are any policy changes which would increase the fairness of the system and reconcile band, federal, provincial and local government perspectives.

THE TAXATION OF LEASEHOLD LANDS

Obtaining even basic data on taxation of leasehold lands and the provision of services to those lands is complicated by the fact that there are one hundred and ninety-four bands in British Columbia. These bands, in turn, possess over sixteen hundred separate Indian reserves. These reserves range from uninhabited fishing sites to fully developed residential, commercial and industrial centres in urban areas.

For this analysis, taxation information has been obtained from two sources. The Union of B.C. Municipalities has compiled property tax collection information from municipalities containing reserve leasehold lands (Appendix 1) and the Provincial Surveyor of Taxes has provided provincial tax levy information for leaseholds on rural reserves (Appendix 2). While

there is an important difference between taxes collected and taxes levied the data base is still adequate for an analysis of the taxation of leasehold lands issue.³ The special issue of tax delinquency is treated further below.

To facilitate analysis, property tax revenue for each major tax is considered:

1. Provincial Rural Tax Act property taxes from leasehold lands in unincorporated areas.
2. School taxes.
3. Municipal taxes from leasehold lands on the Reserves contained within municipal boundaries. (Appendix I also includes the revenues collected within each separate municipality.)
4. Local services taxes, levied by regional districts, hospital districts, improvement districts and other special purpose local districts.

The revenue data for these taxes is presented in Table 1.

TABLE 1

PROPERTY TAXES COLLECTED OR LEVIED ON RESERVE
LEASEHOLD LANDS (1986)

	<u>PROVINCIAL RURAL</u>	<u>SCHOOL</u>	<u>MUNICIPAL</u>	<u>OTHER LOCAL</u>	<u>TOTAL</u>
FROM RESERVES WITHIN MUNICIPALITIES (COLLECTED) ¹		\$2,842,919	\$2,287,801	\$327,678	\$5,458,398
FROM RURAL RESERVES (LEVIED) ²	\$294,265 ³	\$1,270,849		\$590,794	\$2,155,908
TOTALS	\$294,265	\$4,113,768	\$2,287,801	\$918,472	\$7,614,306
TOTAL PROPERTY TAXES	\$33,805,109⁴	\$1,031,000,000⁵	\$802,000,000⁶	\$141,900,000⁷	\$2,011,500,000⁸
LEASEHOLD TAXES AS A PERCENT OF TOTAL	.87%	.40%	.28%	.65%	.38%

¹ Source: UBCM, (Appendix I)

² Taxes levied equals revenue only if there are no past or present delinquencies. The provincial (rural area) average for past due taxes is 8% of the current levy. The amount past due from rural reserve leasehold lands in 1986 equalled \$1,280,628 or 59.8% of the 1986 levy. This problem is treated further below.

³ For 1987 the provincial government has raised the rural tax rate 21.4 percent.

⁴ Figure used is from the Survey of Taxes (Appendix II). Treasury Board indicates the amount is \$36.6 million. With the Treasury Board figure leasehold taxes would be .80% of the total.

⁵ ⁶ ⁷ ⁸ Treasury Board totals including school districts, municipalities and other local governments with no reserve lands within their boundaries. For municipalities with reserves within municipal boundaries, reserve leasehold lands account for .72% of their total property tax collections.

Several general observations can be made concerning the magnitude of property taxes collected from reserve leasehold lands. First, while most reserves are located in rural areas, greater tax revenues are collected from reserves located within municipal boundaries. Secondly, school taxes are the largest single tax levied, accounting for 54% of the total. While municipal taxes are also a large proportion of the total (30%), provincial rural taxation and taxation by other local governments are of much less significance (3.9 and 12.1% respectively).

When one looks at total leasehold property taxes in relation to total property taxes, the amounts are relatively small. Leasehold property taxes are only .38% of all property tax revenues, and less than 1% for any single category of taxes. Some municipalities, however, do receive significant revenues from leasehold lands - \$781,000 in West Vancouver, \$395,000 in Vancouver and \$385,000 in the District of North Vancouver, for example. In a few municipalities leasehold taxes are a significant proportion of total taxes collected - such as 28.9% in Burns Lake and 15% in Duncan - despite the fact that in all but five municipalities the proportion is less than 1% (Appendix I).

Rural leasehold taxes seem to follow a similar pattern with total rural leasehold taxes (\$2,155,908) constituting only .72% of all taxes levied in rural areas (\$297,583,790). While data has not been aggregated by reserve, an examination of folios indicates that of the rural 2137 leasehold properties only eight

reserves have over 100 leaseholds and only five reserves have between 20 and 99. Leasehold revenues appear to be similarly concentrated - thus, as with reserves located within municipalities, in some local areas leasehold property tax revenues may be a significant proportion of the property tax base while overall it is only a very small proportion.

One must exercise caution in using any of the above data. While the general magnitudes should be close, the mixing of tax collection and tax levy information is a major cause for concern because of the very high delinquency rates on leasehold lands. It is also possible that some of the municipalities identified as having Reserves within their boundaries in our survey, but not included in the UBCM data, contain taxable leaseholds. As will be seen below, however, the data presented above is sufficient for an analysis of leasehold taxation and service delivery on B.C. Indian Reserves.

TAX ADMINISTRATION AND TAX DELINQUENCY

Property tax administration is a straight forward process. The B.C. Assessment Authority estimates the market value of all properties subject to taxation and provides this information for rural areas to the provincial Surveyor of Taxes and for municipal areas to the individual municipalities tax collector. The Surveyor of Taxes and tax collectors then collate the taxes levied by all the governments levying taxes on property within their jurisdiction and send a single tax bill to each property

owner or lessee. Taxpayers pay that single bill and the tax collector distributes the funds to the different governments. The usual process for dealing with tax delinquency is to levy interest penalties upon unpaid taxes and ultimately order the sale of the property to recover unpaid taxes. The amount of delinquent taxes owing to the provincial tax collector in 1986 equalled 8% of the 1986 tax levy.

While provincial legislation permits the levying of property taxes on leasehold lands on reserves, the B.C. Assessment Authority, the Surveyor of Taxes and municipal tax collectors do not have the same authority over leasehold lands on reserves as they do over non-Indian land. Band governments, for example, appear to be able to forbid access by Assessment Authority staff to reserves (which prevents accurate assessments), and neither the Assessment Authority nor tax collectors have access to actual leasehold records unless those records are on-file and up-to-date in Ottawa. As it appears that some bands do issue and permit "leaseholds" without formal DIAND registration processes, actual assessment and leasehold records are often inaccurate and incomplete. This makes sending accurate tax bills to the right people difficult, and greatly complicates any enforcement of tax payment.

In addition to the problem of inaccurate taxation records, a municipal or the provincial government does not have the authority to order the leasehold sold at a tax sale to recover delinquent taxes even when tax assessments are accurate and the

proper person is being billed. Thus there is no easy recourse for collecting delinquent property taxes. In addition, because in many cases leaseholders and bands do not feel that any municipal or provincial services are received for taxes levied, there is little cooperation on the part of band governments to insure that property taxes are paid. The result is that tax avoidance and tax delinquency on leasehold lands is very high - with overdue taxes in 1986 equalling 59.8% of the 1986 tax levy, and for some reserve areas past delinquency exceeded the 1986 levy.

Resolution of the tax administration and tax delinquency issues, which require the cooperation of Indian Bands and DINA, should be part of any resolution of the issues surrounding the provincial and municipal taxation of reserve leasehold lands.

TAXATION IN RELATION TO SERVICE DELIVERY

Taxes are compulsory payments individuals and businesses make to a government. The payment of taxes does not require the government to in turn provide any services. Taxes are not like a user charge where payment entitles one to receive a service. At the same time, governments do use tax revenues to provide services and it is often possible to identify a group of people who pay taxes and receive specific services - indeed this is the logic of a system of local governments. For example, a local improvement district collects property taxes to pay for the provision of fire services within the area from which it collects taxes and

citizens would be very upset if the district government decided not to respond to calls from some taxpaying residents. Thus, individuals who pay taxes to a government feel that they are entitled to services similar to those provided to other taxpayers, and the benefits from taxation must be considered along with taxation itself. Because the focus of this analysis is on the property taxation of reserve leasehold lands, each major purpose for property taxation will be examined in turn.

Provincial Rural Taxes

The provincial government levies a property tax on all properties not contained within municipal boundaries. While provincial property tax revenues simply go into the provincial treasury, the provincial government does provide some services directly to rural areas only, and studies have related the cost of providing those services with revenues from the rural property tax. These services include the maintenance of local roads, a government agent's office, policing, tax collecting and subdivision control processing. Of these activities local roads and rural policing account for the vast amount of this expenditure. While it is not possible to precisely identify provincial costs of rural local roads an estimate based on Treasury Board figures and other information is that rural local road expenditures were \$28,478,400 and rural local policing cost \$42,717,600 in 1986.* Because the federal government pays 46% of policing costs, the cost of policing to the provincial government

is \$23.07 million. If \$3 million is allowed for other provincial rural functions, total provincial costs for rural services are \$54.5 million, 52 percent of which is for local roads and 42 percent is for rural policing.

Rural taxes levied in 1986 were \$33,805,109, which is only 62 percent of the total cost to the provincial government of services provided to rural areas and not to municipalities. (Rural property taxes have been raised by 21.4 percent for 1987).

It is difficult to determine if the cost of providing rural services to reserves exceeds rural leasehold tax revenues because the total provincial rural property tax levy on leaseholds was only \$294,265. It is possible that the costs of policing plus the costs of road maintenance for the very few roads on reserves that have been dedicated to the Provincial Crown could be more than \$294,265. The problem is that leaseholders situated on reserves do not receive provincial local road maintenance because they are located on a reserve while similarly situated taxpayers off the reserve do. This differential tax treatment is due to federal and band preferences not to turn over ownership of reserve roads to the Provincial Crown, and to the provincial policy of not servicing undedicated roads. Of much greater concern, however, is that provincial taxation appears as "unfair". This is an issue that will be addressed in the concluding section of the analysis.

School Taxes

The largest single property tax levied is for schools. The provincial government sets tax rates on non-residential property and approves local school district rates on residential property. The taxes are then collected by either a municipal or provincial tax collector, and passed on to the school district or provincial government. Total school property taxes were \$1.031 billion in 1986 of which \$4,113,768 were collected from reserve leasehold lands.

Schooling is different from many other local government services (and from provincially provided local roads) because schooling is available to every child, whether they are resident on an Indian reserve or not. Hence, both business and residential leaseholders pay the same taxes as other non-Indian citizens, and leasehold land residents receive access to the same education as anyone else.

Indian band lands (unless leased to non-Indians) are not subject to school property taxes, but the federal government makes a direct payment to the provincial government for each status Indian child enrolled in a public school. The amount of the payment (\$4168 per student in 1986) is equal to a weighted average of per student costs in the school districts where Indian children are enrolled. The federal government makes similar payments directly to private schools or to band-operated schools for Indian children who attend these schools and who are not enrolled in public schools.

The collection of property taxes from reserve leasehold lands does not appear to cause any inequity for leaseholders. The costs of the provision of education to non-property taxpaying Indians is borne by the federal government, and thus there is no undue burden on property taxpayers to provide a service to non-taxpayers.

While there appears to be no major problem with the taxation of leasehold lands for education, a question can be raised about the federal government payment of the full cost of educating each status Indian. If the provincial government collects residential property taxes from all status Indians who reside off reserves, and from all non-residential leaseholders on reserves, plus the payments of the full cost of education for each status Indian child by the federal government to the provincial government (which totalled between \$27 and \$32 million in 1986) are they not, then, collecting more revenues than would cover the costs they incur?

In addition many Indian band leaders and members are critical of the overall system of financing education because funds for educating Indian children are passed directly to the provincial government, and bands have little or no voice as to how those funds are spent - or as to whether or not any special programs are provided for Indian children. This latter issue, however, is beyond the scope of this analysis.

Municipal Taxes

For this study twenty-six municipalities in British Columbia with 45 Indian Reserves within their boundaries were identified. Twenty-one of the municipalities collect property taxes from reserve leasehold lands. They collect not only their municipal taxes, but also property taxes for the school, hospital, and regional districts within which the municipality is located. Property taxes, on average, make up 55% of municipal revenues, with other revenues coming from provincial grants and a variety of special assessments and user charges. From these revenues municipalities provide a wide range of local services.

Indian reserves are anomolous areas within municipal boundaries. Because reserves are under federal jurisdiction local government regulations such as planning, zoning, subdividing and/or building code regulations do not apply on reserve lands. No taxes can be levied on Indian lands unless those lands have been leased to non-Indians (at which time the property tax is technically levied on the individual leaseholder, not the land itself), and Indians resident on the reserve are seldom active in municipal politics or even bother to vote in municipal elections. Reserve leaseholders are in a similarly awkward situation. They live on reserves where municipal regulations do not apply, yet they may vote in municipal elections and they are required to pay municipal property taxes.

Of key interest in this analysis is the degree to which municipal services are extended to these taxpaying leaseholders and to reserve lands within municipal boundaries. To determine the extensiveness of these services a systematic survey was undertaken of all municipalities thought to contain Indian reserves. With telephone follow-up twenty-six municipalities containing forty-five reserves were identified. Summary information collected by this survey is presented in Table 2. Appendix III provides the basic data from which the summary was calculated.

TABLE 2: B. C. MUNICIPAL SERVICES SURVEY RESULTS

MUNICIPAL SERVICES	PROVIDED BY MUNICIPALITY	PROVIDED TO ALL BAND LANS	ALL HANO LANO CONTRACT TYPE				PROVIDED TO LEASEHOLD LANS ONLY	LEASEHOLD CONTRACT TYPE			
			NO SPECIAL AGREE- MENT OR PAYMENT	DIAND CONTRACT	HANO AGREEMENT WITH PAYMENT	INDIVIDUAL USER CHARGE		NO SPECIAL AGREE- MENT OR PAYMENT	DIAND CONTRACT	HANO AGREEMENT WITH PAYMENT	INDIVIDUAL USER CHARGE
FIRE	45.	38.	27.	1.	10.		2.	2.			
POLICE - regular patrol	33.	24.	21.	1.	2.		1.	1.			
- emergency	33.	23.	20.	1.	2.		1.	1			
GARBAGE - collection	26.	10.	2.		5.	3.	3.	1.			2.
- dump	36.	26.	11.	1.	2.	12.	3.	2.			1.
INSPECTIONS - buildings	45.	16.	2.	1.	2.	11.	6.	3.			3.
- fire	39.	10.	7.	1.		2.	5.	3.			2.
SEWAGE	38.	19.	7.	3.	7.	2.	3.	1.			2.
WATER SUPPLY	34.	23.	3.	2.	14.	4.	4.			3.	1.
DIKING AND FLOOD CONTROL	25.	7.	6.		1.		2.	2.			
PEST/INSECT CONTROL	16.	3.	3.				1.	1.			
LOCAL ROADS											
- grading/oiling	45.	15.	11.	1.	3.		5.	5.			
- paving	45.	10.	6.	1.	3.		5.	5.			
- road/street sign	45.	13.	8.	1.	4.		4.	4.			
- sidewalks	45.	10.	6.	1.	3.		5.	5.			
- street lighting	45.	12.	8.	1.	3.		5.	5.			
- ditch maintenance	45.	17.	13.	1.	3.		5.	5.			
- snow plowing	45.	16.	11.	1.	4.		5.	5.			
ALL SERVICES	685.	292.	172.	18.	68.	34.	65.	51.	0.	3.	11.
PERCENTAGES	100.00	42.63	58.90	6.16	23.29	11.64	9.49	78.46	.00	4.62	16.92

Table 2 presents a list of commonly provided municipal services on the left hand side. This list is not exhaustive, but includes the most expensive services and those where service to a specific area can be identified. It does not include municipal services such as recreation centres or libraries, which both residents and non-residents of a municipality might use; nor public transportation, as we had insufficient information to determine whether or not transit routes served Indian reserves.*

The second column, "provided by municipality", indicates the number of reserves (out of 45) located in a municipality that provides that service.* For example, all reserves are located in municipalities that provide fire services, but only 33 reserves are located within municipalities which provide their own policing (this is because municipalities under 5000 receive policing from the R.C.M.P. without any cost to the municipality). It is necessary to know whether or not a municipality provides a service for itself before it makes sense to ask if the service is provided to leasehold or all reserve lands. It can be observed that from the list of services examined the range is for only 16 reserves to be located in a municipality with a pest/insect control program, while all are located within municipalities providing local roads, building inspection and fire protection.

The next step in the analysis was to identify which services provided by a municipality were also provided to either all band lands or just to leasehold (taxpaying) lands within the municipality. The third column from the left indicates the

number of reserves where the municipality provided the service to the entire reserve. For example 38 reserves received fire protection from a municipal government, but only 16 received building inspection and only 15 received road oiling and grading. The percentage figure on the bottom line indicates that of the list of services analyzed, on average 42.6 percent of the reserves received the municipal service.

The next four columns in Table 2 indicate the type of agreement under which services are provided by municipalities to all band lands. Usually, there is no special agreement or payment from the band to the municipality. In these cases the municipality is either collecting sufficient property taxes from leasehold lands to cover the costs of the service, or the share of provincial grants to the municipality that are attributable to the reserve population covers service costs, or that other municipal taxpayers are subsidizing the service to the reserve. One should note, however, that while "no special agreement" is the most common arrangement it accounts for 58.9 percent of only 42.6 percent of all potential services. Thus only 25 percent of the services provided by municipalities are also provided to reserve lands within their boundaries with no special agreement. One can also note that there are a fairly large number of reserves that have made special agreements and pay the municipality to provide services on Band lands.⁷ Contracts with DIAND on behalf of bands appear to be limited to projects requiring large capital expenditures (such as water supply and

sewage) or where DINA and CMHC require a function to be performed (such as building inspection). Special agreements with payment would appear to be an appropriate way for a municipality to provide services to a reserve where no taxes were collected.

With relatively few services provided to all band lands without some special agreement one then must determine whether or not leasehold lands, which do pay taxes, are provided with municipal services. All band lands include leaseholds, but the Table 2 column labelled "provided to leasehold lands only" indicates the number of reserves within municipalities providing a service to leasehold lands only.

It is noticeable that very few municipalities service leasehold land differently from total band lands, but that when municipalities do provide services to the leaseholds they are provided without special agreements, or with individual user charges. In only a small number of cases have bands made agreements to have services provided to leasehold lands without including the entire reserve, and in no cases did DINA contracts appear to provide services to leasehold lands.

The data in Table 2 provide only an overall summary of the provision of municipal services to reserves within municipal boundaries. As with all summaries, the diversity of municipality-reserve relationships is not fully perceivable. Thus the data for individual reserves is presented in Appendix III. Examination of that data shows that municipal service provision to reserves ranges from no services provided, on

neither leaseholds nor the entire reserve; to most municipal services, provided to all reserve lands. In no case, however, does a municipality report complete services to all reserve lands without some kind of special band agreement. An analysis of the number of services provided by a municipality to either leasehold or all reserve lands also shows no correlation with the amount of revenues collected from leasehold lands.

The conclusions that can be drawn from Table 2 and Appendix III are quite straightforward. They include:

1. Very few municipalities service taxpaying leasehold lands differently from all reserve lands.
2. Most services provided by municipalities are not provided to reserve lands.
3. Where services are extended to reserve lands no special agreement is the most common arrangement, although there are a significant number of band agreements with payment to get services provided on reserves.
4. For municipalities which provide services to all band lands or to leasehold lands only with no special agreement it is not possible to determine whether taxes on leasehold lands cover the costs of the services provided.
5. Many fewer municipalities provide services with no special agreement than collect taxes from leasehold lands.

While data in Table 2 are quite straight forward, there is an additional complication that was indicated on several returned questionnaires: it is that municipalities, like the provincial government, have no easy way to enforce the collection of taxes on leasehold lands. It was previously noted that for the Rural Tax levy, delinquent taxes totalled 59.8% of the 1986 levy. Municipalities are put in an awkward position by tax delinquency

because municipalities must pass-on property taxes levied by school districts, the hospital district and regional district whether or not the tax levy is actually collected from the taxpayer - and the taxes levied by these other governments are greater than the taxes collected by the municipality. For example, in 1986 only about 42 percent of municipally collected property taxes were for the municipality itself. Municipal tax collectors tend to resent "holding the bag" for delinquent leasehold (or any other) taxes levied by other governments.

Local Service Taxes

Local services property taxes are those raised to finance regional districts, hospital districts, improvement districts and other special purpose local governments. Rural local services property taxes levied were \$60,411,751 in 1986, of which \$576,795 (.95%) were levied on rural reserve leasehold lands (Appendix II). Another \$327,678 were levied on reserve leasehold lands for regional districts and hospital districts within municipal areas.

Levying property taxes on reserve leasehold lands for hospital districts does not appear to create any inequity. Hospital services, like schools, are available to everyone. (As with schools, however, the federal government may be overpaying the province for hospital services for Indians). It is also unlikely that levying improvement district taxes causes any special difficulty because improvement districts provide very few services and it is unlikely that leasehold lands would be

included in the district unless services were provided to the land. If a case were discovered where an improvement district was levying property taxes on leasehold lands without providing services it would be relatively easy to have the legal boundaries of the improvement district changed.

Regional districts are much more of a potential problem than hospital districts or improvement districts. This is because regional districts undertake a vast range of functions for different areas within their boundaries. Some of these services, such as fire protection or garbage collection may or may not be provided to reserve leaseholders, other services such as planning, subdivision regulation, animal control or building code enforcement are not provided to reserve leaseholders (unless some special agreement has been made), and other services such as television rebroadcasting or a recreation centre may be available for everyone on a reserve - non-taxpaying Indians as well as leaseholders. It is virtually certain that there are situations, just as with municipalities, where reserve leaseholders pay taxes for services they do not receive and other situations where regional district taxpayers subsidize the provision of services to Indian reserves.

Because regional districts undertake a variety of activities with different boundaries for different activities (e.g. specified areas, electoral areas, and defined areas), they are required to calculate appropriate tax rates for different areas that are directly used for financing the services provided to

that area. Within this taxation and service delivery framework it would be relatively easy to identify whether or not leasehold lands are receiving a service and hence whether or not leasehold lands should be taxed. It would also be appropriate to treat entire reserves as "member municipalities", so that when a service is desired by a band government they are billed directly for the service by the regional district. This treatment would be identical to the treatment of municipal governments within regional districts - where each municipality has the authority to determine whether or not to obtain a service from the regional district.* It would appear to be possible to treat Indian reserves as specified areas under current provincial legislation governing regional districts and thus any serious mis-matches between taxation of leaseholds, or the provision of services to non-taxpayers, could be remedied.

Summary - Taxes and Services

Governments do not keep records in a way that enables one to compare the precise costs of service provision to a subgroup with taxes raised. There is sufficient information, however, to identify problems that do exist from the taxation of reserve leasehold lands. While the total amounts of taxation involved appear low, they are sometimes large in relation to a government revenue or large in relation to a band's resource base. At the same time, whatever the magnitude of revenue involved there is often a very basic issue of fairness involved.

To summarize this analysis, it appears that:

1. The amount of revenue obtained from the provincial rural property tax is very low. The largest proportion of this revenue goes toward maintaining local roads, which the province does not do on Indian reserves because few reserve roads have been dedicated to the Provincial Crown. The other major service provided to rural areas is policing, for which the federal government covers 46 percent of the cost, and this service is received by all reserves.
2. School taxes are the largest component of leasehold property taxation. Schooling is available to everyone and residential school taxes levied on reserves are clearly appropriate. However, the federal government also pays the province the full cost for each Indian student enrolled in public schools, an amount which when added to residential school taxes paid by status Indians living off a reserve and the share of non-residential taxes attributable to Indians is higher than the costs incurred.
3. A few municipalities collect significant revenues from leasehold lands and 21 municipalities collect some revenues from leaseholds. A few municipalities provide many services to leaseholds or all band lands without any special agreement, but on average about only 25 percent of services are made available to reserves without a special agreement. A few municipalities provide no services to taxpaying leaseholds or other Indian lands.
4. Non-municipal tax-service relationships vary. The hospital tax is like the school tax with services available to everyone but extra federal payments are also involved. Little is known about improvement districts. Where tax-service mis-matches occur in regional districts it should be possible to provide a remedy by treating Indian reserves as specified areas with band governments making the decision as to whether or not they wish to receive, and pay for, a service from the regional district.
5. Overall, the great majority of reserve leaseholders are paying property taxes for which they do not receive local or provincial services similar to those received by other property taxpayers.

6. In some municipalities and regional districts it is likely that non-taxpaying Indians receive some local services that are subsidized by other taxpayers.
7. Tax delinquency among leaseholders is a serious problem for both the provincial tax collector and for municipalities.

OBSERVATIONS

From the data that could be obtained within the limits of this study⁹ there is clearly merit to the position of leaseholders and band governments that leaseholds are not receiving services similar to those received by other property taxpayers. The source of this problem appears to be the provincial rural property tax and municipal taxes. The provincial position that leaseholders should pay general property taxes for services that are available to everyone - schools and hospitals - is justified but one should also take into account other federal-provincial payments when examining these taxes. The municipal position that municipal taxpayers should not be expected to subsidize services to non-taxpaying reserves is reasonable, but most municipalities do not provide services to leasehold lands, where they do receive taxes. Given the problems with the provincial rural property tax and municipal taxation in many jurisdictions it is not surprising that many leaseholders simply do not pay their taxes and that band governments do not cooperate to improve tax administration and collection. There are policy changes, however, that could be clearly beneficial to the provincial government and Band governments and most likely

beneficial to municipalities unless the municipality was currently collecting significant taxes without providing services. The policy changes could go in either of two directions:

Integration

Indian reserves are currently not integrated into either local or provincial service delivery. The four policy changes that would be necessary for integration include:

1. Dedicate local reserve roads to the Provincial Crown or get a change in provincial policy to maintain reserve roads without such dedication.
2. The federal government pay grants-in-lieu of taxes to local governments for Indian lands as it does for other federal property under the Municipal Grants Act, and in return all services would be provided to reserve lands.
3. Permit reserves to be subject to regulation of the local governments within which they are located. (This may require constitutional as well as legislative change.)
4. Get band government and federal government cooperation with provincial and municipal tax collectors to enforce property tax collection on leasehold lands.

All of these policies are certain to be strongly opposed by Indian bands as representative of the Trudeau era integrationist White Paper. There is also no guarantee that even with these changes the provincial or local governments would provide equivalent services to Indian reserves.¹⁰ Given the current interest in Indian self-government there is no reason to believe any integrationist resolution of taxation-service delivery problems is desirable or feasible.

Strengthening Band Government

The clear alternative to integration is to strengthen band governments. The steps that would strengthen band government and resolve taxation-service delivery issues include:

1. Provincial withdrawal from levying the rural property tax on leaseholds in exchange for band cooperation to improve tax assessments and collections of the school and hospital tax on leaseholds. My recommendation would be that band governments be given clear authority to levy property taxes on leaseholds and that the band government levy the rural property tax on leaseholds for itself.¹¹ Such a change would result in a net increase in revenue to the provincial government (less delinquency on school and hospital district taxes would more than offset the elimination of the rural property tax - the levy for which was only \$294,265 in 1986) and band governments would obtain an independent source of revenue. Tax administration could remain with the B.C. Assessment Authority and Surveyor of Taxes, with the band government receiving the rural property tax revenues directly from the provincial tax collector.
3. Amend provincial legislation to permit reserves to be treated as specified areas for the purpose of paying for and receiving services from either a municipality or regional district. The band government would be fully responsible for deciding whether or not to opt into a service and would be responsible for making the payment to the municipality or regional district for the service just as municipalities are now responsible to paying regional districts for services received from them.

This approach toward band government reserves would effectively remove them from the political jurisdiction of either municipal or regional district governments, but it would permit full integration of service delivery with appropriate payments where band governments and municipal or regional district government could reach mutually beneficial agreements. It is an approach that is consistent with how regional districts interact with municipalities. It is also an approach that would be a

practical implementation of band self-government for their reserve areas. From a municipalities perspective the logical response to such an approach would be to have the reserve legally removed from municipal boundaries so that the provincial government becomes responsible for tax collection and the municipality is no longer liable for school and hospital district levies that are delinquent.

This move towards strengthening Band government authority would benefit all governments concerned. Bands would receive greater governing authority and increased revenues; municipalities would forgo some revenues but would also have responsibilities clarified and would be relieved of the leasehold tax delinquency problem; the provincial government would lose a trivial amount of revenue from one tax, but would increase net revenue by solving tax delinquency collection problems. The impact on regional districts is less certain, but total revenues are low and where services are being provided to reserves they could continue under contractual or specified area agreements.

The recommendations above deal with the basic issues of leasehold taxation and the relationship between taxation and service delivery for both leaseholds and all band lands. They also deal with the concern of the federal government to strengthen Indian self-government and with a major provincial concern - tax administration and tax delinquency. They do not deal with the larger question of federal government payments to the provincial government - where for schools and health the

total of taxes plus transfers may exceed costs. One possible approach to this issue would be for the provincial government to offer to withdraw from school and hospital district property taxation on non-residential leasehold lands if the bands were given federal authority to levy an identical tax of their own. This would contribute to strengthening a band's economic base, while retaining total tax neutrality between business on or off reserves, and the full cost federal payments to the province for Indian education would still cover these costs.¹² While detailed consideration of such a proposal is beyond the scope of this analysis, it would be consistent with the voluntary withdrawal of the taxation of reserve leasehold lands of Alberta, Saskatchewan, Manitoba and Ontario and provide an indication of support for band self-government and economic development that would help overcome some of the current animosity based on the current tax treatment of reserve leasehold lands.

The current tax-service treatment of reserve leasehold lands has many unfavorable aspects. Resolution of the major problems - along the lines indicated above - would increase the fairness of the system to taxpayers and place more responsibility on band governments with regard to service delivery for both leasehold and other reserve lands under their jurisdiction. At the same time by clarifying tax and service relationships and strengthening Band governments, the bands and their reserves would also become a more integrated part of the local service system in B.C.

NOTES

1. John Ralph Elliot and Associates, Indian Reserve Local Government Structures. Commissioned by The Local Government Committee on the Taxation of Indian Lands, April 15, 1981; Policy and Research Branch, Ministry of Municipal Affairs, "Taxation of Indian Reserves Located within Municipal Boundaries: An Analysis of Municipal Servicing and Cost Recovery," May 1986, and "Taxation of Leased Lands on Indian Reserves: Survey Results," Union of B.C. Municipalities, May 29, 1986.

2. Legislation and court decisions are not unequivocal on this issue. This is the conclusion reached by lawyers researching this issue for this report. See Appendix IV for a brief summary of the issue.

3. There may be no difference between taxes levied and taxes collected even if outstanding tax delinquency is high as long as the rate of tax delinquency is not changing. If tax delinquency is increasing collections will be less than the levy; if delinquency is declining collections will exceed current tax levies.

4. Estimates of \$174 million for rural roads and \$57.5 million for rural policing were provided by Treasury Board. These amounts would imply expenditures of \$367 per capita for rural local roads and \$121 per capita for rural policing. Both of these figures are very high compared to what municipalities spend on the equivalent services. Municipal policing costs averaged \$81 per capita in 1984 or only 67 percent of Treasury Board reported costs. The differences for local roads are even larger. Municipal local road costs average \$72 per capita and in local areas studying incorporation direct cost estimates by the Ministry of Transportation and Highways run from \$17 to \$30 per capita. When overhead costs are added to Ministry estimates per capita costs are still under \$50.

The extremely high estimate for rural roads provided by Treasury Board would appear to include as rural roads, arterial highways and low traffic roads in rural areas that connect one place to another as well as local roads serving businesses and residents in small geographic areas.

For the purposes of this analysis it is assumed that rural local policing costs equalled \$90 per capita for a total of \$42,717,600 and that rural local roads cost the province \$60 per capita, or \$28,478,400 in 1986. The 1985 rural population was 474,640.)

5. The perceptions of municipal officials as to whether or not municipal recreation centres, parks, libraries and public transit systems serve reserves and/or leaseholders is included in Appendix III.

6. All data is reported in terms of reserves, of which there are 45, not municipalities, of which there are 26. If within a single municipality all reserves were serviced identically it would make no difference which base was selected for analysis. However, municipalities often have different service relationships with different reserves within their boundaries and to identify these different relationships it is necessary to use individual reserves as the basic unit.

If municipalities were used as the base unit and service delivery was counted only where all reserves were serviced the amount of service would be undercounted. In contrast, if service delivery was counted where only one of several reserves was serviced it would overstate the number of reserves that are provided with municipal services.

7. From the wording of the Indian Act it would appear that Band governments do not have the authority to contract for services without DIAND being the formal contractor. This is clearly not the case in practice and a legal opinion on this issue (Appendix IV) indicates that courts have considered Bands to have the authority to contract.

8. Regional districts are large areas comprised of Municipalities and unincorporated areas. The unincorporated areas are divided into "electoral areas". Municipalities appoint members to the regional district board; electoral areas elect representatives to the board. Regional districts undertake very few activities for the entire district. Instead services are provided for one or more municipalities or electoral areas, or services can be provided for sub-parts of an electoral area, called a specified area. Combinations of municipalities or electoral areas are called defined areas. The basic principle of decision-making and finance is that only board members who are representative of areas receiving a service vote on that service, and only those areas receiving a service pay property taxes for it. Even without bands appointing directors to the regional district board it would be possible to treat either reserve leasehold lands or entire reserves as specified areas where the band government could decide whether or not it wanted a service provided to the area. For leasehold areas the property tax could be used like it is for other areas of the regional district. For entire reserves legislation would need to be changed to have the band pay the regional district directly. For a description of regional districts and other local governments in B.C. see Robert L. Bish, Local Government in British Columbia, Union of B.C. Municipalities, April, 1987.

9. There is still in process a major survey of all sources of services on B.C. Indian reserves. When combined with further analysis of the taxation of leaseholds on rural reserves a greater understanding of rural reserves and regional district provision of services will be completed.

10. In the United States "once a municipality elects to provide services it must provide equal services to the minority community." If this doctrine were applicable in Canada, municipalities could be required to provide services to Indians within their municipal boundaries. The legal opinion in Appendix IV indicates that this doctrine probably does not apply in Canada.

11. Where a band government was leasing communal band lands it could make passing on tax payments to the leaseholder part of the leasehold contract - as do commercial property owners in relation to tenants. Where Certificates of Possession are held by individuals the tax could be levied on the C.P. holder, who in turn would deal with leaseholders. This way the taxes are imposed on band members who have a voice in band government, and who in turn must take taxes into account in their leasehold agreements. This approach is more complicated to implement but it avoids a position where leaseholders are taxed by a government they have no voice in.

12. Federal officials have also pointed out that B.C. receives nearly 20 percent of its total revenue from federal transfers, \$1.8 billion from Established Program Financing alone, and seem genuinely puzzled as to why the B.C. government is not more supportive of the federal government's attempt to strengthen the locally based governments (Indian bands) that the federal government is responsible for.

APPENDIX 1

TABLE 1
TAX REVENUE FROM LEASED LAND ON INDIAN RESERVES

MUNICIPALITY	TYPE	INDIAN RESERVE	LEASED LAND	POTENTIAL DEVELOPMENT	TAXES COLLECTED MUNICIPAL	SCHOOL	HOSPITAL	REGIONAL	TOTAL	TOTAL TAXES COLLECTED	% OF TOTAL TAXES
Abbotsford	D	YES	YES	YES	\$13,422.55	\$11,189.01	\$1,117.76	\$100.56	\$25,829.88	\$8,226,515.00	0.314%
Burns Lake	V	YES	YES	YES	\$107,228.26	\$221,114.69	\$23,189.86	\$15,006.96	\$366,539.77	\$1,267,377.00	28.921%
Campbell River	D	YES	YES	YES	\$52,618.00	\$56,533.00	\$2,293.00	\$16,636.00	\$128,000.00	\$19,047,995.00	0.672%
Central Saanich	D	YES	YES	YES	\$10,453.64	\$13,275.52	\$1,458.37	\$1,272.68	\$26,460.21	\$4,947,653.00	0.535%
Chilliwack	D	YES	YES	YES	\$43,089.00	\$27,328.00	\$1,524.00	\$1,639.00	\$73,580.00	\$9,674,322.00	0.761%
Delta	D	YES	YES	YES	\$56,426.00	\$42,378.00	\$3,614.00	\$755.00	\$103,173.00	\$45,513,468.00	0.227%
Duncan	C	YES	YES	YES	\$192,137.00	\$196,418.00	\$4,736.00	\$70,592.00	\$463,883.00	\$3,074,777.00	15.087%
Gold River	V	YES	YES	YES	\$273.63	\$373.58	\$17.07	\$4.25	\$668.53	\$3,005,951.00	0.022%
Kelowna	C	YES	YES	YES	\$78,150.00	\$100,727.00	\$2,982.00	\$6,102.00	\$187,961.00	\$35,938,020.00	0.523%
Kent	D	YES	YES	YES	\$751.80	\$990.27	\$58.42	\$36.75	\$1,845.24	\$1,060,674.00	0.174%
Langley	D	YES	YES	YES	\$12,599.00	\$13,606.00	\$743.00	\$124.00	\$27,072.00	\$22,903,609.00	0.118%
Maple Ridge	D	YES	YES	YES	\$15,439.25	\$13,603.47	\$5,391.46	\$1,293.45	\$35,727.63	\$18,221,531.00	0.196%
Mission	D	YES	YES	YES	\$26,378.00	\$17,529.00	\$1,500.00	\$0.00	\$45,407.00	\$10,278,447.00	0.442%
North Vancouver	D	YES	YES	YES	\$385,098.00	\$596,055.00	\$33,897.00	\$8,561.00	\$1,023,611.00	\$43,688,554.00	2.343%
Penticton	C	YES	YES	YES	\$8,294.50	\$4,540.28	\$357.25	\$628.01	\$13,820.04	\$13,723,576.00	0.101%
Pitt Meadows	D	YES	YES	YES	\$114.95	\$85.31	\$8.67	\$3.31	\$212.24	\$3,394,067.00	0.006%
Salmon Arm	D	YES	YES	YES	\$87,423.44	\$91,081.57	\$4,197.49	\$3,204.92	\$185,907.42	\$6,306,393.00	2.948%
Squamish	D	YES	YES	YES	\$2,204.50	\$1,652.11	\$39.70	\$20.65	\$3,916.96	\$6,500,932.00	0.060%
Surrey	D	YES	YES	YES	\$18,409.00	\$26,599.00	\$1,492.00	\$327.00	\$46,827.00	\$102,410,943.00	0.045%
Vancouver	C	YES	YES	YES	\$395,304.13	\$398,825.13	\$24,790.14	\$7,107.83	\$826,107.23	\$373,000,000.00	0.221%
West Vancouver	C	YES	YES	YES	\$781,906.00	\$1,009,007.00	\$62,697.00	\$18,159.00	\$1,871,769.00	\$30,576,713.00	6.122%
TOTAL					\$2,287,800.65	\$2,842,918.94	\$176,104.19	\$151,574.37	\$5,458,398.15	\$754,534,992.00	0.72%

SOURCE: Taxation of Leased Lands on Indian Reserves: Survey Results, UBCM, May 29, 1986.

APPENDIX II - TAX LEVIES ON LEASEHOLD LAND - RURAL RESERVES

04-230-01		TAX NOTICE TOTALSSUPPLEMENTARY				TIME:		DEC 17, 1986		PAGE: 1	
DISTRICT	TAX ACT	SCH ACT	PARCEL TAX	PREPAID & HOGG	LOCAL SERVICE	TOTAL CURRENT	DELO TAXES	GROSS TAXES	FOLIOS	OWNERS	
COLLECTION 01	281.26	1081.21			267.52	1629.99	411.82	2041.81	10	1	
SCHOOL 063	281.26	1081.21			267.52	1629.99	411.82	2041.81	10	1	
SCHOOL 064											
COLLECTION 03	35565.51	153465.30		13706.01	97688.55	273013.35	254039.77	527053.12	384	24	
SCHOOL 061	35148.88	151812.55		13706.01	96843.85	270099.27	228610.32	498709.59	380	24	
SCHOOL 062	416.63	1652.75			844.70	2914.08	25429.45	28343.53	4		
COLLECTION 05	22.38	69.44			58.37	150.19		150.19	5		
SCHOOL 065	22.38	69.44			58.37	150.19		150.19	5		
SCHOOL 066											
COLLECTION 07	656.38	2236.24			1122.74	4015.38	1170.90	5186.26	7	1	
SCHOOL 068	656.38	2236.24			1122.74	4015.38	1170.90	5186.26	7	1	
COLLECTION 09											
SCHOOL 069											
SCHOOL 070											
COLLECTION 11	2383.61	7356.70			2243.84	11984.15		11984.15	10	1	
SCHOOL 071											
SCHOOL 072	377.09	1426.73			347.16	2150.98		2150.98	4	1	
SCHOOL 084	1962.62	5797.31			1833.23	9593.16		9593.16	3		
SCHOOL 085	43.90	132.66			63.45	240.01		240.01	3		
COLLECTION 13	30498.71	121902.57	13990.20	355.15	45406.79	211443.12	32654.93	244098.05	343	16	
SCHOOL 046	19010.01	71881.68	13990.20		37393.95	142275.84	22835.15	165110.99	222	12	
SCHOOL 047	11488.70	50020.89		355.15	8012.84	69167.28	9819.78	78987.06	121	4	
COLLECTION 15	1976.97	8648.41		3.05	2387.22	13009.55	11503.81	24513.36	63	57	
SCHOOL 034											
SCHOOL 035											
SCHOOL 036											
SCHOOL 037											
SCHOOL 038											
SCHOOL 039											
SCHOOL 040											
SCHOOL 041											
SCHOOL 042											
SCHOOL 043	1440.07	5971.73		3.05	864.62	8273.37	9852.67	18126.04	45	55	
SCHOOL 044											
SCHOOL 045											
SCHOOL 048	42.65	219.24			23.78	285.67	535.57	821.24	4		
SCHOOL 075	494.25	2457.44			1498.82	4450.51	1115.57	5566.08	14	2	
COLLECTION 17	8480.56	10809.68			1399.34	20689.58		20689.58	1	2	
SCHOOL 099	8480.56	10809.68			1399.34	20689.58		20689.58	1	2	

04-230-01

TAX NOTICE TOTALSSUPPLEMENTARY

TIME:

DEC 17, 1986

PAGE: 2

DISTRICT	TAX ACT +	SCH ACT +	PARCEL TAX	PREPAID & HOGG +	LOCAL SERVICE =	TOTAL CURRENT +	OELO TAXES =	GROSS TAXES	FOLIOS	OWNERS
COLLECTION 19	8739.16	63059.05			58834.98	130633.17	13551.92	144185.09	29	1
SCHOOL 032	1176.73	4764.52			2454.75	8396.00	300.49	8696.49	15	
SCHOOL 033	7503.28	58097.09			56301.51	121901.88	13052.64	134954.52	12	1
SCHOOL 076	59.15	197.44			78.70	335.29	198.79	534.08	2	
COLLECTION 21	19379.87	78764.73			66042.47	164187.07	92270.90	256457.97	64	
SCHOOL 014	9916.72	40671.58			37569.98	88158.28		88158.28	24	
SCHOOL 015	9190.83	36697.09			28166.40	74054.32	92067.48	166121.80	34	
SCHOOL 016	217.44	1036.87			236.44	1490.75	203.42	1694.17	5	
SCHOOL 017	54.88	359.19			69.65	483.72		483.72	1	
SCHOOL 077										
COLLECTION 23										
SCHOOL 009										
SCHOOL 011										
SCHOOL 012										
SCHOOL 013										
COLLECTION 25	42145.01	175582.92		5.40	100988.38	318710.91	302957.46	621668.37	210	6
SCHOOL 023	42145.01	175582.92		5.40	100988.38	318710.91	302957.46	621668.37	210	6
COLLECTION 27	36101.81	159203.38		51.57	40882.81	236136.43	181288.88	417425.31	394	74
SCHOOL 019										
SCHOOL 021										
SCHOOL 022	3214.20	14062.60			7199.90	24476.70	2907.29	27383.99	38	
SCHOOL 029	32887.61	145140.78		51.57	33682.91	211659.73	178381.59	390041.32	356	74
COLLECTION 29										
SCHOOL 007										
SCHOOL 010										
SCHOOL 086										
COLLECTION 31	15902.21	74601.61			17026.72	107530.54	9878.10	117408.64	179	10
SCHOOL 001	592.97	2648.91			362.66	3604.54	2.24	3606.78	22	
SCHOOL 002	981.81	3994.91			631.38	5608.10		5608.10	4	1
SCHOOL 003										
SCHOOL 004	14327.43	67957.79			16032.68	98317.90	9875.86	108193.76	153	9
SCHOOL 018										
COLLECTION 33	86171.70	386090.32	9.51		133141.31	605412.84	371410.11	976822.95	304	9
SCHOOL 024	57437.16	234917.42	4.09		42511.30	334869.97	371349.17	706219.14	283	7
SCHOOL 026										
SCHOOL 029	20833.96	96083.43			69525.73	186443.12		186443.12	3	
SCHOOL 030	7704.95	54394.63			20964.41	83063.99	12.30	83076.29	12	2
SCHOOL 031	195.63	694.84	5.42		139.87	1035.76	48.64	1084.40	6	
COLLECTION 35	1135.83	5733.43			4723.64	11592.90	5928.67	17521.57	6	1
SCHOOL 027	367.67	1518.38			491.39	2377.44	5928.67	8308.11	1	1
SCHOOL 049	768.16	4215.05			4232.25	9215.46		9215.46	6	

RURAL TAX LEVY - PROVINCIAL TOTALS

(1986)

UIC	TAX ACT		SCHOOL A C	
	NET TAXABLE	NET LEVY	NET TAXABLE	NET LEVY
01	\$11,132,735,764	\$16,052,496.73	\$11,369,757,003	\$71,390,929.30
02	2,077,415,477	9,567,673.76	5,074,356,774	93,188,500.36
03	127,019,433	508,077.72	15,105,024	319,524.01
04			2,342,973,101	11,530,175.24
05	1,055,683,876	4,645,043.11	1,015,252,754	13,140,201.85
06	530,291,778	1,716,647.26	534,735,252	6,921,236.53
07	90,088,556	720,744.04	90,088,556	3,813,949.73
08	154,370,866	221,226.61	154,965,266	818,715.28
09	743,538,907	373,200.18	371,861,542	1,960,329.39
10				
11			43,556,224	282,956.39
12			63,300	411.36
	<u>\$15,911,144,657</u>	<u>\$33,805,109.41</u>	<u>\$21,012,714,796</u>	<u>\$203,366,929.44</u>

TAX ACT "1.00" ADJUSTMENTS \$3,022.91

<u>TOTAL LEVY</u>	
TAX ACT	= \$ 33,805,109.41
SCHOOL ACT	= 203,366,929.44
LOCAL SERVICES	= <u>60,411,750.98</u>
TOTAL LEVIES	= \$297,583,789.83
- PREPAID TAXES	= 128,616.39
+ ARREARS TAXES	= <u>23,934,630.85</u>
*** GROSS TAX	= <u>\$321,389,804.29</u>

Source: Surveyor of Taxes

04-230-01

TAX NOTICE TOTALSSUPPLEMENTARY

TIME:

DEC 17, 1986

PAGE: 3

DISTRICT	TAX ACT +	SCH ACT +	PARCEL TAX	PREPAID & HOGG +	LOCAL SERVICE =	TOTAL CURRENT +	DELO TAXES =	GROSS TAXES	FOLIOS	ADD'L OWNERS
COLLECTION 37	320.10	945.53			220.92	1486.55		1486.55	2	
SCHOOL 028	320.10	945.53			220.92	1486.55		1486.55	2	
COLLECTION 39	896.64	2618.76			964.68	4480.08		4480.08	8	
SCHOOL 050										
SCHOOL 052	77.86	296.27			42.64	416.77		416.77	2	
SCHOOL 080	6.08	24.69			4.43	35.20		35.20	1	
SCHOOL 088	812.70	2297.80			917.61	4028.11		4028.11	5	
SCHOOL 092										
COLLECTION 41	110.18	494.14			71.73	676.05	1091.94	1767.99	5	
SCHOOL 054	75.32	288.11			49.04	412.47	1091.94	1504.41	5	
SCHOOL 055	34.86	206.03			22.69	263.58		263.58	1	
COLLECTION 43	3429.55	17665.37			3277.93	24372.85	2469.68	26842.53	110	4
SCHOOL 056	3420.55	17665.37			3277.93	24372.85	2469.68	26842.53	110	4
SCHOOL 057										
COLLECTION 45	68.14	519.95			44.82	632.91		632.91	2	
SCHOOL 059										
SCHOOL 060	3.85	20.37			2.13	26.35		26.35	1	
SCHOOL 081										
SCHOOL 087	64.29	499.58			42.69	606.56		606.56	1	
GRAND TOTALS	294265.58	1270848.74	13999.71	14121.18	576794.74	2141707.59	1280628.89	3422416.48	2137	207

Source: Surveyor of Taxes

APPENDIX III

SERVICES PROVIDED TO MUNICIPALITIES TO BANDS

Service Abbreviations:

FIRE = Fire
POLR = Regular Police Patrol
POLE = Emergency Police Response
GARC = Garbage Collection
GARD = Garbage Dump
INSB = Building Inspection
INSF = Fire Inspection
SEWR = Sewage
WATR = Water Supply
DYKE = Dyking and Flood Control
PEST = Pest/Insect Control
TRAN = Transit
LIBR = Library
PARK = Parks
RECC = Recreation Centres
RGRD = Road Grading/Oiling
RPAV = Road Paving
RSIG = Road/Street Signs
RWLK = Sidewalks
RLIT = Street Lighting
RDCH = Ditch Maintenance
RPLO = Snow Plowing

Codes:

1st Letter: "M" if municipality provides service, blank if it does not.

2nd Letter: Provision of Service to All reserve lands or to Leaseholds only.

- A - All Band lands.
- L - Leaseholds only.
- O - No service to reserve lands.

3rd Letter: Type of Agreement for Provision to all band lands or leaseholds.

- N - No special agreement.
- B - Band agreement with payment.
- D - DIAND contract.
- I - Individual user charge.

SERVICES PROVIDED BY MUNICIPALITIES TO BANDS

MUNICIPALITY	BAND	FIRE	POLR	POLE	CARC	CARD	INSH	INSP	SEVR	VATR	DYKE	PBST	TRAN	LIBR	PARK	RSCC	RCRD	RPAV	ESIG	RVLX	ELIT	ROCH	RPLD
BURNS LAKE	BURNS LAKE	MAB			MAI		M00	M00	MAI	MAI	M00	M00	MAM	MAM	MAM	MAM	M00	M00	M00	M00	MAM	M00	MAM
BURNS LAKE	BURNS LAKE	MAB			MAM		M00	M00	MAM	MAM	M00	M00	MAB	MAM	MAM	MAM	M00	M00	M00	M00	MAM	M00	MAM
CENTRAL SAANICH	TSAVOUT	MAB	M00	M00	M00	MAD	MAB	M00	MAD	MAB	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00
CENTRAL SAANICH	TSARTLIP	MAB	M00	MAM		MAD	MAD	M00	MAD	MAD	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00
DELTA	TSAVASS	MAM	MAM	MAM	MLI	MLI	MLI	MLI	MLI	MAB	MLI	MAM	MAM	MLI	MLI	MLI	MLI	MLI	MAB	MLI	MLI	MLI	MLI
DUNCAN	COVICHAN	MAM			MLI	MLI	MLI	MLI	MLI	MLI	MAB	MAM		MLI	MLI	MLI	MLI	M00	M00	M00	M00	M00	M00
GOLD RIVER	NOVACHAT	MAM			MAB	MAB	MAM	MAM	MAM	M00	M00		MAM	MAM	MAM	MAM	M00	M00	M00	M00	M00	M00	M00
HOPE	HOPE	MAM			MAI	MAI	M00	M00	MAM	MAM	MAM	MAM		MAM	MAM	MAM	M00	M00	M00	M00	M00	M00	M00
PENTICTO	PENTICTO	MAM	MAM	MAM	MAM	MAM	MAM	MAM	MAM	MAM	MAM	MAM	MAM	MAM	MAM	MAM	M00	M00	M00	M00	M00	M00	M00
PITT MEADOWS	KATZIE	MAB					M00	M00				M00			M00	M00	M00	M00	M00	M00	M00	M00	M00
PORT ALBERNI	AHAHWIN	MAB	M00	M00	M00	M00	MAB	MAB	MAB	MAB	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00
PORT ALBERNI	TSARAHAB	MAB	M00	M00	M00	M00	MAM	MAM	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00	M00
SQUAMISH	SQUAMISH	MAB	M00	M00	MAB	MAM	M00	M00	MAB	MAB	MAM		M00	M00	M00	M00	M00	M00	M00	M00	M00	M00	MAB
SURREY	SEKIANMO	MAM	MAM	MAM	MAM	MAM	M00	M00	M00	M00	M00	M00	MLI	MLI	MLI	MAM	MAM	M00	M00	M00	MAM	MAM	MAM
TOPINO	CLAYOQUO	M00	M00	M00	M00	M00	M00	M00	MAM	MAM				M00				M00	M00	M00	M00	M00	M00
VANCOUVER	MUSQUEAM	MAB	MAB	MAB	MAB		MLI	MLI	MAB	MAB		M00	MAM	MAM	MAM	MAM	MAB	MAB	MAB	MAB	MAB	MAB	MAB
WEST VANCOUVER	SQUAMISH	MAM	MAM	MAM	MAM	MAM	MAM	MAM					MAM	MAM	MAM	MAM	M00	M00	M00	M00	M00	M00	M00

SERVICES PROVIDED BY MUNICIPALITIES TO BANDS

MUNICPL	BAND	FIRE	POLR	POLE	GARC	CARD	INSB	INSP	SEVR	WATR	DYKE	PEST	TRAN	LIBR	PARK	RECC	RGRO	RPAV	RSIG	RVLK	BLIT	ROCH	RPLD
WILLIAMS	SUGAR	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HAN	HOO			HOO	HOO	HOO		HOO	HOO	HOO	HOO	HOO	HOO	HOO
LAKE	CANE																						
CHILLIVA	SAVAN	HAN	HAN	HAN		HAI	HOO	HOO	HAB	HAB	HOO		HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HAN	HOO
CK																							
CHILLIVA	KVA KVAN	HAN	HAN	HAN	HAN	HAI	HOO	HOO	HAB	HAB	HOO		HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HAN	HAN	HOO
CK	AK PILT																						
CHILLIVA	SQUILLA	HAN	HAN	HAN	HAN	HAI	HOO	HOO	HAB	HAB	HOO		HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HAN	HAN	HOO
CK																							
CHILLIVA	SKUL	HAN	HAN	HAN	HAN	HAI	HOO	HOO	HAB	HAB	HOO		HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HAN	HAN	HOO
CK	KAYH																						
CHILLIVA	YAKVBAKV	HAN	HAN	HAN	HAN	HAI	HOO	HOO	HAB	HAB	HOO		HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HAN	HAN	HOO
CK	IOOSE																						
CHILLIVA	TZEACHTS	HAN	HAN	HAN	HAN	HAI	HOO	HOO	HAB	HAB	HOO		HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HAN	HAN	HOO
CK	N																						
HAPLE	WHONOCK	HAN	HAN	HAN	HAN	HAI	HOO	HOO	HOO	HAB			HAI	HAN	HAN	HAI	MLN	MLN	MLN	MLN	MLN	MLN	MLN
RIDGE	I 1																						
HAPLE	LANGLEY	HAN	HAN	HAN	HAN	HAI	HOO	HOO	HOO	HAB			HAI	HAN	HAN	HAI	MLN	MLN	MLN	MLN	MLN	MLN	MLN
RIDGE	I 5																						
LANGLEY	KATZIE	HAN	HAN	HAN	HAN	HAI	MLN	MLN			HAN		MLI	HAN	HAN	HAI	MLN	MLN	MLN	MLN	MLN	MLN	MLN
NORTH	BURRAD	HAN	HAN	HAN	HAN	HAB	HAN	HAI	HAN	HOO	HAB												
VANC.	I 3																						
DISTRICT																							
NORTH	CAPILANO	MLN	HAN	HAN	HAN	HOO	HOO	MLN	HOO	MLI	MLI												
VANC.																							
DISTRICT																							
NORTH	SEYNOUR	HAD	HAD	HAD	HAD	HOO	HAD	HAD	HAD	HAD	HAD												
VANC.	CREEK I																						
DISTRICT	2																						
NORTH	MISSION	HAB	HAB	HAB	HAB	HAB	HAI	HAI	HAB	HAN	HAB												
VANCOUVE	I 1																						
R CITY																							
WEST	SQUANISH	HAN	HAN	HAN	HAI	HAI	HAB	HAN					HAI	HAN	HAN	HAI	HOO	HOO	HOO	HOO	HOO	HOO	HOO
VANCOUVE																							
R																							

SERVICES PROVIDED BY MUNICIPALITIES TO BANDS

MUNICPL	BAND	PTR	POLE	GARC	CARD	INSB	INSF	SEVR	VATR	DYKE	PEST	TRAN	LIBR	PARK	RECC	RGRD	RPAV	RSIG	EVLK	RLIT	RDCH	RPLEO
ABBTSTO RD	RESERVES	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO	HOO
KENT	YALE I 9	HAN				HAI	HOO							HAN		HAN	HAN	HAN	HAN	HAN	HAN	HAN
KENT	OHAMIL I 2	HAN				HAI	HOO							HAN		HAN	HAN	HAN	HAN	HAN	HAN	HAN
KENT	SEABIRD ISLAND	HOO				HAI	HOO							HAN		HAN	HAN	HAN	HAN	HAN	HAN	HAN
KENT	SCHOENLIT B I 1	HAN				HAI	HOO			HAN				HAN		HAN	HAN	HAN	HAN	HAN	HAN	HAN
KENT	CHEHALIS SUEAN	HAN				HAI	HOO			HAN				HAN		HAN	HAN	HAN	HAN	HAN	HAN	HAN
KENT	KITINAT	HOO				HAI	HOO			HOO				HAN		HAI	HOO	HOO	HOO	HOO	HOO	HOO
CAMPBELL RIVER	CAMPBELL RIVER III	HAN				HAIN	HAN	HANB	HAIN					HAN		HAI	HAB	HAB	HAB	HAB	HAB	HAB
CAMPBELL RIVER	CAPE HUDGE	HAN				HAN	HAIN	HAN	HANB					HAN		HAI	HAB	HAB	HAB	HAB	HAB	HAB
SALMON ARN	HESKAILN ITH	HAN				HOO	HOO	HOO	HOB	HOO				HAN		HAN	HAN	HOO	HOO	HOO	HOO	HAN
SALMON ARN	ADAMS LAKE	HAN				HOO	HOO	HOO	HOB	HOO				HAN		HAN	HAN	HOO	HOO	HOO	HOO	HAN
MISSION		HAN				HOB	HOB	HOB	HOB	HOB				HAN		HAN	HAN	HOB	HOB	HOB	HOB	HOB

APPENDIX IV
LEGAL ISSUES
by Glen Perkins

LEASEHOLD TAXATION

Questions:

- (i) What is the basis for imposition of provincial property tax on Indian lands occupied by non-Indians?
- (ii) Does the federal government have the power to pass legislation preventing such taxation?

Answer:

- (i) Non-Indian occupants of reserve lands are taxed personally as if they owned the land; s. 34 of the B.C. Assessment Act.
- (ii) Probably yes, if done to benefit Indians or Indian bands.

Comment

The imposition of provincial property tax on lands in Indian reserves occupied by non-Indians is achieved by the legal fiction of taxing the occupants personally as if they owned the land and improvements they occupy. This fiction is contained in s. 34 of the Assessment Act. It does not contravene the Indian Act, particularly s. 87, which only exempts reserve or surrendered land occupied by Indians or Indian bands from taxation.

The interesting question is "does the federal government have the power to pass legislation which would prohibit the provinces from taxing non-Indian occupiers of reserve land?" Based on recent decisions of the B.C. Court of Appeal¹ and the Supreme Court of Canada² it is likely such legislation would be upheld if it were clearly enacted with a view to ensuring that the tax revenue lost to the province enured to the benefit of the Indians affected. But if the federal government merely prevented the provinces from imposing any tax on non-Indian occupiers of Indian lands and then taxed the lands itself, with the revenues flowing to general revenue, it is likely the legislation would be seen by the courts as trampling the provincial power to impose direct taxation. In short such legislation would have to be made with the best interests of the Indian bands, who are the ostensible beneficiaries of the lands taxed, in mind. For example, if such federal legislation were passed to assist in the formation of "Indian municipalities" or to provide some form of

Indian self-government then it would almost certainly be within the federal power. In legal jargon it would be "in pith and substance" legislation aimed at assisting Indians, clearly a federal responsibility under s. 91(24) of the B.N.A. Act.

Footnotes:

1. Leonard v. R. (1984), 4 W.W.R. 37 (B.C.C.A.). The B.C. Court of Appeal, which is viewed as being anything but favourably disposed to Indian claims, said that the federal government had the power, if it wanted to use it, to exempt the purchase of goods by Indians from stores located on Indian surrendered lands from provincial social services tax. Clearly a broad exemption of a tax dearly prized by the province.

Brown v. B.C. Hydro (1979), 3 W.W.R. 360 (B.C.C.A.). The Court exempted from social services tax electricity purchased by an Indian living on reserve. The Court went on to say that federal legislation that barred the imposition of provincial tax on Indian personal property was within the competence of the federal government, principally because "...these aborigines are, in effect, wards of the state whose care and welfare are a political trust of the highest obligation."

2. Canard v. A.G. Canada (1975), 3 W.W.R. 1 (S.C.C.) at p. 16, Dickson, J.

"Section 91(24) conferred exclusive legislative authority on the Parliament of Canada in 'all matters' coming within the subject 'Indians and lands reserved for Indians'. This enables the Dominion to legislate fully and exclusively upon matters falling strictly within the subject 'Indians'."

Clearly if proposed federal legislation to exempt Indian lands occupied by non-Indians from provincial taxation were viewed as dealing strictly with the subject 'Indians' then the law would be *intra vires* Parliament.

Nowegijick v. The Queen (1983), 144 D.L.R.(3d) 193 (S.C.C.). In this case income earned off reserve by an Indian but paid to him on reserve was exempted from income taxation. Again, this case like those cited above is not squarely on point but it illustrates the length to which the courts will go in exempting from taxation any property that has an Indian complexion or element.

Bibliography:

Danes v. R. in Right of British Columbia (1985), 61 B.C.L.R. 257 (B.C.C.A.)

Assessment Appeals By Way of Stated Case:

#20 Assessment Commissioners v. H.D.L. Mercer (1961) (B.C.S.C.)

#31 Lynn Terminals Ltd. v. Corp. of District of N. Vancouver (1963) (B.C.S.C.)

#50 N.W.Holding Society v. Corp. of Delta (1966) (B.C.S.C.)

#66 Bruno Sammartino v. A.G. of B.C. (1970) (B.C.S.C.) & (1970) (B.C.C.A.) at p. 325-8

A constitutional challenge to the province's power to tax non-Indian occupied lands was struck down. The reason given was that the Indian lands are not taxed; rather the provincial tax legislation "merely imposes a tax personally on the occupier thereof with respect to his occupation." Thus the provisions of s. 91(24) of the B.N.A. Act are not offended nor is the Indian Act s. 87 as this taxation in no way affects "lands reserved for the Indians or their use." Based on this case it is clear that any federal legislation under the Indian Act would have to be very specific in exempting all occupiers of Indian lands from taxation, in any capacity.

#71 Construction Aggregates Ltd. v. Corp. of District of Maple Ridge (1971) (B.C.C.A.)

#124 Assessment Commissioners v. John Wayne Ryan (1978) (B.C.C.A.)

#137 Assessment Commissioner v. Westcoast Transmission Co. Ltd. (1980) (B.C.S.C.)

#151 R. in Right of B.C. v. Newmont Mines Ltd. (1982) (B.C.C.A.)

#182 Assessment Commissioner v. Circle W. HiHium Fishing Camp Ltd. (1983) (B.C.S.C.)

#209 Golden Acres Trailer Park v. Assessor of Area 19, Kelowna (1985) (B.C.S.C.)

BAND CORPORATE CAPACITY

Question:

Do Indian bands have the capacity, as legal entities, to sue and be sued and to contract?

Answer:

Yes, but could be subject to injunctive bars brought by any interested party.

Comment

Subject to the caveat that this issue has not been explicitly determined at the Supreme Court of Canada, Indian bands do appear to have the power to contract and to sue and be sued. The leading case here is Mintuck v. Valley River Band, (1977) 2 W.W.R. 309 (Man. C.A.), which has been followed by the B.C. County Court.¹ Mintuck states that bands are legal entities akin to municipalities or trade unions. They are "creatures of statute" and shall be subject to the same liabilities as "...[the law] would impose on a private individual...."²

There are two further caveats here. One is that these decisions are ex-post facto. That is the band had acted and at the time of the trial its liability for damages was being assessed. But if a band were intending to act and its proposed action appeared to be beyond the band's capacity to so act, then it is possible that injunctive relief could be available to any dissatisfied and affected party. The second caveat is that any judicial relief awarded against a band could prove nugatory as the band's assets located on a reserve are protected from almost all forms of garnishment by s. 89 of the Indian Act. Mintuck who was himself an Indian was not affected by this section as it does not apply to an Indian judgement creditor but any non-Indian creditor would be caught by the statutory bar to enforcement proceedings under a judgement, unless it was possible to locate a band asset not located on a reserve. But "located on a reserve" has been extended to include, for example, things such as band bank accounts located physically off the reserve.³ In other words it might be very difficult for a creditor to locate a band asset held off the reserve.

Footnotes:

1. Cache Creek Motors Ltd. v. Porter (1979), 14 B.C.L.R. 13 (B.C. Co. Ct.). An Indian band had contracted with Cache Creek Motors to have its children transported to school. The band apparently breached the contract and the issue before the Court was whether Cache Creek Motors could sue the band, or was the band a suable entity? Dohm, J. held yes based on Mintuck.
2. Mintuck at p. 311. This case is underpinned by the old legal maxim, "He who enjoys the benefit ought also to bear the burden."
3. Fricke & Seaton Timber Ltd. v. Michell (1986), 1 W.W.R. 544 (B.C.S.C.)

Bibliography:

Field v. M.N.R. (1975), 8 C.E.R. 252 (F.C.A.)

Springhill Lumber Ltd. v. Lake St. Martin Band (1985), 36 Man.R.(2d) 231 (Man. Q.B.)

International Brotherhood of Teamsters v. Therrien (1960), 22 D.L.R.(2d) 1 (S.C.C.). This case is the basis for the Mintuck decision. Here unions were held to be suable entities because they operated much like corporations - they acted through agents, they contracted and they could own property. Also they were creatures of statute. This anthology was applied in Mintuck to Indian bands.

MUNICIPAL SERVICE EQUALITY

Question:

Does the doctrine in Hawkins v. Town of Shaw: "once a municipality elects to provide services it must provide equal services to the minority community," apply in Canada?

Answer:

This doctrine probably would not apply to Canadian Indians because of marked historical differences between the status of Negroes in the U.S. and Indians in Canada.

Comment

The principle problem in deciding the applicability of American law to Canadian situations lies in assessing the degree to which the social situation underpinning the laws in the two countries is analagous. The Supreme Court of Canada has stated on several occasions that great care must be taken in applying laws from another jurisdiction because the foreign laws are often based on a social substrate that is at variance with the Canadian social substrate.

Thus in comparing s. 15 of the Canadian Charter, the equality provisions, and the 14th Amendment to the U.S. Constitution, the equal rights amendment, it is essential to bear in mind that the latter was ratified specifically to end racial discrimination in the U.S.A. In fact it was ratified by all but a few of the United States within three years of the end of the civil war. The predominant feature of the U.S. social substrate prior to 1865 was of course the enslavement of the U.S. Negro population. By contrast the Canadian social substrate prior to the coming into force of the Charter has no single predominant characteristic. It is arguable that s. 15 is much broader in scope than its U.S. counterpart. Consequently any evidence, however slight, of discrimination on a racial basis will probably not, unlike the rule in the U.S., be sufficient to ground a legal action in Canada. That is, the evidentiary burden on a Negro group in the U.S. seeking to prove racial discrimination is very slight as the courts have said explicitly² that there is a different evidentiary standard for cases of this nature. Thus it is probably not nearly so hard for a U.S. Negro group to make out a case of racial discrimination as it would be for a band of Indians in Canada.

A further problem that an Indian band would face in bringing an action of this type in Canada is the relative lack of judicial activism in Canada. This stance is clearly stated in Anns v. Merton London Borough Council (1978), 75 L.G.R. 555 (H.L.), a well known case often followed in Canada, in which the Court said

at p. 564 "...public authorities have to strike a balance between the claims of efficiency and thrift ... whether they get the balance right can only be decided through the ballot box and not in the courts." Thus if the relative lack of services provided to a band within a municipal boundary were seen to be the result of a municipal need to allocate scarce tax dollars unevenly it is likely that the courts would not intervene. On the other hand it is apparent that Canadian courts are becoming more "active" since the coming into force of the Charter. It is however almost impossible to say at this point in time what effect this perceived change in the judiciary's role will have on specific questions.

A third problem in comparing the unequal treatment of Canadian Indians and American Negroes is the fact that this unequal treatment is the result of quite distinct historical factors. In the relevant U.S. cases the latter is an ordinary citizen and member of a municipality who has received substandard municipal services because of his race. But in the case of Indians in Canada we are speaking of a special status group that has traditionally been the direct responsibility of the federal government. Thus the lower level of service to Indians can be viewed as an historical outgrowth of this special status and not as the result of a policy of discrimination on the part of municipal or provincial governments. The lack of service can arguably be attributed directly to the policies of the federal government.

There is no easy answer to this question. There are obvious and strong parallels between the two groups but there are also marked differences. On balance I feel that such an action would probably fail in Canada, despite recent judicial activism, because of the strong historical factors: especially the federal wardship under s. 91(24) of the B.N.A. Act and perhaps less importantly the relatively tough evidentiary problems that would likely arise under a Charter challenge.

Footnote:

1. Hawkins v. Town of Shaw (1971), 437 F2d 1286 (U.S.C.A. 5th) at p. 1288

"...where racial classifications are involved the Equal Protection ... clauses of the Fourteenth Amendment 'command a more stringent standard' in reviewing discretionary [policy based] acts of state or local officers." Further at p. 1293, "Normally the widest discretion is allowed the legislative judgement in determining whether to attack some, rather than all, of the [improvements needed]. ... But we deal here with a classification based upon the race of the participants, which must be viewed in light of the historical fact that the central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from

official sources in the states..., " and at p. 1294, "Facts showing a racial classification call for one [very strict] standard [of evidence] while a non-racial classification calls for another [normal standard of evidence]."

Thus it is easier for the plaintiff Negroes to prove intention to discriminate racially than it would be for the same group to prove for example that a controversial building permit issued to a developer who incidentally was the mayor's brother-in-law was done intentionally in bad faith.

Bibliography:

City of Kamloops v. Nielson (1984), 10 D.L.R. (4th) 641 (S.C.C.); Anns v. Merton applied in this case.

Hawkins v. Town of Shaw (1972), 461 F2d 1171 (U.S.C.A. 5th)

Johnson v. City of Arcadia (1978), 450 F.Supp. 1363 (U.S.D.C. Fla.)

McDonald v. Board of Election Commissioners of Chicago (1969), 22 L.Ed.2d. 739 (U.S.S.C.)

City of Jackson v. Pittman (1986), 484 So.2d. 998 (Miss. S.C.); Town of Shaw followed.

Coleman v. Aycock (1969), 304 F.Supp. 132 (U.S.D.C. Miss.)

Jackson v. Conway (1979), 476 F.Supp. 896 (U.S.D.C. Missouri)