

Discussion Paper United
Indian Council of Mississauga
and Chippewa Nations...

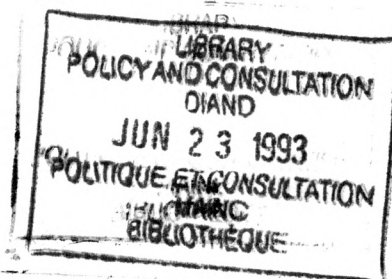
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DISCUSSION PAPER
UNITED INDIAN COUNCILS OF MISSISSAUGA AND
CHIPPENAW NATIONS SELF GOVERNMENT NEGOTIATIONS



prepared by
SELF-GOVERNMENT
NEGOTIATIONS
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TABLE OF CONTENTS

Purpose	2
Background	2
A. Community Profile	2
B. General Description of the Proposal	3
C. Guidelines for Self-Government Negotiations	5
D. Proposed Subject Matters for Negotiations	7
1.0 Status and Capacity	7
2.0 Structures and Procedures of Government	9
2.1 Institutions of Government	9
2.2 Procedures for Elections	11
3.0 Membership	12
4.0 Management of Lands and Resources	14
4.1 Land Title and Management	14
4.2 Natural Resources	16
i. Non-Renewable	16
ii. Renewable	17
4.3 Environment	19
5.0 Government Financing and Revenue	20
5.1 Financial Arrangements	20
5.2 Taxation	24
6.0 Socio-Cultural Matters	25
6.1 Education	25
6.2 Health	27
6.3 Social Services	28
6.4 Communications	29
6.5 Justice	30
7.0 Business Matters	32
7.1 Economic Development/Business	32
8.0 Physical Environment	33
8.1 Public Works	33
9.0 Application of the Indian Act	34

PURPOSE:

The discussion paper is a response from the Community Self-Government Negotiations Branch to the United Indian Councils' self-government framework documentation and discussion with the United Indian Councils. It is intended to provide a mutually acceptable document which defines in general terms what will be the subject of negotiations as per Annex D. As part of an Agreement on an Agenda and Process for Indian Government Negotiations, it establishes a common starting point by describing the status quo and what negotiations are intended to achieve.

The discussion paper has been reviewed in detail with the UIC and adjusted accordingly to take its comments into account. The UIC agrees with the descriptions summarizing its proposals and finds the balance of the paper acceptable as a basis for commencing negotiations. The statements made in the "proposal" sections of this paper are those of the United Indian Councils and are not necessarily adopted by the Self-Government Negotiations Branch. The discussion paper will also be used by the UIC to facilitate community consultation, and by the department as supporting documentation in the process to obtain a mandate to negotiate.

BACKGROUND:

A. Community Profile

The United Indian Councils (UIC) are an unIncorporated historical tribal grouping composed of eight First Nations; namely, Alderville, Beausoleil, Chippewas of Georgina Island, Chippewas of Rama, Curve Lake, Hiawatha, Scugog and Mississaugas of New Credit.

All eight First Nations are signatories or have a historical affiliation to the signatories of the 1923 Williams Treaties which involve portions of central and southern Ontario.

Located in the Peterborough area of Ontario, the First Nations range in size from 50 to 800 persons with a total population of 3,620. The budgets they administer range from \$30,000 to \$2.7 million with a combined total of \$10.5 million. Hiawatha signed an Alternative Funding Arrangement agreement in May 5, 1988, and Curve Lake is in the process of developing such an agreement. The remaining communities are currently operating through contribution arrangements and demonstrate sound financial management. '

These eight First Nations are generally considered to be progressive and possess varying degrees of management and administrative capabilities. All councils are elected under the provisions of the elective system of the Indian Act. Five of the First Nations have section 69 Indian Act powers.

B. GENERAL DESCRIPTION OF THE PROPOSAL

The United Indian Councils' framework documentation consists of a proposal submitted in August of 1986 and a supplemental submission received in December of 1988.

The subject areas in the United Indian Councils' self-government proposal in keeping with the UIC's goal of strengthening Indian government on Indian lands and enhancing the role of Indian government in areas adjacent to and affecting Indian lands, citizens and resources.

The UIC is seeking to negotiate an agreement towards a new legislative arrangement that will set out clear general enabling powers in the various sectors of Indian government operations. The enabling legislation would provide local control in specific areas and significant participation in all areas affecting member First Nations. The enabling legislation would have an opting-in feature to occupy any given area of authority at the discretion of a First Nations and to the extent it requires. Member First Nations would have the option to exercise authority jointly or individually within areas covered by the Agreement.

Essentially, the UIC is seeking exclusive (maximum) local control on-reserve and co-management regimes off-reserve. In order to achieve this goal there are four components which could form a new self-government agreement:

- . federal enabling legislation which would provide a statutory base for the authorities to be exercised by the UIC and individual First Nations;
- . UIC and individual First Nation constitutions which would describe the structure, principles and procedures under which the UIC and individual communities would operate;
- . financial agreements with the federal government, the UIC and the individual communities providing for increased flexibility; and
- . provincial agreement in respect of co-management regimes off-reserve.

The federal legislation and UIC/First Nation's constitutions could be drafted once agreement is reached, to enable the UIC/First Nations governmental powers to evolve over time as required. The immediate objective, as agreed upon by the UIC and the department is to negotiate those areas of jurisdiction which are the basic building blocks of Indian government.

These areas will include: structures and procedures of government, legal status and capacity, election procedures, land title, land management and resources, membership, and financial arrangements and accountability and the application of the Indian Act.

The UIC would want to negotiate on-reserve authority in the areas of education, health, social services, cultural development, communications, renewable and non-renewable resources, environment, public works and taxation as an immediate next priority. Until these areas have been negotiated and the UIC has assumed authority in these jurisdictional areas, the Indian Act will continue to prevail.

5. Community self-government arrangements must be compatible with the established principles, jurisdictions and institutions of government in Canada. For example, they must:
 - i) conform with the Charter of Rights and Freedoms;
 - ii) ensure political and financial accountability by the Indian government to the general community membership; and
 - iii) recognize the rights of redress of citizens.
6. Financial arrangements will be within the resource levels available to the department and consistent with the historical levels of funding provided to that community.
7. Agreements-in-Principle and new self-government arrangements must be formally ratified by the community membership and the federal Cabinet.
8. Federal laws of general application will continue to apply under new community self-government arrangements except to the extent that these laws are inconsistent with the provisions of any legislation giving effect to the self-government arrangements.
9. Provincial laws of general application will continue to apply except to the extent that those laws are inconsistent with the terms of any treaty, the provisions of any legislation giving effect to the self-government arrangements, any other Act of the Parliament of Canada or a law of the community.
10. The negotiation of new community self-government arrangements will be conducted with Indian communities that occupy lands that are recognized as lands reserved for Indians or that hold blocks of land pursuant to comprehensive claims settlement. The population and geographical area over which the Indian government will exercise authority will be defined in the negotiation.

D. PROPOSED SUBJECT MATTERS FOR NEGOTIATION

1.0 STATUS AND CAPACITY

Proposal

Owing to the vague status of bands or band councils pursuant to the Indian Act, the UIC and the member First Nations are seeking in law the status of a separate and artificial person, able to contract in its own name and to sue and be sued. It is further proposed that this unique legal entity would be a very special person for the following reasons:

- A) it would have special rights and privileges as those conferred by Indian Status in terms of taxation and ownership of assets, i.e. the ability to take an allotment or lease of reserve lands for its own purposes with the consent of the appropriate First Nation;
- B) it would have the status of a band ensuring it could enter into agreements with the special rights/privileges of the individual Councils within limited authorized purposes;
- C) it would have the status of a local government, ensuring it could enter into authorized agreements with other levels of government without further statutory or regulatory change; and
- D) the UIC would have all of the implied powers of a corporation. This would mean that it could purchase and hold lands off-reserve for the use and benefit of First Nations, as well as entering into any economic development agreement where incorporation is now required.

It is acknowledged by the UIC that the above features are known in Canadian law. However, no known legal entity currently possesses all these rights and privileges in this combination. Further, the UIC proposes that the individual First Nations in their corporate persona would have the same rights and privileges as set out above.

Existing Situation

The law in this area is unclear. The Indian Act does not define the status and legal capacity of a band or a band council and the exercise of authority is severely limited and complicated by the power of the Minister. Nor does the Act define the relationship of the band council to the band. Such omissions have resulted in great uncertainty about the status and legal capacity of bands and band councils which, to a large extent, has not been clarified by the courts. Non-Indian interests have limited assurances that band governments can enter into contracts, bring or defend law suits, and generally act in the name of the band. This uncertain legal situation is an impediment to band business initiatives.

Response

Indian status is conferred upon individual persons, only and not upon corporations. Band status is determined by certain criteria in section 2(1) of the Indian Act and the UIC does not meet these. However, subject to negotiations, the enabling legislation could confer on the UIC some of the powers and privileges enjoyed by status Indians and bands.

The federal government is prepared to negotiate this area as a priority item. Before entering into substantive negotiations the UIC should clarify whether it is the bands themselves and the band councils as well as the UIC which are to gain legal capacity as described in the proposal. Details on the jurisdiction of the UIC and the band will be required.

Suggested Action

This topic will be included as a priority topic for negotiation in the framework agreement.

2.0 STRUCTURES AND PROCEDURES OF GOVERNMENT

2.1 Institutions of Government

Proposal

The UIC will enhance and complement the authority of its individual member First Nations. The real autonomy and power to make decisions will rest with the Councils of the member First Nations.

There will be two levels of government: the United Indian Councils and the governments of each First Nation.

Two types of constitutions - an umbrella constitution applying to the UIC and individual constitutions applying to each of the First Nations - will set out the powers of each level of government and the areas of jurisdiction of each government institution. The constitutions will be in writing and may:

1. Outline the terms of reference for the UIC/First Nations including term of office, tenure and composition;
2. Outline the procedures to be followed in UIC/First Nations affairs including mechanisms of political accountability;
3. Establish a system of financial accountability;
4. Outline the rules of elections, referenda, appeals and impeachment in respect of the UIC/First Nations; and
5. Provide for any other matters relating to Indian Government.

The United Indian Councils will have the delegated power to act in any area or on any matter within the jurisdiction of its member First Nations with the consent of all. UIC shall have the authority to enact by-laws relating to areas of its mandate, as

.../10

will individual First Nations. The United Indian Councils will be accountable to its member First Nations and the member First Nations will be accountable to their citizens. The UIC will sit as an appeal tribunal in areas of local decision-making to be agreed upon. These may be included in the statutory base or authorized from time to time. Some of these areas may include local elections, membership matters, appeals from local by-laws (including taxation), and internal land matters.

Generally, persons affected by an appeal or parties to it will have the right to be heard. Consideration may also be given to permitting the Minister of Indian Affairs to be represented. The UIC, sitting as a tribunal, would have the right to retain legal counsel just as an administrative tribunal would have, as well as the power to make determinations of fact and law. All decisions would be in writing and viewed to be final and binding. Any person who participated in an appeal, except for the sole purpose of challenging the jurisdiction of the tribunal, shall be deemed to be bound by the decision. UIC and its members sitting in appeal would also have the usual immunity from lawsuits enjoyed by public authorities and judicial bodies.

UIC has put forward two options for the composition of the United Indian Councils. One option proposes that the United Indian Councils be composed of the Chief and one designated councillor from each member First Nation, with a second Councillor designated as an alternate to either of the sitting delegates. This group would elect a Chairman or presiding officer from its own number and would determine the composition of any subordinate boards or committees. The alternate option offers a structure analogous to Regional Governments, which might see United Indian Councils First Nations elect representatives to the United Indian Councils independently of local Chiefs and Councillors.

The proposal is a broad outline only, with much of its contents to be provided in substantive negotiations following consultation with the membership.

Existing Situation

The federal government exercises primary legislative jurisdiction under this heading by way of the provisions of the Indian Act.

Section 2(1) of the Indian Act defines and gives recognition to bands and band councils. The role of the band council and its relationship to the band is suggested in section 74 where there is reference to the selection by elections of band councils "for the good government of the band". Section 2(3) prescribes the manner by which a band and band council shall exercise the powers conferred by the Act.

Response

The federal government is prepared to negotiate structures and procedures of government. During negotiations clear distinction will need to be made between the proposed powers of the UIC and the powers of the individual bands or band councils.

The proposal that the UIC sit as an appeal tribunal will require the participation of the Department of Justice.

Suggested Action

This topic will be included as a priority item in the framework agreement.

2.2. Procedures for Elections

Proposal

The UIC proposes that the individual First Nation constitutions will make provision for democratic procedures to govern the election of Chiefs and Councillors, as well as for defining the composition of the respective levels of government, tenure of office, criteria for UIC membership, voter eligibility criteria, impeachment procedures for misconduct and procedures for ensuring accountability to the First Nation membership.

Also, the umbrella constitution governing the UIC will set out the democratic methods for First Nation representation on the UIC as well as mechanisms for insuring political accountability to the First Nations.

Existing Situation

The Indian Act and the regulations passed thereunder provide for the election of Chief and Council. The Indian Act recognizes band councils elected either in accordance with the Indian Act or according to the custom of the band. At present all of the bands of the UIC elect their chiefs and councils pursuant to Indian Act election provisions.

Response

As a component of the structures of government, procedures for elections and mechanism for ensuring political accountability are essential items for negotiation. The election procedures must ensure adherence to the principles of democracy, natural justice and the Charter of Rights and Freedoms.

Suggested Action

This area will be identified as a priority item in the framework agreement.

3.0 MEMBERSHIP

Proposal

The UIC proposal and discussions to date indicate that membership rules in each community will not necessarily be identical. As well, membership codes may or may not be enacted by individual First Nations. Transfers and dual membership are being contemplated, not only among the United Indian Councils First Nations but also into and out of other First Nations. These transfers may go beyond existing practices under the Indian Act and impact on matters such as land holding in more than one community. It is, however, too early to say whether the concept

of "dual citizenship" will remain a feature of the proposed government. Further consideration of this matter will occur after the communities have had the opportunity to consider membership or citizenship in the context of a broad range of self-government options.

Existing Situation

Current Indian Act provisions permit bands to establish membership rules and maintain their own band lists. Under the Act, membership rules must not deprive persons of membership by reason of situations existing prior to the enactment of the rules, and they may provide mechanisms for appeal. Membership in bands that do not establish membership rules is governed by the Act.

Response

Membership is an essential element for negotiation in self-government. The UIC proposal in this area will require elaboration prior to discussions in substantive negotiations. Specifically the areas of membership rules, procedures, appeals, amendment provisions and the distinction made between members and non-members, and between members and non-members who are resident on reserve, will need to be addressed. The concept of dual membership raises a number of issues such as: eligibility to vote and hold office, per capita entitlements and resource revenue sharing, which the UIC may wish to consider. Membership codes must comply with the Charter of Rights and Freedoms.

Suggested Action

This topic will be included in the framework agreement as an area for negotiation on a priority basis.

.../14

4.0 MANAGEMENT OF LANDS AND RESOURCES

4.1. Land Title and Management

Proposal

The UIC proposal refers to "property" which includes land and water. It is intended that title to reserve land will continue to rest with the Crown. Each First Nation will assume management and control of its reserve and designated lands including allotment to citizens; the exercise of all discretionary powers now reserved for the Minister; administration of referenda for non-Indian use; or in limited situations, the issuance of permits or leases for non-Indian use; expropriation of First Nation lands; the negotiation of permits and leases, collection and administration of revenues; and all regulatory powers.

No assumption or exercise of self-government powers by the UIC or its member First Nations is intended to release the Government of Canada from any fiduciary or other obligations to the UIC.

Off-reserve interests in land will be dealt with by the UIC for the use and benefit of all member First Nations, pursuant to a co-management regime which will be negotiated with affected parties.

Existing Situation

Generally speaking, the legal title to reserve land is vested in the Crown for the use and benefit in common of the Band. The power to legislate respecting Indians and lands reserved for Indians is vested in the Federal Government. The Federal Government administers reserve lands for the benefit of the Indians pursuant to the Indian Act. Currently, the band council can pass by-laws on several aspects of land management under the provisions of section 81 and additional powers are available through sections 53 and 60.

Today by virtue of the 1924 Canada-Ontario Lands Agreement, the Federal Government also has the power to sell or otherwise dispose of absolutely surrendered lands and use the proceeds for the benefit of the band. The 1986 Indian Lands Agreement allows Canada, Ontario and Indian bands to enter into specific agreements on any matter covered by the 1924 agreement, including the removal of any provincial interest in reserve land. In general, provincial legislation in relation to land is inapplicable to lands which are found to be reserved for the Indians. However, once there is an absolute surrender followed by a disposition of lands, such lands cease to be reserve lands and the laws of Ontario apply in the same manner as they apply to other lands in the Province. In addition, non-reserve lands, held for band economic development or other purposes fall within provincial jurisdiction.

Response

Title to reserve land and management of the land are considered to be essential elements of self-government and can be negotiated. However, there are a number of critical issues which must be addressed by the community. Thus, under the Indian Act, the Minister possesses certain powers, which, in some cases, can only be exercised with the consent of the band council, as in sections 18(2), 20(1), and 28(2). Consideration should be given to whether it would be appropriate to transfer these ministerial authorities to the exclusive jurisdiction of the band. Any leases of reserve land are now held by the Crown as lessor. Therefore, the UIC will have to consider whether its member bands wish to assume these leases as lessor or have the rents assigned by the Minister. The desire for authority may be inconsistent with a continued Crown role in land management. Thus, new arrangements may necessitate a transfer of responsibility from the Crown to the bands and could only extend to current reserve boundaries. Prior to assuming these powers, the First Nations would have to develop their rules and procedures for land management. The continued application of the Indian Act will need to be clearly defined during negotiations, as will the role of the Minister (i.e. expropriation, leases etc). Any increase in the authority of the UIC or the bands over reserve lands will mean that any federal fiduciary or other obligations are diminished accordingly.

The co-management regime proposed by UIC will also require the involvement of the provincial government, particularly if the UIC proposes to exercise legislative powers over off-reserve land. The federal government would not have any authority over off-reserve land.

Suggested Action

Title to reserve land and the management of the land will be included in the framework agreement as a priority item.

4.2 Natural Resources

i. Non-Renewable

Proposal

In general, each First Nation seeks authority over the development, extraction and use of all non-renewable resources including hydrocarbons (oil and gas), aggregates (sand and gravel), as well as precious and non-precious metals on First Nation owned land and on-reserve. This would include the power to claim royalties. The First Nations propose to regulate the development and use of all non-renewable resources.

Where non-renewable resources outside the First Nation reserves and designated lands are identified or agreed upon or where the UIC agree upon a scheme of co-management in respect of such non-renewable resources, this shall be dealt with at the UIC level of government for the use and benefit of all its member First Nations.

Existing Situation

Off-reserve mining is under provincial jurisdiction and is administered through a system of licences, permits and royalties. On-reserve, the federal government has provided for the regulation and disposition of minerals pursuant to the Indian Act and regulations thereunder.

The 1924 Dominion Provincial Agreement also impacts on the regulation and disposition of minerals on Ontario reserves. Paragraph 3 to 6 provide for prospecting and mining claims on reserves. Paragraph 6 provides that any consideration in respect of a disposition of a mining claim shall be divided into two (2) parts, one-half to be paid to the Province, the other to be dealt with by the Dominion. Paragraph 7 provides that paragraph 6 shall not apply to reserves established under the Treaty of 1873.

The 1986 Indian Lands Agreement allows Canada and Ontario to enter into specific agreements with Indian bands on any matter covered by the 1924 Agreement.

Response

The federal government is prepared to negotiate authority over on-reserve non-renewable resources. However, as a result of the 1924 and 1986 agreements the provincial government will need to be involved in the negotiations.

The role of the UIC/Bands and the Crown must be clearly defined in any undertaking regarding the expropriation of non-renewable resources.

As well, the roles of both the federal and provincial governments will need to be clearly defined in any co-management regime of off-reserve non-renewable resources.

Suggested Action

This topic will be included in the framework agreement as a priority item.

ii. Renewable

Proposal

Each of the First Nations seeks statutory authority to manage and control hunting, fishing, trapping and gathering, including the harvesting of on-reserve timber on land owned by First Nations. The First Nations propose to regulate the development and use of all renewable resources.

In the event of a co-management scheme off-reserve or where agreed upon with individual members, the UIC would deal with matters concerning renewable resources for the use and benefit of all member First Nations.

Existing Situation

The jurisdictional situation with respect to hunting and fishing is complex. Generally speaking, the courts have not applied provincial legislation in relation to hunting, trapping or fishing to Indians on reserves.

The Indian Act provides, under sections 73 and 81 for the making of regulations and by-laws in regard to "furbearing animals, fish, and other game" on the reserve. With regard to fisheries, the federal government has enacted the Fisheries Act. Subject to any by-laws passed pursuant to section 81(1)(0), of the Indian Act, the Fisheries Act Regulations of Ontario apply on reserve.

Timber and other resources off-reserve are administered under provincial legislation. Timber located on reserve land is subject to the provisions of the Indian Act. The Indian Timber Regulations (c. 961) passed pursuant to section 57 of the Indian Act apply to the disposal of timber from reserves and surrendered lands. Pursuant to the above provisions, the Minister may issue permits to bands and licences to non-Indians.

Response

Management and control of on-reserve hunting, fishing, trapping and gathering is possible. However, the nature of management participation in fisheries would depend on the level of the fishing activity. Co-management may be a practical way to deal with this area. Fisheries management regimes will need to be compatible and integrated with off-reserve management regimes, especially for those species which migrate into or out of reserve waters.

The management of on-reserve timber resource can be negotiated directly with the federal government. The capacity of band resource management laws to supersede provincial and federal laws on-reserve would have to be discussed.

New arrangements for management of off-reserve renewable resources must involve the Province because of its jurisdiction. The federal government is prepared to participate in these negotiations.

Suggested Action

This topic will be included in the framework agreement as a priority item for negotiation. As preparatory work for substantive negotiations, the UIC should develop in more detail what it would like to do in the area of renewable resources. Emphasis should be placed on outlining the plans for regulation of harvesting activities, the recognition of preferred rights of members and mechanisms for protection of individual interests. Consideration should also be given to the fact that any off-reserve activity will require the involvement of the Province of Ontario.

4.3 Environment

Proposal

The UIC proposes legislative authority on-reserve to control environmental protection of land, water, and air. Such topics as conservation, fire protection, pollution control and parks and preserves would be included for discussion.

Again UIC proposes the establishment of a co-management system with relevant off-reserve sectors. One area that the UIC would be interested in pursuing is the establishment and co-management of game preserves either on or off the First Nation reserve.

Existing Situation

Depending on the matter of environmental concern, the legislative jurisdiction may be exclusively within the power of the federal government, exclusively within the power of the Province, or jointly shared by both.

Federal and provincial environmental review processes already exist for certain types of activities. Some federal and provincial environmental laws may apply to Indian reserves in Ontario. DIAND currently funds bands to study the potential effects of developments which may impact on their reserves.

Response

The federal government is prepared to participate in negotiations in this area. The UIC should identify problems with the current environmental protection laws as they apply to the UIC bands' reserves. Other federal departments and the Province will have to be involved in these negotiations. Federal laws will continue to apply except to the extent that they are inconsistent with legislation implementing the self-government arrangement. Any proposal which would weaken the application of the Canada Environmental Protection Act would be difficult to negotiate. The negotiation of the off-reserve aspects of this area must involve the provincial government. The federal government is prepared to participate.

Suggested Action

This topic can be identified in the framework agreement as an item for negotiation.

5.0 GOVERNMENT FINANCING AND REVENUE

5.1 Financial Arrangements

Proposal

The UIC will maintain a Finance Committee with legal and negotiation support services to negotiate on a five year basis a global budget for all member First Nations with the Government of Canada. Once the budget is agreed upon, transfer payments from

Canada in accordance with the budget will be guaranteed for each of the five fiscal years. Each member First Nation will receive an agreed-upon allocation from the global budget for specified purposes (programs/project) and upon particular terms and conditions. These funds will be administered at the local level.

Surplus capital funds will be transferable only for capital purposes, provided that the initially designated project is on schedule and under budget. Whether these are spent for other capital projects in the same community or returned to the common fund will depend upon the internal agreement of the UIC.

Non-capital funds will be transferable within each community, depending upon its own priorities. Any protests from a community resulting from failure to fund any program at all or to fund it adequately will be dealt with by the UIC.

The rules as to transferability will apply in the same manner to programs and projects administered by the UIC.

Reserves for unforeseeable or extraordinary expenses will be maintained by the UIC and funded either as part of the global budget or by way of agreement with Canada.

The agreement on a global budget will not prevent the UIC from access to new or enhanced federal programs, or to surplus funds in any federal program, on the same basis as other First Nations in Ontario.

Funding under the global budget will not be reduced if the United Indian Councils are able to secure additional funding from any source other than the Government of Canada, including any funds raised by taxation, assessment and user fees. Provision will be made for the UIC to issue bonds and debentures to support major capital projects with a percentage of the total value and associated costs to be guaranteed by Canada.

Each member First Nation will have sole management and control of its own revenue accounts and will obtain control of its own trust accounts, which may be administered according to the same rules

and principles regarding investment customarily followed by trustees. Per capita distribution of the capital of trust funds will be abolished. The UIC may consolidate employee pension funds and administer these jointly according to the same rules and principles usually followed by trustees.

The UIC will be accountable to its citizens as well as to Canada for federal funds received by way of annual audit coupled with a limited right of inspection.

Should an individual community encounter difficulty with financial administration or program management, provision will be made for the UIC to step in and propose a remedial scheme.

Should the UIC itself encounter difficulty with financial administration or program management, provision will be made for its budget and resources to be allocated to the member First Nations for management to completion.

In either of the two events noted above, further agreement may be made with Canada for remedial action, co-management, or a combination of such measures, as required.

Existing Situation

The Indian Act governs the administrative and expenditure of Indian monies. Bands administer federal contribution funds under DIAND policies pursuant to authorities in the Financial Administration Act. They also administer monies from provincial agencies according to specific agreements. In addition, bands may administer monies they generate themselves. The Department of Indian Affairs currently provides one of the largest portions of government financing to band governments. The provision of federal funds requires that the Minister account to Parliament for their disbursement and the Minister, in turn, requires band councils to account to him. Under current provisions, a band council's accountability is limited.

Some options to the existing situation are now available to eligible bands through the department's Alternative Funding Arrangement (AFA) policy. Through AFA, the accountability of band councils to their members is enhanced. Band councils now have the opportunity to modify or redesign federally funded programs in a way more appropriate to their community needs and priorities, as long as minimum program requirements are met; to transfer funds between programs, with the exception that capital funds cannot be transferred into funds for operation and maintenance; and to enter into multi-year agreements up to five years subject to the appropriation of funds. The new arrangements continue to accommodate the Minister's accountability to Parliament.

Response

The federal government is prepared to negotiate financial arrangements. These negotiations will be guided by existing federal guidelines for self-government financial arrangements.

The subject of transfer payments, the guarantee of bonds, debentures and special tax incentives will require the involvement of the Department of Finance in negotiations. Unless payments of federal funds are directly authorized by statute, it is not easy to envisage how transfer payments can be guaranteed. Virtually all agreements paying federal monies are subject to appropriation by Parliament. The guarantee of bonds and debentures by the federal government is a complex area. However, no guarantee is available without authorization by statute, regulation or order-in-council depending on the nature of the guarantee.

Suggested Action

This topic will be identified in the framework agreement as a priority for negotiation.

5.2 Taxation

Proposal

The UIC is seeking to expand its authority under section 83 of the Indian Act and to eliminate the involvement of the Governor-in-Council and the approval of the Minister. Specifically, the First Nations want the authority to implement direct and indirect taxes and control of transferable corporate tax benefits and exemptions. It is intended that change to the Income Tax Act may be required.

Existing Situation

Taxation is within both federal and provincial law-making authority. The provinces have more limited taxation powers than the federal government but they can validly enact legislation taxing income and property in addition to other matters as long as the tax is a direct levy against the person intended to pay. Income tax is within the competence of both levels of government, but is subject to political arrangements providing for the sharing of common tax fields.

Under Section 83 of the Indian Act, all bands have a limited power to tax interests in reserve land and to raise monies from band members for projects and to require the licensing of businesses. By-laws made pursuant to Section 83 require the approval of the Minister and must be consistent with any regulations which may be made by the Governor in Council. Section 87 of the Indian Act provides certain exemptions from taxation to Indians and Indian bands.

Response

Enhanced taxation powers would necessitate the involvement of the provincial government. Self-government financial arrangements may include, subject to negotiations, the following revenue raising powers: taxation of interest in reserve lands and other related local taxes, sales of licences and permits, sales of goods and services and user fees.

The federal government is prepared to negotiate local on-reserve taxation and other financial powers. These powers may include, subject to negotiations, access to revenue sources now available to communities under the Indian Act or those powers usually assumed by local governing bodies including:

- taxation of interest in reserve lands and other related local taxes (including flat rate taxes);
- sale of licences and permits;
- sale of goods and services;
- user fees;
- investments;
- natural resource royalties within the framework of applicable federal and provincial legislation; and
- transfer arrangements with other governments.

Any proposal concerning income tax would require the prior agreement of responsible federal departments.

Suggested Action

This topic could be identified in the framework agreement as an item for negotiation.

6.0 SOCIO-CULTURAL MATTERS

6.1 Education

Proposal

The UIC is proposing legislative control over on-reserve activities including pre-school, elementary, secondary, post-secondary education, adult education, special education, up-grading, occupational skills, culture and language as it relates to education. In each of these categories the following sub-

.../26

fields will be discussed: education authority, curriculum development, delivery systems, student support services, student maintenance, scholarships and bursaries, counselling facilities, finance and personal administration.

In areas where legislative authority is not possible, the UIC will be seeking as much participation as is deemed desirable by the member First Nations.

Existing Situation

Education is generally within the jurisdictional purview of the province. However, the federal government exercises jurisdiction over some aspects of the education of Indian children through the Indian Act, and provides some financing of educational programs through contribution agreements. Current funding authority for elementary/secondary education services is restricted to children who live on-reserve or crown land. Post-secondary financial assistance is provided by the department through a new Post-Secondary Student Assistance Program.

Response

Education is a broad area and the Minister's powers under the Indian Act are negotiable. It will be necessary during substantive negotiations to define the role and relationship of the UIC education authority and of the bands including decision-making and accountability mechanisms. As well the continued role if any of the department should be defined. New arrangements will require the involvement of the provincial government in areas such as accreditation, certification and funding of non-Indians on-reserve.

Suggested Action

This topic should be identified as an item for inclusion in the framework agreement.

6.2 Health

Proposal

Through a bilateral agreement with Canada, the UIC seeks legislative control over health services such as preventative, environmental, community and rehabilitative health and medical services. Where statutory authority is not possible, the UIC will be seeking extensive participatory functions to be established through bilateral agreements.

Existing Situation

Health falls within provincial and federal jurisdiction. The federal government has enacted the Indian Health Regulations. Under section 81(1) (a) of the Indian Act, Indian bands have certain by-law powers. Under section 66(3) the Minister may authorize expenditures out of bands' revenue monies on disease prevention and maintaining health standards on-reserve.

The federal government, through the Department of National Health and Welfare's Medical Services Branch (MSB), provides community health services in most Indian communities. This service is provided by either direct delivery or through contribution agreements with bands which are responsible for administering MSB programs in their communities.

In some regions of Canada, provincial governments provide health services or participate with MSB in providing services to Indian communities. In many southern locations, Indian people living on reserve have ready access to provincial and regional health facilities and, therefore, receive their health services from these agencies. All medical, hospital, and hospital-related services are provided to Indian people through provincial health schemes and are paid by the federal government through established program transfer payments. The Department of National Health and Welfare, through Medical Services Branch, also provides non-insured health benefits to status Indians, both on- and off-reserve.

Health services are presently delivered to the bands of the UIC in several ways: directly by National Health and Welfare, by the provincial government and by individual bands through contribution arrangements.

Response

The federal government, through the Department of National Health and Welfare , Medical Services Branch, is prepared to discuss plans with the UIC to take control of its health services in a legislated self-government arrangement. The participation of the Province of Ontario will also be required. Prior to substantive negotiations, the UIC and its member bands will need to determine their respective roles and responsibilities and how accountability will be maintained.

Suggested Action

This topic should be included in the framework agreement as an item for negotiation.

6.3 Social Services

Proposal

The UIC proposes to have legislative powers over social service programs for adult care, child care, social welfare services, child and family services, income support, housing and other related programs. A participatory function is also contemplated for those jurisdictional areas where legislative control is not feasible. The UIC proposes to develop and deliver culturally sensitive and community relevant services.

Existing Situation

The provincial government has jurisdiction over most social services. The federal government on a policy, rather than on a statutory basis, may contribute funds for the following services: income assistance to all eligible residents on-reserve, child welfare services to all registered Indians on-reserve, adult care to all eligible residents on-reserve, day care and other community and social services. Marriage and divorce fall under provincial and federal jurisdictions.

Response

The federal government is prepared to participate in negotiations in this area. However, the negotiation of this subject area will require the involvement of the provincial government. The scope of the UIC and/or the bands' authority may depend on the Province. The UIC may wish to consider adoption under this heading. The range of services over which the UIC might gain greater control subsequent to negotiations depends not only on the existing (federal) resource level, but on: a) statutory obligations involved in respect to any service; and b) the level of provincial funding that might be negotiated in areas that are cost-shared.

Suggested Action

This topic should be included as an item for negotiation.

6.4 Communications

Proposal

The UIC is seeking legislative authority on reserve to establish, regulate and license public telecommunication, radio and newsletters. Significant participatory functions are desirable off-reserve.

Existing Situation

Communications fall primarily under federal jurisdiction and are regulated by the Canadian Radio and Telecommunications Commission (CRTC). There are other laws of a provincial origin which impact on this area dealing with such matters as libel and slander. The CRTC reviews and licenses communications facilities for operation. The CRTC has provisions which could assist bands in achieving certain broadcasting autonomy.

Response

The department is not clear on the implications or possibilities in this area, although it is willing to facilitate discussions with affected departments to determine which UIC goals may be achieved through the existing regulatory structure, and which may be possible by the way of new arrangements. The UIC should be aware that significant legislative authority is not likely to be achievable. In addition, this subject must also be discussed with the Province of Ontario for any changes that would fall under provincial jurisdiction. There are no federal or provincial requirements concerning the publication of a newsletter and the UIC may carry out this activity at the present time. Further Cabinet direction is required to negotiate this jurisdictional field.

Suggested Action

This topic should be identified as an item for negotiation in the framework agreement, subject to Cabinet direction.

6.5 Justice

Proposal

The UIC is seeking local control of the development of a local justice authority. This would include civil and criminal justice matters which fall under the following sector: policy and planning, prevention, court procedures and evidence, prosecution, law enforcement, fines and penalties, corrections, probation and parole, rehabilitation, peace officers and tribal courts.

Existing Situation

The federal government has jurisdictional authority for criminal law and criminal procedure. Provincial governments administer the criminal justice system and policing. Matters of a civil

.../31

nature generally fall under provincial jurisdiction. Within the Indian Act, section 81 provides that the band council may make by-laws in relation to the observance of law and order (81(c)), and the prevention of disorderly conduct and nuisance (81(d)). Section 101 and 102 of the Act and other sections relate to offenses in relation to provisions under the Act. Section 103 pertains to forfeitures and penalties for offenses against various Indian Act sections. Section 107 of the Indian Act gives Justice of the Peace authority over Indian Act offenses, including breach of by-laws and certain summary Criminal Code offenses. Currently there are only six of these Justices of the Peace in Canada and further appointments under this section have been suspended pending a policy review.

Response

This is a highly complex area which will require a great deal of consideration and discussion. The negotiation of the creation of tribal courts, for example, would necessitate the active involvement and cooperation of the Province, because of its jurisdiction within this area. For its part, the federal government, through the Department of Justice, is prepared to participate in these discussions. There are many practical considerations which would need to be addressed before proceeding in this area including: cost, duplication, training, relationship to existing courts, enforcement procedures, policing and facilities. At the outset, both the federal and provincial governments would likely want to know which needs the UIC and member bands feel are not being met by the existing court system, and how a tribal court would differ from and relate to existing provincial and federal courts. As the proposal is quite general, it is not possible to respond in any detail.

Prior to entering into substantive negotiations, a clear indication of what the UIC is seeking in this jurisdictional field will need to be developed.

Suggested Action

This topic should be identified as an item for negotiation. As this area has not been identified as a priority, UIC should develop the proposal in greater detail and consider how they wish to make reference to this topic in the framework agreement.

7.0 BUSINESS MATTERS

7.1 Economic Development/Business

Proposal

The UIC views economic development as the key to self-determination and self-sufficiency. Legislative control of reserve activities and maximum participation in external decision-making bodies off-reserve are the goals. The UIC would provide incentives for First Nation members and outside organizations to establish businesses on-reserve.

It hopes to engage in trade with persons, businesses and other levels of government. Regulation of trade on-reserve and First Nation owned lands will occur by means of tariffs, and other non-tariff mechanisms.

Existing Situation

Under section 81(1)(g) of the Indian Act, band councils have the by-law capacity to zone the reserve for different purposes including "...the carrying on of any class of business, trade or calling ...". Under section 83 of the Indian Act, bands can enact by-laws to raise money by licensing "businesses, callings, trades and occupations" on the reserve.

Response

The federal government is prepared to negotiate new arrangements for band control of businesses on-reserve. However, two points should be noted: first, the regulation of trade can be dealt with, to some extent, within existing Indian Act by-law making powers and second, the content of the proposal can be addressed by defining the legal status and capacity of the UIC and First Nations. The provincial government must be involved where off-reserve activities are contemplated.

Suggested Action

This topic should be identified as an item for negotiation. More detail as to particulars may be required to support substantive negotiations.

8.0 PHYSICAL ENVIRONMENT

8.1 Public Works and Community Infrastructure

Proposal

The UIC is seeking statutory control or significant participation where statutory control is not possible (e.g. participation in planning and decision-making processes) over such matters as private works, public works, housing and other related infrastructure, transportation and community services. In the latter case participation may be arranged through bilateral agreements with Canada.

Existing Situation

Community infrastructure entails two components, namely the regulation of standards and the delivery of services. The regulation of standards involves, in part, the federal power over reserve lands as contained in the Indian Act, section 81 by-law powers and various ministerial powers and regulations enacted under the Act.

The service delivery aspect is 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 and available funding.

Response

The federal government is prepared to negotiate band control over community infrastructure and public works. Negotiations of a self-government agreement in this field will be considered to the extent that it remains consistent with existing program authorities, criteria, federal/provincial standard and funding levels.

Suggested Action

This area can be included as an item for negotiation.

9.0 APPLICATION OF THE INDIAN ACT

Proposal

Further application of the Indian Act will be determined during the process of substantive negotiations. Pursuant to these negotiations, certain sections of the Indian Act will be replaced by the new UIC self-government agreement.

Existing Situation

All sections of the Indian Act currently apply to UIC member bands.

Response

The federal government is prepared to negotiate the future application of the Indian Act to the UIC member bands.

Suggested Action

This area can be included as a priority topic for negotiation.

DOC246