

A New Indian Lands Act
Preliminary Identification
of Issues & Options

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(Preliminary Identification of Issues and Options))

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PREFACE

Phase II of the Lands, Revenues, and Trusts review examined a number of subjects relating to the department's management of its responsibilities under the Indian Act. One of the components of the review dealt with Indian lands management issues. The report prepared by the department's consultants identified a number of options for reform of the current Indian lands management system. One of the options was to enact new legislation that would, at the option of each band, transfer the responsibility for Indian lands to Indians.

The purpose of this paper is to, in a preliminary manner, identify some of the issues and considerations that may need to be addressed should the First Nations indicate that they wish to further explore this option.

Because of its preliminary nature, this paper does not purport to identify all possible issues or considerations. Rather the intention has been to present some of the matters which might be discussed at future meetings between representatives of the First Nations and the Department of Indian and Northern Affairs. It is hoped that through such meetings a working document can be produced which will more accurately and completely present the issues and considerations that must be confronted if there is to be new legislation. Although this paper addresses matters in the context of the administration and control of Indian lands, it is recognized that the wider interests and goals of the First Nations will have to be addressed in the course of the next phase of the LRT review process.

Finally, it is noted that the matters presented in this paper do not purport to represent the views of the Indian communities or associations. Nor are they intended to represent the policies of the Department of Indian and Northern Affairs.

I. NEED FOR REFORM

Reserve lands sustain and preserve band culture and identity, and represent an increasingly important economic asset from which bands can benefit.

The present Indian Act does not recognize that Indians have proprietary interests in their lands. Rather, the Act confers limited statutory rights that can only be exercised with the federal government's concurrence.

The paternalism of the present Act embodies a legislative policy over three hundred years old. The policy had two basic elements. The first was to "protect" the Indians until they could be assimilated into the mainstream culture. The second was to preserve reserve lands until Indians were judged sufficiently responsible to assume control for themselves. In the meantime Indians were to have a legal status akin to wards of the state. Although 113 years have passed since the first Indian Act was enacted, the fundamental policies remain intact today. The Minister is still legally required to assume ultimate responsibility for determining what is in a band's best interests.

The Indian Act is incompatible with modern views of human rights and democratic government and is increasingly untenable from all perspectives. The Indian Act's land management system renders bands dependant upon the Crown by hindering their economic and social development. It fails to define how the Minister should exercise his wide discretionary powers to meet his obligations. In short, no one is served by the Indian Act's present land management system and its negative political, social and economic consequences.

These factors point to a need for legislative reform.

II. OBJECTIVE AND GOVERNING PRINCIPLES OF REFORM

A. Objective of Reform

The objective of both the department and Indian people is to give bands the decision-making authority over how their lands are to be managed and controlled. This objective could be achieved through:

- judicial recognition of existing aboriginal rights of self-government;
- constitutional amendment recognizing aboriginal rights of self-government; or
- legislative transfer of the federal government's authorities over lands reserved for Indians.

The first two options require the cooperation of third parties; judicial or provincial officials. Only the third option will permit bands and the federal government to independently achieve reform.

If the third option is proceeded with, it is essential that the legislative reforms do not prejudice the First Nations' right to seek judicial affirmation or constitutional recognition of their inherent aboriginal rights. One option would be to embody in a preamble to the legislation, a clear statement acknowledging that the legislation in no way limits or precludes future constitutional development or judicial recognition of aboriginal rights.

B. Principles Governing Reform

Legislative reform should recognize that first nations have the right to determine for themselves how their lands are to be managed and controlled. In enacting legislative changes the federal parliament has an obligation to comply with the Charter of Rights and Freedoms, the Canadian Bill of Rights, and the rules of natural justice. The challenge will be to design legislation that respects rights of the individual without impinging upon collective aboriginal rights.

All legislation is drafted in accordance with guiding principles. The following represents some of the principles that could guide the legislative reform process:

- the legislation should apply only to those bands that independently choose to participate in it;
- the legislation should be complete and contain all essential elements for the exercise of transferred authorities, while permitting bands to modify the scheme to meet their special circumstances and needs;
- the legislation should enable bands to legislatively design their own lands management system;

- the legislation should maximize local control by having the leadership account to the band membership, not the Minister;
- the legislation should enhance the opportunity for economic development by enabling bands to structure their land administration system in accordance with modern commercial practices, without compromising the integrity of the reserve land base;
- the legislation should operate so as not to unilaterally alter lawfully acquired rights and interests;
- the legislation, while recognizing the rights of the individual, should ensure there is no unlawful interference with collective rights;
- the legislation should provide for effective, timely, and inexpensive forms of appeal and redress;
- the legislation should clarify the Minister's obligations and clearly define the process by which he is to meet his obligations; and
- the legislative reforms should be supported by adequate financial and technical resources to enable bands to effectively control and manage their lands.

III. TITLE IN INDIAN LANDS

Legal title to the 6.5 million acres of reserve lands is held by the Crown. A major issue is whether ownership of this title should be transferred to the bands. There are at least three options:

- 1) make acceptance of legal title a precondition to opting into the legislation;
- 2) allow bands to accept title at their option; or
- 3) maintain the status quo; with the Crown retaining legal title.

In settling upon an option, some of the considerations are:

- provincial cooperation is required to transfer legal title to reserve lands held by the Crown in right of a province;

- transfer of legal title may cause reserve lands to lose their section 91(24) constitutional status as "lands reserved for Indians", which would result in the lands being regulated by provincial laws;
- transfer of legal title may make it easier for those bands who want to, to register their lands in the provincial land registration systems;
- in practical terms, a transfer of title will not measurably enhance band powers as these would be based on the transfer of the federal Crown's authorities, not possession of legal title;
- it is not necessary for a new Act to deal with the transfer of title, since bands could still receive legal title through the exercise of royal prerogative.

IV. LANDS SUBJECT TO NEW LEGISLATION

A primary issue is whether a band, upon entering into the new legislation, should bring all of its reserve lands under the legislation's ambit. The alternative is to permit bands to designate those lands that they wish to have governed by the new legislation; with the balance continuing to be regulated by the Indian Act. In choosing an option, some of the considerations are:

- the flexibility of allowing bands to incrementally convert to the new legislation;
- the potential for confusion and for incurring increased costs if bands concurrently exercise and administer two separate statutory lands regimes;
- whether lands governed by new legislation should be confined to reserve lands, as defined by section 2 of the Indian Act, or to all lands beneficially held by a band;
- the process by which additional lands may be acquired and brought under the provisions of the new /legislation.

V. BAND AND BAND COUNCILS: LEGAL STATUS AND CAPACITY

The Indian Act confers certain powers and responsibilities upon bands and band councils but does not define the legal status or capacity of either entity. Therefore bands, and those wishing to enter into legal relationships with them, cannot be assured that their rights and interests will be legally enforceable. This impairs band ability to enter into economic arrangements and interferes with the management of their day to day affairs.

In addressing this situation some of the options are:

- 1) to maintain the status quo and allow the courts to determine the extent of band status and capacity;
- 2) constitute bands as corporate entities with all the powers of a corporation;
- 3) confer upon bands all the powers, rights, and duties of a natural person thus enabling them to enter into any form of legal relationship.

In agreeing upon the appropriate option, some of the considerations that could be addressed are:

- that the courts have not, to date, been too helpful in clarifying the extent of the present status and capacity of bands;
- the corporate model is well understood and therefore bands, and those dealing with them, would be able to predict how the courts will interpret band status and capacity;
- corporations, even those owned and controlled by Indians, do not have the status of Indians or bands, and therefore cannot enjoy the rights and benefits flowing from that status;
- it is uncertain whether the federal government has the constitutional authority to confer Indian status upon an artificial entity like a corporation;
- the status and capacity of a natural person carries with it, by definition, the obligations and duties of a natural person; and
- whether clarification, of band status and capacity should be limited to lands matters specifically or should extend generally.

VI. BAND COUNCIL POWERS

A. Band/Band Council Authority:

The Indian Act does not clearly distinguish between band council and band powers. Nor does the Act clearly describe how these powers are to be exercised. The resulting uncertainties hinder effective decision-making and can cast doubt upon the legality of band/band council actions.

If band/band council powers are to be clarified, a number of matters need to be addressed including:

- what, if any, of present band powers should be transferred to band council;
- if band powers are transferred to band council, what is to be the role of the membership in council's decision-making process;
- should the Minister retain any of his present supervisory powers to review the manner in which bands regulate the use of their lands, and if so, what powers should be retained.

B. Exercise of Band Powers

If the Minister's present powers are transferred to bands, there is a need to maximize local control by making the band leadership accountable to the band membership, not the Minister. To achieve this, some of the possible options are:

- 1) membership ratification of all major decisions of council;
- 2) subject council's decision-making powers to the rules of natural justice and procedural fairness in order to enhance open and accountable government;
- 3) adopt formal procedures for the exercise of band council powers; and
- 4) develop conflict of interest provisions to enhance membership confidence and to guide the leadership.

Regardless of the approaches adopted, a number of matters should be addressed with respect to how band councils will exercise their powers:

- the role of the membership in decision-making process, especially in cases where the decisions could have a major impact upon band lands;
- whether band powers should be defined by reference to specifically enumerated powers or through an omnibus provision that generally confers all powers necessary for the control, administration, and management of Indian lands;
- whether band councils should be empowered to legislatively create offices, appoint officers, and delegate certain executive powers to its officers;
- the possible need to empower bands to transfer specified powers to other organizations such as tribal councils and the process through which such transfers could occur.

VII. PERSONAL REMEDIES AND BAND IMMUNITIES

A. Personal Party Remedies

In relation to the previous discussion on the need to clarify Band/Band Council status and capacity, it should be recognized that new legislation may give bands significant power to affect the real property and other interests of band members and third parties. Fundamental principles of natural justice require that these interests be protected. The exercise of power must be balanced by corresponding responsibilities. However, if sections 29 and 89 of the Indian Act were left intact, they could, by precluding seizure of band property, prevent the effective enforcement of an individual's rights and remedies.

Two of the options for achieving the required degree of accountability and responsibility include:

- 1) exposing band property, both real and personal, to all of the usual legal processes of seizure and attachment;
- 2) permitting seizure and attachment of all or part of band's personal property but not its real property.

In settling upon an option, some of the considerations are:

- the courts are likely to either strike down the legislation or impose its own standards of band

responsibility should the legislation fail to protect individual rights and interests;

- in the absence of such protections, third parties are unlikely to enter into agreements with bands with resulting adverse economic consequences;
- preservation of band lands is essential to First Nations' objectives; and
- it is undesirable to permit attachment and seizure of funds earmarked for the social welfare of band members.

B. Personal Liability and Immunity of Band Councillors and Band Members

To effectively exercise their powers, band councillors and members require assurance that they will not be held personally liable for innocent ultra vires acts.

In light of requirement for accountability, the legislation could provide for:

- 1) personal immunity from liability for actions undertaken on good faith;
- 2) limiting liability to the band as a whole; and
- 3) protection of band councillors and members in the same manner as parliamentarians, corporate directors, municipal councillors, shareholders and ratepayers.

C. Clarification of the Crown's Role

Presently, many people dealing with bands are of the mistaken view that the Crown must be a party to all agreements. The legislation could clarify matters by making it clear that bands are neither the agents or servants of the Crown and thus are entitled to act independently.

VIII. Band Legislation - Content and Procedures

In order to maximize local control, the reforms could enable bands to enact their own legislation for the purpose of regulating their lands. Consideration should be given to a number of issues, including:

- whether there should be a Ministerial role respecting approval or disallowance of legislation;
- the legislative standards that must be met by band legislation;
- the procedures for enacting band legislation;
- the form and content of legislation;
- the mechanisms for ensuring open and accountable government;
- the scope and procedures for membership participation in the legislative process;
- provisions to protect band legislation against challenges based upon formal or procedural deficiencies;
- provisions permitting bands to cure legislation that has been successfully challenged; and
- excluding band legislation from compliance with the provisions of the Statutory Instruments Act.

IX. INTERESTS IN INDIAN LANDS

One issue touching upon band control over lands concerns the extent of band authority to create and dispose of interests in lands.

Under the Indian Act no one can acquire an interest in reserve lands without the approval of the Minister. Moreover, the forms of tenure that can be held in reserve lands are extremely limited.

Band members can only acquire two forms of personal tenure in reserve lands: lawful possession and lawful occupation. There is considerable doubt as to the actual extent of locatee rights. Bands differ in their views and the courts are not in agreement. In consequence the department has adopted cautious policies that can complicate and delay transactions.

Non-band members can acquire interests in Indian lands through leases issued under the Indian Act or through a designation or surrender. The granting of leases, which can raise issues of fiduciary obligation, is a matter of

ministerial discretion but the Indian Act does not set out how the discretion is to be exercised. Again, this has resulted in a cautious policies which impede and complicate transactions.

In addressing the need for reforms, some of the matters to be considered are:

- whether the ministerial authority and responsibility to approve lands transactions should be transferred to bands; and if so, whether any approval authorities should be retained by the Minister;
- should bands have the power to create and grant interests in lands; and if so, should the power be restricted to the creation of a predefined set of interests or should it be a general power to create and grant any form of interest;
- should individuals have the right to divide and transfer their interests in land and if so, what restrictions should apply;
- should the present system of Certificates of Possession be retained as an option for bands that wish to use it;
- how are existing lawful interests in lands to be protected so that no band, Indian, or third party will suffer a loss as a consequence of reform;
- what rights should locatees have to lease their lands to third parties;
- some bands have, in accordance with their own traditions, granted interests in land not recognized under the Indian Act. Should the reforms "regularize" such interests or should it be left to individual bands to determine if they wish to give legal recognition to these interests?

X. DISPOSITIONS OF INDIAN LANDS

While legal title to reserve lands is held by the Crown, the courts have recognized another form of title known as "Indian title". Indian title is held collectively by all members of the band for their common use and enjoyment. The Indian Act gives statutory recognition and protection to the collectivity's title by requiring a membership surrender/designation vote to approve transactions that significantly diminish the band's title.

Any disposition of reserve lands diminishes the band's title to some degree. However there is a world of difference between a disposition creating a right of way and one that results in an absolute surrender of reserve lands. It is expected the First Nations will want to maintain protection for the collectivity's title, but without unduly restricting the ability of band governments to effectively deal with their lands.

One way to satisfy these two objectives is to distinguish between the affect that different classes of dispositions will have upon the collectivity's title. This could be accomplished by imposing different procedural requirements for each class of disposition. Although there are many ways to classify dispositions, one example is to classify dispositions as follows:

- 1) Grants of Certificates of Possession - this type of disposition, being limited to band members, does not affect the band's title except to the extent that it gives a band member the exclusive use of a parcel of land;
- 2) Short Term Dispositions - this type of disposition could include a short term lease, perhaps for periods not greater than 21 years. Being of a short term nature, the band's collective interests are usually not significantly affected;
- 3) Medium Term Dispositions - these dispositions can affect collective rights and interests for generations. One possible way to protect a band's collective interests would be to require membership approval for the disposition. Approval might be obtained through a band vote or possibly through membership ratification of band legislation that permits the particular kind of disposition;
- 4) Long Term dispositions - these could involve dispositions for terms longer than 99 years and dispositions that result in the permanent surrender of land. To properly protect band interests, the specific approval for the disposition by the membership might be warranted. Because these dispositions might require conveyance of the Crown's title, there may be a role for the Minister. The Ministerial role could range from deciding whether the disposition is in the band's best interests to merely being satisfied that the statutory procedures for a valid disposition have been fulfilled.

Among the various considerations are:

- should the legislation distinguish between different types of dispositions and if so, on what basis (nature of interest, term of years, etc.);
- should the legislation require different approval mechanisms for different dispositions and if so, who should be empowered to give approvals and how should approvals be made;
- should there be any role for the Minister or Governor in Council in dispositions;
- should bands or individuals be able to make conditional dispositions for the purpose of securing loans and if so, by what process should such dispositions be made.

XI. REGISTRATION OF INTERESTS

Registration does not relate to questions of land management or control but rather provides an independent method for determining the legal status of lands. Every jurisdiction maintains a government regulated lands registration system. Reserve lands are presently registered in the department's Indian Lands Registry. An issue to be addressed is what provision should be made for registration of interests created under new legislation? The options include:

- 1) making no provision for registration, in which case individual bands would be entirely responsible for maintaining their own records;
- 2) requiring each band to maintain its own registry system in compliance with statutory guidelines;
- 3) permitting the incorporation of Indian lands into the respective provincial registry systems, upon band and provincial consent;
- 4) central registration of all interests in Indian lands at the department's registry.

Another issue concerns the requirement for registration. Some options are:

- 1) mandatory registration of all interests created in Indian lands;

- 2) mandatory registration of specified types of interests;
- 3) optional registration of interests in Indian lands.

In arriving at a policy concerning the registration of interests some of the matters that should be considered are:

- the need to ascertain the status of "title" when the purchase or use of lands will involve large investments;
- the need to prioritize interests, particularly when large investments are involved;
- the need to provide a method for resolving conflicting claims regarding interests in the same lands;
- the need for confidence in the independence of the registry system;
- the need for information when developing national programmes relating to the administration of Indian lands;
- the costs and inefficiencies of maintaining numerous registry systems;
- the specialized skills and equipment required to create and maintain a registry system;
- what should constitute a "registerable interest";
- the effect of registration and the priority of registered interests and unregistered interests;
- the effect of not registering a "registerable interest";
- public accountability and access to registry records;
- the relation of provincial laws to Indians lands if interests are registered in the provincial registry systems;
- requirements to evidence the valid creation, disposition, or transfer of interests.

XII. EXPROPRIATIONS

The power to expropriate is a necessary tool of modern government. The Indian Act contains two provisions dealing with the expropriation of reserve lands. Section 18 allows the Minister to "expropriate" band and locatee lands required for the "general welfare of the band". Section 35 permits expropriation of reserve lands for federal or provincial purposes.

There are two primary issues:

- 1) should band governments have the power to expropriate locatee lands; and
- 2) should Indian lands be subject to provincial or federal expropriation.

A. Band Expropriations

A band expropriation power would be a logical extension of their control over lands. However, because there is a potential for conflict between the interests of an individual band member in lawful possession of lands and those of the community, the power of expropriation should be exercised in accordance with the principles of procedural fairness and just compensation.

If bands are to have expropriation powers, some of the considerations to be addressed include:

- should the power be limited to specified purposes or should there be a general power of expropriation;
- what procedures should govern the exercise of the powers;
- how should compensation be determined;
- what interests should be compensated;
- who should be compensated;
- how should disputes be resolved;
- should the power of expropriation extend to lands held by non-band members under a lease, permit, etc.

B. Federal/Provincial Expropriations of Indian Lands

With respect to the expropriation of reserve lands by federal or provincial authorities there appear to be four options:

- 1) make no provision for the expropriation of Indian lands;
- 2) generally permit expropriation of Indian lands;
- 3) limit expropriation of Indian lands to defined purposes;
- 4) retain a Crown discretion similar to that contained in section 35 of the Indian Act.

Some of the matters to be addressed include:

- the need for an expropriation authority in light of the fact that no involuntary expropriation has occurred since 1952;
- if there is no expropriation power, the possible reluctance of provincial governments when asked to provide lands for additions to reserves;
- the possibility that band lands may be required for an important provincial or federal objective;
- whether Indians, as beneficiaries of many provincial services, such as highways, ought to be subject to the same powers of expropriation for such services as other citizens;
- the unique constitutional status and protections accorded reserve lands;
- how money or lands in lieu are to properly compensate for the loss of unique lands such as hunting, burial, or spiritual lands;
- the importance of the present land base in maintaining the social cohesion of bands;
- whether a statutory scheme can properly balance the preservation Indian lands with other public policy objectives;
- if expropriation is permitted, the purposes for which it would be allowed;
- how disputes are to be settled;

- whether the Crown should retain any discretion in light of potential conflicts with its fiduciary obligations;
- the power of the federal government to pass special legislation to permit a specific expropriation, if necessary in the national interest.

XIII. REDRESS AND APPEALS

No legislation can guarantee that the principles of fairness and natural justice will always be observed. This is the responsibility of the society, its institutions and its individual members. However, legislation can, through timely and effective redress provisions, assist to achieve these objectives.

There appear to be two basic options for achieving just and equitable solutions to disputes concerning Indian lands matters:

- 1) rely exclusively upon the present judicial system;
- 2) develop a separate and independent adjudicative system.

A. Redress Through the Court System

With regard to placing reliance upon the court system some of the considerations include:

- the lack of expertise of most judges with respect to lands issues;
- the distrust and lack of understanding that some individuals have of the court system;
- the lack of access that many bands or individuals have to the court system due to geographic isolation or inadequate financial resources;
- the fact that the court system and the principles which govern it are well established and therefore need not be addressed by new legislation;
- the absence of additional costs in relying upon the court system;
- assurance that redress, although at times insensitive to the requirements of Indians, is

unbiased in that the courts have no direct interest in disputes.

If the courts are to be relied upon, another issue is which level of court is best suited to deal with Indian lands matters. Some of the considerations are:

- proceeding before the lower courts of a province are usually simpler, less time consuming and less expensive;
- most communities in Canada are served by provincial courts on a fulltime or period basis;
- some bands are located in isolated areas far from the nearest superior court;
- provincial court judges, being in direct contact with the communities, are more likely to provide workable solutions to practical problems;
- provincial courts have a limited jurisdiction and cannot deal with certain types of legal issues;
- the Federal Court of Canada has had previous experience dealing with Indian Lands issues.

B. Redress Through an Administrative Tribunal

In alternative, the legislation could establish an administrative tribunal. The tribunal could have a local, regional or national scope. The tribunal could also be composed of persons appointed by bands.

Some of the considerations associated with this option are:

- the unique expertise and sensitivities that a tribunal could bring to the adjudicative process;
- the accessibility and low costs of participating in this form of adjudicative process;
- the ability to institute simplified forms of procedure;
- bands could develop a sound understanding and confidence of this form of adjudicative process;
- Indian aspirations for a separate native adjudicative system could be partially realized;

- the possibility of accommodating traditional laws in the adjudicative process;
- the availability of funds to create, staff, and pay for a separate adjudicative system;
- the legislative complications of defining the jurisdiction, powers and procedures of the tribunal;

C. Internal Appeal Process

A modification of the second option would involve empowering bands to establish an internal band based appeals process. In determining the attributes of such a system, consideration should be given to:

- the jurisdiction of the panel;
- the manner by which panel members would be appointed to office and their term of office;
- how appeals would be decided;
- the effect of the panel's decision;
- the right of the parties to be heard;
- the scope for appeal from the panel's decisions;
- training of panel members;
- financial support for the system and remuneration of panel members;
- whether parties should be subject to the panel's jurisdiction on a voluntary or mandatory basis;
- whether non-band members should be subject to the panel's jurisdiction; and
- whether bands should have the option of deciding whether they wish to establish an appeals panel.

XIV. ENTRY CRITERIA AND PROCEDURES

A. Entry Criteria

There are at least three legislative options for regulating the entry of bands into a new lands system:

- 1) leave the matter of entry to the discretion of each band;
- 2) establish statutory criteria to regulate entry; or
- 3) give the Crown the discretion to determine if a band will be permitted entry.

Some of the considerations to be addressed include:

- without entry criteria, in some cases, a band might assume responsibilities it cannot manage.
- what steps could the department take to minimize the possibility of a band assuming responsibilities it cannot properly manage;
- what matters should be addressed in a legislative codification of entry criteria (e.g. completion of training courses; the establishment of effective band administrative structures; the acquisition of practical lands management experience);
- the lack of acceptability to First Nations of leaving entry approval to the Crown's discretion;
- if entry is to be subject to Crown discretion, the standards by which that discretion should be exercised.

B. Entry Process

Where a band chooses to operate under the new legislation, it will be severing a relationship with the Crown, as defined by the Indian Act, and replacing it with a system that will empower the band to substantially alter the present characteristics of reserve land tenure.

In light of this ability for substantive change, some of the matters that should be addressed include:

- the nature and extent of the band membership's role in deciding whether the band should enter the new legislation;

- the procedures by which the membership are to participate in the decision-making process (e.g. band votes, public hearings, etc.);
- the extent to which non-resident band members will be entitled to participate in the decision-making process;
- whether bands should have a right to revert back to the Indian Act if dissatisfied with the new legislative regime.
- how interests created under the new legislation, but not recognized under the Indian Act, will be dealt with if reversion is permitted;
- who will be responsible for compensating for any loss of rights or interests if reversion is permitted;
- who should be responsible for any liabilities incurred prior to reversion if reversion is permitted;
- if reversion is not permitted, how will the legislation deal with a band that finds itself unable to meet its responsibilities under the new legislation.

XV. INTERJURISDICTIONAL RELATIONS

If the proposed legislative reforms are enacted, bands will have powers in relation to lands somewhat similar to those of provincial governments. With an increased governmental jurisdiction, bands will have greater need to deal directly with provincial authorities, including municipalities, in respect to matters of common concern such as environmental protection, the provision of public utilities and services, and land use planning. Accordingly, there may be a need for a method whereby bands can work in coordination with provincial authorities to achieve common land use policies.

Should it be determined that it is desirable to enable bands, at their option, to work in coordination with provincial authorities through common land use laws and policies, some of the matters that should be addressed include:

- the extent to which the legislation should permit bands to work in conjunction with provincial authorities;

- whether provincial laws should, upon band agreement, be permitted to extend to Indian lands; and if so, what restrictions should apply to the extension of such laws;
- the manner by which provincial-band agreements would be negotiated, and the legal effect of such agreements;
- the ability of provincial authorities to make laws specifically in relation to Indian lands to give effect to agreements with provincial authorities;
- the ability of band governments to make laws in relation to provincial lands to give effect to agreements with provincial authorities.

Finally there is the issue of the extension of federal laws of general application to reserve lands. Certain Federal laws dealing with land use or other matters may not be appropriate for band governments operating under the new legislation. These laws will have to be identified in order to determine what legislative amendments and exemptions will be required.

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