Background Paper for the Royal Commission on Aboriginal Peoples. Program Descriptions and Evolution.

BACKGROUND PAPER FOR THE

ROYAL COMMISSION ON ABORIGINAL PEOPLES

PROGRAM DESCRIPTIONS AND EVOLUTION

DEPARTMENT OF INDIAN AFFAIRS
AND
NORTHERN DEVELOPMENT

FINAL VERSION

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TEST CASE FUNDING

OBJECTIVE

To contribute to the legal and other associated costs of certain Indian-related cases because of their potential to become judicial precedents.

DESCRIPTION

The Program provides funding to individuals (including non-Indians) and to Indian Bands and associations to offset costs of legal advice and counsel and other costs associated with litigation of certain Indian-related cases. Justification for this funding arises from the potential of such cases to become judicial precedents.

The program has two components: the Regular Program and the C-31 Program. Regular Program funding applies to a wide variety of Indian-related litigation. Recently funded cases have dealt with such issues as treaty, aboriginal, and constitutional rights, interpretation of the *Indian Act* and the relationship of Indian collectivities to the state. The C-31 Program provides funding specifically for cases that raise unresolved legal issues related to the 1985 amendments to the *Indian Act* (Bill C-31).

Eligibility for Regular Program funding requires that the case involve an important, unresolved Indian-related legal issue, that the issue have general application to a large number of Indians, and that the issue not be before any other court. Other conditions for funding under the Regular Program include: the issue cannot be resolved through any other means, the applicant is ineligible for legal aid, and resolution of the issue in the courts must be in the best interest of both the Indian people and the federal government.

Funding is discretionary and depends on the availability of Departmental financial resources. The maximum contribution[1] per recipient per case for all stages of litigation is $100,000, with a maximum of 80 per cent of eligible costs at each stage. Since 1988, Department practice has been to restrict funding under the Regular Program to cases at the appeal level.

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[1] Payments are made in the form of reimbursements of actual costs, following approval of submitted accounts.

Applicants provide information on the issues raised in the case, a litigation schedule, and an estimate of financial requirements. Program staff analyze the request. If the case does not meet Program criteria, the staff so advise the applicant. If the case appears to meet Program criteria, staff prepare a case report for the Test Case Funding Review Committee.

The Test Case Funding Review Committee reviews the application. The Committee consists of senior Departmental officials and a representative of the Department of Justice.
The Committee recommends whether or not funding is warranted and, if so, at what level of priority (high, medium, or low).

Following the Deputy Minister's approval, Program staff prepare a contribution agreement for signature by Departmental officials, the recipient, and the recipient's legal counsel. The agreement sets out the purpose and arrangements for funding. The recipient, under the agreement, forwards accounts to the Program. Program staff audit the accounts and the Department of Justice reviews them before the Program makes payment. The Program also amends contribution agreements, after consultation with the recipient.

C-31 Program

As with the Regular Program, the C-31 Program may provide funding to individuals, (including non-Indians), organizations, and Indian Bands. Recipients are eligible for contributions to a maximum of $100,000 per case (inclusive of all stages), with a maximum of 80 per cent funding per stage. The C-31 Program differs from the Regular Program in that the former can provide funding at the trial level[2]. The annual budget is $200,000. Between September 1988 and March 1992 the Program entered into twelve contribution agreements under the C-31 Program to cover six legal proceedings, four of which are still active. In 1992 terms and conditions of the C-31 Program were extended to the end of 1997-1998 to fund existing cases to completion.

In addition to and separate from these two sources of funding, the Program has administered special funding for three major aboriginal rights cases in British Columbia[3].

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[2] Under terms and conditions approved by Treasury Board in 1988 for a five-year period.

[3] Delgam Uukw v. The Queen (Gitksan Wet'suwet'en case): $7.4 million for trial and appeal; Pasco *et al* v. Canadian National Railway: $1.2 million; and Moses Martin v. The Queen (Meares Island case): $704,000.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Test Case Funding (Regular)	$0.283	$0.315	$0.156	$0.162	$0.266
Test Case Funding (Special)	$1.085	$0.370	$1.040	$1.278	$2.450
Test Case Funding (Bill C-31)	$0.009	$0.003	$0.010	$0.019	$0.000

Source: Test Case Funding Program

TEST CASE FUNDING

POLICY AND PROGRAM EVOLUTION

The Department has provided financial support for the litigation of Indian-related test cases since 1965. While the basic objectives of the Program have not changed significantly, its operating authority, decision-making procedures, and criteria for assessing funding requests have undergone considerable modification.

In 1965, the Associate Deputy Minister of Justice and the Deputy Minister of Indian Affairs and Northern Development established the basic elements of the Program through an exchange of letters. The Program initially focused on litigation involving treaty rights, *Indian Act* issues, and the criminal charge of murder. Officials of the Department and of the Department of Justice assessed applications for funding assistance against a basic policy criterion: the case must involve an important Indian-related legal issue that applied to a large number of Indians. If the two departments agreed, the applicant received funding.

Between 1965 and 1982, the Program funded approximately twenty-five test cases dealing with such issues as the definition of hunting rights under treaties and the Natural Resources Transfer Agreements, labour law jurisdiction on reserves, and the effect of adoption on entitlement to registration. The Program also funded cases dealing with such issues as taxation on reserves, and the paramountcy of *Indian Act* fishing by-laws versus *Fisheries Act* regulations.

Before 1983 the Program had no specified budget and no limits concerning the extent of financial assistance for individual cases. Between 1972 and 1982 the Program spent approximately $250,000 on test cases.

By 1983, the authority under which the Program had been operating became uncertain. The legal and political environment in which the Program operated had begun to change substantially. Section 35 of the *Constitution Act*, 1982 had given explicit recognition to existing aboriginal and treaty rights. In addition, the *Guerin* case, although not yet decided by the Supreme Court of Canada, raised the possibility that the federal Crown might be legally liable in its dealings with or on behalf of Indians.

The Department recognized that these developments would result in a greater demand for financial assistance through the Program. On this basis, the Department determined that the Program should receive specific authority as a contribution program and sought approval of this authority. In November 1983, the Program was

continued "to contribute to the legal and other associated costs of certain Indian-related cases because of their potential to become judicial precedents."

Treasury Board specified terms and conditions of the Program, including specific conditions for funding test cases. Because of financial restraints, the Department would generally provide funding only at the appeal level. The terms and conditions set a maximum contribution of $100,000 per recipient per case for all levels of litigation. In January 1988, the Minister explicitly restricted funding under the Program to cases at the appeal level. The decision resulted from concerns about the high cost of trial proceedings, the limited annual Program budget ($300,000), and because appeal-level decisions generally have greater value as precedents.

In 1985, the government stated that it would establish a litigation funding program in order to facilitate recourse to the courts to protect rights conferred by Bill C-31. Treasury Board approved terms and conditions for the C-31 Test Case Funding Program in 1988 under which funding is available for trials and appeals. In 1992, the extension of the terms and conditions was approved to the end of 1997-1998 for cases which were receiving funding.

In 1986, Indian organizations asked the government to provide substantial assistance for the litigation of three cases: *Delgam Uukw v. The Queen* (the Gitksan case); *Pasco et al v. Canadian National Railway*; and *Moses Martin v. The Queen* (the Meares Island case). The amounts requested for each case vastly exceeded the total budget of the Program. Following special consideration, the federal government has contributed test case funding for these cases as follows: *Delgam Uukw*: $7.4 million (for trial and appeal); *Pasco*: $1.2 million; and *Martin*: $704,000.

The British Columbia Court of Appeal rendered its decision in *Delgam Uukw* in June, 1993. The Gitksan and Wet'suwet'en have filed an application for leave to appeal this decision to the Supreme Court of Canada. The *Moses Martin* trial is in adjournment. The *Pasco* trial has not commenced.

In 1988–1989 an evaluation of the Program addressed a number of issues, including whether there was a continuing rationale for the Program. The evaluation concluded that the basic rationale for provision of test case assistance remained valid and discussed options as to how and when to provide assistance and how much assistance to provide. The report made no recommendation concerning these options.

In 1990 the Program investigated the possibility of placing its administration in the hands of an independent carrier agency. The investigation included consultations with various organizations. Upon analysis of submissions from interested organizations, however, the Department concluded that the cost of external administration of the Program would be prohibitive.

COMPREHENSIVE CLAIMS

OBJECTIVE

To negotiate modern treaties that provide clear, certain, and long-lasting definition of rights to land and resources, and resolve legal ambiguities surrounding Aboriginal rights and title that have not been dealt with by treaty or other legal means[4].

DESCRIPTION

The process of negotiating comprehensive claims focuses on the definition of the rights Aboriginal people will have in the future, regarding lands and resources. It involves no attempt to define their past rights. Negotiated settlements of comprehensive claims exchange undefined Aboriginal rights of traditional and continuing use and occupancy over an area for a clearly defined package of rights and benefits codified in a settlement agreement protected by the Constitution.

Acceptance of Claims for Negotiation

To determine whether a claim will be accepted for negotiation, the federal government uses criteria derived initially from the 1979 decision of the Federal Court of Canada, Trial Division, in the Baker Lake case. This decision established a common-law test for determining the existence of continuing Aboriginal rights. In order for its comprehensive claims submission to be accepted, an Aboriginal group must demonstrate all of the following: The Aboriginal group was and is an organized society, it has occupied the claimed territory largely to the exclusion of other organized societies for a very long time; and its traditional use and occupancy of the territory was an established fact at the time of assertion of European sovereignty. The group must also demonstrate some continuing current use and occupancy of the land for traditional purposes. Finally, it must be shown that no treaty addresses the group's Aboriginal title and no other legal process has eliminated the group's Aboriginal title.

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[4] The Constitution of Canada recognizes and affirms existing Aboriginal rights. These are common-law rights and remain undefined. Therefore, considerable debate has arisen concerning their nature and extent.

The 1990 Supreme Court judgment in the Sparrow case led to amendments to the application of these criteria for accepting claims. This decision established a test for the unilateral lawful ending of Aboriginal rights. Establishing the occurrence of such lawful elimination requires demonstrating that the Crown exercised a clear and plain intention to do so. The federal government has undertaken a review of claims that it had previously rejected as having been superseded by law in order to determine whether the Sparrow interpretation leads to different conclusions concerning acceptability. The government considers all new claims submissions in accordance with the new interpretation emanating from the Sparrow decision.

In British Columbia, Canada has agreed that the process for negotiation of modern treaties be open to all B.C. First Nations. The vast majority of First Nations in the province have never signed or adhered to treaties and will not be required to demonstrate use of resources in order to begin negotiations.

Funding

The federal government recognizes that the cost of assembling the documentation to substantiate a comprehensive claim exceeds the resources available to most Aboriginal groups. The Department of Indian Affairs and Northern Development provides groups with funding to support the necessary research and preparation of claims. Aboriginal groups that wish to submit a comprehensive claim can apply for a research grant. Each such request is subject to a separate evaluation.

Following acceptance of a comprehensive claim and the commencement of active negotiations, the Aboriginal party receives funding in the form of loans to support the negotiation process. The group repays loans after settlement, through deductions from its negotiated financial compensation payments.

Provincial and Territorial Involvement

Federal, provincial, and territorial governments and Aboriginal groups have no legal obligation to negotiate settlements of comprehensive claims. As a matter of policy, however, the federal government is committed to resolving the claims of Aboriginal people through cooperation and negotiation. Negotiation is the best way to resolve conflicts between Natives and other Canadians, where Aboriginal people are claiming rights to lands and resources that are also used by others.

In the provinces, most of the lands and resources that are the subject of negotiations and required for the settlement of comprehensive claims are owned by the province and under provincial jurisdiction. Upon settlement of a claim, moreover, the province benefits from the establishment of certainty of title to lands and resources. Therefore, the federal government requires that provincial governments participate in the negotiation of comprehensive claims and provide to Aboriginal groups a share of benefits that result from such claims. The federal government has concluded cost-sharing agreements with the Governments of British Columbia and Ontario, and is currently negotiating cost-sharing agreements with the Governments of Quebec and Newfoundland and Labrador.

Negotiating cost-sharing agreements with provinces reflects several complexities. Establishing fair recognition of the value of contributions of land and other non-cash benefits is difficult. All parties must deal with the lack of clear legal obligations for governments to contribute. Governments must deal with the unpredictability of costs prior to concluding agreements with Aboriginal parties.

Cost-sharing agreements provide a firm basis for negotiating claims so that negotiations can be effective and reasonably quick, and settlements can be properly implemented. The cost-sharing agreements allow federal and provincial governments to provide their negotiators with clear mandates.

In the Yukon and Northwest Territories, most lands and resources fall under federal jurisdiction. Nevertheless, territorial governments participate in negotiations and make commitments to Aboriginal groups through settlements.

Negotiation Process

The Minister appoints senior federal negotiators to act on behalf of the Government of Canada; they are provided with initial negotiation mandates from the federal government. Negotiations proceed through a series of stages. **Framework Agreements** determine the scope, timing, process, topics, and parameters for negotiation, and require approval of the federal government. **Agreements in Principle** contain the features of eventual settlements and require both approval of government and endorsement by the Aboriginal parties involved, through resolutions of assemblies or of Band councils. **Final Agreements**, together with plans to implement them, require approval of government and formal ratification by Aboriginal parties. Settlement legislation gives force and effect to final agreements.

Scope of Negotiations

Comprehensive claim settlements clarify the rights of Aboriginal groups to lands and resources so as to facilitate the groups' economic growth and development of self-government. The authorities of non-Aboriginal governments in the settlement area are also clarified. Settlements recognize the interests of Aboriginal groups in resource management and environmental protection and should ensure that claimants share in the benefits of development.

Settlement agreements define a wide range of rights and benefits, usually including: full ownership of certain lands in the area covered by the settlement, guaranteed rights to harvest wildlife, and guaranteed participation in the management of land, water, wildlife, and the environment throughout the settlement area. Settlement agreements usually include financial compensation, the sharing of revenues from resources, specific measures to stimulate economic development and a role in the management of heritage resources and parks in the settlement area.

The Constitution protects settlement rights. The claimant group must concur with any amendments.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Comprehensive Claims	$71.7	$75.3	$44.6	$45.4	$30.1

Source: Main Estimates, Part III.

COMPREHENSIVE CLAIMS

POLICY AND PROGRAM EVOLUTION

The federal government's policy on land claims has evolved and developed partly in response to court decisions, particularly decisions of the Supreme Court of Canada. The Calder decision of 1973 led to an initial statement on claims policy released that August. In that case, the Nisga'a people of British Columbia sought a declaration of their continuing Aboriginal rights to their traditional territory. Six of the seven justices who heard the case acknowledged the existence of Aboriginal title in Canadian law, but they split evenly on whether Aboriginal title continued to exist in British Columbia. The seventh justice ruled against the Nisga'a on another point of law. To address uncertainty created by the decision, the federal government announced that it would negotiate settlements of land claims with native people. A 1981 statement on comprehensive claims policy clarified and reaffirmed the policy of 1973.

During the early 1980s, Aboriginal groups grew increasingly dissatisfied with respect to certain aspects of the policy. They particularly disliked having to extinguish all Aboriginal rights in exchange for specifically defined rights and benefits. The 1983 Report of the Special Committee of the House of Commons on Indian Self-Government reflected this discontent. It made several recommendations concerning resolution of land claims. By 1985, dissatisfaction with existing policy was interfering with the progress of negotiations.

In July 1985, a task force was appointed to review policy on comprehensive claims. The task force consulted Aboriginal groups, including those negotiating claims at the time, as well as provincial and territorial governments, non-Aboriginal organizations, and individuals. Its report Living Treaties: Lasting Agreements recommended a broadening of policy objectives and application, development of alternatives to extinguishment, an increase in the number of items negotiable in a claims settlement, and improvements in the process for negotiating and implementing agreements.

In December 1986, the Minister announced significant amendments to the policy on comprehensive claims, in response to the above recommendations. The revised policy, dealt with: exchange of rights, self-government, resource revenue-sharing, environmental management, offshore areas, interim measures, and implementation plans.

In September 1990, to promote the fair and timely resolution of comprehensive claims, the process for negotiating comprehensive claims was expanded by eliminating the previous limit of six on the number of simultaneous negotiations.

On July 3, 1991, a tripartite British Columbia Claims Task Force released a report containing recommendations on how to settle claims in the province, including establishing an impartial B.C. Treaty Commission to facilitate and monitor treaty negotiations. In November 1991, the federal government accepted all 19 of the recommendations. The First Nations Summit (representing British Columbia First Nations that have agreed to participate in the Treaty Commission process) and the Government of British Columbia have also accepted the recommendations. In September 1992, an agreement was signed by Canada, British Columbia and the Summit to establish the Treaty Commission, the costs of which will be shared by federal and provincial governments.

In April 1993, the B.C. Treaty Commission was appointed. The Commission has been established on an interim basis by an Order in Council. Representatives of Canada, British Columbia, and the First Nations Summit are in the final stages of preparing legislation to provide the Commission with a legislative basis.

Ten comprehensive claim settlements have been concluded since the announcement of the federal government's claims policy in 1973. These include the James Bay and Northern Quebec Agreement (1975), the Northeastern Quebec Agreement (1978), the Inuvialuit Final Agreement (1984), the Gwich'in Agreement (1992), the Nunavut Land Claims Agreement (1993), and the Sahtu Dene and Metis Agreement (1993). The Sahtu Agreement is currently awaiting the passage of settlement legislation to bring it into force. Four Yukon First Nations Final Agreements were signed in 1993, however, legislation will be required to bring them into force has yet to be completed. Negotiations are continuing with eleven other Aboriginal groups, including five Yukon First Nations and one B.C. First Nation.

SPECIFIC CLAIMS

OBJECTIVE

To discharge the government's **lawful obligation** to Indian Bands.

DESCRIPTION

The government recognizes claims by Indian Bands that disclose an outstanding obligation, on the part of the federal government, derived from law. Such a lawful obligation might arise from: a failure to fulfil terms or conditions of a treaty or other agreement between Indians and the Crown, a breach of obligation under the *Indian Act*, other statutes pertaining to Indians, or regulations under either, or a breach of obligation arising out of government administration of Indian funds or other assets. Obligations might also arise from illegal disposition of Indian land, failure to provide compensation for reserve lands taken or damaged by the federal government or any of its authorized agents, or demonstrable fraud by employees or agents of the federal government in connection with acquisition or disposition of Indian reserve land.

Claims related to land generally involve failure to provide reserve lands, loss of reserve lands without lawful surrender by the Band concerned, or failure to pay adequate or any compensation where lands were taken with legal authority. Other claims arise from administration of Indian moneys and other assets, such as timber and mineral rights.

Treaty Land Entitlement claims is a special category of specific claims. This category arises from a group of treaties with Indian Bands mainly in the prairie provinces. These treaties base the size of a reserve on a number of acres (usually either 128 or 32) per person in the Band. Surveys were to determine populations of Bands and to fix the reserve land, but often not all Band members were available to be counted. As a result some Bands have claimed outstanding entitlement for Band members not originally counted.

The Department administers a contributions[5] and loans program to assist native participants in the process of resolving specific claims. In the fiscal year 1992/93 $7.8 million in contributions was available for research, development, and presentation of claims. Most of this amount went to Indian provincial associations working on behalf of their member Bands. In addition, loan funds of $5.4 million per year are available to assist claimant Bands in negotiating the settlement of their specific claims.

When a Band has researched its claim, it submits a "statement of claim" and supporting historical documentation. Specific Claims Directorate staff analyze the claim and identify key historical and legal issues. The Department of Justice then reviews the file on the claim and provides a preliminary opinion on whether the claim establishes a lawful obligation on the part of Canada. The preliminary opinion is reviewed with the Specific Claims Directorate and the federal position is discussed with the Band. The Department of Justice will consider any additional arguments or evidence the Band might wish to provide. The Department of Justice then provides the Directorate with a final opinion, if applicable.

The final decision is made by the Minister. If the claim is accepted, clarification meetings take place and negotiations begin. If a settlement agreement is reached, the Band must ratify it.

The Band is also informed if the Minister rejects the claim. If the Band does not accept the Minister's rejection of a claim, it can request the Indian Specific Claims Commission to review the decision and make recommendations to the government. In the case of claims accepted for negotiation, the Band can also ask the Commission for a review if the Band disagrees with the selection of the policy criteria on which the government proposes to base compensation. If both parties request it, the Commission can arrange for a mediator to assist in the negotiations. Aside from calling upon the Indian Specific Claims Commission, a Band may also choose to pursue litigation.

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[5] Recipients of contributions need not repay the funds received, but must account for how they spend them.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Specific Claims	$71.7	$27.1	$20.1	$7.7	$4.0

Source: Main Estimates, Part III.

SPECIFIC CLAIMS

POLICY AND PROGRAM EVOLUTION

In 1763, a Royal Proclamation recognized an Indian interest in the lands occupied by various Indian tribes which could only be ceded to, or purchased by, the Crown. The Crown thus accepted some responsibility, later built into the *Indian Act*, for the management and disposition of these lands.

This policy subsequently led to agreements or treaties with the Indians. Many of the treaties included the provision of reserve lands; annuities; gratuities; and other considerations for the benefit of Indian people. Section 91(24) of the *Constitution Act*, 1867, provides for federal jurisdiction over Indians and lands reserved for Indians. The *Indian Act*, 1876, details the management of Indian lands, funds and other assets.

In the first two decades of this century the large number of claims led to an amendment to the *Indian Act* making it an offence to raise money to assist a Band in making a claim without permission of the Department. Until the rescinding of this law in 1951, very few further claims arose. The government recognized, however, the large numbers of potential claims and the need to establish an organized approach to resolving them.

The federal government's policy on land claims has evolved and developed partly in response to court decisions, particularly decisions of the Supreme Court of Canada. The *Calder* decision of 1973 led to the initial statement on claims policy in August of that year when the federal government announced that it would negotiate settlements of land claims with native people. The Department created the Office of Claims Negotiation, subsequently the Office of Native Claims.

The process of settling land claims proved much more complicated than initially expected. Establishing the facts of the alleged claim was difficult. By 1981, the Office had settled only 12 of over 70 specific claims accepted for negotiation. Eighty other submitted claims awaited a decision on whether the Minister would accept them for negotiation. These conditions led to a review of the policy and process for settling specific claims.A major objective of the 1981 review was to articulate more clearly the objectives and criteria of the Specific Claims Policy. The review yielded newly stated objectives and criteria, presented in a booklet Outstanding Business: A Native Claims Policy. It also led to broader criteria for accepting claims and new criteria for compensation. The

government decided not to apply statutes of limitation or the doctrine of laches[6]. These defences would otherwise disqualify most of the Indians' specific claims if taken to court.

The 1981 review introduced many positive improvements. However, the Department was settling only three to four claims each year by the end of the 1980s, and had settled a total of only 44 claims by the end of 1990. The number of unresolved claims had grown significantly. Sixty-five per cent of the claims had been in the system for over four years. About sixty new claims were arising each year. Underestimation of the complexity of specific claims and of the labour required in processing them in both the Department of Indian Affairs and Northern Development and the Department of Justice, slowed the process.

In the fall of 1990, the Minister of Indian Affairs and Northern Development requested that the Indian Commission of Ontario prepare a report analyzing the Specific Claims Policy and process. In October of that year, the Ministers of Indian Affairs and Northern Development and of Justice met in Ottawa with twenty Indian leaders to discuss the report's findings and to consider how best to improve the settlement of specific claims. The Indian participants proposed establishment of a working group and canvassing of Indian leaders across Canada for their views.

On December 14, 1990, the working group, known as the **Chiefs' Committee on Specific Claims**, presented the Minister with a report previously approved by a Special Assembly of the Assembly of First Nations, the Chiefs of Ontario, and the Indian Association of Alberta. The report submitted by the Chiefs' Committee criticized the Specific Claims Policy and Process at length.

The government launched a Specific Claims Initiative in April 1991, aiming to resolve more claims quickly, efficiently, and fairly. The Initiative included an increase in funds for settlements (from $15 million to $60 million annually) as well as additional person-years for this Department and for the Department of Justice, to speed up the processing of claims. It also resulted in various administrative adjustments.

The Specific Claims Initiative also removed an earlier provision that prevented consideration of any claim based on events before 1867, "unless the federal government specifically assumed responsibility therefor". The requirement to demonstrate a lawful obligation still applied, of course.

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[6] Statues of limitation (federal or provincial) prohibit taking a claim to court after a prescribed length of time. Under the doctrine of laches, a common law rule, a court will refuse to hear a claim if the claimant has,in the opinion of the court, waited too long to bring the claim.

In 1991, the government established the Indian Specific Claims Commission under the *Inquiries Act*. Independent of the Department, this Commission has the power to subpoena records and witnesses and reviews disputes between claimant Bands and the government concerning the acceptance of claims and the choice of compensation criteria. It assists the government and claimant Bands, when both parties agree, to arrange mediation on any aspect of the negotiations. After an inquiry, the Commission makes its recommendations to the parties involved, including reports from time to time to the Governor General in Council. The Commission does not review amounts of settlements.

First Nations and the federal government created a Joint First Nations/Government Working Group to deal with the policy and process, in particular, that the existing policy and process are overly restrictive. The Joint Working Group consisted of eight representatives of First Nations and three of the federal government.

The Joint Working Group (JWG) reviewed all existing criteria for acceptance and compensation in the Specific Claims Policy. It also recommended upon the establishment of a new Independent Claims Body to process specific claims. The JWG could not agree upon a consensus report to the Assembly of First Nations (AFN) and to the government, and its activities have been suspended pending new directions from the AFN and Canada.

TREATY LAND ENTITLEMENT

Treaty land entitlement claims constitute a special category of specific claim. The following paragraphs describe aspects of program and policy evolution that apply specifically to this category of claim.

Between the years 1874 and 1906, Canada entered into treaties with Bands in the Prairies. When negotiating the treaties, the government representatives usually told Indians that they did not have to select their reserves immediately. Many of the Bands still followed a nomadic way of life and were not yet ready to settle permanently. It was generally only when a Band indicated a desire to choose its lands that Canada sent out surveyors to mark out a reserve. Each treaty established the size of the reserve at either 128 acres or 32 acres per member of the Band, depending on the particular treaty. This formula applied to the Band population either at the time of the treaty or at the date of the first survey, again depending on the treaty. The enumeration process often missed some members. Bands did not always want to select the full amount of land due to them. The above conditions resulted in residual unfulfilled entitlements. In a few cases, the government subsequently made up the residual by adding new parcels of land to the original reserves.

The federal government announced in 1973 its intention to settle all outstanding land claims in Canada arising from Bands that had not received land entitlements according to treaties signed after Confederation. Indians in Saskatchewan were eager for settlement. In 1976, the government of Saskatchewan and the Federation of Saskatchewan Indian Nations agreed to a formula (the 1976 Saskatchewan Formula) for settling the outstanding land claims. In 1977, the federal government authorized the Minister to negotiate settlements in Saskatchewan using this formula.

Negotiations encountered several problems. The small amount of unoccupied Crown land available severely limited the selection of land for reserves. Third parties held interests in much Crown land. But no process existed for purchasing those interests. Many of the third parties did not want to sell their interests. This situation led to friction between native and non-native communities. Municipalities containing lands identified for settlement feared a loss of tax revenue because reserve lands are not subject to tax. By 1990 only two settlements reached through the 1976 Saskatchewan Formula had been finalized[7].

Negotiations had progressed well in Alberta, based on provision of an amount of land according to each Band's entitlement, as of the date of first survey, as well as a negotiated cash amount. But the Indians of Saskatchewan rejected this approach. In 1989, the Federation of Saskatchewan Indian Nations and two Bands (Star Blanket and Canoe Lake) commenced an action against Canada and Saskatchewan in the Federal Court. They alleged that the 1976 Saskatchewan Formula was binding and that Canada was liable to compensate the Bands for losses arising from failure to implement the formula.

In June 1989, to break the deadlock in Saskatchewan and to obtain negotiated rather than court-imposed settlements, an accord was signed with the Federation of Saskatchewan Indian Nations to establish the Office of the Treaty Commissioner for Saskatchewan. After extensive consultation with Indians as well as other groups and residents of the Province of Saskatchewan, the Commissioner recommended a settlement approach for Saskatchewan that would provide cash in place of land, facilitate land acquisition by Bands for creating reserves, and provide adequate cash for each Band to purchase land approximately equal to what the 1976 Formula would have provided. This approach yielded settlements comparable to those in Alberta.

In November 1990, the government approved development and implementation of an approach to settling claims in Saskatchewan based on the Treaty Commissioner's Report. and 1992, Saskatchewan, Canada, and the Federation of Saskatchewan Indian Nations formally agreed on a negotiation process and a cost-sharing arrangement to settle treaty land entitlement claims in Saskatchewan. The agreements require

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[7] Stony Rapids and Fond du Lac.

Saskatchewan and the federal government to transfer, over a 12-year period, up to $454,404,000, with interest, to entitlement Bands. In most cases, the Bands will use these funds to purchase lands that will become part of an entitlement reserve. This arrangement should lead to hundreds of real estate transactions in Saskatchewan, involving the transfer of entitlement lands to reserve status. Once an entitlement Band acquires land, it will in due course transfer the land to the Crown, pending additions to reserves.

There are about 31 treaty land entitlement claims in Manitoba. Although there is no agreement on how to settle claims as there was in Saskatchewan, seven Bands are currently negotiating the settlement of their respective treaty land entitlement claims with the government. A group of Chiefs is studying the Saskatchewan approach as the basis for settling entitlement claims for many Bands in Manitoba.

In the Northwest Territories, Bands only decided to pursue treaty land entitlement claims late in 1992. Preliminary negotiations have begun.

COMMUNITY-BASED SELF-GOVERNMENT

OBJECTIVE

To develop a range of community government arrangements and models to assist in defining what Aboriginal self-government could look like; and, to develop practical measures to increase local control and decision-making power of Aboriginal governments beyond what is available under the *Indian Act*.

DESCRIPTION

More than two hundred of the First Nations in Canada have participated at some level in community-based self-government negotiations. Currently, fourteen sets of substantive negotiations are in progress involving 44 First Nations from across Canada. In addition, one set of negotiations is at the legislation drafting stage. Further community-based self-government negotiations are being conducted parallel to six comprehensive land claims.

Arrangements negotiated with First Nations communities must meet several criteria. They must significantly increase local control and decision-making, be flexible enough to recognize the diverse needs, traditions, and culture of Indian peoples, and provide greater accountability of Indian governments to their own electors.

The negotiations and ensuing arrangements must proceed within established guidelines.

Essential topics considered basic to government must be negotiated: legal status and capacity, structures and procedures of government, membership, management of lands and resources, financial arrangements, application of the *Indian Act*, environmental assessment process, and an implementation plan. Optional topics include, for example, education, health, social and welfare services, culture, environment, and administration of justice.

Negotiations address the extent of the authority that the Indian government would exercise as well as the implementation of that authority. Each set of negotiations reflects the individual circumstances and goals of the community involved.

In some areas, such as child welfare or land and resource management, provincial legislation, regulations, or standards apply. In such areas, negotiations then require the involvement and co-operation of provincial governments, but only with the consent of all parties concerned. To date, the governments of Quebec, Alberta, Yukon, and Ontario have participated in negotiations and British Columbia, Manitoba, and Saskatchewan have indicated a willingness to do so.

Each set of negotiations proceeds through five stages: developmental, framework, substantive, legislative, and implementation. The developmental and framework stages together require about 24 months, as does the substantive stage (total of 48 months). The legislative and implementation stages have no specified time limit. The following paragraphs describe the five stages.

The **developmental** phase consists largely of consultations and discussions within the community on whether or not to pursue the option of establishing a new legislative base for community government. If the community decides to proceed, it develops a framework proposal, setting out what it wishes to establish to replace existing arrangements under the *Indian Act*.

In the stage of **framework negotiations**, the federal government and the community clarify and further develop the framework proposal. This process yields a mutually acceptable framework agreement. It delineates the current situation and the opening positions of the community and the federal government for each negotiable subject area. The agreement also includes a schedule and a budget for the negotiations.

The stage of **substantive negotiations** consists of reaching sub-agreements in all the jurisdictions to be negotiated and determining requirements for putting them into effect. This includes the development of an implementation plan and a financial agreement. The resulting agreement in principle is submitted to community members and to the federal Cabinet for formal approval.

Once the agreement is ratified, **legislation** is drafted in consultation with the community. It then proceeds through the normal legislative process in Parliament.

Once legislation is passed, activities associated with the **implementation** plan begin. Implementation takes place according to the provisions of the implementation plan and occurs over the time period agreed upon.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Community-Based Self-Government	$17.8	$17.8	$14.8	$17.8	$11.5

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

COMMUNITY-BASED SELF-GOVERNMENT

POLICY AND PROGRAM EVOLUTION

The community-based self-government policy was announced in April 1986, to advance aboriginal self-government by developing practical new arrangements within the framework of the Constitution. It is an option for communities which want to replace provisions of the *Indian Act* with negotiated self-government agreements tailored to their specific circumstances. Such agreements provide a broader scope for First Nations government than is possible under the *Indian Act* and require special legislation.

In 1988, the Minister was authorized to undertake community-based self-government negotiations with up to 15 communities, subject to general guidelines and to shift funds from negotiations to preparatory consultation and development. This refinement allowed communities access to more resources to conduct community consultation and to prepare their positions. The guidelines allow communities to develop their own First Nation government within the scope of existing constitutional principles and government practice. Each community sets the pace and direction of the negotiations. In 1993, the maximum funding limit of $1.5 million for substantive negotiations over two years was extended to facilitate the completion of agreements.

In April 1992, the Department transferred responsibility for community-based self-government negotiations from headquarters to regional offices across Canada. The Department expects negotiations to proceed in a more timely and effective manner if federal representatives responsible for the negotiations are those who have close contact with First Nations.

Since 1985, more than two hundred of the bands in Canada received some support to investigate community self-government. This process has generated a great deal of information that has been shared by First Nations from across the country and by government departments and ministries.

BACKGROUND PAPER FOR THE ROYAL COMMISSION ON ABORIGINAL PEOPLES PROGRAM DESCRIPTIONS AND EVOLUTION

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOMENT

CORPORATE SERVICES

FINAL VERSION

TABLE OF CONTENTS

ELEMENTARY/SECONDARY EDUCATION

OBJECTIVE

To ensure that eligible Indians and Inuit have access to a quality and range of elementary and secondary education that is relevant to the social, economic, and cultural needs and conditions of the individuals, bands, and communities being served.

DESCRIPTION

The Program supports schools and educational services for registered Indians living on-reserve or Crown Land (except in the Yukon and Northwest Territories where education of Aboriginal people is the responsibility of the respective territorial governments.); for other on-reserve students for whom the Minister assumes responsibility, and for Inuit living in Inuit communities in Quebec (basic education of Inuit in Labrador and Newfoundland is the responsibility of the province). The Program funds tuition, student services, and capital agreements with First Nations and provincial educational authorities. The Department also operates a small number of elementary and secondary schools on reserves.

The Program covers educational services from kindergarten to completion of secondary schooling including students with special needs. In addition to student support services and activities such as counselling, transportation, student accommodation, and allowances. The Program also funds curriculum enrichment such as native language instruction and cultural education. The following paragraphs briefly describe each component of the Program.

Band-Operated Schools

Indian Band councils or local educational authorities may choose to administer all or parts of their educational programs. First Nations school programs make use of community resources in the delivery of educational programs, including participation of Indian elders and teaching of traditional skills. Most band-operated schools offer provincial-type programs enriched with culturally relevant courses designed to meet the special needs of Indian students from kindergarten through high school. In 1992-1993, band-operated schools accounted for about 49 percent of enrolments under this Program[1].

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[1]Source: Departmental Elementary-Secondary Education Data Base.

First Nations educational authorities hire professional and paraprofessional educational staff and administrative personnel, determine quality and appropriateness of the educational program, run school operations, and are accountable to the community. Funding for instructional services is calculated according to a formula based on a per pupil amount and an additional amount for school administration. The formula adjusts funding for factors such as geographic location, second language instruction and school size.

The Department provides funds to band-operated schools through either Comprehensive Funding Arrangements (CFA) or Alternative Funding Arrangements (AFA). The First Nations educational authority agrees to deliver services according to minimum terms and conditions, and subject to evaluation. In particular, Departmental program requirements for funding band-operated schools under CFAs call for the use of provincially recognized teaching staff and the ability of their students to move between school systems, within their province, without academic penalty.

Bands under AFAs may establish their own standards and programs. In this case, Departmental program requirements ensure that AFA Band Councils guarantee student access and mobility. The Department also provides advice and financial assistance to Band Councils that are planning to take over responsibility for educational programs from the Department.

Provincial Schools

The Department and/or Band Councils negotiate agreements with provincial school authorities concerning the capital and tuition funds required to provide spaces and educational services in provincial schools for Indian students who reside on reserve or Crown land. These agreements allow Indian students to attend provincial schools on the same basis as other provincial residents. Agreements can cover provision of special services for Indian students, such as cultural and language programming and enhanced instructional and student support services. In some cases, band educational authorities provide advice to provincial boards on issues affecting Indian students. In British Columbia and New Brunswick, the Department has a master tuition agreement with the province, applicable to all provincial schools with Indian student enrolment. Each agreement allows for local tuition agreements with First Nations. Elsewhere, agreements are with individual provincial school boards. The Cree School Board and the Kativik School Board in northern Quebec are school boards under provincial jurisdiction.

Funding levels for instructional services are calculated based on annual per student tuition rates, determined in accordance with provincial regulation and multiplied by the enrolment for the school year. The province controls the tuition cost of these services. Agreements can cover responsibility for providing ancillary services, including special education and aboriginal cultural and language programs.

The Department provides funding through direct payment of tuition invoices, contribution arrangements with First Nations, or both. In 1992–1993, provincial schools accounted for 46 percent of all enrolments under the Program[2]. First Nations managed 57 percent of expenditures for provincial tuition.

Federal Schools

Where First Nations have not assumed control, the Department continues to operate schools on some reserves. Federal schools provide the curriculum of the province in which they are situated, enriched with culturally relevant courses in elementary and, in some cases, secondary grades. Federal school funding is calculated according to the same formula described for band-operated schools. First Nations provide certain services in federal schools, such as employing paraprofessionals, language instructors, or support staff; providing instructional supplies and equipment; and supplying student transportation as well as counselling and advisory services.

The Department encourages First Nations to assume responsibility for the delivery of elementary and secondary educational services currently delivered by federal schools (5 percent of enrolments in 1992–1993)[3].

Student and Educational Support

The Department funds daily and seasonal student transportation, student guidance and counselling services, student accommodation, and allowances:

Transportation involves daily bus trips to and from schools both on and off reserve as well as seasonal transportation of students who must live away from their home community to attend school.

Guidance and counselling involves paying the costs of professional and paraprofessional staff associated with providing career and educational support for students.

Accommodation involves the placement of students in private or group homes and residences during the course of the academic year.

Financial assistance consists of a monthly allowance for student needs, special clothing required for physical education, and graduation clothing.

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[2] Source: Departmental Elementary-Secondary Education Data Base.

[3] Source: Departmental Elementary-Secondary Education Data Base.

The Department provides funds to school authorities, for all three types of schools described above. It also funds Indian education boards and committees which provide a management or advisory function to the school system. Funding levels are calculated according to average needs and costs per pupil. Involvement of First Nations in the delivery of student support varies by region, up to 100 percent.

FINANCIAL INFORMATION

The financial data provided below presents the DIAND expenditure on the program each year from 1987–1988 until 1991–1992. These figures do not include expenditures for the construction of schools, nor for their operation and maintenance. Please see the segment on Education Capital Facilities for further information.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Elementary–Secondary Education	$638.1	$556.4	$518.7	$481.4	$445.5

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

ELEMENTARY/SECONDARY EDUCATION

POLICY AND PROGRAM EVOLUTION

Subsequent to Confederation and the numbered Indian treaties, the federal government began to support Indian educational activities across Canada including a number of religious boarding residences. Indian and Inuit children received their formal education mostly in industrial, residential and day schools operated by religious orders and churches.

In 1892, an order in council governing the operation of residential schools was passed. Books and educational supplies were provided from federal government financial appropriations, while the churches paid for maintenance, salaries, and other operating expenses, assisted by per capita grants from the government. The federal government passed regulations pertaining to standards of instruction and domestic care and appointed inspectors to enforce these standards.

From the early 1950s until 1973, the federal government made efforts to offer Indian students provincial educational services comparable to those given to non-Indians. Formal contractual arrangements (such as joint school agreements for the cost-sharing of school construction) with provinces and school boards were entered into for Indian students attending provincial facilities. Tuition agreements, either at the local or provincial level, provided for the purchase of provincial school services. Indian students attending provincial schools followed the regular course of studies. In some schools, modifications to the curriculum recognized Indian linguistic and cultural needs.

The Hawthorn report of 1966, *A survey of the Contemporary Indians of Canada,* documented the political, economic and educational situation of Indian people in Canada. It recommended integrating Indian students with the rest of the Canadian school population. In 1969, the federal government *White Paper* proposed eliminating all constitutional and legislative bases of discrimination against Indian people. It addressed the question of education by advocating that all educational services be provided by provincial agencies. Indian leadership rejected this policy proposal. The government subsequently retracted it.

In 1972, the National Indian Brotherhood (NIB) presented its policy paper, *Indian Control of Indian Education*, to the federal government. Local control and parental responsibility for Indian education formed the two basic principles of the policy. The NIB's policy called for increased Indian participation in negotiating provincial tuition agreements. The Department accepted these two principles in 1973 and undertook a policy of transferring elementary and secondary education programs to Indian bands.

Consistent with the movement to Indian control, the Department initiated funding for special teacher and teacher-aide training programs at several Canadian universities and colleges to increase the numbers of Indian educational professionals in Indian schools. In the same period, the Department also initiated funding for the establishment of Indian education school committees.

During this period, the federal government also established the Cultural/Educational Centres Program which funds Indian and Inuit cultural/educational centres. Many of their projects include aboriginal language studies and development of culturally enriched curriculum materials.

In 1982, the Department reviewed the Elementary-Secondary Education Program resulting in a paper entitled *Indian Education, Phase I.* Subsequent consultation with First Nations led to the continuation of the review and, from 1984 to 1988, the Assembly of First Nations (AFN) received a total of $6 million from the Department to undertake a major study of Indian education in Canada. In 1989, the AFN presented the Minister with the *National Review of First Nations Education - Towards a Vision of Our Future.* The review contained 54 recommendations in four areas: jurisdiction, quality of education, management, and resourcing. Specific recommendations addressed curriculum development, learning styles, aboriginal languages, special education, research coordination, and parental and community involvement in education. The federal government continues to support the AFN Education Secretariat in undertaking projects related to the review. In addition, the Department also supports local and regional First Nation initiatives related to the implementation of the AFN review.

Since 1990, the Minister has entered into a number of Memoranda or Understandings with Indian organizations with respect to research and development in the area of Indian education. In 1990, the Minister signed the *Manitoba Education Framework Agreement* with the Assembly of Manitoba Chiefs (AMC); a similar agreement with the Assembly of Nova Scotia Chiefs in 1992; and, a Memorandum of Understanding with the Union of Ontario Indians in 1993. The Department also participates in a tripartite forum with the province of Ontario and a number of Indian organizations with respect to a variety of issues on Indian education including jurisdiction.

POST-SECONDARY EDUCATION

OBJECTIVE

To provide First Nations with financial assistance to support increased participation and success of Indian and Inuit students in recognized post-secondary education programs thereby improving participant employability. Specifically:

To increase the national rate of participation of Indians and Inuit in post-secondary education closer to that of the general Canadian population.

To increase the number of Indian and Inuit students graduating with certificates, diplomas, and undergraduate and graduate degrees.

To increase the national rate of participation in the labour force and national income levels for Program participants closer to those of the Canadian population of post-secondary students.

DESCRIPTION

The Program includes two components: student support and special programs support.

Post-Secondary Student Support Program (PSSSP)

PSSSP (formerly known as the Post-Secondary Education Assistance Program) is the largest component of the Program. Its objective is to help Status/Treaty Indians and Inuit gain access to post-secondary education and to graduate with the qualifications and skills needed to pursue careers and to contribute to the achievement of economic self-reliance.

PSSSP has enabled considerable growth in the access of Indians and Inuit to post-secondary education. The number of registered Indians and Inuit enrolled in university increased from 60 in 1960-61 to 5,800 in 1985-86. The number of Indians and Inuit enrolled in all post-secondary institutions increased between 1985-86 and 1991-92, from 11,170 to 21,442 students[4].

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[4] Source: Post-Secondary Education Data Base. Note that, in 1985-86, data begin to include all post-secondary institutions, not just universities, but do not distinguish universities from others.

Status/Treaty Indians, living on or off reserve, and Inuit either enrolled or accepted for enrolment in a post-secondary education program of studies are eligible for PSSSP support. PSSSP support is not available to Indians or Inuit who are eligible for support under the *James Bay and Northern Quebec Agreement* or the *Northwest Territories Student Financial Assistance Program*.

Financial support under PSSSP covers expenses for living allowances (students and dependents living with the student), books and equipment, tuition, seasonal transportation (students and dependents living with the student), scholarships, and academic incentives. Students may receive funding for full-time or part-time studies. Eligible programs of study include university and college entrance preparation programs, study at a community college (or CEGEP in Quebec), university programs toward a diploma or degree (bachelor, masters, doctoral and professional degree).

The First Nation administering organizations assess applications of students against their program criteria and funding priorities. Where First Nations have not assumed control for post-secondary student support, the Department continues to administer PSSSP.

University and College Entrance Preparation Program (UCEPP)

PSSSP also includes the University and College Entrance Preparation Program (UCEPP). It supports eligible students for two semesters for the completion of university and college entrance requirements. UCEPP focuses mainly on mature students who have not graduated from high school. Eligibility and the process for application and approval are as for PSSSP.

Indian Studies Support Program (ISSP)

In addition to supporting individual students, the Department also funds the development and delivery of special programs by Indian educational organizations and Indian and provincial post-secondary institutions, under the Indian Studies Support Program (ISSP). This program fosters the design and offering of courses to meet the specific needs of Indian post-secondary students. ISSP also funds the Saskatchewan Indian Federated College to maintain a university-level focus on research and development in Indian education and to deliver post-secondary special programs. The ISSP is designed to help students complete their post-secondary education studies, to emphasize disciplines relevant to Indian self-government and appropriate labour markets, and to enhance Indian languages and cultures.

The ISSP draws on up to 12 per cent of the Department's funding annually allocated to post-secondary education. Program funds may be applied to cover salaries and costs of people employed in the design and delivery of special programs as well as costs of administration, accommodation, materials, and supplies related to the special programs. In the case of the Saskatchewan Indian Federated College, the federal government approved an amount of $4.7 million in 1988-89 and the Department has contributed an annual sum to the College in subsequent years. First Nations determine the priorities for ISSP funding.

Operation

First Nations manage about 87 per cent of the Program budget under their own guidelines. These guidelines include criteria for support, an allowance schedule and an appeal process. Where the Department still provides support directly to students, it applies administrative guidelines developed according to specific program policy and funding priorities. Indian responsibility for the delivery of student support ranges from 56 per cent in Saskatchewan to almost 100 per cent in British Columbia.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Post-Secondary Education	$190.3	$188.9	$147.1	$122.4	$109.1

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

POST-SECONDARY EDUCATION

POLICY AND PROGRAM EVOLUTION

Direct federal government support intended to assist adult Indians and Inuit to acquire education and training began in the 1950s. Approximately 60 Indian students received post-secondary education support in these years, although no specific post-secondary education program existed.

In 1968, the Department introduced a program of financial assistance for technical vocational training for Indians and Inuit who were experiencing problems in getting support under the 1967 *Adult Occupational Training Act*. The 1968 Program also supported university and college level training and the Department assisted about 250 post-secondary education students in 1968-69[5]. Post-secondary education enrolment increased rapidly in the 1970s numbering over 2,000 students by 1975-76[6].

In 1977, after consultation with Indian students and organizations, the Department introduced new post-secondary education program guidelines, separate from vocational training support. The Post-Secondary Education Assistance Program (known as the E-12 circular) governed Departmental support to Indians and Inuit enrolled in post-secondary education programs from 1977 to 1989. The Program provided support for the costs of tuition, books and supplies, travel for students and dependents, shelter, child care, a weekly training allowance, incentives for graduate studies and counselling services. To be eligible for assistance, a student had to be a registered Indian or Inuk, enrolled or accepted for enrolment in a recognized post-secondary education Program and resident in Canada at the time of application. By 1991-92, the numbers of students (full-time and part-time) supported increased to over 21,000.

In 1981-82, the Department provided funding to the Saskatchewan Indian Federated College, University of Regina, for assistance to Indian students enrolled in university and college entrance preparation courses of study. These courses played an important part in allowing mature students access to post-secondary education.

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5 Source: Post-Secondary Education Data Base.

6 Source: Post-Secondary Education Data Base.

The Department's University and College Entrance Preparation Program (UCEPP), approved in 1983, provided support to a student for one academic year with the same tuition, travel, and living allowances as given to post-secondary education students.

Beginning in the 1970s, the Department encouraged universities and colleges to develop special post-secondary education programs for Indians and Inuit and to facilitate the growth of Indian-managed post-secondary education programs. For example, the Department funded Manitou Community College, Quebec (now closed), and the Saskatchewan Indian Federated College (SIFC) to assist the development of Indian-managed post-secondary education institutions.

Also during the 1970s and 1980s, the Department supported provincial and Indian post-secondary education institutions to offer special Programs for Indian and Inuit students such as teacher training, social work, health sciences, and pre-law. The Department's Indian Studies Support Program (ISSP), 1988, formalized this support to the SIFC and other post-secondary education institutions.

The federal government allocated incremental funds to the Department to provide services including on-reserve elementary and secondary education services and post-secondary education support to new and reinstated status Indians as a result of the 1985 amendments to the *Indian Act* (Bill C-31).

In 1987, the rapid growth of post-secondary education expenditures[7] and apparently low graduation rates prompted a formal policy review and the introduction of a controlled annual post-secondary education budget to replace the demand-driven approach to financing post-secondary education and the Department introduced a system of student priorities.

The Department's new 1989 policy on the Post-Secondary Student Support Program was widely rejected by Indian leaders and students. In response to Indian leadership requests for immediate policy changes, the Minister announced revisions and entered into bilateral agreements with Indian organizations[8], to examine post-secondary education policy

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[7] This growth resulted mainly from two factors. First, both the Department and the Indian community were attempting to promote greater levels of post-secondary education for Indians in general. Second, the increasing involvement of Indians in administration of their own programs created a demand for more highly educated Indians.

[8] Carrier Sekani Tribal Council, Kamloops Band, Indian Association of Alberta, Lesser Slave Lake Indian Regional Council, Hobbema Band, Saddle Lake Education Authority, Masqwacheese Cultural Centre, Peigan Band, Federation of Saskatchewan Indian Nations, Dakota Ojibway Tribal Council, Union of Ontario Indians, Six Nations Council, Grand Council Treaty No. 3, First Nations Post-Secondary CS, Rainy Lake Ojibway Education Authority, Institut Educatif et Culturel Attikamek-Montagnais, Kahnawake Education Centre, Union of New Brunswick Indians, Confederacy of Mainland Micmacs, National Indian Education Forum.

changes and requirements for a student data base. Subsequently, a technical report was submitted by the bilateral committee for consideration by Indian Chiefs.

In April 1991, the Prime Minister announced that the government had approved an additional $320 million for Post-Secondary Education over the next five years (1991-1992 to 1995-1996) bringing the total budget for those years to over $1.1 billion. The 1993-1994 budget is $213 million and will increase to $242 million in 1995-1996. It is estimated that the Post-Secondary Education program will fund about 22,000 students in 1993-1994 compared to 3,600 in the mid-1970s.

SOCIAL ASSISTANCE

OBJECTIVES

To assist individuals and families to maintain an adequate standard of living.

To advocate the cause of Indian people seeking to access provincial services.

To support the economic and social development of Indian communities.

To assist Indian bands and organizations to develop their capacity to respond effectively to individual, family and community needs.

DESCRIPTION

No legislation addresses Indian welfare specifically. The Constitution does not require the federal government to provide social welfare services for Indians, nor does it preclude the provinces from extending their normal welfare programs to Indians on reserves. The *Indian Act* mentions welfare only casually, and no other federal legislation establishes welfare services for Indians. Therefore, under the Constitution, provincial legislation, and federal-provincial agreements, Indian people should be eligible for assistance and services administered by provincial, territorial, and municipal governments under the same conditions that apply to the general population.

It is federal government policy that Indian people have access to assistance and welfare services comparable to other citizens in similar circumstances in non-Indian communities adjacent to their reserves. The Department has never undertaken to administer or fund all social services to Indian people. The Department's existing welfare activities result from historical decisions sanctioned by repeated parliamentary approval of appropriations required for social service activities voluntarily assumed by the Department. These activities, combined with programs of other federal departments and of provincial and non-governmental programs, create a social support system for vulnerable members of First Nation communities.

The Program provides financial benefits and services to residents of reserves who are deemed to be in need based on the application of a needs test and other eligibility criteria. The benefits and services help enable these residents and their dependents to maintain health, safety, dignity, and family unity. Services are available to persons in need without regard to status as registered Indians.

Benefits and services include the following. **Basic Needs Allowances** provide for continuing living needs such as food, clothing, shelter, and personal items. **Child Out of Parental Home Allowances** assist with costs of caring for children who are temporarily in a home other than that of their parents. It involves financial assistance only, in cases where the child is not in need of child welfare services[9]. **Special Needs Allowances** provide for non-basic goods or services (usually non-recurring) that are essential to the physical or social well-being of the recipient. **Program Administration and Services** provide funding for salaries and associated administrative costs for band social development staff. The cost for the aforementioned services are reimbursed to Ontario by DIAND as per the 1965 General Welfare Agreement.

The Province of Ontario also provides assistance to reserve residents as per the *Family Benefits Act of Ontario*. The recipients of this service are long term social assistance recipients such as the disabled and/or the chronically unemployable. This program is cost shared with Canada via the Canada Assistance Plan.

The Department has authority to convert the social assistance entitlement of recipients into funds for job-creation or training projects in which they participate.

At present, over 94 per cent of First Nations administer this Program on reserve. Of these, over 25 per cent operate according to a funding arrangement that gives them flexibility to amend the Program to fit local conditions and values.

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[9] See Description of Child and Family Services Program.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Social Assistance	$535.3	$462.8	$397.5	$357.3	$316.2

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

SOCIAL ASSISTANCE

POLICY AND PROGRAM EVOLUTION

Until World War II, welfare services for Indians developed independently of those provided to other Canadians. Federal and provincial welfare programs excluded Indians. Instead, the Indian Affairs Branch[10] made rudimentary provision for their needs. For example, from their inception in 1927 until 1951 federal old-age and provincial blind pension benefits were not available to Indians. The Branch administered this kind of assistance as part of its general relief program. In 1948, the Branch instituted a fixed allowance of $8 a month, subject to a means test. In 1950, the Branch raised the allowance to $25 a month and made it payable to all Indians over seventy years of age.

The main responsibility of the Welfare Section during the post-war years was the care of the aged and sick. When financial relief was necessary, recipients had to undertake certain tasks on or off the reserve, such as cultivation of gardens, land-clearing, farm work, road construction, wood-cutting, or other tasks at the discretion of the Indian agent.

The initial impetus to change came from the hearings of the Special Joint Committee of the Senate and the House of Commons to examine the *Indian Act* (1946-1948). A joint submission of the Canadian Welfare Council and the Canadian Association of Social Workers presented a devastating but reasoned criticism of existing welfare services. It addressed the consequences of the state of poverty and ignorance felt to exist on Indian reserves. These consequences included malnutrition, high infant mortality, unsanitary and overcrowded housing, and disruption of family units caused by the residential school system.

The Joint Committee found that many federal welfare programs and most provincial programs excluded Indian people and that the services the latter received were often inferior to those available to other Canadians. For example, Indian people received social assistance in the form of rations or vouchers (from Indian Affairs Branch) rather than cash. Further, assistance was frequently provided only in return for work, except for

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[10] During the late 1930s up to the mid-1960s the Indian Affairs Branch was part of the Department of Mines and Resources and the Department of Citizenship and Immigration, respectively.

elderly or sick persons. In short, the committee concluded that services for Indian people were inferior to those available to most other Canadians. It recommended a greater involvement by provinces in the provision of social services to Indian people. Provincial participation was seen as desirable at that time because it would relieve the federal government of the need to develop parallel services and would also contribute to the process of integration.

A new Welfare Division was established in 1948. It encompassed both social and economic activities, including financial assistance to needy Indian people and a range of community development services. Subsequently, payment by cheque replaced the practice of providing recipients with a ration or grocery order, helping to remove the stigma of relief. The 1950s, however, saw little progress with respect to involving provinces in the delivery and funding of services to residents of reserves.

Further Joint Committee hearings on Indian Affairs took place from 1959 to 1961. As a result of the Committee's recommendations, the Department established the extension of provincial services to Indian people as a primary goal. The Indian Affairs Branch sought to secure for Indian people residing off reserve the same benefits and treatment as other Canadians, and to press for the extension of normal provincial welfare services to Indians on reserves. The latter goal arose because providing a disperse population with a level of service equivalent to that provided to others by the provinces was a costly duplication of an already existing system.

In 1960, the Department was authorized to provide welfare services to indigent non-Indians. This measure eliminated most of the overlapping of provincial and federal jurisdictions in the administration of financial assistance, as well as the use of different rate structures for people living in the same communities.

In 1964, the Department received authority to administer social assistance at provincial rates and in accordance with provincial eligibility regulations. The Department had been under pressure for some time to equalize its payments with those of the provinces, but had resisted on the grounds that many Indians received free medical and hospital services, free education, and subsidized housing -- as well as not having to pay property taxes on reserves. This decision established the principle that needy residents on reserves should receive social assistance in accordance with the same standards, rates, and conditions as those that apply to persons living under comparable conditions in areas adjacent to reserves. Indian Affairs appropriations suffered an immediate large increase in expenditures for social assistance. The increase resulted in part because of the removal of the previous disparity in rates but also because the Department stopped charging expenditures for assistance to band funds. (Part of the reason for the latter change was to divert band funds to economic development.)

In 1965, approval was given to a proposal that the federal government share with provinces the costs of extending provincial welfare services to Indians residing on

reserves. In 1966, the Province of Ontario made available to Indians the full range of provincial welfare programs, sharing costs according to a *Memorandum of Agreement Respecting Welfare Programs for Indians*. To date, no other province has entered into such a formal arrangement.

Indian leadership during the 1970s stressed development of Indian self-reliance, self-government, community administration, reduction of social dependence, and community-based economic and social planning. The response of the Social Assistance Program was to shift its role from that of providing direct service to that of offering support and advice, and vesting control over local programs in band councils.

In 1972, approval was given for the utilization of financial entitlements of employable people normally dependent upon social assistance to fund job-creation projects of Indian bands (Work Opportunity Program). This measure has enabled Indian communities to create tens of millions of person-hours of employment as an alternative to social assistance dependency in the last two decades. In 1988, the Indian Community Human Resources Strategies Program extended this concept to include transfer of funds to training programs for social assistance recipients.

Alternative Funding Arrangements, available since the late 1980s, enable band governments to develop their own social assistance policy and give them the freedom to use financial resources in support of locally determined priorities and goals. These arrangements support the policy that individuals' and communities' self-sufficiency and sense of responsibility grow stronger the more they have control over their own affairs.

The department's existing authority approved by Treasury Board for social assistance stipulates that, for each province and the Yukon Territory, the Program must adopt the qualifying requirements and assistance schedules of the general assistance program of the province or territory. The Program adjusts benefits to make up for services and benefits provided to Indian and Inuit people through other federal programs, such as the Indian Housing Program and Non-Insured Health Benefits. The ultimate beneficiaries of the social assistance services will be indigent Indian and Inuit individuals and families, and other indigent persons at the discretion of the Minister who reside on reserves or in Indian communities situated on Crown lands. This authority replaced all previous Program authorities except the Work Opportunity Program and the Indian Community Human Resources Strategies, which remain in effect.

CHILD AND FAMILY SERVICES

OBJECTIVE

To ensure that Indian children and families have access to culturally sensitive child and family services in their communities and that these services are comparable to those available to other provincial residents in similar circumstances.

DESCRIPTION

The Constitution does not require the federal government to provide child and family services for Indians, nor does it preclude the provinces from extending their normal programs to Indians on reserves. The *Indian Act* mentions welfare only casually and no other federal legislation establishes welfare services for Indians. Provincial and territorial governments have jurisdiction for welfare matters within their respective territories, including the welfare of children.

The government of each province or territory has passed child welfare legislation to regulate the administration of its own child welfare program. In the absence of federal legislation specific to Indian child welfare, Section 88 of the *Indian Act* recognizes the application of provincial child welfare laws to Indians within the borders of each province or territory. The combination of federal, provincial and territorial authorities gives legal force to the extension of provincial or territorial child welfare services into Indian communities.

The Program funds and supports a comprehensive range of child and family services for children and families living on reserves provided by provincial, territorial and First Nations organizations. The Program also funds and promotes development and expansion of child and family service agencies designed, managed and controlled by Indians. These agencies function in a manner consistent with existing provincial and territorial child and family services legislation. The Program's mandate also included support in fiscal year 1990–1991 and 1991–1992 for the development of Indian standards for these services. Either provincial or territorial legislation provides all agencies (native and non–native) with the mandate to protect children from abuse and neglect. The agencies provide the following services[11]:

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[11] The terms "child welfare services" and "child and family services" can be used interchangeably. The latter reflects a change of orientation toward providing a range of services to the family unit, compared to the previous orientation toward protection of children.

Protection: Services seek to protect children from situations of neglect or abuse, and include investigation, apprehension, court appearances, and voluntary or court-ordered supervision or placement.

Prevention: Services seek to identify and provide support related to potential problems of abuse or neglect, and include counselling, education, respite services, and community organization.

Alternate Care: Services provide care outside the parental home, including foster care, group homes and institutions.

Adoption: This Service provides for the permanent placement of children who cannot return to the parental home and includes recruitment and assessment of adoptive parents, counselling and support to adoptive parents and to the adopted child, and post-adoption support services.

Forty-four First Nations child and family service agencies serve 218 bands, representing 46 percent of the population on reserves of which three have just started their operation at the beginning of 1993. Thirty-three other groups are in development and will lead to additional agencies serving 185 additional bands, representing a total of 74 percent of the population on reserves. In areas where such agencies do not yet exist, provincial organizations or departments provide limited services.

Allocations to Indian agencies accounted for 45% of the budget for all child and family services activities in 1992-1993[12]. As more First Nation communities take over this Program the proportion will increase accordingly.

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[12] Departmental Expenditure, Accounting and Retrieval System.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Child and Family Services	$137.9	$121.4	$103.1	$96.4	$81.9

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

CHILD AND FAMILY SERVICES

POLICY AND PROGRAM EVOLUTION

Prior to 1940, assistance to Indian children and their families originated, by band custom, within the network of the extended family. Parents, grandparents, aunts and uncles contributed to the maintenance, education, and protection of children. When circumstances required separation from their natural parents, relatives took children to live with them in their homes. This informal practice reflected the broader pattern of mutual assistance, based on reciprocal obligations within the extended family. However, this practice became inadequate to meet the needs of band members as families residing permanently on reserves, sent their children to residential schools for ten months of each year.

In the 1950s, provincial and territorial governments began to arrange with bands and with the Department to extend their child welfare services to Indian communities, in order to overcome the disruption in traditional patterns of community care. Formal services provided under provincial child welfare legislation began to replace the informal and customary services inherent in Indian community life.

By the end of the 1960s, the department had arranged with each of the provinces, with varying degrees of formality, to fund the extension of provincial child welfare services to Indian communities.

In the late 1970s, the effect of extending provincial child welfare services to Indian children and their families had become a serious concern of Indian leaders and governments. Tribal chiefs and individual bands passed resolutions declaring their intent to resume responsibility for and control of services to Indian children and their families in order to protect Indian children and to preserve their Indian identity.

During the 1980s, federal and provincial governments recognized a need to deliver culturally sensitive child and family services to native people. They increasingly placed delivery of child and family services to native people in the hands of native organizations.

Early in the 1980s, Manitoba, Ontario, and Alberta added provisions to their child and family service legislation, providing for recognition of Indian culture and tradition in the delivery of services to Indian people. In 1982, the Department issued a policy to facilitate the transfer of service delivery responsibilities for child and family services to Indian organizations. By 1986, 203 bands (36 percent of the 565 across the country) received child and family services from First Nations agencies. However, the *ad hoc* nature of the negotiation and implementation of service delivery arrangements led to inconsistencies among them. For that reason, the federal government imposed a moratorium on the establishment of new Indian-operated agencies, pending a review of the Program.

In 1989, as a result of the review, the government approved the expansion of First Nations child and family services agencies so that all Indian children and families could receive appropriate services from their own agencies. Approval to expand services included funding to First Nations for the development of Indian standards for child and family services. It also required the establishment of a management regime for the Program.

FAMILY VIOLENCE PREVENTION

OBJECTIVES

To increase public awareness and community involvement in preventive action, and promotion of social values that support equal rights and security of women, children, and seniors.

To strengthen the federal legal framework on family violence by reviewing policy and legislation on family violence issues, and to monitor current sexual abuse legislation in preparation for parliamentary review.

To provide prevention, protection, and treatment services to Indians on reserves.

To strengthen services with respect to criminal justice, health and social service intervention, and treatment, particularly for high risk populations.

To increase the number of alternatives for longer-term housing for victims of family violence, while continuing to make emergency shelters available.

To enhance exchange and coordination of national information, through the National Clearinghouse on Family Violence and other mechanisms.

DESCRIPTION

The delineation of authority between federal and provincial governments for the well being of Indian peoples has not been clear. As a result, Indian families and children were not always protected in the same way as other Canadians. Therefore, the federal government has accepted responsibility for the funding of most social services for Indians on reserves.

The Program includes abuse of children, youth, seniors (particularly when in a state of dependency or a position of trust or authority), and women by their male partners, both within and outside the family. Family violence can involve physical or sexual abuse and can also include neglect, deprivation, intimidation, emotional abuse, and financial exploitation.

A current federal government initiative involves seven funded departments: Health Canada, Indian Affairs and Northern Development, Justice Canada, Solicitor General of Canada, Human Resources Development, Canadian Heritage, and Canada Mortgage and Housing Corporation. While broad in scope, the initiative ensures special attention to the needs of aboriginal people, residents of remote and rural parts of the country, members of ethno-cultural minority communities, and people with disabilities.

After consultation with First Nations, the Program distributes all funding directly to local communities to establish services that are responsive to Indian culture and tradition. Communities will decide themselves what services they need, such as: support services; counselling; prevention; school liaison; respite care; treatment for victims, abusers and families; healing circles and lodges; research; assessments (of needs and emergency services); and public awareness activities.

The Program distributes 20 percent of its funds equally among regions, 10 percent equally among bands, and 70 percent equally by Indian population. Most of the funding supports establishment of services on reserves. Small allocations for public awareness activities go to Newfoundland and Labrador and to the Northwest Territories, which receive family violence services under federal-provincial-territorial agreements.

The Department's regional offices develop plans to implement and monitor activities. Some regions have steering committees for planning and administering family violence funds. In some regions, communities receive funds according to a formula. In others, the region and the communities establish funding criteria. In most cases, the Department and the Medical Services Branch (of Health Canada) cooperate with representatives of First Nations to distribute funds. First Nations manage all funds.

In 1988, Canada Mortgage and Housing Corporation (CMHC) received $22.2 million, as part of the National Family Violence Initiative, for the creation of 500 new units of shelter for battered women and their children. While all Canadians are eligible for this program, about 75 of these units are available to residents on reserves because of the gravity of the problem there. The Department funds the operating costs for these shelters. Extended-term accommodation is now under development, to provide women and their children a place to live while taking the next steps toward re-establishing their lives.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Family Violence Prevention	$2.2	$0.1	Nil	Nil	Nil

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

FAMILY VIOLENCE PREVENTION

POLICY AND PROGRAM EVOLUTION

Physical abuse of children has a long history of public concern. Over the past century, Canadian voluntary organizations, led by pioneers in child advocacy, followed by provincial governments, developed a network of child protection services to address this form of abuse.

Since the early 1970s, women's groups and social workers have worked hard to publicize the issue of wife abuse. The first shelter to offer support for women and children escaping from a violent home situation opened in British Columbia in 1972. Today the number of shelters in Canada exceeds 300.

As knowledge about the nature of family violence has evolved, it has indicated that older people are also victims of family violence.

The federal government's involvement with family violence issues began in the late 1970s and early 1980s. As the magnitude of the problem became apparent, the federal government placed increasingly greater emphasis on family violence and undertook a number of activities to address it directly. Non-governmental organizations and governmental bodies at all levels have placed a high priority on addressing family violence and together are making significant contributions.

Community and non-governmental organizations provide a critical resource for program delivery. Provincial, territorial, and (where delegated) municipal governments have primary responsibility for services to victims, families, and offenders, through the criminal justice, health, social service, and education systems. The federal government supports many of these activities through transfer payments to provinces and territories, such as block funding for health services and cost-sharing arrangements (*e.g.* Canada Assistance Plan) for social services.

In the 1970s, growing political action among Indian people, and an increased public awareness of the Indian child welfare issue led to important changes in the delivery system for child welfare services. The federal government responded by entering into discussions with the provinces and Indian associations and communities to establish child welfare agencies based in the community, controlled by Indians, operating under provincial status, and funded by the federal government. These agencies protect children at risk and support their families in time of crisis. In April 1988, and again in June 1989, the government reaffirmed its commitment to fund such services on reserves.

In 1986, the federal government allotted $7 million to Indian and Inuit communities for projects to address and to resolve social and health problems related to family violence. The Department and the Medical Services Branch (of Health Canada) administer the program jointly, with the assistance of an Advisory Committee composed of representatives of Indian and Inuit communities. A total of 222 projects focusing on public awareness, training, community workshops, research, and program development received funding.

Recent studies suggest that family violence is more prevalent in aboriginal communities than in other communities. A 1989 study by the Ontario Native Women's Association, *Breaking Free: A Proposal for Change to Aborginal Family Violence*, found that eight of every ten women in native communities have been victims of family violence (eight times the rate for non-native women). The projects conducted indicated a growing need for continuing services to address the needs of the entire family, rather than relying on *ad hoc* palliative measures in times of crisis.

In May 1990, Departmental representatives held discussions with a range of groups and individuals across the country to ascertain what Indian people would like to see done in the area of family violence and child sexual abuse. They contacted recipients of project funds under the first family violence initiative, concerned community leaders, and individuals. Family violence and child sexual abuses are a major community problem that requires community solutions in the community and financial and moral support from the government.

In his report, *Reaching for Solutions,* published in 1990, the Special Advisor to the Minister of Health and Welfare on Child Sexual Abuse in Canada suggested that all Canadians must share in the responsibility for providing assistance to Indian communities to resurrect aboriginal cultures, community values, self-respect, and self-determination. There is consensus among community leaders that the issue of child sexual abuse should be addressed within a comprehensive framework, not in isolation from family violence, alcohol and drug abuse, and child and family services.

The Department seeks to create a new relationship between aboriginal and non-aboriginal Canadians through a process known as the Native Agenda. One of the four pillars of the Native Agenda is the amelioration of economic and social conditions on reserves. In line with the departmental emphasis on creating this new relationship, the implementation activities for the Department's family violence program focused on further consultations with First Nations and regional representatives in April and May 1991. The consultations helped determine the design of the current program, utilization and distribution of the available budget, and minimum terms and conditions for funding.

Under the approved terms and conditions, bands using Alternative Funding Arrangements for other services can add family violence funding to their agreements.

Under the approved terms and conditions, bands using Alternative Funding Arrangements for other services can add family violence funding to their agreements. They can use contributions for activities such as community needs assessments and public awareness.

The terms and conditions also require communities to evaluate their own activities as part of their administrative reporting. The Program developed a self-evaluation guide to assist communities in this process.

ADULT CARE

OBJECTIVE

To promote independence and improve the quality of life of persons on reserves who are elderly, ill, or have a disability, allowing them to remain at home in their community whenever possible.

DESCRIPTION

The Department shares the federal responsibility for adult care services on reserves with Medical Services Branch, of Health Canada, which provides health services to Indians and Inuit. The provinces do not generally extend health and social programs to reserves, but they do deliver some services to Indian people living on reserves.

The concept of adult care encompasses a range of health and social service programs. Services are provided by federal and provincial Departments, non-governmental organizations, First Nations, and by families. Linkages with health services and other social programs and availability of adequate housing are key components in assisting persons to remain independent and at home.

The Program provides social support and assistance in activities of daily living. Individuals who are frail due to age, who are ill, or who have a disability can thus remain at home in their community whenever possible. In some cases, provision of services at home may not be feasible and institutional care may be more appropriate.

The Program has three components:

In-Home Care provides homemaker services to assist individuals with activities such as housekeeping, meals, personal care (such as bathing and hair washing), drawing water, and carrying wood. Services include community support services such as coordination of meal programs and adult day care within existing budgets.

Foster Care provides supervision and care in a family setting, other than in the person's own home. For the most part, these foster care placements are for persons with a developmental disability for whom placements were made a number of years ago.

Institutional Care provides services in Types I and II institutions defined according to a federal classification system[13]. This component operates in provincial institutions off reserve and in 13 institutions on reserves in four regions.

In-home care programs have developed under the influence of provincial programs, approaches of First Nations, and availability of resources. About two thirds of First Nations provide care services in the home. The Program is generally administered by band social development officers, who assess financial and social needs of clients and hire staff. Band and other health professionals are also involved in client assessments.

First Nations manage institutions on reserves. However, most institutions on reserves are not provincially licensed, and provinces are generally reluctant to accept this responsibility. In Manitoba, where the Department funds seven institutions on reserves, First Nations Personal Care Home Directors currently are receiving funds to develop culturally appropriate standards for the management and funding of these facilities, based on provincial standards. Over time, it has been shown that institutions on reserves typically must provide higher levels of care in order to keep people in their own communities. These higher levels of institutional care are normally provided as insured services to all provincial residents. For the most part, however, provinces do not provide such care on reserves.

Fifty-four percent of the Program budget for 1992-1993 went towards In-Home Care administered by First Nations communities. The balance was directed to institutional and foster care, of which First nations administer about half. Current funding for foster care is limited to two regions and is less than 2 percent of total resources.

In addition to funding adult care, the Department participates in the National Strategy for the Integration of Persons with Disabilities, announced in 1991. This initiative funds First Nations to coordinate existing provincial, federal, and non-governmental services for persons with disabilities and to improve their availability to persons on reserve.

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[13] Type I: Residential care for persons requiring primarily supervision and assistance with daily living activities and social or recreational services.

Type II: Extended care for persons requiring continuous personal care, under medical and nursing supervision.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Adult Care	$37.2	$32.1	$25.8	$22.6	$19.3

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

ADULT CARE

POLICY AND PROGRAM EVOLUTION

Current adult care programs and policies on reserves have evolved along with social policies and services for Canadians in general, subject to specific considerations related to the provision of services to Indians on reserves. In particular, federal legislation for funding health and social programs has defined social services and identified provincial responsibilities related to insured health services.

Provincial programs for adult care services have developed within both health and social Departments and differ among provinces. This diversity has affected the development of adult care services on reserves. Most regional adult care services have evolved according to locally identified needs and in relation to provincial programs, resulting in a variety of programs across the country.

Before World War II, both federal and provincial governments considered Indians to be wards of the federal government and provinces extended very few of their basic public services to reserves. However, Special Joint Committees of the Senate and the House of Commons (in 1946–1948 and in 1959–1961) urged increasing involvement by provinces in the provision of services to Indian people. The extension of basic provincial services became the stated policy of Indian Affairs.

The Department accepted, in the late 1940s and early 1950s, financial responsibility for the care of Indian adults who were unable to care for themselves due to old age or a disability and whose relatives could not provide necessary care. During the 1950s and early 1960s, the Branch negotiated, on behalf of Indian people with disabilities, informal understandings with provincial governments and private organizations for funding and delivery of services. Several provinces implemented agreements during the 1950s for rehabilitation services to persons with developmental or physical disabilities. Where institutional care was required, only adults not requiring active medical treatment were eligible. As Indian people became eligible for benefits under the *Old Age Security*, *Old Age Assistance*, and *Blind Persons Acts* (1951) and the *Disabled Persons Act* (1955), they were expected to pay a fair share of costs for boarding homes or institutional care.

During the 1950s and 1960s, the Department made joint efforts with National Health and Welfare (now Health Canada) to delineate federal responsibilities and to state policies and practices for adult care. Health Canada accepted the responsibility for institutional programs providing treatment or health maintenance under medical supervision. Programs

providing supervision and personal care fell to the Department. However, this method of establishing responsibility was open to varied interpretations and resulted in different practices among regions.

Following the approval of agreements with provinces and organizations for specific rehabilitation or institutional care, the Department took on a number of federal authorities concerning social services to Indian people. None of these addresses adult care specifically, but they have direct implications for the Program.

In the 1960s, Ontario and Quebec developed and signed formal agreements for social services, including rehabilitation and related services. These agreements paved the way for delivery of broader social services by the provinces and private organizations and for funding by the Department. The *Canada Assistance Plan* (CAP) (1966–1967) provided a general framework for defining social services and assistance and for aligning funding and service responsibilities between health and welfare service systems. It provided for sharing of some institutional costs. The Department accepted the CAP listing of institutions as Homes for Special Care as the basis for Departmental responsibility for funding. The Department funded care in provincial institutions on behalf of Indians normally resident on reserves and in institutions on reserves.

In 1977, the *Federal–Provincial Fiscal Arrangements and Established Programs Financing Act* provided federal *per capita* contributions to provinces for insured and extended health care services.

In 1978, the Department reached an understanding with Health Canada, whereby the Department accepted responsibility for Indian people living on reserves who require institutional care of types I and II[14]. Lack of consistency between federal and provincial classification systems and between federal and provincial arrangements for funding programs has created problems in determining funding responsibilities for Indians on reserve.

In the expectation that Part II of the *Canada Assistance Plan* would extend provincial services to Indian people on reserves, the Department did not update adult care policies and practices in concert with developments in provincial programs. In 1982, however, the Department prepared national standards for the Program, including regional manuals[15] for implementing national guidelines and provincial practices.

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[14] Type I: Residential care for persons requiring primarly supervision and assistance with daily activities and social or recreational services.

Type II: Extended care for persons who requiring availability of personal careon a 24 hour basis under medical and nursing supervision.

[15] In some regions, the standards appeared within social assistance manuals.

In 1984, the Department developed a Memorandum of Understanding with Health Canada. It clarified responsibilities for services provided by the two departments with respect to care for elderly, disabled, and handicapped Indians. The purpose of the memorandum was to delineate responsibilities clearly to minimize administrative delays in the provision of services. While the memorandum delineated responsibilities for the components of adult care, it obliged neither department to provide any of these components. Delivery of services depends on availability of resources.

Provincial governments have since developed a broad range of programs for both health and social services. The programs vary considerably[16] with respect to services offered and clients served. The 1990 federal report entitled "Adult Care Working Group Report" on long-term care services provides a comprehensive review of existing programs. Services provided include meal and transportation programs, therapy, adult day care, friendly visitors, independent living centres, geriatric assessment, counselling, homemakers, and home nursing. Institutional care is provided in nursing homes, homes for the aged, and rehabilitation centres. In addition, many families care for members at home.

The provinces have not generally extended their health and social programs to reserves. The extent to which residents on reserves have access to provincial services off reserves varies. Indians resident on reserves have access to some long-term institutional care and health services which provinces are required to provide to all residents under the *Canada Health Act* as insured services.

In July 1989, the Department established, with Medical Services Branch (of Health Canada) a working group on adult care. The objective of the working group was to describe current conditions regarding adult care services in First Nations communities and to identify issues for inclusion in a policy concerning services for the elderly and for people with disabilities who live on reserves.

The Department continues to improve services on reserves by developing a management framework for the Program that will enable First Nations to provide community-based social services to assist the elderly and persons with disabilities to remain in their own home or communities.

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16 As an example of the complexity of long-term care, a review of programs in Ontario covered 16 programs and 12 pieces of legislation.

COMMUNITY INFRASTRUCTURE

OBJECTIVE

To provide support to Indian and Inuit communities in their acquisition and maintenance of capital facilities and services, consistent with recognized standards.

DESCRIPTION

The Department allocates capital funds to construct, expand and repair basic community capital facilities on reserves and Crown lands, including water systems, sanitation systems, electrical and energy systems, roads, bridges, and other transportation, as well as fire protection. The Department also allocates funds for other protection, such as flood control, community buildings, facilities, equipment, and special services (*e.g.* land and water right-of-ways).

In consultation with First Nations and Indian organizations, the Program assists First Nations establish and maintain a high level and quality of community capital facilities to meet the overall health and safety, education, and infrastructure needs of Indian and Inuit communities. The Program emphasizes increased control and responsibility of First Nations over capital planning as well as operation and maintenance of physical facilities.

The Program, in consultation with First Nations, allocates capital budgets to First Nations according to assessed community needs. These include health and safety situations that immediately threaten the physical well-being of individuals and existing community facilities, repair of existing community facilities, upgrades to community facilities that do not meet national, provincial, or Departmental standards, and recapitalization of community facilities.

Through consultation with First Nations, the Department is responsible for developing appropriate policies, standards, and criteria relating to the management of capital. The Department's responsibilities entail maintaining a clear base of accountability for investment decisions, maintaining a reliable and comprehensive inventory of existing on-reserve community facilities, and establishing a national methodology to assign priority, where health and safety, as well as recapitalization, serve as the basis for allocating funds to regions and First Nations. The Department allocates funds to regions on a "needs" basis. Regions, in consultation with First Nations, allocate funding to individual bands. The Department is also responsible for ensuring compliance with maintenance plans for community facilities, based on the reported condition of assets and acquiring resources from Treasury Board to finance the capital Program.

In accordance with Section 5 of the Canadian Environment Assessment Act, in many cases, environmental assessments must be conducted. The funding of a project by the department make it responsible for the environmental assessment.

The Department has developed many data systems to support its policy development, capital allocation, and monitoring of capital projects.

First Nations and Indian organizations are responsible for having physical capital plans covering recapitalization, major maintenance, and new assets, based on their needs. The plan takes into consideration recognized standards and Departmental criteria and priorities.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Community Infrastructure	$216.6	$161.9	$169.1	$156.4	$126.3

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

COMMUNITY INFRASTRUCTURE

POLICY AND PROGRAM EVOLUTION

The Department has developed a capital program over the past 25 years. It defines the Department's responsibilities concerning the basic health and safety needs of Indian communities through the provision of on-reserve physical assets.

Through the 1960s, the Department established a formal capital program aimed at alleviating severe conditions on reserves and at implementing federal policy concerning capital facilities and community development.

Three federal-provincial conferences held between 1963 and 1965 and the 1966 Hawthorn report paved the way to a renewed capital and housing policy for Indian people. A joint committee at the 1963 Federal-Provincial Conference recommended correlation of federal and provincial policies and responsibilities for health, welfare, education, community development, and other services. At the 1964 Federal-Provincial Conference on Indian Affairs, the federal government approved the **Community Development Program**, to improve the economic, cultural and social life of Indian people. This program stressed planning and recruitment of community development specialists, who had a mandate to develop comprehensive community plans on-reserve, in conjunction with Indian bands.

A 1965 Federal-Provincial Conference on Poverty discussed the condition of Indian housing and facilities. The Indian population had increased to nearly 220,000 (from 136,000 in 1949). Between 1953 and 1965, approximately 17,000 housing units were built to accommodate indigent families. In 1965, 46 percent of Indian houses had electricity, 10 percent had sewers or septic tanks, and 15 percent had running water. The infant mortality rate was 69.2 deaths per 1,000 live births, compared to 25.1 for the whole of Canada.

In 1966, the Federal government introduced a $112-million multi-year program[17] for the development of a wide variety of Indian and Inuit community infrastructure services in two specific areas. The first covered adequate water supply and sewage disposal, as well as electrical power, through a rural electrification program with public utilities. The second program, with provincial collaboration, included construction of access roads linking many Indian and non-Indian communities to nearby schools, thus enhancing local employment and economic development.

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[17] Department of Northern Affairs and National Resources, Press Release: "Indian Reserve Improvement Program," Information Services Division, 1-651817, March 23, 1966.

In 1966, the Department established Housing Committees to administer on-reserve capital construction programs. Each committee allocated houses to band members, managed the existing housing stock and related infrastructure, and planned future housing. In 1968, bands received grants to meet part of the costs of administering capital programs. This program excluded capital projects and capital funds.

In 1973, the federal government renewed its commitment to funding the planning and construction of community facilities by approving a five-year long-term capital plan. At that time, the on-reserve housing backlog was 9,576 units. The number of houses with potable water had increased to 31 percent, houses with septic tank and sewers increased to 25 percent and houses with electricity increased to 82 percent. The infant mortality rate had fallen to 34.9 per 1,000 births in 1979, still very high compared to the Canadian average of 21 per 1,000[18].

The Department received approval to provide a subsidy of up to $20,000 to construct a band office and to enter into cost-sharing arrangements permitting the Department and bands to construct community recreation and cultural buildings. A Departmental subsidy totalling $100,000 was available if an equal amount was provided from other sources, such as First Nations or a Province.

In 1974, devolution to Indian bands resulted in greater funding for Band Councils. The Indian Local Government Program also consolidated existing financial authorities with Band Councils. The Councils could plan and manage capital projects for the Department, but each project required the approval of either the Department or of Treasury Board, depending upon the size of the project.

In 1977, the Housing Program received increased funding to facilitate better maintenance practices. The objectives of the Program included provision of infrastructure to meet health and safety standards, a similar level of service to that enjoyed in neighbouring non-Indian communities of comparable size, and planning, operation, and maintenance services to support the provisions of the Program.

In 1980, the Department established the Capital Management Branch to deal with non-residential assets such as community infrastructure and education facilities. The Branch sought to improve the administration of operations and development and to establish systems for managing capital. The Branch established, re-affirmed, or reviewed several component processes and systems.

In 1984, eight Level of Service Standards were initiated for community capital projects in order to meet comparable national, provincial, or local standards and to indicate the extent of federal government assistance to capital projects.

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[18] Source for all figures in this paragraph: Department of Indian Affairs and Northern Development, *Approval of Five-Year Plans for Education and Community Improvement Programs, August, 1973.*

In 1984 and 1986, **Self-Government Transfer Arrangements** were negotiated with the Cree-Naskapi and the Sechelt First Nations respectively. These covered funding for five years, based on a formula adjusted annually for price, volume, capacity to generate revenue, and incentives to support economic development.

In 1986, the Department established **Alternative Funding Arrangements** to address community needs and priorities set by First Nations. These arrangements enabled First Nations to assume more responsibility and authority. Allocation of capital funds under these arrangements had to follow established priorities. Capital funds earmarked for projects under $1.5 million could not be transferred to a non-capital program; funded projects had to be constructed in the period agreed upon.

In 1989, **Comprehensive Funding Arrangements** reduced the reporting burden of First Nations by combining various one-year funding arrangements into one umbrella agreement. These arrangements required allocation of capital funds to specified projects that adhered to specific standards. Band Councils could not divert these funds to operations or maintenance. These arrangements also required more stringent reporting, compared to those for operations and maintenance.

In 1990, the current process of allocating funds on the basis of need replaced the earlier *per capita* formula. The process assessed three categories of needs (major maintenance and repair of assets, replacement and recapitalization of assets, and new construction, including backlog and growth), and sought a more equitable approach to addressing the long-term needs of First Nations. The Department also developed guidelines to assign priority to infrastructure needs, in order to assist regions in ranking major capital projects within each five-year capital plan.

EDUCATION CAPITAL FACILITIES

OBJECTIVE

To ensure that elementary and secondary schools for which the Department is responsible suit the projected enrolment and curriculum needs of Indian students.

DESCRIPTION

The Program entails the planning, design, construction, and repair of schools and accommodation for teachers on reserves, as well as accommodation for students where required. The Program also entails joint school agreements with provinces or school boards where the Department has purchased educational spaces in provincial schools. These agreements have provided funding mainly for new schools but also for additions or renovations to existing facilities, based on the enrolment ratio of Indian students to the total school population. While the Department has purchased student spaces through contributions to construction costs, ownership of the properties remains vested in the province or school board.

Of the 96,594 students that the Department supported in 1991–1992, 51,845 were enrolled in on–reserve schools and 44,749 in provincial schools. There are currently 365 schools on reserves, comprising 312 band schools and 53 federal schools[19].

Currently, the Department has authority to provide educational facilities and services to status Indians and other children residing on reserves and to finance construction of facilities off reserves that benefit on–reserve status students. The Department operates on the principle of **Indian control of Indian education**, and promotes the transfer of school operations and the provision of capital contributions for educational facilities to First Nation authorities. The Program assists and supports Indian bands and individuals to establish and maintain educational facilities consistent with approved policies and standards.

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[19] Source: Departmental Elementary–Secondary Education Data Base.

The Program operates under the Policy for the Provision of Education Facilities. Subject to availability of funds, this Policy applies to band and federal schools, to provincial schools under joint school tuition agreements, and to schools under self-government legislation unless otherwise specified in legislation[20]. The design of new on-reserve schools must also meet Departmental School Space Accommodation Standards, as specified in the Policy. When establishing criteria, the Department and First Nations consider health and safety requirements, overcrowding, curriculum requirements (for existing grades), and student transfers from provincial schools.

The Department is responsible for developing, in consultation with First Nations, appropriate policies, standards, and criteria relating to education capital. Specifically, the Department is responsible for maintaining a clear base of accountability for investment decisions, maintaining a reliable and comprehensive inventory of existing on-reserve education facilities, and ensuring that regions follow the 1988 Policy when identifying school capital projects in their annual education capital plans. The Department is also responsible for ensuring communities with educational facilities have a maintenance management plan that permits existing facilities to operate and be maintained at an acceptable standard and acquiring resources from Treasury Board for the Program through the Department's comprehensive Long Term Capital Plan.

An underlying responsibility exists where construction and/or funding is involved. Under the Canadian Environment Assessment Act, all proposals deemed to be projects must have environmental assessments conducted.

The Department has developed many data systems to support its policy development, capital allocation, and monitoring of education capital projects.

It is the responsibility of First Nations and Indian organizations to provide a capital plan for recapitalization, major maintenance, and new assets, based on their needs. Each plan should comply with recognized standards and Departmental criteria and priorities.

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[20] It does not apply to schools in the Yukon and Northwest Territories, whose governments set their own standards.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Education Capital Funding	$77.7	$79.5	$65.1	$63.1	$67.3

Source: Expenditure, Accounting System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

EDUCATION CAPITAL FACILITIES

POLICY AND PROGRAM EVOLUTION

From the mid-19th century to the mid-20th century, federal government involvement in Indian education was minimal. Churches ran segregated residential schools. Federal involvement in Indian education began with the signing of treaties in the late 19th century with various tribes across Canada. These treaties contained clauses related to education.

Very few bands could afford day schools on reserve and provinces were minimally involved in Indian education. Departmental records show that as early as 1874, the federal government provided funds to British Columbia for the building and furnishing of a schoolhouse for Indians. In 1892, the government passed an order in council governing the operation of residential schools. From 1896 to 1969, residential schools run by churches received a grant per pupil from the federal government. The government provided specific funds to maintain, repair, and improve church-owned residential schools until 1957, when these facilities were transferred to federal authorities.

A Special Joint Committee of the Senate and the House of Commons, active between 1946 and 1948, proposed major revisions to the *Indian Act* that encouraged the schooling of Indian children with non-Indian children. Following an amendment of the *Indian Act* in 1951, the Department had authority to provide educational services and facilities to Indian students through provinces, Councils of the Northwest Territories and Yukon Territory, public or separate school boards, or religious and charitable organizations.

The Department entered into individual **joint school agreements** with provinces and selected school boards, whereby Indian students received their education in provincial schools. These capital agreements recognized that it was sometimes more advantageous for Indian children to attend nearby provincial schools. Among all Indian students, the proportion enrolled in joint schools increased from 6 percent in 1948 to 22 percent in 1958 and 55 percent in 1968[21]. Provinces were responsible for administration of the school and for educational content. The federal government paid tuition fees and a percentage of school construction costs, based on projected enrolments of Indian students.

While the Department recognized the need for an integrated school system, it also responded to the need for basic schooling on reserve. In 1950, it established an Engineering and Construction Division to design and construct improved educational facilities for Indians. Church organizations retained control of the administration of

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[21] Source: Indian Affairs Branch, *A Review of Activities (1948-1968).*

residential schools and day schools on reserves.

Three federal-provincial conferences held between 1963 and 1965 and the Hawthorn report further opened the way for federal and provincial cooperation. Beginning in 1963, the Department signed Master Tuition Agreements with certain provinces to promote construction of joint schools.

A five-year expansion program began in 1963, to build schools on-reserve and to purchase accommodation in provincial schools. Accommodation standards for school space became formal. On-reserve schools that provided both primary and secondary education became mainly elementary day schools. Kindergarten programs were added to reduce dropping out and to overcome age-grade difficulties. Secondary education became the responsibility of off-reserve schools.

In 1968, following a decision of the Department of Justice, the Department recognized employees of residential schools as employees of the Crown and integrated school management and the classroom education program into the federal system. The residential school system came to an end.

A White Paper, in 1969, recommended full integration of Indian people into the mainstream of Canadian society. In reaction, a paper by the National Indian Brotherhood entitled *Indian Control of Indian Education 1992* reclaimed the right of Indian parents to direct and local control over the education of their children. This precipitated a major change in the orientation of the Indian Education Program.

In 1972, Indian Band Councils initiated their own school programs. In 1974, the Indian Local Government Program consolidated existing authorities for devolution to Band Councils and School Committees, allowing them to manage their own education programs. Some bands started construction of their own school facilities, beginning in 1974.

Since 1973, all **joint school agreements** have required formal concurrence of the First Nations concerned. These agreements cover a period of twenty-five years, and preclude the possibility of building a reserve school during that time. Therefore, First Nations have been reluctant to endorse them. Currently Indians are using only 25,500 (62 percent) of the joint school spaces purchased.

Establishment in 1980 of the Capital Directorate within the department initiated a review of the construction and approval process and brought about the establishment of a management regime. The Directorate assumed responsibility for education facilities, commenced long-term planning of school construction, and expanded financing of school facilities. It also consolidated a policy for school space accommodation and developed criteria for assigning priorities to school projects. First Nations assumed greater control over education through more flexible financial arrangements. Such arrangements

included consolidated contribution agreements, block funding over several fiscal years, and self-government agreements.

In July 1988, the Department announced the Policy for the Provision of Education Facilities which, subject to availability of funds, applies to band and federal schools, to provincial schools under joint school tuition agreements, and to schools under self-government legislation unless otherwise specified in legislation[22]. The design of new on-reserve schools must also meet the Departmental School Space Accommodation Standards, established July 1988.

In 1990, a process of allocating funds on the basis of need replaced the earlier *per capita* formula. The process assessed three categories of needs (major maintenance and repair of assets, replacement and recapitalization of assets, and new construction, including backlog and growth), and sought a more equitable approach to addressing regional needs of First Nations.

A Departmental re-organization in 1992 recognized that First Nations deliver most capital funds. The Department has become largely a funding agency with respect to education capital facilities, no longer delivering services.

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[22] It does not apply to schools in the Yukon and Northwest Territories, whose governments set their own standards.

OPERATIONS AND MAINTENANCE

OBJECTIVE

To provide financial assistance to operate and maintain basic community facilities on Indian reserves or Crown lands used for the benefit of status Indians in accordance with the needs of Indian communities, and to devolve to First Nations responsibility for community physical development, according to their wishes and capacity.

DESCRIPTION

The Program permits First Nations to operate and maintain schools, community water and sewage systems, roads, bridges, recreational facilities, garbage collection, and fire protection for the benefit of their communities. Operation and maintenance of community assets on reserves include routine and preventative work to ensure that all community facilities will not need replacing before their designed life span has expired.

In consultation with First Nations and Indian Organizations, the Program provides subsidies to First Nations for the operation and maintenance of capital facilities at a level sufficient to meet the needs of Indian and Inuit communities with respect to health and safety, education, and community infrastructure. The Program increasingly emphasizes planning for the operations and maintenance of physical facilities at the First Nation level.

The Program is responsible for developing, through consultation with First Nations, appropriate policies, standards, and criteria relating to the operation and maintenance of on-reserve community capital facilities. The Program's responsibilities include acquiring resources to finance the Program, allocating the financial resources fairly and equitably to ensure maintenance of community facilities, and ensuring communities have a maintenance management plan in place in order to operate and maintain community facilities. The Department has developed many data systems to support its policy development, capital allocation, and monitoring with respect to operations and maintenance.

The Program calculates costs of operations and maintenance for each community facility on its capital assets inventory. It then sums these to arrive at its total annual financial requirement. This required amount appears in the Department's document, *Forecast for Operations and Maintenance Gross and Net Funding Requirements*. The Program transfers allocated operations and maintenance funds to First Nations through various funding mechanisms, such as contributions, Comprehensive Funding Arrangements, and multi-year block funding.

In addition to operating and maintaining community facilities on reserves, many Indian communities purchase services through Municipal Type Agreements (MTA). They enter into such agreements with nearby municipalities or contractors, for the provision of services such as road maintenance, garbage collection, water and sewage. MTAs offer an alternative that eliminates construction of expensive smaller facilities but ensures comparable levels of service. The Program encourages such agreements, where feasible, and shares with First Nations in paying their costs.

First Nations and Indian organizations have a responsibility to operate and maintain all community facilities at a mutually agreed standard. They must provide the Department with a report, certified by a professional, indicating compliance of the operation and maintenance with the terms of their funding arrangements. The Program requires First Nations to use community maintenance plans to guide maintenance staff in performing required activities for routine and preventative maintenance.

The Program provides First Nations with annual subsidies for the operation and maintenance of various community facilities located on reserves or on Crown lands used for the benefit of status Indians. Eligible facilities include education facilities (schools and teacher accommodation) and community facilities that benefit all community residents (roads, bridges, fire protection, water and sewage systems, garbage collection, and community buildings).

The Program has established funding levels for operations and maintenance required to satisfy health and safety standards. An operations and maintenance handbook describes these levels. Formulas for funding depend on specific types of community facilities, location, and relative unit costs of operation and maintenance. The Handbook also cites the various categories of annual subsidies for operation and maintenance of First Nations community facilities.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Operations and Maintenance	$147.7	$152.7	$142.2	$132.4	$121.8

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

OPERATIONS AND MAINTENANCE

POLICY AND PROGRAM EVOLUTION

The Department has developed a capital Program over the past 25 years. It defines the Department's responsibilities concerning basic health and safety needs of Indian communities through operation and maintenance of physical assets on reserves.

Before 1965, individual bands were fully responsible for the operation and maintenance of facilities (such as roads, bridges, and drainage works) on reserves. The Department expected them to use their own funds when adequate. The Department supported measures for fire protection only for federally owned properties.

In 1965, the Department provided $5,000 to eligible Indian Band Councils to employ band staff for the provision of various services and for community maintenance.

As of 1968, the Department covered the full cost of basic programs (health and safety, primary road maintenance, fire protection, sanitation, and maintenance of school facilities). It contributed part of the cost of other programs (garbage collection, water systems, secondary roads, and sidewalks). It deducted from such contributions any offsetting revenues, such as provincial grants, user fees, and 50 percent of the Band's revenue over $5,000. The federal government would pay a percentage of any remaining deficit based on a fixed schedule. The Department funded municipal-type agreements for bands near or within a city.

In 1974, the Indian Local Government Program consolidated and enhanced funding for the administration of many programs, including operations and maintenance related to capital assets. However, increases in resourcing of operations and maintenance were based only on the inflation of costs. Growth in the numbers of facilities was negligible. While the Department insisted on user fees, some bands were unwilling to collect them, resulting in insufficient funding. Furthermore, inadequate inventory and management systems, a general poor attitude towards maintenance, lack of Band expertise, and lower standards (below federal-provincial standards) resulted in rapid deterioration of community facilities.

In 1983, federal policy acknowledged the need to increase levels of resources for the operation and maintenance of capital facilities and to provide proper service. In the context of increasing numbers of houses on reserves and growing community infrastructure, higher levels of resources were needed to satisfy health and safety standards. Consequently, management systems for maintenance were established. A capital inventory of assets identified all facilities on reserves, by type and category. A Departmental Cost Manual indicated the unit cost for operation and maintenance, using a municipal cost comparison averaged by region, and a specific standard of maintenance for various types of assets was developed. As well, an on-site inspection policy was established, the user fee policy was reiterated, and each Band developed a plan for maintenance management.

Consolidation and expansion of financial arrangements enabled First Nations to become more autonomous and flexible in the management of their operations and maintenance programs. In 1984 and 1986, the Department negotiated **Self-Government Transfer Arrangements** with the Cree-Naskapi and the Sechelt First Nations respectively. These covered funding for five years, based on a formula adjusted annually for price, volume, capacity to generate revenue, and incentives to support economic development. In 1986, the Department established **Alternative Funding Arrangements**, multi-year arrangements that enabled eligible First Nations to assume more responsibility and authority and to implement their programs according to community needs and priorities with minimal reporting requirements. In 1989, **Comprehensive Funding Arrangements** enabled First Nations to administer all operations and maintenance programs, minimized reporting burden, and combined various one-year arrangements.

Today, First Nations continue to implement community maintenance management plans. They either purchase technical training from consultants or receive it from the Department.

ON-RESERVE HOUSING

OBJECTIVE

To provide support to Indian bands and individuals residing in Indian communities located on reserves or on Crown land so that they can acquire housing that meets or exceeds minimum standards.

DESCRIPTION

Although the federal government has no legal obligation to provide housing assistance on reserves, it has an historical commitment that it continues to honour.

The Program provides capital subsidies of between $19,000 and $45,000 (basic transportation and economic components) for constructing or acquiring new houses and an average of $6,000 for renovation or rehabilitation of existing units. Funds are also available for management, planning, technical assistance, inspection, and training activities, as well as demonstration projects to test appropriate technology.

The Department established a funding formula for on-reserve housing in 1982, based on targets for the construction of 2,400 new units, and the renovation of 3,000 existing units. The budget identified then by the government has remained constant since, except for additional funds provided in 1985 for new recipients under Bill C-31. Bill C-31 amended the *Indian Act*, thereby either reinstating or conferring registered status on many Indians. The Program administers Bill C-31 funds in the same way as regular funds, but targets them specifically for recipients who have registered status as a result of Bill C-31.

Band councils, or their designated housing authorities, administer the Program. They develop local housing policies, apply for allocations of available funding, establish priorities, and plan and implement housing projects. All new Departmentally funded construction must meet National Building Code standards. Also, Departmental policy dictates that capital subsidies not cover the full cost of housing. Therefore, bands and individuals must identify and obtain other necessary funding. The individual who will occupy the house, or the Band or community may contribute such funding. The contribution may consist of cash or of labour or materials for the construction of the house. The Work Opportunities Program provides another source of funds. In this case, people engaged in house construction who would otherwise receive social assistance benefits may use their social assistance entitlements to supplement the Department's capital subsidies.

In some instances, Human Resources Development contributes funding to a housing project, if it involves specific on-the-job training. These funds, however, provide only for skills training within a specific period, not for continuing costs of labour.

Other Funding Arrangements

Bands operating under Alternative Funding Arrangements, can use their allocation of housing capital funds, as they wish, to produce an agreed number of houses over an agreed period. Other bands must produce a house for every subsidy they receive and are accountable through specific contribution agreements.

As has been the case with off-reserve housing, loans are becoming an important feature of housing on reserves. The Canada Mortgage and Housing Corporation (CMHC), under the *National Housing Act* (NHA)[23], insures most housing loans in Canada under Section 10 (formerly Section 6) of the Act. CMHC also offers assistance to families who cannot afford the full costs of basic housing requirements.

Two CMHC loan assistance programs are available to reserve residents. One is the Rental Housing Assistance Program under Section 95 (formerly Section 56.1) of the *NHA*. It provides subsidies to reduce rental requirements to a level more appropriate to medium- and low-income families. The subsidy reflects the difference between the amount required to amortize the full capital cost of constructing the housing project at prevailing market interest rates over 35 years and the amount required to amortize the capital cost at an interest rate of two percent over 36 years. As project sponsors, bands must enter into an operating agreement with CMHC. The agreement stipulates terms and conditions for provision of financial assistance.

The other CMHC Program is the Residential Rehabilitation Assistance Program, under Section 51 (formerly Section 34.1) of the *NHA*. This program provides loans for the renovation of existing houses. Part of the loan is forgivable, thereby reducing or eliminating the costs of repaying the loan. This program seeks to improve or upgrade existing houses, at least five years old, with respect to certain aspects of the housing which may be sub-standard. These aspects include structural soundness, electrical, heating, plumbing, fire and safety, and accessibility for a disabled occupant. The maximum loan available is $25,000, of which up to $8,250 may be forgiven.

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[23] *National Housing Act*, R.S., 1985, c. N-11, September, 1989.

CMHC also provides direct loans as a lender of last resort under Section 98 and Project Development Funds (PDF) under Section 76 of the *NHA*. Project Development Funds are used in conjunction with the Rental Housing Assistance Program. Assistance consists of a loan to help finance initial planning of a project and developing it through the CMHC commitment stage. The capital cost of a project, should it proceed, includes loan funds. If the project does not receive approval or does not prove feasible, the PDF loan may be fully forgiven.

Under Section 89 of the *Indian Act*, reserve land is not subject to be mortgaged. To secure housing loans, however, bands and individuals may apply for a Ministerial Guarantee. The guarantee provides security to the lending institution in the event of a default by the borrower. The lending institution must be approved under the *NHA* and the Band must state to the Minister that it will assume responsibility to repay the loan, should the Minister be required to make any payments under the guarantee.

The Social Development Program also affects housing on reserves. It provides shelter allowance payments to eligible households. These payments mainly cover costs such as fuel, utilities (hydro, water, sanitation and telephone), and maintenance and repairs. For housing units constructed under the Rental Housing Assistance Program, the Department will cover rental payments that include the above items plus an allowance for insurance, loan repayments, a replacement reserve (major items only), and continuing administration of the project. This program's policy is not to cover loan repayment costs except where the loans are part of CMHC's Rental Housing Assistance or Residential Rehabilitation Assistance Programs.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Housing (Capital and O&M)	$137.5	$131.6	$151.7	$117.9	$112.6

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

ON-RESERVE HOUSING

POLICY AND PROGRAM EVOLUTION

Indian housing has been the responsibility of three separate federal departments: Mines and Resources (1940–1950), Citizenship and Immigration (1950–1967), and Indian Affairs and Northern Development (1967 to the present). The Department assumed the lead role in coordinating and mobilizing funds and resources from Canada Mortgage and Housing Corporation (CMHC) and other federal departments.

In 1944–1945, the government focused on housing native veterans and the housing shortage on reserves. In the 1950s, housing was funded by welfare appropriations, Veteran's Land Act grants, Band funds, and personal contributions of cash, material, and labour. Between 1945 and 1961, the government constructed some ten thousand housing units for natives on reserves.

In 1962, the government began providing front–end grants, to be supplemented by contributions from individuals and bands, with the aim of providing families with minimum standard housing. The *National Housing Act* was also amended to allow direct lending by CMHC to natives. This enabled both bands and individuals to assume the role of developer, investor, and landlord. It would also permit the use of rental income to finance further housing construction on reserves. However, since reserve land, under Section 89 of the *Indian Act*, is not subject to be mortgaged, normal sanctions against non–payment of loans off reserves could not be imposed. In 1966, as an alternative form of security, the Minister responsible for Indian affairs received authority to provide guarantees on behalf of the Crown for repayment of CMHC loans.

The Subsidy Housing Program consolidated all Departmental housing activities and continued to provide front–end grants to subsidize new construction and renovation. This program presumed that individuals and bands would be fully involved in housing and contribute towards planning, financing, and construction costs in the form of cash down payments, labour, and building materials. In 1968, the Subsidy Housing Program began to subsidize transportation costs of construction material. This practice particularly benefitted the many reserves located very far from urban centres.

By 1975, subsidies had become insufficient to offset the increasing costs of constructing adequate housing. Households on most reserves, due to poor economic circumstances, were unable to supplement the Department grants with personal investment or loans needed to construct or complete safe, decent housing. Take-up of direct CMHC loans was low since few borrowers could handle payment schedules at the market interest rates demanded by such loans. For these reasons, neither the Department's nor CMHC's programs could reduce the backlog of requirements for housing units.

Consequently, in December 1975, the Minister of the Department and the President of the National Indian Brotherhood established a joint working committee to formulate a new housing policy for status Indians. The government endorsed the proposed policy in August 1977, as an integral part of an overall socio-economic development strategy to promote self-help and native participation. The new policy gave natives direct input at every level of housing policy development and program management as well as flexibility to meet a wide range of different housing needs and local conditions. Greater interdepartmental coordination permitted more effective deployment of resources to meet housing requirements on reserves.

CMHC amended the *NHA* to make the Non-Profit Social Housing Program, Residential Rehabilitation Assistance Program, and Loan Insurance accessible to bands and individuals on reserves. Amendments made the Non-Profit Program available to Indian bands without requiring them to incorporate as non-profit corporations. Similarly, resources from the Residential Rehabilitation Assistance Program became available on reserves, regardless of special designation under that program or provincial concurrence.

From 1980 to 1982, the federal government changed its program. Most significantly, it required that health and safety standards of all construction and all new housing must meet the *National Building Code*. The latest significant change to the Program occurred in 1985 with Bill C-31, which allowed certain people to register under the *Indian Act* who were not previously eligible to do so. The program made new funding available to respond to the increased demand for housing on reserves from people who registered as a result of Bill C-31. Such funding followed regular program criteria. CMHC also provided funds for registrants under Bill C-31.

In recent years First Nations have worked with the federal government to develop an effective housing strategy to address certain concerns such as ineffective use of federal funds, overlapping federal roles and responsibilities, lack of First Nation Program control, inadequate standards, and lack of maintenance which appear to impede security of tenure and feeling of home ownership.

The housing issue must now address, amongst all other issues, environmental concerns. Where projects and/or funding is involved, the Canadian Environment Assessment Act will come into play. Environmental assessments will become part of the standard points of concern.

The reports of the Dakota–Ojibway Tribal Council and the Federation of Saskatchewan Indian Nations, along with the reports and conferences of the Assembly of First Nations (AFN), provided the basis for the 1990 Departmental discussion paper entitled *Laying the Foundations of a New On–Reserve Housing Program*. The release of this discussion paper began a consultation process to develop a new housing policy. The government has participated in meetings and information sessions with almost 250 First Nations.

BAND SUPPORT FUNDING

OBJECTIVE

To assist Indian Band Councils to meet the costs of local government.

DESCRIPTION

Band Support Funding consists of a grant available to help recognized bands manage their communities.

To determine annual funding levels, the Department applies a national formula to a database containing the characteristics of each band such as: the number of status band members, the number of status Indians who reside in the community, the values, volume, and types of community services being delivered, as well as the location of the band.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Band Support Funding	$139.6	$125.70	$113.9	$96.7	$91.9

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

BAND SUPPORT FUNDING

POLICY AND PROGRAM EVOLUTION

In 1962, a Joint Committee of Parliament recommended extending the authority and responsibility of Indian Band Councils over local matters. The Committee noted that some form of administrative grant to bands would encourage such expansion.

In 1965, the Grants to Bands Program was approved, which enabled the Department to provide funds to bands for the purpose of delivering programs normally provided directly by Departmental staff.

By 1968, administrative grants of $10.00 per capita (maximum $5,000) or 10 percent of Program value (maximum $25,000) were available to support the delivery of services.

In 1970, the Department received authority to pay 100 percent of approved overhead costs incurred by bands in delivering devolved services.

In 1972, Supplementary Contributions to Chiefs and Councillors were authorized to assist with honoraria and travel expenses.

In 1974, the Department linked funding to the number of members in the band. Program guidelines specified the categories on which Councils were to spend their money. This funding assisted bands to defray costs of council operations that were distinct and separate from program overhead.

In 1975, the Department produced guidelines to restrict expenditures for overhead costs under the 1970 authority. Maximum limits depended on the total value of programs administered. The limits ranged from 12 percent of program value down to 7 percent of program value in the case of bands administering over $500,000.

In 1981, reacting to a Departmental request to increase core funding in line with inflation, the government granted a 33 percent increase and directed the Department to prepare a comprehensive proposal to deal with the costs of Indian band government and the administration of programs. The Department proposed a program of Band Support Funding, which received approval in 1983. The portion dealing with council operations was approved as a grant[24]. The portion dealing with overhead costs become a

[24] The recipient of a grant from the government need not account for the grant's use.

contribution[25]. Resources for support of band government and program administration doubled.

In 1983, the Parliamentary Special Committee on Indian Self-Government released the Penner Report, *Indian Self-Government in Canada*. The Committee recommended a modified per capita formula that would provide for adjustments for band-specific needs, with possible additional funding for exceptional needs.

In 1986, Band Support Funding was modified to a per capita formula-based grant with the intent of establishing the foundation for a system of transfer payments. Subsequent incremental changes to the formula included the addition of an extra isolation index for very remote bands in the N.W.T., adjustments for very small bands, and provisions for bands managing very large programs. This formula-based grant system continues today.

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[25] A recipient of a government contribution must account to the government for how it uses the contribution.

BAND EMPLOYEE BENEFITS

OBJECTIVE

To assist Indian bands and other Indian public service agencies to establish benefit plans for their employees.

DESCRIPTION

The Department may provide funding to an Indian Band, tribal council or other Indian-controlled institution to cover its share, as an employer, of premiums for a private pension plan, the Canada or Quebec Pension Plan, or other optional employee benefits.

An employer is eligible to receive funding from the Department[26] to support salaries of individuals who perform work in the delivery of Departmental programs. Department funding for employee benefits may not exceed 10.1 percent of the salaries paid by the Band in 1993. This limit is increased by 0.1 percent annually to compensate for legislated changes in CPP contributions.

The Department provides funds in response to annual applications by employers. The Office of the Superintendent of Financial Institutions (OSFI) monitors the pension plans for compliance with the federal Acts and regulations governing pension plans.

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[26] See also Band Support Funding Program

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Band Employee Benefits	$19.5	$10.90	$11.2	$4.2	$4.5

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

BAND EMPLOYEE BENEFITS

POLICY AND PROGRAM EVOLUTION

In 1983, the concept was approved to provide of providing funding to support employee pension benefits in order to encourage Indian bands, Tribal Councils, and other service delivery institutions to implement pension plans for the benefit of their employees.

The Federal Government passed the *Pension Benefits Standards Act* (PBSA) in 1987. In the same year, amendments to the Canada Pension Plan (CPP) allowed status Indians employed on reserves to contribute to and benefit from CPP. Prior to this, because income earned on reserve by status Indians is not taxable, Indians on reserve could not participate in the Canada Pension Plan. Employers participate at their discretion.

The Department of Indian Affairs and Northern Development and Health Canada amended the existing Band Employee Benefits Program in 1991. The amended program conforms with PBSA to provide for CPP contributions for participating Indian employees, and allows an additional 2 percent for other benefits, such as disability insurance, normally available to employees in the public sector.

TRIBAL COUNCIL FUNDING AND BAND ADVISORY SERVICES

OBJECTIVE

To provide funding to Tribal Councils to assist them in providing advisory services to their member bands and delivering other programs when given a mandate to do so by their member bands.

DESCRIPTION

At their discretion, bands may group themselves together to form a Tribal Council[27] (a band-controlled institution) for the purpose of representing the collective interest of all the member bands and to deliver services to the band councils and staff. For convenience or greater efficiency, bands sometimes give their Tribal Councils a mandate to deliver services such as social assistance or education.

The Department provides funds directly to Tribal Councils to provide advisory services to member bands, deliver services to individual band members, and to defray the costs of administrative overhead.

To determine the amount of funding available for each Tribal Council, the Department uses a national formula that considers the average on-reserve population of member bands, the types and value of services delivered by the Tribal Council at band request, and the location of the Tribal Council headquarters.

Where bands are not members of Tribal Councils, the Department may directly subsidize an individual band to purchase professional advisory services. The amount available approximates that which would otherwise be available to a Tribal Council for that band, based on on-reserve population and band location.

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[27] To form a Tribal Council, bands must define its mandate. If they wish to receive funding from the Department, Tribal Councils must incorporate (either federally or provincially), as the federal government can provide money only to legal entities. Tribal Councils are thus simply agents of Bands, established to deliver services, and do not represent another level of Indian government.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Tribal Council Funding (TCF) & Band Advisory Services (BAS)	$41.5	$35.2	$34.9	$23.6	$17.0

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

TRIBAL COUNCIL FUNDING AND BAND ADVISORY SERVICES

POLICY AND PROGRAM EVOLUTION

In 1974, the federal government affirmed its intention to treat Indian bands as a level of local government with "the right to exercise the fullest degree of responsibility for local government that is consistent both with law and the customs and traditions of the Band." Any Tribal Councils formed[28] were to be agents of the bands, not governments in their own right.

In 1975, a Departmental Circular[29] established principles by which the Department could transfer program funds to Tribal Councils at the request of bands. The main principles were that Band Councils retain primacy and that bands' participation and pooling of resources in Tribal Councils be voluntary.

Between 1976 and 1978, bands established Tribal Councils as service delivery organizations in Manitoba and in the Lesser Slave Lake and Athabasca districts of Alberta. The Department treated these councils as replacements for district offices. In some cases, the Department accorded them supervisory roles over bands. Program budgets provided their resources. In some cases, an administrative capacity resulted from *ad hoc* transfers of salary dollars from the Department.

In 1984, the government affirmed the Department's authority to provide program funding directly to Tribal Councils and to "cover the cost of delivering programs (including the necessary staff) in a manner similar to that applied when the programs are delivered by a Band." The government also authorized the Department to provide an annual formula-based grant to pay for advisory services delivered by Tribal Councils in support of "administration, management, and general development." The government reaffirmed that Tribal Councils must receive mandates from and be accountable to their member bands.

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[28] Indian Bands have formed Tribal Councils since before Europeans arrived in North America. The government first recognized them in a formal capacity as agents for delivering services to Bands when this Program began in 1984.

[29] Policy Directives have superseded this document.

In 1986, the first formal devolution plan was approved. Implementation of the Tribal Council funding formula approved by the government in 1984 was a significant element of that plan, with the expectation that downsizing of the Department would offset its cost. In 1987, the Department began to phase in full funding for both advisory services and the overhead elements of the formula, achieving full funding in 1991-1992.

In 1989, the Department modified the funding formula to recognize the special needs of communities, either on or off a reserve, that are remote from the main Band community. The formula provided funding depending on the distance of such communities from the central Band community and on the resident population. The Department also introduced direct funding to bands for advisory services.

In 1991, the Department produced a report entitled "Evaluation of the Devolution of Advisory Services" which evaluated the transfer of advisory services to bands and Tribal Councils. It concluded that, for those bands that choose to cooperate with each other in a tribal format, Tribal Councils are a good means for delivering services.

INDIAN/INUIT MANAGEMENT DEVELOPMENT

OBJECTIVES

To increase awareness and knowledge among First Nations of generally accepted practices of management.

To improve the ability of communities to articulate their management capabilities and evaluate management development requirements.

To make available management training and development programs suited to the requirements of First Nations.

DESCRIPTION

The Program aims funds at bands experiencing serious financial management difficulties and at assisting bands in alleviating conditions that may hinder their successful participation in Alternative Funding Arrangements or self-government.

The Program provides support for management training and development of First Nations in response to concerns and needs identified in the community. It helps First Nations to improve the management and administration of their own affairs by providing resources and assistance to communities and individuals, post-secondary educational institutions, and management training institutes.

The resources and assistance apply to training, management support and advice, orientation, and information dissemination. The Program has six components:

Management Development and Training provides resources and support to assist in the identification of specific band management requirements, the development of plans to meet these requirements, and the delivery of activities contained within these plans.

Orientation and Community Awareness provides information and training resources to Indian bands for various responsibilities, tasks, and services they may have to provide.

Advisory Support provides specialized skills that bands may require from time to time for advice, in particular from the Canadian Executive Service Organization (CESO) roster of consultants and from university student consultants under the Indian Management Assistance Program (IMAP).

Management Education provides support and financial assistance to universities and colleges for the development of management programs and courses for Indian people working for band councils. The program also provides scholarships for encouraging band managers to pursue professional management development programs such as offered through the Banff School for Advanced Management.

Institutional Support provides assistance to educational training institutions, to plan and offer courses for the development of band management skills.

Program Management and Coordination funds the program's operation and maintenance nationally and regionally, including provision of overall direction, preparation of guidelines, operational plans, and general functions related to management of the Program.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987-1988 until 1991-1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Indian/Inuit Management Development	$5.0	$7.8	$6.3	$6.0	$5.3

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

INDIAN/INUIT MANAGEMENT DEVELOPMENT

POLICY AND PROGRAM EVOLUTION

In 1970, the Department established a Band Training and Advisory Services Division to provide financial support to individuals for vocational skills and band management training. The division emphasized the personal development of the participants through community-based training in a broad range of knowledge and skills encompassing management, employment, and community development. The Department developed a formal policy in 1973 and established a Band Training Program for the development of effective Indian local government. Departmental staff designed and delivered courses directly to band members. The Program made resources available to regions based on a review and approval of individual proposals, specifically designed to increase the management skills and knowledge of Indian peoples.

An evaluation of the Band Training Program in 1983 sought to ascertain the extent of the Program's contribution to the development of the bands' management capabilities. The evaluation concluded that the Department should not continue with the Band Training Program. The rapid pace of development in Indian local government and the Indian administration of local Programs had exceeded the Department's capacity to plan for, acquire, and provide needed management training and resources to ensure that bands adequately managed programs they operated and delivered. Instead, the Program should focus on developing band management. Training would be only one of several means available to bands for the improvement of management skills.

The Indian/Inuit Management Program replaced the Band Training Program in 1983 and the Department shifted its role in training and development to one of resourcing rather than delivery. The new Program also called for a greater utilization of accredited training institutions as a source of management training.

From 1983 to 1985, the Program received substantial funding to design Indian management courses and to assist in the establishment of Indian Management Training Institutes. A major difference in the new program was the emphasis on bands developing management training plans to focus on their long-term needs, rather than *ad hoc* training. A description of the Program appeared in A *Community Resource Booklet*. At the same time, the *Guidelines for Preparation of a Management Development Plan* assisted bands in submitting comprehensive plans.

In 1986, the newly formed Transfer Payments Management Directorate merged the management of contributions and their impacts. This provided the Department with a more integrated approach to the effective implementation of sound management practices at the band level.

In 1991, the Program completed a major study of the progress and accomplishments of First Nations public administrations. A Steering Committee comprising native and non-native academics, Indian community leaders, consultants and federal and provincial officials directed the study.

This study provided insight into ways in which federal public servants might assist First Nations in developing services for their communities within the context of their specific requirements. It examined the existing Indian service quantitatively and qualitatively identified further steps required to respond to the changing needs of First Nations. Specifically, it considered training requirements and career opportunities for the organizational development of the public administration, staff development, and the preparation of individuals in the community for careers in the Indian public service.

The study also examined the nature of the Indian and Inuit public sector and the needs of its members for training, the use of needs assessments and processes related to Band Training, in regions and in First Nations communities, and access to training for First Nations.

The document *Preparing for Careers in Indian and Inuit Communities – A Working Paper for Consultation with First Nations* presented the findings of the study. It does not offer ready solutions, but encourages discussion of ways to provide a forum for further research and development, for connecting the training industry with First Nations communities, developing strong partnerships with academics, institutions of higher learning and sponsors of training, and for contributing to the development of innovative concepts in the field of public administration. The document also encourages the creation of information dissemination networks and cooperative approaches to the development and empowerment of First Nations communities to enhance their control over the professional development of their staff and their organizations and the preparation of their community members for realizing careers within their own public sector.

Current Program strategy stresses management planning and system development with a focus on bands with serious financial or management problems and bands that wish to enter Alternative Funding Arrangements and are close to meeting the requirements. The strategy also focuses on using products developed by bands, such as management and training plans, for resourcing and for evaluating the appropriateness, adequacy, and relevance of Departmental strategies related to management and training, and using band plans in an advocacy role, both within and outside the Department, in areas that affect "management practices" at the band level.

BACKGROUND PAPER FOR THE ROYAL COMMISSION ON ABORIGINAL PEOPLES PROGRAM DESCRIPTIONS AND EVOLUTION

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

LANDS AND TRUST SERVICES

FINAL VERSION

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INDIAN ESTATES

OBJECTIVE

To administer the estates of deceased Indians who were ordinarily resident on reserves, where required to do so by the *Indian Act*[1] and where the families of the deceased Indians do not assume or assign responsibility for administration of the estates.

DESCRIPTION

The estate of a person who has died consists of all his or her belongings, including personal belongings, furniture, houses, cars, bank accounts, and so on. Typically, an estate administrator is responsible for finding out what the deceased owned, paying his or her debts, preparing tax returns, and transferring the property to the heirs (persons with a right to inherit the property). The estate administrator's job also includes carrying out any wishes the deceased may have expressed in a will and deciding how to divide property fairly among several heirs.

The Program acts as estate administrator only when the family members neither settle the estate themselves nor choose someone from outside the Department to do so. If a family member administers the estate, the Program has no further responsibility as estate administrator. In such cases, the Program will take part in the administration of the estate only when the Minister must make judicial decisions ordinarily made by a provincial court.

In some cases, the Program performs neither function. The family of the deceased may, if they wish, transfer responsibility for the estate from the Minister to the court in their province that deals with estate matters. This court will then appoint an estate administrator to fulfil the first function and carry out the second function of making judicial decisions in place of the Minister.

If the Department has responsibility for the estate of the deceased Indian, administrative and judicial functions are similar to those described above. In the role of estate administrator, the Minister appoints Program employees to pay the debts of the deceased and to identify the heirs according to the *Indian Act*. If the deceased left a will, the estate administrator carries out the wishes as expressed in the will, and transfers the property to any heirs the will has specified.

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[1] Sections 42, and 44 to 50.

The Minister also makes the kinds of decisions that a court might ordinarily have to make during the administration of an estate ("judicial decisions"). The *Indian Act* allows the Minister to "void" a will if carrying it out would cause hardship for persons for whom the deceased had a duty to provide. If the spouse or the children request that the will be voided in this situation, the Minister must consider all the circumstances, as a court would, and make a fair decision either to carry out the will or to void it.

The Program also actively promotes estate planning in Indian communities. It conducts workshops to explain the advantages of planning for death by making a will and taking other steps before death to make the settlement of an estate easier on family and friends. It also provides pamphlets that explain the benefits of making a will and the function of an estate administrator.

The Program is responsible for approximately 2000 estates each year with a total value of approximately $25,000,000 in property[2].

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[2] Source: Estates National Quarterly Report for the period ending 31 December 1992, from Estates Report System database.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Indian Estates	$2.00	$2.17	$2.69	$2.27	$1.62

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

INDIAN ESTATES

POLICY AND PROGRAM EVOLUTION

The Minister of Indian Affairs (or his or her historical manifestations) has had a responsibility for the estates of deceased Indians since the turn of the century.

The 1955 report entitled *Report on the Administration of Indian Estates* attributed a large backlog of estate files to inadequate resources, policy direction, and training for personnel. Little information exists on the response to this report. However, Indian estate regulations passed in 1955 provided more detailed instructions on the administration of estates. The Department also established an office of the Administrator of Estates, with authority over every Indian estate administered across Canada.

The Auditor General's report of 1986 noted a large number of backlogged estate files caused by a lack of resources, inadequate policy direction, inadequately trained personnel, poor file management practices, and a lack of estate planning in the native community (only 10 percent of Indians on reserve made wills). The Program subsequently took specific measures to address the backlog and the reasons for it. It created a task force to eliminate the existing backlog, which the task force accomplished in 1992.

INDIAN BAND ELECTIONS

OBJECTIVE

To administer the electoral provisions of the *Indian Act* and the Indian Band Election Regulations.

DESCRIPTION

The Program administers several activities for Indian bands that fall under the *Indian Act* for election purposes. Currently, 317 bands conduct their elections pursuant to the *Indian Act*, while 277 elect or select their leadership under customary or local rules over which the Department has no say. Bands operating under the *Act* came under its jurisdiction through applications to the Minister and either an Order of the Governor in Council (1951 to 1956) or a Ministerial Order (1956 to present). Bands that carry out their election or selection process under their own custom usually have a mechanism to resolve internal disputes. Those that do not may use the courts to settle their differences. The Program processes an average of 400 election results (225 under the *Indian Act*) and 25 election appeals annually.

The Program provides advice to field staff, Band councils, their legal advisors, and the public regarding the legislation, formulates policy and develops training material. The Program emphasizes training of Band members as electoral officers in order to enable them to conduct the general and by-elections for their Band and for adjacent communities.

Processing of appeals of elections pursuant to the *Indian Act* is the most significant activity that the Program performs. It involves receiving and reviewing the appeal, gathering relevant information, appointing an investigator in the field, evaluating gathered evidence, and preparing a report. The Program may reject an appeal at the outset if the appeal appears based on frivolous grounds or has missed the statutory deadline. Where the appeal appears to have merit, the Program forwards its report to the Minister with a recommendation that an Order in Council be obtained to overturn part or all of the election. The Minister may dismiss an appeal if he or she feels there is no evidence that the allegations have affected the result of an election.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Indian Band Elections/Band By–Law Program	$2.24	$2.40	$1.44	$1.12	$1.14

Source: Expenditure, Accounting and Retrieval System.

Due to the system of coding used, the Indian Band Elections and Band By–Laws Programs are combined.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

POLICY AND PROGRAM EVOLUTION

Following Confederation, government policy respecting aboriginal people focused on continuing the guardianship policy of the colonial period and assimilating Indian people into the mainstream of society. As a major aspect of assimilation, the introduction of the elective process was considered at that time as a form of progress and civilization that would lead the Indians to abandon their traditional, tribal, political systems, which varied throughout the country. It also attempted to bring uniformity to the variety of Band selection systems across Canada. However, neither the *Indian Act* nor the *Indian Advancement Act* provided for elections for Indians in western Canada. The Department allowed these Indians to hold elections according to their customs and carried out business with the people who won such elections as if they were appointees.

The Department, in dealing with the many problems that arose from the administration of both *Acts*, adopted a pragmatic approach, dealing with each problem on its own. The policy created confusion, but lent flexibility to the election process, allowing its administrators to deal with many groups of people at varying degrees of political, social, and economic development.

Following major modifications to the *Indian Act* in 1951, the number of Indian bands that adopted the elective system of the *Indian Act* increased significantly. Prior to 1951, some 400 bands were under the custom system and 194 came under either the three-year system or under the one-year system of the *Indian Advancement Act*. (This legislation was repealed in 1951). By 1971, about 360 bands had been placed under the elective system of the *Indian Act*, while 210 bands retained their custom method.

In the past decade, bands have begun to revert from the system of the *Indian Act* to a local electoral system. In 1988, a formal policy set criteria for every request for reversion. Since then, some 20 bands have returned to their local system of government, a trend that appears to be gaining momentum.

BAND BY-LAWS

OBJECTIVES

To administer the development and implementation of First Nation council by-laws and regulations enacted pursuant to the *Indian Act* in order to carry out the Department's statutory and legal obligations.

To encourage and assist First Nations in making more effective use of the powers to make by-laws, so that they may exercise greater local self-government within the present framework of the *Indian Act*.

To facilitate effective enforcement and prosecution of by-laws within the framework of the current justice system.

To advise and assist in the development of legislative amendments and new legislation with respect to the legislative authority of First Nation councils.

DESCRIPTION

A by-law is a local or community law passed by a First Nation council to provide for the effective management and control of various activities on the reserve. By-laws typically regulate matters such as traffic, intoxicants, residency, health, nuisances, wildlife conservation, and zoning.[3]

First Nation councils enact by-laws and forward them to the Department in accordance with the requirements of the *Indian Act*. Advisors review each by-law for legal and procedural compliance and, where necessary, obtain commentary from the Department of Justice and other affected departments. Advisors then formulate recommendations to the Minister within the 40 day period for disallowance. Local government laws that have come into force after the expiration of the 40-day period, as well as duly enacted intoxicant by-laws[4], are then recorded into a central registry, classified by First Nation, *Indian Act* authority, and subject-matter. When appropriate,

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3 By-law powers are specified in Section 81 and (85)1 of the *Indian Act*.

4 By-laws adopted under Section 85.1, such as those dealing with intoxicants, require the consent of electors. Therefore, the Minister cannot disallow them. The 40-day period for disallowance does not apply to them.

the Minister signs a Notice of Disallowance, which the Program forwards to the First Nation with recommendations for re-drafting and re-submission. There is no statutory obligation to register by-laws. The Program maintains the registry for administrative purposes and to assist First Nations. Approximately 2,200 such by-laws were in force by 1993. A further 300 by-laws enacted under the authority of the *Cree-Naskapi Act* have also been recorded.

First Nation councils pass Band Council Resolutions requesting specific individuals be appointed as justices of the peace for their reserve. The Program reviews each such resolution, then submits it to the Governor in Council, with a recommendation concerning appointment of the individual as a justice of the peace for purposes of the *Indian Act*. Six such appointments have occurred under section 107 of the Act.

When First Nations submit draft by-laws, advisors review and provide recommendations on them. Program staff also meet with the First Nations, with agencies responsible for enforcement and prosecution, and with the judiciary to resolve specific enforcement problems with by-laws. They provide advice and training to these agencies regarding development and enforcement of by-laws and prosecution under them. The Program provides resource materials and sample by-laws. Advice and recommendations promote compliance with the requirements of the *Indian Act*, its Regulations, the criteria set down by the Standing Joint Committee for the Scrutiny of Regulations, and applicable federal and provincial law.

The advisory service is discretionary, and the Program provides it at the request of First Nations. However, it also reduces the rate of disallowance by providing advice to councils and to their solicitors at the initial stages of development of by-laws, rather than following their enactment.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Band By–Law Program/Indian Band Elections	$2.24	$2.40	$1.44	$1.12	$1.14

Source: Expenditure, Accounting and Retrieval System.

Due to the system of coding used, the Indian Band Elections and Band By–Laws Programs are combined.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

BAND BY-LAWS

POLICY AND PROGRAM EVOLUTION

The first Canadian legislation concerning Indians gave First Nations authority to make laws for their communities. Subsequent legislation has extended the range of subjects on which councils have authority to make laws.

The *Act for the Gradual Enfranchisement and the Better Management of Indian Affairs*, adopted in 1869, provided for election of Chiefs along the lines of a municipal government. The Chief or Chiefs of a tribe had authority to make rules and regulations for: public health, observance of order and decorum at assemblies and meetings, repression of intemperance and profligacy, prevention of trespass by cattle, establishment of pounds and pound keepers, road maintenance, and construction and maintenance of public buildings.

The *Indian Acts* of 1876 and 1879 and the 1880 consolidation provided additional authority to regulate the allocation of land to individual band members on reserves, to impose fines, to decide the religious denomination of the reserve school teacher, and to prevent the spreading of noxious weeds.

An amendment to the *Act* in 1951 further broadened the range of subjects that councils could legislate, but retained the Minister's authority to disallow by-laws. Band councils gained jurisdiction in areas of traffic; zoning; hawkers and peddlers; fishing, hunting, and trapping; and trespass.

Bill C-31 (1985) expanded the powers of First Nations councils to allow them to pass by-laws concerning residency and intoxicants and increased the limits on penalties for infractions of by-laws. Bill C-115 (1988) altered section 83 of the *Act* to give councils greater power to levy property taxes and to control development on reserve land.

Prior to the 1980s the Minister disallowed few by-laws. After 1980, however, as a result of the *Canadian Charter of Rights and Freedoms*, criticisms by the Standing Joint Committee for the Scrutiny of Regulations, and a number of decisions of the Supreme Court of Canada, the Department felt obligated to disallow any First Nation's by-law that might infringe on either individual or collective rights, whose territory of application was uncertain, that was so poorly drafted as to be unlikely to hold up in court, or that went beyond the First Nation council's authority.

Consequently, the rate of disallowance of by-laws submitted to the Department increased dramatically[5]. This increase discouraged First Nations from using their powers to make by-laws under the *Indian Act*. Some bands accused the federal government of unduly interfering in the right of First Nations to control their local affairs.

In an effort to resolve this dilemma, the Department introduced the By-Law Advisory Service in 1989 to assist First Nations and their advisors in developing clear, effective, and enforceable by-laws. Since the introduction of the By-Law Advisory Service, the average disallowance rate for by-laws concerning local government control has dropped from about 40 percent to approximately 12 percent[6].

Advisors review and make recommendations on about 50 draft by-laws each year. The Program has also given 36 by-law workshops and training sessions in the last two years. Over 500 First Nation councillors and staff, Departmental employees, members of tribal councils, and local law enforcement officials have attended such sessions.

The Program has developed resource materials such as the *Indian Band By-Law Handbook*, training materials, and over 20 sample by-laws and makes them available on request. To date, the Program has received some 300 requests from First Nations and solicitors nationwide for information regarding by-laws and for assistance in developing by-laws to meet specific needs of individual communities.

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5 The Minister disallowed 40 per cent of by-laws enacted by Band councils in 1986.

6 Source: Department of Indian Affairs and Northern Development, By-Law Advisory Service.

INDIAN MONEYS

OBJECTIVE

To administer the sections of the *Indian Act* pertaining to the management of Indian moneys and the provisions of treaties dealing with payments to individual Indians and to Indian bands, especially to safeguard trust moneys of bands and of individual Indians and to ensure fulfilment of the Minister's fiduciary and other responsibilities toward these moneys.

DESCRIPTION

The Government of Canada holds moneys for the use and benefit of bands and individual Indians. These funds generally result from the sale or lease of natural resources extracted from reserve lands. These are not appropriated funds and they do not belong to the Government of Canada. The Minister has a statutory duty to manage such moneys on behalf of bands and Indians. The Program's major responsibilities involve the management of band moneys and individual moneys and the administration of recurring payments under thc terms of treaties. Meeting these responsibilities entails collecting moneys, holding and maintaining moneys, releasing moneys, and accounting for and monitoring the disposition of funds.

Band Moneys

The two types of band moneys, capital and revenue, have different administrative requirements, especially concerning the approval of expenditures.

- Capital

Band capital moneys result from royalties or exploration fees associated with oil and gas or the sale of resources such as land, timber, sand, and gravel. Alberta bands account for about 95 ercent of all capital moneys held[7]. Their balances have accumulated mostly from oil and gas royalties earned in the 1970s and 1980s. The Program reviews requests from bands to expend band capital moneys.

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[7] Source: Trust Accounting System.

Responsibilities include analysing requests and making recommendations to the Minister on whether to release the funds requested by the band. Proposals sometimes require millions of dollars and are of a complex and speculative nature. They may involve off-reserve activities such as establishing and operating a business (a hotel, truck stop, or restaurant), purchasing real estate (farm land or commercial property), or purchasing shares in a corporation.

In reviewing requests for expenditure of capital moneys, the Department advises bands on Departmental requirements, fully analyzes the requests, determines whether moneys should be expended, and, where the request receives approval, expeditiously releases funds to bands. Departmental officials must ensure that each requested expenditure meets authorized purposes and benefits the band. In so doing, the Department considers benefits to both present and future generations of band members.

- *Revenue*

Band revenue moneys accrue from interest on capital moneys, land lease fees, cottage rentals, and crop shares. Bands having authority to control, manage, and expend their revenue moneys must adhere to the Indian Bands Moneys Revenue Regulations[8]. Seventy percent of Indian bands have received such authority, under Section 69 of the Indian Act, through Orders in Council[9]. The remaining bands' revenue moneys are managed by the Department in the same manner as band capital moneys.

Individual Moneys

Management of individual moneys includes administration of property for Indian mental incompetents and minors.

- *Mental Incompetents*

The Minister's jurisdiction over the property of mental incompetents is exclusive and mandatory.

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8 Department of Indian Affairs and Northern Development, *Indian Bands Revenue Moneys Regulations,* 1978.

9 Of 604 Bands, 440 have received authority over their revenue moneys by Orders in Council.

- *Minors*

In relation to the property of minors, the Minister has the discretion in each case to decide whether or not to assume jurisdiction. Where the Minister does not assume jurisdiction, responsibility falls to the province in which the minor resides.

Treaty Payments

The Crown has a continuing obligation to pay annuities and triennial clothing allowances and to provide hunting and fishing supplies pursuant to the 11 "numbered" treaties and the two pre-Confederation Robinson Treaties. Benefits are payable only to Indians and bands covered by the provisions of these specific treaties.

The Program currently holds about one billion dollars of Indian moneys in interest-bearing trust accounts: $830 million in 1,200 band accounts ($750 million as capital moneys and $80 million as revenue moneys) and $170 million in 16,000 individual accounts[10]. Approximately $400 million flows into or out of these trust accounts annually[11]. Treaty payments amount to approximately $1.5 million annually, excluding administrative costs (such as travel and salary for Departmental officials administering the distribution of treaty payments), which are significant[12].

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[10] Source: Trust Accounting System.

[11] Ibid.

[12] The amount of treaty payments comes from the Public Accounts. See Part III of the Estimates for the Department. While the Department does not collect data on the specific costs of administering treaty payments, the regional offices spend significant amounts ensuring their delivery.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Indian Moneys	$2.37	$2.48	$2.43	$3.60	$2.50

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

INDIAN MONEYS

POLICY AND PROGRAM EVOLUTION

Governments have collected, expended, and managed Indian moneys since before Confederation. Before the discovery of oil and gas on reserve lands, the government held relatively modest sums on behalf of Indian bands and individuals. Since the 1970s, the Department has received large amounts, mostly from oil and gas royalties.

Band Moneys

Between 1868 and 1950, Parliament enacted various pieces of Indian legislation requiring the Governor in Council to direct payments of Indian moneys. In 1868 Parliament passed the *Indian Act*, giving the Governor in Council authority (Section 11) for the general management of Indian moneys and to direct these moneys to cover contributions to Indian schools and costs associated with the construction and repair of roads. This legislation also gave the Receiver General responsibility for holding proceeds from the sale of Indian lands and property. Subsequent amendments provided authority for specific aspects of he management of band moneys[13].

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13 Payment to Band members of up to ten per cent of the proceeds from surrender of lands, timber, or property (Section 59, 1867).

Use of Band moneys for the relief of sick, disabled, aged or destitute Indians (Section 84, 1876).

Use of Band's capital moneys, with the consent of the Band, to purchase reserve land or cattle or to construct permanent improvements or works on the reserve (Section 139, 1886)

Use of Band moneys to construct or repair bridges, ditches, and water courses (Section 70,1895). Payment of up to fifty per cent of proceeds to members of a Band and use of funds for constructing and repairing school buildings and charitable institutions (Section 70,1906).

When an Indian transfers from one Band to another, transfer of a *per capita* share of capital moneys from the account of the old Band to that of the new (Section 17, 1906).

Payment to an enfranchised Indian of his or her share of Band funds if he or she had demonstrated good conduct and exemplary management of property for three years (Section 117, 1906).

The consolidation of the *Indian Act* in 1951, defined the terms "Indian moneys", "capital moneys" and "revenue moneys". Express provisions gave authority to the Minister to pay interest on Indian moneys (subsection 61(2)) and to expend capital (section 64) and revenue moneys (section 66) for particular purposes. The Minister also had discretion to permit expenditures for any other purpose determined to be for the "benefit" (capital moneys) or "general welfare and progress" (revenue moneys) of the band.

Section 68 of the 1951 legislation (Section 69 of the current *Act*) provided for bands to have authority to control, manage, and expend their revenue moneys, subject to the requirements of the Indian Bands Revenue Moneys Regulations, which came into effect in 1978.

Beginning in the late 1960s, the amount of band moneys held increased significantly, primarily as a result of oil and gas proceeds. From 1979–1980 to 1988–1989, band capital accounts received $2.1 billion in deposits and paid out $1.6 billion to bands, while band revenue accounts received about $770 million and paid out about $700 million[14]. Capital and revenue receipts and disbursements peaked in the mid–80s. Following the acquisition of large sums in band accounts, primarily in the 1980s, bands began submitting requests for capital expenditures that often involved large sums of money and included a wide range of activities on and off reserves. In 1983, responding to increased amounts and complexity of requests for expenditure of band funds, and in order to consolidate existing practices and policies, the Program issued procedures and guidelines for the release of band capital moneys.

In 1985, Bill C–31 led to amendments to the *Indian Act* that affected the administration of Indian moneys. These amendments (especially section 64.1 of the *Indian Act*) required the Department to research payments to reinstated Indians at the time they lost their status. The research determines the amount (if any) of *per capita* distributions of band capital moneys that the reinstated individual must forego.

Expenditure of a Band's moneys, under authority of the Superintendent General, without the Band's consent (Subsection 4(2), 1914). Use of Band moneys to improve and cultivate neglected reserve lands (Subsection 4(3), 1914).

Payment to an enfranchised Indian of his or her share of Band moneys (Section 6, 1919). (Payment of funds no longer depended on the demonstration of good conduct and exemplary management of property for three years.) Use of Band moneys to purchase implements or machinery and to make loans to Band members (Section 90, 1924).

Use of Band moneys "for any purpose which may be deemed to be for the general welfare of the Band" (Subsection 92(2), 1927).

14 Source: Trust Accounting System.

Individual Moneys

- Minors

Government responsibility for the protection of the property of minors originated in *An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the laws respecting Indians*, 1857. Section 11 of this *Act* designated the Superintendent General as the guardian or tutor of the property of infant children of deceased enfranchised Indians. Section 13 provided that the Superintendent General would hold the share of an enfranchised infant Indian until the child attained twenty-one years of age. Sections 14 and 16 of *An Act respecting Civilization and Enfranchisement of certain Indians*, 1859, repeated these provisions.

Section 5 of the *Indian Act* of 1884 amended Section 20 of the *Indian Act* to provide (Subsection 3) that property inherited by a minor child from his or her father would devolve upon the widow, subject to the authority of the Superintendent General. Subsection 6 allowed the Superintendent General to appoint guardians and tutors to administer the property of minors.

Amendments to the *Indian Act* in 1951, added a provision in Section 52 concerning the property of minor Indians. The current *Indian Act* retains this Section, which states that the Minister may provide for the administration of property belonging to the children of Indians.

In his 1986 report, the Auditor General raised concerns about the potential for future Crown liability where the parents received per capita distributions on behalf of their children without the written request of the parent and without any determination of the needs of the minor. Another concern involved the release of large amounts of money to minors at the age of majority without establishing any financial planning to encourage proper management. In 1988, amendments to the *Indian Act* provided a remedy to these concerns. Section 51.2 permitted annual payments to a parent of up to $3,000 of a minor's share of per capita distributions for the benefit of that child. Section 52.2 gave the Minister explicit authority to release moneys for the maintenance, advancement, or other benefit of a minor. Section 52.3 allows the Minister discretion to withhold payment for a minor's account for up to three years after the minor reaches the age of majority.

Current policy on the management of the moneys of minors took effect in January 1990.

- Mental Incompetents

Section 2 of the *Indian Act*, as amended in 1924, provided for the administration of "the estate of any deceased or insane Indian" by a person appointed by the Superintendent General.

Section 51 of the *Indian Act* of 1951 concerns moneys held for mental incompetents. It provides exclusive jurisdiction for the Minister to manage moneys belonging to mentally incompetent Indians. Section 2 defines "mentally incompetent Indian" as one who is mentally incompetent according to the laws of the province where he or she resides. Section 51 allows the Minister to perform certain functions regarding the property of a mental incompetent, including managing the property for the maintenance and benefit of the individual, and to appoint administrators.

The Program is currently drafting a comprehensive manual that will describe policy on the management of moneys belonging to mentally incompetents. Although it is only in draft form, the Department's regional offices have already begun to implement it.

Recent Significant Developments

Recent decisions by the Supreme Court of Canada indicate that the Minister has a fiduciary role with respect to the management of Indian moneys. However, the fiduciary and statutory roles of the Minister run contrary to the aspirations of Indian people who have expressed frustration over a lack of direct control and decision-making authority over their moneys. The incidence of litigation brought against the Crown concerning its management of Indian moneys has increased significantly in recent years. For example, the Samson and Enoch Bands have brought legal actions seeking $575 million and $800 million respectively in damages. Both bands have asked for the transfer of all present and future Indian moneys to their control.

Diminishing oil and gas reserves and a general fall in prices have reduced the amounts of royalties payable into band capital accounts. As a result, the rate of return on the remaining band and individual moneys becomes more important as a present and future source of income, leading bands to demand alternatives for the management of Indian moneys.

Between 1988 and 1990 the Department conducted an extensive study of Indian moneys, including intensive consultations with Indians at the national, regional, and local levels. Discussions addressed a wide range of options for change. The Indian Moneys section of the 1990 Lands, Revenues, and Trusts Review, Phase II Final Report, discusses these options.

In 1991, some Alberta chiefs formed the Indian Moneys Committee to address how to overcome the difficulties with existing legislation. In July 1991 the Committee presented the Department with options for managing their moneys. This led the Department to undertake consultations with the Committee and with other federal Departments. These consultations are on-going.

INDIAN REGISTRATION

OBJECTIVE

To maintain a register of persons entitled to registration under the *Indian Act*.

DESCRIPTION

The *Indian Act* requires the Department to maintain a register of persons entitled to registration under the *Act*. However, the *Act* does not confer registration of individuals automatically. The Department need not enter a name in the Indian Register unless it receives an application for registration.

A person is generally eligible for registration as an Indian if ancestors were recognized as members of an Indian band in Canada, in accordance with provisions in the *Indian Act*. However, provisions in past *Indian Acts* have caused persons and their descendants to lose Indian status and band membership for various reasons not related to Indian ancestry. For example, marriage of an Indian woman to a non-Indian caused her to lose her status as a registered Indian. Changes to the *Indian Act* in 1985 extended the eligibility for registration to most persons who had lost or were previously denied Indian status because of provisions in former *Indian Acts*. For example, of the 511,791 persons registered as of December 31, 1991, 79,639 had registered as a result of the amendments of 1985.

A person seeking registration as an Indian applies to the Department, identifying ancestors who the applicant believes were recognized as members of an Indian band in Canada and describing his or her relationship to them. The Department attempts to verify the applicant's information from its records and informs the applicant of any documentation required to confirm entitlement to registration. Such documentation typically includes birth registrations, marriage certificates, and, occasionally, death certificates, or the best alternative documentation that is available. For previously registered applicants, verification of the former registration normally suffices. Once a person has registered status, registration of his or her children usually requires only a copy of the children's birth registrations.

The *Indian Act* also requires the Department to maintain lists of members of Indian bands. Before the changes to the *Indian Act* in 1985, registration usually automatically implied band membership. Upon registration of a person as an Indian, the Department would add his or her name to a band membership list. Now, however, bands have the option of determining band membership themselves in accordance with their own membership rules. At present, 237 of the 605 bands in Canada determine their own membership. In addition, nine *Cree–Naskapi Bands* determine their membership under the Cree–Naskapi (of Quebec) Act. The Department determines membership for the other 359 bands, in accordance with criteria specified in Section 11 of the *Indian Act*.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–988 until 1991–992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Indian Registration	$11.91	$7.88	$6.84	$6.13	$7.44

Source: Expenditure, Accounting and Retrieval System.

It is Important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

INDIAN REGISTRATION

POLICY AND PROGRAM EVOLUTION

Before 1951, the Department maintained no central record of registered Indians. The quality of band membership lists varied widely. In areas covered by the numbered and Robinson Treaties, the local representative of the Department maintained annual lists of band members. Lists also existed for bands that regularly distributed their band funds. However, for many other bands, for which there was no requirement to maintain lists, either no lists existed or the lists were held only in the local Departmental offices, which did not maintain them. The Department needed a formal list of members of Indian bands in order to determine for whom it was responsible.

The *Indian Act* of 1951 established the office of the Registrar under the responsibility of the Indian Affairs Branch, to maintain the Indian Register and be responsible for determining individuals' eligibility for registration as Indians and for band membership in accordance with the *Act*. Until 1985, the Indian Register and band lists were essentially one and the same because, in most cases, a person registered as an Indian was also a member of a band.

While criteria for entitlement to Indian registration have changed over time, the legislative authority of the Registrar has remained the same. In order to maintain the Indian Register, the Registrar requires a national network to report events that affect the Indian Register such as births, marriages, and deaths. The Program processed 68,440 such events in 1991.

Until 1970, Departmental officers reported such events, at which time the Department began to encourage Indian bands to assume responsibility for reporting them. At present, 419 Indian bands (69 percent of the total) perform the local reporting function, either directly or through a tribal council[15].

Consultations with Indian people before the amendments to the *Indian Act* made in 1985 indicated that they sought greater control over their affairs. Therefore, the 1985 amendments provided for bands to assume control of their membership. So far, 237 bands (40 percent of the total) have assumed such control. The Registrar determines entitlement to registration as an Indian, according to criteria in the 1985 amendments to the *Indian Act*, but has no authority to determine whom these 236 bands can add to their membership lists.

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15 Two or more Bands working together to share a common interest.

Changes to the *Indian Act* in 1985 also sought to eliminate discriminatory aspects of previous Indian legislation and to restore Indian status to most persons who had lost it under previous legislation. Since 1985, the Registrar has reviewed applications from 153,156 people seeking registration as Indians under that year's changes to the *Indian Act*. These applications led to 79,639 persons either regaining their Indian status or receiving it for the first time[16].

[16] Source: Departmental Re-instatement of Status Information System.

LAND ENTITLEMENT

OBJECTIVE

To identify and protect Indian interests in off-reserve lands, including sub-surface rights, and to assess and resolve disputes concerning title or interest in reserve lands, including sub-surface rights.

DESCRIPTION

The Program addresses issues concerning the status of or title to Indian reserves and surrendered lands. Such issues are complex and involve historical and legal questions. The Program entails specialized and detailed research to establish the status and extent of Indian lands in order to support the Indian Land Registry. More recently, the Program has expanded to include identification and protection of Indian interests in lands situated off reserves (surrendered or expropriated land)[17].

The Program carries out research to identify off-reserve lands that might be subject to an outstanding Indian interest. These lands include unsold surrendered lands or former reserve lands expropriated for railway purposes. The Program also maintains an inventory of issues concerning title to or interests in Indian lands and carries out research to document the history of the problem. The Program develops policies and positions on behalf of the Department in regard to Indian interests in off-reserve lands or the resolution of disputes concerning the title to Indian lands. It also seeks mandates and funds from appropriate authorities to negotiate settlements, to resolve disputes, or to preserve the Indian interest in off-reserve lands.

The Program also represents the Department or supports its negotiations with First Nations, other levels of government, or third parties to settle disputes concerning title to Indian lands or Indian interests in off-reserve lands. Support for negotiations includes conducting research to clarify the subject of the negotiations and requesting funding for negotiations. The Program also participates in preparing negotiation mandates, developing framework agreements[18], developing and approving policies or negotiation positions, and providing advice on the implementation of negotiated settlements. The Program's

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[17] A surrender of reserve land is a process whereby a Band's membership releases its interest in the land to allow the federal Crown to sell the land to third parties.

[18] Indian associations, provincial governments, and the Department sign framework agreements to provide a basis for negotiations with specific Bands.

activities are critical to the successful transition to Indian self-government, since First Nations require clear title to their lands in order to assume jurisdiction.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Land Entitlement	$2.34	$0.95	N/A*	$0.82	$0.73

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

* It is not possible to provide expenditures for 1989–90 since separate financial records were not maintained for the Land Entitlement Program during this particular fiscal year.

LAND ENTITLEMENT

POLICY AND PROGRAM EVOLUTION

The *Constitution Act* of 1867 gives the federal Crown exclusive legislative jurisdiction over Indians and their lands. The federal government has exercised its authority through the various *Indian Acts*, beginning in 1868. The most recent Act was enacted in 1951 and amended periodically after that date. Although each subsequent Act contained minor changes, the legislation governing Indian Affairs today closely resembles acts passed in 1876.

One feature of all *Indian Acts* has been the requirement to maintain a registry of interests in Indian lands. The current Indian Land Registry was established in 1967. Development of the Program followed closely thereafter. Issues concerning the status of or title to Indian reserves and surrendered lands are complex and involve historical and legal questions. Therefore, the Program's original purpose was to investigate and to clarify the extent of Indian interests in lands to be recorded in the Indian Land Registry.

More recently, the Program's focus has expanded to include identification and protection of Indian interests in lands situated off the reserves (surrendered land and expropriated land). This expansion has resulted from increased activity by First Nations in asserting their interests in off-reserve lands, as well as court decisions (Guerin v. R. [1984]) concerning the status of such land and the nature of the federal Crown's obligation with respect to Indian lands. Both the increased activity and the court decisions have far-reaching implications. These implications include supporting economic development and aspirations for self-government by returning land to Indian control, relocating third parties found to be occupying Indian reserve land illegally, and influencing municipal development where outstanding Indian interests may exist in lands within a municipality. In addition, the parties involved incur costs in dealing with these implications, especially those involving successful court actions against the federal Crown.

LAND MANAGEMENT

OBJECTIVE

To carry out the Minister's statutory responsibilities for managing and administering Indian reserve lands and to support fulfilment of federal obligations under federal and provincial agreements, treaties, specific claim settlements, and out-of-court settlements, concerning the addition of land to reserves and the creation of new reserves.

DESCRIPTION

The Program has delegated most land management functions to regional or district offices. Program activities include providing advice to regional offices on matters of policy or procedure and on major proposals for property development, developing standard documents and land database systems, and conducting periodic audits of regional offices.

The Program is responsible for major transactions with national implications and transactions that require approval of central authorities such as the Governor in Council or Treasury Board. The Program also supports band land management training and assists in the implementation of claims or court settlements involving the acquisition of reserve land.

With respect to policy and legislation, the Program develops Departmental policy regarding administration of reserve land under the *Indian Act*, in consultation with First Nations and other sectors of the Department. It maintains and updates the *1988 Land Management and Procedures Manual*, a comprehensive Departmental policy manual used by Departmental staff and First Nations in managing reserve lands. This manual provides guidance to field staff concerning land management and ensures that management practises and procedures meet the Department's statutory and fiduciary obligations to First Nations under the *Indian Act*.

The Program provides Departmental input and technical assistance to First Nations pursuing legislative alternatives to the *Indian Act*, especially in the area of lands.

The Program provides advice and guidance to headquarters and field staff on policy regarding land management. It also provides input to various policy initiatives originating elsewhere in the Department, or in other departments, that could affect reserve land. Such initiatives include proposals for Community-Based Self-Government or matters of litigation support.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Land Management	$12.78	$8.92	$8.40	$6.74	$5.73

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

LAND MANAGEMENT

POLICY AND PROGRAM EVOLUTION

Managing and administering Indian reserve lands has evolved from simply protecting Indian interests to encouraging First Nations to acquire the knowledge and the power to protect and develop those interests themselves. Sections 53 and 60 of the *Indian Act* permit partial transfer of land management authorities and the management of designated lands to Indian bands that seek these powers. Under section 53, the Minister, or a person appointed by the Minister, including a band council, may manage, lease, or carry out any other transaction affecting designated lands. Section 60 allows the Governor in Council to grant to a band, at its request, the right to exercise such control and management over the lands in the reserve occupied by that band as the Governor in Council considers desirable.

In addition, First Nations face other legal limitations in seeking authority to manage their lands. In the *Guerin* decision[19], the Supreme Court of Canada held that the federal Crown had a fiduciary responsibility with regard to designated lands.

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[19] ***Guerin*** v. R. [1984] 2 S.C.R. 335.

LAND REGISTRY AND SURVEYS

OBJECTIVE

To maintain the Indian Land Registry as required by law and to provide information about it in response to inquiries.

DESCRIPTION

The Department keeps a reserve land register, which records particulars relating to Certificates of Possession and Certificates of Occupation and other transactions respecting 3lands in a reserve. The Department also maintains a register, known as the Surrendered and Designated Lands Register, in which are recorded particulars of any transaction affecting absolutely surrendered[20] or designated[21] lands. The federal government administers, under the *Indian Act*, some 10 million acres of Indian reserve, designated, and surrendered lands located in all provinces and territories. There are currently some 200,000 registered documents and about 7,500 new registrations annually.

Documents submitted for registration include those dealing with lawful possession, such as band council resolutions and transfers of land, and those dealing with leasehold or other rights or interests, such as leases, permits, subleases, assignments, mortgages, and debentures. All documents submitted for registration claiming or granting rights or interests in land must meet the criteria for registration established by the Registrar of Indian Lands, found in the Indian Lands Registration Manual 1989. A registration officer examines each document to ensure that it meets these criteria and does not conflict with previously registered interests. The officer assigns each accepted document a registration number, date, and time, and returns an application for registration to the applicant with particulars about the registration. If the officer finds a document unacceptable for registration, he or she returns the document to the applicant with an explanation. Where lawful possession of reserve land has been granted to individual band members pursuant to section 20 of the *Indian Act*, the Registrar may issue a Certificate of Possession or Certificate of Occupation as evidence of the band member's right to lawful possession. Documents become public information upon registration.

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[20] A surrender of reserve land is a process whereby a Band's membership releases its interest in the land to allow the federal Crown to sell the land to third parties.

[21] A designation of reserve land is a process whereby a Band's membership releases its interest in the land to allow the federal Crown to lease the land to third parties.

The Program also provides information about registration, by distributing operational records to field offices and by responding to inquiries. Field offices use the information contained in the registers and documents in their day-to-day operations as land administrators. The Registry Office supplies these offices with copies of abstracts after registering a document. The Program must also provide information in response to inquiries from a large and varied client base. In particular, bands and band members depend on the Indian Land Registry to protect their interests in reserve lands and to provide a reliable base of information about reserve lands to support development on reserves. Other clients include third parties leasing reserve lands, regional offices, and the general public.

Departmental statutory responsibilities concerning land management and preservation of integrity of Indian reserves require knowledge of the extent and location of reserves and the legal interests that exist on them. Obtaining this knowledge requires surveys. Each year, the Program funds survey work on Indian reserves related to its responsibilities under the *Indian Act*. The Program reviews survey requirements originating within the Department and with bands. The Surveyor General's office of Natural Resources Canada (formerly the Department of Energy, Mines and Resources) oversees the actual survey work under the authority of the *Canada Land Surveys Act*.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Land Registry and Surveys	$1.61	$2.70	$1.79	$2.59	$2.70

Source: Expenditure Accounting System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

LAND REGISTRY AND SURVEYS

POLICY AND PROGRAM EVOLUTION

Since the first Indian legislation, there has been a registry of one form or another in order to maintain a record of transactions on these lands. Upper and Lower Canada and the Maritime colonies maintained books showing the interests granted. At Confederation, Indian records were transferred to the federal government. Until 1967, records of land transactions were held by various units within the Department responsible for specialized forms of transactions, such as leases, sales, permits, and Certificates of Possession.

The Department established the present registry system in 1967 and modelled it after existing provincial registries, using a system of books and abstracts. The Program is now converting all registry records to a computerized system that will provide regional and band offices with direct access to their land registry records. Direct computer links already exist with the Kamloops and Westbank Indian bands in British Columbia. Through this direct link, bands ensure their records are current and enter notifications of pending transactions. Such automation provides land registry records that are consistent, accurate, and accessible to the registry's clients.

Recent emphasis on settling outstanding land issues with First Nations has increased the number of new surveys required to reflect new reserves and changes to reserves. The Program is exploring the use of a graphic information system to support the administration of Indian lands. This system consists of a computerized record of existing surveys of a reserve with overlays showing the location of all registered legal interests on the reserve. It could assist registry staff, land management staff, and bands to identify the location of existing interests for research or planning purposes.

MINERAL MANAGEMENT

OBJECTIVE

To ensure that removal of mineral resources from Indian reserve lands complies with the *Indian Act*, Indian Mining Regulations, and other relevant legal requirements, and to assist First Nations to achieve optimal use of and benefit from mineral resources in accordance with their respective goals.

DESCRIPTION

The Program manages the development, sale, and removal of on-reserve minerals through mineral permits and leases. It also provides support services such as technical advice to Community Economic Development Organizations, Tribal Councils, First Nation Band organizations, individuals, and the private sector. Mineral development on Indian reserves commonly includes sand and gravel pits and limestone quarries. Exploration projects seek out uranium, gold, and diamonds[22].

The Program issues, monitors, and administers mineral permits and leases for the development and removal of minerals from reserve lands. Minerals are a capital asset of bands. The *Indian Act* requires Ministerial authorization for their removal from reserves to protect all members of the community who have a stake in any benefits from the transaction. Many terms and conditions control the type, nature, extent, and value of each mineral transaction in order to protect the interests of First Nations, the Crown, the resource, and the environment. The Program emphasizes environmentally sound management of the development of mineral resources. It views such development as a source of economic benefit to bands and band members, in the form of revenues, employment, and training.

The Program provides technical mineral information and advice to First Nations and other related groups. Advisory and related activities deal with information on legal requirements, commodity pricing, market potential, mineral development, and requirements for environmental assessment[23].

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[22] For information on the management of oil and gas resources on Indian lands refer to separate document entitled "Indian Oil and Gas Canada".

[23] The Indian Environmental Protection Program has responsibility for compliance with these requirements.

The Program assists First Nations in negotiating with the private sector for the sale of on-reserve mineral resources and collaborates with First Nations to develop policy, Programs, and legislative and regulatory initiatives regarding the Indian mineral sector. It also negotiates the resolution of federal-provincial mineral resource issues that affect First Nations.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987-1988 until 1991-1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Mineral Management	$6.23	$2.9	$1.08	$2.00	$1.58

Source: Expenditure, Accounting and Retrieval System.

Due to changes in coding structure, the 1990-91 and 1991-92 totals include the funding for the Forestry program.

Of the 1991-92 total DIAND expenditures, $5.63 million was administered by bands, $0.13 million by Province, and $0.465 million by DIAND.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

MINERAL MANAGEMENT

POLICY AND PROGRAM EVOLUTION

Mineral resources from Indian reserves remained largely unexplored and undeveloped until after World War II. The discovery of the Leduc oil field in Alberta in 1947, led oil companies to develop oil and gas fields on Indian reserves in that province. The Department administered such mineral resources from Ottawa. Interest in Indian oil and gas rights extended to the other three western provinces by the late 1940s.

During the early 1950s, Indian Affairs Branch of the Department of Citizenship and Immigration and Indian bands and associations recognized the need for professionally qualified people to direct an Indian Mineral Program. In 1956, the Department created a staff position to develop petroleum policy and supervise field activities of oil companies on Indian reserves in Alberta and Saskatchewan. The main purposes of the Department's involvement were to clarify questions of title or administrative issues and to provide a focal point for inquiries from the resource industry.

Following the Oil and Gas Regulations of 1958, the Department began devoting an increasing portion of time to minerals other than oil and gas. This work resulted in Indian Mining Regulations in 1961. In 1968, the Department assigned a Mining Geologist to its Calgary office, to evaluate minerals other than oil and gas.

By 1971–1972, the evolving Indian Mineral Program was assisting Indian bands across Canada to develop the mineral resources of their lands so as to derive maximum benefit from employment, revenues, and involvement for the Indian people. It also sought to assist Indian people to take advantage of opportunities for developing mineral resources on provincial Crown lands as well as Indian reserves and of opportunities for employment in the mining and petroleum industry.

Through changes to the Indian Mining Regulations (1968), the Indian Mineral Program promoted development through a negotiated agreement between the mining company and the Band Council. It also communicated development procedures to mining companies to promote private sector interest and investment.

The Program gave greater emphasis to providing advice to bands on mineral matters. It also took measures to increase the involvement of Indian people through on–the–job hiring of qualified Indians within the Minerals Program, workshops on mineral matters, training in prospecting techniques, and consultation on changes in policies.

By 1973, development of oil and gas was generating significant revenues for First Nations. Twenty reserves actively produced petroleum products with annual revenues for Indian bands of about $5 million. Development of minerals other than oil and gas lagged far behind. To accelerate the development of minerals on Indian reserves, the Program began evaluating mineral potential. The evaluation process included research of published literature, field reconnaissance surveys, and detailed geoscientific surveys. The Department explored and evaluated minerals on Indian reserves as an incentive for mining companies, usually performing the research and survey work. Mining companies undertook the development of the mineral resources.

In 1985, due to the linkage to economic benefits, the enhanced Indian Economic Development Program absorbed responsibility for minerals.

In 1986, the Auditor General of Canada reported that the Department must maintain inventories of lands and natural resources to carry out its mandates more effectively. In March 1990, the Department completed an inventory of mineral resources for all reserves, based on the results of evaluations of mineral potential as described above. The Program distributed reports to regions and to First Nations in 1991, as a source of information on mineral resources.

Implementation of the Canadian Aboriginal Economic Development Strategy (CAEDS), in 1989, changed the way in which the Program fulfilled its mandate. Previously, technical staff conducted field studies in order to identify and quantify the mineral potential on a specific reserve so that development could occur. In the context of CAEDS, the Program shifted its emphasis from conducting field studies to advisory and regulatory activities.

In 1992, the Department carried out a major reorganization. In the process, the regions were delegated responsibility for delivery of the advisory and regulatory services under the Mineral Program to First Nations.

FOREST MANAGEMENT

OBJECTIVE

To ensure that the disposition of forest resources on Indian reserve lands complies with the *Indian Act*, Indian Timber Regulations, and other legal requirements and to assist First Nations to achieve maximum use and benefit from forest resources in accordance with their respective goals.

DESCRIPTION

The Program manages the disposition (harvest) of forests on Indian reserve lands, mainly by issuing permits and licences to cut timber. In conjunction with Natural Resources Canada, (formerly Forestry Canada), the Program also provides support services, such as advice to Community Economic Development Organizations, Tribal Councils, First Nation band organizations, individuals, and the private sector.

The Program issues and monitors permits and licences. Timber is a capital asset of bands. Therefore, the *Indian Act* requires Ministerial authorization for its removal from reserves, to protect all members of the community who have a stake in any benefits from the transaction. Terms and conditions control the type, nature, extent, and value of each timber transaction in order to protect the interests of the Crown, First Nations, the forest, and the environment.

The Program collaborates with Natural Resources Canada[24], which funds programs and services to promote good forestry practices and integrated resource management on reserve lands. Staff from the Program and Natural Resources Canada also provide technical forestry information and advice to First Nations and related groups. Management of forest resources is designed to promote multiple uses, provide opportunities for economic development (with revenues, employment, and training that directly benefit bands and band members), and protect and preserve the forests for their long-term benefits. The Program emphasizes environmentally sound and sustainable management of forest resources.

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[24] A Memorandum of Agreement between the Department and Natural Resources Canada ensures coordination of the two departments' objectives and activities.

The Program assists First Nations with negotiations leading to timber sales, issues licences and monitors the cutting and removal of timber from reserves. The Program issues timber permits and licences only with the consent of First Nations. The Program also collaborates with First Nations to develop policy, programs, and legislative and regulatory proposals in the Indian forestry sector in order to meet the goals of First Nations with respect to forestry.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Forest Management	$6.23	$2.9	$2.86	$4.47	$4.87

Source: Expenditure, Accounting and Retrieval System.

Due to changes in coding structure, the 1990-91 and 1991-92 totals include the funding for the Minerals Management program.

Of the 1991-92 total DIAND expenditures, $5.63 million was administered by bands, $0.13 million by Province, and $0.465 million by DIAND.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

FOREST MANAGEMENT

POLICY AND PROGRAM EVOLUTION

Historically, uses of forest resources on Indian reserves included wood fuel, construction materials, and saleable logs and lumber. Most benefits accrued to the individual or band involved. However, poor logging practices and unregulated harvests led to the need for regulation, to improve management of the cutting of trees and administration of resulting revenues.

In 1954, the Governor in Council approved the Indian Timber Regulations, pursuant to the *Indian Act*, with minor amendments in 1966. These Regulations established permits and licences to regulate the cutting and disposal of timber from reserve lands. They also directed that resulting revenues (rents, dues, and stumpage fees) accrue to band trust accounts[25].

In 1982, the Standing Joint Committee for the Scrutiny of Regulations identified sections of the Indian Timber Regulations that appeared to lack proper authority. This finding led to further study, in consultation with First Nations and Forestry Canada (now Natural Resources Canada). Also in 1982, the Governor in Council approved the Stuart Trembleur Lake Band Timber Regulations, with the purpose of making timber regulations on the band's lands consistent with those on provincial Crown lands.

In 1984, a joint task force including representatives of the Assembly of First Nations, the Department, and the Canadian Forestry Service (now Natural Resources Canada) developed an approach by which First Nations would manage and control Indian forests. The approach involved funding, new legislation, human resource development, research and development, and institutional development.

Forestry Canada began to provide funding for Indian forestry under the terms of federal-provincial Forest Resource Development Agreements (FRDA). Between 1984-1985 and 1990-1991, Forestry Canada expended $17 million through these agreements, much of it for forest inventories and management plans. The British Columbia Indian Committee was formed in 1985 to advise on funding allocations for Indian forest lands in British Columbia under the Canada-British Columbia Forest Resource Development Agreement.

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[25] For details, see the description of the Indian Moneys Program.

In Ontario, funding from Forestry Canada and the Canada–Ontario Forest Resource Development Agreement brought about the Indian Forestry Development Program. This program, under Indian control, assisted 25 bands in the Kenora – Fort Frances area with forest management.

The 1986 Report of the Auditor General of Canada stated that the Department should maintain inventories of lands and natural resources (including forestry) to carry out its mandates more effectively. Otherwise it could be liable for lost opportunities and failure to obtain optimum benefit from reserve lands.

In 1987, the Department hired a consultant who recommended new Indian forest management regulations. In 1988, he proposed a new forest policy and regulatory framework that supported forest management and included First Nations in forestry programs. Many of the recommendations have been included in later program development initiatives.

The Intertribal Forestry Association of British Columbia (IFABC) was formed in October 1987 to address concerns of British Columbia interests in forestry. The Department and Forestry Canada provided funding for the founding meeting, at which the Department publicly urged a joint approach to resolving Indian forestry issues. At the first annual general meeting of IFABC, in May 1988, the Department discussed the possibility of Indians taking the lead in regulatory reform for forestry and pledged support to Indian–led proposals.

In February 1989, IFABC commissioned a study of the federal government's legal responsibilities to support Indian forestry. The study identified forestry management and operations (such as forest inventories, management planning, and rehabilitation) as a responsibility of the federal Crown. The Department maintained that the Crown does not have a legal obligation beyond its statutory mandate for the cutting and removal of reserve timber and its compliance with the terms and conditions of any absolute surrender[26] or designation[27] of reserve lands. However, Forestry Canada incorporated a number of the IFABC's recommendations in the Indian lands component of the federal–provincial forest resource development agreements.

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[26] An absolute surrender of reserve land is a process whereby a Band's membership releases its interest in the land to allow the federal Crown to sell the land to third parties.

[27] A designation of reserve land is a process whereby a Band's membership releases its interest in the land to allow the federal Crown to lease the land to third parties.

In May 1989, the Department and Forestry Canada signed a "Memorandum of Agreement in Support of Indian Forestry Initiatives" indicating how the two departments would cooperate with respect to Indian forestry. Since entering into their agreement, the Department and Foresrty Canada have exchanged information data bases to permit both departments to carry out their responsibilities as effectively as possible. Most importantly, they have coordinated efforts to address the on-going need for resources to promote sustainable development of forests on Indian lands.

During 1989, aboriginal forestry leaders undertook a series of initiatives, leading to the creation of the National Aboriginal Forestry Association (NAFA). This organization has become the primary advocate for the interests of First Nations concerning forestry.

In June 1990, the Standing Committee on Forestry and Fisheries released a report concerning the need for aboriginal control of forestry. Forestry Canada began negotiating a second round of federal-provincial forest resource development agreements, recognizing the need for Indian control over the aboriginal component of the agreements. As in the previous round, forest inventories and management remained a priority.

In September 1990, the federal government announced the Native Agenda, including a commitment to aboriginal-led changes to legislation and to programs to improve development of renewable resources.

NAFA released its "Draft Discussion Paper: An Aboriginal Forestry Strategy" in January 1992. The strategy included forest land and resources management legislation and programs for forest management, education and training, business development, policy development, and advocacy. The Canadian Aboriginal Economic Development Strategy (CAEDS), announced in 1989, supports NAFA's strategy by funding a wide range of forestry initiatives that are Aboriginal priorities. In March 1992, the Canadian Council of Forest Ministers stated, in Canada's National Forestry Accord, that the federal government and Aboriginal forestry organizations would cooperate to develop a comprehensive Aboriginal forestry strategy. This commitment to cooperate formed the basis for current policy.

Today, the concept of policies and implementation strategies developed by Aboriginal people forms the principle for decision making. The concept closely follows the policies of self-government and devolution and the government's evolving relationship with the First Nations. NAFA is working closely with the Department to prepare alternative legislation to the forestry provisions of the *Indian Act* and a new regime for the management of First Nations' forest resources.

In 1992, the Department carried out a major reorganization. In the process, the regions were delegated responsibility for delivery of the advisory and regulatory services under the Foresty Program to First Nations.

RESOURCE ACCESS NEGOTIATION

OBJECTIVE

To assist Indian bands and Inuit communities to access business and employment opportunities and to attract investment in the natural resource sector.

DESCRIPTION

This Program provides financial assistance to Indian and Inuit organizations to support the costs of negotiating with governments or private companies for access to and development of natural resources on or off reserves.

More specifically, Program funds can be used to attract commercial investment to develop community-owned natural resources, to negotiate access to off-reserve natural resources, and to negotiate agreements with developers of projects adjacent to reserves that offer business and employment opportunities for reserve residents. The scope of the above activities encompasses agriculture, fisheries, forestry, minerals, oil and gas, resource co-management, tourism, real estate, and small hydro-electric developments. About 60 to 70 projects receive funds each year.

To obtain assistance, First Nations apply to the Department for funding to meet specific negotiation needs. Regional offices assess project submissions from First Nations and rank them according to anticipated economic benefits and the potential for successful negotiations. Previously funded projects that require carry-over of funding receive first priority. Departmental officers then negotiate appropriate funding support with First Nations. After receiving approval of funding, First Nations proceed to implement the project. First Nations submit reports annually or at the termination of their negotiations. The reports identify each project, its relevant sector, the amount and recipient of the contribution, the objective of the project, and results achieved.

First Nations have full responsibility for identifying opportunities and for the negotiation process through Community Economic Development Organizations (CEDOs). The Program provides funding to the CEDOs.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Resource Access Negotiation	$2.99	$1.84	NIL	NIL	NIL

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time–frames for reporting are different and old–year adjustments must also be taken into consideration.

RESOURCE ACCESS NEGOTIATION

POLICY AND PROGRAM EVOLUTION

In 1988, two major resource developments, Dona Lake and Golden Patricia, near reserve lands in Ontario triggered the negotiation of resource development agreements between First Nations and the private sector developer. The First Nations sought agreements that would provide their communities access to employment and economic benefits resulting from the mine developments. They also wanted to influence measures the developers were taking to reduce negative impacts of the mineral developments.

The Department examined the level of activity and resources it was consuming in the area of negotiations for access to on- and off-reserve resource developments. It found that negotiations of this type were common and increasing as First Nations developed capacity and awareness of the opportunities. First Nations conducting their own negotiations found their most significant barrier to be meeting costs associated with the actual negotiations. These costs included research, technical consultants, and legal counsel.

In 1988, the Department designed a Program to meet the need for funding these costs in a systematic manner. The Canadian Aboriginal Economic Development Strategy (CAEDS) was announced in June 1989. In August 1990, terms and conditions were approved for CAEDS programs within the Department, including the Resource Access Negotiation Program.

INDIAN OIL AND GAS CANADA

OBJECTIVE

The prudent management of oil and gas resources on Indian lands, in accordance with the requirements of the *Indian Oil and Gas Act* (the *Act*) and the Indian Oil and Gas Regulations (the Regulations).

DESCRIPTION

Indian Oil and Gas Canada (IOGC) was created by a 1987 Order in Council. It assumed, from the Indian Minerals office, responsibility for the management of oil and gas resources on designated Indian lands across Canada.[28] The Department also accepted the IRC (Indian Resource Council) as an advisory and consultative organization with whom IOGC would meet regularly. IOGC operates primarily under the authority of the *Indian Oil and Gas Act*, the Indian Oil and Gas Regulations, and must comply with the *Canadian Environmental Protection Act* and the Environmental Assessment Process Guidelines Order.

IOGC manages the disposition, leasing, and amendments of oil and gas rights and related surface rights. To do so, it identifies and promotes opportunities, assesses and recommends terms and conditions, conducts environmental assessments and screenings, ensures required Band Council approvals are in place and approves the disposition of surface or subsurface rights and any negotiated amendments to existing agreements.

IOGC manages the documentation and administration of all agreements and amendments and processes transfers, technical reviews, and assessments that result in the continuance or expiry of subsurface agreements.

It also monitors industry activities to verify compliance with all requirements stemming from agreements, legislation, and guidelines. Monitoring includes collection, verification, and validation of Indian moneys; administration of deductions related to royalties; assessments respecting production assurance and equity; and audits dealing with royalties, production, and operating facilities.

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28 For information on the management of mineral resources on Indian lands refer to separate document entitled "Mineral Management".

IOGC provides technical advice and services to First Nations with an ongoing requirement to consult with affected First Nation representatives. It verifies ownership of titles to surface and subsurface rights and maintains an inventory of hydrocarbon potential. The inventory uses geological, geophysical, and reservoir studies; mapping and evaluations; and determinations of hydrocarbon reserves.

In rare instances where the *Act* and the Regulations do not apply, IOGC applies certain authorities under the *Indian Act*, respecting exploration and surface leasing. Examples of such instances include where the title of reserve lands does not include ownership of oil and gas rights, initial exploratory licensing prior to surrender or designation, or where a specific designation concerns a surface facility for oil and gas that is not associated with the exploitation of oil and gas from the reserve.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987-1988 until 1991-1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Indian Oil and Gas Canada	$5.0	$4.9	$4.9	$4.9	$2.8

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

INDIAN OIL AND GAS CANADA

POLICY AND PROGRAM EVOLUTION

Interest in the oil and gas potential of Indian lands began around the turn of the century. Between 1905 and 1910, inquiries were made into lands on the Sarcee, Blood, and Blackfoot Indian Reserves in Alberta. In 1911, the first natural gas well was drilled on Indian lands at the Six Nations Indian Reserve in southwestern Ontario.

Shortly after the discovery in 1947 of the Leduc oil field in Alberta, further discoveries occurred on the Stony Plain, Pigeon Lake, and Stoney Indian Reserves in Alberta. Increasing oil and gas activity on Indian lands in western Canada led the Department to hire, in the 1950s, a minerals specialist. Thus began the Indian Minerals unit, which was then responsible for all oil, gas, and mineral rights on Indian reserves throughout Canada.

In 1985, the Department reviewed the operations of the Indian Minerals unit to determine how to improve services to Indian bands with respect to the management of oil and gas. As a result of the increase in oil and gas operations and advancements that had occurred over the decade, the Department restructured this organization and provided it with additional resources.

In 1986, a workshop attended by Chiefs and representatives of oil-producing bands discussed the adequacy of the *Indian Oil and Gas Act* and Regulations in the context of changing operational requirements and the need for band involvement in the management of their oil and gas resources. The workshop led to a Task Force consisting primarily of First Nation Bands and groups from Alberta, Saskatchewan, and British Columbia, as well as representives from the Department of Indian Affairs and Northern Development and the Department of Justice. The mandate of the Task Force included: development of proposals for changes to the *Indian Oil and Gas Act* and Regulations, development of frameworks for achievement of Indian control of future resource management (including the role of the Indian Minerals office), and participation in certain immediate decisions regarding the office. The Task Force also addressed employment and training as well as financial incentives for industry to

develop resources on Indian lands.

In 1987, the Task Force presented its recommendations to an All Chiefs Assembly. These recommendations included the creation of Indian Oil and Gas Canada (IOGC), a branch of the Department that would have increased resources and be responsible for managing oil and gas resource development on Indian lands across Canada, and the creation of an Indian Resource Council (IRC), as a sectoral organization acting on behalf of bands having interests in oil and gas.

Consequently, IOGC, created by order-in-council, commenced operations in November 1987. It assumed, from the Indian Minerals office, responsibility for the management of oil and gas resources on Indian lands across Canada. The Department accepted the IRC as an advisory and consultative organization with whom IOGC would meet regularly.

IOGC continues to be responsible for fulfilling the Crown's obligations for the prudent management of oil and gas resources on reserve lands pursuant to requirements of the *Indian Oil and Gas Act* and the Indian Oil and Gas Regulations. It also meets regularly with the Canadian Indian Energy Corporation (previously the Indian Resource Council) for consultation with authorized representatives of First Nations.

INDIAN ENVIRONMENTAL PROTECTION

OBJECTIVE

To ensure that the environmental concerns and interests of First Nations and the Indian and Inuit Affairs Program are addressed and the environmental responsibilities of both effectively exercised through the development of appropriate legislation, standards, policy, and management practices.

DESCRIPTION

The Program is responsible for the corporate environmental functions of the Indian and Inuit Affairs Program, such as developing and monitoring the implementation of policies, procedures, and training. The Program supports implementation efforts of employees of the Indian and Inuit Affairs Program and First Nations in fulfilling their responsibilities under environmental legislation, regulations, and by-laws. The Program is also responsible for assisting senior management both in evaluating statutory requirements and in ensuring that Sectors and Regions have instituted appropriate procedures. Specific activities include:

POLICY DEVELOPMENT:

Preparation of a directive outlining roles and responsibilities for Departmental employees where the Department is the object of an enforcement action under environmental protection legislation.

Preparation of a directive concerning roles and responsibilities of Departmental employees under the Environmental Assessment and Review Process (EARP) Guidelines Order and the *Canadian Environmental Assessment Act* (CEAA)[29] .

Preparation of a Memorandum identifying which employees should represent the Department on panels .

Assistance to Corporate Services in the preparation of a directive to aid Departmental employees in applying to transfer payments to First Nations.

Development and implementation of a strategy for waste management on reserves, in conjunction with First Nations, including a proposed waste site permit system, preparation of by-laws by communities, and revisions to existing regulations and legislation.

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[29] To be prepared once the legislation is proclaimed.

MONITORING AND PROCEDURES:

Monitoring and follow-up on notices of violation of legislation issued to departmental officers; preparation of a procedure on enforcement for use by departmental officers; maintenance of a registry of all such notices.

Monitoring and follow-up on assessment review panel procedures involving the Indian and Inuit Affairs Program pursuant to the EARP Guidelines Order and the CEAA.[30]

Quarterly reports on decisions made by the Indian and Inuit Affairs Program based on environmental assessment reports prepared under the EARP Guidelines Order.

Preparation of new procedures and public registries pursuant to the CEAA.[31]

Preparation of a manual on environmental procedures for officers of the Indian and Inuit Affairs Program. (Chapter 1 has been completed).

Assistance in preparing an emergency response procedure for environmental disasters.

Assistance in preparing a departmental action plan in response to the Federal Code of Environmental Stewardship.

COMPLIANCE:

Development of data bases to facilitate monitoring and tracking of environmental issues on or affecting Indian lands.

Preparation of an inventory of inhabited reserve lands to determine potential and actual threats to residents' health and safety, as well as other damage resulting from possible violations of federal environmental legislation (incomplete).

Conducting baseline studies of environmental management activities in all sectors and regions.

Compliance reviews of all regions to determine the extent of sectoral compliance with the EARP Guidelines Order, the CEAA[32] and departmental policies and procedures relating to environmental assessment.

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30 To take effect when the legislation is proclaimed.

31 To take effect when the legislation is proclaimed.

32 To take effect when the legislation is proclaimed.

NATIONAL INITIATIVES:

Funding to assist in correcting some immediate threats to the health and safety of First Nations, and to assist First Nations in intervening in environmental assessment processes.

Planning requirements for environmental awareness training for First Nations and Indian and Inuit Affairs Program employees; delivery of existing courses (introductory course on environmental assessment and a course on Indian and Inuit Affairs Program policies and procedures respecting EARP) and the CEAA[33].

Representing the Department on key federal policy initiatives such as the Green Plan, on environmental legislation such as the *Canadian Environmental Protection Act* (CEPA) and regulations under it as well as the *Canadian Environmental Assessment Act* and regulations under it, and on the Code of Environmental Stewardship.

Co-ordinating departmental participation in environmental impact assessments and preparation of a national communications strategy on environmental matters.

Supporting departmental employees and First Nations in the implementation of environmental policies, procedures, and initiatives.

Providing technical and operational assistance to headquarters and regional staff of the Indian and Inuit Affairs Program on environmental matters.

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[33] To take effect when the legislation is proclaimed.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987-1988 until 1991-1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Indian Environmental Protection	$9.78	$5.23	$4.42	$6.00	$7.80

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

INDIAN ENVIRONMENTAL PROTECTION

POLICY AND PROGRAM EVOLUTION

The Indian Environmental Protection Program evolved from the Resource Development Impact Program, in effect from 1980 to 1987. This program funded and assisted Indian communities to take advantage of the socio-economic benefits of development both on and off reserves, while minimizing negative impacts on people and the environment. It emphasized creation of employment rather than assessment of environmental impact.

The Department subsequently established the Indian Environmental Protection Program which provided funding and assistance to First Nations for environmental workshops and consultations, preparing analyses and responses to projects with potential and existing impacts, participating in environmental assessments and regulatory projects, and negotiating settlements with the proponents of projects.

In August 1990, the Deputy Minister formally established the current Program.

INDIAN TAXATION

OBJECTIVE

To support the Minister in the review and approval of taxation by-laws, and to promote the development of Indian taxation powers under Section 83 of the *Indian Act*.

DESCRIPTION

The Indian Taxation Advisory Board was established in January 1989 by the Minister to assist him in meeting his responsibilities related to the 1988 taxation amendments to the *Indian Act* (Bill C-115). The Board consists of ten members appointed by the Minister. Members possess knowledge and experience in: federal, provincial, and First Nation government; development of reserve land, property taxation, and provision of local services. Seven of the members are Aboriginal[34].

The Board's responsibilities include examining taxation by-laws proposed by First Nations under Section 83 of the *Indian Act* and recommending to the Minister whether to approve them, advising the Minister on policy related to the taxation powers of First Nations, and assisting and consulting with First Nations interested in developing taxation by-laws. The Board's responsibilities also include fostering conformity between taxation by First Nations and by other authorities, hearing from taxpayers whose interests are affected by taxation, and incorporating information from such hearings in recommendations to the Minister, and finally, advising the Minister on means to improve the administration of the Minister's statutory responsibilities.

The Indian Taxation Secretariat, within the Department, provides analytical and logistical support for the Board. The Secretariat assists the Board by reviewing proposed taxation by-laws and by developing policy. With guidance from the Board, the Secretariat consults with all levels of government to foster harmony between First Nation taxation regimes and other taxing authorities. The Secretariat also serves as the focus of Departmental expertise concerning all aspects of Indian taxation.

Property taxation and assessment by-laws originate with the council of the First Nation interested in assuming jurisdiction over taxation. Both the Secretariat and the Board analyze by-laws in accordance with the Board's established policies. The Board ensures that proposed rates of taxation are fair, that the First Nation plans an appropriate strategy to communicate with its taxpayers and with adjacent municipalities, and that municipal

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[34] Members are appointed at the discretion of the Minister. There is no legislated requirement respecting the composition of the Board.

service agreements have been concluded, where necessary[35]. The Board then formally recommends to the Minister either to approve or disallow the by-law. Ministerial approval gives the by-law the force and effect both of a regulation of the Government of Canada and of a law of the First Nation government.

The Board uses a variety of methods to inform First Nation Councils of the benefits of on-reserve taxation. It has held workshops in every region to discuss taxation issues, including all matters relating to the development and implementation of taxation by-laws. It has developed several taxation publications and provided them to First Nation councils. The Board provides financial assistance to First Nations to help offset costs in developing taxation by-laws. The Board has assisted 23 First Nations[36] that have met certain funding criteria established by the Board[37]. The Board has also developed a generic model of a taxation by-law that each First Nation can adapt to its specific requirements. The Board continually revises the model by-law to reflect the resolution of general issues of taxation and assessment.

The Board has created great interest in taxation. Thirty-nine communities are now exercising taxation authority on their lands. More are working toward implementing property taxation by-laws this year.

The Board is interested in other forms of taxation and is monitoring issues such as sales tax and Indian public debt financing as part of a new fiscal relationship between First Nations and other levels of government. The Board is also working on establishing an Aboriginal Gazette, which will notify the public of all by-laws under Section 83. Finally, the Board seeks to establish an institution to succeed it when its mandate expires June 30, 1994.

Given its positive interaction with First Nations, the Board also seeks to assume from the Department responsibility for more functions in this field and takes a pro-active approach in the federal government's recognition of expanded taxation powers under the *Indian Act*.

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[35] Municipal service agreements are needed whenever a nearby municipality provides services to a reserve.

[36] The First Nations that have received funding are: Blood, Columbia Lake, Gitlakdamix, Nadleh Whut'en, Westbank, Restigouche, Peigan, Cowichan, Little Shuswap, Shuswap, St. Basile, Muskeg Lake, Adams Lake, Fort Nelson, Matsqui, Skeetchestn, Whitefish River, Union of Nova Scotia Indians, Bonaparte, Gitwangak, Musqueam, Tzeachten, and Gesgapagiag.

[37] The Board provides funding for the development of taxation by-laws according to its own discretion and subject to the availability of funds for that purpose. In 1989, the Board received limited funding to develop model by-laws as precedents to facilitate a smooth and equitable transition to on-reserve taxation. Since then, the Board has developed a model taxation by-law. In exceptional cases where the model by-law and existing by-laws are inadequate, the Board still provides funding for development of new by-laws.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987–1988 until 1991–1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Indian Taxation	$1.60	$1.12*	$1.11*	NIL	NIL

Source: Expenditure, Accounting and Retrieval System.

* Source: Main Estimates.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

INDIAN TAXATION

POLICY AND PROGRAM EVOLUTION

Before Parliament passed Bill C-115 (*An Act to Amend the Indian Act*) on June 2, 1988, the *Indian Act* explicitly conferred power to make by-laws that applied only to the "reserve". Powers did not extend to "conditionally surrendered" lands[38], as the *Act* defined that term separately. The *Indian Act* confined the jurisdiction of First Nation councils, and the Constitution confined provincial governments such that, given the definitions of "reserve" and "surrendered lands", no body except Parliament could make laws concerning the planning and development of conditionally surrendered lands.

Bill C-115 bridged the gap in jurisdictions by amending the *Indian Act*. The amendment redefined "reserve" and added the term "designated lands". The *Act* now clearly indicated that land set aside for leasing remained within the definition of "reserve".

Bill C-115 also amended the wording of Section 83 of the *Indian Act* to allow First Nations to tax non-Native interests in reserve lands. Also the *Act* no longer required that the Governor in Council declare First Nations to have reached "an advanced stage of development" before they could make by-laws under Section 83. All First Nations now had access to powers under Section 83.

The progressive aspects of the amendment provided a flexible federal legislative structure within the *Indian Act*. They allowed First Nations the power needed to develop taxation by-laws under Section 83 and provided them the opportunity to develop the specific content of these by-laws[39]. However, both the federal government and First Nations lacked experience in real property taxation. Problems arising from this lack of experience led to the creation of the Indian Taxation Advisory Board.

In January 1989, the Minister established the Board, with a mandate covering five years, to assist him in meeting his responsibilities related to the newly amended section of the *Indian Act*. The Board's primary purpose is to provide recommendations to the Minister

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[38] "Conditionally surrendered" land is land reserved for the Indians under the Constitution that has been surrendered to the Crown under the terms of the ***Indian Act***, generally for purposes of a long-term lease to a third party for commercial and residential development. Leased lands may also be "absolutely surrendered" for purposes of outright sale to a third party. These lands would no longer constitute reserve lands. Conditional surrender allows reserve land to be leased without losing its status as reserve land. Bill C-115 established that conditionally surrendered lands could be subject to property taxation by the First Nation government.

[39] The power for First Nations to tax has existed since 1884, but was rarely exercised. Bill C-115 expressly provided that a by-law must address the fundamental areas of assessment, appeal, and enforcement.

on the approval of taxation by-laws, and to promote the development of these new Indian taxation powers. The Board represents a new concept in that it is the first Indian-controlled administrative body involved in the exercise of the Minister's decision-making powers under the *Indian Act*.

A small Secretariat within the Department provides analytic and logistical support to the Board. It is also the centre for all Departmental responsibilities concerning Indian taxation. The Secretariat initiates and prepares policy papers and ministerial briefings on all aspects of Indian taxation. It also responds to enquiries about Indian taxation from businesses and the public.

BACKGROUND PAPER FOR THE ROYAL COMMISSION ON ABORIGINAL PEOPLES PROGRAM DESCRIPTIONS AND EVOLUTION

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

NORTHERN AFFAIRS

Final Version

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NORTHERN AFFAIRS

PART I

ECONOMIC DEVELOPMENT AGREEMENTS

OBJECTIVE

To help broaden and stabilize the northern economies through the comprehensive and coordinated programs of the federal and territorial governments.

DESCRIPTION

The Government of Canada and the two territorial governments signed five-year Economic Development Agreements (EDAs) in 1991. EDAs and their funding are available to all residents of each territory, including Aboriginal people in the North. Each EDA is an enabling framework agreement that provides for several subsidiary agreements, called cooperation agreements, that fund specific projects. It also establishes a policy committee to provide policy direction and to coordinate the cooperation agreements.

Under cooperation agreements, both levels of government commit funds to certain sectors or programs. Joint (federal-territorial) management committees administer these funds, basing their funding decisions on proposals for specific projects. Native and non-native private sector representatives sit on the committees as equal partners with federal and territorial government officials. The committees reach decisions by consensus, subject to criteria developed to meet the goals of the initiatives and programs described in the cooperation agreements. The criteria establish eligible recipients of project funding and vary among cooperation agreements.

The two levels of government share the costs of the agreements: 70 per cent federal, 30 per cent territorial. The Department represents the Government of Canada in negotiating and signing framework agreements, in addition to being a federal signatory to all cooperation agreements. Industry Canada negotiates and serves as federal co-manager of cooperation agreements dealing with small business, entrepreneurship, and tourism. Natural Resources Canada (formerly Forestry Canada) performs these functions for cooperation agreements pertaining to development in the forestry sector. The Department of Indian Affairs and Northern Development takes the same responsibility with respect to cooperation agreements dealing with the remaining targeted sectors[1].

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[1] Targeted sectors vary by EDA. Paragraphs dealing with the specific agreements indicate the sectors involved in each.

The policy committees review the EDAs and the cooperation agreements annually. The reviews may identify new strategies to respond to changes in the territorial economy, or lead to a reallocation of funding from one cooperation agreement to another.

Economic development through the EDAs contributes to expanded, diversified, and more stable territorial economies. Current agreements help strengthen the leading economic sectors of the Yukon and N.W.T. while facilitating diversification into other sectors.

Canada–Yukon Economic Development Agreement

The *Canada–Yukon Economic Development Agreement* makes up to $37.7 million in federal territorial (70:30) funding available for targeted programs under six Cooperation Agreements for the period 1991–1996. With the Yukon Territorial Government, the Department co–manages three agreements in the following areas: renewable resources ($9 million), mineral development ($9 million), and economic development planning ($5 million). Industry Canada co–manages two agreements covering tourism ($9 million) and small business ($3 million). Natural Resources Canada co–manages a separate forestry development agreement worth $2.7 million.

Canada–N.W.T. Economic Development Agreement

The *Canada–N.W.T. Economic Development Agreement* provides for up to $50 million in federal territorial (70:30) funding for regional economic development for the period 1991–1996. It comprises three cooperation agreements that provide the basis of support for 33 initiatives in 10 economic sectors.

Forestry Canada (now Natural Resources Canada) signed a separate Forestry Cooperation Agreement worth $2.6 million. Industry Canada signed a Entrepreneurship and Tourism Cooperation Agreement worth $8.6 million.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Economic Development					
Yukon	$2.1	$1.9	$1.87	$2.27	$2.33
NWT	$2.05	$1.3	$3.6	$2.57	$0.45
HQ	$0.16				

Source: Expenditure, Accounting Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

ECONOMIC DEVELOPMENT AGREEMENTS

POLICY AND PROGRAM EVOLUTION

General Development Agreements (GDAs), modelled on similar instruments established with the provinces, preceded EDAs. The federal government signed the first GDA with the Yukon Territorial Government in 1977. A similar GDA with the N.W.T. followed in 1979. The GDAs supported elementary data development and industry development. Approximately $12 million was available under the GDAs for both territories.

In the early 1980s, the federal government introduced the Economic Development Agreement to promote joint planning, programming, and decision making where opportunities existed for economic diversification. The first EDAs provided support for initial data building, community awareness, identification of opportunities, and demonstration projects.

The first Canada–Yukon EDA, signed in 1984, provided up to $26.4 million for several programs, with varying cost-sharing arrangements such as Mineral Resources ($3.9 million: 90 per cent federal, 10 per cent territorial), Renewable Resources ($4.2 million: 90 per cent federal, 10 per cent territorial), Economic Development Planning ($0.7 million: 90 per cent federal, 10 per cent territorial), Tourism ($10 million: 80 per cent federal, 20 per cent territorial), Small Business ($4.6 million: 70 per cent federal, 30 per cent territorial), and Mining Recovery ($3.0 million: 100 per cent federal).

In 1989–90, the Minister and the Yukon Territorial Government signed a one-year agreement worth $2.3 million (with 70 per cent federal and 30 per cent territorial cost-sharing). This agreement provided assistance for mineral resources, renewable resources, and economic development planning. A one-year extension to this agreement, signed in 1990–91, provided $2.7 million (with the same cost-sharing arrangement), but included tourism programs as well as the three previous areas.

The signing of the first EDA with the N.W.T. occurred in 1982. It led to three subsidiary agreements worth $21 million the following year, to develop natural resources, domestic markets, and human resources. The federal government contributed 90 per cent of the costs, the territorial government 10 per cent. The renewed (1987) version of this EDA led to six subsidiary agreements, with costs shared 70 per cent by the federal government and 30 per cent by the territorial government. The new EDA provided about $38 million for four subsidiary agreements managed by the Department (mineral resources, renewable resources, applied economic planning, and arts and crafts) and two managed by Industry Canada (tourism and small business).

The current EDAs resemble the previous ones, however, new programs, especially in the N.W.T., provide more for the needs of remote and under-developed communities, recognizing the long-term commitment required to build economic self-reliance. Criteria for deciding whether to fund projects include both economic and environmental considerations. Decision-making under the new EDAs proceeds by consensus and involves native and non-native private sector representatives on management committees as equal partners with officials of federal and territorial governments. Funding levels are higher: the Yukon and N.W.T. have $37.7 million and $50.0 million, respectively, available over the five years.

Industry Canada is currently negotiating with the Department to take over the delivery and administration of its tourism and small business cooperation agreement responsibilities. Should the transfer be completed, the Department does not foresee making any changes to the programs themselves.

HOSPITAL AND MEDICAL CARE CONTRIBUTIONS

OBJECTIVE

To reimburse the Government of the Northwest Territories for certain expenditures on hospital care and medical care for status Indians and Inuit residing in the territories.

DESCRIPTION

The Department has contribution agreements with the Government of the Northwest Territories. This government submits invoices, based on actual expenditures under certain criteria. The invoices include summaries of these expenditures and are subject to audit verification and certification. The Department then pays the invoices.[2]

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[2] In November 1992, the Government of the Northwest Territories initiated court proceedings against Canada disputing the method of calculating payments under these contribution agreements. The GNWT is claiming an additional $79M covering the period of 1985-1986 to 1991-1992.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Hospital and Medical Care Contributions	$26.6	$20.3	$20.5	$20.6	$17.9

Source: Main Estimates, Part III.

HOSPITAL AND MEDICAL CARE CONTRIBUTIONS

POLICY AND PROGRAM EVOLUTION

The *Hospital Insurance and Diagnostic Services Act*, which took effect in 1958, provided funding for the Department of National Health and Welfare to pay for half the costs of insured hospital services provided by the provinces and territories. On June 25, 1959, Cabinet approved payment to both territories to assist them with their share of the costs under the *Act*. The Government of Canada agreeds to assist the territories, through the Department, with the cost of hospital care for indigent status Indians and Inuit until such time as the territories could pay these costs. Costs covered by these agreements must meet the criteria of the above *Act* and its successor, the *Canada Health Act*. The parties involved extended these arrangements to include services of physicians when the *Medicare Act* took effect in the territories in 1970.

Starting in 1978, the Department reached three-year contribution agreements with the Government of the Northwest Territories and with the Yukon Territorial Government, whereby the Department would reimburse these governments for the certain expenditures made on behalf of indigent status Indians and Inuit using hospitals and for physicians' services.[3]

[3] Funding for health services in the Yukon has recently been transferred to the Yukon Territorial Government.

INUIT COUNSELLING SOUTH

OBJECTIVE

To meet the needs of Inuit living in Ottawa or Inuit in transit.

DESCRIPTION

The Program consists of annual funding of $80,000 to Tungasuvvingat Inuit[4], a social, cultural, and counselling organization. It is an independent, non-profit, non-political organization with a Board of Directors. Annual funding covers compensation for an Executive Director and part-time support staff, as well as rent and administration. The Government of Ontario also provides continuing support for a community health worker.

Counsellors at Tungasuvvingat Inuit offer direct crisis intervention, counselling, referral to appropriate agencies, accompaniment and transportation of clients to shelters, treatment facilities, and hospitals, as well as continuing emotional support.

Needs for such services usually arise in the context of drug and alcohol rehabilitation, family violence, sexual abuse, mental health, and family breakdown. The staff is on call twenty-four hours a day, seven days a week.

In 1992-93, Tungasuvvingat Inuit entered into an agreement with Employment and Immigration Canada and Pathways to fund training programs aimed at Inuit receiving social assistance in Ottawa and interested in job training and placement.

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[4] "Tungasuvvingat Inuit" is an Inuktitut phrase meaning "a place where Inuit are welcome."

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Inuit Counselling South	$0.08	$0.08	$0.08	$0.08	$0.08

Source: Main Estimates, Part III.

INUIT COUNSELLING SOUTH

POLICY AND PROGRAM EVOLUTION

Indian Affairs and Northern Development had administered a vocational and educational service for Inuit students from the N.W.T. living in Ottawa. In the mid-1960s, Inuit students began to travel south to Ottawa, Churchill, and other points to high school and post-secondary institutions. At that time, the Department was responsible for the education of all residents of the Northwest Territories.

This service ended with the federal government's thrust to devolve regional responsibilities. However, Inuit continued to migrate south for a variety of reasons and the Inuit community expressed the need for a 'place' to meet and seek cultural support and assistance. The Department commissioned a needs assessment. Research confirmed that Inuit needed a permanent facility that would provide a wide variety of counselling services and social and cultural activities. In response to this study, the Department agreed to provide a core contribution which was authorized in December 1986. In March 1987 Tungasuvvingat Inuit[5] began operation.

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5 "Tungasuvvingat Inuit" is an Inuktitut phrase meaning "a place where Inuit are welcome."

NORTH AMERICAN AIR DEFENCE MODERNIZATION

OBJECTIVE

To maximize economic benefits for the North and participation of Aboriginal peoples[6] in the context of the North American Air Defence Modernization Project and the Inuvialuit Final Agreement.

DESCRIPTION

Departmental responsibilities regarding the North American Air Defence Modernization (NAADM) Project include regulating management of resources, providing environmental clearances, ensuring continuity and compliance with provisions of native land claims negotiations and settlements, and meeting commitments for consultation with and participation of provincial and territorial governments and native associations. In addition, the Department is responsible for public consultation throughout the North and for ensuring maximizing economic opportunities.

With regard to public consultation, the Program delivers briefings to northern communities, native groups, business associations, representatives of agencies, and elected officials from federal, provincial, and territorial governments.

To maximize economic opportunities, the Department contributed to the development of a Cooperation Agreement between the Department of National Defence and the Inuvialuit Regional Corporation. This Agreement contains specific provisions for business and employment opportunities, training, arbitration, and other general rules of conduct in the construction of radar sites. For example, it obliges the prime contractor to use designated Inuvialuit businesses. Other Inuvialuit firms, if qualified and competitive, must receive right of first refusal on sub-contracts. In addition, qualified Inuvialuit must have first opportunity on jobs at the western Arctic sites. Aboriginal land claims agreement provisions do not come into play in respect of the Free Trade Agreement.

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[6] In 1985, Canada and the United States embarked on the North American Air Defence Modernization Project. The Canadian government directed that the Project must adopt the foregoing as an important secondary objective.

The Program continues to seek opportunities within the NAADM Project to implement the provisions of the Inuvialuit Final Agreement (IFA) regarding direct economic benefits to Inuvialuit firms and individuals. The IFA provides the Inuvialuit with first priority for economic benefits from contracts within the Inuvialuit Settlement Region, cooperative development of an effective labour market to take advantage of job opportunities in the Inuvialuit Settlement Region, established procedures for environmental review and screening, and acceptable methods for arbitrating disputes.

Although the signing of the Tungavik Federation of Nunavut (TFN) came after the majority of NAADM related work was completed, the provisions of the TFN Agreement, particularly with respect to economic development opportunities, will be considered for the ongoing operation and maintenance of the North Warning System.

The Program is currently developing a Statement of Work and the northern benefits component of a Request for Proposal to operate and maintain the North Warning System chain of radar sites beyond 1995.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($)

	1991–92	1990–91	1989–90	1988–89	1987–88
North American Air Defence Modernization	$34,000	$34,000	$23,000	$20,000	*

* Not available.

Source: Northern Affairs Program

NORTH AMERICAN AIR DEFENCE MODERNIZATION

POLICY AND PROGRAM EVOLUTION

In March 1985, Canada and the United States signed an agreement to undertake the North American Air Defence Modernization (NAADM) Project. The Project's objective was to upgrade the warning system around the perimeter of North America, making it capable of detecting aircraft and cruise missiles.

The Department established this Program in 1987–88 to develop a relationship between the Inuvialuit and the North American Air Defence Modernization Project. Its first challenge was to determine how to implement the Project in harmony with the provisions of the Inuvialuit Final Agreement. In 1984, the Department settled a land claim with the Inuvialuit of the western Arctic, according to the terms of the Inuvialuit Final Agreement. Among other provisions, it required the government to collaborate with the Inuvialuit Regional Corporation to achieve direct economic benefits to Inuvialuit firms and individuals.

In its first year of operation, the Program established communication between the NAADM project and the Inuvialuit and began consulting communities in the Inuvialuit Settlement Region. Progress of the NAADM project into an operational phase (construction of the North Warning System chain of radar sites) led to the need to formalize a Cooperation Agreement between the Department of National Defence and the Inuvialuit. The Program contributed to the development of the Cooperation Agreement, signed in 1989 and covering Inuvialuit participation in constructing Short Range Radar sites.

The Cooperation Agreement, so far, has resulted in[7]:

Payment to 59 Inuvialuit firms of about $22 million for goods and services, direct employment of 128 Inuvialuit by the prime contractor, with wages over $1.6 million, and specialized training, by the prime contractor, of 93 Inuvialuit.

Of total expenditures on goods and services for construction of Short Range Radar sites in the western Arctic, Inuvialuit businesses have received 47 per cent. Inuvialuit made up 65 per cent of the Northern resident work force hired by the prime contractor.

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[7] The NAADM Project Management Office provided the figures that follow.

Total expenditure to date on the NAADM project in the North is about $130 million: $105 million for goods and services and $25 million in wages for the 1,350 people employed on the Project.

NORTHERN AIR STAGE PARCEL SERVICE FUNDING

OBJECTIVE

To improve nutrition and health in isolated northern communities which do not have year-round surface transportation by reducing the cost of nutricious perishable food and other essential items.

DESCRIPTION

The Department and Canada Post Corporation have an agreement[8] concerning provision of Northern Air Stage Parcel Service[9].

The Department pays Canada Post Corporation $15 million per year[10] to cover part of the cost of providing commercial air freight service, including food shipments, to northern air stage offices[11]. The funding enables Canada Post to charge eligible mailers special commercial air stage parcel rates that do not fully cover the cost of providing this service.

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8 Memorandum of Understanding between Department of Indian Affairs and Northern Development and Canada Post Corporation with respect to the Northern Air Stage Funding, signed in April 1992 and covering 1991-92 through 1993-94. A new agreement will cover 1994-95.

9 Popularly known as the "Food Mail" program.

10 The Department began paying the full cost of $15 million per year for the Program in 1992-93, after taking on responsibility for the Program. The previous year, 1991-92, the Department contributed $1 million towards the Program; the balance was provided by the former Department of Industry, Science and Technology.

11 Isolated communities that lack year-round surface transportation.

Eligibility

Isolated communities that Canada Post designates as air stage offices are eligible to receive shipments under this Program. The Program excludes communities such as Inuvik and Yellowknife, which require air transportation only during freeze-up and break-up. Canada Post has designated 189 communities as air stage offices. However, only about 60 communities receive significant amounts of food under this Program. They are primarily in the N.W.T. (Baffin, Kitikmeot, and Keewatin regions) and the northern parts of Quebec, Ontario, Saskatchewan, and Labrador.

Persons wishing to use Canada Post to send commercial quantities of food or other goods to air stage offices must enter into a contractual agreement with the Corporation. They may send goods either to individuals or to businesses.

About 90 per cent of the population of communities receiving food under this Program is aboriginal. Aboriginal people own many of the businesses and air carriers with an interest in this service.

Food Entry Points

Canada Post will accept food for each destination only in the centre designated as the food entry point for that destination. Food entry points are typically the most northerly supply centres on the road or rail network that have the necessary air cargo facilities, such as Val-d'Or, Pickle Lake, Churchill, and Yellowknife.

Prohibited Items

Dangerous goods, tobacco, alcohol, and foods of little nutritional value do not qualify for this service. The Department defines foods of little nutritional value to include soft drinks, certain fruit-flavoured drinks, potato chips, pretzels, cheese puffs, sweetened baked goods, chocolate bars, and similar products.

Nutritious Perishable Food

Most food products that require refrigeration or have a relatively short shelf-life qualify as nutritious perishable food under this Program. All infant foods and formula and non-carbonated water also qualify. Nutritious perishable food is shipped at lower postage rates than non-perishable food and non-food items.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Northern Air Stage Parcel Service Funding	$1.00*	NIL	NIL	NIL	NIL

Source: Expenditure, Accounting and Retrieval System.

* After taking on responsibility for the Program, the Department began contributing $15 million per year in 1992-93. In 1991-92, the Department contributed $1 million towards the Program.

Total program funding over the past five years has been (in millions) $15.0, $15.0, $16.0, $17.0, and $18.0, provided by other departments before 1991-92, as explained in footnote 13 on p. 20.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

NORTHERN AIR STAGE PARCEL SERVICE FUNDING

POLICY AND PROGRAM EVOLUTION

As a government department, the Post Office began to provide food parcel service to isolated communities in northern Quebec, northern Ontario, and the Baffin region of the Northwest Territories in the late 1960s and early 1970s. Postage rates, particularly in the provinces, did not cover the full cost of providing service. Prior to the establishment of a payment specifically for Northern air stage service, the federal government provided annual funding to Canada Post Corporation, previously the Post Office Department, to cover the shortfall. Food mail service was available only in certain regions, but Canada Post accepted parcels other than food for shipment between all origins and destinations[12].

When Canada Post became a Crown Corporation in 1986, it began to receive annual payments[13] to cover its loss related specifically to air stage service. The first payment, in 1986–87, was $19 million. Decreases of $1 million per year in the payment, through the period 1986 to 1990, resulted in large increases in postage rates. The announcement of rate increases in October 1989 led to further public consultation on the issue and a thorough review of the air stage subsidy, under the Department's leadership, in 1990. The report that resulted from the review of the air stage subsidy led to several significant policy changes, announced in May 1991.

These changes include the extension of food mail service to all isolated communities on the air stage network[14], the implementation of a uniform rate for the provinces and territories, focusing of the funding on nutritious perishable food for which there is no

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[12] Non-food parcels have always been eligible for subsidized rates in areas where food parcels were not accepted.

[13] These payments constituted an expenditure related to Canada Post, but administered through a Department (*e.g.* Industry Canada) for which the Minister responsible for Canada Post had responsibility as well. However, that department had no responsibility for policy or programs related to air stage parcel service. No department had such a responsibility until the government assigned it to the Department of Indian Affairs and Northern Development in 1991.

[14] This service began in October, 1991. Communities that had not been eligible for food mail service until then were those in Labrador, the Côte-Nord region of Quebec, Manitoba, Yukon, and the Northwest Territories excluding the Baffin region. Food mail service was and continues to be unavailable in British Columbia and Alberta. At current postal rates, communities in these two provinces would not benefit from such a service.

alternative to air transportation, and the transfer of responsibility for this Program to the Department.

The Department announced further details of the implementation of these policy changes, including a list of foods of little nutritional value that the service would not accept, in August 1991 and June 1992.

In October 1991, regions that had not previously been eligible for food mail service became eligible. Several communities in the Kitikmeot (central Arctic), Keewatin, and Inuvik regions in the N.W.T. and in northern Labrador have since joined the food mail system.

For non-food items, non-perishable food, and (in some cases) frozen food, the sealift provides a reasonable alternative to air service. But the distances and travel times involved preclude using the sealift for most perishable food. Some businesses, particularly in Northern Quebec, had been using food mail for non-perishable items. However, since these businesses required more time to arrange warehousing and financing for inventories, postal rates for these items in the province have been increased gradually.

The Department has been monitoring the impact of the changes to eligibility and postal rates on northern food prices and nutrition. Results of surveys of food prices have been released and the results of the nutrition survey will appear in 1994.

NORTHERN NATIVE RESEARCH AND CONSULTATION CONTRIBUTION

OBJECTIVE

To facilitate research projects or consultation between Northern natives and government or industry, on social, economic, and political development in the North.

DESCRIPTION

The Program provides funds to northern[15] native associations to research and carry out projects in support of their interests and to consult and be consulted on matters related to northern development. Projects or meetings to discuss, clarify, or expand proposals for land claims are not funded under this Program.

Each request for funding must identify the purpose of the consultation or research project and present a budget. The budget must forecast financial obligations and indicate their relationship to the proposed consultation or research project. Contributions for research projects and consultation require a formal contribution agreement. The Program makes each contribution according to an agreed-upon schedule of payments, subject to presentation of progress reports and financial statements.

Following the approved consultation or upon conclusion of the research project, the association must submit a report. The association may agree to share the report with interested third parties.

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[15] North of 60° latitude.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Northern Native Research and Consultation Contribution	$0.43	$0.17	$0.17	$0.12	$0.14

Source: Main Estimates, Part III.

NORTHERN NATIVE RESEARCH AND CONSULTATION CONTRIBUTION

POLICY AND PROGRAM EVOLUTION

Prior to 1978, the Department was allotted funds for two separate contributions to northern native associations. The first was allotted ($100,000) assisted research in support of the associations' claims and interests. The second ($75,000) enabled the associations to consult and to be consulted on matters related to northern development.

In recognition and anticipation of the future needs of northern native associations, in 1978 these allotments were combined under a single contribution authority without reference to funding for land claims research. From 1975, northern native associations received funding for claims research increasingly through loans rather than contributions. Therefore, they directed funding through contributions towards projects in support of other interests that required immediate attention and funding, such as the Berger and Lysk Pipeline Inquiries. Recent support has centred on research to support development of the government of Nunavut.

NORTHERN AFFAIRS

RESOURCE MANAGEMENT PROGRAMS

PART II

ARCTIC ENVIRONMENTAL STRATEGY

OBJECTIVE

To preserve and enhance the integrity, health, biodiversity, and productivity of our Arctic ecosystems for the benefit of present and future generations.

DESCRIPTION

The Arctic Environmental Strategy (AES) is a six-year $86.5 million[1] Green Plan program designed to address the most urgent environmental problems facing the Arctic. The objectives of the program were developed in partnership with the territorial governments, Native organizations and northern residents. The AES was introduced in 1991 with four components which call for action on:

1) **Contaminants** - to identify sources and transport; assess levels and impact on northern ecosystems and human health; provide health advice; and establish international controls through cooperation with other countries.

2) **Waste** - to clean up hazardous and unsightly waste abandoned on unoccupied Crown lands.

3) **Water** - to develop and implement comprehensive water quality and quantity monitoring networks and laboratory facilities, and to investigate specific water concerns.

4) **Environment/Economy integration** - to provide for integration of environment and economy through resource management and improved access to information.

Under each of these four programs northerners participate in both the design of the work and its implementation. The emphasis of the AES is to provide northerners with job opportunities as well as the skills and the knowledge base needed to counter the damage caused to the environment over many years.

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[1] Resources are provided through four federal departments (Indian Affairs and Northern Development, Environment Canada, Health Canada and Fisheries and Oceans) as well as the territorial governments and non-government organizations.

Aboriginal organizations are involved in all aspects of program planning and delivery. Five national native organizations receive core funding to support their participation in the AES, including involvement in all decision-making committees as well as the undertaking of specific projects. AES funding is being used by 50 native communities to develop and implement their own plans for the sustainable management of such resources as timber, wildlife and commercial fisheries. One major initiative for which Program funding is being used is the establishment of the Centre for Nutrition and the Environment of Indigenous Peoples at McGill University. The Centre's governing board includes representatives from a number of northern aboriginal organizations, government and McGill staff.

Internationally, DIAND co-chairs with Sweden the United Nations Economic Commission for Europe's Task Force on Persistent Organic Pollutants. The Task Force is developing a protocol to control the release of these substances into the environment. The Government of Canada, through DIAND, is also the vice-chair of the Arctic Monitoring and Assessment Program (AMAP), part of the Arctic Environmental Protection Strategy (AEPS) signed by eight circumpolar nations in 1991. Canada will also act as host of the next meeting of Ministers for the AEPS scheduled for 1995.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Arctic Environmental Strategy	$7.82	N/A *	N/A *	N/A *	N/A *

Source: Northern Affairs

* Not applicable.

BIOLOGICAL RESOURCES

OBJECTIVE

Sustainable development of fish and wildlife resources in Yukon and Northwest Territories and protection of Aboriginal and northern interests in the Canadian fur industry.

DESCRIPTION

The Program provides advice on the impact of industrial development on Northern biological resources. It initiates and manages research on renewable resources and development issues, and supports the application of Indian knowledge in resource management. Since wildlife habitat pertains to the use of land and water, the Program is administered in accordance with the following legislation: the *Territorial Lands Act*, the *Northwest Territories Waters Act*, the *Yukon Waters Act*, and the *Arctic Waters Pollution Prevention Act.*

The Program also protects and enhances Aboriginal peoples' interests in the Canadian fur industry. It supports and advises Native organizations, develops and supports educational programs for trappers, and assists the Native community advance its economic interest in the fur industry.

The Program monitors, and administers the funding[2] for, the implementation of the Environmental Impact Screening and Review provisions of the *Inuvialuit Final Agreement*. It provides advice and support for negotiating and implementing interjurisdictional and international agreements on wildlife and fisheries resources as well as participating in the negotiation and implementation of comprehensive land claims.

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[2] In 1991 a special allotment of funding was provided for the *Inuvialuit Final Agreement.*

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Biological Resources	$1.59	$1.60	$1.95	* N/A	* N/A

Source: Expenditure, Accounting and Retrieval System.

* Not available.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

ENVIRONMENTAL RESEARCH AND MONITORING

OBJECTIVE

To support the environmental monitoring and protection activities that are part of the Department's responsibilities for the management of resources in Yukon and Northwest Territories (water, lands, minerals, oil and gas, and wildlife).

DESCRIPTION

The Environmental Assessment and Review Process Guidelines Order[3] provides direction for the development and implementation of environmental assessment procedures as part of the Department's responsibilities for managing resources. Because the Program supports the work of resource management, its authority is derived from the *Territorial Lands Act*, the Territorial Land Use Regulations, the *Yukon Waters Act*, the *Northwest Territories Waters Act*, and the *Arctic Waters Pollution Prevention Act* and Regulations.

The Program does research and monitoring to assess the effectiveness of environmental protection measures and to gauge the health of northern ecosystems. It develops policy, direction, and advice related to environmental management strategies, resource development conflicts, and conservation practices. Current activities include implementing the Arctic Environmental Strategy[4], departmental research responsibilities under the Northern Oil and Gas Action Program[5], contributing to the management and operation of the Environmental Studies Research Fund and the Program for Energy Research and Development, monitoring the terrain performance[6] of the Norman Wells Pipeline, and guiding the implementation of environmental assessment and review processes in the North (including processes for claims settlement areas).

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[3] *The Canada Environmental Assessment Act* and regulations, once in force, will replace the *Environmental Assessment and Review Process Guidelines Order*.

[4] For details on the Arctic Environmental Strategy, including resources, refer to program description section.

[5] The Northern Oil and Gas Action Program is an interdepartmental accelerated research program to ensure that federal agencies are fully prepared to regulate expanded oil and gas development.

[6] "Terrain performance" refers to the long-term stability of the relationship between the pipeline and its immediate environment, *i.e.* nearby surface conditions.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991–92	1990–91	1989–90	1988–89	1987–88
Environmental Research and Monitoring	$5.88 *	$3.04	$1.54	$3.56	$5.43

Source: Expenditure, Accounting and Retrieval System.

* Note that Arctic Environmental Strategy (AES) expenditures are not included here; for that information refer to financial table for AES description.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

FOREST RESOURCES, YUKON

OBJECTIVE

To manage and protect forests in Yukon.

DESCRIPTION

The Program exercises specific statutory and regulatory powers and responsibilities pertaining to forest resources in Yukon[7]. The *Territorial Lands Act*, the Yukon Forest Protection Regulations and the accompanying Yukon Timber Regulations govern forestry in Yukon. The Program must ensure that the activities involved in managing forestry resources comply with many other statutes[8] and regulations.

The Program maintains an inventory of information on forests, authorizes the use of forests by issuing tree cutting permits and timber harvesting agreements, participates in environmental assessment and review processes, and ensures compliance with the terms and conditions of authorized timber use. The Program is responsible for protecting forests from insects and disease and for fire protection in more valuable forested areas, settled areas, travel corridors, lodge areas, and mining areas (fire action zones).

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[7] Forestry management was transferred to the Northwest Territories Government on April 1, 1987. It is planned to similarly transfer the responsibility for the forestry management program in Yukon to the Yukon Territorial Government.

[8] Resource management activities in the North must also comply with other statutes, such as the *Migratory Birds Convention Act, Fisheries Act, National Parks Act, Canada Environmental Protection Act,* and *Canada Wildlife Act.*

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Forestry Management	$14.32	$12.09	$14.74	$6.07	$6.24

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

LAND RESOURCES

OBJECTIVE

To manage and protect land resources in Yukon and Northwest Territories.

DESCRIPTION

The Program manages land resources in accordance with the *Territorial Lands Act* and the *Federal Real Property Act*[9]. The *Territorial Lands Act* provides for administration and protection of federal Crown lands in Yukon and Northwest Territories under direct control of the Minister of Indian Affairs and Northern Development. Regulations pursuant to this Act include: Yukon Timber Regulations, Yukon Forest Protection Regulations, Territorial Coal Regulations, Territorial Dredging Regulations, Canada Mining Regulations, Territorial Quarrying Regulations, Territorial Land Use Regulations, and Territorial Lands Regulations. The *Federal Real Property Act* provides legislative authority for the administration of public lands not covered under the *Territorial Lands Act*, such as sea bottom and harbour lands.

The Program authorizes and controls the disposition and uses of federal Crown lands in the Northwest Territories and Yukon. It administers land use permits, quarrying permits, sales and leases of lands, rights-of-way, reserves for public purposes for other government agencies, and Orders in Council related to the disposition of surface rights and interests in Crown lands on the mainland and on submerged lands off the shores of the Northwest Territories and Yukon. It is responsible for environmental screening of proposals and for inspections and enforcement of the terms and conditions attached to authorizations.

The Program maintains registries of interests in federal Crown lands and investigates unauthorized occupation of Crown lands in the two territories. It maintains a comprehensive inventory and management plan for development of northern granular resources (and for the granular resource component of the Northern Oil and Gas Action Program[10]), and coordinates and implements various land use projects (currently the management and clean-up of wastes on northern Crown lands).

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9 Recent legislation transferred responsibility for land titles to the two territorial governments and repealed the *Land Titles Act*.

10 The Northern Oil and Gas Action Program (NOGAP) is an interdepartmental accelerated research program to ensure that federal agencies are fully prepared to regulate expanded oil and gas development.

Other activities include policy and research initiatives related to land development, support for the land selection process during native land claims negotiations, and the modernizing of legislation, policies, records, and procedures in anticipation of changes (including major land transfers) as a result of devolution and the settlement of native land claims.

The Program is also engaged in several *ad hoc* activities. It provides advice and support for the negotiation of comprehensive land claims agreements with the Council for Yukon Indians First Nations and the Sahtu Tribal Council. It is implementing provisions in the Gwich'in claim settlement dealing with natural resources and resource management. It was also involved in the transfer of responsibility for land titles to the two territorial governments.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Land Resources	$4.07	$3.38	$3.81	$1.39	$0.60

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

MINES AND MINERAL MANAGEMENT

OBJECTIVE

To manage and promote the orderly development of mineral resources in Yukon and Northwest Territories.

DESCRIPTION

The Program exercises specific statutory powers and responsibilities pertaining to resources. The *Territorial Lands Act* and accompanying Canada Mining Regulations govern mining in the Northwest Territories. The *Yukon Placer Mining Act* and the *Yukon Quartz Mining Act* regulate mining in Yukon Territory. The former addresses placer mining for alluvial gold deposits, while the latter concerns mining of lode (bedrock) minerals. The Program must ensure that the activities involved in managing mineral resources comply with many other statutes[11] and regulations.

The Program:

Recommends, develops, implements, and reviews policies, strategies, plans, legislation, and regulations to manage and promote the orderly development of mineral resources in Yukon and the Northwest Territories.

Authorizes all quartz (bedrock) and placer (surface gold) mining as well as all coal mining and dredging activities in the two territories.

Operates a formal registry of rights, renewals, and transfers of interest.

Ensures compliance with terms and conditions attached to authorizations.

Ensures the collection of mining royalties due the Crown.

Monitors the exploration and development of mineral resources in the Northwest Territories and Yukon.

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[11] Resource management activities in the North must also comply with other statutes, such as the *Migratory Birds Convention Act, Fisheries Act, National Parks Act, Canada Environmental Protection Act,* and *Canada Wildlife Act.*

Ascertains and provides advice on the economic viability and potential impact of the industry and of specific mining projects.

Analyzes performance of the industry and of individual firms within it concerning exploration, mining, and processing of minerals in both territories (including factors affecting performance). The Program obtains information from a variety of sources, including that provided voluntarily by individual companies.

Recommends, oversees, and implements government initiatives to encourage investment and mine development, to modernize legislation, to enhance industry economic performance, to ensure better environmental protection, and to encourage greater participation by Aboriginal peoples.

Provides technical advice to the industry by informing miners of engineering, technological, and operational advances in the industry.

Offers courses on prospecting, and operates technical libraries and publication outlets.

Sponsors, conducts, or participates in research (field studies, industry analyses).

Does geological mapping of areas where there is an interest in exploration.

Monitors the development of infrastructure related to transportation in the two territories.

Conducts economic impact and feasibility studies of individual mineral development proposals and makes recommendations regarding the provision of government financial support.

Provides advice to native land claims negotiators.

Provides advice on interrelated mining and environmental issues.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Mines and Mineral Management	$3.68	$4.67	$21.90	$6.90	$52.21

Source: Expenditure, Accounting and Retrieval System.

It should be noted that the above figures include expenditures for transportation infrastructure management as well as mines and mineral management. Many of the infrastructure management responsibilities have been transferred to the territorial governments, e.g. inter-territorial roads, B & C airports, Alaska Highway.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

OIL AND GAS RESOURCES

OBJECTIVE

To promote and manage the exploration and development of hydrocarbon resources north of 60°.

DESCRIPTION

The *Canada Petroleum Resources Act* sets out a management regime for petroleum resources, including such matters as the issuance and administration of various licences, royalties, etc. Under this *Act*, the Department issues the various forms of licence (exploration, significant discovery, and production), conducts disposals of rights by public tender, establishes terms and conditions of licences, monitors activities undertaken by industry to meet licence conditions, collects various fees, rentals and royalties, and otherwise protects the public interest with respect to petroleum resources north of 60° latitude.

The *Canada Oil and Gas Operations Act* governs the operational aspects of activities associated with exploration, development, and production. Under this *Act*, the National Energy Board oversees petroleum operations in the North, such as drilling, to ensure they are conducted in a manner that conserves the resource, protects the environment, and meets health and safety requirements for workers. Negotiations with the Yukon government led to the conclusion and the signing on May 28, 1993, of the Canada–Yukon Oil and Gas Accord. Under the terms of the Accord, the federal government is committed to introduce and support as a government measure, legislation necessary to amend the *Yukon Act* to transfer to Yukon the additional legislative powers necessary to undertake, through Yukon legislation, all aspects of the management and administration of onshore oil and gas resources.

The proposed amendments to the *Yukon Act* would provide legislative powers in respect of oil and gas as agreed to in the Accord. These powers would apply throughout Yukon as well as to the area on the north coast landward of the line that encloses a couple of bays that are not otherwise within the territory. The legislative authority of the Yukon government would not apply to the bays for any other purpose. The method used to draw the line, followed the precedent set in the East Coast Accords in applying the low water mark as a fair line of demarcation. The line is solely for the administration of oil and gas resources and does not confer any rights greater than those afforded to the provinces.

These legislative powers would not impinge on the jurisdiction of the National Energy Board over the regulation of pipelines, nor provide for discrimination in prices, or, in supplies to other parts of Canada, nor authorize taxation that differentiates between production exported to another part of Canada and production not exported from the Yukon onshore. The power would not be construed as any greater than those given to provinces under section 92(A) of the *Constitution Act, 1867*,

In addition, the legislative powers would not impair or diminish the capacity of the Government of Canada to fulfil its mandate with respect to international obligations, national security, the environment and other federal responsibilities such as the resolution of aboriginal land claims, the creation of national parks and defense installations.

Once the transfer of administration of oil and gas is completed, the federal government will vacate the field in relation to the management and regulation of oil and gas resources in Yukon. The legislation applicable to oil and gas resources on all frontier lands, the *Canada Petroleum Resources Act*, the *Canada Oil and Gas Operations Act* and Part II.1 of the *National Energy Board Act*, will become non-applicable in the Yukon.

With the additional ordinance making powers, the Yukon government will be in a position to exercise the same type of jurisdiction over onshore oil and gas resources as those exercised by the provinces. Yukon, through its own legislation, will manage and regulate oil and gas activities. The legislation will address the exploration, development, conservation and environmental and safety regulation of oil and gas, and the determination and collection of resource revenues. The transfer of administration of oil and gas and the replacement of federal legislation by territorial legislation would take place at the same time.

The Program must also ensure that the activities involved in managing oil and gas resources comply with many other statutes[12] and regulations.

The Program:

Issues licenses which authorize exploration for, development of, and production of oil and gas on northern Canadian frontier lands.

Ensures compliance with terms and conditions attached to the licences.

Operates a formal registry of oil and gas licences and transfers of interest.

Monitors activities carried out on licence areas.

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[12] Resource management activities in the North must also comply with other statutes, such as the *Migratory Birds Convention Act, Fisheries Act, National Parks Act, Canada Environmental Protection Act,* and *Canada Wildlife Act.*

Tracks ownership and corporate changes.

Approves work and expenditures designed to meet licence requirements.

Recommends declarations of significant and commercial discovery.

Administers security deposits.

Collects various types of revenues generated by oil and gas activities, such as royalties on production.

Coordinates activities of key participants in exploration and development activities, such as regulatory agencies, government departments, Aboriginal groups, environmentalists, prospective explorers, advisors, consultants, and engineers.

Provides information and advice on the current and historic status of rights and on regulations, forms, and procedures.

Develops policy and guidelines in support of the process of issuing rights.

Provides information on related policies, procedures, and operations for use by government, industry, and others.

Produces regular and special reports, indices, and maps in support of oil and gas activities.

Assesses both short-term and long-term socio-economic implications of northern petroleum activity.

Carries out or participates in studies of economic, environmental, energy, northern, intergovernmental, and regulatory trends related to oil and gas development in the North.

Recommends policy changes to encourage industry, to streamline processes, and to enhance industrial, employment, and other socio-economic benefits of northern petroleum activity.

Administers the Norman Wells Proven Area Agreement[13], including the Crown interest and royalty.

Initiates, develops, and updates policy and negotiating frameworks for the Northern Energy Accord.

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[13] The Norman Wells Proven Area Agreement, between the federal government and Imperial Oil Limited, originally signed in 1944, established the basis for developing the Norman Wells field.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Oil and Gas Management *	($19.08)	($8.56)	($6.60)	($3.99)	($5.10)

Source: Expenditure, Accounting and Retrieval System.

* Net Revenue (revenue from royalties less expenditures).

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

WATER RESOURCES

OBJECTIVE

Management of inland waters in the Northwest Territories and Yukon and the prevention of pollution from non-shipping activities in the Arctic offshore waters.

DESCRIPTION

The Program develops policies and plans in support of its legislative mandate, i.e. the *Yukon Waters Act*, the *Northwest Territories Waters Act* and the *Arctic Waters Pollution Prevention Act* and oversees their implementation. This Program serves as the focus for cooperative water data collection, including quality, quantity, sediment, and snow measurements. The Program also conducts scientific research to support the development of policies and plans and to assist in impact assessments. It provides input to the negotiation of transboundary water agreements with upstream jurisdictions, including modernization of the existing legislative base, as well as to negotiation and implementation of native land claims as they relate to water rights and management. The Program also provides advice to the Minister with respect to his responsibilities under the federal Environmental Assessment and Review Process.

The Program provides technical assistance to users of water, applicants, and developers regarding structure design, water quality, water supply, and flood prediction. It also inspects and enforces terms and conditions attached to water licences issued by Water Boards.

The Program provides policy and planning advice for initiatives likely to have impacts on water management in the North, such as native land claims.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987/1988 until 1991/1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
Water Resources	$6.32	$6.16	$5.86	$5.07	$4.39

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

NORTHERN AFFAIRS

EVOLUTION OF NORTHERN AFFAIRS AND RESOURCE MANAGEMENT PROGRAMS IN THE NORTH

PART III

EVOLUTION OF NORTHERN AFFAIRS AND RESOURCE MANAGEMENT PROGRAMS IN THE NORTH

EARLY RESOURCE USE AND DEVELOPMENT ACTIVITY IN THE NORTH

Early Mining and Related Development

The area north of 60° includes the traditional lands of various aboriginal peoples and cultures. Until late in the nineteenth century, resource use consisted primarily of hunting, fishing, trapping, and plant harvesting by aboriginal populations, and a limited amount of European activity centred around whaling and the fur trade.

In 1896, gold was discovered in the Klondike and a large number of non-indigenous people moved to the area to stake and work mining claims. Other people moved to the area to provide goods and services and the population of Yukon grew from less than 1,000 to over 40,000. Transportation links were improved, providing access to the interior by road, regular steam service on the Yukon River, and the White Pass and Yukon railway (completed in 1900).

By 1905, many of the more accessible claims had been mined. In 1906, silver-lead deposits were discovered at Galena Creek and in 1912, quartz mining began in Yukon at the nearby Silver King claim. Government encouraged these activities by providing grubstakes to prospectors.

In 1920, oil was discovered in Norman Wells in the Northwest Territories. In 1930, a relatively small scale operation began producing oil for an on-site refinery. In the Yellowknife area, gold was discovered. The Con and Rycon mines opened in 1938; the Negus mine opened in 1939. Non-natives came north to work in the mines and new infrastructure and services were established around mines.

Northern lands were managed under the *Dominion Lands Act* of 1884 (amended 1887 and 1908). Placer and quartz mineral rights were initially administered in both territories through Northwest Territories Quartz Mining Regulations pursuant to the *Dominion Lands Act*. In 1906, the *Yukon Placer Mining Act* was passed to facilitate placer mining in Yukon and provide greater rights protection for placer miners. Quartz mining received similar support through passage of the *Yukon Quartz Mining Act* in 1924.[1]

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[1] These two *Acts*, with minor amendments form the basis for mining in Yukon today.

Impacts of World War II on Resource Development

Canada and the United States built the Canada–Alaska Highway in response to the possibility of a Japanese invasion of Alaska during World War II. To provide ready fuel for building the Alaska Highway, the Canol Road was built and a four–inch pipeline run between Norman Wells and an oil refinery in Whitehorse. The Canol Pipeline Project lasted from 1942 to 1945. In 1945, the pipeline was dismantled and Norman Wells returned to supplying oil exclusively to its on–site refinery. The highway, however, remained as a permanent link between north and south, providing increased contact between aboriginal peoples and peoples and cultures from outside the North.

In the 1940s, the American government established an air base in Frobisher (now Iqaluit) as part of the Crimson Air Staging Route to Europe. In the 1950s, Distant Early Warning (DEW) line sites were established in the central and eastern Arctic. Air strips, established primarily for military purposes, had the effect of opening up the North, making it more readily accessible for resource exploration and exploitation and for scientific research.

Post–War Resource Management in the North

During World War II, the Department of Mines and Resources had been the federal department responsible for the North. In 1950, the Department of Mines and Resources was replaced by the Department of Resources and Development and, in 1953, by the newly created Department of Northern Affairs and National Resources. The Minister for Northern Affairs and National Resources was given the specific duty of co–ordinating the activities of all federal government departments in the Northwest Territories and Yukon. The Minister was also responsible for promoting further economic and political development in the North.

The Department sought to encourage resource development through improvements to northern infrastructure. Substantial road construction was authorized under a policy called Roads to Resources[2] and the federal government contributed directly to building social and transportation infrastructures for northern mining communities.[3]

Petroleum exploration began in the Sverdrup Basin in the Arctic Islands in 1961 and in the Mackenzie Delta–Beaufort Sea area in 1962. Until the end of the 1960s, Norman Wells remained the only site of actual petroleum production in the North.

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[2] The Dempster Highway was a product of this initiative.

[3] Examples include building the Great Slave Lake Railway to Pine Point and contributions to housing and training to encourage native employment by mining companies. Contributions for social infrastructure were determined by government on a case–by–case basis.

DEVELOPMENT OF NORTHERN AFFAIRS RESOURCE MANAGEMENT REGIMES

The Department of Indian Affairs and Northern Development (DIAND) was created in 1966, combining the Department of Northern Affairs and National Resources with Indian Affairs (until then a branch of the Department of Citizenship and Immigration). The duties, powers, and functions of the Minister of Indian Affairs and Northern Development extended to and included all matters over which the Parliament of Canada had jurisdiction relating to (among other things): Indian Affairs, Eskimo Affairs, and "the Northwest Territories and the Yukon Territory and their resources and affairs".[4]

The Northern Affairs Program (NAP) of DIAND continued the federal government's emphasis on natural resource based economic development in the North. The initial focus was on the development of resource management regimes to encourage and regulate oil and gas and mineral development in the North. By 1968, the need for a comprehensive program for the management of renewable resources was recognized and several new statutes were enacted specifically to address the management of lands, forests, water, and biological resources.

Minerals Management

Territorial Coal Regulations were passed in 1954 to govern the disposition of rights to coal in the Northwest Territories and Yukon. Territorial Quarrying Regulations (1957) were adopted to address the disposition of sand, gravel, and quarryable materials from territorial Crown lands and Territorial Dredging Regulations (1978) were promulgated to address dredging rights for minerals in submerged riverbeds in the Northwest Territories and Yukon. The Canada Mining Regulations were introduced in 1960 to govern mineral rights, collection of royalties, work performance, and licence requirements for mineral exploration and development in the Northwest Territories.[5] These regulations provided certainty for rights holders and resource developers, addressed health and safety issues, and dealt with environmental impacts of development.

The federal government also directly participated in research, information collection, and monitoring activities to provide information for industry and resource managers, to facilitate resource development and better understand and avoid (or mitigate) possible adverse impacts of development on the physical and natural environment.

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[4]Sections 5 and 6 of the *DIAND Act*, R.S. 1985

[5] The Territorial Coal Regulations, Territorial Quarrying Regulations, Territorial Dredging Regulations, and Canada Mining Regulations are administered by authority of the *Territorial Lands Act*.

Oil and Gas Management

New legislation was introduced for the management of oil and gas exploration and development, providing certainty for industry and addressing environmental protection and health and safety concerns. The Canada Oil and Gas Lands Regulations and the Canada Oil and Gas Drilling and Production Regulations were promulgated under the *Territorial Lands Act* and the *Public Lands Grants Act*[6]. These regulations, along with the *Oil and Gas Production and Conservation Act* (1969), became the basis for regulation of oil and gas activities on Canada's frontier lands[7]. In 1970, research facilities were established in Inuvik to study problems of transporting oil and gas from the North, the Arctic Petroleum Operators Association (APOA) was formed, and Mackenzie Valley Pipeline studies were undertaken in anticipation of an oil and gas pipeline along the Mackenzie Valley corridor. The Department prepared guidelines for the construction and operation of northern pipelines.[8] The regulatory responsibilities have been transferred to the National Energy Board effective May 12, 1994 when Bill C-6 was proclaimed. The Minister of DIAND is no longer responsible for administering this Act north of 60° latitude.

Negotiations with the Yukon government led to the conclusion and the signing on May 28, 1993, of the Canada-Yukon Oil and Gas Accord. The proposed amendments to the *Yukon Act* would provide legislative powers in respect of oil and gas as agreed to in the Accord. In addition, the legislative powers would not impair or diminish the capacity of the Government of Canada to fulfil its mandate with respect to international obligations, national security, the environment and other federal responsibilities such as the resolution of aboriginal land claims, the creation of national parks and defense installations.

With the additional ordinance making powers, the Yukon government will be in a position to exercise the same type of jurisdiction over onshore oil and gas resources as those exercised by the provinces. Yukon, through its own legislation, will manage and regulate oil and gas activities. The legislation will address the exploration, development, conservation and environmental and safety regulation of oil and gas, and the determination and collection of resource revenues. The transfer of administration of oil and gas and the replacement of federal legislation by territorial legislation would take place at the same time.

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[6] In 1991, the *Public Lands Grants Act* was revoked pursuant to the *Federal Real Property Act*.

[7] The *Oil and Gas Production Act* has been replaced by the *Canada Oil and Gas Operations Act* (1992) which, together with the *Canada Petroleum Resources Act* (1987), forms the basis today for regulation of northern oil and gas resources.

[8] Issues addressed by the guidelines included environmental protection and pollution control, Canadian ownership and participation, and the training and employment of northerners.

Once the transfer of administration of oil and gas is completed, the federal government will vacate the field in relation to the management and regulation of oil and gas resources in Yukon. The legislation applicable to oil and gas resources on all frontier lands, the *Canada Petroleum Resources Act*, the *Canada Oil and Gas Operations Act* and Part II.I of the *National Energy Board Act* will become non-applicable in the Yukon.

Lands Management

In the 1950s and 1960s, the federal government managed northern lands according to the *Territorial Lands Act*, the *Land Titles Act,* and the *Public Lands Grants Act*[9]. Territorial Lands Regulations were adopted in 1960 to regulate the sale or lease of territorial Crown lands. Promulgation of the Territorial Land Use Regulations in 1969 provided for the designation of land management zones and introduced a land use permitting system to regularize the use of surface lands. The right to use surface lands for access roads, residential or other such uses was subject to terms and conditions controlling the activity and its impacts on the environment.

Forests Management

The Government of Canada introduced the use of permits to regulate the cutting and removal of timber on territorial Crown lands through its adoption of the Territorial Timber Regulations (1962) pursuant to the *Territorial Lands Act (TLA).* In 1987, the Government of the Northwest Territories assumed responsibilities for forest management and fire suppression in the Northwest Territories. Federal legislation was amended to apply to Yukon alone and the Yukon Timber Regulations replaced the Territorial Timber Regulations. Yukon Forest Protection Regulations (1987) provided for fighting of forest fires in Yukon, issuance of fire permits, designation of fire seasons and closed districts, and other measures to protect forest resources from fire.

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[9] The *Territorial Lands Act* provides for the administration and protection of federal Crown lands under direct control of the Minister of IAND. The *Public Lands Grants Act* provided for the management and administration of public lands not covered under the *Territorial Lands Act* (e.g. seabottom and harbour lands). The *Land Titles Act* provided for the registration of interests in private lands. NOTE: The *Public Lands Grants Act* was revoked in 1991 pursuant to the *Federal Real Property Act*. Responsibility for land titles was devolved to the territorial governments in 1993.

Water Management

In 1970, the federal government passed the *Northern Inland Waters Act (NIWA).*[10] This legislation provided for licensing the use of inland water resources, controlling the deposit of wastes into inland water bodies and ensuring that all works and undertakings planned for the use, diversion, storage, or treatment of water were designed and constructed to acceptable engineering standards. In 1993, NIWA was replaced by separate Acts for each territory; the Yukon Waters Act and the Northwest Territories Waters Act. The principles of NIWA were retained and the separate statutes allowed for territory-specific regulatory provisions. Another statute, the *Arctic Waters Pollution Prevention Act* (1970) provided for the prevention of pollution of areas of the arctic waters adjacent to the mainland and islands of the Canadian arctic. The Act was passed as a direct consequence of the voyage of the American tanker Manhattan, through the Northwest Passage.

Biological Resources Management

DIAND had responsibility for the Canada Wildlife Services and National Parks until 1972 and 1979 respectively. The Department retained responsibilities as the administrator of Crown lands (including the offshore), for managing the impacts of land and water use on the biological resources of the North. In this capacity, it undertook the sponsorship and support of research and monitoring of development impacts on the biological resources of the North.[11]

Impacts on Aboriginal Peoples

Interest in northern non-renewable resources in the late 1960's and 1970's often focused on large scale projects. Aboriginal people sought access both to the benefits of development and to active participation in development decisions and activities.[12] They sought also to prevent (or minimize) potential adverse impacts of development on northern aboriginal cultures and lifestyles. Concerned about the possible impacts of development, aboriginal peoples actively pursued land claims negotiations to obtain recognition and protection for aboriginal rights.

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[10] Although earlier statutes (the *Canada Shipping Act*, the *Navigable Waters Protection Act*, and the *Fisheries Act*) applied to water resources, no statutes provided specifically for the planning and management of water until the passage of *NIWA* in 1970.

[11] Pursuant to such legislation as the *Canada Environmental Protection Act* and the Environmental Assessment Review Procedures Guidelines Order

[12] The Berger Inquiry into the proposed Mackenzie Valley Pipeline in the late 1970's exemplifies this new visibility for aboriginal interests and concerns related to resource development in the North.

NORTHERN RESOURCE MANAGEMENT IN A CHANGING ENVIRONMENT

In 1987, the Government of Canada adopted the Northern Political and Economic Framework, affirming the national goal of strengthening northern political and economic institutions through negotiating northern comprehensive land claims settlements, finding cooperative mechanisms to support economic development, enhancing international Arctic cooperation, protecting and enhancing the northern environment, and transferring provincial-type responsibilities to the territorial governments.

Activities targeted by the Northern Political and Economic Framework provide broad direction for the Northern Affairs Program (NAP) today. Current activities are also influenced by the Government of Canada's Frontier Energy Policy (1985), Northern Mineral Policy (1986), Comprehensive Land Claims Policy (1987), and Arctic Environmental Strategy (1991).

Settling Comprehensive Land Claims

The Comprehensive Land Claims Policy[13] (1987) is an expression of the Government of Canada's commitment to negotiate comprehensive land claims agreements between claimant aboriginal peoples and the Government of Canada. In the Northwest Territories, four comprehensive land claims agreements have been reached. In Yukon, there is an Umbrella Final Agreement with the Council for Yukon Indians and four Yukon First Nations.[14]

Settlement agreements have significant impacts on the role of aboriginal peoples in resource management and on their access to use and profit from northern natural resources. The settlement of comprehensive claims in the North involves the relinquishment of claims to certain lands in return for clear title to the surface and/or subsurface of specific lands in the settlement area. Aboriginal people also gain direct participation in resource management through representation on public government institutions created under claims to carry out land, water, and environmental management responsibilities.

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[13] For further details on comprehensive land claims, refer to the program description entitled Comprehensive Claims produced by Claims and Indian Government, DIAND.

[14] In the Northwest Territories, comprehensive land claims agreements have been reached with the Inuvialuit of the Western Arctic (1984), Gwich'in (1991), Sahtu Dene and Metis (1993), and Tungavik Federation of Nunavut (1992). In 1992, the Council of Yukon Indians signed an Umbrella Final Agreement with the Government of Canada. In 1993, final land claims agreements were signed by four Yukon First Nations: the Teslin Tlingit Council, First Nation of Nacho Nyak Dun, Champagne and Aishihik First Nation, and Vuntut Gwitchin First Nation.

Environmental Management

NAP continues to pursue legislative changes to improve its ability to respond to environmental concerns. In 1993, the *Northern Inland Waters Act (NIWA)* was replaced by the *Yukon Waters Act* and *Northwest Territories Waters Act,* statutes designed to improve decision making and licensing processes by providing more opportunities for local involvement and control. NAP is also involved in efforts to establish mining land use regulations in the Yukon and to advance a mine site reclamation policy for the North. Elsewhere, efforts are being made to modernize northern management regimes and ensure that comprehensive and open environmental review processes are implemented in response to the Environmental Assessment Review Process Guidelines Order, tentatively to be replaced by the *Canadian Environmental Assessment Act* (CEAA), in November 1994.

While considerable NAP activity is directed at ensuring reliable identification and mitigation of potential impacts of development activity authorized by the Program, NAP is also involved in measures to help maintain northern ecosystem health (including human health).[15] Much of this work is undertaken as part of the Arctic Environmental Strategy (AES), an action plan to preserve and enhance the integrity, health, biological diversity, and productivity of Canadian Arctic ecosystems. The AES has a strong focus on northern delivery and the creation of economic opportunities for northerners in a manner which protects and enhances the sustainable utilization of resources. The AES seeks to ensure that planning, development, conservation, and protection of the Arctic region accommodates indigenous peoples' perspectives, values, and practices and integrates local, regional, national and international interests in the management of resources and protection of the Arctic environment. AES initiatives include research on environmental contaminants, clean up of northern waste sites, water quality and quantity monitoring, and community based projects to integrate economy and environment. Many of these activities involve work with other circumpolar nations to address common issues and problems.

In the international arena, the Government of Canada is hosting the Third Ministerial Conference of the Arctic Environmental Protection Strategy (AEPS) which involves the eight circumpolar countries as well as ICC, Saami and the Russian Association of Peoples of the North. Canada (DIAND) also is chairing the AEPS Arctic Monitoring and Assessment Program (AMAP), and co-chairs the Task Force on Persistent Organic Pollutants under the aegis of the United Nations Economic Commission for Europe. Finally, Canada is leading an AEPS Task Force on Sustainable Development which will involve Aboriginal people, and responds to the UNCED Agenda 21 "Blueprint for Sustainability".

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[15] These measures are part of the Government of Canada *Green Plan*, adopted in 1991.

A further commitment from the 1992 UNCED is the Biodiversity Convention. The Department is part of an interdepartmental working group headed by the Biodiversity Convention Office of Environment Canada that is working with federal departments, the provinces and territories and with non-governmental organizations to develop a Canadian Biodiversity Strategy. The Biodiversity Convention Office has specifically sought the direct input of First Nations. It expects to have completed the Canadian Biodiversity Strategy by the end of 1994. Canada is meeting its commitments under the United Nations Convention on Biological Diversity and has fully involved First Nations.

Division of the Northwest Territories

As part of the Tungavik Federation of Nunavut land claims agreement, the federal government agreed to division of the Northwest Territories to create an eastern territory, Nunavut, by 1999. Division of the Northwest Territories will entail NAP participation in the establishment of resource management arrangements appropriate to the new territories created by division.

Devolving Province-like Responsibilities

In the early 1970s, the Government of Canada recognized the desire of many northerners for a greater measure of self-government. The government encouraged establishment of effective territorial public services and a gradual transfer of province-like responsibilities to the territorial governments. Program responsibilities were to be transferred to territorial governments at a pace determined by their preparedness and willingness to accept new responsibilities. A number of programs were transferred from the federal government to territorial governments during the 1970's and 1980's. These transfers included certain resource management responsibilities as well as responsibilities for development and maintenance of regional infrastructure supporting resource development.[16] The Department recently transferred responsibility for land titles to both territorial governments. It is currently negotiating the transfer of oil and gas to the Yukon Territorial Government and is planning the devolution of forestry management to the Yukon Territorial Government.

Developing Partnerships

Resource management processes are increasingly public processes. NAP regularly consults with industry, aboriginal people, northern communities, other federal government departments, and other levels of government in the course of administering its legislation

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[16] Transfers to the Yukon Territorial Government have included: Northern Canada Power Commission (1987), mine safety (1989), inter-territorial roads (1990), B and C airports (1990), and the Alaska Highway (1992). Transfers to the Government of the Northwest Territories have included: forest management and fire suppression (1987), Northern Canada Power Commission (1988), inter-territorial roads (1990) and B and C airports (1991).

and policies. Lands management advisory committees,[17] environmental screening committees,[18] and water boards include opportunities for the general public to raise issues and express concerns related to management decisions. There is direct consultation before the issuance of any new oil and gas exploration rights in the North and application referrals for timber harvesting agreements, land leases and sales, land use permits, and most quarry permits.

Encouraging Industry

In the late 1980's, the Government of Canada affirmed its continuing support for the development of both mineral and petroleum resources in the North through its adoption of the Frontier Energy Policy (1985) and the Northern Mineral Policy (1986). These policies were developed to provide a stable environment for investment and to promote the competitiveness of hydrocarbon and mineral development in the North.
The Frontier Energy Policy[19] was adopted to provide a fiscal and management framework designed to attract oil and gas exploration and development. Its objectives include: royalties sensitive to profit, incentives for exploration, fair requirements for Canadian ownership, a stable policy and management environment, cooperation between federal and provincial governments and industry, and fair treatment of consumers and producers of energy. To broaden the potential base for petroleum investment, restrictions on foreign ownership at the production stage were removed from the *Canada Petroleum Resources Act* in June, 1993.

The Northern Mineral Policy provides a framework for mineral exploration and development in the North[20]. Its objectives include: certainty for rights holders, increased investment, improved geoscientific services, minimization of costs imposed by the federal government, and increased consultation and cooperation among industry, government, and the general public.

NAP supports industry through endeavours to improve geoscientific information, assess infrastructure requirements, improve communications between interested parties, and revise legislation to better serve the needs of industry and northerners.

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17 e.g. Land Use Advisory Committee, Federal/Territorial Lands Advisory Committee

18 e.g. Regional Environmental Review Committee in the Northwest Territories

19 At this time, the *Canada Petroleum Resources Act* was enacted to support the Frontier Energy Policy.

20 The Northern Mineral Policy was the first policy created specifically to guide mineral development in the North.

Promoting Sustainable Development

As the North moves toward new arrangements among northerners and between northerners and the rest of Canada, NAP continues to manage northern natural resources and do the monitoring, research, and planning needed to support resource management. As self-government, devolution, territorial division, and claims negotiation processes lead to new arrangements and resource management becomes more and more the responsibility of northerners, there is a need for coordination of resource management planning and implementation at local, regional, national, and international levels. To this end, NAP is currently involved in the promotion and application of Canada's commitment to sustainable development.

Integration of environment and economy is especially important in the unique context of the Canadian North. To ensure that economic development, land claims, devolution, self-government, and the creation of Nunavut are pursued and realized in a manner which satisfies Canada's national and international commitments to sustainable development, NAP needs to work closely with industry, territorial governments, other federal departments, Aboriginal peoples, and other northerners. Existing programs and processes need to be evaluated against sustainable development principles. In some cases, alternate measures need to be put into place to ensure that economic, social, and environmental considerations are fully addressed in resource management decisions.

In Canada's North, DIAND has the opportunity to demonstrate how sustainable development principles can be translated into real actions which protect the Arctic environment while providing opportunities and choices for northerners. Current NAP initiatives include support for trappers seeking to meet European Community standards for the humane trapping of wild fur and forty-two AES community projects ranging from polar bear management to the encouragement of eco-tourism and sustainable approaches to the management of the Norman Wells Oil field Internationally, the Government of Canada is set to play a strong leadership role with the eight arctic circumpolar countries in fostering sustainable development through the Arctic Environmental Protection Strategy and as host of the third Ministerial Conference on the Arctic Environment in 1995.

BACKGROUND PAPER FOR THE
ROYAL COMMISSION ON ABORIGINAL PEOPLES
PROGRAM DESCRIPTIONS AND EVOLUTION

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

POLICY AND STRATEGIC DIRECTION

FINAL VERSION

TABLE OF CONTENTS

POLICY AND STRATEGIC DIRECTION

ECONOMIC DEVELOPMENT

OBJECTIVE

To assist Indian and Inuit communities in their pursuit of enhanced economic self-reliance.

DESCRIPTION

The Department, along with Industry Canada (IC), and Human Resources Development (HRDC), delivers a range of complementary programs under the Canadian Aboriginal Economic Development Strategy (CAEDS), introduced in 1989.

The objective of CAEDS is to provide long-term employment and business opportunities for Canada's Aboriginal citizens, through further development of a network of Aboriginal controlled institutions, to support development of specific communities and economic sectors. CAEDS is also designed to increase employment opportunities by providing Aboriginal people with the means to manage effectively their own business enterprises, economic institutions, job training, and skill development; and to increase Aboriginal activity through joint ventures and by emphasizing greater urban employment of Aboriginal people.

The Department emphasizes enabling Aboriginal communities and their economic development organizations to deliver programs themselves. Within CAEDS, communities establish their own economic goals. Departmental staff work in an advisory and supportive role to assist communities in achieving these goals. The Department has responsibility for four components of CAEDS, as follows.

Community Economic Development Program (CEDP)

CEDP responds to the needs of Indian and Inuit communities to establish their own capacity to manage business, employment, and resource development programs and services. This capacity takes the form of Community Economic Development Organizations (CEDOs).

A CEDO may originate with a tribal council, an unaffiliated band, an Inuit community or group of communities, or a non-profit community development corporation wholly owned by the community. Where possible, the CEDO provides economic services to several communities from a central location. It must provide the full range of services for which it receives funds. It must also account to its constituent community for the quality of services provided. CEDO funding can be used for: enhancing organization development and the capacity of the Board of Directors and staff to deliver Program services, preparing community economic development strategies and plans; providing advisory, consulting, and accounting services to businesses and individuals; and, assisting in marketing and promotion of community goods and services.

An annual operating plan for each CEDO must be submitted to address specific issues such as the organizational management capacity, a clear mandate, constituency support, accountability to community leadership, and a plan for delivery of intended services in areas such as financing, employment, investment, business support, and resources.

More than 369 CEDOs in 1992 received funding and staff support, over 60 percent of which provide a full range of economic development services to their communities, twice the capacity in place in 1989[1]. CEDOs currently leverage over $50 million annually in additional resources from federal and provincial governments and the private sector[2]. Many CEDOs now practise more advanced strategic planning, using tools such as economic leakage measurement and automated work-force inventories.

Regional Opportunities Program[3]

The Regional Opportunities Program addresses region-wide sectoral development and provides some support for research and advocacy projects. The Program practises co-management with First Nations advisory boards in most regions. The advisory boards, in conjunction with regional staff, determine use of Program resources and allocation to the two sub-elements of the Regional Opportunities Program, described as follows:

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1 Department of Indian and Northern Affairs and Northern Development, *Community Economic Development Program Status Report 1991-1992*, 1993.

2 Department of Indian Affairs and Northern Development, *Community Economic Development Program Status Report 1991-1992*, 1993.

3 In 1993-1994. the Department's budget for economic development was reduced by 28.8 percent. First Nations Regional Advisory Boards identified funding for CEDO's as the first priority. While authority for ROP remains, limited funds are currently allocated for this program.

Sectoral Development Institutions

Sectoral Development Institutions provide a variety of products and services such as technical and professional advice to increase the profitability of existing businesses, assistance in business planning and development; brokering public and private sector support; and policy advocacy with governments. Sectoral Development Institutions also provide direct business investment and lending, marketing, export counselling, and services, and product quality control and labelling.

At the end of 1992, 32 Sectoral Development Institutions were providing region-wide professional development services in agriculture, fisheries, forestry, mining, financing, training, and arts and crafts[4].

Special Regional Initiatives

In full partnership with First Nations leadership, regions also fund development opportunities through the Special Regional Initiatives Program. Projects must demonstrate potential benefit to local economies. Authorities prohibit direct investments in business equity, but otherwise permit regions to undertake a wide range of development initiatives, such as identification of regional opportunities, analysis of regional market, and demonstration projects.

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[4] Department of Indian Affairs and Northern Development, *Community Economic Development Program Status Report 1991-1992*, 1993.

Commercial Development Program

Of the three main partners within CAEDS, IC has the primary mandate to provide Aboriginal business financing under its Aboriginal Economic Programs and is the point of first contact for all Aboriginal business financing proposals. However, the Department maintains a role in commercial development, including commercial direct loans to Indians and Inuit not served by an Aboriginal Capital Corporation, commercial loan guarantees for Indians and bands on reserve, where section 89 of the *Indian Act* prevents the pledging and seizing of collateral security, and commercial development research and advocacy activities. The Department's Guarantee Program complements IC's Loan Insurance program, to provide full coverage of loan guarantee services. The Department's Direct Loan Program is offered in areas (geographic and sectoral) not served by Aboriginal Capital Corporations, which represents about twenty percent of the Indian bands located in Quebec, Ontario and British Columbia. As IC completes its national network of ACCs the Department's direct loan Programs will cease to be delivered.

Under CAEDS, the Minister of Indian Affairs and Northern Development has authority to enter into agreements with Indian and Inuit lending institutions to sell all or parts of existing direct loan portfolios. The aim is to sell outright or to contract out the administration and collection of about $20 million (700 accounts) in Indian and Inuit direct loans to Aboriginal lending institutions in every region of the country.

The Department's "Aboriginal Access to Federal Procurement" initiative commenced in 1992. The Department has been actively intervening in selective major procurements ensuring Aboriginal economic development is supported through such means as prime contracting, sub-contracting, employment, etc. Efforts are underway to develop a national Aboriginal business database to support the marketing of Aboriginal businesses both domestically and internationally.

Research and Advocacy Program

All three CAEDS Departments operate Research and Advocacy Programs. These Programs aim to promote the development of Aboriginal employment and business opportunities through research on community economies, building government and private sector support, and identifying and communicating developmental and business ideas.

FINANCIAL INFORMATION

The financial data provided below presents the total DIAND expenditure on the program each year from 1987-1988 until 1991-1992.

TOTAL EXPENDITURES ($ MILLIONS)

	1991-92	1990-91	1989-90	1988-89	1987-88
ECONOMIC DEVELOPMENT Community Economic Development Program (CED)	$70.8	$74.0	$50.4	$30.7	$34.7
Regional Opportunities Program (ROP)	$9.5	Included in CED Program	$6.9	$7.8	$3.6
Commercial Development Program	$4.0	$1.9	$15.6	$15.8	$15.1
Research and Advocacy	$3.2	$1.7	$NIL	$NIL	$NIL

Source: Expenditure, Accounting and Retrieval System.

It is important to note that comparisons between the Expenditure, Accounting and Retrieval System and the National Expenditures, which are found in the Public Accounts, cannot be made. The time-frames for reporting are different and old-year adjustments must also be taken into consideration.

ECONOMIC DEVELOPMENT

POLICY AND PROGRAM EVOLUTION

In 1938, Section 70 of the *Indian Act* gave the Minister of Indian Affairs authority to make loans to Indians for specific projects. A revolving loan fund financed non-profit Indian ventures, largely in agriculture and arts and crafts.

In 1953, the Department of Northern Affairs and National Resources established the Eskimo Loan Fund. The Fund was a continuing special account in the Consolidated Revenue Fund of Canada. Its initial purpose was to provide small loans to Inuit trappers for supplies and equipment. By the mid-1960s, this Fund also assisted Inuit with their housing needs and provided expanded support for the development of small businesses, including cooperatives.

In 1965, Indian advisory boards were established at national and regional levels to advise on the long-term objectives of the Indian Affairs Branch.

In 1966, the Hawthorn Report, *A Survey of Contemporary Indians of Canada*, provided a comprehensive analysis of community economic circumstances on reserves and called for more economic development on Indian reserves.

In 1970, the Department established the Economic Development Branch and the Indian Economic Development Fund (IEDF). The IEDF provided direct loans, loan guarantees and financial contributions to Indian business enterprises to help them to overcome special difficulties in obtaining financing from conventional sources (including the restrictions on pledging collateral security on reserve, *i.e.* Section 89 of the *Indian Act*).

In 1970-1971, the Economic Development Branch began to assist Indians, Indian bands, and Inuit in creating business and employment opportunities in a variety of fields, including service industries, secondary industry, resource utilization, and land development, including mineral resources on Indian reserves.

In 1972-1973, the Department introduced the concept of fostering the development of self-reliance in the administration of Indian and Inuit communities, through advice, financial support, and other assistance. Indian people had greater interest in industrial and commercial development and industry had greater awareness of the opportunities of locating on Indian reserves. In 1973-1974, involvement of Indian people in the planning and implementation of economic enterprises increased.

In 1975, in recognition of important commercial development opportunities for Indians and Inuit in arts and crafts, the National Indian Arts and Crafts Corporation (NIACC) became incorporated as a non-profit economic development organization responsible for the promotion and development of the Canadian Indian arts and crafts industry. Regional arts and crafts affiliates (NIACC members) sprang up in all provinces. The Department began funding the development and promotion of Indian arts and crafts, through NIACC.

In 1975-1976, increasing Indian participation in the labour force received highest priority. The Department worked at involving Canadian industry in co-participation projects with Indian people, such as the joint venture at Tyendinaga Reserve with the Bata Company. Also, Work Opportunity began as a pilot band work program designed to lessen dependence on social assistance and to increase individual involvement in reserve economies, as did the Summer Student Indian and Inuit Recruitment and Development Program.

Also in 1975-1976, the Saskatchewan Indian Agricultural Program and the Manitoba Indian Agricultural Program began operations under the joint direction of the federal and provincial governments and the provincial Indian Brotherhoods. The Department began providing funds to these institutions annually. Similar institutions were later established in Alberta, British Columbia and Ontario.

In 1976-1977, a review of the IEDF and its individual projects indicated that many projects financed by the Fund were too ambitious and beyond the initial capacity or ability of the Indian people involved. The analysis resulted in a stabilization program to return the projects to viability and to increase generation of employment. A large part of the financial injection was used to buy down loans.

In 1979, a report[5] prepared for the Department and the National Indian Brotherhood recommended a new emphasis on community-based planning and control of development projects. As a result, by 1980-1981, the Department's commercial development emphasis had shifted from one of high-profile, large-scale economic projects to those more fitting individual community circumstances, capabilities, and resources. The projects aimed to foster greater community-based and Indian-controlled development of economic and employment opportunities, both on and off reserves.

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[5] Jack Beaver, *To Have What Is One's Own*, 1979.

In 1982–1983, a New Employment Expansion and Development (NEED) Program began, through which social assistance benefits of eligible unemployed employables could be converted to form a basic wage and benefits package. The Summer Youth Employment Program was set up, lasting one fiscal year, and the Special Employment Initiative Program was introduced. The Department supported the establishment of the Northern Native Fishing Corporation (B.C.) and the National Indian Business Association.

In 1983–1984, the Report of the Special Committee on Indian Self-Government in Canada (Penner Report) responded to views of Indian leaders that economic development and self-government are interdependent. The report reflected increased interest in economic development and referred to the erosion of Departmental funds budgeted for economic development through diversion to other program areas.

Also in 1983–1984, the federal government launched the Native Economic Development Program (NEDP), under the Department of Regional Industrial Expansion (now IC). NEDP was designed to provide a source of business financing for all aboriginals (including Métis and non-status Indians). In addition to providing financial support to individual aboriginal businesses, NEDP capitalized small-business lending institutions owned and operated by aboriginals (now known as Aboriginal Capital Corporations or ACCs).

1985–1986 marked another change in direction for the Department's economic development programming. A Task Force on Indian Economic Development led to a new economic development strategy for the Department. The five elements of the strategy included increasing access to the mainstream business community, removing legal and constitutional barriers to Indian business and employment growth, establishing Indian control of resource development on Indian lands, training Indian adults to enter business and increase employment, and improving the ability of federal Programs to increase Indian business development and employment.

In 1986–1987, the Department began to adopt the role of an enabler and advocate for initiatives launched by aboriginal people themselves, rather than a controller and regulator of Indian issues. Indian economic development institutions began negotiations to take over portions of the IEDF.

In June 1988, following two reports on economic development programs and their delivery, the Kamloops amendments to the *Indian Act* (Bill C–115) enabled band councils to levy property taxes on designated lands[6].

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[6] Refer to Indian Taxation Program Description.

In 1987–1988, the regions became responsible for the Department's arts and crafts budget. Their mandate was to fund regional arts and crafts institutions (usually NIACC affiliates) that had clear evidence of cost–effectiveness and constituency support. NIACC continued to receive an annual allocation until 1991–1992. At that point, due to lack of support of NIACC from its membership and the Indian community at large, the Department stopped supporting NIACC financially, and the Corporation closed its doors. Several regional affiliates have also closed.

Devolution of programs to Indians continued. In 1988, the Department sold outstanding IEDF loan portfolios to the Native Fishing Association of B.C. and the Manitoba Indian Agricultural Development Corporation[7]. The Department completed a study of a fully devolved economic development program.

The Canadian Aboriginal Economic Development Strategy, introduced in 1989, marked a significant renewal in the federal government's commitment to aboriginal economic development. The Strategy aims at a partnership between the government and Indian, and Inuit communities, with emphasis on making it possible for these communities and their economic development organizations to deliver programs themselves.

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[7] The Department sold another portfolio, to Dana Naye Ventures in Yukon, in 1991.