Report to the Minister

Outstanding Departmental Issu
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Indian and Northern Affairs Canada
Affaires indiennes et du Nord Canada

Report to the Minister

Outstanding Departmental Issues Regarding the Westbank Indian Band

Canada

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Introduction

This report was initiated by a letter of April 24th, 1985 from Mr. John S. Rayner, Executive Director General (Indian and Inuit Affairs). I was instructed to review the complaints of a number of mobile home park lessees on the Westbank Indian Reserve as well as to review the matters dealt with in two other reports. These reports are:

(1) A report prepared by Lawson, Lundell, Lawson and McIntosh, Barristers and Solicitors, dated April 20th, 1983 (commonly and hereinafter referred to as the "Lawson, Lundell Report"); and

(2) A report prepared by the Economic Development Branch of Departmental Headquarters, dated July 14th, 1983 entitled "Review of Financial Transactions and Relationships - Westbank Indian Band and British Columbia Region" (commonly and hereinafter referred to as the "Hobbs Report").

The purpose of my review was to assess the Department's role in the problems that had developed in connection with a number of mobile home park lessees on Westbank Band lands and to suggest a possible solution. In connection with the Hobbs and the Lawson, Lundell Reports, my purpose was to assess these reports and their conclusions and recommendations and to suggest what responsibilty, if any, and what action the Department should now take in view of these Reports. The terms of reference also assigned Mr. Ernest Boone, LL.B., Lands Branch, Headquarters, to assist me in this project.

At the request of Mr. Fred King, M.P. and Dr. Lorne Greenaway, M.P., we sought and obtained authority from the Minister to engage the services of two prominent and independent lawyers who were hired to assist the writer in providing completeness and objectivity to the report as well

as to ensure that every reasonable step was taken to bar any subsequent allegations of "whitewash" on the part of the Department. Some names were submitted for consideration and Mr. Paul Reecke of Vancouver and Mr. Bruce Preston of Penticton were eventually selected. Mr. King and Dr. Greenaway insisted that Mr. Preston's primary role was to keep them fully informed of the development of events at every step of the review in order that they might feel comfortable with the process and be assured that every reasonable step had been taken to ensure no attempt at coverup would be made or other wrong doing concealed. The Department acceded to this request. Mr. Reecke and Mr. Preston have been involved from the beginning and have provided assistance throughout the process of the preparation of this Report. The interested members of parliament, through the office of Mr. Fred King, M.P., have been kept fully informed of the content of this Report.

In preparing this Report I also sought the assistance of a number of Departmental personnel, many of whom consented to respond in writing to the various allegations contained in the Hobbs and Lawson, Lundell reports. These persons were chosen on the basis of their familiarity with the events which underlay the three areas of review and on the basis of their extensive knowledge of Departmental policies and procedures which were involved in the review areas. I obtained assistance from:

Mr. Fred Walchli, Senior Negotiator, British Columbia Region;

Mr. David Sparks, Negotiator, Comprehensive Claims, British Columbia Region;

Mr. Jon Evans, Director, Reserves & Trusts, British Columbia Region;

Mr. Peter Clark, Senior Intergovernmental Liaison Officer, Public and Intergovernmental Relations, British Columbia Region;

Mr. Steven Roberts, Chief of Statutory Requirements, Headquarters;

Mr. Richard Simison, Senior Lands Advisor, Reserves and Trusts, Headquarters;

Interviews were also held with many others who were considered to have been involved in the problems.

It is important to note at the outset that, notwithstanding that much of the information included in this Report has come from the examination of departmental files, as well as from voluntary oral and written statements provided by departmental, Band and other affected persons, the writer is unable to attest to the reliability of the information received. This is due to the fact that the terms of reference under which this review was conducted did not provide for the taking of evidence under oath, the cross-examination or re-examination of persons making statements, the compellability of witnesses, or the verification of the authenticity of documents. It is also noteworthy that the review was not authorized pursuant to, nor in accordance with, The Inquiries Act.

Accordingly, we accepted statements as made and documents as found or submitted, fully aware that in such a situation the potential exists for self-serving statements and conflicting evidence. We have tried to minimize the negative effects of these restrictions. Notwithstanding,

the author cannot guarantee accuracy of statements nor authenticity of documents and readers must be cognizant of this caveat when reading and interpreting this Report.

This Report is organized as follows:

(1) A brief resume of the events leading to this Report;

(2) A review of the historical background to the topic areas addressed by this Report;

(3) Review of the Hobbs Report;

(4) Review of the Lawson, Lundell Report;

(5) Review of the mobile home park lessee problems;

(6) Supplementary issues raised by the three reviews;

(7) Overall conclusions;

(8) Summary of recommendations; and

(9) Concluding Statement.

Events Leading to this Report

In 1977, following the closure of a number of district offices in the British Columbia Region, the Regional Director General of the Department of Indian Affairs and Northern Development, entered into certain Local Services Agreements with 11 British Columbia Indian Bands, including the Westbank Indian Band. These agreements related to specified services being provided on reserves by the Reserves and Trusts Branch. The general intent of these Agreements was to transfer certain administrative functions, programs and services from the Department to the Bands under conditions agreed to by the parties pursuant to Treasury Board Minute 725973.

In 1978 the Westbank Indian Band requested that it be given the authority to manage its surrendered and Reserve Lands under Sections 53 and 60 respectively of the Indian Act. The Band received the Section 53 authority in 1978. The request for Section 60 authority was not granted, in part as the result of the receipt by the Department of a number of complaints. These complaints alleged unreasonably high rent increases as well as harassment by Chief Ronald Derrickson and the Band Council.

In June of 1981 rents to tenants in the Toussowasket Enterprises Ltd. Mobile Home Park were raised above the level allowed by the British Columbia Rentalsman. The tenants appealed the rent increase to the Rentalsman who declared the increase to be illegal. The Rentalsman's decision was subsequently upheld by a British Columbia Supreme Court decision dated March 3rd, 1982.

The Department, as well as the local Member of Parliament, continued to receive complaints from mobile home park lessees and tenants regarding the management of their leases and the nature, content, interpretation and enforcement of Westbank Band by-laws.

As a result of these and other events on the Westbank reserve the matter eventually came before the House Standing Committee on Indian Affairs. The Committee, in its Fifth Report to the House of Commons delivered on June 1st, 1982, recommended an independent inquiry into activities of the Westbank Band and the British Columbia Regional Office.

On July 12th, 1982 the Honourable John Munro, Minister of Indian Affairs, held a meeting with Chief Ron Derrickson of the Westbank Band. Also present were the Band's accountant, Mr. Lett and a number of senior Departmental officials. At the meeting the Minister ordered an internal review of activities involving the Westbank Band.

The Minister established a three man review committee composed of:

1. Mr. D.K. Goodwin, Assistant Deputy Minister, Chairman;
2. Mr. J. D. Leask, Director General, Reserves and Trusts, Member; and
3. Mr. E. Hobbs, Acting Director General of Economic Development, Member.

The Committee divided its review into two categories:

1. Land transactions, By-laws and Indian estates; to be headed by Mr. Leask; and
2. Economic development and the use of public funds; to be headed by Mr. Hobbs.

In August 1982 the law firm of Lawson, Lundell, Lawson and McIntosh was selected to assist in the internal review. The firm was asked by letter dated September 23rd, 1982 (Appendix 2 to this report) to review:

> "...all aspects of selected land transactions on the Westbank Indian Reserve and to comment on their correctness as to process, authority and substance. These will include headleases on Reserve and surrendered land that have been negotiated between Her Majesty's officials with corporations formed by the Band, individual Band members or non-Indian [headlessees]."

> "...subleases negotiated between the holders of headleases on the Westbank Indian Reserve and tenants at selected trailer courts which have been established on the Reserve and to render opinions about the correctness of the process, the authorities and the substance of those subleases."

> "...the Band by-laws in effect on the Westbank Band, to comment on their correctness in terms of their intended application and the scope of authority that they presume to

exercise, and the manner in which they are enforced by the Chief and Council."

"...the administration of estates on the Westbank Reserve as they are affected by land transactions and to comment on the appropriateness of their administration by the Department."

The law firm commenced its work immediately. In August of 1982 and January, 1983 Chief Derrickson sent telexes to the Minister expressing his dissatisfaction with the way the review was being conducted. The Chief stated that Lawson, Lundell were not carrying out the review in accordance with the Agreement reached with the Minister on July 12, 1982. The Chief requested that the Minister instruct Lawson, Lundell to conform to the agreed procedure for the review. Lawson, Lundell did not receive any amended instructions.

Lawson, Lundell were permitted some access to band files. They had several meetings with Chief Derrickson. The Chief and Band Council then set out certain conditions which they insisted be met before further access to band files would be granted. As a condition to providing access to band files the Chief and Council insisted that they have the right to review and respond to the law firm's report before it was put in final form. The Lawson, Lundell team apparently concluded that their mandate did not permit them to accede to these requests. They were subsequently denied access to the band files. They had only one further brief meeting with Chief Derrickson.

On February 4th, 1983 Chief Derrickson and the Westbank Band Council filed a Statement of Claim in the Federal Court of Canada against the Federal Crown and six Departmental officers with respect to the internal Westbank review. The essence of the Court action was that he, Chief Derrickson, and the Westbank Indian Band, were being unduly harassed by the Department of Indian Affairs. The Department of Justice subsequently brought a motion to have the names of the six

Departmental officers struck from the writ. This motion was granted by the Court. The action is still pending.

Concurrently, a problem emerged regarding certain actions of a company called Toussowasket Enterprises Ltd., owned by Mr. Noll Derriksan, a member of the Westbank Band. The company appeared to be in financial difficulties with respect to the construction and operation of a mobile home park on Reserve lands leased to the company. The company was in Receivership. An integral part of a proposal to salvage the Company was that the Westbank Band buy an interest and assume control.

On April 23rd, 1982 the Department of Indian Affairs accepted the relinquishment of the Toussowasket Enterprises Ltd. lease. A condition precedent to the acceptance of the relinquishment of the lease was that an outstanding mortgage to the Federal Business Development Bank (F.B.D.B.) and an outstanding loan from the Indian Economic Development Fund (I.E.D.F.) both be repaid in full. The mortgage and loan were repaid in full on April 22nd and April 23rd, 1982, respectively. It was alleged that the Department improperly assisted the company to pay off the mortgage and loan by providing a contribution of $300,000 to the Band to assist it to buy into the Mobile Home Park.

At the time of the acceptance of the relinquishment of the lease there was an outstanding unregistered judgment of the British Columbia Supreme Court naming Toussowasket Enterprises Ltd. as the judgment debtor and Donaldson Engineering and Construction Ltd. as the judgment creditor. This judgment is still outstanding.

On April 29th, 1983 the Lawson, Lundell Report was delivered to the Department. Among other recommendations in the report was the

recommendation for a public inquiry and/or Departmental investigation into the following matters:

1. *Activities of administrative officials under by-laws.*
2. *Complaints by lessees and sublessees on land within the Band's reserves;*
3. *Purchase of locatee interests by the Band or Band members from other Band members;*
4. *Band Elections;*
5. *Possible abuses of power by the Chief and Band Council;*
6. *Possible conflicts of interest of the Chief and Councillors;*
7. *Disbursement of Department of Highways trust moneys;*
8. *Distribution of welfare payments; and*
9. *Administration of wills and estates.*

In addition the report recommended that the Okanagan District Office of the Department be reopened, that the 1977 Agreement (a local service agreement pursuant to the Treasury Board Minute 725973) be cancelled and that the department assume more day-to-day administrative activities.

The Lawson, Lundell Report was subsequently referred to the Department of Justice which, in turn, referred the matter to the Kelowna detachment of the Royal Canadian Mounted Police for further investigation regarding the complaints and allegations raised. An R.C.M.P. investigation was conducted and a brief was subsequently forwarded to the Kelowna District Crown Counsel on December 15th, 1983. The opinion of Crown Counsel was that there existed insufficient evidence for any charges.

Some three months later, on July 14th, 1982, the Hobbs Report was completed. Among other recommendations the report recommended that the R.C.M.P. be given the report and all pertinent supporting documentation

for examination in order to determine if criminal investigation of the receipt of excessive benefits was warranted. The report also detailed instances of what it referred to as B.C. region maladministration and recommended that direction be provided to senior B.C. regional officials with reference to adhering to Departmental and Governmental regulations and procedures.

For a considerable period of time no apparent action was taken to address the problems that had been raised by the Hobbs and Lawson, Lundell Reports. They became a focus for criticism of the Department. Despite repeated mediation attempts by Mr. Fred King, Member of Parliament for Okanagan/Similkameen, the problem between the Westbank Band and the mobile home park lessees continued to be a serious and deteriorating one.

Historical Background to the Problem

For much of the first century after Confederation it was generally believed by Canadian Governments and society that the Indian peoples and cultures would eventually be totally integrated into Canadian society. The transition, it was thought, would be made as painless as possible by a paternalistic Government policy.

By the 1960's however, Canadian awareness heightened to the fact that the Indian peoples were increasing in numbers and were reaching out to recover and re-create their special place in Canadian society.

The last two decades have seen a continuing search by both Indians and Government for ways through which the Indian people could take back control over their own lives and reserve lands. This search has involved Indian people, Governments and Canadian society in general in numerous attempts to find solutions to the questions of land claims,

Indian governments and a proper place for Indians in the Canadian Constitution.

But while Governments for two decades have philosphically and steadfastly encouraged the growth of a greater degree of Indian autonomy, they have been unable to create the constitutional and legislative framework within which such independent development could take place. Indians and their lands remain suspended between Federal and Provincial jurisdictions, and in collision with municipal and other jurisdictions whenever Indians attempt to develop their lands.

The Indian Act was designed at a time when Indians had a rural life style. Today, more than one hundred years after its original passage, the Indian Act remains relatively unchanged as the main tool for Indian social, economic, governmental and cultural development. In that capacity, the Act has long ago ceased to meet the needs of both Indians and Government. Indian people and their Band Councils have adopted many of the ways of contemporary Canadian life but frequently the Indian Act prevents them from having access to the political and commercial advantages and flexibility of other Canadians. Outlined hereunder is one example of how both Government and Indians have struggled to circumvent the inadequacies of the Act. This example refers to the regulatory vacuum over conditionally surrendered lands, a continuing difficulty for over ten years.

The "Regulatory Vacuum"

Letter September 24, 1975 from Paul M. Ollivier, Associate Deputy Minister, Department of Justice, to Andrew Charles, Co-ordinator, The Alliance of B.C. Bands

> *"Reference is made to my letter of August 5th, 1975 with respect to the regulatory power over lands surrendered for leasing.*

We have now considered this question more fully and while I am still of the view that the Band Council does not have that regulatory power, neither under Section 81 nor under Section 83 of the Indian Act, I am now of the opinion that the Governor in Council could not without specific legislative authority impose regulations with respect to that land.

Admittedly, Canada has legislative jurisdiction over lands surrendered for leasing because they remain Crown land but we could not find any statutory authority for the Governor-in-Council to make regulations with respect to surrendered lands. Section 73(3) of the Indian Act allows the Governor-in-Council to make orders and regulations to carry out the purposes and provisions of the Indian Act but I am of the opinion that, for example, the making of zoning regulations on lands surrendered for leasing would not be carrying out the purposes and provisions of the Act. Specific legislative authority would be required.

In search for statutory authority allowing the Governor-in-Council to make regulations with respect to lands surrendered for leasing, we have perused the PUBLIC LANDS GRANT ACT and the PUBLIC WORKS ACT but neither of those Acts appear to be applicable to solve the problem at hand.

It would seem to me that the only practical interim solution before the INDIAN ACT can be amended is for Indian Band Councils to make bylaws including by-laws under Section 83 if the Band is so authorized and then for the Department of Indian Affairs to include in any leases a covenant by the lessee that the by-laws were deemed applicable to him and that the lessee would comply with them as a condition of this lease."

Letter received November 25th, 1975 from The Honourable Judd Buchanan, Minister Indian and Northern Affairs, by the Alliance Co-ordinator.

"As Mr. P. Ollivier explained in his letter of September 24th, the opinion of officers of the Department of Justice is that the Governor in Council does not have authority to regulate the use of surrendered lands, and that specific legislative authority is therefore required. I am very concerned, as you are, about this regulatory vacuum. Officers of that Department are responsible for advising Federal Departments on all matters of law and, in this case, they have informed me of a legal problem which prevents my Department from pursuing a course of action consistent with our policy of promoting local government. In view of this, I intend to ask the National Indian Brotherhood to support my request to

Parliament for permissive legislation, which will allow Bands to assume as much responsibility as possible, consistent with good administrative practices, for the management and control of reserve lands, and lands surrendered for leasing. I say 'permissive' legislation because I believe these changes would be welcomed by many other Bands, and the amendment would also allow them to assume this responsibility.

In the meantime, I would suggest that part of the problem could be overcome by including in all future leases a covenant by the lessee that the Band by-laws are to be deemed applicable to him, and that he will comply with them as a condition of the lease."

Letter from The Honourable Warren Allmand, Minister, Indian and Northern Affairs, dated February 10th, 1977, to the Alliance Co-ordinator

"This is to follow up on my special assistant's letter to you of November 3rd, 1976 regarding the legal status of surrendered land which you raised in your letter of October 19th, 1976.

Although my predecessor, Mr. Buchanan, felt at one time the simplest way of overcoming the so-called "regulatory vacuum" was to amend the Indian Act, there have been a number of developments since as well as a great deal of research done on the topic. As a consequence, I have asked my officials and those of the Justice Department to finalize work on an Order-in-Council which, if approved pursuant to Section 73(3) of the Indian Act, would enable me or my designee (i.e. the Indian Band through its Council) to regulate activities on surrendered Indian Lands. These regulations will be broad and will cover such aspects as sanitation, health, pollution, building codes enforcement, etc. While I am aware there is a possibility the regulations may not stand the full test of a Court of Law if they are challenged, I am nevertheless more inclined to adopting that route rather than opting for the more complex and lengthy process of amending the present legislation.

In addition, I want you to know that, as far as is legally possible, I will base departmental policies and practices on the premise that Indian lands that have been conditionally surrendered did not cease to be reserve lands. For example, if a Band Council made a by-law pursuant to Sections 81 and 83 purporting to regulate or affect surrendered lands, I would not disallow the by-law for that reason alone. The fact remains, however, that the Band would be taking its own chances with respect to enforceability.

I hope that the above interim measures will serve the purposes intended pending appropriate amendments to the Indian Act."

The correspondence reveals that ten years ago Government was advised and recognized that Band by-laws might turn out to be ultra vires or invalid if challenged in Court and yet the Bands were encouraged to continue to pass them.

Attempts to Develop Within Existing Legislative and Jurisdictional Framework

Among the many difficulties faced by Government in updating the Indian Act has been the opposition of parts of the Indian community itself. However, as long as fifteen years ago the proposal was made by British Columbia Bands that controversial changes could be introduced as options that Bands could adopt or not as they chose. This method was accepted as valid in the Report of the Special Committee on Indian Self-Government in Canada (Penner Report). To date, although continual studies and discussions have taken place over a period of eighteen years, Government has not passed legislation or created alternative legislation to lift the Indian Act out of the Victorian age. The pleas of the Indians, particularly from British Columbia, for legislative change, have resulted only in more study and more talk. (See Report of the Indian Act Consultation Meetings throughout Canada, 1968, particularly the sessions at Chilliwack, B.C., November 18th to 22nd, 1968; Minutes of the National Conference on the Indian Act, Ottawa, 1969; the British Columbia Bands' brief to that Conference; and numerous letters, briefs, papers and consultations filed and held since that time on all aspects of the Indian Act and Indian self-government.

In the intervening period since 1968, the Indian people and Government have struggled to find acceptable solutions to the bind imposed by constitutional, jurisdictional and legislative inadequacies. However, a number of Bands, many of which are located in British Columbia, frequently near or in urban centres, have been getting on with the business of improving their lot through economic and governmental development. As an example, the Alliance of B.C. Bands was established for that very purpose, to wit:

> *"An Alliance to deal with common issues in land use and local government"*
>
> *"to work jointly to deal specifically with the restrictions in the Indian Act"*
>
> *(See The Alliance brief to the Ministers of Justice and Indian Affairs dated February, 1975)*

The Westbank Band, in concert with the Alliance of British Columbia Bands, made several well-documented attempts during the 1970's to induce the Federal Government to:

(a) *negotiate jointly with those Bands and with the British Columbia Government to overcome jurisdictional problems in order to permit the British Columbia Bands to develop essential services, infrastructure and controls on reserves and surrendered lands and to raise the necessary funds through taxation of occupants of those lands;*

(b) *negotiate with those Bands for the necessary legislation to enable the requirements in (a) to be carried out; and*

(c) *introduce the legislation on an optional basis for those Bands that wished to use them.*

These attempts all failed. The Federal Government had become politically involved with national Indian organizations over the macro-problems of aboriginal rights and land claims. The day to day reserve problems of advanced Bands, which required legislative change and Federal-Provincial-Band agreement, always failed to get past the talking and report stages.

As a result, urban centred advanced Bands, such as Westbank and others, have been kept in a straightjacket by the Indian Act insofar as their Band governmental and commercial development is concerned.

Field offices of the Department of Indian Affairs and Departmental Headquarters have been caught in this same dilemma.

Each in turn has struggled to interpret the Act in a manner sufficiently broad as to permit commercial development and Band by-law control on reserves and conditionally surrendered lands. Encouragement for such interpretation is provided by the Interpretation Act which states in Section 11 that:

> *"every enactment shall be deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best insures the attainment of its objects".*

But liberal construction and interpretation can only be successful to a limited extent in the complex fields of Indians and Indian lands and, in any event, is a poor substitute for proper legislation. Band and Department of Indian Affairs attempts to interpret the Act liberally have often been rejected by the Department of Justice, acting to protect the Crown, and have occasionally been defeated by the Courts and, more frequently, by the effect of the regulatory vacuum.

The Westbank Band was a member of the British Columbia Alliance for a period, until, in frustration at the lack of solid results from Government, it withdrew, to pursue development along its own lines. The argument may be made that achievements such as recognition of Indian special status in the Constitution Act and all-party participation in the recommendations of the Penner Report show that gradually the Indian people and Governments are inching their way forward toward a new era of Indian self-development. Yet, in spite of the promise of these national achievements, the Indian Act remains in the same basic form in which it was passed in 1951.

Increasing numbers, growing awareness of their native heritage and greater access to educational, commercial and political facilities have led many Bands to seek economic and political growth based on the lands they now find themselves occupying - the Indian Reserves.

During this twenty year period, the Westbank Band, having successfully established itself as a separate band, independent of its former ties as part of a larger entity, began its search for self-determination and an improved economic and political condition. The Band faced a Government in Ottawa philosophically sympathetic to its wishes for a better life for its members; successive Ministers frequently confirmed their Government's and their personal belief that Indian people should seek to move away from the paternal relationship of the past and into an era of self-development, economically and governmentally, within the framework of Canadian society and with the advice, cooperation and financial assistance of Government.

Again, as an example, reference is made to the 1981 Report of the Tri-partite Local Government Committee Respecting Indian Local Government in British Columbia. Work toward creation of this Committee and its Report began five years earlier and the Westbank Band was a

leading participant in the Committee at all stages. The study included representatives of several British Columbia Indian Bands, senior officials of the British Columbia ministries of the Attorney-General, Finance and Municipal Affairs, as well as the Federal Department of Indian Affairs (British Columbia Region). The Terms of Reference stated in part:

> *"The general objective of the Committee is to determine the needs of the various Indian Bands for local government-type services, and to explore alternative means by which such services may be funded and provided....the ultimate responsibility for local government services provided to lands reserved for Indians will rest with the various Band Councils."*

The Committee also examined the difficult questions of taxation powers on reseves and representation by non-Indians on reserves and was instructed to:

> *"5. ...undertake a detailed review of existing Federal and Provincial legislation (including potential amendments to the INDIAN ACT) to determine the existence of any statutory limitations to potential policy solutions.*
>
> *6. The ultimate objective of the Committee's research effort will be the development of a formal submission for Federal and Provincial Cabinet consideration outlining various policy options and recommendations for statutory change to better facilitate the provision of local government-type services to Indian reserve lands. Policy recommendations will be made, including minority opinions, if a consensus cannot be reached.*
>
> *7. The Committee will also suggest Provincial consideration of interim grant payments and/or revenue sharing arrangements to fund expanded local services for Indian Reserve Lands until the Committee's research effort and formal recommendations are completed."*

The Report was accepted by all three participants and issued as a unanimous report. (One of the six participating bands abstained from the final vote.) The Report included the following:

> *"Issues that have caused friction and consternation over the years have been faced and evaluated by the three participating bodies of the Local Government Committee in a spirit of compromise and mutual endeavour. Clear evidence of this is the fact that, although the Terms of Reference provide for the expression of 'minority opinions if a consensus recommendation cannot be reached,' this has not proved necessary; the Report is presented without dissent. Accordingly, we commend to the Provincial and Federal governments, as well as to the bands of British Columbia, the following conclusions drawn from this study:*
>
> * *Perpetuation of the existing state of affairs is to no one's advantage. Indian bands will be thwarted in their economic and governmental aspirations; the Province and municipalities will find collection of taxes from on-reserve lessees increasingly challenged and resented; and the Federal government will be precluded from properly discharging its responsibilities towards Indian people in British Columbia. In addition, there exists a real risk of protracted litigation. Clearly, it is time for a change.*
>
> * *Adoption of a more rationalized and uniform system for the delivery of services to the entire reserve community would do much to alleviate the present distortions of what amounts to a scattering of enclaves. Although reserve lands will clearly remain under Federal jurisdiction, this is no reason for preventing the introduction of consistent and equitable methods of providing and financing total reserve communities with necessary local municipal services.*
>
> * *Non-Indians living on reserves have little say in determining what level of services will be provided and how tax dollars will be expended. The resultant abridgment of the right to participate in such decision-making processes finds an answer in the concept of the Local Services Commission. If the non-Indian occupiers seek formal involvement in the servicing and budgetary questions affecting their areas the mechanism would then exist for its achievement.*
>
> * *Effective implementation of self-government choices for Indian bands will require the complete co-operation of the two senior levels of government. This will entail not only legislative change but also agreement on the practical and financial aspects of increased band jurisdiction."*

Having stated these conclusions, the Local Government Committee recommends:

* *That the Attorney General of British Columbia commence an immediate review of the four options described in Part III and the items listed in Part IV, Section E, with a view to having the necessary legislation drafted before the end of 1981.*

* *That the Federal Minister of Justice commence an immediate review of the items listed in Part IV, Section E, with a view to having the necessary legislation drafted before the end of 1981. If this requires a special INDIAN LOCAL GOVERNMENT ACT for British Columbia, the committee so recommends.*

* *That the legislation drafted Provincially and Federally recognize the right of bands to "opt in" to the new system and to "opt out" on appropriate terms and conditions, including the satisfaction of all debts arising from the opting out bands' participation in the new system.*

* *That the Tripartite Local Government Committee assist in the implementation of the recommendations of this Report in the following ways:*

  1. *By assisting the Provincial and Federal governments in the preparation of necessary legislation;*

  2. *By assisting those Indian bands wishing to participate in this local government program;*

  3. *In such other ways as the parties to this study may require;*

  and that the two senior governments participating in this Committee provide the necessary funding to enable the Committee to complete this task."

At the next session of the British Columbia Legislature, following the Report's release in August, 1981, the Provincial Government implemented one of the major recommendations of the Report by amending its Municipal Act to enable British Columbia Municipalities to contract with Bands for the supply of municipal services. The British Columbia Government also indicated it was prepared to commence implementation of

the report jointly through discussions with the Federal Government and British Columbia Bands, including taxation concords and further legislative change. Shortly thereafter, the British Columbia Government withdrew its offer to begin implementing the recommendations of this report; allegedly due to lack of consultation or information from the Federal Government regarding the activities of the Special Committee of the House of Commons on Indian Self-Government in Canada. (Penner Committee).

It is suggested that the Federal Government failed to follow through with the opportunity presented and further progress was shelved.

Indian Bands began to believe that although the Federal Government sympathized with and encouraged their drive for self-development, the government was not prepared to provide a solid legislative base to support it. It also appeared to the Bands that the Federal Government was not prepared to negotiate with the provincial governments for the purpose of resolving jurisdictional problems.

The apparent result of this dilemma was that the Westbank Band, along with other Bands, was pushed into stretching the provisions of the Indian Act as far as they could possibly go in an effort to carry out the self-development programs which both the Band and the Government had expressed as their aim. The only possible alternative, since the Bands had failed to achieve any legislative assistance, would have been to remain on their reserves, under continuing paternalist government care and wait for their opportunity to be handed to them at some future date.

The Westbank Band's rejection of that alternative is clearly shown by the rapid and impressive progress the Band has made in recent years.

Some indication of this progress is documented in several reports, including one dated November 9, 1982, entitled Some Indicators of Change - Westbank Indian Band 1971/72 - 1980/81. (This report is available through the Department of Indian Affairs).

Brief History of the Westbank Band

The Westbank Band of Indians, located on the west side of Okanagan Lake across from Kelowna, came into existence as a separate Band in 1962. Before that date they were part of the Okanagan Band, most of whose members lived on reserves near Vernon, British Columbia and surrounding areas in the Okanagan Valley.

The members of the new Westbank Band, about two hundred in number, were already occupying the two main reserves of the new Band, Tsinstikeptum 9 and 10, as extended families engaged in farming, logging and construction. These family reserve land holdings were traditionally recognized by Band members and a number were registered as locatee holdings under the Indian Act.

Beginning in the 1960's, and to an increasing extent in the 1970's, there was an influx of people to the Okanagan Valley including the Kelowna and Westbank areas. A pleasant climate, uncrowded conditions, availability of land and major highway construction programs brought the valley within easy travelling time of Vancouver, the north-west U.S.A. and the prairie provinces.

By 1961 a toll-free bridge connected Kelowna to the two main Westbank Reserves on the west side of Okanagan Lake.

Wanting to participate in the economic benefits of this growth, the Band surrendered the two reserves for leasing in 1967. Very few leases

were concluded and, in 1972, the lands surrendered in 1967 were returned to reserve status.

"As the Indians themselves had not relocated during the surrender period, the Band basically undertook to reallocate to its members the land holdings they had held prior to the surrender." (D.G. Sparks - Report dated June 10, 1985.)

During the 1970s the Westbank Band and Council, led by strong, commercially aggressive chiefs, began an active program of leasing, other commercial developments and a series of Band By-laws under Sections 81 and 83 of the Indian Act designed to control the growing reserve population. Between 1970 and 1980 the on reserve population increased from approximately 300 persons to in excess of 3000. The Department assisted the Band to commission successive master development plans for their reserves.

Under the Band's efforts many leases were entered into by the Department of Indian Affairs for both manufactured housing (mobile home parks) and other commercial and residential developments for both Band members and others.

About 13 leases were signed with non-Indians for the construction and operation of mobile home parks to meet the growing demand for homes by the influx of people to the area.

In 1978 the Westbank Band, by band vote, asked for the grant of Section 60 powers. This grant was reported by headquarters of the Department of Indian Affairs to be "imminent". The grant has just now (June, 1985) been completed; seven years later. In October, 1978, Section 53 authority was granted. The grants continue to be flawed by the regulatory vacuum mentioned above.

Transfer of Powers to Advanced Bands

Within the Department of Indian Affairs there had been increasing support for assistance to bands moving towards devolution objectives which had been stated by many successive Ministers as Government policy. On April 1, 1974 Treasury Board Minute #725973 authorized the Department to make a contribution to Indian Bands to carry out the administration and delivery of a series of programs offered by the Department in accordance with approved terms and conditions. Mr. Fred Walchli states that he was sent back to British Columbia in 1975, as Director General, with the mandate from the Honourable Judd Buchanan the then Minister, to transfer funding and administration of services and programs to the Bands as quickly as possible.

At that time, Indian unrest with the lack of progress in British Columbia was increasing rapidly. Several Department of Indian Affairs offices had been occupied by Indians and some were closed, including the District Office at Vernon, which was responsible for the Westbank Band. Many files and records of the Department were lost.

One of the basic authorities that Mr. Walchli used was Treasury Board Minute #725973 approved April 1, 1974 which stated:

> *"Your Minister's submission to expand the existing Contributions to Bands Program into a broader Indian Local Government Program through consolidation of existing authorities and to provide Core Funding...to Band Councils....was considered and approved by the Board on March 28, 1974 with the following Conditions."*

The conditions referred solely to funding and Departmental man-hour requirements.

The submission to Treasury Board which resulted in and was approved by this Minute, including appendices marked Annex "A", Annex "B", Annex

"B(1)" and Annex "C" (attached collectively as Appendix 1) shows clearly that the Department was carrying out Government Policy by transferring responsibility for administration of programs and services, together with the available funding to Bands and Band Councils within Departmentally established guidelines except for: "Programs or functions for which the Department must retain responsibility and administration because of statutory or other considerations".

The submission to Treasury Board stated in part (on Page 2):

> *"Indian... communities have repeatedly requested...that they be permitted to operate at a level of responsibility that would enable them to function as an effective local government authority - and not simply as an administrative body or agent carrying out programs whose nature and goals are determined by Government...This is now Departmental policy... Accordingly, within the spirit of that policy...the Department now proposes, as an objective to be achieved as quickly as possible, the transfer of responsibility to Councils for operating all programs and services that can appropriately be managed at the community level...".*

To provide for smooth transition from current administrative arrangements, the Department proposed:

1. *Providing <u>under existing programs</u> all training required by Councils, Council Staff and Community residents (underlining added).*

2. *Assuring that advisory services would be supplied to Councils to assist them to discharge their management responsibilities.*

3. *To approve reasonable budgets which would allow Councils to function effectively as local authorities.*

4. *To provide regular monitoring and evaluation in cooperation with Councils.*

The next point in the submission, however, called for the gradual reduction of Departmental staff, particularly in the administrative and support categories, and required managers to review workloads and to adjust man years accordingly as Bands took over more responsibility. Mr. Fred Walchli, the Regional Director General at the time, believes the requirement to reduce Departmental administrative and support staff as Bands assumed more responsibility was premature and as a result the "smooth transition" was less successful than hoped for. Mr. Walchli in fact asked for an increase in land administrative support staff for a period of time, but the request was not accepted by Headquarters. The Region did, however, supply training, supervision and monitoring to the extent that they were able to do so.

In the Treasury Board submission, land administration (except for Land Registry, Land Surveys, Legal Services and execution of documents) was to be turned over to the Bands in accordance with stated guidelines and under a specific Agreement setting out standards and conditions to be maintained.

The 1977 Agreement

In 1977, at the request of the Westbank Band, the British Columbia Regional Director-General of the Department entered into an agreement ("The 1977 Agreement") with the Band as provided for in T.B. 725973, with the intention of retaining to the Department responsibility over land registry, land surveys, legal services and execution of documents as required in the Treasury Board Minute and by the Indian Act. This agreement appeared to be in accordance with Departmental requirements. It was not, however, drafted with sufficient precision and that allowed the Westbank Band to infer a somewhat greater transfer of control over administration than was intended. Mr. Fred Walchli indicates that Department of Justice had been unwilling to provide drafting services

on the grounds of pressure of work and that service agreements did not pertain to litigation or land documentation.

At the time of this agreement it was generally expected by the Band and the British Columbia Regional Office that Westbank would shortly receive a grant of Section 60 Indian Act powers (which the Sechelt Band had then recently received) and Section 53 powers (which were about to be granted to Sechelt). In fact, Westbank received Section 53 powers in 1978 and Section 60 powers in 1985.

To meet the onslaught of rapid development at Westbank, the Department, at both Regional and Headquarters levels, took decisive but only partially effective steps, within the limits of their capabilities and in the presence of adverse factors mentioned above, to meet their statutory responsibilities. Among these were:

(a) A joint Headquarters-Regional Lands Administration manual was produced for the use and guidance of the British Columbia Bands;

(b) Administrative training programs for Band staff were carried out;

(c) Administrative funding was provided to Bands within available limits;

(d) Some supervision and monitoring was carried out;

(e) Some limited contact was maintained with lessees;

(f) A duplicate of the recording system for British Columbia as shown at the Headquarters land registry, was established at Vancouver.

According to Mr. Walchli, he believed that the 1977 Agreement was also in accordance with Government policy on devolution of administration of services and programs to advanced Bands. Technically, the Agreement did not usurp the authority to grant powers held by the Minister under Section 53, or by the Governor-in-Council under Section 60.

It is the view of this writer that the omissions of the Department with respect to the 1977 Agreement occurred in:

(a) failing to have the Agreement drafted with precision;

(b) failing to explain clearly to the Westbank Council the limits and extent of the Band's responsibilities under the Agreement;

(c) failing to provide sufficient training to Westbank administration staff;

(d) failing to supervise and monitor the standard of Band administration to the extent required;

(e) failing to advise lessees clearly as to the effect of the new Agreement on administration practice;

(f) failing to retain in practice, decision making over matters which under the Agreement continued to be the responsibility of the Crown; and

(g) failing to advise Band and lessees on changes required under T.B. Minute 763729 of April 1, 1980. (See Appendix 6)

A number of events occurred in close time proximity which had the result of detracting from the effectiveness of the guidelines established in Treasury Board Minute 725973. These were:

(a) the occupancy of central interior District Offices resulting in loss of Government files and records;

(b) the British Columbia Region's interpretation of the policy decision in 1975 by the Minister to proceed with the rapid devolution of land administration to Bands;

(c) the closing of the same District Offices;

(d) the reduction of staff, in particular administrative and support staff, at Regional Office; and

(e) the rapidly increasing economic and political resurgence, on the part of both Bands and Indian organizations throughout British Columbia aimed at speeding up the devolution process and achieving progress on land claims.

As a result, according to Mr. Peter Clark, a member of regional staff who was involved in the devolution program, several concerns associated with the Government's statutory responsibilities did not receive adequate consideration. This was, in his view, the foundation of the present difficulties still faced by the Department in the execution of the following responsibilities generally governed by the Indian Act; i.e.:

(a) the security and control of government files;

(b) the association between the Crown and existing lease holders;

(c) the management of lands and resources; and

(d) the collection of rentals by the Crown on behalf of Bands or Indian people.

In the light of the situation that has developed at Westbank, this assessment appears valid. At the same time a number of other factors have contributed to the Westbank situation which are referred to in the section of this Report dealing with mobile home park lessees.

It is clear, however, that the Department, both at Regional and Headquarters levels took decisive steps, within the limits of their capabilities, to deal with greatly increasing problems. The capability of the Department to deal with these problems, and consequently the effectiveness of the actions taken by them, were weakened by several factors outside of the Department's control. Among these were the following:

1. *The increasing tempo of the ebb and flow of political manoeuvering between Government and the Indian people which sometimes affected the effectiveness of service and program transfers to Band administration; the orderly progress towards devolution of responsibilities to Bands, including*

training and monitoring of Band staff and the general relationship between Indian people and Departmental staff;

2. *Instructions to reduce Departmental manpower called for by T.B. 725973 as Government policy;*

3. *Financial restraints called for by T.B. 725973 as Government policy;*

4. *Legislative disabilities caused by an archaic Indian Act;*

5. *Problems arising from the Department's statutory and fiduciary obligations to Indian people coming into conflict with the Department of Justice, which, as legal advisor to the Department, regarded itself primarily as protector of the interests of the Crown. (See Appendix "4"); and*

6. *As Mr. Walchli states, Department of Justice refused his request for assistance with the process of devolution of services and programs and was prepared to provide legal assistance only for litigation and land documentation.*

In this situation the department, at the British Columbia regional level, was in a dilemma. On the one hand they were ordered by the Minister to control the dangerous situation in British Columbia by rapidly moving services, programs, administration and funding to the bands. On the other hand they were required to reduce departmental staff while dealing with the negative external factors mentioned above.

T.B. Minute 725973 authorized the transfer to qualified Bands of all land programs and administration except Registry, Surveys, Legal Services and document execution. But in the absence of Section 53 Ministerial approval and Section 60 Order in Council to Bands, the Department was still obliged to retain the full statutory responsibilities of the Crown. This task was next to impossible given the explosive political climate, the frustrated economic situation of Indian people and the negative structural factors present.

The British Columbia Regional Office made a strong effort to carry out its four headed mandate:

(1) to control the deteriorating situation;
(2) to carry out, supervise and monitor the devolution policy;
(3) to cut its staff; and
(4) to uphold the Statutory responsibilities of the Crown.

But the legislative, financial and manpower resources needed were just not available to them. As a result, situations have developed at Westbank, such as that between the Park Owners, the Band and the Department. In other centres of British Columbia certain Band Councils had become increasingly hostile towards municipalities and other government agencies, and vice versa over such matters as conflicting jurisdiction, taxation, municipal services and control of development on reserves and lands surrendered for leasing.

Conclusions

All of these problems, and others still developing, have been predicted for years by Band Councils, organizations such as the ALLIANCE and Department of Indian Affairs field staff. The files contain many examples of warnings to Government that it was essential for the Federal Government to co-operate with the Indian people in the process of negotiating agreements with the British Columbia Government and to pass effective legislation appropriate to the commercial and political needs of rapidly developing Bands.

Faced with these restrictions, progressive advanced Bands have been able to achieve only limited progress in economic development and in reserve government. Nor has the Department, despite its considerable efforts, been able to be of much assistance to them in that regard. To the limited extent that some Bands have been successful, their results have been achieved by strong leadership, the help of outside advisers

and continual assistance from a considerable number of dedicated Departmental employees who have sought to carry out the Federal Government's constitutional and legislative mandate with great difficulty under volatile conditions.

In many ways the Westbank Band presents a model of what Bands can do to pull themselves away from dependency on Government. They have leadership and energy. The Band has made remarkable progress in spite of serious disabilities. But the disabilities have caused a heavy price to be paid for this progress and the results are showing up in present Westbank problems. The Band does not have an effective legislative base in the Indian Act. The validity of its By-laws is suspect, it has ineffective legal status outside of the Indian Act, its control over conditionally surrendered lands lacks legal foundation and when it incorporates it loses Indian status. Its lands lack a proper registry and its land resource is taxed by outside jurisdictions. It is an act of frustration for the Band to try to determine its powers by looking at Sections such as 81 and 83 of the Indian Act.

In the course of this report reference is made to apparent failures on the part of the Department to carry out its responsibilities under the Act to lessees under Crown Leases, to provide adequate guidance to rapidly developing Westbank Band in matters such as review of by-laws, and accepted commercial and administrative practice. But it is unlikely that the Department at the operational level could have done its work more effectively than it has done, given the existing legislative and other circumstances. The problem appears to stem from:

1. the failure of the Government over a twenty year period, to reach agreement with the Government of British Columbia for a workable status for Indian government; and

2. the failure of Government over the same period, in the face of constant requests from Bands, to provide legislation adequate to the task of supporting effective Band economic and political development.

If inaction on the part of Government to carry out these requirements continues in the future, more problems of the type that have developed at Westbank will occur as additional Bands take over the running of their lives and reserves.

It is against this historical background that the reviews of the Hobbs and Lawson, Lundell Reports and the analysis of the mobile home park lessee problem has been considered.

Review of the Hobbs Report

Introduction

As previously noted, the Hobbs Report was the result of a review done by members of the Economic Development Branch which took place between July of 1982 and July of 1983. The following is a synopsis of our findings regarding that Report.

In general, the Hobbs Report was found to be unreliable. Many of the conclusions which the report suggests either directly or by innuendo, do not, upon review of the documentation available to the Hobbs team, appear to be supportable. Other areas, which are areas of serious concern, are not dealt with in a useful manner. The general focus of the Hobbs report is on raising questions rather than on answering them. Considering the size of the review team (at least 8 members) and the documentation available to the team, the superficiality of the final report is striking.

Mr. R. Simison, in his review of the Hobbs Report, says of the scope of the review:

> *"The Standing Committee called for an overall review of the Westbank/B.C. Region relationship not restricted to the Toussowasket grant/loan issue and this report attempts to do this. The result of this 'shotgun' approach is that no one area under review seems adequately covered. I recall my impression at the time of this review was that large amounts of file material from Headquarters and Region was being collected by the Economic Development Branch but the sheer [quantity] of material to analyze, the unrealistically large convoluted land transactions at Westbank might limit what clear and complete analysis of events the staff involved could reasonably be expected to come up with. In my view, the review may have led [to] better results if it had been restricted to the Toussowasket grant/loan issue and related transactions."*

Many of the areas of concern raised by the Hobbs Report are adequately answered in this review of that Report. Such matters as whether or not there are trust agreements in existence governing the shares held by nominee band members in the Westbank Indian Band Development Company Limited; or whether an appraisal was ever done of Mr. Noll Derriksan's property on I.R. #10, are matters that should have been proceeded with by the Hobbs team by making efforts to locate the documents involved rather than leaving the impression that because they had not seen them, something sinister was indicated. We had no difficulty obtaining copies of the current trust documents governing the shareholdings in the Westbank Indian Band Development Company Limited nor obtaining a copy of the appraisal of the I.R. #10 property.

The question of the Department's involvement in the surrender of the Toussowasket lease, as well as the contribution associated with the mobile home park developed by that Company, has not been adequately addressed in the Hobbs Report. This review of the Hobbs Report concentrates mainly on the Toussowasket matters. However, before dealing with that matter, several other questions raised by the Hobbs Report will be dealt with.

The Hobbs Report identifies a large number of areas of concern. Unfortunately Mr. Hobbs stops short of investigating these areas. Most of the questions raised by the Report would have been satisfactorily answered had the Hobbs team consulted with Departmental personnel in the British Columbia Regional office. On page 1 of the Hobbs Report it is stated that: "The review team did not interview Westbank Indian Band members nor British Columbia Regional employees, but rather assessed available documentation." This approach limits the usefulness of the Report's conclusions.

Three reviews of the Hobbs Report have been prepared by personnel of the British Columbia Regional Office. These persons are:

> Peter J. Clark, Senior Intergovernmental Liason Officer, Public and Intergovernmental Relations, British Columbia Region;
>
> Jon W. Evans, Director, Reserves and Trusts, British Columbia Region; and
>
> David Sparks, Negotiator, Comprehensive Claims;

These reviews deal with the Hobbs Report on a point-by-point basis and, with the exception of the Toussowasket matter, provide satisfactory answers to many of the issues raised in the Hobbs Report.

Summary of Main Questions

Aside from the Toussowasket matter, the main questions raised by the Hobbs Report can be summarized as follows:

1. Conflict of Interest

   Within the Westbank Band, and particularly the Derrickson family, there exist many situations where financial transactions involving the Band or reserve lands take place under circumstances which give rise to the suspicion of conflict of interest. Holders of Band offices deal with Band lands and deal on behalf of the Band, with close relatives.

2. Band Development Company

   The Westbank Indian Band Development Company Limited has substantial assets. It is nominally owned by three shareholders. They purportedly hold these shares pursuant to trust agreements. The Hobbs Report raises the suspicion that these trust agreements do not exist.

3. Incomplete Documentation

   Much of the documentation involving the dealings with respect to the Toussowasket lease was incomplete.

4. Social Assistance

Social assistance payments to non-Indians on the reserve have been assumed by the Department pursuant to letter agreements with the Province. The Province assumes responsibility for welfare payments to Indians living off-reserve. The Hobbs Report points out that this agreement has not been sufficiently formalized.

As a result of our investigation into the aforementioned four issues we have reached the conclusions set out below:

Conclusions with Respect to Main Questions

1. Conflict of Interest

This situation arises frequently when self-government powers are given to small Bands. The matter is dealt with at some length in the review of the Lawson, Lundell Report (see page 65 of this report). At present there are no effective guidelines in this area. As long as the activity is not criminal the recourse available to affected Band members is through the electoral process. The Hobbs Report makes the recommendation that the Report, and all pertinent supporting documentation, be referred to the R.C.M.P. for examination in order to determine if criminal investigation into the receipt of apparently excessive benefits was warranted. Apparently this was not done. Had the report been referred to the R.C.M.P. at the time of its completion in 1983 it may well have had the effect of dispelling the suspicions raised by the Hobbs Report. Because of the passage of time and because of the unreliability of the Hobbs Report it is not recommended that the Report now be submitted to the R.C.M.P.

2. Band Development Company

Little difficulty was experienced in obtaining copies of the current trust agreements governing the shareholdings in the Westbank Indian

Band Development Company Limited. These documents confirm that the nominee shareholders hold their shares in trust for the members of the Westbank Indian Band and have no interest in the shares other than that of bare Trustee.

3. Incomplete Documentation

In the Toussowasket transactions, as in many commercial transactions, the events moved more quickly than the documentation. The documentation appears to have followed in due course and did, in fact, conform to the agreements reached by the parties throughout. There are many problems arising from the Toussowasket situation. These are discussed at length below. Documentation of agreements was not a major problem. Mr. Walchli dealt with this in a letter to Mr. Hobbs dated August 4th, 1982. He states in part:

> *"the initial disbursement was made on the basis of an Agreement between the parties which, while not legally executed, fulfilled the requirement for initial disbursement. Subsequent actions indicate all parties were abiding by the Arrangement both legally and in the spirit and intent of the Arrangement. The Acting Director, in my opinion, wisely used his office's discretion in recommending disbursement under the circumstances."*

4. Social Assistance

The Hobbs Report raises the informality of the documentation of the agreement between Departmental Headquarters and the Ministry of Human Resources of the British Columbia Government under the heading "British Columbia Region Maladministration". The matter is dealt with in the review of the Hobbs Report prepared by Mr. David Sparks as follows:

> *"While administratively it may be ideal for the Federal Government and the Provincial Government to formalize a legal agreement, however, the issues are complex and have*

> *constitutional implications. As a consequence the management of the Department was faced with either providing the Indians of British Columbia with the same level of service as was authorized by the Treasury Board, or alternatively, withdraw the service and make a disadvantaged group even more disadvantaged."*

Consequently, because of the constitutional implications, the documentation was, of necessity, informal.

Departmental Involvement in the Toussowasket Enterprises Ltd. Mobile Home Park

In 1975 an application by Mr. Noll Derriksan, a member of the Westbank Band, was approved under the Indian Economic Development Fund (I.E.D.F.) regulations for a loan in the amount of $72,350 to finance the development of a mobile home park on Indian lands on Indian Reserve #9 in Westbank. Mr. Derriksan was the locatee of the lands on which the park was to be developed. For the purposes of the park development the lands were to be held by Mr. Derriksan's Company, Toussowasket Enterprises Ltd., a provincially incorporated company, under lease from the Crown pursuant to Section 58(3) of the Indian Act. The Indian Economic Development Fund application was made in the name of the Company. Also in 1975, financing in the amount of $170,000 was provided by the Federal Business Development Bank (F.B.D.B.). This financing was secured by a first mortgage of the Toussowasket lease and by a personal guarantee of Mr. Derriksan, limited to $50,000.

In March of 1976 the Indian Economic Development Fund loan was increased in amount to $197,350. This loan was advanced and was secured by a second mortgage of the Toussowasket lease and a personal guarantee of Mr. Derriksan for the full amount of the loan.

During the course of development the mobile home park ran into financial difficulties due to cost overruns and the insolvency of Homco

Industries Ltd., a mobile home sales company in the Westbank area which was to provide some of the initial cash flow for the development through the purchase of exclusive rights to the rentals of completed mobile home sites.

An application for a stabilization grant in the amount of $74,845 was made and recommended by British Columbia Region in July of 1977. This application was reviewed by a committee at National Headquarters and denied approval. The documents initiating the stabilization grant request indicate that at that time the Department was aware of obligations to two creditors of Toussowasket Enterprises Ltd. in the approximate amount of $90,000. A letter from Mr. R.H. Knox, Director General, Program Support giving his approval of the stabilization proposal says:

> *"The approval of this project proposal is contingent on the premise that the $90,000 payable being contested will not be a liability of the Department in the future."*

The creditors to whom this reference is made were Donaldson Engineering & Contracting Ltd., and Underwood, McLellan & Associates Ltd. They were the contractor and the consulting engineers associated with the development of the mobile home park. Because of the cost overruns on the construction of the park, Toussowasket Enterprises Ltd. disputed the accounts of these two creditors and B.C. Region supported the company in financing this dispute. A memo to the file dated April 11th, 1978 indicates that a $7,000.00 contribution was made to the Band by British Columbia Region to pay the costs of Mr. Noll Derriksan"...in pursuing an action against the project managers, consulting engineers and contractor who participated in the design and construction of a mobile home park." The memo goes on to explain the reasons for the grant as follows:

> *"The reasoning for this assistance is to provide a delay action in the life of the trailer park such that sufficient time will be available for new legislation to come into force that will greatly increase the marketability of mobile homes, i.e. B.C. Registry and C.M.H.C. funding. The Toussowasket*

park is well within the guidelines of this new legislation. This delay and the resultant expected increase in demand for space (resulting from the new legislation) would provide the cash flow necessary for the orderly solution of the development problems and continue and augment the development climate on the Westbank Reserve."

The mobile home park continued to experience financial difficulty. On February 5th, 1979, the Federal Business Development Bank placed a receiver in control of the park under the first mortgage and took steps to realize on its security. It appears that these efforts were frustrated by the Band which indicated that it would deny access to the park and would not approve assignment of the lease. This removed any commercial value that the lease might have. At the time of the receivership both the Federal loan and the Indian Economic Development Fund loan were substantially in arrears. In addition there were the unsatisfied claims of Donaldson Engineering & Construction Ltd. and Underwood, McLellan & Associates as well as a number of other creditors.

Toussowasket Enterprises Ltd. remained in receivership from February 5th, 1979 until May of 1981.

During the receivership relationships between F.B.D.B. and the Department were seriously strained and there were indications that this situation would adversely affect F.B.D.B.'s lending policies on reserves generally. The Department, more specifically the B.C. Region of the Department, was faced with the distinct possibility that the project would prove to be an embarrassing failure.

A proposal was put together to salvage this situation. The essence of the proposal was that the Band, through its development company, the Westbank Indian Band Development Company Limited, would complete the development of the park. As well, it would assume responsibility for 50% of both the outstanding debt to the Federal Business Development

Bank and Mr. Noll Derricksan's personal guarantee. In return, the Westbank Indian Band Development Company would receive a 50% interest in the completed park and a right of first refusal to lease an additional 15 acres of adjoining Band land. In order for the Westbank Indian Band Development Company to proceed with this proposal a contribution of $300,000 under a contribution arrangement was made by the Director General, British Columbia Region to the Band (See Appendix 5). This contribution was to be made in 3 equal $100,000 instalments over a two to three year period. One of the conditions of this contribution was:

> *The Westbank Indian Band shall enter into an agreement with Toussowasket Enterprises Ltd. that all payments made to Toussowasket Enterprises Ltd. from funds paid under this arrangement shall be used to reduce the debt owed by Toussowasket Enterprises Ltd. to the Indian Business Loan Fund including principal and accrued interest".*

Before this proposal all of the funding for the development of the park had been by way of loans. The justification for considering a contribution at this point seems to have been:

> *(1) To resolve the difficult situation in which the Department found itself with respect to the Federal Business Development Band.*
>
> *(2) To avoid the embarrassment of a failure of a major Departmentally assisted project.*
>
> *(3) To allow the Band to secure an interest in a development on the reserve lands. The Westbank Band became a separate band in 1962. Formerly they were part of the larger Okanagan Band. Historically the two reserves occupied by the Westbank Band have been characterized by extensive locatee ownership of lands. An experiment with total surrender of the reserve lands for leasing for development between December, 1967 and December, 1972 was unsuccessful and the lands returned to reserve status on the latter date. The shortage of communal band land created a problem in the early 1980's when the reserve lands were displaying excellent development potential. The proposal that the Band acquire a one-half*

interest in the mobile home park was attractive because the benefits would flow generally to the Band.

(4) The completion of the park by the Band development company would provide substantial employment for members of the Band.

This proposal was accepted by the Regional Director General on behalf of the Department, the Band, F.B.D.B. and Mr. Noll Derriksan. The contribution arrangement creating the $300,000 contribution was approved May 5th, 1981. A four party agreement between the Westbank Indian Band Development Company, Mr. Noll Derriksan, the Westbank Indian Band and Toussowasket Enterprises Ltd. dated May 20th, 1981 was executed. The receiver appointed by the Federal Business Development Bank turned over operation of the park to the Westbank Indian Band Development Company in May of 1981.

The overall problem at this point gave promise of resolution. The Westbank Indian Band Development Company was in the process of completing a financially successful subdivision unrelated to the mobile home park and was financially sound. The resolution of the financial difficulties of the mobile home park seemed assured and the benefits to the Band of ownership of one-half interest in the park and the employment benefits of having the Westbank Indian Band Development Company complete the park provided a measure of justification for the $300,000 contribution.

The Band began to manage the park aggressively. Rents, which had been held below market levels by the impact of the British Columbia Residential Tenancies Act were raised on the basis that the Act did not have application on reserve lands. This position had been urged on the Federal Business Development Bank receiver during the receivership but he was unwilling to take this course of action. The mobile home park tenants appealed the rent increases and other disputes arising during this period to the Rentalsman appointed under the Residential Tenancies

Act and he ordered the rent increases to be rolled back. This ruling was appealed to the British Columbia Supreme Court and on March 3rd, 1982, Mr. Justice Locke ruled that the rentals came under the control of the Rentalsman. This decision significantly affected the level of return that could be expected from the park.

Some significant events relating to the Toussowasket Enterprises Ltd. park occurred between March 3rd, 1982 and April 23rd, 1982.

There is a notation in the Hobbs' team notes of a March 22nd, 1982 meeting attended by the Minister as follows:

> *"On March 22nd, 1982, the Minister met with Messrs. Huntington, King and Greenaway who raised concern about complaints by mobile home park tenants, fees, etc. They also raised concerns about the $300,000 contribution in that the attempt was to strip the company of its assets."*

On March 29th, 1982, the Director of Lands, Mr. F.J. Singleton, wrote to Mr. E. Hobbs, Acting Director General, Economic and Employment Development, a letter which refers to the March 22nd, 1982 meeting and states:

> *"The question was raised of a loan by the Department for $300,000 to either the Westbank Band or Westbank Developments Ltd. The concern is that Toussowasket Enterprises Ltd. will be taken over and will cease to exist as a separate corporation and, thereby, not be responsible for its debts. The M.P.s claim that the use of Departmental funds makes the Minister responsible for this action."*

On March 30th, 1982, Legal Services provided an opinion which dealt with the matter of stripping the Company of its assets as follows:

> *"All I can tell you about the M.P.s' objections to the possibility that the economic development loan may result in stripping the company of its assets through a sale and thereby depriving creditors of the possibility of being paid back is*

that it seems to me at the moment that no legal question is raised but only a policy question as to how broadly the Minister wishes to take into account the entire situation, including creditors' claims, when granting an economic development loan. I have not, however, seen any documents on this point. Mr. Hobbs may have further advice in this regard."

On the same day Mr. Hobbs wrote to Mr. Walchli, Director-General, B.C. Region, instructing him to cease all further disbursement of funds under the contribution arrangement but gave as the reason for the order not the stripping of the company and its consequences for creditors but that it contravened Indian Economic Development Fund regulations because a condition was contained within the contribution arrangement that the existing Indian Economic Development Fund loan be paid off with the proceeds of the contribution.

Mr. Walchli indicates that he took this matter up with Mr. Fournier, Assistant Deputy Minister, Finance and Administration and upon confirming that the arrangement did not contravene Indian Economic Development Fund regulations contacted Mr. Hobbs and Mr. Goodwin, Assistant Deputy Minister, Indian and Inuit Affairs who then removed their objection to the disbursement of the funds.

The B.C. Regional Office then acceded to a Band request that the remaining $200,000 of the contribution be advanced immediately and that the Toussowasket lease be surrendered by the Company to the Crown upon payment of the balance owing on the Indian Economic Development Fund loan. The Federal Business Development Bank loan had already been paid off by the Band under the arrangement whereby the Band was to purchase a 50% interest in the Park.

On April 22nd and 23rd, 1982 discharges of both mortgages and the surrender of the lease were executed. These documents were subsequently registered in the Reserve Lands Registry.

The purpose of this surrender was to remove the park from the jurisdiction of the Rentalsman to enhance its profitability. It had the effect, as well, of stripping Toussowasket Enterprises Ltd. of its sole asset and rendering unenforceable the judgment held by Donaldson Engineering Ltd. which had been obtained by default in April of 1979. The amount of the judgment was $63,532.84.

B.C. Regional officials were aware of this judgment. However, there is no indication that Donaldson Engineering had served the judgment on Toussowasket. Donaldson Engineering seems to have pursued the matter of the judgment through Mr. Ron Huntington, M.P. and he clearly raised the matter with the Minister in March of 1982 in such a way as to place the Department on notice that they would be seen as combining with the debtor company Toussowasket if they participated in the disposition of the lease in a manner which rendered unenforceable the judgment held by Donaldson. This is the sort of transaction which would, if within the provincial jurisdiction in British Columbia, offend against the British Columbia Fraudulent Conveyance Act.

The significance of the Fraudulent Conveyance Act lies not in whether it is strictly applicable to the Federal Crown or its servants. We have not considered the question of whether the Act has that applicability. The significance for the department in the Toussowasket matter is that the dealings that took place involved a provincially incorporated holder of the lease of Indian lands and a provincially incorporated creditor company. The debt action of Donaldson Engineering and the action to deal with the rental increases were both actions in the Supreme Court of British Columbia. The Fraudulent Conveyance Act is an act which governs most commercial dealings within the province and one which the Federal Crown will, in normal circumstances, be very reluctant to contravene.

The British Columbia Fraudulent Conveyance Act reads as follows:

Fraudulent conveyance made to avoid debt or duty of others

1. *A disposition of property, by writing or otherwise, and a bond, proceeding and order, at any time made, to delay, hinder or defraud creditors and others of their just and lawful remedies, shall be void and of no effect as against a person, his personal representative and assignee whose rights and obligations by collusion, guile, malice or fraudulent devices and practices are or might be, in any way, disturbed, hindered, delayed or defrauded, notwithstanding a pretence or other matter to the contrary.*

Forfeiture

2. *A party to the disposition, or knowing of it, who willingly maintains, justifies or defends the disposition as true and made in good faith for good consideration, or disposes of any property, or part of it, so acquired by him, shall forfeit one year's revenue or other profits of the land and the whole value of the goods and of money contained in an invalid bond, 50% to Her Majesty and 50% to the person harmed, to be recovered as a debt in a court of competent jurisdiction.*

Offence

3. *A fraudulent disposition under this Act is an offence punishable on conviction by 6 months imprisonment.*

Application

4. *This Act does not apply to a disposition of property for good consideration and in good faith lawfully transferred to a person not having, at the time of the transfer to him, any notice or knowledge of collusion or fraud.*

The events between March 3rd, 1982 and April 23rd, 1982 raise a number of points worthy of comment.

Department of Indian Affairs and Northern Development Headquarters

It is obvious from the records that early in this period the Department of Indian Affairs and Northern Development Headquarters was aware of

the problems inherent in any dealings with the Toussowasket lease involving the Crown which would defeat a creditor who held a B.C. Supreme Court Judgment. A communication to Region stating that the Department was aware of the judgment and that no dealing with the lease was to take place without concrete arrangements being made to satisfy creditors would have prevented the situation which occurred. Instead the Hobbs letter of March 30, 1982 deals with an unrelated problem, the perceived contravention of the Indian Economic Development Fund Regulations, which turned out not to be the case.

B.C. Regional Office Department of Indian Affairs and Northern Development

The British Columbia Regional office was aware of the judgment but was under the mistaken impression that the judgment could be registered by way of Caveat in the Reserve Lands Registry. During the course of this review an instance was referred to in which a money judgment was registered by way of Caveat. The British Columbia Region Officials were, with some justification, under misapprehension about the policy followed by the Indian Lands Registry with respect to judgments. Section 21 of the Indian Act which governs that Registry does not provide for registering a money judgment. The British Columbia Region took the position that if the judgment was not registered in the Registry then they were not constrained in acceding, on behalf of the Crown, to the surrender of the lease. Additionally, British Columbia Region did not include in the terms of the Contribution arrangement with the Band a requirement that all creditors of Toussowasket be satisfied by the Band as a term of the arrangement. They do not seem to have considered the Fraudulent Conveyance Act.

The Creditors of Toussowasket

At the time that the Band assumed control of the park as a result of the Contribution arrangement there were a number of creditors. All but two of these creditors appear to have been satisfied. Underwood, McLellan & Associates had an outstanding account with Toussowasket in the amount of $40,292.05. This account was disputed by the Company. No steps ever seem to have been taken to press this claim. British Columbia Region is not aware of any Court proceedings. The claim may now be statute-barred. It had been outstanding for more than 5 years at the time of the surrender of the lease. Donaldson Engineering & Construction Ltd. had obtained judgment in April 1979 for $63,532.84. The park was in the hands of the Federal Business Development Bank receiver at this point. Mr. Peter Clark of the British Columbia Regional Office recalls speaking to someone from Donaldson Engineering in January and February of 1982 with regard to registration of its judgment by way of Caveat in the Indian Lands Registry. The claim was actively pursued by the Honourable Ron Huntington, M.P. on behalf of Donaldson Engineering with the Minister in March of 1982 and the Minister was made aware of the concerns with regard to dealings by the Crown with the Toussowasket lease. No directions regarding this seem to have been given to the Regional Office. It appears that British Columbia Region did not make any recommendations with respect to how this matter should be resolved nor does it appear that advice was provided from Headquarters.

The Mobile Home Tenants

The tenants in the Band - Toussowasket mobile home park had, in March of 1982, just successfully concluded the litigation in which Mr. Justice Locke had decided that the Rentalsman had jurisdiction and rolled back the rents that followed as a consequence of the Band raising the rates after taking over operation of the park from the

receiver. The legal memorandum of March 30, 1982 deals with the litigation and the appeal proceedings and states:

> *"In view of the fact that the appeal will probably raise difficult questions of constitutional law as between federal and provincial powers in respect of Indian Reserve lands, the Minister will naturally await the Justice Department's advice before taking any definite position."*

The Director of Lands, in a letter to the Departmental Secretariat dated April 26th, 1982, four days after acceptance of the surrender of the Toussowasket lease, states:

> *"I suggest that a Ministerial response to Mr. King might highlight the fact that the Court judgment of March 3rd, by Justice Locke was in favour of the non-Indian tenants. The Band Council's actions pending the outcome of the appeal will have to be governed by the Justice Locke judgment. The response might also indicate that the Department continues to watch the situation very carefully."*

On the same date Mr. Hugh Ladner, counsel for the Band and Toussowasket at the trial before Mr. Justice Locke wrote to the Rentalsman and indicated to him:

> *"We wish to inform you that the lease from Her Majesty the Queen to Toussowasket Enterprises Ltd. has been surrendered to the Crown. The landlord is now Mr. Noll Derriksan, the locatee. Mr. Derriksan is a member of the Westbank Indian Band and is a registered Indian pursuant to the Indian Act. Upon this basis we submit that you have no jurisdiction in the matters with which an Appointment of Hearing has been received indicating that there will be a hearing on April 27th, 1982."*

This aspect of the transaction may also offend against the British Columbia Fraudulent Conveyance Act.

It would appear that, as a result of the surrender, the tenants were denied their remedies under The Residential Tenancies Act.

Concurrent and Subsequent Events

Pursuant to an agreement between Mr. Noll Derriksan and the Westbank Indian Band dated April 23rd, 1982 the Band traded their one-half interest in the mobile home park and their interest in the additional adjoining lot, Lot 33-1-B on Indian Reserve #9, to Mr. Noll Derriksan in exchange for a property on Indian Reserve #10 which Mr. Noll Derriksan held as locatee. This exchange was to have been completed after the Band development company finished development of the mobile home park. This transaction was in fact completed on October 28th, 1982. The value of the land which Mr. Noll Derriksan traded to the Band was appraised by Mr. R.L. de Pfyffer of Columbia Appraisals Ltd., Vernon, B.C. as at October 28th, 1982 at a value of $1,870,000.00. This parcel had been allotted to Mr. Noll Derriksan in August of 1973 in what appears to be a general reallotment of Band lands following the return to reserve status in December of 1972.

Financial Overview of the Toussowasket Transaction

Cost to Band

The Westbank Band expended in excess of $536,000 in paying off debts of Toussowasket. The Band expended, in addition, the sum of $436,000 in completing the park. The Band recovered approximately $363,000 from selling lease rights to mobile home manufacturers and in renting mobile home sites to tenants. The balance of the monies put into the park by the Band came from Band funds and the proceeds of the $300,000 contribution. Outlined hereunder is a brief breakdown of the income/expenditure statements for the period May 1, 1981 to September 15, 1982:

INCOME		EXPENDITURE	
Sale of lease rights	$217,000	Pay off F.B.D.B. loan	$217,000
Rental income	146,000	Pay off I.E.D.F. loan	320,000
D.I.A. Contribution	300,000	Complete mobile home park	436,000
Band Funds	334,000	Purchase of additional 15 acres	24,000
	$997,000		$997,000

Cost to Noll Derricksan

Mr. Derriksan did not, it appears, collect from Toussowasket any rentals due to him as locatee during the period 1975 - 1982. In addition he injected in excess of $30,000 of his own funds. He gave up to the Band a parcel of property which he held title to as the result of the allotment of reserve lands which followed the return of Band lands to reserve status. As previously mentioned, the value of this parcel of property was $1,870,000.

In effect Mr. Derriksan traded this property to the Band for sole ownership of the mobile home park free and clear of all encumbrances. As well Mr. Derriksan obtained title to an additional 15 acres adjoining the park.

Cost to the Department

The Department made 2 contributions in connection with the Toussowasket matter. One was a contribution of $7,000 in 1978 to be used by Mr. Noll Derriksan to "... provide a delay action in the life of the trailer park such that sufficient time will be available for new legislation to come into force that will greatly increase the marketability of mobile homes..." The Department made a further contribution of $300,000 in 1981 which was fully advanced in April of 1982.

Benefits

The $300,000 contribution allowed the Department to solve a pressing problem with Federal Business Development Bank, salvage the Indian Economic Development Fund loan and the mobile home park project. There were advantages to the Band in that Band ownership of development interests on the reserve was increased and there were employment benefits from the involvement of the Band construction company.

The Band, in the end, became the owner of a prime piece of development property on the Reserve valued at $1,870,000 for a net expenditure of $334,000 of Band funds and expenditure of the $300,000 contribution which had been made to the Band by the Department.

Mr. Noll Derriksan ended up with a fully developed and substantially rented mobile home park with no encumbrances in exchange for a parcel of land which, although of considerable value, would have been difficult for him to develop because of the problems with the whole framework within which business transactions involving Reserve lands must be carried on.

Consequences of the Surrender of the Lease

The lease held by Toussowasket Enterprises Ltd. was the sole asset of that Company. The surrender of lease was accomplished at the request of the Band and the locatee and shareholder in Toussowasket, Mr. Noll Derriksan. The surrender was accepted by the Department on behalf of the Crown.

The Department should have been aware, before the surrender was accepted, that the effect of the surrender would be to deny Donaldson Engineering & Construction Ltd., a creditor holding a Supreme Court of British Columbia judgment, and who was pressing its claim through the

Honourable Ron Huntington M.P., any effective remedy against Toussowasket. The Department did not make the advancement of funds under the contribution arrangement conditional upon a written agreement by the Band that it would take care of Toussowasket's creditors. In my view, this represents a significant departure from the standard of conduct which the creditor Donaldson Engineering was entitled to expect from the Crown.

The Crown was also in a position of conflict with respect to the interests of the mobile home park tenants. The Department knew that to accept the surrender of the lease would have the effect of depriving the mobile home park tenants of remedies which they had under provincial jurisdiction and which they had asserted at some considerable expense in the British Columbia Supreme Court. In fact, the sole stated reason for acceptance of surrender of the lease was to remove the mobile home park from the jurisdiction of the Rentalsman under the British Columbia Residential Tenancies Act. In view of the Fraudulent Conveyance Act the acceptance of surrender of the lease is a step that should not have been taken without Department of Justice involvement. Even if the Department was satisfied by the Department of Justice that the acceptance of the surrender was not inadvisable on legal grounds, it may well have been inadvisable on policy grounds when duly considered by a Minister who was a member of a government answerable to both the Band and to the mobile home park tenants.

The $7,000 contribution to allow Toussowasket Enterprises Ltd. to "delay" creditors was an ill-advised contribution. Whatever the beneficial effect may have been to Toussowasket Enterprises Ltd., it is unseemly for the Department to use public funds to delay the lawful pursuit by a creditor of his remedies.

Conclusions and Recommendations

1. The Protection of Third Party Interests

Third parties in this context are understood to be parties other than the Crown, its agencies, Indians or Indian Bands. Although mention is made in the Treasury Board minute underlying the 1977 Agreement relating to the management of many Band matters on the Westbank Reserve, and in the "D" Circulars which are incorporated by reference in that agreement, Departmental policies do not seem to deal adequately with the obligations which the Department has to third parties. These obligations arise, inter alia, because of the Crown's position as landlord under Section 58(3) of the Indian Act, from the common law rules that regulate interference with contractual relationships (such as inducing breach of contract), and are the kinds of obligations covered in Provincial statutes regulating commercial dealing such as the Fraudulent Conveyance Act, the Fraudulent Preference Act, the Builders Lien Act and the Company Act, to name only a few.

Developing Bands and individual Indians in developing Bands are constantly being frustrated in commercial matters by the strictures of the Indian Act. The land registry system in particular is a great impediment to normal commercial dealing in Indian land. Financial institutions are loath to lend money for ventures involving Indian land. The route chosen to overcome these difficulties in the past was to create Departmental programs to ameliorate the effects of a commercially unworkable Indian Act instead of amending the Act itself. What may be required are further provisions in the Act, parallel in some ways to the present provisions, but designed to remove the impediments which become apparent in the case of developing Bands and to allow developing Bands to opt out of the old provisions and into the new.

The kind of provisions that would be necessary would have to incorporate a mechanism or mechanisms for the protection of third party rights so that Indians and non-Indians would know what rules they were governed by in commercial relationships and would be fully aware of the position that would be taken by the Department.

The Indian Act makes inadequate provision for the kind of commercial situation in which a developing Band, such as the Westbank Band, finds itself. If the Department is to protect the interests of third parties it must:

(a) *have clear policies in place which ensure that, when the Department engages in commercial arrangements and dealings on behalf of, or in cooperation with, Indian Bands, that the dealings of the Department are honourably and openly conducted and address third party interests with both actual and apparent fairness. This may be difficult within the present legislative framework and system of land tenure; and*

(b) *in situations involving advanced Bands provide, through modification of the legislative framework in which the Department must operate, for the kinds of conflict of duty situations which arise, for instance, out of the Department's position as landlord of unsurrendered lands pursuant to Section 58(3) of the Indian Act. A legislative framework which would allow the participants in commercial transactions affecting Indian lands to both know and assert their rights and which would eliminate the involvement of and responsibilities of the Department except where necessary would avoid situations like the Toussowasket situation.*

The present framework of policies and practices within the Department does not adequately address the protection of third party rights.

2. The Internal Review Process Underlying the Hobbs Report.

The Hobbs report was not made available to people directly affected by it for a considerable period of time. Mr. Walchli, who had been the Director General, British Columbia Region at the time of the events

which gave rise to the Toussowasket problem, had not seen the report on April 12th, 1985. This even though it had been made available to Mr. Ross of Donaldson Engineering at an earlier date through the Access to Information Act.

The internal review process does not appear to be clearly defined in policy directives within the Department. Mr. Walchli is, quite properly, critical of the process followed in the Hobbs review and sets out the misunderstandings which may well have contributed to the weakness of the final report.

A clear definition of the internal review process would remove the kinds of misunderstandings that hampered the Hobbs review.

3. The Indian Lands Registry

The Indian Lands Registry derives its mandate from two very brief sections of the Indian Act, sections 21 and 55. The workings and nature of the registry are a source of mystery to most people who deal with it. The legislative mandate is not spelled out as it is in Provincial jurisdictions in comprehensive well-drafted acts and regulations but is left to policy manuals and directives which do not have general circulation. The Registry does not take responsibility in its procedures for guarding the lessee of land from obtaining land without access, it does not provide a framework within which charges against owners of interests in Indian lands can be dealt with in an organized fashion and it does not appear to be understood even by members of the Department.

Confusion over Registry practice was a central problem in the Donaldson Engineering aspect of the Toussowasket matter. If rational development of reserve lands is to be accomplished the basics of land registry practice and procedure will have to be embodied in legislation

in order to create a registry system for Indian lands that facilitates rather than hampers commercial transactions involving Indian lands.

4. The Donaldson Engineering & Contracting Claim

This was a claim that had been reduced to judgment and of which the Department was aware. The company was advised to register its claim. Although claims of a similar nature have been registered, the Registry took the position that this one could not. The Regional Officials involved believed that the judgment could be registered. There was insufficient communication between headquarters and the British Columbia Region at a time when headquarters was aware of the potential problems. It would have been a simple matter to ensure that all creditors were paid either concurrently with the finalization of the original contribution arrangement in 1981 or at the time of its modification in April, 1982. The acceptance of the surrender is an unfortunate departure from the standards of conduct reasonably to be expected of agencies of the Crown.

It is recommended that the Donaldson Engineering claim be accepted as a responsibility of the Department and settled either by an ex gratia payment or a reopening of the Contribution arrangement and the payment of funds by that method.

5. The Mobile Home Park Tenants

The facts of the situation regarding the surrender and possible breach of the provisions of the Fraudulent Conveyance Act should be referred to the Department of Justice for an opinion on the implications of this situation for the Department and its employees. The opinion could then be used as a basis upon which to draft policies to govern and guide Departmental personnel engaged in future land transactions of this nature.

Review of the Lawson Lundell Report

As a result of a number of complaints received by Members of Parliament, the House Standing Committee on Indian Affairs in May, 1982, heard evidence on matters involving the Westbank Indian Band, Lessees and other persons doing business with the Band and the role of the B.C. Regional Office of the Department. In its June report to the House of Commons the Committee recommended that an independent enquiry be carried out concerning various aspects of the activities of the Westbank Band and the role of the Department, particularly the B.C. Regional Office. (See Appendix 7)

On July 12th, 1982 the Honourable John Munro, Minister of Indian Affairs, held a meeting with Chief Ron Derrickson of the Westbank Band and the Band's accountant, Mr. Lett. Present were several senior headquarters officials - Mr. D. Goodwin, Assistant Deputy Minister, Mr. E. Hobbs, Acting Director of Economic Development, Mr. J.D. Leask, Director General of Reserves and Trusts and the Minister's Executive Assistant. Mr. Fred Walchli, the B.C. Regional Director General also attended. The Minister stated he had decided to have an internal review to determine whether there was any firm evidence of wrongdoing.

On being advised by the Minister that an internal review would be carried out, Chief Derrickson states that he outlined the review procedures in effect in the B.C. Region to the Minister and asked for assurance they would apply to the Minister's proposed review. Chief Derrickson states further that he also asked that no press releases be made without the mutual consent of the Band Council and the Minister during the course of the review. Chief Derrickson and Mr. Walchli state that the Minister readily agreed to these procedures and conditions. Mr. Walchli states that Chief Derrickson then confirmed

that he would cooperate with the review team and the consultants and invited the review team to Westbank to obtain first hand knowledge of the issues.

In a letter dated September 23rd, 1982, Mr. J.D. Leask appointed the law firm of Lawson, Lundell, Lawson & McIntosh to review certain aspects of the Westbank problems. The terms of reference provided by Mr. Leask to Lawson, Lundell, dated September 23rd, 1982, are attached as Appendix 2. Lawson, Lundell's review and report was presented to the Minister on April 20th, 1983.

It is our view that the Lawson, Lundell review and report was carried out in a highly professional and competent manner within the limitations of the mandate the consultants understood themselves bound by. A number of their individual conclusions and recommendations about the administration of the Westbank Band and the responsibilities of the Department of Indian Affairs are valid and have already been incorporated into procedures of the Band and the Department. To a considerable degree these necessary changes have been acknowledged by the reviews and reports of the Departmental staff who have commented on the Lawson, Lundell Report.

In major respects, however, the conclusions and recommendations of the Lawson, Lundell Report are not a reliable view of the operations of the Westbank Band or of the Department. The report failed to grasp, and clearly present, critical problems faced by the band and the Department in attempting to carry out their respective responsibilities. This failure did not result from anything the consultants did or did not do. It was caused by other factors which are outlined below.

According to Mr. Walchli and Chief Derrickson, the Westbank Band and the British Columbia Region had a long standing and mutually agreed procedure for the carrying out of reviews of Band performance. This procedure is as follows:

(1) Advise the Band Council of the problems.
(2) Obtain Band Council approval to undertake a joint evaluation.
(3) Retain outside consultants, if necessary.
(4) Reach joint agreement on the terms of reference.
(5) Agree on the selection of a firm of consultants.
(6) Jointly co-operate with the consultants in providing information.
(7) Have the report reviewed by both the Band and the Department before the consultants' evaluation was accepted.

Both Chief Derrickson and Mr. Walchli state that it was their belief that they had received the Minister's assurances that this procedure would be used in the Lawson, Lundell review. The process thus provided for an open, co-operative exchange of all information available to the parties. The Lawson, Lundell Report shows clearly in its first eight pages that the consultants were not made aware of this agreement and in fact considered themselves bound to carry out a closed confidential review. They believed they were required to "report our objective views to [the Minister]"; to "prepare a report for your internal use"; that they were "not obliged to answer any questions the person interviewed might ask of us"; that "we could not agree to Chief Derrickson's request that we provide reasons for wishing to see files and resolutions". It should be noted that Lawson, Lundell indicate that they had no input into the manner in which the review was to be conducted. In the terms of reference provided to Lawson, Lundell by Mr. Leask there was no reference made to the procedure allegedly agreed to by the Minister.

The terms of reference set out in detail the subject matters to be reviewed by the consultants. No reference was made to any agreement between the Minister and Chief Derrickson that specific review procedures would be followed or what those procedures were to be. No reference was made to the 1977 Agreement between the Department and the Westbank Band or to the Department "D" Circulars (see Appendix 3) or to the Departmental submission referred to above regarding devolution of administration and service provisions to Bands approved by Treasury Board Minute #725973. These documents, taken together, constitute a code and a contract by which reviews and evaluation of performance of Bands, and in particular the Westbank Band, were to be carried out.

The consultants were further instructed in the terms of reference to consider, review and comment on the role of the Department and the appropriateness of the actions of Departmental members, including B.C. Region.

Lawson, Lundell were not made aware of the established review process. Within a short period all of the conditions that Chief Derrickson understood had been agreed to at the July 12th meeting had been broken. Lawson, Lundell could not be faulted for not adhering to these procedures. They were not made aware of them. An internal review of this type (as opposed to a public enquiry, a royal commission or a Royal Canadian Mounted Police criminal investigation) required the full and voluntary cooperation of all of the parties including the Chief and Council of the Band, and Department, including B.C. Regional Office employees, if it was to have any chance of being successful.

Chief Derrickson and the Westbank Council cooperated with the consultants during the early stages of the review. After it became obvious that its understanding of the agreed review process was not being honoured, the Westbank Council, after failing to get responses to their conplaints to the Minister, ended their cooperation and

subsequently a court action was filed against the Crown. The essence of this court action was that the Department of Indian Affairs had unduly harassed the Chief and Band Council of the Westbank Indian Band and, through its many reviews, had injured the public reputation of the Band.

On page eight of their report the consultants state they were required to report to the Minister on a confidential basis. As a result they did not feel free to discuss allegations of wrongdoing or concerns which arose during their examination of materials with the parties involved. They believed they were required to conduct a closed or confidential review as opposed to an open, co-operative review in which all available information was exchanged. For instance, when the Lawson, Lundell team interviewed B.C. Region Departmental employees, they asked a series of predetermined questions as opposed to entering into an open discussion about the problems being reviewed. The failure to have an open cooperative review in the expansion of the areas being reviewed caused suspicion, fear and anger at both the Westbank Band and the British Columbia Regional Office.

As a result of the style of the review the consultants failed to obtain essential information that would have been readily available to them had the review been the open, co-operative one originally intended. This failure to follow the established procedure and the failure to have an open, co-operative review involving review team, consultants, Band and Departmental staff destroyed at the outset any opportunity for a sucessful review. As a result the consultants failed to gain a true understanding of the nature of the problems on the Westbank Reserve and in the Department.

According to Chief Derrickson and Mr. Walchli, the cause of the breakdown in communications was a failure of the review team and consequently the consultants also, to adhere to the alleged agreement

made between Chief Derrickson and the Minister on July 12, 1982, regarding the process that would be used to complete the review. There is disagreement among the participants at the meeting about what was discussed regarding the terms of reference for the review. No minutes of the meeting were kept. Chief Derrickson and Mr. Walchli, however, state that there was a firm understanding that the review was to be conducted according to the process established by Departmental policy.

Consequently, the consultants found themselves trying to fathom out the complexities of the Indian Act, Reserve and Departmental problems without the co-operation of the Band involved and with severe limitations on their ability to communicate effectively with British Columbia Regional staff. It seems likely they did not become aware of the Treasury Board Minute referred to above (and a later replacement) which were crucial to their understanding of the 1977 Agreement regarding devolution of services and administrative activities to the Band. They appear to have believed the Regional Office was inventing unauthorized programs, whereas in fact the British Columbia Region was following established Departmental policy. This may have led them to believe that many of the activities carried out by the Band pursuant to the 1977 Agreement were unauthorized.

In the result, the failure of the review team to carry out the process of review established by policy and to include it in the terms of reference to Lawson, Lundell, was the single greatest failure of the entire review. Accordingly, damaging results were caused to the reliability and effectiveness of the consultants' report.

With a total breakdown of the co-operative, open process expected by the Band and the Regional Office of the Department an atmosphere was created which made a successful, effective and voluntary review impossible.

Without power to summon witnesses, demand production of documents and require evidence under oath, and in the absence of a free and open exchange of information between consultants, Band and Departmental Staff, the consultants were unable to obtain background information and factual data essential to a clear understanding of the problems.

As a result, while the Lawson, Lundell Report usefully pinpoints a number of items requiring corrective action by the Band and the Department, it fails to reveal the essential legislative, jurisdictional and legal structural problems urgently requiring Government policy review.

A large part of the Lawson, Lundell Report relates to problems on the Westbank Reserve arising from the making and administering of Band By-laws and administration of leases. A further large section of that report refers to the role of the Department and particularly the B.C. Regional Office. Many of these matters have previously been mentioned in this report and are now dealt with in greater detail below.

Conflict of Interest of Band Members

Conflict of interest of band members with respect to involvement in business affairs was a situation which Lawson saw as demanding "...the active role of the Department to ensure that decisions are properly made and that those involved in the transaction do not participate in the decision..."

As Mr. Clarke observed:

> *"With so many small Bands in British Columbia who have few members willing to take key roles on Band Council, it is inevitable that many circumstances exist which may give rise to allegations of conflict of interest. Without clear regulations to assist Departmental and Band staff, it is difficult to answer this problem."*

The question of conflict of interest has long been of concern to the Department, particularly since the 1980 decision of the British Columbia Supreme Court in Leonard v. Gottfriedson. The geographical, social, political and cultural situation of many small Indian Bands makes it very difficult to develop conflict of interest rules which would not seriously affect the overall well-being of the Band. The dilemma of the Department has always been how to best promote active involvement in the affairs of the Band by those most able and qualified to provide leadership and initiative. The general tendency of the non-Indian is to want to apply to the Indian societies the conflict of interest guidelines developed by his own society. But, however laudable and rational these rules may be in the non-Indian society, they are not easily adaptable to small, closed societies that are tantamount to extended families.

Even the case law appears divided on the issue and certainly reflects the difficulty of the situation. In Leonard v. Gottfriedson (referring to a Band Council Resolution allocating an interest in land) the Supreme Court of British Columbia stated that:

> *"...The Chief was clearly disqualified by reason of interest from taking part in any such resolution. Furthermore, he was sufficiently experienced to know that..."*

In Boyer v. Her Majesty (again referring to a Band Council Resolution allocating an interest in land) the Federal Court of Canada (Trial Division) stated that:

> *"...I had some concern about Mr. Corbiere voting as Chief with respect to this resolution but I am advised the regulations under the Act use the words "may abstain"...At worst...it is a procedural irregularity and internal between the Band and the Department..."*

It would appear that the view taken by the Federal Court judge is the better view and that the matter of "conflict of interest" rules is at present an internal matter between the Band and the Department. Even more so, it is a matter between members of the band and their council.

The Department's role could best be carried out by assisting individual bands to achieve successful conflict of interest rules that will best serve their particular circumstances. Lawson, Lundell state that:

> *"The lack of an effective procedure to identify conflicts of interest and have them examined objectively is a serious deficiency in Departmental procedure. Had this been in effect in the past many current problems could have been avoided."*

They go on to state:

> *"A conflict situation demands the active role of the Department to ensure that decisions are properly made and that those involved do not participate in the decision."*

In the case of Westbank, the Band Council is composed of three members, two of whom are directly related. If the normal rules of conflict of interest are applied, then in every case where a Derrickson is involved in a land or other business transaction, the Band Council is rendered powerless to act. In effect, the people who historically have done the most to develop the economic wealth and political strength of the Band would be forced to decide whether to forego personal advancement to work for the Band in a political role or to turn their backs on their Band and devote their energies and expertise full time to the attainment of personal wealth.

The situation at Westbank is analogous to the situation encountered in the Boyer case. The following quote from the Boyer case illustrates that:

> *"... In the early years, the Reserve population, i.e. those actually residing there, numbered about 10 or 12 families. It was described by many as a destitute community. Under the stewardship of Mr. Corbiere the Band flourished, people returned and today his evidence is that about 300 - 400 people live there and he estimates ... the tangible assets at $4,684,000. He also lists what he calls intangible benefits that exist for the Reserve community's benefit... The development under then Chief Corbiere was significant ... His contribution to the well-being of the Reserve and its people was exemplary..."*

Bands are at liberty to develop guidelines should they so desire. In those few occasions where exception is taken it is clear that judicial redress is available.

The case law on the subject is by no means unanimous. The matter has been addressed by at least two superior courts: the Supreme Court of British Columbia and the Federal Court of Canada, Trial Division. The differing attitudes of these two courts is significant and can probably be taken as an indication that the matter may be the subject of review by a court of appeal in the future.

Regardless of what the courts may ultimately say about conflict of interest involving members of Band Councils and the Band's business affairs, it appears that should the matter come before an appeal court, with the Department's present policy as the prevailing guidelines, the Department could be found wanting. The end result may well be that the Department will find itself in the position of having lost the initiative to the courts and being forced to take its direction from a judgment of the court.

It would be appropriate for the Department to afford a high priority to the matter of the review of the present guidelines and regulations with a view to the development, in conjunction with the Indian Bands, of a comprehensive set of conflict of interest rules and guidelines for use by Indian Band Councils.

By—Laws and the Indian Act

The Lawson, Lundell Report correctly stated that a number of Band By-laws might be held invalid if they were challenged in a Court of Law. The reason for this situation does not lie in a failure of the Band Council to draft proper By-laws nor of the Department to review Band By-laws. The reason and fault lie basically with the inadequacies of the By-law making powers as set out in Sections 81 and 83 of the Indian Act.

For many years a number of Indian Bands in British Columbia, B.C. Regional Departmental officials and The Alliance of B.C. Indian Bands have been urging the Government to amend the Act and to provide clear and detailed powers for Indian Band Councils. This subject is discussed in more detail in that part of this report entitled "Historical Background to the Problem". The consultants did not have a clear understanding of the complexities of the legislative and administrative difficulties faced by Bands such as Westbank in attempting to carry out reasonable and responsible local government on their reserves in the absence of effective governing legislation.

Essential changes to Federal legislation, even on an optional basis for progressive Bands, has not been forthcoming. This is due in part to political pressure on Government for many years in the past by various groups, including Indian Bands who are not interested in development

and some municipal and provincial governments that fear the development of Indian Government on Reserves. A few examples of inadequacies of the Indian Act are set out below.

1. Section 81 (h). This sub-section authorizes Band Councils to regulate the construction, repair and use of buildings owned by the Band or individual Band members. There are no provisions for control of buildings owned by lessees.

2. Sections 21 and 55. These provide for registration of transactions respecting lands in a reserve and in connection with leases or other disposition of surrendered lands respectively. For a Registry system to be effective, there must be certainty for all persons wishing to use it whether they be Band members, Departmental staff, potential mortgagees, solicitors, or others. The rules must be laid out in sufficient detail to permit all necessary types of entries to be made. The rules must be available for all interested parties to see and understand. Sections 21 and 55 do not provide these requirements.

In the part of this report dealing with the Hobbs report, two cases are referred to of what appear to be identical applications for registration within a few months of each other. In both cases, the Plaintiff had obtained Judgment for a monetary sum and neither were dealing with interests in land. In one case the Judgment was accepted and recorded and in the second case it was not. The second case was rejected on the grounds that such types of applications are not accepted. In the second case the Judgment holder had been advised by the B.C. Regional staff member that he should register his Judgment.

It will be difficult for substantial commercial activity and building development to take place on reserve or surrendered lands unless the statutory and regulatory problems of the Indian Lands Registry are overcome. This problem has been put forward in a number of submissions

to the Department over a period of many years. As an example, reference is made to the Brief by the Special Steering Committee submitted to Dr. Owen Anderson, Regional Director General of British Columbia, on November 21st, 1983 wherein the following recommendations are set forth (at page 34):

> *"...registration of interests:*
>
> *(a) that the Indian Lands Registrar should issue a statement describing the principals and policies upon which he operates the Registry including its independence from the Departments of Indian Affairs and Justice;*
>
> *(b) that the Department should review the proposals for improvement of the Registry presented by the Indian Lands Registrar in November, 1976;*
>
> *(c) that the Registrar should advise of current practice with regard to lands registered in the Surrendered Lands Register; and*
>
> *(d) that the Department should state its present policy concerning the registration of Indian lands in the Provincial registry systems.*

3. Section 81(a). This subsection authorizes a Band Council to provide for the health of residents on reserve but presumably does not apply to lands surrendered for leasing.

4. Section 81(g). This section authorizes Band Councils to divide reserves into zones and to prohibit the construction of any class of buildings. In this case also it appears that the power does not extend to conditionally surrendered lands.

5. The regulatory vacuum on conditionally surrendered lands and the entire question of the doubtful reserve status on conditionally surrendered lands are discussed in more detail in the earlier part of this report entitled "Historical Background to the Problem". This uncertain status results in the loss of regulatory, including by-law control by Band Councils over Band lands that are surrendered for leasing. These and other inadequacies of the Indian Act have been submitted to Department Headquarters and the Minister on a number of occasions as in the Alliance Brief to the Minister of Justice and the Minister of Indian Affairs dated February, 1973.

The Department and Indian Band Councils have only Sections 81 and 83 of the Indian Act to guide them. There is no equivalent of the various Provincial Municipal Acts to define the limits of jurisdiction for Indian Band Councils or to provide appropriate remedies for those aggrieved by particular by-laws. **To remedy this situation the by-law enacting powers of the Indian Act must be expanded and clarified to provide Band Councils with the capacity to encourage and control development and to pursue their economic and social goals effectively in a contemporary context.**

Because the Lawson, Lundell report apparently did not consider the inadequacies of the Indian Act, they did not identify this problem. However, Lawson, Lundell have correctly pointed out in their Report that By-laws disallowed by the Minister cannot be enforced by the Band Council; nor can the Band enforce By-laws during the waiting period necessary for them to take effect.

The Lawson, Lundell report referred to a number of problems concerning the application of By-Laws. Mr. David Sparks has commented usefully on this problem in his recent review dated June 10, 1985. It appears likely that the difficulties have been caused for two reasons:

1. In its efforts to improve conditions on the reserve the Band may have been over-zealous in some cases in the requirements it has made of lessees; and

2. The Department has failed to give sufficient training and subsequent monitoring to the Band on the question of establishing specific schedules of fees in By-laws as the only charges that can be levied for various purposes and that must be levied on a completely consistent basis. The Department has not instructed the Band on the proper differentiation of functions and responsibilities, between Chief, Band Council, Administrator and Band staff.

1977 Agreement Between the Department and the Westbank Band

Commencing on page 44 of the Report, Lawson, Lundell considered the 1977 Agreement between the Department and the Westbank Band. Unfortunately, for the reasons discussed above in the comment on the failure of the review team to adhere to the established procedure for the review and to transmit that procedure to Lawson, Lundell in their terms of reference, the Departmental submissions approved by Treasury Board Minute 725973 escaped Lawson, Lundell's notice.

The 1977 Agreement did not in itself delegate authority to the Band beyond the limits imposed in the Treasury Board approval. No attempt was made by the Department to transfer authority to the Band in contravention of the statutory powers given to the Minister under Section 53 or to the Governor in Council under Section 60(1).

As a result, the comments of Lawson, Lundell on page 50 of the Report concerning the validity of the 1977 Agreement and reference to land are not valid. Lawson, Lundell is correct however, in stating subsequently that the 1977 Agreement was poorly drafted. Mr. Walchli has explained this by stating that the Department of Justice was unable to assist in drafting because the proposed document was not a matter involving either litigation or interests in land.

The recommendation of Lawson, Lundell, on page 55 of their Report, that the 1977 Agreement should be considered null and void and that the rights and obligations purported to be granted by it should be extinguished, is a failure to recognize the established policy of the department and the government.

The Departmental submission approved by Treasury Board Minute 725973 and the Departmental Indian Local Government Circulars referred to above are clear evidence that the Government believed Indian Bands should play an increasingly responsible and effective role in providing services and carrying out administration on reserve lands. The consultants, however, correctly recognized that in practice the Department was not putting enough effort into reviewing the proposals made by the Band in such matters as rent reviews. There were reasons for the Department's failure in this respect which have been discussed in the section of this report entitled "Historical Background to the Problem". Nevertheless, it was a responsibility of the B.C. Regional Office to ensure that the necessary thorough review of Band administrative activities was being carried out and to advise Headquarters if they lacked the staff to do so.

In the section of the report (commencing on page 56) entitled "The Crown as Landlord of Unsurrendered Lands", Lawson, Lundell are probably correct when they point out that the Department has continuing responsibilities to determine that proper methods and considerations are applied to Crown leases whether the day-to-day administration is carried out by Departmental or Band personnel. However, the Crown's continuing responsibilities are to see that the work is properly done, and not necessarily to do it themselves, unless it becomes impossible, for one reason or another, for the Band to carry out these responsibilities. Consequently, the consultants' recommendations on page 58 and 59 to the effect that the 1977 Agreement should be terminated and that Departmental employees should discharge day-to-day

responsibilities are not an accurate understanding of Departmental policy or of lawfully authorized programs for devolution of responsibilities to Indian Bands.

Length of Terms of Leases

The Lawson, Lundell review also provided observations regarding the length of the term of leases. It was observed that: "... The length of the term of most of the leases does not comply with the policy of the Department as stated in Circular H-3, Section 18.04 ...". It is again significant that the Circular in effect at the time of writing of the Lawson, Lundell Report was Circular H-7-1 of July 1, 1980. However, we have concluded that, even if Lawson, Lundell had based their opinion on Circular H-7-1, the opinion would have been substantially the same as that quoted above. Notwithstanding this observation, the following statement provided by Mr. Clarke of British Columbia Region appears to be the preferable view:

> *"If Reserve lands are to be used to their highest and best use in British Columbia, then generally any commercial leases will have to be greater than 21 years. The exceptions may be small, unimproved recreational developments and agricultural uses.*
>
> *The policy of the Department is to limit the length of the lease to its shortest term whilst ensuring that it is of a long enough duration to support a successful development. Where substantial financing is required under a mortgage of the leasehold it is unlikely to have terms any less than 30/35 years for good quality commercial leases. A shorter term would indicate an unsophisticated developer.*
>
> *The great majority of leases at Westbank are for commercial purposes. Those for trailer parks provide security for a form of residential development more commonly termed "manufactured housing". Few of the improvements, once built, are capable of being moved.*
>
> *The standards required to service such trailer parks are almost the same as any residential subdivision and the capital costs would not be protected by a short term lease.*

The critical requirement is the ability for periodic review of rentals -- not the length of the lease. (See the Guerin decision)"

Responsiveness to Complaints by Lessees and Third Parties

Lawson, Lundell reported that the B.C. Regional Office was frequently neither consistent nor helpful in their response to complaints by lessees and other third parties on the Westbank Reserve. Our investigation would lend credence to that observation.

Provision of Assistance by Chief to Locatees

The provision of assistance by the Chief to Band members contemplating Section 58(3) locatee leases was also the subject of much concern to the Lawson, Lundell team. The general allegation was that while it was acceptable for the Chief to provide uneducated and inexperienced locatees with advice and assistance in dealing with lessees, it is not proper for the Chief to employ the influence and power of the Band Council in this regard. As Mr. Sparks has noted with respect to the Chief's activities in this area:

> *"Chief R.M. Derrickson probably is providing many locatees with a valuable service in assisting them in negotiating the terms and conditions of leases and in rent renewals. However, he must exercise the greatest care and be certain that all the parties involved in the negotiations are very clear that he is providing the assistance as a professional advisor and not as the Chief and Chairman of the Council of the Westbank Band of Indians. He should also have a business licence under the Band's by-law if he is collecting a fee."*

Chief Derrickson has indicated that he has at no time collected a fee for providing assistance to locatees.

Responsiveness to Complaints by Band Members Against Band Council

With respect to the examples of complaints put forward by Band Members Lawson, Lundell states "... the Department is probably correct in avoiding embroilment in disputes and squabbles between individuals and the Chief and Band Council: it is not the function of the Department and its officials to act as mediator or, as some complainants would require, as advocate for the complainant ..."

Mr. Sparks also deals with this in his review:

> *"Lawson makes some comments with respect to the removal of the Chief. A careful examination of the Indian Act discloses that Section 78(2) (a) empowers the Minister to remove or declare a position on Council as vacant when a person is convicted of an indictable offense, dies or resigns; becomes ineligible to hold office by virture of the Act; that he has been absent from a Council for three consecutive meetings without being authorized to do so; or was guilty, in connection with an election, of corrupt practices, accepting a bribe, dishonesty, or malfeasance. The best evidence available is that none of the petitions submitted to the Regional Office made allegations that fulfilled any of these requirements."*

With respect to the removal of a Chief or Band Councillor from office, the law is as set out in Sections 78(2) and 79 of the Indian Act. The Department, does not have the authority to deviate from the requirements of the Act.

Conclusions Arising From Review of Lawson, Lundell Report

The general tenor of the Lawson, Lundell Report is to suggest that problems of administration which have arisen on the Westbank reserves in relation to lessees and other third parties should be resolved by turning back the clock. Their recommendations included such items as terminating the Agreement under which provision of services and

administration has been turned over from the Department to the Band, having Regional staff carry out more activities on a day to day basis in the place of Band staff and reopening the Okanagan Departmental District Office. These are not practical solutions to the problems which exist and are not in accordance with Departmental or Government policy. It would be far more effective for the Department to concentrate its efforts on additional training in administration for Band employees, to work together with the Council and the Chief to resolve the difficulties which exist and which develop from time to time and to carry out an effective monitoring of the Band's progress.

Several groups of people have been involved in the events that have occurred on the Westbank Reserves during the past few years and which have resulted in a number of outstanding problems. Among these groups are the Band members, Council, Chief and Staff of the Westbank Band; lessees, tenants, contractors, advisors and other third parties either living or working on the Reserves; Departmental Regional staff and officials, including the Director-General, who have had responsibilities for what occurred at the Reserves; and Headquarters staff of the Department within their own levels of responsibility. In reviewing the events that have taken place and looking for reasons for the problems that developed, some of which have had serious and unfortunate effects on various participants in these events, one basic conclusion stands out. That conclusion is that all participants have made mistakes at one time or another and to a greater or lesser degree. None of the participants has a perfect record.

Without forgetting the review carried out by the R.C.M.P. which resulted in the statement that they saw no evidence of criminal activity, or the financial audit of the Band in 1979 which resulted in no finding of wrongdoing, there have been two main reviews of the Band's performance - both commenced in 1982 and completed in 1983 - namely the Lawson, Lundell review and Report and the Hobbs review and

Report. Each of those Reports made serious allegations of maladministration by the Band Council, the Chief, and to some extent, the administrator and by the persons responsible for Westbank Band in the Regional Office including the Director-General.

Perhaps it is now time to recognize that all the parties listed above, without exception, must share in the blame for the difficulties which have occurred in one form or another. Little or nothing is gained by merely recognizing faults and allocating blame. It is necessary that corrective action be taken to remedy the difficulties of the past and to create a favourable situation and climate and to put in place the necessary procedures to avoid such problems in the future so far as is possible.

In the Lawson, Lundell and Hobbs Reports, there was no criticism of errors made by Government, Departmental Headquarters, lessees on the reserves, or by other third parties. Instead, criticism was directed towards the Band and British Columbia Region. As stated earlier, all the involved groups had a share in the problems that developed. The difficulties and the problems have now been held up to the light of day and have had a further airing. The time has come to take the necessary action recommended and to put the errors of the past and the hostilities they have engendered to rest. No further benefits will be obtained by carrying out further reviews or enquiries into these past events. It appears that all the people involved took the steps they thought were best in the light of their responsibilities. What is important now is for all concerned to make a fresh start, unfettered by the errors of the past.

Recommendations Arising From Review of Lawson, Lundell Report

A large part of the responsibility for determining a successful future development of the Westbank Reserves and their residents lies with the

Department of Indian Affairs. The persons responsible for initiating policy for the Department in collaboration with the Band Council should be seeking ways to introduce legislation on an optional basis that will permit the Westbank Band Council, if it wishes, to continue the policy of encouraging growth and development and of controlling its quality and direction. It is also recommended, in very general terms, that the Department take steps along the following lines:

- *when amended or new enabling Federal legislation is in place, to assist in training Westbank staff in the appropriate administration of By-Laws;*

- *that the Department, until such time as new legislation may be brought forward, continue to review all band By-laws promptly upon receipt and to exercise the power of disallowance where it is clear that the proposed By-laws would create unreasonable hardship, exceed the jurisdiction contemplated by the Act, delegate powers that rightfully reside in the band council or conflict with the Charter of Rights or other existing Federal legislation.*

- *to ensure that effective policies, procedures and remedies are in place to enable the Department to see that appropriate Administrative practices exist at Westbank covering By-laws, leases, and other business and Governmental activities. This would include the proper execution of legislative, executive and administrative functions at the Band level through separation of functions and responsibilities;*

- *if it is the wish of the Band, to encourage and assist the development of increasing self-government on the Westbank Reserves;*

- *to search for new approaches to land tenure and self-government which will have the effect of increasing reliance by the Band on its own resources and will encourage the Band to utilize the guidance of market forces in its economic and administrative activity;*

- *to seek agreement with all levels of Government and Bands toward a resolution of the problems of:*

  (1) an adequate level of local services on reserves together with necessary financing,

(2) a resolution of the problem of double taxation on reserves,

(3) ways of ensuring that the basic civil rights of non-Indians residing and carrying on business on Westbank reserves are maintained.

Review of the Mobile Home Park Lessees Problem

This review has proceeded somewhat differently from the other two reviews. Lawson, Lundell had set out the original statement of the problem as being that allegations had been made by the lessees located at the Westbank Indian Reserve that the Department, through its actions and inactions, had contributed to a situation concerning the lessees which conceivably may result in certain lessees being forced into bankruptcy. As a result the relationship between the lessees and the Westbank Indian Band, specifically the Chief of the Band, Chief Derrickson, has deteriorated rapidly.

As a result, this writer had been directed that the problem regarding the mobile home park lesees was to be addressed immediately and the true facts of the matter determined. The writer was also directed to determine whether or not the Department committed any acts it ought not to have committed, or failed to take any actions which it ought to have taken. To this end, Messrs. Reecke and Preston were retained under contract to assist the writer in seeking a resolution to this problem.

The terms of reference for Mr. Reecke and Mr. Preston were as follows:

"1. the contractor shall do whatever is necessary to determine the true facts of the situation at Westbank;

2. after the contractor has determined the true facts, he will determine whether or not the Department committed any acts that it ought not to have committed, or failed to take any actions which it ought to have taken and what actions, if any, it can take now to rectify the situation;

3. the method of effectively achieving the contractor's goal shall be determined jointly by the contractor and the Departmental representative, Mr. F.J. Singleton; and

4. the contractor shall report his findings and recommendations directly and only to Mr. F.J. Singleton, Director, Lands Directorate, Indian and Northern Affairs Canada."

It is important to note that their services were acquired in co-operation with Mr. King and Dr. Greenaway. These gentlemen again insisted that Mr. Preston would act as liaison between the writer and the British Columbia caucus to keep the latter fully informed as to the development of events and the legitimacy of the attempts to resolve the difficulties.

Early in the course of the review conducted by Mr. Reecke and Mr. Preston it became evident that there was a possibility that agreement could be achieved on a process which would result in the mobile home parks being purchased by the Westbank Band. Efforts since that time have been directed to defining this process through consultation between the lessees involved, the Westbank Band, the consultants and the Department. The final report of the consultants which details their findings and the recommended process is set out later in this section.

The process recommended in the consultant's report seems to have the support of all affected parties. The Department is presently engaged in discussions with the Westbank Band regarding the details of the Department's involvement in the process. This has not yet been concluded. There are further matters to be resolved between the Department and the Band before any further steps can be taken.

The next step in the process is to obtain Ministerial approval for the Department's further participation in the process outlined in the consultant's report. Appraisers have been chosen by both the lessees and the Band. In order for the process to have every opportunity for success it is necessary that delay be kept to a minimum and the momentum gained to date preserved.

The report of the consultants is set out below.

Mobile Home Parks on the Westbank Reserves

In the course of this project we reviewed 13 leases of lands located on Tsinstikeptum Indian Reserve No. 9 near Westbank, British Columbia. Functionally these comprise 9 operating mobile home parks. The entities or individuals operating these mobile home parks are:

Acres Holdings Ltd.
Jack Alexander and Barbara Alexander
The Billabong Mobile Home & Tourist Park (1974) Ltd.
Golden Acres Limited
H.I. Enterprises Ltd.
Park Mobile Home Sales Ltd.
Shady Beach Camp Ltd.
231117 B.C. Ltd.
Westgate Developments Ltd.

Golden Acres Limited and Westgate Developments Ltd. each operate their mobile home parks on 2 leases.

Two of the 13 leases have been cancelled and mobile home parks are not being operated on those lands.

Six of the functioning mobile home parks belong to an association known as Westbank Mobile Home Park Operators Association. The spokesman for that association is Mr. Leonard Crosby, the owner of Golden Acres Limited. In the course of our review we spoke to each of the operators

of the 6 mobile home parks. All of the mobile home parks operate on leases of locatee lands.

The Six Association Mobile Home Parks

1. Acres Holdings Ltd.

   Acres Holdings Ltd. leases 24.31 acres from the Crown. The Estate of Ellen Tomat is locatee. The lease is dated September 1st, 1979 and runs for 25 years from that date.

   This mobile home park consists of 75 mobile home pads, 16 of which are designed for double-wide mobile homes and 59 for singles. At present there are 65 mobile homes in the park. In addition to the mobile homes this park contains campground facilities, a laundromat, a small store and an office. The campground has space for 103 campsites. The operator of this mobile home park purchased it as a going concern in July of 1980. The mobile home park is located on lakefront property along the eastern border of IR No. 9.

2. Jack Alexander and Barbara Alexander

   The Alexanders operate their mobile home park on 21.5 acres leased from the Crown. Mr. Ron Derrickson, the chief of the Westbank Band of Indians is locatee. The lease is dated May 1st, 1981 and runs for a period of 40 years from that date. The mobile home park consists of 126 mobile home pads, 52 of which are designed for double-wide mobile homes and 74 for single-wide mobile homes. At present there are 107 mobile homes in the park. In addition to the 126 mobile home pads, there are 2 mobile homes that are used as an office and the Alexander's home.

   The Alexanders first leased the land in 1976 for 25 years. They developed the park and renegotiated the lease at the time of the rental review provided for in the first lease in 1981. The lease was extended from 25 years to 40 years at the time of the first rental review. The Alexander's park is located in northeastern portion of IR No. 9 and does not have beach frontage. Some of the pads have a view of Okanagan Lake.

3. The Billabong Mobile Home & Tourist Park (1980) Ltd.

   This company leases 13 acres from the Crown. The Estate of Ellen Tomat is locatee. The date of lease is September 1st, 1979 and runs for a period of 25 years from that date. This mobile home park consists of 77 mobile home pads, 67 of which are currently

occupied by mobile homes. In addition to the mobile home pads, the mobile home park contains 65 campsites and 1 mobile home pad occupied by the owners.

The operator of the park, Mr. Don Lauriault, purchased this Lease on July 1, 1980. At the time of purchase the park was developed and fully occupied. This mobile home park is on the eastern border of IR No. 9. The mobile home park is located on lakefront property.

4. Golden Acres Limited

This mobile home park is located on property governed by two leases. One of the leases covers a 15.54 acre parcel leased from the Crown. The locatee is Theodore Derrickson. The date of the lease is September 1st, 1980 and runs for a period of 41 years from that date. The other portion of the mobile home park is operated on lands leased from Mr. Ronald Derrickson. This lease covers a 7.51 acre parcel and runs for 45 years and 7 months from the date of the lease, February 1st, 1976.

This mobile home park consists of 87 mobile home rental sites, all of which are designed for double-wide mobile homes. In addition, a portion of the lands have been converted into residential housing. This housing consists of 2 duplexes and a permanent residence.

This property was developed by the operator, Mr. Leonard Crosby, after leasing an initial 3.5 acres in 1969. He consolidated this parcel with another to create the 7.51 acres leased in 1976. A further 15.54 was leased in 1980. The mobile home park is located immediately behind and across Boucherie Road from the lakefront mobile home parks and has an attractive view of Okanagan Lake.

5. Park Mobile Home Sales Ltd.

This mobile home park is located on 53.16 acres of surrendered lands leased from West-Kel Holdings Ltd., a company owned by Mr. Noll Derriksan which holds the Head Lease. The Head Lease is dated June 30th, 1970 and the Sub-Lease to Park Mobile Home Sales Ltd. is dated October 12th, 1972. The Head Lease is for a period of 50 years from July 1st, 1971 and the Sub-Lease for a period of 48 years and 8 months less 1 day commencing November 1, 1972.

This mobile home park consists of 270 mobile home pads. There are presently 247 mobile homes in the park. In addition to the mobile home pads there is a storage building, store, office and swimming pool in an approximately 4,000 square foot building.

This park is located beside Highway 97 and does not have a view of Okanagan Lake. The former operators, Mr. and Mrs. Bruce York, took over the park in 1977 when it had 171 developed mobile home pads. They expanded the mobile home park in 1981 and the first mobile home unit was moved onto the expanded section of the mobile home park on July 1st, 1981. Park Mobile Homes Sales Ltd. has now sold its interest. The property is now leased to Ross Management Ltd. by the Crown.

6. Westgate Mobile Home Park Ltd.

This mobile home park is operated on 20.3 acres under 2 separate leases. One lease covers 10.3 acres of which Mr. Ron Derrickson is the locatee. This lease is dated August 1st, 1981 and runs for 40 years from that date. The other parcel of land is governed by a lease of lands of which the Estate of Ellen Tomat is locatee and this lease runs from June 15th, 1981 for a period of 40 years.

This mobile home park consists of 137 mobile home pads occupied at present by 128 mobile homes.

Mr. Ted Zelmer leased this mobile home park and began development in 1976 when he entered into his first lease. He subsequently leased 2-1/2 acres in 1976 and a further 7-1/2 acres in 1980. When the original lease with Mr. Ron Derrickson came up for renewal in 1981, the two Tomat leases were combined and the current rents were agreed to. This mobile home park is not located on lakefront property.

Rental Disputes and Potential Disputes

1. Acres Holdings Ltd.

The rent under this lease is subject to review to set the rent for the 5-year period commencing September 1st, 1984. A rental increase notice has been sent to the lessee.

2. The Billabong Mobile Home & Tourist Park (1974) Ltd.

The rent under this lease is subject to review to set the rent for the 5-year period commencing September 1st, 1984. A rental increase notice has been sent to the lessee.

3. Golden Acres Limited

There is a dispute which is presently the subject of a Federal Court action concerning the rent under the lease of 7.5 acres of which Ron Derrickson is the locatee. The amount of the rent for

the 5-year period commencing September 1st, 1981 is under dispute pursuant to the terms of that lease.

The Relationship Between the Park Owners Association and the Westbank Band

A common theme emerged throughout our discussions with the mobile home park owners. When they entered into the leases and committed themselves to mobile home parks on Westbank Indian Reserve lands, while in some cases they appreciated that the Band was, to some extent, participating in the administration of the leases, they thought that the Department would continue to be responsible for and ensure that the administration was in accordance with Crown lease administration policy. The park owners told us that they were confident that because the leases were Crown leases they would be administered in a manner consistent with the Crown's normal policies and procedures in dealing with small business men.

It is significant that some of these entrepreneurs who became lessees were under-financed and were attracted to the Westbank Reserve by the plentiful supply of cheap land available with annual lease payments. In this way the lessees were able to avoid capital investment in land. They were also attracted by what was perceived to be a relative lack of governmental controls on land development on Indian land. In British Columbia Indian Reserve land had become known as a haven for developers with limited capital who wished to avoid the increasing capital cost of land purchase and who wished to escape the increasing costs and stringency of municipal controls over development.

The period in which most of these mobile home parks were developed was an economically expansionary period in the mobile home park industry. The mobile home park industry was particularly expansionary in the central Okanagan in the latter part of the 1970's and up until 1981. The mobile home park owners, by and large, significantly increased

their business investment during this period. On the basis of what they told us, they did so in the expectation that the management of the lands on which they were expanding their operations would be characterized by an even-handed course of dealing which they expected when dealing with the Crown.

It became evident to them in 1980 and 1981 that the Westbank Band of Indians had assumed greater control of the management of lands in the Reserve than had been previously supposed by the owners. The existence of the 1977 Agreement and the extent of the de facto delegation of powers over the management and control of the lands on the Reserves was not known to the trailer park owners at that point.

The Chief of the Westbank Band, Chief Ron Derrickson, is an astute and highly capable individual who has a firm grip on the economic realities of the commercial situation in which the Band finds itself. The Band lands are located next to the expanding commercial centre of the Okanagan Valley. Chief Derrickson has and is, in our view, pursuing policies with a view to maximizing the commercial benefit of the Reserve lands to the Members of the Band. The Band has developed far-reaching plans for the development of their own lands and has taken steps to put in place, through the framework of by-laws emerging from a development plan, an administrative structure to maximize the benefit to the Band of the valuable lands which it occupies. The Westbank Band has exercised, in full measure, its powers to administer lands arising from the grants of power under the 1977 Agreement. These powers were subsequently replaced by grants of Section 53 and Section 60 powers. The Band is also aggressively exercising the power to regulate construction, development and the expansion of an infrastructure of services through policies which they base on their powers under Sections 81 and 83 of the Indian Act.

In the normal commercial situation extraction of greater revenues from tenants would be moderated by the adverse effect, upon the revenues of the landlord, of insolvency of the tenants. In the situation which exists in Westbank the probable consequence of insolvency or bankruptcy is to return the lands, with their considerable capital improvements, to the locatees. There is little in this situation to moderate the natural desire of the Band to seek ever greater revenues from the tenants.

All of the mobile home park owners that we spoke to expressed concern over their ability to meet the level of rents and other financial levies which the Band is seeking. The park owners feel that the level of rents sought by the Band in recent years is above fair market rents under the leases. It is their position as well that some fees levied on the basis of by-laws have been arbitrary and of a magnitude which threatened the financial viability of their parks.

The prolonged history of the conflict between the mobile home park owners and the Band and its Chief has already been the subject of testimony before the Standing Committee on Indian Affairs and Northern Development and the Special Committee on Indian Self-Government. It has led to extensive mediation by the Member of Parliament for Okanagan, Similkameen, Mr. Fred King, along with other members of the British Columbia caucus, and further attempted mediation by Mr. Gerv Fretz, M.P., Parliamentary Secretary to the Minister of Indian Affairs and Northern Development. An incident in which a serious assault on Chief Derrickson led to charges against certain persons associated with the ownership of the mobile home parks has exacerbated an already tense and commercially unstable situation. None of the present lessees affected by our proposed solution were among those charged.

The remedy provided within the framework of the leases which govern the mobile home parks is a determination under the authority of Subsection (3) of Section 17 of the Federal Court Act, which provides:

> "(3) The Trial Division has exclusive original jurisdiction to hear and determine the following matters:
>
> (a) the amount to be paid where the Crown and any person have agreed in writing that the Crown or that person shall pay an amount to be determined by
>
> (i) the Federal Court
> (ii) the Trial Division, or
> (iii) the Exchequer Court of Canada;
>
> (b) any question of law, fact, or mixed law and fact that the Crown and any person have agreed in writing shall be determined by:
>
> (i) the Federal Court
> (ii) the Trial Division, or
> (iii) the Exchequer Court of Canada: and
>
> (c) proceedings to determine disputes where the Crown is or may be under an obligation, in respect of which there are or may be conflicting claims."

Periodic reference of disputes to the Courts and of rental disputes to Federal Court and Federal Court of Appeal is not a practical or possible solution for small business. From the point of view of the mobile home park owners, this remedy is beyond their reach economically. The Band can, and has in the past, vigorously monitored or pursued court actions in which their interests were involved.

It is our conclusion that the multitude of conflicts are real ones. We are convinced that these conflicts have substantially interfered with the ability of the Band and its Chief to carry forward their plans and achieve their goals. We are further convinced that these conflicts

also created an environment in which the mobile home park owners find it difficult to carry on their commercial ventures.

The Role of the Department of Indian Affairs and Northern Development

The complaints of the mobile home park owners have been repeatedly brought to the attention of the Department over the long course of this conflict. Considerable correspondence exists which documents this. Because of the extent to which the Department handed over power to manage and control lands on the reserve to the Band the Department had removed itself from a position in which it could deal effectively with the problem.

The provisions of the "D" series of circulars which are incorporated by reference in the 1977 Agreement do not provide an effective framework for an orderly transition of powers of administration of lands to the Band. It would appear that what resulted from the Department's actions during the period 1977 through 1985 was analagous to an ineffectively controlled transfer of powers under Section 60 of the Indian Act to the Band without the necessary Order-in-Council authority. In particular, the Department of Indian Affairs technically retained the Section 60 powers under the 1977 Agreement, but in practice did not fully exercise them.

This was made worse by the loss of Departmental records resulting from the occupation of the offices in Vernon and Kamloops in 1975. It was further adversely affected by the large staff reductions that accompanied the devolution of powers to the Band. Protection of the interests of third parties during the course of transition was not effectively accomplished by the Department. This could perhaps have been accomplished by an effective program of advising third parties of the extent and nature of the changes in management which directly affected their commercial interests and by building in a process to

ensure that their interests were not adversely affected by arbitrary or commercially unforseeable change.

It is our conclusion that the Department has allowed to develop, and has created in part, this situation by failing to fulfil adequately its responsibilities in three areas:

(1) The Department has, through a policy of aggressively handing over the management and control of lands on the Reserve to the Band, transferred to the Band in the late 1970's the powers which are analagous to powers dealt with in Section 60 of the Indian Act. While technically the Department correctly retained these responsibilities and powers in the 1977 agreement, in practice it was normal to permit the decisions to be made by the Band. This was done without the necessary Order-in-Council. The basis in law upon which the Band exercised these powers was therefore suspect. The exercise of these powers directly affected the owners of the Mobile Home Parks.

(2) All of the leases governing the existing mobile home parks with the exception of the Park Mobile Home Sales Ltd. lease have covenants providing that "...if the Lessee pays rent hereby reserved and observes and performs the covenants herein contained, it will peaceably hold the land without any unlawful interruption by Her Majesty." The activity of the Band in the course of its control and management of lands under leases between the Crown and the mobile home park owners has interfered with that covenant to provide quiet enjoyment. The involvement of the Department, in permitting the exercise of by-law powers on questionable statutory footing has, as well, interfered with that quiet enjoyment.

(3) The mobile home park owners feel, with perhaps some justification, that the Crown assumed a moral obligation to them when they entered into their leases with the Crown to avoid creating a situation which significantly derogated from the value of the leases.

Mobile Home Park Tenants

Aside from the direct effect on the mobile home park owners, these developments have led to a situation where the mobile home park industry on Band lands has received extensive unfavourable publicity in

the Okanagan area. There is a net movement of mobile home tenants off the parks. This, in itself, has had a considerable effect on the economic viability of the mobile home parks.

This process has affected the tenants in the mobile home parks as well. Moving a mobile home is costly. Because of this the mobile home tenants are not free to move at will in response to a deteriorating environment. Many of them are both emotionally and economically attached to their location in the mobile home parks and, because of this, can be subjected in the short run, to a level of rents above the prevailing market level in the area.

The upward pressure on rents under the leases has, we understand, led to a level of rents in some or all of the mobile home parks which are not maintainable in the long run. Due to the economic recession, market value of the parks and the level of rents that can be obtained from individual homeowners has decreased. The Park owners however, as lessees of the Crown on locatee lands, face increasing rents which, combined with increasing taxes and operating costs, including interest on borrowed money, takes an ever greater proportion of their total income from the Parks. As a result they are being pushed toward bankruptcy.

As well we saw some evidence that the unwillingness or inability to continue investment in the mobile home parks by the mobile home park owners will lead to a situation where the quality of the services in the parks will decline. Because most of the services such as electricity, water, sewage and roads are individually constructed and maintained, continued investment is required to ensure that they are maintained at an acceptable level. The economic pressure experienced by the mobile home park owners militates against maintenance of services at an acceptable standard.

In addition, the servicing infrastructure on the reserve lands is totally inadequate to meet the requirements of the rapidly increased population, the vast majority of which is non-Indian. This is especially so in the case of water supply which is deficient in both quantity and quality, resulting in danger to health and safety. In turn this creates a potential liability situation for the Band and the Crown.

Chief Derrickson indicates that the Reserve presently lacks the necessary servicing infrastructure to accommodate the Reserve's present population and to provide for future growth. He estimates that the cost of providing this infrastructure would be in the region of three million dollars over the next five years.

Recommended Solution

We would expect that if the mobile home parks were to be owned and managed by the Band they would be well managed. We were impressed by the management abilities of the Band and its Council. We are satisfied that the management of the mobile home parks presently in the hands of band members was of a high standard. It would be our expectation that if the pressures generated by the currently unstable situation were removed from the mobile home parks that it would be in the best interests of the Band and the mobile home park tenants. We have no reason to believe that the Band would not achieve this. The history of the conflict between the mobile park owners and the Band has created a situation which has led to a public perception that conditions in mobile home parks on the Reserve are below the standard of mobile home parks off the Reserve. It would be in the Band's interest to reverse that situation as quickly as possible.

In our view, the most practical resolution of the conflict which presently exists between the mobile home park owners and the Band could

be achieved by transfer of ownership of some of the mobile home parks to band ownership. Both Chief Derrickson and the mobile home park owners have expressed an interest in discussing this.

We are presently in the process of actively pursuing this proposed solution. However, it is essential to note that this process cannot be successfully concluded unless we have the full co-operation of Chief Derrickson and the Band Council as well as all of the affected mobile home park owners. Based upon our personal experiences over the past several months, we have certain concerns in this regard and are not overly optimistic that this co-operation will be obtained.

As well, it is equally essential that the solution have the full support of the Minister. To that end we understand that Mr. King, and other members of the British Columbia caucus, will be seeking an early meeting with the Minister after he has had time to read and consider this Report. Our proposal for resolving this problem is as follows:

Initial Approach

1. The Owners of some of the parks operating on Reserve lands would be approached to explore their interest in selling their mobile home parks to the Band at fair market value. The fair market value would be determined through a process of appraisal, negotiation and arbitration. We understand that the 6 mobile home park owners that we spoke to would all be interested in exploring such a sale. There are 3 mobile home parks whose operators we have not discussed this with. But it may be because of the absence of evident conflict between these lessees and the Band or because these properties came into their present owner's hands at a time when the extent of the Band's control of their lands was known that these properties remain outside the scope of this proposal. However, we would recommend that the owners of the three other parks, H.I. Enterprises Ltd., Shady Beach Camp Ltd. and 231117 B.C. Ltd. be contacted to explore their desire to be included in this process. The Park Mobile Home Sales Ltd. property has been sold. Presumably the purchaser of that property is aware of and accepts the commercial risks inherent in the

purchase. This will presumably put Park Mobile Home sales Ltd., the largest of the parks, outside the scope of this proposal.

Retaining of Appraisers by Both Parties

2. If tentative agreement on a buy-out process could be achieved between the mobile home park owners and the Band then each would be asked to retain an appraiser to appraise the mobile home parks on the basis of their fair market value. The mobile home park owners would be required to provide their audited financial statements to both appraisers. Factual data that has been developed by Mr. Gaetan Roy would be provided to both appraisers and the appraisers chosen by the parties would be instructed to discuss their appraisal approach with one another beforehand and to agree to sharing basic sources of information to minimize the costs of the appraisal process. We would suggest that in these exceptional circumstances the costs of the appraisals be borne by the Department.

Gaetan Roy Guideline Letters of Opinion

3. During the course of our review we have asked Mr. Gaetan Roy, a well known and highly respected Ottawa appraiser, to prepare letters of opinion of approximate market value for our assistance and to give some indication to both the Band and the mobile home park owners of the general area in which the appraisal values may fall. These are necessarily incomplete and are intended to be general indicators only. For example, these letters of opinion do not take into account levels of future expenditures required, changes in pad rental levels, advantages of permanent structures or values of structures and equipment of a moveable nature. These letters of opinion are to be released to the Band and the park owners but we do not see them as necessarily being relied upon in the process which will establish fair market value.

Process of Determination of Fair Market Value

4. Once the appraisal results were obtained, if the appraisals differed by less than 10% on the valuation placed on any individual mobile home park, then the appraisal results would be averaged to determine the fair market value for the purposes of the sale. If the appraisal results differed by more than 10% the parties would have the opportunity for a specified but short period to negotiate a fair market value. Failing this the matter would be arbitrated by a sole arbitrator agreed to by both parties beforehand. We think that it is important that this arbitrator be agreed upon by the parties as early as possible. There should be a set period within which the arbitration would have to take place

and, in order to make this practical, the choosing of an arbitrator should be one of the first tasks undertaken.

The Park Owner's Decision

5. After determination of a fair market value for the parks the park owners would make an election to sell or not to sell at the fair market value established.

Exploration of Financing and Infrastructure Assistance

6. A member of the Department, in consultation with the bank or agency chosen to provide the financing, would discuss with the Band an acceptable financing proposal. During the course of our review we were advised by Senior D.I.A. officers that the financing might be put together through a combination of the Indian Economic Development Fund and commercial lenders. We recommend that the Department assist the Band to make favourable financing arrangements to allow the Band to acquire the mobile home parks. We recommend that the Department work with the Band within existing Departmental contribution programmes to facilitate the development of an adequate servicing infrastructure on the reserve.

Decision of Band

7. If suitable financing arrangements could be made and the Band elects to go ahead, the purchase and sale of the mobile home parks could then proceed.

Mobile home park owners who decided that they would prefer to continue with the operation of their mobile home parks with full knowledge of the present circumstances surrounding the grant of powers to the Band and after having had an opportunity to dispose of their mobile home park at fair market value would be in a situation where they had made a business decision to carry on the operation of their mobile home parks with full knowledge of the process under which their leases would be administered.

Supplementary Issues

In the course of the foregoing reviews it became apparent that two of the matters which have been referred to briefly above deserve more detailed comment. These are:

(1) The Indian Lands Registry; and

(2) Conflict of Interest - Departmental Personnel.

At the risk of some repetition these two matters are dealt with separately below.

The Indian Lands Registry

The Indian Lands Registry derives its mandate from two very brief sections of the Indian Act, Sections 21 and 55. The workings and nature of the Registry are a source of mystery to most people who deal with it. The legislative mandate is not spelled out as it is in provincial jurisdictions in comprehensive well-drafted acts and regulations but is left to policy manuals and directives which do not have general circulation. The Registry does not take responsibility in its procedures for guarding the lessee of land from obtaining land without access, it does not provide a framework within which charges against holders of interests in Indian lands can be dealt with in an organized fashion and it is not understood even by members of the Department by their own admission.

The Indian Lands Registry, because of the absence of a comprehensive legislative base, cannot provide the commercial certainty that is required to facilitate dealing in land. Difficult questions of procedure, priority, the effect of errors in registration and the rules governing the inevitable time delays in the process cannot be addressed

with certainty. This creates a climate which discourages investment in and commercial dealing with Indian lands.

In spite of these fundamental difficulties, the present Indian Lands Registry has grown to the point where today it has a Registrar, a Deputy Registrar and a staff of several people. It is in the process of being converted to an automated data base at a substantial cost. The Indian Lands Registry takes its legal advice from the Department of Justice and its policy direction from the Department of Indian Affairs. Within a system of land tenure which imposes the obligations of a landlord on the Crown in many instances, the problem of conflict of interest is clear. Independence from the Department and a comprehensive statutory foundation would do much to resolve this problem.

There is also the problem that the Department appears to hold out the Indian Lands Registry as a registry office analogous to the provincial land registry offices. The present Registry gives all the appearances of being a Land Titles Office, yet there is no assurance fund or guarantee to protect the interests of those who rely upon its records.

Until such time as the role of the Lands Registry is clearly defined by statute the Department should produce a comprehensive set of interim policy guidelines. These should be designed to assist personnel who are engaged in activities concerning interests in land to ensure that procedures are present to protect the interests of all parties concerned.

The Department should undertake, on a high priority basis, the definition of the role and function of the Indian Lands Registry and the office of Registrar of Indian Lands within the overall context of long term government policies and aims with respect to Indian lands. The government should consider the feasibility of creating an Indian

Lands Registry independent of the Department, controlled by its own statute and capable of acting in concert with Provincial land registry and land title systems.

Conflict of Interest – Public Servants

Indian Bands and organizations have drawn the attention of Government to this problem for many years. The Federal Government, with jurisdiction over Indians and lands reserved for Indians, is the appropriate arm of Government to come to grips with the problem. Appropriate remedies may require constitutional accord with the Provinces, legislative amendment and policy changes.

Conflict of interest has become more pronounced and visible recently as a result of the Canadian Charter of Rights and Freedoms and recent judicial decisions, in particular, Guerin et al v. Her Majesty the Queen in Right of Canada (the Musqueam Case) and Kruger et al v. Her Majesty the Queen in Right of Canada, of the Supreme Court of Canada and the Federal Court of Appeal, respectively.

In 1984, by the judgment in the Musqueam Case, the Supreme Court of Canada held there was an enforceable legal relationship between Indians and the Crown Federal with respect to Indian title, arising from the unique special relationship between Indians and the Crown. The Justices described this relationship variously as a trust relationship, a fiduciary relationship, or a type of agency, with a majority finding the existence of a fiduciary relationship.

In the Kruger Case Mr. Justice Heald observed:

> *"Bearing in mind that it is the Crown which owes the fiduciary duty to the Indians, the facts of this case clearly raise the issue of conflict of interest, in my view. It seems evident that two departments of the Government of Canada were in conflict concerning the manner in which the Indian occupants*

of Parcel A should be dealt with. The evidence seems to unquestionably establish that the officials of the Indian Affairs Branch were diligent in their efforts to represent the best interests of the Indian occupants. On the other hand, the Department of Transport was anxious to acquire the additional lands in the interests of air transport. This situation resulted in competing considerations. Accordingly, the Federal Crown was in a conflict of interest in respect of its fiduciary relationship with the Indians. The law is clear that "...one who undertakes a task on behalf of another must act exclusively for the benefit of the other, putting his own interests completely aside" and that "Equity fashioned the rule that no man may allow his duty to conflict with his interest.". On this basis, the Federal Crown cannot default on its fiduciary obligation to the Indians through a plea of competing considerations by different departments of Government."

Later in the same judgment he observed:

"Bearing in mind that the onus is on the Crown to establish that the Indians were in possession of all the relevant information known to it, I have no hesitation in concluding that the Crown has not discharged that onus on these facts. Characteristic of a lack of disclosure, in my view, is the non-disclosure of the opinion of the Deputy Minister of Justice referred to supra given to other officials of the Crown that the Indians' interest in the land could be taken only by surrender and not by expropriation. In view of my agreement with my brother Urie J. that the expropriations were legally correct, I do not cite this non-disclosure as a legal impediment to the Crown's actions per se but I think it indicative of the attitude of the Crown's servants outside the Indian Affairs Branch. Their attitude seemed to be that they were not concerned in any way with the welfare of the Indians and were leaving protection of the Indian interests to the Department of Indian Affairs. That may have been a defensible posture for the officials of other departments to adopt, given their own urgent priorities in wartime. However, the Governor-in-Council is not able to default in its fiduciary relationship to the Indians on the basis of other priorities and other considerations."

The conflict of interest is now clearly exposed. All Ministers of the Crown and their Departments have a duty, as public servants, to advance the national interest. The Minister of Justice, as chief legal officer of the Crown, has a duty to preserve and protect the interests of the

Crown. The Minister of Justice through his staff, also provides legal advice to Government Departments, including Indian Affairs. This also includes matters of dispute between the Government and the Indians. A former Regional Director of Justice, B.C. Region, once wrote to the then Executive Director of the Union of British Columbia Chiefs:

> *"To expedite our processing of Indian land matters, I find it easiest to look on Indian Reserves as land which belongs to the Crown, that all alienations of the title to Reserve lands by lease or otherwise must be done in the name of the Crown, and all actions to enforce rights in relation to the Reserves should be brought in the name of the Crown. The legal service functions of the Department of Justice are not and ought not to be political in nature and thus we try to avoid becoming involved in such problems as claims of aboriginal title, or that Reserve lands are held by the Crown in trust for the Indians.*
>
> *Title to Indian Reserves is vested in Her Majesty and it is Her interests which we must preserve and protect. However, Her primary interests in such land is (sic) that they be used for the benefit of Indians and consequently that is also the interest of the Department of Justice."*

Although not specifically addressed in either the Lawson, Lundell or the Hobbs Report, the problem of the conflict of interest faced by the Department of Indian Affairs has been present in most of the situations reviewed. The essence of the problem is that Departmental personnel are constantly torn between or confused by their duties and responsibilities to the Crown on one hand and to Indian Bands on the other hand. Many of the critical accusations made of Departmental personnel are traceable to the difficult position in which employees are placed.

There is the added difficulty faced by Departmental employees when involved in matters concerning Bands and lessees of Band lands. Recently the Director of Lands was threatened with a law suit for breach of fiduciary duty by a Band's solicitor when he proposed the release of real estate appraisals as part of a plan of action to

resolve certain difficulties between the Band and its lessees. The Band's solicitor considered the proposed release of the real estate appraisals to be not necessarily in the best interests of the Band. Departmental staff are aware of their responsibility to provide services for and to assist Indians in their social and economic development. Their obligations to third parties are less clearly recognized.

Increasingly in recent years, Indian people and Bands have found themselves in an adversarial position vis-a-vis the Federal Government and its servants with respect to their individual and Band rights. Frequently, these disputes involve rights which Indians perceive themselves as having over land and land related matters. In this connection, it is noteworthy that the Crown Federal elected historically to exercise its exclusive legislative jurisdiction over Indians and lands reserved for Indians by acquiring, holding and administering Indian lands in a manner which prevents Indians from exercising any power over the disposition or other alienation of lands without the consent of the Crown.

Furthermore, the Crown has assumed exclusive control by statute over many other aspects of Indian personal rights and property. These controls are set forth in the Indian Act. See, for example, the sections establishing control over Indian monies, artifacts, materials on Reserves, education, estates, guardianship of infant children, definition and registration of Indians, trespass on Reserves, and, by Section 88, applicability of general Provincial laws. In brief, the Crown has chosen to exercise extensive control over the personal rights and property of Indians.

This assumption of controls over the lands, rights and property of Indians brings into existence the fiduciary or trust relationship referred to in the Musqueam Case.

In the United States a recognition of similar conflict of interest was expressed in a message to Congress on July 8th, 1970. Former President Richard Nixon said in part:

> *"The United States Government acts as a legal trustee for the land and water rights of American Indians. These rights are often of critical economic importance to the Indian people; frequently they are also the subject of extensive legal dispute. In many of these legal confrontations, the Federal Government is faced with an inherent conflict of interest. The Secretary of the Interior and the Attorney General must at the same time advance both the national interest in the use of land and water rights and the private interests of Indians in land which the Government holds as trustee.*
>
> *Every trustee holds a legal obligation to advance the interests of the beneficiaries of the trust without reservations and with the highest degree of diligence and skill. Under present conditions, it is often difficult for the Department of the Interior and the Department of Justice to fulfill this obligation. No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute; yet the federal government has frequently found itself in precisely that position. There is considerable evidence that the Indians are the losers when such situations arise. More than that, the credibility of the Federal Government is damaged whenever it appears that such a conflict of interest exists."*

This unresolved problem of conflict of interest constantly stands in the way of finding solutions to the basic problem of defining a new, realistic and workable relationship between Indian Bands and the Federal Government.

Overall Conclusions Arising from Reviews of Lawson, Lundell and Hobbs Reports and Mobile Home Park Lessees Problem

Some clear overall conclusions can be drawn from the review of the Lawson, Lundell and Hobbs reports and the review and analysis of the mobile home park lessee problem. These are set out below:

1. The Indian Act and Developing Bands

The legislative framework provided by the present Indian Act hampers rather than assists developing Bands. Indian Bands do not have an effective legislative base in the Indian Act. The validity of their by-laws is suspect, they have ineffective legal status outside of the Indian Act, their control over conditionally surrendered lands lacks legal foundation and when they incorporate they lose Indian status. Their lands lack a proper registry and their land resource is taxed by outside jurisdictions. It is an act of frustration for Bands to try to determine their powers by looking at Sections such as 81 and 83 of the Indian Act. **Developing Bands are thus frustrated in their efforts to pull themselves away from dependency on Government. This could be addressed by creating further provisions in the Indian Act, parallel in some ways to the present provisions, but designed to remove the impediments which become apparent in the case of developing Bands and to allow developing Bands to opt out of the old provisions and into the new.**

2. The Present System of Land Tenure

The Crown is, at present, the Landlord of both surrendered and unsurrendered Indian lands. This creates continuing responsibilities which the Crown is not effectively able to discharge once management of the lands is turned over to the Bands. Many of the problems that were apparent in the course of this review stemmed from

this. Resolution of this problem will require a search for new approaches to land tenure and self-government which will have the effect of increasing reliance by the Bands on their own resources and will encourage the Bands to utilize the guidance of market forces in their economic and administrative activity. It will remove the Crown from the position of assuming, in law, responsibilities which it cannot, in practice, fulfill.

3. Conflict of Interest

In 1984, by the judgment in the Musqueam Case, the Supreme Court of Canada held that there was an enforceable legal relationship between the Indians and the Crown Federal with respect to Indian title, arising from the unique special relationship between the Indians and the Crown. The Justices described this relationship variously as a trust relationship, a fiduciary duty, or in terms of agency. The Crown, its ministers and the Departments, on the other hand have a duty to advance the national interest. This conflict of interest is exposed frequently in dealing with lands. It is complicated by the responsibilities that the Crown has assumed as landlord of surrendered and unsurrendered lands. This problem of conflict of interest is unresolved. It was apparent throughout the course of this review that the present legislative and policy framework does not adequately address this problem. One aspect of this problem is the protection of third party rights when the Department finds itself injected into commercial relationships involving Indians and non-Indians.

It is these problems with the administrative and legislative framework which have been the primary cause of the problems which have developed at Westbank. The actions of the British Columbia Regional office during the period covered by the events reviewed are probably a reflection of the difficulties caused by the legislative framework and the pressure of events rather than maladministration as indicated in

the Hobbs Report. This is not to say that the parties involved are not to blame, because all of the participants have made mistakes at one time or another to a greater or lesser degree. The time has come, however, to concentrate on the resolution of the fundamental problems rather than on the allocation of blame.

Although we are by no means absolutely certain, after reviewing this Report we have a suspicion that the British Columbia Region of the Department of Indian Affairs did not have enough people on staff with sufficient technical expertise and general experience to properly advise the Regional Director General, the Band and the mobile home park lessees in a timely and forthright manner. It would appear in many cases that an attitude of "laissez - faire" existed amongst certain Regional employees and that this attitude contributed to the overall development of the problems that subsequently evolved at the Westbank reserves.

Recommendations and Departmental Initiatives

As a result of the review of the Westbank situation the Report to the Minister makes the following observations and recommendations:

1. That the Department of Indian Affairs accept a measure of responsibility for the problem which has arisen between a number of mobile home park lessees and the Westbank Band. That the Department encourage and assist in a process which will result in the purchase by the Band, at fair market value, of the leasehold interests of the affected lessees. This will include assistance to the Band to solve the water problem presently existing on one of their reserves.

2. That the Department accept responsibility for the loss suffered by Donaldson Engineering & Construction Ltd. an unsecured creditor of Toussowasket Enterprises Ltd. due to the Department's actions in accepting surrender of the Toussowasket lease.

3. That the Department immediately begin the process of amendment to the Indian Act which will provide a legislative framework within which developing Bands can realize their potential and reduce their dependence on government.

4. That the Department, until such time as new legislation may be brought forward, continue to review all band By-Laws promptly upon receipt and to exercise the power of disallowance where it is clear that the proposed By-laws would create unreasonable hardship, exceed the jurisdiction contemplated by the Act, delegate powers that rightfully reside in band councils or conflict with the Charter of Rights or other existing Federal legislation.

5. That the system of land tenure be examined in light of increasing self-government being assumed by Bands with a view to making changes

which will have the effect of increasing reliance by the Bands on their own resources and will encourage Bands to utilize the guidance of market forces in their economic and administrative activities.

6. That the problems arising from the conflict of interest inherent in the Department's role be immediately addressed in policy directives and later through more fundamental change.

7. That the Department seek agreement with all levels of Government and the Bands for a resolution of the problems of:

(i) an adequate level of local services on reserves together with the necessary financing.

(ii) double taxation on reserves.

(iii) ensuring that the basic civil rights of non-Indians residing and carrying on business on reserves are maintained.

8. That the Department develop, in conjunction with Indian Bands, a comprehensive set of conflict of interest rules and guidelines for use by Indian Band Councils.

9. That the Department move toward the creation of an Indian Lands Registry, independent of the Department and controlled by its own statute.

10. That the Department clearly spell out the process which is to be followed by both the Department and Bands when internal reviews are carried out.

11. That while it is recognized that the Deputy Minister and his senior staff are in the midst of a total review of the Departmental

organization, with a view to correcting any institutional and structural weaknesses within the Department, we nevertheless strongly recommend that the Deputy Minister afford a high priority to the appointment of a senior officer, who is highly qualified as a property manager, for immediate assignment to the British Columbia Regional office. Such an officer should have, as a minimum requirement, a number of years of practical experience complemented by specific training in property, administrative and municipal law; property, finance and organizational development related to local government, as well as be a person possessed of a proven record of accomplishment.

Concluding Statement

It is the hope of the writer that this review will serve to allow the Department and the Westbank Band to put aside the difficulties of the past. The challenge of the future is to convert the lessons learned from these difficulties into policies which will prevent their repetition.

Respectfully submitted by:

Fred Singleton
Director
Lands Directorate
Reserves and Trusts

Appendices

Treasury Board Conseil du Trésor

APPENDIX 1

T.B. 725973

May 13, 1974.

Mr. H. Basil Robinson,
Deputy Minister of Indian
Affairs and Northern
Development,
Ottawa, Ontario.
K1A 0H4

Dear Mr. Robinson:

Your Minister's request for reconsideration of additional funding through Supplementary Estimates 1974-75 in the amount of $4 million for Core Funding to Band, District, and Inuit Settlement Councils (Northern Quebec) was considered and approved by the Treasury Board on May 9, 1974.

Approval was given on the basis that the Department will absorb an amount of $2 million to meet the original total amount of $6 million requested for Core Funding in 1974-75.

It should be noted that this letter will amend only sub-paragraph (a) of the Treasury Board decision letter of April 1, 1974 in respect to the matter of Supplementary Estimates 1974-75.

Yours sincerely,

R.L. Richardson,
Assistant Secretary.

Ottawa, Ontario
K1A 0R5

Treasury Board Conseil du Trésor

COPIES SENT TO		DATE
D.M.	✓	
A.D.M. (CONS.)		
A.D.M. (IND.-ESK.)	✓	
A.D.M. (N.E.D.)		
LEGAL ADVISER		
FIN. & MAN. ADV.	✓	
COORDINATOR	✓	
P.A.	✓	

T.B. 725973

April 1, 1974.

Mr. H. Basil Robinson,
Deputy Minister of Indian Affairs
and Northern Development,
Ottawa, Ontario.
K1A OH4

Dear Mr. Robinson:

Your Minister's submission to expand the existing Contributions to Bands Program into a broader Indian Local Government Program through consolidation of existing authorities and to provide Core Funding in the amount of $6 million through Supplementary Estimates 1974-75, to Band, District and Inuit Settlement Councils (Northern Quebec) was considered and approved by the Board on March 28, 1974 with the following conditions:

(a) No additional funds are to be provided for Core Funding through 1974-75 Supplementary Estimates. If the Department wishes to embark upon the Core Funding program in 1974-75 through re-arrangement of priorities, it should be noted that requirements for the program in 1975-76 will be reviewed by the Board as a B Budget proposal.

(b) Core Funding, if proceeded with by the Indian Program from available resources, should not include an annual cost-of-living escalation.

(c) No extension of Band control of Capital funds is to take place until such time as the Treasury Board receives and approves submissions reflecting a consolidation and up-dating of guidelines and criteria to be followed during the period ending 1979-80, for implementation of each of the major programs' capital activities, as requested in our letter of December 27, 1973 (TB 721633) concerning the Indian Program 5-year Capital Plan.

(d) The financial implications of Indian District Councils controlling programs requires review by Treasury Board since this involves the funding of a level of Indian Local government over and above Band local government.

(e) Departmental man-year and dollar offsets attributable to the hand-over of programs to Indian control are to be identified in Program Forecasts. Since the increasing control of departmental programs by Indian Bands is bound to affect the use of departmental manpower and to some extent cause changes in organization, emphasis should be placed upon development of a manpower plan to parallel the direction of the Program.

Although it is understood that from 6 to 18 months will elapse before the implementation of expansion of Indian Band control of programs will begin on a large scale, it would be useful if the Department could undertake an evaluation of achievements of the Program within two years of implementation commencing.

Yours sincerely,

A. Kroeger

A. Kroeger,
Deputy Secretary.

CANA

The Honorable the Treasury Board
L'honorable Conseil du Trésor

DEPUTY MINISTER

Vol 21 (A)
78-56
T.B. Number – C.T. N°

Indian Affairs and Northern Development
Department – Ministère

1/29-6-2-1
File – Dossier

Date

(6-2196) V.M. GRAN

SUBJECT: INDIAN LOCAL GOVERNMENT PROGRAM

PROPOSAL:

1. To expand the existing Contributions to Bands Program into a broader Indian Local Government Program by consolidating existing authorities into one overall authority which will permit the Department to transfer funds for any or all Capital and O & M programs approved in Estimates to Band Councils, District Councils and Inuit Settlement Councils. This will be done consistent with the following: the effective functioning of local government, the needs of community residents, legislative requirements, and the principles of good management.

2. To provide Band and Inuit Councils (in Northern Quebec only) with basic Core Contributions for honoraria to Chiefs and Councillors, and to cover those necessary expenses involved in operating a council office and which are not included in the administrative portion of specific program costs.

COST: $6,000,000

CHARGEABLE TO: Vote 5 - Operating Expenditures - Community Affairs

REMARKS:

1. The Government's objective is, in consultation with Indian and Eskimo peoples, to innovate, support and encourage co-ordinated activities whereby Indians and Eskimos may achieve their cultural, economic and social aspirations within Canadian society. In line with this objective Departmental policy is to assist Councils, at their request and commensurate with their ability, to assume greater responsibility for the management of programs and services which are needed in their community.

2. The existing Contributions to Bands Program, which was introduced in 1965, has been progressively expanded to increase the number of Departmental programs which Councils

could operate locally. Indian and Eskimo communities have responded positively to the expansion of the Contributions to Bands Program. They have repeatedly requested, however, that they be permitted to operate at a level of responsibility that would enable them to function as an effective local government authority - and not simply as an administrative body or agent carrying out programs whose nature and goals are determined by Government.

A Departmental Task Force established to review the Contributions to Bands Program has recorded the communities' request and this is now Departmental policy as evidenced by the attached letter to Quebec Chiefs.

3. Accordingly, within the spirit of the policy noted in (1) above, the Department now proposes as an objective to be achieved as quickly as possible, the transfer of responsibility to Councils for operating all programs and services that can appropriately be managed at the community level, and has developed an integrated program to do this which will ensure the maintenance of adequate standards of service and the judicious use of public funds. The description of these services, and the arrangements for their transfer to local administration appear in Annex A.

4. All current Treasury Board Authorities that relate to the existing Contributions to Bands Program and to be replaced by the one overall authority requested in (1) above are listed in Appendix "B". Those authorities that will continue to apply to specific program areas are listed as Appendix "B"(i)

5. To assure the successful achievement of the objectives of transferring services to local control, the Department proposes to contribute funds to Councils to enable Chiefs and Councillors to carry out their responsibilities for the successful operation of local government. The purpose and scale of these contributions appear in Annex (C).

6. To provide for smooth transition from current administrative arrangements, the Department proposes to:

   (a) Provide under existing programs all training which may be required by Councils, Council staff, and community residents;

   (b) Assure that advisory services will be supplied to Councils to assist them to discharge their management responsibilities;

   (c) Approve reasonable budgets which will allow Councils to function effectively as local authorities;

(d) Provide regular monitoring and evaluation, in co-operation with the Councils.

7. A major consequence of this program will be the enhancement of local native leadership and the gradual reduction of Departmental staff, particularly in the administrative and support categories. The Department is developing a plan which will make it mandatory for managers to review reduced workloads and adjust man years accordingly as Bands take over more responsibility.

8. Release of funds from Treasury Board Vote 5 is hereby requested pending the inclusion of an item in 1974-75 Supplementary Estimate "A".

ANNEX "A"

Transfer of Programs and Services to Local Operation

1. All programs which supply services to residents of Indian and Eskimo communities have been reviewed in consultation with native people. This review has determined three groups of programs are involved:

   a) Those which can be transferred to Councils to be operated completely under local authority, with Departmental advice and assistance, and subject only to general guidelines which the Department has developed to ensure adequate management (see paragraph 4 below).

   b) Those programs (such as housing and welfare) for which the government has responsibility but the administration of which can be delegated to Councils on mutually acceptable terms as spelled out in appropriate agreements that specify standards which Councils must maintain as well as adherence to the general guidelines covering all programs. (See paragraph 5 below)

   c) Those few programs for which responsibility must continue to rest with the Department because of statutory or other considerations. (See paragraph 6 below)

2. The general guidelines and Agreements which have been developed to govern the operation of all programs transferred to local authority, and to which Councils wishing to operate such programs must agree, provide for the following safeguards:

   a) The protection of individual rights.
   b) The assurance that adequate standards of service are maintained.
   c) The protection of public funds.

3. To take account of the possibility of non-compliance with the guidelines or with the terms of specific Agreements, Councils will be required to agree beforehand that - when this occurs - a program that has been transferred to local authority may be moved back into an intermediate "co-management" arrangement, where the Council and the Department will each discharge specified, complementary functions. This arrangement can continue until the local difficulties are overcome - at which time the program can revert to local authority once more.

   In effect, this will provide for a specific program (or programs) to be operated in a state of "receivership" where a community has - for whatever reason - been unable to operate that program. The intermediate step may, of course, also be used as a preliminary phase for transferring a new program to an interested, but relatively inexperienced Council.

4. Programs or Functions which can be carried out by Councils under General Guidelines

   This group includes a wide range of activities, some of which are

listed below. Local operation would be:

a) with funds from the Department (and/or from other sources);

b) with advice and assistance from Departmental staff and others;

c) under a set of general guidelines that would ensure adequate accounting of funds and adequate program management and to which Councils would agree by Band Council Resolution; and

d) in accordance with any spending levels which Treasury Board may have set for particular programs. These would be attached to the guidelines as individual schedules.

Library Contributions
Recreation Program Contributions
Professional Education (Teachers)
Scholarships
Educational Studies and Research
School Inspection Services
Education Committees
School Maintenance and Utilities
Curriculum Enrichment
Maintenance of Students in Private Homes
Mid-day Lunches
Student Allowances
Seasonal Transportation
Adult Education
Vocational Education
Employment and Relocation
Preventative Social Services

5. Programs or functions which can be carried out by Councils under mutually acceptable terms and conditions

This group includes activities in which special standards of performance might have to be stipulated, in addition to the guidelines previously mentioned. They can be operated by Councils:

a) in accordance with the guidelines noted previously; and

b) under a specific Agreement which sets out standards to be maintained, and any other applicable conditions.

Policing - (except option 3(b))
Social Assistance
Child Welfare Programs
Work Opportunity
Subsidy and Band Administered Housing
Fire Fighting
Community Planning
Water & Sanitation Services (construction & maintenance)
Daily transportation (schools)
Student Residences
Band Economic Dev. Committees
Roads and Sidewalks (construction & maintenance)
Electrification (construction & maintenance)
Band Administration Buildings (construction & maintenance)

Community Recreation Facilities (construction & maintenance)
Wharves and Docks (construction & maintenance)
Ferries (operation only)
Homes for the Aged (construction & maintenance)
Day Care Centres (construction & maintenance)
Band Elections (except appeals for Bands under section 74)
Control of Band Capital Funds
Control of Band Revenue Funds
Band Membership Functions
Education in non-Federal Schools
Joint School Capital Construction
Cultural Grants
Negotiations of Terms and Conditions of leases and permits

6. Programs or Functions for which the Department must retain responsibility and administration because of statutory or other considerations

Policing (Option 3(b))
Legal Aid
Off-Reserve and on-Reserve housing with C.M.H.C. funding
Sectorial Economic Programs
Land Registry
Land Surveys
Land Acquisition and Sales
Federal-Provincial Agreements with respect to Lands
Legal Services relating to Lands
Estate Administration
Indian Economic Development Fund
Economic Incentives
Federal-Provincial Agreements with respect to Resource Development
Band election appeals by Bands under section 74
Band Capital Funds
Treaties and annuities
Claims
Legislation

ANNEX "B"

Contributions to Bands Program Authorities

The Department proposes that the following Treasury Board authorities be rescinded and supplanted with the more general authority that will permit the transfer of programs and services to local operation, in accordance with the provisions of the present submission.

Where appropriate, spending limits and other conditions specified in those Treasury Board authorities being rescinded will be stipulated in schedules attached to the Agreements under which the respective programs will be operated. (These are listed as Annex B (1).

Ref. No.	T.B. Min. No.	Approval	Ref. No.	T.B. Min. No.	Approval	Ref. No.	T.B. Min. No.	Approv
1	506077	28/09/56	12	685355	1/01/69	22	709267	27/01/
2	548207	11/05/59	13	686922	13/03/69	23	710314	22/03/
3	590293	26/01/62	14	688642	1/05/69	24	711118	30/03/
4	644770	12/10/65	15	695406	25/03/70	25	711577	19/04/
5	655934	2/06/66	16	700418	9/12/70	26	711630	4/05/
6	657358	21/07/66	17	698666	23/12/70	27	715958	27/11/
7	678269	11/04/68	18	703820	29/04/71	28	716463	20/12/
8	678781	25/04/68	19	706705	2/09/71	29	716019	11/01/
9	Letter	26/04/68	20	706895	14/09/71	30	720128	5/07/
10	Letter	23/07/68	21	708442	3/12/71	31	720177	13/09/
11	681628	24/07/68				32	719934	19/07/

ANNEX "B(1)"

Listed hereunder are existing authorities where spending limitations and other conditions are specified and which will be stipulated in schedules attached to agreements under which the respective programs will be operated.

Reference No.	T.B. Minute	Approval Date	Limits of spending or other conditions
3	590293	26/01/71	A general authority to establish school committees, and to set the financial authority of these committees for sports and playground equipment as follows: 1 - 4 classrooms - 50.00. per classroom 5 - 8 classrooms - 40.00. per classroom 9 - 12 classrooms - 30.00. per classroom 12 - and over - 20.00. per classroom
13	686922	13/03/69	To increase maximum housing subsidy to an individual to $10,000. per house plus freight.
19	706705	02/09/71	To contribute to the operation cost of Band Economic Development Committee members and to special economic studies and activities not to exceed $20,000. in any year.
20	706895	14/09/71	To contribute to costs of a Band Policing Program in accordance with the schedule approved in the submission.
21	708442	03/12/71	Pursuant to Section 22 of Government Contract Regulation, the Department is authorized to enter into service contracts with school committees and Band Councils for the purpose of kindergarten and nursery school services for Indian children living on Reserves up to a limit of $25.000. per contract.
29	716019	11/01/73	Amendment to T.B. 708442 to enter into service contracts with School Committee or Band Counci for purchasing special education services for exceptional children living on Reserves up to limit of $25,000.
30	720128	05/07/73	Authority to amend Library contributions to $2.30 per capita in 1974-75.
31	720177	13/09/73	To provide recreation contributions to Bands basis the following: a) Bands with an on-Reserve population of 500 or less will receive an annual contributic of $10 for each reserve resident. b) Bands with an on-Reserve population of mor than 500 will receive an annual contributi of $5,000, plus $1 for each reserve reside

ANNEX "B(1)" con't

Reference No.	T.B. Minute	Approval Date	Limits of spending or other conditions
32	719934	19/07/73	Indian Band Policing Option 3(b) - Total program to be cost-shared between Federal and Provincial Governments not to exceed $15,000. including a salary of approximately $8,000. plus costs of pensions, uniforms, administration and equipment, including vehicles.
24	711118	30/03/72	Authorizing funds for Work Opportunity Projects based on the following schedule of funds to be provided by Bands:

Annual Revenue of Band	% of project cost to be provided by Band	Maximum amount to be provided by Band in year
Less than $10,000	Nil	Nil
$10,000 - $19,000	2%	$ 1,000
20,000 - 39,000	5%	4,000
40,000 - 99,999	10%	10,000
100,000 - and over	10%	no maximum

ANNEX "C"

PREAMBLE

1. Throughout Canada, Band Councils are experiencing a multitude of demands from Band members, Governments, business and industry and private interests. This unprecedented activity is a logical outcome of the increased responsibilities Band Councils are taking in local government.

   There are a wide range of responsibilities carried by Band Councils that are not directly related to any programs which the Band takes over from this Department. A majority of Band Councils in Canada have an on-Reserve population of less than 300 people. These smaller Bands experience real difficulty in establishing an administrative unit that meets their needs. Recognizing this reality, the Core Fund has been established to enable Band Councils to meet their unique needs in a way that they decide is most appropriate for their particular set of circumstances.

2. Core Fund

   It is important to distinguish between the Core Fund, which is intended to meet the needs of Band Councils, and the separate subject of administrative costs of operating programs. The Core Fund is not intended to cover the administrative costs of running programs. Additional administration funds are provided for that purpose. The Regional Director will negotiate with each Band what administration funds are required to carry out the programs which it takes over from the Department.

3. The Core Fund is specifically intended to provide for the following, based on the Band Council's priority in each of the following categories:

   1. Honoraria to Chiefs and Councillors.
   2. Travel in the conduct of Band Council business.
   3. Professional Advice.
   4. Full or part-time administrative staff.
   5. Office rent, equipment, stationery and utilities excluding furniture.

   As part of the planning process Band Councils will indicate when preparing their budgets how they intend to spend the Core Fund. It will be mandatory in the Annual Audit for Band Councils to account for the final expenditure of the Core Fund.

   Specific guidelines will go forward on Core Funding to Regional Directors when Treasury Board approval has been received to ensure there is no duplication of funds provided.

4. Cost Index allowance consideration in Core Funding

   In order that Core Funds be provided to Bands on as equitable a basis

as possible, the core funding formula has been adjusted in the case of each individual Band across Canada to reflect the cost indexes in each Band location. The adjustments in the above regard have been based directly on cost index information provided by Statistics Canada.

5. While the total funds required to implement the Core Funding proposal amounts to $9,427,779 these costs will be offset to a great extent by:

   (a) Deducting or eliminating social assistance benefits presently provided to Chiefs and Councillors.

   (b) Discontinuance of the present honorarium being paid to Chiefs under Treasury Board Minute 711577 of March 30, 1972.

   (c) Discontinuance of any and all administration funds presently provided to Bands except those specifically provided for true administration costs of operating Departmental programs.

6. Core Funding will be provided on the basis of on-Reserve Band population of a particular Band and/or on-settlement population of a particular Band or group of Inuit people (Northern Quebec only) on Crown Land. It does not provide for members of other Bands who may reside on other than their basic Band Reserve or settlement or Inuit people resident in other than Northern Quebec.

7. Core Funding will be provided only on the basis of those Indians or Inuit registered members living on-Reserve or on-settlement on Crown Land as determined on December 31 of the previous year by the Membership Division.

8. Adjustments to cost-indexing amounts for each individual Band or Inuit Council will also be made annually based on information relative to cost differentials provided by Statistics Canada.

9. A general revision of Core Funding will also be made each fiscal year to reflect the general increase or decrease in the cost of living based on the cost of living of all Canadians.

10. A schedule of Contributions, ranged according to population follows. In application, these amounts will be appropriately augmented to take account of higher costs primarily in northern areas. All expenditures are accountable, through audits.

Indian and Northern Affairs Canada | Affaires indiennes et du Nord Canada

APPENDIX 2

2/3

OTTAWA, Ontario K1A 0H4

September 23, 1982.

Lawson, Lundell, Lawson
& McIntosh,
Barristers & Solicitors,
2800 Vancouver Centre,
P.O. Box 11506,
650 West Georgia Street,
VANCOUVER, British Columbia.
V6B 4R7

Your file Votre référence

Our file Notre référence

ATTENTION: Mr. Alistair Miller

Dear Mr. Miller:

Westbank Indian Band Review

On August 3rd, 1982, I sent you a telex advising you that your firm had been selected to act as advisers to the Department of Indian and Northern Affairs and to the Assistant Deputy Minister in respect to the Westbank Band internal review. I had previously provided you with a set of terms of reference in respect to that review and I would like to clarify those terms of reference for you at this time.

There were four specific stated requirements in the terms of reference and I will deal with each one at a time.

1) "The consultant will be required to review all aspects of selected land transactions on the Westbank Indian Reserve and to comment on their correctness as to process, authority and substance. These will include headleases on reserve and surrendered land that have been negotiated between Her Majesty's officials with corporations formed by the Band, individual Band members or non-Indian headleases."

While it is expected that you will comment on the role of the Westbank Indian Band in respect to this particular requirement, it is also understood that you are to review the actions of departmental staff, both at the regional/district level and at headquarters, in respect to the stated land transactions and to provide your objective opinion in respect to that as well.

... / 2

Canada

2) "The consultant will be required to review subleases negotiated between the holders of headleases on the Westbank Indian Reserve and tenants at selected trailer courts which have been established on the Reserve and to render opinions about the correctness of the process, the authorities and the substance of those subleases."

In respect to this particular requirement to review subleases negotiated between the holders of headleases and their lessees, again, the departmental/Band role in this particular aspect of band operations is to be considered.

3) "The consultant will be required to review the band by-laws in effect on the Westbank Band, to comment on their correctness in terms of their intended application and the scope of authority that they presume to exercise, and the manner in which they are enforced by the Chief and Council."

This particular requirement is necessary in order to deal with the complaints and allegations made by trailer court owners in respect to the Westbank Band Council itself. In addition, you are to review, as much as you can, the approval process for these by-laws and comment on the departmental role in that respect. It is expected that you will want to interview a number of the trailer court owners and lessees in conducting this part of the review.

4) "The consultant will be required to examine into the administration of estates on the Westbank Reserve as they are affected by land transactions and to comment on the appropriateness of their administration by the Department."

The requirement to review estates is of concern principally as regards the departmental role in the administration of the Tomat estate and the Wilson estate.

I understand that there is a belief that the review, and your role in it, is to be a very narrow one dealing only with specific complaints by two or three trailer court owners and not going much beyond that. That is not correct. The requirement of the Standing Committee on Indian and Northern Affairs is that the "enquiry" address all of the relationships between the regional office of Indian and Northern Affairs in Vancouver and the Westbank Indian Band and, of course, that includes almost everything. The area of responsibility that you have been asked to look at, in respect to this particular set of terms of reference, relate to the administration of land, the administration of estates, and to Band by-laws. The whole question of economic development and the Band/departmental relationships in that area have not been given you as an area to review as this responsibility remains with the Director of Economic Development in Ottawa for the moment.

Yours sincerely,

J.D. Leask,
Director General,
Reserves and Trusts.

cc: D.K.Goodwin
S.T.Parks
P.J.Clark

Indian and Northern Affairs / Affaires indiennes et du Nord

PROGRAM CIRCULAR INDIAN AND ESKIMO AFFAIRS

CIRCULAIRE DU PROGRAMME DES AFFAIRES INDIENNES ET ESQUIMAUDES

APPENDIX 3

Date:	**No:** D-1
Subject: INDIAN LOCAL GOVERNMENT	**Objet:** L'ADMINISTRATION LOCALE INDIENNE
Related Directives / Directives connexes: D-2, D-3, D-4	**Effective date / Date d'entrée en vigueur:** April 1, 1976

PURPOSE: To state the position of the Department with respect to Indian Local Government.

1. GENERAL:

1.1 The policies and procedures relevant to Indian local government are described in a revised series of program circulars which take effect on April 1, 1976.

Program Circular D-1
Indian Local Government

Program Circular D-2
District Councils

Program Circular D-3
Band Core Funding

Program Circular D-4
Funding of Band Operated Local Services

1.2 These circulars also apply to the Inuit settlements of Northern Quebec.

1.3 In these circulars:

a) "Department", "Indian", "Band" and "Council of the Band" have the meanings ascribed to them in the Indian Act. "Band Council" has the same meaning as "Council of the Band".

b) "Local Service" means a program which may be managed in whole or in part at the community level. For more details, see 3.2 of Program Circular D-4.

BUT: Exposer la position du Ministère en ce qui concerne l'administration locale indienne.

1. GENERALITES:

1.1 Les lignes de conduite et les méthodes se rapportant à l'administration locale indienne sont décrites dans une série révisée de Circulaires du Programme qui entrent en vigueur le 1er avril 1976. Cette série comprend:

Circulaire du Programme D-1
L'administration locale indienne

Circulaire du Programme D-2
Conseils de district

Circulaire du Programme D-3
Financement de base des bandes

Circulaire du Programme D-4
Financement des services locaux administrés par les bandes

1.2 Ces circulaires s'appliquent également aux collectivités inuit du Nouveau-Québec.

1.3 Dans ces circulaires:

a) Les termes "Ministère", "Indien", "Bande" et "Conseil de bande" ont la même signification que celle qui leur est attribuée dans la Loi sur les Indiens.

b) "service local" désigne un programme qui peut être administré, en partie ou en totalité, au niveau de la collectivité. Voir l'alinéa 3.2 de la Circulaire du

IA-4(5-75)7530-21-023-3952

c) "Local Service Agreement" means a Band Council Resolution, a contract, or a written agreement which describes mutually satisfactory arrangements for providing a local service to Band members. For more details, see Section 3 of Program Circular D-4.

d) "Regional Director General" means the senior executive officer of a Departmental region or a person designated by him.

e) "Auditor" normally means an accredited member of a recognized accounting association. (i.e. public accountant) but may mean an officer appointed by the Regional Director General to examine the financial records of a Band Council.

1.4 Suggestions for improvement or amendment to this Circular may be sent to the Regional Director General or to the Director General, Program Development, Indian and Eskimo Affairs Program, 400 Laurier Avenue West, Ottawa, Ontario, K1A 0H4.

2. INTRODUCTION:

2.1 The present Indian Local Government Policy was approved by Treasury Board on April 1, 1974. Subsequently, guidelines were set out in a series of program circulars which were distributed in early 1975 with the suggestion that recommendations for improving them be submitted to

Programme D-4 pour plus de détails.

c) "accord portant sur un service local" désigne une résolution du conseil de bande, un contrat ou une entente écrite décrivant les dispositions mutuelles en vue de fournir un service local aux membres de la bande. Voir l'alinéa 3 de la Circulaire du Programme D-4 pour plus de détails.

d) "directeur général de la région" désigne le principal administrateur d'une région du Ministère ou une personne désignée par celui-ci.

e) "vérificateur" désigne normalement un membre accrédité d'une association comptable reconnue (c'est-à-dire un expert-comptable), mais peut aussi désigner un agent nommé par le directeur général de la région pour étudier les dossiers financiers d'un conseil de bande.

1.4 Les suggestions en vue de l'amélioration ou de la modification de la circulaire peuvent être envoyées au directeur général de la région ou au directeur général de l'Elaboration des programmes, Programme des Affaires indiennes et esquimaudes, 400, avenue Laurier ouest, Ottawa (Ontario) K1A 0H4.

2. INTRODUCTION:

2.1 La présente ligne de conduite sur l'administration locale indienne a été approuvée par le Conseil du Trésor le 1er avril 1974. Ensuite, on a présenté des principes directeurs dans une série de Circulaires du Programme qui ont été distribuées au début de 1975 et proposé que les recommandations en

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the Department.

2.2 The recommendations received indicate the need to revise the original program circulars and to clarify the Department's position with respect to the planning, management and delivery of local services.

2.3 The Indian Local Government Guidelines as described in the D series of Program Circulars apply to all Departmental activities that can be transferred to the control of a Band Council.

3. SOME BASIC POLICY CONSIDERATIONS:

3.1 Indian Bands have 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.

3.2 Indian Bands can exercise this right and its related obligation without:

a) diminishing their unique and continuing relationship to the Federal Government; or

b) relieving the Federal Government of its responsibilities to meet commitments under law or the various treaties; or

c) affecting adversely the special status of Indians and Indian lands; or

d) reducing the number or quality of local services available to

vue de leur amélioration soient soumises à l'approbation du Ministère.

2.2 Les recommandations reçues indiquent le besoin de réviser les Circulaires originales du Programme et d'expliquer la position du Ministère sur la planification, la gestion et la distribution des services locaux.

2.3 Les principes directeurs sur l'administration locale indienne, décrits dans la série D des Circulaires du Programme s'appliquent à toutes les activités du Ministère dont la direction peut être remise au conseil de bande.

3. QUELQUES CONSIDERATIONS SUR LES LIGNES DE CONDUITE FONDAMENTALES:

3.1 Les bandes indiennes ont le droit d'exercer au maximum les responsabilités de l'administration locale qui sont conformes aux lois, ainsi qu'aux coutumes et aux traditions de la bande.

3.2 Les bandes indiennes peuvent exercer ce droit et ses obligations connexes sans:

a) diminuer la relation unique et constante qu'ils ont avec le gouvernement fédéral; ou

b) libérer le gouvernement fédéral de ses responsabilités de respecter ses engagements en vertu de la loi ou des divers traités; ou

c) avoir un effet défavorable sur le statut spécial des Indiens et des terres indiennes; ou

d) réduire le nombre ou la qualité des services locaux

Band members.

3.3 Band Councils and provincial and national Indian organizations will be consulted to the extent reasonable about policy and program developments before implementation.

3.4 The Department is accountable to Parliament through the Minister for funds appropriated to it and therefore must establish certain standards for their use.

3.5 The Department will supply Bands with financial and other assistance required to provide local services, within the limits of appropriated funds. It is expected that Indian Bands will contribute to the cost of local services from their own resources wherever this is possible and appropriate.

3.6 A Band Council is responsible for determining the needs, priorities and method of delivery for local services.

3.7 A Band Council may supply a local service direct through its own staff or it may:

a) delegate this function to a committee or authority appointed by and responsible to it; or

b) arrange for the service to be provided by another organization acting as its agent such as a District Council or a School Board.

offerts aux membres de la bande.

3.3 Les conseils de bande et les organismes indiens provinciaux et nationaux seront consultés, dans une mesure raisonnable, au sujet de l'élaboration des lignes de conduite et des programmes avant la mise en application.

3.4 Le Ministère est responsable au parlement par l'intermédiaire du Ministre de ses disponibilités et doit de ce fait fixer certaines normes relatives à leur utilisation.

3.5 Le Ministère fournira aux bandes l'aide financière et autres formes d'aide qui leur sont nécessaires pour fournir les services locaux, dans les limites de ses disponibilités. On s'attend à ce que les bandes indiennes partagent les frais des services locaux à partir de leurs propres ressources dans la mesure du possible et quand ceci est approprié.

3.6 Un conseil de bande est responsable pour la détermination des besoins, des priorités et de la méthode de distribution de la plupart des services locaux.

3.7 Un conseil de bande peut fournir un service local directement, par l'entremise de son propre personnel, ou il peut:

a) déléguer cette fonction à un comité ou à une autorité qui est nommée par lui et lui est responsable; ou

b) faire en sorte que le service soit fourni par un autre organisme le représentant, comme une conseil de district ou une commission scolaire.

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3.8 The Department will continue to provide local services through its own staff where Bands wish it to do so or because of some requirement in law or government policy.

3.9 The Department will participate in the planning and/or administration of local services that are managed by a Band Council or some other organization when one or more of the following conditions apply:

a) Departmental funds are contributed to the services.

b) The Indian Act specifically requires Departmental participation.

c) No Departmental funds are involved but:

i) A Band has requested Departmental participation and the Department has agreed to the request.

ii) A Band has arranged for the provision of a local service with an agency which requires Departmental participation.

4. SOME BASIC PRINCIPLES AND PRACTICES OF INDIAN LOCAL GOVERNMENT:

4.1 In order for Band members to receive the benefits of community control of local services, Band Councils need to develop financial and administrative practices

3.8 Le Ministère continuera de fournir des services locaux par l'entremise de son propre personnel lorsque les bandes le désirent ou lorsque des conditions sont fixées par une loie ou une politique gouvernementale.

3.9 Le Ministère participera à la planification et/ou à l'administration des services locaux gérés par un conseil de bande ou quelque autre organisation lorsqu'une ou plusieurs des conditions suivantes s'appliquent:

a) Des fonds du Ministère sont contribués aux services.

b) La Loi sur les Indiens exige formellement la participation du Ministère.

c) Aucun fond du Ministère est en cause, mais:

i) une bande a demandé la participation du Ministère et celui-çi a accepté.

ii) une bande a pris des dispositions en vue d'assurer un service local avec un organisme qui demande la participation du Ministère.

4. CERTAINS PRINCIPES FONDAMENTAUX ET METHODES DE L'ADMINISTRATION LOCALE INDIENNE:

4.1 Afin que les membres de la bande reçoivent les avantages du contrôle des services locaux par les collectivités les conseils de bande doivent mettre au point des méthodes administratives et

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acceptable to the Regional Director General and consistent with the following principles:

a) that the electorate support the Band Council in assuming management responsibility for a local service;

b) that the service be provided to Band members by a qualified staff;

c) that the rights of individual Band members be protected;

d) that the Band Council account to Band members for all funds received and expended by it;

e) that all Departmental funds provided to the Band Council be expended for the purpose approved;

f) that the Band Council establish and follow suitable financial and administrative practices;

g) that Band Accounts be audited at least once a year.

4.2 A sample guideline which illustrates suitable financial and administrative practices for Band Councils is attached as an appendix.

financières acceptables au directeur général de la région et conformes aux principes suivant:

a) les électeurs appuient le conseil de bande pour assumer la responsabilité de gestion d'un service local;

b) le service est offert aux membres de la bande par un personnel qualifié;

c) les droits de chacun des membres de la bande sont protégés;

d) le conseil de bande rend compte aux membres de la bande de toutes les disponibilités reçues qu'il a dépensées;

e) tous les fonds fournis par le Ministère au conseil de bande sont dépensés aux fins approuvées;

f) le conseil de bande établit et suit des méthodes administratives et financières appropriées;

g) les comptes de la bande sont vérifiés au moins une fois l'an.

4.2 Un exemple de ligne de conduite qui illustre des méthodes administratives et financières appropriées pour les conseils de bande est attaché à titre d'annexe.

Assistant Deputy Minister

Le Sous-ministre adjoint

P.C. Mackie

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Indian and Northern Affairs / Affaires indiennes et du Nord

PROGRAM CIRCULAR INDIAN AND ESKIMO AFFAIRS

CIRCULAIRE DU PROGRAMME DES AFFAIRES INDIENNES ET ESQUIMAUDES

Date:	**No:** D-1
Subject: APPENDIX SUGGESTED BAND ADMINISTRATIVE AND FINANCIAL PROCEDURES	**Objet:** ANNEXE METHODES ADMINISTRATIVES ET FINANCIERES PROPOSEES AUX BANDES
Related Directives: **Directives connexes:**	**Effective date:** **Date d'entrée en vigueur:** April 1, 1976

PURPOSE: To describe guidelines to assist Band Councils in the development of suitable administrative and financial practices to regulate the administration of local services in accordance with the basic principles of Indian local government set out in Section 4.1 of Program Circular D-1.

BUT: Décrire les lignes de conduite en vue d'aider les conseils de bande dans la mise au point de méthodes administratives et financières permettant de diriger l'administration des services locaux conformément aux principes fondamentaux d'une administration locale indienne qui figurent à l'alinéa 4.1 de la Circulaire du Programme D-1.

SPECIAL NOTE: Band Councils who wish to convert the sample guidelines (or parts of them), into Band Regulations will need to make certain changes in wording to enable the Council to enforce them, and to make them suitable for local conditions. This can be done by Band Council Resolution.

NOTE: Les conseils de bande désirant convertir cet exemple de lignes de conduite (ou quelques parties) en règlements de bandes devront apporter certain changement dans le texte afin que les conseils puissent les faire observer et pour les rendre appropriés aux conditions locales. Ceci peut se réaliser par résolution du conseil de bande.

1. BAND COUNCIL RESPONSIBILITIES:

The general responsibilities of the Band Council with respect to the administration of local services should be as follows:

1.1 planning, estimating and budgeting for the funds and resources required for local services.

1.2 ensuring sound financial management, including accountability to Band members and to funding agencies.

1.3 ensuring that all Band staff and Committee members are adequately trained and qualified

1. RESPONSABILITES DU CONSEIL DE BANDE:

Les responsabilités générales du conseil de bande en ce qui a trait à l'administration des services locaux devraient être les suivantes:

1.1 planifier, évaluer et budgéter les fonds et les ressources nécessaires aux services locaux.

1.2 veiller à ce que la gestion financière soit saine et à ce qu'il en soit rendu compte aux membres de la bande et aux organismes de financement.

1.3 s'assurer que tout le personnel de la bande et les membres de comités aient la formation et la compétence

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for the duties to which they are assigned.

1.4 overseeing the work of all Band Council employees.

1.5 initiating and conducting investigations and taking such necessary disciplinary action as may be required where an employee does not comply with these or other applicable regulations.

1.6 permitting access by Band members, at reasonable times, to the minutes of all Band and Band Council meetings, by-laws and resolutions of the Band, the budget, monthly financial statements and audit reports.

1.7 appointing, by resolution, a person or persons (preferably not a member of Council) who will:

a) record all resolutions, decisions and other proceedings of the Band Council in a prescribed manner;

b) keep the books, records and accounts of the Band Council in accordance with established procedures;

c) maintain a filing system in which is kept all minutes of the Band Council meetings, all by-laws, and copies of all vouchers, bank statements, cancelled cheques and correspondence relating to the business of the Band;

d) receive, record and deposit all monies received by the Band Council, and pay out

voulues pour exercer les fonctions qui lui sont confiées.

1.4 surveiller le travail des employés du conseil de bande.

1.5 lancer et mener des enquêtes et prendre les mesures disciplinaires qui s'imposent si un employé ne se conforme pas aux présentes modalités ou à d'autres règlements en vigueur.

1.6 permettre aux membres de la bande de consulter, à un moment raisonnable, les procès-verbaux de toutes les réunions de la bande et du conseil de bande, les règlements administratifs et les résolutions de la bande, le budget, les états financiers mensuels et les rapports de vérification.

1.7 nommer, par voie de résolution, une ou plusieurs personnes (de préférence ne faisant pas partie du conseil) afin de:

a) enregistrer toutes les résolutions, décisions et autres délibérations du conseil de bande de la manière prescrite;

b) tenir les livres, les dossiers et les comptes du conseil de bande conformément aux méthodes établies;

c) tenir à jour le classement de tous les procès-verbaux des réunions du conseil de bande, de tous les règlements administratifs, des copies de tous les reçus, états de comptes bancaires, chèques annulés et de la correspondance relative aux affaires de la bande;

d) recevoir, inscrire et déposer tout l'argent reçu par le conseil de bande, et le

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those monies in accordance with established procedures;

e) prepare a monthly statement to be presented at the next regular meeting of the Band Council or in any event at least once a month, showing:

i) itemized receipts and disbursements during the preceding month;

ii) the standing of the general ledger balances as of the last day of the preceding month;

iii) the standing of all accounts as of the last day of the preceding month and any other information that may be required by the Band Council or the Department.

1.8 appointing by Band Council Resolution a person to perform any of the duties noted in 1.7 above when a position is vacant or the employee is absent.

2. ACCOUNTING SYSTEMS:

2.1 An adequate double entry bookkeeping system such as one-write accounting system should be maintained daily to record all financial transactions. This system is to include the facility to record:

a) all receipts and receivables;

b) all disbursements;

c) all commitments for services or benefits received, but not

remettre à qui de droit conformément aux méthodes établies;

e) rédiger et présenter lors de la prochaine réunion du conseil de bande ou au moins une fois par mois, un relevé mensuel:

i) du détail des perceptions et débours du mois précédent;

ii) de l'état des soldes du grand livre pour le mois précédent;

iii) de l'état de tous les comptes au dernier jour du mois précédent, ainsi que tous les autres renseignements demandés par le conseil de bande ou le Ministère.

1.8 nommer, par résolution du conseil de bande, une personne chargée d'accomplir certaines tâches notées à l'alinéa 1.7 qui précède lorsqu'un poste est vacant ou que l'employé est absent.

2. SYSTEMES DE COMPTABILITE:

2.1 Afin d'inscrire toutes les transactions financières, il faut maintenir tous les jours une comptabilité en double partie adéquate qui offre les avantages de la comptabilité simple. Ce système permet d'enregistrer facilement:

a) toutes les recettes et les sommes à recevoir;

b) tous les débours;

c) tous les engagement pour des services ou des biens reçus,

immediately paid for;

d) details of employees' earnings and payroll deductions.

2.2 A General Ledger should be maintained and updated monthly to facilitate a continual accounting of revenue received, expenses incurred and changes to assets, liabilities and Band equity.

2.3 Band reconciliations should be prepared upon receipt of bank statement and cancelled cheques.

2.4 Monthly listings of Accounts Receivable and Accounts Payable should be prepared, and balanced to General Ledger control accounts where applicable.

3. RECEIPTS AND DEPOSITS:

3.1 A receipt, completed at least in duplicate (except in a one-write system), on pre-numbered forms, should be issued for all funds received. The original should be given to the payee, and the duplicate should be retained as a permanent record of the amount, the date, the source and the purpose of the payment. All pre-numbered receipts should be accounted for.

3.2 All funds received should be deposited intact, and without undue delay, in the chartered bank or the trust company or the credit union or the Caisse Populaire, which has been designated by the Band Council.

mais non immédiatement payés;

d) les détails du traitement des employés et des déductions de la feuille de paye.

2.2 On devraient tenir et mettre à jour mensuellement un livre de comptabilité générale afin de faciliter une comptabilité suivie des recettes et des dépenses, ainsi que des changements dans l'actif, le passif et la mise de fonds de la bande.

2.3 Les apurements de compte devraient être effectués à la réception de l'état bancaire et des chèques annulés.

2.4 Une liste mensuelle des comptes à payer et à recevoir devrait être préparée et, s'il y a lieu, confrontée aux comptes du livre de comptabilité générale.

3. RECETTES ET DEPOTS:

3.1 On devrait émettre pour chaque perception de fonds un reçu et au moins une copie (sauf dans un système de comptabilité simple) numérotés à l'avance. L'original doit être remis au porteur et la copie, conservée à titre de référence indiquant le montant reçu, la date, l'origine et l'affectation de la somme. On doit tenir une comptabilité de tous les reçus numérotés à l'avance.

3.2 Tous les fonds reçus devraient être déposés en entier et sans délai exagéré dans la banque à charte, la société de fiducie, la société de secours mutuel ou la Caisse populaire choisie par le conseil de bande.

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3.3 Funds received by the Band Council are not to be deposited to the credit of an individual.

3.4 Funds held in trust by the Band Council should be deposited in a separate Band Trust Account designated for that purpose.

4. PURCHASES:

4.1 Purchases can be approved by the Band Council providing that:

i) the necessary funds are identified in the budget;

ii) they are required for a local service provided by the Band Council;

iii) they are made in accordance with the established regulations and procedures of the Band Council;

iv) the decision is recorded in the minutes of a Band Council meeting.

4.2 The Band Council, without diminishing its responsibility for the control of purchases, may designate an employee to sign purchase orders for approved purposes up to a prescribed limit.

4.3 All purchases of supplies and services are to be authorized in writing, either through the issuance of purchase orders in triplicate or by contract as referred to in 7 below. The original copy of the purchase order should be forwarded to the supplier, and the duplicate and triplicate copies retained at the Band office.

3.3 Les fonds perçus par le conseil de bande ne seront pas crédités au compte d'un particulier.

3.4 Les fonds administrés en fidéicommis par le conseil de bande devraient être déposés dans un compte de fiducie de bande ouvert à cette seule fin.

4. ACHATS:

4.1 Les achats peuvent être approuvés par le conseil de bande pourvu:

i) que les crédits nécessaires soient prévus au budget;

ii) qu'ils sont nécessaires pour un service local fourni par le conseil de bande;

iii) qu'ils soient faits selon les règlements et les méthodes établis par le conseil de bande;

iv) que la décision figure au procès-verbal de la réunion du conseil de bande.

4.2 Sans diminuer sa responsabilité en matière d'achats, le conseil de bande peut désigner un employé qui signera les bons de commande pour les fins approuvées jusqu'à la limite prescrite.

4.3 Tout achat de biens et de services devrait être autorisé par écrit, soit par bon de commande en trois exemplaires ou par un contrat, comme mentionné au paragraphe 7 ci-après. L'original du bon de commande est remis au fournisseur et les deux autres doubles sont conservés au bureau de la bande.

a) The duplicate copy of the purchase order should be attached to the invoice being processed for payment after the receipt or delivery has been certified as well as the quality, quantity, price and total charge.

b) The triplicate copy of the purchase order should be filed in numerical order to facilitate the accounting of all purchase order numbers.

5. PAYMENTS:

5.1 Accounts should be approved for payment on or before the due date either by:

a) a Band Council approving them prior to payment; or

b) the Band Council authorizing an employee to approve payments within an established limit, and subsequently, the Band Council reviewing all such payments.

5.2 All decisions of the Band Council relevant to the payment of accounts should be recorded in the minutes of a meeting.

5.3 Where payments are made in connection with any contract, the Band Council should hold back a predetermined amount, normally 15% of the contract price, until the contract has been completed to the satisfaction of the Band Council.

a) Le premier double du bon de commande devrait être annexé à la facture à traiter après réception ou livraison des articles commandés et après vérification de leur qualité, quantité, prix et du total des frais.

b) Le deuxième double du bon de commande devrait être classé par ordre numérique afin de faciliter la comptabilité de tous ces numéros de bon de commande.

5. PAIEMENTS:

5.1 Le paiement des comptes devrait être approuvé avant ou à leur échéance par:

a) un conseil de bande qui approuve les comptes avant leur paiement; ou

b) le conseil de bande autorisant un employé à approuver le paiement des comptes dont la liste a déjà été établie et le conseil de bande examinant par la suite tous les paiements ainsi consentis.

5.2 Toutes les décisions du conseil de bande ayant trait au paiement des comptes devraient figurer aux procès-verbaux des réunions.

5.3 Lorsque les travaux à contrat sont acquittés par versements, le conseil de bande devrait retenir un montant fixé à l'avance, généralement 15% du montant total du contrat, jusqu'à ce que les travaux aient été terminés à sa satisfaction.

5.4 Advances from funds contributed to a Band from Departmental appropriations should be made only for authorized travel by persons travelling on behalf of the Band Council and to pay employees while on earned annual leave.

6. DISBURSEMENTS:

6.1 Disbursements or payments should be made by pre-numbered cheques on the basis of certified supporting documentation, such as the invoice, the payment voucher and the purchase order. All cheques should be accounted for.

6.2 The Band Council should authorize at least three persons, two of whom should be members of the Council, and one a Band employee, to sign cheques drawn on its accounts. All cheques should be signed by at least two of these authorized persons. In the case of agreements which designate specific signing authorities, the terms of the agreements must be complied with (e.g., Housing Authority Agreements).

6.3 Band cheques should not be post-dated and must not be signed in blank.

6.4 Where a cheque is reported lost, destroyed, stolen or has not been presented for payment within six months of the date of issue, it should be cancelled and a stop payment notice registered with the bank. A duplicate cheque may then be issued, but the payee should indemnify the Band against further loss.

5.4 On ne doit faire des avances à partir des fonds accordés par le Ministère sauf pour payer des déplacements autorisés faits par des personnes voyageant au nom du conseil de bande et pour payer les employés en congés annuels payés.

6. DEBOURS:

6.1 Les débours ou paiements devraient être faits par chèques numérotés à l'avance en se fondant sur des pièces justificatives, comme la facture, la pièce comptable et le bon de commande. Tous les chèques doivent être justifiés.

6.2 Le conseil de bande devrait autoriser au moins trois personnes, deux de ses membres et un employé de la bande, à signer les chèques tirés sur ses comptes. Tous les chèques doivent être signés par au moins deux des personnes autorisées. Dans le cas d'ententes désignant des signataires précis, on doit se conformer aux conditions de l'entente (par exemple, les ententes sur l'autorisation de construire des logements).

6.3 Les chèques émis par la bande ne devraient pas être post datés et ne doivent pas être signés en blanc.

6.4 Lorsqu'on apprend qu'un chèque a été perdu, détruit ou volé ou encore qu'il n'a pas été encaissé à la banque dans les six mois suivant sa date d'émission, on devrait l'annuler et donner ordre à la banque de le frapper d'opposition. Pourvu que le bénéficiaire dégage la bande de toute responsabilité à l'égard d'une autre perte, un deuxième chèque peut être émis.

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6.5 Where a petty cash fund is established to facilitate the paying of small incidental expenses:

a) The Band Council should establish the amount of the fund and designate the employee responsible for it;

b) The employee should complete a voucher for each disbursement made, and ensure that the total of such vouchers and the cash on hand equals the amount of the fund;

c) Reimbursement of the fund supported by vouchers should be made not less than once a month and individual expenses should be charged to appropriate activities.

6.5 Lorsqu'une petite caisse a été constituée afin de faciliter le paiement des menus frais:

a) le conseil de bande devrait fixer le montant de cette petite caisse et nommer l'employé qui en sera chargé;

b) l'employé devrait remplir une pièce justificative pour chaque débours et s'assurer que le montant total de ces pièces et celui de l'encaisse correspondent au total initial;

c) se fondant sur les pièces justificatives, le rétablissement de la petite caisse devrait être fait au moins une fois par mois et les dépenses individuelles imputées aux activités appropriées.

7. CONTRACTS AND TENDERS:

7.1 Except in an emergency, where the contract is expected to exceed $500, tenders should be invited. Normally, three tenders should be obtained before a contract is let.

7.2 Where the contract is not expected to exceed $500, the Band Council can authorize an employee to call for tenders or to negotiate a contract by telephone or by other personal contact, provided that, within a time specified by Council, such a tender call or negotiated contract is documented for presentation to the Council.

7.3 The invitation to tender should indicate:

a) the hour and date of closing;

7. APPELS D'OFFRES ET CONTRATS:

7.1 Sauf en cas d'urgence, lorsqu'on s'attend à ce que le montant du contrat dépasse $500.00, il faudrait faire un appel d'offres. Généralement, on devrait recueillir trois soumissions avant d'adjuger un contrat.

7.2 Lorsque le montant d'un contrat ne dépasse pas $500.00, le conseil de bande peut autoriser un employé à lancer lui-même un appel d'offres par téléphone ou par tout autre moyen qu'il juge à propos pourvu que dans un délai fixé par le conseil, les documents d'appel d'offres ou du contrat négocié soient présentés au conseil.

7.3 l'appel d'offres devrait préciser:

a) l'heure et la date de fermeture des soumissions;

b) sufficient details from which comparable bids can be made;

c) the date, hour and place tenders are to be opened; and,

d) the amount of security deposit required, if any.

7.4 The Council can require a security deposit up to 15% of the total value of the contract from the tenderers. It is suggested that this be done in a form that is in accordance with the practice normally followed by the Federal Government.

7.5 The tendering period should normally not be less than five (5) working days.

7.6 Tenders should be returned in a sealed envelope, addressed to the designated employee for this purpose. Tenders should be clearly marked "Tender for __" on the envelope. The date and time of receipt of tenders should be recorded on the unopened envelope and the sealed tenders deposited in a safe place until the appointed time for the opening of bids.

7.7 At the appointed time, the designated employee should open all tenders in the presence of at least two members of the Band Council. Tenderers may at their discretion be present.

7.8 The designated employee should read aloud all tenders, giving the name of the tenderer and the amount of the bid.

b) les détails nécessaires aux soumissionnaires pour présenter des offres comparables;

c) la date, l'heure et le lieu d'ouverture des soumissions; et,

d) le montant du dépôt de garantie, si exigé.

7.4 Le conseil peut exiger des soumissionnaires un dépôt de garantie jusqu'à concurrence de 15% de la valeur totale du contrat. Pour ce faire, on suggère de suivre les méthodes couramment employées par le gouvernement fédéral.

7.5 Le délai entre l'appel d'offres et la fermeture des soumissions est généralement d'au moins cinq (5) jours ouvrables.

7.6 Les soumissions devraient être envoyées dans des enveloppes cachetées et adressées à l'employé désigné à cette fin. Le mention "soumission pour __" devrait être clairement indiquée sur l'enveloppe. L'heure et la date de réception de la soumission devraient être inscrites sur l'enveloppe cachetées et les soumissions cachetées placées en lieu sûr jusqu'au moment de leur ouverture.

7.7 A l'heure et à la date indiquées, l'employé désigné ouvre toutes les soumissions en présence d'au moins deux membres du conseil de bande. Les soumissionnaires peuvent assister s'ils le désirent.

7.8 L'employé désigné devrait lire à haute voix toutes les soumissions, en donnant le nom du soumissionnaire et le montant de sa soumission.

7.9 The project, name of tenderer, date and amount of bid should be recorded in a book provided for this purpose.

7.9 Le projet, le nom du soumissionnaire, la date et le montant de la soumission devraient être inscrits dans un livre réservé à cette fin.

7.10 The designated employee should present all tenders received to the next meeting of the Band Council. The Band Council may seek and have present such professional advisers as may be needed to review the tenders received and it may award a contract.

7.10 L'employé désigné devrait présenter toutes les soumissions reçues à la prochaine réunion du conseil de bande. Le conseil de bande peut avoir recourset obtenir la présence des conseillers professionnels dont il a besoin pour étudier les soumissions reçues et il peut adjuger le contrat.

7.11 The lowest tender received is normally accepted. Where the Band Council considers it in the best interest of the Band to do otherwise, the reasons should be recorded in the minutes of the meeting as part of the minute awarding the contract to another tenderer.

7.11 La soumission reçue étant la plus basse est généralement acceptée. Lorsque le conseil de bande juge que, dans l'intérêt de la bande, il doit en choisir une autre, il devra inscrire au procès-verbal de la réunion ce qui l'a ainsi motivé en tant que partie de la résolution par laquelle il adjuge le contrat à un autre soumissionnaire.

7.12 Awarding of a contract should be by a recorded vote of Council members. In the event that a member of Council has a personal interest in the contract, he should signify his interest, and thereafter refrain from taking part in the discussion or voting on the motion to award the contract, and, if the Council so directs, leave the meeting until after the contract has been awarded.

7.12 L'adjudication d'un contrat se fait par le vote des membres du conseil inscrit au procès-verbal. Si un membre du conseil a des intérêts personnels dans ce contrat, il devrait informer ses collègues et s'abstenir par la suite de prendre part à la discussion et de voter qui précéderont l'adjudication du contrat, et, si le conseil le lui ordonne, il devra quitter la réunion jusqu'à ce que le contrat ait été adjugé.

7.13 After acceptance of a tender, a contract should be developed and signed by both the contractor and the Band Council.

7.13 Une fois la soumission acceptée, le contrat doit être rédigé et signé à la fois par l'entrepreneur et le conseil de bande.

7.14 The Band Council should appoint a qualified person to act on its behalf to inspect the work performed, services rendered, or goods supplied by the contractor.

7.14 Le conseil de bande devrait nommer une personne qualifiée qui, en son nom, inspectera le traveil accompli, les services rendus ou les articles fournis par l'entrepreneur.

7.15 Federal or Provincial labour regulations should be adhered to in all labour contracts.

7.16 The Band Council is responsible for the costs of contract preparation and related services.

8. TRAVEL:

8.1 All travel for which reimbursement of expenses is to be made, should be approved in advance by the Band Council.

8.2 Rates of travel should be established by the Band Council. In this, it is suggested that Treasury Board regulations related to travel be used as a guide.

8.3 Approved travel expenses should be paid on the basis of an itemized claim.

8.4 Where the duties of an employee require day-to-day travel, the Band Council may approve such travel within predetermined limits, and a travel advance may be issued.

9. INVENTORIES:

9.1 Inventories should be maintained for all equipment, buildings, vehicles and other real assets. A physical count should be completed annually and made available to the auditor.

9.2 The write-off of items should be authorized by the Band Council and recorded in the minutes.

7.15 Tous les contrats de travail devraient se conformer aux règlements fédéraux ou provinciaux en vigueur dans ce domaine.

7.16 Le coût de la rédaction du contrat et des services connexes incombent au conseil de bande.

8. DEPLACEMENTS:

8.1 Tous les déplacements dont les frais seront remboursés devraient préalablement être approuvés par le conseil de bande.

8.2 Les frais de déplacement devraient être fixés par les conseils de bande. Pour ce faire, il est proposé d'utiliser comme guide le règlement du Conseil du Trésor relatif aux déplacements.

8.3 Le remboursement des frais de déplacement approuvés devrait se fonder sur une réclamation détaillée.

8.4 Lorsque les fonctions d'un employé l'obligent à voyager quotidiennement, le conseil de bande peut approuver ses déplacements en leur fixant une limite précise et lui consentir une avance de voyage.

9. INVENTAIRES:

9.1 On devrait tenir un inventaire de tout matériel, immeuble, véhicule, ou autres biens immeubles. L'inventaire des biens devrait être fait chaque année et remise aux vérificateurs.

9.2 La radiation d'un article devrait être autorisée par le conseil de bande et inscrite au procès-verbal.

9.3 The Band Council should obtain adequate insurance coverage to protect its assets.

10. BUDGETS:

10.1 An annual budget should be prepared for review by the Band Council, and submission to the Regional Director General at the time and in the form required.

10.2 Departmental funds provided to the Band Council are to be expended for the purposes identified in the Local Service Agreement.

11. AUDIT:

11.1 Detailed financial statements should be prepared annually or as required by the Band Council or the funding agencies who should state what information is to be included in the statements.

11.2 The Band Council should appoint an auditor to audit the financial records and inventories of the Band Council at least once each year. The audit should normally be completed and submitted to the funding agencies and the Band Council before June 30th for the fiscal year ending the preceding March 31st.

11.3 The Band Council should set terms of reference such as the following for its auditor:

a) the examination must be in accordance with accepted auditing practices, and is to include a general review of accounting procedures, and such tests of accounting records as the auditor considers

9.3 Le conseil de bande devrait protéger ses biens en les assurant de façon suffisante.

10. BUDGET:

10.1 Le budget annuel devrait être pour préparé pour révision par le conseil de bande et soumission au directeur général de la région à la periode et dans la forme requise.

10.2 Les fonds fournis au conseil de bande par le Ministère doivent être dépensés aux fins indiquées dans l'accord portant sur un service local.

11. VERIFICATION:

11.1 Des états financiers détaillés devraient être rédigés chaque année ou selon les exigences du conseil de bande ou des organismes de financement, ces derniers devant fixer les renseignements qu'ils doivent contenir.

11.2 Le conseil de bande devrait nommer un vérificateur pour examiner les registres et les inventaires financiers du conseil de bande au moins une fois l'an. La vérification devrait être normalement terminée et présentée aux organismes de financement et au conseil de bande avant le 30 juin de l'année financière se terminant le 31 mars précédent.

11.3 Le conseil de bande devrait déterminer comme suit les attributions de son vérificateur:

a) l'examen doit être conforme aux méthodes de vérification reconnues. Il doit comprendre une étude générale des méthodes de comptabilité ainsi que les examens des registres comptables que les

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necessary in the circumstances;

b) the auditor will have the right of access at all reasonable hours to the accounting records, supporting vouchers and documents, including minutes of Band Council meetings related thereto;

c) financial statements should be prepared on an accrual basis. They are to report on all Band financial activities under Band Council control and consist of:

i) Balance Sheet;

ii) Statement of Revenue and Expenditures for each local service;

iii) Details of surpluses or deficits for each local service; and,

iv) A consolidated Balance Sheet and Statement of Revenue and Expenses.

d) The auditor is to express an opinion as to the accuracy of the financial statements as a reflection of the financial position of the Band in accordance with generally accepted accounting principles. He should also state recommendations which the Band Council could follow.

11.4 The audited financial statement should be signed by the Chief and a quorum of the Band Council, and by the Band administrator and

vérificateurs jugent nécessaires, compte tenu des circonstances;

b) le vérificateur doit avoir droit d'accès en tout moment raisonnable aux livres de comptabilité, aux pièces justificatives et aux documents, de même qu'aux procès-verbaux des réunions du conseil de bande connexes;

c) les états financiers doivent être préparés sur une base cumulative. Ils doivent faire rapport de toutes les activités financières de la bande dirigées par le conseil et ils doivent comprendre:

i) le bilan;

ii) l'état des recettes et des dépenses pour chaque service local;

iii) le détail des excédents ou des déficits de chaque service local; et,

iv) le bilan consolidé et l'état des recettes et des dépenses.

d) Le vérificateur doit donner son opinion sur l'exactitude des états financiers qui reflètent la situation financière de la bande en s'appuyant sur les principes courant de comptabilité. Il devrait également formuler des recommandations que le conseil de bande peut suivre.

11.4 Les états financiers devraient être signés, par le chef et un quorum du conseil de bande, ainsi que par l'administrateur de la

included in the records of the Band Council.

11.5 The Band Council should ensure that where appropriate the recommendations made by the auditor are implemented and that the auditor's report is available to Band members.

bande, et être versés aux registres du conseil de bande.

11.5 Le conseil de bande devrait voir à ce que les recommandations du vérificateur, lorsqu'elles sont appropriées, soient appliqués et que son rapport soit mis à la disposition des membres de la bande.

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Indian and Northern Affairs / Affaires indiennes et du Nord

PROGRAM CIRCULAR
INDIAN AND ESKIMO AFFAIRS

CIRCULAIRE DU PROGRAMME
DES AFFAIRES INDIENNES
ET ESQUIMAUDES

Date:	No: D-4
Subject: BAND OPERATED LOCAL SERVICES	**Objet:** SERVICES LOCAUX DIRIGES PAR LES BANDES
Related Directives / Directives connexes: D-1	**Effective date / Date d'entrée en vigueur:** April 1, 1976

PURPOSE: To describe the procedures and conditions applicable to the provision of local services by Band Councils and financed from Departmental appropriations.

1. GENERAL:

1.1 This Circular replaces Program Circulars D-4 and D-5 (March 27, 1975), and becomes effective April 1, 1976.

1.2 This Circular also applies to the Inuit Settlements of Northern Quebec.

1.3 In this Circular:

a) "Department", "Indian", "Band" and "Council of the Band" have the meanings ascribed to them in the Indian Act. "Band Council" has the same meaning as "Council of the Band".

b) "Local Service" means a program which may be managed in whole or in part at the community level. For more details, see 3.2 of Program Circular D-4.

c) "Local Service Agreement" means a Band Council Resolution, a contract, or a written agreement which describes mutually satisfactory arrangements for providing a local service to Band members. For more details, see Section 3 below.

BUT: Décrire les modalités et conditions applicables aux services locaux dirigés administrés par les conseils de bande et financés par le Ministère.

1. GENERALITES:

1.1 La présente circulaire remplace les Circulaires du Programme D-4 et D-5 (du 27 mars 1975) et entre en vigueur le 1er avril 1976.

1.2 La présente circulaire s'applique également aux collectivités inuit du Nouveau-Québec.

1.3 Dans la présente circulaire:

a) Les termes "Ministère", "Indien", "Bande" et "Conseil de bande" ont la même signification que celle qui leur est attribuée dans la Loi sur les Indiens.

b) "service local" désigne un programme qui peut être administré, en partie ou en totalité, au niveau de la collectivité. Voir l'alinéa 3.2 de la Circulaire du Programme D-4 pour plus de détails.

c) "accord portant sur un service local" désigne une résolution du conseil de bande, un contrat ou une entente écrite décrivant les dispositions mutuelles en vue de fournir un service local aux membres de la bande. Voir l'alinéa 3 ci-dessous pour plus de détails.

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d) "Regional Director General" means the senior executive officer of a Departmental region or a person designated by him.

e) "Auditor" normally means an accredited member of a recognized accounting association (i.e. public accountant), but may mean an officer appointed by the Regional Director General to examine the financial records of a Band Council.

1.4 Suggestions for improvement or amendment to this Circular may be sent to the Regional Director General or to the Director General, Program Development, Indian and Eskimo Affairs Program, 400 Laurier Avenue West, Ottawa, Ontario, K1A 0H4.

2. INTRODUCTION AND PRELIMINARY PROCEDURES:

2.1 A Band Council that elects to assume responsibility for the delivery of a local service to its members shall signify its intention to the Department in writing, and well in advance of the proposed transfer date, stating:

a) the local service involved;

b) the basic objectives it hopes to achieve in managing this local service;

c) whether the local service is to be provided direct by employees of the Band Council or through some other organization acting on its behalf;

d) "directeur général de la région" désigne le principal administrateur d'une région du Ministère ou une personne désignée par celui-çi.

e) "vérificateur" désigne normalement un membre accrédité d'une association comptable reconnue (c'est-à-dire un expert-comptable), mais peut aussi désigner un agent nommé par le directeur général de la région pour étudier les dossiers financiers d'un conseil de bande.

1.4 Les suggestions en vue de l'amélioration ou de la modification de la circulaire peuvent être envoyées au directeur général de la région ou au directeur de l'Elaboration des programmes, Programme des Affaires indiennes et esquimaudes, 400, avenue Laurier ouest, Ottawa (Ontario) K1A 0H4.

2. INTRODUCTION ET METHODES PRELIMINAIRES:

2.1 Un conseil de bande qui choisit d'assumer la responsabilité pour l'administration d'un service local à ses membres, doit signifier, par écrit, son intention au Ministère, bien en avance de la date prévu, en précisant:

a) la nature du service local;

b) les objectifs principaux que le conseil espère atteindre en administrant ce service;

c) le fait que le service local sera offert directement par les employés du conseil de bande ou par l'entremise d'un organisme agissant pour lui;

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d) an estimate of the cost of the local service, and identifying the amount to be obtained from each source;

e) the name of those persons empowered by the Band Council to act on its behalf in negotiations with the Department in the preparation of a Local Service Agreement; and,

f) other relevant information.

2.2 At the request of a Band Council, the Regional Director General will appoint an official to assist a Band Council in preparing submissions referred to above.

2.3 A Band Council which delegates responsibility for the provision of a local service to another organization such as a school board, a District Council, or a committee, will inform the Department of its decision by means of a Band Council Resolution. It may:

a) retain the responsibility to negotiate the Local Service Agreement with the Department, and subsequently arrange a contract separately with the organization to provide the actual service; or

b) empower the organization to negotiate a Local Service Agreement with the Department; or

c) request that the organization share with it responsibility to negotiate a Local Service Agreement with the Department.

d) les coûts prévus de ce service local, et identification du montant d'argent de chaque source de financement;

e) le nom des personnes autorisées par le conseil de bande à agir en son nom au cours des négociations avec le Ministère pour préparer les accords de service local; et,

f) tout autre renseignement pertinent.

2.2 A la demande du conseil de bande, le directeur général de la région devra nommer un agent chargé d'aider le conseil de bande à rédiger les documents susmentionnés.

2.3 Un conseil de bande qui délègue à un autre organisme telle une commission scolaire, un conseil de district ou un comité la responsabilité d'administrer un service local, devra informer le Ministère de cette décision au moyen d'une résolution du conseil de bande. Il peut:

a) se réserver le droit de négocier un accord de service local avec le Ministère et, par la suite, prendre les dispositions pour un contrat séparément avec cet organisme afin de fournir le service en question; ou

b) autoriser cet organisme à négocier un accord de service local avec le Ministère; ou

c) demander que l'organisme en question partage, avec le conseil de bande, le droit de négocier un accord de service local avec le Ministère.

2.4 Where the transfer of responsibility for the delivery of a local service from the Department to a Band Council or to another organization involves the termination of a Departmental staff position, the request for such a transfer must be referred to Departmental Headquarters by the Regional Director General. This referral should normally be made at least seven months prior to the transfer date. For example, as a school can be transferred to Band Council control only on September 1st, notification must be received at Departmental Headquarters by the preceding February 1st.

2.4 Lorsque le transfert de la responsabilité d'administration d'un service local du Ministère à un conseil de bande ou à son agent nécessite l'élimination d'un poste d'un des employés du Ministère, la demande officielle doit être présenté à l'Administration centrale du Ministère par le directeur général de la région. Cette présentation doit normalement être faite au moins sept mois avant la date du transfer. C'est-à-dire, comme une école ne peut être transférée au conseil de bande que le 1er septembre, l'avis officiel doit être reçu à l'Administration centrale au plus tard le 1er février.

3. LOCAL SERVICE AGREEMENTS:

3.1 Whenever the Department contributes to the cost of a local service, the terms and conditions under which it is to be provided will be set out in a Local Service Agreement which, depending on the complexity of the service to be provided, can be any one of the following:

a) A Band Council Resolution submitted by a Band Council and approved by the Regional Director General stipulating the terms and conditions mutually agreed to.

b) A memorandum of Agreement or Contract developed and approved by both the Band Council and the Regional Director General.

c) A Letter of Understanding signed by the Regional Director General.

3. ACCORD PORTANT SUR UN SERVICE LOCAL:

3.1 Lorsque le Ministère partage les frais d'un service local, les modalités en vertu desquelles ce service doit être fourni devront être fixées par un accord de service local qui, selon la complexité du service, pourra être soit:

a) une résolution de bande soumise par un conseil de bande et approuvée par le directeur général de la région énonçant les modalités mutuellement acceptées.

b) une entente écrite ou un contrat développé et approuvé par le conseil de bande et le directeur général de la région.

c) une lettre d'entente signée par le directeur général de la région.

3.2 Activities within the general categories listed below may be administered as local services by a Band Council.

a) Cultural activities, community libraries and recreation;

b) On-reserve education activities, but excluding capital funds for construction;

c) Education in non-Federal schools and only with the concurrence of the school authority where an Agreement already exists, but excluding capital funds for construction;

d) Other education activities such as educational assistance for students attending educational institutions in urban centres and student residences;

e) On-reserve social welfare activities including preventive social services and work programs;

f) Child welfare services, if the Department has the concurrence of the Province concerned because of provincial legislative responsibility for child welfare;

g) Community protection including fire-fighting and policing but excluding policing under option 3(b);

3.2 Les activités dans le cadre des catégories générales suivantes peuvent être administrées comme services locaux par un conseil de bande.

a) Activités culturelles, bibliothèques et loisirs communautaires;

b) Activités en matière d'éducation sur la réserve, à l'exception de l'administration des fonds de capital pour la construction;

c) L'éducation dans les écoles non fédérales, moyennant l'assentiment de l'administration scolaire, lorsqu'il existe déjà un accord, à l'exclusion toutefois de l'administration des fonds de capital pour la construction;

d) Autres activités en matière d'éducation, telles l'aide à l'éducation pour les étudiants inscrits dans des institutions urbains ou dans des foyers d'étudiants;

e) Les activités de bien-être social dans les réserves, ce qui comprend les services à caractère préventif et les programmes d'emploi;

f) Les services de bien-être de l'enfance, si le Ministère a reçus l'assentiment de la province en question, à cause des attributions législatives provinciales dans ce domaine;

g) protection de la collectivité, ce qui inclut les services de protection contre les incendies et les services policiers, à l'exception des services

	policiers prévus dans l'option 3(b);
h) Construction and maintenance of community facilities including water and sewer systems, roads and sidewalks, and buildings such as Band offices and community halls;	h) La construction et l'entretien des installations communautaires, notamment les réseaux d'approvisionnement d'eau et d'égout, les routes et les trottoirs et les bâtiments tels les bureaux de la bande et les salles communautaires;
i) Band housing programs;	i) Les programmes de logement des bandes;
j) Band Economic Development committees and specific economic development projects negotiated individually with the Department;	j) Les comités de promotion économique des bandes et certains projets particuliers de promotion économique, qui sont négociés individuellement avec le Ministère;
k) Certain specific aspects of land management that do not affect the special status of reserve land; and,	k) certains aspects bien précis de l'administration des terres qui n'influent aucunement sur le status spécial des terres de la réserve; et,
l) Certain aspects of membership registration.	l) certains aspects de l'inscription aux bandes.
3.3 Local Service Agreements will stipulate:	3.3 Les accords de service local doivent préciser:
a) objectives, standards and details of the service to be provided;	a) les objectifs, les normes et les détails du service offert;
b) the responsibilities of each party to the Agreement;	b) les attributions de chaque partie en cause;
c) details of funding arrangements;	c) les détails des dispositions financières;
d) details of financial and other controls;	d) les détails des contrôles financiers et des autres genres de contrôle;
e) any special qualification of persons to be employed or contracted with;	e) la compétence des personnes qui devront être employées ou embauchées par contrat;

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f) any special training or technical assistance to be provided;

g) any special program requirements;

h) duration of the Agreement;

i) the organization which will deliver the service if other than the Band Council;

j) the procedures and conditions under which an Agreement can be terminated, or the Band's delivery agent changed, including the provisions to ensure continuity of services;

k) details of continuing Departmental involvement in the delivery of the local service; and,

l) that the Department will have access to the financial and other records of the Band relating to the administration of local services.

3.4 A Regional Director General may enter into or renew a Local Service Agreement when he is satisfied with the following:

a) the terms of the Agreement - see 3.3 above;

b) the previous performance of the Band Council or organization supplying the service, as revealed by financial audit and program evaluation reports, e.g.:

i) program objectives and standards were met;

f) toute formation spéciale ou aide technique nécessaire;

g) toute exigence spéciale relative au programme;

h) la durée de l'accord;

i) l'organisme qui doit offrir le service, si autre que le conseil de bande;

j) les modalités de résiliation de l'accord ou de changement de l'agent nommé par la bande, y compris les dispositions assurant une continuité des services;

k) les détails sur la participation continuelle du Ministère à l'administration du service local; et,

l) que le Ministère aura accès aux livres de comptabilité et autres records de la bande concernant l'administration des services locaux.

3.4 Le directeur général de la région peut passer un accord de service local ou renouveler un tel accord lorsqu'il est satisfait avec:

a) les modalités de l'accord - - voir 3.3 ci-dessus;

b) le rendement antérieur du conseil de bande ou de l'organisation administrant le service, après étude des rapports d'évaluation du programme et des rapports de vérification financière démontrant, que:

i) les objectifs et les normes du programme ont été atteints;

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ii) internal financial control was fully satisfactory;

iii) monies were spent for the purposes identified in the Agreement.

c) Band financial procedures as stipulated in Section 4.1 of Program Circular D-1 have been adopted by the Band Council; and,

d) that there is evidence of Band member support, where the Band Council wishes to enter into a new Agreement that involves a major local service.

3.5 Where a Band Council wishes to terminate or make significant changes in an Agreement involving a major local service, a Regional Director General will ensure that there is evidence of community support for the action.

3.6 Where it is necessary for the orderly transition of program management from the Department to the Band or for effectiveness of program delivery, a mutually agreed period of joint Departmental/Band management may be a condition of the Agreement.

3.7 Where a Local Service Agreement is in effect, and performance under the terms of that Agreement has not been satisfactory, a Regional Director General may - instead of terminating the Agreement - continue funding subject to certain additional conditions that are stipulated in writing to the Band Council, and agreed to by the Band Council.

ii) le contrôle interne est entièrement satisfaisant;

iii) les sommes sont dépensées aux fins prescrites dans l'accord.

c) les méthodes d'administration financière par la bande, précisées à l'alinéa 4.1 de la Circulaire du Programme D-1 adoptées par le conseil de bande; et,

d) la preuve de l'appui des membres de la bande lorsque le conseil de bande désire passer un nouvel accord sur un important service local.

3.5 Lorsqu'un conseil de bande désire résilier ou apporter des changements majeurs à une entente sur un important service local, le directeur général de la région s'assurera que les membres de la communauté appuient l'action préconisée.

3.6 Lorsque nécessaire, en vue d'une trasition ordonnée de l'administration de programmes du Ministère à la bande, ou en vue de l'efficacité d'exécution de programmes, une période de coadministration par la bande et le Ministère pourra être une condition de l'accord.

3.7 Lorsqu'un accord portant sur un service local est en vigueur et que les resultats selon les termes de l'accord ne sont pas satisfaisant, le directeur général de la région peut - au lieu de terminer l'accord - continuer de fournir les fonds sujet à certaines conditions additionelles qui seront énoncées en écrit au conseil de bande et acceptées par le conseil de bande.

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3.8 A Regional Director General may refuse to enter into or renew a Local Service Agreement, but in such instances, he is to inform the Band Council in writing, giving:

a) specific reasons for refusal;

b) specific recommendations on actions that may be required by the Band Council;

c) a description of the nature, scope and source of assistance available to the Band Council to prepare it to assume or re-assume responsibility for the delivery of the service.

3.9 A Local Service Agreement may be terminated by either party:

a) under the terms and conditions described in the Local Service Agreement; or,

b) when either party considers that the other party has not fulfilled its obligations under the Agreement.

3.10 A Regional Director General may terminate an Agreement when, in his judgement, the Band Council's performance under the Agreement:

a) endangers the rights, health, safety or welfare of any persons; or,

b) constitutes mismanagement of program and delivery systems.

3.8 Le directeur général de la région peut refuser de passer un accord portant sur un service local ou de le renouveler, mais dans de tels cas, il doit informer, par écrit, le conseil de bande, donnant:

a) les raisons précises de refus;

b) des recommandations précises sur les mesures que doit prendre le conseil de bande;

c) une description de la nature, de la portée et de l'origine de l'aide disponible au conseil de bande pour préparer celui-çi à assumer ou reprendre ses responsabilités pour l'administration du service.

3.9 Un accord portant sur un service local peut prendre fin à la demande de l'une ou l'autre des parties:

a) selon les conditions décrites dans l'accord portant sur un service local; ou,

b) lorsqu'une des parties considèrent que l'autre partie n'a pas rencontrer ses obligations en vertu de l'accord.

3.10 Un directeur général de la région peut mettre fin à un accord quand, selon son jugement, le rendement du conseil de bande selon l'accord:

a) compromet les droits, la santé, la sécurité ou le bien-être d'une personne; ou,

b) témoigne une mauvaise administration des programmes et méthode d'éxécution.

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This decision should be based on substantive evidence, and action taken only after efforts to overcome problems have failed.

4. BUDGET CRITERIA:

4.1 Band Councils, jointly with the Regional Director General, or officers appointed by him, are responsible for calculating and budgeting local service costs. Local service costs consist of two elements which must be shown separately in requests for funds:

a) Actual program costs identified in 4.2 below;

b) Overhead costs identified in 4.4 below.

4.2 Program costs (including program administration) include:

a) services, facilities, materials and supplies provided to Band members under a specific local service as listed in Section 3.2 above.

b) salaries, benefits and travel expenses incurred by personnel employed in the operation of a specific local service. See Appendix for examples.

4.3 A combination of the following factors will be taken into consideration in calculating program costs:

a) Type of service to be rendered;

Cette décision doit être fondée sur des preuves réelles; il ne faut prendre ces mesures qu'après avoir tenté en vain de surmonter les difficultés.

4. CRITERES POUR LE BUDGET:

4.1 Les conseils de bande, en collaboration avec le directeur général de la région ou les agents nommer par ce dernier, sont chargés de calculer et de budgétiser les coûts du service local. Les coûts du service local comportent deux éléments qui doivent être indiqués séparément dans les demandes de financement:

a) les coûts réels du programme, déterminés au paragraphe 4.2 ci-dessous;

b) les frais généraux, déterminés au paragraphe 4.4 ci-dessous.

4.2 Les coûts du programme (y compris l'administration du programme) comprennent:

a) les services, les installations, les matériaux et les fournitures offerts aux membres de la bande en vertu d'un service local précis, dont la liste figure à l'alinéa 3.2 ci-dessus.

b) les salaires, les avantages et les frais de déplacement du personnel employé pour assurer le fonctionnement d'un service local précis. Voir les exemples en appendice.

4.3 Une combinaison des facteurs suivants servira au calcul des coûts du programme:

a) le type de service à offrir;

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b) Population, nature and size of the area to be serviced;

c) Geographic location;

d) Number and qualifications of staff required;

e) Previous year's costs;

f) Availability of other resources including the Band's own capital and revenue funds;

g) Availability of funds in the regional budget; and,

h) Specific terms and conditions of a particular local service.

4.4 Overhead costs include:

a) Salaries, benefits and travel costs of personnel who supply general support to persons referred to in 4.2(b) above. See Appendix for examples.

b) The cost of supplies, facilities and services such as heat, light, janitorial services and telephone.

4.5 A combination of the following factors will be taken into consideration in calculating overhead costs:

a) Volume of services provided;

b) Number and qualification of staff required (not including those staff paid for from Band Core funding);

b) la population, la nature et la superficie de la région desservie;

c) l'emplacement géographique;

d) le nombre et la compétence des employés;

e) les coûts de l'année précédente;

f) la disponibilité des autres ressources, y compris les fonds de capital et de revenue de la bande;

g) la disponibilité des fonds au budget régional; et,

h) les modalités précises d'un service local particulier.

4.4 Les frais généraux comprennent:

a) les salaires, les avantages et les frais de déplacement du personnel qui offrent un soutien général aux personnes mentionnées à l'alinéa 4.2(b) ci-dessus. Voir les exemples en appendice.

b) le coût des installations, des fournitures et des services tels le chauffage, electricité, l'entretien et le téléphone.

4.5 Une combinaison des facteurs suivants servira au calcul des frais généraux:

a) le volume des services offerts;

b) le nombre et la compétence des employés (excluant les employés payés par le financement de base des bandes);

c) Nature of office accommodation required;

d) Costs of utilities;

e) Basic telephone, telex and postal costs;

f) Geographic location;

g) Previous year's costs;

h) Availability of other resources including the Band's own capital and revenue funds;

i) Availability of funds in the regional budget;

j) Specific terms and conditions of a particular local service; and,

k) Cost of financial audit;

l) Notwithstanding factors a) to k) above, the total of all overhead costs is not to exceed a percentage of the total amount of all Departmental funds provided for all program costs for that Band excluding Band Core funds, as follows:

c) sorte de locaux exigés;

d) les coûts des services d'utilité publique;

e) les frais postaux, les tarifs de base du téléphone et du télex;

f) l'emplacement géographique;

g) les coûts de l'année précédente;

h) la disponibilité des autres ressources y compris les fonds de capital et de revenue de la bande;

i) la disponibilité des fonds au budget régional;

j) les modalités spécifiques d'un service local particulier; et,

k) les coûts de la vérification financière;

l) nonobstant les facteurs a) à k) ci-dessus, le total de tous les frais généraux ne doit pas excéder un pourcentage donné du montant total de tous les fonds ministériels fournis pour tous les frais du programme de cette bande, excluant le financement de base des bandes, comme suit:

TOTAL PROGRAM COSTS	MAXIMUM ALLOWABLE OVERHEAD COSTS	TOTAL DES COUTS DU PROGRAMME	MAXIMUM POUR LES FRAIS GENERAUX
Under $100,000	Up to 12% of actual amount	Sous $100,000	Jusqu'à 12% du montant réel
$100,000 to $250,000	Up to 10% of actual amount*	$100,000 à $250,000	Jusqu'à 10% du montant réel*
$250,000 to $500,000	Up to 8% of actual amount**	$250,000 à $500,000	Jusqu'à 8% du montant réel**
Over $500,000	Up to 7% of actual amount***	Plus de $500,000	Jusqu'à 7% du montant réel***

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* It is permitted to negotiate up to $12,000. for Bands administering between $100,000. and $120,000.

** It is permitted to negotiate up to $25,000. for Bands administering between $250,000. and $312,500.

*** It is permitted to negotiate up to $40,000. for Bands administering between $500,000. and $571,500.

4.6 Departmental contribution for Band employees' salaries, benefits and travel costs will not exceed those rates which the Federal Government authorizes for public servants performing similar duties.

4.7 Funds received by the Band Council are not to be deposited to the credit of an individual nor is a Band Council to make loans from these funds.

5. SURPLUS/DEFICITS:

5.1 Funds provided for a specific local service which become surplus at the year-end will, unless specified otherwise in the Local Service Agreement or other program circulars, be shown in the budget for the ensuing year and applied against the cost of the appropriate local service.

5.2 When a Band Council for any reason ceases to provide a local service, all unexpended Departmental funds relating to that service must be returned to the Department.

* Il est permis de négocier jusqu'à $12,000. pour les bandes qui administrent entre $100,000. et $120,000.

** Il est permis de négocier jusqu'à $25,000. pour les bandes qui administrent entre $250,000. et $312,500.

*** Il est permis de négocier jusqu'à $40,000. pour les bandes qui administrent entre $500,000. et $571.500.

4.6 La contribution du Ministère aux salaires, aux avantages et aux frais de déplacement des employés de la bande ne doit pas excéder les taux fixés par le Gouvernement fédéral pour les fonctionnaires accomplissant ces mêmes fonctions.

4.7 Les fonds reçus par le conseil de bande ne doivent pas être déposés au compte d'un particulier et le conseil de bande ne peut faire aucun prêt avec ces fonds.

5. EXCEDANT/DEFICIT:

5.1 Les fonds attribués pour un service local précis qui deviennent excédantaires à la fin de l'année seront, sauf lorsqu'il y a indication contraire signifiée dans l'accord ou un autre circulaire du programme, identifiés dans le budget de l'année suivante et affectés pour le coût du service local en question.

5.2 Lorsque, pour une raison quelconque, un conseil de bande cesse de fournir un service local, le solde des fonds du Ministère affectés à ce service doit être retourné au Ministère.

5.3 In the event a Band Council incurs a deficit for a local service and the Department cannot authorize additional funds during the same fiscal year, a charge against the next year's budget will be made as a first commitment and the Band Council will have to seek other funding or cut back in the delivery of a particular local service.

6. AUDITS:

6.1 Where the Band Council does not ensure that an audit or program evaluation is performed adequately, the Regional Director General may appoint an official to perform such an audit or program evaluation with or without Band Council approval.

7. APPEALS:

7.1 Any party to a Local Service Agreement may appeal to the Assistant Deputy Minister after all attempts to resolve the issue at the district/regional levels have failed and when:

a) an unfavourable decision has been rendered that is deemed to be contrary to 3.6, 3.7 and 3.10 above;

b) a violation has been alleged of the terms of a Local Service Agreement.

7.2 The Assistant Deputy Minister will appoint a mediator acceptable to all parties for the purposes of arbitrating the dispute.

5.3 Dans le cas ou un conseil de bande contracte un déficit pour un service local et que le Ministère ne peut autoriser des fonds supplémentaires durant la même année financière, une imputation contre le budget de l'année suivante sera identifié a titre de première charge et le conseil de bande devra obtenir d'autre fonds ou réduire certains services locaux.

6. VERIFICATIONS:

6.1 Lorsque le conseil de bande ne s'assure pas que la vérification ou l'évaluation de programme est accomplit de façon adéquate, le directeur général de la région peut nommer un représentant pour vérifier ou évaluer le programme, avec ou sans l'approbation du conseil de bande.

7. APPEL:

7.1 Les parties signataires à un accord portant sur un service local peuvent faire appel au sous-ministre adjoint après que toutes tentatives de trouver une solution au niveau de district ou régional ont échoué et que:

a) une décision peu favorable a été prononcée qui est jugée contraire à 3.6, 3.7 et 3.10 ci-dessus;

b) une infraction a été prétendue selon les termes d'un accord portant sur un service local.

7.2 Le sous-ministre adjoint nommera un médiateur acceptable aux parties pour arbitrer le différent.

Assistant Deputy Minister

P.C. Mackie

Le Sous-ministre adjoint

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Indian and Northern Affairs / Affaires indiennes et du Nord

PROGRAM CIRCULAR
INDIAN AND ESKIMO AFFAIRS

CIRCULAIRE DU PROGRAMME
DES AFFAIRES INDIENNES
ET ESQUIMAUDES

Date:	No: D-4
Subject: APPENDIX PROGRAM AND OVERHEAD COSTS	Objet:
Related Directives: / Directives connexes: D-1	Effective date: / Date d'entrée en vigueur: April 1, 1976

ITEM	PROGRAM COSTS (see 4.2)	OVERHEAD COSTS (see 4.4)
Social Assistance	- costs of actual assistance such as welfare payments, child care payments, the costs of articles provided to welfare recipients; - the salary, benefits and travel of welfare officers and welfare clerks where the case load warrants their employment or a portion of the salary of those persons engaged part-time to perform these tasks - i.e. a Band Manager who also acts as a welfare administrator; - long-distance telephone charges.	- the provision of office space; - the salary and benefit costs of secretarial assistance; - basic telephone, telex, telegram charges; - office stationery.
Education	- the salary, benefits, travel costs of the following employees: principal, classroom teachers, classroom assistants, school caretakers, school bus drivers, education and social counsellors, and the secretary assigned to assist the principal and teachers; - long-distance telephone charges; - cost of school supplies and maintenance.	- the salary, benefits and office space for secretaries, clerks and administrators employed to manage the education program; - basic telephone, telex and telegram charges; - the cost of office supplies and equipment.

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ITEM	PROGRAM COSTS (see 4.2)	OVERHEAD COSTS (see 4.4)
Roads	- the salaries and benefits of persons employed in the actual maintenance or construction of roads; - the cost of materials used in the maintenance and construction of roads;	- office expenses relevant to paying accounts and salaries; - the salary and benefits for the office staff.
Band Management		- the salary, benefits and travel costs of the Band Manager, and secretaries assigned general duties; - all telephone, telex and telegram charges; - office stationery.

NOTE:

1) Band Council vs program administration expenses

Any payments made to Band Chiefs or Councillors, who are assigned as part of their duties as elected officials specific responsibilities (or "portfolios") for local services such as social assistance, education or public works, are to be charged to Band funds or Core funds. Payments from program or overhead funds received from the Department are limited to direct staff costs for those persons employed by the Band Council to manage and administer local services.

2) Band staff training costs are to be charged to regional training programs.

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Indian and Northern Affairs / Affaires indiennes et du Nord

PROGRAM CIRCULAR
INDIAN AND ESKIMO AFFAIRS

CIRCULAIRE DU PROGRAMME
DES AFFAIRES INDIENNES
ET ESQUIMAUDES

Date:	No: D-4
Subject:	Objet: ANNEXE COUTS DU PROGRAMME ET FRAIS GENERAUX
Related Directives: / Directives connexes: D-1	Effective date: / Date d'entrée en vigueur: April 1, 1976

ARTICLE	COUTS DU PROGRAMME (voir 4.2)	FRAIS GENERAUX (voir 4.4)
Assistance sociale	- les coûts réels de l'assistance tels les paiements de bien-être, les paiements de soins aux enfants, le coût des articles fournir aux bénéficiaires du programme de bien-être; - les salaires, les avantages et les frais de déplacement des agents et des commis du bien-être lorsque leur charge de travail justifie leur emploi ou une portion du salaire des personnes embauchées à temps partiel pour accomplir ces tâches - c'est-à-dire, un gérant de bande qui agit aussi comme administrateur du programme de bien-être; - frais d'appels téléphoniques interurbains.	- les locaux pour les bureaux; - les salaires et les avantages des secrétaires; - tarif de base pour le téléphone, le télex et les télégrammes; - papeterie de bureau.
Education	- les salaires, les avantages, les frais de déplacement des employés suivants: le directeur d'école, les enseignants, les aides-enseignants, les préposés à l'entretien de l'école, les chauffeurs d'autobus scolaires, les agents d'orientation et les conseillers sociaux, ainsi que au service du directeur d'école et des enseignants; - les frais d'appels téléphoniques interurbains; - les frais des fournitures scolaires et de l'entretien.	- les salaires, avantages et espace de bureau pour les secrétaires, les commis et les administrateurs qui s'occupent des services d'éducation; - les tarifs de base pour le téléphone, le télex et les télégrammes; - les frais de fournitures et de l'équipement de bureau.

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ARTICLE	COUTS DU PROGRAMME (voir 4.2)	FRAIS GENERAUX (voir 4.4)
Routes	- les salaires et les avantages des personnes effectivement employés à l'entretien ou à la construction des routes; - le coût des matériaux utilisés pour l'entretien ou la construction des routes; - les frais d'entretien et d'acquisition de l'équipement.	- dépenses de bureau: comptes et salaires à payer; - les salaires et les avantages des employés de bureau.
Administration de la bande		- les salaires, les avantages et les frais de déplacement des gérants de bande et des secrétaires à qui sont confiées des fonctions générales; - tous les frais de téléphone, de télex et de télégramme; - papeterie de bureau.

NOTA:

1) Conseil de bande vs les dépenses de l'administration du programme

Tous les paiements faits au chef ou au conseiller de la bande, qui ont reçus des attributions spécifiques (ou portefeuille), dans le cadre de leurs fonctions de représentants élus, pour les services locaux tels l'assistance sociale, l'éducation ou les travaux publics, doivent être imputés aux fonds de la bande ou au financement de base de la bande. Les paiements imputés au fonds du programme ou les frais généraux reçus du Ministère visent exclusivement les frais pour les employés du conseil de bande chargés de gérer et d'administrer les services locaux.

2) Les frais de formation pour le personnel de la bande devra être imputé aux programmes de formation pour la région.

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APPENDIX 4

The Department of Justice, at page 10 of the 1985-86 Estimates, Part III, identifies that their primary role is to protect the interests of the Crown. It is stated that:

> "The roles and responsibilities of the Department of Justice are based on the Department of Justice Act which provides for three broad areas of endeavours. First, the Department is empowered to provide a full range of legal services to the Government of Canada and its departments and agencies including the provision of legal advice, the preparation of legal documents, the drafting of legislation and the conduct of litigation. Second, the Department is charged with ensuring that the administration of public affairs is carried out in accordance with the law. Third, the Department has the lead responsibility in the planning, development and implementation of government policies in areas related to the administration of justice and such other areas as are assigned by the Governor in Council."

APPENDIX 5

CONTRIBUTION ARRANGEMENT

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANAOA
AS REPRESENTED BY THE MINISTER OF INDIAN
AFFAIRS AND NORTHERN DEVELOPMENT

(Hereinafter referred to as the "Minister")

AND:

THE WESTBANK INOIAN BAND,

(Hereinafter referred to as the "Recipient")

MAILING AOORESS:

P.O. Box 850, Westbank, B.C. VOH 2AO.

CONTRIBUTION AMOUNT: $ 300,000.00

PURPOSE:

To purchase a 50% interest in the leasehold interest held by Toussowasket Enterprises Ltd. and a first refusal to a leasehold interest in an additional 15 acres adjoining the property.

FINANCING:	APPLICATION OF FUNDS		SOURCE OF FUNOS	
	Purchase of leasehold interest	$ 300,000	Department of Indian Affairs	$ 300,000

TERMINATION: This Arrangement shall terminate on the 30th day of June, 1984 ----------, subject to any other provisions of this Arrangement.

DISBURSEMENT:

1. On the Recipient's acceptance of this Arrangement and the completion of all legal documentation, a disbursement of $ 100,000 will be made.

2. The Recipient shall provide a statement of expenditures with full disclosure of all disbursements during the period, plus a revised expenditure plan before any subsequent payments can be released.

3. The Recipient agrees to refund to the Department all funds not expended or committed for the purpose by cheque payable to the Receiver General for Canada.

EXPENDITURE PLAN:

Prior to March 31, 1982	April 1, 1982 to March 31, 1983	April 1, 1983 to March 31, 1984
$ 100,000	$ 100,000	$ 100,000

Funds will not be disbursed in any fiscal year until the Band's Financial Audit has been received and approved by the Department.

OTHER:

1. The Recipient shall provide accrued interest towards financing the Purpose, as follows:

   Accrued Interest on the outstanding balance of the debt owed by Toussowasket Enterprises Ltd. to the Indian Business Loan Fund on an annual basis commencing March 31, 1982.

2. The Recipient shall observe the following additional conditions under which the Contribution is made:

   The Westbank Indian Band shall enter into an agreement with Toussowasket Enterprises Ltd. that all payments made to Toussowasket Enterprises Ltd. from funds paid under this Arrangement shall be used to reduce the debt owed by Toussowasket Enterprises Ltd. to the Indian Business Loan Fund including principal and accrued interest.

GENERAL CONDITIONS:

1. All funds contributed in this Arrangement will be subject to an annual financial audit to the Minister's satisfaction to be provided by June 30th for each year ended March 31st.

2. The Minister reserves the right to cancel or suspend any disbursement relative to this Contribution at any time should circumstances warrant such action.

3. All schedules required pursuant to this Arrangement, and attached hereto, form an integral part of the Arrangement.

4. The approval of the funds, which are the object of this Arrangement are subject to the appropriations being approved by Parliament during each fiscal year of the Arrangement.

5. Any funds not disbursed by March 31st of each fiscal year must be returned to the Receiver General for Canada.

6. This offer is open for the acceptance of the Recipient until June 30, 1981, after which it shall become null and void.

7. The Recipient shall keep and maintain accounting records during the life of this Arrangement in a form satisfactory to the Director General and permit or arrange for the Director General, or any person authorized by him, to examine those books and records at any time.

8. This Arrangement shall not be assigned.

9. Disbursements made by the Recipient, pursuant to the Arrangement for honoraria, professional and administrative services and all other expenses, must be supported by invoices itemizing time and charges.

10. The Recipient agrees to provide a summary report of activities undertaken during each quarter of the period covered by this Arrangement. The report should address the degree of attainment of the objectives of the program.

11. No member of the House of Commons may be admitted to any share of this Contribution or to any benefit to arise therefrom.

WE ACCEPT:

Date:

Date:

Date:

Date:

Date:

Witness to above signatures — Date:

APPROVED:

F.J. Walchli — Date:
Director General
B.C. Region.

Witness — Date:

THIS IS TO CERTIFY THAT THIS CONTRIBUTION ARRANGEMENT MEETS THE FINANCIAL REQUIREMENTS OUTLINED IN THE MINISTER'S TELEX OF JULY 8, 1980.

FINANCIAL OFFICER — DATE:

CONTRIBUTION ARRANGEMENT

APPLICANT: WESTBANK INDIAN BAND
P.O. Box 850
Westbank, B.C.
VOH 2AO.

REQUEST: $ 300,000 Contribution

PURPOSE: To purchase a 50% interest in the leasehold interest held by Toussowasket Enterprises Ltd. and a first refusal to a leasehold interest in an additional 15 acres adjoining the property. The actual amount to be determined but not to exceed $ 300,000.

FINANCING:

APPLICATION OF FUNDS		SOURCE OF FUNDS	
Purchase of leasehold interest	$ 300,000	Dept. of Indian Affairs	$ 300,000

BACKGROUND:

In March, 1976 a $ 197,350 loan was approved for Toussowasket Enterprises Ltd. to assist in the construction of a mobile home park on locatee land held by Noll Derriksan and leased to the company, which is owned by Noll Derriksan and his wife. The FBDB had also provided a loan of $ 168,000. Due to a variety of problems, the business experienced severe financial difficulties and is now in receivership with the debt to the Department now approaching $ 300,000.

PROPOSAL:

The Band have requested a $ 300,000 Contribution to purchase 50% of the Company's leasehold interest as well as right of first refusal to lease an adjoining 15 acres for further development. The Band will also assume 50% of the F.B.D.B. mortgage and a 50% liability of Noll Derriksan's personal guarantee. Upon receipt of payment from the Band, Noll Derriksan will repay his loan from the Department completely including principal and accrued interest.

CONDITIONS:

The agreement between the Band and Noll Derriksan is as follows:

1. Band to assume 50% of F.B.D.B. mortgage.

2. Also, 50% of personal guarantee of Noll C. Derriksan.

3. Band to apply for financing to complete Park on joint venture basis (within 18 months of registration of agreement).

4. Band reserves the right to transfer its share to W.I.B. Development Co. Ltd.

5. Operation of Park to be determined by Band Council or their authorized representative.

6. Buy-Sell agreement between parties.

7. First right of refusal to lease on additional 15 acres adjoining property held by Noll C. Derriksan.

8. Subject to Solicitor's approval.

9. Date of registration of agreement to be anniversary date of Lease and all lease payments are extinguished prior to that date.

REASONS FOR TRANSACTION:

(1) The Company appears unable to meet its financial commitments.

(2) The Band wish to assume control of this Reserve land and expand the Park to increase employment and increase Band revenues.

(3) The Band wish to buy the Lease rather than shares in the Company to avoid liability for other Company debts.

(4) This will remove a potentially uncollectable debt from the Department's records on a basis similar to that of the Stabilization Program.

FAC MILE COMMUNICATION

OR NATING FROM I.E.A. B.C. REGION, VANCOUVER, B.C.

TO:	FROM:	AUTHORIZED:
MR. S. COOK ECONOMIC INSTITUTIONS ECONOMIC DEVELOPMENT INDIAN & INUIT AFFAIRS DEPTL. H.Q.	MR. A. ARMITAGE HEAD, IBLF MANAGEMENT SOCIO-ECONOMIC DEVELOPMENT B.C. REGION.	

FILE OR OTHER IDENTIFIER:

WESTBANK INDIAN BAND
CONTRIBUTION AGREEMENT 901-0375 - $ 100,000

TEXT:

-- AS REQUESTED I HAVE ATTACHED A COPY OF THE AGREEMENT.

PLEASE NOTE THAT THE AGREEMENT WAS SIGNED PURSUANT TO SECTION 7.6(a) OF THE FINANCIAL SIGNING AUTHORITIES.

CLAUSE 1.3(g) PERMITS CONTRIBUTIONS TO INDIAN & INUIT, THEIR BANDS, SETTLEMENTS, CORPORATIONS OR OTHER LEGAL ENTITIES FOR ECONOMIC EMPLOYMENT AND DEVELOPMENT PROGRAMS.

THE DELEGATION FROM THE MINISTER PERMITS REGIONAL DIRECTORS GENERAL TO SIGN CONTRIBUTIONS UP TO $ 2,000,000.

RECEIVED
TRANSMITTED BY
GRAPHIC COMMUNICATION
HRS ____ DATE 7-Dec-81

DATE:	TIME:	OPERATOR:
DEC.10/81 AA:IR		

WESTBANK INDIAN COUNCIL

BOX 850 WESTBANK, B.C. V0H 2A0 - TELEPHONE 768-7666

008130

June 23, 1981

Mr. Jack Rennie
Management Services
Dept. of Indian Affairs
P.O. Box 10061
700 W. Georgia St.
Vancouver, BC

Dear Sir:

Re: Toussowasket Enterprises Ltd.
Lot 33-2, I.R. 9

As requested, enclosed please find copy of the executed agreement, Toussowasket Enterprises Ltd, the Westbank Indian Band Development Co. Ltd., Noll C. Derriksan and the Westbank Indian Band.

Should you require further information, please advise the writer.

Yours very truly,

WESTBANK INDIAN COUNCIL

Chief Ronald M. Derrickson.

RMD/bdes
encl.

THIS AGREEMENT made the 20th day of May, 1981.

BETWEEN:

TOUSSOWASKET ENTERPRISES LTD., a body corporate duly incorporated under the laws of the Province of British Columbia, having an office at Box 250, Shannon Lake Road, Westbank, British Columbia;

(the "Vendor")

OF THE FIRST PART

AND:

WESTBANK INDIAN BAND DEVELOPMENT CO. LTD., a body corporate duly incorporated under the laws of the Province of British Columbia, having an office at Box 850, Westbank, British Columbia

(the "Purchaser")

OF THE SECOND PART

AND:

NOLL C. DERRIKSAN, a registered member of the Westbank Indian Band, of Box 250, Shannon Lake Road, Westbank, British Columbia

("N.C.D.")

OF THE THIRD PART

AND:

WESTBANK INDIAN BAND, represented herein by its duly constituted Council, and having an office at Box 850, Westbank, British Columbia

(the "Band")

OF THE FOURTH PART

W H E R E A S :

A. The Vendor holds as sole lessee a lease (the "Lease") registered in the Indian Lands Registry (the "Registry") in Ottawa, Province of Ontario, under number .

B. The Vendor wishes to sell to the Purchaser a fifty (50%) percent interest in and to the Lease and the Purchaser wishes to purchase this interest.

C. As consideration for the purchase of a fifty (50%) percent interest in and to the Lease the Purchaser has agreed for it, or the Band on its behalf, to assume responsibility on behalf of the Vendor for the payment of all monies due and owing under a second mortgage of the Lease (the "Second Mortgage") granted by the Vendor to the Department of Indian Affairs and Northern Development and registered in the Registry under number ; AND has agreed to assume fifty (50%) percent of a mortgage of the Lease (the "First Mortgage") to the Federal Business Development Bank registered in the Registry under number ; AND has agreed to assume fifty (50%) percent of a personal guarantee (the "Guarantee") of N.C.D. to the Federal Business Development Bank.

WHEREFORE IN CONSIDERATION of the premises and the mutual covenants and conditions herein contained the parties hereto agree as follows:

1. The Vendor agrees to sell and the Purchaser agrees to purchase an undivided one-half (1/2) interest as tenants-in-common in and to the Lease.

2. The Purchaser agrees for it, or the Band on its behalf, to assume responsibility for the payment of all monies due and owing under the Second Mortgage.

3. The Purchaser agrees to assume responsibility for the payment of fifty (50%) percent of all monies due and owing under the First Mortgage.

4. The Purchaser agrees to assume responsibility for fifty (50%) percent of the Guarantee.

5. It is understood and agreed that it is a condition precedent to the Agreement herein that the Federal Business Development Bank shall approve all the arrangements herein and shall grant its formal consent where necessary.

6. The Vendor shall deliver to the Purchaser at the date of execution of this Agreement an assignment (the "Assignment") of the Lease in registrable form assigning the Lease to the Vendor and Purchaser.

7. The Vendor agrees that the Purchaser may submit the Assignment for registration in the Registry at such time as the requirements attendant upon the satisfaction of clauses 2, 3, 4 and 5 hereof have been completed.

8. The operation of the trailer park provided for in the Lease is to be determined jointly by the duly constituted Council of the Band or its authorized representative and N.C.D. or his authorized representative. In the event of an inability to reach agreement concerning the operation of the said trailer park, the matter of disagreement shall be referred for resolution or determination to a single arbitrator if the parties can agree upon one and, if not, to three arbitrators, one to be appointed by each party and the third to be selected by the two appointed, and the provisions of the Arbitration Act, R.S.B.C. 1979, as amended from time to time, will apply to the arbitration.

9. The Vendor and N.C.D. covenant and agree with the Purchaser that they shall not during the term of the Lease lease or agree to lease the approximately fifteen acres of lands held by N.C.D. under Certificate of Possession No. and more particularly known and described as:

(the "Adjoining Lands")

except in accordance with the following procedure:

(a) If during the term of the Lease the Vendor or N.C.D. desires to lease the Adjoining Lands or receives a bona fide offer for the Lease of the Adjoining Lands which the Vendor and N.C.D. is willing to accept, the Vendor and N.C.D. shall give to the Purchaser notice of the rent and the terms and conditions upon which they are prepared to lease the Adjoining Lands or of the rent and the terms and conditions of any such bona fide offer for the lease of the Adjoining Lands as the case may be, and the Purchaser shall have THIRTY (30) days from the date such notice is deemed received by the Purchaser to notify the Vendor and N.C.D. that the Purchaser will lease the Adjoining Lands for the rent and upon the terms and conditions set forth in such notice.

(b) If the Purchaser shall not, within the said period of THIRTY (30) days, so notify the Vendor and N.C.D., time being of the essence hereof, then the Vendor and N.C.D. shall be at liberty on the expiration of the said period

of THIRTY (30) days to lease the Adjoining Lands within SIX (6) months thereafter without any further notice to or hindrance by the Purchaser for the rent (or a greater rent) and upon the terms and conditions (or upon other terms and conditions more favourable to the Vendor and N.C.D.) set forth in such notice.

(c) If the Purchaser shall, within the said period of THIRTY (30) days so notify the Vendor and N.C.D. that the Purchaser will lease the Adjoining Lands for the rent and upon the terms and conditions set forth in such notice from the Vendor and N.C.D. to the Purchaser then the giving of such notice by the Purchaser to the Vendor and N.C.D. shall create a binding and enforceable contract between the Vendor and N.C.D. and the Purchaser for the lease of the Adjoining Lands for the rent and upon the terms and conditions set forth in the said notice from the Vendor and N.C.D. to the Purchaser. Any such binding and enforceable contract shall be completed and all adjustments shall be made THIRTY (30) days after the creation thereof.

(d) If the Vendor and N.C.D. shall not accept any bona fide offer to lease the Adjoining Lands after the Purchaser shall have failed to exercise its rights hereunder, the provisions of this section shall continue to operate and any subsequent bona fide offers to lease the Adjoining Lands received by the Vendor or N.C.D. shall be subject hereto.

10. The Vendor and Purchaser agree that there shall be a Buy/Sell Agreement which shall operate upon the following basis:

(a) Either of them may have the right at any time during the term of the Lease to nominate a purchase price for the other's interest in the Lease;

(b) The offeree may either accept the said price or, within thirty (30) days of the making of the offer by the offeror, the offeree may purchase the offeror's share of the Lease for the same consideration and upon the same terms and conditions as set forth in the offeror's offer. In the event that the offeree does not choose to purchase the offeror's share the offeror shall have the right to complete the sale upon the terms and conditions of the offer.

11. Any notice to be given by one party to another shall be well and sufficiently given if delivered by hand to or deposited in any Government Post Office receptacle in Canada registered, postage prepaid, addressed to:

(1) the Vendor at:

Box 250
Shannon Lake Road
Westbank, B.C.

(2) the Purchaser at:

Box 850
Westbank, B.C.

(3) N.C.D. at:

Box 250
Shannon Lake Road
Westbank, B.C.

(4) the Band at:

Box 850
Westbank, B.C.

or to such other address as any party may have last notified the others in writing, and shall be deemed to have been received, if delivered, when delivered and if mailed, on the third business day (exclusive of Saturdays, Sundays and Statutory Holidays) after such mailing thereof.

12. The parties shall execute and deliver such further documents and instruments and do all such acts and things as may be reasonably necessary or requisite to carry out the full intent and meaning of this Agreement and to effect the transactions contemplated by this Agreement.

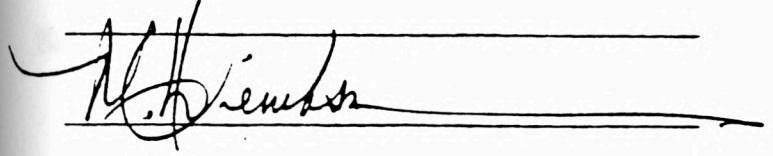
13. This Agreement shall not be assigned by either the Vendor or Purchaser without the consent of the other one.

14. Wherever the singular or masculine is used in this Agreement, it shall be deemed to include and mean the plural, the feminine or the body politic or corporate as the context or the parties hereto may require.

15. This Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the parties.

IN WITNESS WHEREOF the parties hereto have hereunto executed this Agreement the day and year first above written.

The Corporate Seal of)
TOUSSOWASKET ENTERPRISES LTD.)
was hereunto affixed in the)
presence of:)
)
)
_____) c/s
)
_____)
)



The Corporate Seal of
WESTBANK INDIAN BAND DEVELOPMENT
CO. LTD.
was hereunto affixed in the
presence of:

c/s

SIGNED, SEALED AND DELIVERED
in the presence of:

Barbara McGruther
Signature of Witness

P.O. Box 850
Street Address

Westbank, BC
City or Town

Secretary
Occupation

NOLL C. DERRIKSAN

SIGNED, SEALED AND DELIVERED
by the duly constituted Council
of the WESTBANK INDIAN BAND
in the presence of:

Barbara McGruther
Signature of Witness

P.O. Box 850
Street Address

Westbank, BC
City or Town

Secretary
Occupation

CHIEF RONALD M. DERRICKSON

COUNCILLOR BRIAN ELI

COUNCILLOR ROSE DERRICKSON

DATED May 20, 1981

BETWEEN:

TOUSSOWASKET ENTERPRISES LTD.

AND:

WESTBANK INDIAN BAND DEVELOPMENT CO. LTD.

AND:

NOLL DERRIKSAN

AND:

WESTBANK INDIAN BAND

PURCHASE OF INTEREST IN LEASE

W. GRAHAM ALLEN
BARRISTER AND SOLICITOR
SUITE 840 - 777 HORNBY STREET
VANCOUVER, BRITISH COLUMBIA
V6Z 1S4

APPENDIX 6

Rec'd in DMC April 10/79

TB 763729

April 6, 1979.

Mr. Arthur Kroeger,
Deputy Minister,
Department of Indian Affairs
and Northern Development,
Ottawa, Ontario.
K1A 0H4

Dear Mr. Kroeger:

Your submission seeking authority for approval of terms and conditions for the Indian and Inuit Program for the payment of contributions to specific classes of recipients was approved by Treasury Board on April 4, 1979.

As discussed with and agreed to by your officials this approval is on the understanding that:

1. the maximum dollar amount per recipient is $4,000,000 with any larger amount requiring separate Treasury Board approval;

2. the application of the terms and conditions will be reviewed before March 31, 1980 with particular reference to the maximum amount set for each recipient and the evaluation criteria; and

3. more precise evaluation procedures and criteria will be developed and resubmitted at the time of the revision of the terms and conditions.

Yours sincerely,

Denise Moncion

Denise Moncion,
Assistant Secretary.

COPIES SENT TO:		DATE
D. M.	✓	11.4.79
A. D. M.: FINANNCE & ADMIN.	✓	
DIR., R. P. & A.	✓	
DIR., ACC'T. OPER.	✓	
DIR. OF FINANC.	✓	
PROG. CO-ORDINATOR(S) ✓		
(ADMIN.)		
(I. I. A.)	✓	for info
(NORTH)		
(PARKS)		
LEGAL ADVISER		
Mr. Donnelly	✓	
Mr. [illegible]	✓	
Mr. [illegible]	✓	
P. A.		

Ottawa, Ontario
K1A 0R5

The Honorable the Treasury Board
L'honorable Conseil du Trésor

AD/FIN/79/12
T.B. Number – C.T. N°

Indian & Northern Affairs
Department – Ministère

File – Dossier

Date

(P.R. Robinson 7-9455)

OBJET:	CONDITIONS	SUBJECT:	TERMS AND CONDITIONS
PROPOSITION:	L'approbation du Conseil du Trésor pour les conditions de versement des contributions à des catégories spécifiques de bénéficiaires (liste ci-jointe) pour l'année 1979-80 et les années subséquentes, jusqu'à ce que ces conditions soient modifiées ou annullées.	PROPOSAL:	Treasury Board approval of terms and conditions for the payment of contributions to specific classes of recipients (as attached) for 1979-80 and subsequent years, until amended or rescinded.
COUT:	AUCUN	COST:	NIL
OBSERVATIONS:	1- La circulaire no 1977-50 du Conseil du Trésor (Subventions & contributions) énonce les exigences nécessaires à la présentation des conditions en matière de l'accord de contribution. La structure modifiée du Programme des Affaires indiennes et inuit appuie cette proposition de conditions.	REMARKS	1- Treasury Board Circular 1977-50 (Grants & Contributions) sets out the requirements for Terms and Conditions in respect of contribution arrangements. The Indian & Inuit Affairs revised activity structure supports these proposed Terms & Conditions.
	2- Les conditions ci-jointes répondent à toutes les exigences établies par la circulaire, à l'exception de la prévision de versement d'avances.		2- The attached Terms and Conditions conform to the Treasury Board circular in every respect except insofar as the provision of advance payments is concerned.

Voir ch. 9.4.4 para. 10 du Guide financier

300-1 7540-21-798-9239

The Honorable the Treasury Board
L'honorable Conseil du Trésor

CANADA

T.B. Number – C.T. N°

Department – Ministère | File – Dossier | Date

OBSERVATIONS: (suite)

3- Le paragraphe 13(b) du circulaire stibule qu'"on pourra verser des avances pour une première période d'au plus trois mois, puis pour des périodes d'un mois à la fois".

4- Cette exigence occasionnera des problèmes d'ordre administratif à quelques bénéficiaires éventuels.

5- Le Ministère demande l'autorisation de verser des avances portant sur une période d'au plus trois mois au cours de l'année, lorsque le Ministère le jugera utile. Le paragraphe 6(a) des conditions ci-jointes explique les [illegible] proposés.

REMARKS: (cont'd)

3- The Treasury Board Circular (para. 13(b)) requires that "advances may be made for an initial period no greater than three months and thereafter for one month at a time".

4- This requirement will place a great administrative burden upon some prospective recipients.

5- Authority is requested to make advances covering periods of up to three months throughout the year, if the Department deems it advisable to do so. Paragraph 6(a) of the attached Terms and Conditions sets out the proposed advance payment arrangement.

INDIVIDUAL INDIANS/INUIT

TERMS AND CONDITIONS

1. Indian - as ascribed in the Indian Act.

Inuit - those Inuit inhabitants of the Province of Quebec.

2. The purpose of these terms and conditions is to permit the entry of the Department of Indian Affairs and Northern Development into contribution arrangements, with the prospective recipients, which will clearly define any one service or a multitude of services which the Department has authority to provide to the recipient and which will, because of the recipient's demonstrated capability, be administered by the recipient in accordance with the contribution arrangements.

3. These terms and conditions will remain in effect until either the Department or the Treasury Board feels that they should be revised.

4. (a) The prospective recipient of the contribution will forward to the Department a sufficiently detailed financial and operating plan showing progress to be made in the provision of the service or services, and costs thereof. Officers of the Department will review the plan and satisfy themselves as to its feasibility, annual cost, total cost, benefit to the recipient and relevance to the Department's objectives;

(b) The recipient will maintain financial records, in accordance with generally accepted accounting principles and practices, to ensure the adequacy, accuracy, completeness and timeliness of reports and plans based upon these records and required by paragraph 4(c);

(c) The recipient will provide a financial report and a progress report to the Department on at least a quarterly basis, specifying year to date expenditures, forecasted total annual expenditures, progress to date and forecasted progress; the detail of the financial and progress report will be the subject of negotiation between the Department and the recipient.

5. Independent auditors may be appointed by the Department or the recipient to review the financial records maintained by the recipient to ensure that the program is being managed within the agreed arrangement, that only allowable expenditures have been charged against the arrangement and that generally accepted accounting principles and practices have been consistently applied in the maintenance of financial records.

6. (a) Advance payments may be made once every three months or more frequently if it is deemed advisable to do so; the accounting for the previous period's advance will take the form of a financial report and a cash flow projection for the ensuing period's advance;

(b) No advance (except the initial advance) will be made without the previous period's financial report;

(c) All advances will be based upon cash flow statements and will take into consideration all cash surpluses arising in the previous period.

7. The maximum annual amount of the contribution will not exceed the total amount appropriated by Parliament and will be in accordance with the policy, scope and objectives stated in the Department's annual Program Forecast and Estimates Submissions to Treasury Board.

... 3

8. (a) Authority to sign comprehensive contribution arrangements (those contribution arrangements involving the administration of more than one service) will be granted to the Regional Director General; the maximum dollar limit would be the total value of the contribution arrangement.

(b) Authority to sign other contribution arrangements (those contribution arrangements involving the administration of only one service), will be granted to the Departmental Officers in the Region at the level of District Superintendent or above, except as limited by paragraph 8(c);

(c) Authority to sign contribution arrangements, the value of which exceeds $500,000 per annum, will be granted to the Regional Director General; the maximum dollar limit would be the total value of the contribution arrangement;

(d) The delegation of signing authorities document will support and detail the expected signing arrangements;

(e) In every instance, the contribution arrangement must be countersigned by a financial officer at the equivalent level to certify that the budgetary constraint has not been violated.

9. Authority to approve payments by certifying that they are in accordance with the contribution arrangement will be granted to Departmental Officers at the level of District Superintendent or above as detailed in the delegation of signing authorities document; the maximum dollar limit would be the total value of the contribution arrangement.

10. Departmental Officers will continually review the recipient's progress, demonstrated capability and results achieved in the light of Departmental objectives; future funding decisions will take into account the success of previous undertakings.

... 4

INDIAN BANDS/INUIT SETTLEMENTS

TERMS AND CONDITIONS

1. Indian Band - as ascribed in the Indian Act and Inuit Settlements - those communities of Inuit people situated in Northern Quebec.

2. The purpose of these terms and conditions is to permit the entry of the Department of Indian Affairs and Northern Development into contribution arrangements, with the prospective recipients, which will clearly define any one service or a multitude of services which the Department has authority to provide to the recipient and which will, because of the recipient's demonstrated capability, be administered by the recipient in accordance with the contribution arrangements.

3. These terms and conditions will remain in effect until either the Department or the Treasury Board feels that they should be revised.

4. (a) The prospective recipient of the contribution will forward to the Department a sufficiently detailed financial and operating plan showing progress to be made in the provision of the service or services, and costs thereof. Officers of the Department will review the plan and satisfy themselves as to its feasibility, annual cost, total cost, benefit to the recipient and relevance to the Department's objectives;

(b) The recipient will maintain financial records, in accordance with generally accepted accounting principles and practices, to ensure the adequacy, accuracy, completeness and timeliness of reports and plans based upon these records and required by paragraph 4(c);

... 2

(c) The recipient will provide a financial report and a progress report to the Department on at least a quarterly basis, specifying year to date expenditures, forecasted total annual expenditures, progress to date and forecasted progress; the detail of the financial and progress report will be the subject of negotiation between the Department and the recipient.

5. Independent auditors may be appointed by the Department or the recipient to review the financial records maintained by the recipient to ensure that the program is being managed within the agreed arrangement, that only allowable expenditures have been charged against the arrangement and that generally accepted accounting principles and practices have been consistently applied in the maintenance of financial records.

6. (a) Advance payments may be made once every three months or more frequently if it is deemed advisable to do so; the accounting for the previous period's advance will take the form of a financial report and a cash flow projection for the ensuing period's advance;

(b) No advance (except the initial advance) will be made without the previous period's financial report;

(c) All advances will be based upon cash flow statements and will take into consideration all cash surpluses arising in the previous period.

7. The maximum annual amount of the contribution will not exceed the total amount appropriated by Parliament and will be in accordance with the policy, scope and objectives stated in the Department's annual Program Forecast and Estimates Submissions to Treasury Board.

... 3

8. (a) Authority to sign comprehensive contribution arrangements (those contribution arrangements involving the administration of more than one service) will be granted to the Regional Director General; the maximum dollar limit would be the total value of the contribution arrangement.

(b) Authority to sign other contribution arrangements (those contribution arrangements involving the administration of only one service), will be granted to the Departmental Officers in the Region at the level of District Superintendent or above, except as limited by paragraph 8(c);

(c) Authority to sign contribution arrangements, the value of which exceeds $500,000 per annum, will be granted to the Regional Director General; the maximum dollar limit would be the total value of the contribution arrangement;

(d) The delegation of signing authorities document will support and detail the expected signing arrangements;

(e) In every instance, the contribution arrangement must be countersigned by a financial officer at the equivalent level to certify that the budgetary constraint has not been violated.

9. Authority to approve payments by certifying that they are in accordance with the contribution arrangement will be granted to Departmental Officers at the level of District Superintendent or above as detailed in the delegation of signing authorities document; the maximum dollar limit would be the total value of the contribution arrangement.

10. Departmental Officers will continually review the recipient's progress, demonstrated capability and results achieved in the light of Departmental objectives; future funding decisions will take into account the success of previous undertakings.

... 4

11. Efforts will be made to withhold the final payment in the contribution arrangement until such time as an interim audit report or final audit report has been received by the Department.

12. In the event that final payment must be made prior to the receipt of an interim audit report or a final audit report, and the audit report, when received, indicates that an unallowable expenditure has been reimbursed, consideration will be given to recovering that amount from future contribution arrangements being entered into with that recipient.

.46

Concerns: 763729

June 12, 1979

All Regional Directors General
and Regional Directors of the
Yukon and Northwest Territories
(Indian and Inuit Affairs)

Approved Terms and Conditions
Grants and Contributions

Further to the memorandum of April 19th from Mr. Fournier and myself and the Directors of Operations meeting last month, it would appear that there are a number of matters arising out of the April 19th memorandum requiring further clarification at this time. Accordingly and in fulfillment of our previous commitment, this memorandum is intended to outline, and insofar as possible, clarify all issues identified to date.

TERMINOLOGY

1. Some confusion has emerged as to the labels and content for various types of contribution arrangements. Basically there are three types of arrangements;

   a) Arrangements covering a contribution from a single contribution class which are to be termed Single Contribution Arrangements.

   b) Arrangements covering contributions from more than one contribution class which are to be termed Comprehensive Contribution Arrangements, being the term and definition appearing in Treasury Board Minute 763729.

   c) Arrangements covering more than one contribution class and permitting the recipient to move funds between contribution classes are to be termed Consolidated Contribution Arrangements.

2. There is some question as to the distinction between an arrangement and an agreement generally the two are interchangeable although in certain cases the following distinction may be useful;

   a) "Contribution Arrangement" means an undertaking between a donor department or agency and a prospective recipient of a contribution, describing the obligations of each and the terms

and conditions for payment of the contribution. The arrangement may be formal, or it may be as informal as an exchange of letters and may include a Band Council Resolution. In all cases all arrangements, whether formal or informal must conform to the requirements of T. B. 763729.

b) Agreements are generally formal written undertakings duly executed and witnessed usually contractual in nature.

AUTHORITIES

1. The question of the relationship between the new authority under T. B. Minute 763729 and previous authorities such as T. B. Minute 725973 (Local Government Programs) and T. B. Circular 1977-50 has been raised. The situation is as follows;

   a) Generally all previous authorities pertaining to grants and contributions are superceded by T. B. 763729 and the new vote authority.

   b) T. B. 1977-50 remains in force as a guide at the Departmental level in seeking further revision of terms and conditions if necessary. Most of the pertinent portions of the circular have been exempted, reflected or supplemented under T. B. 763729, therefore it is no longer necessary to refer to Treasury Board Circular 1977-50 as a policy or operating guide.

   c) With regard to T. B. 725973 and other earlier authorities, these may be considered as superceded except where there are matters not covered by the new authorities and still applicable under present circumstances. All such outstanding matters will be resolved in future amendments and submissions.

2. With respect to signing authorities the following apply;

   a) In the case of comprehensive or consolidated contribution arrangements, signing authority is restricted to the Regional Director General within the dollar limit of his signing authority.

   b) When new delegations of authority are made by the Minister, the Regional Director Generals' authority, with the exception of comprehensive and consolidated arrangements, will be delegated to the Regional Director of Operations.

   c) In all other cases authority to sign contribution arrangements may be delegated to both Regional Directors General and District Managers within the limits of their respective signing authority.

   d) Section 8(e) of T. B. Minute 763729 requires that a financial officer countersign all contribution arrangements. The

Assistant Deputy Ministers' memorandum of April 19th further specified that in order to countersign, a financial officer must hold authority under section 26, or in the case of Districts, section 25 of the Financial Administration Act. The reference to section 26 or section 25 is merely a qualification identifying which financial officers are eligible to countersign a contribution arrangement and does not imply that officers countersigning a contribution arrangement are signing under these sections. Rather they are signing to verify that the arrangement conforms to T. B. Minute 763729.

e) Until the limits of signing authorities are revised and approved by the Minister, the dollar limits for signing of contribution arrangements must conform to the existing limits in the Financial Signing Authorities Document rather than those given under T. B. 763729 and on page 3 of our memorandum to you of April 19th.

GRANTS

1. Grants are unconditional payments without a requirement for either an audit or arrangement though they are conditional as to purpose. However, terms and conditions may be, and often are, attached to grants. In addition T. B. Circular 1977-50 requires Departments to seek approval for terms and conditions for grants as well as contributions so that there is a requirement for further guidelines in this area. During the interim, previous practices shall continue to apply.

PAYMENT SCHEDULES

1. The following are intended to clarify questions pertaining to payment schedules;

   a) Advances may be for any period up to and including three months and must be based on cash flow requirements.

   b) Payments after the initial advance can only be released upon receipt of a statement of account for all or part of the period covered by the initial advance.

   c) In all cases a payment succeeding the initial advance may not cover a period greater than that covered by the statement of account for the preceeding payment.

   d) Payments following the initial advance may be made either on a reimbursement basis or in the form of an adjustment of the initial advance based on a revised cash flow projection.

   e) Any payment schedule which conforms to these conditions and restricts accumulation of unaccounted advances to three months

cash requirement at any given time is acceptable.

2. In certain cases it is possible for an advance to be released on the basis of a statement of account for part of the period and projection to the end of that period provided that the part of the period covered by a projection does not exceed one month.

CONTRIBUTION AND RECIPIENT CLASSES

1. A number of instances have been identified where the wording of contribution classes in the vote structure and the description of the various recipient classes in T. B. 763729 appear to be mismatched so that contributions from certain contribution classes to certain recipient classes are excluded. Since the contribution classes are informational in nature, this apparent contradiction is not a problem. A contribution may be made from any contribution class to an eligible recipient in any recipient class.

2. There appears to be some question concerning the transfer of contribution monies between contribution classes by the recipient particularly with reference to non-discretionary funds. In summary the situation is as follows;

   a) Under a single or comprehensive arrangement no transfer of contribution monies between contribution classes is possible, although transfers within contribution classes may be authorized.

   b) Under consolidated arrangements, contribution monies may be transferred between contribution classes depending on the wording of the arrangement providing that they conform to the standards and criteria for non-discretionary funds.

   c) At present the issue of the transfer of contribution funds from non-discretionary to discretionary activities is still unresolved.

Pending a final decision, no transfers of non-discretionary to discretionary contribution funds should be authorized.

R. J. Fournier,
Assistant Deputy Minister,
Finance and Professional Services.

R. D. Brown,
Assistant Deputy Minister -
Programs
(Indian and Inuit Affairs).

Assistant Deputy Minister
Indian and Northern Affairs

Sous-ministre adjoint
Affaires indiennes et du Nord

Indian and Inuit Affairs

Affaires indiennes et inuit

See T.B. Approval
No. 763729 (attached)

OTTAWA, Ontario K1A 0H4

AUG 3 1979

All Regional Directors General and
Regional Directors,
Northwest Territories and
Yukon Territory,
(Indian and Inuit Affairs).

Approved Terms and Conditions -
Contribution Arrangements

In earlier memoranda, we have indicated that you would be provided with communication programs to assist you in discussing the potential of the new authorities. Over the next few months, you will receive a series of articles concerning Band government and, specifically, grants and contributions. They should provide your Regional staff with basic information so that they may prepare Regional Guidelines as you implement your work plans related to Band government activities.

In the first article we identify those authorities, directives, guidelines and various memoranda which still apply to the Contributions to Bands Program. We deal with definitions, applicable authorities, directives and guidelines, signing authorities and with contents and form of contribution arrangements.

Regional staff should feel free to suggest items to be covered in future issues and also raise any questions which could be answered through this information vehicle. It is intended that much of the material utilized in these articles will eventually serve to develop appropriate program circulars.

R.D. Brown,
Assistant Deputy Minister - Programs
(Indian and Inuit Affairs).

In this issue

DEFINITIONS

Recipient and Recipient Classes

Grants and Classes of Grants

Contributions and Classes of Contributions

Contribution Arrangements and Types of Arrangements

Authorities Applicable as of July 31, 1979

Directives Applicable as of July 31, 1979

Delegated Signing Authorities

Content of Contribution Arrangements

Format of Contribution Arrangements

Headquarters Contact

DEFINITIONS

"Recipient" means a grouping eligible to receive contributions

There are five recipient classes:

Recipient Class 1 - Indian Bands/Inuit Settlements

Indian Band - as described in the Indian Act and Inuit Settlements those communities of Inuit people situated in Northern Quebec

Recipient Class 2 - Associations, Organizations, District Councils

These recipient vehicles must be Indian/Inuit owned or controlled

Recipient Class 3 - Individual Indians/Inuit

Indian - as described in the Indian Act

Inuit - those Inuit inhabitants of the Province of Quebec

Recipient Class 4 - Provincial and Territorial Governments

Provincial and Territorial governments

Recipient Class 5 - Corporations, School Boards, Other Legal Entities

While there are not any restrictions with respect to the Indian/Inuit ownership or control of these recipient vehicles, the beneficiaries must be Indian or Inuit.

"Grant" by definition means an unconditional transfer payment, made to a recipient, for which the government will not receive any goods or services.

The three classes of grants established under Vote 15 are however conditional as to purpose:

Grant Class 1 - Education

Grants to individual Indians and Inuit to support their education and cultural advancement.

Grant Class 2 - Social Services

Social Assistance payment made to individual Indians and Inuit.

Grant Class 3 - Band Government

Grants to Indian Bands, their District Council's and Inuit Settlements to note business office and support services costs.

.../2

Note - Grants are unconditional payments without a requirement for either an audit or arrangement though they are conditional as to purpose. However, terms and conditions may be, and often are, attached to grants. In addition T.B. Circular 1977-50 requires Departments to seek approval for terms and conditions for grants as well as contributions so that there is a requirement for further guidelines in this area. During the interim, previous practices shall continue to apply.

"Contribution" means a conditional transfer payment, made to a recipient, which is subject to audit and for which the government will not receive any goods or services.

The ten classes of contributions established under Vote 15 are:

Contribution Class 1 - Reserves and Trusts

Contributions to Indian Bands for land selection.

Contribution Class 2 - Education

Contributions to Indian Bands and Inuit Settlements, their school boards, organizations or associations for educational services and facilities.

Contribution Class 3 - Contributions to provincial governments and school boards for the construction of joint school facilities.

Contribution Class 4 - Economic and Employment Development

Contributions to Indians and Inuit, their Bands, settlements, corporations or other legal entities for economic development and employment.

Contribution Class 5 - Social Services

Contributions to Indian Bands, Inuit settlements and provincial governments for social assistance including payments to non-Indians residing on Indian Reserves.

Contribution Class 6 - Contributions to Indian and Inuit settlements for social service, other than social assistance.

Contribution Class 7 - Community Infrastructure and Services

Contributions to Indian and Inuit, their Bands, settlements and corporations, provincial governments and other organizations to assist in the design, construction, maintenance and operation of community services, facilities and housing.

Contribution Class 8 - Band Government

Contributions to Indian Bands and Inuit settlements for administrative overhead costs.

.../3

Contribution Class 9 - Contributions to Indian Bands and Inuit settlements for local development planning.

Contribution Class 10 - Contributions to Indian associations for policy development and consultation.

Note - Financial controls for the above contribution classes will be exercised in accordance with the Vote Control Codes (VCC) contained in the Financial Manual - Coding Section.

Note - A number of instances have been identified where the wording of contribution classes in the vote structure and the description of the various recipient classes in T.B. 763729 appear to be mismatched so that contributions from certain contribution classes to certain recipient classes are excluded. Since the contribution classes are informational in nature, this apparent contradiction is not a problem. A contribution may be made from any contribution class to an eligible recipient in any recipient class.

"Contribution Arrangement" means an undertaking between the department and a prospective recipient of a contribution, describing the obligations of each and the terms and conditions for payment of the contributions.

There are basically three types of contribution arrangements:

a) Arrangements covering a contribution from a single contribution class which are to be termed Single Contribution Arrangements.

b) Arrangements covering contributions from more than one contribution class which are to be termed Comprehensive Contribution Arrangements, being the term and definition appearing in Treasury Board Minute 763729.

c) Arrangements covering more than one contribution class and permitting the recipient to move funds between contribution classes are to be termed Consolidated Contribution Arrangements.

In addition, contribution arrangements may be distinguished by two other features:

a) Contribution arrangements may be for a term exceeding one year

b) Contribution arrangements may include more than one donor and/or more than one recipient.

Authorities Applicable As Of July 31, 1979

A) T.B. 725973 dated April 1, 1974. This authorized the expansion of the Contributions to Bands Program into a broader Indian Local Government Program through consolidation of existing authorities and provided core funding.

Note -

1) The Core Funding formula and eligibility is superceded by T.B. 734786 April 15, 1975 and is detailed in Program Circular D-3 dated April 1, 1976.

2) The Terms and Conditions and recipient classes of above authority are now superceded by T.B. 763729 April 6, 1979 and are detailed in the memorandum dated April 19, 1979.

3) Authorities listed in Annex B to above authority are still applicable.

B) T.B. 734715 dated April 15, 1975 to establish guidelines and cost-sharing criteria for the funding of community centre facilities and to authorize contributions from capital.

C) T.B. 748348 dated October 27, 1977 approving a $2.0M fund for Band Work Process.

D) T.B. 751608 dated February 7, 1978 dated February 7, 1978 approving terms and conditions for the transfer of education capital funds.

E) T.B. 758999 dated August 15, 1978 to establish a new Parliamentary vote 15 for grants and contributions for Indian and Inuit Program.

Directives Applicable as of May 31, 1979

A) Memorandum April 19, 1979, approved terms and conditons - Contributions arrangements

B) Clarification memo dated June 12, 1979

C) Band Financial Management memo to Regional Directors of Finance dated April 2, 1979 dealing with audit requirements.

D) Memorandum June 26,1979 - Joint Management of Programs

E) D-1 Indian Local Government dated April 1, 1976

F) D-2 District Councils dated April 1, 1976

G) D-3 Band Core Funding dated April 1, 1976 - To be amended

H) D-4 Band operated Local Services dated April 1, 1976 - To be amended. Sections 1.3(b) & (c), 3.1, 3.2, and 3.3 are superceded by memoranda A) and B) above and by this document.

Delegated Signing Authority

When new delegations of authority are confirmed by the Minister, the limits will likely reflect those quoted in the April 19 memo. In the meantime, the signing authorities and the limits are as follows:

.../5

	Regional Directors General	Directors of Operations	District Managers
Single Class of Contribution	1,000,000	1,000,000	250,000
Comprehensive Arrangements	1,000,000	1,000,000	250,000
Consolidated Arrangements	1,000,000	None	None
Core Funding Grant	Full	Full	Full

Note -

The terms and conditions of T.B. 763729 requires that a financial officer countersign all contribution arrangements. The Assistant Deputy Ministers' memorandum of April 19 further specified that in order to countersign, a financial officer must hold authority under section 26, or in the case of Districts, section 25 of the Financial Administration Act. The reference to section 26 or section 25 is merely a qualification identifying which financial officers are eligible to countersign a contribution arrangement and does not imply that officers countersigning a contribution arrangement are signing under these sections. Rather they are signing to verify that the arrangement conforms to T.B. Minute 763729.

Content of Contribution Arrangements

In all arrangements, the minimum requirements include:

a) Identification of the recipient of the contribution

- Who is receiving the contribution?
- Check against recipient classes

b) Purpose: What is the reason for the contribution?

- In single arrangements or comprehensive arrangements where there is no authority to transfer within contribution classes, the purpose should be specific (sub-activity level, if required).

- In comprehensive arrangements with authority to transfer within the contribution class, specify limitations of the class, e.g., what are sub-activities - they can or cannot transfer within.

- In consolidated arrangements, identify areas by contribution classes for which funds are provided.

c) Effective date - the date of signing and duration of arrangement. Most agreements are for one year only but may exceed one year and should usually not exceed five years. In such cases, the availability of funds after the first year is subject to funds being made available by Parliament.

.../6

d) Conditions attached to the contribution(s) as specified in the approved general terms and conditions for all contributions and in the approved terms and conditions for the specific contribution(s).

- The financial and operating plan showing progress to be made in the provision of service(s) and costs thereof.

- Maintenance of financial records by recipient.

- Financial report and progress report on at least a quarterly basis specifying year-to-year expenditures, forecasted total annual expenditures, progress to date and forecasted progress.

- Method of payment and provision for advance payment.

- Financial limitations and allowable expenditures.

- Provision for the appointment of independent auditors.

- Transferability of funds, if not specified in purpose(s).

e) Written acceptance of terms and conditions of the contribution arrangement by the recipient.

Format of Contribution Arrangements

Provided that the minimum requirements stated above are covered, the form of any arrangement may be:

A standard contractual arrangement
A memorandum of agreement
A letter of understanding
An exchange of letters
A Band Council Resolution
A master agreement with schedules
Any other form that meets the requirements stated above

Headquarters Contact

Program Support	J.D. Nicholson	994-3389
Director, Operational Support Branch	P. Kyba	994-3389
Chief, Program Development and Implementation	F. Jettè	994-3555
Development Officer	D. Yarymowich	994-3555
Director Finance and Management	B. Veinot	994-1201

J.D. Nicholson,
Director General,
Program Support.

HOUSE OF COMMONS

Issue No. 56

Thursday, May 27, 1982
Monday, May 31, 1982

Chairman: Mr. Keith Penner

CHAMBRE DES COMMUNES

Fascicule nº 56

Le jeudi 27 mai 1982
Le lundi 31 mai 1982

Président: M. Keith Penner

Minutes of Proceedings and Evidence of the Standing Committee on

Indian Affairs and Northern Development

Procès-verbaux et témoignages du Comité permanent des

Affaires indiennes et du développement du Nord canadien

RESPECTING:

Main Estimates 1982-83: Votes under INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

INCLUDING:

The Fifth Report to the House

CONCERNANT:

Budget principal 1982-1983: crédits sous la rubrique AFFAIRES INDIENNES ET NORD CANADIEN

Y COMPRIS:

Le cinquième rapport à la Chambre

WITNESSES:

(See back cover)

TÉMOINS:

(Voir à l'endos)

DL A2 B2 H RCM D1 D2
Goodwin, D.K.
A.D.M.
Indian & Inuit Affairs
Room 2109

First Session of the
Thirty-second Parliament, 1980-81-82

Première session de la
trente-deuxième législature, 1980-1981-1982

REPORT TO THE HOUSE

Tuesday, June 1, 1982

The Standing Committee on Indian Affairs and Northern Development has the honour to present its

FIFTH REPORT

(1) In relation to its Order of Reference dated Tuesday, February 23, 1982 regarding the Main Estimates for the fiscal year ending March 31, 1983, your Committee has heard an extensive number of witnesses and received a large number of briefs and submissions. In the course of its deliberations, your Committee heard a number of serious representations and allegations that it feels should be brought to the attention of the House and the Minister of Indian Affairs and Northern Development for immediate action.

MOHAWK COUNCIL OF KAHNAWAKE

(2) Your Committee was concerned by the statement of the Mohawk Council of Kahnawake that funding for their native police force was to be terminated by the Department of Indian Affairs and Northern Development, due to the Band's refusal to comply with the requirements of the Quebec Police Act. Your Committee also heard evidence that the Council is using its own band funds to extend water and sewage facilities throughout its reserve, contrary to promises reported to have been made to them during the construction of the St. Lawrence Seaway.

(3) In response to these complaints, your Committee urges the Minister to cooperate with all Indian bands and/or councils who wish to establish their own police forces on their reserves. Your Committee further recommends that the Minister, in consultation with Indian bands and/or councils, work to determine a set of basic minimum standards relating to community infrastructure. To this end, it is suggested that a special capital fund be created to meet, on a priority basis, the infrastructure needs of those Indian communities which are obviously below these minimum standards.

CONNE RIVER INDIAN BAND

(4) Your Committee was distressed by the testimony of the Conne River Indians who, for many years, along with other Newfoundland Indians, have sought to be registered, without success, despite having met all the criteria of the Department of Indian Affairs and Northern Development. Your Committee regrets that long delay in resolving the issue of registration of Indians in Newfoundland and urges immediate action by the Government of Canada.

(5) Furthermore, as regards the "Canada-Newfoundland-Native Peoples of Conner River Agreement", your Committee requests that the Department of Indian Affairs and Northern Development accelerate its initiative to settle the dispute with the Government of Newfoundland, which has thus far prevented funds from flowing to the Conne River Indians in this fiscal year.

RAPPORT À LA CHAMBRE

Le mardi 2 juin 1982

Le Comité permanent des affaires indiennes et du développement du Nord canadien a l'honneur de présenter son

CINQUIÈME RAPPORT

(1) Conformément à son Ordre de renvoi du mardi 23 février 1982, concernant le Budget principal des dépenses pour l'année financière se terminant le 31 mars 1983, votre Comité a entendu un très grand nombre de témoins et reçu de nombreux mémoires. Au cours de ses délibérations, beaucoup de ces témoins ont fait état de situations et d'allégations que votre Comité estime de son devoir de porter à l'attention de la Chambre des communes et du ministre des Affaires indiennes et du Nord canadien afin que des mesures soient immédiatement adoptées.

CONSEIL MOHAWK DE KAHNAWAKE

(2) Votre Comité s'inquiétait du fait que le Conseil mohawk de Kahnawake a déclaré que le ministère des Affaires indiennes et du Nord canadien devait annuler les fonds destinés à sa force policière autochtone, la bande ayant refusé de se conformer aux exigences de la Loi de la police du Québec. Votre Comité a également entendu des témoignages selon lesquels le Conseil emploi ses propres fonds destinés à la bande pour prolonger ses installations d'eau et d'égout sur sa réserve, contrairement aux promesses qui lui auraient été faites pendant la construction de la voie maritime du Saint-Laurent.

(3) Tenant compte de ces plaintes, votre Comité prie instamment le ministre de collaborer avec toutes les bandes et (*ou*) les conseils indiens désireux d'instituer leurs propres forces policières sur leurs réserves. Votre Comité recommande en outre que le ministre, avec la consultation des bandes et (*ou*) des conseils indiens, tente d'établir un ensemble de normes fondamentales applicables à l'infrastructure de ces collectivités. A cette fin, il est proposé de créer un fonds spécial destiné à répondre en priorité aux besoins des collectivités indiennes dont l'infrastructure n'atteint manifestement pas ces normes minimales.

BANDE INDIENNE DE CONNE RIVER

(4) Votre Comité a été affligé d'entendre les témoignages des Indiens de Conne River qui, pendant de nombreuses années, avec d'autres Indiens de Terre-Neuve, ont tenté sans succès d'être instrits, bien qu'ils aient répondu à tous les critères établis par le ministère des Affaires indiennes et du Nord canadien. Votre Comité regrette que la question concernant l'inscription des Indiens de Terre-Neuve tarde tant à être réglée et exhorte le gouvernement du Canada à prendre immédiatement des mesures à cet égard.

(5) En outre, en ce qui concerne l'Accord Canada Terre-Neuve—Autochtones de Conne River, votre Comité demande que le ministère des Affaires indiennes et du Nord Canadien se hâte de régler les différends l'opposant au gouvernement de Terre-Neuve, qui jusqu'ici, empêchent les fonds prévus pour l'année financière en cours de parvenir aux Indiens de Conne River.

(6) Some members of the Committee question the legality of the payments being made to the Government of Newfoundland for cost-shared services to native people in that province, arguing in Committee that expenditures of the Department of Indian Affairs and Northern Development are exclusively for registered Indians in Canada.

FORT NELSON INDIAN BAND

(7) Your Committee was interested in the representations made by the Fort Nelson Indian Band calling for a change in legislation to permit Indian bands to invest their own capital funds as they see fit, in instruments bearing current commercial rates, rather than the present practice of basing interest rates on those of long-term government bonds. Your Committee suggests that the Minister, in consultation with Indian people, establish mutually acceptable arrangements regarding the management of these funds. In the meantime, it is recommended that the Minister's trust responsibility with regard to capital accounts be exercised in such a manner as to protect these funds against the erosion of inflation.

UNION OF NEW BRUNSWICK INDIANS

(8) The testimony of the Union of the New Brunswick Indians described a level of deprivation among their bands well below the poverty line, due to insufficient funds and the unresponsive attitude demonstrated by some local departmental officials. The evidence indicated inadequate housing, water and sewage facilities. It was revealed, as well, that children often go to school hungry. Your Committee urges greater effort by the Department, in consultation with local band authorities, to alleviate these disparities (see No. 3 above).

BRITISH COLUMBIA REGION

(9) In its hearings during two days in Vancouver your Committee heard numerous criticisms about the funding and management operations of the regional and district offices in British Columbia. The testimony of the witnesses, who represented a cross-section of Indian bands and organizations throughout the province, revealed several recurring themes:

(*a*) departmental operating and management costs are extraordinarily high;

(*b*) the Department of Indian Affairs and Northern Development prevents Indians from determining their own priorities;

(*c*) departmental officials fail to consult adequately with Indians in the region and district managers dominate Indian bands;

(*d*) current departmental programs are failing;

(*e*) the Department, in the development and application of its programs, ignores existing diversities among Indian bands in the various parts of the province;

(6) Certains membres du Comité mettent en doute la légalité des paiements versés au gouvernement de Terre-Neuve à l'égard des services assurés aux autochtones de la province aux termes des ententes sur le partage des frais, soutenant que les débours du ministère des Affaires indiennes et du Nord canadien vont exclusivement aux Indiens inscrits du Canada.

BANDE INDIENNE DE FORT NELSON

(7) Votre Comité s'est intéressé aux démarches de la bande de Fort Nelson pour que soit apportée à la loi une modification permettant aux bandes indiennes d'investir leurs propres fonds d'immobilisation à leur convenance, dans des effets productifs d'intérêts en vigueur actuellement sur le marché, au lieu de se conformer à la pratique actuelle qui consiste à baser les taux d'intérêt sur ceux des obligations à long terme du gouvernement. Votre Comité suggère que le ministre, avec la consultation de la population indienne, prenne des arrangements acceptables de part et d'autre concernant la gestion de ces fonds. Entre-temps, il est recommandé que la responsabilité fiduciaire du minsitre à l'égard des comptes en capital soit exercée de façon à protéger ces fonds contre l'érosion causée par l'inflation.

UNION DES INDIENS DU NOUVEAU-BRUNSWICK

(8) Les témoignages de l'Union des Indiens du Nouveau-Brunswick ont fait état dans ses bandes d'un niveau de privation bien au-dessous du seuil de pauvreté, et ce, à cause de fonds insuffisants et de l'indifférence manifestée par certains représentants du ministère travaillant sur place. Il a également été révélé que souvent, des enfants se rendent à l'école le ventre creux. Votre Comité exhorte le ministère, avec la consultation des administrations locales des bandes, à déployer plus d'efforts pour diminuer ces disparités (voir le no 3 mentionné plus haut).

RÉGION DE LA COLOMBIE-BRITANNIQUE

(9) Au cours des auditions qu'il a tenues pendant deux jours à Vancouver, votre Comité a entendu une foule de critiques contre les activités de financement et de gestion des bureaux régionaux et des bureaux de district de la Colombie-Britannique. Dans les dépositions des témoins, qui représentent un échantillon des bandes et des organismes indiens de la province, de nombreux thèmes se sont répétés:

a) les frais d'exploitation et d'administration du ministère sont beaucoup trop élevés;

b) le ministère des Affaires indiennes et du Nord canadien empêche les Indiens de déterminer leurs propres priorités;

c) les représentants du ministère négligent de consulter adéquatement les Indiens de la région, et les directeurs des bureaux de district ont la mainmise sur les bandes indiennes;

d) les programmes actuels du ministère ne donnent pas les résultats voulus;

e) dans l'élaboration et l'application de ses programmes, le ministère ne tient pas compte des diversités qui existent entre les bandes indiennes des différentes parties de la province;

(*f*) approval of the budgets of Indian bands is frequently delayed, resulting in wasteful interest charges being incurred by the affected bands. Further, it was alleged that funds are being disproportionately allocated;

(*g*) departmental welfare services are below the provincial level;

(*h*) the Department fails to provide guidelines, or an adequate delineation of its financial responsibilities, in relation to those of the bands;

(*i*) the "Master Tuition Agreement" with the Province of British Columbia, costing some $3,000 per child/per year, fails to meet its objective;

(*j*) while the estimates show an increase in the region's administrative costs, band budgets have not been proportionately augmented; and,

(*k*) economic development policies leading Indian bands to establish themselves as corporate entities erode their Indian status.

(10) Consequently, in accordance with the recommendations made by several Indian witnesses in British Columbia, and other witnesses during the year, your Committee requests that the Government of Canada take steps to further reduce the size of the Department of Indians Affairs and Northern Development and transfer more responsibilities, monies and person/years to the Indian bands and organizations so they can have a larger role in running their own affairs.

(11) The members of the Committee further recommend an independent inquiry, specifically with regard to all activities carried out by the regional office in conjunction with Indian band members and officials of the Westbank Indian Band in British Columbia, as well as all other governmental economic development ventures affecting Indian people in the British Columbia Region.

JAMES BAY AND NORTHERN QUEBEC AGREEMENT

(12) Recalling your Committee's earlier report to the Minister respecting the implementation of the James Bay and Northern Quebec Agreement, your Committee is dismayed by the delay of the federal Cabinet in reaching a just decision based on the recommendations of the Department's review, providing for adequate funding according to the terms and conditions of the Agreement.

(13) Your Committee feels compelled to report to the House that the Minsiter has again failed to comply with a statutory requirement contained in the James Bay and Northern Quebec Native Claims Settlement Act, to report to Parliament on the progress of implementing this Agreement, "... within sixty days after the first day of January of every year ...".

f) l'approbation des budgets des bandes indiennes est souvent retardée, imposant des taux d'intérêt inutiles aux bandes touchées. En outre, il a été allégué que les fonds sont affectés de façon disproportionnée;

g) les services de bien-être du ministère sont inférieurs à ceux qui sont offerts sur le plan provincial;

h) le ministère néglige d'établir des lignes directrices ou de délimiter adéquatement ses responsabilités financières par rapport à celles des bandes;

i) l'entente sur les frais d'éducation conclue avec la Colombie-Britannique, coûtant quelque 3 000 $ par enfant chaque année, n'atteint pas son objectif;

j) bien que le Budget indique que les frais d'administration de la région ont augmentés, les budgets des bandes n'ont pas été augmentés en conséquence; et

k) les politiques de développement économique qui ont amené les bandes à se constituer en sociétés minent leur statut d'Indien.

(10) Par conséquent, conformément aux recommandations formulées par plusieurs témoins indiens de la Colombie-Britannique et d'autres témoins au cours de l'année, votre Comité demande que le gouvernement du Canada prenne les mesures nécessaires pour réduire davantage la taille du ministère des Affaires indiennes et du Nord canadien et pour transférer davantage de responsabilités, de crédits et d'année-personnes de ce dernier aux bandes et organismes indiens, afin qu'ils puissent jouer un plus grand rôle dans l'administration de leurs affaires.

(11) Les membres du Comité recommandent en outre la tenue d'une enquête indépendante, précisément à l'égard de toutes activités dans lesquelles s'engage le bureau régional avec le concert de membres et de dirigeants de la bande indienne de Westbank (Colombie-Britannique), de même que toutes autres entreprises du gouvernement rattachés au développement économique qui touchent la population indienne de la région de la Colombie-Britannique.

CONVENTION DE LA BAIE JAMES ET DU NORD QUÉBÉCOIS

(12) Évoquant le rapport qu'il a transmis plus tôt au ministre concernant la mise en oeuvre de la Convention de la Baie James et du Nord québécois, votre Comité est consterné par la lenteur du Cabinet fédéral à parvenir à une décision équitable fondée sur les recommandations de l'étude du ministère, prévoyant des fonds suffisants, conformément aux modalités de la Convention.

(13) Votre Comité se sent dans l'obligation de signaler à la Chambre que le ministre a encore une fois négligé de se conformer à une exigence statutaire de la Loi sur le règlement des revendications des autochtones de la Baie James et du Nord québécois, voulant qu'il fasse rapport au Parlement sur les progrès de la mise en oeuvre de ladite Convention, « ... dans les soixante jours qui suivent le 1er janvier de chaque année ... »

NORTHERN CANADA POWER COMMISSION

(14) Your Committee notes with satisfaction that the report of its Sub-committee on the Northern Canada Power Commission has been received with near unanimous approval north of 60° Your Committee urges the Government of Canada to implement its recommendations without delay, as is being advocated by the Governments of the territories.

NATIONAL INDIAN VETERANS ASSOCIATION

(15) Your Committee heard with regret of the inequitable treatment of Indian war veterans. Your Committee urges that the Department of Indian Affairs and Northern Development, in conjunction with other departments concerned, extend adequate research funding to the National Indian Veterans Association to alleviate shortcomings in the treatment of Canadian Indian veterans.

SPECIAL REFERENCE

(16) Given the numerous recurring and urgent problems that have been brought to its attention, some of which are noted above, your Committee requests a special reference from the House of Commons to examine the Government of Canada's total financial and other relationships with Indian and Inuit people.

A copy of the relevant Minutes of Proceedings and Evidence (*Issues Nos. 36 to 39 and 41 to 56 inclusive*) is tabled.

Respectfully submitted.

COMMISSION D'ÉNERGIE DU NORD CANADIEN

(14) Votre Comité est heureux de remarquer que le rapport de son sous-comité sur la Commission d'énergie du Nord canadien a été approuvé presque à l'unanimité au nord du 60e parallèle. Votre Comité exhorte le gouvernement du Canada à appliquer ses recommandations sans tarder, comme le préconisent les administrations des territoires.

ASSOCIATION NATIONALE DES ANCIENS COMBATTANTS INDIENS

(15) C'est avec regret que votre Comité a entendu des témoignages concernant le traitement inéquitable des anciens combattants indiens. Votre Comité exhorte le ministère des Affaires indiennes et du Nord canadien, avec la collaboration d'autres ministères intéressés, d'accorder à l'Association nationale des anciens combattants indiens suffisamment de fonds de recherches pour qu'elle puisse atténuer les lacunes qui existent en ce qui concerne le traitement des anciens combattants indiens.

MANDAT SPÉCIAL

(16) Compte tenu des nombreux problèmes continuels qui lui ont été signalés, et dont certains sont mentionnés plus haut, votre Comité demande à la Chambre des communes de lui confier un mandat spécial afin qu'il examine toutes les relations financières et autres qui existent entre le gouvernement du Canada et la population indienne et inuit.

Un exemplaire des procès-verbaux et témoignages s'y rapportant (*fascicules nos 36 à 39 et 41 à 56 inclusivement*) est déposé.

Respectueusement soumis,

Le président

KEITH PENNER

Chairman

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