

FEDERAL-PROVINCIAL-TERRITORIAL  
ISSUES: AN OVERVIEW

June 25, 1981  
Intergovernmental Affairs

FEDERAL-PROVINCIAL-TERRITORIAL ISSUES  
AN OVERVIEW

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FEDERAL-PROVINCIAL-TERRITORIAL  
ISSUES AN OVERVIEW

I. INTRODUCTION

The purpose of this document is to provide a brief overview of current Federal-Provincial-Territorial issues involving Indian people.

It is the hope that this document will be followed by material and presentations to DMC which will focus in more detail on the issues in each individual province. As such, the material in this document will provide little more than a point form inventory of outstanding issues at this time. The analysis and questions relating to departmental strategy will be developed in the context of the presentations on individual provinces.

It is the intention to update this overview/inventory on a six month basis. The marginal notation indicates material that has been revised since the production of the previous document.

II. STRUCTURE/INDEX

This paper is divided into two sections as follows:

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(A) NATIONAL INTERGOVERNMENTAL ISSUES/ACTIVITIES

(1) INTRODUCTION

The issues dealt with in this section of the paper are ones where the existing federal policy and/or strategy for dealing with the particular issue is or should be national in its content.

To the extent that these national issues, policies and strategies are subjects of different translation or interpretation in each of the provinces, these variations will appear in the individual-provincial material.

FEDERAL/PROVINCIAL OVERVIEW

(2) Constitutional Renewal (Native Element)

BACKGROUND

The Special Joint Committee of the Senate and the House of Commons on the Constitution received presentations from the three National Native Associations, fourteen other native representatives and twenty non-native organizations, all of whom addressed the native elements of the patriation resolution. As a result of these presentations and other factors, major native specific amendments were made, and identified in the Special Joint Committee report to Parliament as follows:

- Section 25. Aboriginal Rights and Freedoms not Affected by Charter
- Section 34. Rights of the Aboriginal Peoples of Canada
- Section 36(2) Participation of Aboriginal Peoples in Constitutional Conferences
- Section 55(c) Amendments to the Rights of the aboriginal peoples require general amending procedure.

STATUS

The Constitution Act, 1981, resolution was debated in the House and the Minister, the Honourable John Munro spoke on February 20, 1981 outlining the following points regarding the native specific provisions:

- (a) <sup>EXISTING</sup> ~~Aboriginal and treaty~~ rights are recognized and affirmed in a special part of the Canada Act.
- (b) Aboriginal and treaty rights and freedoms and rights established by the Royal Proclamation (1763) and from Land Claims Settlements are enhanced.
- (c) The Canada Act will ensure that constitutional questions directly affecting the aboriginal peoples, including identification and definition of those aboriginal & treaty rights to be included in the Constitution will be discussed by the representatives of the aboriginal people with First Ministers.

- (d) The Constitution Act, 1981, provides for the participation of elected representatives of the governments of the Yukon and Northwest Territories in future constitutional discussions on items which at the discretion of the Prime Minister directly affect the two territories.

By provision of section 55(c) any future amendments regarding aboriginal and treaty rights can be made only under the general amending formula, thereby giving an added dimension of security to those rights.

The Constitution Act in its entirety is presently under review by the Supreme Court of Canada and a judgement is anticipated in the fall.

In the absence of a decision from the Supreme Court it is interesting to note that the provincial and territorial ministers responsible for native matters are meeting on frequent occasions to discuss such matters as Federal-Provincial-Territorial responsibilities for services to Indians, Local Indian Government Legislation and Land Claims. It is anticipated that these meetings will continue and eventually lead to discussions with Federal departments (i.e. DIAND, DNHW) on an issue basis and not in the constitutional context.

#### OUTSTANDING ISSUES/QUESTIONS

- . Thus far there has been virtually no reaction from the Provinces on the "Natives and the Constitution" item except for Ontario who have indicated their partiality towards early discussions on Federal/Provincial/Territorial responsibilities for services to Indians.
- . In anticipation of a post-patriation process that will include native participation, substantive research and analytical work is required to facilitate discussions on process and agenda.
- . This research and analysis will cover the federally committed agenda items such as aboriginal and treaty rights, native self government, native political representation and Federal/Provincial responsibility for services to Indians as well as more specific areas of constitutional concern that may be raised by the other parties (i.e. aboriginal people and Provinces).

This preparatory work necessarily will look at the legal, political and economic implications of the issues and also identify to what extent some issues may be dealt with in the constitution as opposed to other processes. (i.e. legislation, administrative arrangements, claims settlements etc.)

NORTHERN CONSTITUTIONAL DEVELOPMENT

BACKGROUND

In August, 1980, Cabinet requested (375-80 RD) the Minister of Indian Affairs and Northern Development to bring before Cabinet Committee an overall plan for the "social economic and constitutional development of the NWT. That Cabinet decision was therefore the origin of the current overall review of the Federal Government's policy for Canada's North.

FACTORS

A number of developments in the territories' recent history militate in favour of such a review.

1. In the Yukon, de facto responsible government was introduced in 1979, leaving the control and administration of the territorial government in the hands of a fully elected Cabinet. The Commissioner was then instructed by the Minister to play a role somewhat similar to that of a Lieutenant Governor in the provinces. The Minister also indicated that the formal establishment of responsible government would be confirmed in law through amendment of the Yukon Act.
2. With respect to the Northwest Territories, the Prime Minister's Special Representative for Constitutional Development (Mr. Drury) submitted his report in March, 1980. The main thrust of his report centered around the concept of devolution of responsibilities from the federal to the territorial and from the territorial to the local level of government. Mr. Drury also recommended the early settlement of native claims and the thorough examination of the question of division by the local population.

In November, 1980, the NWT Legislative Assembly accepted the report of its Special Committee on Unity and approved in principle the concept of dividing the NWT into at least two separate

territories. The report also called for a territorial plebiscite to be held within two years.

3. Originally "land oriented", the negotiation of native claims has gradually included the discussion of proposals of consequence to the current politico-constitutional structure of the territories (CYI proposal for separate government or, alternatively, guaranteed native representation, ITC proposal for Nunavut). Political/constitutional arrangements negotiated in the native claim settlement process must therefore be consistent with the Government's broad policy on northern development.
4. The national strategy of energy self-sufficiency is likely to have a bearing on the territories' constitutional and political future as well as influence the shape of agreements with native people living in the North.

Insofar as the national strategy requires that the Federal Government retain the ownership of and control over resources, particularly oil and gas, the pace of the territories' constitutional development will likely be affected.

STATUS

A comprehensive paper on the subject of northern constitutional development is currently being prepared for consideration by Cabinet. Timing of this Cabinet review has not yet been established.

OUTSTANDING  
ISSUES/  
QUESTIONS

The comprehensive paper will seek to clarify the Government's policy regarding the future of the territories in the Canadian federation. In particular, the paper will examine questions such as:

- the formalization of responsible government through amendment of the Yukon and Northwest Territories Acts;
- the eventual possibility of provincial status as opposed to other forms of

of constitutional status;

- the transfer of additional provincial-type powers and responsibilities from the Federal to the territorial governments;
- resources and resource revenue sharing;
- the issue of division of the NWT;
- the relationship between comprehensive native claims and constitutional development;
- native involvement in territorial government program management and delivery; and
- guaranteed representation in political institutions.

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(4) INTERGOVERNMENTAL SOCIAL POLICY TRANSFERS AND INDIANS

BACKGROUND:

The Federal Government undertakes extensive transfers to Provincial Governments respecting Social programs. These include the Established Programs Financing Act, Canada Assistance Plan, and various other programs (e.g. Young Offenders, Vocational Rehabilitation, etc.). In addition the Federal Government also makes Equalization payments to several Provinces. The value of these intergovernmental transfers is considerable.

In several of the programs, in particular E.P.F., the formula employed to calculate Provincial entitlements utilizes a provincial population base which incorporates "natives", including both on-reserve and off-reserve Status Indians. The Department of Finance cautions, however, that the complexity of the formula inhibits the Federal Government from drawing any conclusions about resultant levels of cash flow to the Indian population. This caution notwithstanding, it can be argued that, on the face of it, Provinces receive federal funding for services being delivered to all residents of the province, including Status Indians. Provincial Governments, while not denying the fact that the formula is calculated on the basis of total population, are generally resistant to acknowledging the effect of this on cash flow and are, accordingly, unprepared to ascribe any responsibility to themselves for delivery of services to Indians.

When some of these programs were last negotiated in 1977, the question of responsibility for Indians came up in the exploratory talks at the officials level but was not dealt with in the main discussions by Ministers. In subsequent correspondence on this point with British Columbia, the Prime Minister indicated that the EPF federal resource flows were not intended to alter prior existing arrangements respecting Status Indians. The exact nature of these arrangements however were not identified and have subsequently proven to be a major point of dispute with Provincial Governments, in particular concerning the responsibility for service delivery to off-reserve Status Indians.

Several of the programs lapse within the next few years and the Federal Government is currently preparing for the commencement of new Federal-Provincial fiscal arrangement

negotiations respecting Equalization, Established Program Financing and Canada Assistance Plan funding transfers to Provincial Governments.

ISSUE:

The department in various forums, including ministerial correspondence, has taken the position that insofar as both the on-reserve and off-reserve Indian population is included in the population figures used at arriving at the total Provincial EPF transfer payments, and that as residents of a Province Indians, particularly off-reserve, contribute in many instances to provincial tax revenues including those used in the formula for calculating Provincial entitlements under other programs (in particular the Equalization transfers), Indians, particularly off-reserve, have a legitimate claim on Provincial governments for services available to all residents.

This issue of responsibility for Status Indians, particularly off-reserve, has arisen on many occasions within various tripartite discussions and is a major impediment to the resolution of issues in a tripartite forum. In those situations where some Provinces have been willing to extend the delivery of programs to Status Indians, they "charge-back" 100% of the cost to the Federal Government. The result is an element of "double funding" by the Federal Government.

The funding formulas for these programs are complex. The exact dollar value attributable to Status Indians is difficult to determine and varies depending upon assumptions, methodology employed, etc. However, the exact value and nature of the funding formula does not alter the essence of the issue: that is, to what extent do Federal resource transfers to Provincial Governments for universal programs purport to encompass the delivery of these services to all Provincial residents, including Status Indians, particularly those resident off-reserve.

STATUS:

The Federal Government seeks to have the Provinces affirm their responsibility on the basis of overriding legal and social principles.

In addition to its relationship to the question of Intergovernmental Social Policy fiscal transfers, the issue of Federal-Provincial responsibility for the provision of services to Status Indians has been proposed

by the Prime Minister as an item for discussion during the forthcoming Post Patriation Constitutional talks, under the agenda head "Natives and the Constitution".

(5) CLAIMS

(a) Comprehensive Claims:

There are recognized outstanding comprehensive land claims in the Yukon and Northwest Territories and in the Provinces of British Columbia, Quebec and Newfoundland/Labrador. In B.C., claims have been accepted involving the Nishga Tribal Council, the Association of United Tahltans, the Gitksan-Carrier Tribal Council (including the Kitwancool Band) and the Kitamaat Village Council (Haisla Nation). The claim in Quebec concerns the twelve (12) bands on the north shore which are represented by the Conseil Attikamek Montagnais. There are two claims in Labrador involving the Naskapi Montagnais Innu Association and the Labrador Innu Association.

Negotiations on the Northern claims are either underway (CYI, COPE, ITC) or imminent (Dene/Metis). Formal discussions on the Quebec and Labrador claims are expected to commence in the near future, but the Nishga claim is at somewhat of a standstill until the respective roles and responsibilities of the federal and provincial governments are worked out with B.C. In any event, B.C. has adopted the position that they are not prepared to consider other claims until at least an agreement-in-principle is negotiated on the Nishga claim. Progress on the Quebec and Labrador claims could also be affected by differences between the governments. As in B.C., the Province of Newfoundland is interested in reaching a formal understanding on the roles and responsibilities of the Federal and Provincial governments before entering into tripartite negotiations with the native groups.

(b) Specific Claims

There are over two hundred specific claims in most provinces already on record. However, it is known that the Indian people are withholding the submission of a large number of claims until they are more comfortable with the policy and process. There are a number of claims that are currently being negotiated and which require the participation of the provinces,

including the B.C. Cut-off lands claims (22 bands and 34 reserves); the Prairie Treaty Land Entitlement claims (some 20 bands in Saskatchewan alone and the Cree-Chip Band in Alberta); and the Big Grassy and Temagami Band claims in Ontario. There are additional treaty land entitlement claims being documented; 15 in Saskatchewan, 24 in Alberta and 20 in Manitoba. With the exception of treaty land entitlements the provinces have shown little interest in becoming involved in the resolution of Indian land claims. In point of fact, probably the greater portion of the specific claims are against the Federal Government and do not implicate the provinces.

(6) SERVICES TO OFF RESERVE STATUS INDIANS

BACKGROUND:

Prior to the late 50's most Status Indians lived on reserves with Federal Government providing basic services. 1960's and 70's saw major expansion in types, quantity and quality of Provincial Government social programs to their citizens. There were consequent requests by Indians for comparative delivery of Federal programs.

Increasing migration off the reserves (16% in 1966, 27% in 1976, projected 34% for 1980) and a developing federal position that the provision of services to Indians who leave the reserve was a matter of provincial responsibility, led to heightened provincial concerns as the demand for and cost of delivering provincial services to the off-reserve population grew.

While the trend of increasing off-reserve migration has slowed, Western Canada in particular now has significant status Indian population concentrated in the more depressed areas of the major cities (c.f. Winnipeg, Regina, Edmonton).

Off-reserve Indian people are often faced with fragmented, unresponsive and, in some instances, inappropriate services. Special transition services to facilitate adjustment by those who move off the reserve and programs to support Indian identity in the off-reserve context are generally not available. Beyond the apparent lack of capacity of many off-reserve programs to meet Indian needs, Indian people often have access to such programs denied or impeded as a result of continuing differences between the two levels of

government on the financial responsibility for such services.

The issue is particularly manifested in the broad range of areas where Federal-Provincial social services interface occurs - child welfare, social assistance, income maintenance, etc. The present pattern of Federal-Provincial involvement in the financing and delivery of off-reserve services to Indian people is fundamentally inconsistent from Province to Province. In part, this reflects ad hoc reactive decision making by DIAND in the past - by program area and by Province. National policies have rarely been developed and, where developed, have not been consistently adhered to.

ISSUES:

A. Constitutional Responsibility

The fundamental problem between the Federal and Provincial Governments in this context stems from continuing differences of interpretation concerning responsibilities for the provision of services by the governments for Indian people generally and specifically in relation to the off-reserve status Indian population.

- (i) Federal Position: The Federal Government adopts the view that Sec. 91(24), B.N.A. Act, is an assignment of permissive legislative authority. Through both specific legislature provision and policy, the Federal Government has chosen to limit its actual fiscal responsibility for the provision of services to on-reserve status Indians, with some exceptions (e.g. post-secondary assistance, etc).

Of relevance to the off-reserve situation is Section 88 of the Indian Act which provides that, subject to the terms of any Treaty or any other Act of Parliament, all Provincial laws of general application apply to Indians in the Province except to the extent that they are inconsistent with the provisions of the Indian Act. Accordingly, for the purpose of the application of Provincial laws described in Section 88 an Indian person is generally in the same position as other residents of the Province except insofar as those laws deal with matters specifically dealt with by Parliament as they refer to Indian people.

The Federal Government takes the position that it has responsibility both on and off reserve, but that the responsibility is discharged differently in the off-reserve context. While a special relationship continues to exist between Indians living off-reserve and the Federal Government and such Indians maintain their Status, they are also residents of the Province and as such are included in the population figures used at arriving at various Intergovernmental transfer payments, and contribute in many instances to provincial tax revenues, some of which are also used in calculating Provincial entitlements under other programs (in particular Equalization transfers). Consequently Indians have a legitimate claim on Provincial Governments for services available to all residents, without discrimination.

(ii) Provincial Positions: Many Provinces disavow any legal responsibility for the provision of services to Indians on the basis that Section 91(24) of the British North America Act confers mandatory legal and financial responsibility on the Federal Government in this area. Increasing concerns that in reviewing total expenditures on Status Indians, the proportionate share of Provincial Governments has increased markedly and is projected to continue to increase in the immediate future. Specific problems from the provincial perspective include social services off-reserve, and health care and administration of justice (on and off-reserve). In these areas higher utilization and higher per capita costs attributable to Native peoples have resulted in the provinces spending large sums of direct provincial money for programs and services the full cost of which are not recoverable under existing Federal-Provincial fiscal arrangements.

(iii) Indian Position: Positions differ widely amongst National and Provincial Indian leadership. The essential position is that the Federal Government has a trust responsibility, and specifically a responsibility for the provision of services for all Indian people. The position rejects

the drawing of artificial distinctions between the on and off-reserve populations. This position translates into acceptance of the provincial position by some Associations (i.e. total federal responsibility); others are prepared to contemplate provincial participation in delivery of services and in their financing on a variety of different bases. (Usually accompanied by conditions re no loss of Status, rights and entitlements.)

B. Actual Delivery

Notwithstanding the strict legal position of the Provinces, the willingness to deliver services to Status Indians and meet some part of the costs of providing such services is markedly different from one province to another.

Provincial positions are generally characterized by a reluctance to extend services to Indians without special cost-sharing arrangements.

The provinces fall into one of three categories:

- (i) Those that make Provincial Services available to Status Indians off-reserve on same basis as to other Provincial residents (no special chargeback) e.g. Quebec, New Brunswick, Prince Edward Island;
- (ii) Those which will only provide Off-Reserve Services on the basis of 100% chargeback to the Federal Government - until the recipient of services has met the off-reserve residency requirements created by provincial regulation (Manitoba and Alberta); and
- (iii) Those which have refused to provide social services to the off-reserve population even on a chargeback basis until such residency requirements have been met (Saskatchewan).

C. Others

In addition, several other problems impede working co-operatively on the substantive issues in the off-reserve (and equally applicable on-reserve) context.

- (i) A lack of consultation with and participation by Indian people in the development of



provincial policies and programs. A number of provinces resist, to varying degrees, the notion of full Indian participation in Federal-Provincial discussions.

- (ii) Lingering suspicion by Indian people that discussions on Indian access to provincial programs is tantamount to implementation of the 1969 White Paper.
- (iii) The ability of the Federal Government to bring about major changes in Indian programs within its own resources is severely limited during present fiscal restraint period. Expansion of services in one program and/or province is usually only achieved at the expense of service adjustments in other areas. //

RESOLUTION STATUS:

A number of tripartite processes have been established over the last three years involving the Federal and Provincial Governments and provincial Indian associations in an attempt to address these concerns on a broad range of issues. The results, in terms of a capacity to resolve the issue of Federal-Provincial responsibility for services in the context of individual provincial discussions have not been encouraging. The experience has been that the two levels of government quickly assume traditional positions on the constitutional responsibility question, thus effectively precluding consideration of ways and means of delivering more effective services both on and off-reserve. To date, the Federal Cabinet has not reviewed the jurisdictional question in detail.

The Federal Government has proposed that:

- (a) the question of "Federal-Provincial Responsibility for Services to Indian People" be one of the subjects of consideration in the Post Patriation Constitutional Conferences under the agenda head "Natives and the Constitution"; and
- (b) the Provincial Tripartite Processes focus on "interim" ways and means of dealing with the immediate problems involved in improving off-reserve services to Indian people pending resolution of the longer term constitutional questions.

(7) FEDERAL-PROVINCIAL-INDIAN POLICING AGREEMENTS

THE RCMP 3G PROGRAM

Background

The Special Native Constable Program administered by the RCMP has been developed in conjunction with the Solicitor General, the RCMP, and Indian Bands and functions where the RCMP acts as provincial police under Federal-Provincial Agreements. (At the moment all provinces and territories, where the RCMP provide policing, except New Brunswick, have participants in the Special Constable Program.)

The RCMP employ native constables directly as members of the force - selecting and posting constables in consultation with Band Councils - as well as training, settling terms and conditions of work and supervising performance. Constables are warranted by RCMP for a wide range of policing duties. This program (commonly referred to as option 3b) also has similar versions in Ontario and Quebec where the RMCP do not provide policing services. The Canada-Ontario Indian Agreement expired in 1980; Tripartite negotiations for renewal of the final draft agreement and T.B. submission are in the latest stages.

Costs for the current Special Constable Program agreement are shared with the provinces on the basis of a decreasing formulae which saw the Federal Governments projection reduced from 52% in 1978-79 to 46% in 1980-81 (a forecast expenditure of 6.4 million in 1980-81). This proportion includes a slight premium paid over the master RCMP/Provincial Policing Agreement (2% in 1980-81) to help offset training costs.

The Special Constable Program - RCMP was evaluated in 1978 and despite positive evaluations of the programs effectiveness and the support expressed by many bands, the Special Constable program has provoked opposition. The main arguments centre on the RCMP's retention of full control over the constables and thus in the Indian perception of the program, over the total policing system on the reserve. Such an arrangement was and is perceived to be inconsistent with the desire of most bands to become autonomous and to control local affairs.

Issues

A recent decision not to transfer authority and responsibility for native policing to the Office of the Solicitor-General at the expiration of the present policing agreement, such that Native policing would be placed in the context of policing contracts that the Solicitor-General negotiates with the individual provinces, ensures the continuation of a direct involvement in Indian policing by this department.

The Master RCMP-Provincial Policing Agreement expires on March 31, 1981 and the Solicitor-General has informed his provincial colleagues, that an integral part of the proposal to renew the Master Agreement for a further five years, is an increase of the Provincial and Municipal contributions from 56% to 75% and 90% respectively. Initial provincial response is not positive and any new terms and conditions for the Master Policing Agreement may affect Indian Special Policing arrangements and/or deliberations.

As a consequence of Indian concerns regarding the RCMP 3b Program a number of alternative proposals have been put forward.

- (a) the Dakota, Ojibway Tribal Council Police, a three year pilot project of a number of small adjacent reserves in Manitoba, established in 1977, to overcome shortcomings of band constable programs, and
- (b) the proposals of the Indian leadership in Alberta to create an elaborate Indian Justice system complete with a Police Commissioner and federally-appointed Indian judges (Preliminary discussions have taken place between the Indians and the province, the latter remains non-committal on the proposal).

At this time the department does not have a comprehensive national policing policy for Indian Reserves, whereby the various programs or proposals can be evaluated in a rational manner, taking into consideration such disparate factors as the provinces constitutional responsibility for policing, the principle of Band determination and the relationship of policing to emerging issues such as Indian Government.

The current Canada-Provincial Indian Policing arrangements expired March 31, 1981 and the Treasury Board authority lapsed on this date also.

Consequently there is a requirement for an interim operating agreement which would provide a suitable length of time to evaluate the various Indian policing proposals and programs, develop firm departmental policy, and negotiate new agreements with the Provinces concerned.

It is proposed that the Federal Government offer the provinces affected, an extension of the existing arrangements governing the RCMP (3b) program for a further one year with cost sharing maintained at 1980-81 levels involving 160 person-years.

It must be emphasized that a complete rationalization of this department's policing policy on a national scale will not occur within the one year extension; such an extension is intended to provide enough time to identify provincial positions, Indian concerns and develop terms of reference for a comprehensive review. A further request for an extension would be predicated on the results of the preliminary review.

Discussions have already commenced with representatives of the Solicitor-General and the RCMP to develop a joint Treasury Board Submission. This department has been represented by members of the Housing and Band Support and Intergovernmental Branches.

Prior to finalization of the Treasury Board Submission and after consultation with Solicitor-General, the department must approach each of the Provinces presently involved in the RCMP 3b program, to seek their concurrence to the one year extension.

Following implementation of an extension to the current RCMP 3b agreement the Department can, through liaison and consultation with Indian associations, the RCMP, the Ministry of the Solicitor-General and Provincial authorities, begin the first phase of development of a national policy on Indian Policing.

DAKOTA OJIBWAY TRIBAL POLICE

The Solicitor General's Department funded a token contribution of \$12,500 in 1980/81 toward the costs of the DOTC police committee in recognition of their innovative concept in police management. They have indicated, however, that it is not their intent to contribute substantially toward the DOTC Tribal Police Force.

The force has been the subject of a review sponsored by the Solicitor General's office. Operational funds have been provided by this department and the Province of Manitoba for the current operating year. However, the Province had indicated that their continued participation in the project is predicated on the results of the review, which is expected to be made public toward the end of the 1981 calendar year.

Quebec-Amerindian-Cree Communities

The Quebec Regional Director has reached agreement in principle with the Province of Quebec for a cost-shared program for the provision of Native specific policing services on certain reserves in Quebec.

The Agreement would encompass all those reserves where the Amerindian Police Force are now providing a policing service, the Huron Village and the Cree communities.

The Agreement would commence effective January 1, 1979 and terminate March 31, 1983 to coincide with the termination of a similar policing Agreement in the Province of Ontario.

The proposed cost-sharing formula is as follows:

Jan. 1/79 - March 31/81	60% Fed.	40% Prov.
Current fiscal year 1981/82	56% Fed.	44% Prov.
1982/83	52% Fed.	48% Prov.

These are the identical cost-sharing figures provided to other provinces at the commencement of Federal/Provincial policing agreements.

The Regional Director General commenced final meetings leading to the formal ratification of the Agreement, the week of June 15th. He is optimistic for success.

Eskoni Band's Proposal for Amerindian Policing Plan

The Eskasoni Band of Nova Scotia have proposed a band policing program similar to that provided by the Amerindian Program of Quebec. Regional officials have met with the Attorney General of Nova Scotia and have explained this Department's current position on cost-shared Federal/Provincial Policing Agreements. These discussions did not constitute a formal offer to participate in a cost-shared agreement. The Provincial Minister has taken the Eskasoni proposal under advisement and has promised to provide an opinion following a comparative analysis with the RCMP 3B Program.

Canada Ontario Policing Agreement

A new Federal/Provincial Policing Agreement was ratified on April 11, 1981 by the four Indian Associations of Ontario, the Ontario Government and the Federal Government. The current Agreement will expire on March 31, 1983 and provides for a 52% Federal, 48% Provincial cost-sharing formula. Specific provisions of the Agreement will create an Indian Police Commission of Ontario and require that the Agreement be evaluated during its lifetime.

This department recently communicated its intentions to the Chairman, Indian Commission of Ontario, that the Indian Police Commission and the program evaluation should be established in the very near future.

(B) PROVINCE-TERRITORY SPECIFIC INTERGOVERNMENTAL ISSUES/ACTIVITIES

(1) INTRODUCTION/BACKGROUND

Tripartite In recent years, the Provinces have shown an increased tendency to resolve Indian related issues through tripartite discussions. While the propensity to enter into such discussions varies from province to province and subject to subject discussions are now under way or pending in seven of the ten Provinces.

Issues: The tripartite processes deal with a wide range of issues which are, in many instances, different for each of the Provinces. Many of the discussions presently under way involve a fundamental re-examination of the relative responsibilities of the Federal and Provincial Governments for the provision of services to Indian people in all program areas including health, social, education, economic and justice services, especially off reserve services.

Departmental Involvement: Departmental involvement in each of the processes varies in accordance with the issue, stage of development and Province. The Minister, Deputy Minister, Assistant Deputy Minister and Regional Directors General all play Intergovernmental Affairs lead roles at various stages in the processes. In general terms, Headquarters involvement is in a support capacity to the Regional Directors General except where National issues or exceptional political circumstances exist.

Tripartite Structures: The established tripartite structures differ significantly from one province to another in accordance with the type of issues under consideration and the level of representation of each of the parties. The most highly structured existing process is in Ontario where a Tripartite

Council made up of Federal and Provincial Ministers and the Presidents of the four Ontario Indian Associations oversees the work of a Steering Committee (at the Deputy Minister level), four Tripartite Working Groups and three other ad hoc Tripartite Groups. Their work is facilitated by an independent Indian Commission of Ontario. At the other end of the scale, the mechanisms are more Regionally based dealing with locally-defined issues.

Assessment:

While the notion of tripartite mechanisms to address Indian problems is not new, the present mechanisms, while not without their difficulties, offer some real hope for a successful resolution of complex issues in the longer term. The most common difficulties experienced with the present federal/provincial mechanisms are:

- (a) A number of provinces still resist, in varying degrees, the notion of Indian people being full participants to such discussions.
- (b) Lingering distrust, suspicion and even hostility on the part of Indian people directed towards either or both governments. Such an attitude impedes working co-operatively on the substantive issues.
- (c) A narrowness of focus on the part of some provinces who see the essential objectives of the process in financial terms or who second the socio-economic development objectives to the financial consequences of the alternatives to be considered.
- (d) Differing levels of political awareness and sophistication from band to regional associations to the National Indian Brotherhood. Internal Indian politics and differences of opinions also create difficulties.



- (e) Many of the processes have contained within them issues which, from the Federal perspective, and increasingly from the Provincial perspective, can only be resolved effectively at the National level. Lodgement of such issues in tripartite forums (e.g. the question of Federal-Provincial responsibility) came about at a time when a viable National forum for consideration of such issues was lacking.
- (f) Some problems in ensuring that Indian people have adequate financial and human resources to participate fully in the processes.
- (g) The ability of the Federal Government to bring about major changes in programs to Indian people within its own resources is severely limited during the present period of fiscal restraint. Expansion of services in one area can usually only be achieved at the expense of a cut-back in services in other areas.

(2) BRITISH COLUMBIA

(a) BACKGROUND

The British Columbia Government traditionally has been reluctant to participate in formal Tripartite discussions, based upon the following factors:

- (1) the perception that the Federal Government would attempt to abdicate some or all of its responsibilities (as the Province understands these to be) for the provision of services to status Indians;
- (2) the view that Tripartite mechanisms are not necessarily the most effective or efficient method for addressing Indian issues. The B.C. position is based on the rationale that not all participants in the process are equal;
- (3) the lingering uneasiness which persists with respect to land claims issues and the negative atmosphere this has created for meaningful Federal/Provincial/Indian discussions; and
- (4) the Province has not been fully convinced that the Federal Government, as one party to Tripartite discussions, could be objective in dealing with Indian issues -- particularly in areas where they view Indian demands for greater financial and natural resources as being unreasonable.

In addition, the absence of a single Province-wide Indian organization and the perception by the Provincial Government that the Departments' Regional Director General does not possess the necessary authority from Ottawa to conduct appropriate Federal-Provincial discussions, has compounded the difficulties.

During 1980, the Department's Regional Director General met with two of the Provincial Deputy Ministers in the Land and Resource Management and the Social Services areas. Their discussions were exploratory in nature, aimed at identifying areas of mutual concern, where Tripartite discussions might be desirable or required.

The Office of Native Claims has opened a satellite office in Vancouver to expedite the consideration and resolution of comprehensive and specific claims.

(b) ISSUES

(1) Child Care - General Agreement:

There is an informal Child Welfare agreement under which Indian Affairs pays a per diem rate to the Province for status Indian children placed in Provincial institutions.

The appropriateness of the services provided and of the agreement itself are questioned by Indian people. In addition following an audit of the existing arrangements, a need has been identified by the department to arrive at a formal agreement to govern any payments to be made for the 1981-82 fiscal year and beyond.

(2) Child Care - Spallumcheen Band Agreement

In mid-October the Honourable Grace McCarthy, B.C.'s Minister of Human Resources, Mr. Munro, and Chief Wayne Christian of the Spallumcheen Band, achieved agreement in principle concerning the "authority of the Spallumcheen Band Council to assume responsibility and control over their own children". The department is in the process of reviewing the above commitments with representatives of the Band and the Province.

(3) A Comprehensive Social Services Agreement:

The Province has expressed an interest in examining the question of a long term Federal-Provincial Social Services agreement. In this context the Province maintains the view that the Federal Department of Indian Affairs is totally responsible for providing income maintenance programs and social services to status Indians on or off-reserve. There is an existing informal agreement in this area.

(4) Education Master Tuition Agreement

Numerous Indian bands have indicated their desire to participate in the design and development of curriculum for Indian students and in the process of reviewing the existing Federal-Provincial Master Tuition Agreement. The Province regards education and curriculum development as its sole responsibility and traditionally has rejected special Indian involvement in these areas, let alone in reviewing the Agreement. The Province does make efforts to meet special Indian needs at the district level.

(5) Tripartite Committee on Taxation

The Province and its municipalities levy property taxes on non-Indian interests on reserve lands. In total, these taxes represent about \$4 million that could otherwise go to bands for developing municipal services on reserves. The Alliance Bands are asking the Province to vacate this field of taxation in order that bands can provide municipal services to lessees either directly or through purchase of services from adjacent municipalities.

The Province has agreed to engage in discussions and negotiations with the local Government Committee, and has committed the cooperation of those departments administering taxation and assessment matters, municipal affairs and finance in seeking satisfactory solutions to the issue.

A tripartite working group has been meeting on a regular basis to study the alternative courses of action for establishing band taxation authority. DIAND is funding the local Government Committee and is represented on the tripartite working group.

(6) Federal-Provincial Indian Special Constable (3b) Program

(See item 37, National Issues.)

(7) Comprehensive Claims

Claims have been accepted involving the Nishga Tribal Council, the Kitwancool Band, the Association of 'United Tahltans, the Gitksan Carrier Tribal Council and the Kitamaat Village Council (Haisla Nation).

B.C. has adopted the position that they will not consider other claims until at least an agreement in principle is negotiated on the Nishga Claim.

The Nishga discussions are at a standstill pending a working out of the respective roles and responsibilities of the Federal and Provincial Governments. Proposals in this regard are currently in the development stage.

(8) Specific Claims

The British Columbia cut-off lands dispute involves 33,000 acres of land taken, without surrender, from 34 reserves held by 22 bands as a result of recommendations of the 1913-16 Royal Commission on Indian Affairs in British Columbia (established pursuant to the 1912 McKenna-McBride Agreement).

Tripartite negotiations on this claim began in March, 1977. A joint government offer made in January, 1978 was rejected by the Committee of Cut-Off Bands, which was seeking the return of lands lost and the current market value for the 3,200 acres sold to third parties (approximately \$42 million by Indian assessment). In another joint offer made in March, 1979, the Federal Government offered to increase the compensation to be paid for the 3,200 alienated acres based on value at the time of taking, with compound interest, or, alternatively, to seek a joint reference to the Federal Court on the basis for compensation. This offer was also rejected as unacceptable.

In December, 1979, eleven cut-off bands filed suit against Canada, alleging breach of trust, and that the cut-off legislation

was ultra vires. This court action was held in abeyance when it was agreed in January 1981 that the two governments would begin a new round of negotiations with the 22 individual bands as opposed to dealing with a representative committee as in the past. The Federal negotiator is seeking a new mandate from Cabinet and it is anticipated the negotiations will commence in July 1981.

(3) ALBERTA

(a) Background

There is no established Tripartite process at the Provincial level at the present time. Alberta resists any suggestion for the creation of a formal tripartite process, although leaves open the possibility of such processes being established to deal with specific issues.

During January an informal meeting was held between the department and officials of the Alberta Native Secretariat and the Ministry of Intergovernmental Affairs. Areas of priority concern to Alberta included Claims (Cree Chip Claims) Resource Development and Off Reserve Services.

(b) Issues

(1) Extension of Services General

In April, 1978, the Alberta Government announced an "Extension Policy" for providing Provincial services to Treaty Indians, indicating its willingness to assume the full cost of delivering services off-reserve on the condition that the Federal Government upgrade on-reserve services to Provincial standards, and that Alberta be reimbursed 100% for any services delivered to Indians living on-reserve. Alberta also indicated its willingness to assume all off-reserve costs subject to normal chargeback (i.e. Canada Assistance Plan) upon conclusion of a general agreement.

The Chiefs of Alberta rejected the Extension Policy as an extended welfare

program perpetuating the poverty cycle. The Policy was also seen as a threat to treaty and aboriginal rights by proposing the transfer of responsibility from the Federal to the Provincial Government for services to Indians living off reserves.

In June, 1979, the Chiefs submitted to both governments a counter-proposal entitled "Provincial/Indian relations". The counter-proposal called for the Federal government to recognize its responsibility for all social and maintenance programs, while the Provincial Government would contribute to economic development and employment generating programs. It also proposed a one-year moratorium on individual band discussions while the broader tripartite discussions would proceed.

In late 1980, following a series of bilateral meetings between the Indian Association of Alberta and the Provincial government, the IAA has presented a new series of documents in this area.

(2) Blackfoot Social Services

In 1977, the Blackfoot Band in Gleichen, Alberta, submitted a social services proposal to the Federal and Provincial Governments. Both Alberta and Canada responded to that proposal with agreements in principle that improved services were both desirable and necessary if positive and progressive social service delivery was to be achieved.

During the course of subsequent tripartite negotiations, which extended over a two year period, the parties were unable to reach agreement regarding the financing of the proposed programs. In addition, the Blackfoot Band withdrew from the discussions, on a temporary basis, in order to re-examine its own position on social service delivery.

In June, 1980, the Blackfoot Band submitted another proposal to the Federal and Provincial governments. Essentially

this proposal is a re-working of the 1977 package, and represents a renewed effort on the part of the Band to improve the range and quality of social services available to the Blackfoot people. The Federal government has agreed in principle to the revised proposal. The Band is awaiting a substantive response to the proposal from the Alberta Government, however, the Federal Government has received from Alberta an indication that "the Provincial response will provide a positive basis from which both the Federal and Provincial governments can address the social service concerns of the Blackfoot Band."

(3) Resource Development/Economic/  
Environmental Issues

During the past few years, the department has recognized a need to provide increased support to Indian groups in Alberta to facilitate their involvement in the development of their own resources and other Alberta adjacent economic opportunities. At present, the department is involved in a wide range of Indian resource initiatives and specific energy projects which includes the following:

- (a) Assurances from the Shell Alsands Consortium and ESSO at Cold Lake to provide training, employment, business development support and other special measures to Indian and Native people living in the vicinity of the proposed projects.
- (b) Requests from Indian Bands adjacent to the Alsands and Cold Lake Heavy Oil projects to provide infrastructure comparable with surrounding non-Indian communities such that the former are capable of effective participation.
- (c) Requests to provide Indians equity participation in major energy projects.



- (d) Mitigative measures to reduce the impact of the pipeline development on the Indian people and to assist them in taking advantage of the socio-economic opportunities.
- (e) Affirmative Action issues, including the ATC challenge of the Alberta Human Rights legislation.
- (f) Requests for organizational assistance from individual bands and umbrella groups (i.e. TCA, ATC, IOGPA, etc).

The Indian and Inuit Program is presently developing a comprehensive strategy and range of policy instruments to support Indian initiatives in this field. A discussion paper on this subject is presently being developed to go forward to MSSD later in the year. To address the most immediate, the Federal Government recently approved \$1 M of emergency funding for resource development projects. The following is a list of Indian groups in Alberta that will receive funding:

- (a) The Tribal Chiefs Association (6 Bands).
  - (b) The Cold Lake Band.
  - (c) The Athabaska Tribal Council (5 Bands).
  - (d) The Indian Association of Alberta (on behalf of nine Bands affected by the Alaska Highway). *Pipeline*
  - (e) The Peigon Band.
  - (f) The Fort McMurray Band.
  - (g) The Indian Oil and Gas Producers of Alberta (17 Bands).
- (4) Federal-Provincial Indian Special Constable (3b) Program

(See Policing re National Issues above.)

(5) Other Issues

- (a) Assured Income for Severely Handicapped (AISH) Program - Alberta's Assured Income for the Severely Handicapped (AISH) program came into effect on December 1, 1979. While the program first excluded handicapped persons living on reserve, Alberta modified its policy in early 1980 stating that Treaty Indians and persons living on reserve could apply for and receive AISH benefits if they met the program's eligibility requirements. The Province indicated that they would absorb the administrative expenses but expected the Federal Government to reimburse the province for the amount of individual benefits paid to Treaty Indians.

The provincial request for reimbursement was initially directed to Health and Welfare Canada, and was subsequently referred to DIAND. In responding to the province, the Department indicated that the AISH program raised in more specific terms many of the same questions which arose in the context of Alberta's overall policy regarding the extension of provincial services to Treaty Indians. The Department further advised that it could not accede to the Alberta request, and urged the province to support the initiation of tripartite discussions to address the issue, as well as other matters of mutual concern. There have been no further developments on this issue since the Departmental position on reimbursement was conveyed to Alberta last year.

- (b) Redwood Meadows Development, Enoch Land Development Ltd - Sarcee and Enoch Bands conditionally surrendered reserve lands to develop major non-Indian residential subdivisions. There is jurisdictional uncertainty

over the governance of such developments and discussions have been held with Alberta and the Bands on the problems involved. Following a referral by the Province the jurisdictional questions are being heard by the Alberta Court of Appeal.

- (c) Relocation of Chief Smallboy and his breakaway group from Hobbema Band - Chief Smallboy and his group of followers broke away from their Band in 1968 and requested lands for relocation. Various attempts have been made to obtain lands, without success. In October 1980, Chief Smallboy requested a lease of lands under the jurisdiction of the Alberta Transportation Department and the request is under consideration by the Alberta Government.
- (d) Blackfoot Coal - Discussions to have Alberta environment laws apply to a coal operation on the reserve.
- (e) Court Reference Re-Status of Private Land Purchased by Indians - A number of wealthier bands have purchased private land for Indian use and are claiming reserve status for land. (Further information to be provided).
- (f) Specific Claims -
  - (i) Fort Chipewyan Cree Band Treaty Land Entitlement Claim - The Cree Band of Fort Chipewyan in Northern Alberta signed Treaty 8 in 1899 but have not to this date received any reserve land. During the early 1970's the Federal Government and the Band reached agreement regarding the amount of the entitlement but the Province would not support the proposed settlement.

Recently, however, the Province indicated in discussion with ONC that they support a speedy

resolution of this issue. While the Province maintains its previous position on the total entitlement acreage, it has expressed a willingness to allow the Federal Government to provide an increased amount of land from Wood Buffalo National Park, including additional surface and sub-surface rights. ONC has appointed a negotiator and detailed discussions are now beginning.

- (ii) Other - The province is concerned with upwards of 24 other treaty entitlement claims, particularly those in the mineral and oil rich parts of the province. Development could be seriously affected if litigation such as the Lubicon Lake action alleging unextinguished aboriginal rights continues in the courts.
- (iii) Land surrender claims could become a serious problem for the province if challenges to surrenders continue to arise. There are potentially large quantities of land at issue. The Enoch band earlier rejected a federal settlement proposal and is pursuing this matter in the courts.
- (g) 1930 Resource Transfer Agreement - Discussions to clarify the intent of these agreements and to eliminate those conditions which are not of advantage to Indian people.

(4) SASKATCHEWAN

(a) Background

The Government of Saskatchewan has been historically reluctant to accept responsibility for its Status Indian population. The Province currently delivers services to Status Indians after their completion of a 12 month off-reserve residency and is prepared to deliver services only if it is assured of 100% cost recovery, and then only with the endorsement of the Indian leadership.

The Federation of Saskatchewan Indians on the other hand, has strongly advised individual bands not to endorse Federal/Provincial service agreements and urged Status Indians in general against accepting Provincial services regardless of whether they live on or off reserve. There have been some indications that the Federation of Saskatchewan Indians' strong stand against Provincial involvement may be mellowing.

The gaps in services that exist as a result of this situation have limited Department of Indian Affairs and Northern Development's capacity to deliver adequate programs/services and have led to unfavourable publicity.

While there is no formal ongoing tripartite process, it is encouraging to note progress on "issue-specific" processes. Successful negotiations have been proceeding on land entitlements for the past four years and good progress has been made in the area of access roads to Indian reserves and the issue of the Indian Federated College.

(b) Issues

(1) Saskatchewan Indian Federated College

Saskatchewan Indian Federated College established at the University of Regina in 1976 has been unsuccessful in securing continuity of funding. The Federal Government currently provides year-by-year contributions totalling \$1,300,000 over four years. Also the Province has

contributed funding support of approximately \$754K in the same period. An extension of the governing Treasury Board authority, for the year ending March 31st, 1981, committed \$500,000 to the College on the condition that a federal-provincial agreement for long-term funding was negotiated. Those negotiations commenced January 1981. The issue revolves around the federal government's assertion that post-secondary education is a Provincial responsibility for which the Province is compensated through federal-provincial fiscal transfers (Established Programs Financing); and the provincial government's contention that Status Indians are exclusively a federal responsibility, outside the coverage of EPF.

While it is generally perceived that the Indian Federated College at the University of Regina is the most pressing Indian Educational issue for tripartite discussion, it should be noted that the Federation is also pressing for the resolution of funding arrangements for the Indian Community College and the Indian Cultural College.

(2) Provision of Social Services (especially Child Welfare) to Off Reserve Status Indians

Secondly, since 1973, DIAND and the Province of Saskatchewan have disputed the Province's demand that the federal government provide social assistance and services during the first year that Indian people reside off-reserve, and that Indian people living off-reserve must thereafter choose to receive social assistance from the Province rather than from the federal government. This policy position of the Saskatchewan Government appears to be in contradiction of the provisions of the Canada Assistance Plan Agreements, Part I.

Until 1973, the Province of Saskatchewan provided social assistance and services to Indian people who were living off-reserve

in places such as Saskatoon and Regina. However, in that year, the Province notified the Minister of Indian Affairs and Northern Development, the Honourable Jean Chrétien, that it would expect this Department to provide such assistance during the first year that Indian people had moved off the reserve. Mr. Chrétien replied that this Department would do so in order to prevent hardship, but that the temporary provision in no way implied agreement with the policy put forth.

The issue respecting the imposition of a residency requirement is further complicated by the Provincial government encouraging Indian people living off-reserve for more than one year to seek federal assistance. The Saskatchewan Regional Office now refers such applicants to the Provincial government for aid after one year. Although the Province is generally accepting these referrals, they insist that the person specify that they wish to receive assistance from the Province in lieu of the federal government. The present situation remains unstable and controversial.

Pending Canada-Saskatchewan negotiations to resolve this issue, the federal government is continuing to provide social assistance to Indian people who are in need during the first twelve months that they are resident off the reserve in a Provincial municipality and expects the Province to assume its responsibility the following year after that.

(3) Specific Claims

a) Land Entitlements

Several outstanding entitlement claims have been dealt with in recent months. The progress made on settlements in Saskatchewan is viewed positively by all parties. One entitlement settlement has recently been completed and several others are nearing completion as most of the problems between governments have been

resolved. The FSI has recently brought forward entitlement claims for 12 further bands involving over 600,000 acres. The quantity of land is of some concern.

b) Ministikwan Band Claim

A claim by Ministikwan band for lands surveyed for Indian purposes before the Natural Resources Transfer Agreement of 1930 is of concern to the province. Technically these lands were neither reserved for the Indians, nor transferred to the province. The province has, however, leased or exploited part of the lands. Discussions are taking place between the governments.

c) Land Surrenders

Land surrenders, a major problem, are of concern to the province, which is resisting any involvement in such claims. The issues involved are breach of trust, fraud, coercion, etc.

(4) Federal-Provincial Indian Special Constable Program

(See National Overview.)

(5) Saskatchewan Grid and Farm Access Road Agreement

Since the Spring of 1980, the Regional Office (Saskatchewan) and the Province have had formal discussions directed to an eventual shared-cost agreement for the construction and maintenance of access roads to Indian Reserves and roads internal to Reserves. The status of the negotiations as of February, 1981 indicate:

- (i) Federal-Provincial disagreement on the need to await Indian Band designation of main access roads and interior reserve roads; the Federal Government is insistent that Indian input, already requested, is requisite for proceeding.



(ii) Provincial pressure at the Ministerial level to accept, as part of the agreement, a federal contribution to pay 50% of maintenance costs of provincial access roads to Indian reserves; no precedent currently operates for such a federal contribution in Saskatchewan.

(6) 1930 Resource Transfer Agreement

Discussions to clarify the intent of these agreements and to eliminate those conditions which are not of advantage to Indian people.

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(5) MANITOBA

(a) BACKGROUND

In 1976 a general Tripartite Committee was established to examine intergovernmental arrangements covering programs & services to Indian people. Since that time, with several interruptions due to the Federal and Provincial elections and political events concerning the stability of the Manitoba Indian Brotherhood, tripartite discussions have focused on the responsibilities of the two levels of Government for the provision of services and of ways to improve and "rationalize" such services. After extended negotiations it was obvious the issue cannot be settled within the context of one province. The Federal Government thus suggested the parties agree to elevate the issue of responsibility to the constitutional renewal process. This approach was intended to enable the Manitoba Tripartite process to focus on shorter term, problematic priority issues, such as the need for improved care and protection of Indian Children. The Manitoba Government has not formally responded to the suggestion, but has subsequently participated in discussions concerning a "priority" item: Child Welfare.

The province has traditionally taken a "hard-line" on the responsibility issue. The issue is constantly raised in all tripartite discussions, with the consequent impediment to resolving the more immediate concerns.

At the Conference of Federal-Provincial Ministers of Social Services, December 8 and 9, 1980 and in subsequent correspondence the Honourable G. Minaker, Provincial Minister of Community Services and Corrections, restated the Manitoba position that "some (Indian) needs remain unserved" and that the primary responsibility remains with the Federal Government:

- (1) for on-reserve Indians the Province was prepared to deliver services "if acceptable financial compensation can be negotiated" (i.e. 100% charge-backs);

- (2) in off-reserve situations the Province seeks "some continuing Federal responsibility to alleviate the exceptional needs".

(b) ISSUES

(1) Federal-Provincial Services Agreement

In 1976 the Province presented a detailed proposal for new intergovernmental arrangements to cover all programs for Indian people. The proposal however, raised fundamental issues respecting the responsibilities of the two levels of government (see above). Differences in positions lead to a suspension of these discussions on general social service concerns. The discussions are in abeyance, pending development on the specific child welfare discussion.

(2) Child Welfare Agreement

A tripartite Indian Child Welfare Sub-Committee was formed February, 1977, to examine child and family services in order to develop a model for services delivery and recommendations which would serve as the basis for improving protection and care for neglected Indian Children. In April 1980 the Sub-Committee submitted its report to the Manitoba Tripartite Committee.

In July 1979, a ruling from the Manitoba Provincial Court received considerable media attention and demonstrated once again that Indian child neglect in Manitoba would have to be dealt with on an urgent basis by the two governments.

Since September 1980, the Federal and Provincial governments and the Four Nations Confederacy have been negotiating a tripartite "Master" Indian Child Welfare Agreement for Manitoba. The purpose would be an agreement in principle setting out the application and operation of the Manitoba Child Welfare Act to Indian people in Manitoba, while leaving the details of program organization and

related expenditure levels to subsequent regional or band specific Subsidiary Agreements.

The master Child Welfare Agreement is essentially negotiated and the department is presently seeking authority, and the requisite financial resources, to conclude the Agreement.

(3) Reserve Policing

Manitoba is one of the provinces wherein the RCMP provide a provincial policing service and as such the national issue, item no. 7, negotiation of Federal-Provincial-Indian Policing agreements is applicable.

In addition to the RCMP 3B Program, a three year pilot project was undertaken in 1978, experimenting with a police force operated by a district council on behalf of a number of small adjacent reserves. The Dakota Ojibway Tribal Council Police program is under the general direction of a committee representing the bands, this department, the province and the RCMP. Constables are warranted for a narrow range of policing duties by the Provincial Government. Funding is 73% Federal 27% Provincial and while funds have been provided for an additional year beyond the expiration date of March 31, 1981, the Province has indicated that their continued participation is predicted on the results of a program review commissioned by the Solicitor General; the results of the review are expected to be announced in the fall of 1981.

The Solicitor General's Department funded a token contribution of \$12,500 in 1980/81 towards the costs of the D.O.T.C. police committee in recognition of their innovative concept in police management. They have indicated, however, that it is not their intent to contribute substantially towards the D.O.T.C. Tribal Police Force.

(4) Manitoba Northern Flood Agreement -  
Implementation

During the period 1972-78 Manitoba Hydro undertook the development of a massive hydro-electric construction project encompassing the Churchill River, Nelson River and Lake Winnipeg. This construction entailed major socio-economic and environmental impacts on five Indian bands. In an attempt to address and alleviate these impacts, the bands (represented by the Northern Flood Committee), the Provincial and Federal Governments and Manitoba Hydro signed an agreement setting out a number of obligations and undertakings by the respective parties.

Several of these obligations are currently in dispute as amongst the NFC and the two governments, in terms of quantity and quality and intent, and are being brought forward to an recently appointed Arbitrator. The issue in essence concerns an apparent failure on the part of the Federal Government to implement several of the undertakings.

(5) Child Related Income Support Program

On January 1981, the Province introduced a new program for Provincial residents the purpose of which is to assist low income families only in meeting the costs involved in caring for children.

The department was not consulted on this program and the Provincial regulations prohibits Status Indians living on Reserve or in receipt of Social Assistance from Canada from eligibility for the program.

While the program is designed such that individuals on social assistance do not stand to gain financially, the province has offered to extend the program to Status Indians, upon 100% Federal charge-back. The Province recently requested discussions on the program these are expected to commence by the fall.

(6) Education

The Province has traditionally extended financial assistance to Urban Status Indians. However lately students who normally would be eligible for financial assistance are being denied such assistance on the basis that as Status Indians they are a Federal responsibility.

In one recent case a Status Indian resident in Winnipeg for 10 years, in regular attendance in the school system, and previously assisted via a Provincial Student Aid Bursary for 2-3 years, was considered ineligible on the basis of being a Status Indian.

(7) Dunsekekan

The Fairford Band claims that this island is part of their Reserve and we support their position. Manitoba does not accept this position and following confirmation of our position with Justice, we will be holding discussions with Manitoba on the issue.

(8) 1930 Resource Transfer Agreement

Discussions to clarify the intent of these agreements and to eliminate those conditions which are not of advantage to Indian people.

(9) Specific Claims

a) Treaty Land Entitlements

Treaty land entitlements are a major concern of the province. Some 15 claims will be validated by Canada in 1981. Given difficulties over takings of Indian lands for public purposes, the province has refused to provide entitlement lands on the same basis as Saskatchewan. Discussions on these topics are expected to begin in the near future.

b) Cross Lake Band Claim

A claim by Cross Lake Band pertains to lands surveyed for Indian purposes but never granted reserve status. The province is objecting on the basis of legal arguments to the grant of reserve status to those lands.

(6) ONTARIO

(a) BACKGROUND

The Ontario Tripartite Process was established in March 1978 by the Federal and Provincial Governments and the four Ontario Status Indian Associations. A number of priority issues of mutual concern to the three parties were identified, and a mechanism to allow for discussions aimed at resolution of those issues was established. The mechanism consists of:

- (1) Tripartite Council: (Ministerial level) - Three meetings to date, subsequent meetings to be arranged, with two meetings per year acknowledged as a minimum requirement.
- (2) Tripartite Steering Committee: (Deputy Minister level) - Most recent meeting occurred February 6, 1981; subsequent meetings to be arranged with four meetings per year acknowledged as a minimum requirement. Meetings are chaired by the Indian Commission of Ontario.
- (3) Working Groups: (Officials) - Meetings are scheduled on an as required basis, and are chaired by the Indian Commission of Ontario.

Following the creation of the Tripartite mechanism, the parties agreed upon the need for a independent body to facilitate the process. As a result, in September 1978, the Indian Commission of Ontario (ICO) was established under the authority of concurrent Federal and Provincial Orders in Council, with Mr. Justice E. Patrick Hartt as Commissioner.

Preliminary work has begun with respect to the in-depth evaluation of the Commission which will be undertaken in the near future in order to better determine the future of the Ontario Tripartite Process when the ICO's mandate expires in September, 1982.



(b) ISSUES

(1) Hunting and Fishing

The issue of Indian rights given by Treaty and of regulations governing hunting and fishing has been a source of long-standing conflict and concern. A Working Group was established to clarify the issue, and to make recommendations to resolve the conflict. Issues with national implications are to be identified and possibly referred to constitutional discussions.

The administration of inland fisheries has been delegated to Ontario by the Federal Government. The Ontario Fishery Regulations make no special provisions for Indian food fishery although the Province has stated an official policy giving Indian food fishing priority over sports and commercial fishing.

The Indian people have called for a moratorium on the laying of hunting and fishing charges in Ontario until the question of treaty rights, jurisdiction and policy have been resolved. Both levels of government refused this request, however, the Federal Government supported an AIAI proposal put forward in June, 1980 to establish a review system whereby a senior provincial officer would review all fishing charges against individual Indians in order to determine whether Ontario should pursue the charges through the courts. The Federal Government and the Indian Associations are still awaiting a provincial response to the proposal.

(2) Wild Rice

In northwestern Ontario, Indian people regard harvesting of the wild rice crop as their exclusive right. However, the Ontario government has in the past opened the harvesting to non-Indians as well. A working group was established to attempt to define the nature and extent of Indian

rights and to develop a viable wild rice industry. A 5-year moratorium on new licences was imposed by the provincial government in 1978 to allow for this development, and discussions were initiated with the province in an attempt to reach agreement as to how the wild rice industry can best be developed. Recently, however Grand Council Treaty No. 3, the local Indian association, refused to become involved in tripartite wild rice projects that involve non-Indian entrepreneurs, and further indicated that its future participation in the Working Group would depend on the Province's response to the question of its financial commitment to the development of the wild rice industry, particularly in terms of Indian involvement, and upon Ontario's willingness to refrain from any discussion of the rights issue.

The Working Group has also commissioned a hydrological study of water levels which was proposed by Treaty #3. The study will encompass most of the watershed in the Treaty #3 area.

(3) Lands and Resources

A number of bands in the province have an insufficient land base or, in some cases, no reserve at all. The Canada-Ontario Indian Lands Agreement (1924) has been found unsatisfactory by the parties. In addition, a more substantial reserve base is desired by many bands. A working group is presently addressing these issues, with a focus on the revision of the 1924 Lands Agreement.

(4) Services to Status Indians

Indian people and the governments have expressed concern at the adequacy and scope of services presently provided. Additionally, questions have been raised regarding the responsibility for providing services to Indian people on and off reserve. The working group dealing with this issue has undertaken an extensive

review of services, and is documenting information relevant to resolution of the responsibility issue. Working in parallel to the main working group is a Subcommittee on Social Services. The second report of this group, recommending new arrangements for the provision of social services to Indian Communities, has now been presented to the Services Working Group and to the Tripartite Steering Committee. The working group is currently focussing on the implementation of the recommendations contained in that report.

(5) Grassy Narrows/Islington (Whitedog) Mediation

On December 15, 1979 Canada and Ontario entered into an agreement with the Grassy Narrows and Whitedog Bands to participate in a mediation process intended to achieve settlement of several long standing issues related to environmental pollution and the long-term social, economic and educational needs of the communities.

As of January 1981, discussions with the two bands are occurring separately. The following is a summary of the status of the two mediation processes.

Grassy Narrows

Due to a series of delays caused by changes in the Band's leadership, the Grassy Narrows negotiations have been proceeding somewhat more slowly than the Whitedog negotiations over the past year. However, the Band has recently submitted (May 27, 1981) a revised proposal which requests a comprehensive lump-sum payment of \$13,3 million from the Federal Government. This proposal is presently under review by the department.

The constitution agreement with Grassy Narrows is due to terminate July 2, 1981. However, it is anticipated that this agreement will be extended to December 31, 1981.

Islington (Whitedog)

The Whitedog mediation process as set out in the Memorandum of Understanding of December 15, 1978 come to an end on May 31, 1981. However, it is understood that the parties will continue to negotiate with the Islington Band on a voluntary basis.

As of May 31, 1981 all parties have submitted formal settlement offers to the Band. The Band has yet to respond formally to any offer and appears to be taking the position that it will not finalize negotiations with any one party until all negotiations have been completed. This could potentially extend all negotiations substantially as there are significant differences of position with respect to the various parties on the Great Lakes Forest Product Limited/Reed Paper proposal.

NOTE: The Jim Lake (Minaki-Pagwash) Forest Road Access has not been an issue in recent months as the Province and DREE have placed a temporary hold on the construction of the road. This road could become an issue again, however, as both bands consider the land the road crosses to be subject to the mediation process.

Additionally, the Minister has requested a meeting with the Honourable Pierre De Bané (DREE) to deal with the issue, and is currently awaiting a response.

(7) Policing Agreement

Approximately 120 Indian special constables are to be employed on reserves in Ontario under a jointly funded federal-provincial program. The previous agreement expired on March 31, 1980. Negotiations for a new agreement have been completed and the document was ratified on April 11, 1981, by this department on behalf of the Federal Government, the Province of Ontario and the four recognized Indian Association of Ontario. Discussions are now under way with a view

to establishing an Ontario Indian Police Commission and conducting an evaluation of the Indian Policing Program, as per the terms of the Agreement.

(8) Specific Claims

a) Claims Resolution Process

Nine land claims have been filed with the ICO for assistance in conducting the review of validity and seeking resolution. This process was initiated on an experimental basis in an attempt to find a better method of resolving claims than that employed in the established claims negotiation process. To date one claim has been accepted by the Minister for negotiation, the parties have agreed that an evaluation of the effectiveness of the process will be undertaken before any additional claims are referred.

b) Temagami Claim

After six years of litigation the province agreed in 1980 to join Canada and the band in negotiating a settlement of the claim. The ICO is assisting and terms of reference for negotiations have been discussed.

c) Big Grassy/Sabaskong Claim

The province agreed to join Canada and the Big Grassy and Sabaskong Bands in negotiating a settlement to Little Grassy Reserve 35EI. The land was identified under Treaty 3 for reserve purposes and despite a federal-provincial agreement in 1915 to confirm reserve status, the lands were alienated by the province.

(9) Shoal Lake Bands 39 and 40

In 1978, Shoal Lake Bands 39 and 40 requested assistance through the Ontario Tripartite process to deal with the

imposition of fishing quotas by the Province. The ICO was directed by the Tripartite Steering Committee to facilitate all-party discussions. The ICO subsequently became involved in other matters of concern to the Bands, including the question of Indian participation in the management of provincial resource policies, and the development of on-reserve alternative economic opportunities.

(10) Headlands Boundaries Treaty No. 3

Treaty No. 3 Bands claim their reserve boundaries include the water, underlying land and islands within projected headlands and we support this position. It appears Ontario will deny the claim and we have asked the Province to state its position. We will try to bring the three parties together to resolve the issue.

(11) St. Regis Band

Discussions to resolve problems associated with the new interprovincial boundary, land claims and the Seaway expropriations.

(12) Nipissing Band

Discussions to negotiate the return from the Province to Reserve status of 34,000 acres of unsold surrendered land.

(13) Walpole Island Band

Discussions to negotiate the boundaries of the Reserve with respect to Lake St. Clair, St. Clair River including the Seaway and the Chenal Ecarte River.

(7) QUEBEC

(a) BACKGROUND

Since 1965 the Department of Indian Affairs has entered into bilateral contracts to reimburse eight (8) Centres des Services Sociaux for a wide range of social services delivered to Indian reserve communities. By virtue of the James Bay and Northern Quebec Agreement, contracts with two Centres for delivery of services to the Crees were not renewed as of April 1, 1981. Delivery of these services were taken over by the Cree Regional Health and Social Services Center (see Section 16).

In 1971, the Quebec Minister of Social Affairs requested an agreement with Canada under Part II of the Canada Assistance Plan which would provide for Federal-Provincial cost-sharing at a level of 100% for welfare assistance and services provided to Indian people on reserve and 50% for those provided to Indians living off reserves. Negative reaction from Indian leaders and other factors prevented an expansion of the Canada Assistance Plan, Part II in this manner.

The Province, however, continued to deliver social services as previously through the Centres des Services Sociaux. Adapted services were delivered to reserve Indians under contract terms of 100% reimbursement. A full range of services were delivered to off-reserve Indians without bill-back to the Department of Indian Affairs and Northern Development.

In November, 1977, the Quebec Government undertook to enforce a law requiring review and approval by the Provincial Cabinet of all intergovernmental agreements. The contracts between the Department of Indian Affairs and the Centres des Services Sociaux came under this classification. The Quebec Minister of Health and Social Services took the occasion to propose a general social services agreement with Canada which would:

- (1) Cost-share the Income Security program for Cree hunters and trappers.

- (2) Apply to all Indians as described in the Indian Act, except those under the James Bay Agreement and in Northern Quebec.
- (3) Extend the same health and social services and social assistance to these Indians as other Quebecers receive.
- (4) Would reimburse the Province 100% of all costs.

The Federal Minister, while expressing a willingness to consider these positions stated that no discussions could take place without the participation of Indian representatives.

All indications from Indian spokesman point to their unwillingness at the present time to undertake tripartite discussions.

In the absence of any other arrangement, the contracts with the Centres des Services Sociaux have been renewed.

An initiative is being taken by the Conseil Attikamek-Montagnais to establish its own Centre des Services Sociaux with appropriate provincial certification. The Conseil wants to enter into bilateral discussions with the Province, while looking to the Federal Government for support and funding. To date, all Federal input has been made by Regional staff.

The prospect of tripartite negotiations in Quebec on the delivery and funding of social services is an unlikely one for the very near future.

(b) ISSUES

(1) Social Assistance

Upon request from a band, Quebec delivers social aid (equivalent to social assistance) to band members without any charge-back to DIAND. All of the Inuit and all of the Cree bands, except for Mistassini and Waswanipi, are in receipt of such services from Quebec.



(2) Policing

Discussions have been proceeding at the Regional level with Quebec on policing programs. These separate discussions encompass:

(i) The Amerindian Policing Program (not presently covered by Federal-Provincial agreement). The Amerindian Police Special Constable Program in Quebec operates as an independent police force under control of a council representing the various Quebec Indian linguistic groups. The Officer-in-Charge of the force, under general direction of council, selects and trains staff, sets terms and conditions of work and supervises performance. Constables are warranted by the Province under the Quebec Police Act for a full range of policing duties (Criminal Code, provincial laws applicable on Indian reserves, and band by-laws). Funding at the moment is 100% Federal. However, in response to overtures from the department's Regional Director General the province has indicated a willingness in principle to a cost sharing formula of 60% Federal 40% Provincial, gradually adjusted to 52% Federal 48% Provincial by 1982-83 to coincide with similar arrangements between Canada and Ontario.

(ii) Policing under the James Bay Agreement

Arrangements are completed for policing services in the Cree communities. Quebec has trained and appointed a total of fifteen (15) special Cree constables who work in the Cree communities. They are supervised and assisted by the Sureté du Québec. Cost-sharing with Canada will be 60% Federal and 40% Provincial from January 1,

1979, to March 31, 1981 inclusive; 56% Federal 44% Provincial for 1981/82; and 52% Federal 48% Provincial for 1982/83.

(iii) Caughnawaga Policing

Pressure is being exerted on the Band to regularize the illegal status of its ten peacekeepers. Quebec is prepared to appoint the ten men as peace officers as they have had considerable training on the job and supervision since July of 1979. The Department should re-examine its practice of funding an illegal police force should the Band Council of Kahnawake again defer its request that Quebec appoint the men as policemen. Caughnawaga and Village Huron are the only two reserves who have band-employed constables. The four Huron officers are legal appointments. Should an agreement materialize with Quebec for cost-sharing the Amerindian Policy Program, it will include the Caughnawaga and Huron policemen also, though the bands will continue to be the employers.

(3) Northern Quebec Transfer Agreement

- (i) The Northern Quebec Transfer Agreement, which is an Agreement between the Province of Quebec and the Government of Canada, was signed by Mr. Munro on February 13, 1981. The effective date of the Agreement is February 10, the day on which Quebec Ministers signed.
- (ii) The Agreement provides that Quebec will assume total responsibility for the provision to the 13 Inuit communities of Northern Quebec of housing, water, sanitation, electricity and related municipal services. The Agreement was required in order to rationalize the delivery of municipal services

in line with the municipal system established under the James Bay and Northern Quebec Agreement.

- (iii) Under the provisions of the Agreement Canada transferred to Quebec all buildings, vehicles, generators and other property used in the provision of these services. The total value of properties transferred is \$30.2 million.
  - (iv) The Agreement provides that Canada will pay Quebec \$72 million dollars at the rate of \$8 million a year for 9 years.
  - (v) A second agreement, dealing with the establishment of a "unified system" for the provision of municipal services to Inuit communities, as provided for by Section 29.0.40 of the James Bay and Northern Quebec Agreement, is being negotiated with the Inuit (Makivik Corporation), Quebec, and Canada. It is anticipated that this agreement will be signed by all three parties in the near future.
- (4) Health Services: James Bay Agreement

The Grand Council of the Crees (of Quebec) have filed suit against Quebec and Canada alleging failure of the Governments to meet their responsibilities pursuant to Section 14 of the James Bay Agreement respecting the provision of Health and Social Services in the James Bay Territory and pursuant also to Section 28 with respect to "essential sanitation services" in each of the Cree communities. While Canada has some residual responsibilities for delivery of health services in James Bay (as specified under Section 14) these terminate on March 31st, 1981; Quebec having already assumed

responsibility under Section 14, will thereafter have exclusive obligation except in the case of federal programs of general application. There is no jurisdictional disagreement as between Canada and Quebec. The action of the Crees is based on their complaint about inadequacy of funding of the Cree Regional Health Board and a desire to have responsibility for services transferred to Canada. The Department's position on the matter has been to insist that the Cree resolve the issue with Quebec and to offer any support to the process of resolution that may be mutually desired by the two parties.

The Cree base their legal case against Canada upon insufficient funding available from Canada to provide essential sanitation services soon enough to prevent epidemics and loss of lives. To compensate for loss of life, other inconveniences, corrective measures already taken on their own, and corrective measures still required, the Cree are claiming an award from the Federal Government of 300 million dollars.

(5) Cree/Naskapi Act

Discussions concerning implementation of the legislation relating primarily to local government and lands administration for Cree and Naskapi of James Bay, as required by the James Bay Agreements, are coming to an end. Legislation on this subject should be ready for tabling in the House in the Fall of 1981.

(6) Conseil Attikamek-Montagnais Land Claim

This is a comprehensive claim accepted by the Minister for negotiation in October 1979, subject to the participation of the Province of Quebec. The province agreed to enter into tripartite negotiations in September 1980 and it is anticipated that formal discussions will begin in May or June 1981. The relative roles and responsibilities of the federal and provincial governments are still to be

determined. In recent discussions with the Office of Native Claims provincial officials suggested that the Province is prepared to assume full responsibility for all aspects of the anticipated settlement package, including monetary compensation; but, unlike the situation in the James Bay negotiations, there is no legal requirement for them to do so. It is expected that several issues between the governments will emerge as the negotiations proceed.

(7) Trapping - Labrador

Although Quebec Region has no administrative function in the Territory of Labrador and although negotiation with that Province is normally the responsibility of the Maritime Regional Office, the Quebec Regional office has directly negotiated with Newfoundland a solution to the problem confronting Quebec Montagnais trappers, whose traplines are at least partially located in Labrador.

In December 1980, Prime Minister Peckford wrote to the Honourable John Munro indicating that the Province had agreed to revise its regulations to permit Quebec Montagnais Indians to be recognized as Labrador residents for the purpose of obtaining trapping permits in those areas of Labrador which were not being harvested by other residents of the Province of Newfoundland.

It is expected that those amendments will be made in time to allow the Indians to return to their Labrador traplines in the late summer and fall of 1981.

(c) Tripartite Negotiations

(1) James Bay and Northern Quebec Agreements

The James Bay and Northern Quebec Agreement (JBNQA) and the Northeastern Quebec Agreement (NQA) resulted in the creation of numerous tripartite committees. Of the thirty odd committees which were established in the initial

stages of those Agreements, the Federal Government now retains membership in twelve Joint Committees: Economic and Community Development; Education; Environment; Hunting, Fishing and Trapping Training; Housing; Resettlement, Great Whale River; Resettlement, Naskapis; Cree Trappers Association; Economic Development; Access Routes; and Cree Policing.

In addition to the above a good number of "ad hoc" tripartite meetings continue to take place.

It can be concluded, therefore, that the two Northern Quebec agreements have fostered regular and close relations between the two orders of government at the administrative level.

(8) NEW BRUNSWICK

(a) BACKGROUND

Traditionally discussions with New Brunswick have essentially been undertaken by the department's regional office, focussing upon local operational concerns. Recently, however, the Provincial Government has expressed some interest in the tripartite mechanism for specific issues.

(b) ISSUES

(1) Provincial Enrichment of Child Care Services

In November 1979, the Provincial Deputy Minister, Department of Social Services proposed to the department that extended child care services be delivered by the Province to three bands - Burnt Church, Big Cove and Tobique, with the department being responsible for 100% of administration and service costs. The province undertook extensive bilateral discussions with the three bands, and as a result put forward specific social service proposals for each of the respective reserves.

The department responded formally in May 1980 suggesting that a tripartite process be established to examine the implications of the proposal. In addition the department wrote to the three bands to seek their views regarding the provision of social services through the Province and their willingness to participate in the proposed tripartite forum. No response was received from the Province (only 1 of the 3 Bands responded), until December 1980 when the Minister of Social Services indicated that the Province was disappointed that DIAND had not as yet responded positively to their proposal. As a result of this comment the RDG requested a meeting with the Province. Subsequently on February 5, 1981 the Provincial Government agreed to establish a tripartite mechanism to undertake a general review of Child Care Services on

four reserves. (The Province recently started working on a fourth reserve - Eel Ground).

As a result of a letter received from Premier Hatfield, of New Brunswick, by our Minister dated March 12, 1981, progress on this issue has been delayed. Mr. Hatfield's letter basically touched upon several areas including this issue and the Region is awaiting Mr. Munro's response to Mr. Hatfield's letter before proceeding further.

(2) Reserve Policing

New Brunswick is the only province or territory where the RCMP provide a provincial policing service that does not participate in the RCMP's Special Native Constable Program. Discussions with the Province have occurred in the past, however they have been relatively unproductive as the province has indicated they were reluctant to enter into a cost-sharing program for reserve policing due to a shortage of funds.

(3) Other Issues

Other outstanding issues for potential tripartite discussion concern the need to re-examine and regularize the 1975 Education Agreement, and a provincial proposal respecting an escalator administrative over-head charge to the department for a Children in Care program.

Although formal negotiation has not taken place on overhead charge for children in care, the Region is paying these charges on an annual basis. It is anticipated negotiation will begin very shortly.

(4) Resources Agreement, Maritimes

Discussions to gain better advantages for Indian people from Resources under reserves where title is in the province.



(5) Land Claims

Recently Premier Hatfield, in his capacity as Minister for Federal-Provincial Relations, established a point of contact within the Provincial Government to analyse land claims matters pertaining to New Brunswick. The senior contact is the Secretary to the Cabinet who is supported by a policy analyst for Native and Indian Affairs, Mr. Daniel D. Horsman. Mr. Horsman recently met with the Office of Native Claims to discuss the claims on record within New Brunswick with a view of determining. a) the basis on which the Federal Government is prepared to negotiate these claims; b) the negotiating process itself; c) the expected outcome of the negotiations. The province is also interested in the question of aboriginal title with particular reference to New Brunswick. The Union of New Brunswick Indians has submitted a claim to the province on behalf of the Big Cove Band for lands alienated prior to confederation. Details were provided on the extent to which the Federal Government is dealing with the Big Cove Band in respect to their claims for loss of lands since Confederation.

(9) NOVA SCOTIA

(a) BACKGROUND

The Atlantic Regional Office met with the Nova Scotia Department of Social Services and the Department of Intergovernmental Affairs on February 2, 1981 on the invitation of the Province to discuss the possibility of re-establishing tripartite discussions in Nova Scotia; a general exchange of views has now occurred and further discussions are planned.

(b) ISSUES

(1) Social Services

The Department of Social Services, Province of Nova Scotia, is responsible for the tripartite mechanisms in that Province. Mr. Stirling, Minister of Social Services, at the Conference of Federal/Provincial Ministers (December 1980) expressed a desire to develop closer partnership arrangement for resolving issues which affect Indians in Nova Scotia. As a direct result, the Region has communicated to the Province our interpretation of what the role of the tripartite committee should be. Discussions will proceed on this item within the next few months.

(2) Federal/Provincial Indian Special Constable (3b) Program  
(See Policing - National Issues above.)

(3) Resources Agreement, Maritimes

Discussions to gain better advantages for Indian people from Resources under reserves where title is in the province.

(4) Land Claims

There is no provincial involvement in land claims in Nova Scotia at this time. However, it is possible that the Union of Nova Scotia Indians will approach the province in a manner similar to New Brunswick in respect to land alienations prior to confederation.

(10) PRINCE EDWARD ISLAND

(Situation stable.)

(11) NEWFOUNDLAND

(a) BACKGROUND

At the time Newfoundland entered Confederation, the position of Indian and Inuit as aborigines in the Province was not clarified in terms of any special status. The policy position of the Federal Government at that time was to abstain from designating funds for separate services and delivery to Indian and Inuit people in Newfoundland, in recognition of their unique and historic situation as full provincial citizens and the long experience of the Newfoundland Government in handling Native affairs.

However, between 1950 and 1964, at the request of the Province the Federal Government reimbursed Newfoundland for native medical costs and provided contributions of \$200,000 per year for capital expenditures directed towards projects for Indian and Inuit peoples.

In 1965, the first comprehensive Federal/Provincial agreement was struck designating the native medical coverage under an agreement with the Department of Health and Welfare. In addition the two governments broadened the range of other provincial programs and services delivered, under a separate Native development agreement with Indian Affairs, by the provincial authorities to natives and for which the Federal Government undertook to contribute to the associated costs. This approach of provincial delivery has prevailed in the subsequent renewals negotiated since that time (i.e., three renewals each covering 5 year intervals).

Since 1965, a Federal-Provincial Advisory Committee has existed to provide program planning, advice and guidance to the Province on the administration and delivery of programs and services to Natives covered by the Agreement. This Committee was expanded in 1973 to include representatives of the three provincial native associations.

In October 1980, in a public statement of policy, Premier Peckford indicated the provinces readiness to participate in

tripartite negotiations in respect to the Naskapi-Montagnais Innu Association and Labrador Inuit Association comprehensive land claims. The Premier, also stated that this participation would extend to the Conne River Indians if the Federal Government were to accept a claim from them.

(b) ISSUES

(1) Canada-Newfoundland Agreement

The Canada/Newfoundland Agreement for native development expired March 31, 1980. The renegotiation process led to a decision to formalize 2 separate agreements, one covering the Labrador communities, one the Indian Community of "Conne River" on the Island.

The two Agreements were signed on July 4, 1981.

- (2) Registration: At present, the Indian people of the Province of Newfoundland are not registered as Indians; no land settlement on claims has been made, nor are there any Indian reserves as such. In 1976, the Indians at Northwest River and Davis Inlet in Labrador made a formal request to be registered. A similar request was received from Conne River in Newfoundland. The required Order-in-Council was submitted December 1980.

The Treasury Board recently requested that the Department withdraw its submission and proceed by way of a Cabinet memorandum outlining the Provincial and National implications of registering the three communities.

The Premier has written to the Minister noting Provincial concern that registration "would not be in the best interests of the communities" i.e. the province has concerns respecting the homogeneous nature of mixed communities in Newfoundland-Labrador.

A request has now been received from the Federation of Newfoundland Indians to consider registration of people of Micmac origin in 13 other communities located on insular Newfoundland. The implications of this are presently being reviewed and a report should be forthcoming from Reserves and Trusts, Indian and Inuit Program.

(3) Policing

(See above National overview note, item #7).

(4) Comprehensive Land Claims

Before beginning tripartite negotiations with the NMIA and the LIA the province has insisted that bilateral discussions be held at the official level between the two governments to reach agreement on their respective roles and responsibilities in respect to the claims. Premier Peckford recently wrote the Minister checking him for seemingly avoiding the bilateral discussions and requesting an early meeting between officials. This will take place in the near future on the assumption that the province is no longer seeking a definitive decision on the claim of the Conne River Indians on the Island of Newfoundland before entering into negotiations on the Labrador claims. The Conne River claim is still under review.

(12) NORTHWEST TERRITORIES

(a) BACKGROUND

The NWT Government has traditionally offered government programs to all residents regardless of racial origin. These programs include education, social assistance, local government, premium-free health care insurance, economic development programs, etc. The NWT Legislative Assembly (22 members) now has a majority of native members and Indian and Inuit interests are well represented in the Assembly's deliberations.

There is only one small reserve in the NWT (Hay River) and this did not come into existence until the mid 1970's. As a result, only a miniscule number of status Indians, living in the NWT, are on reserve land. The NWTG continues to provide program services on the reserve. Treaties 8 and 11 apply in the NWT; however, no treaties were ever entered into with the Inuit. The Inuit population constitutes about 33% of the total NWT population.

(b) ISSUES

1. Health Services

The NWT has legislative competence in this field under the NWT Act; however, the Department of National Health and Welfare has attempted to transfer this program to the NWTG. This has met with resistance from both Inuit and Indian associations. More currently, discussions have started with the NWTG and the Inuit on the possibility of contracting the operation of the Frobisher Bay hospital to the NWTG. These discussions have not yet progressed to the stage where a definite agreement has been reached.

2. National Native Alcohol Abuse Program (NNAAP)

The NWT NNAAP was combined with the territorial Alcohol and Drug Co-ordinating council to avoid duplication of efforts and to co-ordinate the efficient use of

funds received from various sources. Native groups have argued that this procedure was not in keeping with the basic principle of the NNAAP.

3. Post Secondary Student Assistance

The NWT Government has provided, since 1964, a very generous student allowance program. The amounts, however, do not match the ones provided under the Department's E-12 policy. As a result there has been a difference between amounts received by Indian and Inuit northern students and their counterparts in the South.

A recent proposal in the NWT Legislative Assembly would, if put into effect, transfer responsibility for post-secondary education assistance to Indian and Inuit students back to the Department.

Comprehensive Claims

4. COPE Claim (Committee for the Original Peoples Entitlement)

The AIP for the COPE Claim resulted in the loss of access by the Yukon Government to the North Slope of the Yukon. The YTG has objected strenuously to this action. COPE claims that a review of the signed AIP is a breach of the Agreement by the Federal government and the Minister has called for a "cooling off" period.

5. DENE Claim

It is anticipated that a chief negotiator will be named in April 1981, and meetings on the claims will be scheduled soon after this appointment. The Dene Nation state they have a position ready to be tabled; however, we do not yet have a clear picture on what the principal elements in it will be. We assume the areas of land, self-government and resource control will be some of the key issues.



6. ITC Claim

Initial discussions on ITC claims have taken place. ITC originally objected to participation by the NWTG in the negotiation sessions but has since relaxed its position. One important issue in this claim is the ITC position that a new northern Territory (Nunavut) must be created. This issue is being raised in Cabinet in conjunction with other aspects of constitutional development.

Other key issues in the ITC Claims are wildlife management and resource revenue sharing (see also #7 below on this issue). To date, one "mini-agreement in principle" has been signed on the joint management of Keewatin caribou.

7. Bill C-48

All native associations, together with both Territorial governments, have joined together to oppose Bill C-48. Opposition centres on the following perceptions of the Bill:

- a) It impedes (if not prevents) the territories from ever attaining provincial type status.
- b) It places severe limitations on native claims by excluding oil and gas from negotiations.
- c) It allows the federal government to make decisions concerning resource development without input from territorial residents.

8. Development projects

Native associations in the NWT have tended to resist plans for development projects. Objections are generally based on two areas of concern: (a) concern about the environment and game; and (b) concern that large projects should not proceed before land claims are either settled or well advanced. Current proposals that have raised objections are the Norman Wells

pipeline and the shipping of LNG through Lancaster Sound.

9. Forest Protection and Management

The level of forest fire protection in the NWT has been a major issue in recent years. The Dene Nation feel that the existing protection services are not adequate and that they would be better motivated to do the job. The GNWT position is that they are not prepared to take over the fire protection services without the forestry management function as well. The Minister has agreed to delegate responsibility for the administration of the forest management function and to transfer fire fighting to NWTG but detailed discussions are only now getting underway.

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(13) YUKON

(a) BACKGROUND

The Yukon Government has historically offered all the services it provides (education, health care insurance plan, social assistance, etc.) to all residents regardless of racial origin. Status Indians receive additional services such as the Indian Economic Development Fund, cross cultural educators band development, etc., through the Department's regional office. A large percentage of Yukon Indians are non-status as a result of enfranchisement decisions made in earlier years. This causes many difficulties since, within communities, (and even within families) one person may receive services for which another person is not eligible. An attempt is being made by the Council for Yukon Indians to obtain equal treatment for all Yukon natives through the land claims negotiation process.

(b) ISSUES

1. Land Claims

Negotiations commenced in 1980 and, to date, Agreements in Principle have been negotiated on Housing, Land Use, Community Services, Trapping, Indian Harvesting and Wildlife Management and Fishing. In addition an Elders Agreement has been signed which allows all Yukon Indians to benefit now from the outcome of a future settlement. A key element in the negotiations is the decision which must be made as to whether a two government system (essentially a reserve system) or a one government system will be the basis for a settlement.

2. Education

Over the last 10 years there have been a series of differing issues in the education field. Most of these have been in relation to Indian control of Indian education policy. This policy was not extended to the Yukon (or the N.W.T.) because of the small population and the mixed community base which makes the

establishment of a separate school system impractical. In recent years more involvement in education has been given to local school committees and this has provided greater Band input into those schools, such as Old Crown, Kluane and Pelly Crossing, which are basically Indian communities.

3. COPE Land Claims

The AIP for the COPE Land Claim proposed the creation of a wilderness park in the northern section of the Yukon. This, in effect, blocks off territorial government access to the North Slope and the YTG has raised strong opposition to this move. A review of the agreement on this issue has resulted in strenuous objections from COPE on the basis that a signed AIP was being broken by the Federal side. The Minister has ordered a "cooling off" period before negotiations start again.

4. Health Services

As in the NWT, the Department of NH&W delivers the health services package. Arrangements were almost completed for a transfer to the YTG in 1978; however, objections from the native associations (YNB, CYI, YANSI) caused the proposal to be abandoned. Health services will be one of the issues to be resolved in the CYI Land Claims Negotiations.

5. Bill C-48

All native associations, the YTG and the NWTG have joined together to oppose Bill C-48. Opposition centres on the following perceptions of the Bill:

- a) It impedes (if not prevents the territories from ever attaining provincial type status.
- b) It places severe limitations on land claims negotiations.
- c) It allows the Federal government to make decisions concerning resource

development without input from territorial residents.

6. Special Indian Constable Program

The Yukon participates in the RCMP special constable program (3B) in the same way as the participating provinces. One band (Whitehorse) has opted for hiring their own constable and he is currently employed on a trial arrangement.

7. Dempster Highway

The Yukon Dempster Highway Regulations restrict the right to travel on the highway or within 8km. on either side of the highway, with a skidoo. This, in effect, prevents access to the hunting grounds of the Ft. McPherson (NWT) Band. YTG claim that special permission can be given to cross the corridor (and was granted without difficulty in 1980). Chiefs of bands in the northern Yukon and the Mackenzie Delta feel that the NWT/Yukon Border is only an artificial line and should not interrupt their traditional way of life. They agree that the Yukon Government's strict regulations re the Dempster Highway does interfere with their lifestyle and want to be represented on the committee which has been established to manage the Dempster Highway area.