

**MANUAL FOR
THE ADMINISTRATION
OF BAND MONEYS**

**Indian Moneys Directorate
Registration, Revenues and Band Governance
Lands and Trust Services**

October 1997

Table of Contents

Chapter 1 - Introduction

1.1	Definitions	1-1
1.2	Purpose 1-1	
1.3	Description of Band Moneys	1-2
1.4	Nature of Relationship	1-3

Chapter 2 - Roles and Responsibilities

2.1	Introduction	2-1
2.2	Headquarters.....	2-1
2.2.1	Indian Moneys Directorate	2-2
2.2.2	Accounting Operations Directorate	2-2
2.2.3	Other Headquarters Areas	2-3
2.3	District or Regional Lands and Trust Services	2-3
2.4	First Nations	2-4

Chapter 3 - Collecting Band Moneys

3.1	Authority to Collect	3-1
3.2	Sources of Indian Moneys	3-2
3.3	Lands and Natural Resource Activity	3-2
3.4	Oil and Gas Activity	3-3
3.5	Settlement Funds.....	3-3
3.6	Fine Moneys	3-6

Chapter 4 - Holding Band Moneys

4.1	Consolidated Revenue Fund	4-1
4.1.1	Deposits into the CRF	4-1
4.1.2	Suspense Accounts.....	4-2
4.1.3	Advantages	4-2
4.2	Trust Fund Management System	4-3
4.3	Payment of Interest	4-4
4.4	Release of Band Moneys Information	4-4
4.4.1	<i>Access to Information Act</i>	4-6
4.4.2	<i>Privacy Act</i>	4-7
4.5	Creation of New First Nations.....	4-8
4.6	Inherent Right to Self-Government.....	4-8

Chapter 5 - Expending Band Moneys Legislative Overview

5.1	Introduction	5-1
5.2	Section 61	5-1
5.3	Section 64 (Capital)	5-2

5.4	Section 66 (Revenue).....	5-3
5.5	Section 69 (Revenue).....	5-4

**Chapter 6 - Expending Band Moneys
Overall Process**

6.1	Introduction.....	6-1	6.2
6.3	Process Overview.....	6-3	
6.4	Formal Expenditure Request.....	6-3	
6.5	Departmental Assessment.....	6-4	
	6.5.1 Initial Review.....	6-5	
	6.5.2 Assessment of Benefit.....	6-9	
	6.5.3 Regional Summary Report/Recommendation.....	6-12	
6.6	Decision.....	6-14	6.7
6.8	Indian Moneys BCR Tracking System.....	6-15	

**Chapter 7 - Expending Band Moneys
Specific Procedures and
Documentation Requirements**

7.1	Introduction	7-1
7.2	Paragraph 64(1)(a) Capital Per Capita Distributions (PCDs).....	7-1
	7.2.1 Documentation Requirements	7-2
	7.2.2 Minors' PCD Shares Directed by a First Nation Council (Section 52.1).....	7-4
	7.2.3 PCD Shares to be Withheld by the Department	7-6
	7.2.4 Compiling the PCD Pay List.....	7-7
	7.2.5 Administration of PCD Payments	7-8
	7.2.6 PCD Back Pay	7-10
7.3	Paragraph 64(1)(b) Roads, Bridges, Ditches, Water Courses	7-13
7.4	Paragraph 64(1)(c) Outer Boundary Fences.....	7-15
7.5	Paragraph 64(1)(d) Land Purchase for Reserve or Addition To Reserve.....	7-16
	7.5.1 Regional Submissions Recommending Ministerial Approval	7-17
7.6	Paragraph 64(1)(e) Member's Interest in Land	7-18
7.7	Paragraph 64(1)(f) Livestock, Farm Implements, Equipment.....	7-20
7.8	Paragraph 64(1)(g) Permanent Improvements/Works.....	7-21
7.9	Paragraph 64(1)(h) Band Member Loans	7-24
7.10	Paragraph 64(1)(I) Expenses Incidental to Managing Lands/Properties	7-25
7.11	Paragraph 64(1)(j) Housing Construction, including Loans and Guarantee of Loans for Building Purposes.....	7-27

7.12	Paragraph 64(1)(k)	
	Any Other Expenditure	7-30
7.12.1	Regional Submissions Recommending	
	Ministerial Approval	7-31
7.12.2	Band Indebtedness.....	7-32
7.12.3	Purchase of Off-Reserve Land	7-34
7.12.4	Band-Owned Business	7-35
7.12.5	Operation of Community Facilities.....	7-40
7.12.6	Purchase of Major Equipment or Other Assets.....	7-40
7.13	Subsections 64(2) and 66(2.1).....	7-42
7.14	Section 64.1	7-44
7.15	Subsection 66(1) Expenditures	7-47
7.16	Subsection 69(1) Expenditures	7-48

Chapter 8 - Auditing Band Moneys

8.1	Audit Requirements	8-1
8.2	Accounting for Expended Funds	8-2
8.3	Audit Review Process	8-3
8.4	Unauthorized Use of Funds	8-4
	8.4.1 Change-of-Purpose BCR	8-4
	8.4.2 Return of Approved Moneys	8-5
	8.4.3 Moneys Deferred to the Next Fiscal Year	8-5

Chapter 9 - Granting Section 69 Authority

9.1	Introduction	9-1
9.2	Revenue Regulations.....	9-1
9.3	Indian Band Revenue Moneys Order	9-2
9.4	Process for Granting 69 Authority.....	9-3
9.5	Documentation Requirements for Regional Submissions.....	9-4
9.6	Informed Band Membership Consent.....	9-5
9.7	Band Council Resolution.....	9-8
9.8	Evidence of Consistent Financial Responsibility	9-9
9.9	Amendments of an Existing Authority	9-10
9.10	Band Divisions	9-10

Chapter 10 - Revoking Section 69 Authority

10.1	Introduction	10-1
10.2	Process for Revoking Section 69 Authority	10-1

APPENDICES

- A. Summary of Rick Gilbert et al v. Alice Abbey Decision
- B.
 - 1. Rates of Interest - From 1867 to March 1997
 - 2. Order in Council P.C. 1981-3/255
- C. Indian Bands Revenue Moneys Regulations
- D. Checklist for Completing the Initial Expenditure Review
- E. Calculation of Amount Owing Under Section 64.1 of the Act
- F. Regional Business Plan Assessment Report
- G. Checklist for Processing Section 69 Authority Submissions
- H. Sample Trust Declaration and Agreement
- I. Sample Release Form for Payments to Persons Deleted from a Band List
- J. Process for Expending/Monitoring Band Moneys
- K.
 - 1. Band Council Resolution -- Request for PCD where the Minister is directed to make a payment for the benefit of minors
 - 2. Receipt Form -- Payment to a First Nation council on behalf of minors
- L. Receipt Form -- Payment to a parent/guardian on behalf of a minor

Introduction

1.1 DEFINITIONS

In this manual,

- “**Act**” refers to the *Indian Act*;
- “**Regulations**” refers to the *Indian Bands Revenue Moneys Regulations*;
- “**Department**” refers to the Department of Indian Affairs and Northern Development (DIAND);
- “**Minister**” refers to the Minister of DIAND; and
- “**First Nation**” refers to a band. The word “band” is used in this manual when it is associated with specific terms used in the *Indian Act* (for example: “band capital moneys” and “band list”).

1.2 PURPOSE

The purpose of this manual is to set out the policies, procedures and responsibilities for headquarters, regional and district staff with respect to the administration of band capital and revenue moneys.

This document replaces and supersedes all previous direction given on this subject, including Program Circular H-12 dated March 15, 1983, on the expenditure of band capital moneys.

1.3 DESCRIPTION OF BAND MONEYS

Band moneys are considered to be "public moneys", which are defined in section 2 of the *Financial Administration Act* as "*all money that is paid to or received or collected by a public officer under or pursuant to any Act, trust, treaty, undertaking or contract, and is to be disbursed for a purpose specified in or pursuant to that Act, trust, treaty, undertaking or contract*".

Section 2 of the *Indian Act* defines Indian moneys as "*all moneys collected, received or held by Her Majesty for the use and benefit of Indians and bands*". Two types of Indian moneys are identified in section 62 of the *Indian Act*:

- **Capital moneys** are derived from the sale of surrendered lands (that is, from an interest in land), or the sale of the capital assets of a First Nation. These moneys include royalties, bonus payments and other proceeds from the sale of timber, oil, gas, gravel or any other non-renewable resource.
- **Revenue moneys** are defined as all Indian moneys which are not capital moneys. They are derived from a variety of sources which include, but are not limited to, the interest earned on band capital and revenue moneys, fine moneys, proceeds from the sale of renewable resources (e.g., crops), band leasing activities (e.g., cottages, agricultural purposes, etc.) and rights-of-way.

Band capital and revenue moneys are not funds which have been appropriated (i.e., approved by vote from time to time) by Parliament. They are public moneys held by the Crown on behalf of First Nations and are managed under an entirely different administrative regime.

1.4 NATURE OF RELATIONSHIP

Although the government has administered band moneys since pre-confederation times, the precise extent of the Minister's responsibilities over these funds has not been defined to date.

The decisions in the Guerin and Sparrow litigation have found that a fiduciary relationship exists between the Crown and Indians in certain cases, such as in the administration of reserve lands. While the courts have not yet found that such an obligation exists with

respect to band moneys, it is prudent to apply a high standard to the department's administration of these moneys. Therefore, departmental officials must act impartially and in the best interests of First Nations and their members. Officials must act honestly and show the same care and skill in administering these moneys as would a prudent person in administering his or her own affairs.

All members of a First Nation have an interest in the moneys that are held in common for their benefit. In making decisions about an expenditure of these moneys, First Nation councils must take precautions to ensure the money is spent with due care and for the benefit of their members. When band moneys are released to a First Nation, the First Nation council is fully accountable to its members for the subsequent use of those funds. The council is in a fiduciary role with respect to those funds.

The 1992 court decision in the Gilbert et al v Alice Abbey case addressed the matter of the fiduciary duty of chiefs and councillors. The case attests to the fact that duly elected chiefs and councillors are fiduciaries for all members of the First Nation. Elected councillors who breach their obligations can be held liable if their decisions are found to be not in the best interest of the First Nation or its members (refer to Appendix "A" for a summary of the Abbey case).

In June 1996, in the case of Moon v Campbell River Indian Band, the Federal Court Trial Division made a similar ruling. The court characterized the relationship of band councils, who accepted moneys from the Crown on the express trust condition that they be paid to the members of the First Nation, as that of "trustees" towards those members who have not been paid these funds.

Roles and Responsibilities

2.1 INTRODUCTION

DIAND is responsible for administering the band moneys provisions of the *Indian Act*. The Lands and Trust Services (LTS) Sector, under the direction of the Assistant Deputy Minister (ADM), LTS, carries out the majority of these functions on behalf of the department. However, other areas of DIAND, such as the Finance Branch, Corporate Services Sector, also support or contribute to the moneys management activities. This chapter of the manual outlines departmental and First Nation roles and responsibilities related to the administration of band moneys.

2.2 HEADQUARTERS

Under the ADM of LTS, the area having overall responsibility for moneys management is the Indian Moneys Directorate, within the Registration, Revenues and Band Governance Branch. Indian Oil and Gas Canada and the Lands and Environment Branch also have important responsibilities related to the collection of band moneys. (Refer to Chapter 3 of this manual.)

In addition, the Accounting Operations Directorate, Finance Branch, under the ADM, Corporate Services, is involved with the financial and accounting aspects of moneys management.

Headquarters is primarily responsible for the development of national policies, procedures and training courses, and for the national computerized systems which are needed to manage the work.

2.2.1 Indian Moneys Directorate

The Indian Moneys Directorate (IMD) establishes national program policies related primarily to the administration of sections 61 to 69 of the *Indian Act*. The Directorate provides advice to regions and First Nations on the implementation of these policies and related procedures and provides training to regional staff.

IMD reviews regional submissions to release capital moneys to First Nations under paragraphs 64(1)(d) and (k) of the Act and seeks the Minister's approval for such expenditures where it can be established that the disbursement will benefit the First Nation. In preparing these submissions, regions should consult with and provide advance documentation to IMD as early as possible to expedite the processing of these expenditure requests.

Where a region recommends that a First Nation be given section 69 authority over its revenue moneys (see Chapter 9 of this manual), IMD is responsible for assessing the regional submission and for seeking the Minister's signature recommending Governor in Council approval of the Order in Council.

2.2.2 Accounting Operations Directorate

The Accounting Operations Directorate, Finance Branch, is responsible for the ongoing operations of the departmental Trust Fund Management System (TFMS). Its duties include maintaining the existing computer system and developing any modifications to TFMS.

This Directorate coordinates the semi-annual deposit of interest into band moneys accounts (see section 4.3 of this manual). It also conducts research, copies trust accounting records and provides other information related to band accounts (e.g., historical account balances, interest rates).

2.2.3 Other Headquarters Areas

The following organizational units with DIAND carry out other moneys management responsibilities:

- the Claims and Indian Government Sector: negotiating the terms of claim settlements (refer to section 3.6 of this manual);

- the Departmental Audit and Evaluation Branch: auditing of DIAND's administration and practices;
- the Access to Information and Privacy Directorate: responding to information requests related to band moneys;
- the Information Management Branch: providing support for computer systems; and
- the Administration Directorate: holding and maintaining records.

2.3 DISTRICT OR REGIONAL LANDS AND TRUST SERVICES

Most operational responsibilities for the administration of band moneys have been delegated to regional and district officials. Each region has its own legal instrument, approved by the Minister, which sets out the authorities it has been delegated.

Among the responsibilities delegated to the regions and/or districts by the Minister is the making of decisions on the expenditure of all capital moneys (except those falling under paragraphs 64(1)(d) and (k) of the Act) and all revenue expenditures under sections 66 and 69.

The responsibilities of district or regional Indian Moneys officers include consulting, training and providing advice to First Nations on all aspects of the administration of band moneys. Staff also analyze expenditure requests, review annual band money budgets, make recommendations on the approval or denial of expenditure requests, prepare submissions for granting section 69 authority to First Nations, and review annual audited financial statements.

Staff are encouraged to consult with the Band Moneys Advisors in the Indian Moneys Directorate at headquarters for policy clarification or to seek advice at any stage of their assessment of band moneys expenditures.

2.4 FIRST NATIONS

All members of a First Nation have an interest in band moneys which are held in common for their use and benefit. The 1992 Abbey and the 1996 Campbell River Indian Band court decisions (see section 1.4 and Appendix A of this manual) addressed the matter of the fiduciary duty of chiefs and councillors. These cases attest to the fact that

actions can be successfully brought against elected council members who breach their fiduciary obligations.

First Nation councils must plan for the expenditure of band moneys as part of their overall financial management of First Nation resources, seeking independent legal and financial assistance when necessary. In managing band moneys expenditures, the council should:

- weigh the pros and cons of proposed expenditures, identifying how they would benefit the First Nation and its members and giving consideration to whether other funding sources would be more appropriate for the intended purpose;
- ensure that any apparent conflict of interest related to an expenditure proposal is properly considered;
- consult with regional or district staff on departmental requirements;
- prepare expenditure request submissions for review by DIAND;
- manage moneys once they have been released by DIAND from the Consolidated Revenue Fund (CRF); and
- account for all band capital and revenue trust moneys received.

First Nations must provide the department with a full justification and all necessary information in support of expenditure requests (other than for the use of band revenue moneys under section 69 of the Act).

First Nations are encouraged to involve the department at the earliest stage of an expenditure proposal so that the appropriate documentation requirements can be identified and to facilitate prompt consideration of the request by the department.

Collecting Band Moneys

3.1 AUTHORITY TO COLLECT

Indian reserves are federal Crown lands. Subsection 2(1) of the Act defines a reserve as:

“a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band”.

As defined in the *Financial Administration Act* (FAA), public moneys (which include Indian moneys) encompass all fees derived from surrenders of interests in reserve lands. The FAA further stipulates that:

"all public moneys shall be deposited to the credit of the Receiver General".

Only the Crown has title to reserve lands and, therefore, any band moneys generated from resource transactions related to those lands must be paid to the Receiver General for Canada. The Indian Act contains no provisions authorizing First Nations to collect Indian moneys. Section 69 authority, which is described later in this document, does not provide First Nations with the authority to collect revenue moneys.

3.2 SOURCES OF INDIAN MONEYS

Band moneys are derived from a variety of sources which, except for the payment of interest, are associated with the following types of renewable or non-renewable resource activities occurring on reserve or Crown lands:

- lands and natural resource activity; and
- oil and gas activity.

In some instances, funds may also flow into band accounts in the CRF as a result of claims settlements reached between the Crown and a First Nation, or as a result of fines.

Collection responsibilities of the department include ensuring that the correct amount of funds are collected and that the funds are attributed to the proper account (capital or revenue) of the appropriate First Nation.

3.3 LANDS AND NATURAL RESOURCE ACTIVITY

Regional and district Lands staff are responsible for ensuring that all terms of resource related transactions for reserve lands are met, including the collection of all moneys prescribed in the relevant sale, lease or licence agreements. The WinLands software (formerly the Land Transaction Management System - LTMS) has been designed by Lands Directorate, in conjunction with the Information Systems Directorate, to allow regions to monitor compliance with the terms of lands transactions, including the receipt of all moneys due.

In a similar manner, staff in the Environment and Natural Resources areas are responsible for the management of resource activity related to timber, sand, gravel, limestone and other minerals on reserves or on Crown land. Regional and district officers have been delegated ministerial authority to collect band capital and revenue moneys derived from lands and other sources of natural resources.

3.4 OIL AND GAS ACTIVITY

The *Indian Oil and Gas Act and Regulations* provide the authority for Indian Oil and Gas Canada (IOGC) to enter into agreements with private sector companies to extract oil and gas from reserve lands. Under this legislation, IOGC is responsible for negotiating, issuing and managing oil and gas permits and leases. It also verifies oil and gas production and provides forecasts of projected royalties which are used by First Nations in managing their finances.

The resulting revenues from oil and gas royalties, bonuses and so on, are deposited into the appropriate First Nation's capital or revenue account by IOGC. For some First Nations, these revenues represent a major source of funds.

3.5 SETTLEMENT FUNDS

First Nations are increasingly receiving significant sums of money from treaty land entitlement and specific claim settlements. This trend will continue as the government gives priority to the settlement of claims.

In some cases, the Crown pays settlement funds directly into trusts outside of the CRF. On other occasions, settlement funds are paid into band capital or revenue trust accounts within the CRF to be administered under sections 61 to 69 of the *Indian Act*.

The Claims and Indian Government Sector is responsible for negotiating the terms of the claim settlements. However, Indian Moneys staff within LTS must be consulted whenever settlement funds are to be deposited into a band capital or revenue account.

The following sets out departmental practices concerning the disposition of settlement funds:

- Funds derived from settlements are not Indian moneys and do not have to be managed pursuant to the Act. These funds would only become Indian moneys if, at the time the agreement is signed, the membership of the First Nation decides to place their settlement funds into the CRF to be managed by the Crown.
- Settlement agreements have to be ratified by a vote, based on the informed consent of the membership. The decision concerning the placement of settlement funds (either in external trusts or in the CRF) must also be based on the informed consent of the First Nation, by means of a membership vote.
- Specific clauses are to be included in settlement agreements stating where the funds are to be placed, whether or not the funds are considered to be Indian moneys (depending on the First Nation's decision), any conditions on their subsequent disposition, and that Canada assumes no fiduciary obligations regarding the use of settlement funds placed in outside trusts.

- Settlement funds not deposited into the CRF may be placed directly into external trusts, provided that certain procedural steps are followed, namely: the trust agreement is ratified with the informed consent of the membership; the First Nation and its members obtain independent legal and financial advice; and the trust is designed so the funds are used for the benefit of the First Nation.

The department will not review the performance of an outside trustee after such moneys are paid into an external trust. The Crown will have no further involvement with these funds because they cease to be Indian moneys and fully become the responsibility of the First Nation and the trustee.

The following applies to the subsequent use of settlement funds deposited into band capital and revenue accounts:

- Where a settlement agreement is silent on the use of band capital and revenue moneys, these funds will be released in accordance with sections 64, 66 and 69 of the Act.
- Some settlement agreements set out specific terms for the use of settlement funds deposited in band trust accounts (for example, that they are only to be used to purchase land, etc.). Such terms must be honoured by the department in addressing requests for the expenditure of those funds under sections 64, 66 and 69.
- A First Nation having section 69 authority may transfer into an external trust any revenue moneys received from a settlement agreement, if it provides informed consent through a second membership vote. The request for transfer must be forwarded to the department in the form of a band council resolution (BCR).

This second vote is required because the settlement moneys were originally deposited into the CRF on the basis of a band membership vote which ratified the terms of the settlement agreement. However, a second vote is not needed if the original settlement agreement contained a clause expressly allowing for the use of section 69 for this specific purpose.

- Band capital moneys cannot be transferred into an external trust, unless the courts rule that the trust arrangement removes the Crown from any further responsibility for those funds following the transfer.

3.6 FINE MONEYS

Section 104 provides the authority for the disposition of fine moneys relating to offenses committed under the *Indian Act* (including band council by-laws) and its regulations. This section stipulates that:

“(1) Subject to subsection (2), every fine, penalty or forfeiture imposed under this Act belong to Her Majesty for the benefit of the band, or of one or more members of the band, with respect to which the offence was committed or to which the offender, if an Indian, belongs.”

“(2) The Governor in Council may from time to time direct that a fine, penalty or forfeiture described in subsection (1) shall be paid to a provincial, municipal or local authority that bears in whole or in part the expense of administering the law under which the fine, penalty or forfeiture is imposed, or that the fine, penalty or forfeiture shall be applied in the manner that he considers will best promote the purposes of the law under which the fine, penalty or forfeiture is imposed, or the administration of that law.”

Pursuant to section 62, fine moneys received by DIAND under section 104 of the Act are considered to be band revenue moneys. Fine moneys resulting from other laws (for example, from other federal or provincial legislation) do not fall under section 104 and are not deposited into band trust accounts.

Most fine moneys are generated as a result of the violation of band by-laws. A by-law is a local law that is passed by a First Nation council to help control certain activities within the reserve, as set out in sections 81, 83 and 85.1 of the Act.

In accordance with section 104, fine moneys paid by individuals for the infraction of by-laws are generally collected by the provincial government and are eventually turned over to the federal government and to DIAND, for deposit into band revenue accounts on behalf of the First Nation. However, in practice, the disposition of these moneys varies from province to province. For example, in some cases, by-law fine moneys are retained in whole or in part by the province to cover the administration costs it incurs in policing the bylaws on behalf of the First Nation and in processing the fine through its courts.

Once the fine moneys have been deposited into the band's revenue account, the First Nation may access these funds by requesting their release under sections 66 or 69 of the Act.

Holding Band Moneys

4.1 CONSOLIDATED REVENUE FUND (CRF)

4.1.1 Deposits into the CRF

Band capital and revenue moneys collected by the Crown are deposited into the CRF, which is the single fund used to receive all moneys belonging to Canada. It is defined in the FAA as the "*aggregate of all public moneys that are on deposit at the credit of the Receiver General*".

Accordingly, all Indian moneys collected by the Crown are deposited into the CRF. Within the CRF, specific accounts have been set aside for First Nations and certain Indian individuals:

- band capital and revenue accounts;
- individual accounts for minors, adoptees, deceased individuals, mentally incompetent Indians and missing individuals; and
- suspense accounts for First Nations and individuals.

Capital and revenue moneys are held in separate interest-bearing accounts under the name of the particular First Nation concerned. The department generally maintains one capital account and one revenue account per First Nation (approximately 1,200 accounts in total).

Primarily by means of per capita distributions to members of a First Nation, Indian moneys are sometimes deposited into departmentally administered accounts in the CRF for certain individuals, especially for mentally incompetent Indians, infant children of Indians and adoptees.

4.1.2 Suspense Accounts

When Indian moneys are received which cannot be credited to a First Nation or individual account, they are deposited into interest-earning suspense accounts. Each region has one Indian moneys suspense account. Moneys placed in suspense accounts may include receipts for unidentified First Nations or persons, receipts for moneys under litigation and amounts received for unapproved or expired leases.

Regions must review all suspense accounts monthly and arrange for the proper disposition of these moneys as quickly as possible.

4.1.3 Advantages

By having their moneys held in the CRF, First Nations receive the following advantages:

- tax is not charged on the interest earned on band capital and revenue moneys;
- management fees are not charged by the government for the administration of Indian moneys;
- the government calculates interest on the basis of the quarterly average month-end balance in a First Nation's account (when balances tend to be higher) and not on the minimum quarterly balance;
- a rate of interest is paid which is equivalent to the market yield of bond issues having a maturity of ten years or over, even though the moneys may be held in the CRF for much less than 10 years;
- the band moneys held in the CRF are risk free and are protected from the possibility of financial institution failures or investments being written off due to market fluctuations; and
- band moneys held in the CRF are not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian or First Nation.

The department must carry out a variety of miscellaneous functions because Indian moneys are held in the CRF. These functions are described below.

4.2 TRUST FUND MANAGEMENT SYSTEM

Prior to 1983, the accounting of Indian moneys collected and expended by the Crown on behalf of First Nations was managed through a manual ledger card system. In 1983, the department introduced a computerized system named the "Trust Accounting System" to assist with the management of Indian moneys. This system was replaced in 1992 with the "Trust Fund Management System" (TFMS). The Accounting Operations Directorate, Finance Branch, is responsible for managing the financial and computer functions of TFMS, including all systems maintenance and development.

The TFMS maintains a record of all moneys collected for and expended by all First Nations. It also generates monthly and year-end financial reports for the department and First Nations in which all transactions against the capital and revenue accounts are detailed.

Full access to TFMS is provided to regions and districts responsible for administering Indian moneys accounts. Departmental staff use TFMS to update account information, journal voucher moneys between band and individual accounts, make disbursements from accounts and generate account history reports. Detailed information on TFMS is available from regional Corporate Services staff.

4.3 PAYMENT OF INTEREST

Subsection 61(2) of the Act provides for the payment of interest on band capital and revenue moneys. Indian moneys earn a rate of return set by the Governor in Council through an order-in-council (OIC). For information purposes, Appendix "B" provides the actual rates of interest paid on band accounts from Confederation to March 1997. Actual interest rates for subsequent periods can be obtained by contacting the Accounting Operations Directorate, Finance Branch, at headquarters.

The method for determining the interest rate currently payable on band accounts has been in effect since April 1, 1980 pursuant to OIC - P.C. 1981-3/255 (see Appendix "B"). Interest rates are based on Government of Canada bonds having a maturity of ten years or over, using the weekly yields published by the Bank of Canada.

Based on the month-end balances on deposit in the First Nation's account, interest is calculated quarterly and compounded semi-annually. Every six months (April and October), the Accounting Operations Directorate uses the TFMS to calculate and deposit interest amounts payable on band capital and revenue accounts.

Interest earned on balances in a band's capital and revenue account are deposited into the band revenue account.

4.4 RELEASE OF BAND MONEYS INFORMATION

The department receives requests to release information it holds under sections 61 to 69 on behalf of First Nations. Such information may include detailed history reports that itemize all receipts and expenditure transactions related to a band's capital or revenue accounts. Current account balances may also be requested, along with access to departmental files that contain letters, band council resolutions and other documents related to the department's management of the First Nation's trust moneys.

The *Access to Information Act* and *Privacy Act* govern the disclosure of information held by the federal government.

A request for information is formal when an application is sent to the Access to Information and Privacy (ATIP) Secretariat at headquarters or when a written request explicitly refers to one of these two Acts. The ATIP Secretariat coordinates the preparation of responses to formal requests to ensure there is compliance with the above-noted legislation and related policies and procedures.

Departmental programs have the responsibility to research, compile the required information or records and to prepare recommendations on whether complete or partial disclosure should be authorized. Normally the program has to provide the information, along with its recommendations on the release of information, within seven calendar days. Under exceptional circumstances, extensions can be obtained for providing a formal response. These extensions should be discussed with the ATIP Secretariat.

A request is informal when it is not made under either one of these two Acts. The release of information from departmental files and records should be provided through ordinary channels whenever possible and practical. Prior to transmitting the documentation to the applicant, the department has to ensure that any specific information, records or portions thereof that have been excluded or exempted under these Acts (for example, legal opinions), are not released to the person making the request.

Since the department could be sued for inappropriate disclosure, advice should be sought from the departmental ATIP Secretariat to clarify any questions on the proper way to deal with an informal request. Whenever the right to access personal or "third party" information is unclear or ambiguous, the applicant should be asked to submit a formal

request under relevant legislation. Applicants who have been denied access through ordinary channels shall also be informed of their rights to submit a formal request.

4.4.1 *Access to Information Act*

The *Access to Information Act* gives the right to access federal government records based on the principle that information should be made available to the public, subject to limited and specific exceptions. This Act applies to requests that are made by individuals to access information about another entity, that is, about a “third party” (some other person, group of persons or organization).

The department must protect the interests of First Nations when dealing with requests for trust moneys information or records. These records can be released to a council since it is the official representative of the First Nation. Any other entities (persons/researchers) must provide the department with a written consent from the council (a recent letter from the chief or a BCR adopted during the current mandate of the council) to have access to these records. The name of the requester must appear on the letter or the BCR that confers council consent to the release of information.

It should be noted that the trust records of First Nations often contain personal information on individual members. The department does not have to review these records and remove such personal information they may contain. Paragraph 8(2)(a) of the Privacy Act authorizes disclosure of personal information when the release is consistent with the purpose for which the information was obtained. For instance, the department holds trust records to account for its management of First Nations moneys. Consequently, all personal information contained in these records should be released to councils so that they might have a complete record of what is on their files.

Sometimes, the members of a First Nation request copies of band trust records without first obtaining the consent of their councils. Even though registered members have an interest in the moneys held in trust on behalf of their communities, only their councils represent the First Nation as a whole and thus have access to these records.

In these situations, members should be advised to contact their councils to obtain the required information. The council likely either originated the information now contained on our departmental files, or it was provided with copies of this information by the department sometime in the past. Furthermore, the council has a general duty to account to its own members for prior moneys management and the moneys management decisions it has made.

4.4.2 Privacy Act

The *Privacy Act* deals with all personal information that is collected by the federal government on Canadians. This legislation protects that information against unauthorized disclosure and applies to individuals' requests for information about themselves.

This legislation gives any individual the right to access the information held by the government on his or her behalf. Consequently, LTS staff may informally release such requested information to the individual alone. It is important to ensure that only the information relating to that person is released.

In a case where a person requests information about someone else, a written consent of release from the other individual has to be obtained prior to the disclosure of personal information. When there is a separation or a divorce, only the parent with legal custody of the child can access the child's records. The duly appointed administrator (i.e., the legal guardian) of a mentally incompetent Indian may have access to any information regarding that individual.

Information on a person that has been dead for more than 20 years cannot be protected under this legislation and must be released upon request. In such circumstances, proof of the individual's death must be obtained prior to the disclosure of information. Where the death cannot be confirmed, the applicant should be asked to present a formal request for information under the *Privacy Act*.

4.5 CREATION OF NEW FIRST NATIONS

Section 17 of the Act allows the Minister to constitute new First Nations. Subsection 17(2) states that:

“Where pursuant to subsection (1) a new band has been established from an existing band or any part thereof, such portion of the reserve lands and funds of the existing band as the Minister determines shall be held for the use and benefit of the new band.”

Where a new First Nation is established from an existing one, the capital and revenue moneys held for this existing First Nation are generally divided on a per capita basis among the members of both First Nations. The calculation of funds to be attributed to each First Nation is based on the total population of those First Nations, as well as the balances in their capital and revenue accounts, as of a specific pre-determined date.

All details pertaining to the disposition of funds (such as the effective date for dividing the capital and revenue moneys) should be addressed and resolved by the parties prior to the establishment of the new First Nations, with the full knowledge of their members.

4.6 INHERENT RIGHT TO SELF-GOVERNMENT

The Claims and Indian Government Sector is responsible for negotiating self-government arrangements between First Nations and the federal government.

The self-government process ultimately results in the signing of an agreement with a First Nation and the passage of specific legislation to give effect to the agreement. Each negotiation is unique to the particular First Nation involved. Although the form and wording of the various arrangements will vary to reflect the specific needs of First Nations, there are several aspects which should be common to all agreements from a band moneys perspective. As a result, regional LTS staff have a duty to review any proposed inherent right/self-government arrangements by First Nations in their region to ensure that the terms relating to band moneys are consistent with the following guidelines.

- The department will negotiate the full transfer of band moneys it holds on behalf of a First Nation, subject to the passage of specific legislation which fully relieves the Minister from all duties related to the subsequent management of those moneys.
- The federal government will be liable for any errors or omissions that occurred while these funds were under its administration.
- The federal government will not be liable for any errors or omissions in the administration of these moneys subsequent to their transfer to a First Nation. Following such a transfer, the future liability of the Crown with respect to those assets is extinguished. First Nation councils will be fully accountable to their people for the future management of those funds.
- Authority over the administration and management of these moneys will be transferred only if there are adequate provisions for the protection of the individual interests of all members of the First Nation. For LTS staff, addressing this point involves reviewing the band membership provisions contained elsewhere in the proposed agreement.

Capital and revenue moneys are no longer considered to be “Indian moneys” after they have been transferred to a First Nation pursuant to an inherent right/self-government legislation. The First Nation has complete discretion in determining the manner in which these transferred funds will subsequently be managed. For example, the transferred trust funds do not need to be segregated by the First Nation as “capital” or “revenue” moneys.

Expending Band Moneys
Legislative Overview

5.1 INTRODUCTION

Chapters 5 to 7 of this manual address the expenditure of band moneys.

Chapter 5 presents an overview of the legislative provisions related to expending band moneys. Specifically, it provides explanations of sections 61, 64, 66 and 69 of the Act.

Chapter 6 outlines the overall process that is in place within DIAND for handling expenditure requests from First Nations. Chapter 7 provides direction on specific procedures and document requirements that apply to requests made under sections 64 to 69 of the Act.

5.2 SECTION 61

Subsection 61(1) is a general provision which states that: *“Indian moneys shall be expended only for the benefit of the Indians or bands for whose use and benefit in common the moneys are received or held...”*.

This subsection affirms that band moneys, which are held "in common" for all members of the First Nation, must be used for the benefit of its members. The current members of a First Nation have an interest in band capital and revenue moneys. Whenever possible, however, consideration should be given to use or conserve existing moneys in such a way as to benefit not only current members but also future generations.

Subsection 64(1) also states that the Governor in Council (the Governor General via Cabinet) may determine whether any proposed use of band moneys is "*for the use and benefit of the band*".

5.3 SECTION 64 (CAPITAL)

The expenditure of band capital moneys is addressed in subsection 64(1). This provision provides the Minister with the authority, subject to the consent of a band council, to authorize and direct the expenditure of capital moneys for a number of specific purposes that are itemized in paragraphs 64(1)(a) through (k) :

- | | |
|-----------|---|
| 64(1)(a): | per capita distributions to band members; (see also sections 52.1 to 52.5 of the Act for the administration of minors' shares); |
| 64(1)(b): | constructing/maintaining roads, bridges, water courses; |
| 64(1)(c): | constructing/maintaining outer boundary fences; |
| 64(1)(d): | purchasing land to be set aside as a reserve; |
| 64(1)(e): | purchasing a band member's interest in land; |
| 64(1)(f): | purchasing livestock, farm implements, equipment and machinery; |
| 64(1)(g): | constructing/maintaining permanent improvements and works; |
| 64(1)(h): | providing loans to band members; |
| 64(1)(i): | paying for expenses incidental to managing reserve lands and band property; |
| 64(1)(j): | constructing houses, providing housing loans and guarantees; and |
| 64(1)(k): | any other purpose which is for the benefit of the band. |

Where a by-law under paragraph 81(1)(p.3) of the Act is in force for a First Nation, subsection 64(2) allows the Minister to authorize payments of capital moneys to persons whose names are deleted from the Band List.

5.4 SECTION 66 (REVENUE)

Subsection 66(1) allows revenue moneys to be expended for any purpose that in the opinion of the Minister "*will promote the general progress and welfare of the band or any member of the band*". This subsection provides First Nations with a wide range of possible expenditure purposes for which a release may be authorized, but only with the consent of the council.

Subsections 66(2) and 66(3) of the Act, as well as sections 67 and 68, allow the Minister to expend revenue moneys for other specified purposes. These expenditures do not require council consent, although in practice such consent would normally be sought by departmental officials in advance of the release of any revenue moneys. These provisions are rarely used, since a First Nation may request the expenditure of funds for these purposes under the authority of section 66(1).

Expenditures under subsection 66(2) may be made "*to assist sick, disabled, aged or destitute Indians*" and "*for the burial of deceased indigent members of the band*". Expenditures can also be approved in respect of certain unemployment insurance contributions.

Where a by-law under paragraph 81(1)(p.3) of the Act is in force for a First Nation, subsection 66(2.1) allows the Minister to authorize payments of revenue moneys to persons whose names are deleted from the Band List.

Subsection 66(3) allows the Minister to expend revenue moneys for the following specified purposes, without council consent:

- | | |
|-----------|---|
| 66(3)(a): | to destroy weeds and prevent the spread of insects, pests or disease that may destroy or injure vegetation on reserves; |
| 66(3)(b): | to prevent and control the spread of disease on reserves; |
| 66(3)(c): | to provide for the inspection of premises on reserves and their destruction or renovation; |

- 66(3)(d): to prevent overcrowded premises on reserves;
- 66(3)(e): to provide for sanitary conditions in private premises and in public places on reserves; and
- 66(3)(f): to construct and maintain boundary fences.

5.5 SECTION 69 (REVENUE)

Subsection 69(1) of the Act enables a First Nation to “control, manage and expend” its revenue moneys. This subsection does not give a First Nation the authority to collect band revenue moneys, from such sources as the leasing of reserve lands.

The process through which a First Nation gains control over its revenue moneys is described in Chapter 9.

Once a First Nation receives section 69 authority over its revenue moneys, it assumes full responsibility for all revenue expenditures that are requested by the council. This includes determining whether any given expenditure will be for the general progress and welfare of the First Nation and its members. DIAND will not require substantiation that a release of revenue moneys will benefit the First Nation, but will rely on the expenditure decision made by the council.

First Nations with section 69 authority must adhere to the *Indian Bands Revenue Moneys Regulations*. Appendix "C" contains a copy of these regulations, which were last amended in 1993. Prior to 1993, the regulations included a schedule of bands having section 69 authority. At the time this schedule was revoked, the *Indian Revenue Moneys Order* was created listing all bands having this authority. The current regulations and the order are described in sections 9.2 and 9.3 of the manual.

Expending Band Moneys
Overall Process



6.1 INTRODUCTION

First Nations may ask the Minister or his or her delegate to authorize the expenditure of their capital or revenue moneys by submitting a formal request to DIAND in the form of a band council resolution (BCR).

Regional and district LTS staff are responsible for assisting First Nation councils in understanding the department's administrative requirements for processing such requests. They also assess expenditure requests and recommend approval or denial. The Minister or the delegated official makes the final decision on the release of funds.

Given the nature of the Minister's duties and various important litigation that is before the courts, the department must ensure that the best interests of First Nation members are kept in mind when considering requests for the release of band capital and revenue moneys.

This Chapter of the manual provides a definition of an expenditure and describes the steps involved in processing an expenditure request from the receipt of a BCR in the department to the release of funds.

6.2 DEFINITION OF AN EXPENDITURE

Sections 64, 66 and 69 of the Act provide for the expenditure of band capital or revenue moneys. An expenditure is the action or process of disbursing funds. It is limited to a once and for all payment. After there has been such a payment by the Minister, the moneys cease to be “Indian moneys” and the Minister exercises no further direct control over those funds.

The making of an investment such as stocks, bonds or Guaranteed Investment Certificates (that is, financial instruments that are readily convertible to cash), does not constitute an “expenditure”. Releasing capital or revenue trust moneys solely for the purpose of making monetary investments is not permissible under existing legislation.

(Note: Indian moneys are public moneys and the manner in which a financial return is earned on these funds is prescribed under the *Financial Administration Act* and the *Indian Act*. Subsection 61(2) of the *Indian Act* provides for interest to be paid on such moneys held in the CRF. Orders in council specify the manner in which the interest rate is determined.)

A loan guarantee is not an “expenditure” per se, since an “expenditure” will only occur if the First Nation fails to pay off the loan. Therefore, the use of band capital or revenue moneys as collateral for a loan to a First Nation (that is, as a loan guarantee), as well as line-of-credit arrangements, are not permissible under sections 64, 66 or 69 of the *Indian Act* (other than for loan guarantees for housing purposes which are specifically allowable pursuant to paragraph 64(1)(j) of the Act). Furthermore, the *Appropriation Act* does not contain the necessary authority for these types of financial transactions and such authority is not specifically found in other legislation, including the *Indian Act*.

6.3 PROCESS OVERVIEW

An overview of the general process followed for the expenditure and monitoring of band moneys is graphically displayed in Appendix J. This process is initiated when a First Nation council adopts a BCR requesting a release of funds. The BCR is sent to the appropriate regional or district office of DIAND which is then responsible for analysing the request, assessing whether the expenditure would benefit the First Nation and its members (except for section 69 requests), and approving or denying the request within the scope of its delegated authority.

For expenditure requests under paragraphs 64(1)(d) and (k), where this authority has not been delegated, the region sends its recommendation to the Registration, Revenues and Band Governance Branch at headquarters for review by the Indian Moneys Directorate and preparation of the final submission for ministerial approval.

Once an expenditure is approved by DIAND, the funds are released to the First Nation council who is then responsible for making the authorized expenditure.

At the end of each fiscal year, First Nations must submit an independent audit of their funds to DIAND. This audit includes sections pertaining to the use of band capital and revenue moneys. Regions and districts analyze the appropriate sections of financial audits to ensure that the funds released to the First Nation were used for the purposes previously authorized by DIAND.

If not, corrective measures are taken to resolve any issues or discrepancies.

6.4 FORMAL EXPENDITURE REQUEST

The expenditure of band capital or revenue moneys is initiated through a BCR which conveys the consent of the First Nation council for the release of funds. The BCR must be discussed and approved at a duly convened meeting of the council. It specifies the nature of the request, the amount of the proposed expenditure, its purpose and other particulars. In addition, First Nation councils must provide DIAND with sufficient information to support their requests (except for section 69 requests) so that departmental officials can make informed recommendations and decisions on the release of funds.

In some instances, it may be appropriate for a First Nation council to hold a general meeting of its members or conduct a membership vote to determine whether the community supports a proposed use of capital or revenue moneys. For example, a membership vote may be undertaken by the First Nation where large, risky or controversial proposals are involved, or where a possible conflict of interest situation may arise.

In considering an expenditure, First Nation councils are encouraged to seek the assistance of independent financial or legal advisors. First Nation councils are also encouraged to involve the department at the early stages of their development of an expenditure proposal, so that proper documentation requirements can be identified and to facilitate the expeditious release of funds by the department.

6.5 DEPARTMENTAL ASSESSMENT

Departmental assessment of an expenditure request consists of three phases:

- the initial review;
- the assessment of benefit; and
- the recommendation.

The manner in which an expenditure request is assessed will differ according to whether the First Nation proposes to use its capital or revenue moneys and, in the case of revenue moneys, whether the First Nation has been granted section 69 authority.

For revenue expenditure requests from First Nations having section 69 authority, the department conducts the initial review described below and ensures that an environmental screening and, where necessary, an assessment or audit of the proposed expenditure has been completed. These environmental requirements are defined in section 6.5.1 of the manual.

Under section 69, the band has the authority to “expend” its revenue moneys. Therefore, it is the responsibility of the First Nation council to determine whether a proposed use of revenue moneys will benefit the community and its members. Departmental staff are not responsible for assessing benefit for section 69 expenditures. When the submitted documents are satisfactory, LTS staff prepares a recommendation for approval.

For release of capital moneys under section 64, as well as revenue moneys under section 66, departmental staff must conduct an initial review and an assessment of the overall benefit for the First Nation. If satisfactory, LTS staff then prepare the appropriate approval documentation, with their recommendation on the release of funds, to the appropriate signing authority.

The results of the initial review and the assessment of benefit must be documented on file by LTS staff. At any step of the process, it may be necessary to contact the First Nation council or band staff to obtain additional supporting information or seek clarification of matters related to the proposal.

6.5.1 Initial Review

Appendix “D” provides a checklist which can be used by LTS staff to carry out the initial review.

When a BCR requesting the expenditure of band moneys is received within LTS, the First Nation council should be sent an acknowledgement letter. The assigned officer actioning the BCR then begins the initial review by examining the following aspects of the request.

BCR Requirements

The BCR must contain the following:

- a clear statement that the BCR was passed at a duly convened meeting of the council and the date of that meeting; copies of council minutes where the expenditure was considered may be included as supporting documentation;
- a statement of the number of council members constituting a quorum and the signatures of at least the council members that supported the motion;
- a clear indication of whether capital or revenue funds are required (a single BCR may be used to request the expenditure of both capital and revenue moneys), the exact amount requested and a clear statement of the specific purpose(s) of the proposed expenditure;
- where a band membership vote was held in support of the request, the results of the vote should be stated, along with the wording of the motion or question that was posed to the members;
- a statement that books and records will be maintained according to generally accepted accounting practices and that departmental staff will be permitted access, at reasonable times, to all relevant books, records and the project site for audit, inspection or any other reasonable purpose;
- a statement that audited financial statements will be provided to the department for all trust funds within 90 days of the end of the fiscal year; and
- an indication of the date(s) on which the funds are required and where the cheque should be directed (optional).

Where the BCR is determined to be significantly deficient, or where the purpose of a proposed expenditure is not permissible (see section 6.2 of the manual regarding investments, loan guarantees and lines-of-credit), it will be returned to the First Nation council unapproved, with a letter specifying the areas of concern. The council may later wish to resubmit a new BCR to address these deficiencies.

Should the BCR not have all of the above-mentioned information (e.g., the BCR does not mention the audit clause), it may not be necessary to return it to the First Nation council. In such cases, the council would be required to provide this information or any minor clarification in writing.

A single BCR may be used to submit an annual capital or revenue budget that itemizes multiple expenditures for the First Nation over a given fiscal year.

Section of the Act

Based on the nature and purpose of the expenditure request, LTS officers will determine the section or paragraph of the Act under which the proposal falls. Refer to section 7 of the manual for a detailed description of the types and purposes of expenditures described in sections 64, 66 and 69 of the Act.

The section or paragraph under which an expenditure can be authorized is information that is used to establish whether the council has submitted all necessary documents in respect of the type of request it has made. It is also used to identify the departmental official that has been delegated the signing authority for authorizing such expenditures.

The Minister has delegated the making of all expenditure decisions to regional and district staff within the LTS Sector, with the exception of capital moneys expenditures made under paragraphs 64(1)(d) and (k) of the Act. These two types of expenditures require the Minister's approval and, therefore, need to be supported by a recommendation from the Regional Director General. Refer to the most recent delegation instrument to determine which regional official has the appropriate delegated signing authority for all other band moneys expenditures.

Supporting Documentation

In addition to the BCR, supporting documentation must be provided by the First Nation council for section 64 and 66 expenditures to enable the department to make an informed judgement on the merits of an expenditure request. No supporting documents are required for section 69 proposals other than an environmental screening and, where

necessary, an environmental assessment or audit. Definitions of these environmental terms are included in section 6.5.2 of the manual.

Requirements for supporting documentation depend on the specific purpose and nature of the expenditure request. Chapter 7 of this manual indicates the supporting documentation that is required for the expenditure purposes stated in each paragraph of subsection 64(1) and section 66.

Availability of Funds

LTS staff must determine whether the First Nation has sufficient funds in its trust account to satisfy the amount of the request. The TFMS may be used to obtain current balances and financial commitments against First Nations trust funds accounts (e.g., housing loan guarantees, or other approved BCRs which have not yet been funded). It may also be necessary to contact other sources such as Indian Oil and Gas Canada, Lands or Natural Resources to obtain future income projections of band moneys.

When a First Nation does not have sufficient funds available in its trust account, but is expecting to receive these funds throughout the remainder of the year, the BCR may be approved subject to the availability of funds. If these expected funds are not sufficient to cover the expenditure request, LTS officers should consult with the First Nation council for appropriate action. For example, the BCR may be approved for a lesser amount than was originally requested, or it may be returned to the First Nation council unapproved.

Remedial Action Plan (RAP)

For First Nation councils experiencing financial difficulties or indebtedness situations, a Remedial Action Plan (RAP) may be in place. Through the efforts of First Nation council and regional Funding Services staff, a RAP sets out strategies for addressing the various financial issues faced by First Nation councils.

Expenditure requests to address the indebtedness of a First Nation fall under paragraph 64(1)(k) of the Act (refer to Chapter 7).

6.5.2 Assessment of Benefit

After completing the initial review, the LTS officer begins a detailed analysis of the expenditure requests that fall under section 64 or 66. As required by the Act, this analysis must determine whether the intended use of funds will benefit the First Nation or, in the case of revenue moneys, promote the general progress and welfare of the First Nation members.

When conducting this assessment, LTS staff may need to contact the First Nation council or other interested parties (i.e., banks, other areas within DIAND, other government departments, etc.) to obtain further information or additional supporting documentation. The assessment must examine all aspects of the expenditure request including the financial, socio-economic, environmental and legal considerations.

Financial Considerations

The financial assessment is critical to making an informed recommendation. This assessment must establish whether the proposed expenditure is a prudent and necessary use of trust moneys and that the amount requested is reasonable for the type of expenditure being proposed.

LTS staff must ensure that the relevant financial documentation is on file. This includes establishing whether anticipated costs have been sufficiently broken down, such that the specifics of how the funds are to be used are understood.

The financial assessment must compare the total amount requested with the balances in the band capital or revenue account. Irrespective of the amount requested, LTS staff must consider the impact of the release of trust funds on the account balance. For example, the release of funds may deplete the account or adversely impact future generations.

The First Nation council should provide evidence that alternative sources of funding were considered in financing the expenditure request, where this is seen to be appropriate. Alternative funding sources include appropriated funds from DIAND, other federal or provincial programs, financial institutions, etc.

Socio-Economic Considerations

The assessment should show any possible employment opportunities for members either on or off-reserve. Furthermore, the analysis of the expenditure request should determine particular benefits to the community as a whole, including reduced dependence on social assistance, new or improved programs and services, community facilities, cultural events, etc.

Environmental Considerations

Ministerial decisions to release band moneys do not trigger the application of the *Canadian Environmental Assessment Act* (CEAA). However, as a matter of policy, the LTS Sector will apply CEAA requirements to all ministerial expenditure decisions made under sections 64, 66 and 69. This is appropriate, given the nature of the Minister's

responsibilities over Indian moneys and the need to determine whether the release of funds is of overall benefit to the First Nation.

Environmental impacts must therefore be considered for all band moneys expenditures, however, it is understood that many expenditures will have no impact on the environment (e.g., band office salaries, etc.).

First Nation councils must provide the department with an environmental screening for expenditure requests under sections 64, 66 and 69 and, depending on the nature of the expenditure, an assessment or audit of its environmental impact. The First Nation will bear all costs associated with producing this assessment or audit. Such costs can be included in the amount requested from the capital or revenue account. They may also be financed by the regional offices of DIAND, if appropriated funding is available for this purpose.

An **environmental screening** refers to a shortened or simplified type of assessment under the CEEA. It must be approved by the appropriate Responsibility Center Manager in each region. Expenditure requests involving the participation of other federal agencies and departmental programs may have already been screened. In such cases, LTS staff must obtain a copy of this environmental screening for reference purposes. When the environmental screening identifies impacts on the land or its environment, an assessment or audit, as the case may be, will be required to support an expenditure request.

An **assessment** may be undertaken by means of an environmental screening, a comprehensive study or a panel review. It is aimed at assessing the potential impacts on land, and on the environment in general, for proposed “projects”. An assessment would generally be required for new projects.

An **audit** refers to a review of the existing environmental condition of land. For example, an audit would be required for land proposed to be acquired by the department for an addition to a reserve under 64(1)(d), or the acquisition of off-reserve lands by the First Nation under 64(1)(k).

The *Indian & Inuit Affairs Program (IIAP) Environmental Assessment Procedures* manual has been developed to provide an overview of the CEEA requirements. This document will be of help in making a determination on the environmental impacts of proposed projects and can be obtained by contacting the Lands and Environment Branch at headquarters.

Legal and Other Considerations

The LTS officer must determine if there are any legal issues that must be addressed in consultation with Legal Services. For example, the proposal may set a precedent which may have to be assessed in light of the Minister's statutory responsibilities. In such cases, the Indian Moneys Directorate at headquarters should be consulted to determine if the matter has any national policy implications.

In terms of other considerations, LTS staff should ensure that the council members did not allow their personal interests to conflict with their duty to the First Nation. For issues involving the use of reserve land, it may be necessary to consult with the Lands Directorate.

Annual Operating Budgets

The assessment of an annual operating budget would include a review of the previous year's budget and audited financial statements, if applicable. Furthermore, a review of each expenditure item by program area (e.g. housing, administration, agriculture, summer students, etc.) and a confirmation of addition and carry-forward totals should be conducted.

6.5.3 Regional Summary Report/Recommendation

A written summary report indicating the results of the assessment must be prepared by the LTS officer for the consideration of the person responsible for authorizing the release of funds. A possible format for the summary report is described below.

This report must consider all important facts pertaining to the expenditure request and contain a recommendation on whether the requested moneys should be released to the First Nation.

Expenditure Description: This description outlines the proposed expenditure, its purpose and amount, as well as a breakdown of the expenditure cost components, if applicable.

Overview: The overview can be minimal or extensive depending on the nature of the request. It should contain a summary of the assessment of benefit, including whether the expenditure is necessary and proper, any environmental or legal considerations, all sources of funding, reference to any supporting documentation, history of the project and the date the moneys are required. The positive and negative aspects of the request must be addressed.

Financial Summary: This part of the summary report should provide an analysis of the financial aspects of the proposal, including an assessment of the reasonableness of the amount requested. It should also include general factual information related to the band's capital and/or revenue account (e.g. the opening balance, year-to-date receipts or forecasts, commitments and the anticipated year-end balance), financial projections (e.g. oil and gas receipts, land leases, other sources), receipts versus disbursements (prior years, current and projected), cash flow, etc. Any outstanding audit issues impacting on this expenditure proposal should be reported.

Recommendation: The report will contain a recommendation from the LTS officer for the approval or denial of the expenditure request. The recommendation must be based on the results of the analysis previously described in the report. Recommendations may be made for full, partial or conditional approval (e.g. release of moneys based on progress reports for the project, submission of a satisfactory environmental assessment, subject to the availability of funds, etc.) or for denial of the request.

The recommendation should also state the paragraph of the *Indian Act* which authorizes the release of funds, and the specific amount to be approved.

6.6 DECISION

The BCR and Regional Summary Report are forwarded to the person having delegated signing authority. Once a decision is made, the First Nation council is promptly notified in writing. If the expenditure is approved, the letter will refer to the specific BCR in question and indicate the section under which approval was given, the amount approved, the purpose of the expenditure(s) and any conditions placed on the approval. A copy of the approved BCR is attached to the letter. When the expenditure is denied, the letter to the First Nation council must state the reason(s) for denial and include a copy of the unapproved BCR.

6.7 RELEASE OF BAND MONEYS

Where approval has been given, the LTS officer processes the release of moneys in compliance with the terms of the decision (that is, full, partial or conditional approval). The TFMS is used to issue all cheques. Refer to the TFMS manual for information on the use and operation of this system.

For all capital moneys and section 69 revenue expenditures, a cheque is issued to the First Nation council pursuant to what it has requested in its BCR (i.e., usually deposited into the First Nation's bank account). For revenue expenditures to First Nations not having section 69 authority, the payment is made by the department either directly to the supplier

or, if the First Nation has already incurred the expenses and has submitted original negotiated cheques, to the First Nation council for reimbursement.

For band moneys budgets or for certain projects (for example, the construction of community buildings), moneys are periodically released from the First Nation's account in phases, according to a cashflow statement or a specified work schedule. This ensures that certain predetermined work is completed before further moneys are released.

6.8 INDIAN MONEYS BCR TRACKING SYSTEM

The Indian Moneys BCR Tracking System has been developed by the Alberta Region. It is a helpful tool for assisting departmental staff in processing band moneys expenditure requests. All regions are encouraged to use this computer system which allows LTS staff to:

- maintain information on the specifics of past and current band moneys expenditure proposals;
- analyze monthly cash-flows;
- generate submission summary reports or expenditure histories;
- itemize environmental concerns; and
- access sample letters that can be used to process the request.

The system can also be of assistance in the post-expenditure phase. For instance, it may be used during the annual review of First Nation audits to identify whether band moneys previously released were used for the purpose for which they were approved. Chapter 8 of the manual gives more information on the audit of band moneys.

Further information concerning this system, including training on use of the relevant software, may be obtained by contacting IMD at headquarters.

Expending Band Moneys
Specific Procedures and
Documentation Requirements

7.1 INTRODUCTION

This chapter provides detailed information concerning the specifics of processing disbursements from band capital and revenue accounts pursuant to paragraphs 64(1)(a) to (j), subsections 64(2) and 66(2.1) and sections 64.1, 66 and 69 of the Act. It expands on the purposes for which band capital or revenue moneys can be used under these provisions, the relevant procedures that apply, as well as any pertinent documentation requirements.

7.2 PARAGRAPH 64(1)(a) Capital Per Capita Distributions (PCDs)

“to distribute per capita to the members of the band an amount not exceeding fifty per cent of the capital moneys of the band derived from the sale of surrendered lands”

Paragraph 64(1)(a) of the Act allows for the distribution of an equal share of capital moneys to every person who is on the Band List of a First Nation or is entitled to be on that list at the time of the distribution.

The total amount of moneys that can be released from a band capital account cannot exceed 50 percent of the capital moneys derived from the sale of surrendered lands (includes royalties from the sale of oil, gas, timber, etc., which represent an interest in land). A feature has been incorporated into TFMS to ensure that no more than 50 percent of a band's capital receipts are released for PCD purposes.

In considering whether it wishes to consent to a PCD, a First Nation council should assess the impact that a such a distribution will have on the members of the First Nation who

receive social assistance payments. PCD payments to members of a First Nation are typically treated as income and would result in an equivalent reduction in the amount of social assistance benefits that are payable to PCD recipients.

The general documentation requirements for making PCD payments using band capital moneys are described in section 7.2.1 below.

The responsibilities related to the administration of band capital PCDs will vary according to:

- whether the First Nation council has made a determination under section 52.1 of the Act that, for certain minor members of the band, all or a part of their PCD payments will be paid to the parent or guardian on behalf of the children (see 7.2.2 below);
- whether the Band List is maintained by the department under section 11 of the Act, or is controlled by the First Nation under section 10 (see 7.2.3 below for procedures related to compiling a PCD payroll); and
- whether the distribution of the per capita payments to each band member will be made by either the department or the First Nation (see 7.2.4 below).

7.2.1 Documentation Requirements

The PCD payment process is initiated when a First Nation council submits a BCR to the department consenting to the release of funds. In addition to the normal BCR requirements, the BCR requesting the PCD to First Nation members must include the following information (see part 1 of Appendix K for specific wording of the BCR):

- a) the specific amount of band capital moneys that are payable to each member;
- b) the effective date of the payment (those persons who are members of the First Nation on this date will be entitled to receive a share of the distribution);
- c) the date on which the distribution is to be paid out;
- d) a statement (optional) identifying whether the First Nation wishes the distribution to be administered by its council or by DIAND; and
- e) in cases where minors' shares are to be paid "in trust" to their parents or guardians pursuant to section 52.1 of the Act:

- a clear statement and evidence (e.g., a copy of the minutes of the general meeting of the membership of the First Nation) that the council has complied with all the requirements of subsections 52.1(1) and (2);
- where the council administers the PCD, the name(s) of council member(s) designated to sign the receipt for moneys received under section 52.1; and
- a statement that the children on whose behalf payments are being made are in the actual care and custody of the persons to be paid. A complete list containing the minors' names, their band numbers, the amount of the payment, and their parents or guardians' names should be attached to the BCR.

Where the First Nation controls its Band List under section 10, a pay list identifying all individuals entitled to receive a share of the PCD as of the date of the distribution must also be attached to the BCR. This list must identify the minors, children-in-care, adoptees, mentally incompetent Indians, deceased individuals who were members as of the effective date of the distribution and those individuals who will be absent on the date the distribution is made (or their whereabouts is unknown).

7.2.2 Minors' PCD Shares Directed by a First Nation Council (Section 52.1)

Normally, a full share of a capital PCD that is payable to a minor is deposited into a departmental trust account on behalf of that child.

However, under section 52.1 of the Act, the council of a First Nation may determine that all or a portion of a minor's share of a capital PCD under paragraph 64(1)(a) will be paid to the parent or guardian of that child. The legislation provides that a limit of up to \$3,000 of a minor's PCD share may annually be paid to the parent or guardian, as directed by the First Nation under section 52.1.

The council must determine that such payments are necessary or proper for the maintenance, advancement or other benefit of the child. Any such determination by the council must be proceeded by:

- a) the council posting in a conspicuous place on the reserve, fourteen days before the determination is made, a notice that it proposes to make such a determination; and

- b) the council giving the members of the First Nation a reasonable opportunity to be heard at a general meeting of the First Nation before the determination is made.

When making a determination under section 52.1, the council is solely responsible for deciding when a payment is necessary or proper for the maintenance, advancement or other benefit of a child. Likewise, the council is solely responsible for developing its own guidelines or criteria for making a determination in any specific case. The department has no role in a council's exercise of its discretion or in carrying out its duties under subsections 52.1(1) and (2).

It is the further responsibility of the council, when making a decision under section 52.1, to determine and select a "conspicuous place" on reserve for the posting of a notice to the members and for determining when "a reasonable opportunity to be heard" has been afforded to the members. The department must not recommend one location over another for the posting of the notice to the members or define what is a "reasonable opportunity to be heard." Complaints from members of a First Nation should be directed to the First Nation council.

Where the council makes a determination under section 52.1 that payments on behalf of minors are "necessary or proper", it must, under subsection 52.1(3), notify the Minister of its decision. This notice must meet the following conditions:

- a) the notice must be given at the same time that the council gives its consent to a distribution under paragraph 64(1)(a); and
- b) the notice must be in the form of a BCR (see part 1 of Appendix K for specific wording to be used).

Where the council notifies the Minister that it has made a determination under subsection 52.1(3), and the notice to the Minister complies with the conditions set out above, the Minister must provide for the payment of the children's shares as directed by the council. Payments made by the Minister under subsection 52.1(3) are subject to the following conditions:

- a) a maximum of \$3,000 a year of a minor's share of a PCD under paragraph 64(1)(a) must be paid out by the Minister; any moneys exceeding this amount must be deposited into individual trust accounts in the CRF; and
- b) payments made directly to the council require that the prescribed receipt (see part 2 of Appendix K) is signed by the council members; this receipt discharges the Minister from liability for the loss or misapplication of the payment.

7.2.3 PCD Shares to be Withheld by the Department

Where a First Nation council has not made a determination under section 52.1, each minor's per capita share must be withheld by the department and deposited into individual trust accounts in the CRF.

Furthermore, the PCD shares of adoptees, children-in-care or absent individuals must be withheld by the department and deposited directly into individual trust accounts in the CRF (refer to the TFMS user manual for the procedures that must be followed to open and deposit funds into an account).

Where the Minister's jurisdiction has been established, the PCD shares of mentally incompetent Indians who are members of the First Nation must also be withheld by the department and deposited into CRF accounts that are established on behalf of those individuals. Pursuant to section 51 of the Act, the Minister has exclusive jurisdiction over the property of mentally incompetent Indians when all of the following three factors are present:

- a) the person is a registered Indian within the meaning of the Act;
- b) the person is ordinarily resident on a reserve; and
- c) the individual has been found to be mentally incompetent according to provincial law.

Consultation with regional LTS staff involved in the application of section 51 is required to determine if the Minister has assumed jurisdiction over the property of any mentally incompetent Indians who are eligible to receive a share of the PCD.

Where the Minister does not have jurisdiction, but the individual is proven to be mentally incompetent (a member living off reserve, for example), the person's PCD share will be directed to the provincial Public Trustee or the person appointed under provincial law to administer the individual's property.

7.2.4 Compiling the PCD Pay List

A pay list must be compiled identifying the names of all individuals who are entitled to receive a per capita share of the distribution, that is, all individuals who are members of the First Nation as of the effective date on which the payment is to be made. The pay list is compiled either by regional LTS officers or by the First Nation council, depending on who has control over the Band List.

Where DIAND Controls the Band List

Where DIAND controls the Band List under section 11 of the Act, the regional LTS officer must compile a pay list which is composed of the following sub-lists:

- a Family Group sub-list (which lists all members of the First Nation according to their family grouping);
- a Children-in-Care sub-list (which identifies any children who have been removed from their parental homes and are in foster care or reside in a provincially-funded home or centre);
- an Adoptees sub-list;
- a Mentally Incompetent Individuals sub-list (those for whom the Minister has jurisdiction under section 51 of the Act);
- a Deceased Individuals sub-list (those who were members of the First Nation as of the effective date of the distribution, but who are now deceased); and
- an Absent Individuals sub-list (individuals whose whereabouts is unknown).

The Children-in-Care List should be obtained from the membership staff and the social workers of the First Nation. Their input is sought because they have first-hand knowledge of any children removed from their natural family.

Regional LTS staff may compile the above-noted lists by accessing the names of all First Nation members on the Indian Registry System (IRS), by searching the TFMS for the names of mentally incompetent band members, or by contacting other sources.

Where a First Nation Controls Its Band List

Where the First Nation controls its Band List under section 10 of the Act, the council alone can determine who is entitled to receive the PCD in question. It is therefore responsible for preparing a list containing the names of all individual members who are entitled to receive a share of the distribution. A copy of this list must be provided to the department.

The list must identify the names of those individuals whose shares are to be deposited into an individual trust accounts maintained by the department (adoptees, mentally incompetent

individuals, minors, children-in-care and absent individuals). All additions and deletions to the pay list must be confirmed by the First Nation council to ensure validity of the data.

7.2.5 Administration of PCD Payments

The payment of a PCD to First Nation members may be administered by either the department or, on request and where determined to be appropriate, by a First Nation council.

PCDs Administered by DIAND

As described in section 7.2.4 of this manual, pay lists of all persons entitled to receive a PCD must be compiled by either DIAND or the First Nation council, depending on who controls the Band List.

Once the lists have been finalized, LTS officers will deposit into individual departmental trust accounts the PCD shares of: all minors (except for payments under section 52.1 of the Act); children in care; mentally incompetents; adoptees; deceased individuals; and those who will be absent or whose whereabouts is unknown at the time the PCD payments will be made.

The TFMS is used to requisition PCD cheques for all other members of the First Nation. The cheques are made payable to the individual member or, for payments under section 52.1, "in trust" to the parent or guardian of those minors.

After making the necessary arrangements with the First Nation council, departmental staff will travel to the band office and distribute the cheques to each individual listed on the pay list. Upon receipt of their shares, the members will sign the pay list. All uncollected moneys must be deposited into departmental trust accounts in the name of the individual.

PCDs Administered by a First Nation Council

In its BCR, the First Nation council may ask to administer the distribution to its members (i.e., for everyone other than for those whose PCD shares will be withheld by DIAND for deposit into individual CRF accounts). On receipt of such a BCR request from a council, regional LTS staff must carefully assess whether the First Nation would be able to effectively carry out the various administrative responsibilities related to the making of PCD payments.

In considering this matter, LTS must examine whether the First Nation has established a good track record for managing its finances and accounting for its spending. This can be

determined through discussions with staff from Funding Services, by evaluating the outcome of past audit reviews, or by assessing distributions the First Nation council may have administered in the past. Despite the request of the First Nation council, LTS may determine that it is more appropriate for DIAND staff to administer the distribution.

Where it is determined that the council may administer the distribution, LTS will issue only one cheque, payable to the First Nation council, representing the total amount payable to all entitled members whose funds have not been withheld by DIAND in individual accounts. The council is responsible for depositing the single cheque and using those funds to prepare and distribute individual cheques to the members. When distributing these cheques, the council must obtain the signature of the members on the pay list.

Where a council has made a determination under section 52.1, it is suggested that a receipt from each minor's parent or guardian be obtained by the council during the distribution and kept within its office. This receipt discharges the council members from liability for the loss or misapplication of these minors' shares. A sample of such a receipt is found in Appendix L.

After the distribution, First Nation councils must send to the department all cancelled cheques, bank statements and the original copy of the signed pay list for reconciliation and audit purposes. All unpaid moneys must also be returned to the department for deposit into individual trust accounts by regional or district LTS officers. LTS officers must reconcile all payments made, against the documentation provided by the First Nation council.

7.2.6 PCD Back Pay

After a distribution of band capital moneys has been paid out to the members of a First Nation, a member who was not paid at that time may be found to be entitled to a share of that PCD.

Establishing entitlement

A person must have been a **member** of a First Nation **at the effective date of the distribution** in order to be eligible to receive his or her share of a PCD. However, PCD arrears may be paid to a new born child if the birth occurred on or before the effective date of the distribution and the child was registered on the Band List within one (1) year after the event. If not, the date of registration should be used to establish the child's eligibility to a distribution.

Where the First Nation was controlling its Band List at the time of the distribution, LTS officers must obtain written confirmation from the council that a person was a member of the First Nation in accordance with the membership rules that existed at that time. The council must also confirm the effective date on which the person became a member of the First Nation. Unless this information is provided to DIAND, LTS staff cannot establish an individual's entitlement to receive a distribution of band capital moneys.

Where the department was administering the Band List at the time of the distribution, LTS officers must confirm with the departmental Registrar that a person is registered and obtain the date of registration in order to establish his/her entitlement to a distribution. The registration date must be on or before the date of the distribution. There are some exceptions to this general rule. For instance, reinstated members are eligible for a distribution from the date of their application, as long as this application was received in headquarters within 30 days after it was signed. For individuals whose application was received after this period, they become eligible for the distribution as of the date the application was received in headquarters.

Calculating and making the payment

The LTS officer must research each case individually to ensure that a duplicate payment is not made and that the member receives the appropriate amount. The payment does not include any amounts for interest since the *Indian Act* contains no such authority.

In processing a PCD arrears payment, the following information may be required:

- confirmation, by DIAND or the First Nation council as appropriate, of the date the person was reinstated/registered and the date he or she became a member of the First Nation;
- a calculation of the back pay owed; and
- a copy of the **Calculation of Amount Owing Under Section 64.1 of the Indian Act** (Appendix E) form; this form is only necessary for members reinstated after April 1985 in accordance with paragraphs 6(1)(c) or (d) of the Act (see section 7.14 of this manual).

LTS officers will review the information related to the arrears payment, verify the amounts and distribution dates, and send a letter to the council notifying it of the payment that is being prepared. A copy of the letter is attached to the relevant background information and forwarded to the appropriate LTS manager for review and approval.

A cheque is then requisitioned and forwarded to the individual or, where a payment is made under section 52.1 of the Act, to the parent or guardian “in trust” for the minor. When a cheque is sent to a parent or a guardian in accordance with paragraph 52.1(1) of the Act, a receipt form (Appendix L) must be signed by the parent or the guardian to discharge the Minister, the First Nation and its council, from liability for the loss or misapplication of the payment. A payment of not more than \$3,000 belonging to an infant child can be made annually to his or her parents or guardians. Any moneys over \$3,000 must be deposited into a minor’s trust account.

**7.3 PARAGRAPH 64(1)(b)
Roads, Bridges, Ditches, Water Courses**

“to construct and maintain roads, bridges, ditches and water courses on reserves or on surrendered lands”

This provision applies to expenditures related to the construction and maintenance of roads, bridges, ditches and water courses located on reserves or on surrendered lands. It does not apply to the construction or maintenance of provincial, federal or private roads, ditches and water courses.

Paragraph 64(1)(b) may provide for the following types of expenditure:

- construction: materials, labour, heavy equipment purchase or rental, consulting fees, engineering fees, etc.; and
- maintenance: minor and major repairs, snow-plowing, bush-cutting, painting, clearing, summer employment to cover removal of roadside garbage, etc..

The purchase of heavy equipment may be authorized under this paragraph when the equipment will be primarily used to construct or maintain roads, bridges, ditches and water courses. In formulating a recommendation, it must be demonstrated that this proposed expenditure will be of overall benefit to the First Nation and that it is more cost effective to buy rather than rent the equipment. The following factors should be considered: the price (fair and reasonable), the annual operating and maintenance costs, the primary and secondary uses of the equipment, other sources of funding to be accessed, the owner and insurer of the asset.

Paragraph 64(1)(g) must be applied when the asset is used primarily to construct and maintain improvements that are of permanent value to the First Nation or where it is a capital investment. If the equipment is for a combination of those purposes, the appropriate paragraph that best reflects the purpose of the expenditure should be selected. If analysis shows that the heavy equipment is to be used for a new or existing band-owned business, ministerial approval is required under paragraph 64(1)(k).

The supporting documentation should include:

- documentation related to the construction project which demonstrates that all applicable federal and provincial codes and standards will be met and the land on which the project will be undertaken is free and clear of any encumbrances; for

tendered projects, this information would be found in the tender document; First Nations should consult with DIAND regional/district staff as well as DIAND Technical Services staff for information on applicable standards;

- a narrative explaining how the maintenance will be carried out and financed;
- a copy of the capital plan which illustrates the First Nation's and/or the department's commitment to the project;
- if the First Nation is receiving funding from the department, a copy of the Comprehensive Funding Arrangement which identifies all sources of funding, the scope of work, schedule and budget;
- a statement from the Funding Services Officer (FSO) which supports the First Nation's request; and
- justification in the form of surveys, appraisals, cost estimates, financial projections, numbers of full or part time jobs created for First Nation members, etc. from qualified sources to show that the First Nation is paying a fair price and to demonstrate there are economic benefits.

All submissions must include an environmental screening and, where considered necessary, an environmental assessment or audit of the proposal.

7.4 PARAGRAPH 64(1)(c) Outer Boundary Fences

“to construct and maintain outer boundary fences on reserves”

This paragraph provides for the construction and the maintenance of outer boundary fences on reserves. It excludes expenditures for off-reserve and inner boundary fences. The costs related to such expenditures may be broken down as follows:

- for construction costs: materials, labour, equipment rental, fees for design, etc.; and
- for maintenance costs: paint, repairing fence breaks, replacing fence posts and wire, clearing bush, etc.

The supporting documentation should include:

- a map indicating the intended location, size and type of fencing;
- a statement that provides a breakdown of costs including materials/labour and identifies other sources of funding that will be used to finance the project; and
- confirmation that the expenditure is required and that the costs are reasonable; this information can be obtained through the Funding Services Officer (FSO) or Technical Services Officer.

All submissions must include an environmental screening and, where considered necessary, an environmental assessment or audit of the proposal.

**7.5 PARAGRAPH 64(1)(d)
Land Purchase For Reserve Or Addition To Reserve**

“to purchase land for use by the band as a reserve or as an addition to a reserve”

This paragraph provides for the purchase of lands that will be set aside as a reserve or as an addition to a reserve, for the use and benefit of the First Nation. The expenditure must be personally authorized by the Minister.

The approval of such expenditures has not been delegated due to the various implications associated with setting aside land as a reserve.

The purchase of off-reserve lands that will not be used as a reserve (e.g., for speculation purposes, commercial ventures or otherwise) are not included in this provision. Such expenditures would fall under paragraph 64(1)(k).

The release of band capital moneys under this paragraph can only be considered when the Regional Director General has given “approval-in-principle” that the property can and will be set aside as reserve land pursuant to the department’s Additions to Reserve policy. Lands staff should be consulted for further information on the process to follow for adding lands to a reserve and for obtaining an “approval-in-principle” to the effect that land will be set aside as a reserve or as an addition to a reserve.

Furthermore, regions and districts should consult with IMD at headquarters when processing such proposals to ensure that all relevant requirements are considered in the regional recommendations that will have to be submitted for ministerial consideration.

IMD is responsible for conducting a review of the regional moneys submission and preparing a recommendation from the Director General of RRBG to the ADM of LTS. The ADM forwards these recommendations to the Deputy Minister and to the Minister's Office for approval. At any step in this process, headquarters and regional LTS staff may be asked for further information and explanations.

7.5.1 Regional Submissions Recommending Ministerial Approval

For an expenditure proposal made under paragraph 64(1)(d), regions must prepare a recommendation for ministerial consideration. A regional submission will be sent to the Director General, Registration, Revenues and Band Governance (DG, RRBG) at headquarters. Aside from the usual requirements, the submission must contain the following:

- the BCR must provide a detailed description of the land (location, lot numbers, hectarage) and a statement that the land it is to be added to the reserve; and
- a briefing note signed by the Regional Director General is required, recommending the release of the band moneys, and including a narrative justification highlighting the benefits the First Nation will receive.

This submission must also be supported by the information that has been requested during the “Additions to Reserve” process, namely:

- a copy of the signed “approval-in-principle”;
- evidence of clear title;
- the total purchase price of the land, the proposed financing arrangements and a confirmation that the other sources of funding are in place;
- an independent appraisal of the land from a registered or certified land appraiser in order to establish that the price to be paid for the land is fair and reasonable; and
- an environmental screening and, where considered necessary, an environmental assessment or audit of the proposal.

**7.6 PARAGRAPH 64(1)(e)
Member's Interest in Land**

“to purchase for the band the interest of a member of the band in lands on a reserve”

This provision applies to situations where a First Nation member has a lawful interest in land as defined by sections 20 to 29 of the Act. This includes members who have a certificate of possession, a certificate of occupation or a location ticket.

If the member of the First Nation is also a member of the council, the question of whether band capital moneys can be used for this purpose must be brought before the First Nation members for a vote to avoid any conflict of interest problems.

The supporting documentation should include:

- information outlining the value of permanent improvements, mineral rights, leases, etc.;
- evidence that fair value has been established for the lot; (for land or housing purposes, this can be based on an assessment from an independent certified real estate appraiser, or from CMHC; for the value of oil and gas rights, this information can be obtained from Indian Oil and Gas Canada; for mineral rights, the Natural Resources Directorate should be contacted);
- confirmation from the district or regional lands staff that the correct lot number is quoted and that the member has a lawful interest in the land;
- evidence in the form of a sworn affidavit that the member has consented to the purchase;
- where the person is also a member of council, evidence that the vote of First Nation members supported the expenditure request; and
- an environmental screening and, where considered necessary, an environmental assessment or audit of the proposal.

7.7 PARAGRAPH 64(1)(f)
Livestock, Farm Implements, Equipment

“to purchase livestock and farm implements, farm equipment or machinery for the band”

This paragraph provides for the purchase of farm assets (livestock, tractors, trailers, combines, trucks, etc.) and the general operating costs of a farm (salaries, seed, hay, maintenance of equipment, spraying, fertilizer, insurance, etc.). The expenditure must be for a tangible asset that is purchased and not constructed. This paragraph does not provide for the construction of farm buildings, which fall under paragraph 64(1)(g), and farm related expenses of band-owned companies or businesses since such expenditures fall under paragraph 64(1)(k).

The supporting documentation should include:

- justification in the form of appraisals, cost estimates and financial projections from qualified sources to show that the First Nation is paying a fair price and the proposal will lead to economic benefits;
- for farm equipment and machinery: price quotations from qualified sources for new/used equipment or a quotation of fair market value from an independent source; an explanation of how the equipment will be maintained, stored and disposed of in future (e.g. trade-in or write-off);
- for livestock: a sale report indicating the value of the livestock; an explanation of how the livestock will be managed; and details on the intended use of the livestock (i.e. beef or pork for consumption, cattle to be used for breeding); and
- ∅ an environmental screening and, where considered necessary, an environmental assessment or audit of the proposal.

7.8 PARAGRAPH 64(1)(g)
Permanent Improvements/Works

“to construct and maintain on or in connection with a reserve such permanent improvements or works as in the opinion of the Minister will be of permanent value to the band or will constitute a capital investment”

This paragraph provides for the construction and maintenance of permanent improvements or works to buildings, central water and sewer systems, churches, lagoons, filtration plants, schools, day care centers, arenas, rural electrification, gasification, where appropriated capital funding is insufficient to cover total project costs.

"Permanent improvements or works" is defined as improvements related to infrastructure. There must be evidence of permanent value to the First Nation or, if not, evidence that the expenditure is a capital investment.

All activities must be on reserve or in connection with a reserve. For instance, permanent improvements or works to water or electrical lines extending beyond reserve boundaries may be considered to be in connection with a reserve and therefore fall under this paragraph. Such situations should be thoroughly investigated to ensure that alternative sources of funding are used in priority to capital trust moneys and that all other users of the line contribute their fair share.

Construction expenditures may include material, labour, equipment purchase/rental and consulting fees. For the purchase of heavy equipment, this paragraph will apply when the asset is used primarily to construct and maintain improvements that are of permanent value to the First Nation or where it is a capital investment. When the asset is used primarily to construct or maintain roads, bridges, ditches and water courses, paragraph 64(1)(b) will apply. If the equipment is purchased for a combination of those purposes, the appropriate paragraph that best reflects the purpose of the expenditure should be selected. If analysis shows that the heavy equipment is to be used for a new or existing band-owned business, ministerial approval is required under paragraph 64(1)(k).

In making a recommendation for the purchase of heavy equipment, it should be demonstrated that the expenditure is for the overall benefit of the First Nation and that it is more cost effective to buy rather than rent or lease. The following factors should be considered: the price (fair and reasonable), the annual operating and maintenance costs, the primary and secondary uses of the equipment, other sources of funding to be accessed, the owner and insurer of the asset.

Maintenance expenditures may include both minor or major repairs to houses owned by a First Nation. Costs devoted to the purchase of immovable assets such as heating, water, ventilation, refrigeration and security systems may also be included.

This paragraph does not provide for the purchase of moveable assets and activities related to off-reserve property. Costs related to the operation of community facilities such as day care centers would fall under paragraph 64(1)(k).

The supporting documentation should include:

- documentation demonstrating that all applicable federal and provincial codes and standards related to the construction or maintenance project will be met and that the land on which the project is to be undertaken is free and clear of any encumbrances (this information will be found in the tender document);
- a recommendation from regional/district Technical Services;
- a copy of the capital plan which illustrates the First Nation's and/or the department's commitment to the project;
- if the First Nation is receiving funding from the department, a copy of the appropriate funding arrangement which identifies all sources of funding, scope of work, schedule and budget;
- a statement from the Funding Services Officer (FSO) which supports the First Nation's request;
- justification in the form of appraisals, cost estimates and financial projections from qualified sources to show that the First Nation is paying a fair price; and
- an environmental screening and, when considered necessary, an assessment or audit of the proposal.

7.9 PARAGRAPH 64(1)(h)
Band Member Loans

“to make to members of the band, for the purpose of promoting the welfare of the band, loans not exceeding one-half of the total value of (i) the chattels owned by the borrower, and (ii) the land with respect to which he holds or is eligible to receive a Certificate of Possession”

This paragraph includes personal or business loans not exceeding half the value of the chattels and land (Certificate of Possession, Location Ticket and Certificate of Occupation) held by the individual members. It is optional to charge interest or take security on the loans. It excludes loans granted to First Nation enterprises or corporations and loans made by First Nation corporations to members of the First Nation, since these expenditures would fall under paragraph 64(1)(k).

The supporting documentation should include:

- a written loan agreement and promissory note in which the terms and conditions of borrowing are detailed;
- a repayment plan by the individual including an undertaking that the funds be redeposited to the First Nation’s capital account;
- where items are used as security, the value of such items must be verified by qualified sources; and
- where no interest or security is being given, a narrative justification specifically describing how the arrangement will be of benefit to the First Nation.

7.10 PARAGRAPH 64(1)(i)
Expenses Incidental to Managing Lands/Property

“to meet expenses necessarily incidental to the management of lands on a reserve, surrendered lands and any band property”

This paragraph provides for expenditures directly associated with the management of lands on a reserve or surrendered lands and any band property. “Band property” is real estate situated on a reserve or on surrendered lands which belongs to a First Nation. Land management expenditures for off-reserve properties of the First Nation fall under paragraph 64(1)(k).

Band capital moneys may be released under this paragraph to fund the costs of a land manager, environmental protection officer, forest ranger, fire protection officer, security guards (not law enforcement officers), surveyors, the insurance of assets (including local works), legal fees related to collecting rent, negotiating leases and accounting fees, if related to collecting rent, and reasonable travel costs. It may also cover expenses associated with that portion of administrative and governance costs directly related to the time spent managing lands or properties. In addition, the purchase or replacement of major appliances for housing owned by a First Nation may fall under this paragraph. (There are five major appliances that may be funded, namely, a washer, dryer, stove, refrigerator and dishwasher.)

This paragraph may also provide for expenditures related to natural resource and environmental management activities which are directly incidental to managing lands and properties. Such activities may include the development or maintenance of resource inventories, pre-commercial mineral exploration, development of land use plans, fire prevention and suppression, silviculture, forest protection against diseases and insects, mine site rehabilitation, environmental remediation and responses to environmental emergencies.

The supporting documentation should include, where appropriate:

- a detailed breakdown of the expenditure request and a description of how it directly relates to lands and property management;
- a budget outlining salaries, benefits, administrative costs, travel costs and other planned costs;

- cost estimates from two or more sources if purchasing assets;
- a statement from the Funding Services Officer which supports the First Nation's request;
- justification from qualified sources in the form of appraisals, cost estimates, financial projections and number of jobs created for members, to show that the First Nation is paying a fair price and the project is economically beneficial;
- if the First Nation is receiving supplementary funding from the department, a copy of the appropriate funding arrangement which identifies all sources of funding, scope of work, schedule and budget; and
- an environmental screening and, where considered necessary, an environmental assessment or audit of the proposal.

7.11 PARAGRAPH 64(1)(j)
Housing Construction, including Loans and Guarantees of Loans for Building Purposes

“to construct houses for members of the band, to make loans to members of the band for building purposes with or without security and to provide for the guarantee of loans made to members of the band for building purposes”

This paragraph provides for the construction of houses for members of the First Nation and may include any major renovations or additions to existing houses. It would not include the building of a non-residential structure. Construction costs generally encompasses material, labour, electrical, plumbing and project management fees.

Furthermore, this paragraph authorizes the department to grant loans to members for residential building purposes. Such loans may be granted with or without security. Under this paragraph loan payments for on-reserve Canada Mortgage Housing Corporation (CMHC) projects or other housing projects may be funded using band capital moneys. However, alternative financial sources must be explored and, if available, be applied in priority to band capital moneys. For instance, funds from the social assistance program may be used to reduce the total amount of a housing loan.

This paragraph also allows band capital moneys to be used to guarantee loans to members for housing purposes. Loan guarantees should only be authorized under these specific and limited circumstances. Capital or revenues moneys cannot be otherwise used for loan guarantees. When members are independently borrowing funds (e.g., from a bank, trust company, etc.), the lender may seek a “guarantee” from the Minister that moneys held by the Crown will be used to secure the loan. These moneys would only be expended from the First Nation’s capital account if the member later defaults on his or her loan payments.

Where a loan guarantee is approved, the moneys in the First Nation’s account must be set aside or “frozen”, until such time as the loan has been fully paid off.

The analysis of a request for a housing loan guarantee is treated the same as any other proposed expenditure, even though the requested funds may never actually leave the CRF.

The Minister must be assured that the member is able to afford the loan and that the proposed use of the moneys is acceptable and complies with this paragraph.

Where appropriate, the supporting documentation may include:

- **for the construction of houses for members of the band:** a legal land description, site plan and a statement that the use of the land complies with the community plan or zoning by-law; project documentation demonstrating that all

applicable federal and provincial codes and standards will be met (this information will be found in the tender document); a recommendation from regional/district Technical Services staff; if the First Nation is receiving supplementary funding from the department, a copy of the appropriate funding arrangement which identifies all sources of funding, scope of work, schedule and budget and a statement from the Funding Services Officer (FSO) which supports the First Nation's request; justification from qualified sources in the form of appraisals, cost estimates, financial projections, number of jobs created for First Nation members to show that the First Nation is paying a fair price and the project is economically beneficial; an environmental screening and, where considered necessary, an assessment or an audit.

- **for housing renovations:** a detailed breakdown of the proposed expenditure including budget and project costs.
- **for loans to a First Nation member:** a written loan agreement and promissory note in which the terms and conditions of borrowing are detailed; this agreement must also direct that all payments be redeposited to the First Nation's capital account; for loan payments, justification must specifically address the expenditure of band moneys as opposed to First Nation members paying rent or rent being covered under the social assistance program.
- **for loan guarantees:** a full justification and supporting documentation for the housing loan and its intended use (a copy of the loan agreement, including amount of the loan, interest rates to be charged, repayment amounts and duration).

7.12 PARAGRAPH 64(1)(k)
Any Other Expenditure

“for any other purpose that in the opinion of the Minister is for the benefit of the band.”

This paragraph covers other expenditure purposes that benefit First Nations. It may encompass the following types of expenditures:

- the purchase, start-up or operation of a business;
- loans or contributions made to or by corporations or enterprises owned by First Nations;
- operating costs of a commercial farm (salaries, seed, hay, fertilizer, spraying, maintenance of equipment, insurance, etc.);
- the purchase of off-reserve lands not to be set aside as a reserve or as an addition to a reserve;
- legal costs related to litigation by or against a First Nation;
- other items of a discretionary nature where "benefit" can be established including recreation, daycare and family services; and
- incurred debts when certain conditions are met.

Except for loan guarantees relating to housing under paragraph 64(1)(j), the use of capital or revenue trust funds to guarantee a loan or provide for a line-of-credit is not permissible.

As outlined in section 6.2 of this manual, paragraph 64(1)(k) of the Act, as well as sections 66 and 69, contain no clear authority for authorizing these types of financial transactions.

Regions and districts should consult with IMD at headquarters when processing 64(1)(k) proposals to ensure that all relevant requirements are considered in the regional recommendations that will have to be submitted for ministerial approval.

IMD at headquarters will conduct a review of the regional submissions and prepare recommendations from the Director General of RRBG to the ADM of LTS. The ADM

will later forward his recommendations to the Deputy Minister and to the Minister's Office for approval. At any step in this process, regional LTS staff may be asked for further information and explanations.

7.12.1 Regional Submissions Recommending Ministerial Approval

For each expenditure proposal under paragraph 64(1)(k), regions must prepare recommendations for ministerial consideration. A regional submission containing the following must be sent to the Director General, Registration, Revenues and Band Governance (DG, RRBG) at headquarters:

- the BCR for the Minister's signature;
- a briefing note signed by the Regional Director General, recommending the release of the band moneys to confirm and highlight the benefits that will accrue to the First Nation; and
- supplementary documentation to support the expenditure request.

The regional submission should contain the following information and documentation for expenditure proposals relating to band indebtedness, purchase of off-reserve land, band owned businesses, operation of community facilities and the purchase of assets and equipment.

7.12.2 Band Indebtedness

Band Councils experiencing financial difficulties or indebtedness situations may request the expenditure of band capital moneys to reduce or eliminate their indebtedness. Such expenditure requests require the Minister's approval. The Minister will consider the expenditure of band capital trust moneys to offset any incurred debt under section 64(1)(k) when satisfied that all of the following conditions are met:

- cause(s) of the debt is(are) explained;
- the expenditure is consistent with any Remedial Action Plan;
- the use of band moneys is the most appropriate alternative for funding the debt; and

- the membership of the First Nation consents to the expenditure.

Cause(s) of debts

In all cases of indebtedness, the First Nation council must clearly identify and document the cause(s) of its debts and establish a satisfactory action plan to ensure that similar debts do not reoccur.

Remedial Action Plan

First Nation councils experiencing financial difficulty may be under a Remedial Action Plan (RAP) which sets out strategies for addressing the various financial issues they are facing. Where a RAP is in place, LTS staff, in conjunction with the Funding Services Officer, determines whether the expenditure request is consistent with the requirements of the RAP.

If the expenditure is not consistent with the RAP or cannot be adequately addressed by approving the requested release of band capital moneys, LTS and Funding Services Officers may need to meet with the council to discuss the necessity of the proposed expenditure. In some instances, it may be appropriate to revise the RAP, or to return the BCR to the council unapproved.

Appropriateness of Using Band Trust Moneys to Finance the Debt

The overall financial position of the council should be examined by Funding Services to determine whether the use of band capital moneys is the most appropriate alternative for funding the debt. Departmental analysis of the request will focus on whether the proposed use of funds is for the “benefit of the band”, as required by paragraph 64(1)(k).

Band Membership Consent

In support of the expenditure request, evidence should be provided to the effect that the membership of the First Nation is aware of the amount of the debt, how it was incurred and the corrective measures taken to rectify the problems encountered. This information can be conveyed at a duly convened meeting of the membership of the First Nation, who may then be given the opportunity to vote on whether they support the use of band capital moneys for this purpose.

In some circumstances (e.g., where recurring debts, large sums or a high percentage of the band's capital account are involved), LTS staff may require that a formal vote of the membership be held. The manner used to conduct the vote, the question asked and the results of the vote must be contained in the BCR. A majority of those voting must support the expenditure request.

7.12.3 Purchase of Off-Reserve Land

When a proposal involves the purchase of off-reserve land, the regional submissions should contain the following information and documentation:

- an appraisal of the land and property from a registered or certified land appraiser, to establish that the price to be paid for the land is fair and reasonable;
- the total purchase price of the land, the proposed financing arrangements and written confirmation that any other sources of funding are in place;
- a brief description of the land including the number of hectares, the structures on the land, any improvements needed, the type of land (forested, farm land, residential);
- identification of zoning restrictions, if applicable;
- since the land will not be added to the reserve, the name(s) of those holding the land on behalf of the First Nation must be identified; these individuals should also sign a document stating they are holding these lands in trust for the First Nation;
- details of economic, socio-economic and other benefits to the First Nation (i.e., job creation);
- identification of the impact the expenditure will have on First Nation capital and revenue accounts;
- an environmental screening and, where considered necessary, an assessment and/or audit; and

- a description of the intended use of the land, specifically:
 1. If the land is to be used for farming:
 - an outline of farming plans;
 - a summary of the relevant experience of individuals who will be managing and operating the farm; and
 - other confirmed funding sources.
 2. If the land is to be used for development purposes (e.g., for a business or a business park): refer to the topic, noted immediately below, on a Band-Owned Business.
 3. If the land is to be used for other purposes (e.g., cottage development):
 - an outline of development plans;
 - a summary of the relevant management experience of individuals involved in the project;
 - a summary of any contingency plans (e.g., for major repair costs, demolition costs, well drilling costs, servicing costs, zoning restrictions, etc.); and
 - three-year cash-flow projections.

7.12.4 Band-Owned Business

When a proposal involves the start-up, purchase or expansion of a First Nation business or corporation, the regional submission should contain the following information and documentation:

Business Plan

The First Nation council must submit a **current** business plan with its BCR. Funding for the preparation of a business plan can sometimes be obtained from provincial or federal programs. Such costs may also be covered through the use of band capital or revenue moneys.

A well-prepared business plan is an essential document that enables departmental staff or lending institutions to better understand the various components of the business, and it also increases the likelihood of receiving expeditious consideration of the First Nation's request for funds.

Furthermore, the business plan provides the owners (that is, the First Nation), the managers and operators of the business with a document that helps to keep the business

on track. By following the approved business plan, management is less likely to make business decisions that are inappropriate or inconsistent with the goals of the owners.

A business plan provides fundamental information on the business and the specific nature of the expenditure request. It generally outlines the proposed resources and strategies to be used to make the business a successful one, and sets out the goals the business is expected to achieve over a stated period of time. It contains the following components:

- a profile of the business (ownership particulars and type of business);
- the approach to marketing (industry, target customer, competition, product, etc.);
- the operations (site, facilities and equipment, production process or service operation, labour force);
- management (qualifications, competency and reliability); and
- a financial summary (financial requirements, proposed financing, historical financial results, current financial position, operating forecast, cashflow requirements).

Regional Business Plan Assessment Report

Regions must review the business plan and provide headquarters with their assessment by completing a **Regional Business Plan Assessment Report**. The format of this report is provided in Appendix "F". A two-phased course has been developed to provide necessary training to LTS staff responsible for reviewing business plans. You may contact IMD at headquarters for further information on this course.

Alternatively, the regional office may choose to engage the services of an independent financial expert to undertake the assessment on behalf of the department. This is especially appropriate where the proposal is large or complex and the type of business is relatively specialized.

When assessing a business plan, the following questions must be addressed:

1. Has the First Nation received independent financial and legal advice?
2. Does a review of the recent business plan and accompanying financial statements indicate that the business is viable?
3. Will the expenditure result in the business generating profits? If so, when? Will the business have sufficient financing in place to cover its costs until such time as a profit can be realized? What rates of return are forecasted over the next three years and

how does this compare to the interest rates projected for band moneys accounts?
What tax implications apply to the business? What impact do they have on profitability?

4. What are the confirmed sources and proposed uses of funds?
5. What possible risks are associated with the proposal? Are these risks reasonable, given the nature of the business? How can these be mitigated? If the risks are significant, has the First Nation acknowledged the risk in its BCR?
6. Do cash-flow estimates show the business has sufficient working capital?
7. What level of equity has the owner put into the business? What are the terms of any loans?
8. What security can the entrepreneur provide to a lending institution?
9. What are the inventory requirements? Are there any contracts or agreements in force? Has information been provided on the suppliers and various cost components?
10. Has a market survey been performed? Is there sufficient consumer demand for the product? What is the size of the total market, and who is the target market? What are the current and future market trends?
11. What are the sales strategies? Pricing and promotion strategies? What sales are forecast and what are the major assumptions on which this forecast is based?
12. What competitors will the business face? What competitive advantage does this business have?
13. Who will manage and operate the business? What qualifications, expertise and experience do the key personnel have, and are these appropriate to the demands of the business?
14. How much staff and equipment are required? Is any training to be provided to the staff?
15. Is the business held by a band-owned corporation and, if so, how is the corporation structured (proprietorship, partnership or corporation.)

As part of the review process, the following related documents may also be requested, where appropriate: letters of intent, list of inventory, list of leasehold improvements, list of fixed assets, price lists, description of insurance coverage, accounts receivable summary, accounts payable summary, copies of legal agreements, annual financial statements and tax returns for the past three years, appraisals, financial statements for associated companies and lease agreements.

Land Designation

Whenever reserve lands are to be used by a third party (which includes a band corporation) for a business or economic development venture located on reserve, those lands must be designated for this purpose before any band moneys are released to a First Nation. Failure to do so would be unlawful since these lands are set aside by the Crown

for the Indians of that First Nation and not for any third party. Crown consent to such a use of the reserve lands is essential. The refusal of a First Nation to designate the land would mean that the expenditure request could not be approved.

Regional lands and Indian moneys staff should jointly address this requirement with the First Nation council.

Trust Agreement

A trust agreement is not a mandatory requirement for expenditure requests under 64(1)(k). However, it is strongly suggested that First Nation councils develop such an agreement to provide greater protection of their members' interests and to ensure that the way in which the assets of the First Nation or its corporations are held and managed is proper and is supported by the membership. The purpose of a trust agreement (between the First Nations and the shareholders or the trustee) is mainly to confirm that the assets are held in trust for the First Nation and that the trustee has agreed to act as a trustee. Furthermore, this agreement should list the number of shares and the duties of the trustee in the management of the shares. Appendix H provides a sample of a **Trust Declaration and Agreement**.

Where a trust agreement has not been developed and approved by the band membership, the regional submission must identify the name(s) of those holding the shares on behalf of the First Nation. Furthermore, these individuals should also sign a document stating that they are holding these shares "in trust" for the First Nation. A copy of this document must be attached to the submission.

Socio-Economic Benefits for the Community

The regional submission will identify any socio-economic benefits the business may provide to the community, (e.g., jobs created or maintained, full or part-time, native or non-native, etc.).

Environmental Assessment

The regional submission must also include an environmental screening and, where considered necessary, an assessment or audit.

7.12.5 Operation of Community Facilities

Even though building costs of community facilities fall under paragraph 64(1)(g), all costs related to the operation of these facilities would fall under 64(1)(k).

For example, the operation of a daycare center may be authorized under 64(1)(k). In reviewing such an expenditure proposal, the region will verify that the building meets all provincial requirements, since the running of a daycare is generally an area that is heavily regulated. The First Nation should also demonstrate that it will have sufficient funds to operate the daycare for the foreseeable future and identify confirmed sources of funding.

7.12.6 Purchase of Major Equipment or other Assets

When a proposal involves the purchase of major equipment or other assets, the regional submission should contain the following:

- a description of the equipment or asset that is being purchased and its intended use; (if construction of community capital asset/equipment, the regional submission should identify the facilities that will be built);
- a detailed cost estimate of the equipment or asset to ensure that a fair price is paid for it; in some instances where second-hand equipment or assets are being purchased, it may be appropriate to obtain a professional appraisal. The regional submission should also identify any related operating and maintenance costs and specify the manner in which these ongoing expenses will be financed; annual operating and maintenance costs will increase over time due to inflation and depreciation;
- if other sources of funding are being accessed to finance the purchase, confirmation that this funding has been arranged must be obtained from the First Nation;
- the equipment or asset must be insured; the annual insurance costs must be identified; the region should confirm that there is adequate insurance to cover fire, loss or theft and that funding is available to cover these costs;
- a cost analysis must also be done to determine the most efficient option for the First Nation (purchasing, leasing or hiring an outside contractor); leasing may be most beneficial if the equipment is needed for only a short period of time; for a major construction project, it may be less costly for the First Nation to purchase its own equipment;
- since First Nations cannot own property (in most provinces), the name(s) of those holding the equipment on behalf of the First Nation must be identified; these

individuals should also sign a document stating they are holding this property in trust for the First Nation; and

- a description of the benefits for such expenditures will provide for the First Nation, which may include job creation over a specified period of time and possible revenue generation.

**7.13 SUBSECTIONS 64(2) AND 66(2.1)
Payments to Members Deleted from a Band List**

Paragraph 81(1)(p.3) of the Act states that a First Nation council may make a by-law "to authorize the Minister to make payments out of capital or revenue moneys to persons whose names were deleted from the Band List of the band". Where such a by-law is in force, the Minister may authorize such payments of band capital and/or revenue trust moneys pursuant to subsections 64(2) and 66(2.1) respectively. This payment must not exceed one per capita share of the First Nation's capital or revenue moneys.

A First Nation council must submit a BCR to request such a payment. The LTS officer will review the BCR to ensure that it:

- has been duly signed by a quorum of the council (minutes of the meeting where the BCR was passed may be provided);
- specifies the effective date for the payment;
- states whether a full or partial per capita share of the First Nation's capital and/or revenue moneys is to be paid to the individual; and
- where the First Nation controls its Band List under section 10, states the total number of members as of the effective payment date; where the Band List is maintained by the department under section 11, the LTS officer will have to obtain the population of the First Nation as of the effective payment date from the Indian Registry System.

The LTS officer must also obtain:

- a copy of the by-law adopted by the First Nation council and confirmation that it is in force; and
- an Account History Report (from TFMS) which details the balances in the First Nation's capital and revenue accounts on the effective payment date.

The LTS officer will calculate the individual's share of the capital and/or revenue account and submits a written summary of the above with a recommendation for approval to the person having delegated ministerial signing authority.

When a payment is authorized pursuant to subsections 64(2) and 66(2.1), a cheque is requisitioned and made payable to the individual. A letter is also sent to this individual, with a copy to the First Nation council, explaining the payment and requesting the signature of a release form. It is mandatory that this release be signed by the individual in

order to discharge the Crown from any liability that may be associated with the payment. Appendix "I" contains a sample of a release form.

Members Transferred from One First Nation to Another

Prior to April 17, 1985, when a member transferred from one First Nation to another, section 16 of the Act prescribed that one per capita share of the former band's capital and revenue accounts were to be transferred to the new First Nation's CRF accounts. If the per capita share of the former First Nation exceeded the share of the new First Nation, the difference was paid directly to the individual member.

Since Bill C-31 came into force on April 17, 1985, these provisions are no longer in force. Therefore, no transfer of band moneys is made following the transfer of membership. A person who ceases to be a member of one First Nation by reason of becoming a member of another is not entitled to any moneys held by the department on behalf of the former First Nation.

7.14 SECTION 64.1

Limitation Imposed on Bill C-31 Reinstates

Prior to the Bill C-31 amendments of April 17, 1985, individuals who lost their Indian status and band membership were entitled to receive one per capita share of the moneys held in their First Nation's capital and revenue accounts. Following these amendments, individuals who had previously lost their Indian status could apply to be reinstated and regain membership in their First Nation. Subsections 64.1(1), (2) and (3) were introduced as part of these 1985 amendments and apply only to those reinstates who:

- a) previously ceased to be members of their First Nation under the circumstances set out under paragraphs 6(1)(c), (d) or (e); and
- b) had previously received a total amount of more than \$1,000 (the "forgivable amount") as their per capita share of band moneys, upon loss of their Indian status and membership in the First Nation.

Subsection 64.1(1) - Capital Per Capita Distributions

Pursuant to this subsection, the above reinstates who regain membership in their First Nation cannot begin receiving per capita distributions of band capital moneys until such time as all funds received on loss of status exceeding \$1,000 have been recovered, including interest.

In administering this subsection, LTS officers will:

- determine whether a reinstatee falls under paragraph 6(1)(c),(d) or (e);
- establish the amount that was previously paid to the individual, if any;
- calculate the amount that needs to be repaid or forgiven, including interest;
- inform the individual and the First Nation council of the results of the research; and
- if applicable, take whatever action is required to ensure that the necessary amounts are repaid or forgiven.

The Indian Moneys Directorate (IMD) at headquarters will provide regions with a partially completed form containing the base information the region will need to calculate the amount owing. This form, entitled "**Calculation of amount owing under section 64.1 of the Indian Act**" (see Appendix E), contains the following information :

- the name of the person;
- the First Nation and registration number (both current and former);
- the date on which status was lost;
- the date of the loss of status payment;
- the amount of that payment;
- the principle amount required to be forgiven; and
- the total amount owing to the First Nation.

If it has been determined that an individual owes moneys to his/her First Nation, regional LTS staff will use the information provided by IMD to calculate the interest amount that may also be owed. Contact IMD at headquarters for assistance in these calculations of interest.

The region will write the individual and the First Nation council informing them of the results of this research. Reinstateses are not responsible for repaying any amounts owing under subsection 64.1(1) from their personal funds. In cases where it is determined that an individual owes an amount exceeding the forgivable amount, the region will take necessary steps to withhold future capital PCDs until the appropriate amount is recovered. Once the amount owed has been completely recovered, PCDs would commence for that individual.

An individual who does not owe moneys to his/her First Nation is immediately entitled to receive PCD back payments. The procedures for making PCD arrears payments are described in section **7.2.6** of this chapter.

Subsection 64.1(2) - Recovery of Other Benefits

A First Nation council may bring into effect subsection 64.1(2) upon making a by-law in accordance with paragraph 81(1)(p.4). This paragraph states that a First Nation council may make a by-law *"to bring subsection 10(3) or 64.1(2) into effect in respect of the band."*

Where such a by-law is in force, subsection 64.1(2) applies to the above reinstateses who regain membership in their First Nation. Until the individual repays the amount exceeding

\$1,000 to the First Nation, including any interest, he or she is not entitled to receive any benefits flowing to individual First Nation members from the expenditure of band moneys under paragraphs 64(1)(b) to (k), subsections 66(1) and 69(1).

The same general procedures stated for subsection 64.1(1) will apply to the calculation of the amount owing under this provision. LTS staff must confirm whether the by-law is in force and, if applicable, determine the appropriate measures to be taken to recover the moneys owed to the First Nation.

Subsection 64.1(3) - Determining interest

In accordance with subsection 64.1(3), regulations have been adopted that prescribe the manner in which interest is calculated for the purpose of subsections (1) and (2).

7.15 SUBSECTION 66(1) EXPENDITURES

“With the consent of the council of the band, the Minister may authorize and direct the expenditure of revenue moneys for any purpose that in his opinion will promote the general progress and welfare of the band.”

This subsection provides First Nations with a wide range of possible expenditure purposes. However, it must be demonstrated that the expenditure is beneficial and that the First Nation has the resources to fund the request.

As explained in section 6.2 of this manual, the use of band revenue moneys to guarantee a council loan or line-of-credit is not permissible, since subsection 66(1) contains no explicit authority to this effect.

The documentation needed to substantiate any request must be customized to meet the specific requirements of that request. Requirements may be similar to those previously described for the expenditure of band capital moneys under paragraph 64(1)(a) to (k), depending on the proposed use of funds. Suggested supporting documentation must include information which clearly explains how the expenditure will benefit the members of the First Nation.

A satisfactory environmental screening is required and, where considered necessary, an environmental assessment or audit of the proposal.

7.16 SUBSECTION 69(1) EXPENDITURES

Where a First Nation has been granted subsection 69(1) authority, its council is responsible for considering the First Nation's overall financial situation and for determining whether revenue moneys should be used to cover costs associated with any proposed expenditure.

First Nation councils are also responsible for thoroughly reviewing their revenue moneys proposals and seeking independent legal, financial or other expert advice, where appropriate, to determine whether the expenditure is beneficial and promotes the general progress and welfare of the First Nation and its members.

Once a First Nation council has determined that a particular proposal should be funded with revenue moneys, it provides the department with its consent for the release of funds, in the form of a BCR. The BCR must state the amount requested from the revenue account and the specific purpose of the expenditure.

The BCR may be supported by a membership vote where the council determines this is appropriate. This vote is especially desirable where a large sum is being requested or where a special circumstance is involved (for example, where there may be a possible conflict of interest; or where a high risk venture is involved).

A membership vote is required where the membership had initially voted these moneys into their revenue account pursuant to a claims settlement agreement and the council now wishes to transfer these revenue moneys into a privately held trust (see section 3.6 of this manual for additional information).

A satisfactory environmental screening is required and, when considered necessary, an environmental assessment or audit of the proposal. These documents will describe any environmental impacts that must be addressed and any mitigating measures that may need to be taken.

As explained in section 6.2 of this manual, the use of band revenue moneys to guarantee a First Nation loan (that is, to use the trust funds as collateral) or line-of-credit is not permissible since subsection 69(1) contains no explicit authority to this effect.

Revenue Per Capita Distributions

First Nations having subsection 69(1) authority may use their revenue moneys to make per capita distributions to their members. When making a distribution, the council is responsible for protecting the interests of all of its members, including those who are mentally incompetent, minors and adoptees. Any concern raised by a member with respect to his or her eligibility for a revenue PCD payment is to be resolved between the individual and the First Nation council.

For such a distribution, the First Nation council does not need to provide the department with a pay list, or the names of those who will be paid, except in the following situations:

- Pursuant to section 51, the Minister has exclusive jurisdiction over the property of mentally incompetent Indians. For those mentally incompetent members who ordinarily reside on reserve, LTS staff must ensure that their PCD shares are withheld for deposit in CRF accounts established by the region or district on behalf of those individuals.
- Where the department maintains the Band List, the Minister may also have to withhold the shares of any children who have been adopted by non-Indian parents. The names of these adopted children appear on an Adoptee List maintained by the Registrar at headquarters. These names are not entered on the departmental Band List and cannot be released to a First Nation council for reasons of confidentiality. Since the interest of these adopted children should also be considered in the distribution, the department must inform the council of the number of those adopted children and deposit their PCD shares into individual trust accounts in the CRF.

Auditing Band Moneys

8.1 AUDIT REQUIREMENTS

First Nations must provide the department with audited financial statements, including all expended capital and revenue moneys (whether or not they have been granted section 69 authority over their revenue moneys), within 90 days from the end of the fiscal year. Many First Nations utilize the same fiscal period as the Government of Canada (April to March), although they may choose to adopt their own fiscal period.

If a First Nation provides capital or revenue moneys to a corporation owned by the First Nation, as either a loan or as an increase in equity, the financial statements of the corporation must also be submitted.

In addition to any requirements contained in this manual, the general reporting guidelines for the annual audit are described in the **Year-End Reporting Handbook for DIAND Funding Arrangements**. This handbook requires First Nations to prepare their financial statements in accordance with generally accepted principles as defined by the Canadian Institute of Chartered Accountants (CICA), unless recommended otherwise.

If a First Nation refuses to comply with departmental audit requirements, it should be informed that no further capital or revenue moneys will be released until such time as the matter is satisfactorily resolved. The Regional Director General may refer the matter to the Director General of Registration, Revenues and Band Governance Branch at headquarters for further consideration and action.

8.2 ACCOUNTING FOR EXPENDED FUNDS

When an expenditure of band moneys is approved, the First Nation council is fully accountable to the Minister and the members of the First Nation for the subsequent use of those funds. The council is in a fiduciary role with respect to those funds.

Regional or district LTS officers will review the audit to ensure that the moneys released to a First Nation were actually expended for the purpose for which they were authorized, that is, in accordance with the specific requests consented to by the council and the related expenditures approved by the department. In addition, regional officers are responsible for taking whatever corrective action is deemed appropriate in order to rectify any problems identified during the audit review. The **Year-End Reporting Handbook** must be used when reviewing First Nations' financial statements.

Where band moneys were released to a First Nation, the level of detail contained in the audited financial statements must be sufficient to enable departmental officials to determine that these moneys were used for the purpose for which they were authorized.

Where the department has authorized an expenditure of band moneys and has paid invoices (for example, directly to a supplier), no special reporting requirement is necessary from the First Nation since the Minister is assured that the funds were used for the purpose authorized.

8.3 AUDIT REVIEW PROCESS

At the end of each fiscal year, the region will review band moneys expenditures by analyzing the financial audited statements as follows:

- after March 31st of each year, the region will prepare a summary of approved BCRs for capital and revenue moneys released to each First Nation during the fiscal year; (regions may adopt various practices in preparing this summary; for example; they may use either TFMS data or a BCR tracking system to compile the summary);
- this summary is forwarded under covering letter to the relevant First Nation for use in the preparation of its fiscal year-end financial statements;

- when the audited financial statements are received, the region will conduct a review to identify the transferred funds and to match actual expenditures to those that were approved by the department;
- First Nations or their auditors may be contacted during the course of the review to resolve any questions or concerns relating to the audit of band moneys expenditures;
- a report of the review will be prepared by the region and examined by the regional audit review committee;
- if any questions or issues remain, a letter will be forwarded to the First Nation requesting clarification and/or remedial action (see subsection 8.4 of this manual in cases where an unauthorized use of funds has occurred); and
- once all concerns have been adequately addressed, and as part of the final response to the First Nation, a letter is sent acknowledging that no audit issues remain outstanding with respect to trust funds.

Where significant concerns remain unresolved, senior management at region and headquarters should be approached to determine what action should be taken to rectify the matter. These considerations may include the possibility of revoking a First Nation's section 69 authority.

8.4 UNAUTHORIZED USE OF FUNDS

Pursuant to the Act, the Minister has responsibilities with respect to the approval and expenditure of band moneys. In line with these responsibilities, it is essential that all approved band money expenditures be accounted for. Any variances identified between authorized and actual expenditures should be raised promptly with the First Nation and the necessary corrective action should be taken to address any concerns.

Corrective action may include:

- submitting a change-of-purpose BCR;
- refunding the trust account; and
- deferring to the next fiscal year any funds not used in a given year.

8.4.1 Change-of-Purpose BCR

In all cases where a council wishes to change the purpose for which band moneys are to be used, it must first seek the consent of the Minister. The council is not authorized to proceed with any change until it is approved by the Minister. A council is legally answerable to the Minister and the members of the First Nation for a unilateral change in the purpose of a BCR not approved in advance by the Minister. Failure to use moneys for authorized purposes may result in the recommendation that a First Nation's section 69 authority be revoked.

Alternatively, the First Nation may be asked to provide evidence tracing how the funds were actually expended (e.g. receipts, invoices, etc.). In addition, a BCR is required to inform the Minister of the actual use of the moneys in question and the rationale for the change. The BCR will also request that the First Nation use these moneys for this new purpose. The new BCR, known as a "change-of-purpose" BCR, should provide whatever justification and supporting documentation is needed to establish that the actual use of funds was of benefit to the First Nation and is consistent with the requirements of sections 61 to 69.

Upon receipt of a change-of-purpose BCR, regional officials must analyze the request in the same manner as they would any other expenditure proposal. If the subsequent analysis determines that the actual use of funds is not appropriate, the region must seek the return of these moneys from the First Nation.

8.4.2 Return of Approved Moneys

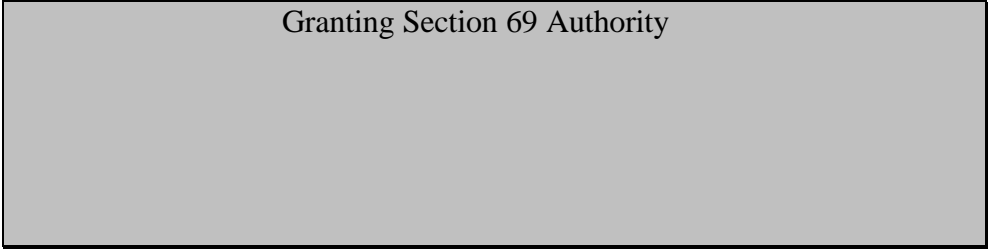
Where it is determined that capital or revenue moneys expended by the First Nation were used for unauthorized purposes, the region must request that the First Nation return any such moneys for deposit in the departmental capital or revenue account.

In the alternative, the First Nation may be asked to expend other funds (not band moneys) to finance the expenditure item that was originally approved by the department. For example, if the original expenditure approval was given for the construction of a building which was not built, the First Nation could take the necessary steps to ensure that the building project is completed.

8.4.3 Moneys Deferred to the Next Fiscal Year

For on-going programs or unfinished multi-year projects, band moneys can be carried forward to the next fiscal year for the same purpose.

Granting Section 69 Authority



9.1 INTRODUCTION

This Chapter of the manual applies to First Nations requesting section 69 authority. The Governor in Council, through an order-in-council, may grant a First Nation the authority to exercise section 69 powers over the management of its revenue moneys. These powers permit a First Nation to "*control, manage and expend in whole or in part its revenue moneys*". It does not include the power to collect revenue moneys.

First Nations requesting section 69 authority should specify whether they are seeking full or partial authority. Partial authority may be requested, for example, in cases where a First Nation only wishes to manage revenue derived from a certain source (e.g., the proceeds from cottage leases). Requests for partial authority will be assessed by the department on a case by case basis.

9.2 REVENUE REGULATIONS

Pursuant to subsection 69(2) of the Act, the Governor in Council has established the *Indian Bands Revenue Moneys Regulations* (see Appendix "C"). These regulations require that:

- First Nations establish separate accounts in a bank, trust company or other financial institution, to manage these moneys;

- First Nations authorize three persons (at least two band members) to sign for the

withdrawal of funds from the account;

- every payment from the account be authorized by at least two authorized persons;
- revenue payments from the Consolidated Revenue Fund be paid into the First Nation's account;
- First Nations engage an auditor and render an annual report; and
- copies of the auditor's annual report be posted on reserve and supplied to the Minister of DIAND.

9.3 INDIAN BAND REVENUE MONEYS ORDER

Prior to 1990, separate orders-in-council were made when First Nations were granted section 69 authority. In May 1990, the *Indian Band Revenue Moneys Order* (SOR/90-297) (the Order) was made, granting approximately 90 First Nations authority over their revenue moneys in whole.

In May 1993, the Order was amended and effectively consolidated all previous orders-in-council related to the granting of section 69 authority. As of September 1997, a total of approximately 440 First Nations were listed in the schedule to the Order.

As a result, the current process for granting a First Nation authority over its revenue moneys in whole involves seeking Governor in Council authority to add a First Nation's name to the schedule to the existing *Indian Band Revenue Moneys Order*.

Where a First Nation is seeking partial authority over its revenue moneys, a separate order-in-council must be sought. The Order cannot be used for this purpose, since it only applies to First Nations having full authority.

9.4 PROCESS FOR GRANTING 69 AUTHORITY

The process for granting section 69 authority to a First Nation may be summarized as follows (see Appendix "G" for a checklist for processing section 69 authority submissions):

First Nation: The process begins when the members of a First Nation provide their informed consent to acquire section 69 authority. A BCR along with supporting documentation is submitted to the regional LTS office.

Region: The First Nation's request is analyzed. If satisfied that approval requirements have been met, the regional office submits the request to the Indian Moneys Directorate at headquarters. The recommendation of the Regional Director General must accompany the request.

Headquarters: The regional submission is assessed. If the submission is incomplete or if the First Nation's request has not met departmental policy requirements, it will be returned to the regional office. The process headquarters must follow for obtaining an order-in-council is prescribed by central agencies and is time consuming, given detailed the documentation requirements that apply to this type of approval and the need to consult with numerous offices. First Nations should be made aware that it may take several months to obtain the order-in-council.

Once a decision is reached that the First Nation has met departmental requirements, the Indian Moneys Directorate will prepare an order-in-council submission. It involves obtaining revisions from and the consent of various departmental offices (Minister, Deputy Minister, Assistant Deputy Minister of LTS; ADM of Corporate Services, Director General of RRBG, Executive Support Services Directorate, Legal Services, the Office of Privatization and Regulatory Affairs and the Privy Council Office).

The approval process ends when the Governor General signs the order-in-council. The related statutory instrument is subsequently published in the Canada Gazette. Headquarters will advise the region of the outcome of the submission and the region will inform the First Nation.

9.5 DOCUMENTATION REQUIREMENTS FOR REGIONAL SUBMISSIONS

Documentation provided to headquarters by regional offices will include the following:

- evidence of informed band membership consent (refer to section 9.6);
- an original, duly authorized and complete band council resolution (refer to section 9.7);
- evidence demonstrating that the First Nation exercises consistent financial responsibility (refer to section 9.8); and

- a letter from the Regional Director General recommending that the First Nation be granted section 69 authority, including statements explaining the rationale behind the decision to recommend.

In support of the recommendation, regions may also wish to include opinions expressed by program managers (for example Funding Services, Capital Management, Finance, etc.).

9.6 INFORMED BAND MEMBERSHIP CONSENT

Since section 69 authority rests with the First Nation, the Department must ensure that the membership is formally advised about the implications of such authority. Furthermore, departmental records should show that the consent of the membership has been obtained.

Informing the Membership

In considering whether a First Nation should seek section 69 authority over its revenue moneys, the membership of the First Nation must be given an opportunity to be informed and to be heard. This would preferably occur at a general band meeting which would have been convened for that purpose, following sufficient advance notification of the membership. The minutes of these meetings should accompany the regional submission.

The membership of a First Nation should be informed of the implications of section 69 authority by the council and **its own independent legal and financial advisors**. The membership should be informed of the following:

- what revenue moneys are;
- the Minister's current duties under section 66;
- the present limits on the council's powers when operating under section 66;
- the new duties of the First Nation/council (including the need to meet the requirements of the revenue moneys regulations) and the remaining obligations of the Minister, if the First Nation receives section 69 authority; and
- the advantages, disadvantages and implications of a First Nation's revenue moneys being managed under sections 66 or 69.

Departmental officials may not provide advice or direction to the First Nation, but may attend meetings convened for such purposes to clarify or explain departmental policies and procedures. By attending these meetings departmental officials can also attest to the method used by the First Nation to reach its decision on the request for section 69 authority and that the membership was informed.

A First Nation should have a reasonable understanding of the nature and scope of its responsibilities and powers. The basic concepts which a First Nation should be aware of in managing its revenue moneys are that:

- the moneys must be used for beneficial purposes which "*promote the general progress and welfare of the band or any member of the band*" (that is, in a manner consistent with section 66);
- the First Nation must adhere to the provisions of the *Indian Bands Revenue Moneys Regulations*;
- those carrying out the section 69 duties on behalf of the First Nation must be fully accountable to the membership for the management of these moneys;
- the First Nation must annually offer full disclosure of its management of revenue moneys to the Minister; and
- the failure to adequately carry out its obligations could result in the Crown revoking the First Nation's section 69 authority.

Based on existing case law (for example, the Gilbert v Abbey decision), the First Nation council assumes the role of a fiduciary and must conduct itself accordingly. Failure to properly exercise their responsibilities could leave them in breach of their fiduciary duty and subject to legal action from the members of the First Nation. This situation highlights the need for chief and council to seek out independent legal and other advice, when appropriate, to ensure they are properly carrying out their duties.

As an internal measure, the membership of the First Nation may wish to impose certain guidelines (for example, budgetary approval procedures) which the council would be expected to follow when exercising section 69 powers on their behalf.

Membership Consent

The consent of the membership must be given through a band membership vote. The basis for requiring a membership vote is found in paragraph 2(3)(a) which specifies that "*a power conferred upon a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of the majority of the electors of the band*". The approach suggested in the *Indian Referendum Regulations* may be used for the vote.

The regional submission to headquarters will include a description of the method used to obtain consent and must also detail the results of the vote, namely:

- the wording of the question posed to the voters;
- the total number of eligible voters;

- the total number of members who actually voted;
- the number in favour;
- the number opposed; and
- the number of spoiled ballots.

9.7 BAND COUNCIL RESOLUTION

An original band council resolution must be authorized at a duly convened meeting of the council. It should contain the following statements:

- that the First Nation (not the council), by a majority vote of the electors of the First Nation, desires to control, manage and expend its revenue money in whole or in part (specify one or the other). Where a First Nation desires to manage only a portion of its revenues, the request must specifically define these moneys;
- that the members of the First Nation were informed of the implications of the request;
- that the First Nation agrees to meet the requirements of the *Indian Bands Revenue Moneys Regulations*;
- that the control, management and expenditure of revenue moneys will be undertaken solely for the general progress and welfare of the First Nation or any member of the First Nation;
- that the members of the First Nation have agreed that the council will exercise the section 69 duties on behalf of the First Nation;
- that the council, authorized by the First Nation to carry out its revenue moneys responsibilities, will be accountable to the First Nation and its members; this includes the duty to disclose the particulars of the management of its revenue moneys to the membership and annually post the audited financial statements of

the First Nation on a conspicuous place on reserve pursuant to paragraph 8(2)(a) of the revenue moneys regulations; and

- that the First Nation agrees to fully disclose the particulars of its management of the revenue moneys to the Minister when requested to do so (through audits or examination of records); this complies with the requirements of paragraph 8(2)(b) of the revenue moneys regulations.

9.8 EVIDENCE OF CONSISTENT FINANCIAL RESPONSIBILITY

The regional submission will contain statements on the amount of moneys currently in the First Nation's revenue account as well as a description of any moneys expected to be deposited into the First Nation's revenue account in the near future (e.g., settlement claims or major leasing agreements which may be pending, etc.).

The submission will include copies of the last three financial audits of the First Nation. The audits should be unqualified. If the audit is qualified, evidence must be provided to the effect that the First Nation has taken acceptable corrective measures to remedy any problems. Departmental assessments which were conducted on these three audits are also to be provided.

The submission will consider whether the First Nation has otherwise:

- demonstrated good financial control;
- used Indian moneys for the purposes for which they were authorized; and
- been diligent and consistent in the management of its funds.

A newly created First Nation will have been unable to establish a past track record on which its financial performance can be assessed. However, this situation should not prevent the First Nation from obtaining section 69 authority. In such cases, the First Nation should provide evidence that effective financial systems and procedures are in place and that it is able to carry out all of the duties imposed by section 69 and the *Indian Bands Revenue Moneys Regulations*. Such an assessment may be obtained by regional or district staff following an on-site review of the First Nation's systems and records. The assistance of staff from other program areas may be required for this purpose.

9.9 AMENDMENTS OF AN EXISTING AUTHORITY

After a First Nation has been granted section 69 authority, it may later request changes to its powers (for example, asking for full, rather than partial authority over its revenue moneys). The First Nation will conduct a new membership vote for this purpose and submit a BCR and supporting documentation to the department. A regional submission will be required and the Governor in Council authority will be sought.

9.10 BAND DIVISIONS

Occasionally a First Nation having section 69 authority is divided to form two or more First Nations. In such cases, the "parent" First Nation, which originally was granted section 69 authority, will automatically retain these powers. However, the newly formed First Nation must apply for the authority to exercise section 69 powers. An order-in-council will be sought for the First Nation, once it is established that all the requirements described in this manual have been met.

Revoking Section 69 Authority

10.1 INTRODUCTION

After a First Nation receives authority over its revenue moneys, section 69 of the Act allows the Governor in Council (GIC) to revoke that authority. In such cases, the Minister of DIAND would recommend revocation to the GIC, accompanied by a proposed order-in-council to that effect.

10.2 PROCESS FOR REVOKING SECTION 69 AUTHORITY

Revocation may be considered where it comes to the attention of the department that a First Nation:

- has not established the requisite machinery and procedures set out in the revenue regulations; or
- does not properly exercise the powers conferred upon it; this would include evidence of mismanagement or misuse of revenue moneys.

Such action would be preceded by a regional submission to headquarters outlining the problem, its significance, corrective measures attempted, and an assessment of options to revocation. The recommendation of the Regional Director General must accompany the submission. If headquarters concurs with the regional recommendation, the Indian Moneys Directorate will prepare the necessary GIC submission.

Significant revenue moneys concerns may first come to the region's attention during the audit review process. Regions should promptly take whatever steps are appropriate to rectify the situation. Failure to correct the identified problems may eventually lead to a regional recommendation for revocation.

Revocation should be used as a measure of last resort, where the issue is significant and all other avenues to address the particular problems have been considered. For example, rather than revoke a First Nation's section 69 authority, a region may temporarily appoint an independent receiver-manager to receive all income and issue all cheques on behalf of the First Nation.

In such cases, the First Nation council would initiate the expenditure request by BCR and the region would conduct a full assessment of the proposed expenditure. A release of revenue moneys would only be authorized by DIAND if the region can establish that the expenditure would benefit the First Nation and its members.

Apart from the review of annual revenue moneys audits, departmental officials will generally not undertake further monitoring of how a First Nation is carrying out its section 69 responsibilities. However, where specific and documented problems in the management of a First Nation's revenue moneys are brought to the attention of the department, such problems must be investigated.

APPENDIX A

Summary of Rick Gilbert et al. v. Alice Abbey Decision

Duty of Chief and Councillors to Act in a Fiduciary Capacity

The British Columbia Supreme Court addressed the matter of the fiduciary duty of chiefs and councillors in its June 28, 1992 decision on the Rick Gilbert et al. v. Alice Abbey case. The decision stated that:

- a) "a fiduciary duty exists if one person undertakes to act in relation to a particular matter in the interests of another, and has been entrusted with a power or discretion to affect the other's interest, in a legal or practical sense, so that the other is in a position of vulnerability"; and
- b) "a duly-elected chief as well as members of the band council are fiduciaries as far as all other members of the band are concerned."

This case also attests to the fact that litigation can be successfully brought against elected chiefs and councillors who breach their fiduciary obligations.

Conflict of Interest

In addition, the case clarified that one effect of being a fiduciary to the members of a First Nation, is that the actions of chief and councillors, while in office, are subject to scrutiny. There must be no question of these elected representatives allowing their personal interests to conflict with their duty to the First Nation.

This means that in a potential conflict of interest situation the individual chief or councillor has an obligation to make full disclosure of his or her interest and to abstain from participating in the related discussions and vote.

APPENDIX B

1. Rates of Interest on Capital and Revenue Accounts

From 1867 to March 1980

From Confederation to December 31, 1882, the annual interest rate was fixed by Order-in-Council at 5%.

From January 1, 1883 to June 30, 1892, the annual interest rate was fixed by Orders-in-Council of January 12, 1883 and June 4, 1883 at 4%.

From July 1, 1892 to December 31, 1897, the annual interest rate was fixed by Order-in-Council of September 29, 1892 at 3 ½%.

From January 1, 1898 to March 31, 1917, the annual interest rate was fixed by Order-in-Council of December 24, 1897 at 3%.

From April 1, 1917 to March 31, 1969, the annual interest rate was fixed by Order-in-Council of June 5, 1917 at 5%.

From April 1, 1969 to March 31, 1980, the interest rate was fixed by Order-in-Council of October 8, 1969 as follows:

Fiscal Year	Average Interest Rate for the Month of March	Interest Rate Adjustment re Previous Year at March 31	Interest Rate Applied on April 1 Opening /March 31 Carryover Balance	Yearly Average Interest Rate
1969-1970 ¹	7.24%	---	7.24%	7.79%
1970-1971 ¹	8.05%	+ 0.55%	8.60%	7.59%
1971-1972 ¹	6.80%	- 0.46%	6.34%	6.97%
1972-1973 ¹	7.07%	+ 0.17%	7.24%	7.30%
1973-1974 ¹	7.30%	+ 0.23%	7.53%	7.70%
1974-1975 ²	7.92%	+0.40%	8.32%	9.00%
1975-1976 ²	8.25%	NA	8.25%	9.27%
1976-1977 ²	9.47%	NA	9.47%	9.03%
1977-1978 ²	8.76%	NA	8.76%	8.81%
1978-1979 ²	9.15%	NA	9.15%	9.43%
1979-1980 ²	9.91%	NA	9.91%	10.81%

From April 1, 1980 to present, the interest rate has been fixed by Order-in-Council of

January 29, 1981.

<u>Year</u>	<u>First Quarter</u>	<u>Second Quarter</u>	<u>Third Quarter</u>	<u>Fourth Quarter</u>	<u>Compounded Semi-annually⁴</u>
1980-81 ³	2.95%	3.04%	3.23%	3.29%	12.9005%
1981-82 ³	3.69%	4.11%	3.88%	3.86%	16.1437%
1982-83 ³	3.78%	3.68%	3.05%	2.97%	13.9291%
1983-84 ³	2.8387%	2.9996%	2.9571%	3.075%	12.2225%
1984-85 ³	3.3847%	3.258%	3.0213%	2.9694%	13.0313%
1985-86 ³	2.795%	2.7169%	2.63%	2.5356%	10.9622%
1986-87 ³	2.351%	2.3196%	2.3446%	2.2652%	9.4957%
1987-88 ³	2.4266%	2.6025%	2.6291%	2.4748%	10.3897%
1988-89 ³	2.5711%	2.6156%	2.569%	2.6034%	10.6274%
1989-90 ³	2.4989%	2.4023%	2.4171%	2.5889%	10.1526%
1990-91 ³	2.7837%	2.7221%	2.7156%	2.5152%	11.0246%
1991-92 ³	2.4944%	2.5061%	2.3017%	2.2522%	9.7821%
1992-93 ³	2.3062%	2.0737%	2.1373%	2.1006%	8.8034%
1993-94 ³	2.0358%	1.8977%	1.8308%	1.8300%	7.7383%
1994-95 ³	2.1777%	2.2819%	2.3058%	2.2589%	9.2279%
1995-96 ³	2.0687%	2.0866%	1.9375%	1.9079%	8.1605%
1996-97 ³	2.0048%	1.9310%	1.6952%	1.7229%	7.4884%
1997-98 ³	1.7213%	1.5665%	1.4656%	1.4017%	6.2494%
1998-99 ³	1.3731%	1.3720%	1.2998%	1.3129%	5.4295%
1999-00 ³	1.3760%	1.4462%	1.5517%	1.5440%	6.0053%
2000-01 ³	1.4938%	1.4508%	1.4302%	1.4177%	5.8764%
2001-02 ³	1.4887%	1.4738%	1.4112%	1.4404%	5.8986%
2002-03 ³	1.4625%	1.3921%	1.3767%	1.3537%	5.6629%
2003-04 ³	1.2969%	1.3237%	1.3148%	1.2463%	5.2488%
2004-05 ³	1.3177%	1.2871%	1.2256%	1.1779%	5.0709%
2005-06 ³	1.1073%	1.0638%	1.0600%	1.0519%	4.3289%

¹ *From April 1, 1969 to March 31, 1974, interest was calculated in the beginning of the fiscal year by using the March monthly average of those market yields of Government of Canada bond issues as published each Wednesday by the Bank of Canada as part of its weekly financial statistics which have terms to maturity of 10 years or over, together with an interest rate adjustment to correct for the amount by which rates during the course of the previous fiscal year will have varied from the rate established at the commencement of that year. This Interest rate was applied to the April 1 Opening Balance of the account (Capital and Revenue) and the resulting interest was credited to the Band Revenue Account in the beginning of the fiscal year.*

² *From April 1, 1974 to March 31, 1980, an interest advance was credited to the Band Revenue Account in the beginning of the fiscal year by multiplying the March monthly average of those market yields of Government of Canada bond issues as published each Wednesday by the Bank of Canada as part of its weekly financial statistics which have terms to maturity of 10 years or over to the account's (Capital and Revenue) year-end carryover amount. At the end of the fiscal year, the actual interest for the fiscal year was calculated by multiplying the yearly average of those market yields of Government of Canada bond issues having terms of maturity of 10 years or over to the annual average month-end account (Capital and Revenue) balance with interest advance deducted. The difference between the interest advance and the actual interest is then credited or debited to the Band Revenue Account. For 1974-1975, an interest advance was calculated as described in (1) above, but an adjustment was made to reflect the actual interest earned at the end of the fiscal year.*

³ *From April 1, 1980 to the present, interest has been calculated on quarterly average month-end balances on deposit and compounded semi-annually. The interest rate has been based on the quarterly average of those market yields of the Government of Canada bond issues as published each Wednesday by the Bank of Canada as part of its weekly financial statistics, which have terms to maturity of 10 years or over.*

⁴ *The last column is an annualized interest rate that is shown for information purposes only.*

Calculations of interest must be based on month-end account balances which generally vary from month to month.

2. Order in Council P.C. 1981-3/255

2. Order in Council P.C. 1981-3/255

Order in Council P.C. 1981-3/255



P.C. 1981-3/255
29 January, 1981

CANADA
PRIVY COUNCIL - CONSEIL PRIVE (T.S. Rec.)
(Rec. du C.T.)

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL,
on the recommendation of the Minister of Indian Affairs and
Northern Development and the Treasury Board, pursuant to subsection
61(2) of the Indian Act, is pleased hereby to revoke Order in
Council P.C. 1969-1934 of the 8th of October, 1969 and to fix
the rate of interest to be allowed, commencing the 1st day of
April, 1980, on Indian Bands' Revenue and Capital moneys held
in the Consolidated Revenue Fund at the quarterly average of
those market yields of the Government of Canada bond issues as
published each Wednesday by the Bank of Canada as part of its
weekly financial statistics, which have terms to maturity of 10
years or over.

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORME

CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVE

APPENDIX C

Indian Bands Revenue Moneys Regulations Regulations Respecting Revenue Moneys of Certain Bands of Indians

[*Administrative consolidation*]

Short Title

1. These Regulations may be cited as the *Indian Bands Revenue Moneys Regulations*.

Interpretation

2. In these Regulations,

"account" means the account of a band established pursuant to section 5;

"band" means

- (a) a band listed in the schedule to the *Indian Band Revenue Moneys Order*, or
- (b) any other band permitted to control, manage or expend its revenue moneys in part pursuant to subsection 69(1) of the *Indian Act*".

(Title Revoked)

3. Section 3 is revoked.

General

4. Any expenditure by a band of its revenue moneys shall be subject to the *Indian Act*.
5. Every band shall establish an account with a chartered bank, a trust or loan company or a credit union or caisse populaire.
6.
 - (1) Every band shall authorize three persons, two of whom shall be members of the band, to sign cheques or orders for payment of money drawn on its account.
 - (2) Every cheque or order for payment of money drawn on the account of a band shall be signed by at least two of the persons authorized by the band pursuant to subsection (1).
7. Where the Minister has, pursuant to section 66 of the *Indian Act*, authorized or directed the expenditure of revenue moneys of a band, the amount of moneys so authorized or directed to be expended shall be paid to the band's account out of the Consolidated Revenue Fund.
8.
 - (1) Every band shall engage an auditor to audit its account and to render an annual report in respect thereof.
 - (2) A copy of the auditor's annual report shall, within 7 days of its completion,
 - (a) be posted in conspicuous places on the band reserve for examination by members of the band; and
 - (b) be supplied to the Minister of Indian Affairs and Northern Development.

APPENDIX E

CALCULATION OF AMOUNT OWING UNDER SECTION 64.1 OF THE INDIAN ACT CALCUL DU MONTANT DÛ SELON L'ARTICLE 64.1 DE LA LOI SUR LES INDIENS

1. Name of person - Nom de la personne	
2. (a) Date of signature on application for reinstatement Date de signature sur la demande de réinscription	2. (b) Date of receipt of application for reinstatement in Office of Registrar Date de réception de la demande de réinscription au Bureau du registraire
3. Date of reinstatement letter - Date de la lettre de réinscription	4. Reinstated under section: - Réinscrit(e) selon l'article :
5. Last band member of - Membre de quelle bande (dernière)	
6. Date of loss of status - Date de la perte du statut	7. Date of loss of status payment - Date du paiement pour perte de statut

8. Amount of payment on loss of status - Montant du paiement lors de la perte du statut	
a) Treaty Traité	
b) one per capita (Capital) une part par personne (Capital)	
c) one per capita (Revenue) une part par personne (Revenu)	
TOTAL →	

9. Amount not required to be reimbursed - Montant non exigible pour remboursement	
a) Treaty Traité	
b) Section 64.1 Article 64.1	\$1,000.00
TOTAL →	

10. Principle amount required to be reimbursed Montant de capital non exigible pour remboursement	(8.) - (9.) = →	
--	-----------------	--

11. Montant total dû à la bande à partir de →	Date	Amount - Montant \$
12. Montant total dû à la personne à partir de →	Date	Amount - Montant \$
Band council by-law under paragraph 81(1)(p.4) to bring subsection 64.1(2) into effect Règlement administratif du Conseil de bande selon l'alinéa 81(1)(p.4) pour mettre en vigueur le paragraphe 64.1(2)		<input type="checkbox"/> Yes <input type="checkbox"/> No

13. Comments - Remarques

--

Trust funds clerk - Commis des fonds en fiducie	Authorized officer - Fonctionnaire autorisé
Date	Date

APPENDIX F

Plan Assessment Report

Prepared by the _____ Region for:

the Indian Moneys Directorate
RRBG Branch, Headquarters
Lands and Trust Services

INDIAN MONIES DIRECTORATE – PARAGRAPH 64(1)(K)

REGIONAL BUSINESS PLAN ASSESSMENT REPORT

Band Name & Number:	
Name of Business/Corporation:	

ISSUE: Should the Minister authorize and direct the release of \$ _____ of capital moneys to the band, pursuant to paragraph 64(1)(k) of the *Indian Act*?

BUSINESS NAME:	
ADDRESS:	

TYPE OF BUSINESS:	DEVELOPMENT STAGE
--------------------------	--------------------------

PURPOSE OF REQUEST:	
----------------------------	--

PROJECT:	
-----------------	--

PROJECT:	
-----------------	--

PROGRAM	FINANCING				
ITEM	\$	%	SOURCE	\$	%
TOTAL:			*I.M.D. 64-(1) (K)		
			TOTAL:		

BCR DATE: (dd/mm/yy) _____	DATE APPLICATION RECEIVED AT REGION: (dd/mm/yy) _____
--------------------------------------	---

DISTRICT	REGION	HEADQUARTERS
Recommended 19	Recommended 19	Recommended 19
AMOUNT:	AMOUNT:	AMOUNT:
NAME:	NAME:	NAME:
TITLE	TITLE:	TITLE:
Signature:	Signature:	Signature:
AMOUNT:	AMOUNT:	AMOUNT:
NAME:	NAME:	NAME:
TITLE	TITLE:	TITLE:
Signature:	Signature:	Signature:
AMOUNT:	AMOUNT:	MINISTER'S OFFICE
NAME:	NAME:	DATE:
TITLE:	TITLE:	NAME:

Signature: | Signature: | Signature:

AUDITED <input type="checkbox"/>	REVIEW ENGAGEMENT <input type="checkbox"/>	YEAR-END <input type="checkbox"/>	COMBINED <input type="checkbox"/>
YEAR ESTABLISHED: _____	OTHER <input type="checkbox"/>	INTERIM <input type="checkbox"/>	CONSOLIDATED <input type="checkbox"/>

SAMPLE BALANCE SHEET

<input type="checkbox"/>	CASH		BANK		
<input type="checkbox"/>	RECEIVABLES				
<input type="checkbox"/>	INVENTORY		ACCRUALS		
<input type="checkbox"/>	PREPAID EXPENSES		TERM DEBT - CURRENT		
<input type="checkbox"/>	OTHER:		OTHER:		
<input type="checkbox"/>			UNEARNED REVENUE		
<input type="checkbox"/>	TOTAL CURRENT		TOTAL CURRENT		
<input type="checkbox"/>					
<input type="checkbox"/>	LAND IMPROVEMENTS		LONG TERM DEBT		
<input type="checkbox"/>	BUILDING				
<input type="checkbox"/>	Deprec. (\$)				
<input type="checkbox"/>	MACHINERY & EQUIPMENT		SHAREHOLDER LOANS		
<input type="checkbox"/>			EQUITY & GRANTS		
<input type="checkbox"/>	VEHICLES		Grants:		
<input type="checkbox"/>	LEASEHOLD IMPROVEMENTS				
<input type="checkbox"/>	FURNITURE & FIXTURES				
<input type="checkbox"/>			EQUITY		
<input type="checkbox"/>	OTHER:		Preferred Shares		
<input type="checkbox"/>			Common Shares		
<input type="checkbox"/>			Proprietors		
<input type="checkbox"/>					
<input type="checkbox"/>	INTANGIBLES		RETAINED EARNINGS(Deficit)		
<input type="checkbox"/>					

--	--	--	--

1. HISTORY

History should be limited to key facts: the year when the business was founded, change of ownership (if any), physical expansions, growth and important factors that influenced the business. A description of past departmental involvement in the business is also required (eg, past expenditures, etc.).

2. OWNERSHIP STRUCTURE

Identify whether business is an incorporation, partnership, limited partnership, sole proprietorship, not for profit.

3. DIRECTORS

Based on the detailed analysis of the Board of Directors, an assessment is required of the Board's ability to oversee the management and managers of the business.

4. MANAGEMENT

Based on the detailed management analysis, an assessment is required of the management team's ability to successfully run and plan every facet of the business.

5. DESCRIPTION OF OPERATIONS, PRODUCTS OR SERVICES

Assessment is required on whether the description of operations convey a clear idea of the nature and size of the business and its product or service.

6. SUPPLIER/PURCHASING

Assessment is required of the adequacy of or dependency on supply sources, as well as the aging of payables as compared to industry standards and terms with suppliers.

7. MARKET SERVED/MARKET OPINION

Geographic market, advertising, potential market volume, pricing policy.

8. COMPETITION

In the case of a new business, what effects will the proposed business have on existing operations? What is the company's competitive advantage and position versus those of its competitors?

9. FINANCIAL ANALYSIS

HORIZONTAL ANALYSIS:

The horizontal analysis is the examination of elements in the financial statements over a period of time - usually two or more fiscal periods.

VERTICAL ANALYSIS:

The vertical analysis provides on a percentage basis the fluctuation of expenses as compared to sales. In summary form, present your conclusions on fluctuations of expenses and your comparison to the industry.

RATIO ANALYSIS:

The ratio analysis provides quick financial measures of a company's performance. These ratios are usually compared to the industry, but also provide valuable information on their own. A summary of conclusions from the ratio analysis should be stated.

CASHFLOW STATEMENT ANALYSIS:

Summary conclusions on the adequacy of receipts to meet disbursements in a timely fashion. Does the client's cashflow address all requirements or have there been any oversights on their part?

INSURANCE ANALYSIS:

Summary conclusions on adequacy of coverage that is available to protect the client's investment.

OPERATING & WORKING CAPITAL ANALYSIS:

Summary conclusion that adequate working capital has been budgeted to meet up-front costs.

10. ENVIRONMENTAL ASSESSMENT

Any environmental concerns? How will they be mitigated?

11. FACILITIES

Confirm that facilities are adequate to meet the business objectives of the company.

12. HUMAN RESOURCES

Breakdown the number of existing full-time, part-time positions prior to funding from the trust fund account, with a dollar value for payrolls. Breakdown of positions after assistance based on the proposed project. Provide an opinion of the qualifications of human resources to meet the goals and objectives of the business.

EXISTING:

FULL TIME _____

PART TIME _____

TOTAL _____

DOLLAR VALUE _____

AFTER ASSISTANCE:

FULL TIME _____

PART TIME _____

TOTAL _____

DOLLAR VALUE _____

COMMENTS:

13. ECONOMIC, SOCIAL BENEFITS

What impact will the project have on the community if band capital moneys are provided or refused by the Minister of DIAND? What factors were considered in support of the recommendation?

14. SECTION 64(1)(K) DATA

Itemization of past expenditures made from the band's trust accounts that may relate to the current proposal.

15. RETURN ON INVESTMENT (R.O.I.)

A breakdown of historical and projected return on Investment for the business. Compare to DIAND trust account's return on Investment.

YEAR: 199__

199__

199__

199__

R.O. I.: _____

16. PREVIOUS GOVERNMENT SUPPORT

Provide details of funding from other government programs that were used to support the project since inception. Confirmation that conditions were met with the agencies upon completion of program.

17. OTHER SOURCES OF FUNDING

Confirmation that for the current proposal, there are no other funding sources that the band may be able to utilize to finance its request.

18. STRENGTHS

Point form remarks on the strength of the business in terms of its management, operation, market or products.

19. WEAKNESSES

Point form remarks on the weak points of the business in terms of its management, operation, market or products.

20. OTHER REMARKS

Use this section to cover any points that may not have been included elsewhere, but may have material impact. It may also be used to highlight key points that will reinforce any recommendations.

21. RECOMMENDATIONS/RATIONALE

State the recommendation(s) and explain the rationale on which the recommendation is based to support or decline the expenditure request.

APPENDIX G

CHECKLIST FOR PROCESSING SECTION 69 AUTHORITY SUBMISSIONS

Evidence of Informed Band Membership Support:

- o Statement on method used to inform membership.
- o Minutes of meeting at which the membership were informed.
- o Statement on voting process followed.
- o Results of vote.

Band Council Resolution:

- o Original BCR submitted and duly authorized.
- o First Nation has clearly requested section 69 authority.
- o BCR specifies whether whole or partial authority requested.
- o Membership informed.
- o Council agrees to meet requirements of revenue moneys regulations.
- o Council agrees to exercise its powers for general progress/welfare of the band.
- o Council named to exercise band powers.
- o Council agrees to fully inform and disclose the particulars of its management of revenue moneys to the membership.
- o Council agrees to fully disclose to the Minister its management of revenue moneys.

Evidence of Consistent Financial/Fiscal Responsibility:

- o Audits for most recent three years obtained.
- o Departmental assessment of these audits obtained and reviewed.
- o Council has corrected any problems noted in previous audit assessments.
- o Letters from other program areas (if applicable).

Regional Recommendation:

- o Full rationale supporting regional recommendation included.
- o Recommendation signed by RDG.

APPENDIX H

SAMPLE TRUST DECLARATION AND AGREEMENT

(Name of First Nation)
as represented by Council of the Band

and

(Name of Company)

and

(Name of Trustee)
TRUSTEE

WHEREAS the (Name of Band) Band of Indians (hereinafter referred to as the “Band”) is the beneficial owner of all the outstanding and issued shares in the capital stock of (Name of corporation) (hereinafter referred to as “Corporation”);

AND WHEREAS all of the said outstanding and issued shares in the capital stock of the Corporation are held in trust by those persons who, from time to time, form the Council of the Band or who are nominated by the said Council to hold shares in trust (hereinafter referred to as “Trustee”);

AND WHEREAS (Name of Trustee) has agreed to act as Trustee and to hold shares in the Corporation on behalf of and in trust for the Band on the terms and conditions as hereinafter set out;

AND WHEREAS the number of Trustees as defined herein will not, at any time, exceed the number of Council Members of the Band;

NOW THEREFORE WITNESSETH that, in consideration of the mutual covenants as hereinafter set out, the parties hereto agree as follows:

1. Nominee Trustee

- (a) The (Name of Band) Band Council shall immediately appoint a Nominee Trustee (hereinafter referred to as “Nominee”) in all circumstances where a Trustee

ceases to act as Trustee pursuant to paragraph 4 of this agreement.

- (b) A Nominee shall be a _____ (Name of Band) _____ Band member nominated by a majority vote of the _____ (Name of Band) _____ Band Council members present at a duly convened Council meeting.
- (c) A Nominee shall continue in the position of Trustee until such time as the said Nominee is removed by a majority vote of the _____ (Name of Band) _____ Band Council Members present at a duly convened Council meeting.
- (d) The _____ (Name of Band) _____ Band members shall at all times be notified by Council as to the names of the Nominees who are appointed or removed.
- (e) A Nominee has all of the same powers, duties, and responsibilities as does a Trustee.

2. Shares Held by Trustee

The Trustee hereby agrees to become the registered owner of _____ Common Share(s) in the capital stock of the Corporation representing _____ percent of all outstanding and issued Common Shares of the Corporation.

3. Duties of Trustee

The Trustee agrees:

- (a) to vote the Shares in the best interests of the Band in accordance with a decision of the majority of the Trustees at a duly convened meeting where all the Trustees are present; or
- (b) to vote the shares in accordance with a majority decision of the _____ (Name of Band) _____ Band members present at duly convened _____ (Name of Band) _____ Band membership meeting;
- (c) to notify and keep informed the members of the Band, at their request, of all matters relating to the Corporation which come to his attention or notice in his capacity as shareholder of the Corporation;

- (d) to provide to the members of the Band a report, at least once in any calendar year or more often if circumstances warrant or if requested by a member of the Band, on the project or projects in which the Corporation is involved and to provide in connection therewith such Financial Statements as are necessary to adequately apprise the members of the status thereof;
- (e) to provide the members of the Band with such reasonable access to the Corporate and Financial Books and records of the Corporation as they would be entitled to as Shareholders of the Corporation;
- (f) to maintain proper books and records on all matters relating to the duties and actions of the Trustee;
- (g) to execute the Share Certificate in blank for transfer and to deliver it to the custody of the solicitor for the Corporation; and
- (h) in respect of any dividends or moneys paid to shareholders or in respect of any moneys received by shareholders, the Trustee is obligated to deposit these moneys, on behalf of the members of the Band, in the Band's Revenue Account as defined by the Indian Band's Revenue Moneys Regulations under the Indian Act and is further obligated to account to the Band members for such moneys deposited.

4. Removal of Trustee

- (a) A Trustee or nominee will cease to act:
 - (i) immediately upon Trustee ceasing to be a Council Member of the Band;
 - (ii) immediately upon request to the Council of the Band by the members of the Band, as determined by majority vote of the said members at a duly convened meeting, at which at least two-thirds (2/3) of the Band members over the age of eighteen (18) years are present; or
 - (iii) at such time as the Trustee is deemed to be in breach of the provisions of this Agreement as determined either by the Council of the Band, as determined by decision of the majority of the Council Members present at a duly convened Council meeting of the Band, or by a majority vote of the Band members at a duly convened meeting, at which at least two-thirds (2/3) of the Band members over the age of eighteen (18) years are present.
- (b) Upon ceasing to be a Trustee for any reason whatsoever, all documentation, materials or property in the possession or control of the Trustee relating to the

IN WITNESS WHEREOF the parties hereto have hereunder set their respective hands and seals on the ____ day of _____.

NOMINEE TRUSTEES

) COUNCIL MEMBERS OF THE
) INDIAN BAND
) _____
) Chief
) _____
) Councillor
) _____
) Councillor
) _____
) Councillor
) _____
) Councillor
) _____
) Councillor
) _____
) Councillor
) _____
) Councillor
) _____
) Councillor

SIGNED, SEALED AND DELIVERED in the presence of

Witness

Witness

Witness

Witness

Witness

APPENDIX I

**SAMPLE RELEASE FORM FOR PAYMENTS
TO PERSONS DELETED FROM A BAND LIST**

FROM: _____
(hereinafter referred to as the "Applicant")

TO: _____
(hereinafter referred to as the "Band")

WHEREAS the Indian Act R.S.C. 1970 C.1-6 as amended, provides that a Band Council may authorize the Minister to make payments out of the capital or revenue moneys to persons whose names become deleted from the Band List of the Band; and

WHEREAS pursuant to this power the Band Council has passed a By-Law Respecting Payments of capital and revenue moneys to persons whose names become deleted from the Band List of the Band; and

WHEREAS the applicant desires to receive such a payment; and

NOW THEREFORE BE IT AGREED that in consideration of the Band Council authorizing the Minister to make a payment out of the capital and revenue moneys held by the Minister for the benefit of the Band, as set out herein, it is agreed as follows:

1. Upon execution of the Release, the Band through its Band Council will pass a Band Council Resolution in a form as set out in the attached BCR.
2. The Applicant shall not ever reside on the _____ Reserve.
3. The Applicant shall not ever apply for membership in the _____ Band.
4. The Applicant shall withdraw any and all applications which have been made for membership in the Band.
5. The Applicant hereby applies to the Band Council to have the Applicant's name deleted from the Band List.
6. The Applicant hereby surrenders the Applicant's membership in the _____ Band.

7. The Applicant agrees that the payment out of the capital and revenue moneys held by the Minister for the benefit of the Band shall constitute a complete and full payment to the Applicant for all of the rights, interests, benefits and other attributes of the Band Membership which the Applicant is hereby applying to surrender, and for any and all rights, interests, and benefits which are incidental to, connected with or which flow from that membership. Without restricting the generality of the foregoing this clause shall apply notwithstanding that the Applicant may have been or have become entitled to a greater sum in light of the determination of litigation surrounding the validity of the 1985 amendments to the Indian Act and the membership granted by those amendments.

THIS RELEASE made this _____ day of _____, 199___, by the Applicant.

Witness

(Applicant)

THIS RELEASE accepted by the _____ Band Council

this _____ day of _____, 199___.

Chief

Councillor

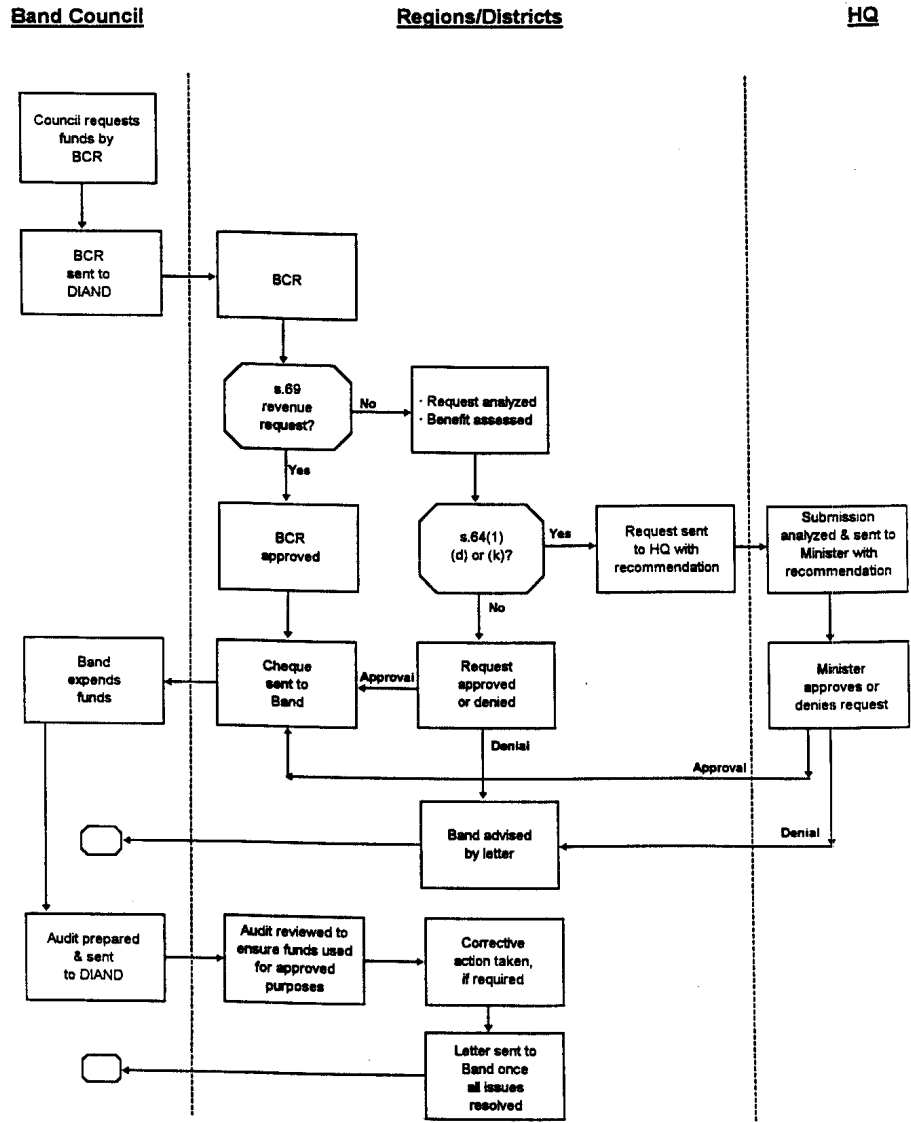
Councillor

Councillor

Councillor

APPENDIX J

PROCESS FOR EXPENDING/MONITORING BAND MONEYS



APPENDIX K

1. BAND COUNCIL RESOLUTION

Request for PCD where the Minister is directed to make a payment for the benefit of minors

As mentioned in section 7.2.2 of this manual, a First Nation council may use the following wording in its BCR to give notice to the Minister that payments on behalf of minors are necessary or proper:

We, _____ (name of First Nation council) _____, do hereby request funds of approximately _____ (amount) _____ from our capital account in order to issue a per capita distribution (pcd) under paragraph 64(1)(a) of the *Indian Act*.

By _____ (date) _____, the pcd payments will be issued in the amount of _____ (amount and frequency) _____ to each of the _____ (number) _____ estimated First Nation members on the Band List as at _____ (date) _____.

Optional clause:) We, _____ (name of First Nation council) _____, will administer the pcd and will be responsible for preparing and distributing the individuals cheques to all members.

We, _____ (name of First Nation council) _____, have made a determination under section 52.1 of the *Indian Act* and do hereby direct the Minister to make a payment for the maintenance, advancement or other benefit for those minors specially named in the attached list. Children on whose behalf such payments are being made are in the actual care and custody of the persons identified in the above mentioned list.

We, _____ (name of First Nation council) _____, have complied with all the requirements of subsections 52.1(1) and (2) of the *Indian Act* in that 14 days prior to making our determination, we did post in a conspicuous place on the reserve a notice of our intention to make a decision under section 52.1 and First Nation members were given a reasonable opportunity to be heard at a general meeting of the First Nation held prior to the determination.

We, _____ (name of First Nation council) _____, have designated the following council member(s) to sign the prescribed receipt on our behalf for all moneys received under subsection 52.1(3) of the *Indian Act*: _____ (name of Councillor) _____

The books and records will be kept in accordance with generally accepted accounting principles. The _____ (name of First Nation council) _____ will provide audited financial statement to the department within 90 days of the end of the fiscal year.

Any unexpended funds will be returned to the department as a debt due to the Crown.”

2. PAYMENT TO A FIRST NATION COUNCIL ON BEHALF OF MINORS

As stated in section 7.2.2, a receipt must be signed by the council members identified in the BCR that requested the distribution, to discharge the Minister from liability for the loss or misapplication of the payment. The following receipt form is suggested:

Receipt Form

**Payment to a First Nation Council
on Behalf of Minors**

We, _____

duly elected members of the _____ First Nation Council acknowledge on behalf of the members of the First Nation Council receipt of _____ dollars, made payable to the members of the _____ First Nation Council "in trust" for the express purpose of _____
_____.

Pursuant to subsection 52.5(2) of the Indian Act 1985 R.S.C. c. I-5, we further acknowledge that this receipt given in respect of said moneys is a sufficient discharge for the moneys and effectively exonerates Her Majesty the Queen, Her representatives and officials, from seeing to the application of the said moneys or from being answerable for its loss or misapplication.

_____ First Nation Council
Signatures: _____

Witness _____

Dated this _____ day of _____ 19____ .

APPENDIX L

Receipt Form

**Payment to a Parent/Guardian
on Behalf of a Minor**

I, _____, being a member of the (name of First Nation),
acknowledge receipt of the sum of \$ _____, which sum represents payment to me for
myself and the following listed children, each of whom is a member of the
(name of First Nation).

CHILD'S NAME

BIRTH DATE

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

I represent that I am the parent or legal guardian of the above named children and that the funds received in respect to each such child will be used for his or her benefit or will be deposited in a trust account maintained for that child.

I, on behalf of myself and the above-named children, in consideration of the payment, do hereby release and forever discharge and indemnify the Department of Indian Affairs, the Chief and Council of the (name of First Nation), their agents, employees, heirs, executors, administrators and assigns, from any and all manner of action, cause of action, suit, cost, debt, demand or claim of whatever nature or kind which the undersigned or any other person shall or may have by reason of or relating to the payment of moneys to me or to members of the (name of First Nation).

SIGNED at _____ this _____ day of _____ 19____.

CHEQUE NUMBER _____

SIGNATURE _____