

GOOD PUBLIC WORKS MANAGEMENT IN FIRST NATIONS COMMUNITIES

Backgrounder

– Public Works Function in Self Government



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1. INTRODUCTION: PURPOSE AND SCOPE

Peoples of European descent did not establish Canada's earliest forms of government. In fact, prior to the arrival of Europeans, Aboriginal Peoples in Canada had governed themselves for thousands of years. However, in the *Constitutional Act of 1867* (the *British North American Act*), and as a matter of government policy, Aboriginal peoples were excluded from the formation of Canada and had little control over their own interests. In recent years, Canada has seen a re-emergence of First Nations governance as Aboriginal communities increasingly seek jurisdiction, through self-government negotiations, in a number of areas - one of which is public works. This highly complex and technically based function does not often receive the attention it deserves despite its centrality to local governance. Further complicating public works are the numerous overlaps with several other functions including environmental management, health and social programming, and economic development.

The following paper has been designed to provide an overview of the function for federal government negotiators as well as their counterparts in Aboriginal communities to inform their discussions surrounding public works.

Several sections of this paper refer to how the public works function is organized and regulated in municipalities across Canada. These references are not meant to suggest any parallels between the rights and authorities of self-governing First Nations and those granted to municipalities by their respective provincial governments. To equate First Nations with municipalities is erroneous and ignores the unique relationship between First Nations and the federal government. However, there are mutual lessons that can be drawn from municipal governments. Specifically, certain issues such as growing use of public-private partnerships and user fees, problems of technology transfer, increased citizen expectations in service quality and limited resources for staff training are relevant to both Aboriginal and non-Aboriginal communities in Canada.

2. DESCRIPTION OF THE FUNCTION

2.1 Definition

The public works function consists of the planning, design, financing, construction, maintenance, research and related regulatory and redress regimes pertaining to:

- public buildings (government buildings, schools, libraries, etc.)
- roads, bridges and related infrastructure
- systems for providing potable water
- systems for collecting, treating and disposing of sewage
- solid waste collection and disposal
- development of community plans and zoning bylaws
- parks and recreation
- fire suppression and protection
- wharves and harbours
- land management and expropriation
- community electrification and energy management
- worker health and safety

In addition to the above functions, public works also entails, in some instances, the regulation of the construction of private dwellings through appropriate building, fire and other codes. (Appendix A provides a brief yet detailed description of several of these functions.) Public works is increasingly a multi-disciplinary function that demands a background not only in various aspects of engineering but also in finance, project management, contract administration and the law. There is also mounting demand for administrative skills related to accommodations and building management. Ensuring capacity and sustained technical support, especially in small communities, is an increasing challenge.

The regulatory aspect of the function is often underplayed as is the ongoing operations and management of such diverse facilities as a water purification plant and a large school.

2.2 Objectives

Governments want their public works function to accomplish several objectives. Principal among these is to deliver high quality services - such as the provision of potable water and the treatment of sewage, the collection of garbage - at reasonable cost. That said, the function usually is associated with other objectives:

- to preserve the health and safety of its citizens
- to ensure fiscal prudence
- to achieve environmental sustainability
- to provide economic development opportunities
- to enhance cultural expression and pride
- to enhance training opportunities
- to strengthen communities through recreation and voluntary activities.

All of these objectives are central to sound governance. Because the goods and services generated as a result of public works activities are tangible - they can frequently be seen, measured and touched - they then become an expression of the permanence, competence and viability of the community. They are an expression of cultural pride and community strength. Many public works functions bear a direct impact on other government initiatives. For example, if public buildings are built and well-maintained, this facilitates the delivery of social programs and the construction and maintenance of public works facilities leads to numerous economic development opportunities. Thus, it is hard to imagine a government without a public works function.

3. PUBLIC WORKS IN SMALL, NON-ABORIGINAL MUNICIPALITIES

The purpose of this section is to help negotiators understand how some of the above objectives are achieved in non-Aboriginal communities so as to inform the crafting of sound self-government agreements.

3.1 Roles - Provinces & Municipalities

In Canada, regional and municipal governments, hereby described as local governments, are creatures of the provinces. In addition to maintaining the exclusive right to create and disband

municipal corporations, provinces also determine the powers and responsibilities of their constituent municipalities, including their expenditure requirements and revenue capabilities. Municipal leaders do not hold complete authority over their affairs; thus, they often require the approval of a minister or a provincial authority prior to taking action.

The relationship between the provinces and municipalities can generally be described as one between a regulator and operator respectively. Yet it is noteworthy that the rationale for dividing service responsibilities between regional (upper tier) and lower-tier municipalities in several provinces is based more on considerations of economy and efficiency as opposed to concerns over regulation.¹ Appendix B provides a general division of responsibilities between the provincial, regional and local governments.

3.2 Legal Framework

In each province, there is generally a provincial statute governing the principal aspects of municipal authority. Legislation was generally deemed to be preferable over establishing a series of codes, statutes and charters for each municipality in view of each function. As such, municipalities are legislated under specific corporations of an identical class under general laws. These Acts typically specify the functions municipal government may undertake, the sources of revenue available to them, how and when budget decisions are made, the alteration of municipal boundaries, the composition of municipal councils, and the passing of by-laws, among other functions.

In addition, an assessment act in each province and territory establishes the rules for assessing real property for property taxes (in five of the ten provinces, it is entirely a provincial responsibility). Most provinces have also established boards, commissions, or quasi judicial agencies to oversee many of the functions of municipalities such as approval of capital expenditures, borrowing, planning decisions, and passing of municipal by-laws.

Finally, there are other statutes that affect each of the principal public works functions. The following provides a brief summary of statutory practices for each of the following areas of public works.²

1) Building and Safety Codes

Building safety standards are typically found in the provincial Municipal Act or Building Act. The main purposes of these statutes are to sanction the adoption of provincial or national codes (most commonly the National Building Code), to describe the duty of buildings inspectors (and setting forth their power of entry into dwellings), to lay out the process for obtaining building permits and to provide redress for aggrieved citizens. Several provinces have set up bodies — such as the Safety Codes Council of Alberta or Building Standards Board in Manitoba — to advise on

¹ For further information, please consult Institute On Governance, *The Public Works Function in Canadian Jurisdictions* (RPS for INAC, October 1998). The paper is available on the Institute's website at www.ioq.ca

² For a more comprehensive examination of the legal and regulatory relationship between provincial governments and municipalities in the areas of public works, see Institute On Governance, *The Public Works Function in Canadian Jurisdictions* (RPS for INAC, October 1998). The paper is available on the Institute's website at www.ioq.ca

standards and hear appeals regarding permits. A separate Fire Prevention Act typically provides for a provincial fire commissioner and the Fire Underwriters Survey (FUS) organizations with the power to investigate fires and set standards for prevention and safety. Most provinces also maintain provisions or separate legislation that demands closure, cleanup or demolition of unsightly property.

2) Water and Sewage

Authority to build and operate water and sewage works typically derives from the provincial Municipal Act. Statutes specifically detailing safety standards take the form of either a Water Resources Act or a section of the *Canadian Environmental Protection Act* (CEPA). The most important provisions pertain to: setting the process of obtaining licenses for building potable water, waste water or sewage works (including the submission of plans to the minister), enumerating the powers of provincial inspectors, and permitting the minister (through an appointed environmental director) to shut down water or sewage works deemed deleterious to public health. Specific potable water standards, along with classes of licenses for water works operators, are found in provincial regulations.

3) Solid Waste

In general, each provincial Municipal Act authorizes — and frequently compels — municipalities to provide for the planning, collection and safe and ultimate disposal of solid waste either by itself or through a contracted organization. In addition, a Waste Management Act or Environmental Protection Act typically reserves wide-sweeping powers to the provincial minister (through regulations) to oversee waste management systems. The most important provincial government powers include: undertaking investigations, appointing inspectors and describing their powers, defining litter, setting regulations, and demanding provincial approval for the operation or enlargement of certain waste disposal sites and systems (e.g. incinerators, hazardous waste).

4) Roads and Bridges

The provincial Municipal Act allows municipal ownership and maintenance of roads, bridges, sidewalks and other street amenities while a separate Highways Act establishes provincial ownership of all other roads. Typically, there is a section outlining that roads must be kept in a “reasonable state of repair”. Detailed road building standards and schedules for maintenance are handled by municipal by-law or Lieutenant Governor in Council regulations. Liability for “disrepair” will be handled in the courts. Provision regarding the expropriation of lands for road building are usually found in a separate Expropriation Act.

5) Parks and Recreation

The provincial Municipal Act permits communities to own and maintain recreation and community facilities such as public libraries, museums, art centres, or sporting facilities. All provinces also have a Provincial Parks Act which describes the process of setting up and administering a provincial public park while empowering provincial officials to enforce standards within these areas. These statutes also allow the provincial government to set a variety of

regulations, such as the prohibition of certain activities (logging, mining, etc.), the issuing of licenses (for hunting, fishing, etc.), the setting of user fees, or the use of firearms.

6) Land Use Planning

Each province has enacted a highly detailed Planning Act (except for BC and Alberta, where planning is contained within their Municipal Acts) which sets out the process and required content of community plans for planning advisory bodies (respecting individual municipalities, counties, improvement districts, etc.). Virtually all of these acts establish a consultative process which ensures the right of the public to have access to information and to participate in the formulation of land-use policies. Power is also conferred to individual municipalities regarding zoning, subdivision, and building standards. Finally, provincial planning appeal boards are commonly established for adjudication of disputes.

In summary, despite trends to lessen bureaucratic regulation, provincial legislation granting authority to municipalities remains extremely detailed. It places narrow limits on what municipalities can do and severely restricts the scope of municipalities to initiate policy. Legislation also sets out acceptable sources and conditions of municipal revenue, both in the areas of capital borrowing and user fees.

Provinces maintain detailed standards and professional staff for each of the categories of infrastructure in order to support the creation of new facilities (e.g. waterworks), the upgrading and replacement of outdated or obsolete installations.

3.3 Financing Public Works

Municipalities generally borrow to pay for that part of capital works that are not financed by grants from higher levels of government or through direct user fees. Borrowing is strictly regulated by the provinces. For example, borrowing to pay operating expenditures is forbidden and in all provinces except Prince Edward Island, the provincial minister must approve all capital expenditures. Moreover, the size of municipal debt is limited in two ways: the total long-term debt a municipality may incur and its debt service burden in comparison to gross revenues or expenditures. As a result of these strict controls, municipal governments are the least indebted in Canada.

While useful for larger communities, bond financing is frequently not a viable option for smaller communities as they have more difficulties raising capital through bond ratings as they benefit from lower interest rates. That said, the trend is to rely less and less on borrowing funds, even in large municipalities, which are choosing instead to rely on operating revenues (i.e. user fees) and reserves to finance activities.

3.4 Contemporary Issues and Trends

Large and small municipalities in Canada face similar issues; what differentiates small and rural municipalities is the acuteness of these challenges, many of which are highlighted below.

Access to long-term capital for capital infrastructure is less secure in small municipalities

Since small communities are typically not rated by bond granting agencies, acquisition of debentures at reasonable rates of interest is difficult when acting alone. To offset this problem of debt issuance, a variety of means have been used to access long-term financing, including provincially-backed debentures, bond banks, and (and recently in some provinces) direct lending from chartered banks.

Small municipalities are increasingly forced to be more self-reliant in public works financing

User fees in small and rural communities are now commonplace for water and sewage operations (e.g. yearly household consumption or metered rates), solid waste collection and disposal (e.g. tipping fees) and recreational facilities.

Problems of technology transfer

The difficulty of transferring new technology to assess, build and maintain public works is frequently voiced by municipalities across Canada. Laggardness in implementing new technology in small and rural communities is particularly problematic as is access to those with knowledge and expertise. Since public works staff in these municipalities wear more than one hat, insufficient time prevents individuals from attending training sessions outside the community or to research new technologies and applications. Moreover, since the private sector typically drives changes in public works technology (which are often first introduced in urban centres), smaller municipalities are generally the last to benefit from these innovations.

One of the initiatives presently being pursued by the federal government to address this problem is the creation of a National Technical Guide for Urban Infrastructure. The National Building Code and National Fire Code have greatly assisted the construction industry in Canada by linking research to technology developments and through subsequent diffusion into the industry. The absence of such a code for infrastructure has resulted in considerable variation in technical manuals and contract specifications infrastructure used by various levels of government and the private sector. This has led to a difficulty in predicting life-cycle costs for infrastructure, a lack of sharing of technologies and an inability for manufacturers to introduce new technologies in an orderly manner. The National Technical Guide - designed to provide guidelines on constructed municipal facilities such as bridges, roads, buried utilities, sidewalks, and other urban fixtures - is intended to be published by the year 2004 following several stages of cross-country consultations.

Engineering consultants are commonly required

Since few small communities can sustain the cost of a full-time professional engineer, contracted firms are commonly retained for specific projects or time frames given their expertise in infrastructure design and repair. This arrangement requires transparent contracting procedures and the building of longer term relationships with individuals or companies who will be able to understand the unique public works specifications of the community.

Elected council oversight of public works is important

The role of council in small municipalities extends to land use planning, short- and long-term capital planning, tendering, and channeling citizen concerns regarding the state of municipal infrastructure. Evidence suggests that councils' direct involvement in public works management, particularly financial oversight, will continue to grow.

Citizens expectations are growing for improved service quality and planning for public works

Citizens are increasingly demanding greater quality in the delivery of public works and more meaningful forms of political participation. Municipal administrators also caution that governments must better manage these demands and avoid creating undue expectations of service. Building large-scale water or sewage treatment plants is simply not feasible for smaller communities. One manifestation of these mounting demands that citizens are turning toward the legal system in greater numbers to assert their rights. As a result, anecdotal evidence from public works directors suggests that maintaining facilities to codes and standards is increasingly important.

There is no optimal way of administering public works

There is no evidence to suggest that there is one correct way of organizing the administration of public works. Some communities place public works functions in a single department; others place responsibility for streets and sidewalks in a public works department but have a separate water department or sanitation department. The size and growth of the community, the range of public works functions, the complexity of operations and other unique local conditions are typically the most important considerations when administering a public works department.

Small municipalities must be open to joint servicing arrangements with neighbouring communities

The vast majority of small municipalities in Canada share some public works with contiguous communities, special purpose bodies, or regional governments. Inter-municipal agreements obviously provide an effective means to obtain economies of scale such as through the provision of communal services (i.e. - water, sewage, solid waste collection and disposal) and in the development and enforcement of by-laws and regulations.

There is agreement that training for public works managers and staff is needed given the diversity of their responsibilities

Training of public works managers and staff assumes added importance given the diversity of skills commonly required, the increasing use of technology, and the important health and safety considerations of public works functions. For managers, generalist knowledge of administrative and legal affairs is becoming as important as technical understanding of engineering practices.

Standards for financial reporting are evolving to better account for public assets and liabilities

Finally, related to financial management, municipalities are engaged in improved valuation of assets and liabilities. Provincial governments have demanded improved accounting and reporting procedures, which include a common standard for calculating depreciation costs. The Public Sector Accounting and Auditing Board of the Canadian Institute of Chartered Accountants, for example, has made recommendations that the financial statements recognize the liability for closure and post-closure care costs for solid waste disposal sites. Many municipalities have accordingly altered their bookkeeping methods by adopting an accrual basis for accounting.

3.5 Conclusions

The public works function is one which operates in a complex, and layered regulatory environment. *Appendix C - Synopsis of Alberta's provincial statutes pertaining to public works* demonstrates the depth and complexity of applicable legislation that must be taken into account. Alberta has been selected as an example given the depth of the legislation surrounding this function.¹ As well, Alberta has recently concluded a significant municipal reform process.

An examination of the legal and regulatory framework surrounding the public works function reveals that provincial governments continue to play an important role. Provinces set standards, provide redress functions, approve various council decisions and, in some cases, inspect public works. The rationale for dividing service responsibilities between regional (upper-tier) and lower tier municipalities in several provinces is based on considerations of economy and efficiency as opposed to concerns over regulation. The two-tier municipal structure has been used primarily to allow those services supposedly exhibiting economies of scale and significant spill overs to be provided by the regional government, while allowing the lower-tier governments to provide the remaining services and to encourage citizen access and participation in local decisions. However, trends towards municipal consolidation in both Canada and abroad suggest that single tier governments offer the least entangled, most accountable, and most cost-effective means of providing local government services.

4. PUBLIC WORKS IN FIRST NATIONS COMMUNITIES

Drawing upon the context from non-Aboriginal communities, this section aims to provide negotiators with a better understanding of governance issues as they apply to self-government.

4.1 Existing legal framework

The unique legal context of Aboriginal communities on reserve present opportunities, constraints and challenges that differ greatly from non-Aboriginal municipalities. To begin, provincial jurisdiction for legislation relating to the public works function likely does not apply to Indian Lands. Under Section 91 (24) of the Constitutional Act of 1867, jurisdiction for legislating for

¹ A synopsis of provincial legislation is contained in Institute On Governance, *A Compendium of Provincial Statutes* (RPS for INAC, March 1999). The paper is available on the Institute's website at: www.iog.ca

land reserved for Indians and other land-related issues affecting reserves rests with the federal government. Further, even if some provincial laws do apply to Indian reserves, provincial governments have shown great reluctance in the past to enforce such laws. One reason for this is the future cost obligations (such as the regular monitoring of facilities) to provincial governments. For example, according to regulations of the Ontario Ministry of the Environment, the issuance of Certificates of Approvals obligates the Ministry for regular monitoring of approved facilities. Another reason centers upon the fact that access to facilities on-reserve is sometimes problematic. On the other hand, federal law related to public works is sparse and related mainly to environmental management - for example, the *Canadian Environmental Protection Act* (CEPA), the *Fisheries Act*, and the *Transportation of Dangerous Goods Act*.

Section 60 (1) of the *Indian Act* states that the Governor in Council may, upon the request of the band council, grant the band “the right to exercise such control and management over lands in the reserve occupied by the band as the Governor in Council considers desirable.” Further, the *Indian Act* accords by-law making power in some areas to First Nations. Section 80(1) outlines the powers of the band council and states that it may enact by-laws provided that they are not inconsistent with any regulation created by the Governor in Council of the Minister pertaining to the following areas:

- (f) *the construction of bridges, ditches, fences and other local works*
- (g) *the dividing of the reserve or a portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any such zone*
- (h) *the regulation of the construction, repair and use of buildings, whether owned by the band or by individual members of the band*
- (i) *the survey and allotment of reserve lands among the members of the band and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use, if authority therefor has been granted under section 60*
- (l) *the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies¹*

Federal organizations such as the National Research Council, the Canadian Commission on Building and Fire Codes and the Institute for Research in Construction develop model codes for buildings and residences on-reserve. These codes outline the standards for fire safety, occupancy, building services, structural design, environmental separation, hazardous materials and energy conservation. Although these codes are developed by federal entities, they must be adopted by the authority with the jurisdictional power. It is not likely that First Nations have the delegated authority to adopt such codes, even if they chose to do so.

In order to deal with the regulatory void described above, federal funding agreements with First Nations include as part of their conditions the commitment by the recipient First Nations to meet a series of standards applicable to their facilities.

¹ Imai, Shin & Donna Hawley, *The 1995 Annotated Indian Act*, Carswell Thompson Canada Limited, 1994

Environmental protection and assessment is an increasingly important aspect of the overall legislative context. Under federal legislation, any public works project on-reserve would require an environmental assessment. Likewise, applications for provincial funding require a provincial environmental assessment. There are now ongoing attempts to harmonize federal and provincial approaches to environmental assessment, regulation and monitoring. Increasingly, First Nations are embarking on these processes.

4.2 Roles and programs

4.2.1 First Nations

First Nations are key players as they increasingly take ownership of the public works function. This ownership is over a wide range of responsibilities from the provision of political leadership to managing the operation of public works activities.

Some First Nations have developed a community plan, the principal elements of which may include: projections for capital expenses, demographic forecasts, anticipated program needs, zoning plans, revenue projections, financial requirements and projected staff requirements. Well-formulated plans will take into account all public works functions and thus demand input from experts with both technical and managerial experience. First Nations requesting funds for capital and O&M financing of public works outlays must submit a current and approved plan to the negotiating table in order for the request to be considered.

4.2.2 Tribal Council

First Nations Tribal Councils are often the organizing entities driving capacity-building on-reserve. (See section 4.3.) They are able to play an advisory role by coordinating services, resources and expertise on public works for its members.

While not all First Nations are aligned with a Tribal Council, this approach may nonetheless present some interesting opportunities for capacity development. For example, in 1994, representatives of Ontario's First Nations negotiated an agreement with DIAND and PWGSC to take control of its technical and advisory services which were previously operated and controlled by government personnel. As a result, Ontario's First Nations Chiefs transferred the mandate of the Indian Inspection Unit (IIU) to its Tribal Councils to form the Ontario First Nations Technical Services Corporation (OFNTSC). The OFNTSC, a non-profit corporation, currently provides professional technical advisory services to unaffiliated First Nations in Ontario and is a strong example of increasing Aboriginal participation in public works. The corporation provides: Architectural Support Services, Housing Inspections, Housing Policy and Programs, Capital Project Planning and Development, Quality Assurance, Training, Operation and Maintenance (O&M), Fire Safety and Protection, and the Circuit Rider Training Program. Members of the OFNTSC can submit an official request to seek the corporation's involvement in various projects throughout Ontario.¹

¹ For more information on the OFNTSC, consult the following website: www.ofntsc.org

4.2.3 DIAND

In the context of public works, DIAND's primary role is as a funding agency. It is estimated that the asset replacement value in the over 600 First Nations reserves in Canada amounts to approximately \$713 for buildings and infrastructure and an additional \$7B for housing stock. Capital expenditures and O&M currently averages \$700M per year. Over eighty per cent of DIAND's program expenditures are for basic services which are provided to other Canadians by provincial, territorial and municipal governments.

DIAND has the following major programs:

Capital Facilities and Maintenance Program

The Capital Facilities and Maintenance Program supports DIAND's strategic objective to assist First Nations in building healthy, sustainable communities. The program provides funding to assist First Nations to acquire, construct, operate and maintain basic community facilities and services for the following public works functions: water and sewage, roads and bridges, fire protection and suppression services, electric power supply and distribution systems, school site development, operations and maintenance.

The program also outlines the level of service standard DIAND is prepared to financially support to assist First Nations in providing community services comparable to levels of service that would generally be available in non-native communities of similar size and circumstance. Subject to the availability of funds and departmental priorities, DIAND provides funding assistance to First Nations for the functions outlined above, where RPS for INAC provides knowledge and advice to DIAND. All program funding is subject to the approval of a plan.

Capital Facilities and Community Services Program

The Capital Facilities and Community Services Program is the departmental funding mechanism used for the implementation of capital projects and community services on reserve. It oversees the following activities: evaluation of capital projects under contribution arrangements; rental of facilities for federal and band operated schools; capital funding (capital planning), level of service standards and management of teacherages on reserve; and, capital facilities and community services.

Funds for the services listed above are subject to community need as well as the size, value and complexity of the proposed project. Funds are distributed through contribution arrangements, flexible transfer payments and alternative funding arrangements.

On Reserve Housing Program

The new federal on-reserve housing policy introduced structural reforms in July 1996 with the objectives of protecting and extending the life of existing housing; constructing quality, affordable new housing designed to respond to the variety of needs within the community; supporting individual pride and responsibility; and, linking housing activities to training, job creation and business development. Participating First Nations develop community-based housing programs

and multi-year plans, which act as tools to coordinate resources, measure progress, foster accountability to the community as well as serve as the basis for federal funding. First Nations will continue to operate under the former policy regime until such time as they meet the requirements of the on-reserve housing policy.

For further information, please refer to Appendix D - Summary of DIAND Programs.

4.2.4 RPS for INAC

Real Property Services for Indian and Northern Affairs (RPS for INAC) has essentially two main roles. The first, program delivery and support, involves the delivery of knowledge and advice for DIAND. The second is to provide accommodation, tenant and real estate services directly to DIAND. These services are primarily, but not exclusively, delivered to departmental staff.

As an increasing number of public works responsibilities are devolved to First Nations communities, the relationship between DIAND and RPS has changed. “While most of the RPS activity in the past involved the management of capital projects and operations and maintenance services and advice directly to FN, the future roles of RPS involve limited direct contact with First Nations and include a myriad of services around the areas of governance, accountability, audit and evaluation, data management, environmental stewardship, nation building, claim settlement and self government.¹ Thus, over the past number of years, the role of RPS has evolved from that of on-site expert and implementer to strategic thinker, coordinator and facilitator.

4.2.5 Other federal departments and agencies

The following provides a sample of some of federal programs and activities outside DIAND aimed at strengthening the public works function for First Nations:

Canadian Mortgage and Housing Corporation (CMHC):

- Drafted the Section 95 Housing Program for on-reserve housing. Also manages the Housing Internship Initiative for First Nations and Inuit Youth, a two-year employment initiative to provide work experience and training to assist youth to pursue long-term employment in the housing industry.

Health Canada:

- Sets out the Guidelines for Canadian Drinking Water Quality along with the health and environment ministries of the provinces and territories under the auspices of the Federal Provincial Sub-Committee on Drinking Water.

Human Resources Development Canada:

- At the request of the Chief, Band Council or other designate, the Labour Branch at HRDC provides fire protection engineering and inspection services for major public band buildings in

¹ Department of Indian Affairs and Northern Development -Client Profile

First Nations communities. These services enable communities to protect, conserve and minimize risks to life and property. Services range from preventing, detecting, containing and extinguishing fires, and alerting people to a fire.

- As part of the Human Resource Development Strategy, the Regional Bilateral Agreement with First Nations set objectives for human resource development so First Nations communities can design and deliver local labour programs and human development services to meet their needs. The agreement also aims to strengthen capacity for community-based decision-making and accountability. Under the Youth Employment Strategy, \$5.2 million is administered by the Assembly of First Nations to address youth issues on-reserve. HRDC also manages the Aboriginal Strategic Initiatives Program to strengthen labour-market training, transitions between welfare and work, social services and education.

4.2.6 Provinces

Unlike the case of small non-Aboriginal municipalities, provinces play a limited role with respect to the public works function in Aboriginal communities. The role of the provinces tends to vary, depending on whether or not the community has chosen to adopt provincial codes and standards for the public works function. Some provinces provide assistance in the event of environmental emergencies as well as certification programs. Provincial interests do come into play when there are potential spill over effects of the public works function on provincial lands. For instance, if a sewage outfall runs into provincial water bodies, then appropriate environmental regulations typically apply.

4.2.7 Municipalities

Some Canadian non-Aboriginal municipalities are engaged in service contracts with First Nations to provide such services as fire protection, solid waste management and road maintenance. For many communities, this represents a cost-effective solution to ensure public works services on-reserve.

4.3 Building Capacity

Capacity is the ability of individuals and organizations to perform functions efficiently, effectively and sustainably. Effective approaches to build capacity all share an ethic of creating self-sufficiency and often require a coordinated effort among involved stakeholders. In addition to strengthening service delivery, capacity building must also strive to support broader governance functions such as improved accountability, transparency, citizen participation and involvement, as well as planning and evaluation.

Some current initiatives relevant to the public works function are described below:

Briefings and courses

The federal government, in cooperation with First Nations, has developed several measures to strengthen governance capacity for public works. For example as part of its technology transfer initiative, RPS for INAC offers briefings and courses designed to increase the awareness of

middle managers, Chiefs, Councillors and Band Managers about their responsibilities with respect to the public works function.

Minimum standards as set by other government sources

Several provincial governments are setting mandatory levels of service or minimum standards in many areas of municipal infrastructure. For example, most provinces are setting a mandatory requirement that all water and sewage treatment plant operators be certified for the type of plant that they operate. To do this, provinces are required to offer courses in operations of water and wastewater facilities. Some First Nations with central water and sewer systems have taken advantage of such courses.

Circuit Rider concept

A circuit rider trainer is a professional who will make periodic visits to the community to provide expert, hands-on service on-reserve. Other functions may include providing advice on capital and management plans, consulting on training and personnel issues and evaluation. Ideally, the costs for the circuit rider can be divided among several communities and visits can be scheduled to suit the needs of each community.

Awareness training

DIAND headquarters has developed a briefing package to encourage the support of Band Councils and Tribal Councils for O&M issues. There is also a three-day briefing for technical staff focusing on the principles of good O&M practice.

5. PUBLIC WORKS IN THE CONTEXT OF SELF-GOVERNMENT

From a governance perspective, this function presents challenges for a variety of reasons:

- the wide range of activities including some which are project management oriented (e.g. the planning, construction and financing of a school); some which are regulatory in nature (e.g. the application of building codes); and others which are operational (e.g. running and maintaining a sewage disposal system);
- the highly technical nature of the function, involving a number of professional disciplines;
- the potential for some activities to have “spillover” affects on adjacent jurisdictions;
- the importance of having this function tied closely to other related activities of government - housing, economic development, environmental management to name a few;
- the fact that some activities bring specific benefits to individuals (e.g. the provision of potable water), thus lending themselves to user fee approaches while other have benefits that are more generalized (e.g. the provision and maintenance of public buildings) and consequently need to be financed from general revenues;
- the high costs associated with financing public works facilities and the difficulty of smaller communities in obtaining sufficient and affordable debt financing;
- the likelihood that scale from an efficiency point of view matters and that the implications will not be uniform across the function, i.e. some activities can be done efficiently at the

community level (e.g. garbage collection), others may require a much larger scale (e.g. the development of building codes); and finally,

- the impact that the function has on the daily lives of each individual or family in the jurisdiction, suggesting the importance of local preferences.

An important issue that negotiators will need to examine carefully is how best to structure the regulatory-type functions embedded in a public works regime - that is, regulatory regimes relating to construction, fire prevention, zoning, water quality, sewage and solid waste disposal among others. In many of these areas, the Aboriginal government will have both operating and regulatory responsibilities - for example, it builds and operates sewage systems and is responsible for regulating them to ensure certain environmental and health standards are adhered to. A potential problem - and one hardly unique to Aboriginal governments - is how does a government regulate itself.

One manifestation of this problem is the potential for what experts in administrative law refer to as “institutional bias” - that is, where positions within an organization are in conflict. The most obvious example of institutional bias occurs when a single entity acts as both “prosecutor” and “judge”. This is reflected in a growing jurisprudence involving cases in the securities industry, professional organizations with certification powers and agencies regulating the purchase and use of alcohol. One of the key issues in these cases is the extent to which one entity can both investigate behaviour and then make judgements about withdrawing licences or other types of certification.

In the case of public works in the context of Aboriginal self-government, the reverse side of the coin might present itself: instead of “overzealous” pursuit of the law, there is the potential for under enforcement through discouraging rigorous inspections, cutting budgets or appointing “soft” regulators.

This problem may be especially acute in governments that are relatively small. Unfortunately, there appears to be little jurisprudence bearing on this type of institutional bias, jurisprudence which might be helpful in the design of Aboriginal governments.

Aboriginal governments with a two-tier structure might be able to avoid this potential problem by separating the regulatory from the operating powers by assigning each to different tiers. For single tier governments, the inspection functions might be contracted to an organization independent of the Aboriginal government with obligations to make results of its investigations public.

There may be other solutions as well. Negotiators will need to discuss with their counterparts the best way to avoid potential problems of institutional bias.

6. CONCLUSIONS

There are three main conclusions that can be drawn from this analysis. The first conclusion is that the public works function is fundamental to effective self-government and is more complex than it appears. Thus, it likely deserves careful treatment in self-government agreements. The second

conclusion is that the regulatory nature of many public works functions is one of the principal reasons for this complexity. It is not clear how this regulatory aspect will work in a single-tier government. The third and final conclusion is that building capacity for a modern public works function will likely be a major challenge for a First Nations government. This suggests a continuing relationship with the federal government for some time to come.

APPENDIX A Basic Descriptions of Public Works Functions

WATER SUPPLY

Objective:

- to supply safe drinking water

Key activities:

- Application of the national drinking water guidelines
- Exercising good practices in the following activities:
 - Planning, design and inspections of construction sites
 - Operation and preventive maintenance of a water supply system
- Inspection, enforcement, penalties, redress
- Training and certification of staff and water facilities
- Public awareness
- Equipment acquisition, maintenance and inventory control

Organizational implications:

- Emergency response section
- Regulation unit
- Public education unit/capability

Indicators of success:

- State of readiness and response times
- Reduced health risks (focusing on prevention measures from diseases outbreaks)
- Continued supply of safe drinking water to the public
- Assurance of adequate volume of water for fire fighting capabilities
- Public awareness on potential health risks (if water not safe, notify public about needs for boiling of water), on water conservation measures and other
- General knowledge of water data (i.e. levels of water consumption, costs, etc.)

Existing key federal regulations (and originating agency):

- National Fire Code
- National Building Code
- The latest edition of the Canadian Drinking Water Guidelines by Health Canada

WASTEWATER COLLECTION, TREATMENT AND FINAL DISPOSAL

Objective:

- To collect, treat and final safe disposal of wastewater

Key activities:

- Application of the national wastewater treatment and effluent quality guidelines
- Exercising good practices in the following activities:
 - planning, design and inspections of construction sites
 - operation and preventive maintenance of a wastewater system
- Inspection, enforcement, penalties, redress
- Training and certification of staff and wastewater facilities
- Public awareness
- Equipment acquisition, maintenance and inventory control

Organizational implications:

- Emergency response section
- Regulation unit
- Public education unit/capability

Indicators of success:

- State of readiness and response times
- Reduced health risks by safe disposal of treated wastewater
- Provide continuous wastewater service to the public
- Public awareness on potential health risks related to unsafe practices re. wastewater system and on wastewater conservation measures (i.e. low-flushed toilets, re-use of grey wastewater and other)
- General knowledge of wastewater data (i.e. type of a treatment system, testing results, upgrades to collection and treatment systems, etc.)

Existing key federal regulations (and originating agency):

- National Fire Code
- National Building Code
- The latest edition of the Guidelines for Effluent Quality and Wastewater Treatment at Federal Establishments by Environment Canada

ROADS & BRIDGES

Objective:

- To construct and maintain roads and bridges to a level to allow safe and efficient mobility within and into a community

Key activities:

- Development (or adoption) and maintenance of design (optional) and maintenance standards¹
- Construction (optional), reconstruction, maintenance and inspection of roads and bridges
- Setting up and using a maintenance management system
- Development (or adoption) of bylaws²
- Enforcement of bylaws and setting penalties (e.g. bridge load restrictions)
- Training and certification of maintenance staff (e.g. equipment operators)
- Negotiating and maintaining MTA's (optional)
- Equipment acquisition, maintenance and inventory control

Organizational implications:

- Road maintenance unit
- Maintenance equipment yard and housing
- Regulation unit²

Indicators of success:

- Roads and bridges in good and safe condition
- Community satisfaction

Existing key federal regulations (and originating agency):

- Roads and bridges are generally a provincial responsibility
- Roads Design Standards: Transportation Association of Canada “Geometric Design Guide for Canadian Roads” (Provinces usually have their own standards)
- Bridge Design Standards CAN/CSA S6-88 “Design of Highway Bridges”
- Indian Reserve Traffic Regulations (C.R.C., c.959) govern the operation of vehicles within Indian Reserves (available at <http://canada.justice.gc.ca/FTP/EN/Regs/Chap/1/1-5/CRC959.txt>)
- Off reserve roads and bridges which receive funding assistance may have to conform to the higher standards of the responsible provincial, territorial, regional, or municipal transportation authority providing funding assistance.

¹ design and maintenance standards are frequently provincial/territorial

² this should probably be covered under the policing function together with traffic and vehicle operation

WORKER HEALTH AND SAFETY

Objective:

- To ensure the protection of the health and safety of First Nations employees and employees of other organizations active in the Nation through the provision of healthy workplaces; preventative training; the availability and application of policies, standards, guidelines and inspection; and that hazards are identified, addressed and reported.

Key activities:

- Establishing and maintaining a health and safety function (organization, committee, coordinator)
- Establishing policies, directives, standards, measures and procedures and the exercise of related authorities. This includes the delineation of responsibilities of employers and employees and procedures for dealing with critical incidents.
- Delivering or arranging the delivery of worker awareness and training and information campaigns
- Inspecting of workplaces by qualified persons and identifying and ensuring compliance as to the correction of unsafe conditions
- Investigating and reporting of accidents, occupational diseases and other hazardous occurrences
- Maintaining health and safety records
- Providing personal protective equipment and first aid services for employees
- Ensuring health and safety provisions in procurement and contracting processes
- Periodically evaluating the health and safety function
- Administering accident/injury compensation claims

Organizational implications:

- Requires leadership by elected community representatives
- Requires an effective health and safety organization or coordinator with and accountability regime and enforcement authority
- Requires an extensive set of policies, standards and guidelines, and a training regime
- Requires commitment to training and awareness (extensive courses available)

Indicators of success:

- Results of inspections of workplace safety conditions
- Number and nature of hazardous occurrences
- Employer/employee awareness of health and safety procedures

Existing key federal regulations:

- Canada Labour Code Part 2
- Various policies, standards and guidelines are available from Treasury Board and PWGSC

SOLID WASTE MANAGEMENT

Objective:

- To collect and provide safe and controlled disposal of solid waste

Key activities:

- Application of the national guidelines for solid waste disposal
- Planning of solid waste disposal management method (collection and disposal)
- Providing that a community is going to build a solid waste disposal site, exercising good practices in the following activities:
 - planning, design and inspections of construction solid waste site
 - operation and preventive maintenance of a wastewater system
- If a community is going to collect and transfer the solid waste to a neighboring community, exercise good practices in planning of delivery methods to that site (through a transfer station or direct disposal)
- Inspection, enforcement, penalties, redress
- Training and certification of staff and solid waste facilities
- Public awareness on environmental friendly measures such as: recycling, re-use, reduce of solid waste
- Equipment acquisition, maintenance and inventory control

Organizational implications:

- Emergency response section
- Regulation unit
- Public education unit/capability

Indicators of success:

- State of readiness and response times
- Reduced health risks by controlled waste collection and disposal methods
- Provide continuous solid waste services to the public
- Public awareness on potential health risks (potentials of: fires, leakages etc.)
- General knowledge on solid waste management methods (i.e. collection days, type of waste that can be recyclable, and other)

Existing key federal regulations and originating agency):

- National Fire Code
- National Building Code
- The latest edition of the Guidance Manual for Solid Waste Landfills at Federal Facilities by Environment Canada

FIRE PROTECTION (excludes other emergency measures)

[Fire protection as a public works function, in the FN context, may be considered to have two components: **pure fire suppression** (fire truck and equipment) and **infrastructure** (water supply and hydrants)]

Objective:

- To protect life and property from fire

Key activities:

- Development (or adoption) and maintenance of a fire code and bylaws
- Three levels of inspection, (residents, fire department, and HRDC)
- Coordinate HRDC periodic inspections of existing buildings, engineering drawing reviews, and inspections of major public band buildings under construction
- Enforcement, penalties, redress*
- Training and certification of fire department staff
- Fire suppression
- Community education
- Equipment acquisition, maintenance and inventory control
- Ensure the community water system is suitable for fire suppression purposes by liaising with the person responsible for maintaining the water distribution system (maintaining fire pumps, hydrants etc.)

Organizational implications:

- Fire fighting unit
- Regulation capability
- Fire prevention community education capability
- Negotiating and maintaining MTA's {for suppression function} (optional)

Indicators of success:

- State of fire readiness and response times
- Reduced fire losses (life, injury, property)
- Community awareness

Existing key federal regulations (and originating agency):

- National Fire Code, National Research Council of Canada
- National Building Code, National Research Council of Canada

* where a FN building houses federal employees it must be inspected in accordance with the Canada Labour Code

COMMUNITY PLANNING

Object:

- To organize and control community land use and development
- To address current land use and community development problems
- To provide for orderly community growth and development
- To contribute to community health, well-being and convenience
- To avoid/address environmental problems
- To provide basis for community capital development program
- To support economic and cultural development
- To provide for community involvement in community affairs

Key activities:

- Development and maintenance of a community plan
- Process of public consultation
- Development of zoning bylaw
- Land use regulation and administration
- Subdivision planning
- Site planning associated with physical developments

Organizational implications:

- Requires leadership by elected community representatives
- Initial role for planning coordinator
- Means to effect ongoing land administration function (community official)

Indicators of success:

- Support of plan by community leaders and people
- Effective land administration
- Addressing needs of current and future populations (e.g. land availability for housing)
- Coordinated, effective and efficient capital development program
- Ecological integrity
- Community integrity and pride

Existing key federal regulations (and originating agency):

- Not applicable
- Provincial/territorial planning act and guidelines can provide guidance
- Guidelines available from DIAND

PARKS AND RECREATION

Objective:

- To provide for active and passive community recreational opportunities suitable to community needs
- To provide a degree of protection for selected land and water areas in the community of FN area of jurisdiction

Key activities:

- Determine community needs and interests (can be done through community plan)
- Assess community land base for suitable resources
- Identify community needs and goals through community consultation
- Identify and acquire land
- Identify in capital development program
- Design/develop facilities and recreational features
- Develop and implement recreational programs
- Possibly relate to economic development goals and activities

Organizational indicators:

- Need recreation coordinator and volunteers
- Facilities, equipment and lands will require maintenance

Indicators of success:

- Recreation and open space supported in community plan and zoning bylaw
- Facilities, programs available and actively used
- Open space protected and available for passive recreation
- Maintained facilities and equipment available for public use

Existing key federal regulations:

- Not applicable
- Guidelines available from DIAND and provinces
- Facility standards available from sports sanctioning bodies and other sources

BUILDINGS

(including residential, institutional, industrial, agricultural, community/public and commercial)

Object:

- Provide appropriate shelter and habitable space for living and carrying out the functions necessary to maintain a viable and safe community

Key activities:

- Coordinating client needs into functional programs for building projects
- Interpretation of municipal bylaws and zoning regulations, related to project development
- Preparation of project schedules and budgets
- Hiring design consultants to complete detailed designs and prepare contract documents
- Review of detailed designs for compliance with building codes/standards and municipal regulations
- Coordination of special needs and services (energy conservation, etc.) into projects as required
- Preparation of project status reports and presentations to clients
- Review detailed designs for compliance with client needs
- Coordination of tendering process for construction of projects
- Periodic construction project inspections and verification of work completed
- Completion of Interim and Substantial Completion inspections
- Coordination of furniture and space fit up with consultants and clients
- Coordination of Building Commissioning activities
- Coordination of project documentation (as built drawings, warranties, equipment brochures, etc.) for building operational staff
- Review of building O & M strategies with building construction contractors and future operators
- Verification of municipal requirements for occupancy of building after construction

Organizational implications:

- Architectural, mechanical and electrical expertise needed
- Access to technical staff for document reviews and distribution
- Link to contracting/tendering organizations
- Link to decision making authorities, especially for major budget and planning decisions

Indicators of success:

- Community needs are recognized and realistically planned into an ongoing implementation schedule

*Existing key federal Codes and Regulations**

- National Building Code
- National Fire Code
- Canadian Electrical Code

- ASHRAE Standards
- Canadian Labour Code
- CAN/CSA- B651-M90 Barrier Free Design
- Canadian Environmental Protection Act

* Depending on the type of building and its uses, a variety of federal regulations may apply, i.e.. Heritage Conservation, Fisheries Act, etc. It is incumbent on the project authority to identify all of the jurisdictions that require attention for project completion.

APPENDIX B

General Division of Responsibilities Over Public Works Functions

	Provincial Role	Regional Government Role	Lower-Tier Municipal Role
Land Use	Enabling legislation (Planning Act) Advice to municipalities on land use planning Final approval of Official Plans and oversight of zoning by-laws Adjudication of disputes over official plans or by-law	Power to appoint planning advisory committee Development and adoption of Official Plan	Adoption and implementation of zoning by-laws
Building Codes	Formulation of building codes (5 provinces) Enabling legislation (Building Code Act) Appeals procedure	(limited)	Appointment of inspectors Site plan approval Issuing building permits
Roads and Bridges	Enabling legislation (e.g. Highway Traffic Act) Setting and monitoring of minimum standards (construction and safety) Construction and maintenance of provincial (inter-city) roads	Construction and maintenance of arterial roads Consult with province on legislation and regulations Monitor effectiveness of standards (with province)	Construction and maintenance of local roads
Parks and Recreation	Enabling legislation (Municipal Act or Public Parks Act)	(limited)	By-law establishing park or recreational facility Delegation of management to park Board
Water and Sewage Systems	Enabling legislation (Municipal Act) Review of waterworks plans Review of utility rates and provision for appeals process Establishment of water quality standards (Water Resources Act)	Establishment and operation of water utilities Expropriation powers over land and water sources Inspection of water system	(Usually limited to local distribution, billings and customer relations)
Solid Waste Management	Enabling legislation Setting of health standards	Choice and management of disposal site Inspection of sites	Solid waste collection

APPENDIX C

Synopsis of Alberta's provincial statutes pertaining to public works

Building and Safety Codes

Safety Codes Act (RSA 1980 S-0.5)

- S. 61 - permits The Lieutenant Governor in Council to set regulations “governing fire protection and the safe design, manufacture, construction, sale, installation, use, operation, occupancy and maintenance of:
 - i) buildings,
 - ii) electrical devices,
 - iii) elevating devices,
 - iv) gas systems,
 - v) plumbing or private sewage disposal systems,
 - vi) pressure equipment,
 - vii) fire protection systems and equipment”
- S.29 - provides for the appointment of inspectors
- S. 30 - Safety code officer may enter dwelling without warrant (except for private dwelling-place which requires consent of owner or warrant from a justice)
- S. 21 -permits fees by the levy on assessments on persons who apply for, or hold, certificates or permits or who apply to register designs
- S. 63 & 64 - defines penalties & offences, which include interfering with a safety code officer, making a false or misleading statement, or failing to submit pertinent information
 - first offence penalty is not more than \$15,000 (and not more than \$1000 day for each day in case of continuing offence) and/or imprisonment for a term not exceeding 6 months
 - 2nd or subsequent offence: \$30,000 and \$2000 per day for continuing offence and/or imprisonment for 12 months max.
- Part 2 - establishes Safety Codes Council; responsibilities of Council include:
 - hearing appeal of orders from inspectors;
 - promote uniformity of safety standards for any thing, process or activity to which the Act applies;
 - may review and formulate classifications of certificates of competency and qualifications required of a person to hold a certificate of competency;
 - with the consent of the Minister, may review and formulate codes and standards for accreditation and safety standards for any thing, process or activity to which the Act applies;
 - may undertake to provide the Minister with advice on safety information, education programs and services, accreditation and other matters related to this Act

Building Code Regulation, AR 50/98

- provides that the Alberta Building Code 1997, as established by the Safety Codes Council and published by the National Research Council of Canada, is declared in force in respect of buildings

Alberta Fire Code, 1992, AR 204/92, 52/98

- declares that the Alberta Fire Code, 1997, as established by the Safety Codes Council and published by the National Research Council of Canada, is declared in force in respect of fire protection

Electrical Code Regulation, AR 215/97

- declares that the code in force in respect of electrical systems is the Canadian Electrical Code, part 1, Seventeenth Edition, CSA Standard C-22.1-1994. The Electrical Code Regulation also provides for some amendments to that Code

Water and Sewage

Environmental Protection and Enhancement Act (1992 E-13.3)

Part 7 - relates to potable water

- S. 146 - the Minister may make regulations inter alia a) prescribing substances providing for the establishment of specified concentrations for those substances in potable water; b) prescribing methods for determining the concentration of a substance in potable water; c) governing the design, construction, maintenance or operation of i) any type of waterworks system or part of a system, or ii) an equipment, device or apparatus used in connection with any type of waterworks system; d) governing the purity of potable water; e) governing and prohibiting the manufacture, sale or use of any equipment, process, chemical, substance or thing to be used in the treatment or disinfection of potable water
- Director (as designated by the Minister) may issue an environmental protection order to the person responsible for a waterworks system deemed unfit for intended use; this order may order the person responsible for the waterworks system to:
 - i) construct, improve, extend or enlarge the waterworks system;
 - ii) to operate or maintain the system according to terms and conditions set by the Director;
 - iii) take any other action the Director considers necessary to protect or restore the quality of the potable water;
 - iv) report on any matter relating to the construction or operation of the waterworks system;
 - v) take emergency measures when any potable water supplied by a waterworks system may cause, is causing or has caused an immediate and significant adverse effect on human life or health

Water Resources Act (RSA 1980, W-S)

- S. 71 - sets out what Lieutenant Governor in Council may regulate (34 areas), including:
 - governing the inspections of works and the investigation of complaints
 - respecting the fees or charges to be paid in respect of any application and for licenses issues under this Act
 - governing the water rates that may be charged by licensees, and the publication of tariffs and rates
- S. 29, 42-45 - explains inspection process and costs associated (borne by the licensee)
- S. 59-63 - deals with penalties, including obstructing inspecting officers, refusing to carry out orders, or discrimination between users of water

Potable Water Regulations (pursuant to RSA E-13.3, 1992), AR, 122/93

- S. 6 - potable water must meet health related concentration limits for substances listed in the latest edition of *Guidelines for Canadian Drinking Water Quality*, published by Health Canada; or any additional or other limits established by the Director
- S. 7 - waterworks systems must meet at least minimum potable water treatment requirements set out in the latest edition of *Standards and Guidelines for Municipal Waterworks and Storm Drainage Systems* published by the department
- S. 16-17 - establishes certification procedures for waterworks operators; classification set out in *Water and Wastewater Operator's Certification Guidelines* published by the department
- S.19 - sets out timelines and procedures for sampling and testing of water supply
- defines “approved analytical methods” as conforming to latest edition of *Standard Method for the Examination of Water and Wastewater* published by the American Public Health Association, et al.; or the last edition of *Methods Manual for Chemical Analysis of Water and Wastes* by the Alberta Environmental Centre

Wastewater Storm and Drainage Regulations, AR 119/93 & 120/93

- S. 5 - drainage standards set out in *Standards and Guidelines for Municipal Waterworks and Storm Drainage Systems* published by the department
- defines “approved analytical methods” of inspection as conforming to latest edition of *Standard Method for the Examination of Water and Wastewater* published by the American Public Health Association, et al.; or the last edition of *Methods Manual for Chemical Analysis of Water and Wastes* by the Alberta Environmental Centre
- S. 10 - contravention of specified regulations result in \$50,000 for individuals and \$500,000 for corporations

Water Well Regulations, AR 123/93 & 252/93

- sets out construction & certification requirements

Solid Waste

Environmental Protection and Enhancement Act (1992 E-13.3)

Part 9 - defines waste (e.g. rubbish, paper, packaging, containers bottles, cans, etc.)

- S. 178 - The Lieutenant Governor in Council may make regulations
 - a) designating anything as waste;
 - b) respecting the provision of waste collection containers;
 - c) respecting the collection, storage, treatment, or disposal of waste on, into or under land, water or ice;
 - d) respecting the procedure relating to requests for review of environmental protection to clean up unsightly property;
 - e) respecting the design, location, establishment, construction, operation, and reclamation of waste management facilities;
 - f) exempting any person from the application of all or any of the provision of this Division or the regulations under the Division.

- S. 174(1) - If an inspector or investigator considers any property when viewed from a highway to be unsightly property, the inspector or investigator may issue an environmental protection order to clean the unsightly property.
- S. 175(1) - establishes liability of local authority or property owner for costs of cleaning up.
- S. 185-199 - governs investigations and inspections (e.g. applications for investigations, right of entry and inspection, seizure without order or search warrant)
- S. 200-211 - deals with enforcement and civil remedies
- S. 212-225 - sets out offences and penalties
- S. 168 - provides for the establishment of a management board or other body, whether as a corporation or otherwise, for any purpose in connection with a regulation under this section

Waste Control Regulation, AR 129/93 & 192/96

- addresses hazardous waste, hazardous recyclables, and non-hazardous waste
- S. 15 - sets standards for landfills
- S. 40 - contravention of specified regulations result in \$50,000 for individuals and \$500,000 for corporations

Roads and Bridges

Municipal Government Act (1994 M-26.1)

Part 3, Division 2 - deals with the regulation of roads and sets out who holds title to roads within a municipality;

- S.2 - establishes responsibility of Highway Authority, which is responsible for the construction and maintenance of all highways subject to its direction, control and management
- S. 532 - declares that roads must be kept in “reasonable states of repair”

Public Highways Development Act (RSA 1980 P-28)

- Invests power to the Minister of Transportation and Utilities to set standards through regulations for the construction and maintenance of public highways.
- S. 19-22 - deals with Ministerial control over other highways, which overlap with access to roads otherwise under municipal jurisdiction.
- S. 34-37 - deal with Controlled Streets and provide for the council of an urban municipality to make by-laws to regulate controlled streets.
- S. 39 - sets out provisions for drainage of highways
- S. 38 - sets out circumstances of Crown liability for poor maintenance of roads

Highways Traffic Act (R. S. A. 1980 H-7)

- Sets out the procedure to expropriate land.
- S.7 (b) declares when a municipality expropriates land, it is the approving authority in respect of an expropriation;
- Part 1 sets out the Procedure for Expropriation;
- Part 2 sets out the Procedure for compensation;

- Part 3 is a general section that includes authorizing the Lieutenant Governor in Council to make any orders and regulations he considers necessary to effect the intent of the Act.

Parks and Recreation

Provincial Parks Act (RSA 1980 P-22)

- establishes process and purpose of setting up provincial park [S. 1 1]
- Minister may, in respect of parks and recreation areas, make regulations governing
 - a) establishment and use of reservoirs;
 - b) controlling domestic or other animals;
 - c) the use of firearms or other explosives;
 - d) the use of land and activities on that land;
 - e) commercial, scientific, and research activities that may be carried on;
 - f) the use of motor vehicles, off-highway vehicles, boats, trailers and equipment;
 - g) standards respecting the provision or utilization of services in respect of the public;
 - h) standards respecting buildings;
 - i) setting, use and extinguishing of fires;
 - j) treatment and feeding of wildlife;
 - k) dressing or hanging of big game;
 - l) issuing of permits allowing special activities to be carried on;
 - m) controlling or prohibiting noise;
 - n) removal, storage and disposal of motor vehicles, aircraft, boats, trailers, articles or objects;
 - o) tenders or proposals made by persons wishing to carry on commercial activities;
 - p) governing fees payable

Recreation Development Act (RSA 1980 R-8)

- defines the functions and powers of the applicable Minister in promoting, encouraging and coordinating orderly recreation development in Alberta
- the Minister may appoint boards or commissions to carry out duties prescribed by the Minister

Recreation, Parks and Wildlife Foundation Act (RSA 1980 R-9)

- establishes Foundation to provide to persons and organizations the opportunity to donate real or personal property to the Foundation to be used for a) development or maintenance of recreational programs, facilities, and services; b) development or maintenance of parks; c) management, conservation or preservation of fish and wildlife.

Land Use Planning

Municipal Government Act, RSA 1980 M-26.1

Part 17 - deals specifically with Planning and Development.

- Division 1 - Authorizations, Compensation
- Division 2 - Land Use Policies
- Division 3 - Planning Authorities

- Division 4 - Statutory Plans (includes Intermunicipal Development Plans, Municipal Development Plans, Area Structure Plans, Area Redevelopment Plans)
- Division 5 - Land Use
- Division 6 - Development Levies and Conditions
- Division 7 - Subdivision of Land
- Division 8 - Reserve Land, Land for Roads and Utilities
- Division 9 - Use and Disposal of Reserve Land
- Division 10 - Subdivision and Development Appeals
- Division 11 - Intermunicipal Disputes
- Division 12 - Bylaws, Regulations
- Division 13 - Transitional

APPENDIX D

Summary of DIAND Programs

Capital Facilities and Maintenance Program

The Capital Facilities and Maintenance Program supports DIAND's strategic objective to assist First Nations in building healthy, sustainable communities. The program provides funding to assist First Nations to acquire, construct, operate and maintain basic community facilities and services for the following public works functions:

- water and sewage
- roads and bridges
- fire protection services
- electric power supply and distribution systems
- school site development
- operations and maintenance

The program also outlines the level of service standard DIAND is prepared to financially support to assist First Nations in providing community services comparable to levels of service that would generally be available in non-native communities of similar size and circumstance. Subject to the availability of funds and departmental priorities, DIAND provides funding assistance to First Nations for the functions outlined above, where RPS for INAC provides knowledge and advice to DIAND. All program funding is subject to the approval of a plan.

Roughly forty-five per cent of the capital budget is targeted to the operation and maintenance of existing infrastructure and facilities; the remainder is allocated for the construction or acquisition of capital assets (mainly consisting of water systems, sewage systems and schools). Over ninety percent of the capital budget is administered by First Nations. First Nations are also responsible for managing capital projects, providing technical expertise, developing and implementing maintenance management programs and ensuring that their capital assets are constructed and maintained in accordance with minimum federal and provincial standards. Priority is given to projects bearing a direct impact on the health and safety on-reserve. Funding for minor capital projects and operating and maintenance is provided under a funding formula and managed by the First Nations. Funding for major capital project is allocated at the regional level on a case by case basis in accordance with national priorities and the five-year regional capital plan.

A recent assessment of capital needs on-reserve has demonstrated that the existing needs greatly exceed the level of available funding. This assessment will necessitate careful targeting of capital resources, greater effort in extending the life of assets through maintenance, as well as encouraging First Nations to access private funding sources.

Key initiatives under the Capital Facilities and Maintenance Program include:

- **Accelerated Water and Sewer.** The improvement of living conditions on-reserve is a priority of the department as outlined in *Gathering Strength*. Under this initiative, additional

resources are identified to continue to address urgent upgrade requirements in water and sewer systems and to provide basic services where none are existent.

- **First Nations Tendering Policy.** The Framework to guide the development of a First Nations tendering policy was finalized in the fall of 1998 and made available to First Nations through DIAND regional offices as well as on the department's Internet site. First Nations are required to develop tendering policies as a condition of funding related to federal funded capital projects over \$100,000, excluding housing. Operational parameters have been identified to allow for the use of the construction management approach in implementing capital projects. The next step will be a capacity building exercise for First Nations, regional staff and Aboriginal contractors as it relates to contracting practices for capital projects taking place on reserve. A review of existing training material on contracting practices will be undertaken in order to reflect the tendering policy and the construction management approach. The updated training package will be delivered in 2000-2001.
- **Capital Program Review.** A key objective of the *Gathering Strength* initiative is the fundamental rethinking of existing programs. A review of the capital program has started and will examine, identify and make recommendations on structural reforms aimed at improving the effectiveness, efficiency and sustainability of the program.

Capital Facilities and Community Services Program

The Capital Facilities and Community Services Program is the departmental funding mechanism used for the implementation of capital projects and community services on reserve. It oversees the following activities:

- evaluation of capital projects under contribution arrangements
- rental of facilities for federal and band operated schools
- capital funding: capital planning projects
- level of service standards and management of teacherages on reserve
- capital facilities and community services

Funds for the services listed above are subject to community need as well as the size, value and complexity of the proposed project. Funds are distributed through contribution arrangements, flexible transfer payments and alternative funding arrangements.

On Reserve Housing Program

The new federal on-reserve housing policy introduced structural reforms in July 1996 with the objectives of:

- protecting and extending the life of existing housing;
- constructing quality, affordable, new housing designed to respond to the variety of needs within the community;
- supporting individual pride and responsibility; and
- linking housing activities to training, job creation and business development.

Participating First Nations develop community-based housing programs and multi-year plans, which act as tools to coordinate resources, measure progress, foster accountability to the community as well as serve as the basis for federal funding. First Nations will continue to operate under the former policy regime until such time as they meet the requirements of the on-reserve housing policy.

Under this policy the federal government reallocated \$160 million between 1996-1997 and 2000-2001. Funding totalled \$352 million in 1996-1997 and \$339.4 million in 1997-1998. From 1998-1999 to 2000-2001, the total federal spending is expected to be roughly \$300.0 million annually.

Key initiatives under the on reserve housing policy include:

- **Working with the Canada Mortgage and Housing Corporation:** The department is working jointly with the Assembly of First Nations (AFN) and Canada Mortgage and Housing Corporation (CMHC) to explore:
 - increased leveraging of private sector funds;
 - alternative forms of housing governance;
 - increased linkages between housing and economic development; and
 - alternative housing program options.

An inventory of best practices has been developed in the following areas: innovative financing; design and construction techniques; use of local resources; use of social assistance; and link with economic development. This inventory was provided to the AFN for their use and inclusion on their Web Site. Also, a series of brochures were produced and delivered to all First Nations. They complement the training initiatives currently underway.

- **Innovative housing fund:** The Innovative Housing Fund was announced in July 1998 as part of *Gathering Strength*. The fund provides First Nations an opportunity to explore new or innovative approaches that could enable them to access to better housing. Projects could include, but are not limited to:
 - new or innovative house building technology or techniques;
 - alternative house designs;
 - energy sources;
 - water supply and/or distribution, sewage collection and/or disposal; and
 - innovative housing portfolio management or financing options.

Projects must be cost shared with the private sector and/or First Nation(s) or First Nations organizations.

- **Community-based housing training package:** Funds have been identified as part of the *Gathering Strength* initiative to be utilized in support of First Nations training and capacity building initiatives related to housing, with a focus on the new housing initiative. DIAND is working with the AFN and CMHC to develop and test two training packages. The first is a training-for-trainers package and the second is a community workshop package. The objective is to develop capacity within First Nations organizations to be able to develop and maintain an up-to-date comprehensive set of housing policies, programs and plans.

- **Other Issues:**

Ministerial Loan Guarantee authority

The departmental loan guarantee authority for housing on reserve has been increased from \$1.2 billion to \$1.7 billion. The Governor in Council approved revised terms and conditions governing the administration of loan guarantee authority.

Mold Action Plan

The department is working with AFN, Health Canada and CMHC on the development of a national strategy on mold. A householder pamphlet and a mold information kit will be available shortly. Workshops and training sessions are being held to increase awareness and promote preventative measures.

Homelessness

The department is working with Human Resources Development Canada and other federal departments on the implementation of the initiatives announced in December 1999 to address homelessness, in partnership with the provinces/territories, municipal governments and non-government agencies involved in the issue.

FURTHER READING

Institute On Governance, The Public Works Function in Canadian Jurisdictions, (RPS for INAC, October 1998).

Institute On Governance, Self-Government Agreements and the Public Works Function, (RPS for INAC, October 1998).

Institute On Governance, Public Works in Small and Rural Municipalities, (RPS for INAC, March 1999).

Institute On Governance, A Compendium of Provincial Public Works Statutes, (RPS for INAC, March 1999).