

Appendix 3A: Existing Financial Arrangements for Aboriginal Governments and Regional and Territorial Governments

Indian Band Government

Until at least the 1950s, the federal government, through the department of Indian affairs (DIAND), was directly responsible for providing the vast majority of services to on-reserve Indians. Since that time, band governments have come to assume more and more responsibility for delivering and administering these services themselves. The financial arrangements currently in place to support these activities fall into three programs of transfers from DIAND: contribution arrangements, comprehensive funding arrangements, and alternative funding arrangements.

Contribution Arrangements

Contribution arrangements are used to fund programs or projects requiring significant interaction between DIAND and the recipient government, such as major capital projects. Contributions involve substantial terms and conditions that stipulate matters such as the service to be provided, to whom, and what expenses are eligible for reimbursement. Any amount left unspent is to be returned to the federal government.

Comprehensive Funding Arrangements

Sixty-five per cent of all funds currently transferred by the department to *Indian Act* governments are realized through the comprehensive funding arrangements (CFA) program, a mix of contributions, lump sum grant funding, and flexible transfer payments.¹

Contributions

Contributions are open-ended financing arrangements in which DIAND undertakes to finance all eligible expenditures associated with the provision of particular services to band members. For these designated services, DIAND retains all control over program design and the allocation of funds, while band governments are responsible for administering the services and reporting regularly to the federal government. Before the establishment of the broader CFA program (which includes a mix of transfers), contribution agreements were the primary instrument for financing band government activities. Now, as part of the CFA program, contribution agreements fund only those services involving a high level of technical complexity or a high level of risk, such as in the case of social assistance programs. In this case, a manual specifies eligibility requirements and benefit schedules that must be complied with in order for payments made by the Indian band to be eligible for reimbursement.

Grants

The grant portion of the CFA program is specifically earmarked for financing the institutions of band government and their administration. This is an unconditional grant, with no specific terms or conditions attached to it.

Flexible transfer payments

Flexible transfer payments (FTP) are special transfer payments that were introduced as an alternative to contribution agreements, providing for increased flexibility in the form of more autonomy for band governments to determine the means of delivering specified services. When any savings are realized through these alternative means, band governments are free to spend the surpluses generated in any manner they see fit. This limited autonomy allowed under FTP, however, is traded off against more onerous reporting requirements compared to contribution agreements.

Alternative Funding Arrangements

A lot of times our funds are earmarked already. We are told, 'This is for child initiatives; this is for this; this is for that.' In our community we know our needs are a lot different from what has been told to us. We need to be able to have a say, as a community, where we want to have those dollars go.

Chief Agnes Snow
Canoe Creek Indian Band
Kamloops, British Columbia, 15 June 1993

The most recent approach to financing *Indian Act* governments is the alternative funding arrangements (AFA) program. It was established in 1986 as an alternative to the CFA program and now accounts for 20 per cent of all funding transferred to band governments from DIAND.² Similar in nature to the FTP scheme, but generally on a multi-year basis, the AFA program provides for more autonomy for band governments regarding the allocation of funds for different uses. In practice, a band government will negotiate with the department what is essentially a conditional grant for the provision of particular services. Once those funds are transferred, however, band governments have the authority to redesign programs and to reallocate funds between various programs and projects.

Sechelt Indian Band Self-Government

The legal framework for the fiscal arrangements for the Sechelt band is provided by federal legislation (the *Sechelt Indian Band Self-Government Act*) and provincial law (the *Sechelt Indian Government District Enabling Act*). The latter gives Sechelt, and the 33 reserves it contains, legal status as a municipality.

The federal legislation effectively replaced most of the elements of the *Indian Act* for the Sechelt band. The Sechelt band, as a legal entity, can thus enter into contracts, acquire property and borrow funds and has been given fee simple title to all its reserve lands. It is

responsible for providing public services in the areas of education, health, testate or intestate succession, public order and safety, and social and welfare services.

Perhaps the most important point concerning the fiscal arrangements is the power given to the Sechelt band in the federal law for “taxation, for local purposes, of interests in Sechelt lands, and of occupants and tenants of Sechelt lands in respect of their interests in those lands”. Thus the Sechelt band has taxation authority over both Aboriginal and non-Aboriginal residents. This is significant, because roughly 50 per cent of the residents on Sechelt lands are non-Aboriginal.

Section 32 of the federal legislation also allows for moneys held by the government of Canada for the Sechelt band (as the band existed under the *Indian Act*) to be transferred to the band. Five-year agreements establish a base level of funding that is indexed to the Consumer Price Index and to growth in the on-reserve status population and is conditional upon providing existing standards of specified public services. These services include the operation of band-owned schools and the provision of education support services, social services such as shelters and special needs, job creation and economic development. Capital expenditures include transfers to the Sechelt Indian Band Housing Program, construction and improvement of roads and bridges, purchase of machinery, equipment and lands for use by the Sechelt band, and payments to local school districts for Sechelt’s negotiated share of capital construction.

DIAND expenditures in 1984-1985 for the Sechelt band served as the initial basis for the transfer payments to the band under the original five-year funding agreement (1986-1991). A new funding agreement was signed in 1991 covering the next five-year period. This new agreement gives the band a single lump-sum grant at the beginning of the fiscal year, with annual adjustments made to reflect the rate of inflation and changes in the band’s population. The funding now allows the range of services to be extended to include the provision of nursing services, health and medical supplies, and it includes the funds that had been allocated to the band under the Canadian Aboriginal Economic Development Strategy. The arrangement eliminates the need for separate contribution agreements to be reached between the band and the various departments of the federal government that would normally provide services to Sechelt residents.

Regional Governments

Kativik Regional Government

The Kativik Regional Government (KRG) is recognized as a municipal corporation by the *Act Concerning Northern Villages and the Kativik Regional Government*, which also provides the legal framework for the fiscal arrangements between Kativik and the Quebec government. Although KRG has the legal authority to levy taxes within its territory, and has entered into tax-sharing agreements with Canada and Quebec, KRG leaves many of the tax fields open entirely for the 14 municipalities that make up the region. Quebec’s Bill 23 (1978) gives municipalities within the Nunavik region the power to levy municipal-type taxes (a portion of which is paid to KRG), as well as raising revenues

through issuing licences or permits and charging fees for services and rentals. Each municipality, however, must submit its budget proposals to KRG, which, in turn, must have its global budget approved by the Quebec department of municipal affairs. KRG also has a resource revenue sharing agreement and has the authority to borrow funds.

The bulk of the funding for KRG comes in the form of conditional grants from a large number of federal and provincial government departments. The amount of these grants must be negotiated each year with each department that has entered into a contractual agreement with KRG. These contracts are usually for periods of three years. For example, the recent contract signed between the Quebec department of public security and KRG for locally controlled police services is for a duration of three years, but the annual transfer amounts from the department to KRG to finance these services must be renegotiated each year. Therefore, KRG is subject to the funds made available to the department by the Quebec cabinet. This approach is time-consuming and expensive.

Cree-Naskapi

The *Cree-Naskapi (of Quebec) Act* applies to the Naskapi band of Quebec and eight Quebec Cree bands. This act gives the bands local by-law powers that translate into authority to levy taxes (other than income taxes) and to charge fees for licences or services. The bands control their own capital and revenue funds, although the minister of Indian affairs is entitled to inspect all band accounts, financial records and auditor's reports. The bands may also borrow moneys through a by-law that specifies the amount to be borrowed, its purpose, and the manner and terms of repayment.

The fiscal arrangement between the federal government and the Cree-Naskapi takes the form of cash grants with few conditions attached. Annual funding is determined by adjustments to the DIAND funding base for the 1984-1985 fiscal year, with subsequent adjustments made for changes in population, inflation, uncontrollable major cost components in northern isolated communities (for example, fuel, transportation and utility costs), additions to housing and local infrastructure, reinstatements of band members, as well as any special needs that may arise from time to time. Funds are allocated to the individual bands based on proportional distribution and subject to a few negotiated factors. Seventy-five per cent of the grant is paid at the beginning of the fiscal year, with the remainder paid once certain conditions regarding accountability have been met.

Territorial Government

Yukon Territorial Government

A similar model is found in the *Yukon Territorial Government Formula Financing Agreement*. This model is an alternative to the formula used to calculate equalization payments from the federal government to the provinces, but is based on the equalization principles set out in section 36 of the *Constitution Act, 1982*. It is based on historical estimates of spending for the provision of "reasonably comparable levels of public

services” to those in other provinces and territories of Canada. This base, referred to as the gross expenditure base (GEB) is then adjusted to reflect population and inflation changes.

GEB is calculated on a per capita basis which, for 1991, was estimated at approximately \$13,000. This represents the maximum transfer, or ceiling, available from the federal government. However, all other revenues available to the Yukon government are deducted from GEB. These revenues include payments under various shared-cost programs, such as the former Established Programs Financing and the Canada Assistance Plan; and recoveries from various programs and agreements such as DIAND’s family and children’s services and hospital and medical care programs, the economic development agreement, and the Inuvialuit Final Agreement, for example. Also deducted from the expenditure base are the own-source revenues available to the Yukon government, such as tax revenues (for example, income tax, school and property tax, as well as taxes on fuel oil, tobacco, liquor and insurance premiums), investment income, licences, fees and permits, and fines. The difference between GEB and the revenues available to the government is the amount of the formula financing transfer payment.

The main advantage of this approach is its flexibility, which would make it attractive to Aboriginal nation governments that do not yet enjoy a level of economic development that would allow for a significant tax base, as well as those that require a period to catch up. The tax effort of the Aboriginal government would have to be factored into the formula, as is the case for the method of calculating equalization for provinces. This would likely be done by assuming that the Aboriginal government is levying taxes, where it has authority to do so, at the national average rate.³ Without such a factor, a decision by a government not to tax in an area in which it has authority to do so would result in an increased transfer from the federal government. To be consistent with the broad principles of equalization, and to prevent the creation of tax havens, it should be the Aboriginal government that bears the fiscal consequences of such a decision.

Analysis

By far the most serious critique of financial arrangements associated with the *Indian Act*-style governing relationship is the excessive costs of negotiation and administration associated with such a relationship. DIAND, for example, expends a portion of its budget advising on and monitoring services that are devolved to band governments, in addition to its responsibilities for managing program design and providing funding for the services themselves. Band governments, for their part, are subject to excessive and complex accountability requirements, which draw significantly on the time and other resources available for actually delivering the services. We should note that many improvements have been made in the past decade regarding these accountability requirements, notably with the introduction of the AFA program. However, these accountability provisions, and the related costs of administration, typically still exceed those associated with transfers received by provincial and even municipal governments.

A related and equally important critique of the DIAND band government relationship stems from the fact that the size of transfers under either CFA or AFA is determined in separate negotiations between the federal government and individual band governments, rather than through formula-based financing mechanisms that would apply to *all* band governments. This has two important implications, one related to the process of negotiation and the other to equity considerations.

To begin with, each band must allocate scarce resources to a continuing and regularized negotiation process. These negotiations often occur on an annual or ad hoc basis, in contrast to federal/provincial fiscal arrangements, which are renewed regularly every five years. More fundamentally, the prospect of a fair and balanced negotiation process is nearly impossible given the overwhelming imbalance of the parties at the table — small band governments, often representing communities of fewer than a thousand people, with limited own-source revenues and institutional capacity, versus federal negotiators who not only have the administrative resources of an entire federal department to draw upon, but are also the gatekeepers of the federal government's fiscal largesse.

As well, negotiations for transfer levels conducted on a community-by-community basis are not designed to take sufficient account of (1) the resources available to different bands; (2) the varying abilities of band governments in terms of institutions and personnel to administer or deliver programs; or (3) the differences in the costs of service delivery borne by different band governments in providing the same services. By contrast, when the level of fiscal transfers is determined on the basis of a funding formula (or formulae), and these broader arrangements are negotiated simultaneously by Aboriginal, federal, provincial and territorial governments, the negotiation process is simplified, more cost-effective, and more likely to produce equitable results across Aboriginal nations.

Finally, it should be noted that CFA and AFA programs apply only to service delivery for band members residing on-reserve, as determined by the federal government. In some *Indian Act* communities, this can mean that up to 50 per cent of a nation's members are not properly or adequately funded.

Notes:

1 Department of Indian Affairs and Northern Development, "DIAND's Evolution from Direct Service Delivery to a Funding Agency", background paper prepared for RCAP (1993), p. 13. Note that an additional 13 per cent of funding for band governments is realized through contribution agreements that have been established outside the CFA framework.

2 DIAND, "DIAND's Evolution".

3 For a fuller description, see Thomas J. Courchene and Lisa M. Powell, *A First Nations Province* (Kingston: Institute of Intergovernmental Relations, Queen's University, 1992).