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October 31, 1991

Mr. Hugh Ryan  
Indian Taxation Secretariat  
Indian and Northern Affairs Canada  
Room 168 - 10 Wellington Street  
Ottawa, Ontario  
K1A 0H4

Dear Mr. Ryan

We are pleased to submit the final report on the study of the tax and service implications of Bill C-115.

As indicated in the report, while the study was substantially completed by April, 1990, the terms of reference called for an extensive review process which was finally concluded in August, 1991. The review process was prolonged in part because precedence was given to a complementary project which resulted in the publication in April, 1991, of the booklet *Indian Government Taxes and Services in British Columbia: Alternatives Under Bill C-115 and Bill 64*.

Many thanks for the opportunity to be of service to Indian and Northern Affairs Canada.

Yours truly

Robert L. Bish

Eric G. Clemens

Hector G. Topham

## EXECUTIVE SUMMARY

The 1988 Bill C-115 amendments to the *Indian Act* made it clear that a band may establish a property taxation regime with respect to reserve lands leased to non-Indians. The amendments raised important questions about tax and service relationships, such as the possible double taxation of leaseholders. This was particularly true in British Columbia, which was the only province that uniformly taxed the real property interests of non-Indians on reserve land. Accordingly, the Indian Taxation Advisory Board, which had been established to advise on the implementation of new band taxation regimes, asked the University of Victoria Centre for Public Sector Studies to conduct case studies aimed at clarifying the nature of the relevant property tax and service relationships in British Columbia, the options available to the bands, and the implications of the various options. The cases included the Burns Lake and Lake Babine bands in the Village of Burns Lake, the Cowichan band in the City of Duncan, the Musqueam band in the City of Vancouver, and the Westbank band in the Central Okanagan Regional District. The cases accounted for approximately 30 percent of the municipal property taxes levied on reserve leaseholds in British Columbia.

The principal findings were as follows:

- In most cases, the services delivered to both leasehold and non-leasehold Indian reserve areas have been closely integrated with the services delivered to off-reserve areas in the same locality, and have typically involved contractual arrangements between a band and a local municipal or regional government. In these cases, it would be very costly and in many respects highly impractical to introduce new, segregated service delivery systems.
- The contractual agreements involving bands, INAC and municipal or regional governments appear to have worked quite well in the Musqueam, Cowichan and Westbank cases. In the Burns Lake and Lake Babine cases, there were problems which appear to have been largely attributable to inadequate contract management, notably on the part of INAC.
- In British Columbia, business and industrial properties are usually taxed at two or three times the rate at which residential properties are taxed. Thus, in the Burns Lake case, where the dominant leasehold was the Babine Forest Products mill, and in the Cowichan case, where the leaseholds were primarily commercial, the municipality's estimated costs of servicing the leaseholds were found to be less than the property taxes levied. This was also found to be true in the predominantly residential Musqueam case, where the average assessed value of the residential leaseholds on the reserve was roughly twice the residential average for Vancouver as a whole. In the West-bank case, where many of the leaseholds were mobile homes with low assessed values, the Central Okanagan Regional District's costs of delivering services to the reserve were found to be considerably greater than its revenues from leaseholder property taxes. In the Lake Babine case, where there were no leasehold lands, the costs of providing soft services to reserve residents were evidently borne entirely by the Village of Burns Lake.

In July, 1990, the British Columbia Legislature passed Bill 64, the *Indian Self Government Enabling Act*, which prescribed several possible ways in which new band taxation and service arrangements can be harmonized with those of the existing taxing authorities in the province. The two main options are as follows:

- concurrent taxation, wherein an Indian band which impose taxes in accordance with Bill C-115 negotiates with each of the appropriate B.C. taxing authorities a contract for the band to assume responsibility for delivering some or all services on an Indian reserve, while the taxing authority in turn reduces or eliminates the taxes it levies on the reserve leaseholders; and
- independent band taxation, wherein an Indian band imposes taxes in accordance with Bill C-115, the reserve leaseholders automatically become exempt from all property taxes imposed by all B.C. taxing authorities, and the band assumes responsibility for the provision of all services to the reserve either directly or through contracts negotiated with other taxing authorities.

Perhaps the most important feature of Bill 64 is that, in providing for exclusive band taxation, it balances bargaining power between bands and municipalities while at the same time providing for integrated service delivery. Since the case studies indicate that it would in most cases be impractical for a band to assume responsibility for delivering services previously provided by a municipality, in that it would cost more for the band to produce the services, it would usually be mutually beneficial to make contractual arrangements for service delivery. This means that the concurrent taxation option is unlikely to be preferred. More likely, the band would choose the independent band taxation option and would in turn pay the local government a negotiated price for the continued provision of services. The negotiated price would not have to be purely cost-based. For example, where the band members live outside municipal boundaries and the band provides many of its own services, as in the Cowichan case, the

negotiated price could take into account the prices of services to unleased band lands as well as the sharing of property tax surpluses from non-residential leaseholds within the municipality. In both the Cowichan and Musqueam cases, it would appear that agreements covering the independent taxation option itself would be necessary because of the contractual agreements already in place, although it can be argued that the existing agreements would be automatically invalidated as soon as the band chose to exercise this option. While the Musqueam case is complicated, the case for sharing in Cowichan appears to be quite strong.

Of the four municipal cases, the Burns Lake situation is the one in which bargaining positions are altered most dramatically by the provisions of Bill 64. In the past, the Village of Burns Lake could tax the Babine Forest Products mill, to which it provided almost no direct services, to subsidize its residents. The band members themselves received very little benefit. It would appear appropriate for the band to choose the independent band taxation option, with contractual agreements for service provision and revenue sharing between the band and the village.

With only two possible exceptions, concurrent taxation does not appear to be a cost-effective option in any of the cases examined in this study. One of the exceptions could be a situation in which taxes are being collected but services are not being provided, as in the case of the Babine Forest Products mill. The other exception, applicable in all cases, would involve the negotiation of a concurrent taxation agreement covering the local government's planning, zoning, by-law enforcement and other regulatory activities which do not apply to Indian reserves. Under such an agreement, the local government would reduce the property taxes it levies on leaseholders by an amount equal to the pro-rated cost of financing these activities and the band government would then levy taxes in this amount. The amount of money would be quite small, however, and might not be worth the administrative effort involved.

A variation on the concurrent taxation option is one in which there would be an overall increase in property taxes due to band taxation. This would have the following consequences:

- In most cases, relatively higher taxes would result in lower leasehold land values as leases are renewed over time.
- A band's increased revenues from taxes could simply represent a transfer of revenues from locatees who would bear the losses attributable to lower land rents.
- There could be a net loss associated with the uncertainty created by the band's authority to raise taxes still further.
- In some cases, such as a mill or a golf course, additional band revenues could be raised unless taxes are set so high that the activities are forced to shut down or relocate.

While the number of cases examined in this study is small, the differing mixes of residential and non-residential leasehold properties within and without municipal boundaries leads to a conclusion that there is no single solution or fiscal benchmark that can be used for all municipal-band agreements. On the other hand, the provincial government could use such a benchmark based on its average province-wide cost recovery percentage from rural property taxes if it so desired, while recognizing that each reserve situation would itself be different.

This study led to the publication of the booklet entitled *Indian Government Taxes and Services in British Columbia: Alternatives Under Bill C-115 and Bill 64* (Bish Clemens and Topham, April 1991). The booklet has evidently been reasonably successful in serving its intended purposes of assisting bands in assessing their taxation options and informing other interested parties, such as municipal officials, but the processes whereby mutual agreement can be reached among affected parties remain somewhat undefined. At this point, the evidence strongly indicates that each case must be individually addressed on its merits, at least until such time as a body of precedent has been satisfactorily established.

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## ACKNOWLEDGEMENTS

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The willing cooperation of the case study participants is gratefully acknowledged. The main participants in the cases documented in this report included the Burns Lake, Lake Babine, Cowichan, Musqueam and Westbank Indian Bands; the Village of Burns Lake; the cities of Duncan and Vancouver; and the Bulkley Valley, Cowichan Valley, Greater Vancouver and Central Okanagan regional districts. Other local and regional governments who were most cooperative in responding to requests for information included the City of North Vancouver; the districts of Delta, North Cowichan, North Vancouver, Squamish and West Vancouver; the Sunshine Coast Regional District; the Lakeview Irrigation District; and the Westside Fire Protection District.

Advice and assistance were provided by a number of ministries and agencies of the British Columbia Government, including Finance and Corporate Relations (Planning and Statistics Division, formerly the Bureau of Statistics); Native Affairs; Municipal Affairs Recreation and Culture; Solicitor General (Police Services Branch); Transportation and Highways (South Okanagan District Office); the Surveyor of Taxes; and the B.C. Assessment Authority. Helpful advice was also given by the Kelowna detachment of the RCMP.

The members of the study team included Robert Bish, principal investigator, Eric Clemens, project manager, and Hector Topham, research associate. Research assistance and support staff included Diana Tindall, Doug Caul, Sherri MacDonald and Debbie Needley. Administrative support was provided by the University of Victoria offices of research administration, accounting and purchasing.

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## 1. INTRODUCTION

The amendments to Canada's *Indian Act* contained in Bill C-115 were a response to concerns about taxation issues which had been expressed over the years by a number of Indian bands. The issues were brought to a head by the Kamloops Band in British Columbia, which had developed an industrial park on part of its reserve in the early 1960s. The Band subsequently found that its ability to set lease rates, provide services and generally compete with other industrial parks was inhibited by the fact that park residents had to pay both service charges to the Band and rural property taxes to the Province of British Columbia. It appeared that the Province did not deliver services commensurate with the taxes levied. After concluding that it should assert its powers to levy its own taxes, the Band found that certain deficiencies in the *Indian Act* also inhibited its powers to tax, zone and regulate reserve land which had been conditionally surrendered for use by another party, typically in a leasehold arrangement with a non-Indian. The Band's ensuing petition to amend the *Indian Act* was eventually supported by over a hundred other Band Council Resolutions.

Bill C-115 was proclaimed on June 28, 1988. It amended the *Indian Act* as follows:

- the word "reserve" was further defined to include a new category of "designated lands" which had formerly been called "conditionally surrendered lands";
- the process by which reserve land may be surrendered, either absolutely or conditionally, was clarified;
- the provisions for the management of surrendered land were clarified;
- the legal basis for the establishment of band taxation regimes was clarified and strengthened; and
- the prospects for the economic development of reserve land were enhanced by providing for the possibility of mortgaging leases and property on conditionally surrendered (designated) land while at the same time ensuring that the underlying title remained with the band.

In conjunction with the proclamation of Bill C-115, the Minister of Indian and Northern Affairs Canada (INAC) appointed an Indian Taxation Advisory Board (ITAB) in order to ensure that any new band taxation systems would be effective and fair. The Board's mandate includes:

- giving advice to the Minister on policy issues and on individual band by-law proposals;
- providing advice and guidelines for bands on taxation by-law development; and
- ensuring that the interests of taxpayers and others affected by band taxation are taken into account.

The Board consists of seven Indian and three non-Indian members. It is chaired by Chief Clarence (Manny) Jules of the Kamloops Indian Band.

The impact of the amendments on the relationships between Indian bands and local or provincial governments varies considerably across the country. In British Columbia, which is the only province that uniformly taxes the real property interests of non-Indians on Indian land, the amendments have raised important questions about tax and service relationships, for example with respect to the possible double taxation of leaseholders on reserve lands. The situation is less critical in the other provinces: Ontario, Manitoba, Saskatchewan and Alberta vacated the field in the 1970s, while such taxation is relatively rare in Quebec and the Atlantic provinces.

The situation in British Columbia has been the subject of several analyses based on aggregations of data suitable for an overall assessment but insufficient for more detailed examination of particular points. For example, there is little or no systematically collected information about accommodations that have been worked out between Indian bands and local governments. Similarly, no detailed distinctions have been made between leaseholds that require municipal services and those, such as utilities easements, that do not.



## 1.1 Study terms of reference

It was determined by the ITAB early in 1989 that there was a pressing need to remedy existing informational deficiencies and that the most appropriate approach was to conduct studies of selected cases in which leaseholds on Indian reserves yielded significant tax revenues, either in absolute terms or as a proportion of the municipal budget. The cases selected for study were:

- The Burns Lake and the Lake Babine Indian Bands, each of which has reserve lands within the Village of Burns Lake where, according to a 1986 study conducted by the Union of B.C. Municipalities (UBCM), leasehold tax revenue of \$366,540 constituted 28.9% of total 1985 property tax revenue in the municipality.
- The Cowichan Indian Band, which has reserve lands within the City of Duncan where leasehold tax revenue of \$463,883 constituted 15.9% of total 1985 property tax revenue in the municipality.
- The Musqueam Indian Band which has reserve lands within the City of Vancouver where leasehold tax revenue of \$826,107 constituted 0.2% of total 1985 property tax revenue in the municipality.
- The Squamish Indian Band, which has reserve lands within the District of West Vancouver where leasehold tax revenue of \$1,871,769 constituted 6.1% of total 1985 property tax revenue in the municipality. There are also leaseholds on reserves within the Districts of Squamish and North Vancouver, the City of North Vancouver and the Sunshine Coast Regional District.
- The Westbank Indian Band, which has reserve lands within the Central Okanagan Regional District and was selected to illustrate the situation where there are significant leaseholds on a reserve in an unincorporated area of the province.

In all, the five groups included ten substantial cases of band-government relationships, of which two involved the Village of Burns Lake and five involved the Squamish Band. The selected cases had some built-in biases. For one thing, it was likely that, in all cases, the importance of the financial issue would have required some kind of accommodation to be worked out between the band and the local government. On the other hand, while the cases might shed light on other issues not identified in previous studies, it seemed unlikely that they would clarify situations where services have not been an issue, for example because the only leaseholds are utility easements.

In May, 1989, INAC contracted with the University of Victoria Centre for Public Sector Studies to conduct the study. The terms of reference for the project stated that the objective was to "...provide case studies to be used by the Department to guide policy development..." The scope of work included provisions for the research team to:

- produce comprehensive descriptive reports in each case, including the identification and quantification of taxes levied, services provided and related capital investments by bands, municipalities or the provincial or federal governments;
- analyse the implications of Bill C-115 with respect to tax and service levels, agreements between jurisdictions, tax bases, double taxation impacts, tax burden and local government as these relate to bands, other governments and lease holders on reserve lands;
- make every effort to ensure that all parties agree on the basic descriptive information in the final report;
- comment on and prepare draft terms of reference for a coordinating committee involving federal, provincial, Indian and municipal representatives, to provide a mechanism for ongoing coordination of local taxation regimes;
- comment on a list of questions prepared by the UBCM and make appropriate recommendations; and
- consult as may be necessary with the Chairman of the Indian Taxation Advisory Board and officials in the Ministries of Native Affairs, Finance, Municipal Affairs and Treasury Board in the Province of British Columbia.

Although not covered explicitly in the terms of reference, it was understood that, where appropriate and feasible, the scope of study could also include examination of interactions between bands and municipalities regarding reserve lands other than those leased to non-Indians.<sup>1</sup>

The UBCM subsequently requested that its list of questions not be included in the report, since some of the questions had been answered within the context of the report while others were addressed in Bill 64, as described

below. Similarly, with the passage of Bill 64, the need for the proposed coordinating committee was significantly diminished, to the point where it was deemed to be unnecessary.

A Study Advisory Committee was formally constituted in accordance with the consultative provisions of the terms of reference. The Committee members included:

- Julian Greenwood, B.C. Ministry of Finance and Corporate Relations;
- Chief Clarence "Manny" Jules, Kamloops Indian Band; Chairman, ITAB;
- Chief Robert Louie, Westbank Indian Band;
- John Taylor, Chairman, B.C. Assessment Authority; Member, ITAB; and
- Richard Taylor, Executive Director, UBCM.

Provision was also made for Mr. Greenwood to consult with Ruth Montgomery of the B.C. Ministry of Native Affairs and with Jennifer Whybrow of the Ministry of Municipal Affairs, Recreation and Culture.

Five of the ten cases originally selected for the study are documented in this report. Because necessary items of information were not provided, it was not possible to include the Squamish Indian Band case studies. A review of the other cases suggests, however, that the main points which would have been illustrated in the Squamish case studies are adequately covered by the others.<sup>2</sup>

## 1.2 Bill 77 and Bill 64

In July, 1989, during the course of this study, the British Columbia Legislature passed Bill 77, entitled *Indian Land Tax Cooperation Act*, which provided for bands to use provincial and municipal property assessment and tax collection services in relation to their taxes. The Act also permitted, but did not require, the province and municipalities to reduce tax rates in situations where a band council provides services financed by band tax funds, if those services would otherwise be paid for by the provincial or local government.

In July, 1990, Bill 77 was superseded by Bill 64, the *Indian Self Government Enabling Act*. Bill 64 provides for three options regarding the taxation of leasehold lands on Indian reserves, as follows:

- concurrent taxation, wherein an Indian band which impose taxes in accordance with Bill C-115 negotiates with each of the appropriate B.C. taxing authorities a contract for the band to assume responsibility for delivering some or all services on an Indian reserve, while the taxing authority in turn reduces or eliminates the taxes it levies on the reserve leaseholders;
- independent band taxation, wherein an Indian band imposes taxes in accordance with Bill C115, the reserve leaseholders automatically become exempt from all property taxes imposed by all B.C. taxing authorities, and the band assumes responsibility for the provision of all services to the reserve either directly or through contracts negotiated with other taxing authorities; and
- Indian District organization, wherein an Indian band established as a legal entity may be recognized as an Indian district under provincial law, may be entitled to some or all of the benefits to which B.C. municipalities are entitled, and may implement either a concurrent or an independent band taxation regime and service delivery system.

The independent band taxation option provides some protection for leaseholder interests in that the provincial government may require the continuation of service delivery by a provincial taxing authority during a transition period at a price set by the provincial government. The Indian district option includes a similar provision under which, in the absence of a contract, the provincial government may set the price and require the service to continue to be delivered indefinitely. In all cases, bands may use provincial and municipal property assessment and tax collection services.

In September, 1990, a draft of this report was reviewed at a meeting of the Study Advisory Committee. At that meeting, the Committee agreed that:

- study participants should be asked to submit comments on the draft report by the middle of October, 1990;

- there was a need for a booklet, based on this study, which would provide a framework for Indian bands in British Columbia to analyze their taxation and service delivery options within the context of Bills C-115 and 64; and
- further work on this study should be deferred as required until the booklet was completed.

The booklet, entitled *Indian Government Taxes and Services in British Columbia: Alternatives Under Bill C-115 and Bill 64*, was completed in April, 1991. By that time, issues raised in the comments from study participants had been resolved in all cases but one. The last set of issues was finally resolved in August, 1991, by which time it had been determined that there was no longer a need for the final meetings with study participants that had been contemplated in the original terms of reference.

In many respects, the main objectives of this study had been realized by September 1990. While this report has been revised since then, it is substantially the same as it was at that time. No attempt has been made to incorporate the more substantial revisions which would have been required to bring it up to date with the booklet. Consequently, the contents of this report can be regarded as having been augmented or, in some respects, superseded by the contents of the booklet. Accordingly, the report should be read not in isolation but, rather, in conjunction with the booklet.

### 1.3 Notes to Chapter 1

1. (page 2) In two cases, issues of political representation were raised which, while beyond the scope of study, are worth noting. The Village of Burns Lake expressed concern that members of the Lake Babine Indian Band, whose growing population evidently constituted almost twenty percent of the Village's total population in 1989, enjoyed the same local voting rights as other Village residents but were not required to fulfill the same obligations of municipal citizenship as were non-Indian residents. In the other case, the Central Okanagan Regional District (CORD) expressed its concern as follows:

We have a great deal of concern with regard to the feasibility of reaching agreements with the (Westbank) Band Council, particularly with regard to taxation, as we believe our authority under present legislation is somewhat limited. For an example, the Band Council has already suggested that they would like to have direct representation on the Regional Board. The Municipal Act does not provide for direct representation from a Band Council to the Regional Board, however on the other hand if an Indian Reserve became incorporated pursuant to the Provincial Statutes, then perhaps consideration could be given to have direct representation on Regional Boards.

Although it would seem that the CORD's concern may be addressed in the Indian District option of Bill 64, it is not yet clear whether this is a feasible option in this case.

2. (3) In the case studies documented in this report, the Indian reserve leaseholds within municipalities accounted for approximately 30 percent of all the municipal property taxes levied on such leaseholds within British Columbia. Had the case studies involving the Squamish Indian Band been included, the figure would have been on the order of 80 per-cent. Preliminary discussions also indicated that, in the District of North Vancouver, a key issue involved the disruption of reserve lands by railways and utility easements in a manner that significantly inhibited their potential for enhanced economic development. This was evidently not a significant issue in the other cases.

## 2. BACKGROUND

### 2.1 Legal context

Section 91(24) of Canada's *Constitution Act 1867 (BNA Act)* assigns jurisdiction over "Indians and Lands reserved for the Indians" to the Parliament of Canada. Under the *Indian Act*, Indian reserves are held by the federal Crown for the "use and benefit" of Indian bands. Except under certain restricted circumstances, no part of an Indian reserve can be leased by the federal government on behalf of a band unless the band has first "surrendered" the land to the government.<sup>1</sup>

There are essentially two situations in which reserve land is leased to non-Indians. In the first situation, land held in common by the band may, by a vote of its members, be conditionally surrendered to the federal government which in turn leases the land, as noted above. The second situation involves a *locatee* lease wherein an individual Indian (i.e. a *locatee*) who holds a Certificate of Possession (CP) for a legally subdivided part of the reserve may apply to the Minister directly to lease all or part of it for his sole benefit. The band has no right in law to approve or disapprove of the lease although, as a matter of policy, such approval must be obtained for leases that exceed a term of 21 years.<sup>2</sup> While it has been possible for band councils to tax the reserve property interests of band members since 1951, Bill C-115 ensured that, for the first time, they also have clear and explicit authority to tax non-Indian interests in these and other reserve lands.

Information about conditional surrenders, Certificates of Possession and other transactions involving reserve lands are recorded in INAC's Indian Land Registry system. In some cases, bands enter into irregular, unregistrable arrangements known as "buckshee leases". Such buckshee leases are disregarded for the purposes of this study.

The *Indian Act* provides that provincial laws "of general application" are applicable to Indians unless the federal government has preempted the field. In practice, because the *Indian Act* is comprehensive, provincial and local governments have very limited authority over reserve lands, including those leased to non-Indians. For example, provincial and local land use, zoning and building code regulations are not applicable to reserve lands. Provincial authority to tax non-Indian leaseholders is a notable exception to the rule.

The right of a province to tax the real property interests of non-Indians on Indian land, despite the fact that the Indian land itself cannot be taxed, is generally traced to a Supreme Court decision of 1914 (*Smith v. Rural Municipality of Vermillion Hills*). The court defined the tax on a non-Crown interest in Crown lands as a tax *in personam*, that is to say a tax against the person who occupies or holds the land and not against the land itself. This decision allowed municipalities to tax the property of persons situated on Crown land within municipal boundaries, thereby preventing an unfair avoidance of local taxes by persons benefiting from local government services. In British Columbia, S. 34 of the *Assessment Act* provides for taxation on this basis.

Although the provincial and local governments have the legal authority to tax non-Indian leaseholders as if the land itself were being taxed, they do not have the same powers to enforce this authority that they have with respect to lands within the provincial domain. In other words, in the event of tax delinquency, where the province or the municipality could normally order the sale of the property to recover unpaid taxes, it cannot do so in the case of an Indian reserve leasehold. It would appear that the inability of the provincial and local governments to enforce their laws on Indian reserve land was one of the main reasons why Ontario and the Prairie provinces vacated the field of leasehold property taxation. A second probable reason was that, in the circumstances, the provinces may not have been prepared to commit themselves to meeting taxpayer expectations for services to leasehold lands that would be equal to the services provided to lands over which they had jurisdiction.

The legal status of Indian bands has also been an issue for some municipalities. While bands are not statutory corporations under the *Indian Act*, a 1982 decision by the Supreme Court of Canada indicated that an Indian band may act much like a corporation and sue or be sued, on the basis that Parliament would not confer statutory rights and powers upon Indian bands without also intending that the bands be legally liable for and able to enforce matters

related to these rights and powers.<sup>3</sup> Section 286.1 of the B.C. *Municipal Act* also gives municipalities and regional districts authority to contract directly with band governments.<sup>4</sup> In short, the evidence indicates that the "corporate authority" question *per se* is no longer a critical issue.

INAC has apparently used this evidence, at least in part, to justify its current practice of declining to become a signatory to service contracts between Indian bands and local governments. In certain respects, the INAC position might be welcomed by local governments insofar as INAC involvement tends to greatly complicate the process. Nevertheless, there remain questions about the extent to which an Indian band may rely on INAC funding to meet contractual commitments related to capital projects and, perhaps more fundamentally, about a band's financial ability, beyond its trust relationship with INAC, to live up to its contractual obligations. In this regard, it may be noted that a substantial share of the existing contracts between Indian bands and municipalities in B.C. do not involve INAC and that there is no evidence that such contracts have resulted in serious or systematic problems of non-compliance. At the same time, it is clear that a municipality which is contemplating entering into a contract with an Indian band would be well-advised to ensure that it is protected by the same kind of financial assurances that the municipality would require in any of its contracts.<sup>5</sup>

## 2.2 Service delivery and property taxation in British Columbia

In British Columbia, the statutes governing property taxation include the *Assessment Act*, the *Municipal Act*, the *Taxation (Rural Area) Act*, the *School Act*, the *Library Act* and the *Hospital Districts Act*. Governmental bodies in British Columbia that deliver services and levy property taxes include:

- municipalities, including cities, towns, villages and districts;
- the provincial government;
- regional districts;
- school districts; and
- other special purpose governments and agencies, including improvement districts, hospital districts, the British Columbia Assessment Authority (BCAA) and the Municipal Finance Authority (MFA).

The value of each property in British Columbia is assessed by the BCAA, which also classifies it in one of nine property classes used throughout the province.<sup>6</sup> The BCAA informs each of the other taxing authorities of the value and classification for each and every property within its jurisdiction. Each authority then sets property tax rates in accordance with its budgetary needs and the scope of its authority to levy taxes. It is common practice in British Columbia to tax business and industrial properties at considerably higher rates than those imposed on residential properties, in effect resulting in the "subsidization" of the residential property taxpayer by the non-residential taxpayer.

### 2.2.1 Municipal services and property taxes

With the exception of the City of Vancouver, which is governed by its own charter, the approximately 150 municipalities in British Columbia are governed by the provincial *Municipal Act*. There are four types of municipality. Historically, areas which were not densely populated were incorporated as district municipalities. Densely populated areas were incorporated as villages if the population was less than 2,500, as towns if the population was 2,501 to 5,000, or as cities if the population exceeded 5,000.

The services typically provided by municipalities include police protection (if the municipality's population exceeds 5,000), fire protection, water supply, sewage disposal, garbage collection, local roads, sidewalks, street lighting, traffic control, parks, recreation programs and facilities, libraries, subdivision control, building inspection, flood control, pest and insect control, public transit, general administration, etc. Expenditures on services are re-covered through revenues from property taxation, conditional and unconditional grants from the provincial government,

grants and payments from other governments, license and permit fees, fines, and the direct sale of services or commodities such as water.

In addition to the *Municipal Act*, a number of other provincial statutes have a direct bearing on the delivery of municipal services. For example, while municipalities are not required to provide sewage disposal services, the public health provisions and regulations of the *Health Act* make it virtually mandatory to do so in densely populated areas. Police protection and fire inspection services are both specifically mandated under other statutes, as discussed in Section 2.2.3.

Each municipality collects its own taxes and serves as the tax collector on behalf of other authorities, including the province (for school taxes), school district, regional district, hospital district, BCAA and MFA. A single tax bill is sent to each property owner in the municipality and the tax collector transmits to each authority the taxes levied by that authority. Whether or not they have actually been paid, the municipal tax collector is required by law to transmit all of the taxes levied by the other authorities and must therefore carry the full burden of all unpaid taxes.

### **2.2.2 Provincial government services and rural property taxes**

The provincial government levies general rural property taxes in unincorporated areas of British Columbia at a uniform rate for each of the nine different classes of property in the province. For example, there is one tax rate for all rural business properties but it differs from the tax rate for rural residential properties. For the purposes of this study, these taxes are considered to be related to a limited range of services, including roads, subdivision control administration, tax collection and, as discussed below, policing.

The provincial government also levies school property taxes in all parts of the province. Residential school property tax rates vary from district to district, while non-residential property taxes are levied at a uniform rate for each class of property. Like the revenues from rural property taxes, the revenues from provincial school taxes are deposited in the province's general revenue fund. The financing of schools through the general fund is based on a policy of equal accessibility to public school education in all parts of the province, such that a student in Dawson Creek may expect to get an education comparable in content and quality to a student in Vancouver.

Provincial property taxes are collected by the British Columbia Surveyor of Taxes. Like the municipal tax collector, the Surveyor of Taxes collects taxes on behalf of other authorities and is required by law to transmit all of the taxes levied by them to those other authorities. The provincial government bears the loss for delinquencies.

### **2.2.3 Police and fire protection services**

In accordance with Section 17 of the British Columbia *Police Act*, every municipality whose population exceeds 5,000 must provide its own policing. A municipality may create its own police force, enter into a contract or a joint agreement with another municipality, or contract with the Attorney General of British Columbia, who in turn engages the RCMP to provide the service. At the present time, 12 municipalities with populations exceeding 5,000 people have their own police force. The remainder are served by the RCMP. The provincial government provides a limited subsidy to the 12 municipalities with their own police force. Municipalities served by the RCMP receive the service at less than full cost through an agreement between the federal and provincial governments.

The Attorney General also engages the RCMP to police the province's unincorporated areas and approximately 80 municipalities with populations under 5,000. The service is financed through a federal-provincial cost-sharing agreement which will expire in 1991. Where there is an implied relationship between property taxation and the provision of police services in rural areas, there is no such relationship implied in the case of the smaller municipalities which levy their own property taxes and are not required to provide police services. Paradoxically, the property taxpayer in the smaller municipality is, in effect, provided with "free" police services.

The provincial Fire Services Act requires that each municipality appoint an assistant to the Provincial Fire Commissioner to provide fire inspection services. The position is normally held by the fire chief in a municipality with its own fire department, but it may be held by any one of a number of officials, including the mayor and the engineer. In unincorporated areas that have been organized for fire protection through an improvement district, or through a specified area within a regional district, an official of the fire department will fill this role. In other areas, police perform inspections.

#### **2.2.4 Regional district services and property taxes**

Regional districts in British Columbia were created in 1965. Of the 30 districts, 29 have been incorporated. Before 1965, there was no form of general local government in the unincorporated areas outside municipal boundaries. Services of the kind typically provided by a municipality were provided only by the province, by special-purpose governments such as improvement districts, or through individual, non-governmental arrangements.

Each regional district consists of both the municipalities and the unincorporated area within its boundaries. The unincorporated area is subdivided into several "electoral areas", each of which is represented on the regional district board along with each of the member municipalities. All regional districts are empowered by the B.C. Municipal Act to undertake settlement planning, set building regulations, provide local works and services to unincorporated areas, provide contract works and services to municipalities and improvement districts, and provide grants-in-aid. Each regional district may also take on additional functions in accordance with its letters patent and the Municipal Act.

A regional district typically provides a variety of "municipal-type" services, each of which is delivered within a specific geographical area. For example, a service may be delivered to only one electoral area, to a "service area" within an electoral area, or to a "service area" consisting of several electoral areas and/or municipalities.<sup>7</sup> For services financed through property taxes, the regional district is required to calculate an appropriate tax rate for each service and taxes are collected only from properties within the area served. Rather than levying its own taxes, the regional district recovers expenditures by requisitioning funds from each of the member municipalities and, for unincorporated areas, from the provincial government, who in turn levy corresponding municipal and provincial property taxes. Expenditures may also be recovered through the direct sale of a service or commodity such as water.

#### **2.2.5 School district services and property taxes**

The 75 school districts in British Columbia have over 1,550 schools serving approximately 500,000 students in kindergarten and grades one through twelve. More than half of these districts have fewer than 5,000 students enrolled. School district boundaries have been drawn independently of the boundaries of other jurisdictions.

As noted above, the provincial government levies non-residential school property taxes in all parts of the province at a uniform rate for each class of property. The province also sets a residential tax level which is partially relieved by a Homeowner Grant (HOG) system. Revenues from these taxes are deposited to the province's general revenues from which funds are then allocated to each school district according to a complex "fiscal framework" formula based on standards and service levels set by the province. The local school district is responsible for delivering educational services within the district and may, if given approval in a local referendum, levy additional residential property taxes to supplement its revenues above the provincial level.

The provincial government currently funds approximately 95% of all public school education costs, which are now on the order of \$2 billion per year. Of this amount, approximately 15 percent can be attributed to residential property taxes (net of the HOG), approximately 25% is attributable to non-residential property taxes, and the remainder comes from general revenues. Approximately five percent of school district revenues come from miscellaneous charges. The education of status Indian students in the system is paid for by the federal government in the form of an annual contribution to the province. The contribution is based on a weighted average of operating costs per student in the school districts where Indian students are enrolled. In 1986/87, this average was \$4,608 per student and the total federal payment was approximately \$30,662,000. The federal government makes similar payments directly to independent or band-operated schools.

### 2.2.6 Other special purpose governments and agencies

Of the approximately 600 special purpose local governments in British Columbia, those which are of particular interest to this study include 29 regional hospital districts, over 300 improvement districts and the 75 school districts discussed above. The agencies of interest include the British Columbia Assessment Authority (BCAA) and the Municipal Finance Authority (MFA).

The regional hospital districts, which were established in 1967, are administered by the Ministry of Health under the *Hospital District Act*. The boundary of each regional hospital district coincides with the boundary of a regional district and it is governed by a board composed of the same members as the regional district board. The hospital districts were established to supervise the establishment, construction and operation of hospitals, but their activities to date have been confined to the coordination of funding for capital works and the distribution of locally-raised tax revenues.<sup>8</sup> Each district is authorized to levy a small property tax for purchasing new equipment, planning new facilities and assisting individual hospitals with applications for provincial funding. Unlike most regional district functions, in which a member area may or may not participate at its own option, all member areas must participate in the regional hospital function on a common basis.

An improvement district is a local government especially incorporated for the purpose of undertaking one or more "municipal-type" functions in a rural area. The functions undertaken most frequently include water works, fire protection, irrigation, street lighting, drainage, garbage disposal, dyking, sewerage, parks and playgrounds. Each district is governed by an elected board of trustees. The district can usually raise revenues through user charges, property taxation or both. Since the establishment of regional districts in 1965, there has been an increasing tendency to undertake these functions through regional district service areas rather than improvement districts.

The British Columbia Assessment Authority was established in 1974. As noted above, the value of each property in British Columbia is assessed by the BCAA, which also classifies it in one of nine classes used throughout the province. To finance its activities, the BCAA levies a property tax in all parts of the province at a uniform rate for each class of property.

The Municipal Finance Authority was established in 1969 to provide debt financing for the regional districts and their member municipalities. The MFA issues debentures or other evidence of indebtedness and then lends the proceeds to those governments on whose behalf the financing has been undertaken. The governing members of the MFA are appointed by the regional district boards throughout the province. Like the BCAA, the MFA finances its administrative activities by levying a property tax in all parts of the province at a uniform rate for each class of property.

### 2.2.7 Summary of property taxes levied in British Columbia

Virtually every property tax statement in British Columbia has a breakdown showing taxes levied for schools, the regional district, the regional hospital district, the BCAA and the MFA. In an incorporated municipality, the statement will also show general purpose taxes levied by the municipality. In an unincorporated area, instead of general municipal taxes, the statement will show general purpose rural taxes levied by the provincial government and, often, taxes levied by one or more improvement districts. Regional district taxes are often broken down further to show taxes applicable to service areas. The statement may also show other taxes or fees, for example local improvement levies or annual flat rate water supply charges.

In most cases, the largest single property tax on the statement is the one levied for school purposes. For the typical residential property-owner, much of this tax is offset by the Homeowner Grant. The next largest tax is usually the one levied for general purposes in a municipality or, in an unincorporated area, the provincial rural tax. The magnitude of the property tax levied by regional districts varies considerably from one district to another and, in some cases, may well exceed the provincial rural property tax, particularly where the rural property is located in several service areas. Regional hospital district taxes also vary from one jurisdiction to another but, in general, they are relatively small, as are the taxes levied by the BCAA and MFA.



### 2.2.8 Tax-service equity

Although taxes are compulsory payments for which a government is not strictly obliged to provide services in return, there is a general perception and expectation that each individual who pays taxes to a government is entitled to services similar but not necessarily precisely equal to those provided to other taxpayers. The analysis of tax-service relationships therefore involves the question of how fair and equitable is the basis on which the taxes are levied and the services delivered.

Because they are imposed at uniform rates according to property class on each and every property-owner within a regional district, the taxes levied by the regional hospital district, the BCAA and the MFA are, by definition, equitably levied within each class. It can, however, be argued that these taxes are not levied equitably across the classes, for example that the business property-owner pays an unfairly higher share than the residential property-owner. Because they are relatively small and because the question of equity is debatable, it is assumed for the purposes of this study that these taxes are equitably levied across all properties. It follows that the cost of each of these services to each property-owner is equal to the tax levied.

It can be similarly argued that, while the school tax is equitably levied within each class of property in a given school district, it is not necessarily levied on an equitable basis across the various classes. For example, because a business property is usually taxed at a considerably higher rate than a residential property in the same school district, it can be argued that the business property-owner is bearing an unfairly high share of the school property tax burden. In this case, the question of equity is debatable in part because the taxes pay for services which are of general social benefit and cannot be readily measured or assigned to individuals. The issue is complicated by the fact that the non-residential school tax is levied at a uniform rate for each property class across the province while residential school taxes vary from district to district. Given these considerations, it is assumed for the purposes of this study that, as with the regional hospital district, the BCAA and the MFA, the cost of school services to each property-owner is equal to the tax levied. There is, however, another question of equity regarding federal financial contributions for the education of Indian students in the provincial public school system. The issue is briefly described below in the discussion of a previous study.

The tax-service relationships which are of primary analytical interest in this study are those involving the property taxes levied and the "municipal-type" services delivered by municipalities, regional districts, improvement districts and the province. The question of equity across property classes also arises in these relationships because the governments involved typically tax non-residential properties at higher rates than they tax residential properties. In these cases, the non-residential property-owner generally subsidizes the delivery of services to the residential property-owner. As several of the case studies show, this practice is highly relevant in considering the implications of Bill C-115 and Bill 64.

### 2.2.9 Tax-service cost recovery relationships

The question of cost recovery relationships was addressed in a recent study (Bernard 1990) from which much of the following discussion is drawn. As noted elsewhere, municipalities recover their expenditures on services through revenues from property taxation, conditional and unconditional grants from the provincial government, grants and payments from other governments, license and permit fees, fines, and the direct sale of services or commodities such as water.

The evidence indicates that property tax revenues constitute an overall average of 55 to 60 percent of municipal general purpose tax revenues in British Columbia. The averages are somewhat less in the smaller communities, being 50 percent in towns and 46 percent in villages. These averages do not take into account situations where general purpose expenditures are partially or fully offset by directly corresponding revenues, for example where garbage collection fees and expenditures are independently deposited to and paid from the general revenue fund. Where these corresponding revenues and expenditures are taken into account, the overall average share of the remaining expenditures covered by property taxation increases considerably, probably to 70 percent or more.

The cost recovery relationship in unincorporated areas is difficult to assess. As noted elsewhere, the provincial rural tax is related to a limited range of services, including policing, roads, subdivision control administration and tax collection. According to the B.C. Ministry of the Solicitor General, the estimated 1986 provincial expenditure on policing in unincorporated areas was \$25,000,000, or about \$56 for each person living in rural British Columbia.<sup>9</sup> According to the Ministry of Transportation and Highways, the corresponding figure for constructing and maintaining secondary roads was \$175,000,000, or about \$390 per capita.<sup>10</sup> The estimated cost of other services was less than two dollars per capita. Thus, total 1986 provincial expenditures for these rural services were estimated to be on the order of \$448 per capita.

The revenue from provincial rural property taxes has increased substantially in recent years in accordance with progressive increases in the rural residential tax rate. In 1989, provincial rural tax revenue was expected to be on the order of \$44,700,000, or about \$100 per capita. Assuming that the related expenditures did not change significantly between 1986 and 1989, the estimated share of the cost borne by rural property taxes in 1989 would have been approximately 22 percent ( $100 \div 448$ ).

Analyses of several unincorporated areas have indicated that the actual cost recovery relationship varies considerably across the province, as follows:

- In eight areas in the Fraser-Fort George Regional District, the overall cost recovery level was found to range from two percent in a "truly rural" area to 112 percent in a "hamlet" with a substantial non-residential assessment.
- In seven areas considering incorporation, the level was found to range from 32 to 124 percent.
- In eight areas in the Comox Valley, the level was found to range from 35 to 82 percent.

In some urban fringe areas, the overall cost recovery level was found to be approximately 70 percent.

The two major reasons for the wide range of recovery levels are, on the cost side, the tendency for per capita road costs to be higher in areas with relatively low population densities and, on the revenue side, large differences in tax revenues related to wide variations in the non-residential tax base. For example, a mine or a mill can yield large tax revenues and, in a small area, a correspondingly high per capita recovery level.

Three conclusions emerge from these analyses. First, there is an extremely wide variation in rural property tax cost recovery levels throughout British Columbia. Second, to expect a 100 percent cost recovery level in rural areas would be to expect a much higher level of cost recovery from property taxes than exists in municipalities. Third, to expect a 100 percent cost recovery level from the property taxes levied on Indian reserve leaseholders would be to expect a much higher level of cost recovery than exists for other rural residents.

As noted elsewhere, for services financed through property taxes, regional districts are required to calculate an appropriate tax rate for each service and taxes are collected only from properties within the area served. In general, then, the cost of a service to an area is equal to the portion of the property tax allocable to that service, and the overall cost of services is essentially equal to the regional district property taxes paid in that area. In other words, with the exception of minor provincial grants, regional districts operate on a full cost recovery basis. Improvement districts, which can raise revenues through user charges, property taxation or both, also operate on a full cost recovery basis.

### 2.3 Service delivery and property taxation on British Columbia Indian reserves

Since Indian reserve leaseholders are taxed on the same basis as off-reserve property-owners, it logically follows from the foregoing discussion that, for the purposes of this study, the taxes levied on the leaseholders by the school authorities, the regional hospital district, the BCAA and the MFA are considered to be equitable. The leaseholders may also be generally considered to receive the same benefits as off-reserve property-owners from these four taxing authorities, as follows:

- The benefits of school services to reserve leaseholders are most obvious in the case of residential leaseholders whose children attend schools run by the local provincial school district. Otherwise, like the taxes levied on off-reserve non-residential property-owners, the school taxes levied on non-residential leaseholders help pay for educational services which are considered to be of general social benefit. School services may also benefit re-serve band members who do not pay property taxes but whose education is financed through federal payments to the province.<sup>11</sup>
- The benefits of regional hospital services extend both to reserve leaseholders, whose property taxes help pay for the services, and to the band members residing on the reserve, whose hospital care is financed through federal government payments to the province.
- The services provided by the BCAA and the MFA are essential in supporting other services from which both reserve leaseholders and off-reserve property-owners benefit. Thus, if leaseholders receive other municipal or regional district services, it can be assumed that they benefit from BCAA and MFA services.

Regarding "municipal-type" services, it would be reasonable to expect that reserve leaseholders who pay property taxes should receive the same benefits as off-reserve property-owners in the same locality. By the same token, since band members pay no property taxes, and since the federal government pays no grants-in-lieu-of-taxes for services to Indian reserves, it would be reasonable to expect that services financed through property taxes would not be provided to band members unless there was some kind of separate contractual arrangement.

In fact, there is considerable uncertainty about what the tax and service relationships actually are in each case. For example, in some cases band members might use "soft" services, such as local parks or recreation facilities, on the basis of an informal agreement or no agreement at all. In other cases, there is often room for argument that reserve leaseholders do not benefit from all of the capital works financed through MFA loans and that, therefore, not all annual debt service charges should be included in the costs allocable to municipal property taxes paid by leaseholders.

In most cases, it is reasonable to allocate at least a portion of general government and administration costs to leaseholder property taxes. On the other hand, in the absence of any agreement to the contrary, it is not reasonable to assign to reserve leaseholders costs associated with provincial and local land use, zoning and building code regulations, because the regulations are not applicable to Indian reserves and the leaseholders therefore receive no benefits from the associated municipal services.<sup>12</sup> As discussed elsewhere, in those cases where a service is provided on a user-pay basis, the tax-service relationship is not an issue.

#### 2.3.1 Other studies

The question of tax and service relationships was examined in separate studies undertaken in 1986 by the B.C. Ministry of Municipal Affairs, Recreation and Culture (MARC) and the UBCM. In the MARC study, 24 municipalities were surveyed. The primary objective was "...to determine the nature and extent of fiscal interaction between municipalities and Indian reserves".

The MARC study found that property taxes were levied on Indian reserve leaseholders in 16 of the 24 municipalities. For these 16 cases, the total value of leasehold assessments in 1985 was found to be \$283,168,748. The total property tax levy was \$5,373,670, including \$2,241,378 in general municipal taxes, \$2,806,952 in school taxes and \$325,340 in other taxes. The total levy of \$5,373,670 on reserve leaseholders was 0.89% of the overall total levy of \$601,627,557. It was also reported by 19 of the 24 municipalities that they provided at least one service to an Indian reserve. Fourteen reported providing more than two services. The breakdown was as follows:

- Sewerage was provided in 12 cases. The service was financed on a user-fee or contract basis in seven cases, out of general revenue in three cases, on a barter basis in one case (for easements in the City of North Vancouver) and was provided at no charge in one case.
- Water was supplied in 16 cases. The service was financed on a user-fee or contract basis in 12 cases, out of general revenue in three cases, and on a barter basis in one case (for easements in the City of North Vancouver).
- Garbage collection was provided in 10 cases. The service was financed on a user-fee or contract basis in seven cases and out of general revenue in three cases.
- Fire protection was provided in 16 cases. The service was financed on a user-fee or contract basis in six cases, out of general revenue in seven cases, and was provided at no charge in one case.
- Police protection was provided in six cases. The service was financed on a user-fee or contract basis in three cases and out of general revenue in three cases.
- Other services were provided in 16 cases. They were financed on a user-fee basis in four cases, out of general revenue in 11 cases, and were provided at no charge in one case.

The purpose of the UBCM study was "to determine the magnitude and extent" of the impacts in British Columbia of the then forthcoming amendments to the Indian Act which were ultimately incorporated in Bill C-115. The UBCM survey included all municipalities and regional districts and was designed to determine:

- those municipalities and regional districts that have Indian reserves within their boundaries, and if those lands were leased or had the potential for lease development;
- the value and type of development on leased lands; and
- the value of different types of taxation.

Responses were received from 130 of 144 municipalities and from 21 of 28 regional districts. Of the responding municipalities and regional districts,

- 96 municipalities reported no Indian reserves,
- 13 municipalities and 17 regional districts reported Indian reserves with no lease revenue, and
- 21 municipalities and four regional districts reported Indian reserves with lease revenue. Of these, 19 of the municipalities and three of the regional districts reported that they also provided at least some services.

Another 28 municipalities and 11 regional districts reported that they provided at least some services to Indian reserves within or adjacent to their jurisdictions. The services provided by municipalities were generally water, sewer and fire protection, primarily on a fee-for-service or contractual basis. The regional districts generally provided fire protection to Indian reserves within their boundaries.

The 21 municipalities reported a total of \$317 million in assessments on leased lands in Indian reserves. In 1985, they levied \$5,458,398 in property taxes on the leased lands. Of this total, school taxes accounted for 52%, municipal taxes for 42%, hospital taxes for 3% and regional taxes for 3%. These taxes represented 0.72% of all property taxes levied in the 21 municipalities. They represented a significant portion of the total tax levy in Burns Lake (28.9%) and Duncan (15.1%). They represented over one percent of the tax levy in West Vancouver (6.1%), Salmon Arm (2.9%) and North Vancouver District (2.3%).

Most of the regional districts indicated that they received little or no revenue from leased lands on Indian reserves. Three that provided detailed information indicated that the loss of leasehold revenue could have a significant impact on specific areas.

The most prominent concern was expressed by one respondent as follows:

The current remedies available for collection of taxes on leased land on Indian reserves are totally inadequate. Our experience has indicated that no cooperation can be expected from the lessor should the lessee become in arrears on the property taxation. As you are aware, the Municipality must remit the taxes due other authorities and is responsible for the collection of outstanding balances. It would appear our only course of action is to initiate legal proceedings against the lessee with no guarantee that any financial proceeds will result from such action, given the nature of the lessee's assets.

The question of tax and service relationships was also addressed in a 1987 study conducted for INAC (Bish 1987) to which this study is, in many respects, something of a sequel. The report on the 1987 study observed that the issue can be viewed from several perspectives, as follows:

- Many Indian bands feel that the economic value of their leasehold properties is reduced because the leaseholders are taxed but do not receive services equivalent to the services received by off-reserve property taxpayers.
- Likewise, many of the reserve leaseholders feel that they are unfairly taxed.
- Many local governments feel that it is unfair for off-reserve property taxpayers to finance the provision of services to Indian reserves when all reserve lands cannot be taxed and the federal government does not provide grants-in-lieu-of-taxes for Indian reserves.
- The provincial government follows uniform policies with regard to rural property taxation and the provision of rural services. Specifically, the provincial government will only maintain a road if it has been dedicated to the province. Thus, if local road maintenance is not provided to reserve leaseholders, it is because the band and/or INAC is unwilling to dedicate the road to the province.
- The federal government's present policy is to promote Indian self-government and economic development on reserves. Provincial government cooperation is considered to be important to achieving these objectives.

Out of over 1,600 separate Indian reserves possessed by British Columbia's 194 bands, the 1987 study identified 45 urban reserves within the boundaries of 26 municipalities, 21 of which collected property taxes from reserve leaseholders. The study findings and observations are summarized in the following sections.

### 2.3.2 Findings of the 1987 study

In general, the findings of the 1987 study corroborated the findings of the 1986 MARC and UBCM studies. As shown in Exhibit 2.1, the 1987 study found that the total amount of 1985 property taxes levied by all governments on Indian reserve leaseholders was 0.38 percent of the total amount of property taxes levied in British Columbia. The breakdown was as follows:

- Of the leasehold total of \$7,614,306, 28.3% was levied on rural reserve leaseholders and 71.7% was collected from reserves within municipalities.
- The property taxes of \$2,155,908 levied on rural reserve leaseholders accounted for 0.72 percent of all property taxes levied in rural areas of the province (not shown in Exhibit 2.1).
- The property taxes of \$5,458,398 levied on reserve leaseholders within municipalities accounted for 0.85 percent of all property taxes levied within B.C. municipalities (not shown in Exhibit 2.1).
- Provincial rural, school, municipal and other local property taxes accounted respectively for 4%, 54%, 30% and 12% of the \$7,614,306 in property taxes levied on reserve leaseholders.
- Provincial rural, school, municipal and other local property taxes levied on reserve leaseholders accounted respectively for 0.87%, 0.4%, 0.28% and 0.65% of the total provincial rural, school, municipal and other local property taxes levied in the province.
- Municipal property taxes levied on reserve leaseholders accounted for 0.72% of the total collected by municipalities which had reserves within their boundaries.
- Other local service property tax levies of \$576,795 on rural reserve leaseholders accounted for 0.95% of all local service property taxes in rural areas in the province (not shown in Exhibit 2.2). Another \$327,678 was levied within municipalities for regional and hospital districts.
- Past due taxes on rural leaseholders were \$1,280,628, or 59.4% of the 1986 rural leaseholder levy, whereas the provincial average for past due taxes in rural areas was only about eight percent.

It was found that leaseholders accounted for significant property tax revenue in some municipalities, including Vancouver (\$395,000), West Vancouver (\$781,000) and the District of North Vancouver (\$385,000). Others which were found to derive a significant share of their property tax revenue from leaseholders included Burns Lake (28.9%) and Duncan (15%).

**Exhibit 2.1**  
**Property taxes collected from or levied on reserve leasehold lands (1985)**  
(adapted from Table 1 in Bish 1987)

	Provincial rural	School	Municipal	Other local	Total
From reserves within municipalities (collected) <sup>1</sup>		\$2,842,919	\$2,287,801	\$327,678	\$5,458,398
From rural reserves (levied) <sup>2</sup>	<u>\$294,265</u> <sup>3</sup>	<u>1,270,849</u>	_____	<u>590,794</u>	<u>2,155,908</u>
<b>Totals</b>	<u>\$294,265</u>	<u>\$4,113,768</u>	<u>\$2,287,801</u>	<u>\$918,472</u>	<u>\$7,614,306</u>
<b>Total property taxes</b>	<u>\$33,805,109</u> <sup>4</sup>	<u>\$1,031,000,000</u> <sup>5</sup>	<u>\$802,000,000</u> <sup>6</sup>	<u>\$141,900,000</u> <sup>7</sup>	<u>\$2,011,500,000</u> <sup>8</sup>
<b>Leasehold taxes as a percent of total</b>	0.87%	0.40%	0.28%	0.65%	0.38%

1 Source: Union of British Columbia Municipalities

2 Taxes levied equals revenue only if there are no past or present delinquencies. The provincial (rural area) average for past due taxes is 8% of the current levy. The amount past due from rural reserve leasehold lands in 1986 equaled \$1,280,628 or 59.8% of the 1986 levy.

3 For 1987 the provincial government has raised the rural tax rate 21.4%

4 Figure used is from the Surveyor of Taxes. Treasury Board indicates the amount is \$36.6 million. With the Treasury Board figures, leasehold taxes would be 0.80% of the total.

5 6 7 Treasury Board totals include school districts, municipalities and other local governments with no reserve lands within their boundaries. For municipalities with reserves within municipal boundaries, reserve leasehold taxes account for 0.72% of their total property tax collections.

8 The overall total includes the Treasury Board figure of \$36.6 million for the provincial rural total rather than the Surveyor of Taxes figure of \$33,805,109.

The services examined in the 1987 study included only those usually regarded as services to property and did not include those, such as libraries or recreation facilities, which are independent of property location. As shown in Exhibit 2.2, the 1987 study found that, of 685 cases in which a municipal service might have been provided to at least some of the 45 urban reserves identified in the study, the service was provided to a reserve in 52.1 percent of the cases, including 42.6 percent to all band lands and 9.5 percent to leasehold lands only. Although no services would be required in those cases where, for example, the leaseholds were utility easements, it would appear that, in at least 40 percent of the cases, a municipal service was not provided to taxpaying leaseholders even though it was provided to other property taxpayers in the municipality

Other findings regarding the delivery of services included the following:

- INAC contracts accounted for only 18 of the 292 cases in which all band lands were served, and for none of the 65 cases where only leasehold lands were served.
- Individual user charges were assessed in 45 cases, including 34 in which all band lands were served and eleven where only leasehold lands were served.
- Band agreements with payments accounted for 71 cases, including 68 in which all band lands were served and three where only leasehold lands were served. No municipality reported the provision of complete services to all reserve lands without some kind of special band agreement.
- No special agreement or payment was involved in 223 of the 357 cases where services were provided, including 172 in which all band lands were served and 51 where only leasehold lands were served.
- No correlation could be found between the amount of property taxes levied on reserve leaseholders and the number of services provided by a municipality to either leasehold or all reserve lands.

**Exhibit 2.2**  
**Municipal services survey results (1985)**  
(adapted from Table 2 in Bish 1987)

Municipal service	Provided to reserve				Contract type (all band lands / leaseholds)			
	Provided by municipality	All band lands	Leaseholds only	Not provided	No special agreement or payment	INAC contract	Band agreement with payment	Individual user charges
Fire	45	38	2	5	27 / 2	1 / 0	10 / 0	0 / 0
Police - regular patrol	33	24	1	8	21 / 1	1 / 0	2 / 0	0 / 0
- emergency	33	23	1	9	20 / 1	1 / 0	2 / 0	0 / 0
Sewerage	38	19	3	16	7 / 1	3 / 0	7 / 0	2 / 2
Water supply	34	23	4	7	3 / 0	2 / 0	14 / 3	4 / 1
Garbage collection	26	10	3	13	2 / 1	0 / 0	5 / 0	3 / 2
Garbage dump	36	26	3	7	11 / 2	1 / 0	2 / 0	12 / 1
Local - grading/oiling	45	15	5	25	11 / 5	1 / 0	3 / 0	0 / 0
roads - paving	45	10	5	30	6 / 5	1 / 0	0 / 0	0 / 0
- road/street signs	45	13	4	28	8 / 4	1 / 0	4 / 0	0 / 0
- sidewalks	45	10	5	30	6 / 5	1 / 0	3 / 0	0 / 0
- street lighting	45	12	5	28	8 / 5	1 / 0	3 / 0	0 / 0
- ditch maintenance	45	17	5	23	13 / 5	1 / 0	3 / 0	0 / 0
- snow plowing	45	16	5	24	11 / 5	1 / 0	4 / 0	0 / 0
Building inspection	45	16	6	23	2 / 3	1 / 0	2 / 0	11 / 3
Fire inspection	39	10	5	24	7 / 3	1 / 0	0 / 0	2 / 2
Dyking and flood control	25	7	2	16	6 / 2	0 / 0	1 / 0	0 / 0
Pest / insect control	16	3	1	12	3 / 1	0 / 0	0 / 0	0 / 0
All services	685	292	65	328	172 / 51	18 / 0	68 / 3	34 / 11
Percentages	100	42.6	9.5	47.9	59 / 78	6 / 0	23 / 5	12 / 17

The main conclusions drawn from the foregoing findings were as follows:

- Very few municipalities service taxpaying reserve leaseholders differently from all reserve lands.
- Most services provided by municipalities are not provided to reserve lands.
- Where services are extended to reserve lands, they are most commonly provided with no special agreement, although there are also a significant number of band agreements with payment.
- For municipalities which provide services with no special agreement to all band lands or to leaseholders only, it is not possible to determine whether the taxes on leaseholders cover the costs of the services provided.
- Fewer municipalities provide services with no special agreement than collect taxes from leaseholders.

It was also noted in the 1987 study that, while there does not appear to be any inequity for reserve leaseholders in the school property tax levy, a question can be raised about the fact that the federal government pays the full cost of educating each status Indian in the provincial public school system.<sup>13</sup> Since the provincial government also collects property taxes from non-residential reserve leaseholders and from status Indians residing off reserves, it would appear that the province is collecting more revenues than are needed to cover the costs incurred. The study also observed that many Indian band leaders and members are critical of the overall system of financing public school education because the bands have little or no voice regarding the expenditure of funds paid to the province by the federal government.

Some of the data used in the 1987 study was incorrect because, in at least one case, a number of properties had not been included in the analysis and the rural reserve leasehold property tax levy was therefore underestimated. In the

case of the Westbank Indian Reserve, it was found in the course of the current study that over 1,000 mobile home leasehold properties on the reserve had been classified by the BCAA under a tenure code different from the code that should have been used for designating leasehold properties on Indian reserves. It seems unlikely, however, that errors attributable to this kind of discrepancy would significantly affect the main findings and observations of the 1987 study.

### 2.3.3 Summary findings and observations of the 1987 Study

The 1987 study found that, although governments do not keep records in a way that permits ready comparison between the precise costs of services to and the taxes raised from a particular subgroup, there is sufficient information available for a reasonably complete description of the problems associated with the taxation of reserve leasehold lands. While the total amount of taxation involved appears to be small, the local amount may be large relative to the local government tax base or to the band's resource base. Whatever the magnitude of revenue may be, there is often a basic issue of fairness involved.

The main findings arising from the 1987 analysis were as follows:

- The amount of revenue obtained from the provincial rural property tax is very low. The largest proportion of this revenue goes toward maintaining local roads, which the province does not do on Indian reserves because few reserve roads have been dedicated to the Provincial Crown. The other major service provided to rural areas is policing, for which the federal government covers almost half the cost, and this service is received by all reserves.
- School taxes are the largest component of leasehold property taxation. Schooling is available to everyone and the residential school taxes levied on reserve leaseholders are clearly appropriate. However, the federal government also pays the province the full cost for each Indian student enrolled in a public school, an amount which, when added to residential school taxes paid by status Indians living off a reserve and the share of non-residential taxes attributable to Indians, is higher than the costs incurred.<sup>14</sup>
- A few municipalities collect significant property tax revenues from leaseholders and 21 municipalities collect some revenues from leaseholders. A few municipalities provide many services to leaseholders or to all band lands without any special agreement but, on average, only about 25 percent of services are made available to reserves without a special agreement. A few municipalities provide no services to taxpaying reserve leaseholders or to other reserve lands.
- Non-municipal tax-service relationships vary. The hospital tax is like the school tax, with services available to everyone but with extra federal payments also involved. Little analysis has been done regarding improvement districts. Where tax-service mismatches occur in regional districts it should be possible to provide a remedy by treating Indian reserves as specified areas, with band governments making the decision as to whether or no they wish to receive, and pay for, a service from the regional district.
- Overall, the great majority of reserve leaseholders are paying property taxes for which they do not receive local or provincial services similar to those received by other property taxpayers.
- In some municipalities and regional districts, it is likely that non-paying Indians receive some local services that are subsidized by other taxpayers.
- Tax delinquency among reserve leaseholders is a serious problem for both the provincial tax collector and for municipalities.

The main observation arising from the 1987 study was that, given the available data, there was clearly merit to the position taken by leaseholders and band governments that leaseholders were not receiving services similar to those received by other property taxpayers. The sources of the problem appeared to be the provincial rural property tax and municipal taxes. The provincial position that leaseholders should pay property taxes for school and hospital services that are available to everyone was justified, but other federal-provincial payments should be taken into account when examining these taxes. The municipal position that municipal taxpayers should not be expected to subsidize services to non-taxpaying reserves was reasonable, but most municipalities did not provide services to taxpaying reserve leaseholders.

The 1987 study also observed that, given the problems with the provincial rural property tax and municipal taxation



in many jurisdictions, it should not be surprising that many leaseholders simply do not pay their taxes and that band governments do not cooperate to improve tax administration and collection. There are remedial policy changes, however, that could be beneficial to the provincial government, to band governments and most likely to municipalities, unless the municipality was collecting significant taxes without providing services. To be genuinely useful, the changes could not involve the direct integration of reserves into the local or provincial service delivery systems because of the certainty of band opposition, continuing uncertainty about whether equivalent services would actually be provided to Indian reserves, and the move towards Indian self-government.

The remedial action identified in the 1987 study was to strengthen band government through two main policy initiatives. The first initiative would involve "...provincial withdrawal from levying the rural property tax on leaseholds in exchange for band cooperation to improve tax assessments and collections of the school and hospital tax on lease-holds". Band governments would be given clear authority to levy the rural property tax on leaseholders for them-selves, thus obtaining an independent source of revenue. Such a change would also result in a net increase in revenue to the provincial government, because the loss of the rural reserve property tax would be more than offset by reduced delinquency in school and hospital district tax collections.<sup>15</sup> Assessment and tax administration could remain with the BCAA and the Surveyor of Taxes, who could transmit rural property tax revenues directly to band governments.

The second policy initiative suggested in the 1987 study would involve amending provincial legislation to permit reserves to be treated as specified areas for the purposes of paying for and receiving services from either a municipality or a regional district. The band government would be fully responsible for deciding whether or not to opt into a service and for making the payment to the municipality or regional district, just as municipalities are now responsible for making payments to regional districts for services received. In the case of a reserve within a municipal boundary, it would be logical to have the reserve legally removed from within the municipal boundary so that the provincial government would become responsible for tax collection and the municipality would no longer be liable for delinquent school and hospital district taxes.

It was noted in the study that this approach would effectively remove reserve leasehold lands from the political jurisdiction of the provincial or municipal governments, but it would permit full integration of service delivery with appropriate payments where a band government and a municipal or regional district government could reach a mutually beneficial agreement. It would be consistent with the way in which regional districts and municipalities currently interact. It would increase the fairness of the system to all taxpayers while at the same time placing more responsibility on band governments with regard to the delivery of services to both leasehold lands and to other reserve lands under their jurisdiction. The bands and their reserves would become more fully integrated into the local service system while at the same time moving toward the practical implementation of band self-government.

#### **2.3.4 The Kamloops and Sechelt cases**

With the passage of Bill 64, the existing Kamloops Indian Band arrangement and the Sechelt Indian District are worth noting in this study. In the Kamloops case, the Band and the provincial government have agreed to an arrangement whereby the Band provides all services except policing to the industrial park it has developed on reserve land outside of Kamloops, and the rural property tax revenues from leaseholders in the industrial park are shared between the province and the Band. This is a useful example of the principles embodied in the concurrent taxation option working in practice.

The Sechelt Indian District was established in 1986-87, when the Parliaments of Canada and British Columbia passed laws which gave the Sechelt Indian Band both a relatively high degree of self-government and, for the practical purposes of local service delivery, status as a special kind of provincial municipality. A discussion of this "Sechelt model", which may be regarded as an example of the Indian district option prescribed in Bill 64, can be found in a recent book entitled *Indian Government: Its Meaning In Practice* (Cassidy and Bish 1989), as well as in other publications.

## 2.4 Notes to Chapter 2

1. (page 5) Before the passage of Bill C-115, there was considerable uncertainty about the status of leased land with respect to various sections of the Indian Act. On the one hand, the courts had ruled that the leased land remained "land reserved for the Indians" so that, in general, provincial laws or municipal by-laws could not be enforced on conditionally surrendered land, even against non-Indian leaseholders. On the other hand, the courts had ruled in one case that the Indian personal tax exemption did not apply on conditionally surrendered land and in another that Indians living on conditionally surrendered land could not vote in band elections. The amendments contained in Bill C-115 removed the uncertainty and made clear that, for most sections of the Indian Act, the leased lands came within the meaning of the word "reserve".
2. (5) The locatee system was originally seen to be part of a broader strategy for gradually assimilating Indians into the wider society. It has, in some cases, resulted in the subdivision of large portions of reserve land such that relatively little of the land remains held in common by the band. The system was initiated in the Gradual Enfranchisement Act of 1869, which deemed an Indian to be lawfully in possession of a portion of reserve land which had been subdivided by survey into lots only if the Superintendent General had granted him a "location title" to the lot. The system was subsequently incorporated in the Indian Act of 1876, under Section 20.

There are apparent inconsistencies in how the Indian Act delineates the individual interest and the band interest in the same land. An individual locatee who holds a Certificate of Possession (CP) acquires certain rights of use and occupation which may be transferred to another band member by sale, devise or descent. These rights can override any interest of the band in the land covered by the CP. Under Section 58(3), a locatee may apply to the Minister to lease his land for his sole benefit. However, the band may, by a vote of its members, surrender any of its reserve lands, including lands held by locatees. The locatee may be compensated for improvements but it is uncertain whether he has the right to be compensated for the loss of use of the land. (Hall 1988)

3. (6) In *Re Public Service Alliance of Canada and Francis* (1982), 139 D.L.R. (3d) 9 (S.C.C.) (sub nom *Francis v. Canada Labour Relations Board*). The court followed the line of reasoning used in *International Brotherhood of Teamsters, Local 213 v. Therien* (1960), [1960] S.C.R. 265 at 277-78, referred to as *Therien*, in finding that an Indian Band Council could be considered to be an employer within the meaning of the Canada Labour Code, i.e. that a band could be recognized as a legal person. Another line of reasoning pursued in *Mintuck v. Valley River Band* (1977), [1977] 2 W.W.R. 309 (Man. C.A.), referred to as *Mintuck*, was that the Band was capable of suing and being sued through its councillors or agents, i.e. through the practical procedural device of a representative order. Both lines of reasoning are evidently considered to be legally valid arguments.
4. (6) B.C. Municipal Act S. 286.1 (1): "The council may by bylaw, with the approval of the Inspector (of Municipalities), enter into an agreement with the council of an Indian band to provide a municipal service or services to lands within a reserve, as defined in the Indian Act (Canada)".
5. (6) A question arises as to whether the federal government, even if it is not a signatory to a contract between an Indian band and another party, would be legally deemed to provide such assurances by virtue of its trust relationship with the band, in a manner analogous to the responsibility assumed by a provincial government for the affairs of its municipalities. INAC staff have advised that there are cases where an Indian band has defaulted on a contract but the other contracting parties have been unsuccessful in seeking to sue the federal government on this basis.
6. (6) The nine classes of property in British Columbia are as follows:  

Class 1 - Residential	Class 6 - Business and other
Class 2 - Utilities	Class 7 - Managed Forest
Class 3 - Unmanaged Forest	Class 8 - Recreation and non-profit
Class 4 - Heavy Industry	Class 9 - Farm
Class 5 - Light Industry	
7. (8) Before 1990, a service area within an electoral area was called a "specified area" and a service area consisting of several electoral areas and/or municipalities was called a "defined area".

8. (9) Hospitals in British Columbia are operated by non-profit societies, religious organizations or, in four cases, municipalities.
9. (page 10) The estimated 1986 cost of \$56 per capita for rural policing is less than half the estimated cost for municipalities.
10. (10) The estimated 1986 cost of about \$390 per capita for constructing and maintaining rural roads is three to four times the estimated cost for municipalities and for unincorporated areas which have been the subjects of incorporation studies. There would appear to be a question as to whether the figures provided by the Ministry of Transportation and Highways are actually for the equivalent of local roads.
11. (12) If there is a question concerning school taxation, it is not whether leaseholders on Indian reserves should be exempt from provincial school taxes but whether the federal government should reduce its payment to the provincial government for each status Indian. As discussed elsewhere, residential property taxes, which status Indians on re-serves do not have to pay, accounted for about 15 percent of the cost of the B.C. public school system. Non-residential property taxes, which are levied on Indian reserve leaseholders, accounted for about 25 percent. Other taxes accounted for the remainder. Except where income is earned or sales transactions occur directly on an Indian reserve, most Indians pay these other taxes like any other citizen. Thus, it would appear that the taxes used by the provincial government in financing its public schools are collected from Indians and Indian reserves to almost the same degree that they are collected from non-Indians. At the same time, the federal government pays the provincial government the full operating cost of educating status Indians in the public school system.
12. (12) As indicated in Note 17 to Chapter 4, some municipalities may argue that it is reasonable to assign to reserve leaseholders costs associated with provincial land use, zoning and building code regulations.
13. (16) This observation was erroneous. The federal government pays the full operating costs for status Indian students, but provincial authorities pay all of the capital costs of schools in the provincial public system.
14. (17) While this finding may still be correct, it was based on the erroneous observation cited in note 13 above.
15. (18) As discussed in Section 2.3.2, and as indicated in Exhibit 2.1, total 1986 rural property taxes levied were \$294,265, while taxes in arrears or delinquent were \$1,280,628. Total school and "other" taxes levied (including hospital district taxes) were, respectively, \$1,270,849 and \$590,794. The argument is based on the premise that, under the present system, the (uncollectable) delinquent school and hospital district taxes may very well exceed the provincial rural property tax while, under the proposed system, the bands would cooperate in ensuring that lease-holders paid provincial school and hospital district taxes.

### 3. METHODOLOGY

The project terms of reference provided for "...an intensive process of data collection and analysis designed to ensure high levels of comprehensiveness and accuracy, together with an extensive review process designed to ensure full consultation with and participation of all interested parties". The study was to consist of four phases, described in the terms of reference as follows:

Phase 1: Project Development This phase will include orientation of project personnel, identification and confirmation of data requirements, development of data collection instruments, initial formal contacts with band, local government and advisory personnel, and preliminary arrangements for initial site visits...

Phase 2: Data Collection and Analysis This phase will commence with the mailing of information requests to local governments and bands regarding relevant tax and service information. The efficiency of the overall process will be considerably enhanced by collecting this data, making telephone contacts and knowing what is needed in advance of the site visits. Visits will be paid to each of the five sites for the purposes of meeting band and local government officials and completing the collection of data. The data will be further analysed and statements of findings, implications and optional solutions to problems will be formulated. An interim report on each of the five cases will be prepared and circulated to all interested parties for review. Feedback from and a meeting with advisory personnel, together with a second visit to each site, will be arranged.

Phase 3: Review and Meetings The purposes of this phase will include confirming that the findings are appropriately comprehensive and accurate, clarifying the implications and options, identifying disagreements and, wherever possible, resolving the disagreements and achieving consensus. Meetings will be held as required with advisory personnel, band personnel and local government officials. It is anticipated that a consensus will be achieved with regard to the basic descriptive information and that the implications and optional solutions to specific problems will be explored. The achievement of a consensus regarding any solution is the responsibility of the parties involved and beyond the control of the contractor.

Phase 4: Final Report In this phase, the five case study reports will be amended and circulated for final review and comment. Further amendments will be made as required in consultation with advisory personnel. The final report, which will draw on all case studies, will then be prepared, submitted for approval and distributed.

The initial contacts with the bands and local governments were made late in May, 1989. It was envisioned that the second phase would be completed by July 15, 1989, and that the whole study could be concluded no later than the end of October, 1989. This timetable proved to be unduly optimistic, for the following reasons:

- The time required for the bands and governmental agencies to respond to requests for information was often much longer than expected. By October 13, 1989, information had been received from only two of the five bands and one band had yet to finally confirm its willingness to participate in the study. By the end of May, 1990, re-requested information had still not been received from one band and two governmental agencies. Because of the nature and complexity of much of the information, it was not possible to remedy the situation by making site visits for the specific purpose of data collection.
- The processes of data collection and analysis proved to be more complex and laborious than expected. In the Westbank case, for example, over 1,000 property tax folios had to be analysed. In several cases, 1989 tax folio data had to be reconciled with 1988 revenue and expenditure data. In all cases, much more time than had been anticipated was spent in maintaining the high levels of accuracy, precision and completeness prescribed in the terms of reference.
- The methodologies used in costing services were revised and refined several times. For example, it had been originally proposed to base the estimated cost of delivering fire protection services on a combination of factors, including assessed property value, population and area. This approach eventually proved to be

inappropriate in practice and it was necessary to investigate several other approaches before the one documented in this report was adopted.

Because of the time slippage, the procedure described in the original terms of reference was adjusted so as to ensure that the main objectives of the study would be satisfied in as timely a fashion as possible. It was vital, for example, that the Indian Taxation Advisory Board be apprised of the study findings at the earliest possible time because it was known that a number of bands were preparing taxation bylaws which would be presented to the Board early in 1990.

By January, 1990, the analyses had been completed in four of the five cases to a point where it was felt that a reasonably precise and comprehensive presentation could be made to the Indian Taxation Advisory Board at its meeting in Vancouver on January 24, 1990. The presentation included reviews of property taxation generally, previous studies of taxes and services on Indian reserves, and property taxation for public school education in British Columbia. The case studies were reviewed with reference to the rationale for case selection, the methodology for data collection and analysis, the general implications of a band property tax, and the preliminary findings to date. In many respects, the presentation satisfied the principal objectives of the study in that both INAC and the Indian Taxation Advisory Board were given much of the information from the study that the Board needed to properly fulfill its mandate in reviewing band taxation bylaw proposals.

In two of the cases, Cowichan and Musqueam, factual summaries were prepared and submitted for review and comment in April, 1990. In June and July 1990, copies of all but the final sections of a draft final report were submitted for review and comment to the Study Advisory Committee and to all of the main case study participants. A meeting of the Study Advisory Committee was held on September 14, 1990, prior to which copies of the draft final sections were submitted to committee members for review in preparation for the meeting. By the time of the meeting, none of the case study participants had yet responded with comments on the draft report and it was agreed that responses should once again be requested. In each case, the general response of each participant was ascertained by the end of October, 1990, as follows:

- the Village of Burns Lake had submitted a detailed list of comments;
- the Cowichan Band had indicated that it expected to provide some comments later;
- the City of Vancouver and the Central Okanagan Regional District had each submitted a number of comments;
- the Westbank Band indicated that it had a number of comments to make; and
- the other participants had no further comments.

No further comments were received from the Cowichan Band. Some comments were provided by a representative of the Westbank Band in January, 1991, and it was agreed in August that a note would be inserted to the effect that the Band did not necessarily agree with all of the data regarding service delivery.

As noted elsewhere, further work on this study was deferred until the publication in April, 1991, of the booklet entitled *Indian Government Taxes and Services in British Columbia: Alternatives Under Bill C-115 and Bill 64* (Bish, Clemens and Topham). Given the booklet, the comments received, and the fact that the UBCM had conducted a workshop on the subject in January, 1991, it was concluded that it would not be necessary to hold the final review meetings which had been contemplated in the study terms of reference.

### **3.1 Data collection and analysis**

The data collection process commenced at the end of May, 1989, with the determination of data requirements and the development of appropriate collection instruments. By the end of June, 1989, most of the main study participants had confirmed their willingness to participate in the study and requests for information had been sent to them. Each information request included a covering letter, a checklist and one or more forms for tabulating the services provided. Copies of the checklists and forms are displayed in Appendix C.

Each of the principal respondents was asked for information about reserve location (maps), reserve size, services provided to the reserve, services provided to leaseholders only, relevant capital works, any problems related to service delivery, and any previous studies. Each Indian band was also asked for a general description of the band plus information about reserve population, locatee leases, band leases, lease revenues, special educational programs, land management arrangements and band finances. Each municipality was also asked for information about formal agreements with the band, reserve leasehold property tax rolls, tax revenues levied and collected over the past three years, services provided by the municipality generally, and municipal finances.

Data was requested from additional sources as soon as the need for and nature of the required information had been clearly ascertained. In all cases, information was requested from the appropriate regional district and from the British Columbia Assessment Authority. In the Burns Lake case, the information requested from the bands was provided by INAC's regional office in Prince George. In the Musqueam case, the Corporation of Delta was contacted. In the Westbank case, data was provided by the B.C. Surveyor of Taxes, the Ministry of the Solicitor General, the Ministry of Transportation and Highways and several improvement districts. Valuable information was also provided by other sources, notably the B.C. Central Statistics Bureau and the Ministry of Municipal Affairs, Recreation and Culture.

Site visits were made in three of the four cases for the purposes of general familiarization and visual verification of road-related service delivery. The study team briefly toured the main Musqueam reserve on October 17, 1989. The project manager visited the Westbank area on November 23-24, 1989, and the Village of Burns Lake on February 16, 1990, where he also collected some supplementary data. It was not considered essential to make a special site visit in the Cowichan case because the data provided by the City of Duncan and the Cowichan Indian Band were reasonably complete and because the members of the study team were already familiar with the area.

The data were analysed with reference to the following questions about their relationship to the possible implications of Bill C-115:

- What is the relationship between the estimated costs of the municipal services delivered to the reserves and the property taxes levied on the leaseholders? Do the leaseholders pay more or less in taxes than the estimated cost of the services delivered? Do the taxes paid by non-residential reserve leaseholders "subsidize" the services delivered to off-reserve residential property-owners?
- What kind of tax base is involved? Are the primary land uses residential, business, industrial, recreational, or a combination of two or more uses? How might this affect the extent to which the leaseholders can pass forward or backward the costs of additional taxes?
- Who would really pay? Would the leaseholders be able to pass a band's new property tax backward to the band in the form of reduced rents, would they be able to pass it forward (for example to customers), or would they have to absorb it? Would a locatee lessor stand to gain, lose or stay even?
- What kinds of constraints do existing agreements with other governments and with leaseholders impose on the options available to the band? What is the impact in each agreement of such factors as length of term, scope, assignment of responsibilities and terms of payment?
- What kinds of effects may existing capital works have on the options available to the band? What is the impact in each case of such factors as age, ownership, magnitude, operating cost and replacement cost?
- Does the evidence support previous findings of high rates of taxes in arrears and tax delinquency among leaseholders and, if so, are there any apparent increasing or decreasing trends? How might this factor affect the available options?
- To what extent would the band be likely to receive cooperation from the provincial and local governments in imposing a new taxation regime?

The principal analyses concerned the estimated costs of the municipal services delivered to the reserves and the relationship between those costs and the property taxes levied on the leaseholders. These analyses are discussed in the following sections of this chapter.<sup>1</sup>

### 3.2 Service cost analysis

Analysing the cost of delivering a municipal service is not an exact science.<sup>2</sup> At the level of the whole municipality, the cost is usually considered to be the same as the expenditure shown in the municipal budget. At the neighborhood or individual level, however, it is not as straightforward a matter as it might seem at first glance. In those cases where a user fee is charged, for example in the case of metered water supply, the cost of delivering the service is normally the same as the fee charged. Where the cost is covered by other means, for example through the imposition of property taxes, the unit cost of delivering the service must be estimated.

There are several ways of expressing the unit cost of delivering a service, including annual cost *per capita*, *per lot*, *per unit of length*, *per unit of area*, or *per unit of assessed value*. These unit costs are typically calculated by dividing the annual municipal expenditure on the service by, respectively,

- the municipal population,
- the number of lots in the municipality,
- the overall length of the system in question (e.g. kilometres of roads),
- the municipality's area, expressed in appropriate units (e.g. hectares), or
- the municipality's total assessment, expressed in appropriate units (e.g. thousands of dollars).

In many respects, the test of a cost estimate is the extent to which the various parties who may have an interest in the estimate consider it to be reasonable and acceptable, given the assumptions upon which it is based and the method used in determining it. For the purposes of this study, three methods of cost estimating are used, corresponding to the three types of municipal service discussed below. While these methods do not result in "perfect" cost assignments, they are considered to be relatively sound in comparison to other methods which might yield marginally more precise results but would involve somewhat more costly procedures.

#### 3.2.1 Variable services to property

Variable services to property include fire, police and other services delivered to all properties, other than those delivered in the form of a fixed linear system such as a road or a pipe. It would be inappropriate to use a per capita basis for estimating the cost of delivering these so-called "hard" services because the cost to non-residential properties would not be taken into account. Because people who live outside the municipality but use the non-residential properties for such activities as working, shopping or leisure, create both increased costs and higher property values in the municipality, the assessed value of the non-residential properties can be used as a proxy for allocating service costs to these people, as well as for the direct costs of servicing the properties. While the assessed value method for allocating costs is by no means perfect, there is a relationship between the value of non-residential properties and the degree to which outsiders are attracted into the municipality.

Except for individual or local groups of residential properties, where a per capita basis is deemed to be more appropriate, the cost per unit of assessed value is thus considered to be an appropriate basis for estimating the cost of delivering this type of service to different classes of property, both collectively and individually. As shown in Exhibit 3.1, the estimate is calculated in three steps:

- First, the net total cost of the service is determined, i.e. the portion covered by the general revenue of the municipality (including property tax revenue, provincial per capita grants, etc.). In Exhibit 3.1, of the total cost of \$1,000,000 for fire protection, \$200,000 is recovered through a contract for protecting an adjacent village, so that the net total cost is \$800,000.
- The net total cost is then broken down by class of property so that, for example, where the assessed value of all business properties in the municipality is determined to be 12% of the municipality's total assessment, the corresponding cost of protecting these business properties is estimated to be 12% of the net total cost, or  $0.12 \times \$800,000 = \$96,000$ .

- Finally, the cost to each class of reserve leasehold properties is determined according to the leaseholders' share of the total municipal population in the case of residential properties or, for non-residential properties, of the total assessment for the class. The summation of these costs is the total cost of fire protection to the reserve lease-holders or, as shown in the example, \$47,600.

In the analysis of the cases, this method is used to determine a *cost factor* for each service to the reserve leaseholders. For example, from Exhibit 3.1, the residential cost factor is  $.75 \times .05 = .0375$ . The total cost factor is  $(.75 \times .05) + (.03 \times 0) + (.05 \times 0) + (.12 \times .10) + (.05 \times .20) = .0595$ . The total estimated cost of the service to the reserve leaseholders is  $.0595 \times \$800,000 = \$47,600$ .

### 3.2.2 Fixed services to property

Fixed services to property include roads, sewerage and other services which are delivered to all properties in the form of a fixed, usually linear system. For these services, it is considered to be most appropriate to base the estimate on the cost per unit of length, adjusted by size or width, as illustrated in the road maintenance cost calculation shown in Exhibit 3.2. Cost estimates for sewer maintenance and other linear services are calculated on a similar basis.

**EXHIBIT 3.1**  
**Example of estimating the cost of fire protection to reserve leasehold properties**

1.	Total fire protection expenditure in municipal budget	\$1,000,000
	Revenue from contract for fire protection to adjacent village	<u>200,000</u>
	Net total cost of fire protection to municipality	\$ <u>800,000</u>
2.	Breakdown of net total cost of fire protection by class of property:	
	•Residential (75% of municipality's total assessed value)	\$ 600,000
	•Utility (3% of municipality's total assessed value)	24,000
	•Industrial (5% of municipality's total assessed value)	40,000
	•Business (12% of municipality's total assessed value)	96,000
	•Recreational (5% of municipality's total assessed value)	<u>40,000</u>
	Net total cost of fire protection to municipality (100%)	\$ <u>800,000</u>
3.	Breakdown of net total cost of fire protection to reserve leaseholders:	
	•Residential (reserve leasehold population = 5% of City's) = $\$600,000 \times .05 =$	\$ 30,000
	•Utility (none on reserve)	0
	•Industrial (none on reserve)	0
	•Business (reserve business property value = 10% of City's) = $\$96,000 \times .10 =$	9,600
	•Recreational (reserve recreational p.v. = 20% of City's) = $\$40,000 \times .20 =$	<u>8,000</u>
	Total cost of fire protection to reserve leaseholders	\$ <u>47,600</u>

**EXHIBIT 3.2**  
**Example of estimating the cost of road maintenance to reserve leasehold properties**

1.	Net total cost of road maintenance in municipal budget	\$3,000,000
2.	Breakdown of road maintenance net total cost:	
	•Major road maintenance (60 km @ \$25,000/km)	\$1,500,000
	•Local road maintenance (300 km @ \$5,000/km)	<u>1,500,000</u>
	Net total cost of road maintenance	\$ <u>3,000,000</u>
3.	Breakdown of road maintenance costs to reserve leaseholders:	
	•Major road maintenance (0.5 km x \$25,000/km)	\$12,500
	•Local road maintenance (5.0 km x \$5,000/km)	<u>25,000</u>
	Total cost of road maintenance to reserve leaseholders	\$ <u>47,500</u>



In the example shown in Exhibit 3.2, the estimates of annual road maintenance costs are based on reasonably firm information about (1) the net total cost as given in the municipal budget, (2) the total lengths of major roads, local roads, lanes and alleys as described in a report published annually by the British Columbia Ministry of Municipal Affairs, Recreation and Culture (MARC 1987) and (3) the lengths of roads serving the reserve leaseholders. Where a municipal engineering department does not break down its costs as shown in Step 2, the breakdown must be estimated. In the illustration, the annual unit cost of maintaining a major road is taken to be five times the unit cost of maintaining a local road, based on the premises that a major road is almost twice the width of a local road and that the life of a local road is on the order of three times the life of a major road.

### 3.2.3 Services to people

Services to people include parks, recreation and other services which are delivered to and used by people on a person-al rather than a real property basis. There are two ways of looking at these services. On the one hand, it would seem more appropriate to use a per capita basis than an assessed value basis for estimating the cost of delivering these so-called "soft" services because they are not used by all property-owners in the same way as the "hard" services are used. On this basis, the estimated cost of a service to reserve leaseholders would be calculated as the per capita municipal cost of the service multiplied by the reserve leasehold population.

The second way of looking at these services is that it would be unfair to assign the full share of the property tax burden for these services to the residential sector only, which is what in fact happens when the per capita basis is used for cost estimating. Because the services are also used by people who live outside but come into the municipality for such activities as working or shopping, it would be appropriate to allocate, as a proxy, a share of the cost of service delivery to the non-residential property-owners. Furthermore, it is common practice in British Columbia to levy both residential and non-residential municipal property taxes on essentially the same basis, such that there is an implied acceptance on the part of non-residential property-owners that a share of their property taxes will be used to help cover the costs of delivering these "soft" services. On this basis, the calculation of the estimated cost of a "soft" service to reserve leaseholders would be the same as the calculation for the "hard" service de-scribed above and shown in Exhibit 3.1.

A resolution of the arguments surrounding the two perspectives is beyond the scope of this study. Consequently, both methods of calculation are used in deriving two separate cost estimates for each of the "soft" services and, accordingly, two total cost estimates are calculated.

### 3.2.4 Other factors

Other factors to be considered in the estimation of service delivery costs include the following:

- The procedure for calculating service costs (and the tax-service relationship) in rural areas is somewhat different from the municipal procedure, but is based on the same principles.
- Given the uncertain nature of some of the information, it would be reasonable in most cases to assign a confidence interval on the order of 15% to the overall estimated costs of services to reserve leaseholders.
- Where a service is paid for by user fees, it is usually excluded from the analysis because none of the cost is attributable to property taxes.
- The cost of a service delivered by a regional or improvement district is usually equal to the tax levied.
- In some cases, it is reasonable to include in the calculation the whole population of the reserve, for example where it is agreed that the members of the Indian band use a municipal recreational facility as much as anyone else.

In all cases, the unit cost of a given service is expressed as its *average* cost rather than its *marginal* or *incremental* cost, because the average cost is considered to be the more equitable of the two. For example, for a population of 1,000 people served by a fire department with an annual budget of \$1,000,000, the *average* unit cost of the service

would be \$1,000 per person per year ( $\$1,000,000 \div 1,000$ ). If the population and budget increased in size respectively to 1,500 people and \$1,200,000, then the *average* unit cost would be \$800 per person per year ( $\$1,200,000 \div 1,500$ ). For the additional 500 people, however, the *marginal* unit cost would be only \$400 per person per year ( $\$200,000 \div 500$ ).

No attempt is made to distinguish between classes of people and their relative demand for a service even though, for example, it may be expected that families with children would use playgrounds more than others. Similarly, the average annual cost of repaving local roads is attributed to each and every local road, notwithstanding the fact that a given local road may be repaved only once every forty or fifty years. The underlying premise is that, on the whole, it all balances out.

### 3.3 Analysis of tax-service relationships

Estimating the cost of services to which municipal property taxes can be allocated is a first step in analysing the tax-service relationship. A second step involves determining the total property tax levied on the leaseholders in a given year. This is determined from tax folio information provided by the tax collector for the same year in which the service costs were incurred. The analysis thus yields a "snapshot" of the tax-service relationship at a given point in time. While the "snapshot" analysis is admittedly inferior to a trend analysis, it is considered to be adequate for the purposes of this study.

A third step in analysing the tax-service relationship involves determining what proportion of the municipality's general revenue comes from property taxes. As shown in Exhibit 3.3, this proportion is determined by first identifying all situations where a source of revenue can be fully or partially allocated directly to a corresponding expenditure, for example where garbage collection fee revenue is the same as the garbage collection expenditure. The summation of these allocations is then subtracted from the total revenue budget, resulting in the *net total revenue* not directly related to specific expenditures. The proportion of the net total revenue attributable to property taxes (70% in the example) is determined by dividing the total municipal revenue from property taxes and grants in lieu of taxes by the net total revenue.

**EXHIBIT 3.3**  
**Example of analysing a municipality's general revenue and expenditure**

	Revenue	Expenditure	Allocation	
Total municipal revenue				\$50,000,000
Revenue directly allocated to specific expenditures <sup>1</sup>				
Local improvements	\$ 3,000,000	\$ 3,000,000	\$ 3,000,000	
Permits, licenses, fees	1,500,000	1,000,000	1,000,000	
Parking enforcement, fines	1,000,000	500,000	500,000	
Garbage collection	2,000,000	3,000,000	2,000,000	
Water supply	4,000,000	4,000,000	4,000,000	
Parks, recreation, etc.	500,000	1,000,000	500,000	
Reserve and fund transfers	500,000	1,000,000	500,000	
Other government levies	25,000,000	25,000,000	25,000,000	
Total revenue directly allocated to specific expenditures				<u>36,500,000</u>
Net total revenue not directly allocated to specific expenditures				<u>\$13,500,000</u>

Total property tax and grant-in-lieu revenue = \$9,450,000 =  $(9,450,000 \div 13,500,000) = 70\%$  of net total revenue

Note: 1. The allocable amount for each item is the lesser of the two figures. If the revenue side is greater, the difference is allocated to unspecified general fund expenditures. If the expenditure side is greater, the difference must be made up from other general fund revenues.

In some cases, the municipality receives provincial grants for specific purposes. The exact nature of these grants is not normally identified in annual financial statements and no attempt has been made to determine to what expenditures they should be allocated. Consequently, the net total revenue might be somewhat overestimated and the property tax share correspondingly underestimated. Similarly, internal transfers to the general revenue fund from other municipal funds or accounts are treated as revenues allocable to expenditures in the form of transfers from the general fund to other funds or accounts, and no attempt is made to determine whether some of the transfers to the general fund might *not* be allocable. For the purposes of this study, the effect of these possible errors would appear to be inconsequential.

The fourth and fifth steps in the analysis are shown in Exhibit 3.4. The fourth step involves calculating the total cost of services to leaseholders that is attributable to property taxes paid by the leaseholders. This *adjusted total cost* is calculated by multiplying the estimated total cost of the services to the leaseholders by the proportion of the net total revenue attributable to property taxes that was calculated in step three.

In the fifth and final step, the difference is calculated between the adjusted total cost of services to leaseholders and the total property taxes levied on the leaseholders. If the total cost exceeds the total taxes, as shown in example (a) in Exhibit 3.4, then the cost of the services has not been fully covered by the taxes. If the taxes exceed the costs, as shown in example (b), then taxes have been levied for which there were no allocable services.

In summary, the analysis involves determining :

- the property tax revenues generated from leasehold lands;
- the average costs of services to leaseholders;
- the share of the costs that are, on average, covered by property taxation within the jurisdiction that delivers the services; and
- the relationships between the property taxes levied on the leaseholders and the costs of the services they receive.

The degree to which service costs to leaseholders are covered by leaseholder property taxes can then be compared to service cost coverage by property taxes in the rest of the municipality.

Given a confidence interval on the order of plus or minus 15 percent for the adjusted total cost determined in step 4, it would be reasonable to conclude in example (a) of Exhibit 3.4 that the total cost of services to the leaseholders could be considered to be about the same as the total municipal property tax levied on them. By the same token, it would be reasonable to conclude in example (b) that the total cost of services to the leaseholders is probably somewhat less than their total municipal property tax levy.

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**EXHIBIT 3.4**  
**Examples of calculating the tax-service relationship for reserve leaseholders**

(a)	Step 1: Estimated total cost of allocable services to leaseholders	\$500,000
	Step 2: Total municipal property taxes levied on leaseholders	\$320,000
	Step 3: Property tax portion of net total revenue = 70%	
	Step 4: Adjusted total costs allocable to property taxes = \$500,000 x 0.7 =	<u>350,000</u>
	Step 5: Service costs not covered by property taxes	<u>\$ 30,000</u>
(b)	Step 1: Estimated total cost of allocable services to leaseholders	\$500,000
	Step 2: Total municipal property taxes levied on leaseholders	\$420,000
	Step 3: Property tax portion of net total revenue = 70%	
	Step 4: Adjusted total costs allocable to property taxes = \$500,000 x 0.7 =	350,000
	Step 5: Property taxes not allocable to services	<u>\$ 70,000</u>

### 3.4 Notes to Chapter 3

1. (page 23) This methodology was further developed, refined and simplified in the preparation of the booklet *Indian Government Taxes and Services in British Columbia: Alternatives Under Bill C-115 and Bill 64* (Bish Clemens Topham, April, 1991).
2. (24) In a letter dated October 5, 1990, the Director of Finance for the City of Vancouver commented as follows:

Chapter Three sets out a methodology for identifying and taxing various types of services, based on a number of factors. While this chapter will undoubtedly form the basis of future discussions with Indian Bands, and the costing of services, it develops a rationale for allocating service costs which is indeed arguable. The City of Vancouver, as a matter of practice, allocates the cost of the services it provides to the Musqueam Lands on the basis of assessed value, excepting water and local improvement charges. A departure from that methodology should not be assumed as a given, and would have to be negotiated.

The tax and service relationships developed in this chapter also assume a sharing of City revenues not directly derived from taxation. The City of Vancouver is fundamentally opposed to that concept in cases where services are provided under contract to an outside agency, specifically the Musqueam Band.

Regarding the first of the above comments, it may be noted that a “one-step” method, based only on assessed values, is one of two methods of cost allocation described in the booklet *Indian Government Taxes and Services in British Columbia: Alternatives Under Bill C-115 and Bill 64* (Bish Clemens Topham, April, 1991). Regarding the second comment, it should be noted that, during the course of the study, the provincial unconditional grant formula was revised to include Indian reserve populations, whereas these populations had been excluded under the previous formula. Reserve leaseholders, who are the focus of this study, also pay all other local and provincial taxes. In this context, it would seem reasonable to argue that an Indian band acting on behalf of its leaseholders cannot be considered to be an “outside agency” in the conventional sense of the term.

## 4. BURNS LAKE AND LAKE BABINE CASES

### 4.1 Background

These two cases were initially defined as a single case, since each involved the Village of Burns Lake. Because the two cases had a number of common elements, they can be discussed most economically and coherently in one chapter. Necessary distinctions between the cases are maintained within the organizational framework of the chapter.

The cases involve the Burns Lake Indian Band and the Lake Babine Indian Band, whose reserves are located in the Bulkley-Nechako Regional District (BNRD) in north-central British Columbia. The BNRD includes seven unincorporated Electoral Areas ('A'-G' inclusive) and eight municipalities. Each Band has two reserves within the boundaries of the Village of Burns Lake. In 1988, the total area of the Village was approximately 851.4 hectares.<sup>1</sup> The total Village population according to the 1986 census was 2,126, including 23 people living on the Burns Lake Re-serves (I.R.No.18), 380 on the Lake Babine Reserves (Woyenne I.R.No.27) and 1,723 in the rest of Burns Lake.

The Burns Lake Band had four reserves in the BNRD in 1988, with a total area of approximately 164 hectares. The area of the two reserves within the Village of Burns Lake was approximately 116.7 hectares, including 40.2 hectares in Burns Lake I.R.No.18 and 76.5 hectares in Sheraton I.R.No.19. I.R.No.18 was the site of the Band's village.<sup>2</sup> I.R.No.19, which was about 12 miles east of the Village proper and was annexed in 1975, was the site of the Babine Forest Products saw and planing mill. According to INAC, the Band had 47 members as of December 31, 1988, of whom 25 lived on I.R.No.18. One other person lived on I.R.No.18, for a total population of 26.

The Lake Babine Band had 23 reserves in the BNRD in 1988, with a total area of approximately 1,250 hectares. The area of the two reserves within the Village of Burns Lake was approximately 16.4 hectares, including 12.6 hectares in Woyenne I.R.No.27 and 3.2 hectares in Chapel Park I.R.No.28. According to INAC, the Band had 1,303 members as of December 31, 1988, of whom 846 lived on the Reserves.<sup>3</sup> Woyenne I.R.No.27, whose resident Indian population in 1989 was estimated by INAC to be 541, was the site of the Band's main village. I.R.No.28, which was uninhabited, was the site of a cemetery. The considerable population increase on I.R.No.27 since 1986, and an associated increase in the population per household, had led the Band to seek additional adjacent land for expansion.<sup>4</sup>

### 4.2 Leaseholds and land management

Land management services were provided to both Bands in 1988 by the INAC Prince George Regional Office, in accordance with the *Indian Act*. The Lake Babine Band had no leasehold properties within the Village of Burns Lake.

In 1988, the Burns Lake Band had one permit and three leasehold arrangements within the Village of Burns Lake, as follows (1988 actual assessed property values/property classification in parentheses):

- Alamart Holdings Ltd. (Kaltire), which had a permit of occupation for a small parcel of land on I.R.No.18 adjacent to Alamart's own property for a term of 20 years, from August 1, 1982, to July 31, 2002. Separate taxes had not been levied on this property and the assessed value was not known.
- Babine Forest Products Ltd. (\$5,256,450/5),<sup>5</sup> which had leased I.R.No.19 for a term of 50 years, from June 1, 1974 to May 31, 2024. It was a joint lease, with a split in revenues between the Band (76.2%) and the locatee (23.8%). The annual rent was about 10% of the assessed value of the land. The property was traversed by the C.N.R. Prince George - Prince Rupert main line.
- Raymond J. Hennessy (\$17,800/6), who had leased a parcel of land on I.R.No.18 for use as a weather station for a term of eight years from October 1, 1983 to September 30, 1991.
- Westland Helicopters Ltd. (\$25,100/6), which had leased a parcel of land on I.R.No.18 for a term of 81 months from January 1, 1985, to September 30, 1991.

The permit and leases were each the subject of a formal agreement between INAC, the Band and the permittee or

lessee. The agreements all included provisions whereby the lessee agreed to pay all taxes, duties and assessments made against the land (or the lessee or the occupier), and to comply with all federal, provincial and municipal laws. Provision was also made for a subdivision of the term into shorter periods, for example five years in the case of the lease with Babine Forest Products, to permit the rental terms to be adjusted and give the lessee the right to surrender the lease.

BCAA records indicate that there were also two business (class 6) properties on I.R.No.18 which were exempt from property taxation but apparently received at least some Village services financed by Village property taxes.<sup>6</sup> They included (1988 actual assessed property values in parentheses):

- Rainbow Motel (\$186,400);<sup>7</sup> and
- a warehouse (\$40,850), which was apparently owned and operated by the Burns Lake Band.

For study purposes, it is assumed that these two properties received the same Village services as the Hennessy and Westland Helicopter lessees.<sup>8</sup>

### 4.3 Property taxes and fees

As indicated in Exhibits 4.1 and 4.2, the 1988 property taxes levied on the three Burns Lake Indian Reserve leasehold properties in the Village of Burns Lake were as follows:

- school taxes..... \$85,934 (14.6% of the \$590,289 in school taxes levied in the Village);
- municipal taxes..... \$110,134 (24.6% of the Village's \$446,919 municipal tax levy);
- water frontage taxes..... \$144 ( 0.18% of the Village's \$78,477 water frontage tax levy);
- sewer frontage taxes..... \$49 ( 0.01% of the Village's \$49,601 sewer frontage tax levy);
- BNRD taxes..... \$19,130 (26.6% of the \$72,008 levied in Burns Lake for the BNRD); and
- other taxes..... \$10,342 (26.6% of the \$38,930 levied in Burns Lake for the Regional Hospital District, the Municipal Finance Authority and the British Columbia Assessment Authority).

There had been no taxes in arrears or delinquent on the three properties in 1986-88.<sup>9</sup>

#### EXHIBIT 4.1

#### 1988 property taxes levied on Burns Lake Indian Reserve leaseholders

	Industry Class 5	Business Class 6	Total
Number of taxable properties	1	2	3
Taxable assessed value	\$5,974,250	\$38,800	\$6,013,050
School taxes	\$ 85,367	\$ 567	\$ 85,934
Municipal taxes	109,647	487	110,134
Water frontage taxes	0	144	144
Sewer frontage taxes	0	49	49
BNRD taxes <sup>1</sup>	19,041	89	19,130
Other taxes <sup>2</sup>	10,294	48	10,342
Total property taxes	<u>\$224,349</u>	<u>\$1,384</u>	<u>\$225,733</u>
Arrears, delinquent	\$0	\$0	\$0

Notes: 1. Bulkley-Nechako Regional District.

2. Includes Regional Hospital District, Municipal Finance Authority and B.C. Assessment Authority.

Source: Village of Burns Lake property tax folios.

## EXHIBIT 4.2

## Village of Burns Lake 1988 General Operating Fund Revenue and Expenditure

Revenue		Expenditure	
General purposes tax	\$ 446,919	General government services	\$ 219,557
Sewer frontage tax	49,601	Fire protection	50,953
Water frontage tax	78,477	Building inspection	10,280
Federal grants -in-lieu of taxes	5,913	Pest and animal control	1,332
Provincial grants -in-lieu of taxes	33,778	Other protective services	4,231
Government service fees	81,031	Common transportation services	163,050
Garbage collection and disposal revenue	45,592	Roads and streets	81,092
Cemetery	3,270	Street lighting	30,995
Licences and permits	22,376	Traffic services	4,385
Penalties and interest	24,197	Airport	19,625
Airport gasoline	12,918	Garbage collection and disposal	29,549
Interest on investments	50,500	Public health and welfare services	4,571
Other revenue from own services	37,971	Environment development	16,321
B.C. revenue sharing (unconditional)	76,212	Arena, parks and playgrounds	91,986
B.C. conditional grants	51,146	Library and museum	5,000
Other contributions (BNRD - arena)	58,420	Interest	12,176
School District 55 levy	590,289	Reserve for future expenditures <sup>1</sup>	252,000
BNRD and Hospital District	<u>111,370</u>	General Capital Fund contribution	54,775
Collections for other governments	701,659	Transfer to Sewer Fund	49,601
Appropriation of prior years surplus	<u>158,513</u>	Transfer to Water Fund	78,477
Total revenue	<u>\$1,938,493</u>	School District 55	584,509
		BNRD	72,008
		Hospital District	24,674
		Other	<u>14,256</u>
		Taxes levied for other governments	695,447
		Excess of revenue over expenditure	<u>63,090</u>
		Total expenditure	<u>\$1,938,493</u>

Note: 1. The \$252,000 reserve for future expenditures includes:

Arena roof	\$100,000
Office equipment and carpeting	2,000
Works yard	10,000
Street improvements and lighting	18,000
New pickup	17,000
Fire truck	25,000
Public works equipment, etc.	80,000

As shown in Exhibits 4.2 and 4.3, of the Village's total 1988 revenues of \$1,938,493, revenues of \$1,094,799 were directly allocated, either fully or partially, to corresponding expenditures. Property tax and grants-in-lieu revenues of \$486,610 accounted for 57.7% of the \$843,694 in revenues which were not directly allocated to corresponding expenditures. It is assumed that 100% of the BNRD levy of \$72,008 in the Village of Burns Lake was covered by property taxes.

#### 4.4 Services

Of the services in the Village of Burns Lake which were partially financed by property taxation and were provided to non-Reserve properties, most were also provided to the Reserve leasehold properties. In the case of the Babine Forest Products mill property, "hard" services such as water, sewerage and road maintenance were provided by the mill itself. The Village reportedly provided only "back-up" fire protection. For study purposes, it is assumed that services to the Kaltire permit site were included in the services provided to the adjacent Kaltire property. Because the Village's population was less than 5,000, policing was provided at no cost to the Village or the Bands through a shared-cost contract between the federal and provincial governments and the RCMP, as discussed in Section 2.2.3.<sup>10</sup>

Services provided to one or both of the Bands which were paid for through separate contracts included fire protection, garbage collection, water supply, sewerage, road maintenance and street lighting. Water supply and sewerage were provided in accordance with 1974 agreements which, as discussed elsewhere, were in dispute. Some other services were evidently a "free" benefit to the members of the Bands, since they used the services but paid none of the municipal property taxes that partially covered the cost of providing them, as indicated below.

#### EXHIBIT 4.3

##### Analysis of Village of Burns Lake 1988 General Fund Revenue and Expenditure

	Revenue	Expenditure	Allocation	
Total revenue				\$1,938,493
Revenue directly allocated to specific expenditures <sup>1</sup>				
Sewer	\$ 49,601	\$ 49,601	\$ 49,601	
Water	78,477	78,477	78,477	
Government services	81,031	219,557	81,031	
Garbage collection and disposal	45,592	29,549	29,549	
Arena, parks, etc. (inc. cemetery)	61,690	91,986	61,690	
Licences and permits (inc. building)	22,376	10,280	10,280	
Airport	12,918	19,625	12,918	
Interest	50,500	12,716	12,716	
Other government levies	701,659	695,447	695,447	
Surplus, excess revenue	158,513	63,090	<u>63,090</u>	
Total revenue directly allocated to expenditures				<u>1,094,799</u>
Net total revenue not directly allocated to expenditures				<u>\$ 843,694</u>
Total property tax and grants-in-lieu revenue = \$446,919 + 5,913 + 33,778 = (486,610 ÷ 843,694)				
= 57.7% of net total revenue				

Note: 1. The allocable amount for each item is the lesser of the two figures. If the revenue side is greater, the difference is allocated to unspecified general fund expenditures. If the expenditure side is greater, the difference must be made up from other general fund revenues.



#### 4.4.1 Village of Burns Lake services provided on a user fee basis

Services provided on a user fee basis included the following (1988 Village general operating expenditures in parentheses):

- Garbage collection and disposal ( \$45,592). The 1988 costs were \$29,549.<sup>11</sup>
- Water supply (\$246,403). The 1988 costs were \$264,432. A frontage tax for capital costs was charged to all properties except those on Reserve Band lands. The system was operated through the Village's Waterworks Operating Fund.<sup>12</sup>
- Sewerage (\$257,613). The 1988 costs were \$264,217. A frontage tax for capital costs was charged to all properties except those on Reserve Band lands. The system was operated through the Village's Sewer Operating Fund.<sup>13</sup>

With the exception of the garbage collection and disposal service, it would be reasonable to equate the cost of providing each of these services with the fees paid. In the case of garbage collection and disposal, it would appear that the fees were significantly greater than the cost of providing the service.

#### 4.4.2 Village of Burns Lake services financed from general revenue

Services which were financed through the Village's General Operating Fund in 1988 and which were provided to the leaseholders on I.R.No.18 and/or to the Reserves as a whole, included the following (1988 Village net general fund expenditures in parentheses):

- Fire protection (\$75,953, including a \$25,000 fire truck reserve). The Burns Lake Band paid the Village a separate fee of \$300. The Lake Babine Band paid a fee of \$7,729.50.<sup>14</sup>
- Building inspection (\$0). Total Village expenditure in 1988 was \$10,280, while \$22,376 was recovered in re-venues from licenses and permits. The Village inspected only leasehold structures.
- Pest and animal control (\$1,332). Only leasehold properties were served.
- Other protective services (\$4,231). Only leasehold properties were served.
- Roads and streets (\$369,952, including \$163,050 common transportation services, \$81,092 roads and streets, \$10,000 works yard reserve, \$18,000 street improvement and lighting reserve, \$17,000 new pickup reserve and \$80,000 public works reserve, etc.). The Bands each contracted separately for road maintenance on the Re-serves.<sup>15</sup> According to *Municipal Statistics for the Year Ended December 31, 1987*, the Village of Burns Lake maintained approximately 14.0 kilometres of local roads and 2.0 kilometres of improved lanes and alleys. The evidence from maps and a site visit indicated that this included approximately 0.7 kilometres of local road serving I.R.No.18, including the two leaseholders, and 0.2 kilometres serving I.R.No.27.
- Street lighting (\$30,995). The Bands each contracted separately for street lighting on the Reserves.<sup>16</sup> It is assumed that there were 14.0 kilometres of street lighting in the Village of Burns Lake, of which approximately 0.7 kilometres lighted local roads serving I.R.No.18, including the two leaseholders, and 0.2 kilometres lighted the roads serving I.R.No.27.
- Traffic services (\$4,385). Only leasehold properties were served.
- Airport (\$6,707). Total Village expenditure in 1988 was \$19,625, of which \$12,918 was recovered in airport gasoline revenues. All Reserve residents and leaseholders, including the Babine Forest Products mill, are assumed to have benefited from the airport.
- Arena, parks and playgrounds (\$130,296, including \$100,000 arena roof reserve). Total Village expenditure in 1988 was \$191,986, of which \$3,270 was recovered in cemetery revenues and \$58,420 was covered by a BNRD contribution. Although the Bands had their own common facilities on the Reserves, there appeared to be a consensus that Band members used the Village's facilities to about the same degree as other residents of the Village of Burns Lake.
- Library and museum (\$5,000). There appeared to be a consensus that Band members used these facilities to about the same degree as other residents of the Village of Burns Lake .
- Contribution to General Capital Fund (\$54,775). This included \$26,381 for debt retirement and a \$28,394 contribution to capital assets. In general, the capital costs covered by this fund were related to services which are considered to have been provided to all Reserve residents and leaseholders except the Babine Forest Products mill.

- General government (\$140,526, including \$2,000 office equipment and carpeting reserve). Total Village expenditure in 1988 was \$221,557, of which \$81,031 was recovered in government service fee revenues. Because there was an apparent consensus that the Bands received "free" benefits from a number of other services, it is assumed that they also benefited from the general government activity involved in providing those services. For study purposes, it is assumed that general government "overhead" costs did not exceed 15% of the total cost of the other services provided to the Reserve residents and/or leaseholders.

Services financed through the Village's General Operating Fund which are not considered to have been provided to the Reserves included the following (1988 Village net general fund expenditures in parentheses):

- Public health and welfare services (\$4,571). There was a Health and Welfare Canada medical services facility on I.R.No.27 which served both Bands.
- Environment development services (\$16,321). As discussed in Section 2.3, this included the administration of regulations which did not apply to Indian reserves.<sup>17</sup>

#### 4.4.3 Services provided by the BNRD

Services provided to both Reserves by the Bulkley-Nechako Regional District included the following (Village of Burns Lake's 1988 cost share in parentheses):

- Economic development (\$54);
- Economic Development Initiative Northwest (\$3,307);
- Burns Lake Tom Forsyth Arena grant (\$23,524);
- Burns Lake library (\$6,385); and
- General government (\$16,745). As in the case of the Village, it is assumed that general government "overhead" costs did not exceed 15% of the total cost of the other services provided to the Reserve residents and/or leaseholders.

For study purposes, it is assumed that these services were provided to all residents of the Reserve, including those on the Band lands, on the premise that they benefited all the people of the region or, in the case of the arena and library, the area they served.

Services which are not considered to have been provided to both Reserves by the Bulkley-Nechako Regional District included the following (Village of Burns Lake's 1988 cost share in parentheses):

- Waste disposal (\$16,920). The Lake Babine Band paid a separate fee of \$3,000 for this service in 1988. It is assumed that service to the Burns Lake I.R.No.18 was financed from property taxes.
- Planning and zoning (\$5,055). As discussed in Section 2.3, this included the administration of regulations which did not apply to Indian reserves.

#### 4.5 Analysis of the tax-service relationships

As discussed in Section 3.3, the relationship between property taxes levied on the leaseholders and the costs of services delivered to them is calculated in five steps, as follows:

- Calculate the total estimated cost of services to which Village property taxes can be allocated;
- Determine the total Village property tax levied on the leaseholders (\$110,134 from Exhibit 4.1);
- Determine the property tax portion of the Village's net total revenue (57.7% from Exhibit 4.3);
- Calculate the adjusted total cost of services that can be attributed to leaseholder property taxes; and
- Calculate the difference between the adjusted total cost of services and the total property tax levied.

The cost calculations are based on the municipality's net total expenditure on each allocable service and on *cost factors* derived primarily from information about assessed property values, population and, for systems such as roads, system length. The data on population and assessed values are shown in Exhibit 4.4. The 1988 population estimates shown in Exhibit 4.4 are used for the purposes of these case studies in order to account for the fact that the increase since 1986 in the population of the Lake Babine Band was proportionately greater than that in the rest of the Village of Burns Lake.

**EXHIBIT 4.4****Village of Burns lake population, area and assessed values**

<b>Population and area</b>	<b>Burns Lake Village</b>	<b>Burns Lake Band</b>		<b>Lake Babine Band</b>		<b>Total Village</b>
	<b>(ex Reserves)</b>	<b>I.R.18</b>	<b>I.R.19</b>	<b>I.R.27</b>	<b>I.R.28</b>	
1986 Census population	1,723	23	0	380	0	2,126
1988 population estimate	1,724	26	0	513	0	2,263
1988 % of total Village population	76.18%	1.15%	0.0%	22.67%	0.0%	100.0%
Area (hectares)	718.3	40.2	76.5	12.6	3.8	851.4

<b>Actual 1988 assessed values <sup>1</sup></b>	<b>Village of Burns Lake</b>	<b>Class % of total value</b>	<b>I R 18 and 19 leasehold total</b>	<b>I R % of class</b>
Residential (class 1)	\$25,629,000	41.80%	\$ 0	0.00%
Utilities (class 2)	3,254,219	5.31	0	0.00
Industrial (class 5)	5,354,550	8.73	5,256,450	98.17
Business and other (class 6) <sup>2</sup>	26,127,550	42.61	270,050	1.03
Recreation, non-profit (class 8)	952,150	1.55	0	0.00
Farm (class 9)	<u>754</u>	<u>0.01</u>	<u>0</u>	0.00
Total assessed value	<u>\$61,318,223</u>	<u>100.00</u>	<u>\$5,526,500</u>	

- Notes: 1. The total values are taken from BCAA records and may not include the assessed values of all Band properties on the Reserves. The differences would not significantly affect the service cost analyses.  
2. Includes the Rainbow Motel and warehouse on I.R.No.18.

Sources: B.C. Assessment Authority; Village of Burns Lake; B.C. Ministry of Municipal Affairs, Recreation and Culture: *Statistics Relating to Regional and Municipal Governments in British Columbia 1988*.

**4.5.1 Tax-service relationships in the Burns Lake case**

The rationale and methods for determining service cost factors are described in Section 3.2. The "variable services to property" which were provided in 1988 to the Reserve residents and leaseholders on I.R.No.18 and I.R.No.19 included the airport, BNRD economic development and the BNRD Economic Development Initiative Northwest. As indicated in Exhibit 4.4, the leasehold properties served included:

- 1.15% by population of the Village's residential properties, which comprised 41.80% of the Village's total actual assessment;
- 98.17% by value of the Village's industrial properties, which comprised 8.73% of the Village's total assessment; and
- 1.03% by value of the Village's business properties, which comprised 42.61% of the Village's total assessment.

The total cost factor for these services to I.R.No.18 and I.R.No.19 was therefore  $(.4180 \times .0115) + (.0873 \times .9817) + (.4261 \times .0103) = .0949$

For "services to people", including arena, parks, playground, library, museum, BNRD arena contribution and BNRD library contribution, the cost factor calculation is based on the population served which, in this case, consisted of 26 Reserve residents. The cost factor was therefore .0115. Alternatively, as discussed in Section 3.2, the cost factor was the same as that determined for variable services to property, or .0949.

The "variable services to property" which were provided to both residents and leaseholders on I.R.No.18 included the General Capital Fund contribution and BNRD waste disposal. The total cost factor for these services was  $(.4180 \times .0115) + (.4261 \times .0103) = .0092$ .

The "variable services to property" which were provided only to leaseholders on I.R.No.18 included fire protection,

pest and animal control, other protective services, and traffic services. The total cost factor for these services was  $(.4261 \times .0103) = .0044$ .

For "fixed services to property", the unit costs are derived from the Village's total expenditure. For study purposes, it is assumed that local roads cost twice as much to maintain as improved lanes and alleys. On this basis, the unit cost for maintaining local roads in Burns Lake in 1988 was  $\$369,952 \div [14.0 + (2.0 \div 2)] = \$24,663$  per kilometre, or \$24.66 per metre. The unit cost for providing street lighting was  $\$30,995 \div 14 = \$2,214$  per kilometre, or \$2.21 per metre.

As discussed in Section 3.2.3, two methods of calculation are used in estimating costs for each of the "soft" services and, accordingly, two total cost estimates are calculated. By one method, as shown in Exhibit 4.5, the total 1988 estimated cost of allocable Village services to the Burns Lake Reserves was \$25,164. From Exhibit 4.3, 57.7% of this cost was covered by property tax revenues, so that the adjusted total cost of the allocable services was \$14,520.

#### EXHIBIT 4.5

##### Calculation of Burns Lake Indian Reserve tax-service relationships

Service provided by Village of Burns Lake	net total cost or length of system	Calculation method #1		Calculation method #2	
		cost factor or unit cost	Reserve cost share	cost factor or unit cost	Reserve cost share
Fire protection	\$75,953	.0044	\$ 333	.0044	\$ 333
Pest and animal control	1,332	.0044	6	.0044	6
Other protective services	4,231	.0044	19	.0044	19
Roads and streets	700 m	24.66	17,262	24.66	17,262
Street lighting	700 m	2.21	1,547	2.21	1,547
Traffic services	4,385	.0044	19	.0044	19
Airport	6,707	.0949	636	.0949	636
Arena, parks, playground	130,296	.0115	1,498	.0949	12,365
Library and museum	5,000	.0115	58	.0949	474
General Capital Fund contribution	54,775	.0092	504	.0092	504
General government	\$21,882 / \$33,165	.15	<u>3,282</u>	.15	<u>4,975</u>
			\$ 25,164		\$ 38,140
Total cost of services allocable to leaseholder property taxes			\$ 14,520		\$ 22,007
Adjusted total cost of allocable services (= total cost x .577)			<u>110,327</u>		<u>110,327</u>
Total Village property taxes levied on reserve leaseholders			\$ <u>95,807</u>		\$ <u>88,320</u>
Leaseholder property taxes not allocable to Village services					

Service provided by BNRD	net total cost or length of system	Calculation method #1		Calculation method #2	
		cost factor or unit cost	Reserve cost share	cost factor or unit cost	Reserve cost share
Economic development	\$ 54	.0949	\$ 5	.0949	\$ 5
Econ. Dev. Initiative Northwest	3,307	.0949	314	.0949	314
Burns Lake Tom Forsyth Arena	23,524	.0115	271	.0949	2,232
Burns Lake Library	6,385	.0115	73	.0949	606
Waste disposal	16,920	.0092	156	.0092	156
General government	\$819 / \$3,313	.15	<u>123</u>	.15	<u>497</u>
Total cost of services allocable to leaseholder property taxes			\$ 942		\$ 3,810
Total BNRD property taxes levied on reserve leaseholders			<u>19,130</u>		<u>19,130</u>
Leaseholder property taxes not allocable to BNRD services			\$ <u>18,188</u>		\$ <u>15,320</u>

As shown in Exhibit 4.1, the total 1988 Village property tax levied on the leaseholders, including frontage taxes, was \$110,327. The portion of the leaseholder municipal property taxes not allocable to Village services was therefore \$95,807.

By the second method, the total 1988 estimated cost of allocable Village services to the Reserves was \$38,140. The adjusted total cost of the allocable services was \$22,007. The portion of the leaseholder municipal property taxes not allocable to Village services was \$88,320.

Similar calculations apply to the services provided by the BNRD. By one method, as shown in Exhibit 4.5, the total 1988 estimated cost of allocable BNRD services to the Burns Lake Reserves was \$942. From Section 4.3, it is assumed that 100% of this cost was covered by property tax revenues, so that the adjusted total cost of the allocable services was \$942. As shown in Exhibit 4.1, the total 1988 BNRD property tax levied on the leaseholders was \$19,130. The portion of the leaseholder BNRD property taxes not allocable to BNRD services was therefore \$18,188.

By the second method, the total 1988 estimated cost of allocable BNRD services to the Reserves was \$3,810. The portion of the leaseholder BNRD property taxes not allocable to BNRD services was therefore \$15,320.

#### **4.5.2 Tax-service relationships in the Lake Babine case**

The rationale and methods for determining service cost factors are described in Section 3.2. The "variable services to property" which were provided to the Reserve residents on I.R.No.27 included the airport, General Capital Fund contribution, BNRD economic development and the BNRD Economic Development Initiative Northwest. The property served included 22.67% by population of the Village's residential properties, which comprised 41.80% of the Village's total actual assessment. The total cost factor for these services to I.R.No.27 was therefore  $(.4180 \times .2267) = .0948$ .

For "services to people", including arena, parks, playground, library, museum, BNRD arena contribution and BNRD library contribution, the cost factor calculation is based on the population served which, in this case, consisted of 513 Reserve residents. The cost factor was therefore .2267. Alternatively, as discussed in Section 3.2, the cost factor was the same as that determined for variable services to property, or .0948.

The unit costs for "fixed services to property" were the same as those calculated for the Burns Lake case. The unit cost for maintaining local roads in Burns Lake in 1988 was \$24.66 per metre. The unit cost for providing street lighting was \$2.21 per metre.

As discussed in Section 3.2.3, two methods of calculation are used in estimating costs for each of the "soft" services and, accordingly, two total cost estimates are calculated. By one method, as shown in Exhibit 4.6, the total 1988 estimated cost of allocable Village services to the Lake Babine Reserve was \$20,170. From Exhibit 4.3, 57.7% of this cost was covered by property tax revenues, so that the adjusted total cost of the allocable services was \$27,786. The Band had no leaseholders in the Village of Burns Lake and therefore no leaseholder property taxes were levied. The cost of Village services that were not covered by leaseholder municipal property taxes was therefore \$27,786. By the other method, the cost of Village services not covered by leaseholder property taxes was \$15,944.

Similar calculations apply to the services provided by the BNRD. By one method, as shown in Exhibit 4.6, the total 1988 estimated cost of allocable BNRD services to the Lake Babine Reserve was \$8,164. From Section 4.3, it is assumed that 100% of this cost was covered by property tax revenues, so that the adjusted total cost of the allocable services was \$8,164 or, by the second method, \$3,627. The cost of BNRD services that were not covered by leaseholder property taxes was therefore \$8,164 or \$3,627.

## EXHIBIT 4.6

## Calculation of Lake Babine Indian Reserve tax-service relationships

Service provided by Village of Burns Lake	net total cost or length of system	Calculation method #1		Calculation method #2	
		cost factor or unit cost	Reserve cost share	cost factor or unit cost	Reserve cost share
Roads and streets	200 m	24.66	\$ 4,932	24.66	\$ 4,932
Street lighting	200 m	2.21	442	2.21	442
Airport	6,707	.0948	636	.0948	636
Arena, parks, playground	130,296	.2267	29,538	.0948	12,352
Library and museum	5,000	.2267	1,134	.0948	474
General Capital Fund contribution	54,775	.0948	5,193	.0948	5,193
General government	\$41,875 / \$24,029	.15	<u>6,281</u>	.15	<u>3,604</u>
Total cost of services allocable to leaseholder property taxes			<u>\$48,156</u>		<u>\$27,633</u>
Adjusted total cost of allocable services (= total cost x .577)			\$27,786		\$15,944
Total Village property taxes levied on reserve leaseholders			<u>0</u>		<u>0</u>
Village services not covered by leaseholder property taxes			<u>\$27,786</u>		<u>\$15,944</u>

Service provided by BNRD	net total cost or length of system	Calculation method #1		Calculation method #2	
		cost factor or unit cost	Reserve cost share	cost factor or unit cost	Reserve cost share
Economic development	\$ 54	.0948	\$ 5	.0948	\$ 5
Econ. Dev. Initiative Northwest	3,307	.0948	314	.0948	314
Burns Lake Tom Forsyth Arena	23,524	.2267	5,333	.0948	2,230
Burns Lake Library	6,385	.2267	1,447	.0948	605
General government	\$7,099 / \$3,154	.15	<u>1,065</u>	.15	<u>473</u>
Total cost of services allocable to leaseholder property taxes			\$8,164		\$3,627
Total BNRD property taxes levied on reserve leaseholders			<u>0</u>		<u>0</u>
BNRD services not covered by leaseholder property taxes			<u>\$8,164</u>		<u>\$3,627</u>

## 4.6 Capital works

In 1988, the capital works of interest in these cases included:

- the buildings, roads, sewers, lift station, and water lines on I.R.No.18;
- the railway lines, mill works and cemetery on I.R.No.19;
- the buildings, roads, sewers and water lines on I.R.No.27; and
- the road, cemetery and forced main on I.R.No.28.

## 4.6.1 Capital works in the Burns Lake case

Of the capital works financed by the federal government on I.R.No.18, INAC records show that about 60% was built in 1986/87 at a cost of \$120,000 with a life expectancy of 30 years. The other 40% was built in the early 1960s at a cost of \$10,000 with a life expectancy of ten years.<sup>18</sup>

According to the Village, a ten-year agreement dated June 1, 1971, had allowed the Village access to a strip of land through I.R.No.18 for a sewer line connecting the Village's public works yard to the main sewer line. The agreement expired in 1981 but was "overlooked" until 1987. The Village had requested a further five year term but, as of October 1989, had not been given a commitment.

The Village had recently constructed a pipeline from new wells drilled on an island in Burns Lake to the original

water intake connection. The pipeline was resting on the bottom of Burns Lake. According to INAC, this may have been a violation of the Burns Lake Band's riparian rights, since it appeared that the Village had neither requested consent from the Burns Lake Band to run the pipe along the shoreline of I.R.No.18 nor acquired a Water Lot Licence for the pipeline from either the province or the Band. The Village advised that it has all provincial licences and permits and that, where it was on dry land, the pipeline crossed only Village property.

The Burns Lake Band reportedly identified five possible encroachments on I.R.No.18, four of them involving the Village and one involving School District 55. Three which had been surveyed and given preliminary confirmation included a small building used for a dog pound (together with a gravel road), aerial trespass by the eaves of an old shed (along with an area adjacent to a road on which vehicles encroach) and a shed type building. In addition, there were potential encroachments of about five feet by a 10 inch water main and about two inches by a forced main.

On I.R.No.19, all capital works except a cemetery, two cabins and the railway line had been built and were owned by Babine Forest Products Ltd. Their 1988 assessed value exceeded \$5,000,000. The Band had retained a right of access along the river, to the cemetery and to the two cabins.

#### 4.6.2 Capital works in the Lake Babine case

INAC records show that the capital works financed by the federal government on I.R.No.27 were originally built in 1968. After that, they were gradually upgraded at a cost of \$60,000 until 1987, when they were extensively renewed at a cost of \$175,000, with a life expectancy of 20 years.<sup>19</sup>

The 160 metre road serving the cemetery parking lot on I.R.No.28 was owned by the federal government. According to INAC, there were no legal agreements regarding a forced sewer main that ran across the south end of the Reserve. The Village contended that the line was not in use and had been abandoned. INAC engineers reportedly advised that, in their view, it was an overflow line.

#### 4.7 Issues

There were several contentious issues affecting the relationship between the Village of Burns Lake and the two Bands. Information about these issues was provided primarily by the Village Treasurer and by the Prince George Regional Office of INAC. An official of the Lake Babine Band was briefly interviewed during a site visit. Attempts to arrange an interview with a Burns Lake Band official during the site visit were unsuccessful.

The Village claimed that its relationships with the Bands themselves were by and large harmonious and that the main difficulty was with the *Indian Act* and INAC. As noted in a paper prepared by the Village, "Our negotiations directly with the Bands in the past have been relatively satisfactory as they appear to understand the financial burden and agree to pay their share."

Two of the issues were of common concern in both cases. The remaining issues are discussed with reference to the relevant case.

##### 4.7.1 The "Native Issue"

In October, 1988, the Treasurer of the Village of Burns Lake produced a document entitled *Native Issue Report*. The report's main contentions were as follows:

- The two Indian bands did not pay their fair share for municipal services from which their members benefited in the same way as other Village residents. In 1988, the Village should have realized \$104,291 in revenues from the two Bands, including \$18,813 in utility charges, \$29,119 in property taxes, \$15,426 in frontage taxes and \$40,932 in per capita grants from the B.C. Government.
- The Indians had a potentially unfair say in the affairs of the Village in that they had "representation without taxation". They could vote in municipal elections and referenda "...without having concern for the cost of administering Village services... (and) in theory could elect a total Indian, Village Council, as they see fit without concern for costs."

INAC evidently considered the amount of compensation sought by the Village to be unjustified, in part because the frontage tax claim was at variance with the provisions of the 1974 water and sewer agreements discussed below. It would also appear that most, if not all, of the utility charges included in the Village's claim had been and were being paid by the Bands.

The Village's calculation of property taxes was based on estimated taxable assessed values of Band properties as follows:

• Burns Lake Reserve Band residential properties (9).....	\$ 390,000
• Burns Lake Reserve other residential properties (4) .....	189,650
• Burns Lake Reserve commercial properties (2).....	227,250
• Lake Babine Reserve Band residential properties (80).....	<u>4,165,000</u>
• Total for both Bands.....	<u>\$4,971,900</u>

The report did not include the Babine Forest Products property in the calculations.<sup>20</sup>

During the course of this study, the Government of British Columbia changed its procedures to include Indian reserve residents in its calculations of per capita grants, thus resolving the Village's concern on that point. The concern about political representation was considered to be beyond the scope of study.

#### 4.7.2 The municipal services issue

The Village of Burns Lake contended that two 1974 Water and Sewer Agreements, each signed and properly executed by Village officials and the appropriate Band officials, were invalid. In its 1988 *Native Issue Report*, the Village stated its position as follows:

This agreement was dated July 1, 1974, between Her Majesty the Queen, Village of Burns Lake, and the Burns Lake Band (Reserve #18). The document was signed by the Village Sept. 11th 1974, and the Burns Lake Band signed October 10, 1974. The agreement appears to be signed by a representative of Her Majesty the Queen however there is no evidence of a date, or affidavit of execution. The Village has never received a completed legal copy of the agreement, several terms and conditions have not been fulfilled, and therefore this document is considered invalid.

The Ministry of Indian Affairs and Northern Development considers the agreement valid however they have never provided the Village with a copy properly executed. They further claim to have a sister agreement for the Woyenne Reserve #28 (sic) and again the Village has no record of this agreement.

Another agreement was negotiated with the Lake Babine Band in 1984 to provide road maintenance, snow-plowing and sanding, fire protection, water, and sewer. The agreement was discussed and developed with the Lake Babine Band however the Ministry of Indian Affairs and Northern Development refused to acknowledge and sign the agreement. As the Band is not legally responsible for agreements on the reserve land this agreement has never been completed.

Copies of each of the two 1974 agreements were provided by the INAC Regional Office in Prince George. The two agreements appear to have been identical except that the Lake Babine agreement had not been signed by a federal government official. The main points of each agreement can be summarized as follows:

- Any person on the Reserve is entitled to connect to the water main and the trunk sewer at his or her own expense. The Village agrees to provide inspection services to ensure that all connections meet the applicable standards.
- The Village shall supply potable water as required and shall accept, treat and dispose of all sewage effluent from the Reserve.
- The Village shall at its own expense maintain and repair the water main and trunk sewer systems within the Reserve. For this purpose, the Village is permitted during the life of the agreement to enter a right of way within the Reserve, defined as "those portions of the Reserve being ten feet either side of the mains". The cost of maintaining connections "between any establishment and its property line" shall not be borne by the Village.
- The cost of replacing and renewing trunk mains situated on the Reserve shall be subject to negotiation by the parties.



- User rates covering operating, maintenance and repair costs for both sewer and water services are, for the three year period commencing July 1, 1974, to be 90 percent of the rates set out in Village by-laws. For each sub-sequent five-year period and the last two-year period of the agreement, the rates charged to Reserve users are to be 90 percent of the rates in effect at the commencement of the period.
- The Band Council agrees to collect the rates from the users, to pay them annually in advance to the Village, and to pay interest on arrears at 8 percent per annum or at such other rate as may be set out in the B.C. Municipal Act.
- The Village agrees "...that in no case will the [Band] Council be charged frontage tax rates, which are defined as those 'taxes or rates commonly assessed against the property which abuts the mains and generally pays for the capital cost of water distribution or sewage collection mains', and that future user rates will in no way subsidize frontage rates."
- The Term of the Agreement shall be forty years (i.e. to expire on June 30, 2014).
- The agreement "...shall be subject to the provisions of the Indian Act and Regulations established thereunder... No waiver on behalf of Her Majesty of any breach shall take place or be binding unless the same be expressed in writing by the Minister..."

The agreements contained no termination provisions.

According to information provided by INAC, the development of the 1974 agreements began in 1968, when the Burns Lake Village Council advised INAC that the Village would no longer permit the Bands to connect to the Village water and sewer systems until (1) payment had been made of arrears on water rates and (2) payment of current and future water and sewer rates was guaranteed. Negotiations began in March, 1969, but, primarily because of procedural inefficiencies, including misunderstandings about who was to be responsible for preparing them, draft agreements were not prepared until February, 1973. Points pertinent to the negotiating process included the following:

- The Village initially felt that it should receive a grant in lieu of taxes "...to help offset the cost of providing services to residents on the Reserve".
- In October, 1968, upon the advice of the local INAC agent that, while he knew of no precedent for a grant in lieu of taxes, he was agreeable to passing on a request for one to a "higher level", the Village permitted the Lake Babine I.R.No.27 sewer main to be connected to the Village system.
- Since INAC had paid for the on-Reserve water and sewer systems, INAC felt that it would be inappropriate for the Village to charge a frontage tax related to the capital costs of those systems.
- An INAC review of the Village's financial management of the systems led INAC to conclude that the user fees then charged by the Village were too high while the frontage tax was too low.
- The water and sewer arrears were paid by the two Bands early in 1971.

The draft agreements prepared and submitted in February, 1973, by the Village of Burns Lake were subsequently reviewed by the INAC Regional Office and the federal Justice Department. Revised documents signed by the Village and the respective Band Councils were submitted to the INAC Regional Office in September, 1974. Because it contained a right-of-way provision which the Regional Office did not have authority to approve, the Lake Babine Band's agreement was sent to Ottawa for signature in May, 1975. According to an INAC background paper, "... it is at this point that this particular document disappears into the Department's system". Fully executed documents were never returned to either the District, the Band or the Village.

The Burns Lake Band's agreement escaped a similar fate only because the Chief had been ill and did not sign the document until later. By this time, INAC signing authority for rights-of-way had evidently been delegated to the Regional Office. Consequently, this agreement was signed at the INAC Regional Office but, as in the Lake Babine case, fully executed documents were not returned to the interested parties.

It appears that neither the INAC District Office, the Village nor the Bands attempted to ascertain the disposition of the two agreements during the period between 1974-75 and the commencement of new negotiations in 1981. The INAC background paper suggested that this could have been due to one or more of the following factors:

- changes in staff at the Village's municipal offices;

- the Village's loss of records covering the issue;
- changes in the composition of the Village Council;<sup>21</sup>
- changes in INAC District and Regional staff;
- the lack of a system in INAC for monitoring the progress of such agreements; and
- changes in the Chief and Council in each of the two Bands.

As noted in the background paper, "It is possible with such changes occurring [that] the then recently signed agreements became overshadowed and virtually forgotten".

The "lost" documents apparently faded into oblivion until 1981, after new negotiations had commenced between parties who either "...had forgotten or had no knowledge of the 1974 agreements already in place". Attempts to locate the Lake Babine Band's agreement in Ottawa finally bore fruit in 1986, when three copies were discovered "...in an unsigned, unregistered condition on a closed file". The Burns Lake Band's agreement, signed by an INAC official, was found in Regional Office files. The INAC District Office had been attempting to establish the validity of the agreements with the Department of Justice since 1986. No decision had been rendered as of December, 1990.

INAC's position regarding the two agreements can be summarized as follows:

- Subject to Justice Department advice, INAC could contend that both agreements were valid and that the major argument in each case centered on the degree to which the parties had complied.
- In 1978, the Village of Burns Lake accepted a \$320,000 INAC contribution for capital works on its sewage lagoon, in accordance with the agreements. The Village had also requested additional capital contributions.
- Over a period of about ten years, the Village had been billing the Bands for water and sewer user fees at the same rates as those billed to other Village taxpayers, rather than at the preferential rates stated in the agreements. The Bands had been paying the higher rates. According to INAC, the Lake Babine Band paid \$11,692 in 1988/89 instead of the \$10,740 due under the agreement.
- In INAC's view, the Village had failed to fulfill its obligations under the agreements to maintain and repair the water and sewer mains on the Reserves.

On the understanding that the Village was still seeking a grant in lieu of taxes, INAC staff also made the following observations:

- There was no precedent south of the 60th parallel for compensating a municipality "in lieu of taxes" for reserve lands located within municipal boundaries except where such lands were established retroactively from Crown property located within existing municipal boundaries. The Village of Burns Lake had extended its boundaries to include the two main Reserves in 1959 and I.R.No.19 in 1975.
- Analysis of the arguments advanced by the Village of Burns Lake suggested that, if any annual compensation were due at all, it should be paid only as a contribution towards the O.& M. cost of those community facilities which were used extensively by the Reserve populations. While such an arrangement might be feasible within the framework of an O.& M. Community Facilities Agreement, no such "general use" agreements existed at the time and considerable care would have had to be taken "to establish the uniqueness of this particular situation".
- To by-pass the negotiation process in cost-sharing agreements for new capital construction by applying an annual lump sum "in lieu of taxes" would not provide sufficient control over what was built or where it was built and therefore would not ensure that the best interests of the Bands were preserved.

INAC evidently considered the Village's proposed 1984 agreement to be too "open-ended".

As previously noted, the burden of the Village's argument was that the 1974 agreements were invalid because they had not been properly executed. The Village had not made specific allegations regarding any other failure on the part of INAC or the Bands to abide by the terms of the agreements. Regarding a grant in lieu of taxes, the Village argued that a grant in lieu "...would provide the same control as (that available to) every other taxpayer. The Indians already have the same rights as any other resident of the Village, to address Village Council and vote in referendums and elections".

### 4.7.3 Other issues in the Burns Lake case

A key issue in this case concerned the implications of Bill C115 with respect to the Babine Forest Products property. The Burns Lake Band had indicated its desire to levy taxes on its leaseholders and the Village was concerned that this might adversely affect its own tax entitlements. As noted in the Village's *Native Issue Report*, the Village received from these leaseholders approximately \$112,000 each year in general municipal property taxes, representing about 28% of the total general taxes levied. Although the Village reportedly provided no services other than back-up fire protection to I.R.No.19, it argued that, as with any business or industrial taxpayer, the company's property taxes helped provide services to people in the Village who worked at the mill. In the *Native Issues Report*, the Village expressed its concern about Bill C-115 as follows:

It is possible that these leaseholders would be double taxed by the Village and the Burns Lake Band until they could no longer afford to pay, at which time they may either close down permanently or move to a different location outside of the Village Boundaries and off the reserve. This action of course will be financially devastating for the Village.

Issues regarding an expired sewer line permit, riparian rights and possible encroachments are discussed in Section 4.6.1 above. The Village's position regarding the encroachments was stated in 1989 as follows;

Some of the minor trespass problems have occurred as a result of verbal agreements [which were made] years ago with the Chief of the Burns Lake Band and were not documented properly. We are now trying to settle these minor trespass situations however the present Chief Robert Charlie is not interested in selling or renewing the lease for any length of time. We have offered a land exchange and await the Band's response.

According to INAC, the Burns Lake Band developed a 10 lot subdivision which was completed in 1987/88. Water and sewer mains serving the subdivision were connected to the Village systems in accordance with the 1974 Water and Sewer Agreement. The Village refused to allow the water connection to be turned on until the items noted in the *Native Issue Report* were settled. "Some time in 1989 the water was turned on in the subdivision by an unknown person".

INAC advised that Canadian National Railways required a small portion of land for a road at the west end of I.R.No.18 in order to close an at grade railway crossing. A land exchange was proposed.

### 4.7.4 The Lake Babine expansion issue

The main issue in the Lake Babine case was the refusal of the Province of British Columbia to sell to the federal government a parcel of land within the Village limits for the expansion of I.R.No.27 until existing contentious issues were resolved to the satisfaction of both the Village and the Bands. According to INAC, the Band was experiencing severe overcrowding and had to acquire additional land in order to relieve the overcrowding and accommodate Bill C-31 members. The Band would have liked to acquire District Lot 5343 immediately east of I.R.No. 27, which comprised about 32 hectares of land and was within the Village boundary. After the Band and INAC had begun their efforts to acquire the additional land, a parcel of about four hectares in the southwest corner of the desired property was acquired by another party.

A background report prepared by INAC staff in 1984 included the following observations:

There does not appear to be any conflict between the band's proposals for D.L.5343 and the Village of Burns Lake's Official Community Plan, which shows the future land use for D.L.5343 as Parks, Open Space, Rural. The land is presently zoned RR-1 Rural. However, the Burns Lake O.C.P. is in the process of being updated at this time. Servicing of D.L.5343 will require some off-site infrastructure improvements, as detailed in the Associated Engineering report, but most of these improvements appear to be compatible with the Village's long range plans.

In contrast, the Village's stated position on the issue was as follows:

An expansion of this magnitude by either of the Bands under the present conditions would make

an already intolerable situation even more financially unbearable for the Village. The existing capital equipment (water and sewer system, recreational facilities, transportation equipment, etc.) would be inadequate to service the resulting increase in population and would require major financial expenditures to accommodate such an expansion and the existing taxpayers simply cannot afford that type of increase in taxation.

INAC's position on the issue incorporated its positions regarding the *Native Issue Report* and the 1974 municipal servicing agreements, as discussed above. The Lake Babine Band was concerned that the issue be resolved as soon as possible and had indicated that it was generally agreeable to the terms of the Village's 1984 services proposal. Field interviews suggested that the Band's agreement was based on practical considerations of self-interest rather than on concurrence with the Village's basic argument.

#### 4.8 Observations

The evidence regarding existing agreements and capital works indicates that, while there were many contentious issues affecting the relationships between the two Bands and the Village of Burns Lake, there had also been an under-lying desire to cooperate in the delivery of services and the installation of infrastructure. This desire was still very evident in the case of the Lake Babine Band, if only for practical reasons of self-interest, as noted above. While the desire to cooperate may not have been so evident in the case of the Burns Lake Band, it does seem that the Band was prepared to do whatever was necessary and practical to preserve and advance its own interests. If this were to mean negotiating a new municipal services agreement which would be more satisfactory to all parties, there would seem to be no reason to believe that either Band would reject such an option out of hand. For its part, the Village "...would provide all services to reserves if the bands would pay for them".

The key issue was the dispute over the 1974 municipal services agreement. The possibility of resolving a number of other issues, particularly the Lake Babine expansion issue, depended on first achieving a satisfactory resolution of the municipal services issue. Such a resolution could not be achieved until INAC had determined its position regarding the 1974 agreements. It would appear that INAC's options included legal action aimed at enforcing the validity of the agreements or, perhaps more constructively, the negotiation of new O. & M. agreements incorporating applicable provisions of the 1974 agreements as well as new provisions covering other services. The evidence indicates that INAC staff had given the second option serious consideration. It would seem that prompt and effective action by INAC in seeking a satisfactory resolution of the issue would be consistent with INAC's professed concern with ensuring that the best interests of the Bands were preserved.

Regarding the tax-service relationship in the Burns Lake case, the evidence indicates that approximately 80% of the municipal property taxes paid by leaseholders on the Burns Lake Reserves was not assignable to the cost of Village services delivered to the Reserve residents and leaseholders. In other words, it can be argued that, of the \$110,327 in municipal property taxes levied on the I.R.No.18 and 19 leaseholders in 1988, an amount on the order of \$90,000 was used to pay for, or "subsidize", the cost of Village services provided to off-reserve residential property-owners in the Village of Burns Lake, including the members of the Lake Babine Band. It can be similarly argued that an amount on the order of \$15,000 to \$18,000 in leaseholder property taxes subsidized BNRD services to off-reserve residential property-owners, including the members of the Lake Babine Band. The subsidization of services to residential properties from non-residential property taxes is a common pattern among B.C. municipalities. The subsidization effect in this case was attributable to the non-residential classification of the properties as well as to the fact that the Village and, to a lesser extent, the BNRD, provided virtually no services to the Babine Forest Products property.

In the Lake Babine case, the evidence indicates that the Reserve residents received "subsidized" municipal services from the Village of Burns Lake costing on the order of \$16,000 to \$28,000. Similarly, the Lake Babine Reserve residents received "subsidized" services from the BNRD costing on the order of \$4,000 to \$8,000.

The cost estimates calculated in this study are based on observations about services similar to those on which the Village, in its *Native Issue Report*, based its estimate of \$29,119 due from the two Bands in property taxes (or the equivalent thereof). In comparison, the allocable cost of municipal services delivered by the Village of Burns Lake to *both* Bands in 1988 is estimated in this study to have been on the order of \$38,000 to \$42,000. Thus, approximately 60% to 65% of the municipal property taxes levied on the Burns Lake Reserve leaseholders was not assignable to the cost of Village services delivered to Indian Reserve residents and leaseholders. In other words, it can be argued that, of the \$110,327 in municipal property taxes levied on the leaseholders in 1988, an amount on the

order of \$68,000 to \$72,000 was used to pay for, or "subsidize", the cost of Village services provided to non-Indian residential property-owners in the Village of Burns Lake. It can also be argued that an amount on the order of \$10,000 to \$12,000 in leaseholder property taxes subsidized BNRD services to non-Indian residential property-owners.

If the Burns Lake Indian Band decided to impose taxes in accordance with Bill C-115, the Village's ability to respond would be constrained by the provisions of Bill 64, B.C.'s *Indian Self Government Enabling Act*, discussed in Section 1.2. Bill 64 provides for three options, of which two, concurrent taxation and independent band taxation, are relevant to the situation.

Under the concurrent taxation option described in Part 1 of Bill 64, the Village and the Band would negotiate a contract whereby the Band assumes responsibility for delivering some or all services on the Reserve and the Village in turn reduces or eliminates the taxes it levies on the reserve leaseholders. In the case of I.R.No.18, because the Band's ability to take over the delivery of services currently provided by the Village would appear to be quite limited, as noted above, the Village's ability to justify a reduction in its tax rates would also be quite limited. In the case of I.R.No.19, since there is no formal agreement in place and the Village provides virtually no direct services to the Babine Forest Products mill, it would appear that the Burns Lake Band could readily assume responsibility for service delivery and the Village could substantially reduce its property taxes on the mill.

Under the independent band taxation option described in Part 2 of Bill 64, the reserve leaseholders would automatically become exempt from all property taxes imposed by the Village and the Band would assume responsibility for the provision of all services to I.R.No.18 and 19, either directly or through contracts negotiated with the Village. The provincial government could require the Village to continue delivering services during a transition period at a price set by the Province. This option would have major implications for both the Band and the Village. For the Band, its leasehold properties on I.R.No.18 are an integral part of the Village of Burns Lake. It would be neither economically nor physically sensible to endeavor to service these leaseholds independently of adjacent non-Reserve areas, although it may be feasible to do so. For the Village, it could mean the loss of substantial tax revenues from the mill on I.R.No.19 without corresponding reductions in expenditures. It would therefore appear to be in the interests of both parties to seek an agreement under either the concurrent or the independent band taxation option.

Although the possibility of double taxation on leaseholders would appear to be virtually eliminated with the passage of Bill 64, the possible implications are worth recording. In other words, if the Burns Lake Indian Band were to impose substantial new taxes while the Village essentially maintained its present taxes, the implications would be as follows:

- the I.R.No.18 leaseholders could try to pass on the additional costs to their customers, although their ability to do this would probably be severely limited and they would likely have to absorb most of the tax; and
- the mill on I.R.No.19 would most likely have to absorb the additional costs because its product prices are set on national and international markets.

In the long run, if the taxes on leasehold properties were to continue to be relatively higher than the taxes on comparable properties in the same locality, the market values of the properties with the relatively higher taxes would decline and the Band would realize reduced revenues from leasehold rents.

A discussion of options and implications is not immediately relevant in the Lake Babine case because the Band had no leasehold properties in the Village. If the Band were to lease some of its reserve land, the options and implications would be similar to those in the Burns Lake case.

#### 4.9 Notes to Chapter 4

1. (page 30) The Village of Burns Lake was incorporated in 1923. In 1959, the Village boundaries were extended to include I.R.No.18, so that its area comprised about 218.5 hectares of land and 25 hectares of water. In 1967-74, the Village was further expanded to include an additional 410.1 hectares of land and 34.3 hectares of water. Finally, in 1975, the boundaries were extended to include about 12 miles of Highway 16 and the site of the Babine Forest Products mill, adding another 163.1 hectares. As indicated in Exhibit 4.4, the area of the Village in 1988 was 851.4 hectares, including about 60 hectares of water.
2. (30) According to INAC records, there have been numerous surrenders of I.R.No.18 land to the Department over the years, including 86.2 hectares that were surrendered in 1938 and have since been in large part sold to other parties, including the Village, the School District and Canadian National Railways. The Band's village is on a large parcel of land that was surrendered in 1933. In 1959 and 1965, 12.2 hectares were conveyed to the Lake Babine Band and were subsequently set apart in 1967 as Woyenne I.R.No. 27. Finally, a large parcel of still undeveloped land in the north-west part of the Village was surrendered in 1974. In 1988, there were only two small parcels of unsurrendered land left - a small cemetery and a 0.67 hectare lot.
3. (30) Besides its reserves in the Village of Burns Lake, the Lake Babine Band also had villages in Topley Landing and Fort Babine, as well as several leasehold properties outside the Village of Burns Lake, none of which were pertinent to the case study.
4. (30) Much of the Band's population growth was attributable to Bill C-31. Bill C-31 was a 1985 amendment to the Indian Act which provided for the restoration of Indian status to people who had lost their status under the old provisions of the Act, particularly Indian women who had married non-Indian men. The amendment also provided for Indian status to be conferred on the children of these people. Bill C31 reportedly affected over 60,000 people, many of whom were expected to seek readmission to band membership and residency on reserves.
5. (30) The Village of Burns Lake 1988 tax notice indicated that the taxable assessed value of the Babine Forests Products property was \$5,974,250, as compared to the actual value of \$5,256,450 shown in the 1988 BCAA records. The explanation of the discrepancy has not been determined and is not considered to be critical to the study findings. For study purposes, the BCAA figure is used in the tax-service calculations.
6. (31) BCAA records also show two other business class properties on I.R.No.18, as follows (1988 actual assessed property values in parentheses):
  - Canada Department of Citizenship and Immigration, Indian Affairs Branch (\$889,550); and
  - Village of Burns Lake for a maintenance and storage yard (\$165,150).

It was found that the Woyenne Reserve No.27 had for some time been anomalously shown on BCAA rolls to be "owned" by the Canada Department of Citizenship and Immigration, Indian Affairs Branch, and that the 1989 actual assessed value of the properties on I.R.No.27 is set at \$889,550. Both INAC and the Village confirmed that the maintenance and storage yard property had been transferred to the Village in exchange for another piece of land although, according to INAC, a portion of the yard was still on Reserve land.
7. (31) The Rainbow Motel property had been leased to a non-Indian leaseholder who failed to pay property taxes. The motel was taken over by the Burns Lake Band, which operated it and paid no taxes in 1988.
8. (31) INAC staff have advised that the warehouse received no services. However, it is reasonable to assume that it benefited from such services as fire protection, other protective services, traffic services and road maintenance, i.e. the same services as those provided to the Hennessy and Westland Helicopter properties.
9. (31) It would appear that uncollected taxes on the Rainbow Motel property, which were on the order of \$18,000, would not be paid, although the Village reportedly seized some chattels and recovered about \$5,000. In addition, the Village apparently failed to collect property taxes of \$3,209 on a second hand store that went out of business.
10. (33) Although police services were "free" in this particular instance, in the sense that there was no direct relationship between the property taxes paid and the services received, it would not be reasonable to assume that this would continue to be the case

indefinitely.

11. (34) According to INAC, the Lake Babine Band was currently paying \$3,696 per year for garbage collection and disposal. No figures were provided for the Burns Lake Band.
12. (34) According to INAC, the Lake Babine Band was currently paying \$11,692 per year for water supply and sewerage services. The Burns Lake Band was paying \$1,687 per year. Sources of revenue for the Village's Waterworks Operating Fund in 1988 included user rates (\$79,586), frontage taxes (\$78,477), connection charges (\$400), return on investments (\$2,838), provincial grants (\$93,287) and "other" (\$9,844). Expenditures included administration and billing (\$24,153), distribution and transmission (\$77,053), debt charges (\$142,759) and other fiscal services (\$2,838).
13. (34) Sources of revenue for the Village's Sewer Operating Fund in 1988 included user rates (\$97,304), frontage taxes (\$49,601), connection charges (\$360), return on investments (\$1,108), provincial grants (\$93,462), appropriation of prior year's surplus (\$19,809) and "other" (\$1,108). Expenditures included administration and billing (\$24,153), collection and disposal (\$47,174), debt charges (\$142,993), other fiscal services (\$3,293) and reserve for future expenditures (\$40,000).
14. (34) According to a Village letter dated January 23, 1989, the fire protection fee of \$7,729.50 that the Village charged to the Lake Babine Band in 1988 was based on a total fire protection cost of \$73,134. The Village's Financial Statement of December 31, 1988, shows the total 1988 fire protection cost to have been \$75,953, including a \$25,000 fire truck reserve. On the basis used in this study, the Band's cost share would be  $[1.15 (\$75,953 \times .0948) =] \$8,280$ . According to INAC, the Band's annual fire protection cost for the purpose of calculating INAC funding was set at \$1,540, or \$6,740 less than the cost calculated by the method used in this study.
15. (34) According to a Lake Babine Band official, the Band expected to pay the Village approximately \$8,400 in 1990/91 for the contracted maintenance of on-Reserve roads. For this function, INAC currently contributed \$7,000 to the Lake Babine Band and \$1,975 to the Burns Lake Band.
16. (34) According to a Village letter dated January 23, 1989, B.C. Hydro charged the Lake Babine Band \$2,244 for street lighting in 1988.
17. (35) The Village of Burns Lake expressed its position on the question of land use planning and zoning costs as follows:

We do not agree with the thought that it is not reasonable to assign to reserve leaseholders costs associated with provincial land use, zoning and building code regulations... These regulations, bylaws, zoning and building codes provide for a better community for everyone to live in and do not necessarily need to apply to reserves although it certainly would improve the appearance and quality of living on some reserves.
18. (39) INAC records show that capital works constructed by the federal government for the Burns Lake Band on I.R.No.18 included 485 metres of water lines, 435 metres of sewer lines, a lift station, 720 metres of road, three street lights and a 51 square metre Band administration office. Annual operating costs paid for by the federal government included \$775 (water), \$407 (sewer), \$4,064 (lift station), \$1,975 (road) and \$1,672 (administration office, cemetery care and road clearing). A ten lot subdivision was completed in 1987/88.
19. (40) INAC records show that capital works constructed by the federal government for the Lake Babine Band on I.R.No.27 included 1,717 metres of water lines, 1,964 metres of sewer lines, 2,530 metres of road, 21 street lights and five buildings, including a social services building (214.1 sq.m.), a kindergarten (243.4), a church (103), an arts and crafts shop (210.1) and a cultural hall and Band office (754). Current annual operating costs paid for by the federal government included \$2,758 (water), \$1,835 (sewer), \$7,000 (roads) and \$24,706 (buildings). There was also a 100 metre sewer line and a 25 metre water line serving a medical services building owned by Health and Welfare Canada.
20. (41) The Village's estimated assessed value of the Lake Babine Reserve residential properties was, on average, some-what higher than the average assessed value of single family residences in the Village as a whole. The Lake Babine average, as estimated by the Village, was approximately  $(\$3,805,000 \div 71 =) \$53,600$ . The Village average, according to 1988 BCAA records, was  $(\$18,384,700 \div 425 =) \$43,250$ . According to the Village, the difference was attributable to the fact that the houses on the

Reserve were, on the whole, newer than those off the Reserve, and the Lake Babine Band's housing manger generally concurred with the values estimated by the Village.

21. (43) The INAC background paper erroneously indicated that a new mayor had been elected shortly after the agreements were signed in 1974. The Village advised that John Baker was Mayor from 1967 to 1981.



## 5. COWICHAN CASE

### 5.1 Background

The Cowichan Indian Band Reserves are located in the Cowichan Valley Regional District (CVRD) on Vancouver Island, about an hour's drive north of Victoria. The CVRD includes nine unincorporated Electoral Areas ('A' to 'I' inclusive) and four municipalities: the City of Duncan, the District of North Cowichan, the Town of Ladysmith and the Village of Lake Cowichan. The City of Duncan is the only municipality that has an Indian Reserve within its boundaries and is, accordingly, the only one of the four that contains leasehold lands relevant to this study.

Duncan is the main commercial centre in the CVRD. Although its 1986 census population was only 4,225 (including the Indian reserve), the urbanized area immediately surrounding this relatively small city is often perceived to be within Duncan's boundaries. As noted in the City of Duncan *Official Community Plan*, the Cowichan Community Centre "...is located in the Municipality of North Cowichan, operated by the Regional District, yet people from throughout the Cowichan Valley typically associate it with Duncan".

In 1988, there were nine Cowichan Band Reserves in the CVRD with a total area of approximately 2,524 hectares. The main Reserve, Cowichan I.R. No. 1, had an area of 108 hectares within the City of Duncan and another 2,275 hectares in Electoral Areas 'D' and 'E' of the CVRD. According to the Cowichan Band administration, the Band had 2,385 members as of December 31, 1988, of whom 1,652 lived on the Cowichan Indian Reserves. About 230 of the Band members reportedly lived in Somenos Village, i.e. that part of I.R.No.1 within the City of Duncan. The 1986 census recorded 186 people living on the Indian reserve in the City of Duncan.

### 5.2 Leaseholds and land management

In 1988, the Band had 22 leasehold arrangements within the City of Duncan, the most significant of which involved a 1973 agreement between INAC and the City for the development of a commercial subdivision (Duncan Mall) south of downtown Duncan and immediately west of the Trans-Canada Highway. The City had agreed to in-stall and maintain road, water, sewage, storm drain, street lighting and traffic control systems, and to provide police, fire, garbage and waste removal services. The agreement provides for the City to "administer and control" the lands for fifty years or as long as the lands are required for the intended purposes, whichever is the lesser, and to recover the costs of constructing the sewer and water systems "through the imposition of taxes and local improvement rates".<sup>1</sup> Either party can terminate the agreement on one year's notice, in which case the Government of Canada would pay the City the unamortized portion of the City's capital costs.

The commercial subdivision included 14 business (class 6) properties in 1988. The Band and locatees who had formerly held Certificates of Possession in the area derived substantial revenues from the commercial subdivision through annual rents and, in several cases, percentages of gross income. Under the terms of the surrender agreement between the Band and the federal government, former locatees received 90 per cent of the land rent. Other Reserve leasehold properties on the City's tax rolls included three class 6 business properties, four class 6 public use properties that were exempt from taxation, and one residential (class 1) property.

Most of the Band's leasehold arrangements outside the City of Duncan involved the use of land for public purposes, including a dyke, fish hatchery, incinerator, sanitary landfill, sewer, sewage lagoon and outfall. There were a number of agricultural leases and one small commercial lease. Virtually all of the leaseholds outside the City of Duncan were on locatee lands, with 90 per cent of the rent going to the locatee and ten per cent to the Band.

Land management services required of INAC under the *Indian Act* were provided by the Cowichan Band Council under a "loose" contractual arrangement with the Department. The Band's land management staff consisted of a manager, an administrator and a clerk. Duties include administration of the leasing program and individual land holding transactions, collection and disbursement of rentals and fees under a direct Ministerial appointment (since June, 1988), and provision of staff support to two committees. The Band's Land Investigation Committee of Elders, established over 25 years ago, was charged with investigating the ownership of all member land claims and making recommendations to the Band Council. The Land Management Committee, established about 17 years ago, makes recommendations regarding the alienation of Reserve lands by lease, permit or direct agreement. The Council makes no land allocation decisions without recommendations from these Committees.

### 5.3 Property taxes and fees

As indicated in Exhibits 5.1 and 5.2, the 1988 property taxes levied on the 22 Cowichan Indian Reserve leasehold properties in the City of Duncan were as follows:

- school taxes..... \$186,427 (12.7% of the \$1,471,279 in school taxes levied in the City);
- municipal taxes..... \$196,884 (15.4% of the City's \$1,276,374 municipal tax levy);
- CVRD taxes..... \$64,096 (15.0% of the \$428,566 levied in Duncan for the CVRD); and
- other taxes..... \$10,083 (14.9% of the total of \$67,754 levied in the City for the Regional Hospital District, the Municipal Finance Authority and the British Columbia Assessment Authority).

In addition to these taxes, the leaseholders were assessed fees as follows:

- garbage collection fees....\$5,396 (2.0% of the City's \$269,772 garbage collection fee revenues);
- sewer rentals .....\$10,414 (4.2% of the City's \$247,413 sewer rental revenues); and
- water bills..... \$14,376 (3.1% of the City's \$457,584 revenue from water sales).

The total amount levied on the leaseholders in 1988 property taxes and fees, excluding water bills, was \$473,300. The \$456,460 levied on the Duncan Mall commercial subdivision was 96.4 per cent of this total.

Leaseholder property taxes in arrears or delinquent were \$186,044 in 1987, \$119,348 in 1988 (25.2 per cent of the \$473,300 levied) and \$137,759 in 1989, i.e. there was no obvious trend either upwards or downwards in the degree of delinquency. According to the City Treasurer, tax delinquency had not been a problem until about 1985, when a new leaseholder found that a mortgage could not be registered against the property leased by Floren Holdings Ltd. in 1988. The new leaseholder had gone, there had been several other occupants since then, and there was a possibility that the debt would have to be written off. In the case of the other major debtor, the Village Green Hotel, the problem was apparently a temporary one.<sup>2</sup>

As shown in Exhibits 5.2 and 5.3, of the City of Duncan's total 1988 revenues of \$4,634,158, revenues of \$2,518,182 were directly allocated, either fully or partially, to corresponding expenditures. Revenues of \$1,333,400 from property taxes and grants in lieu of taxes accounted for 63.0% of the \$2,115,976 in revenues which were not directly allocated to corresponding expenditures. It is assumed that 100% of the CVRD levy of \$428,566 in the City of Duncan was covered by property taxes and grants in lieu of taxes.

**EXHIBIT 5.1**  
**1988 property taxes and fees levied in the City of Duncan**

Name of property owner	Taxable assessed value	on Cowichan Indian Reserve leaseholders Property taxes and fees (rounded to nearest dollar)						Total taxes & fees	Arrears, delinquent
		School	Muni-cipal	CVRD <sup>1</sup>	Other <sup>2</sup>	Garbage fee	Sewer fee		
320146 B.C.	\$ 646,300	\$ 9,436	\$ 9,974	\$ 3,247	\$ 511	\$ 100	\$ 89	\$ 23,356	\$ 0
Town Cobbler	229,700	3,354	3,545	1,154	182	176	89	8,499	0
Canada Safeway	1,440,000	21,024	22,222	7,234	1,138	100	89	51,806	0
Shell Canada	231,950	3,386	3,579	1,165	183	100	89	8,503	0
Doghhouse Drive-In	166,400	2,429	2,568	836	131	100	231	6,296	0
Floren Holdings	235,650	3,440	3,636	1,184	186	328	63	8,838	45,835
Safe-Way Auto Sales	52,400	765	809	263	41	0	0	1,878	7,537
Marlowe Investments	908,550	13,265	14,020	4,564	718	632	1,033	34,232	0
Doman Industries	206,100	3,009	3,180	1,035	163	100	89	7,577	0
Mohawk Oil	248,550	3,629	3,836	1,249	196	100	89	9,098	0
Starview Holdings	236,400	3,451	3,648	1,188	187	100	231	8,805	0
Village Green Hotel	1,331,000	19,433	20,540	6,686	1,052	100	3,732	51,542	51,485
Cowichan MiniMall	1,076,400	15,715	16,611	5,407	850	1,012	621	40,217	14,012
Duncan Mall	<u>5,354,400</u>	<u>78,174</u>	<u>82,627</u>	<u>26,896</u>	<u>4,231</u>	<u>1,620</u>	<u>2,264</u>	<u>195,813</u>	<u>0</u>
Total, commercial subdivision	\$12,363,800	\$180,510	\$190,795	\$62,108	\$ 9,769	\$4,568	\$ 8,709	\$456,460	\$118,869
City of Duncan	0		Exempt			70	193	263	0
Malaspina College	0		Exempt			100	609	709	0
G. Asp	0		Exempt			100	0	100	0
Cowichan S. D. 65	0		Exempt			70	840	910	0
T.H. Automotive	36,300	530	560	182	29	90	63	1,454	0
Garner Builders Supplies	76,600	1,118	1,182	385	61	0	0	2,746	0
Sun Valley Markets	<u>263,150</u>	<u>3,842</u>	<u>4,061</u>	<u>1,322</u>	<u>208</u>	<u>328</u>	<u>0</u>	<u>9,761</u>	<u>0</u>
Total, business & other (class 6)	\$12,739,850	\$186,000	\$196,598	\$63,997	\$10,067	\$5,326	\$10,414	\$472,403	\$118,869
Residence (class 1)	<u>48,050</u>	<u>427</u>	<u>286</u>	<u>99</u>	<u>16</u>	<u>70</u>	<u>0</u>	<u>897</u>	<u>479</u>
Total, all leasehold properties	<u>\$12,787,900</u>	<u>\$186,427</u>	<u>\$196,884</u>	<u>\$64,096</u>	<u>\$10,083</u>	<u>\$5,396</u>	<u>\$10,414</u>	<u>\$473,300</u>	<u>\$119,348</u>

Notes: 1. Cowichan Valley Regional District levies.

2. Includes levies for Regional Hospital District, Municipal Finance Authority and B.C. Assessment Authority.

Source: City of Duncan Property Tax Folios

## EXHIBIT 5.2

## City of Duncan 1988 General Fund Revenue and Expenditure

<b>Revenue</b>		<b>Expenditure</b>	
Property taxes	\$1,276,374	Legislative expenses	\$ 57,707
Downtown redevelopment assessment	58,242	Admin., legal, advertising	221,751
Utilities special assessment	40,005	Operation & maintenance	36,255
		Insurance	20,393
Federal grants in lieu of taxes	8,696	Computer services	17,227
Provincial grants in lieu of taxes	38,690	Tourism	41,668
B.C. Hydro grants in lieu of taxes	9,640	Sundry, other	<u>89,786</u>
		General government services	\$ 484,787
Garbage fees	269,772	Fire protection	150,321
Transit user fees	9,455	Emergency measures	7,196
		Flood control	3,067
Trade licences	34,580	Animal control	10,154
Building permits and other fees	12,782	Building inspection	45,541
Other licences and permits	10,360		
Rentals	142,676	Road admin. & engineering	\$ 59,322
Fines	14,173	Road and street maintenance	220,677
Interest received	70,605	Common services	41,699
Penalties and interest on taxes	70,763	Equipment operation & maint.	<u>116,154</u>
Eagle Heights fire protection	48,474	Total, roads	437,852
Other revenue from own sources	45,023	Street lighting	63,843
		Traffic maintenance and control	7,762
B.C. revenue sharing grants	207,520	Parking lots and control	79,771
Conditional transfer - federal government	6,792	Transit subsidy	18,052
Conditional transfer - provincial government	22,309		
Conditional transfer - District of N. Cowichan	7,254	Garbage collection	265,524
		Comfort stations	4,469
Transfers from reserve accounts	83,374	Environmental planning and research	14,441
Transfer from waterworks utility revenue fund	54,000		
Transfer from sewer enterprise revenue fund	45,000	Parks (\$79,273 general, \$37,000 joint)	116,273
Surplus from previous years	<u>80,000</u>	Aquannis swimming pool contribution	111,348
		Library	61,751
Subtotal	\$2,666,559	Senior citizen's activity centre	10,742
		Debt charges	338,852
CVRD levy	428,566	Transfers to reserve accounts and funds	<u>402,829</u>
Residential school levy	\$669,133		
Non-residential school levy	802,146	Subtotal	\$2,634,575
Regional Hospital District	28,772		
Municipal Finance Authority	317	Conditional transfer to CVRD	428,566
B.C. Assessment Authority	<u>38,665</u>	Taxes transmitted to other governments	<u>1,539,033</u>
Other government levies	<u>1,539,033</u>		
		Total expenditure	<u>\$4,602,174</u>
Total revenue	<u>\$4,634,158</u>	Surplus for the year	<u>\$ 31,984</u>

**EXHIBIT 5.3****Analysis of City of Duncan 1988 General Fund Revenue and Expenditure**

	<b>Revenue</b>	<b>Expenditure</b>	<b>Allocation</b>
Total revenue			\$4,634,158
Revenue directly allocated to specific expenditures <sup>1</sup>			
Garbage collection	\$ 269,772	\$ 265,524	\$ 265,524
Transit	9,445	18,052	9,445
Building inspection	12,782	45,541	12,782
Fire protection	48,474	150,321	48,474
Account and fund transfers	182,374	402,829	182,374
Surplus	80,000	31,984	31,984
CVRD levy/transfer	428,566	428,566	428,566
Other government levies	1,539,033	1,539,033	<u>1,539,033</u>
Total revenue directly allocated to specific expenditures			<u>2,518,182</u>
Net total revenue not directly allocated to specific expenditures			<u>\$2,115,976</u>
Total property tax and grants-in-lieu revenue	= \$1,276,374 + 8,696 + 38,690 + 9,640		
	= \$1,333,400	Ö 2,115,976 = 63.0% of net total revenue	

Note: 1. The allocable amount for each item is the lesser of the two figures. If the revenue side is greater, the difference is allocated to unspecified general fund expenditures. If the expenditure side is greater, the difference must be made up from other general fund revenues.

**5.4 Services**

Most of the services provided to non-Reserve properties in the City of Duncan in 1988 were also provided to the Reserve leaseholders but were not provided to the Band. Because the City's population was less than 5,000, policing was provided at no cost to the City or the Band through a shared-cost contract between the federal and provincial governments and the RCMP.<sup>3</sup> Services which were also provided to the Band include sewerage, water supply and fire protection, as discussed below.

**5.4.1 City of Duncan services provided on a user fee basis**

Services provided on a user fee basis in 1988 included the following (total 1988 city expenditure/total 1988 leaseholder payments in parentheses):

- Garbage collection (\$265,524/\$5,396). The Band had a separate arrangement.
- Sewerage (\$385,643/\$10,414).<sup>4</sup> The Band has its own sewer line serving Somenos Village which connected to the City system at Cowichan Way. The Band paid the City a separate annual fee.
- Water supply (\$535,235/\$14,376).<sup>5</sup> In accordance with agreements extending back to 1926, in exchange for the use of the No.1 Water Well Site and a water line easement through I.R.No.1, the City provided free water service in perpetuity to the Somenos Village area of the Reserve for fire protection and for the domestic use of not more than eighty residences.<sup>6</sup> The City's water system also served a large area outside Duncan's boundaries, including much of the southern part of North Cowichan, the Eagle Heights/Koksilah area of the CVRD and, on I.R.No.1, the Clem Clem Alutz Village<sup>7</sup> and Boys Road Subdivision area.<sup>8</sup> The service was financed through individual user charges.

It would be reasonable to equate the cost of providing each of these services with the fees paid.

### 5.4.2 City of Duncan services financed from general revenue

Services to the leaseholders which were financed through the City's General Revenue Fund in 1988 included the following (1988 City net general fund expenditures in parentheses):

- Fire protection (\$101,777). Total City expenditure in 1988 was \$150,321, of which \$48,474 was recovered in fees paid for Eagle Heights fire protection. As noted, the City provided fire protection services to the whole of I.R.No.1 within the City of Duncan.
- Emergency measures (\$7,196).
- Animal control (\$10,154). The Band also had a dog catcher and contracted out some work.
- Building inspection (\$32,759). Total City expenditure in 1988 was \$45,541, of which \$12,782 was recovered from "building permits and other fees". The Band required each lessee to get a City building permit.
- Public transit (\$8,597). Total City expenditure in 1988 was \$18,052, of which \$9,455 was recovered in transit user fees. The system mainly served senior citizens and the handicapped.
- Parks (\$116,273). This included \$79,273 general and \$37,000 joint expenditure.
- Recreation (\$111,348). The City contributed to the operation of the Aquannis swimming pool.
- Library (\$61,751). This was paid to the Vancouver Island Regional Library system.
- Senior citizen's activity centre (\$10,742).
- Roads (\$437,852). As indicated in Exhibit 5.2, this included:
  - administration and engineering;
  - road and street maintenance, including snow removal, drainage, sidewalk maintenance, traffic lines and signs, boulevards, cleaning and flushing;
  - common services (workshop, yard, small tools and equipment operations and maintenance); and
  - major equipment operation and maintenance.

As shown in Exhibit 5.4, roads serviced by the City included an estimated 11 kilometres of major roads and 21 kilometres of local roads. Major roads serving the Reserve (and their approximate length) included Government (300 metres) and Trunk (one-half the 670 metres on which the commercial subdivision fronts). Local roads serving the Reserve included Cliffs (300 metres), Cowichan Way and Centre Road in the commercial subdivision (985 metres).<sup>9</sup>

- Street lighting (\$63,843). As shown in Exhibit 5.4, the City had an estimated 28.2 kilometres of streetlights. Except for Cliffs, all of the above-mentioned roads evidently had streetlights.
- Traffic maintenance and control (\$7,762).
- Debt charges (\$338,852).
- Transfers to reserve accounts and funds (\$220,455). Total City expenditure was \$402,829, of which \$182,374 was recovered in transfers from reserve accounts and funds. As noted in Section 3.3, internal fund and account transfers are treated as allocable revenues and expenditures for study purposes.
- General government (\$484,787). These services were defined by the City as including expenditures on legislative activities, general administration, legal services, advertising, building and equipment operation and maintenance, insurance, computer services, tourism, travel, conventions, receptions, elections, grants to or-

#### EXHIBIT 5.4

##### City of Duncan roads and streetlighting

##### Estimated length of system

	City of Duncan	Cowichan I R 1
Major roads maintained by City of Duncan	11.0 km	0.635 km
Local roads maintained by City of Duncan	21.0 km	1.285 km
Improved lanes and alleys maintained by City of Duncan	2.0 km	0.0 km
Streetlighting operated by City of Duncan	28.2 km	1.6 km

Sources: British Columbia Ministry of Municipal Affairs, Recreation and Culture: *Municipal Statistics for the Year Ended December 31, 1987*;

City of Duncan: *1988 Annual Financial Report; Zoning Bylaw No.1540, Schedule 'A'* (map).

ganizations, senior citizen sewer and water rebates, and "sundry". These expenditures constituted over 18% of the City's total municipal expenditures (484,787 Ö 2,634,575). Because some of the services are not considered to have been provided to reserve leaseholders, it is assumed that general government "overhead" costs were 15% of the total cost of the other services provided to the leaseholders.

Services financed through the City's General Revenue Fund which are *not* considered to have been provided to the leaseholders included the following (1988 City net general fund expenditures in parentheses):

- Flood control (\$3,067). The Reserve was not protected by the City's dyke.
- Comfort station (\$4,469). The commercial subdivision included comfort stations.
- Environmental planning and research (\$14,441). This included the administration of regulations which did not apply to Indian reserves.
- Parking lot and control (\$79,771). Given the fact that the commercial subdivision included extensive parking lots, neither the Reserve residents nor the commercial leaseholders derived any obvious benefit from this function. In any case, the cost would normally have been offset, at least partially, by revenues from parking fees and fines.

### 5.4.3 Services provided by the CVRD

Services provided to leaseholders by the Cowichan Valley Regional District included the following (City of Duncan's 1988 cost share in parentheses):

- Incineration (\$45,900). The Band paid separately for incineration.
- Cowichan Community Centre (\$346,063).
- Regional parks (\$1,950).
- General government (\$34,633).

## 5.5 Analysis of the tax-service relationship

As discussed in Section 3.3, the relationship between property taxes levied on the leaseholders and the costs of services delivered to them is calculated in five steps, as follows:

- Calculate the total estimated cost of services to which municipal property taxes can be allocated;
- Determine the total property tax levied on the leaseholders (\$196,884 from Exhibit 5.1);
- Determine what proportion property taxes are of the municipality's net total revenue (63.0% from Exhibit 5.3);
- Calculate the adjusted total cost of services that can be attributed to leaseholder property taxes; and
- Calculate the difference between the adjusted total cost of services and the total property tax levied.

The cost calculations are based on the municipality's net total expenditure on each allocable service and on *cost factors* derived primarily from information about assessed property values, population and, for systems such as roads, system length, as shown in Exhibit 5.4. The data on population and assessed values are shown in Exhibit 5.5. The 1986 population census figures are used for the purposes of this case study, first because they are used by the City of Duncan and the CVRD for their own calculations and, secondly, because they are sufficiently precise for the order of magnitude of the estimates used in the case.

The rationale and methods for determining service cost factors are described in Section 3.2. Fire protection services provided by the City to I.R.No.1 included service to 4.4% by population of the City's residential properties, which comprised 51.35% of the City's total actual assessment, and to 22.7% by value of the City's business properties, which comprised 44.94% of the City's total actual assessment. The total cost factor for fire protection service to the reserve was therefore  $(.5135 \times .044) + (.4494 \times .2270) = .1246$ .

For other "variable services to property", including emergency measures, animal control, building inspection, traffic control, debt charges, reserve fund transfers and CVRD general government, the cost factor calculation is based on services to 0.12% of the population and 44.94 % by value of the City's business properties. The total cost factor for these services to the reserve was therefore  $(.5135 \times .0012) + (.4494 \times .2270) = .1026$ .

**EXHIBIT 5.5**

Population and area	City of Duncan population, area and assessed values				Total City
	City of Duncan (ex Reserve)	Cowichan I.R.1 in Duncan			
		Lessees	Band	Total	
1986 Census population	4,039	5	181	186	4,225
1988 (no change for study purposes)	4,039	5	181	186	4,225
1988 % of total City population	95.6%	0.12%	4.28%	4.4%	100.0%
Area (hectares)	237.5	±21.3	±86.7	108.0	345.5
<b>Actual 1988 assessed values</b>	<b>City of Duncan</b>	<b>Class % of total value</b>	<b>I R 1 leasehold total</b>	<b>I R 1 % of class</b>	
Residential (class 1)	\$ 75,931,280	51.35%	\$ 48,050	0.06%	
Utilities (class 2)	3,159,062	2.14	0	0.00	
Business and other (class 6)	66,446,050	44.94	15,082,550	22.70	
Recreation, non-profit, etc. (class 8)	<u>2,334,250</u>	<u>1.58</u>	<u>0</u>	0.00	
Total assessed value	<u>\$147,870,642</u>	<u>100.01%</u>	<u>\$15,130,600</u>	10.23%	

Sources: B.C. Assessment Authority;

B.C. Ministry of Municipal Affairs, Recreation and Culture: *Statistics Relating to Regional and Municipal Governments in British Columbia 1988*;

City of Duncan: *1988 Annual Financial Report; Zoning Bylaw No.1540, Schedule 'A' (map)*; tax folios.

For CVRD incineration, the cost factor calculation is based on the cost of garbage collection. From Section 5.4.1 above, the cost factor was therefore  $5,396 \div 265,524 = .0203$ .

For "services to people", including transit, parks, recreation, library, senior citizens centre, CVRD parks, and the Cowichan Community Centre, the cost factor calculation is based on the population served which, in this case, consisted of the five resident leaseholders. The cost factor was therefore .0012. Alternatively, as discussed in Section 3.2, the cost factor was the same as that determined for variable services to property, or .1026.

For "fixed services to property", the unit costs are derived from the City's total expenditure. Assuming that major roads cost five times as much to maintain as local roads, the unit cost for maintaining local roads in Duncan in 1988 was  $\$437,852 / [21.0 + (11.0 \times 5)] = \$5,760$  per kilometre, or \$5.76 per metre. The unit cost for maintaining major roads was  $\$5.76 \times 5 = \$28.80$  per metre. The unit cost for street lighting was  $\$63,843 / 28.2 = \$2,260$  per kilometre, or \$2.26 per metre.

As previously noted, some of the City's general government services are not considered to be provided to the leaseholders. It is therefore assumed that the City's general government "overhead" costs were 15% of the total cost of the other services provided to the leaseholders.

As discussed in Section 3.2.3, two methods of calculation are used in estimating costs for each of the "soft" services and, accordingly, two total cost estimates are calculated. By one method, as shown in Exhibit 5.6, the total 1988 estimated cost of allocable City services to the reserve leaseholders was \$121,532. From Exhibit 5.3, 63.0% of this cost was covered by property tax revenues, so that the adjusted total cost of the allocable services was \$76,565. As shown in Exhibit 5.1, the total 1988 municipal property tax levied on the leaseholders was \$196,884. The portion of the leaseholder municipal property taxes not allocable to City services was therefore \$120,319.

By the second method, the total estimated cost in 1988 of allocable City services to the reserve leaseholders was \$157,530. The adjusted total cost of the allocable services was \$99,244. The portion of the leaseholder municipal property taxes not allocable to City services was \$97,640.



**EXHIBIT 5.6****Calculation of Cowichan Indian Reserve tax-service relationships**

Service provided	net total cost or length of system	Calculation method #1		Calculation method #2	
		cost factor or unit cost	Reserve cost share	cost factor or unit cost	Reserve cost share
<b>by City of Duncan</b>					
Fire protection	\$101,777	.1246	\$12,681	.1246	\$12,681
Emergency measures	7,196	.1026	738	.1026	738
Animal control	10,154	.1026	1,042	.1026	1,042
Building inspection	32,759	.1026	3,361	.1026	3,361
Public transit	8,597	.0012	10	.1026	882
Parks	116,273	.0012	140	.1026	11,930
Recreation	111,348	.0012	134	.1026	11,424
Library	61,751	.0012	74	.1026	6,336
Senior citizen's activity center	10,742	.0012	13	.1026	1,102
Major road maintenance	635 m	28.80	18,288	28.80	18,288
Local road maintenance	1,285 m	5.76	7,402	5.76	7,402
Street lighting	1,600 m	2.26	3,616	2.26	3,616
Traffic maintenance and control	7,762	.1026	796	.1026	796
Transfers to funds and reserves	220,455	.1026	22,619	.1026	22,619
Debt service	338,852	.1026	34,766	.1026	34,766
General government	\$105,680/\$136,983	.15	<u>15,852</u>	.15	<u>20,547</u>
Total cost of services allocable to leaseholder property taxes			<u>\$121,532</u>		<u>\$157,530</u>
Adjusted total cost of allocable services (= total cost x .63)			\$ 76,565		\$ 99,244
Total City property taxes levied on reserve leaseholders			<u>196,884</u>		<u>196,884</u>
Leaseholder property taxes not allocable to City services			<u>\$120,319</u>		<u>\$ 97,640</u>
<b>Service provided by CVRD</b>					
Incineration	\$ 45,900	.0203	\$ 932	.0203	\$ 932
Cowichan Community Centre	346,063	.0012	415	.1026	35,506
Regional parks	1,950	.0012	2	.1026	200
General government	34,633	.1026	<u>3,553</u>	.1026	<u>3,553</u>
Total cost of services allocable to leaseholder property taxes			\$ 4,902		\$40,191
Total CVRD property taxes levied on reserve leaseholders			<u>64,096</u>		<u>64,096</u>
Leaseholder property taxes not allocable to CVRD services			<u>\$59,194</u>		<u>\$23,905</u>

Similar calculations apply to the services provided by the CVRD. By one method, of \$64,096 in 1988 CVRD property taxes levied on the leaseholders, \$59,194 was not allocable to CVRD services. By the second method, the unallocable amount was \$23,905.

**5.6 Capital works**

In 1988, capital works identified elsewhere in this discussion included the following:

- City roads, water lines, sewers, storm drains, streetlighting and traffic control systems installed on I.R.No.1 in accordance with the Duncan Mall commercial subdivision agreement;
- roads within the Reserve maintained by the City, including Cliffs and part of Government;
- roads within the Reserve maintained by the B.C. Ministry of Transportation and Highways including Allenby, Indian and Miller;
- City water lines serving Somenos Village in exchange for the use of the No.1 Water Well Site and a water line easement through I.R.No.1;

- City water lines serving the Clem Clem Alutz Village and Boys Road Subdivision area on I.R.No.1 outside the City limits;
- the Band's sewer line in Somenos Village which connected to the City system at Cowichan Way.

Other relevant capital works included:

- a sewage lagoon and outfall<sup>10</sup> operated by the Duncan-North Cowichan Joint Utilities Board,<sup>11</sup> situated on lands leased from locatees on I.R.No. 1 immediately east of the City limits;
- a small portion of the City's Cowichan River flood protection dyke on locatee land immediately west of the sewage lagoon, leased for 25 years to 2002 for a prepaid one-time fee of \$25,000;
- City parking lots east of the Duncan Mall commercial subdivision;<sup>12</sup>
- a CVRD incinerator on 2.4 hectares of locatee land leased at an annual rent of \$4,200;
- a CVRD sanitary landfill on 4.5 hectares of Band and locatee land leased to 1994 at an annual rent of \$8,000;
- a CVRD sewer line easement on locatee land prepaid for a period of 20 years;
- a fish hatchery owned by the federal Department of Fisheries, situated on 3.6 hectares of locatee land leased at an annual rent of \$10,000; and
- a private road serving the Koksilah Industrial Park, situated on about 0.4 hectares of locatee land.

All of these works except the parking lots were located outside the City of Duncan.

## 5.7 Issues

It appears that the relationship between the Cowichan Indian Band and the City of Duncan was and is relatively harmonious. As noted elsewhere, there would appear to have been an issue regarding the status of leaseholder property taxes in arrears or delinquent. The Band also expressed a concern that, with the exception of the commercial sub-division area, the City "...may not always expend the same effort or interest in providing the services to leased Re-serve lands (including surrendered lands) within the City as it does to non-Reserve lands within the City".

A Band representative expressed concern about the Band's land management arrangements. According to the representative, while "...it was intended in 1980, when the present land management arrangement started, that the Department of Indian Affairs would pay for the land work undertaken out of their own administration budget, they now fund the entire payment out of contribution monies. The payment presently amounts to less than one half of the wages paid by the Band and would represent one third of the Department's costs of providing the work which they are required by the *Indian Act* to provide".

The main problem identified by the City was "...in concluding an Agreement once we have agreed to do something". For example, the City had never received a formal document regarding the sewage lagoon lease nor had it received one for the second parking lot.

## 5.8 Observations

The evidence regarding existing agreements and capital works indicates that the Cowichan Indian band and the City of Duncan have cooperated over the years in the delivery of services and the installation of infrastructure. The essence of the agreements is that, for services provided to the reserve, the City collects the same taxes and/or fees as it collects for services delivered off the reserve. The agreements have generally worked well, although the tax delinquency issue indicates that the commercial subdivision agreement might have been more satisfactory had it included a provision covering this possibility, as was the case in several agreements between the Musqueam Indian Band and the City of Vancouver.

If the City of Duncan had decided to write off \$45,835 in delinquent property taxes out of the total of \$196,884 in municipal property taxes levied on the I.R.No.1 leaseholders in 1988, the actual property tax revenue attributable to the leaseholders would have been \$151,049. The evidence indicates that between (76,565 ÷ 151,049 =) 50.7% and (99,244 ÷ 151,049 =) 65.7% of this amount was assignable to the cost of City services delivered to the leaseholders. In other words, it can be argued that, of the property taxes levied on the commercial leaseholders, an amount on the order of \$50,000 to \$75,000 was used to pay for, or "subsidize", the cost of City services provided to off-reserve residential property-owners in the City of Duncan. It can be similarly argued that an amount on the order of \$25,000 to \$60,000 in leaseholder property taxes subsidized CVRD services to off-reserve residential property-owners.

The subsidization of services to residential properties from non-residential property taxes is a common pattern among B.C. municipalities. The subsidization effect in this case was attributable to the non-residential classification of almost all of the properties rather than to a failure by the City and the CVRD to provide services.

The City's ability to adjust the rate at which it imposes property taxes on I.R.No.1 leaseholders is constrained by the provisions of B.C.'s *Indian Self Government Enabling Act* (Bill 64) discussed in Section 1 of this report. Under Bill 64's concurrent taxation provisions, a municipality may reduce its tax rates where a band council provides services financed by band tax revenues if those services would have otherwise been paid for by the municipality. It would appear that Duncan's ability to reduce its leaseholder tax levy on this basis would be quite limited.

Under Bill 64's independent band taxation provisions, the Band could assume authority for its own taxation, Duncan would automatically cease imposing taxes on leaseholders, and the Band would ultimately assume responsibility for providing all services to the reserve, either directly or through contracts with Duncan. In practical terms, since most of the reserve leaseholds are an integral part of the City of Duncan, it would be neither economically nor physically feasible to service these leaseholds independently of adjacent non-Reserve areas. It therefore follows that both the Band and the City would probably find it mutually advantageous to cooperate in providing for the continuance of existing City services, essentially in accordance with the existing service agreements but in a form which could permit the band to gain a share of the leasehold property tax revenues. On the other hand, a non-cooperative approach could lead to serious disruptions in services to leaseholds, reductions in their market values, eventual reductions in leasehold revenues which would offset gains in tax revenues and, overall, harmful results for both the Band and the City.

If the Cowichan Indian Band were to impose substantial new taxes while the City of Duncan essentially maintained its present taxes, the implications would be as follows:

- the leaseholders could try to absorb the additional costs, although retail business profit margins would probably be too narrow to permit more than a small amount to be absorbed;
- the leaseholders could try to pass on the additional costs to their customers, although local competition would probably severely limit their ability to do this; and/or
- the leases could be renegotiated to reduce their amount, in which cases some losses would be incurred by present or former locatees.

In the long run, if taxes on the leasehold business properties were to continue to be relatively higher than the taxes on other business properties in the same locality, the market values of the properties with the relatively higher taxes would decline and the Band and/or locatees would realize reduced revenues from leasehold rents.

## 5.9 Notes to Chapter 5

1. (page 50) The City allocated 70 per cent of the commercial subdivision debt charges to its General Revenue Fund, 19 percent to the Sewer Enterprise Revenue Fund and 11 percent to the Waterworks Utility Revenue Fund. The "general" portion of the debt was paid from general revenues and the sewer and waterworks portions were funded from user charges.
2. (51) The Band's position regarding taxes in arrears and delinquent was stated in a letter as follows:  
The City taxes the user's right in the case of leased reserve land as opposed to taxing the land. We take the position that the Lessee is personally liable and the City must look to the Lessee for recovery. It is also our position that the tax arrears on a lease that is the subject of a foreclosure does not attach to the leasehold and that the mortgagee ought not to be liable... We think that this should go for a legal opinion in the case where the taxing authority is a Municipality or in the case where the taxing authority is the Band.
3. (54) Although police services were "free" in this particular instance, in the sense that there was no direct relationship between the property taxes paid and the service received, it would not be reasonable to assume that this will continue to be the case indefinitely.
4. (54) Sewer rental revenues of \$247,413 constituted 60.8 per cent of the Sewer Enterprise Revenue Fund's total revenues of \$406,692 and 64.2 per cent of the Fund's total expenditures of \$385,643. Other sources of Sewer Fund revenue included connection and service charges (\$4,500), conditional transfers from other governments (\$98,286), interest received, debt charges recovered and surplus appropriated from previous years (\$56,483). Expenditures included administration (\$40,730), sewage collection and disposal (\$57,969), customer billing and collection (\$11,967), Joint Utilities Board contribution (\$65,527), transfers to reserves (\$48,923) and debt charges (\$160,527).
5. (54) Water sales revenues of \$457,584 constituted 75.9 per cent of the Waterworks Utility Revenue Fund's total revenues of \$602,488 and 85.4 per cent of the Fund's total expenditures of \$535,235. Other sources of Water Fund revenue included connection and service charges (\$38,254), conditional transfers from the provincial government (\$105,650) and interest received (\$1,000). Expenditures included administration (\$41,510), transmission and distribution (\$72,012), pumping (\$105,010), customer billing and collection (\$44,142), transfers to other funds (\$80,447) and debt charges (\$192,437).
6. (54) According to Band Council Resolution 529 of March 26, 1985, the No.1 Water Well agreement cannot be "unilaterally cancelled or changed by either party but may only be altered by mutual consent" (this resolution also permitted the City to take 8,000 yards of gravel from the Cowichan River in exchange for a waiver of outstanding water accounts). There was no debt owing on the well. Annual operating costs of approximately \$4,500 were covered by revenues from water system user charges.
7. (54) The construction of a waterline to serve the Clem Clem Alutz Village area of I.R.No.1, southeast of the City, was the subject of a 1982 agreement between the Band and the City. Construction costs of \$171,000 (of which \$26,800 was attributable to the portion of the line that was not on the Reserve), together with engineering and incidental costs, were borne entirely by the Band. The portion of the line within the Reserve was owned and maintained by the Band and the portion outside the Reserve boundary was owned and maintained by the City. The agreement stipulates that there be not more than 100 domestic or commercial connections to the line and that it shall not be used for industrial or irrigation purposes. Provision is made for the City to refund connection payments to the Band. The City reserves the right to discontinue service if the Band permits water payments to become in arrears. The agreement extends to September 30, 2002, with an option for either party to renew it for an additional 20 years.
8. (54) A 1986 agreement provided for construction of a waterline to serve the Boys Road Subdivision area of I.R.No.1 south of the City. Construction costs, including a pressure reducing facility, the connection to the existing City water main, engineering and incidental costs, were borne entirely by the Band. The Band also agreed (1) to contribute \$100,000 towards the cost of a future water production well, payable in two equal instalments on April 1, 1987 and 1988, and (2) to pay for upgrading and maintaining "to a reasonable standard" the existing internal Boys Road Sub-division water system. The new line and works serving the subdivision within the Reserve were owned and maintained by the Band. The previously existing waterline, pressure reducing facility and waterworks were owned and maintained by the City. The agreement stipulates that there be not more than 100 domestic or, in limited circumstances, commercial connections to the line and that it shall not be used for industrial or irrigation purposes. The payable rates are 60 per cent of the rates imposed for properties to which water is supplied outside the City boundaries and the City reserved the right to discontinue service if the Band permits payments to become in arrears. The agreement extends to March 31, 1997, with an option for either party to renew it for an additional ten years.
9. (55) Other main roads within the Reserve included Allenby (1275 m.), Indian (625 m.) and Miller (415 m.), all of which were maintained by the B.C. Ministry of Transportation and Highways.
10. (59) The sewage lagoon, which was constructed by the City prior to 1978, also served the Eagle Heights area of the CVRD, the Boys Road Subdivision and Somenos Village. In 1979, the lagoon was upgraded at a cost of \$480,000, of which

approximately \$200,000 was paid by Duncan, \$200,000 was paid by North Cowichan and \$80,000 was covered by grants. As of December 31, 1989, the City's outstanding debt was to be \$33,000 of the \$90,000 originally borrowed for lagoon construction and \$100,000 of the amount borrowed for upgrading. The lagoon and outfall were the subject of 1980 lease agreements which expire on June 30, 1996. The 1988 lease payments were \$20,428 for the lagoon lands and \$1,500 for the outfall easement.

11. (59) Sources of Joint Utility Board operating funds in 1988 included contributions from Duncan (\$65,527) and North Cowichan (\$77,921), dumping fees of \$5,393 and interest received of \$60,120. Operating expenditures in 1988 included \$5,215 for administration, \$21,929 for leases, \$64,986 for operation and maintenance, debt charges of \$9,906 (Duncan) and \$6,805 (North Cowichan), \$9,495 for a sewage disposal study, and \$90,625 (net) transferred to the reserve for capital expenditure.
12. (59) A 1970 agreement permitted the City to use approximately one hectare of Reserve land immediately east of the commercial subdivision area for a parking lot. The permit was renewed in 1976 for the period from September 1, 1974 to August 31, 1979, at an annual rent of \$10,000. Since then, there had been no formal renewal of the agreement, although it provided for two renewal periods of five years, i.e. to August 31, 1989. In 1985, a second parking lot adjacent to the first one was added in accordance with a Band Council Resolution approving the issuance of a month-to-month permit to the City for the use of the additional land during the period from July 1, 1985, to June 30, 1990, at an annual rent of \$6,000 per acre. As of August 31, 1989, the City had an accounting liability on the order of \$30,000 for this lease, since a formal agreement had not yet been signed and the City had not yet paid the Band any money. Capital investments made by the City included \$50,000 for public washrooms, \$30,000 for a farmer's market, \$26,000 for paving the new lot in 1986 and \$30,000 for the original paving, which was in need of replacement.

## 6. MUSQUEAM CASE

### 6.1 Background

The Musqueam Indian Band Reserves are located in the Greater Vancouver Regional District (GVRD). The GVRD includes three unincorporated Electoral Areas and 16 incorporated municipalities. Municipalities which have a Musqueam Indian Reserve within their boundaries include the City of Vancouver (I.R.No.2), the Corporation of the Township of Richmond (I.R.No.3) and the Corporation of Delta (I.R.No.4). The main Reserve in the City of Vancouver was of primary interest to this study. Except for a riparian permit in Richmond and, in Delta, a farm leasehold and a single residence on Band land, the other two Reserves were unused in 1988.

The total area of the three Reserves in 1988 was approximately 232.2 hectares, including 168.7 hectares within I.R. No.2, 6.2 hectares in I.R.No.3 and 57.3 hectares in I.R.No.4. According to the Musqueam Band administration, the Band had 769 members as of October 6, 1989, of whom 400 lived in Musqueam Village on I.R.No.2. Another 34 Status Indians from other Bands, plus 44 non-Indians, lived in Musqueam Village, for a total population of 478. There had been a considerable population increase since 1986, and an associated increase in the population per household, which was attributed by the Band largely to the impact of Bill C-31.<sup>1</sup>

According to the 1986 census, there were 1,238 people living on I.R.No.2, including approximately 835 on leasehold property in the Musqueam and Salish subdivisions and 403 on Band property in Musqueam Village. While the population on the Band lands had increased markedly, to an estimated 465 by 1988, it seems unlikely that the resident population on the leasehold lands had changed very much, if at all, since 1986.

### 6.2 Leaseholds and land management

In 1988, the Band had four primary leasehold arrangements within the City of Vancouver, as follows:

- The Musqueam subdivision contained 75 single-family residential properties and one multi-family property. The subdivision was the subject of a 1965 agreement between the Minister of INAC, the City and the Musqueam Development Company Ltd. The agreement provided for the delivery by the City of "ordinary city services", for the City to levy municipal taxes against "the tenants and occupiers", and for leaseholder contributions to a "tax trust fund" to be used "solely for the purpose of securing and paying (delinquent) municipal taxes, water rates and local improvements". The Band collected annual land rents from each leaseholder. The agreement and the leases were due to expire in 2064.
- The Salish subdivision contained 143 single-family residential properties. It was the subject of a 1970 agreement between the Minister of INAC and the City. The agreement's provisions were similar to those of the Musqueam subdivision agreement, except that, instead of a tax trust fund, it simply provided for the direct payment of delinquent taxes to the City by the Minister. In this case, the Band received a lump-sum payment rather than annual rents. A parcel at the west end of the subdivision, which was originally intended for garden apartments but was never developed, was in the process of being de-surrendered and returned to the Band. The agreement and the leases were due to expire in 2074.<sup>2</sup>
- The 1958 Shaughnessy Golf Course lease provided for a fixed annual payment into a trust fund, subject to amendment every fifteen years. The lease was due to expire in 2033.<sup>3</sup>
- The Musqueam Golf Course and Driving Range lease provided for a fixed annual payment plus a variable payment related to income. The lease was due to expire in 2038.<sup>4</sup>

The Band had also issued riparian permits to Pacific Towing Services, International Forest Products Ltd. (formerly Whonnock) and the North Fraser Harbour Commission, all within the City of Vancouver,<sup>5</sup> and to Canadian Forest Products within the Township of Richmond.<sup>6</sup> Farmlands were leased in 1988 to Kwai Lai Farms and Hong Kong Farms in the City of Vancouver<sup>7</sup> and, in Delta, to Ed McKim.<sup>8</sup> As discussed below, the Band had also granted to the Greater Vancouver Sewerage and Drainage District a sewer right-of-way for what appears to be an indefinite term.

The Musqueam Indian Band had 26 administrative staff in 1989, including 15 working in the Band Office on the reserve. The Band's land management program, including planning, development and lease management, was administered by a land management officer who reported to the Band Council through the Band Manager. All land policy and allocation decisions were made by resolution of the Band Council.

### 6.3 Property taxes and fees

As indicated in Exhibits 6.1 and 6.2, the 1988 property taxes levied on the 224 Musqueam Indian Reserve leasehold properties in the City of Vancouver were as follows :

- school taxes..... \$482,699 (0.23% of the \$206,930,146 in school taxes levied in the City);
- municipal taxes.... \$432,714 (0.21% of the City's \$208,423,402 municipal tax levy);
- GVRD taxes..... \$9,286 (0.23% of the \$4,111,787 levied in Vancouver for the GVRD);
- B.C.Transit taxes.... \$5,968 (0.06% of the \$9,780,717 levied in Vancouver for B.C. Transit); and
- other taxes..... \$42,210 (0.23% of the City's total of \$18,718,712 in revenues collected for the Regional Hospital District, the Municipal Finance Authority and the British Columbia Assessment Authority).

In addition to these taxes, the leaseholders were levied \$20,928 in water rates and \$1,112 in other charges. Single-family residential leaseholders paid a flat rate of \$100 each for water supply. Other leaseholders paid metered charges.

Taxes in arrears or delinquent were \$10,451 in 1986, \$26,928 in 1987, and \$17,902 in 1988. There was no obvious trend in the degree of delinquency. There had been no cases of delinquency requiring invocation of the tax payment provisions of the two subdivision agreements.

#### EXHIBIT 6.1

##### 1988 property taxes levied in the City of Vancouver on Musqueam Indian Reserve leaseholders

	Residential Class 1	Business Class 6	Recreation Class 8	Farm Class 9	Total
No. of taxable properties	221	4	2	2	225 <sup>1</sup>
No. of exempt properties	1	1	0	0	2
Taxable assessed value	<u>\$63,640,350</u>	<u>\$4,706,300</u>	<u>\$3,287,150</u>	<u>\$63,216</u>	<u>\$71,697,016</u>
School taxes	\$392,960	\$ 66,345	\$23,171	\$223	\$482,699
Municipal taxes	329,441	82,810	19,964	499	432,714
GVRD taxes <sup>2</sup>	7,529	1,364	389	4	9,286
B.C.Transit levy	0	5,968	0	0	5,968
Other taxes <sup>3</sup>	<u>34,225</u>	<u>6,200</u>	<u>1,768</u>	<u>17</u>	<u>42,210</u>
Total general taxes	<u>\$764,155</u>	<u>\$162,687</u>	<u>\$45,292</u>	<u>\$743</u>	<u>\$972,877</u>
Local and other charges <sup>4</sup>	<u>\$ 22,040</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>\$ 22,040</u>
Arrears, delinquent	<u>\$ 17,204</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>\$ 17,204</u>

Notes: 1. Four properties had two land use classes. The two farms also had residences and the two golf courses had both business and recreational classes. Hence, the total number of properties was 225 rather than 229.

2. Greater Vancouver Regional District.

3. Includes Regional Hospital District, Municipal Finance Authority and B.C. Assessment Authority.

4. Includes \$20,928 in water rates and \$1,112 in other charges.

Source: City of Vancouver property tax folios

**EXHIBIT 6.2**  
**City of Vancouver 1988 General Fund Revenue and Expenditure**

<b>Revenue</b>		<b>Expenditure</b>	
General tax levy	\$208,423,402	General government	\$20,324,404
Receipts in lieu of taxes	18,867,915	Fire protection	41,041,314
Penalties	2,103,216	Police protection	65,365,790
Interest	1,692,956	Permits and licenses	7,339,114
Local improvement taxes	5,042,717	Emergency program	70,305
Sundry licenses (net)	6,180,756	Streets, roads, bridges, walks	11,559,135
Service and inspection fees	7,275,546	Snow and ice control	652,791
Rentals, leases and taxes in lieu (net)	10,482,512	Traffic control	4,794,744
Municipal by-law fines	4,872,389	Street lighting and communications	4,586,364
Income from parking meters	2,333,635	Parking enforcement	2,648,232
Scavenging fees	6,606,094	Sewers and drains	3,145,548
Sundry fees and services	1,179,874	Joint Sewerage Board - pollution control	5,386,896
Interest on short-term investments	13,046,732	Street cleaning	4,303,806
B.C. revenue sharing (unconditional)	17,523,298	Scavenging and waste removal	9,496,017
Waterworks	19,772,679	Waterworks	19,772,679
Parks, recreation, civic theatres	18,274,548	Parks, recreation, libraries, civic theatres	59,075,450
Transfers from funds and reserves	14,175,572	Grants for cultural and community services	7,622,098
GVRD tax levy	4,042,975	Mountain View Cemetery	384,346
GVRD receipts in lieu	68,812	Planning	6,145,929
B.C. Transit levy	9,780,717	Public health service	9,663,020
School District 39 levy	99,690,667	Interest on temporary loans	77,524
S.D.39 receipts in lieu	2,904,302	Debt charges	50,314,245
B.C. school levy	104,335,177	Local improvements (property owner share)	5,042,717
Regional Hospital District	12,262,395	Transfers to funds and reserves	18,048,861
Municipal Finance Authority	51,450	Excess of revenue over expenditure	992,512
B.C. Assessment Authority	6,404,967	Transmitted to other governments	239,541,462
Collected for other governments	<u>239,541,462</u>		
Total revenue	<u>\$597,395,303</u>	Total expenditure	<u>\$597,395,303</u>

As shown in Exhibits 6.2 and 6.3, of the City of Vancouver's total 1988 revenues of \$597,395,303, revenues of \$313,400,418 were directly allocated, either fully or partially, to corresponding expenditures. Revenues of \$227,291,317 from property taxes and receipts in lieu of taxes accounted for 80.0% of the \$283,994,885 in revenues which were not directly allocated to corresponding expenditures. Similarly, GVRD revenues from property taxes and receipts in lieu of taxes accounted for 100% of the total of \$4,111,787 in GVRD revenues collected in the City of Vancouver.



**EXHIBIT 6.3****Analysis of City of Vancouver 1988 General Fund Revenue and Expenditure**

	Revenue	Expenditure	Allocation	
Total revenue				\$597,395,303
Revenue directly allocated to specific expenditures <sup>1</sup>				
Local improvements	\$ 5,042,717	\$ 5,042,717	\$ 5,042,717	
Permits, licenses, fees	6,180,756			
	7,275,546	7,339,114	7,339,114	
Parking enforcement, fines	4,872,389			
	2,333,635	2,648,232	2,648,232	
Scavenging and waste removal	6,606,094	9,496,017	6,606,094	
Waterworks	19,772,679	19,772,679	19,772,679	
Parks, recreation, etc.	18,274,548	59,075,450	18,274,548	
Reserve and fund transfers	14,175,572	18,048,861	14,175,572	
Other government levies	239,541,462	239,541,462	<u>239,541,462</u>	
Total revenue directly allocated to specific expenditures				<u>313,400,418</u>
Net total revenue not directly allocated to specific expenditures				<u>\$283,994,885</u>
Total property tax and receipts-in-lieu revenue = \$208,423,402 + 18,867,915 = 227,291,317				Ö 283,994,885
				= 80.0% of total net revenue

Note: 1. The allocable amount for each item is the lesser of the two figures. If the revenue side is greater, the difference is allocated to unspecified general fund expenditures. If the expenditure side is greater, the difference must be made up from other general fund revenues.

**6.4 Services**

Services financed by property taxes which were provided to non-Reserve properties in the City of Vancouver were also provided to the Reserve leasehold properties but, with a few exceptions, were not provided to Musqueam Village, i.e. to the Band. The Band had a separate contract with the City for the delivery of some services and, as noted below, it is assumed for study purposes that GVRD services benefited Band members in the same way that they benefited everyone who lives within the GVRD. Similarly, it is assumed that the Band members benefited from B.C. Transit services which, in 1988, were partially financed by \$9,780,717 in property taxes levied in the City of Vancouver.

**6.4.1 City of Vancouver services to Musqueam Village**

Services to Musqueam Village were provided in accordance with a 1983 agreement between INAC and the City of Vancouver, and included the following (1984 costs in parentheses):

- Police protection (\$12,525.50).
- Fire protection (\$3,000).
- Garbage collection and disposal, street and catch basin cleaning (\$2,770).
- Sanitary and storm sewer maintenance (\$2,750).
- Water system service (\$1,400; water supply charges were paid on the City's normal flat-rate basis).
- Street maintenance (\$3,500).
- Traffic control (\$300).
- Street lighting maintenance and power (\$913).

The agreement provided for the rates to be adjusted annually with reference to changes in the consumer price index for the City of Vancouver and changes in the number of dwellings on the reserve. Current cost information was not provided. The agreement was to expire in 1993.

### 6.4.2 City of Vancouver services financed from general revenue

Services to the leaseholders which were financed through the City's General Revenue Fund in 1988 and whose costs were covered at least in part by property tax revenue included the following (total 1988 City net general fund expenditures in parentheses):

- Fire protection (\$41,041,314).
- Police protection (\$65,365,790).
- Emergency program (\$70,305).
- Streets, roads, bridges and walks (\$16,515,732). This included \$11,559,135 for maintenance, \$652,791 for snow and ice control, and \$4,303,806 for street cleaning. As shown in Exhibit 6.4, roads serviced by the City included 358.0 kilometres of major roads and 1,019.0 kilometres of local roads. There were no major roads directly serving the Reserve. There were approximately 14,000 feet (4.3 km) of local roads in the two subdivisions.
- Traffic control (\$4,794,744).
- Street lighting and communications (\$4,586,364). As shown in Exhibit 6.4, it is estimated that the City had 1,735 kilometres of street lighting, of which 4.3 kilometres were on the Reserve. It is assumed that street lighting was on both sides of all major roads and on one side of all local roads
- Sewers and drains (\$3,145,548). As shown in exhibit 6.4, the City maintained 1,802 kilometres of sewers and drains overall and approximately 15,000 feet of twin sewers (9.2 km total) in the two subdivisions.
- Pollution control (\$5,386,896). This was a contribution to the Joint Sewerage Board.
- Scavenging and waste removal (\$2,889,923). Total City expenditure in 1988 was \$9,496,017, of which \$6,606,094 was recovered in scavenging fees.
- Parks, recreation, libraries, civic theatres (\$48,807,346). This included \$59,075,450 for operating expenditures, \$7,622,098 for grants and \$384,346 for Mountain View Cemetery, less \$18,274,548 in operating revenues.
- Public health service (\$9,663,020).
- Interest and debt charges (\$50,391,769).
- Transfers to funds and reserves (\$3,873,289). Total City expenditure was \$18,048,861, of which \$14,175,572 was recovered in transfers from funds and reserves. As noted in Section 3.3, internal fund transfers are treated as allocable revenues and expenditures for study purposes.
- General government (\$20,324,404).

Planning services (\$6,145,929) financed through the City's General Revenue Fund are *not* considered to have been provided to the I.R.2 leaseholders. As noted in Section 2.3, in the absence of any agreement to the contrary, it would not be reasonable to assign to reserve leaseholders costs associated with the administration of provincial regulations which are not applicable to Indian reserves.

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#### EXHIBIT 6.4 City of Vancouver roads, street lighting and sewers

	Estimated length of system	
	City of Vancouver	Musqueam I R 2 leasehold lands
Major roads maintained by City of Vancouver	358.0 km	0.0 km
Local roads maintained by City of Vancouver	1,019.0 km	4.3 km
Lanes and alleys maintained by City of Vancouver	697.0 km	0.0 km
Street lighting operated by City of Vancouver	1,735.0 km	4.3 km
Sewers maintained by the City of Vancouver	1,802.0 km	9.2 km

Sources: British Columbia Ministry of Municipal Affairs, Recreation and Culture: *Municipal Statistics for the Year Ended December 31, 1987*;  
City of Vancouver: *1988 Financial Statements and Annual Report*, maps.

### 6.4.3 Services provided by the GVRD

Services provided by the Greater Vancouver Regional District include the following (City of Vancouver's 1988 cost share in parentheses):

- Parks (\$2,054,332).
- Air pollution control (\$410,334).
- Labour relations (\$689,060).
- Hospital planning (\$177,539).
- General government (\$713,000).

For study purposes, it is assumed that these services are provided to all residents of the Reserve, including those on the Band lands, on the premise that they benefit all the people of the region.

### 6.5 Analysis of the tax-service relationship

As discussed in Section 3.3, the relationship between property taxes levied on the leaseholders and the costs of services delivered to them is calculated in five steps, as follows:

- Calculate the total estimated cost of services to which City property taxes can be allocated;
- Determine the total City property tax levied on the leaseholders (\$432,714 from Exhibit 6.1);
- Determine the portion of the City's net total revenue from property taxes (80.0% from Exhibit 6.3);
- Calculate the adjusted total cost of services that can be attributed to leaseholder property taxes; and
- Calculate the difference between the adjusted total cost of services and the total property tax levied.

The cost calculations are based on the municipality's net total expenditure on each allocable service and on *cost factors* derived primarily from information about assessed property values, population and, for systems such as roads, system length, as shown in Exhibit 6.4. The data on population and assessed values are shown in Exhibit 6.5. The 1988 population estimates shown in Exhibit 6.5 are used for the purposes of this case study in order to account for the probability that the increase since 1986 in the City of Vancouver's population had been proportionately greater than the increase in the leasehold land population.

The rationale and methods for determining service cost factors are described in Section 3.2. The "variable services to property" which were provided in 1988 by the City of Vancouver to the leaseholders on I.R.No.2 included fire protection, police protection, emergency program, traffic control, pollution control, scavenging and waste removal, public health service, interest and debt charges, transfers to funds and reserves, and general government. The leasehold properties served included:

- 0.19% by population of the City's residential properties, which comprised 59.93% of the City's total actual assessment;
- 0.05% by value of the City's business properties, which comprised 33.42% of the City's total assessment;
- 0.36% by value of the City's recreation properties, which comprised 3.2% of the City's total assessment; and
- 67.61% of the City's farm properties, which comprised less than 0.01% of the City's total assessment.

The total cost factor for these services to the Reserve was therefore  $(.5993 \times .0019) + (.3342 \times .0005) + (.0320 \times .0036) + (.0000 \times .6761) = .0014$ .

The "variable services to property" which were provided by the GVRD to I.R.No.2 included air pollution control, labour relations, hospital planning and general government. As noted in Section 6.4.3, it is assumed that these services were provided to all residents of the Reserve, including those on the Band lands, on the premise that they benefited all the people of the region. The total cost factor for these services to the Reserve was therefore  $(.5993 \times .0029) + (.3342 \times .0005) + (.0320 \times .0036) + (.0000 \times .6761) = .002$ .

For City of Vancouver "services to people", including parks, recreation, libraries and civic theatres, the cost factor calculation is based on the population served which, in this case, consisted of approximately 835 resident leaseholders. The cost factor was therefore .0019. Alternatively, as discussed in Section 3.2, the cost factor was the same as that determined for variable services to property, or .0014.

## EXHIBIT 6.5

Population and area	City of Vancouver population, area and assessed values				
	City of Vancouver (ex Reserve)	Lessees	Band	Total	Total City
1986 Census population	431,147	±835	±403	1,238	432,385
1988 population estimate	±443,092	±835	±465	±1,300	±444,392
1988 % of total City population	99.71%	0.19%	0.10%	0.29%	100.0%
Area (hectares)	11,446.2	±131.5	±37.2	168.7	11,614.9

  

Actual 1988 assessed values	City of Vancouver	Class % of total value	I R 2 lease- hold total	I R 2 % of class
Residential (class 1)	\$17,194,053,453	59.93%	\$63,919,000	0.37%
Utilities (class 2)	593,093,034	2.07	0	0.00
Major Industrial (class 4)	212,904,500	0.74	0	0.00
Light Industrial (class 5)	182,053,250	0.63	0	0.00
Business and other (class 6)	9,588,868,041	33.42	4,726,300	0.05
Recreation, non-profit (class 8)	918,973,240	3.20	3,287,150	0.36
Farm (class 9)	<u>96,320</u>	<u>0.00</u>	<u>65,120</u>	67.61
Total assessed value	<u>\$28,690,041,838</u>	<u>99.99%</u>	<u>\$71,997,570</u>	

Sources: B.C. Assessment Authority;

B.C. Ministry of Municipal Affairs, Recreation and Culture: *Statistics Relating to Regional and Municipal Governments in British Columbia 1988*;

City of Vancouver: *1988 Financial Statements and Annual Report*; property tax folios; maps.

For other "services to people", including GVRD parks and B.C. Transit, the cost factor calculation is also based on the population served which, in this case, consisted of approximately 1,300 Reserve residents. The cost factor was therefore .0029. Alternatively, as discussed in Section 3.2, the cost factor was the same as that determined for variable services to property, or .002.

For "fixed services to property", the unit costs are derived from the City's total expenditure. For study purposes, it is assumed that major roads cost five times as much to maintain as local roads and that the costs of maintaining bridges, walks and lanes can be included in the costs of major and local road maintenance. On this basis, the unit cost for maintaining and cleaning local roads in Vancouver in 1988 was \$16,515,732 ÷ [1,019.0+(358.0x5)] = \$5,880 per kilometre, or \$5.88 per metre. The unit cost for maintaining major roads was \$5.88 x 5 = \$29.40 per metre. The unit cost for maintaining sewers and drains was \$3,145,548 ÷ 1,802 = \$1,745 per kilometre, or \$1.745 per metre. The unit cost for providing street lighting was \$4,586,364 ÷ 1,735 = \$2,640 per kilometre, or \$2.64 per metre.

As discussed in Section 3.2.3, two methods of calculation are used in estimating costs for each of the "soft" services and, accordingly, two total cost estimates are calculated. By one method, as shown in Exhibit 6.6, the total 1988 estimated cost of allocable City services to the reserve leaseholders was \$430,746. From Exhibit 6.3, 80.0% of this cost was covered by property tax revenues, so that the adjusted total cost of the allocable services was \$344,597. As shown in Exhibit 6.1, the total 1988 City property tax levied on the leaseholders was \$432,714. The portion of the leaseholder municipal property taxes not allocable to City services was therefore \$88,117.

By the second method, the total 1988 estimated cost of allocable City services to the reserve leaseholders was \$406,342. The adjusted total cost of the allocable services was \$325,074. The portion of the leaseholder City property taxes not allocable to City services was \$107,640.

## EXHIBIT 6.6

## Calculation of Musqueam Indian Reserve tax-service relationships

Service provided by City of Vancouver	net total cost or length of system	Calculation method #1		Calculation method #2	
		cost factor or unit cost	Reserve cost share	cost factor or unit cost	Reserve cost share
Fire protection	\$41,041,314	.0014	\$ 57,458	.0014	\$ 57,458
Police protection	65,365,790	.0014	91,512	.0014	91,512
Emergency program	70,305	.0014	98	.0014	98
Traffic control	4,794,744	.0014	6,713	.0014	6,713
Pollution control	5,386,896	.0014	7,542	.0014	7,542
Scavenging and waste removal	2,889,923	.0014	4,046	.0014	4,046
Parks, recreation, etc.	48,807,346	.0019	92,734	.0014	68,330
Public health service	9,663,020	.0014	13,528	.0014	13,528
Interest and debt charges	50,391,769	.0014	70,548	.0014	70,548
Transfers to funds and reserves	3,873,289	.0014	5,423	.0014	5,423
General government	20,324,404	.0014	28,454	.0014	28,454
Local road maintenance and cleaning	4,300 m	5.88	25,284	5.88	25,284
Sewer and drain maintenance	9,200 m	1.745	16,054	1.745	16,054
Street lighting	4,300 m	2.64	<u>11,352</u>	2.64	<u>11,352</u>
Total cost of services allocable to leaseholder property taxes			<u>\$430,746</u>		<u>\$406,342</u>
Adjusted total cost of allocable services (= total cost x .8)			\$344,597		\$325,074
Total City property taxes levied on reserve leaseholders			<u>432,714</u>		<u>432,714</u>
Leaseholder property taxes not allocable to City services			<u>\$ 88,117</u>		<u>\$107,640</u>
Service provided by GVRD	net total cost or length of system	Calculation method #1		Calculation method #2	
		cost factor or unit cost	Reserve cost share	cost factor or unit cost	Reserve cost share
Parks	\$2,054,332	.0029	\$ 5,958	.0020	\$4,109
Air pollution control	410,334	.0020	821	.0020	821
Labour relations	689,060	.0020	1,378	.0020	1,378
Hospital planning	177,539	.0020	355	.0020	355
General government	713,000	.0020	<u>1,426</u>	.0020	<u>1,426</u>
Total cost of services allocable to leaseholder property taxes			\$9,939		\$8,089
Total GVRD property taxes levied on reserve leaseholders			<u>9,286</u>		<u>9,286</u>
GVRD service costs not covered by leaseholder property taxes			<u>\$ 653</u>		
Leaseholder property taxes not allocable to GVRD services					<u>\$1,197</u>

Similar calculations apply to the services provided by the GVRD and B.C. Transit. By one method, as shown in Exhibit 6.6, the total 1988 estimated cost of allocable GVRD services to the reserve leaseholders was \$9,939, all of which was covered by property tax revenues. As shown in Exhibit 6.1, the total 1988 GVRD property tax levied on the leaseholders was \$9,286. The portion of the cost that was not covered by leaseholder GVRD property taxes was therefore \$653.

By the second calculation method, the total 1988 estimated cost of allocable GVRD services to the reserve leaseholders was \$8,089. The portion of the leaseholder municipal property taxes not allocable to GVRD services was \$1,197.

As shown in Exhibit 6.2, the total cost of B.C. Transit services to Vancouver property taxpayers in 1988 was \$9,780,717. By one calculation method, the cost allocable to the reserve was  $\$9,780,717 \times .0029 = \$28,364$ . From Exhibit 6.1, \$5,968 of this cost was covered by property taxes levied on the Reserve leaseholders. The portion of the B.C. Transit cost that was not covered by leaseholder property taxes was therefore  $\$28,364 - \$5,968 = \$22,396$ .

By the second method, the total 1988 estimated cost of B.C. Transit services to the reserve lease-holders was  $\$9,780,717 \times .002 = \$19,561$ . The portion of this cost that was not covered by leaseholder property taxes was therefore  $\$19,561 - \$5,968 = \$13,593$ .

## 6.6 Capital Works

In 1988, the capital works of interest in this case included three main items:

- the roads, sewers, water lines and sewage pumping station in the two leasehold subdivisions;
- the roads, sewers and water lines in Musqueam Village; and
- the Highbury sewer right-of-way through the Musqueam Village area.

The capital works in the two leasehold subdivisions were built by the developers around 1965 and 1970. Ownership was granted to the City of Vancouver by Letters Patent until 2074. Life expectancies would be 60 - 100 years for roads, 100 years for sewers, 40 years (asbestos cement) or 150 years (cast iron/ductile iron) for water lines and 25 to 30 years for the pumping station. The estimated 1988 replacement cost of these works was on the order of \$2,000,000.

The Musqueam Reserve is at the extreme western end of Vancouver's water service area. The system is evidently adequate to meet domestic and fire service demands for single family residences only.

Information about the capital works in the Musqueam Village area was not provided by the Band. It would appear that the works were built and owned by the Band. The 1970 Salish subdivision agreement provided for the Band to use the pumping station since "... the Minister has approximately a 35% interest in the capital cost...". The 1983 services agreement noted that it did not include any work by the City "... required to bring any or all of the water mains, water main valves, hydrants or other related water main facilities of the Village up to the City's standards".

The Highbury sewer right-of-way, bisecting the south-east corner of the Musqueam village area, appeared to be about five metres wide in most places. Technical information was not provided about the sewer's size, life expectancy, etc. It was the subject of a 1960 agreement between Canada and the Greater Vancouver Sewerage and Drainage District which granted the District the right "...to lay down, operate and maintain a sewer pipeline on the said lands... for such period of time as the said right-of-way is required for the purpose of a sewer pipeline right-of-way". The land is to be used "for no other purpose". The Band received a lump-sum payment of \$1,500 and employment preference in the construction of the pipeline "insofar as members are available and suitable for such employment". According to the agreement, the right-of-way contained about 2.5 acres (one hectare) of land. According to a Bill C-31 impact study prepared for the Band, the right-of-way consumed seven acres (2.8 hectares) of land which could be "... incorporated into backyards and open spaces but (was) unavailable for other development" (Process Four Design, 1988).

## 6.7 Issues

Neither the City nor the Band provided written comments about issues related to problems with their agreements, etc.<sup>9</sup> It would appear that both parties felt that Bill C-115 had raised serious issues requiring resolution through a process of careful negotiation.<sup>10</sup>

The most serious issue evidently facing the Band was a shortage of land to accommodate expected growth in the Band's population. As indicated in Exhibit 6.5, the Band lands on I.R.No.2 constituted only about 37.2 hectares out of a total area of 168.7 hectares. The rest of the land had been committed to the long term lease arrangements discussed in this study. The report on the Bill C31 impact study prepared for the Band in 1988 included the following observations:

- Band membership will increase by at least 42% within the next few years.
- Household population size in Musqueam Village is already almost twice the national average.
- For a variety of reasons, I.R.No.3 and I.R.No.4 are unsuitable for housing or intensive economic development.
- The Band requires about 24 additional hectares of land in the vicinity of I.R.2 for housing immediately, another 12 hectares for housing by 2002, and an unspecified amount for "... social, traditional, ceremonial and economic development purposes".

The report noted that undeveloped publicly-owned lands in the vicinity of I.R.2 included the University Endowment Lands (Province, 278.6 hectares), Musqueam Park (City, 21 hectares), Musqueam Marsh (City, 3.2 hectares), the original I.R.No.3 on Sea Island (Canada, 24.3 hectares), and other provincial land (3.2 hectares). The Band had registered a well-publicized land claim against the University Endowment Lands.

Another issue of concern to the Band was the status of its lease arrangement with the Shaughnessy Golf Club. The Band had agreed to surrender the land in 1958 but did not get a copy of the lease until 1970. They discovered that the terms of the lease varied considerably from what had been agreed and that it was substantially less valuable than intended. The Band brought an action in 1975 and damages were assessed at \$10,000,000 on the basis of the lost opportunity for residential development, since the lease would not have been entered into were it not for the federal government's breach of trust. The Supreme Court of Canada upheld this judgment, finding that "...the Crown had breached its fiduciary obligation..." and that the Crown's conduct in concealing the terms of the lease amounted to "...unconscionable conduct and therefore equitable fraud".<sup>11</sup> The Band's subsequent attempt to break the lease was dismissed in 1990 by the Federal Court of Canada on the grounds that the case had been settled in 1984 with the award of damages to the Band.

## 6.8 Observations

The evidence regarding existing agreements and capital works indicates that the Musqueam Indian Band and the City of Vancouver have cooperated over the years in the delivery of services and the installation of infrastructure. The essence of the two long-term residential subdivision agreements was that, for services provided to the reserve, the City collects the same taxes and/or fees as it collects for services delivered off the reserve, while responsibility for tax delinquency is placed on INAC. The other agreement provided for the delivery of most City services to Musqueam Village, the Band's residential area, at a rate equal to 50% of the estimated cost or, in 1984, a total of \$27,158.50. On the basis used in this report, the full cost of these services in 1988 would have been about \$85,000.

On the whole, the three agreements appear to have worked well. There is a question as to whether the Musqueam Village agreement, which will expire in 1993, will be renewed on the same terms. In general, because of the small size of the Reserve, it would be most economical to continue to receive services from the City of Vancouver.

In 1988, the City of Vancouver levied \$432,714 in municipal property taxes on the I.R.No.2 leaseholders. The evidence indicates that between 20% and 25% of this amount was not assignable to the cost of City services delivered to the leaseholders. In other words, it can be argued that, of the property taxes levied on the leaseholders, an amount on the order of \$90,000 to \$105,000 was used to pay for, or "subsidize", the cost of City services provided to off-reserve residential property-owners in the City of Vancouver. While the subsidization of services to residential properties from non-residential property taxes is a common pattern among B.C. municipalities, the subsidization effect in this case was attributable primarily to the fact that the average assessed value of the single-family residences on I.R.No.2 leaseholds was almost \$255,000 in 1988, or twice the average assessed value for occupied single-family residences in the City of Vancouver as a whole.

Property taxes levied on the I.R.No.2 leaseholders by the GVRD in 1988 were \$9,286. The evidence suggests that all or most of this amount was assignable to the cost of the GVRD services which were of benefit to the residents of the Reserve, including the band members.

Property taxes levied on the leaseholders by B.C. Transit in 1988 were \$5,968. The evidence indicates that these taxes only covered between 21% and 30% of the cost of B.C Transit services delivered to the residents of the Reserve. In other words, it can be argued that the reserve residents received "subsidized" transit services costing on the order of \$13,600 to \$22,400. In this case, the subsidization effect was attributable to the fact that B.C. Transit was a provincial corporation which was also funded from other provincial revenue sources and levied property taxes only on utility, industrial and business properties, which accounted for only a small part of the total assessment on the Reserve.

The City's ability to adjust the rate at which it imposes property taxes on I.R.No.2 leaseholders is constrained by the provisions of B.C.'s *Indian Self Government Enabling Act* (Bill 64) discussed in Section 1 of this report. Under Bill 64's concurrent taxation provisions, a municipality may reduce its tax rates where a band council provides services financed by band tax revenues if those services would otherwise have been paid for by the municipality. It would appear that Vancouver's ability to reduce its leaseholder tax levy on this basis would be quite limited.

Under Bill 64's independent band taxation provisions, the Band could assume authority for its own taxation, Vancouver would automatically cease imposing taxes on leaseholders, and the Band would ultimately assume responsibility for providing all services to the reserve, either directly or through contracts with Vancouver. In practical terms, since most of the reserve leaseholds are an integral part of the City of Vancouver, it would be neither economically nor physically feasible to service these leaseholds independently of adjacent non-Reserve areas. It therefore follows that both the Band and the City would probably find it mutually advantageous to cooperate in providing for the continuance of existing City services, essentially in accordance with the existing agreements but in a form which could permit the Band to gain a share of the leasehold property tax revenues. On the other hand, a non-co-operative approach could lead to serious disruptions in services to leaseholds, reductions in their market values, eventual reductions in leasehold revenues which would offset gains in tax revenues and, overall, harmful results for both the Band and the City.

If the Musqueam Indian Band were to impose new taxes while the City maintained its present taxes, the implications would be as follows:

- the residential leaseholders would have to absorb the tax;
- the Shaughnessy Golf Club (i.e. its members) would also have to absorb the cost; but
- the Musqueam Golf Course, which had an income participation agreement as part of its lease with the Band, would want to renegotiate the terms of its lease.

In the long run, if the taxes on the leasehold residential properties were to continue to be relatively higher than the taxes on equivalent residential properties, the market values of the leasehold properties would probably decline and the Band would realize reduced rents and/or tax revenues.



## 6.9 Notes to Chapter 6

1. (page 63) Bill C-31 was a 1985 amendment to the *Indian Act* which provided for the restoration of Indian status to people who had lost their status under the old provisions of the Act, particularly Indian women who had married non-Indian men. The amendment also provided for Indian status to be conferred on the children of these people. Bill C-31 reportedly affected over 60,000 people, many of whom were expected to seek readmission to band membership and residency on reserves.
2. (63) The Salish subdivision agreement provided for a park reserve on the water which had not yet been developed and was not listed on the City's 1988 tax rolls. The City had agreed to pay the Band \$483,125 for installation of the roads, sewers and water mains. The payment was to be in installments related to progress in developing the subdivision.
3. (63) The actual assessed value of Shaughnessy Golf Course in 1988 was \$6,500,000, broken down as follows: business (class 6) land and improvements \$4,007,900; recreational (class 8) land \$2,492,100. In 1989, the assessed value was \$4,822,000, broken down as follows: business (class 6) land and improvements \$382,350; recreational (class 8) land \$4,429,650. Total taxes paid were \$173,072 in 1988 and \$66,921 in 1989. The substantial differences between the 1988 and 1989 assessments were attributable to (1) an in-depth review by the BCAA of its policies and procedures regarding the assessment of golf courses and (2) the resolution of an appeal made by the Golf Club to the BCAA. As a result, the golf course clubhouse had been assessed at what would appear to be on the order of ten or twenty percent of its current actual replacement cost.
4. (63) The actual assessed value of the Musqueam Golf Course and driving range in 1988 was \$1,063,450, broken down as follows: business (class 6) land and improvements \$268,400; recreational (class 8) land \$795,050. In 1989 the assessed value was \$1,412,750, broken down as follows: business (class 6) land and improvements \$268,400; recreational (class 8) land \$1,144,350. Total taxes paid were \$19,921 in 1988 and \$22,347 in 1989.
5. (63) The actual 1988 assessed values of taxable Vancouver properties with riparian permits were \$387,850 for the Pacific Towing Services property and \$62,150 for the International Forest Products Ltd. property. These leaseholders paid property taxes in 1988 of, respectively, \$12,915 and \$2,070. The property leased to the North Fraser Harbour Commission could not be readily identified from the assessment rolls and, since the property was tax-exempt, it was disregarded for the purposes of this study.
6. (63) The property leased to Canadian Forest Products in Richmond was in I.R.No.3. It could not be readily identified from assessment rolls and, because it was at best of marginal interest, it was disregarded for the purposes of this study.
7. (63) The actual 1988 assessed values of the two farms were \$37,295 for Kwai Lai Farms and \$42,425 for Hong Kong Farms. These leaseholders paid property taxes in 1988 of, respectively, \$418 and \$513. Hong Kong Farms did not lease land in 1989.
8. (63) Ed McKim leased 16.6 hectares of land on I.R.No.4 in Delta for farming. The land was served by the municipality's road and water supply systems, but not by the sewer system. The whole of I.R.No.4 was within the provincial Agricultural Land Reserve, i.e. the surrounding lands could only be used for purposes such as farming. The 1989 assessed value was \$117,260 and \$1,323 was paid in taxes.
9. (72) The Musqueam Band Manager advised in a telephone conversation in October, 1989, that there was currently a disagreement over the provision of garbage collection services.
10. (72) See Chapter 3, note 2.
11. (72) *Guerin v. R.* [1984] 6 W.W.R.481, 13 D.L.R. (4th), 321 (S.C.C.)

## 7. WESTBANK CASE

### 7.1 Background

The Westbank Indian Band Reserves are located in the Central Okanagan Regional District (CORD). The CORD includes four unincorporated Electoral Areas ('A','G','H' and 'I') and two municipalities (Kelowna and Peachland).

The three Westbank Reserves are located in Kelowna (Mission Creek No.8), Electoral Area 'G' (Tsinstikeptum No.10) and Electoral Area 'H' (Tsinstikeptum No.9). There were no leaseholds on I.R.No.8 in 1989 and it is disregarded for the purposes of this study. The other two Reserves are in a suburban area on the Western shore of Lake Okanagan between Kelowna and Peachland. Both Reserves are bisected by Provincial Highway 97. The area near I.R.No.9 is commonly known as Westbank.

The total area of the three Reserves in 1989 was approximately 969.4 hectares, including 2.0 hectares within I.R.No.8, 640.8 hectares in I.R.No.9 and 326.6 hectares in I.R. No.10. According to the Westbank Band administration, the Band had 389 members as of April 11, 1989, of whom 275 lived on the Reserves. Another 63 status Indians from other Bands, plus 64 non-status household members, also lived on the Reserves, for a total Reserve Band population of 402. In addition, the Band estimates that 5,000 non-Indians lived on leasehold properties on I.R.No.9 and I.R.No.10. This estimate is significantly different from 1986 census figures, which recorded 2,458 people living on I.R.No.9 and 449 on I.R.No.10, for a total Reserve population, including Indians, of 2,907.

The Westbank Band did not have a village in 1989, in the traditional sense of the term. It had built a non-profit housing development for Band members on common land in I.R.No.9 and, adjacent to the housing development, the Pine Acres long-term care facility. The Band Office was located on I.R.No. 10 in a modern three-storey commercial office building built and owned by the Band.

### 7.2 Leaseholds and land management

In 1989, as indicated in Exhibit 7.1, there were 1,295 taxable leasehold properties on the two Westbank Reserves in the electoral areas, including 1,105 on I.R.No.9 in Electoral Area 'H' and 190 on I.R.No.10 in Electoral Area 'G'. Of the 1,295 properties, 14 were business properties, four had combined business and recreation uses, three were utilities and the remainder were residential. In most cases, all of the lease revenues accrued to locatees. The Band did not receive a share of locatee lease revenue. Approximately 80 percent of the land on the two Reserves was held by locatees.

The 1,274 residential properties included over 1,000 mobile homes in 12 parks on I.R.No.9 and 214 comparatively expensive single family residences in Lakeridge Heights, a planned subdivision on I.R.No. 10. The Lakeridge Heights subdivision was the subject of a 1974 agreement between the federal Crown (Minister of INAC) and the Westbank Indian Band Development Corporation, which is owned by the Band and incorporated in the Province of British Columbia.<sup>1</sup>

The Band's land management program in 1989 was administered by the Chief and a staff which included three members of the Band Council, two secretary-clerks and a maintenance man. All land policy and allocation decisions were made by resolution of the Band Council.

### 7.3 Property taxes and fees

As indicated in Exhibit 7.1 the 1989 property taxes levied on the 1,299 Westbank Indian Reserve leasehold properties in Electoral Areas 'G' and 'H' were as follows :

- school taxes..... \$390,270;
- provincial rural taxes..\$128,631;
- CORD taxes.....\$208,670 (6.7% of the total Electoral Area requisition in the CORD);
- library taxes.....\$ 21,634; and
- other taxes..... \$ 31,736 (including the Regional Hospital District, the Municipal Finance Authority and the British Columbia Assessment Authority).

In addition to these taxes, the leaseholders on I.R.10 in Electoral Area 'G' were levied taxes by the Westside and Lakeridge Fire Protection Districts of \$12,169 and \$2,521 respectively. Separate fees, for which data was not readily available, were also charged for water supply, septic tank cleaning and garbage collection. The Band also charged each leaseholder in Lakeridge Heights a "service fee" equal to one percent of the original list price of the house.

Cumulative tax arrears or delinquencies in 1989 were \$323,863, or 40.7% of the \$795,631 in total 1989 taxes levied on the leaseholders. Because cumulative data for other years were not readily available, trends could not be analyzed.

### 7.4 Services

As is usually the case in unincorporated areas, "municipal" services were delivered by a variety of agencies, including the provincial government, the regional district, special-purpose districts, the Westbank Indian Band and private contractors. In this case, with only a few exceptions, services provided by the CORD to an electoral area were also provided to the Westbank Indian Reserve. It is assumed for study purposes that this included the resident members of the Band. Services provided by the Westbank Indian Band to Lakeridge Heights residents included building design review, covenant protection, maintenance of a small park and maintenance of ditches. Information on the costs of providing these services was not provided by the Band.

#### 7.4.1 Services provided on a user fee basis

Services provided on a user fee basis in 1989 included the following:

- Water supply. On I.R.No.10, Lakeridge Heights leaseholders paid a flat rate for water supplied from Lake Okanagan by the Sookinchute Utility Co., which was owned by the Band. On I.R.No.9, the Band's non-profit housing area was also supplied with lake water by Sookinchute and there were plans to extend the system to serve the mobile home parks and other leasehold properties. There were also some wells and it would appear that, in some cases, water had also been supplied by tanker trucks.<sup>2</sup>
- Garbage collection. There was no defined service. Individual arrangements were made.
- Sewage disposal. All properties had septic tanks and cleanout services were individually arranged. The CORD had constructed a piped system in the Westbank area in 1988-89, and was negotiating with the Band to extend the system to serve I.R.No.9.

In all of these cases, it would be reasonable to equate the cost of the service with the fees paid.

#### 7.4.2 Services provided by special purpose governments

Services provided by special purpose governments in 1989 included the following:

- Fire protection. Leaseholders on I.R.No.10 were levied annual taxes for fire protection by both the Westside and the Lakeridge Fire Protection Districts. As shown in Exhibit 7.1, the total 1989 tax bills were, respectively, \$12,169 and \$2,521. The Lakeridge F.P.D. no longer provided fire protection directly. A firehall built and owned by the Band had been leased to a prefabricated cabinet shop. The Westside F.P.D. also protected I.R.No.9

## EXHIBIT 7.1

## 1989 property taxes levied on Westbank Indian Reserve leaseholders

	----- Indian Reserve No. 9 -----				----- Indian Reserve No. 10 -----				Total IR9+10
	Resi- dential Class 1	Busi- ness Cl. 6	Recre- ation Cl. 8	Total IR9	Resi- dential Cl. 1	Uti- lity Cl. 2	Busi- ness Cl. 6	Total IR10	
No. of properties taxed	1,093	12	4	1,105 <sup>1</sup>	181	3	6	190	1,295
Taxable assessed value	<u>\$27,549,150</u>	<u>\$2,608,700</u>	<u>\$555,650</u>	<u>\$30,713,500</u>	<u>\$20,625,200</u>	<u>\$51,350</u>	<u>\$937,200</u>	<u>\$21,613,750</u>	<u>\$52,327,250</u>
School taxes	<u>\$193,409</u>	<u>\$34,957</u>	<u>\$3,723</u>	<u>\$232,088</u>	<u>\$144,802</u>	<u>\$822</u>	<u>\$12,558</u>	<u>\$158,182</u>	<u>\$390,270</u>
Provincial rural taxes	<u>\$63,367</u>	<u>\$12,000</u>	<u>\$1,278</u>	<u>\$76,645</u>	<u>\$47,438</u>	<u>\$237</u>	<u>\$4,311</u>	<u>\$51,986</u>	<u>\$128,631</u>
Central Okanagan R.D.									
CORD	\$57,820	\$13,414	\$1,166	\$72,401	\$19,881	\$173	\$2,213	\$22,267	\$94,668
CORD (I) <sup>2</sup>	161	42	0	203	7,935	0	512	8,447	8,650
Weed control	582	136	12	730	439	4	38	481	1,211
Garbage dump (I) <sup>2</sup>	11,435	2,997	0	14,432	----- included in CORD (I) -----				14,432
Westbank - parking (I) <sup>2</sup>	1,429	372	0	1,801	na	na	na	na	1,801
- youth club (I) <sup>2</sup>	2,698	702	0	3,400	na	na	na	na	3,400
- Community Hall (I) <sup>2</sup>	1,620	421	0	2,041	na	na	na	na	2,041
Johnson-Bentley A. C.	43,368	9,982	670	54,020	na	na	na	na	54,020
Rec./sr. cit. act. complex	----- included in CORD -----				20,396	179	1,787	22,361	22,361
Urban transit <sup>3</sup>	----- included in CORD -----				2,437	26	264	2,727	2,727
Lakeridge st. lighting (I) <sup>2</sup>	na	na	na	na	3,360	0	0	3,360	3,360
Total CORD taxes	<u>\$119,113</u>	<u>\$28,066</u>	<u>\$1,848</u>	<u>\$149,027</u>	<u>\$54,448</u>	<u>\$382</u>	<u>\$4,814</u>	<u>\$59,643</u>	<u>\$208,670</u>
Okanagan Library	<u>\$10,347</u>	<u>\$2,401</u>	<u>\$209</u>	<u>\$12,957</u>	<u>\$7,747</u>	<u>\$68</u>	<u>\$862</u>	<u>\$8,677</u>	<u>\$21,634</u>
Westside Fire Prot. Dist. - fees paid under separate arrangement-					<u>\$12,057</u>	<u>\$112</u>	<u>\$0</u>	<u>\$12,169</u>	<u>\$12,169</u>
Lakeridge Fire Prot. Dist.	na	na	na	na	<u>\$2,498</u>	<u>\$23</u>	<u>\$0</u>	<u>\$2,521</u>	<u>\$2,521</u>
Other <sup>4</sup>	<u>\$15,180</u>	<u>\$3,521</u>	<u>\$306</u>	<u>\$19,007</u>	<u>\$11,364</u>	<u>\$99</u>	<u>\$1,265</u>	<u>\$12,729</u>	<u>\$31,736</u>
Total taxes levied	<u>\$401,415</u>	<u>\$80,945</u>	<u>\$7,363</u>	<u>\$489,724</u>	<u>\$280,354</u>	<u>\$1,742</u>	<u>\$23,811</u>	<u>\$305,907</u>	<u>\$795,631</u>
Delinquent taxes/arrears	<u>\$124,515</u>	<u>\$81,608</u>	<u>\$0</u>	<u>\$206,123</u>	<u>\$110,142</u>	<u>\$3,451</u>	<u>\$4,148</u>	<u>\$117,741</u>	<u>\$323,863</u>

Notes: 1 Four properties had both business and recreation land use classes, resulting in a total of 1,105 rather than 1,109.

2 Taxes were based on the taxable assessed value of improvements only.

3 Urban transit taxes were levied only on the parts of Lakeridge Heights that were adequately served by the system.

4 Included levies for Regional Hospital District, Municipal Finance Authority and B.C. Assessment Authority.

Source: British Columbia Surveyor of Taxes property tax folios.

for a monthly fee based on \$1.00 per month for a mobile home and \$3.00 each per month for other residences. In both cases, it would be reasonable to equate the cost of the service with the taxes or fees paid.

- Library. All leaseholders were levied taxes by the Okanagan Regional Library system. The total tax bill in 1989 was \$21,634. Because the leaseholders were levied taxes at the same rates as property owners in the rest of the electoral areas, it would be reasonable to equate the cost of the service with the taxes paid.

### 7.4.3 Services provided by the Government of British Columbia

Services provided by the Government of British Columbia in 1989 included the following:

- Police protection. The RCMP provided police protection at an estimated total cost for both Reserves of \$183,090. The cost was shared, with the federal government paying \$58,590 and the provincial government paying \$124,500 in 1989.<sup>3</sup>
- Dedicated local road maintenance, including street cleaning, snow plowing and traffic control. This did not include Highway 97, which bisects the two Reserves. The B.C. Ministry of Transportation and Highways evidently maintained 20.84 kilometres of road on the two Reserves, including 12.43 kilometres on I.R.No.9 and 8.41 kilometres on I.R.No. 10. The estimated 1989 cost of this service was \$201,164, or \$9,653 per kilometre.<sup>4</sup>
- General government services, including the Government Agent, tax administration and subdivision control. The estimated 1989 cost of these services was approximately \$2.00 per person.<sup>5</sup>

As noted above, the police and road maintenance cost estimates were individually calculated. They are regarded as definitive for study purposes. Given the relatively small amount of money involved in the general government unit cost estimate, it is reasonable to assume that any error would not have a significant effect overall.

### 7.4.4 Services provided by the CORD

The allocations of services listed below are based on the best information available for the year 1989. A band representative had indicated that there appeared to be many errors in the draft report, but it was subsequently ascertained that this advice was based on the situation in 1990. Nevertheless, a number of revisions to the earlier draft were made and it was agreed that, for study purposes, it would be sufficient to note that the Band did not necessarily agree with all of the allocations. It may be that the CORD would also disagree with some of the allocations, particularly those that differ from the earlier draft. However, it would appear that the main findings in this case study would not be significantly affected by any outstanding points of disagreement.

(a) Services provided by the CORD to all electoral areas *and* to both Reserves in 1989 included the following (total budgeted 1989 Electoral Area requisition in parentheses):

- Regional District Board (\$28,931).
- Electoral Area elections, UBCM, etc.(\$13,961).
- Grant-in-aid regional (\$9,434).
- Grant - Boys and Girls Club (\$28,750).
- Rescue service (\$20,703).
- 911 emergency telephone operations (\$63,937).
- 911 emergency telephone debt payment (\$15,812)
- Crime Stoppers (\$11,367).
- Victims Witness assistance (\$7,203).
- Septic tank effluent disposal (\$14,424).
- Okanagan Basin Water Board (\$178,321).
- Regional parks (\$123,887).

(b) Services provided by the CORD only to Electoral Areas 'G' and 'H', including both Reserves, included the following (total budgeted 1989 Electoral Area requisition in parentheses):

- Westside Transit (\$82,344). Some parts of Lakeridge Heights were neither served nor taxed.
- Westside sanitary landfill (\$233,573).
- Mount Boucherie Community Centre (\$171,890).
- Mount Boucherie Arena (\$312,177).
- Westside community parks (\$107,976).
- Westside Senior Citizens Activity Centre (\$53,253).

(c) Services provided by the CORD to Electoral Area 'H' and I.R.No.9 only included the following (total budgeted 1989 Electoral Area requisition in parentheses):

- Grants-in-aid Area 'H'(\$4,075).
- Westbank Hall parking lot (\$15,288).
- Westbank Community Hall (\$17,250).

- Johnson-Bentley Aquatic Centre (\$547,080).

(d) Services provided by the CORD to Electoral Area 'G' and/or I.R.No.10 only included the following (total budgeted 1989 Electoral Area requisition in parentheses):

- Grants-in-aid Area 'G' (\$8,667), provided to the whole area, including the Reserve.
- Lakeridge Park Street Lighting (\$2,245), provided only to the Reserve.

(e) Services provided by the CORD to all Electoral Areas *but not* to both Reserves included the following (total budgeted 1989 Electoral Area requisition in parentheses):

- Building inspection (\$124,651), which was provided to I.R.No.10 only, in accordance with the terms of the Lakeridge Heights subdivision agreement. The Band issued its own permits and did its own inspections on I.R.9.<sup>6</sup>
- Dog control (\$27,137), mosquito control (\$1,113), unsightly and untidy premises (\$4,822), weed control (\$18,171), noxious insect control (\$1,921), and Economic Development Commission (\$31,368), none of which were provided to the Reserve, according to the Band.
- Planning (\$189,262), which was not provided to the Reserve, as discussed in Section 2.3 above.

## 7.5 Analysis of tax-service relationships

As discussed in Section 3.3, the relationship between property taxes levied on the leaseholders and the costs of services delivered to them is normally calculated in five steps, as follows:

- calculate the total estimated cost of services to which municipal property taxes can be allocated;
- determine the total municipal property tax levied on the leaseholders;
- determine the portion of the municipality's net total revenue from property taxes;
- calculate the adjusted total cost of services that can be attributed to leaseholder property taxes; and
- calculate the difference between the adjusted total cost of services and the total property tax levied.

Because the CORD had a separate budget for each of the services it provided and, in each budget, indicated what share of the cost was borne by Electoral Area requisitions, it is not necessary to perform the kind of analysis of revenues and expenditures that is done where the case involves an incorporated municipality. In other words, of the foregoing five steps, the third and fourth are omitted in this case. Similarly, as noted elsewhere, the cost of each of the services provided by the provincial government must be separately analyzed rather than derived from a budget analysis.

### 7.5.1 The regional district tax-service relationship

The regional district cost calculations in this case are based on the district's net total expenditure on each allocable service and on *cost factors* derived primarily from information about assessed property values and population, as indicated in Exhibit 7.2. The 1986 census figures shown in Exhibit 7.2 are used for the purposes of this case study, first because they were used by the CORD for its own calculations and, secondly, because they are considered to be reliable, since the Reserve residents evidently participated fully in the 1986 census.

The rationale and methods for determining service cost factors are described in Section 3.2. The "variable services to property" which were provided by the CORD to all electoral areas and to both Reserves included all those listed in paragraph 7.4.4(a) above, except for regional parks. The Reserve residents and leasehold properties served included:

- 11.72% by population of the residential properties in the CORD Electoral Areas, which in turn comprised 79.00% of the total actual assessment in the CORD Electoral Areas;

## EXHIBIT 7.2

## Central Okanagan Regional District population, area and assessed values

Population and area	Electoral area(s) / Indian Reserves			
	E.A.'G'/IR10	E.A.'H'/IR9	E.A.'G'+ 'H'	All E.A.s
1986 census population				
Off-Reserve population	5,666	7,779	13,445	21,903
Westbank Reserve population	<u>449</u>	<u>2,458</u>	<u>2,907</u>	<u>2,907</u>
Total population	<u>6,115</u>	<u>10,237</u>	<u>16,352</u>	<u>24,810</u>
Westbank Reserve population as a percentage of the total <sup>1</sup>				
Tsinstikeptum I.R.No.9 (%)	0.00	24.01	15.03	9.91
Tsinstikeptum I.R.No.10 (%)	<u>7.34</u>	<u>0.00</u>	<u>2.75</u>	<u>1.81</u>
I.R.No.9 + I.R.No.10 (%)	<u>7.34</u>	<u>24.01</u>	<u>17.78</u>	<u>11.72</u>
Area in hectares				
Off-Reserve area (hectares)	±106,663.4	±36,579.2	±143,242.6	±270,082.6
Westbank Reserve area (hectares)	<u>326.6</u>	<u>640.8</u>	<u>967.4</u>	<u>967.4</u>
Total area (hectares)	<u>±106,990.0</u>	<u>±37,220.0</u>	<u>±144,210.0</u>	<u>±271,050.0</u>

Actual 1989 assessed values<sup>2</sup>Electoral area(s) and percentage of total value in class<sup>1</sup>

	'G'	%	'H'	%	'G'+ 'H'	%	All E.A.s	%
Residential (class 1)	\$276,168,600	83.22	\$265,037,300	81.56	\$541,205,900	82.40	\$782,699,814	79.00
Utilities (class 2)	3,999,900	1.21	4,920,900	1.51	8,920,800	1.36	30,792,459	3.11
Business (class 6)	43,795,500	13.20	38,719,800	11.91	82,515,300	12.56	133,988,847	13.52
Recreation (class 8)	2,128,300	0.64	5,117,700	1.58	7,246,000	1.10	8,287,550	0.84
Other classes	<u>5,740,800</u>	<u>1.73</u>	<u>11,181,600</u>	<u>3.44</u>	<u>16,922,400</u>	<u>2.58</u>	<u>35,013,821</u>	<u>3.53</u>
Total assessed value	\$331,833,100	100.00	\$324,977,300	100.00	\$656,810,400	100.00	\$990,782,491	100.00

Westbank Indian Reserve(s) and percentages of class values in Electoral Area(s)<sup>1</sup>

	% of			% of			% of		
	IR.9	'H'	All	IR.10	'G'	All	IR.9+10	'G'+ 'H'	All
Residential (class 1)	\$27,549,150	10.39	3.52	\$20,625,200	7.47	2.64	\$48,174,350	8.90	6.15
Utilities (class 2)	0	0.00	0.00	51,350	1.28	0.16	51,350	0.58	0.16
Business (class 6)	2,728,700	7.05	2.04	997,200	2.28	0.74	3,725,900	4.52	2.78
Recreation (class 8)	<u>555,650</u>	<u>10.86</u>	6.70	<u>0</u>	<u>0.00</u>	<u>0.00</u>	<u>555,650</u>	<u>7.67</u>	6.70
Total	<u>\$30,833,500</u>			<u>\$21,673,750</u>			<u>\$52,507,250</u>		

Notes: 1. The percentages shown in italics are used in the cost factor calculations. All other figures are included only to complete the tables.

2. The total actual assessed values shown for all electoral areas are firm figures taken from BCAA records. The values for Electoral Areas 'G' and 'H' are estimates derived from firm aggregated data on taxable assessed values for hospital purposes and disaggregated data on the values of exempt properties. The estimated values of exempt properties are taken from computer printouts provided by the Kelowna regional office of the BCAA.

Sources: B.C. Assessment Authority; B.C. Surveyor of Taxes property tax folios; Central Okanagan Regional District; B.C. Ministry of Municipal Affairs, Recreation and Culture: *Statistics Relating to Regional and Municipal Governments in British Columbia 1988*.

- ¥ 0.16% by value of the utility properties, which comprised 3.11% of the total actual assessment in the CORD Electoral Areas;
- ¥ 2.78% by value of the business properties, which comprised 13.52% of the total actual assessment in the CORD Electoral Areas; and
- ¥ 6.70% by value of the recreation properties, which comprised 0.84% of the total actual assessment in the CORD Electoral Areas.

The total cost factor for these services to the Reserves was therefore  $(.7900 \times .1172) + (.0311 \times .0016) + (.1352 \times .0278) + (.0084 \times .0670) = .0971$

For CORD "services to people", the cost factor calculation is based on the population served which, in this case, included 2,907 Reserve residents. The cost factor for regional parks, which were provided to all electoral areas, was therefore .1172. Alternatively, as discussed in Section 3.2, the cost factor for regional parks was the same as that determined for variable services to property, or .0971.

The Westside sanitary landfill was the one "variable service to property" which was provided by the CORD only to Electoral Areas 'G' and 'H', including both Reserves. The total cost factor for this service to the Reserves was  $(.8240 \times .1778) + (.0136 \times .0058) + (.1256 \times .0452) + (.0110 \times .0767) = .1531$ .

The cost factor for CORD "services to people" that were delivered only to Electoral Areas 'G' and 'H', including all Reserve residents, was .1778. Alternatively, the cost factor was the same as that determined above for variable services to property, or .1531. The services provided included all those listed in paragraph 7.4.4(b) above, except for the Westside sanitary landfill.

Grants-in-aid to Area 'H' was the one "variable service to property" which was provided by the CORD only to Electoral Area 'H' and I.R.No.9. The total cost factor for this service to the Reserves was  $(.8156 \times .2401) + (.0151 \times .0000) + (.1191 \times .0705) + (.0158 \times .1086) = .2105$ .

The cost factor for CORD "services to people" that were delivered only to Electoral Area 'H', including I.R.No.9, was .2401. Alternatively, the cost factor was the same as that determined above for variable services to property, or .2105. The services provided included the Westbank parking lot, the Westbank Community Hall and the Johnson-Bentley Aquatic Centre.

Grants-in-aid to Area 'G' was the one "variable service to property" which was provided by the CORD only to Electoral Area 'G' and I.R.No.10. The total cost factor for this service to the Reserves was  $(.8322 \times .0734) + (.0121 \times .0128) + (.1320 \times .0228) + (.0064 \times .0000) = .0643$ . The total cost factor for Lakeridge Park street lighting, which was provided only to I.R.No.10, was 1.0000.

Building inspection was the one "variable service to property" which was provided to all electoral areas but was not provided to I.R.No.9. The service was provided to I.R.No.10 only, in accordance with the terms of the Lakeridge Heights subdivision agreement. The total cost factor for this service to the Reserves was  $(.7900 \times .0181) + (.0311 \times .0016) + (.1352 \times .0074) + (.0158 \times .0000) = .0154$ .

As discussed in Section 3.2.3, two methods of calculation are used in estimating costs for each of the "soft" services and, accordingly, two total cost estimates are calculated. By one method, as shown in Exhibit 7.3, the total 1989 estimated cost of allocable CORD services to the Westbank Reserves was \$362,546. As shown in Exhibit 7.1, the total 1989 CORD property tax levied on the leaseholders was \$208,670. The portion of CORD service costs not covered by leaseholder property taxes was therefore \$153,876.

By the second method, the total 1989 estimated cost of allocable CORD services to the Reserves was \$324,924. The portion of CORD service costs not covered by leaseholder property taxes was \$116,254.



**EXHIBIT 7.3****Calculation of the Westbank Indian Reserve / CORD tax-service relationship**

Service provided	total Electoral	Calculation method #1		Calculation method #2	
		cost	Reserve	cost	Reserve
<b>by CORD</b>	<b>Area cost share</b>	<b>factor</b>	<b>cost share</b>	<b>factor</b>	<b>cost share</b>
Regional District Board	\$28,931	.0971	\$2,809	.0971	\$2,809
Electoral Area elections, UBCM, etc.	13,961	.0971	1,356	.0971	1,356
Grant-in-aid regional	9,434	.0971	916	.0971	916
Grant - Boys and Girls Club	28,750	.0971	2,792	.0971	2,792
Rescue service	20,703	.0971	2,010	.0971	2,010
911 emergency telephone operations	63,937	.0971	6,208	.0971	6,208
911 emergency telephone debt	15,812	.0971	1,535	.0971	1,535
Crime Stoppers	11,367	.0971	1,104	.0971	1,104
Victims Witness assistance	7,203	.0971	699	.0971	699
Septic tank effluent disposal	14,424	.0971	1,401	.0971	1,401
Okanagan Basin Water Board	178,321	.0971	17,315	.0971	17,315
Regional parks	123,887	.1172	14,520	.0971	12,029
Westside Transit	82,344	.1778	14,641	.1531	12,607
Westside sanitary landfill	233,573	.1531	35,760	.1531	35,760
Mount Boucherie Community Centre	171,890	.1778	30,562	.1531	26,316
Mount Boucherie Arena	312,177	.1778	55,505	.1531	47,794
Westside community parks	107,976	.1778	19,198	.1531	16,531
Westside Sr. Citizens Activity Centre	53,253	.1778	9,468	.1531	8,153
Grants-in-aid Area 'H'	4,075	.2105	858	.2105	858
Westbank Hall parking lot	15,288	.2401	3,671	.2105	3,218
Westbank Community Hall	17,250	.2401	4,142	.2105	3,631
Johnson-Bentley Aquatic Centre	547,080	.2401	131,354	.2105	115,160
Grants-in-aid Area 'G'	8,667	.0643	557	.0643	557
Lakeridge Park Street Lighting	2,245	1.0000	2,245	1.0000	2,245
Building inspection	124,651	.0154	1,920	.0154	1,920
Total cost of services allocable to leaseholder property taxes			\$362,546		\$324,924
Total CORD property taxes levied on Reserve leaseholders			<u>208,670</u>		<u>208,670</u>
CORD service costs not covered by leaseholder property taxes			<u>\$153,876</u>		<u>\$116,254</u>

**7.5.2 The provincial rural tax-service relationship**

From Section 7.4.3, the total 1989 estimated cost of provincial government services to the Westbank Indian Reserves, including police protection, local road maintenance and general government services, was (\$124,500 + \$201,164 + \$5,814 =) \$331,478. From Exhibit 7.1, the total 1989 provincial rural tax levied on the leaseholders was \$128,631. The portion of provincial government service costs not covered by leaseholder property taxes was (\$331,478 - \$128,631 =) \$202,847.

## 7.6 Capital Works

The capital works of interest in this case included the following:

- the roads owned and maintained by the provincial government, including Highway 97;
- the roads owned and maintained by the Band;
- the waterworks built and operated by the Band through the Sookinchute Utility Corporation;
- the sewage system recently built in the Westbank area by the CORD;
- the Inland gas line easement in Lakeridge Heights; and
- the Band's buildings and grounds, including the Band office building, the Wild 'n' Wet Amusement Park, Mission Creek Native Park, Pine Acres Home, and the non-profit housing development.

There appears to have been no particular conflict or confusion between the Band and the provincial government regarding the ownership and maintenance of the two road systems although, as noted elsewhere, it has not been verified for study purposes that all of the roads that were reportedly maintained by the province had in fact been formally dedicated to the provincial Crown. In I.R.No.9, the provincial road system flanking Highway 97 appears to have been designed specifically to take advantage of the commercial development opportunities offered by the area's proximity to the highway. Future developments such as street lighting should pose no particular problems.

Similarly, there appear to have been no conflicts or confusion regarding underground services, in part perhaps because they were still limited in extent. The Band expected to continue to expand its waterworks system much like an improvement district would. Any extension of the CORD Westbank sewage system to I.R.9 would be financed and built on the basis of a contract acceptable to both parties.<sup>7</sup> The Inland gas line easement was well incorporated into the Lakeridge Heights development and appeared to pose no apparent impediment to the economic development of the land.

The Band's buildings, including the Band office building, Pine Acres Home and the non-profit housing development, were worth over \$5,000,000 in 1989. Their high quality, together with the high quality of the Lakeridge Heights development, suggests an approach to capital development which has been responsible and far-sighted. The approach was also entrepreneurial, including Band companies set up for general development, construction, utilities, economic development and manufacturing, as well as the Wild 'n' Wet Amusement Park, a successful water slide venture.

## 7.7 Issues

It would appear that the relationships between the Band and its neighbors were relatively amicable up to 1989. Generally, the CORD treated the Band in the same way as it treated anybody else. For its part, the Band does not seem to have demanded special treatment and, in some of its developments, appears to have made some very positive contributions to the larger community. The issues noted by the CORD included the sewage system negotiations in the Westbank/I.R.No.9 area, building inspections on I.R.9 and, as noted in Section 1.3, the feasibility of reaching taxation and service agreements with the Band Council. While the Band provided no written comments, a Band representative made it clear that policing was a main point of concern, as noted elsewhere.

## 7.8 Observations

The evidence regarding existing agreements and capital works indicates that the Westbank Indian Band had, over the years, cooperated with the local and provincial governments in the delivery of services and the installation of infrastructure. There were some agreements in place, and there had been continuing negotiations regarding the delivery of specific services. The essence of the agreements was that, for services provided to the Reserve, the local government would collect the same taxes and/or fees as it collected for services delivered off the Reserve. While the participation of the Reserve leaseholders in a variety of local service areas within the CORD complicated service delivery arrangements, the only local tax-service imbalance in the system appears to have been the one involving the Central Okanagan Regional District.

In 1989, the CORD levied \$208,670 in property taxes on the Westbank Reserve leaseholders. The evidence suggests that these taxes only covered between 58% and 64% of the cost of CORD services delivered to the residents of the Reserve. In other words, it can be argued that the Reserve residents received "subsidized" regional

government services costing on the order of \$120,000 to \$150,000.<sup>8</sup> While the subsidization of services to residential properties from non-residential property taxes is a common pattern in British Columbia, the subsidization effect in this case was exacerbated by the relatively low per capita assessed value of mobile homes.

Similarly, the provincial government levied \$128,631 in rural property taxes on the Westbank Reserve leaseholders in 1989. The evidence indicates that these taxes only covered about 39% of the cost of corresponding provincially-financed services delivered to the residents of the Reserve. As noted in Section 2.2.9, the estimated province-wide share of the cost of these services that was borne by rural property taxes in 1989 was approximately 22 percent. At the same time, there is evidence indicating that, in urban fringe areas to which the Westbank area might be compared, the average overall cost recovery level has been approximately 70 percent. The lower recovery level in the Westbank case was probably attributable at least in part to the relatively low assessed value of the large number of mobile homes on I.R.No.9. In any event, the question is probably academic, since it would appear that this tax-service relationship would not be at issue in the context of the independent band taxation provisions of Bill 64, as discussed below.

Analysis of the taxation figures shown in Exhibit 7.1 indicates that, in 1989, the total property tax levy on the average I.R.No.10 residential leaseholder was  $(\$280,354 / 181 =) \$1,549$ , or about 4.2 times the levy of \$367 on the average I.R.9 leaseholder. Similarly, the average provincial tax levy of \$262 in I.R.No.10 was about 4.5 times the average of \$58 in I.R.No.9. These differences were attributable to the considerably higher average assessed value of the residential properties on I.R.No.10.

In contrast, the average CORD levy of \$301 in I.R.No.10 was only about 2.8 times the average of \$109 in I.R.No.9. The proportional discrepancy is explained by the fact that only I.R.9 leaseholders were levied taxes for the Johnson-Bentley Aquatic Centre in Westbank. These taxes averaged \$40 per leaseholder. This cost had been a continuing subject of controversy in the whole Westbank area of Electoral Area 'H'.

Cumulative leaseholder tax arrears or delinquencies in 1989 were \$323,863, or 40.7% of the \$795,631 in total 1989 taxes levied on the leaseholders. If the provincial government, which served as the tax collector in this case, were to write off these delinquent taxes, it would end up with a net loss of  $(\$128,631 - \$323,863 =) \$195,232$ , because, whether collected or not, the B.C. Surveyor of Taxes would still have to transfer all of the taxes that had been levied by other taxing authorities (i.e. school district, regional district, hospital district, improvement districts, BCAA and MFA).

The ability of the provincial and regional governments to adjust the rates at which they impose property taxes on Westbank Reserve leaseholders is constrained by the provisions of B.C.'s *Indian Self Government Enabling Act* (Bill 64) discussed in Section 1 of this report. Under Bill 64's concurrent taxation provisions, the government may reduce its tax rates where the Band Council provides services financed by Band tax revenues if those services would otherwise have been paid for by the government. It would appear that the ability of both the provincial and regional governments to reduce their leaseholder tax levies on this basis would be quite limited.

Under Bill 64's independent band taxation provisions, the Band could assume authority for its own taxation. All provincial taxing authorities, including the province, the CORD, and improvement districts, would automatically cease imposing taxes on leaseholders and the Band would ultimately assume responsibility for providing all services to the Reserve, either directly or through contracts with other governments. It appears, however, that road maintenance and police services would continue to be provided regardless of the Band's choice of taxation options, in effect providing the Band with tax room analogous to the tax room provided for municipalities who receive "free" police services from the province because their populations are less than 5,000. In practical terms, the cost to the Band of assuming direct responsibility for these two services would probably be considerably more than the related revenue it could hope to realize from leaseholder taxation, particularly with respect to road maintenance. It would therefore appear to be to the Band's advantage to accept the tax room provided by the provincial government and to continue the same service relationships for these two functions, albeit with possible improvements in quality.

With regard to the services provided by the CORD, the main issue under the independent band taxation option would seem to be whether or not the Band's leaseholders are to be regarded as part of the larger CORD community or as residents of an entirely separate community. If the former, then the tax and service relationships might not in fact change very much. If on-Reserve services, the CORD would charge the Band an amount equivalent to the amount usually paid from property taxation, while the Band would pay its fair share for off-Reserve services. If the latter, then the CORD would charge the Band full cost prices for on-Reserve services and the Reserve residents would use off-reserve CORD services as any other non-resident would. The distinction is particularly significant in

the case of an off-Reserve recreational facility such as the Johnson-Bentley Aquatic Centre, for which Reserve residents and businesses were levied \$54,020 in 1989, as shown in Exhibit 7.1 (as shown in Exhibit 7.3, the calculated "Reserve cost share" for this facility was \$115,160 or \$131,354). It should be kept in mind that such a facility was developed with the participation of leaseholders who were paying a share of the debt service costs through their property taxes. In this case, if the payment of the Reserve leaseholders' share of the cost were to cease, the off-Reserve citizens would be left with a very large tax burden.

If the Westbank Indian Band were to impose new taxes while the CORD and the province maintained their present taxes, the implications would be as follows:

- the residential leaseholders would have to absorb the tax;
- the non-residential leaseholders could try to pass on the additional costs to their customers, although their ability to do so would probably be severely limited; and/or
- the leases could be renegotiated to reduce their amount, in which case some losses would be incurred by locatees.
- In the long run, if the taxes on the leasehold properties were to continue to be relatively higher than the taxes on equivalent off-reserve properties in the same locality, the market values of the leasehold properties would probably decline and the locatees would realize reduced rents and/or tax revenues.

## 7.9 Notes to Chapter 7

1. (page 75) The Lakeridge Heights subdivision agreement is in the form of an indenture dated November 16, 1974, between "Her Majesty the Queen in the Right of Canada" and the Westbank Indian Band Development Company Limited. The agreement provides for a term of 99 years, terminating on June 12, 2073. Only single-family dwellings are to be built and all construction is to conform to the provisions of the National Building Code of Canada. The Company is permitted to grant easements to any public utility. Para. C18 provides that the lessee will, "...during the Term, at its own expense, promptly observe, perform, execute and comply with all laws, rules, requirements, orders, directions, ordinances and regulations of every authority having such competence, civic, municipal, provincial, federal, band or otherwise, concerning the Demised lands and buildings, or other improvements constructed therein and thereon not inconsistent with the Indian Act...".
2. (76) There had been some problems with water supply to I.R.No.9. At one time, the band had an arrangement with the Lakeview Irrigation District to supply water from its Rose Valley Lake reservoir on Bear Creek. This arrangement had required special permission from the provincial government because the Reserve was outside the boundaries of the District. The arrangement was discontinued several years ago.
3. (78) The policing cost estimate was provided by the Police Services Branch of the B.C. Ministry of Solicitor General. The estimate was based on an analysis using population and crime ratios for estimating the police strength required. The Westbank Indian Reserve population was found to represent approximately 11% of the estimated 1988 population of the Kelowna Provincial Force detachment and 9% of Criminal Code offences. Assuming that these are the determinants of police strength, the Reserves would require roughly 10% of the current general duty police strength of 20, or two RCMP members. The federal-provincial policing agreement was to end in 1990/91, in which year the costs were to be shared on a 30% federal - 70% provincial basis. In 1989/90, the sharing formula was 32%-68%. Based on an estimated cost of \$91,545 per provincial force member in 1989/90, the total cost would have been \$183,090, with the federal government paying \$58,590 and the province paying \$124,500. There was evidently a position in the detachment for an Indian Special Constable whose time was to be allocated 80% to community and crime prevention activities on Indian reserves and 20% to enforcement on and off reserves.

A Band representative questioned the policing cost estimate for the following reasons:

- there were only two regular RCMP officers patrolling the whole west side of the area;
- the RCMP did not actually patrol the Reserves, in spite of the Band's position that it wanted such a service;
- there was in fact no Indian Special Constable; and
- the response to emergencies was sometimes inadequate because of traffic congestion on the bridge across Lake Okanagan.
- The estimate was reviewed with respect to these points, and with reference to the data in Exhibit 7.2, as follows:
- Two officers on regular patrol 24 hours per day would be equivalent to six officers on regular shifts of eight hours each, i.e. 30 percent of the detachment's 20 officers were assigned to regular patrol on the west side. Since the Reserves comprised some 17.78 percent of the population on the west side this would translate into an equivalent allocation of about one patrol officer to the Westbank Reserves.

- The whole west side probably constituted approximately  $(144,210 \div 271,050 =)$  53 percent of the area served by the RCMP detachment (the detachment's service area boundaries did not correspond precisely with the CORD's boundaries). On this basis,  $(20 \times .53 =)$  10.6 RCMP officers could be allocated to the west side. Of this number, the Reserve's share on the basis of area would be  $(10.6 \times 967.4 \div 144,210 =)$  0.07 officers.
  - The west side contained approximately  $(16,352 \div 24,810 =)$  66 percent of the population served by the detachment. On this basis,  $(20 \times .66 =)$  13.2 RCMP officers could be allocated to the west side. Of this number, the Reserve's share on the basis of area would be  $(13.2 \times .1778 =)$  2.35 officers.
  - While the foregoing figures might provide support for an argument that the service provided by the RCMP was less effective or efficient than it should have been, the general practice in this study has been to make no attempts to judge the relative effectiveness or efficiency of performance in service delivery.
  - For study purposes, the issue is probably not critical, as discussed in Section 7.8. On this basis, it was decided that the Solicitor General Ministry's cost estimate was appropriate and acceptable for study purposes.
4. (page 78) The road maintenance cost estimate was provided by the South Okanagan Highways District Office of the B.C. Ministry of Transportation and Highways. A dummy budget run yielded an estimated cost of \$201,164 per year to maintain the roads listed below. The roads include the following:

I.R.No.9	Length (km)	I.R.No.10	Length (km)
Gossett Road	0.24	Westside Road	2.13
Bering Road	0.63	Old Ferry Wharf Road	0.92
Butt Road	0.91	Bear Creek Road	0.81
Louie Drive	1.66	Tomat Avenue	0.92
Carrington Road	1.23	Michelle Crescent	0.56
Boucherie Road	0.75	Essen Road	0.12
Old Okanagan Highway	2.70	Alexander Place	0.13
Shannon Lake Road	0.38	Campbell Road	0.90
Elk Road	1.40	Manuel Road	0.30
Ridge Estates Drive	0.98	Abel Street	0.36
Deer Road	0.28	Abel Place	0.16
Grizzly Road	0.14	Derrickson Place	0.17
Daimler Drive	0.58	Bayview Road	0.38
East Boundary	<u>0.55</u>	Road 'A-1" (unregistered)	<u>0.55</u>
Total	<u>12.43</u>	Total	<u>8.41</u>

It was considered unnecessarily laborious to verify for study purposes that all of these roads had in fact been formally dedicated to the provincial Crown. It may be that some of them have not been so dedicated.

5. (78) The provincial rural government services cost estimate of \$2.00 per capita is drawn from a management report prepared in the University of Victoria School of Public Administration (Bernard 1990).
6. (page 79) The CORD made the following point of clarification in a letter dated October 10, 1990:  
Under Clause 7.7 of the report, where it suggests the Band's unwillingness to permit the Regional District of Central Okanagan to carry out building inspections on I.R. #9, we wish to note that this is not correct in that the Band Council wishes the Regional District to provide building inspection services, however we are reluctant to do so without the band first adopting a bylaw similar to the Regional District Bylaw which includes the adoption of the British Columbia Building Code and Plumbing Code. This is now under consideration and until the adoption of the bylaw by the Band Council together with an appropriate agreement being entered into between the parties involved, the Regional District is reluctant to provide the service.
7. (83) The CORD made the following point of clarification in a letter dated October 10, 1990:  
With respect to sewer services, the Regional District is insisting that any agreement entered in to be a three party agreement, namely the Regional District, the Indian band Council and the Federal Government, as the Regional District must receive guarantees and we believe that the only way that these guarantees can be met is through a three party agreement.
8. (84) These figures are based on an assumption that the Band members received the same benefits from the CORD as the leaseholders. For example, it is assumed that the Band members used the Westbank recreation facilities to the same extent as the leaseholders, etc. If it were assumed instead that the Band members received no benefits from the CORD whatsoever, and that they comprised approximately ten percent of the Reserve population in 1989, then the total estimated cost of allocable services would have been on the order of  $(\$326,546 \times .9 =)$  \$326,291 or  $(\$324,924 \times .9 =)$  \$292,432. In other words, the leaseholder property taxes would have only covered between 64 and 71 percent of the cost of CORD services

delivered to the Reserve. The service costs not covered by leaseholder property taxes would have been either \$117,621 or \$83,762, i.e. the services would have “subsidized” by an amount on the order of \$85,000 to \$115,000.

## 8. SUMMARY OBSERVATIONS

Although the sample of five cases is small, it appears to cover reasonably well the various types of situations in which issues regarding tax and service relationships would be likely to arise. In the Cowichan and Burns Lake cases, the leaseholds consisted predominantly of non-residential properties within municipalities. In the Musqueam and Westbank cases, while there were some non-residential uses, most of the leaseholds were residential, in one case within an unincorporated area. The Lake Babine case illustrates a situation where there were issues regarding service delivery within a municipality but the potential for leasehold development had not yet been pursued. Thus, there is a reasonable sample of land use types and intergovernmental relationships.

As noted in Section 1.3, the case study leaseholds within municipalities generated approximately 30 percent of all municipal property taxes levied on such leaseholds in the province. Had the Squamish case studies been included, the figure would have been on the order of 80 percent. Thus, as noted in Section 1.1, the selected cases had some built-in biases in that the importance of the financial issue would have required some kind of accommodation to be worked out between the band and the local government. Furthermore, it seems unlikely that these cases would help clarify situations where services had not been an issue, for example because the only leaseholds were utility easements. It therefore follows that the selected cases cannot be regarded as being fully representative of all of the leasehold situations in British Columbia.

As noted in Section 1.2, the contents of this report can be regarded as having been augmented or, in some respects, superseded by the contents of the booklet entitled *Indian Government Taxes and Services in British Columbia: Alternative Under Bill C-115 and Bill 64* (Bish Clemens and Topham, April 1991). The methodology used in this report for costing services was further developed and simplified in the preparation of the booklet, as noted in Section 3.4. While this methodology is relatively straightforward and yields intuitively sensitive results, sufficient data is also provided in each case study for other analysts to select alternative approaches. The study team believes, however, that the general conclusions would not be altered by employing more costly approaches.

In this chapter, the principal conclusions are divided into the following three main sections: service integration, agreements, and tax and service cost relationships. Options for future policies are then examined, followed by some concluding observations.

### 8.1 Service Integration

In most cases, the services delivered to both leasehold and non-leasehold Indian reserve areas have been closely integrated with the services delivered to off-reserve areas in the same locality. This includes such physical services as roads, water supply and sewerage, as well as most other services, such as fire protection. The exceptions include the self-contained operations of the Babine Forest Products mill on Burns Lake Indian Reserve No. 19, located 12 miles east of the Village of Burns Lake proper, and some of the services delivered to the Westbank reserves, notably the water supply system owned and operated by the Sookinchute Utility Corporation.

Where there has been a close physical and economic integration of reserve leasehold areas with surrounding off-reserve territory, it has typically involved contractual arrangements between the band and the local municipal or regional government. In these cases, it would be very costly and in many respects highly impractical to introduce new, segregated service delivery systems.

## **8.2 Agreements**

The contractual agreements involving bands, INAC and municipal or regional governments appear to have worked quite well in the Musqueam, Cowichan and Westbank cases. In the Burns Lake and Lake Babine cases, however, there were problems which appear to have been largely attributable to inadequate contract management by all of the parties involved. The difficulties were evidently exacerbated by INAC's historic policy of requiring Ottawa central office approval of local service contracts, especially those concerning capital expenditures, and by INAC's more recent practice of evidently declining to become a signatory to service contracts between bands and local governments, apparently on the grounds that an Indian band can sue or be sued and, in general, act much like a corporation. On the latter point, both the Village of Burns Lake and the Central Okanagan Regional District have indicated that they were not prepared to enter into contracts with bands without INAC participation. The weight of the evidence suggests, however, that band governments can and should be able to enter into contracts independently.

Recognizing band governments as the appropriate contracting parties does not eliminate all problems, however. Many bands do not have adequate control over their own resources, particularly with respect to funds for capital expenditures. It would seem that, if INAC is encouraging bands to enter into independent contractual arrangements, it should also be emphasizing programs like the Alternative Financial Arrangement, whereby a band that has no other resources can be more aware of its own fiscal situation prior to entering into an agreement requiring a long term fiscal commitment.

## **8.3 Tax and service cost relationships**

### **8.3.1 B.C. property taxation practices**

The comparison of tax-service costs between an Indian reserve and the local off-reserve area must take into account both the role of property taxation within the locality and the overall tax-service cost relationship. There are two key property taxation considerations, of which the first is that property taxes typically account for only 55 to 60 percent of a municipality's annual revenue.

The second consideration is that business and industrial properties are usually taxed at two or three times the rate at which residential properties are taxed. While there are a limited number of studies on the subject,<sup>1</sup> there seems to be a consensus that revenues from these non-residential properties are used to subsidize the provision of services to residents, especially in the case of local government services. In other words, residential property owners pay less than full cost for the services they receive.

### **8.3.2 Reserves as fringe areas**

In one sense, an Indian reserve within a municipality is analogous to an adjacent fringe area in that both the fringe area and reserve residents often work, shop and recreate within the municipality, yet pay no property taxes to it. Municipal officials often regard fringe area and reserve residents as being subsidized by the municipality. Economic analyses do not in general support a subsidization conclusion because fringe area residents using the city contribute to its economy and thus contribute to higher property values, higher property tax revenues, increases in other municipal revenue sources, and higher incomes for municipal residents generally.

In addition, fringe area or reserve residents in British Columbia often must pay full cost for a service delivered by a regional or improvement district that does not contain the kind of high-valued non-residential properties usually found in municipalities. In other words, the commercial and industrial property tax subsidy noted above is not available to such fringe area or reserve residents. An appreciation of both the subsidization and fringe area situations is needed for a proper understanding of the context in which reserve taxes and service costs should be analyzed.



### 8.3.3 Reserve tax and service cost relationships

The key findings from each of the four municipal case studies are summarized in Exhibit 8.1. Only data from cost calculation number 1 are used as they are sufficient for the purposes of this discussion.

Given the foregoing observations regarding the use of business and industrial property taxes to subsidize residential taxpayers, it can be expected that, in those cases where the leasehold land uses were primarily commercial or industrial, the municipality's service costs would have been less than the property taxes levied. The same expectation applies in the case of a regional district. This expectation was confirmed in the Burns Lake case, where the dominant leasehold was the Babine Forest Products mill, and in the Cowichan case, where the leaseholds were primarily commercial. However, the corresponding expectation that predominantly residential land uses would generate insufficient revenue to cover service costs was not borne out in the Musqueam case, because the average assessed value of the residential leaseholds on the reserve was roughly twice the residential average for Vancouver as a whole. In the Lake Babine case, where there were no leasehold lands, the costs of providing soft services to reserve residents were evidently borne entirely by the Village of Burns Lake.

Two important questions arise from the foregoing observations:

- Did the band members living on the reserve benefit from the revenue surpluses generated by the taxation of commercial and industrial leasehold properties on the reserve, or did the subsidies from such surpluses accrue only to non-Indian residents of the municipality?
- Did the municipality treat the band members living on untaxed reserve lands as residents of the municipality with respect to the distribution of benefits from non-residential property tax subsidies, or did it treat them as it would the residents of a fringe area?

In the Cowichan case, where only a small part of the unleased reserve land was within the City of Duncan and the City provided few services under contract to the Band, it would appear that the Band members living in Somenos Village did not benefit from the subsidization effect to the same degree as did the off-reserve residents of Duncan. While the same would seem to be true for Band members living on the reserve lands outside Duncan, it must be kept in mind that this part of the reserve was in a fringe area.

In the Burns Lake case, where all of the Band members resided in the Village of Burns Lake, the degree to which the Band members could be seen to benefit from the subsidy generated by the Babine Forest Products mill would be a function of the relationship between (1) the contract prices paid by the Band for services purchased from the Village of Burns Lake and (2) the actual costs incurred by the Village in providing the services. While the evidence regarding

#### Exhibit 8.1

##### Summary of municipal tax and service cost relationships

	Burns Lake	Lake Babine	Cowi- chan	Mus- queam
a. Total municipal property taxes levied on reserve leaseholders	\$110,327	\$ 0	\$196,884	\$432,714
b. Total cost of services allocable to leaseholder property taxes <sup>1</sup>	<u>25,164</u>	<u>48,156</u>	<u>121,532</u>	<u>430,746</u>
c. Total cost revenue balance <sup>2</sup> = (a) minus (b)	<u>\$ 85,163</u>	- <u>\$48,156</u>	<u>\$ 75,352</u>	<u>\$ 1,968</u>
d. Adjusted total service cost = share financed by property taxation <sup>1</sup>	<u>14,520</u>	<u>27,786</u>	<u>76,565</u>	<u>344,597</u>
e. Adjusted cost revenue balance <sup>2</sup> = (a) minus (d)	<u>\$ 95,807</u>	- <u>\$27,786</u>	<u>\$120,319</u>	<u>\$ 88,117</u>

Notes: 1. Cost estimates are derived from calculation method #1.

2. A positive balance means that the property taxes levied on reserve leaseholders exceeded the estimated cost of the services delivered by the municipality. A negative balance means that all of the service costs were not covered by leaseholder property taxes.

the hard services is unclear, it would seem that the Burns Lake Band members probably did benefit from the subsidy with respect to the soft services, much like the members of the Lake Babine Band.

In the Musqueam case, the evidence indicates that Vancouver provided services to Musqueam Village for about one-half their estimated cost. In other words, the City treated the Band members in much the same way as it would treat any resident of Vancouver, recognizing that they should all benefit equally from the non-residential property tax subsidy. Had the City regarded the reserve as a fringe area, it would have charged the Band full cost for its services.

Tax and cost relationships in unincorporated areas are somewhat different from those within municipalities. Since regional districts do not have the variety of non-property tax revenue sources that are available to municipalities, virtually all the costs of their services must be financed by property taxes. On the other hand, the provincial government's rural property tax revenues cover only about 22% of the estimated costs of province-wide police protection and road maintenance, with the remainder being financed from general provincial revenues. The province and the regional districts tax commercial and industrial properties at twice the rate of residential property.

The Westbank case study illustrates the impact of regional district and provincial tax-service relationships in an unincorporated area. As could be expected on a reserve whose leaseholds were primarily residential, the Central Okanagan Regional District's costs of delivering services to the reserve were considerably greater than its revenues from leaseholder property taxes. The cost recovery figure was particularly low because most of the residential properties were mobile homes with low assessed values. While the provincial government's rural property tax revenues from the reserve covered roughly 39 percent of estimated costs, and was thus higher than the 22 percent province-wide average, it should be noted that provincial cost recovery in relatively dense fringe areas is generally much higher, sometimes as much as 70 percent.

## 8.4 Options and implications

Bill C-115 allows band governments, with approval of the Indian Taxation Advisory Board, to levy property taxes on leasehold lands. In 1990, the British Columbia government provided for municipal responses to Bill C-115 with Bill 64, the *Indian Self Government Enabling Act*. Before examining the options available under Bills C-115 and 64, it is useful to examine the key issues which have emerged from the case study analyses.

### 8.4.1 Sharing surpluses from business and industrial property taxes

The practice of subsidizing residential properties through higher tax rates on business and industrial property raises two related questions regarding Indian reserves:

- When leasehold lands within a municipality generate a subsidy, should the band members living on the reserve share in the benefits from that subsidy even if the band's residential area lies outside municipal boundaries?
- When the band's residential portion of a reserve lies within municipal boundaries, should the cost of delivering municipal services to these residences be subsidized by non-residential property taxes and other revenues, such as provincial grants, received by the municipality?

The first of the two questions arises in the Cowichan case, where such a sharing of benefits could probably be most efficiently undertaken through a sharing of tax revenues between the municipal and band governments rather than through the introduction of new systems of band taxation and service delivery. The Indian reserve would be treated as if it were an integral part of the local economic community rather than as a fringe area, while service delivery under contracts, which have worked well, would be retained.

The second question arises to some degree in all of the cases. In the Burns Lake case, the answer would clearly be yes, since part of the Village of Burns Lake's non-residential property tax revenue comes from Burns Lake Indian Reserve leaseholds. In the Lake Babine case, on the other hand, the issue is not as straightforward. Conceptually speaking, the Lake Babine Indian Reserve within the Village of Burns Lake could be regarded either as a fringe area or as an integral part of the municipality. If it were regarded as a fringe area, the Band members would pay full cost for local hard services but could freely use local soft services without payment, or for a nominal user fee, as do fringe area residents throughout the province. This approach would resemble the specified area model discussed in Section 2.3.3 above. The municipality would have no basis for complaint, since it would not have to share its surplus business and industrial tax revenues with the reserve residents while, at the same time, it would benefit from their contributions to the local economy. On the other hand, if the reserve were considered to be an integral part of the municipality, it would be appropriate for service agreements to be made wherein the Band would pay the Village at contracted rates equivalent to the subsidized rates charged to the Village's residential property taxpayers.

In the Musqueam case, as noted above, the agreement between the City of Vancouver and the Musqueam Band regarding services to Musqueam Village suggests that the reserve has been treated as if it were an integral part of the local economic community. While the particular agreement tended to be more a form of grant in lieu of taxes, it could have been contractual. In the Lake Babine case, either the specified area model or a form of payment in lieu of taxes could be an improvement over the present situation.

Similar issues arise for reserves in unincorporated areas such as Westbank. Regarding provincial services, the question is the extent to which reserve leasehold property taxes cover the costs of service delivery relative to the provincial average cost recovery percentage. Where the recovery from the reserve exceeds the provincial average, a case can be made that the surpluses should be shared with the band. In the Westbank case, it should also be noted that there has been a high rate of tax delinquency and that the province could be better off fiscally if it were to surrender its rural taxes to the band in exchange for assistance in enforcing the collection of other property taxes, as discussed in Section 2.3.3 above.

#### **8.4.2 Bill C-115 and Bill 64**

In July, 1990, the British Columbia legislature passed Bill 64, the *Indian Self Government Enabling Act*. As noted in Section 1.2, Bill 64 creates a legislative framework for improving relationships between Indian bands, local governments and the provincial government by providing for three options regarding the taxation of leasehold lands on Indian reserves, as follows:

- concurrent taxation, wherein an Indian band which impose taxes in accordance with Bill C-115 negotiates with each of the appropriate B.C. taxing authorities a contract for the band to assume responsibility for delivering some or all services on an Indian reserve, while the taxing authority in turn reduces or eliminates the taxes it levies on the reserve leaseholders;
- independent band taxation, wherein an Indian band imposes taxes in accordance with Bill C-115, the reserve leaseholders automatically become exempt from all property taxes imposed by all B.C. taxing authorities, and the band assumes responsibility for the provision of all services to the reserve either directly or through contracts negotiated with other taxing authorities; and
- Indian District organization, wherein an Indian band established as a legal entity may be recognized as an Indian district under provincial law, may be entitled to some or all of the benefits to which B.C. municipalities are entitled, and may implement either a concurrent or an independent band taxation regime and service delivery system. Bill 64 remedies the deficiencies of the previous Bill 77 and creates a legislative framework for improving the relationship between bands, municipalities and the provincial government, especially in regard to the introduction of band property taxation.

For the purposes of this study, only the concurrent and independent band taxation options are of interest. In both of these cases, contractual arrangements to provide for integrated property tax administration and service delivery are encouraged.

Perhaps the most important feature of the legislation is that, in providing for exclusive band taxation, it balances bargaining power between bands and municipalities while at the same time providing for integrated service delivery. Since the foregoing analyses indicate that it would in most cases be impractical for a band to assume responsibility for delivering services previously provided by a municipality, in that it would cost more for the band to produce the services, it would usually be mutually beneficial to make contractual arrangements for service delivery. This means that the concurrent taxation option, in which the band assumes responsibility for service delivery and local government taxes are correspondingly reduced, is unlikely to be preferred except, perhaps, where the local government is prepared to reduce its taxes by an amount equal to its cost of providing regulatory services which do not apply to Indian reserves, as discussed below. What is more likely is that the band would choose the independent band taxation option and would in turn pay the local government a negotiated price for the continued provision of services. The negotiated price would not have to be purely cost-based. For example, where the band members live outside municipal boundaries and the band provides many of its own services, as in the Cowichan case, the negotiated price could take into account the prices of services to unleased band lands as well as the sharing of property tax surpluses from non-residential leaseholds within the municipality.

The provisions of Bill 64 thus suggest three possible band taxation options:

- 1) concurrent taxation, with municipal tax reductions offsetting new band taxes, and with bands assuming some service responsibility (unlikely);
- 2) concurrent taxation, but with an increase the leaseholders' taxes because the municipality continues to provide all services, perhaps in accordance with previous contractual agreements (Cowichan? Musqueam?); and

3) independent band taxation, with payment to the municipality for services (Cowichan? Musqueam? Burns Lake?).

#### **8.4.3 Option 1: concurrent taxation with no increase in total property taxes**

Concurrent taxation with no increase in the total property taxes levied on leaseholders requires that band governments assume responsibility for service provision. With only two possible exceptions, this does not appear to be a cost-effective option in any of the cases examined in this study. One of the exceptions, applicable in all cases, would involve the negotiation of a concurrent taxation agreement covering the local government's planning, zoning, by-law enforcement and other regulatory activities which do not apply to Indian reserves. Under such an agreement, the local government would reduce the property taxes it levies on leaseholders by an amount equal to the pro-rated cost of financing these activities and the band government would then levy taxes in this amount. The amount of money would be quite small, however, and might not be worth the administrative effort involved.

A second situation in which concurrent taxation might be an appropriate choice is one in which taxes are being collected but services are not being provided, as in the case of the Babine Forest Products mill or the Kamloops industrial park discussed in Section 2.3.4 above. In the case of the mill, virtually all of the services are provided by the leaseholder. In the Kamloops case, the Band provides all services except police protection and has agreed with the provincial government on a formula for sharing rural property tax revenues. As noted in Section 2.3.3 above, there are other situations in B.C. in which taxpaying reserve leaseholders do not receive full municipal services, and there may be other rural reserves in situations like that of the Kamloops Band.

#### **8.4.4 Option 2: concurrent taxation with higher total property taxes**

Where there is a net increase in taxes, the incidence of taxes will vary. In some cases, they will result in a direct reduction in the value of leasehold lands and the loss in value will in turn ultimately be borne by either the band or a locatee. In other cases, the tax increase will be borne by the leaseholders or passed on to their customers.

In the Cowichan case, since it is unlikely that the local businesses could pass the cost of a tax increase forward to their customers, there would be pressure to reduce leasehold rents as the leases come up for renewal. Thus, the tax increase would serve primarily to shift leasehold revenues from locatees, who would have to accept lower rents, to the band, which would receive the taxes.

In the Burns Lake case, additional taxes on the mill would have to be borne by the mill owners (stockholders) because mill product prices are determined on national and international markets. The only way the mill could avoid the tax would be to physically relocate off the reserve – something it is unlikely to do if the tax rate remains reasonable.

In the Musqueam and Westbank cases, the residential property taxpayers on the reserves would have to bear the increased costs as there is no one to whom they could pass it on. However, the market price of the houses could be reduced upon resale because they are taxed more highly than similar surrounding properties and, in the longer run, the land rents are likely to have to be reduced accordingly. The Musqueam Band would realize a net revenue gain in the short term, since the leasehold revenues accrue to the Band, but in the long run there would very likely be a net revenue loss because the uncertainty of future tax increases could severely depress land values. In the Westbank case, where the mobile homes are in fact more "mobile", rents would probably adjust more quickly and the main effect would be a transfer of revenues from locatees to the Band as taxes increase and land rents decline.

There are some notable exceptions in these cases. The Westbank reserve includes some high-valued homes where the increased costs would be borne by homeowners for some time, as in the Musqueam case. In the Musqueam case, not all of the leaseholds are residential. The Band could, for example, levy a tax on the golf courses which the golf club members would have to absorb because there are no practical substitute sites available and their only option would be to close the course.

In summary, an overall increase in property taxes due to band taxation would have the following consequences:

- In most cases, relatively higher taxes would result in lower leasehold land values as leases are renewed over time.
- A band's increased revenues from taxes could simply represent a transfer of revenues from locatees who would bear the losses attributable to lower land rents.
- There could be a net loss associated with the uncertainty created by the band's authority to raise taxes still further.

- In a few cases, like the mill or golf courses, additional band revenues can be raised unless taxes are set so high that the activities are forced to shut down or relocate.

#### **8.4.5 Option 3: independent band taxation with contractual payments for services**

The independent band taxation option permits a band government to share in tax surpluses while retaining integrated service delivery by agreement with one or more other governments. In the Cowichan and Musqueam cases, it would appear that agreements covering the independent taxation option itself would be necessary because of the contractual agreements already in place, although it can be argued that the existing agreements would be automatically invalidated as soon as the band chose to exercise this option. While the Musqueam case is complicated, the case for sharing in Cowichan appears to be quite strong.

Of the four municipal cases, the Burns Lake situation is the one in which bargaining positions are altered most dramatically by the provisions of Bill 64. In the past, the Village of Burns Lake could tax the mill, to which it provided almost no direct services, to subsidize its residences. The Band members themselves received very little benefit. Under Bill 64, the band government can implement independent taxation and totally exclude the municipality from access to a large revenue source. As in the Cowichan case, it would be appropriate to choose the independent taxation option with contractual agreements for service provision and revenue sharing between the Band and the Village.

#### **8.5 Final observations**

In contrast to its initial response with Bill 77, the provincial government's response in Bill 64 provides a legislative framework within which band governments, local governments and the province should be able to work out tax assessment, tax collection, service delivery and tax sharing agreements that are both fair and mutually beneficial. The opportunities are there.

The case studies indicate that the relationships between bands and municipalities have generally functioned well with voluntary contractual arrangements because there are substantial net gains to be made through service delivery integration. In the Burns Lake and Lake Babine cases, where there have been problems, they appear to have been attributable more to inadequate contract administration, as well as INAC policies and practices, than to any kind of intrinsic difficulty in the relationships between the bands and the Village. A history of cooperation should lead to an adjustment in fiscal arrangements where that appears appropriate, for example between the City of Duncan and the Cowichan Band.

While the number of cases examined in this study is small, the differing mixes of residential and non-residential leasehold properties within and without municipal boundaries leads to a conclusion that there is no single solution or fiscal benchmark that can be used for all municipal-band agreements. On the other hand, the provincial government could use such a benchmark based on its average province-wide cost recovery percentage from rural property taxes if it so desired, while recognizing that each reserve situation would itself be different.

This study has brought into focus and clarified the key issues surrounding the implementation of Bill C-115 in British Columbia. It has also provided a sound method of allocating service costs and has led to the publication of the booklet entitled *Indian Government Taxes and Services in British Columbia: Alternatives Under Bill C-115 and Bill 64* (Bish Clemens and Topham, April, 1991). The booklet has evidently been reasonably successful in serving its intended purposes of assisting bands in assessing their taxation options and informing other interested parties, such as municipal officials, but the processes whereby mutual agreement can be reached among affected parties remain somewhat undefined. As noted in Section 1.1, with the passage of Bill 64, the need for the coordinating committee envisaged in the original terms of reference was significantly diminished, to the point where it was deemed to be unnecessary. At this point, the evidence strongly indicates that each case must be individually addressed on its merits, at least until such time as a body of precedence has been satisfactorily established.

## **8.6 Note to Chapter 8**

1. (page 89) An Ontario study found the cost of delivering services to business properties to be only 60 percent of the residential property cost on an assessed value basis (F. A. Clayton, "An Assessment of Proposals Affecting Property Tax Burdens", in *Special Conference Report*, Canadian Tax Foundation, Toronto, 1968).

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**APPENDIX C. CHECKLISTS AND FORMS**

**University of Victoria Centre for Public Sector Studies**  
**Study on Tax and Service Implications of Bill C-115**  
**Checklist of Information to be Requested from Local Governments**

1. Map(s) showing location(s) of Reserve(s).
2. Size(s) of Reserve(s) (hectares or acres)
3. Copies or details of agreements with the Indian Band.
4. Copies of the most recent tax rolls for all leasehold properties within the Indian Reserve(s), including details for each property as follows:
  - a. Name and address of leaseholder.
  - b. Narrative legal description.
  - c. Actual use.
  - d. Lot size.
  - e. Taxable assessed value.
  - f. Tax rates and amount of taxes (school, municipal, local service levies, total).
  - g. Delinquent taxes by year.
5. Total annual tax revenues (1) levied and (2) actually collected from leasehold properties over the past three years.
6. Services provided by the municipality with details for each service, **as indicated on the attached form(s)**, as follows:
  - a. Breakdown according to whether service is provided to (1) non-Reserve lands, (2) leasehold lands on the Reserve(s) and/or (3) all Band lands, and,
  - b. Contract type where applicable (no special agreement or payment, formal/DIAND contract, band agreement with payment, individual user charge).
7. Information on relevant capital works (e.g. water, sewer, roads), including for each one:
  - a. Name of owner of works.
  - b. Description of works (including maps wherever possible).
  - c. Year(s) of construction and life expectancy.
  - d. Capital cost(s) in the year(s) of construction.
  - e. Annual operating cost in current dollars.
  - f. Provisions for capital debt repayment (e.g. user charge, frontage tax, general tax levy).
8. Brief description(s) of any problem(s) with contracts or agreements to provide services to the Reserve.
9. Most recent Annual Financial Statement.
10. Any previous studies that may be relevant to the present study.



**University of Victoria Centre for Public Sector Studies  
Study on Tax and Service Implications of Bill C-115**

**Table of Services Provided by** .....  
(name of local government)

**Name of Band and Reserve(s)** .....

Service	Area serviced by local government			Contract type			
	Provided to non-Reserve lands	Provided to leased lands on Reserve	Provided to all Reserve lands	No special agreement or payment	Formal/DIAND contract	Band agreement with payment	Individual user charges
Fire protection	.....	.....	.....	.....	.....	.....	.....
Fire inspection	.....	.....	.....	.....	.....	.....	.....
Police (regular patrol)	.....	.....	.....	.....	.....	.....	.....
Police (emergency only)	.....	.....	.....	.....	.....	.....	.....
Garbage collection	.....	.....	.....	.....	.....	.....	.....
Garbage disposal	.....	.....	.....	.....	.....	.....	.....
Building inspection	.....	.....	.....	.....	.....	.....	.....
Sanitary sewage	.....	.....	.....	.....	.....	.....	.....
Water supply	.....	.....	.....	.....	.....	.....	.....
Dyking & flood control	.....	.....	.....	.....	.....	.....	.....
Pest/insect control	.....	.....	.....	.....	.....	.....	.....
Public transit	.....	.....	.....	.....	.....	.....	.....
Library	.....	.....	.....	.....	.....	.....	.....
Parks	.....	.....	.....	.....	.....	.....	.....
Recreation Centre	.....	.....	.....	.....	.....	.....	.....
Local Reserve Roads							
grading/oiling	.....	.....	.....	.....	.....	.....	.....
paving	.....	.....	.....	.....	.....	.....	.....
road/street signs	.....	.....	.....	.....	.....	.....	.....
sidewalks	.....	.....	.....	.....	.....	.....	.....
street lighting	.....	.....	.....	.....	.....	.....	.....
ditch maintenance	.....	.....	.....	.....	.....	.....	.....
snow plowing	.....	.....	.....	.....	.....	.....	.....
Other services - specify							
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....

**Please describe any unusual arrangements on a separate sheet of paper.**

**University of Victoria Centre for Public Sector Studies**  
**Study of Tax and Service Implications of Bill C-115**  
**Checklist of Information to be Requested from Indian Bands**

1. Map(s) showing location(s) of Reserve(s).
2. Size(s) of Reserve(s) (hectares or acres)
3. Number of (1) Indian and (2) non-Indian residents on each Reserve.
4. Number of Certificates of Possession and locatee leases on each Reserve, with details for each Certificate of Possession as follows:
  - a. Name of Certificate holder.
  - b. Description of property (address, area).
  - c. Annual charges paid to Band, if any.
  - d. Locatee lease details, where applicable, including name of leaseholder, use of property, annual lease charges paid to Certificate holder, copy of leasehold agreement.
5. Number of Conditional Surrenders for lease on each Reserve, i.e. number of leaseholds other than those described in item 4 above, with details for each leasehold as follows:
  - a. Name of leaseholder.
  - b. Description of property (address, area).
  - c. Use of property.
  - d. Annual lease charge.
  - e. Copy of leasehold agreement.
6. Total annual revenues:
  - a. from all Conditional Surrenders for lease.
  - b. from all locatee leases.
7. Services provided to (1) Indian residents and (2) leasehold lands, including Conditional Surrenders and locatee leases, with details for each service as follows:
  - a. Service provider (band, provincial government, municipality, regional district, improvement district, etc.), **as indicated on the attached form(s)**, and
  - b. Contract type (no special agreement or payment, formal/DIAND contract, band agreement with payment, individual user charge), **as indicated on the attached form(s)**.
  - c. Copy of contractual agreement(s), where applicable.
8. Information on relevant capital works (e.g. water, sewer, roads), including for each one:
  - a. Name of owner of works.
  - b. Description of works (including maps wherever possible).
  - c. Year(s) of construction and life expectancy.
  - d. Capital cost(s) in the year(s) of construction.
  - e. Annual operating cost in current dollars.
  - f. Provisions for capital debt repayment (e.g. user charge, frontage tax, general tax levy).
9. Descriptions of special educational program(s), if any, provided by the local school district for Band members, including details of any extra payments made by DIAND or the Band for such program(s).
10. Brief description(s) of any problem(s) with (1) the provision or non-provision of services for which taxes are paid by leaseholders and/or (2) contracts or agreements to have services provided to the Reserve.
11. A brief description of the Band's current arrangements for land management involving the leasing of lands, including general organization, staffing and budget.
12. A brief general description of the Band, including current total population (resident and non-resident on Reserve), history, language, present basis of economic life, Reserve infrastructure (administration office, schools, cultural and recreational facilities, etc.).
13. Most recent Annual Financial Statement.
14. Any previous studies that may be relevant to the present study.

**University of Victoria Centre for Public Sector Studies  
 Study on Tax and Service Implications of Bill C-115  
 Table of Services Provided to Indian Residents**

Name of Band and Reserve(s).....					
Service	Service Provider	Contract type			
	(indicate if band, provincial government, municipality (name), regional district, other agency (name), or not applicable)	No special agreement or payment	Formal/DIAND contract	Band agreement with payment	Individual user charges
Fire protection	.....	.....	.....	.....	.....
Fire inspection	.....	.....	.....	.....	.....
Police (regular patrol)	.....	.....	.....	.....	.....
Police (emergency only)	.....	.....	.....	.....	.....
Garbage collection	.....	.....	.....	.....	.....
Garbage disposal	.....	.....	.....	.....	.....
Building inspection	.....	.....	.....	.....	.....
Sanitary sewage	.....	.....	.....	.....	.....
Water supply	.....	.....	.....	.....	.....
Dyking & flood control	.....	.....	.....	.....	.....
Pest/insect control	.....	.....	.....	.....	.....
Public transit	.....	.....	.....	.....	.....
Library	.....	.....	.....	.....	.....
Parks	.....	.....	.....	.....	.....
Recreation Centre	.....	.....	.....	.....	.....
Local Reserve Roads					
grading/oiling	.....	.....	.....	.....	.....
paving	.....	.....	.....	.....	.....
road/street signs	.....	.....	.....	.....	.....
sidewalks	.....	.....	.....	.....	.....
street lighting	.....	.....	.....	.....	.....
ditch maintenance	.....	.....	.....	.....	.....
snow plowing	.....	.....	.....	.....	.....
Other services - specify					
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
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.....	.....	.....	.....	.....	.....
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**Please describe any unusual arrangements on a separate sheet of paper.**

**University of Victoria Centre for Public Sector Studies  
Study on Tax and Service Implications of Bill C-115  
Table of Services Provided to *Leased Lands on Reserve(s)***

**Name of Band and Reserve(s)**.....

Service	Service Provider (indicate if band, provincial government, municipality (name), regional district, other agency (name), or not applicable)	Contract type			
		No special agreement or payment	Formal/ DIAND contract	Band agree- ment with payment	Individual user charges
Fire protection	.....	.....	.....	.....	.....
Fire inspection	.....	.....	.....	.....	.....
Police (regular patrol)	.....	.....	.....	.....	.....
Police (emergency only)	.....	.....	.....	.....	.....
Garbage collection	.....	.....	.....	.....	.....
Garbage disposal	.....	.....	.....	.....	.....
Building inspection	.....	.....	.....	.....	.....
Sanitary sewage	.....	.....	.....	.....	.....
Water supply	.....	.....	.....	.....	.....
Dyking & flood control	.....	.....	.....	.....	.....
Pest/insect control	.....	.....	.....	.....	.....
Public transit	.....	.....	.....	.....	.....
Library	.....	.....	.....	.....	.....
Parks	.....	.....	.....	.....	.....
Recreation Centre	.....	.....	.....	.....	.....
Local Reserve Roads					
grading/oiling	.....	.....	.....	.....	.....
paving	.....	.....	.....	.....	.....
road/street signs	.....	.....	.....	.....	.....
sidewalks	.....	.....	.....	.....	.....
street lighting	.....	.....	.....	.....	.....
ditch maintenance	.....	.....	.....	.....	.....
snow plowing	.....	.....	.....	.....	.....
Other services - specify					
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
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**Please describe any unusual arrangements on a separate sheet of paper.**