



Manual for the Administration of Band Moneys



Indian Moneys, Estates and Treaty Annuities (IMETA)
Individual Affairs Branch
Resolution and Individual Affairs Sector

2012

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Preamble

The *Manual for the Administration of Band Moneys* and “moneys” related provisions of the *Indian Act* (the Act) are issued under the authority of the Assistant Deputy Minister (ADM) of the Resolution and Individual Affairs (RIA) sector, Department of Aboriginal Affairs and Northern Development Canada (AANDC).

This manual and subsequent chapters are intended to authorize and provide direction to AANDC headquarters, regional and district offices and in particular, Regional Directors General and persons designated by them to carry out specific tasks and responsibilities related to carrying out the administration of the moneys provisions of the *Indian Act*, its regulations and associated policies.

This manual is composed of chapters that set out the *National Expenditure Request Procedure Guidelines* for the administration of Band moneys. For consistency, this manual and its chapters, including the *National Expenditure Request Procedure Guidelines* chapters, follow common language usage unless otherwise prescribed.

1.0 Purpose

The purpose of this manual is to authorize and outline the chapters, responsibilities and procedures with respect to the administration of Band capital and revenue moneys.

2.0 Application

This manual and related chapters and procedures are intended to apply to all departmental employees and anyone working on behalf of the Department, and Bands, as well as affirm the application of those chapters, responsibilities and procedures with respect to the administration of Band capital and revenue moneys.

3.0 Issuing Authority

This manual is issued under the authority of the Assistant Deputy Minister of the Resolution and Individual Affairs (RIA) sector. It replaces and supersedes all previous manuals and direction given on this subject, including Program Circular H-12 dated March 15, 1983 on the expenditure of Band capital moneys.

4.0 References

Legislation

Access to Information Act, R.S.C. 1985, c. A-1.
Canadian Environmental Assessment Act, S.C. 1992, c. 37.
Employment Insurance Act, S.C. 1996, c. 23.
Financial Administration Act, R.S.C. 1985, c. F-11.
First Nations Lands Management Act, S.C. 1999, c. 24, s. 5.
First Nations Oil and Gas and Moneys Management Act, S.C. 2005, c. 48.
Indian Act, R.S.C. 1985, I-5.
Indian Oil and Gas Act, R.S.C. 1985, c. I-7.
Privacy Act, R.S.C. 1985, c. P-21.

Regulations

Indian Band Council Procedure Regulations, C.R.C., c. 950
Indian Bands Revenue Moneys Regulations, [1993] C.R.C., c. 953.
Indian Oil and Gas Regulations, [1995] S.O.R./94-753.
Indian Referendum Regulations, [1978] C.R.C., c. 957.
Receipt and Deposit of Public Moneys Regulations, [1997] C.R.C. c. 728, as amended by S.O.R./98-128, 83-828 and 94-402.

Decisions

Attorney General of Canada v. Canard, [1976] 1 S.C.R. 170.
Guerin v. R., [1984] 2 S.C.R. 335, [1984] 6 W.W.R. 481, 59 B.C.L.R. 301, 36 R.P.R. 1, 20 E.T.R. 6, 13 D.L.R. (4th) 321, [1985] 1 C.N.L.R. 120, 55 N.R. 161 (S.C.C.).
Lady Virginia Kemp v. M.N.R. [1947] Ex. C.R. 578-586.
Moon v. Campbell River Indian Band, [1996] 3 F.C. 907.
Rick Gilbert v. Alice Abbey, [1992] 4 C.N.L.R. 21.
Sparrow v. R., [1990] 1 S.C.R. 1075, [1990] 70 D.L.R. (4th) 385, [1990] 4 W.W.R. 410, [1990] 56 C.C.C. (3d) 263, [1990] 3 C.N.L.R. 160, [1990] 46 B.C.L.R. (2d) 1.

Policies and Manuals

Financial Management Manual, Volume 3, Part 5, Transfer Payments, Chapter 5.16 Funding Arrangements - Management Control Framework for the Receipt of Reporting requirements, Section 8.10 Indian Moneys. February 27, 2003.
Financial Management Manual, Volume 3, Part 6, Chapter 6-3 Receipt and Deposit of Public Money, December 1, 2000.
FNOGMMA Moneys Implementation Policy, November 2006.
Indian Moneys Manual, 1999.
Records Management Policy, September 29, 1999.
Order in Council (P.C. 1981-3/255) dated January 29, 1981.
Treasury Board Comptrollership, Chapter 3-3, Policy on Deposits, July 1, 1995.

5.0 Glossary of Terms and Definitions

In this manual,

- “the Act” means, the *Indian Act*;
- “Band” means within the meaning of section 2 of the Act;
- “Band council” means the council of a Band within the meaning of section 2 of the Act;
- “band council resolution (BCR)” refers to the resolution or authorizing document approved by quorum of the council of a Band at a duly convened meeting of the Band council;
- “Band List” means a list of persons that is maintained under section 8 of the Act by the Band or the Department;
- “change-of-purpose BCR” refers to a new BCR requesting unilateral change to a previous BCR from a Band council that wishes to change the purpose for which Band moneys are to be used;

- “commercial farm” refers to large-scale production of crops for sale, intended for widespread distribution to wholesalers or retail outlets and into world markets and may also include livestock production and livestock grazing.
- “community consent” means, the consent of the majority of the electors of a Band in favour of a proposal of the Band council for the benefit of the Band membership;
- “Consolidated Revenue Fund” (CRF) refers to the aggregate of all public moneys that are on deposit at the credit of the Receiver General, as defined under the *Financial Administration Act* (FAA);
- “Department” means Aboriginal Affairs and Northern Development Canada (AANDC);
- “Documentation Requirements”, refers to Appendix D, which provides a list of ‘General Documentation Requirements’ for paragraphs 64(1)(a) to (k) including a general list for ‘Demonstrating Benefits’ criteria. Each paragraph and section may have additional documentation requirements and will be identified as indicated.
- “environmental assessment”, in respect of a project, refers to an assessment of the environmental effects of the project that is conducted in accordance with *Canadian Environmental Assessment Act* (CEAA) and subsequent regulations;
- “environmental audit” refers to a review of the existing environmental condition of land proposed to be acquired as an addition to reserve under 64(1)(d), and/or the acquisition of off-reserve lands by a Band under 64(1)(k) of the Act;
- “environmental screening” refers to an environmental assessment that is conducted pursuant to section 18, and that includes a consideration of the factors set out in subsection 16(1) of CEAA;
- “expenditure” refers to the action or process of disbursing funds from the CRF at the request of a Band by BCR for a specified purpose in accordance with sections 64, 66 and 69 of the Act;
- “Indian moneys,” “Band moneys” and “moneys,” means all moneys collected, received or held by Her Majesty for the use and benefit of Indians or Bands, within the meaning of section 2 of the Act;

- “informed consent” for this manual, has the same meaning as community consent and consent of the majority of electors as per paragraph 2(3)(a) of the Act;
- “loan guarantees” as described under section 64(1)(j) where the Minister provides approval for a First Nation to act as guarantor and only capital moneys will be used as security for the payment when there is a default, and does not mean Ministerial Loan Guarantees as prescribed by the Department’s Ministerial Loan Guarantee policy whereby the Minister acts as guarantor and responsible for paying defaults;
- “loan” as described under 64(1)(j) where the Minister provides approval to grant a loan to a member of the Band for housing purposes only, and may or may not use capital moneys only as a form of security;
- “mentally incompetent Indian” means an Indian who, pursuant to the laws of the province in which he resides, has been found to be mentally defective or incompetent for the purposes of any laws of that province providing for the administration of estates of mentally defective or incompetent persons;
- “Minister” means, the Minister of Aboriginal Affairs and Northern Development Canada;
- “minor” means, a “child” pursuant to section 2 of the Act, and also means the “infant child” of a person, pursuant to the Act, is registered as an Indian or is entitled to be registered as an Indian, and includes a child born out of wedlock, a legally adopted child in accordance with Indian custom.
- “negotiated cheque” means a cheque or other written order to pay drawn on the Receiver General or on the account of the Receiver General, or for cashing or negotiating any other instrument issued as authority for the payment of money out of the Consolidated Revenue Fund, or on a cheque drawn in favour of the Government of Canada or any of its departments and tendered for deposit in the Consolidated Revenue Fund.
- “new Band” refers to a new Band that has been established from an existing Band or any part thereof, such portion of the reserve lands and funds of the existing Band as the Minister determines shall be held for the use and benefit of the new Band pursuant to section 17 of the Act;
- “ordinarily resident on a reserve” means, residence in customary mode of life of person, as opposed to special, occasional, casual residence¹;

¹ *Attorney General of Canada et al. v. Canard*, [1976] 1 S.C.R. 170.

- “pay list” refers to a list of all individuals entitled to receive a share of a per capita distribution (PCD) as of the date of a distribution compiled either by the Department or the Band. This list must also identify the minors, children-in-care, adoptees, mentally incompetent Indians; deceased individuals who were members as of the effective date of the distribution and those individuals who will be absent on the date the distribution is made or identify their whereabouts as unknown.
- “per capita distribution” refers to the distribution of equal share of capital moneys to every person who is a member of a Band, on the Band List of that Band, and/or is entitled to be on that Band List at the time of the distribution;
- "permanent improvements or works" refers to improvements related to infrastructure, where it is evidenced there is permanent value to the Band or, if not, evidence that the expenditure is a capital investment;
- “regulations” means, the Indian Bands Revenue Moneys Regulations, unless otherwise identified;
- “remedial management plan” (RMP) refers to the strategy for addressing the various financial issues faced by a Band;
- “settlement type funds” refers to moneys owed to a Band as a result from a treaty land entitlement, settlement claim, compensation type agreement or specific claim. These moneys are not Indian Moneys and do not have to be managed pursuant to the Act.
- “surrendered lands” means a reserve or part of a reserve or any interest therein, the legal title to which remains vested in the Crown, that has been released or surrendered by a Band for whose use and benefit it was set apart;
- “suspense account” refers to an ‘interest-earning account’ of moneys received, which cannot be credited to a Band or individual’s account.

6.0 Band Moneys

The *Indian Act* defines Indian moneys² as "*all moneys collected, received or held by Her Majesty for the use and benefit of Indians and bands*". Under section 62 of the Act these moneys are referred in two categories as:

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

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

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

7.0 Nature of Relationship

The Department has taken the position to apply a high standard to the administration of Band moneys. It is this high standard that departmental officials act impartially and in the best interests of Bands and their members. Department officials must act honestly and show the same care and skill in administering these moneys as would a prudent person in administering his or her own affairs.

The decisions in the *Guerin*³ and *Sparrow*⁴ litigation have found that a fiduciary relationship exists between the Crown and Indians in certain cases where there is a trust like relationship established such as in the administration of reserve lands.

In hindsight, the 1992 court decision in the *Gilbert v. Abbey*⁵ case addressed the matter of the fiduciary duty of Chiefs and councillors. The case attests to the fact that duly elected Chiefs and councillors are fiduciaries for all members of the Band. Elected councillors who breach their obligations can be held liable if their decisions are found to be not in the best interest of the Band or its members.

³ *Guerin v. R.*, [1984] 2 S.C.R. 335, [1984] 6 W.W.R. 481, 59 B.C.L.R. 301, 36 R.P.R. 1, 20 E.T.R. 6, 13 D.L.R. (4th) 321, [1985] 1 C.N.L.R. 120, 55 N.R. 161 (S.C.C.).

⁴ *Sparrow v. R.*, [1990] 1 S.C.R. 1075, [1990] 70 D.L.R. (4th) 385, [1990] 4 W.W.R. 410, [1990] 56 C.C.C. (3d) 263, [1990] 3 C.N.L.R. 160, [1990] 46 B.C.L.R. (2d) 1.

⁵ Appendix A - *Gilbert v. Abbey*, [1992] 4 C.N.L.R. 21

In June 1996, in the case of *Moon v. Campbell River Indian Band*⁶, the Federal Court Trial Division made a similar ruling and characterized the relationship of Band councils, who accepted moneys from the Crown on the 'express trust' condition that they be paid to the members of the Band, as that of "trustees" towards those members who have not been paid these funds.

8.0 Roles and Responsibilities

AANDC is responsible for administration of the Band moneys provisions of the Act. The Resolution and Individual Affairs (RIA) sector carries out the majority of these functions on behalf of the Department. However, other areas of AANDC including at the regional and district level, such as the Finance Branch, Corporate Services sector, also support or contribute to the moneys management activities. The following sections provide descriptions of the roles and responsibilities of those areas also involved in the administration of Band moneys.

8.1 Headquarters

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

Under the direction of the Assistance Deputy Minister (ADM) of RIA, the area having overall responsibility for Band moneys administration is the Indian Moneys, Estates and Treaty Annuities Directorate (IMETA) within the Individual Affairs Branch.

Indian Oil and Gas Canada (IOGC) and the Lands Branch, Lands and Economic Development (LED) sector, also have important responsibilities related to the collection of Band moneys.

The Chief Financial Officer Sector (CFO) is also responsible for the financial and accounting of moneys information.

8.1.1 Indian Moneys, Estates and Treaty Annuities (IMETA)

The Indian Moneys, Estates and Treaty Annuities Directorate (IMETA) develops and establishes national program chapters, policies related to the administration of sections 61 to 69 of the Act. IMETA also provides advice to regions and Bands on the implementation of these policies and related procedures, as well as provides training to regional staff.

⁶ *Moon v. Campbell River Indian Band*, [1996] 3 F.C. 907, 136 D.L.R. (4th) 383, [1997] 1 C.N.L.R. 77, 114 F.T.R. 269.

IMETA works with the regions in reviewing submissions requesting the release of capital moneys to Bands under paragraphs 64(1)(d) and (k) of the Act; and provides assistance in seeking Ministerial approval for such expenditures where it can be established that such a disbursement will benefit the Band.

Where a region recommends that a Band be given section 69⁷ authority over its revenue moneys, IMETA is responsible for the assessment of the submission and to seek Ministerial recommendation to the Governor in Council (GIC) for approval by Order in Council (OIC).

8.1.2 Information Management Branch (IMB)

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

IMB coordinates the semi-annual deposit of interest into Band moneys accounts. It also conducts research, copies trust accounting records and provides other information related to Band accounts (i.e., historical account balances, interest rates).

8.1.3 Other Headquarters Areas

The following organizational units within AANDC carry out other administration of Band moneys related responsibilities:

- Treaty and Aboriginal Government (TAG) sector: negotiates the terms of claim settlements;
- Audit and Evaluation Sector: auditing and evaluation of AANDC's administration and business practices;
- Corporate Secretariat (CS) Sector, Access to Information and Privacy Unit: responds to information requests;
- Chief Financial Officer (CFO) Sector, Information Management Branch (IMB): provides support for computer systems and holds and maintains records; responsible for departmental financial accounting and financial resource management.

⁷ *Indian Act*, s.69 Management of revenue moneys by Band.

8.2 Regions and District Offices

Most operational responsibilities for the administration of Band moneys have been delegated to the Regional Directors General. Each region has its own legal instrument, approved by the Minister, which sets out the authorities it has been delegated.

Among the responsibilities delegated to the Regional Directors General are the making of decisions on the expenditure of all capital moneys (except those falling under paragraphs 64(1)(d) and (k) of the Act) and all revenue expenditures under sections 66 and 69.

The responsibilities of district or regional officers, with administration of moneys duties, include consulting, training and providing advice to Bands on all aspects of the administration of Band moneys. Departmental staff must also analyze expenditure requests, review annual Band money budgets, make recommendations on the approval or denial of expenditure requests, prepare Order in Council submissions for granting section 69 authority to Bands and review annual audited financial statements.

Departmental staff are encouraged to consult with IMETA, at headquarters, for policy clarification or to seek advice at any stage of their assessment of Band moneys expenditures and in preparing submissions. Regions are also encouraged to consult with and provide advance documentation to IMETA as early as possible to expedite the processing of expenditure requests.

8.3 Bands

All members of a Band have an interest in Band moneys which are held in common for their use and benefit.

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

- weigh the pros and cons of proposed expenditures, identifying how they would benefit the Band and its members and giving consideration to whether other funding sources would be more appropriate for the intended purpose;
- ensure that any apparent conflict of interest related to an expenditure proposal is properly considered;
- consult with regional or district staff on departmental requirements;

- prepare expenditure request submissions for review by AANDC;
- manage moneys once they have been released by AANDC from the CRF;
and
- account for all Band capital and revenue trust moneys received.

Bands must provide the Department with a full justification and all necessary information in support of expenditure requests other than for the use of Band revenue moneys under section 69 of the Act.

Bands are encouraged to involve the Department at the earliest stage of an expenditure proposal so that the appropriate documentation requirements can be identified in order to facilitate prompt consideration of the request by AANDC.

1.0 Purpose

The purpose of this chapter is to authorize and provide general direction to AANDC headquarters, regional and district staff, and Bands on the collection of Band moneys.

2.0 Scope

This chapter applies to the moneys collection provisions of the *Indian Act*.

3.0 Authority

This chapter is issued under the authority of the Assistant Deputy Minister of the Resolution and Individual Affairs (RIA) sector.

4.0 Accountability

Overall accountability for departmental conformance with this chapter rests with the Assistant Deputy Ministers and Regional Directors General, and persons designated by them to carry out to specific tasks and responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

5.0 Guiding Principles

- The collection of Band moneys is a joint process between Bands and the Minister, each having certain responsibilities.⁸
- Collection responsibilities of the Department include ensuring that the correct amounts of funds are collected in respect of duly executed agreements between a Band and other party, and that the funds are attributed to the appropriate trust account (capital or revenue) of the appropriate Band.
- As prescribed by the *Financial Administration Act*, public moneys, including Indian (Band) moneys, encompass all fees derived⁹ from surrenders of interests in reserve lands.

⁸ The *Indian Act* does not contain provisions to authorize Bands to collect Indian moneys.

⁹ *Lady Virginia Kemp v. M.N.R.* (1947) Ex. C.R. 578-586. The definition of the word “derived” is broad enough to include both royalties and bonus payments received.

- Only the Crown has title to reserve lands and, therefore, any Band moneys generated from resource transactions related to those lands must be paid to the Receiver General for Canada.

6.0 Sources of Band Moneys

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

- lands and natural resource activity;
- oil and gas activity;
- settlement funds; and
- fine moneys.

6.1 Lands and Natural Resource Activity

6.1.1 Regional and district Lands staff must ensure that all terms of resource related transactions for reserve lands are met, including the collection of all moneys prescribed in the relevant sale, lease, license or other type of agreement.¹⁰

6.1.2 Staff of the Lands Branch are also responsible for the creation and administering the instruments for Bands to manage resource activity related to timber, sand, gravel, limestone and other minerals on reserve. Regional and district Lands officers have been delegated ministerial authority to collect Band capital and revenue moneys derived from lands transactions and other natural resources.¹¹

6.2 Oil and Gas Activity

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

¹⁰ Indian Land Registry System (ILRS) is a database that contains instruments registered in the Indian Lands Registry relating to Reserve Lands and Crown Lands.

¹¹ Along with the ILRS, AANDC developed Netlands which is a computer application that can be used in the management of land transactions on reserve lands. Designed to help AANDC and Band staff manage lands projects and associated land instrument details.

- 6.2.1 Resulting revenues from oil and gas royalties, bonuses and so on, are deposited into the appropriate Band's capital or revenue account by IOGC. However, a Band will still need to seek Ministerial approval for release of these capital and revenue trust moneys.
- 6.2.2 As an alternative option, any Band that has capital and/or revenue moneys held for them in trust by Canada may apply to opt into the moneys portion of the *First Nation Oil and Gas Moneys Management Act* (FNOGMMA). Under FNOGMMA, a Band will no longer need to seek Ministerial approval to expend or manage their capital and revenue trust moneys. As well, a Band can also opt to manage and regulate on-reserve oil and gas activities through this Act.

6.3 Settlement Type Funds¹²

Bands are increasingly receiving significant sums of money owed to them from treaty land entitlement, settlement agreements, compensation type agreements and specific claim settlements.

The Treaty and Aboriginal Government sector is responsible for negotiating the terms of the claim settlements. Band Moneys staff within RIA should be consulted whenever settlement type funds are being considered to be deposited into a Band's capital or revenue account.

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

- 6.3.1 Settlement type agreements must be ratified by referendum based on the informed community consent of the membership. The decision concerning the placement of funds (either in external trusts or in the CRF) must also be based on community consent of the Band by means of a referendum.
- 6.3.2 Specific clauses must be included in settlement type agreements which must include: stating where the funds are to be placed; whether or not the funds are considered to be Indian moneys (depending on the Band's decision); and, that Canada assumes no future fiduciary obligations regarding the use of the funds once paid to an outside trust.¹³

¹² Funds derived from 'settlements' are not Indian (Band) moneys and do not have to be administered pursuant to the *Indian Act*. Settlement type funds would only become Indian (Band) moneys once placed in the CRF and accredited to a Bands' capital or revenue account which can only then be administered pursuant to sections 61 to 69 of the *Indian Act*.

¹³ Outside trusts may also include use of bank accounts, if so indicated.

6.3.3 Funds not deposited into the CRF may be placed directly into external trusts¹⁴ provided that certain procedural steps are followed, namely: the trust agreement is ratified with the consent of the membership; the Band and its members obtain independent legal and financial advice; and the trust is designed so the funds are used for the benefit of the Band.

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

6.3.4 Where a settlement type agreement is silent on the use of Band capital and revenue moneys, these funds will be released in accordance with sections 61 to 69 of the Act.

6.3.5 Some settlement type agreements set out specific terms for the use of funds deposited in Band trust accounts. For example, settlement type funds may be used specifically to purchase land for the use of the Band or as an addition to a reserve, or for a per capita distribution to the members of the Band. Such terms must be honoured by the Department in addressing requests for the expenditure of those funds under sections 64, 66 and 69.

6.3.6 A Band having section 69 authority may transfer into an external trust any revenue moneys (moneys initially received from a settlement type agreement which were deposited into the Bands revenue account) as long as it obtains community consent through a second referendum.¹⁵ The request for such a transfer must be forwarded to the Department in the form of a BCR.

6.3.7 Band capital moneys cannot be transferred into an external trust, unless the settlement type agreement or a court rules that the trust arrangement provides for a release and indemnification of the Crown from any present and future responsibility, or liability, for those funds once transferred.

6.4 Fine Moneys

Section 104, provides the authority for the disposition of fine moneys¹⁶ relating to offenses committed under the Act (including Band council by-laws) and its regulations. This section stipulates that:

¹⁴ AANDC will not review the performance of a Bands trust after such moneys are transferred. The Crown will have no further involvement with these funds because they cease to be Band moneys and fully become the responsibility of the Band and the trustee.

¹⁵ A second vote (referendum) is required because the initial settlement type funds were originally deposited into the CRF on the basis of an initial referendum which ratified the terms of the agreement. However, a second vote is not required if the original settlement agreement contained a clause expressly allowing for the use of section 69 for this specific purpose.

¹⁶ Most fine moneys are generated as a result of the violation of Band by-laws. A by-law is a local law that is passed by a Band council to help control certain activities within the reserve, as set out in sections 81, 83 and 85.1 of the Act.

- 6.4.1 *“(1) Subject to subsection (2), every fine, penalty or forfeiture imposed under this Act belongs to Her Majesty for the benefit of the band, or of one or more members of the band, with respect to which the offence was committed or to which the offender, if an Indian, belongs.*
- 6.4.2 *(2) The Governor in Council may from time to time direct that a fine, penalty or forfeiture described in subsection (1) shall be paid to a provincial, municipal or local authority that bears in whole or in part the expense of administering the law under which the fine, penalty or forfeiture is imposed, or that the fine, penalty or forfeiture shall be applied in the manner that he considers will best promote the purposes of the law under which the fine, penalty or forfeiture is imposed, or the administration of that law.”*
- 6.4.3 Pursuant to section 62, fine moneys received¹⁷ by AANDC under section 104 of the Act are considered to be Band revenue moneys. Moneys resulting from other law violations (i.e., federal or provincial legislation) do not fall under section 104 and are not to be collected and deposited into Band trust accounts.
- 6.4.4 In accordance with section 104, fine moneys paid by individuals for the infraction of by-laws are generally collected by the provincial government and are eventually turned over to the federal government and then to AANDC for deposit into a revenue account on behalf of the Band. In practice, the disposition of these moneys varies from province to province. It's important to note that once these moneys are received at AANDC they are deposited into a suspense account until it is determined which Band's revenue account they are to be credited to.
- 6.4.5 Once the fine moneys have been deposited into a Band's revenue account, the Band may access these funds by requesting their release under sections 66 or 69 of the Act.

7.0 Consolidated Revenue Fund

Band capital and revenue moneys collected or received by the Crown are deposited into the Consolidated Revenue Fund (CRF) which is the single fund used to receive all moneys belonging to Canada. Within the CRF, specific accounts have been set aside for Bands and certain individuals:

- Band capital and revenue accounts;

¹⁷ It is incumbent upon moneys received by AANDC to be verified as fine moneys pursuant to s.104 of the Act.

- individual accounts for minors, adoptees, deceased individuals, dependent adults and missing individuals; and
- suspense accounts for Bands and individuals.

7.1 Band Capital and Revenue Accounts

Capital and revenue moneys are held in separate interest-bearing accounts under the name of the particular Band concerned. The Department generally maintains one capital account and one revenue account per Band (approximately 1,400 accounts in total).

7.2 Individual Accounts

Primarily by means of per capita distributions (PCD) to members of a Band, Band moneys are sometimes deposited into departmentally administered accounts in the CRF for certain individuals, which include mentally incompetent Indians, infant children of Band members, adoptees, and in some cases children-in-care.

7.3 Suspense Accounts

When moneys are received by the Department which cannot be immediately credited to a Band or individual account, they are temporarily deposited into an interest earning suspense account as prescribed by the *Indian Moneys Manual, Part 5 - Indian Moneys Suspense Accounts*.

Each region has one Band moneys suspense account. Moneys placed in suspense accounts may include, but not limited to: receipts for unidentified Bands or persons; receipts for moneys under litigation; and amounts received for unapproved or expired leases and permits.

8.0 Payment of Interest

Subsection 61(2) of the Act, provides for the payment of interest on Band capital and revenue moneys. Band moneys earn a rate of return set by the Governor in Council (GIC) through an Order in Council (OIC). Actual interest rates for subsequent periods can be obtained by contacting the Information Management Branch, Corporate Accounting and Treasury Accounting and Financial Reporting Directorate at headquarters.

The method for determining the interest rate currently payable on Band accounts is pursuant to OIC (P.C. 1981-3/255) dated April 1, 1980. Interest rates are based on Government of Canada bonds having a maturity of ten years or over, using the weekly yields published by the Bank of Canada.

Based on the month-end balances on deposit in the Band's account, interest is calculated quarterly and compounded semi-annually. Every six months (April and October), the Treasury Accounting and Financial Reporting (TAFR) Directorate utilizes the Trust Fund Management System (TFMS) to calculate and deposit interest amounts payable on Band capital and revenue accounts.

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

9.0 Trust Fund Management System

The Information Management Branch is responsible for managing the financial and computer technical functions of the TFMS including all systems maintenance and development.

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

Full access to TFMS is provided to regions and districts responsible for administering Band moneys accounts by TAFR Directorate. Departmental staff may use TFMS to update account information, journal voucher moneys between Band and individual accounts, make disbursements from accounts and generate account history reports. Information on a Bands account history may be also available, upon request, to a third-party working on behalf of AANDC for research purposes such as litigation research.¹⁸

¹⁸ Confirmation must be provided by the Departmental contact and/or official to CA&TAFR, indicating that the third-party is working on behalf of AANDC and requires access to a Band or Bands accounts, either in the form of correspondence or email. Any other account information requests should be made through the Access to Information process.

1.0 Purpose

The purpose of this chapter is to authorize and provide general direction to AANDC headquarters, regional and district staff, and Bands on the moneys provisions of the *Indian Act* specific to the expenditure of Band moneys.

2.0 Scope

This chapter applies to any Band requesting payment of moneys in accordance with the moneys expenditure provisions of the Act.

3.0 Authority

This chapter is issued under the authority of the Assistant Deputy Minister of the Resolution and Individual Affairs (RIA) sector.

4.0 Accountability

Overall accountability for departmental conformance with this chapter rests with the Assistant Deputy Minister and the Regional Directors General, and persons designated by them to carry out to specific tasks and responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

5.0 Guiding Principles

- Band moneys which are held "in common" for all members of the Band must be used for the benefit of its members.
- Current members of a Band have an interest in Band capital and revenue moneys. Whenever possible consideration should be given to use or conserve existing moneys in such a way as to benefit not only current members but also future generations;
- Bands authorized to control, manage and expend its revenue moneys under section 69, assume full responsibility for all revenue expenditures that are requested by the Bands' council. This includes determining whether any given expenditure will be for the general progress and welfare of the Band and its members.

6.0 Section 61 – Indian Moneys to be Held for Use and Benefit

This subsection affirms that Band moneys must be used for the benefit of its members.

6.1 Subsection 61(1) - General

Subsection 61(1) is a general provision which states, *“Indian moneys shall be expended only for the benefit of the Indians or bands for whose use and benefit in common the moneys are received or held, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which Indian moneys are used or are to be used is for the use and benefit of the band.”*

7.0 Section 64 – Capital

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

7.1 Subsection 64(1) – Expenditure of Capital Moneys with Consent

- 64(1)(a) - per capita distributions (PCDs) to Band members not exceeding fifty percent of the capital moneys of the Band derived from the sale of surrendered lands;
- 64(1)(b) - constructing/maintaining roads, bridges, water courses on the reserves or surrendered lands;
- 64(1)(c) - constructing/maintaining outer boundary fences on reserves;
- 64(1)(d) - purchasing land to be set aside as an addition to a reserve;
- 64(1)(e) - to purchase for the Band the interest of a member of the Band in lands on a reserve;
- 64(1)(f) - purchasing livestock, farm implements, equipment and machinery for the Band;
- 64(1)(g) - constructing/maintaining permanent improvements and works, in the opinion of the Minister will be of permanent value to the Band or will constitute a capital investment;

- 64(1)(h) - providing loans to Band members not exceeding one half of the total value of:
 - i) chattels owned by the borrower,
 - ii) land with respect to which the member holds or is eligible to receive a Certificate of possession,
 - 64(1)(i) - paying for expenses incidental to managing reserve lands and Band property;
 - 64(1)(j) - constructing houses, providing housing loans and guarantees for building purposes; and
 - 64(1)(k) - any other purpose that in the opinion of the Minister is for the benefit of the Band.
- 7.2 Subsection 64(2) - Expenditure of Capital Moneys in accordance with by-laws.

This subsection provides that where a by-law, under paragraph 81(1)(p.3) of the Act, is in force for a Band, the Minister is authorized to make payments of capital moneys to persons whose names are deleted from a Band List.

8.0 Section 66 – Revenue

8.1 Subsection 66(1) - Expenditure of Revenue Moneys with Consent

This provision allows revenue moneys to be expended for any purpose that in the opinion of the Minister, *“will promote the general progress and welfare of the band or any member of the band”*.

8.1.1 This subsection provides Bands with a wide range of possible expenditure purposes for which a release may be authorized, but only with the consent of the Band council.

8.2 Subsection 66(2)¹⁹ – Minister may Direct Expenditure

This provision allows the Minister to make expenditures out of revenue moneys under subsection 66(2), *“to assist sick, disabled, aged or destitute Indians”* and *“for the burial of deceased indigent members of the band”*. Expenditures may also be approved in respect of contributions under the *Employment Insurance Act*.

¹⁹ Subsections 66(2) and 66(3) of the Act, as well as sections 67 and 68, allow the Minister to expend revenue moneys for other specified purposes. These provisions are rarely used, since a Band may request the expenditure of funds for these purposes under the authority of section 66(1).

8.2.1 Where a by-law under paragraph 81(1)(p.3) of the Act is in force for a Band, subsection 66(2.1) allows the Minister to authorize payments of revenue moneys, but not greater than one per capita share of the revenue moneys, to any person whose name was deleted from a Band List.

8.3 Subsection 66(3) - Expenditure of Revenue Moneys with Authority of the Minister

This provision allows the Minister to expend revenue moneys for the following specified purposes, without Band council consent:

- 66(3)(a) - to destroy noxious weeds and prevent the spread of insects, pests or disease that may destroy or injure vegetation on reserves;
- 66(3)(b) - to prevent, mitigate and control the spread of disease on reserves whether or not the diseases are infectious or communicable;
- 66(3)(c) - to provide for the inspection of premises on reserves and their destruction, alteration or renovation;
- 66(3)(d) - to prevent overcrowding of premises used as dwellings on reserves;
- 66(3)(e) - to provide for sanitary conditions in private premises and in public places on reserves;
- 66(3)(f) - to construct and maintain boundary fences.

9.0 Section 69 – Revenue

9.1 Subsection 69(1) – Management of revenue moneys by Band

This provision enables a Band to, “*control, manage and expend in whole or in part its revenue moneys*”. However, this subsection does not give a Band the authority to collect Band revenue moneys.

9.1.1 Once a Band is granted section 69 authority over its revenue moneys, it assumes full responsibility for all revenue expenditures that are requested by the Band council. This includes determining whether any given expenditure will be for the general progress and welfare of the Band and its members.

9.1.2 AANDC does not require substantiation that a release of revenue moneys will benefit the Band, but rely on the expenditure decision made by the Band council.

9.2 Subsection 69(1) - Membership Distribution - Revenue

Bands having subsection 69(1) authority may use their revenue moneys to make per capita distributions (PCD) to their members. When making a distribution, the Band council is responsible for protecting the interests of all of its members, including those who are mentally incompetent, minors, adoptees and children-in-care.

9.2.1 Any concern raised by a member with respect to his or her eligibility for a revenue PCD payment is to be resolved between the individual and the Band council.

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

- Pursuant to section 51, the Minister has exclusive jurisdiction over the property of mentally incompetent Indians. For those mentally incompetent members who ordinarily reside on reserve, AANDC staff must ensure that PCD shares are withheld for deposit in CRF accounts established by the region or district on behalf of those individuals.

9.2.3 Adoptee - Distribution List

- Where the Department maintains the Band List, the Minister may also have to withhold the shares of any minor who have been adopted by non-Indian parents. The names of these adopted minors appear on an Adoptee List maintained by the Registrar at headquarters. These names are not entered on the departmental Band List and cannot be released to a Band council for reasons of confidentiality. Since the interest of these adopted minors should also be considered in the distribution, the Department must inform the Band council of the number of those adopted minors and deposit their PCD shares into individual trust accounts in the CRF.

9.3 Subsection 69(2) – Revenue Regulations

This provision affirms that the Governor in Council (GIC) has established the *Indian Bands Revenue Moneys Regulations* and that these regulations require that:

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

- Bands authorize three persons (at least two Band members) to sign for the withdrawal of funds from the account;
- every payment from the account be authorized by at least two authorized persons;
- revenue payments from the CRF be paid into the Band's account;
- Bands engage an auditor and render an annual report; and
- copies of the auditor's annual report be posted on reserve and supplied to the Minister of AANDC.

10.0 Indian Band Revenue Moneys Order

Prior to 1990, separate Order in Council's (OIC) were made when Bands were granted section 69 authority. In May 1990, the Indian Band Revenue Moneys Order (SOR/90-297) was made granting approximately 90 Bands authority over their revenue moneys in whole.

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

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

Where a Band is seeking partial authority over its revenue moneys, a separate OIC must be sought. The 1993 Order cannot be used for this purpose, since it only applies to Bands having full authority.

11.0 Members Transferred from One Band to Another

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

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

1.0 Purpose

The purpose of this chapter is to authorize and provide general direction to AANDC headquarters, regional and district staff, and Bands on the granting and revoking of section 69 authority over the management of revenue moneys.

2.0 Scope

This chapter applies to any Band that consents to acquire section 69 authority in accordance with the moneys management provisions of the *Indian Act*.

3.0 Authority

This chapter is issued under the authority of the Assistant Deputy Minister of Resolution and Individual Affairs (RIA) sector.

4.0 Accountability

Overall accountability for departmental conformance with this chapter rests with the Assistant Deputy Minister and Regional Directors General, and persons designated by them to carry out to specific tasks and responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

5.0 Guiding Principles

- The Department will ensure that the Band membership is formally advised about the implications of such an authority.
- The Band council should have a reasonable understanding of the nature and scope of its responsibilities and powers.
- The Band council continues to assume the role of fiduciary and must conduct itself accordingly in managing its revenue moneys.
- Revocation of section 69 authority should be used as a measure of last resort, where the issue is significant and all other avenues to address the particular problems have been considered.

6.0 General Process for Granting 69 Authority

The process for granting section 69 authority to a Band may be summarized as follows:

6.1 Band BCR

The process begins when the members of a Band provide their informed consent to its Band council to acquire section 69 authority. A BCR along with the supporting documentation to confirm the community consent is submitted to the regional office.

6.2 Regional Review

The Band council's request is reviewed. If satisfied that approval requirements have been met, the regional office submits the request to the Indian Moneys, Estates and Treaty Annuities Directorate (IMETA) at headquarters.²⁰

6.3 Headquarters Assessment

The regional submission is assessed by IMETA. If the submission is incomplete, or if the Band's request has not met departmental policy requirements, it will be returned to the regional office.

6.3.1 Once a decision is reached that the Band has met departmental requirements, IMETA will prepare an OIC submission.²¹ It involves obtaining revisions from and the consent of various departmental offices (Assistant Deputy Minister of RIA; ADM of Corporate Services, Director General of Individual Affairs, Executive Support Services Directorate, AANDC Legal Services, Deputy Minister, Minister, the Office of Privatization and Regulatory Affairs and the Privy Council Office (PCO)).

6.3.2 The approval process ends when the Governor in Council approves the OIC. The related statutory instrument is subsequently published in the Canada Gazette. Headquarters will advise the region of the outcome of the submission approval and the region will inform the Band.

²⁰ The recommendation of the Regional Directors General must accompany the request.

²¹ The process headquarters must follow for obtaining an Order in Council (OIC) is prescribed by central agencies and is time consuming, given detailed the documentation requirements that apply to this type of approval and the need to consult with numerous offices. Bands should be made aware that it may take several months to obtain the OIC.

7.0 General Documentation Requirements²² for Regional Submissions

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

- evidence of informed Band membership consent (community consent);
- an original, duly authorized and complete BCR²³;
- evidence demonstrating that the Band exercises consistent financial responsibility; and
- a letter from the Regional Directors General recommending that the Band be granted section 69 authority, including statements explaining the rationale behind the decision to recommend.
- In support of the recommendation, regions may also wish to include opinions expressed by program managers (i.e., Funding Services, Capital Management, Finance, etc.).

8.0 Department Records of Band Membership Consent

Since section 69 authority will ultimately rest with the Bands' Chief and council. Departmental records must demonstrate that the consent of the membership had been obtained.

8.1 Informed Band Membership

The membership of a Band should be informed of the implications of the Band having section 69 authority, by the Band council and by the Bands legal and financial advisors. This type of information sharing should preferably occur at a general council meeting which would have been convened for that particular purpose and following sufficient advance notification to the membership.

8.1.1 The membership should be informed of the following:

- what 'revenue' moneys are;
- Minister's current duties under section 66;
- present limits on the Band council's powers when operating under section 66;

²² See Appendix D – General Documentation Requirements.

²³ Appendix H – BCR Requirements. An original band council resolution (BCR) must be authorized at a duly convened meeting of the council.

- new duties of the Band council including the need to meet the requirements of the revenue moneys regulations, the remaining obligations of the Minister once the Band receives section 69 authority; and
- advantages, disadvantages and implications of a Band's revenue moneys being managed under sections 66 or 69.

8.1.2 Departmental officials may not provide advice or direction to the Band but may attend meetings²⁴ convened for such purposes to clarify or explain departmental policies and procedures.

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

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

8.1.4 Based on existing case law (i.e., the *Gilbert v Abbey* decision), the Band council assumes the role of a fiduciary and must conduct itself accordingly:

- Failure to properly exercise their responsibilities could leave the Band council in breach of their fiduciary duty and subject to legal action from the members of the Band.
- The Chief and council should seek out independent legal and other advice, when appropriate, to ensure they are properly carrying out their duties.

²⁴ At the request of the Band council, departmental officials attending these meetings can also attest to the method used by the Band to reach its decision on the request for section 69 authority and that the membership was informed.

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

8.2 Community Consent

Community consent is required for granting section 69 authority. In such cases, the Department recommends the approach and methods prescribed in the Indian Referendum Regulations for holding a referendum to obtain community consent.

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

- the wording of the question posed to the voters;
- the total number of eligible voters;
- the total number of members who actually voted;
- the number in favour;
- the number opposed; and
- the number of spoiled ballots (if applicable).

9.0 Evidence of Consistent Financial Responsibility

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

9.1 Audits

The submission should include copies of the last three available financial audits²⁵ of the Band. Departmental assessments which were conducted on these three audits should also be provided which consider whether the Band has otherwise:

- demonstrated good financial control;

²⁵ The audits should be unqualified. If the audit is qualified, evidence must be provided to the effect that the Band has taken acceptable corrective measures to remedy any problems.

- used Band moneys for the purposes for which they were authorized; and
- been diligent and consistent in the management of its funds.

9.2 Newly Created Bands

A newly created Band will have been unable to establish a past track record on which its financial performance can be assessed.

9.2.1 The Band should provide evidence that effective financial systems and procedures are in place and that it is able to carry out all of the duties imposed by section 69 and the Indian Bands Revenue Moneys Regulations.

9.2.2 Such an assessment may be obtained by regional or district staff following an on-site review of the Band's systems and records. The assistance of staff from other program areas may be required for this purpose.

10.0 Amendments of an Existing Authority

After a Band has been granted section 69 authority, it may later request changes to its powers such as asking for full, rather than partial authority over its revenue moneys.

- The Band will need to conduct a new referendum for this purpose and submit a change-of-purpose BCR and provide support documentation to the Department. A regional submission will be required and the Governor in Council (GIC) authority will be sought.

11.0 Band Divisions

Occasionally a Band having section 69 authority is divided to form two or more Bands. In such cases, the "parent" Band, which originally was granted section 69 authority will automatically retain these powers.

- The newly formed Band must apply for the authority to exercise section 69 powers. An OIC will be sought for the Band once it is established that all the requirements of AANDC's New Bands/Band Algamation policy have been met.

12.0 General Process for Revoking S.69 Authority

The process for revoking section 69 authority of a Band may be summarized as follows:

12.1 AANDC Assessment

Revocation may be considered where it comes to the attention of the Department that a Band:

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

12.2 Corrective Measures

Significant revenue moneys concerns may first come to the region's attention during the audit review process.

12.2.1 Regions should promptly take whatever steps are appropriate to rectify the situation. Failure to correct the identified problems may eventually lead to a regional recommendation for revocation.

12.2.2 Rather than revoke a Band's section 69 authority, a region may temporarily appoint an independent receiver-manager to receive all income and issue all cheques on behalf of the Band.

12.2.3 The Band council should initiate the expenditure request by BCR and the region would then conduct a full assessment of the proposed expenditure.

12.2.4 A release of revenue moneys would only be authorized by AANDC if the region can establish that the expenditure would benefit the Band and its members.

12.3 Recommendation for Revocation

Such action would be preceded by a regional submission to headquarters outlining the problem, its significance, corrective measures attempted, and an assessment of options to revocation. The recommendation of the Regional Directors General must accompany the submission.

12.4 Headquarters Concurrence

If headquarters concurs with the regional recommendation for revocation of a Band's s.69 authority the Indian Moneys, Estates and Treaty Annuities Directorate (IMETA) will prepare the necessary OIC submission.

1.0 Purpose

The purpose of this chapter is to authorize and provide general direction to AANDC headquarters, regional and district staff, and Bands on departmental audit reporting requirements for all expended capital and revenue moneys.

2.0 Scope

This chapter applies to any Band expending Band moneys in accordance with the moneys management provisions of the *Indian Act*.

3.0 Authority

This chapter is issued under the authority of the Assistant Deputy Minister of the Resolution and Individual Affairs (RIA) sector.

4.0 Accountability

Overall accountability for departmental conformance with this chapter rests with the Assistant Deputy Ministers and Regional Directors General, and persons designated by them to carry out to specific tasks and responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

5.0 Guiding Principle

- The Minister has responsibilities with respect to the approval and expenditure of Band moneys. In line with these responsibilities, it is essential that all approved Band money expenditures be accounted for.

6.0 Audit Reporting Requirements

6.1 Financial Statements

Bands should provide the Department with financial statements for all expended capital and revenue moneys (whether or not they have been granted section 69 authority) within 120 days from the end of the fiscal year.

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

6.1.2 In addition to any requirements contained in this manual, the financial reporting requirements as described in the *Year-End Reporting Handbook* must be followed.

6.1.3 Bands must prepare their audited financial statements in accordance with generally accepted accounting principles (GAAP) as defined by the Canadian Institute of Chartered Accountants (CICA), unless recommended otherwise.

6.1.4 Non-compliance by a Band regarding departmental audit financial reporting requirements should be informed that future capital or revenue moneys may be delayed until such time as the matter is satisfactorily resolved. The Regional Directors General may refer the matter to the Director General of Individual Affairs Branch at headquarters for further consideration and action if warranted.

7.0 Accounting for Expended Funds

When an expenditure of Band moneys is approved and released, the Band council is fully accountable to the Minister and the members of the Band for the subsequent use of those funds.²⁶

8.0 Unauthorized use of Funds - Corrective Action

In line with the approval and expenditure of Band moneys responsibilities any variances identified between authorized and actual expenditures should be raised promptly with the Band and the necessary corrective action should be taken to address any concerns. Corrective action may include:

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

8.1 Change-of-Purpose BCR

In cases where a Band council wishes to 'change the purpose' for which Band moneys are to be used it should first seek the consent of the Minister.²⁷

²⁶ Appendix A - Rick Gilbert et al v. Alice Abbey, 1992.

²⁷ Except in the case of revenue funds where a Band has been granted s.69 authority.

8.1.1 Upon receipt of a change-of-purpose BCR, regional officials must analyze the request in the same manner as they would any other expenditure proposal. If the subsequent analysis determines that the use of funds is not appropriate, the region should seek the return of these moneys from the Band to the account from which they were released.

8.2 Return of Approved Moneys

Where it is determined that approved capital or revenue were used for unauthorized purposes, the region should request that the Band return an equal amount of such moneys for re-deposit in the Band's capital or revenue account.

8.2.1 In the alternative, the Band may be asked to expend other funds, not Band moneys, to finance an expenditure item that was originally intended to be approved by the Department.

8.3 Moneys Deferred to Next Fiscal

For on-going programs or unfinished multi-year projects, Band moneys can be carried forward to the next fiscal year for the same purpose. These deferred moneys must be identified in the Band's audited financial statements as prescribed by the Financial Reporting Requirements of the Year End Reporting Handbook.

Introduction

Bands may request of the Minister, or his/her delegate, to authorize the expenditure of their capital or revenue moneys by submitting a formal request to the Department by way of a Band council resolution (BCR).

Regional and district staff are responsible for assisting Band councils in understanding the Department's administrative requirements for processing and assessing such requests for recommendation of approval or denial. However, it should be noted that the Minister, or the delegated official, makes the final decision on the release of funds.

Given the nature of the Minister's duties, the Department must ensure that the best interests of Band members are kept in mind when considering requests for the release of capital and revenue moneys.

This chapter of the manual describes the general steps involved in processing an expenditure request from the receipt of a BCR in the Department to the final release of funds, as well as affirm the authority to which this chapter applies.

The steps involved in processing an expenditure request are documented in two sections. This first section (Section 1 – Process Overview) provides a general overview of the phases required in processing requests. The second section (Section 2 - Processes and Procedures) is prescriptive in nature and illustrates the procedure to undertake the processes related to the administration of Band moneys.

Chapter (7) of this manual expands on the specific sections and purposes for which capital or revenue moneys can be utilized, as well as identify any pertinent documentation requirements. It is recommended that Chapter (6) be referenced in conjunction with Chapter (7).

1.0 Purpose

The purpose of this chapter is to authorize and provide a standard for AANDC headquarters, regional and district staff on the processes and procedures required in the administration of Band moneys in the form of National Expenditure Request Procedure Guidelines.

2.0 Scope

This chapter shall apply to any Band and/or persons designated to carry out to specific tasks and responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

3.0 Authority

This chapter is issued under the authority of the Assistant Deputy Minister of Resolution and Individual Affairs (RIA) sector.

4.0 Accountability

Overall accountability for departmental conformance with this chapter rests with the Assistant Deputy Ministers and Regional Directors General, and their responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

5.0 Guiding Principles

- The Department must ensure that the best interests of Band members are kept in mind when considering requests for the release of capital and revenue moneys.
- Regional and district staff are responsible for assisting Band councils in understanding and adhering to the Department's administrative requirements for processing such requests.

Section 1 - General Process Overview

- The process is initiated when a Band council adopts a band council resolution (BCR) requesting a release of funds which is then sent to the appropriate regional or district office of AANDC for analysis and assessment of whether the expenditure would benefit the Band, including approving or denying the request within the scope of its delegated authority.
- If it has been determined that an expenditure request falls under paragraphs 64(1)(d) and (k), where this authority has not been delegated, the region must forward its recommendation to the Indian Moneys, Estates and Treaty Annuities Directorate (IMETA), Individual Affairs Branch (IAB), for review and preparation of the final submission for ministerial approval.
- Once an expenditure request is approved by the Minister, the funds are then released to the Band council or, as stipulated in the BCR, directly to a financial institution.

Phase 1 - Formal Request

The expenditure of capital or revenue moneys is first initiated through a BCR.

Phase 2 - Departmental Assessment

Departmental assessment²⁸ of an expenditure request consists of:

- the initial review;
- the assessment of benefit to the Band and its members; and
- the recommendation for approval or denial.

The manner in which an expenditure request is assessed²⁹ will differ according to whether the Band proposes to use its capital or revenue moneys; and in the case of revenue moneys, whether the Band has been granted section 69 authority.

²⁸ Appendix H - BCR Requirements - lists the minimum information required in the BCR.

²⁹ The results of the initial review and the assessment of benefit must be documented on file by departmental staff. At any step of the process, it may be necessary to contact the Band council or Band staff to obtain additional supporting information or seek clarification of matters related to the proposal.

- For release of capital moneys under section 64, as well as revenue moneys under section 66, departmental staff must conduct an initial review and an assessment of the overall benefit for the Band.
- If the review and an assessment is satisfactory, departmental staff must then prepare the appropriate approval documentation with their recommendation.
- For revenue expenditure requests from Bands having section 69³⁰ authority, the Department must only ensure that, where necessary, an environmental screening, environmental assessment or environmental audit of the proposed expenditure has been completed.

Phase 3 - Release of Band Moneys

Once approval has been given for a release of Band moneys the departmental officer processes the release in compliance with the terms of the decision that is either full, partial or conditional. The Trust Fund Management System (TFMS) is then used to record the amount of funds to be released and under which authority.

³⁰ Under section 69 a Band has the authority to “expend” its revenue moneys only in whole or in part. Therefore, it is the responsibility of the Band council to determine whether a proposed use of revenue moneys will benefit the community and its members. Departmental staff are not responsible for assessing benefit for section 69 expenditures.

Section 2 – Processes and Procedures

Phase 1 – Formal Request

1.0 Initiating the Process

The expenditure of capital or revenue moneys is initiated through a BCR.

1.1 Duly Convened Meeting

Generally, a duly convened meeting is deemed to have occurred when a quorum³¹, majority of the whole Band council, has convened to pass motions.

1.2 Community Consent

Community consent is required for granting section 69 authority, and may be required to determine whether the community supports a proposed use of capital or revenue moneys or, where large or high risk proposals³² are involved; or where a possible conflict of interest situation may arise; or where the Band council deems it is warranted. In such cases, the Department recommends the approach and methods prescribed in the Indian Referendum Regulations for holding a referendum to obtain community consent.

1.3 Submitting BCR

The Band council adopts a motion requesting a release of their funds under the related section of the *Indian Act*. The decision is formalized with a BCR which is then sent to the appropriate regional or district office of the Department. The Department is then responsible for analysing the request and assessing whether the expenditure would benefit the Band and its members (except for section 69 requests), and approving or denying the request within the scope of its delegated authority.

Band councils are encouraged to involve the Department at the early stages of their development of an expenditure proposal, so that appropriate documentation requirements can be identified and to facilitate the expeditious release of funds.

³¹ Section 6 of the Indian Band Council Procedures Regulations defines quorum. As a result of the Qualicum Decision, motions cannot be passed at a Band council meeting where only two officials are present as a motion requires a minimum of two positive votes to pass. Minimum council size is three, minimum quorum required is three.

³² High risk capital expenditures include expenditures that may be viewed as not a benefit to the Band membership such as: meetings or conferences held outside Canada for Chief and/or Council, Band staff and/or any other members of the community; Band staff bonuses; salary raises to Chief and Council and staff; purchases of assets that directly benefit a Chief or council member(s), or Band staff members. Such expenditures should be analyzed in the context of 'a prudent use of funds and in the performance of duty to act in a fiduciary capacity'. See Appendix A - Gilbert et al v. Abbey case.

Phase 2 – Departmental Assessment

2.0 Initial Review

2.1 Acknowledgement Letter

When a BCR requesting the expenditure of Band moneys is received within the Department the Band council will be sent an acknowledgement letter to acknowledge receipt of the expenditure request. The assigned officer actioning the BCR then begins the initial review by examining the following aspects of the request.

2.2 BCR Review

Have the minimum BCR information requirements been met?³³

2.3 BCR Deficiency

Where it is determined that the BCR does not meet the minimum BCR language requirements, or purpose of a proposed expenditure in a BCR is not permissible, it must be returned to the Band council unapproved with a letter specifying the reason for the return. The Band council may later wish to resubmit a new BCR to address the deficiencies with an appropriate purpose.

2.4 BCR Minor Clarification Requirement

Should the BCR not have all of the required information (i.e., BCR does not mention the audit or assurance clause) or there exists an inconsistency between the expenditure request and BCR information provided, it may not be necessary to return it to the Band. In such cases, the Band council or an authorized member of the Bands' administration would only need to provide this information, or any minor clarification, in writing to the region or district office which clarifies the discrepancy or minor change.

2.5 Section of the Act

Based on the nature and purpose of the expenditure request, departmental officers must assess the submission for the section or paragraph³⁴ of the Act under which the submission references.

³³ Appendix H - BCR Requirements.

³⁴ Chapter 7, Part 2 of the National Procedural Guidelines provides detailed descriptions of the types and purposes of expenditures described in sections 64 and 66.

- 2.5.1 Departmental officers must assess under which section or paragraph an expenditure can actually be authorized; establish whether the Band council has submitted all necessary documents in respect of the type of request it has made; and, determine that the departmental official has been delegated the signing authority for authorizing such expenditures.
- 2.5.2 Capital moneys expenditures made under paragraphs 64(1)(d) and (k) of the Act require the Minister's approval and therefore need to be supported by a recommendation from the Regional Directors General.

2.6 Support Documentation

Support documentation must be provided by the Band council for section 64 and 66 expenditures to enable Department officials to make an informed decision on the merits of an expenditure request. Requirements for support documentation depend on the specific purpose and nature of the expenditure request (see section 3.0 following). Support documentation is not required for section 69 requests.

2.7 Availability of Funds

Departmental staff must determine whether the Band has sufficient funds³⁵ in its trust account to satisfy the amount of the request at the time of the request. The TFMS must be used to obtain current balances and financial commitments against Bands trust funds accounts (i.e., housing loan guarantees, or other approved BCRs which have not yet been funded).

2.8 Insufficient Funds

If Departmental staff determine that there are insufficient funds in the Bands account to cover the expenditure request, then the departmental officer must contact the Band to inform them the BCR will be sent back to the Band council for their appropriate action.

3.0 Assessment

After completing the initial review, the departmental officer begins an assessment of the expenditure request. An Indian Moneys Expenditure Request Analysis template (Appendix G) has been created for use by the departmental official when conducting the assessment.³⁶

³⁵ It may also be necessary to contact other sources such as Indian Oil and Gas Canada, Lands Branch to obtain future income projections of Band moneys.

³⁶ Indian Moneys Officers must ensure all sections of the expenditure request analysis template are complete. This analysis is not necessary for S.69 requests.

- As required by policy, the assessment should determine whether the intended use of funds will benefit the Band or promote the general progress and welfare of the Band members.
- Departmental staff may need to contact the Band council or other interested parties (i.e., other areas within AANDC, other government departments) to obtain further information or additional support documentation.
- The assessment must examine all aspects of the expenditure request which includes the financial, socio-economic, environmental and legal considerations.

3.1 Financial Considerations

The assessment must establish whether the proposed expenditure is a prudent use of trust moneys and that the amount requested is reasonable for the type of expenditure being proposed.

- 3.1.1 Staff must ensure that the relevant financial documentation is on file. This includes establishing whether anticipated costs have been sufficiently broken down, such that there is a clear understanding of the specifics of how the funds are to be used.
- 3.1.2 The financial assessment must compare the total amount requested with the balances in the Band capital or revenue account. Irrespective of the amount requested departmental staff must consider the impact of the release of trust funds on the account balance (i.e., the release of funds may deplete the account or adversely impact future generations).
- 3.1.3 The Band council should provide evidence that alternative sources of funding were considered in financing the expenditure request (i.e., alternative funding sources include appropriated funds from AANDC, other federal or provincial programs, financial institutions, etc).
- 3.1.4 The financial assessment should include a summary of the last available financial audited statements of the past 3 years specifying whether the audits were qualified or unqualified. If qualified, the assessment should include information on the particular circumstances relating to the qualified audit opinion and assess whether the qualified opinion is a result of the Band's financial management.

3.1.5 If moneys were released for the expenditure previously, the financial assessment must provide confirmation that previously approved funds for that purpose, as indicated in the Band's last available Audited Financial Statement(s), have been expended according to their approved purpose.

3.2 Socio-Economic Considerations

The assessment of the expenditure request should illustrate the benefits to the community as a whole such as demonstrating reduced dependence on existing programs and services (i.e., social assistance), and/or may result in the creation of possible employment opportunities for Band members either on or off-reserve.

3.3 Environmental Considerations

Environmental impacts³⁷ must be considered for all Band moneys expenditures, however, it is understood that many expenditures will have no impact on the environment (i.e. Band office salaries).

3.3.1 Band councils must provide the Department with an environmental screening and depending on the nature of the expenditure, an environmental assessment or environmental audit, of its impact for expenditure requests under sections 64, 66 and 69, where appropriate.

3.3.2 The Band will bear all costs associated with producing the environmental screening, assessment or audit. Such costs can be included in the amount requested from the capital or revenue account or may also be financed by the regional offices of AANDC, if appropriated funding is available for the specified purpose.

3.4 Legal Issues and Other Considerations

The departmental officer must identify whether there are any potential legal issues that may need to be addressed. For example, the proposal may set a precedent which may have to be assessed in light of the Minister's statutory responsibilities. In such cases, IMETA Directorate at headquarters should be consulted to determine if the matter has any national policy implications.

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

³⁷ Ministerial decisions to release Band moneys do not always trigger the application of the *Canadian Environmental Assessment Act* (CEAA). As a matter of policy and due diligence the Department will apply CEAA requirements to all Ministerial expenditure decisions made under sections 64, 66 and 69. This is appropriate, given the nature of the Minister's responsibilities over Indian moneys to determine whether the release of funds is of overall benefit to the Band and the Minister's exclusive authority over reserve lands.

3.5 Previous Expenditure Request Activity

The assessment should include a review of the Band's last available annual audited financial statements to provide confirmation that previously approved funds, of the Band's last available Audited Financial Statement(s), have been expended according to their approved purpose.

4.0 IMETA Assessment Process (64(1)(d) and (k)) Only

4.1 Preliminary Assessment

Once a BCR is received in the region for a 64(1)(d) and/or (k) expenditure and a draft expenditure request assessment is complete, the regional Indian Moneys Officer (or designate) will contact an IMETA-HQ designate by either telephone or by email indicating that a submission will be sent shortly. The officer will then forward a copy of the BCR via email or by facsimile.

4.1.1 IMETA will open a file regarding the request to verify it meets initial review (s. 2.0) criteria.

4.1.2 Any questions or concerns regarding the BCR, draft submission or support documentation, will be documented.

4.1.3 IMETA will contact the region and set up a conference call to discuss the draft submission. (This should be done within a week of receiving the draft submission or as soon as conveniently possible).

4.1.4 After the conference call, if additional information is required, IMETA will follow up with the regional officer by email and list the information to be received, including any other comments or concerns.

IMETA will also begin completion of a draft of the Policy Compliance Report³⁸ and Risk Review. These documents will accompany the expenditure request approval package for Ministerial approval.

4.1.5 IMETA will compose a draft Decision Briefing Note for Ministerial approval and wait for the additional information requested, or changes to the expenditure request analysis, BCRs, etc., yet to be received.

³⁸ Appendix C – Policy Compliance Report.

4.1.6 If no additional information is required from the region, IMETA will inform the region of this during the conference call and inquire as to when headquarters will receive the 'original' documentation (i.e., BCR signed by Chief and council, approved expenditure request by RDG, support documentation, etc.) and then proceed to compose a final Decision Briefing Note, Policy Compliance Report and Risk Review to finalize the expenditure request package for Ministerial approval.

4.2 IMETA-HQ - Approval Process

Once the original documentation is received IMETA will confirm with the region receipt of the submission documentation, including whether all the documentation is received or there is documentation missing.

4.2.1 IMETA will begin the finalization of the submission (Briefing Note, Policy Compliance Report and Risk Review) and then route for headquarter approvals (i.e., manager, IMETA Director, DG, ADM, etc.)

4.2.2 Once Ministerial approval has been granted, or not, the region will be notified by email of this decision.

4.2.3 An official letter will then be composed by IMETA to the regional officer indicating the final decision.

4.2.4 The letter and subsequent documents will then be faxed to the regional officer with a copy of the signed band council resolution, Ministerial Letter of Authorization and Decision Briefing Note. Copies³⁹ of these documents will then be mailed to the regional officer.

Phase 3 – Release of Band Moneys

5.0 Approval - Regional

Once approval has been given for an expenditure request, the departmental officer processes the release of moneys in compliance with the terms of the decision that are either full or partial. The Trust Fund Management System (TFMS) is then used by the regional Officer responsible for Indian Moneys to record the amount of funds released and under which authority.

³⁹ All original documentation must stay with headquarters. IMETA must keep this file on hand unless otherwise directed.

5.1 Capital Moneys and Section 69 Bands (Revenue) – Cheque Requisition

For all capital moneys and section 69 revenue expenditures, a cheque is issued pursuant to what it has requested in its BCR (i.e., usually deposited into the Band's bank account).

For revenue expenditures to Bands that do not have section 69 authority, the payment is made by the Department either directly to the supplier or, if the Band has already incurred the expenses and has submitted copies of original negotiated cheques to AANDC for reimbursement to the Band.

5.2 Periodic Release

For Band moneys budgets, or for certain projects (i.e., construction of community buildings), moneys may be periodically released from the Band's account according to a prepared cash flow statement or a specified work schedule. This ensures that certain predetermined work is completed before further moneys are released.

Preamble

Chapter 7 of the manual expands on the specific sections and purposes for which capital or revenue moneys can be utilized, as well as identify any pertinent documentation requirements. The following information concerns the specifics of processing disbursements from Band capital and revenue accounts pursuant to paragraphs 64(1)(a) to (k), subsection 64(2), section 66 and subsection 66(2.1) of the Act.

A. Paragraph 64(1)(a) - Capital Per Capita Distributions (PCDs)

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

- Provides for the distribution of an equal share of capital moneys to every person who is a member of the Band, or is entitled to be a member of the Band at the time of the distribution.
- Identifies the total amount of moneys that can be released from a Band capital account, which cannot exceed 50 percent of the capital moneys derived from the sale of surrendered lands (which also represent an interest in land and includes royalties from the sale of oil, gas, timber, etc.).
- In considering whether a Band wishes to consent to a PCD, the Band must assess the impact the distribution would have on the members of the Band who may be in receipt of social assistance payments.

1.0 Limitation - Bill C-31 Reinstates

An individual, who had lost their Indian status prior to Bill C-31⁴⁰, could apply to be reinstated and regain membership in their Band. Subsections 64.1(1), (2) and (3) were introduced as part of the 1985 Bill C-31 amendments and apply only to those reinstates who:

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

1.1 Administration of Reinstates

In administering section 64.1 and subsequent subsections, departmental officers will:

- determine whether a reinstatee falls under paragraph 6(1)(c),(d) or (e);
- establish the amount that was previously paid to the individual, if any;
- calculate the amount that needs to be either repaid or forgiven, including interest;

⁴⁰ Prior to the Bill C-31 1985, individuals who lost their Indian status and Band membership were entitled to receive one per capita share of the moneys held in their Band's capital and revenue accounts.

- inform the individual and the Band council of the results of the research; and
 - if applicable, take action to ensure that the amounts identified are either repaid or forgiven.
- 1.1.2 If it has been determined that an individual owes moneys to his/her Band, departmental staff will use the information to calculate the interest amount that may also be owed.
- 1.1.3 The region will send a letter to the individual and the Band council informing them of the results of this assessment.⁴¹
- 1.1.4 An individual who does not owe moneys to his/her Band is immediately entitled to receive PCD back payments.⁴²

2.0 Documentation Requirements

In addition to the general documentation requirements, the BCR requesting the PCD to Band members must also include a pay list⁴³ and the following information:

- specific amount of Band capital moneys that are payable to each member;
- effective date of the payment⁴⁴;
- date on which the distribution is to be paid out;
- statement identifying whether the Band wishes the distribution to be administered by the Band council or by AANDC; and
- where minors' shares are to be paid "in trust" to their parents or legal guardians pursuant to section 52.1 of the Act:
 - a clear statement and evidence⁴⁵ that the Band council has complied with all the requirements of subsections 52.1(1) and (2);

⁴¹ Reinstates are not responsible for repaying any amounts owing under subsection 64.1(1) from their personal funds. In cases where it is determined that an individual owes an amount exceeding the forgivable amount, the region will take necessary steps to withhold future capital PCDs until the appropriate amount is recovered. Once the amount owed has been completely recovered, PCDs would commence for that individual.

⁴² Refer to Section A - 64(1)(a), of this Chapter, Section 5.3 - PCD Back Pay (Arrears) - Establishing Entitlement.

⁴³ Identifies all individuals entitled to receive a share of a PCD as of the date of the distribution. This pay list must also identify the minors, children-in-care, adoptees, mentally incompetent Indians; deceased individuals who were members as of the effective date of the distribution and those individuals who will be absent on the date the distribution is made or identify their whereabouts as unknown.

⁴⁴ Those persons who are members of the Band on this date will be entitled to receive a share of the distribution.

⁴⁵ A copy of the minutes of the general meeting of the membership of the Band.

- where the Band council administers the PCD, the names of council members designated to sign the receipt for moneys received under section 52.1; and
- a statement⁴⁶ that the minors on whose behalf payments are being made are in the actual care and custody of the persons to be paid.

3.0 Administration of Band Moneys PCD Responsibilities

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

- whether the Band List is maintained by the Department under section 11 of the Act, or is controlled by the Band under section 10;
- whether the distribution of the per capita payments to each Band member will be made by either the Department or the Band council; and
- whether the Band council has made a determination under section 52.1 of the Act that, for certain minor members of the Band, all or a part of their PCD payments will be paid to the parent or guardian on behalf of the children.

4.0 Authority to Compile the PCD Pay List

A pay list must be compiled to identify the names of all individuals who are entitled to receive a PCD.

4.1 AANDC Controlled Band List

Where AANDC controls the Band List under section 11 of the Act, the departmental regional staff must compile a pay list which may be composed of the following sub-lists:

- 4.1.1 *Family Group* - lists all members of the Band according to their family grouping;
- 4.1.2 *Children-in-Care*⁴⁷ - lists any minors who have been removed from their parental homes and placed in foster care, or reside in a provincially funded home or centre;

⁴⁶ A complete list containing the minor's names, their Band numbers, the amount of the payment, and their parents or legal guardian's names should be attached to the BCR.

⁴⁷ The Children-in-Care list should be obtained from the membership staff and ideally the social workers of the Band as their input is sought due to their first-hand knowledge of any minors removed from their natural family.

- 4.1.3 *Adoptees* – such lists contains confidential and protected information of members who have been adopted. A sub-list of adoptees should only be developed on a need to know basis.
- 4.1.4 *Mentally Incompetent Individual* – lists those for whom the Minister has jurisdiction under section 51 of the Act⁴⁸;
- 4.1.5 *Deceased Individuals* – lists those who were members of the Band as of the effective date of the distribution, but who are now deceased; and
- 4.1.6 *Absent Individuals* – lists individuals whose whereabouts are unknown.
 - Regional staff may compile the above noted lists by accessing the names of all Band members on the Indian Registry System (IRS); by searching the TFMS for the names of individual Band members; or by contacting other sources.

4.2 Band Controlled Band List

Where the Band controls its Band List under section 10 of the Act, the Band council is solely responsible for determining who is entitled to receive the PCD, including:

- Preparing a list containing the names of all individual members who are entitled to receive a share of the distribution.
- Providing a copy of this list to the Department.
- The list must identify the names of those individuals whose shares are to be deposited into an individual trust accounts maintained by the Department (i.e., adoptees, mentally incompetent individuals, minors, children-in-care and absent individuals).
- All additions and deletions to the pay list must be confirmed by the Band council to ensure validity of the data.

5.0 Process and Procedure of PCD Payments

The payment of a PCD to Band members may be administered by either the Band council, or the Department on request of the Band council, and/or where determined to be appropriate.

⁴⁸ For any matters that fall under s.42 to s.52.5 of the Act, Estates officers should be consulted to assist in determining the appropriate course of action.

5.1 PCDs Administered by AANDC

Pay lists of all persons entitled to receive a PCD must be compiled by either AANDC or the Band council, depending on who controls the Band List.

- 5.1.1 Once the lists have been finalized, a departmental officer must deposit the PCD shares into the individual trust accounts.
- 5.1.2 The TFMS is used to record a requisition of PCD obligations for all other members of the Band and for payment to an individual member or, for payments under section 52.1, “in trust” to the parent or legal guardian of those minors.
- 5.1.3 After making arrangements with the Band council, departmental staff will travel to the Band office and distribute the cheques to each individual listed on the pay list.
- 5.1.4 Upon receipt of their PCD share (cheque), the members must sign the pay list. All uncollected moneys must be deposited into the individual trust accounts.

5.2 PCDs Administered by a Band council

In its BCR, the Band council may ask to administer the distribution to its members (i.e., for everyone other than for those whose PCD shares will be withheld by AANDC for deposit into the individual trust accounts).

- 5.2.1 On receipt of a BCR request from a Band council, regional staff must assess whether the Band would be able to effectively carry out the various administrative responsibilities related to the making of PCD payments.
- 5.2.2 Regional staff must examine whether the Band has established a good track record for managing its finances and accounting for its spending. This can be determined through discussions with staff from Funding Services by evaluating past audit reviews, or by assessing distributions the Band council may have administered in the past.⁴⁹
- 5.2.3 Where it is determined that the Band council should administer the distribution, departmental staff will issue only one cheque payable to the Band council representing the total amount payable to all entitled members whose funds have not been withheld by AANDC in individual accounts.

⁴⁹ Despite the request of the Band council, departmental staff may determine that it is more appropriate for AANDC staff to administer the distribution.

5.2.4 The Band council is responsible for depositing the cheque into a Band account to prepare and distribute those funds by individual cheque(s) to the members.

- When distributing these cheques on an individual basis the Band council must obtain the signature of the members on the pay list.
- Where a Band council has made a determination under section 52.1, it is suggested that a receipt⁵⁰ from each minor's parent or guardian be obtained by the Band council during the distribution and kept within its office. This receipt discharges the Band council members from liability for the loss or misapplication of these minors' shares.

5.2.5 After the distribution the Band council must send all negotiated cheques not distributed, including bank statements and the original copy of the signed pay list to the Department for reconciliation and audit purposes. All unpaid moneys must be returned to the Department for deposit into individual trust accounts by regional or district departmental officers who must then reconcile all payments made against the documentation provided by the Band council.⁵¹

5.3 PCD Back Pay (Arrears) - Establishing Entitlement

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

5.3.1 It must be determined that a person must have been, or was eligible to be registered, as a member of a Band at the effective date of the distribution in order to be eligible to receive his or her share of a PCD.

5.3.2 PCD arrears may also be paid to a new born child if the birth occurred on or before the effective date of the distribution and the child was registered on the Band List within one (1) year after the event. If not, the date of registration should be used to establish the child's eligibility to a distribution.⁵²

⁵⁰ Refer to Appendix F – Payment to a Parent/Guardian on Behalf of a Minor.

⁵¹ All uncollected moneys must be deposited into departmental trust accounts in the name of the individuals.

⁵² A full share of a capital PCD that is payable to a minor or on behalf of that minor.

- 5.3.3 Where the Band controls its Band List at the time of the distribution, departmental officers must obtain written confirmation from the Band council that the person was a member of the Band in accordance with the membership rules that existed at that time. The Band council must also confirm the effective date on which the person became a member of the Band.⁵³
- 5.3.4 Where the Department administers the Band List at the time of the distribution, departmental officers must: confirm with the Indian Registrar that the person is registered; and/or obtain the date the application to be entitled for registration was received by the Department in order to establish his or her entitlement to a distribution. The registration date must be on or before the date of the distribution.⁵⁴

5.4 Calculating and Making Payment

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

- 5.4.1 In processing a PCD arrears payment, the same process and procedure for administering PCDs by a Band council or AANDC is applied, however, the following information may also be required:
- confirmation by AANDC or the Band council of the date the person was reinstated/registered and the date he or she became a member of the Band;
 - a calculation of the PCD arrears owed; and
- 5.4.2 Departmental officers will also review the information related to the arrears payment to verify the amounts and distribution dates and send a letter to the Band council notifying it of the payment that is being prepared. A copy of the letter is attached to the relevant background information and forwarded for review and approval.

⁵³ Unless this information is provided to AANDC, departmental staff cannot establish an individual's entitlement to a distribution.

⁵⁴ There are some exceptions to this general rule. For instance, reinstated members are eligible for a distribution from the date of their application, as long as this application was received in headquarters within 30 days after it was signed. For individuals whose application was received after this period, they become eligible for the distribution as of the date the application was received in headquarters.

6.0 Section 52.1 – Minors’ PCD Shares Directed by a Band council

Normally, a full share of a capital PCD that is payable to a minor is deposited into a departmental trust account on behalf of that minor. However, under section 52.1 of the Act, the council of a Band may determine that all or a portion of a minor’s share of a capital PCD under paragraph 64(1)(a) will be paid to the parent or legal guardian of that minor.

- A limit of up to \$3,000 of a minor’s PCD share may be paid annually to the parent or legal guardian, as directed by the Band under section 52.1. Any moneys over the \$3,000 limit must be withheld by the Department and deposited into individual trust accounts.

6.1 Determination by the Band council

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

- 6.1.1 the Band council posting, in a conspicuous place on the reserve fourteen days before the determination is made, a notice that it proposes to make such a determination; and
- 6.1.2 the Band council giving its members a reasonable opportunity to be heard at a general meeting before the determination is made.

6.2 Deciding When a Payment is Necessary or Proper

The Band council is solely responsible for deciding when a payment is necessary or proper for the maintenance, advancement or other benefit of a minor.

- 6.2.1 The Band council is solely responsible for developing its own guidelines or criteria for making a determination in any specific case.
- 6.2.2 The Department has no role in a Band councils exercise of its discretion or in carrying out its duties under subsections 52.1(1) and (2).
- 6.2.3 It is the responsibility of the Band council to determine and select a “conspicuous place” on reserve for the posting of a notice to its members.
- 6.2.4 It is the responsibility of the Band council for determining when “a reasonable opportunity to be heard” has been afforded to its members.
- 6.2.5 The Department must not recommend one location over another for the posting of the notice to its members, or define what is considered a “reasonable opportunity to be heard.”

- 6.2.6 Complaints from members of a Band should be directed to the Band council.
- 6.2.7 Where the Band council makes a determination under section 52.1 that payments on behalf of minors are “necessary or proper”, it must, under subsection 52.1(3) notify the Minister of its decision.
- 6.3 Subsection 52.1(3) - Ministerial Notification

This notice must meet the following conditions:

- 6.3.1 Notice must be given at the same time that the council gives its consent to a distribution under paragraph 64(1)(a).
- 6.3.2 Notice must be in the form of a BCR.
- 6.3.3 Where the Band council notifies the Minister that it has made a determination under subsection 52.1(3), and the notice to the Minister complies with the conditions set out above, the Minister must provide for the payment of the minor’s shares as directed by the Band council.

6.4 PCD Shares to be withheld by AANDC

Where a Band council has not made a determination under section 52.1 each minor’s per capita share must be withheld by the Department and deposited into individual trust accounts in the CRF.

- 6.4.1 PCD shares of adoptees, children-in-care or absent individuals must be withheld by the Department and deposited into individual trust accounts.
- 6.4.2 Where the Minister’s jurisdiction has been established, the PCD shares of “mentally incompetent Indians”, who are members of the Band, must also be withheld by the Department and deposited into individual trust accounts.

7.0 Section 51 – Mentally Incompetent Indians

Pursuant to section 51 of the Act, the Minister has exclusive jurisdiction over the property of mentally incompetent Indians when all of the following criteria are present:

- The person is a registered Indian within the meaning of the Act;
- The person is ordinarily resident on a reserve;

- The individual has been found to be mentally incompetent pursuant to the laws of the province/territory in which he/she resides.

7.1 Consultation with Regions

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

7.2 No Ministerial Jurisdiction

Where the Minister does not have jurisdiction, but the individual is proven to be mentally incompetent, the person's PCD share will be directed to the Provincial Public Trustee, or the person appointed under provincial law to administer the individual's property.

Note: Some provinces use the term "dependent adult" in lieu of "mentally incompetent".

B. Paragraph 64(1)(b) - Roads, Bridges, Ditches, Water Courses

“to construct and maintain roads, bridges, ditches and watercourses on the reserves or on surrendered lands;”

- Applies to expenditures related to the construction and maintenance of roads, bridges, ditches and water courses located on reserves, or on surrendered lands.⁵⁵
- May provide for the following types of expenditure:
 - construction: materials, labour, heavy equipment purchase⁵⁶ or rental, consulting fees, engineering fees, etc.; and
 - maintenance: minor and major repairs, snow ploughing, bush-cutting, painting, clearing, summer employment to cover removal of roadside garbage, etc.
- May authorize the purchase of heavy equipment when the equipment will be primarily used to construct or maintain roads, bridges, ditches and water courses on reserve lands.

1.0 Documentation Requirements

In addition to the general documentation requirements, the following information is required:

- Documentation related to the construction project which demonstrates that all applicable federal and provincial codes and standards will be met and the land on which the project will be undertaken is free and clear of any encumbrances.
- For tendered projects, this information would be found in the tender document; Bands should consult with AANDC regional/district staff on applicable standards.
- A narrative explaining how the maintenance will be carried out and financed.
- A copy of the capital plan which illustrates the Bands and/or the Departments commitment to the project.

⁵⁵ Does not apply to the construction or maintenance of provincial, federal or private roads, ditches and water courses.

⁵⁶ Any heavy equipment that is purchased using trust moneys becomes an asset of the Band.

2.0 Demonstrating Benefit

In addition to the list of general documentation requirements, the following factors should also be considered that demonstrate benefit to the community and its members:

- If the purchase of such an asset is to be used primarily to construct and maintain other permanent improvements to the Band or where it is a capital investment section 64(1)(g) must be applied.
- If the equipment is for a combination of purposes, the appropriate paragraph that best reflects the purpose of the expenditure should be selected.

C. Paragraph 64(1)(c) - Outer Boundary Fences

“to construct and maintain outer boundary fences on reserves;”

- Provides for the construction and the maintenance of outer boundary fences on reserves.⁵⁷
- The costs related to such expenditures may be broken down as follows:
 - Construction costs: materials, labour, equipment rental, fees for design, etc.; and
 - Maintenance costs: paint, repairing fence breaks, replacing fence posts and wire, clearing bush, etc.

1.0 Documentation Requirements

In addition to the general documentation requirements, the following information is required:

- A map indicating the intended location and size of fencing area;
- A statement that provides a breakdown of costs including materials/labour and identifies other sources of funding that will be used to finance the project; and
- Confirmation that the expenditure is required and that the costs are reasonable and in accordance with established funding service agreements terms and conditions; this information may be obtained through the appropriate departmental officer, responsible organization and/or service delivery agent.

⁵⁷ It excludes expenditures for off-reserve and inner boundary fences.

D. Paragraph 64(1)(d) - Land Purchase for Reserve or Addition to Reserve (ATR)⁵⁸

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

- Provides for the purchase of lands that will be set aside as a reserve or as an addition to reserve for the use and benefit of the Band.
- The expenditure must be personally authorized by the Minister.⁵⁹
- The regional or district Lands staff responsible for additions to reserves must be consulted when this provision is considered.
- IMETA is responsible for conducting an initial review of the regional moneys submission and then prepare a briefing and/or recommendation from the Director General of Individual Affairs Branch to the ADM of RIA.
- After review, the ADM will forward any concerns or recommendations to the ADM of Lands and Economic Development for consideration prior to the conduct of the addition to reserve review.

1.0 Documentation Requirements

In addition to the general documentation requirements, the following information is required:

- The BCR must also provide a detailed description of the land (i.e., location, lot numbers, number of hectares) and a justification (citing the specific section of the ATR Policy) as to why the land should be added as reserve, or as an addition to reserve; and
- A Decision Briefing Note signed by the Regional Directors General recommending the release of the Band moneys for the purchase of land for reserve or as an addition to reserve, including a narrative that highlights the benefits to the Band.

2.0 Addition to Reserves Policy Application

The process and application of the ATR Policy and its site-specific criteria depend on how proposals are categorized. Separate site-specific criteria are set out for proposals falling under each of the ATR policy categories in the Department’s Lands Management Manual, Additions to Reserve/New Reserves chapter.⁶⁰

⁵⁸ AANDC’s Additions to Reserves Directorate must be consulted at the onset when this provision is considered.

⁵⁹ The approval of such expenditures has not been delegated due to the various implications associated with setting aside land as a reserve.

⁶⁰ http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/enr_ids_pubs_lmm_1315105451402_eng.pdf

E. Paragraph 64(1)(e) - Member's Interest in Land

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

- Applies to situations where a Band member has a lawful interest in land as defined by sections 20 to 29 of the Act, and relevant court cases, including members who have a certificate of possession, a certificate of occupation or a location ticket.
- If the member of the Band is also a member of the council, the question of whether Band capital moneys can be used for this purpose must be brought before the Band members for a vote to avoid any conflict of interest problems.

1.0 Documentation Requirements

In addition to the general documentation requirements, the following information is required:

- Information outlining the value of permanent improvements, mineral rights, leases, etc.;
- Evidence that fair value has been established for the lot (for land or housing purposes, this can be based on an assessment from an independent certified real estate appraiser, or from Canada Mortgage and Housing Corporation (CMHC); for the value of oil and gas rights⁶¹);
- Confirmation from the district or regional Lands staff that the correct lot number is quoted and that the member has a lawful interest in the land;
- Evidence in the form of an affidavit that the member has consented to the purchase; and
- Where the person is also a member of the Band council, evidence that a referendum of the membership supported the expenditure request.

⁶¹ This information can be obtained from Indian Oil and Gas Canada; and for mineral rights the Lands Branch should be contacted.

F. Paragraph 64(1)(f) - Livestock, Farm Implements, Equipment

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

- Provides for the purchase of farm assets⁶² (i.e., livestock, tractors, trailers, combines, trucks, etc.).
- The expenditure must be for a tangible asset that is purchased and not constructed.

1.0 Documentation Requirements:

In addition to the general documentation requirements, the following information is required:

- For farm equipment and machinery: price quotations from qualified sources for new/used equipment or a quotation of fair market value from an independent source; an explanation of how the equipment will be maintained, stored and disposed of in future (i.e., trade-in or write-off); and
- For livestock: a sale report indicating the value of the livestock; an explanation of how the livestock will be managed, and details on the intended use of the livestock (i.e., beef or pork for consumption, to be used for breeding, etc.).

⁶² This paragraph does not provide for the construction of farm buildings, which fall under paragraph 64(1)(g), and farm related expenses of Band-owned companies or businesses since such expenditures fall under paragraph 64(1)(k).

G. Paragraph 64(1)(g) - Permanent Improvements/Works

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

- Provides for the construction and maintenance of permanent improvements or other works to buildings, central water and sewer systems, churches, lagoons, filtration plants, schools, day care centers, arenas, rural electrification, gasification, where appropriated capital funding is insufficient to cover total project costs.⁶³
- All activities must be on reserve or in connection with a reserve.⁶⁴

1.0 Documentation Requirements

In addition to the general documentation requirements, the following information is required:

- A written statement issued from a Band council or authorized agent of the Band that demonstrates that all applicable federal and provincial codes and standards related to the construction or maintenance project will be met,
- The land on which the project is to be undertaken is free and clear of any encumbrances.
- For tendered projects, this information would be found in the tender document; Bands should consult with AANDC regional/district staff on applicable standards.
- A recommendation from regional/district Technical Services.
- A copy of the capital plan which illustrates the Band’s and/or the Department’s commitment to the project.

2.0 Construction and Maintenance

Construction expenditures may include material, labour, equipment purchase/rental and consulting fees.

⁶³ This paragraph does not provide for the purchase of moveable assets and activities related to off-reserve property. Costs related to the operation of community facilities such as day care centers would fall under paragraph 64(1)(k).

⁶⁴ For example, permanent improvements or works to water or electrical lines extending beyond reserve boundaries may be considered to be in connection with a reserve and therefore fall under this paragraph. Such situations should be thoroughly investigated to ensure that alternative sources of funding are used in priority to capital trust moneys and that all other users of the permanent improvement contribute their fair share.

2.1 Application

For the purchase of heavy equipment, this paragraph will apply when the asset is used primarily to construct and maintain improvements that are of permanent value to the Band or where it is a capital investment.

- When the asset is used primarily to construct or maintain roads, bridges, ditches and water courses, paragraph 64(1)(b) will apply.
- If the equipment is purchased for a combination of purposes, the appropriate paragraph that best reflects the purpose of the expenditure should be selected.
- If analysis demonstrates that the heavy equipment is to be used for a new or existing Band owned business, ministerial approval is required and paragraph 64(1)(k) will apply.

3.0 Demonstrating Benefit

In addition to the list of general documentation requirements the following factors should also be considered that demonstrate benefit to the community and its members:

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

H. Paragraph 64(1)(h) - Band Member Loans

“to make to members of the band, for the purpose of promoting the welfare of the band, loans not exceeding one-half of the total value of

i) the chattels owned by the borrower, and

ii) the land with respect to which he holds or is eligible to receive a Certificate of Possession,

and may charge interest and take security therefor;”

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

1.0 Documentation Requirements

In addition to the general documentation requirements, the following information is required:

- A written loan agreement and/or promissory note between the Band and the borrower (Band member) in which the terms and conditions of borrowing are detailed.
- A repayment plan and/or repayment schedule attached to the loan agreement or promissory note directing that the funds be redeposited to the Band’s capital account.
- Where assets are used as security, the value of such assets must be verified by qualified sources.
- Where no interest or security is being given, a justification describing how the arrangement will be of benefit to the Band is required.

I. Paragraph 64(1)(i) - Expenses Incidental to Managing Lands/Property⁶⁵

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

- Provides for expenditures directly associated with the management of reserve lands or surrendered lands and Band property.
- Band capital moneys may be released under this paragraph to fund the costs of a land manager, environmental protection officer, forest ranger, fire protection officer, security guards (not law enforcement officers), surveyors, the insurance of assets (including local works), legal fees related to collecting rent, negotiating leases and accounting fees, if related to collecting rent, and reasonable travel costs.
- May also cover expenses associated with that portion of administrative and governance costs directly related to the time spent managing lands or Band properties.
- The purchase or replacement of major appliances for housing owned by a Band may fall under this paragraph.⁶⁶
- May also provide for expenditures related to natural resource and environmental management activities which are directly incidental to managing lands and Band properties. Such activities may include:
 - the development or maintenance of resource inventories;
 - pre-commercial mineral exploration:
 - development of land use plans;
 - fire prevention and suppression:
 - silviculture;
 - forest protection against diseases and insects;
 - mine site rehabilitation;

⁶⁵ “Band property” is the real estate of a reserve or surrendered lands which belong to a Band. Land management expenditures for off-reserve properties of the Band may fall under paragraph 64(1)(i) or (k) and are considered high risk capital expenditures (i.e. meetings or conferences held outside Canada for Chief and/or Council, Band staff and/or any other members of the community; Band staff bonuses; salary raises to Chief and Council and staff; purchases of assets that directly benefit a Chief or council member(s) or Band staff members). Such expenditures should be analyzed in the context of ‘a prudent use of funds and in the performance of a Bands duty to act in a fiduciary capacity’. See Appendix A - Gilbert et al v. Abbey case.

⁶⁶ There are five major appliances that may be funded, namely, a washer, dryer, stove, refrigerator and dishwasher.

- environmental remediation and responses to environmental emergencies;
- protection and preservation of Band property.

1.0 Documentation Requirements

In addition to the general documentation requirements, the following information is required:

- A detailed breakdown of the expenditure request and a description of how it directly relates to lands and property management.
- A budget outlining salaries, benefits, administrative costs, travel costs and other planned costs.
- If applicable, cost estimates from two or more sources when purchasing assets.

J. Paragraph 64(1)(j) - Housing Construction, including Loans and Guarantees of Loans for Building Purposes

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

- Provides for the construction of houses for members of the Band and may include any major renovations or additions to existing houses.⁶⁷
- Authorizes the Department to grant loans to members for residential building purposes. Such loans may be granted with or without security.
- Loan payments for on-reserve Canada Mortgage Housing Corporation (CMHC) projects or other housing projects may be funded using Band capital moneys.⁶⁸
- Allows Band capital moneys only to be used to guarantee loans to members for housing purposes should only be authorized under these specific and limited circumstances.
- Where a member of the Band independently borrows money from a credited financial institution, the lender may seek a “loan guarantee” from the Band, upon approval from the Minister that the Band can act as a guarantor to authorize that capital moneys held by the Crown will be used to secure the loan. These moneys can only be expended from the Band’s capital account if the member later defaults on the loan payments.⁶⁹
- Where a loan guarantee is approved, the Band’s capital moneys will be set aside or “frozen” in an amount equal to the loan until such time as the loan has been repaid in full.

1.0 Documentation Requirements

In addition to the general documentation requirements, the following information is required:

⁶⁷ It would not include the building of a non-residential structure. Construction costs generally encompass material, labour, electrical, plumbing and project management fees.

⁶⁸ Alternative financial sources must be explored and, if available, be applied in priority to Band capital moneys. For instance, funds not used from the Bands social assistance program may be used to reduce the total amount of a housing loan.

⁶⁹ Loans made under this section of the Act are not Ministerial Loan Guarantees whereby the Minister is acting as guarantor and responsible for paying defaults. Capital or revenues moneys cannot be otherwise used for loan guarantees.

1.1 Construction of houses for members of the Band.

- A legal land description.
- Site plan and a statement that the use of the land complies with the community plan or zoning by-law.
- Project documentation demonstrating that all applicable federal and provincial codes and standards will be met (this information should be found in the tender document).
- A recommendation from regional/district Technical Services staff.
- Land is unencumbered for building purposes.

1.2 Housing renovations

- A detailed breakdown of the proposed expenditure including budget and project costs.

1.3 Loans to a Band member

- A written loan agreement and promissory note between the Band and the borrower in which the terms and conditions of borrowing are detailed;
- A repayment plan and/or repayment schedule attached to the loan agreement or promissory note directing that all payments be deposited to the Band's capital account; for loan payments, justification must specifically address the prudent expenditure of Band moneys as opposed to the Band paying rent or rent being covered under the social assistance program.

1.4 Loan Guarantees

- A full justification and supporting documentation for the housing loan and its intended use (i.e., a copy of the loan agreement and/or promissory note, including amount of the loan, interest rates to be charged, repayment amounts and duration).
- Where a loan guarantee is approved, the moneys in the Band's account must be set aside or "frozen", until such time as the loan has been fully paid.
- The analysis of a request for a housing loan guarantee is treated the same as any other proposed expenditure, even though the requested funds may never actually leave the CRF.

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

- For proposed loan guarantees not relating to housing, the use of capital or revenue trust funds to guarantee such a loan or provide for a line-of-credit is not permissible.

K. Paragraph 64(1)(k) - Any Other Expenditure

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

Covers other expenditure purposes that benefit Bands. It may encompass the following types of expenditures:

- the purchase, start-up or operation of a business;
- loans or contributions made to or by corporations or enterprises owned by Bands;
- operating costs of a commercial farm (salaries, seed, hay, fertilizer, spraying, maintenance of equipment, insurance, etc.)⁷⁰;
- the purchase of off-reserve lands not to be set aside as a reserve or as an addition to a reserve;
- legal costs related to some form of litigation which can include support of a specific claim by a Band;
- other items of a discretionary nature where "benefit" can be established including recreation, daycare and family services; and
- incurred debts when certain conditions are met.

1.0 Regional Submissions Recommending Ministerial Approval

Regions and districts should consult with AANDC headquarters when processing 64(1)(k) proposals to ensure that all relevant requirements are considered in the regional recommendations that will be submitted for ministerial approval.⁷¹ Regions shall use the expenditure request analysis template.⁷²

2.0 Documentation Requirements

In addition to the general documentation requirements, the following information is required, where applicable:

- letters of intent;
- list of inventory;

⁷⁰ For this manual, commercial farm refers to large-scale production of crops for sale, intended for widespread distribution to wholesalers or retail outlets and into world markets and may also include livestock production and livestock grazing.

⁷¹ Refer to Chapter 6, Section 2, Phase 2, 4.0 IMETA Assessment Process (64(1)(d) and (k)) Only.

⁷² Refer to Appendix G - Indian Moneys Expenditure Request Analysis Template.

- list of leasehold improvements;
- list of fixed assets;
- price lists;
- description of insurance coverage;
- accounts receivable/accounts payable summary;
- copies of legal agreements;
- available annual audited financial statements for the past three years;
- Information relating to a Bands' Remedial Management Plan (RMP) (where applicable)
- appraisals;
- financial statements for associated Band owned companies; and
- lease agreements.

Where required, the regional submission should also contain the following information and documentation for expenditure proposals relating to: Band indebtedness; purchase of off-reserve land; Band owned businesses; operation of community facilities; and, the purchase of assets and equipment.

2.1 Business Plan Assessment

Regions must provide headquarters with their cursory review of the Band's Business Plan. Alternatively, the regional or district office may choose to engage the services of an independent expert to undertake the review on behalf of the Department. This is especially appropriate where the proposal is large or complex and the type of business is relatively specialized.

2.2 Band Indebtedness

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

- cause of the debt is explained;
- the expenditure is consistent with any RMP;
- the use of Band moneys is the most appropriate alternative for funding the debt;
- the membership of the Band is made aware of the debt and does not formally oppose to the use of trust funds to pay the debt in full or make payments towards the debt balance.

2.2.1 Cause(s) of debts

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

2.2.2 Remedial Management Plan (RMP)

- Band councils experiencing financial difficulty may be under a RMP which sets out strategies for addressing the various financial issues they are facing.
- Where a RMP is in place departmental staff, in cooperation with the Funding Services Officer (FSO) and/or third party manager, determine whether the expenditure request is consistent with the requirements of the RMP and the terms and conditions of established service funding agreements.
- If the expenditure is not consistent with the RMP or cannot be adequately addressed by approving the requested release of Band capital moneys the appropriate departmental officer and Funding Services Officer may need to meet with the Band council to discuss the necessity of the proposed expenditure.

2.2.3 Appropriateness of Using Band Trust Moneys to Finance the Debt

- The overall financial position of the Band council should be examined by departmental officers, in cooperation with Funding Services, and where applicable, the third party manager, to determine whether the use of Band capital moneys is the most appropriate alternative for funding the debt.⁷³

⁷³ In some instances, it may be appropriate to revise the RMP, or to return the BCR to the Band council unapproved.

- Departmental analysis of the request will focus on whether the proposed use of funds is for the “benefit of the Band”, as required by paragraph 64(1)(k).

2.2.4 Informed Membership

- Evidence should be provided to the effect that the membership of the Band is aware of the amount of the debt, how it was incurred, and identify the corrective measures taken to rectify the problems encountered.
- In some circumstances (i.e., where recurring debts, large amount requested, high risk capital proposals or a high percentage of the Band’s capital account is involved), the Department may require⁷⁴ that a referendum be held. The region should consult with headquarters regarding this requirement.

2.3 Purchase of Non-Reserve Land

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

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

⁷⁴ Such proposals must be analyzed in the context of a prudent use of funds; and in the performance of a Bands duty to act in a fiduciary capacity (best interest of the membership). See Appendix A - Gilbert et al v. Abbey case.

- identification of the impact the expenditure will have on Band's capital and revenue accounts;
- an environmental screening and, where necessary, an environmental assessment, or environmental audit.
- a description of the intended use of the land, specifically:
 - a) If the land is to be used for farming⁷⁵:
 - an outline of the farming plans;
 - a summary of the relevant experience of individuals who will be managing and operating the farm; and
 - other confirmed funding sources.
 - b) If the land is to be used for development purposes (i.e., for a business or a business park).
 - c) If the land is to be used for other purposes (i.e., cottage development):
 - an outline of development plans;
 - a summary of the relevant management experience of individuals involved in the project;
 - a summary of any contingency plans (i.e., for major repair costs, demolition costs, well drilling costs, servicing costs, zoning restrictions, etc.); and
 - a three-year cash-flow projection.

2.4 Band Owned Business

When a proposal involves the development, purchase or expansion of a Band owned business or corporation, the regional submission should contain the following information and documentation:

⁷⁵ For this section the purchase of land for farming is devoted primarily to the practice of producing and managing food (produce, grains, or livestock) to sustain a livelihood as opposed to commercial farming for large-scale production of crops for sale intended for widespread distribution to wholesalers, retail outlets and for world markets.

2.4.1 Business Plan

- The Band council must submit a current business plan⁷⁶ with its BCR.
- The business plan should enable departmental staff, or lending institution, to better understand the various components of the business.
- The business plan should provide the fundamental information on the business and the specific nature of the expenditure request and sets out the goals the business is expected to achieve over a stated period of time. It contains the following components:
 - profile of the business (ownership particulars and type of business);
 - approach to marketing (industry, target customer, competition, product, etc.);
 - operations (site, facilities and equipment, production process or service operation, labour force);
 - management (qualifications, competency and reliability); and
 - financial summary (financial requirements, proposed financing, historical financial results, current financial position, operating forecast, cashflow requirements).

2.5 Operation of Community Facilities

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

- In reviewing such a proposal, the region will verify that the building meets all provincial requirements (i.e., running of a daycare is generally an area that is heavily regulated).
- The Band should demonstrate that it will have sufficient funds to operate the facility for the foreseeable future and identify confirmed sources of funding.

⁷⁶ Funding for the preparation of a business plan can sometimes be obtained from other provincial or federal programs. Such costs may also be covered through the use of Band capital or revenue moneys and as long as the business plan costs do not exceed standard industry project costs.

2.6 Purchase of Major Equipment or other Assets

When a proposal involves the purchase of major equipment or other assets, the regional submission, in addition to the general list for demonstrating benefit criteria, the following information and factors should also be considered:

- a description of the equipment or asset that is being purchased and its intended use⁷⁷;
- a description of the benefits⁷⁸ for such expenditures, which may include job creation over a specified period of time and possible revenue generation.

3.0 Land Designation

Whenever reserve lands are to be used by a third party (which includes a Band corporation) for a business, or economic development venture located on reserve, those lands must be designated for this purpose.

- Regional lands and Indian moneys staff must jointly address this requirement with the Band council before any Band moneys are released.
- Reserve lands are set aside by the Crown for the use and benefit of the Band and not for any third party. Therefore, Crown consent to such a use of the reserve lands is essential. The refusal of a Band to designate the land would mean that the expenditure request could not be approved.
- Lands must be designated before any Band moneys are released. Failure to do so would be unlawful since lands are set aside by the Crown for the Band.

⁷⁷ If the equipment is for a combination of purposes, the appropriate paragraph that best reflects the purpose of the expenditure should be selected.

⁷⁸ Refer to Appendix D for a list of the general criteria for demonstrating benefit.

Subsection 64(2) and 66(2.1) - Payments to Members Deleted from a Band List

“64(2) The Minister may make expenditures out of the capital moneys of a band in accordance with by-laws made pursuant to paragraph 81(1)(p.3) for the purpose of making payments to any person whose name was deleted from the Band List of the band in an amount not exceeding one per capita share of the capital moneys.”

and

“66(2.1) The Minister may make expenditures out of the revenue moneys of a band in accordance with by-laws made pursuant to paragraph 81(1)(p.3) for the purpose of making payments to any person whose name was deleted from the Band List of the band in an amount not exceeding one per capita share of the revenue moneys.”

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

1.0 Documentation Requirements

In addition to the normal processing requirements and the general documentation requirements, a departmental officer will ensure that AANDC also has:

- a copy of the by-law adopted by the Band council and confirmation that it is in force, and
- an Account History Report generated from the TFMS which details the balances in the Band's capital and revenue accounts on the effective payment date.
- The departmental officer will also calculate the individual's share of the capital and/or revenue account and will submit a written summary of the calculation with a recommendation for approval to the person having delegated ministerial signing authority.

2.0 Authorized Payment

When a payment is authorized pursuant to subsections 64(2) and/or 66(2.1), a cheque is requisitioned and made payable to the individual.⁷⁹

- A letter is sent to the individual, with a copy to the Band council, explaining the payment and requesting the signature of a release form, and
- It is mandatory that the release be signed by the individual in order to discharge the Crown from any liability that may be associated with the payment.

⁷⁹ Refer to Chapter 6, Section 2, Phase 3 - Release of Band Moneys, 5.0 Approval – Regional.

Subsection 64.1(2) - Recovery of Other Benefits, and 64.1(3) - Determining Interest

“(2) Where the council of a band makes a by-law under paragraph 81(1)(p.4) bringing this subsection into effect, a person who has received an amount that exceeds one thousand dollars under paragraph 15(1)(a), as it read immediately prior to April 17, 1985, or under any former provision of this Act relating to the same subject-matter as that paragraph, by reason of ceasing to be a member of the band in the circumstances set out in paragraph 6(1)(c), (d) or (e) is not entitled to receive any benefit afforded to members of the band as individuals as a result of the expenditure of Indian moneys under paragraphs 64(1)(b) to (k), subsection 66(1) or subsection 69(1) until the amount by which the amount so received exceeds one thousand dollars, together with any interest thereon, has been repaid to the band.”

- Paragraph 81(1)(p.4) authorizes a Band council to pass a by-law to bring subsection 10(3) or 64.1(2) into effect in respect of the Band.
- Where such a by-law is in force, subsection 64.1(2) applies to reinstateses.⁸⁰
- Until an individual repays the amount exceeding \$1,000 to the Band, including any interest, he or she is not entitled to receive any benefits from the release of Band moneys that would normally flow to all Band members under paragraphs 64(1)(b) to (k), subsections 66(1) and 69(1).

Subsection 64.1(3) - Determining interest

- Regulations have been adopted that prescribe the manner in which interest is calculated for the purpose of subsections 64.1(1) and (2).

1.0 Documentation Requirements

In addition to the general documentation requirements, the following will also apply and should be noted:

- Subsection 64.1(1) and subsections 64(2) and 66(2.1);
- the calculation of the amount owing under these provisions.

⁸⁰ Refer to Section A, Paragraph 64(1)(a), Section 1.0 Limitation – Bill C-31 Reinstateses.

Subsection 66(1) - Expenditures

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

This subsection provides Bands with a wide range of possible expenditure purposes.⁸¹

- It must be demonstrated that the expenditure is beneficial and that the Band has the resources to fund the request.
- The use of Band revenue moneys to guarantee a loan or line-of-credit is not permissible.⁸²

1.0 Documentation Requirements

In addition to the general documentation requirements, the following information, where relevant and obtainable from the Band or other sources, is required:

- Documentation needed to substantiate any request must be customized to meet the specific requirements of that request.

⁸¹ Refer to Chapter 3, Section 8.0 – Section 66 -Revenue.

⁸² Refer Paragraph 64(1)(j) - Housing Construction, including Loans and Guarantees of Loans for Building Purposes, Section 1.4 Loan Guarantees, bullet 5 - Except for loan guarantees relating to housing, the use of capital or revenue trust funds to guarantee a loan or provide for a line-of-credit is not permissible.

1.0 Purpose

The purpose of this chapter is to provide direction and clarity to AANDC headquarters, regional and district staff, and Bands on the preservation of capital trust funds and the creation of new Bands.

2.0 Scope

This chapter applies to any persons designated to carry out specific tasks and responsibilities related to the administration of capital trust funds in relation to the Band moneys provisions of the *Indian Act* (the Act).

3.0 Authority

This chapter is issued under the authority of the Assistant Deputy Minister of the Resolution and Individual Affairs (RIA) sector.

4.0 Accountability

Overall accountability for departmental conformance with this chapter rests with the Assistant Deputy Minister and Regional Directors General, and persons designated by them to carry out to specific tasks and responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

5.0 Guiding Principles

- Hold and maintain the Crown to a high standard in its affairs with Bands in a fiduciary/trust like duty that is well established and applicable to Band moneys.
- To ensure the expenditure requests from Bands are in the best interest of the Band and its membership as directed by Section 61(1) of the Act.
- Band moneys shall be expended only for the benefit of the Indian or Bands for whose use and benefit in common the moneys are received, held, and subject to the Act.
- To prudently protect and maintain an acceptable balance of Band capital moneys given the non-renewable source of Band moneys and the nature of these funds are held “in-common” for current and future members of the Band.

6.0 Preservation of Capital Trust Funds Policy

It has been a long standing practice and policy⁸³ in the Alberta region to adhere to a policy of recommending to senior management that Bands limit annual capital expenditures to a level of known, or expected income for a given year, since:

- Band moneys are a non-renewable asset, and
- the need to demonstrate benefit of the expenditure for both current and future generations.

6.1 Duty to Administer Band Moneys

While recognizing that capital trust funds are the Band's moneys, a balance between the existence of the *Indian Act*, past practices relating to expenditures, and the Minister's fiduciary duty to the beneficiaries of these funds, are all factors that must be considered when reviewing an expenditure request.

6.1.1 In the administration of Band moneys under the Act, the designated departmental official should:

- gather all the relevant facts;
- have or develop knowledge of the operation;
- develop a relationship and knowledge of the administration of the Bands he or she is working with;
- examine the proposed expenditure in light of the above criteria; and
- assess and decide as to whether a departmental official would recommend approval of such an expenditure if it was his or her own money with the information presented.

7.0 Creation of New Bands⁸⁴

Section 17 of the Act, allows the Minister to constitute new Bands from an existing Band or any part thereof, such portion of the reserve lands and funds of the existing Band as the Minister determines shall be held for the use and benefit of the new Band.

⁸³ The practice and later policy was put in place to prevent the complete depletion of a Band's capital account. June 23, 1992 letter G. Wouters, RDG Alberta to Gregor MacIntosh, DG RRBG.

⁸⁴ Chapter 4, Section 9.0 Evidence of Consistent Financial Responsibility, ss.9.2 Newly Created Bands, and Section 11.0 Band Divisions, should be reviewed in conjunction with this section.

7.1 New Band Moneys

Where a new Band is established from an existing one, the capital and revenue moneys held for the existing Band are generally divided on a per capita basis among the members of both Bands.

7.1.1 The calculation of funds to be attributed to each Band shall be based on the total population of those Bands, as well as the balances in their capital and revenue accounts, as of a specific pre-determined date.

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

7.2 New Bands and S.69 Authority

Where a Band has s.69 authority and is divided to form two or more Bands the “parent” Band, which was originally granted s.69 authority through an Order-in-Council (OIC), will automatically retain this authority. The new Band must apply to be granted this authority from the Governor-in-Council (GIC) by an OIC.⁸⁵

8.0 Inherent Right to Self-Government

The Treaties and Aboriginal Government (TAG) sector of AANDC is primarily responsible for negotiating self-government arrangements between Bands and the federal government.

The self-government process ultimately results in the signing of an agreement with a Band and the passage of specific legislation to give effect to the agreement. Each negotiation is unique to the particular Band involved. Although the form and wording of the various arrangements will vary to reflect the specific needs of a Band, there are several aspects which should be common to all agreements from a Band moneys perspective.

8.1 AANDC Duty to Review

Regional staff have a duty to review any proposed inherent right/self-government arrangements by Bands in their region to ensure that the terms relating to Band moneys are consistent with the following conditions:

⁸⁵ Refer to Chapter 4 - Granting and Revoking Section 69 Authority.

- 8.1.1 The Department will negotiate the full transfer of Band moneys it holds on behalf of a Band subject to the passage of specific self-government legislation which fully relieves the Minister from all duties related to the subsequent management and administration of those moneys.
- 8.1.2 The federal government will be liable for any errors or omissions that occurred while these funds were under its administration.
- 8.1.3 The federal government will not be liable for any errors or omissions in the management and administration of these moneys subsequent to their transfer to a Band.
- Following such a transfer, the future liability of the Crown with respect to those assets is extinguished. Band councils will be fully accountable to their people for the future management of those funds.
- 8.1.4 Authority over the administration and management of these moneys will be transferred only if there are adequate provisions for the protection of the individual interests of all members of the Band.
- For departmental staff, addressing this point involves reviewing the Band membership provisions contained elsewhere in the proposed agreement.
- 8.1.5 Capital and revenue moneys are no longer considered to be “Indian moneys” once they have been transferred to a Band, pursuant to self-government legislation.
- 8.1.6 The Band has complete discretion in determining the manner in which these transferred funds⁸⁶ will subsequently be managed.

⁸⁶ The transferred trust funds do not need to be segregated by the Band as “capital” or “revenue” moneys.

1.0 Purpose

The purpose of this chapter is to authorize and provide general direction to AANDC headquarters, regional and district staff, and Bands on the release of Band moneys information it holds on behalf of Bands.

2.0 Scope

This chapter applies to any persons designated to carry out specific tasks and responsibilities related to the administration of capital trust funds in relation to the Band moneys provisions of the *Indian Act*.

3.0 Authority

This chapter is issued under the authority of the Assistant Deputy Minister of the Resolution and Individual Affairs (RIA) sector.

4.0 Accountability

Overall accountability for departmental conformance with this chapter rests with the Assistant Deputy Minister and Regional Directors General, and persons designated by them to carry out to specific tasks and responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

5.0 Guiding Principles

- The *Access to Information Act* and *Privacy Act* govern the disclosure of information held by the federal government and should be made available to the public, subject to limited and specific exceptions.
- Departmental programs have the responsibility to research, compile the required information or records and to prepare recommendations on whether complete or partial disclosure should be authorized.
- The release of information from departmental files and records should be provided through ordinary channels whenever possible and practical.

6.0 Formal Request vs. Informal Request

6.1 Formal Request

A request for information is formal when an application is sent to the Access to Information and Privacy (ATIP) Secretariat at AANDC headquarters, or when a written request explicitly refers to one of the two Acts.

6.1.1 The ATIP Secretariat coordinates the preparation of responses to formal requests to ensure there is compliance with the above-noted legislation and related policies and procedures.

6.1.2 Normally a departmental program provides the information, along with its recommendations on the release of information, within seven calendar days.⁸⁷

6.2 Informal Request

A request is informal when it is not made under either one of these two Acts. The release of information from departmental files and records should be provided through ordinary channels whenever possible and practical.

6.2.1 Prior to transmitting the documentation to the applicant, the Department has to ensure that any specific information, records or portions thereof that have been excluded or exempted under these Acts (i.e., legal opinions, personal information), are not released to the person making the request.

Since the Department could be sued for inappropriate disclosure, advice should be sought from the departmental ATIP Secretariat to clarify any questions on the appropriate process to address an informal request.

6.2.2 Where information is received by the Department which indicates that a Band and/or Bands may be under litigation against the Crown in relation to Band Moneys, the informal request should be forwarded to the Litigation Management and Resolution Branch for review and decision prior to any disclosure of information.

⁸⁷ Under exceptional circumstances, extensions can be obtained for providing a formal response. These extensions should be discussed with the ATIP Secretariat.

7.0 Access to Information Act⁸⁸

AANDC must protect the interests of Bands and its members when dealing with requests for trust moneys information or records. These records can be released to a Band council, upon submission of a letter or BCR from the Chief and/or Band council, since it is the official representative of the Band. However, any other entities (individuals/researchers/third parties) must provide the Department with written consent from the Band council in the form of a BCR adopted during the current mandate of the council which specifies what information can be released and to whom.⁸⁹

7.1 Access to Records Only by Band council

Sometimes members of a Band request copies of Band trust account records from AANDC without first obtaining the consent of the Band council. Even though registered members of a Band have an interest in the moneys held in trust on their behalf of their communities, only their Band council represents the Band as a whole and can authorize access to those records.⁹⁰

7.2 Council Duty to Account to Band Members

A Band council likely either originated the information now contained on departmental files, or it was provided with copies of this information by the Department sometime in the past. A Band council has a fiduciary duty to account to its own members for prior moneys management and the moneys management decisions it has made and will make.⁹¹

8.0 Privacy Act

The *Privacy Act* deals with all personal information that is collected by the federal government on Canadians.

- This legislation protects that information against unauthorized disclosure and applies to individuals' requests for information about themselves.
- This legislation gives any individual the right to access the information held by the government on his or her behalf.

⁸⁸ This Act applies to requests that are made by individuals to access information about another entity, that is, about a "third party" (some other person, group of persons or organization).

⁸⁹ It should be noted that the trust records of Bands often contain personal information on individual members.

⁹⁰ Members should be advised to contact their Band council to obtain the information.

⁹¹ See Appendix A - Rick Gilbert et al v. Alice Abbey (BCSC), 1992.

- Consequently, departmental staff may informally release such requested information to the individual alone. It is important to ensure that only the information relating to that individual is released.

8.1 Written Consent of Release

In a case where a person requests information about someone else, a written consent of release from the other individual must be obtained prior to the disclosure of the information requested.

8.1.1 In situations when there is a separation or a divorce, only the parent with legal custody of the minor can access the minor's records.

8.1.2 The duly appointed administrator of property and/or the legal guardian of a mentally incompetent Indian may have access to any information regarding that individual.⁹²

8.2 Deceased Individuals Information⁹³

Information on a person that has been deceased for more than 20 years cannot be protected under this legislation and must be released upon request.

8.2.1 Proof of the individual's death must first be obtained prior to the disclosure of information.

8.2.2 Where the death cannot be confirmed, the applicant should be asked to present a formal request to AANDC for information under the *Privacy Act*.

9.0 Personal Information Release Authority

Paragraph 8(2)(a) of the *Privacy Act* authorizes disclosure of personal information when the release is consistent with the purpose for which the information was obtained.⁹⁴

⁹² The Head of Individual Moneys under the Estates program should be consulted regarding matters related to mentally incompetent Indians.

⁹³ Ibid.

⁹⁴ The Department holds trust records to account for its management of Bands moneys. Consequently, all information contained in these records should be released to Band councils only and without question so that they may have complete records of what is on their files.

1.0 Purpose

The purpose of this chapter is to provide direction and clarity to AANDC headquarters, regional and district staff on the re-deposit of Indian moneys into the Consolidated Revenue Fund (CRF).

2.0 Scope

This chapter applies to Indian moneys released to a Band in accordance with sections 64, 66 and 69 of the *Indian Act*.

3.0 Authority

This chapter is issued under the authority of the Assistant Deputy Minister of the Resolution and Individual Affairs (RIA) sector.

4.0 Accountability

Overall accountability for departmental conformance with this chapter rests with the Assistant Deputy Minister and Regional Directors General, and persons designated by them to carry out to specific tasks and responsibilities related to the administration of Band moneys provisions of the *Indian Act* and its regulations.

5.0 Guiding Principles

- While there is no explicit statutory authorization to act as a trustee over Indian moneys, no such provision is necessary. The Crown may agree to act as a trustee of any person's moneys without specific statutory authority.
- The *Indian Act* does not preclude the Minister from accepting moneys for re-deposit into a Band's trust account. The Minister is not obligated to accept a re-deposit to the Band's trust account, however, may do so at his/her discretion.
- It is the government's policy to ensure that public money it receives is promptly deposited to prevent and reduce, to the extent possible, instances of error, fraud, or omission and to decrease the government's need to borrow.⁹⁵

⁹⁵ Treasury Board Comptrollership, Chapter 3-3, Policy on Deposits, 1995. and *Receipt and Deposit of Public Money Regulations*, 1997, and the *Financial Administration Act*, Section 2.

6.0 Policy

The Manual for the Administration of Band Moneys provides greater direction and clarity to AANDC headquarters, regional and district offices and Regional Directors General and persons designated by them to carry out specific tasks and responsibilities related to carrying out the administration of the Band moneys provisions of the *Indian Act* and its regulations.

6.1 Redeposit of Approved Funds

Approved funds which have originated as a release of Indian moneys which were not expended (in whole or in part) on the purpose for which the release was approved, are eligible for redeposit into the Consolidated Revenue Fund (CRF).

6.1.1 A redeposit of moneys into a Band's capital or revenue trust account within the CRF may only be permitted if such capital and revenue moneys were released pursuant to sections 64, 66 and 69 of the *Indian Act* and a Band's year end audited financial statement indicates that the capital and/or revenue moneys were unexpended.

6.1.2 Should a Band's year end audited financial statements indicate that the moneys released had been expended on the purpose for which the release of moneys was approved; no requests for redeposit will be accepted.

6.1.3 A Band must submit a BCR requesting the redeposit of unexpended moneys referencing the original BCR request for the release of capital and/or revenue moneys.

6.1.4 Unexpended moneys shall be redeposited into a Band's account which the prior release had originated from, either the Band's capital or revenue trust account.

7.0 Unauthorized use of Funds⁹⁶

In line with the approval and expenditure of Indian moneys responsibilities, it is essential that all approved Indian money expenditures be accounted for. Any variances identified between authorized and actual expenditures should be raised promptly with the Band and the necessary corrective action should be taken to address any concerns.

⁹⁶ Refer to Chapter 5 - Auditing, Section.8.0 Unauthorized use of Funds - Corrective Action.

8.0 Redeposit / Return of Moneys Procedures

8.1 Bands Request for Redeposit

Upon receipt of a Band's request to redeposit unexpended moneys, the Band will be advised that should its request be approved a redeposit of funds shall be made to the Band's account which the prior release originated.

8.1.1 Regional staff must review a Band's year end audited financial statements, specifically the statement of receipt and expenditure of Indian moneys for both capital and revenue trust moneys.

8.1.2 Identify the unexpended capital and/or revenue moneys which have been released to the Band and are requested for redeposit.

8.1.3 Where the request for a redeposit is for a surplus of moneys released to a Band pursuant to *Indian Act* sections 64 and/or 66, the expended portion must be verified to ensure moneys released was expended on the purpose for which the release was originally approved.

8.1.4 Once the region has determined that the request for redeposit has complied with all provisions of this chapter, the region may approve the request.

8.2 Return of Approved Moneys used for Unauthorized Purposes

Where it is determined that approved capital or revenue moneys expended by a Band were used for unauthorized purposes, the region must request that the Band return any such moneys for redeposit into its capital or revenue account.

9.0 Responsibilities

- Regional staff are responsible for ensuring that a Band's request meets the requirements set out in this chapter.
- Regional departmental staff are responsible for ensuring payment and redeposit of moneys into a Band's trust account within the Consolidation Revenue Fund.
- AANDC headquarters is responsible for providing policy direction, guidance and implementation of this chapter.

Appendix A - *Rick Gilbert et al v. Alice Abbey Decision*

SUMMARY

Duty of Chief and councillors to act in a fiduciary capacity:

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

- a) "a fiduciary duty exists if one person undertakes to act in relation to a particular matter in the interests of another, and has been entrusted with a power or discretion to affect the other's interest, in a legal or practical sense, so that the other is in a position of vulnerability"; and
- b) "a duly-elected Chief as well as members of the Band council are fiduciaries as far as all other members of the Band are concerned."
- This case also attests to the fact that litigation can be successfully brought against elected Chiefs and councillors who breach their fiduciary obligations.

Conflict of Interest:

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

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

Appendix B - Historical Rates of Interest on Capital and Revenue Accounts

From 1867 to March 1980

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

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

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

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

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

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

Fiscal Year	Average Interest Rate for the Month of March	Interest Rate Adjustment re Previous Year at March 31	Interest Rate Applied on April 1 Opening /March 31 Carryover Balance	Yearly Average Interest Rate
1969-1970	7.24%	---	7.24%	7.79%
1970-1971	8.05%	+ 0.55%	8.60%	7.59%
1971-1972	6.80%	- 0.46%	6.34%	6.97%
1972-1973	7.07%	+ 0.17%	7.24%	7.30%
1973-1974	7.30%	+ 0.23%	7.53%	7.70%
1974-1975	7.92%	+0.40%	8.32%	9.00%
1975-1976	8.25%	Not Applicable	8.25%	9.27%
1976-1977	9.47%	Not Applicable	9.47%	9.03%
1977-1978	8.76%	Not Applicable	8.76%	8.81%
1978-1979	9.15%	Not Applicable	9.15%	9.43%
1979-1980	9.91%	Not Applicable	9.91%	10.81%

- 1.0 Band moneys rates of interest for the period from 1980-81 to present, can be found in the Application Table - Interest Rates, in AANDC's Trust Fund Management System (TFMS). This table is updated quarterly and posted as a separate document on AANDC's website.
- 2.0 Order-in-Council (P.C. 1981-3/255) dated January 29, 1981.

Order in Council P.C. 1981-3/255
29 January, 1981

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Minister of Indian Affairs and Northern Development and the Treasury Board, pursuant to subsection 63 (2) of the *Indian Act*, is pleased hereby to revoke Order in Council P.C. 1969-1934 of the 8th of October, 1969 and to fix the rate of interest to be allowed, commencing the 1st day of April, 1980, on Indian Bands' Revenue and Capital Moneys held in the Consolidated Revenue Fund at the quarterly average of those market yields of the Government of Canada bond issues as published each Wednesday by the Bank of Canada as part of its weekly financial statistics, which have terms to maturity of 10 years or over.

Indian Act 64(1)(d) & (k) Expenditure Submission Policy Compliance Report

Report Prepared By _____ Date: _____

Band Name and Number			
Band Council Resolution Numbers			
BCR Dates			
Region			
Name of Regional Officer on File and Office Phone #			
Date Preliminary Version of Submission Received at Region			
Conference Call Date			
Date Final Version of Submission Received at HQ			
Expenditure Request Purpose			
Expenditure Amount \$			
Percentage draw of Capital / Revenue Trust Account		% as of (Date)	
Capital Balance		\$ as of (Date)	
Revenue Balance		\$ as of (Date)	
Previously Approved Expenditure as indicated in the Bands last available Audited Financial Statement(s)	Fiscal	Purpose	Amount
Audited Financial Statements (last available) – General Commentary			
Fiscal Year: 201x-201x		(i.e. Qualified / Unqualified?)	
Is final submission in compliance with the <i>Manual for the Administration of Band Moneys</i> , Yes or No?			
Comments (if none leave blank):			

Recommendation:

(*Manually check off appropriate box that applies (one per category) then apply to risk matrix for level)

Expenditure Type	Financial Management
<i>COMPLEXITY</i> of the expenditure request eligible activity (pursuant to s.64 of the <i>Indian Act</i>)	<i>LIKELIHOOD</i> of Band properly expending approved funds (pursuant to s.64 of the <i>Indian Act</i>)
<p>Overall, the eligible activity is:</p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>LOW</i> : Based on type of activity (routine in nature to the Band), amount of funds requested, merit of the complexity of the proposal, previous expenditure history of same type and acceptable expenditure analysis, risk is low. <input type="checkbox"/> <i>MEDIUM</i> : Based on type of activity (not routine in nature to Band but similar to other Band expenditures), amount of funds requested, acceptable expenditure analysis, merit of the complexity of the activity which may be subject to some outside influences that may impede the proposal, previous expenditure history of same type, risk is medium. <input type="checkbox"/> <i>HIGH</i> : Based on type of activity (not routine in nature or similar to other Band expenditures) , large dollar amount of funds requested, merit of the complexity of the activity which may be perceived as controversial and require community ratification, may be subject to strong outside influences such as litigation and require higher level of analysis, risk is high. 	<p>Band's expenditure request history demonstrates:</p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>EXPECTED</i>: Approved funds properly expended according to purpose; no issues with the Bands available Audit Financial Statement(s); Year-end Reporting is good; and/or does not require attention and direction of AANDC Senior Management. <input type="checkbox"/> <i>LIKELY</i>: Approved funds may be subject to outside influences that may impeded the proper expenditure of funds according to their intended purpose; minor issues raised with the Bands available Audit Financial Statement(s); minor Year-end Reporting issues raised; and/or may require the attention and direction of AANDC Senior Management. <input type="checkbox"/> <i>UNLIKELY</i>: Unable to verify and/or confirm approved funds were properly expended according to their intended purpose as reported in the Bands available Audit Financial Statements; major Year-end Reporting issues raised; and/or requires the immediate attention and direction of AANDC Senior Management.

Risk Matrix

		Financial Management		
Level		EXPECTED Likelihood	LIKELY Likelihood	UNLIKELY Likelihood
Expenditure Type	LOW Complexity	<input type="checkbox"/> Acceptable Risk	<input type="checkbox"/> Acceptable Risk	<input type="checkbox"/> Acceptable Risk
	MEDIUM Complexity	<input type="checkbox"/> Acceptable Risk	<input type="checkbox"/> Regional Judgement Call	<input type="checkbox"/> Regional Judgement Call
	HIGH Complexity	<input type="checkbox"/> Acceptable Risk	<input type="checkbox"/> Regional Judgement Call	<input type="checkbox"/> Requires Higher Level Analysis

LEGEND

Acceptable Risk: The proposed expenditure should be considered for approval by management on the merit of the proposed eligible activity (pursuant to s.64 of the *Indian Act*) and upon assurance, by current Chief and Council to AANDC that to the best of their knowledge, previously released funds were expended pursuant to the approved BCR requests.

Regional Judgement call: The proposed expenditure should be considered for approval by management on the merit of the proposed eligible activity (pursuant to s.64 of the *Indian Act*), consideration and direction should also be given by AANDC Senior Management with respect to the possibility of risk mitigation such as:

- Assurance, by current Chief and Council to AANDC, that previously released funds, to the best of their knowledge, were expended pursuant to the previously approved BCR requests;
- Prioritizing the activity with more predictable expenditures;
- Releasing funds when additional documentation is requested by the Region from the Band to support the request is provided;
- Issues raised in either annual Audited Financial Statements, Year-end Reporting and/or may require the attention and direction of AANDC Senior management to address.

Requires Higher Level Analysis: The proposed expenditure should only be considered for approval on the merit of the proposed eligible activity (pursuant to s.64 of the *Indian Act*) with consideration and direction given by AANDC Senior Management with respect to risk mitigation measures be implemented by such methods as:

- Reduced the Unlikely level to a Likely level upon verification and assurance, by current Chief and Council to AANDC that previously released funds, were expended pursuant to the previously approved BCR requests;
- Where a proposed expenditure request is not routine in nature or similar to other Band expenditures (is of large dollar amount; merit of the complexity of the activity may be perceived as controversial; may be subject to strong outside influences such as litigation, or where a perceived conflict of interest situation may arise) may require higher level of analysis and mitigation measures be implemented with evidence provided to AANDC;
- Release funds upon confirmation of demonstrated general membership support and/or community ratification results in favour of expenditure proposal;
- Reject the expenditure proposal due to the High Complexity and Unlikelihood the current Chief and Council can provide AANDC with an acceptable level of assurance that previous expenditures were expended for their intended purpose, or other measures Senior Management may deem appropriate.

From the available information provided, the Indian Moneys Expenditure Request Analysis submission for the XXX First Nation/Band - BCR # complies/does not comply with the policy requirements of the *Manual for the Administration of Band Moneys* and therefore, recommend/ do not recommend submission for Ministerial approval.

(Name) _____ Date _____
Signature _____
Band Moneys Officer/Advisor

(Name) _____ Date _____
Signature _____
Manager, Indian Moneys

(Name) _____ Date _____
Signature _____
Director IMETA

Appendix D - General Documentation Requirements

1.0 General Documentation Requirements

The following are general documentation requirements described for the expenditure of Band capital moneys under paragraph 64(1)(a) through (k) and section 66.

- *BCR⁹⁷ for the Minister's signature.
- If the Band receives funding from the Department, a copy of the funding arrangement which identifies all sources of funding, the scope of work, schedules and budgets should be on file.
- Where appropriate, a justification in the form of appraisals, cost estimates and financial projections from qualified sources to demonstrate that the Band is paying a fair price and the proposed use of funds will lead to economic benefits.
- Where necessary, a submission must include either an environmental screening, an environmental assessment or environmental audit of the project.

2.0 Demonstrating Benefit – General Criteria

In formulating a recommendation, for the purchase of heavy equipment or where demonstrating benefit is required, it must be demonstrated that the proposed expenditure will be of overall benefit to the Band. The following general criteria should be considered:

- price (fair and reasonable);
- annual operating and maintenance costs;
- primary and secondary uses of the equipment;
- other sources of funding to be accessed;
- owner and insurer of the asset.

⁹⁷ See Appendix H - Band Council Resolution (BCR) Requirements. A BCR generally should not be more than one year old from time of passing at a Band council meeting to the time it is received at AANDC. If the BCR is more than one year old when received by AANDC, departmental staff should contact the current Chief and council to verify whether the BCR is still valid or the Band wishes to rescind the BCR.

Appendix E – Payment to a Band Council on Behalf of Minors Template

1.0 A receipt must be signed by a quorum of the Band council members identified in the BCR that requested the distribution, to discharge the Minister from liability for the loss or misapplication of a PCD payment. The following receipt form is suggested:

Receipt Form

Payment to a Band Council
on Behalf of Minors

We, _____

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

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

Band Council
Signatures: _____

Witness _____

Dated this _____ day of _____, 201____.

Appendix F – Receipt Form - Payment to a Parent/Guardian on Behalf of a Minor Template

Receipt Form	
Payment to a Parent/Guardian on Behalf of a Minor	
<p>I, _____, being a member of the <u> (name of Band) </u>, acknowledge receipt of the sum of \$ _____, which sum represents payment to me for myself and the following listed minors, each of whom is a member of the <u> (name of Band) </u>.</p>	
CHILD'S NAME	BIRTH DATE
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
<p>I represent that I am the parent or legal guardian of the above named minors and that the funds received in respect to each such minor will be used for his or her benefit or will be deposited in a trust account maintained for that minor.</p>	
<p>I, on behalf of myself and the above-named minors, in consideration of the payment, do hereby release and forever discharge and indemnify the Department of Aboriginal Affairs and Northern Development Canada, the Chief and council of the <u> (name of Band) </u>, their agents, employees, heirs, executors, administrators and assigns, from any and all manner of action, cause of action, suit, cost, debt, demand or claim of whatever nature or kind which the undersigned or any other person shall or may have by reason of or relating to the payment of moneys to me or to members of the <u> (name of Band) </u>.</p>	
SIGNED at _____ this _____ day of _____, 201__ .	
CHEQUE NUMBER _____	
SIGNATURE _____	

Appendix G - Indian Moneys Expenditure Request Analysis Template

Name of First Nation/Band _____

Date: DD/MM/YYYY

PART A - REGIONAL INFORMATION

Fiscal Year: YYYY-YYYY
Region: _____
Regional Officer: _____

Regional File #: _____
CIDM #: _____

Band Council Resolution Information:

Date of BCR: DD/MM/YYYY
Date Received in Region: DD/MM/YYYY
Capital Balance: \$ _____
Balance Date: DD/MM/YYYY
Amount Requested: \$ _____
Recommendation: [In full/partial?]

BCR No.: _____
Quorum: _____
Revenue Balance: \$ _____
Balance Date: DD/MM/YYYY
Capital/Revenue: _____

Date routed to RDG: DD/MM/YYYY

If amount of time between 'Date Received in Region' and 'Date Routed to RDG' exceeds two months, please provide all relevant information relating to the delay experienced such as dates, discussions and meetings held with the Band, documents requested, etc.:

Attachments to BCR:

[Include a list of any attachments / support documentation to the BCR]

Part B - Submission Overview

Provide a brief explanation for the request. Include a rationale that supports the level of urgency (if applicable). Include the authority to be used to release these funds from the Bands Indian moneys account, either 64(1) or 66. If a portion of the request was previously approved under regional authorities, include the authorities used under sections 64(1) or 66 and the previous amounts released.

1.0 Submission Timeline:

Provide the date difference between the time the BCR was received in the region to forwarding RDG approved submission and the final assessment to HQ.

PART C - COMMUNITY PROFILE

Location: [Closest District/Town/City] Current Population: #
Membership Authority: [Section 10/Section 11?] Method of Election: [Custom/IA]
Tribal Council: [If Applicable] Term of Office: YYYY - YYYY

1.0 Principles of Governance:

Provide an explanation of how the community was made aware of the decisions made by the Band council (i.e. by general council meetings, communications/bulletins or otherwise). If possible, provide a general overview of the political and socio-economic environment of the Band.

PART D - ANALYSIS

1.0 Background

Explain the purpose(s) of the expenditure request in detail. Include background information that supports the need for the use of capital/revenue funds for this purpose. (Refer to specific supporting documentation when detailing the purpose(s) of the expenditure.) For each capital expenditure requested in the BCR the following must be provided:

- a) the purpose & the amount requested;
- b) a clear need and benefit statement, and;
- c) an indication that the expenditure request is a prudent, reasonable and provide sufficient evidence to support this statement.

2.0 Assessment of Benefit

Provide a summary of the benefit to the Band members for this expenditure request. Include any employment statistics for band members, economic benefits, number of members that will directly or indirectly benefit from the request to the Band or other tangible benefits as a result of this expenditure.

If this is a re-occurring expenditure, details are required as to how successful the program/expenditure has been. Or if there is an increase in the request, there should be a corresponding rationale as to why the need for additional funds (i.e., increase in participation, etc).

3.0 Cross Sectoral Linkages

Do any other sectors/Departments have roles to play for this expenditure request? Describe how this role may affect the assessment process, if at all. Provide comments from the FSO regarding this expenditure request (*is a requirement*).

4.0 Legal Implications or Other Considerations

Include any legal factors affecting this expenditure request, such as current litigation, land claim issues, governance issues or other considerations.

5.0 Environmental Assessments

Is an environmental assessment or screening needed for this request? If yes, provide a brief explanation. If no, has an assessment/screening/audit taken place? What are the results? Do these results affect this expenditure request? Or, not applicable.

PART E - FINANCIAL ANALYSIS

1.0 Band Capital/Revenue Trust Account

Table 1 - Account Balance

Part A)	
(1) Opening balance as of April 1, YYYY	\$ _____
(2) Year to date projected / generated revenues	\$ _____
Sub-total (1) + (2)	\$ _____
Part B)	
Capital Trust Request (list approved for this fiscal include pending approvals)	
1) BCR No., Purpose	(\$) _____
2) BCR No., Purpose	(\$) _____
3) BCR No., Purpose	(\$) _____
Sub-total	(\$) _____
Part C) This submission - Funds Requested from Capital Trust - Total	(\$) _____
Available Capital Trust Balance: Sub-total A) - Sub-total B) – Total C)	(\$) _____

2.0 Financial Projection

Please include any information on the estimated income from any activity on reserve for the fiscal year in which the expenditure request is taking place.

Provide any other financial detail here. Include outstanding payables that may have an affect on the account balance (i.e., IOGC forecast, impact request will have on account (percentage %)).

3.0 Other Sources of Funding

Include all other sources of funding provided for the purpose of this expenditure request. If none exist, please indicate that as well.

4.0 Previous Expenditure Request Activity

Have Indian moneys been released for this purpose previously? If yes, please provide confirmation that previously approved funds of the Band's last available Audited Financial Statement have been expended according to their approved purpose.

5.0 Capital/Revenue Historical Trust Account Balances

Table 2 - Historical Account Balances**

Fiscal Year	Opening Balance	Receipts	Expenditures	Closing Balance
YYYY - 5				
YYYY - 4				
YYYY - 3				
YYYY - 2				
YYYY - 1				
Total				

**Last 5 years account balances.

6.0 Remedial Management Plan (RMP)

Is the Band currently under Intervention, as prescribed by the Intervention Policy within the department's Financial Management Manual? If the Band is under intervention, provide a description of the reason(s) for the intervention AND indicate the course of remediation and the projected time to remediate.

Does the Band have a RMP? What is the level of intervention (self-imposed, third party manager)? What is the status of the RMP? How many years has this RMP been in place? When will the RMP no longer be necessary?

7.0 Audit Financial Statement Information

Using Table 3, please provide a brief cursory review (two sentences) for each of the Band's last three (3) available audited financial statements to identify whether the Band has obtained a qualified, unqualified or denial of opinion from an auditor. If the qualification of the Band's audit was not associated with the Band's financial management please provide more details.

Based on information you have access to, provide your general commentary in Table 3.

Table 3 - Audited Financial Statement - General Commentary

Fiscal Year #1 ****-****	Insert Comment Here.
Fiscal Year #1 ****-****	Insert Comment Here.
Fiscal Year #1 ****-****	Insert Comment Here.

PART F - RECOMMENDATION

(For s.64(1) capital and s.66 revenue requests to be recommended for approval, it must be a prudent use of funds for the benefit of the Band and/or promote the general progress and welfare of the Band, and be a reasonable expenditure.)

Based on the information provided, I recommend / do not recommend approval of this expenditure request in accordance with [subsection 64(1) / section 66] of the *Indian Act* in the amount of \$ _____ for the purpose of *(insert purpose of expenditure request)*.

 (sign here)
 (print name here)
 Regional Officer

 Date

 (sign here)
 (print name here)
 Regional Supervisor/Manager

I approve / do not approve of the expenditure request (circle/underline approval/non-approval).
Add Notes/Comment (if necessary).

 Date

 (sign here)
 (print name)
 Regional Director

I approve / do not approve of the expenditure request (circle/underline approval/non-approval).
Add Notes/Comment (if necessary).

 Date

 (sign here)
 (print name here)
 Regional Directors General

I approve / do not approve of the expenditure request (circle/underline approval/non-approval).
Add Notes/Comment (if necessary).

 Date

Appendix H - Band Council Resolution (BCR) Requirements

An original BCR submitted to AANDC must contain the following information:

- a clear statement indicating that the BCR was passed at a duly convened meeting of the council and the date of that meeting; copies of council minutes where the expenditure was considered may be included as supporting documentation;
- a statement of the number of council members constituting a quorum and the signatures of at least the council members that supported the motion;
- a clear indication of whether capital or revenue funds are required, the exact amount requested and a clear statement of the specific purpose(s) of the proposed expenditure;
- if a Band membership vote and/or any other form of duly convened meeting was held in support of the request, the results of the decision should be stated, along with the wording of the motion or question that was posed to the members;
- a statement that books and records will be maintained according to generally accepted accounting practices and that departmental staff will be permitted access, at reasonable times, to all relevant books, records and the project site for audit, inspection or any other reasonable purpose;
- a statement that audited financial statements will be provided to the Department for all trust funds within 120 days of the end of the fiscal year;
- a statement that provides assurance that previously approved funds, as indicated in the Band's last available Audited Financial Statements, have been expended according to their approved purpose:

BE IT RESOLVED that (), Band Council provides assurance that previously approved funds, as indicated in the Bands last available Audited Financial Statements, have been expended according to their approved purpose.

IT IS FURTHER RESOLVED that the () Band Council accepts the full responsibility for the administration of any approved trust funds and agrees to follow generally accepted accounting practices, and that the Band Council will contact AANDC to determine whether other documentation is required if due to change in Band priorities or operational efficiencies, including full or partial funds previously approved, are required for other purposes than intended supported by a change-of-purpose Band Council Resolution.

- an indication of the date(s) on which the funds are required and where the negotiable cheque should be directed.