

Building Strong Communities Through Education and Treaties

Discussion Paper

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Foreword

The First Nations Education Steering Committee (FNESC) was established in May 1992 at a provincial meeting of First Nations educators, leaders and technicians. Committee members came forward to volunteer their time to pursue quality education for First Nations learners. Over time, the group of people involved in FNESC has grown significantly. A complete list of people on the FNESC is included in Appendix A. The group is still made up of volunteers, and the core group of people who first came forward has remained constant over the last five years.

The FNESC has been involved in a two-year research and consultation process from March 1995 to March 1997 this process was:

designed to provide a forum for research and consultation regarding quality education for First Nations learners, funding or resourcing of quality education and to begin to develop models of education that implement First Nations governance of education (FNESC Workplan, 1995: p.1).

The process has involved an extensive consultation process, with over 30 regional workshops held over the last two years. There were also three Provincial Education conferences, bringing together First Nations people from all over BC to share ideas, discuss First Nations control and jurisdiction, and to provide direction for future research.

In addition to the consultation process the FNESC has compiled a great deal of research.

This paper is a compilation of the findings and recommendations of First Nations as presented through the research and consultation process. The paper is designed to support First Nations involved in the treaty making process, and offers information and support to First Nations who are not directly involved in the treaty process. Specifically, this paper is intended be used by First Nations to determine what their definition and implementation of governance over education will look like. The options outlined in this paper are not exhaustive, and are intended to stimulate further discussion.

The organization of the paper includes a description of some of the key concepts in First Nations' approaches to control and jurisdiction, the foundation for First Nations control and jurisdiction over First Nations Education, the resourcing of

First Nations education as it may be addressed through treaties, and some of the options for First Nations' control and jurisdiction over First Nations education.

The recommendations and references to education are made within the context of First Nations learners education in BC, and is not meant to imply that the situation is the same in other regions or provinces.

The First Nations Education Steering Committee would like to acknowledge the tremendous contributions that have been made by the many First Nations who participated in the regional consultations. They would also like to thank specifically the following First Nations and persons who participated directly in the development and reviewing of the many drafts of the paper. Their ideas and input have served to shape and develop this paper, however, any errors or omissions are solely the responsibility of the author.

Dididaht First Nation
Sliammon First Nation
TsleilWaututh First Nation
Heiltsuk First Nation

Nisga'a Nation
Gitanyow First Nation
Oweekeno First Nation
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Jim Angus
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One further thank you to Nancy Morgan for sharing her legal expertise and experience to ensure that the information contained in this document that is of a legal nature is as accurate as possible in a theoretical framework.

Table of Contents

| | |
|--|-----------|
| Foreword | 1 |
| Table of Contents | 3 |
| Executive Summary | 6 |
| I Introduction | 12 |
| Quality Education | 12 |
| Purpose of Treaties | 14 |
| II Key Concepts in First Nations Approaches to Control and Jurisdiction | 16 |
| Treaty Making | 16 |
| Sovereignty | 16 |
| Self-determination | 16 |
| Self-determination/Self-government | 16 |
| Inherent Right of Self-government, Which Includes Jurisdiction over Education | 17 |
| Jurisdiction | 18 |
| Division of Powers - Federal and Provincial | 18 |
| III Making Room for First Nations Jurisdiction | 20 |
| Aboriginal and Treaty Rights | 22 |
| Treaty Making in BC | 23 |
| Citizenship Issues | 25 |
| Fiduciary Obligation | 27 |
| First Nations Languages | 27 |
| IV Rebuilding First Nations Governments Through Education and Training | 29 |
| Elementary/Secondary System - What does this provide? | 30 |
| Post-Secondary Education - What do First Nations Want? | 31 |

| | | |
|-------------|--|-----------|
| V | Provisions for Education in Modern Treaties | 33 |
| | James Bay and Northern Quebec Agreement | 33 |
| | Other Land Claims Agreements | 34 |
| | Nisga'a AIP | 35 |
| VI | Resourcing First Nations Education Without Treaties or Self-Government Agreements | 37 |
| | Resourcing Mechanisms for Non-First Nations Learners | 38 |
| | Current Resourcing Mechanisms for First Nations Learners | 38 |
| VII | Resourcing First Nations Education Through First Nations Treaties or Self-Government agreements | 41 |
| | Present | 41 |
| | Future Treaties | 43 |
| VIII | Principles Regarding the Negotiation of Education in Treaties | 45 |
| | Compensation or Redress | 45 |
| | Equity | 46 |
| | Security or Certainty | 46 |
| | Protection | 46 |
| | Adequacy of Resources | 47 |
| | Portability or Transferability of Treaty Rights | 47 |
| IX | Options for First Nations Education for Consideration in the Treaty Process | 49 |
| | 1. Standard Education as Exists within the Provincial System (Status Quo) | 49 |
| | Legislative or Policy Changes Required | 49 |
| | Example | 50 |
| | Considerations | 50 |

| | | |
|------------|---|-----------|
| 2. | Standard Education as Exists Within the Provincial System Plus First Nations Input | 51 |
| | Legislative or Policy Changes Required | 52 |
| | Examples | 53 |
| | Considerations | 57 |
| 3. | First Nations Control over First Nations Education | 57 |
| | Legislative or Policy Changes Required | 59 |
| | Examples | 59 |
| | Considerations | 61 |
| 4. | First Nations Jurisdiction | 62 |
| X | Considerations | 65 |
| | Adequacy of Funding/Economies of Scale | 66 |
| | Quality Education is Expensive | 66 |
| | Capacity Building in First Nations Communities | 66 |
| | First Nations Governments How Will They Organize Themselves? 66 | |
| XI | Conclusion | 69 |
| | Bibliography | 69 |
| Appendix A | First Nations Education Steering Committee and Chiefs Action Committee Members | |
| Appendix B | James Bay and Northern Quebec Agreement - Section 16 | |
| Appendix C | Nisga'a Agreement in Principle - Sections 52 -59 | |
| Appendix D | Excerpt from First Nations Education Finances, Matthew 1995 | |
| Appendix E | Table 1: What is Possible Without Treaties Table 2: What May be Possible Through Treaties | |
| Appendix F | Royal Commission on Aboriginal Peoples Statistical Information Regarding National Graduation Rates for Aboriginal Learners versus Non-Aboriginal Learners | |
| Appendix G | 1995 Provincial Statistics Regarding Graduation Rates for First Nations Learners in the Provincial System versus Non-First Nations learners | |

Executive Summary

I Introduction

“Indian Control of Indian Education” - this statement has resonated for decades in one form or another, echoed by First Nations leaders from all corners of Canada. It is a clear and simple statement, but it has met with tremendous difficulties in its implementation. This paper will attempt to recount the historic reasons for the barriers. It will also propose several options for First Nations involved in the treaty process which may assist them in entrenching provisions for quality education in their treaties.

II Key Concepts in First Nations Approaches to Control and Jurisdiction

The following are important factors which are associated with First Nations control and jurisdiction: Treaty Making, Sovereignty, Self-determination and Self-determination/Self-government.

The inherent right of self-government, which includes jurisdiction over education is the foundation for First Nations control of First Nations education. The inherent right of self-government is described as follows in Morgan’s paper Legal Mechanisms for the Assumption of Jurisdiction and Control over Education by First Nations:

Inherent jurisdiction is an original source of authority that is not derived from an outside constitutional or statutory authority. Consequently, inherent jurisdiction cannot be withdrawn. Inherent jurisdiction is a critical component of a First Nation’s inherent right of self-government. A First Nation’s inherent right to govern itself is not granted by any other government, rather the authority is derived from the First Nation’s existence as a self-governing entity at the time of contact (Morgan, 1995: p. 13).

The Government of Canada has recognized the inherent right of self-government as an existing right under section 35 of the *Constitution Act, 1982* in its 1995 policy on Aboriginal Self-Government.

A further important and complicating factor is the division of powers over First Nations education between the federal, provincial and First Nations governments..

III Making Room For First Nations Jurisdiction

At present two orders of government are explicitly recognized in the Canadian Constitution: the Federal and Provincial Governments. However, First Nations and the Federal and Provincial governments have undertaken negotiations in some parts of Canada with the intention of recognizing a third, First Nations, order of government. In doing so, one of the issues that will need to be addressed is the potential for overlap between First Nations' powers to make laws for their citizens and the powers of Parliament and the provincial legislatures.

Aboriginal and Treaty Rights

Section 35 of the *Constitution Act, 1982* provides a foundation for the constitutional recognition of aboriginal rights. Section 35 is not designed to create new rights, but rather to provide new constitutional protection for existing aboriginal rights.

Treaty Making in BC

Many BC First Nations are involved in tripartite treaty negotiations with the federal and provincial governments. The process is a six stage process and is monitored by the BC Treaty Commission. The treaty process is voluntary, and not all First Nations in BC have elected to participate in this process as a means of resolving their outstanding issues with the other orders of government. Currently, there are about 45 First Nations involved in the treaty making process, many of whom have progressed to Stage four - they are negotiating an agreement-in-principle.

Brining Treaties into Force

The mechanism for bringing into force the northern land claims agreements will likely be used in British Columbia. Both federal and provincial settlement legislation would probably be required. As in the north, settlement legislation would not attempt to reiterate the provisions of the treaty. Rather, it would be focused only on the provisions which require legislative implementation.

Citizenship Issues

First Nations must be able to determine the citizenship of their members, and this should not depend on external dictates such as the *Indian Act*. Under treaties, First Nations people may still be considered Canadian citizens (by Canadian and First Nations governments) and BC residents. Being such, they will have access to services provided by the other orders of government. First Nations will have choices regarding the accessing of services, including education services. This may represent a complication if a duplication of services exists.

Fiduciary Obligation

The concept of fiduciary duty refers to the responsibility which arises when one party (the fiduciary) undertakes to act for the benefit of the other party (the beneficiary). This duty is founded on the resulting dependance of the beneficiary on the fiduciary. Canadian law imposes a high standard of conduct which requires the fiduciary to act in the best interests of the beneficiary and to not acquire any personal benefit from the relationship.

The only way the federal government could likely eliminate its fiduciary duty is with the express and fully informed consent of First Nations.

IV Rebuilding First Nations Governments Through Education and Training

This section provides an overview of how First Nations are looking to build their governments. Generally, they intend to train their own people to be well versed in their culture, as well as "to participate effectively and fully in formulating and meeting their own goals socially, economically, and politically to continue to be free and self-governing" (AFN, 1988: p.71).

First Nations people believe that education is the cornerstone of building successful governments. Education is not limited to what is learned in the classroom or through provincial curricula. First Nations want to build communities that are culturally grounded, in terms of both the values and educational philosophies of their own cultures.

V Provisions for Education in Modern Treaties

This section provides an overview of the education provisions in modern day treaties - modern day meaning within the last 25 years. Of the agreements that have been signed in the last 25 years, only the agreements with the First Nations and Inuit in northern Quebec have included detailed provisions regarding education. The other agreements do not contain comprehensive provisions for education, however, there is some discussion about how they may wish to implement the provisions that are contained in their treaties. References are made to the James Bay and Northern Quebec Agreement, Yukon First Nations Agreements and the Nisga'a Agreement in Principle.

VI Resourcing First Nations Education - Without Treaties or Self-government Agreements

Under the existing, split jurisdiction for First Nations education (federal, provincial and First Nations) First Nations education is financed primarily by the federal government.

For non-First Nations learners, funding for education is taken from provincial revenues from taxation (property and sales taxes) and royalties from natural resources.

In BC, tuition funds for First Nations learners attending provincial schools are transferred to the Province in the following ways:

- ▶ Directly from DIA to the Province upon the submission of an invoice from the Province, in the absence of an agreement between the First Nation and the Province;
- ▶ Via the First Nation through a negotiated "Local Education Agreement" signed by the First Nation and the appropriate school district;
- ▶ Via the First Nation through a negotiated "Education Agreement", as a result of a First Nation opting for the recently implemented Direct Tuition Transfer option; and,
- ▶ Via the First Nations through a Financial Transfer Agreement (FTA).

IX Options for First Nations education for consideration in the Treaty Process

This section explores several options for First Nations as they work to entrench provisions for education in their treaties. The two tables in Appendix E entitled *What is Possible Without Treaties* and *What May be Possible Through Treaties* capture these discussions in an abbreviated fashion.

Four options are presented in this section. Within each option, examples are provided demonstrating how it may be implemented. The four options are:

1. Standard Education as Exists within the Provincial System (Status Quo).
2. Standard Education as Exists within the Provincial System Plus First Nations Input.
3. First Nations Control over First Nations Education.
4. First Nations Jurisdiction.

These options have been listed in isolation from each other, but it may be possible to combine options as appropriate for each nation.

X Considerations

Even with control and jurisdiction over education there will still be many issues for First Nations to consider that may impact on their ability to provide quality education for their citizens. Some of these issues to consider include:

- ▶ Adequacy of Funding/Economies of Scale
- ▶ Quality Education is Expensive
- ▶ Capacity Building in First Nations Communities
- ▶ First Nations Governments - How Will They be Organized?

I Introduction

“Indian Control of Indian Education” - this statement has resonated for decades in one form or another, echoed by First Nations leaders from all corners of Canada. It is a clear and simple statement, but it has met with tremendous difficulties in its implementation. This paper will attempt to recount the historic reasons for the barriers. It will also propose several options for First Nations involved in the treaty process which may assist them in entrenching provisions for quality education in their treaties.

Quality Education

In the 1988 Tradition and Education study conducted by the Assembly of First Nations, *quality* is described as:

a value laden term that must be understood within the context of cultural values, belief systems, and educational philosophy of the First Nations (AFN, 1988: p.71).

That study also suggests that:

Education provides the setting in which First Nations children can develop the fundamental attitudes and values which have an honored place in First Nations' traditions and cultures.(AFN, 1988: p. 71)

This pursuit of quality education for First Nations learners has been a priority for First Nations since before contact:

First Nations educated their children to successfully function in their cultures for centuries, before the coming of Europeans. Traditional First Nations education systems served the same purpose as education systems today. Education was the means by which the values, beliefs, customs, lifestyles and the accumulated knowledge and skills of First Nations peoples were passed from generation to generation (Matthew, 1996: p. 1).

A summary of the history of education in BC can be found in Box 1 (adapted from Matthew, 1996: p.16-18). This chronology provides a brief outline

Box 1: Chronology of Key Historical Events as They Relate to First Nations Education

| | | | |
|--------|---|------|---|
| 1000 | First Meetings of North American First Nations with Norse | 1977 | DIA Post-secondary support policy established (E-12) |
| 1763 | Proclamation of 1763 | 1982 | <u>Constitution Act, 1982</u> Section 35(1) "recognizes and affirms aboriginal rights" |
| 1849 | Colony on Vancouver Island Created | 1986 | The BC MTA canceled. |
| 1858 | Colony created on British Columbia mainland | 1987 | Bands begin negotiating Local Education Agreements with school boards |
| 1867 | <u>British North America Act</u> : the formation of Canada | 1988 | An amended MTA is signed between the province and the federal government, enabling First Nations to sign local agreements with school districts |
| 1871 | British Columbia joins confederation | 1988 | Assembly of First Nations report on study <u>Tradition and Education, Toward a Vision of Our Future</u> . Reaffirmation of First Nations jurisdiction over education. |
| 1876 | <u>Indian Act</u> Sections 114 to 122 | 1989 | DIA caps post-secondary funding and allocates these funds on a per capita basis. |
| 1880's | Residential Schools instituted | 1992 | Amended MTA ends. |
| 1946 | Special Joint Committee on the <u>Indian Act</u> : Integration of residential schools; First Nation attend public schools from home | 1993 | A Letter of Understanding agrees to the transfer of tuition funds for 1992/93 |
| 1969 | Master Tuition Agreement (MTA) | 1995 | DIA introduces FTAs: a block funding arrangement with a cap on all funding, including education. |
| 1969 | White Paper Policy | | |
| 1972 | Indian Control of Indian Education tabled by N.I.B.* | | |
| 1973 | Indian Affairs adopts principles of Indian Control of Indian Education | | |
| 1970's | First Nations schools developed and residential schools begin to close | | |

*NIB= National Indian Brotherhood

of education activities and some of the most significant influences on First Nations education.

Throughout this paper the statement 'quality education is expensive' is made. First Nations people want it to be clear that the reason that quality education is so expensive currently is that they are working hard to undo or fill in many of the gaps in education for First Nations learners.

With the introduction, implementation and then closure of residential schools the federal government managed to take away from First Nations people the opportunity to access quality education. This has served to leave generations of people without adequate parenting or academic skills. Today First Nations are trying to rectify this situation and are having to educate not only the young people in their communities but also the adults.

First Nations languages were also victims of the residential schools and the attempted assimilation of First Nations people. First Nations are now having to develop curriculum and train teachers to teach First Nations languages to a new generation whose parents often do not speak their languages. This is very expensive.

First Nations are not asking for any more than they deserve. They are seeking to resolve a situation that is not of their making.

Purpose of Treaties

Many First Nations are currently involved in a treaty making process with Canada and British Columbia. The reasons for the three parties entering into this process and the process itself will be discussed further in this paper under section III. This section refers to some of the historic reasons behind First Nations entering the treaty process and what they are anticipating as outcomes of the treaty process.

From an historic perspective, First Nations are seeking recognition and compensation for the past injustices they have been subject to at the hands of the federal, and to a lesser extent, the provincial governments. First Nations are seeking to confirm a new relationship with these other orders of government that is based on mutual respect and a recognition of jurisdiction and the ability and right to govern themselves.

First Nations are seeking to rehabilitate communities that have been ravaged, both from an educational and social perspective, by the federal residential schools. They are looking to secure a better quality of life for their citizens that includes access to appropriate education services.

The other orders of government are approaching treaty making from an entirely different perspective. The certainty that they are seeking is purely financial and not emotional. They are not looking to compensate First Nations for past injustices. They are not looking to take responsibility for the terrible circumstances that many First Nations find themselves in today. These differences in approach and purpose are cause for concern for both First Nations and the federal and provincial governments and have served to hinder the process. However, all are seeking resolution and have made a commitment to see the process through.

II Key Concepts in First Nations Approaches to Control and Jurisdiction

The following are important factors which are associated with First Nations control and jurisdiction. The statements are meant to be thought provoking and do not represent the views of all First Nations. (N.B. Some feel that these statements are too soft and do not fully represent the perspective of sovereignty that many First Nations hold.)

Treaty Making:

Treaty making (whether by means of a treaty, an accord or other kinds of agreements) represents an exercise of the governing and diplomatic powers of the nations involved to recognize and respect one another and to make commitments to a joint future. It does not imply that one nation is being made subject to the other (RCAP, 1996: p.18).

Sovereignty:

Sovereignty relates to having ultimate authority and exclusive law-making powers within a given territory (Quote from Dr. Gerald Alfred, 1997).

Sovereignty is the natural right of all human beings to define, sustain and perpetuate their identities as individuals, communities and nations (RCAP, 1996: p. 108).

Self-determination:

Self-determining peoples have the freedom to choose the pathways that best express their identity, their sense of themselves and the character of their relations with others. Self determination is the power of choice in action (RCAP, 1996: p. 108).

Self-determination/Self-government:

Self-determination refers to the collective power of choices; self-government is one possible result of that choice (RCAP, 1996: p. 175).

Inherent Right of Self-government, which includes jurisdiction over education.

In the discussion paper entitled Legal Mechanisms for the Assumption of Jurisdiction and Control over Education by First Nations the following comments are made regarding the inherent right of self-government:

Inherent jurisdiction is an original source of authority that is not derived from an outside constitutional or statutory authority. Consequently, inherent jurisdiction cannot be withdrawn. Inherent jurisdiction is a critical component of a First Nation's inherent right of self-government. A First Nation's inherent right to govern itself is not granted by any other government, rather the authority is derived from the First Nation's existence as a self-governing entity at the time of contact (Morgan, 1995: p. 13).

The Government of Canada has recognized the inherent right of self-government as an existing right under section 35 of the *Constitution Act, 1982* in its 1995 policy on Aboriginal Self-Government. In this policy the Government:

recognizes, as well, that the inherent right may find expression in treaties, and in the context of the Crown's relationship with treaty First Nations. Recognition of the inherent right is based on the view that the Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources (Irwin, 1995: p. 3).

While First Nations agree with the recognition of the inherent right of self-government, many have expressed some difficulties with the Federal government's policy. First Nations feel that it may become too restrictive and may hinder full implementation of the inherent right. For this reason, and

others, First Nations have not fully endorsed the Federal policy on self-government.

However, some First Nations feel that this policy may allow First Nations to enter into a process to negotiate a future for their communities, in which they will have the right and the ability to exercise their right to govern.

The Federal self-government policy also states that the federal government:

realizes that Aboriginal governments and institutions will require the jurisdiction or authority to act in a number of areas in order to give practical effect to the inherent right of self-government (Irwin, 1996: p. 5).

Within the scope of negotiations as outlined in this policy, the Federal government has included education as an item for negotiation.

Although the Federal Government has recognized the inherent right of self-government, this recognition did not create that right. The right existed before recognition and will continue. It is the exercise of the right that is in the hands of First Nations (Chief Nathan Matthew, 1997)

Jurisdiction

Jurisdiction is a concept which refers to legal power or authority, and includes the right to make laws (Morgan, 1995: p. 2).

Division of powers - Federal and Provincial

Constitutionally, under section 91(24) of the *Constitution Act, 1867*, the federal government has jurisdiction over "Indians and lands reserved for Indians". However, section 93 describes education as being under the exclusive jurisdiction of the Provincial governments:

93. In and for each Province the Legislature may exclusively make Laws in relation to Education...

This apparent inconsistency has served as the foundation for the debate regarding jurisdiction over First Nations education, however, this two party

debate has overlooked the fact that First Nations were, prior to contact, solely responsible in this area, and that they are now trying to reassert their jurisdiction over education. First Nations people refer back to the inherent right of self-government, and maintain that the inherent right includes jurisdiction over education.

The provincial government has passed the *School Act* which “provides the legal framework for the Provincial education system today” (Matthew, 1996: p. 45). Within the *School Act* there is little room for First Nations to exert influence or participate in decision-making regarding the education of First Nations learners in the public system. Amendments were made in 1989 to enable First Nations to enter into Local Education Agreements with school boards, but to date the success of these agreements, and even the ability to negotiate an agreement, seems to be dependent on many subjective factors - the primary factor being the willingness of the parties to negotiate.

licencing and regulation of facility-based services off Settlement Land) is expressly stated to apply "in the Yukon". This power is not, however, described as an exclusive power, so First Nations laws will likely operate concurrently with federal and territorial laws.

- The CASGA also states that Canada and the Champagne and Aishihik First Nations will enter into negotiations with a view to concluding a separate agreement or an amendment of this Agreement which will identify the areas in which laws of the First Nations will prevail over federal laws of general application to the extent of any inconsistency.
- In the meantime, the CASGA states that "common law conflict of law principles" will apply when a conflict of laws issue arises between the First Nations and federal or territorial laws of general application. This essentially leaves it up to the courts to determine which laws prevail.

It is important to note that the above provisions are currently being renegotiated so that the Yukon First Nation self-governments agreements can receive explicit protection under section 35 of the *Constitution Act, 1982*.

The concept of making room for First Nations jurisdiction is also considered by McNeil, in his article entitled Envisaging constitutional space for Aboriginal governments. His comments are made in the context of a review of the implications of the *Sparrow* court decision. His interpretation suggests that in the *Sparrow* decision, the Supreme Court of Canada did not interpret Aboriginal rights as being beyond the regulatory power of the federal or provincial governments for fear of creating a jurisdictional vacuum. In order to overcome this concern, McNeil recommends that:

The rule of law must also be redefined to include Aboriginal laws, as well as the common law and federal and provincial legislation....

For these new definitions to be meaningful, s.35(1) has to be interpreted as creating a constitutional space for Aboriginal governments and laws.

Aboriginal peoples have to... fill this constitutional space with Aboriginal laws.... To the extent that these laws... are already in place, the task is simply to act on them and demonstrate their existence. Where they are not in place, Aboriginal peoples have the option of

making them by exercising their inherent right of self-government (McNeil, 1993: p.134).

With the Federal government's new policy on Aboriginal Self-Government which recognizes the inherent right, and the BC treaty process making room for governance matters within the treaty making process, some of these concerns have begun to be addressed, and room is being made for First Nations to actively exercise their inherent right of self-government.

First Nations may choose to exercise their inherent right of self-government unilaterally or in the context of the implementation of their treaty. In either case, a First Nation could begin by passing laws relating to education.

In the case of a unilateral exercise of the power, a First Nation's laws could be challenged and it would be up to the First Nation to prove it had the right to pass such laws and that its laws prevailed to the extent of any inconsistency with the federal or provincial law in question. The result in such a case would depend on a large number of factors. For example, a law relating to the education of the First Nations' citizens at a First Nation operated school on the First Nations' lands might prevail over an inconsistent federal law, while a law directing the provincial school system to teach the First Nation's language to all students in the local school district would not likely prevail over an inconsistent provincial law.

In the case of a First Nation exercising its jurisdiction in accordance with its treaty provisions on self-government, the answer to the question of which law would prevail might be found in the treaty itself through a clause that described which categories of First Nations laws prevail over federal and provincial laws. Education is one field where there is a greater possibility that the other governments will agree that First Nations laws should prevail. This is acknowledged in the federal policy on Aboriginal Self-Government which recognizes that education is one area where "a more general recognition of Aboriginal authority or jurisdiction may be sufficient"(Irwin, 1995: p.6).

Aboriginal and Treaty Rights

Section 35 of the *Constitution Act, 1982* provides a foundation for the constitutional recognition of Aboriginal rights. Section 35 is not designed to create new rights, but rather to provide new constitutional protection for existing Aboriginal rights. Section 35 states that:

- (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.

One of the most significant aspects of section 35 is that it protects Aboriginal and treaty rights from being extinguished by federal legislation (the provincial governments have not been able to extinguish aboriginal and treaty rights since 1867). Since the enactment of section 35, a First Nation’s Aboriginal or treaty rights can only be extinguished through constitutional amendment, or with the consent of the First Nation through voluntary surrender (Morgan, 1995: p. 12-13).

To date, in BC there are only two areas where treaties have been signed- Treaty 8 in the northeastern part of the Province and the Douglas treaties on Vancouver Island. This paper does not address the interpretation of these treaties, and it is not intended to detract from, nor impact on, discussions, negotiations or implementation of these treaties.

After over 120 years of pursuing an agreement the Nisga’a Nation signed an historic Agreement-in-Principle (AIP) in 1996. This AIP represents the first of the modern day treaty negotiation processes in BC to reach this point. The provisions for education in the AIP will be reviewed later in this document.

Treaty Making in BC

In June 1991, the British Columbia Claims Task Force released its Report. That report provided an outline of:

- ▶ the historical background of why treaties are needed;
- ▶ what treaties will represent in terms of a new relationship;
- ▶ the scope of what negotiations should include;
- ▶ the process for negotiations;
- ▶ what interim measures may be taken prior to treaties are signed; and,
- ▶ the necessary public information and education before, during and after treaties are signed.

The following is an excerpt from *The Report of the British Columbia Claims Task Force* describing the treaty process:

In the negotiation of treaties certainty is an objective shared by all. These treaties will be unique constitutional instruments. They will identify, define and implement a range of rights and obligations, including existing and future interests in land, sea and resources, structures and authorities of government, regulatory processes, amending processes, dispute resolution, financial compensation, fiscal relations, and so on (1991: p.17).

The BC Treaty Commission has been established to facilitate the negotiation of BC treaties. The made in BC approach to treaty making has six stages. They are:

1. Submission of Intent to negotiate a Treaty
2. Preparations for Negotiations
3. Negotiation of a Framework Agreement
4. Negotiation of an Agreement in Principle
5. Negotiations to Finalize a Treaty
6. Implementation of Treaty

The treaty process is voluntary, and not all First Nations in BC have elected to participate in this process as a means of resolving their outstanding issues with the other orders of government. Currently, there are about 45 First Nations involved in the treaty making process, many of whom have progressed to Stage four.

It is critical that First Nations begin to think about where education will fit into their treaty negotiation process, and begin to consider capacity building and implementation issues as they move through the process.

Bringing Treaties into Force

The Yukon First Nations' land claims agreements expressly stated that they would come into force upon the enactment of settlement legislation. The Yukon settlement legislation (the *Yukon First Nations Land Claims Settlement Act*) "approved, [gave] effect to and declared valid" the first four Yukon First Nations's agreements. The other Yukon First Nations may be added to the

Schedule of First Nations to whom the act applies by federal order in council once their agreements have been finalized.

The mechanism for bringing into force the northern land claims agreements will likely be used in British Columbia. Both federal and provincial settlement legislation would probably be required. As in the north, settlement legislation would not attempt to reiterate the provisions of the treaty. Rather, it would be focused only on the provisions which require legislative implementation. For example, the four Yukon First Nations' land claims agreements are each hundreds of pages long, while the Yukon settlement legislation is nine pages long and contains only 20 provisions. Settlement legislation in British Columbia would likely be longer as it would include provisions which, in the case of the Yukon, are addressed in a separate statute (the *Yukon First Nations Self-Government Act*). Nevertheless, it is likely that settlement legislation in British Columbia would be limited to issues that must be implemented through legislation, such as provisions which establish or recognize legal entities.

Citizenship Issues

One further aspect of the jurisdiction question is the issue of the citizenship of First Nations people. Citizenship determines the rights and ability to access services. Since the passing of the *Indian Act* First Nations have not had the legal right to determine their own citizenship. This has been problematic and First Nations are taking measures to take back this control.

First Nations must be able to determine the citizenship of their members, and this should not depend on external dictates such as the *Indian Act*. Under treaties, First Nations people may still be considered Canadian citizens (by Canadian and First Nations governments) and will still be residents of BC. As Canadian citizens and BC residents, they may have access to services provided by the other orders of government. This is captured in the Champagne and Aishihik First Nations self-government agreement, which reads:

- 3.6 This Agreement shall not:
 - 3.6.1 affect the rights of Citizens as Canadian citizens; and,
 - 3.6.2 unless otherwise provided pursuant to this Agreement or in a law enacted by the Champagne and Aishihik First Nations, affect the entitlement of Citizens to the benefits,

services, and protections of other Canadian citizens applicable from time to time.

This can be interpreted to mean that citizens of the Champagne and Aishihik First Nations will have choices regarding the accessing of services, including education services. This may represent a complication if a duplication of services exists.

A further consideration in BC may be the position of the Province - that First Nations learners living on reserve are the responsibility of the federal government and, as such, must pay (via the federal government) a fee for service - i.e. tuition. A question arises regarding what situation will exist after a treaty is signed, if First Nations citizens maintain their status as Canadian citizens and BC residents. Will they no longer have to pay a separate tuition fee?

Under the Sechelt Agreement, Sechelt students attend provincial schools. Sechelt is billed directly for their tuition dollars, and pays with dollars allocated by the federal government.

Further questions to be considered later in this paper in Section IX include: Will First Nations have the ability to negotiate an appropriate fee for service rather than having to pay whatever the province asks? And, will First Nations be able to negotiate payment schedules that ensure accountability of the education contractor (even if the contractor is the Province)?

A relevant clause is included in the Nisga'a Agreement-in-Principle (AIP):

7. Nisga'a Citizens will be eligible to receive public services from Canada and British Columbia and to participate in programs established by Canada and British Columbia, in accordance with conditions in effect from time to time, to the extent that Nisga'a Government has not assumed responsibility for such public services or programs under a fiscal financing agreement. (Nisga'a AIP, 1996: p. 95)

A more detailed discussion of the Nisga'a AIP follows later in this paper.

Fiduciary Obligation

The concept of fiduciary duty refers to the responsibility which arises when one party (the fiduciary) undertakes to act for the benefit of the other party (the beneficiary). This duty is founded on the resulting dependance of the beneficiary on the fiduciary. Canadian law imposes a high standard of conduct which requires the fiduciary to act in the best interests of the beneficiary and to not acquire any personal benefit from the relationship.

The Canadian courts have held that both the federal and provincial governments owe a fiduciary duty to First Nations. The sources of the fiduciary obligation of the Crown to First Nations are the unique nature of Aboriginal title, and the historic responsibilities assumed by the Crown in relation to First Nations.

First Nations frequently express a concern that treaty-making should not be used by non-Aboriginal governments as a means to evade their fiduciary duty. This is in part because these governments can argue that as First Nations become increasingly autonomous, their dependence - the basis for the fiduciary duty - diminishes. However, while the exercise by First Nations of their inherent right of self-government may narrow the scope and alter the nature of the fiduciary duty, it is unlikely to eliminate it. The Supreme Court of Canada has held that section 35 of the Constitution, which recognizes and affirms both "aboriginal and treaty rights", incorporates the fiduciary relationship. This means the fiduciary duty is a component of treaty rights and would not be eliminated through the exercise of those rights.

The only way the federal government could likely eliminate its fiduciary duty is with the express and fully informed consent of First Nations.

First Nations Languages

In discussions with First Nations throughout BC it has become very apparent that a very strong effort will have to be made to protect and enhance the state of First Nations languages. Currently, First Nations languages do not enjoy protection or support in a manner that, as First languages, they should. There is no legislative protection or support at present by the other orders of government. First Nations have indicated that they are going to include in their treaties recognition of the importance and critical place that their languages hold in shaping and forming their cultures. With this recognition

and support First Nations hope to be able to save their languages, and with them, their cultures and people.

IV Rebuilding First Nations Governments Through Education and Training

The following section will provide an overview of how First Nations are looking to build their governments. Generally, they intend to train their own people to be well versed in their culture, as well as “to participate effectively and fully in formulating and meeting their own goals socially, economically, and politically to continue to be free and self-governing” (AFN, 1988: p.71).

First Nations people believe that education is the cornerstone of building successful governments. Education is not limited to what is learned in the classroom or through provincial curricula. First Nations want to build communities that are culturally grounded, in terms of both the values and educational philosophies of their own cultures.

Due to many overwhelming factors, such as the residential school system and the bilateral (federal-provincial) Master Tuition Agreement, First Nations have been denied the “right to freely choose and participate in the development of education systems” (FNESC, 1995: p.4). This denial has resulted in systems that do not provide appropriate, or even adequate, training for First Nations learners to allow them to participate in the much needed nation-rebuilding process.

First Nations control and jurisdiction over First Nations education would provide such culturally appropriate and relevant education. Education for First Nations learners should provide them with the tools to enable them to help their communities reach their goals (self-government, economic development, and others).

This section has been broken down into two subsections to further elaborate on what First Nations are seeking in terms of quality education through control and jurisdiction:

- ▶ Elementary/Secondary System- What does this provide?
- ▶ Post-Secondary Education - What do First Nations want?

needs education services is only available in a meaningful way in the provincial systems. First Nations schools in BC receive only a fraction of the dollars required to meet the overwhelming need, through funds provided through a per capita formula by the Department of Indian Affairs (DIA). Under First Nations control and jurisdiction, every effort will be made to meet the needs of all learners, regardless of their individual challenges.

Post-Secondary Education - What do First Nations want?

Post-secondary education is a continuation of what is learned in the elementary/secondary system, and it should continue to be culturally appropriate and relevant.

First Nations are looking to post-secondary institutions to provide a quality education to First Nations learners and to provide them with specialized skills necessary to participate in and contribute to First Nations government and community activities. This will include employment in natural resource management, administration, health care, social services, justice, education, and all of the other areas that make up government and community structures. To effectively run a government and a community, there must be people who are well trained and qualified to fill such positions. Currently, many communities do not have sufficient human resources to build their governments. Capacity building is an area that, prior to as well as post treaties, requires a significant amount of work. To do this, appropriate education systems must be accessible and available to First Nations communities.

In BC, there are many Aboriginal post-secondary institutions. These institutions are operating on a very precarious and tenuous funding base. They must, piecemeal, put together their budgets and hope, year-to-year and in an ever-changing fiscal climate, that they will be able to remain in business. They appear to be meeting the needs of First Nations learners and are an important component of the implementation of First Nations control and jurisdiction over First Nations education.

One question that is currently being addressed by a consortium of Western Aboriginal Post-Secondary Institutions is that of accreditation. First Nations control and jurisdiction should include the ability to ascertain what programs, curricula, and institutions achieve First Nations goals and aspirations with respect to post-secondary education.

Two of the BC Aboriginal post-secondary institutions are provincially recognized and accredited, and therefore eligible for public funding. This recognition and funding, however, is not entirely without problems. If First Nations institutions must meet Provincial criteria to receive funding, they may not be able to place the specific needs of First Nations learners at the forefront. Rather they may be trying to fit into the provincial system to access dollars. If Aboriginal post-secondary institutions are required to seek public funds (under existing programs), they cannot fully tailor their programs to meet First Nations goals and aspirations.

V Provisions for Education in Modern Treaties

The following provides an overview of the education provisions in modern day treaties - modern day meaning within the last 25 years. Of the agreements that have been signed in the last 25 years, only the agreements with the First Nations and Inuit in northern Quebec have included detailed provisions regarding education. The other agreements do not contain comprehensive provisions for education, due to the federal government's policy (at that time) of keeping self-government issues separate from land claims agreements. Instead, self-government agreements were negotiated and signed as separate agreements that may not be constitutionally protected under section 35 of the *Constitution Act, 1982*.

Since the signing of those agreements, however, the federal government has changed its self-government policy and, in BC, is negotiating land and governance issues at the same treaty table with the intention of including governance matters in the section 35 protected treaty. This is seen in the Nisga'a Agreement-in-Principle (AIP) signed in February, 1996.

The new federal self-government policy indicates that:

The Government of Canada is prepared, where the other parties agree, to constitutionally protect rights set out in negotiated self-government agreements as treaty rights within the meaning of section 35 of the *Constitution Act, 1982*. Implementation of the inherent right in this fashion would be a continuation of the historic relationship between Aboriginal peoples and the Crown. Self-government rights could be protected under section 35:

- in new treaties;... (Irwin, 1996: p. 8)

James Bay and Northern Quebec Agreement

The Cree people, through the James Bay and Northern Quebec Agreement, have established their own school board under provincial jurisdiction. While under provincial jurisdiction, this school board has been granted some unique powers in order to ensure that the education that is delivered is culturally appropriate for Cree learners. One of the difficulties with the implementation

of this option has been an inadequacy of resources, making it difficult for the board to be able to meet its obligations. For reference, section 16 of the James Bay and Northern Quebec Agreement which contains all references to the provision of education services, has been included in Appendix B to this document.

Other Land Claim Agreements

The Yukon First Nations' Self-Government Agreements contain provisions allowing them to exercise jurisdiction over education. However, these agreements have not yet been implemented, and the provisions do not explicitly describe what the implementation of jurisdiction over education will look like for the Yukon First Nations. For example, in *The Nation of Nacho Nyak Dun Self-Government Agreement* (1993) the following statements are made regarding education services under the heading Yukon First Nation's Legislative Powers:

13.2.5 provision of training programs for Citizens, subject to Government certification requirements where applicable;

13.2.8 provision of education programs and services for Citizens choosing to participate, except licensing and regulation of facility-based services off Settlement Land;

Currently, the implementation of the self-government agreements is being negotiated by the Yukon First Nations. It is important to bear in mind that since the signing of these agreements, the federal policy has changed, and therefore self-government agreements may look somewhat different if they are now included in a treaty. The Yukon First Nations are currently engaged in negotiations to amend their self-government agreements so that they can be protected under section 35 in accordance with the new federal government policy on the inherent right of self-government. While some First Nations have begun to develop laws under their self-government agreements, none have done so in the area of education at this point in time.

The implementation of self-government in this area will likely take place on a number of fronts. The First Nation could pass laws on education. They could also enter into "program and service transfer agreements" with the federal, provincial or territorial governments. Finally, they could enter into funding agreements with other governments to support the delivery of their

programs and services. *A First Nation would likely have to move forward on all these fronts to achieve its objectives.*

Nisga'a AIP

In 1974, the Nisga'a people established their own school board under provincial jurisdiction. They were able to do this due to the determined resolve of the community members and the politicians. A further reason for the ability to set up a Nisga'a controlled school board was that the Nisga'a people make up the majority of the population in the Nass Valley. Because of this unique situation, which pre-dated the 1996 signing of the Agreement-in-Principle (AIP), *the Nisga'a provisions for education may differ considerably from those of other BC First Nations.*

In the Nisga'a AIP, there are provisions for education (the text of these is attached in Appendix C to this document). Generally, the provisions enable the:

Nisga'a Central government to make laws in respect of pre-school to grade 12 education of Nisga'a citizens on Nisga'a Lands, including the teaching of Nisga'a language and culture, provided that any Nisga'a laws will provide for:

- a. curriculum, examination and other standards which permit articulation between school systems and admission to provincial universities; and,
- b. certification of persons teaching subjects other than Nisga'a language and culture to a standard comparable to those of the College of Teachers or the Inspector of Independent Schools, or a requirement for certification by either of these bodies. (Nisga'a AIP, 1996: p. 76)

With respect to the provision of post-secondary education the Nisga'a have included the following in their agreement:

- 55. Nisga'a Central Government may make laws in respect of post-secondary education within Nisga'a lands, including:

- a. the establishment and determination of the curriculum for post-secondary institutions with the ability to grant degrees, diplomas or certificates;
 - b. the accreditation and certification of person who teach or research Nisga'a language and culture; and,
 - c. the provision for and coordination of all adult education programs.
56. Laws enacted by Nisga'a Central Government in respect of post-secondary education will be comparable to provincial standards respecting:
- a. institutional organizational structure and accountability;
 - b. tuition and fee schedules;
 - c. admission standards and policies;
 - d. instructors' qualifications and certification;
 - e. curriculum standards sufficient to permit articulation with provincial institutions; and,
 - f. degree requirements (Nisga'a AIP, 1996: p.76-77).

These provisions have been deemed appropriate for the Nisga'a people by the Nisga'a people. *Other First Nations may choose to negotiate very different or very similar agreements, reflecting what is appropriate for their citizens.*

VI Resourcing First Nations Education - Without Treaties or Self-government Agreements

Under the existing, split jurisdiction for First Nations education (federal, provincial and First Nations) First Nations education is financed primarily by the federal government.

As described in section IV, according to the *School Act* the Province has responsibility for the education of all school aged children in BC regardless of race, ethnicity or ability to pay. However, contrary to this *Act*, the Province charges First Nations learners for attending Provincial schools. The Province argues that it is not responsible for First Nations learners because they are the sole responsibility of DIA. The Province is willing to provide a standard education (the same as for all other citizens of BC) to First Nations learners, but at a cost to be recouped from DIA.

This relationship was reflected in the Master Tuition Agreement (MTA) that was in place between 1969 and 1992. The MTA was a bilateral agreement between the federal and provincial governments that allowed for the transfer of tuition dollars for status Indian children living on-reserve to the provincial government. This agreement did not provide an accountability mechanism. The provincial government counted, in September of each year, the number of on-reserve status Indian children, and provided a bill to the federal government. The bill was paid on behalf of the Indian children. First Nations were not considered at all in this scenario. The province was not required to demonstrate the quality of service that was provided to First Nations children. First Nations believe that this is a contributing factor to the current poor state of First Nations education in the public school system, and to the high demand for adult secondary education.

Since the expiration of the MTA, DIA has continued to pay tuition costs to the province for First Nations learners. The bills are paid without questioning either the amount, or the quality of education which is received by First Nations learners. This lack of accountability is unacceptable to First Nations.

Resourcing Mechanisms for Non-First Nations learners

Following the recommendation of the Sullivan Royal Commission, 1988, the province allocates education funding according to a block funding formula. The 'block rate' is determined according to four main categories: General Operating Grants, Targeted Grants, Capital Support Grants, and Developmental Grants. Each year, adjustments are made to the block rate for economic indicators, enrollment and mandated programs. Due to factors such as remoteness, the block rate varies between school districts.

Funding for education is taken from provincial revenues from taxation (property and sales taxes) and royalties from natural resources. The province argues that First Nations have to pay separately for education because it feels that First Nations people do not contribute to these general revenues. This has long been a point of contention between First Nations and the province, as First Nations have in the past, and continue to contribute to the general revenue, both through paid taxes and through the resources that have been removed from their traditional territories. This may continue to be a point of contention in the treaty process.

Current Resourcing Mechanisms for First Nations learners

Currently, DIA funds the following education services for on-reserve, status First Nations learners:

- ▶ The operation of Band Operated or First Nations controlled schools
- ▶ Seats for First Nations learners in the provincial System
- ▶ Cultural Centers
- ▶ Post-Secondary Education

In BC, tuition funds for First Nations learners attending provincial schools are transferred to the Province in the following ways:

- ▶ Directly from DIA to the Province upon the submission of an invoice from the Province, in the absence of an agreement between the First Nation and the Province;
- ▶ Via the First Nation through a negotiated "Local Education Agreement" signed by the First Nation and the appropriate school district;

- ▶ Via the First Nation through a negotiated “Education Agreement”, as a result of a First Nation opting for the recently implemented Direct Tuition Transfer option; and,
- ▶ Via the First Nations through a Financial Transfer Agreement (FTA).

Under each of the first three options, DIA retains full accountability for paying the tuition costs to the school district, and in the event of a First Nation’s failure to pay, DIA will pay the invoice and later recoup the money from the First Nation.

The fourth option noted above has been implemented in 1996-97 with the introduction of Financial Transfer Agreements (FTA). FTAs are agreements between First Nations and the federal government (through DIA).

It appears that DIA believes it can divest itself of responsibility for tuition payments through the FTA process. This means that First Nations will be solely responsible for paying the province for the tuition of First Nations learners attending the Provincial system. While this situation is in some ways an improvement, as First Nations may then have bargaining power with school districts, the FTA is based on the principle of a fixed budget for a period of five years. The FTA will provide for increases in budgets only if there is an overall increase in the budget of DIA. This situation does not allow for such matters as population growth, and/or increases in the provincial tuition block rate.

This situation is very different than that established in the Cree agreement, which includes the following provisions:

- 16.0.27 The budget of the Cree School Board shall take into account the unique characteristics of the Cree School Board’s geographical location and of its student population. It shall provide for items such as the following:
- ...b) increases in the student population and the need for adequate teaching facilities...
 - d) the development of special curriculum provided for in paragraph 16.0.9; (Barman, Hebert and McCaskill, 1987: p.103)

VII Resourcing First Nations Education Through First Nations Treaties

In order for First Nations to fully implement self-government they must have an adequate financial or resource base from which to draw. First Nations governments will need to have the capacity to access revenue and royalties from natural resources, “levy taxes, to borrow and to have access to transfers from the other orders of government” (Hogg and Turpel, 1995: p. 209)

Through amendments to the *Indian Act* section 83, some First Nations now have the power “to levy municipal-like property taxes, subject to the approval of the Minister of Indian Affairs”(Hogg and Turpel, 1995: p. 209). Under the *Sechelt Indian Band Self Government Act*, Sechelt has these taxation powers, which are not subject to the approval of the Minister of Indian Affairs.

With the power of taxation comes the responsibility to provide services, and First Nations with the ability to tax are responsible for ensuring that services are provided. At present services are often provided through agreements with adjacent municipalities.

Under full self-government, and with access to appropriate resources, First Nations governments could be responsible for providing services, such as justice, health, policing, education and others, to both their citizens and other people residing on their traditional lands.

Present

Modern agreements, such as the Yukon First Nation Self-Government Agreements, confer powers to levy both property taxes and other kinds of direct taxes.¹ However, even with full powers of direct taxation, most Aboriginal communities will not have the tax base needed to provide the kinds and levels of services that most Canadians enjoy.

¹ “Direct taxes are those that are unlikely to be “passed on” by the initial payer of the tax.” They include income tax, property tax and sales tax. (Hogg and Turpel, 1995)

This situation will be similar to that of the provinces in Canada that do not have a rich resource or strong economic base on which to draw. They benefit from a redistribution of government funding through federal equalization payments and such payments, are provided for in the *Constitution Act, 1982*, which indicates that equalization payments will be made to ensure that all Canadians have access to a similar levels of service at a similar cost of living.

Financing quality education has been a point of contention with the Cree people during the implementation of their self-government agreement. Two specific points of relevance are included in sections 16.0.22 and 16.0.24 of the James Bay and Northern Quebec Agreement:

- 16.0.22 Programs and funding by Quebec and Canada, and the obligations of such governments in favor of the James Bay Crees, shall continue, subject to the Agreement. As a result thereof there shall be no decrease in the quality and quantity of educational services presently available to Native persons for their education and the operational and capital funding necessary to ensure services presently available to Native persons for their education and the operational and capital funding necessary to ensure services will be provided by Quebec and Canada.
- 16.0.24 Quebec and Canada shall jointly ensure the continuation of existing educational services and programs presently available to the Native people, including:
- a) allowances to students in accordance with established regulations;
 - b) students "room and board" allowances;
 - c) maintenance of foster homes for students;
 - d) living, tuition and transportation allowances for post-secondary students (Barman, Hebert, & McCaskill, 1987: p. 102-103).

These sections have been problematic for the Cree, in that where education services have not been available in Cree communities, they have had to make other arrangements for Cree people. These other arrangements had not been factored into the budget for the school board and have caused them a

significant amount of trouble as indicated in Billy Diamond's paper The Cree Experience:

The general budget of the Cree school board has been consistently approved at levels far less than those necessary to allow it to achieve its mandate and to meet its obligations under subsection 16.0.22. Budget allocations are made in accordance with existing provincial standards and do not reflect the board's need to provide culturally relevant programmes and meet the needs of its clientele (Barman, Hebert, & McCaskill, 1987: p. 102-103).

This brings up the question of citizenship again, who will be responsible for First Nations citizens in the absence of First Nations education institutions?

Future Treaties

Taxation is an issue that will require significant consideration during treaty negotiations. First Nations are faced with the question of how they will want to define and then implement their powers of taxation, and how these will relate to other governments. First Nations will have to decide whether they will pay taxes to other governments. The answer to that question will depend to some extent on whether they wish to access the services provided by other orders of government (such as defense, health, education, social and pension issues to mention a few).

All of these decisions will impact on the ability of First Nations to provide services to their citizens.

In order to calculate the costs of quality education for First Nations learners, First Nations will have to consider many factors. A starting place may be to look at how the provincial government's funding formula works. The components of that arrangement include four main categories: General Operating Grants, Targeted Grants, Capital Support Grants and Developmental Grants.

First Nations could use those categories and insert their own numbers into them that would take into consideration such factors as:

- ▶ remoteness;
- ▶ economies of scale;

- ▶ need (such as real numbers regarding special needs education rather than a percentage of the total budget);
- ▶ enrollment;
- ▶ administration;
- ▶ evaluations; and,
- ▶ cost of providing an enhanced or “quality” education.

Attached as Appendix D for reference is an excerpt from Nathan Matthew’s paper First Nations Education Finances - A Review, that describes how DIA allocates education funding for First Nations schools. The funding formula used by the Provincial government is even more complicated and has many more categories. However, it may be more appropriate or informative to work with the provincial formula and adjust it for factors specifically related to First Nations education.

VIII Principles Regarding the Negotiation of Education in Treaties

To further guide and provide a context for treaty discussions and intentions First Nations have asked that a section regarding principles behind the negotiation of education in treaties be included in this document. The following areas were identified as principles or intentions for inclusion or resolution in treaties:

- ▶ Compensation or Redress
- ▶ Equity
- ▶ Security or Certainty
- ▶ Protection
- ▶ Adequacy of Resources
- ▶ Portability or Transferability of Treaty Rights
- ▶ Statement of Values

Compensation or Redress

Both the federal and provincial governments have clearly stated that they do not see treaty making as including compensation for past wrongs. They have taken the perspective that the purpose of treaty making is to build a new relationship and not to rehash past injustices, such as residential schools, relocation of nations, and other unilateral impositions.

First Nations do not agree with this perspective. They feel that in order for treaty making to be meaningful and successful there must be some recognition of the injustices that First Nations have suffered at the hands of others. ***This recognition would enable people to put the past behind them and to move forward. Education is a critical component of putting the past behind and moving forward.***

Due to the severe influences of the residential school system and the inadequate services provided by the provincial system, First Nations people are playing catch up in the area of education. Many adults are returning to school to improve their education to enable them to become stronger members of their nations. The current system requires an injection of funding to enable education authorities to provide a quality education that will meet the cultural and academic needs of First Nations learners. The needs would not be so great

if First Nations were starting at a level at least at par with other Canadian citizens, however, this is not the case. First Nations are seeking compensation for this shortfall and the many abuses that have led to its existence.

A further area that has suffered has been First Nations' languages. In the federal government's attempts at assimilation First Nations languages have been decimated. First Nations are seeking compensation to be used to rejuvenate these languages and ensure their longevity.

Equity

First Nations are seeking to at least reach a level of equity with other citizens of Canada in terms of quality of life. Currently, the living conditions, levels of health and education in most communities is far below that enjoyed by most Canadians. First Nations are seeking to rectify this situation.

Security or Certainty

First Nations are seeking security or certainty for their future. First Nations have often fallen into the traps of government as it arbitrarily and/or unilaterally changes policy and thereby changes the rules by which First Nations communities must live. Usually for the worse.

First Nations want to entrench in treaties a definition and protocol for their relationships with the other orders of government which could only be changed with the consent of all parties. This is to improve and protect their quality of life and to ensure that their children will be assured a better quality of life.

This definition of, and intention behind, certainty is vastly different than that of the federal and provincial governments. They are seeking to define a mechanism to deal with First Nations regarding land and resource issues. They are seeking certainty to set the minds of industry and other citizens of Canada at ease.

Protection

First Nations are seeking a way to protect their culture, their languages and their nations. Treaties are seen as a way to ensure that their languages live on and that their cultures are recognized and dealt with appropriately.

Adequacy of Resources

First Nations are seeking adequate resources to rebuild their nations. This would include the provision of adequate and appropriate services. For the purposes of this paper that would mean adequate resources to provide a quality education to their citizens.

Portability or Transferability of Treaty Rights

An issue for consideration of First Nations in negotiating treaties will be the portability or transferability of treaty rights. First Nations have indicated that they will be responsible for the provision of services to all of their citizens regardless of their location. This may mean different things to each nation and they will define and develop mechanisms to meet the needs of their citizens. However, the portability or transferability of treaty rights may need to be addressed formally in the treaty.

Statement of Values

The following is an excerpt from the *Indian Control of Indian Education* paper prepared by the National Indian Brotherhood and tabled with the federal government in 1972. The statement, although 25 years old remains reflective of First Nations view of the values that they want to pass on to their children through education.

We want education to provide the setting in which our children can develop the fundamental attitudes and values which have an honored place in Indian tradition and culture. The values which we want to pass on to our children, values which make our people a great race, are not written in any book. They are found in our history, in our legends and in the culture. We believe that if an Indian child is fully aware of the important Indian values he will have reason to be proud of our race and of himself as an Indian.

We want the behaviour of our children to be shaped by those values which are most esteemed in our culture. When our children come to school they have already developed certain attitudes and habits which are based on experiences in the family. School programs which are influenced by these values respect cultural priority and are an extension

of the education which parents give children from their first years. These early lessons emphasize attitudes of:

- self-reliance,
- respect for personal freedom,
- generosity,
- respect for nature,
-wisdom.

All of these have a special place in the Indian way of life. While these values can be understood and interpreted in different ways by different cultures, it is very important that Indian children have a chance to develop a value system which is compatible with Indian culture (National Indian Brotherhood, 1972: p.2).

IX Options for First Nations education for consideration in the Treaty Process

This section explores several options for First Nations as they work to entrench provisions for education in their treaties. The two tables in Appendix E entitled *What is Possible Without Treaties* and *What May be Possible Through Treaties* capture these discussions in an abbreviated fashion.

Four options are presented in this section. Within each option, examples are provided demonstrating how it may be implemented. The four options are:

1. Standard Education as Exists within the Provincial System (Status Quo)
2. Standard Education as Exists within the Provincial System Plus First Nations Input.
3. First Nations Control over First Nations Education.
4. First Nations Jurisdiction.

These options have been listed in isolation from each other, but it may be possible to combine options as appropriate for each nation.

1. **Standard Education as Exists within the Provincial System (Status Quo)**

First Nations who have a good working relationship with the local school district and/or who make up the majority of the population may wish to maintain the status quo and continue to have their children attend provincial schools.

Legislative or Policy Changes Required

With this option, First Nations learners would receive the same standard education as that provided within the provincial system. This standard may or may not include any additional, culturally relevant, enhancement. *Additions will depend upon the will of the Province.* For example, the targeted dollars that are currently provided by the provincial government, at its discretion, are provided:

1981-1991. The figure is taken from the Report of the Royal Commission on Aboriginal Peoples (RCAP) Volume 3, page 440. The figure demonstrates that the percentage of Aboriginal people who succeed in mainstream education systems, nationally, is grim. First Nations people graduate with less frequency, and they attain higher levels of learning at about half the frequency of the non-Aboriginal population.

Appendix G also include information regarding the success of First Nations learners within the Provincial system over the last five years. The provincial Ministry of Education followed a cohort of 1990 grade eight students for five years to track their graduation rates. The rate of graduation for all Aboriginal learners was 31%, compared to 68% for all students.

In the Report of the Royal Commission on Education 1988, A Legacy for Learners , prepared by Barry M. Sullivan, it was noted that:

Using any typical evaluative criteria, it is apparent the province has not achieved its enunciated goal of 'parity for Native... children within the public schools' (Sullivan, 1988: p. 205).

With these statistics in mind, First Nations are looking for ways to improve the quality of education for their children. In that context, maintaining the status quo and relying on the standard, provincial education system may be seen as an unacceptable option.

2. Standard Education as Exists Within the Provincial System Plus First Nations Input

The second option being put forward for consideration by First Nations and governments is that of a standard education (as found within the provincial system today) with First Nations in a stronger decision-making position or having greater influence over decisions made by the provincial government with respect to education.

A great deal of research has been done regarding the success of First Nations learners in education and repeatedly the same message has been brought forward.

RCAP, for example, found in its review of Aboriginal Education that there has been a consistent message delivered by First Nations to non-First Nations governments for at least the last twenty years: the key to success is "Aboriginal Control of Aboriginal Education". RCAP recommends that:

- 3.5.1 Federal, Provincial and territorial governments act promptly to acknowledge that education is a core area for the exercise of Aboriginal self-government. (RCAP, 1996: p. 444)

RCAP also found that Aboriginal people need to be involved, in a meaningful way, in decision making associated with the education of Aboriginal students. RCAP recommends that:

- 3.5.7 Where Aboriginal children attend provincial and territorial schools, provincial and territorial governments take immediate steps to ensure that Aboriginal people are involved fully in the decision-making processes that affect the education of their children. Aboriginal control of education and parental involvement should be implemented through a variety of actions:

- (a) legislation to guarantee Aboriginal representation on school boards where population numbers warrant;...
- (c) establishment of Aboriginally governed schools affiliated with school districts, if requested by Aboriginal people; and
- (d) creation of Aboriginal advisory committees to school boards. (RCAP, 1996: p. 471)

Legislative or Policy Changes Required

With this option, First Nations would be involved, in a meaningful way, in decisions regarding the education of their citizens.

As indicated in the RCAP report and through the FNESC research and consultation project, potential provincial legislative changes that may be required to implement this option could include:

- ▶ legislation to guarantee Aboriginal representation on school boards
- ▶ stronger legislation regarding the negotiation and implementation of local education agreements

This would ensure that a First Nations voice would be clearly heard in decision-making regarding education in a particular district.

Examples

i. Aboriginal Representation on School Boards

At present there is no existing example of guaranteed Aboriginal representation on school boards.

ii. Local Education Agreements

There are a significant number of successful local education agreements between First Nations and school districts. However, there are also many examples of how such negotiations and/or the implementation of such agreements have broken down. The wording in the agreements is not always strong, and it often contains more 'may' rather than 'shall or will' clauses. This wording is problematic, as it does not ensure that the agreements are implemented in the spirit in which they were negotiated.

Currently, even under local education agreements, First Nations can not negotiate the tuition rate established by the province or the amount provided by DIA. First Nations are also currently required to pay for students on a year round basis rather than based on the actual retention of students. For example, if a student is in a provincial school September 30, the province receives the full tuition amount, even if that student is no longer in school in October of the same year. This has been a point of contention for First Nations for years, as they do not

receive further funds to support these students even if they have been expelled from the provincial system.

First Nations would also like to see a mechanism for assessing the quality of service provided to First Nations learners in the provincial system to ensure that every effort is being made to retain First Nations learners and to promote academic graduation, as opposed to the more common school leaving certificate.

There are many policy changes that would need to be implemented under this option. A few of them are as follows:

As indicated in the RCAP report and as a result of the FNESC research, changes in policy or perhaps reaffirmations of policy that may be required to implement this option could include:

- i. the establishment of First Nations governed schools affiliated with school districts, if requested by First Nations' people (DIA and Provincial policy changes)
- ii. the creation of First Nations' advisory committees to school boards (RCAP, 1996: p. 471) (Provincial policy change)
- iii. the creation of First Nations committees to advise the Provincial Ministry of Education, and specifically to provide advice on program development and implementation on a provincial level (Provincial policy change)
- iv. the creation of Aboriginal controlled school boards

Examples

i. First Nations Schools

Currently, there are a couple of examples of how this option has been implemented in BC. Unfortunately, these agreements have been implemented only in cases of remoteness or other extenuating community circumstances. This is unfortunate, as these agreements are examples of how First Nations can contract for education services from the provincial government. One of the examples is the Hartley Bay School which is under the control of the Hartley Bay First Nation's community. The

community purchases education services from School District 52 and provides them in their community.

This arrangement arose from an ad hoc agreement between DIA and the Province regarding tuition dollars. Due to the remoteness of the community and the high costs associated with the provision of education services, DIA agreed to provide the province with one and a half times the block rate, and the community worked with the local school district to deliver the services. Unfortunately, this arrangement, and the few others like it, are in jeopardy, due to DIA's tightening up of the tuition process and the fact that this has never been sanctioned by a formal DIA policy.

ii. First Nations Advisory Councils to School Districts

There are several examples of Aboriginal advisory committees to school boards being established. A good example is the First Nations Education Council, formed by the Nanaimo First Nation and School District 68. The advisory council was established as part of the implementation of their local education agreement. Most of the advisory councils which currently exist and function well were established through provisions in local education agreements.

Even though there are now provisions within the *School Act* which allow First Nations to enter into local education agreements with school districts, these agreements only succeed if there is a positive working relationship between the First Nation and the school district. There must be a further mechanism to assist in the establishment of these relationships. *(This may require a legislative change)*

iii. Provincial First Nations Advisory Body

At present there is a provincial First Nations education body, the First Nations Education Steering Committee (FNESC), that has been mandated by First Nations to provide input and advice to the Provincial Ministry of Education regarding program and policy matters. However, this body has not been fully

recognized or utilized by the Province. This body could serve many functions, including communications, policy and program advice, and, in some areas, the implementation of programs or initiatives jointly with the province. An example of a program that could be jointly implemented is the Aboriginal Language and Culture grant program. This program could be organized and delivered jointly by the Province and the Provincial First Nations education body.

iv. First Nations School Board

The Nisga'a Nation currently runs its own provincial school board under provincial guidelines. This has afforded the Nisga'a people greater control over what is taught in their schools, and has provided them with decision-making powers within the confines of provincial guidelines. The Nisga'a people have experienced greater success in an education system under Nisga'a control; however, they have offered the following cautions regarding this option (information shared during the regional consultations conducted by the FNEESC).

Under provincial guidelines, the Nisga'a people must continue to offer provincial curriculum (although they have been able to supplement it and make it more culturally relevant) and they are bound by the collective bargaining agreements that are negotiated by the province. This has been particularly problematic in terms of being able to hire and retain personnel who share the Nisga'a vision of education. Due to the unions, they have not been able to hire as many Nisga'a people as they would like, and they have been unable to work with the staff to ensure that they share the Nisga'a approach to learning.

Overall, however, this is an example of how First Nations can work within existing legislation and still have decision-making powers over First Nations education.

Considerations

i. First Nations Schools

One of the main considerations regarding this option is the question of adequate funding and who would be responsible for providing such funding. If First Nations are considered citizens of BC, and not just of their respective First Nations, would they have access to these services without a fee for service? Or, would First Nations have to provide a fee for service? If they did, would they have the power to negotiate the fee, rather than having to pay the block rate as determined by the Provincial government? (Also refer to the discussion regarding the Cree School Board on page 38).

ii. First Nations Advisory Boards to School Districts

A further concern would be the degree to which First Nations 'advice' would be incorporated into provincial/school board decisions. Would it be treated in a meaningful way, or would it be seen as token?

iii. Where provincial and First Nations interests diverge, as in the example of the difficulties faced by the Nisga'a in hiring staff, how would conflicts be resolved?

3. First Nations Control over First Nations Education

Some First Nations have already implemented control (as opposed to jurisdiction) over First Nations education within the existing legislative framework. Some of these First Nations have suggested that they would like to expand that control even further. First Nations in the treaty process may be considering this option.

The legal status of many First Nations education authorities is currently unclear. If these authorities are established as separate and apart from a band administration and are not incorporated (for example, as a society under provincial law), they will not be recognized as legal entities in the eyes of Canadian law. This means that these authorities cannot legally enter into contracts in their own name. Furthermore, if the authority attempts to enter

into a contract, the person who signs the contract on its behalf will be liable in his or her personal capacity for any commitments under the contract. This situation places the would-be signatory in an untenable position. The signatory, as an individual, is considered a legal entity with the power to do things such as enter into contracts, own property, sue and be sued; the education authority, as an unincorporated entity, is not. Through statutes such as the *Companies Act* and *Societies Act*, bodies which are incorporated in accordance with those statutes are given the "powers of a natural person". Other entities that are neither incorporated nor explicitly recognized as having powers do not exist in the eyes of Canadian law.

Some First Nations do not wish to incorporate their education authorities, although this would limit the liability of those making commitments on their behalf, as they do not want to be subject to the rules of the Province which govern societies incorporated under provincial law. This is viewed by some as submitting to the jurisdiction of the Province and as inconsistent with the concept of the inherent right of self-government.

This issue was highlighted in the Report of the Standing Committee on Aboriginal Affairs and Northern Development entitled *Sharing the Knowledge: The Path to Success and Equal Opportunities in Education* which found that:

Although the department clearly recognizes the authority of bands to administer education programs on reserves, it has not introduced any legislation setting out the scope of this authority. A band is a statutory creature, recognized in the *Indian Act*. First Nation educational authorities have no such explicit legal recognition... Since there is no clear statutory enactment on point, First Nations education authorities risk not being recognized as valid legal entities (1988: p. 37).

As noted in the discussion earlier in "Making Room for First Nations Jurisdiction", there are many changes that would be required to make this option a reality. One small but critical step would be for the federal government to enact a legislative provision acknowledging that First Nations can establish their own education authorities. The provision would also recognize that these authorities are legal entities with the powers of a natural person. This provision could be incorporated into the *Indian Act* or a new statute.

First Nation education authorities could be established through the treaty process. One approach to establishing an education authority through a treaty would be to set out the objectives of the authority and its basic structure in the treaty. The settlement legislation which gives effect to the treaty would then state that "the First Nation Education Authority has the capacity, rights, powers and privileges of a natural person". This is the approach taken in the *Yukon First Nations Land Claims Settlement Act* to the recognition of boards and councils established in the Yukon First Nation Final Agreements.

Legislative and Policy Changes

This option may require legislative changes to enable First Nations to implement jurisdiction over education. It is not clear whether these changes would be both provincial and federal.

As indicated during the FNEESC research and consultation process the following legislative changes may be required to facilitate First Nations control of First Nations education:

- i. legislation that recognizes First Nations jurisdiction over education and makes room for this jurisdiction within the federal and provincial legislative context.

Example:

As mentioned above, there are examples of First Nations which have begun to implement jurisdiction over education in their communities - even without formal legislative recognition. These examples include

- i. First Nations Schools K-12

In BC, approximately 125 communities have established their own schools, even in the absence of recognized legal status or authority under the *Indian Act*. Some have chosen the route of incorporation as societies, while others have passed band by-laws to do so.

Currently, Mt. Currie Education Authority is issuing a Mt. Currie First Nation graduation certificate. They have negotiated

Considerations

- i. Adequacy of resourcing continues to be a primary concern. For reasons explored later, funding is and probably always will be a serious consideration in terms of the provision of education under First Nations control and jurisdiction. This needs to be considered in the setting up of First Nations governments and must be included in the budgeting process for these governments.
- ii. Band operated schools, as they currently operate, are under federal jurisdiction, unless they are registered as Independent Schools with the provincial government. This situation is very problematic, as DIA does not have clear policies regarding education standards, and seems to be acting solely as a financing agent rather than a policy making body. This has left Band operated schools not registered with the province in a vacuum. They can not grant the Dogwood Certificate, and there are few standards regarding quality of education to which they must adhere.

These schools have recently formed the First Nations Schools Association, and hope that this body will be able to assist First Nations in setting standards regarding all aspects of First Nations education in First Nations schools and will, ultimately have some “power” to assess and evaluate these standards. This will require some mechanism to recognize a First Nations graduation certificate.

In previous papers regarding First Nations control of First Nations education it has been recommended that there be a national *Indian Education Act* established. This may be problematic as it would require the agreement of First Nations from across Canada and would have to be guaranteed not to interfere with how First Nations are currently providing education services to their citizens. In BC, the option of incorporating powers of governance, including education, into treaties and self-government agreements is a more widely supported option.

The legislation to recognize First Nations jurisdiction over First Nations education may actually come in the form of enabling legislation to implement treaties. The actual implementation of this jurisdiction, however, may be more complicated.

4. First Nations Jurisdiction

In this option, First Nations would have the ability to pass their own laws regarding education. They would have legislative authority and ability to develop and implement their own education systems under their own jurisdiction and control.

What will be critical in terms of this option is the change in approach of the federal and provincial governments. They will need to make room for First Nations to implement these laws.

Currently, First Nations can do many of the things that are listed for consideration in this option; however, in most cases they must do them under the control and/or jurisdiction of another order of government. Under First Nations jurisdiction they will need to have the resources in place to set up their own laws and regulations for each identified area. First Nations may choose to adopt similar mechanisms for service delivery, but doing so will be their choice - a crucial difference from the current situation. First Nations will have the ability to choose and develop a system that will best suit the needs of their governments and their citizens. This choice is what has been missing since contact.

One further critical note is that First Nations jurisdiction is based on the premise that First Nations people have an inherent source of jurisdiction. This is most clearly demonstrated in the area of education. Parents have the responsibility for educating their children. They have the ability to make choices regarding who teaches their children and how, and what is taught. By exercising their power to choose, parents are effectively exercising control. The suggestions made in this section are intended to demonstrate how groups of individuals - communities, nations, etc. - can come together to exercise jurisdiction. But it must not be forgotten that the root of control and jurisdiction is with the individual, however, the exercise of jurisdiction is often through a collective of individuals of like minds and with common goals.

In this option, the services and considerations have been arranged according to what may be provided at the **local level** (this may include an individual First Nation or the entire Nation, depending on who signs the treaty), **regional level** (this again may be on a Nation basis or across a Language Group, or in whatever way First Nations choose to organize themselves) and **provincial level**.

At the local level, First Nations will retain decision-making control and jurisdiction over education as described in their treaties.

The information contained in this section and the optional structures provided was presented to the FNEsc by First Nations through the regional consultation process. Some First Nations may choose to undertake to provide all of the services on the local level, while others may choose a different combination. The breakdown of services outlined considers the most cost-effective and credible ways of providing services.

Some of the components for consideration under this option will include:

i. **Local Level**

At the local level First Nations may choose to:

- ▶ develop locally relevant curriculum;
- ▶ provide for Aboriginal Language instruction;
- ▶ develop policies and implement personnel policies;
- ▶ pass general laws regarding education jurisdiction and control; and,
- ▶ develop and implement a system for resourcing education (which may include for the provision of dollars to regional or local bodies).

ii. **Regional Level**

First Nations who have signed treaties on an individual level may wish to form regional associations to assume some responsibilities for education. An example may be an association by Nation or by language group. Some of the tasks that a regional organization could be responsible for providing may include:

- ▶ Aboriginal Language Curriculum Development
- ▶ Personnel issues
- ▶ Coordination of service sharing (ie. ordering bulk supplies, sharing professional staff, others)
- ▶ Joint management of education services

iii Provincial Level

First Nations may choose to support a provincial body that would be responsible for providing the following services:

- ▶ Standards - First Nations must be able to set and assess their own standards of education. As indicated earlier in the paper, First Nations want to provide to their citizens a standard of education that is transferable to the provincial system; however, they also want their education system to include appropriate cultural enhancement.
- ▶ Teacher Training - The development and provision of teacher training may be an issue that could be addressed at a provincial level to ensure consistency and cost-effectiveness.
- ▶ Research - There are many issues of relevance to First Nations education that could be researched at the provincial level rather than the local level to provide support to First Nations in the most cost-effective manner.
- ▶ Evaluations - First Nations schools may wish to organize themselves to conduct their own evaluations against a set of standards they establish themselves. This has been initiated with the formulation of the First Nations Schools Association.
- ▶ Coordination of Information Sharing and Networking - A provincial body could coordinate information sharing and networking amongst First Nations.

X Considerations

Even with control and jurisdiction over education there will still be many issues for First Nations to consider that may impact on their ability to provide quality education for their citizens.

Adequacy of Funding/Economies of Scale

Even when funding rates provided to First Nations by DIA are equal to the block rates of the province, funding can run short due to a lack of an economy of scale. For example, the amount of funding allocated to school districts for students with special needs is calculated as a pre-set percentage of the total numbers of students times the block rate (see calculation in box 2). Funding formulas are a significant consideration when the negotiation of First Nations jurisdiction over education is being negotiated. As discussed, this represented a problem for the Cree as they implemented their own school district and worked to improve the quality of education for Cree students.

| | | | |
|---|-------------------|------------------|---|
| Box 2: Sample calculation of special needs allocation for school district A and for First Nations school | | | |
| School District A | Block Rate | Pre-set % | Allocation for district for special needs students |
| (5,000 students X \$5,827.00) X | | 5% | <u>\$1,456,750.00</u> |
| First Nations School (K-12) | Block Rate | Pre-set % | Allocation for First Nations school for special needs students |
| (150* students X \$5,827.00) X | | 5% | <u>\$43,702.50</u> |
| * Most First Nations schools do not have this many students, so even these figures are high | | | |

Quality Education is Expensive

The provision of quality education is very expensive. *The quality education that First Nations have indicated they are seeking will cost more than the current education system.* First Nations are seeking education at least at the current provincial standard, or as indicated in the Nisga'a AIP at a level that is transferable between the provincial K-12 system and the post-secondary system, plus cultural enhancement. This enhancement may come in the form of language programs, increased cultural components, or even an extended school year to allow for participation in traditional, seasonal activities. This increased expense will also need to be factored into the negotiations and setting of governance budgets.

Capacity Building in First Nations Communities

As with all aspects of First Nations self-government there will need to be a significant amount of time and energy put into developing the capacity to implement self-government. With respect to education, this will involve recruiting or developing not only First Nations teachers, but also education administrators, planners and counselors.

Many communities have already begun to develop long term education strategies, often within the context of a long term community development plan. This step is critical, as it is important to consider education in the context of health, social issues and economic development.

First Nations Governments - How Will They be organized?

At present, First Nations undertakings are set up in 'program areas', as dictated by various funding regimes. As First Nations approach self-government, they may be rethinking these structures and trying to create better linkages between health, social, and economic development issues.

Presently, responsibility for First Nations citizens' mental and physical well being is divided up between many program areas. Under self-government First Nations may want to bring these together again in a more holistic approach.

By doing this they may be able to work with their citizens to develop an individual approach to moving forward that includes healing, education, learning to parent, life skills and other important factors of working towards becoming healthy, contributing members of a First Nations government and community. This approach would also work to include all persons in the community, elders, youth, men and women.

This will only work if First Nations have control and jurisdiction over their own lives and the appropriate resources to restructure and implement a government that best suits their needs.

XI Conclusion

This paper has been written to serve as an information package and tool for First Nations involved in the treaty process. Given that policies and circumstances change with great regularity this paper will be an ongoing piece of work. To be updated as changes happen and further information is gathered.

It is hoped that First Nations will read this paper and see in it, useful options and ideas that will contribute to their deliberations and negotiations.

During the discussions with the Chief Negotiators it was agreed that there would not be a conclusion to the document but rather a "to be continued".

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Appendix A

**First Nations Education Steering
Committee Members
Chiefs Action Committee Members**

First Nations Education Steering Committee Members

Chair

Joe Hall

Sto:lo Nation

Vice Chair

Gwen Phillips-Clement

Ktunaxa Nation

Members

Deborah Jacobs

Squamish Nation

Jim Angus

Kispiox

Jacob McKay

Nisga'a Nation

Barbara White

Nanaimo

Darrel Roze

Kwakwiltl

Marlene Erickson

Carrier Sekani

Brenda Leighton

North Coast Tribal Council

Barbara Clifton

Gitksan Nation

Sandra Victor

In-shuck-ch

George Speck

Namgis First Nation

Theresa Dennis

Okanagan Nation

Jerry Calder

Quatsino Nation

Cecelia Harris

Penelakut Indian Band

Nancy Nyce

Haisla Nation

Barbara Barltrop

Nanoose

Sandra Martin

Wet'suwet'en

David Rattray

Tahltan Nation

Jacqui Dennis

AAPSI

Fran Hunt-Jinnouchi

Gwa'Sala-Nakwaxda'xw

Chiefs Action Committee

Chief Nathan Matthew

North Thompson First Nation

Chief David Walkem

Cooks Ferry First Nation

Chief Ron Ignace

Skeetchestn First Nation

Margerie McRae

Gitksan Nation

Appendix B

**Excerpt from the James Bay
and Northern Quebec Agreement
taken from
Indian Education in Canada
Volume 2:
*The Challenge***

fighths with Canada and the province continue, but we feel we have gained their respect because of our ability to properly operate our board. We are convinced that, in the end, Cree education will be provided to all of our people in the manner which we proposed in the agreement.

In conclusion, Native education must be looked at from the perspectives of the Native communities themselves and not from the perspective of someone who is outside looking in. The people themselves must be able to identify the goals which they and their children will achieve. They must have direct control over the institutions and processes available to accomplish these goals. They must have the necessary cultural and social framework and infrastructure to enable the goals to be fulfilled.

We feel that, in the James Bay and Northern Quebec Agreement, we have established a blueprint for a successful regime of Native education; we hope that it will serve as an example to other groups in Canada and elsewhere.

APPENDIX A

Section 16 of the James Bay and Northern Quebec Agreement

- 16.0.1 For the purposes of this Section, the following words and phrases shall mean:
- a) "Native person" is a person who qualifies as a Cree in accordance with the criteria for eligibility established in Section 3 of the Agreement.
- 16.0.2 The Education Act, (1964, R.S.Q., c. 235 as amended) and all other applicable laws of general application in the province shall apply in the areas covered by this Section save where these laws are inconsistent with this Section in which event the provisions of this Section shall prevail.
- 16.0.3 The Category I areas of the Cree communities of Fort George, Paint Hills, Eastmain, Rupert House, Waswanipi, Mistassini, Great Whale River and Nemaska listed in the Agreement shall be constituted as a single school municipality.
- 16.0.4 A Cree School Board, which shall be a school board under the Education Act, shall be established forthwith upon the execu-

tion of the Agreement and shall exercise powers and functions in the said school municipality and for the persons described in paragraph 16.0.6.

- 16.0.5 Every child shall be entitled to receive moral and religious instruction in accordance with a program approved by a clergyman or priest serving the community and by the Protestant or by the Catholic Committee of the Superior Council of Education. Any child, upon request of his parents for reasons of conscience, shall be exempted from such moral or religious instruction.
- 16.0.6 To the exclusion of all other school boards, the Cree School Board shall have jurisdiction and responsibility for elementary and secondary education and adult education:
 - a) Within the territorial limits of the municipality contemplated by paragraph 16.0.3, in respect to all persons who qualify as Crees in accordance with the criteria for eligibility established in Section 3 of the Agreement, as well as in respect to all persons who do not so qualify and who are ordinarily residing therein or who are ordinarily residing within Category III lands surrounded by Category I lands except for the Inuit of Great Whale;
 - b) in Category II, in respect to all persons who qualify as Crees in accordance with the criteria for eligibility established in Section 3 of the Agreement.
- 16.0.7 The Cree School Board shall not have jurisdiction over non-Native settlements in Category II lands.
- 16.0.8 Subject to the laws covering such powers and duties, the Cree School Board will have all the powers and duties given to a school board including the powers:
 - a) to make agreements for educational purposes with any person, group, community, institution or corporation;
 - b) to make agreements with other school boards in the province in virtue of which such school boards would allow some of their teaching personnel a leave of absence for the purpose of working for the Cree School Board and guaranteeing the re-employ-

ment of such personnel at the expiration of their contract with the Cree School Board;

c) to determine the use of standardized tests.

16.0.9 The Cree School Board shall also have the following special powers, subject only to annual budgetary approval:

a) to make agreements with Canada for education and training programs not provided by Quebec, in accordance with the laws and regulations relating to such agreements;

b) to determine, in conjunction with the Quebec Department of Education, the school year and school calendar limited only by the total number of days per year required by law and regulations;

c) to make agreements for post-secondary education for the persons specified in paragraph 16.0.6;

d) to acquire, build and maintain residential facilities for its teachers;

e) to determine, in conjunction with the Quebec Department of Education, the number of Native persons and non-Native persons required as teachers in each of its schools;

f) to arrange, with the Quebec Department of Education, for the hiring of Native persons as teachers notwithstanding that such persons might not qualify as teachers in accordance with the standard qualifications prevailing in the other areas of the province;

g) to select courses, textbooks and teaching materials appropriate for the Native people and to arrange for their experimental use, evaluation and eventual approval;

h) to develop courses, textbooks and materials designed to preserve and transmit the language and culture of the Native people;

i) to make agreements with universities, colleges, institutions

of one (1) commissioner designated by the Cree "Native party" from among its members;

b) the Cree School Board shall determine the date when elections of such school commissioners shall take place;

c) The qualifications for being eligible to vote for and to hold office as a school commissioner shall be:

- 1) membership in a Cree community;
- 2) to be of the age of majority;
- 3) not to be affected by legal incapacity.

However non-Natives who are entitled to the services from the Cree School Board and who meet the qualifications specified in the Education Act for electors shall be entitled to vote for school commissioners.

d) such school commissioners shall be elected or designated, as the case may be, for a term of three (3) years. Three (3) of the first commissioners elected shall serve for one (1) year and three (3) of the first commissioners elected shall serve for two (2) years with the first commissioners having such abbreviated terms of office being designated by the drawing of lots at the first meeting of the Cree School Board;

e) if during his term of office the school commissioner designated by the Grand Council of the Crees (of Quebec) or its successor loses his office as a member of the Grand Council of the Crees (of Quebec), the Grand Council will appoint another commissioner for the remainder of the term of such disqualified commissioner.

16.0.13 The commissioners of the Cree School Board shall be entitled to receive the representation allowances provided pursuant to section 205 of the Education Act, and shall be reimbursed by the Board for all expenses actually incurred for travel, lodging and meals when attending official meetings of the Board in accordance with the regulations that the Board shall adopt for such purpose.

16.0.14 School buildings, facilities, residences and equipment of Que-

bec and Canada shall be transferred or leased, at nominal cost, to the Cree School Board for their use by it. The means and procedures for such transfer or lease shall be arranged by agreement between the Cree School Board and the said governments and will include the right to modify the said buildings, facilities, residences and equipment as may be necessary to fulfill the educational purposes of the Board.

- 16.0.15 The Cree School Board shall not be the proprietor of any lands. The Board will be allocated building sites within Category I which are required for its educational purposes by means of agreements to be entered into between the Board and the local governments. Such agreements shall be for a nominal monetary consideration, by long term lease or other similar contract, to enable the said Board to receive the transfers or leases to it of the buildings, facilities, residences and equipment specified in paragraph 16.0.14, and to enable the said Board to construct any buildings that it may require for its purposes. Any allocation made pursuant to this paragraph shall not be construed to exclude such allocated land from Category I.
- 16.0.16 The Cree School Board shall establish elementary and high school committees which shall be consultative and which shall have the functions delegated to them by the said Board. Nevertheless the Cree School Board must consult their committees with respect to the following:
- a) selection of teacher(s) and principal(s);
 - b) school calendar and year;
 - c) changes in curriculum.
- 16.0.17 There will be one (1) elementary school committee for each community in which there is at least one (1) such school and one (1) high school committee for each community in which there is at least one (1) high school.
- 16.0.18 Each school committee shall be composed of from five (5) to eleven (11) members, including one (1) member of the band council or one (1) person appointed by the band council of the community in which the school is located. The number of parents on the school committee shall be fixed annually by a general assembly of the parents of the students attending the

schools concerned, providing one (1) parent representative from each school concerned is elected to the committee, and providing, if there are six (6) or more students attending the school who normally reside in a community other than that in which the school is situated, at least one (1) parent representative of such students be elected to the committee.

- 16.0.19 The terms and conditions of the establishment, operating and financing of the school committees shall be determined by the said Board.
- 16.0.20 The Cree School Board shall have the right to hire a community education administrator for a community pursuant to a recommendation from the elementary school or high school committee in such community.
- 16.0.21 The Cree School Board shall reimburse members of the school committees for their expenses for travel, lodging and meals incurred when attending official meetings of their school committee held outside the community in which they reside in accordance with regulations that the Board shall adopt for such purpose.
- 16.0.22 Programs and funding by Quebec and Canada, and the obligations of such governments in favour of the James Bay Crees, shall continue, subject to the Agreement. As a result thereof there shall be no decrease in the quality and quantity of educational services presently available to Native persons for their education and the operational and capital funding necessary to ensure services will be provided by Quebec and Canada.
- 16.0.23 The funding by Quebec and Canada referred to in paragraph 16.0.22 shall be provided to the Cree School Board in accordance with a formula to be determined by the Quebec Department of Education, the Department of Indian Affairs and Northern Development and the Crees.
- 16.0.24 Quebec and Canada shall jointly ensure the continuation of existing educational services and programs presently available to the Native people, including:
 - a) allowances to students in accordance with established regulations:

- b) students "room and board" allowances;
- c) maintenance of foster homes for students;
- d) living, tuition and transportation allowances for post-secondary students.

16.0.25 The services and programs referred to in paragraph 16.0.24 may be provided through agreements to be entered into between Quebec and Canada and the Cree School Board acting in accordance with the needs of the communities involved.

16.0.26 The Cree School Board will not be obliged to levy school taxes.

16.0.27 The budget of the Cree School Board shall take into account the unique characteristics of the Cree School Board's geographical location and of its student population. It shall provide for items such as the following:

- a) the cost of the construction, maintenance and replacement of buildings, facilities and equipment;
- b) increases in the student population and the need for adequate teaching facilities;
- c) the cost of transportation of students and teaching staff including transportation for students to and from schools in other parts of the province;
- d) the development of a special curriculum provided for in paragraph 16.0.9;
- e) the maintenance of hostels and residences for its students attending schools outside their community;
- f) the establishment and maintenance of kindergarten school programs and facilities;
- g) the operation of physical education and sports programs;
- h) the provision of adult education programs;
- i) the payment of northern allowances where applicable;
- j) the provision of working conditions and benefits to attract

competent teaching personnel and to encourage such personnel to remain in their position for extended periods of time, taking into consideration the conditions and benefits offered in surrounding areas.

- 16.0.28 Based on annual budgets, providing for operating and capital costs, approved by Quebec and Canada, each of the said governments shall contribute to the approved budget of the Cree School Board on the following basis:

Quebec: 25%

Canada: 75%

This provision shall take effect two (2) years after the execution of the Agreement.

Commencing in 1982 and every five (5) years thereafter, the percentage contribution of Quebec and Canada shall be reviewed taking into account changes in the ratio of Native students to non-Native students under the jurisdiction of, and receiving services from, the Cree School Board.

- 16.0.29 The provisions of this Section shall come into full effect at the beginning of the school year 1978-1979.

- 16.0.30 During the first year, (1976-1977, transition period) in accordance with the provisions of this Section, the following will be done:

a) the members of the Cree School Board will be elected and designated, as the case may be; a director-general of the Board will be appointed, and the elementary and high school committees will be established;

b) the School Board of New Quebec and the Department of Indian Affairs and Northern Development will continue to operate their existing schools;

c) the Cree School Board will plan its operations for the second year of the transition period and, with the assistance of the School Board of New Quebec and the Department of Indian Affairs and Northern Development, it will draw up an operating budget and the capital assets budget for the second year of the transition period.

d) the Cree School Board will arrange to engage teachers as of the time when its schools shall commence to operate.

16.0.31 During the second year, (1977-1978, transition period), in accordance with the provisions of this Section, the following will be done:

a) a tri-partite committee shall be established, composed of the administrator of the School Board of New Quebec, a member of the Department of Indian Affairs and Northern Development, and a member of the Cree School Board for the purpose of the financial administration of the schools under the jurisdiction of the Cree School Board and for the purpose of the construction of, or major repairs to, buildings required;

b) subject to all of its resolutions being approved by the said tri-partite committee, the Cree School Board shall administer the schools in Categories I and II lands falling under its jurisdiction.

Commencing with the year 1978-1979 all teachers and principals of the School Board of New Quebec and of the Department of Indian Affairs and Northern Development assigned to schools in the school municipality shall become employees of the Cree School Board. The School Board of New Quebec and the Department of Indian Affairs and Northern Development shall withdraw from the operation of schools in the school municipality.

16.0.32 The schedules during the transition periods provided for in paragraphs 16.0.30 and 16.0.31 may be revised by agreement among Quebec, Canada and the Cree School Board.

16.0.33 the provisions of the Education Act respecting elections, school taxes and valuation of property, and school and parents' committees shall not apply to the Cree School Board.

16.0.34 Notwithstanding section 300 of the Education Act, the publication of public notices for school purposes may be made in accordance with by-laws that the Cree School Board shall adopt for such purposes and submit to the Minister of Education for approval.

- 16.0.35 The parties undertake to negotiate a modification of the provisions of law respecting compulsory school attendance.
- 16.0.36 In all of the Category I lands of the communities set forth in paragraph 16.0.3 of this Section, Quebec and Canada shall take all measures necessary to implement this Section.
- 16.0.37 The Cree School Board shall, in consultation with the Minister of Education, negotiate the working conditions of its employees, except basic salary, basic marginal benefits and basic work loads which are negotiated at the provincial level.
- 16.0.38 The provisions of this Section can only be amended with the consent of Quebec and the interested Native party, save for the provisions of paragraphs 16.0.14, 16.0.22, 16.0.23, 16.0.24, 16.0.28, 16.0.30b, 16.0.31, 16.0.32 and 16.0.36 which in addition shall require the consent of Canada.

Legislation enacted to give effect to the provisions of this Section may be amended from time to time by the National Assembly of Quebec.

Appendix C

Excerpt from The Nisga'a Treaty Negotiations Agreement in Principle

Nisga'a

Treaty Negotiations

AGREEMENT-IN-PRINCIPLE



Issued jointly by the
Government of Canada,
the Province of British Columbia
and the Nisga'a Tribal Council

or provincial laws of general application, Nisga'a laws will prevail to the extent of the inconsistency.

51. Upon request of Nisga'a Government, Nisga'a Government and British Columbia will negotiate and attempt to reach agreements in respect of child and family services for Nisga'a children residing outside Nisga'a Lands.

Pre-school to Grade 12 Education

52. Nisga'a Central Government may make laws in respect of pre-school to grade 12 education of Nisga'a citizens on Nisga'a Lands, including the teaching of Nisga'a language and culture, provided that any Nisga'a laws will provide for:
 - a. curriculum, examination and other standards which permit articulation between school systems and admission to provincial universities; and
 - b. certification of persons teaching subjects other than Nisga'a language and culture to a standard comparable to those of the College of Teachers or the Inspector of Independent Schools, or a requirement for certification by either of these bodies.
53. In the event of an inconsistency between Nisga'a laws pursuant to paragraph 52 and federal or provincial laws of general application, Nisga'a laws will prevail to the extent of the inconsistency.
54. Nisga'a Central Government and British Columbia will negotiate and attempt to reach agreements concerning the provision of Kindergarten to Grade 12 education to:
 - a. persons other than Nisga'a citizens residing on Nisga'a Lands; and
 - b. Nisga'a citizens residing outside of Nisga'a Lands.

Post-Secondary Education

55. Nisga'a Central Government may make laws in respect of post-secondary education within Nisga'a Lands, including:
 - a. the establishment and determination of the curriculum for post-secondary institutions with the ability to grant degrees, diplomas or certificates;
 - b. the accreditation and certification of persons who teach or research Nisga'a language

and culture; and

- c. the provision for and coordination of all adult education programs.
56. Laws enacted by Nisga'a Central Government in respect of post-secondary education will be comparable to provincial standards respecting:
- a. institutional organizational structure and accountability;
 - b. tuition and fee schedules;
 - c. admission standards and policies;
 - d. instructors' qualifications and certification;
 - e. curriculum standards sufficient to permit articulation with provincial institutions; and
 - f. degree requirements.
57. In the event of an inconsistency between Nisga'a laws pursuant to paragraphs 55 and 56 and federal or provincial laws of general application, Nisga'a laws will prevail to the extent of the inconsistency.
58. Nisga'a Central Government may operate and provide post-secondary education services outside Nisga'a Lands in accordance with laws of general application.
59. Nisga'a Central Government may authorize and prescribe the terms and conditions under which Nisga'a post-secondary institutions may enter into arrangements with British Columbia and other institutions to provide post-secondary education outside Nisga'a Lands.

Child Custody

- 60. Nisga'a Government will have standing in any proceedings in which custody of a Nisga'a child is in dispute, and the courts will consider any evidence and representations concerning Nisga'a laws and customs when considering the custody of a Nisga'a child in addition to any other matters they are required by law to consider.
- 61. The participation of Nisga'a Government pursuant to paragraph 60 will be in accordance with the applicable Rules of Court and will not affect the Court's ability to control its process.

Appendix D

**Excerpt from First Nations
Education Finances
Matthew 1995**

B.C. Region Education Budget

The Indian Affairs budget for First Nations education for 1995/96 in the B.C. Region is outlined in the following table:

| <u>1995-1996 British Columbia</u> | |
|-----------------------------------|--------------------|
| <u>Region Education</u> | |
| <u>Budget</u> | (000) |
| Elementary/Secondary | |
| Band Schools | \$33,380.0 |
| Provincial Schools | 88,034.1 |
| Instructional Support | 12,476.9 |
| Accommodation services | |
| Financial assistance | |
| Guidance & Counselling | |
| Advice and Assistance | |
| Band School Transportation | |
| Elem/Secondary Sub-total | \$133,604.0 |
| Post Secondary | |
| Indian Studies Support | 1,868.0 |
| Student Financial Support | 41,359.0 |
| Counselling Centres | 535.0 |
| Post-Secondary Sub-total | 43,762.0 |
| TOTAL EDUCATION BUDGET | \$177,366.0 |

DIAND, B.C. Region *Management Regime and Initial Allocations, 1995/96, Social Development, Elementary/Secondary Education, Post Secondary Education, Funding Services, March, 1995.*

- Funding for band school capital- major, minor and operation & maintenance is taken out of the Regional Capital Facilities and Housing Budget.
- Funding for Band School Band Employee Benefits and Administration Support comes from the Regional Indian Government Budget.
- The Cultural Centres allocation of \$649,000.00 for the British Columbia

Region is not included- it is administered from National Headquarters in Ottawa.

Band Operated Schools

In order to be considered for federal funding band operated schools must meet the following standards:

- Meet British Columbia Ministry of Education curriculum and program standards
- Employ B.C. College of Teachers-certified teachers
- Use only facilities which are certified for use as schools
- Adult programs must meet regular provincial curriculum standards and grant a Dogwood certificate.

Adult programs which are described as equivalency, upgrading, or adult basic education are not considered for funding.

Funding for band operated schools is calculated mostly on a number of formulae in addition to per capita calculations.

Instruction

The funding for instruction as of 1994/95 was calculated using a formula which started with a base rate of \$4,217 which is adjusted according to a geographic factor, and a small school factor. The rates established by the formula is multiplied by the number of units, or students. This allocation is then supplemented by an administrative allocation, and a unit amount to accommodate special education funding. The number of students attending the band operated school must be registered on the nominal roll. The funds are intended to adequately fund instruction, curriculum materials, administration, special education, transportation, operation and maintenance, evaluations, and capital.

Factors included in the funding calculation include:

- enrollment
- remoteness
- small school size
- administration
- low cost special education
- high cost special education
- school evaluations

The Band School Instructional Funding is calculated by the following formula:

A Unit price (\$4495 in 1995/96) is set by DIAND.

| | | |
|--------|--|--|
| Box 1 | UNITS = Full Time Equivalency (FTE): total number of full time students | 1 student Kfull-time to 12 equals 1 FTE (K4= 0.5 FTE) |
| Box 2 | Total students is multiplied by Unit\$ | FTE Units x Unit \$ (\$4495) |
| Box 3 | Geographic Index [by Band - <i>Education Services Handbook</i>] range from .08 (eg. Sooke) to 1.65 (eg. Ft. Ware)] divided by 2 | Geo. Index divided by 2 = Geo. Factor |
| Box 4: | Small Schools Factor [Units (FTE) divided by no. of grades with at least one student] | = average no. of students per grade |
| Box 5: | Adjustment Factor: Geographic factor multiplied by Small Schools factor | Box 3 multiplied by Box 4 |
| Box 6: | Adjustment Factor (Box 5) multiplied by Box 2 (FTE Units x Unit\$) | Box 5 multiplied by Box 2 (funding correction) |
| Box 7: | \$20,000 for administration, for most schools | when FTE is more than 10 |
| Box 8: | Special Education - no longer factored into calculation | Prev. \$160/FTE and \$16,700 /High Cost |
| Box 9: | Total instructional funding: [FTE Units x Unit\$ (Box 2)] + Adjustment + Administration | Box 2 + Box 6 + Box 7 |

Source: DIAND, (1995). *Education Services Handbook*, Intergovernmental Affairs Directorate, B.C. Region

The total above budget is calculated and multiplied by .3 (three months - April to June of the previous year, indicated by boxes "a" on "Band School Allocation/Budget Form) based on the previous year's FTE's and calculated at .7 (September to March, indicated by boxes "b" on the above) for the current school year. These figures, added together, comprise the budget for the current fiscal year. As noted below, some change in funding is already underway. For example, the 1995/96 funding will not reflect actual enrolment but will be funded based on 1994/95 enrolment with a provision for possible 5% increases. It is quite possible that FTE-based funding will be adapted in the future and remain at the same level, rather than being reflective of actual numbers of students.

1994/95 was the last year in which high cost special education needs were funded using the \$16,700 per approved student calculation. This fund was last available for the April to June period of the 1994/95 school year. As of September, 1995, the Unit rate is \$4495, which includes low cost and high cost special education and evaluation funding.

Many First Nations Schools have secondary programs which include adult

and replacement. The amount allocated for 1995/96 is \$75.00 per student. This amount is not included in the main funding formula.

Operation and Maintenance

Building operation and maintenance is funded according to a formula which considers school size, space entitlement and geographic factors. Adult students are not considered when calculating space entitlement.

The major components to the calculation of Operation and Maintenance funds are:

The gross funding requirement (GFR) is that amount required to operate and maintain a facility to generally accepted standards. The net funding requirement (NFR) is the GFR less and amount the operator or administrator received as a result of user fees or other income. Band schools net funding is equivalent to 100% of gross funding.

Operation & Maintenance Costs are determined in the following manner:

O & M Costs (GFR) = Base Unit Cost x City Centre Index x Zone (remoteness) x Asset Count. In B.C. the following table illustrates how O & M costs are calculated:

| Asset subclass | CC Centre | City Units | Unit Cost | City Centre Index | Zone 1 | Zone 2 | Zone 3 | Zone 4 |
|----------------|--------------|------------|-----------|-------------------|--------|--------|--------|--------|
| School | Vancouver | sq. metres | 48.42 | .96 | 1.0 | 1.34 | 1.66 | 1.89 |
| School | Victoria | sq. metres | 48.42 | .97 | 1.0 | 1.34 | 1.66 | 1.89 |
| School | Kamloops | sq. metres | 48.42 | 1.20 | 1.0 | 1.34 | 1.66 | 1.89 |
| School | Pr. George | sq. metres | 48.42 | 1.26 | 1.0 | 1.34 | 1.66 | 1.89 |
| School | Pr. Rupert | sq. metres | 48.42 | 1.36 | 1.0 | 1.34 | 1.66 | 1.89 |
| School | Whitehorse | sq. metres | 48.42 | 1.59 | 1.0 | 1.34 | 1.66 | 1.89 |
| School | Ft. St. John | sq. metres | 48.42 | .99 | 1.0 | 1.34 | 1.66 | 1.89 |

City Centre Indices:

For seven geographic areas identified a major population centre where various economic indices for O&M can be readily defined. A City Centre

is assigned to each First Nation based on the proximity of the First Nation's most populated site to the City Centre that best reflects the economic activities of the site.

Remoteness Zones:

A Service Centre is the nearest community to which a First Nation can gain access to supplier, equipment and material services, to a pool of skilled or semi-skilled labour, and to financial institutions, provincial and federal services.

Zone 1: located within 50 km of the nearest service centre with year round road access.

Zone 2: located between 50 and 350 km from the nearest service centre with year round access road.

Zone 3: located over 350 km from the nearest service centre with year round road access.

Zone 4: no year round road access to a service centre.

Generally, O & M costs include those major cost components required to operate and maintain a facility, i.e. labour, fuel, electricity, equipment and material.

The O & M Unit Costs represent that cost required to operate and maintain facilities in Vancouver. City centre and remoteness indices allow a user to estimate average facility O & M costs in a particular location. In order to apply this methodology to a specific facility it is necessary to make further adjustments considering the life of the facility, its physical condition, the type of construction and the accessibility to the site.

They must be supplemented by specialized professional assessment of the many varying local or site-specific factors and their impact on the project cost.

It is the responsibility of asset managers/officers to identify project anomalies and variations from normal conditions and to make the necessary cost adjustments.

All estimates must be dated, as a cost estimate has a limited life,

particularly in a period of changing inflation rates and fluctuating market conditions.

Daily transportation

Funding is provided for transporting all students in the K4 to grade three levels. Transportation funding is provided to those students in grades 4 to 12 who live more than 1.6 kilometres away from the school. The funding is also based on the distance a student lives from a public school. If a student lives 30 kilometres away from a band school and ten kilometres from the public school, the transportation will be based on the shorter distance, that is, to the public school. Once the number of eligible students is determined a calculation of the transportation budget can be made using the following table.

Indian and Northern Affairs Transportation Formula

| Bus Size in Number of Passengers | 1995/96 Daily Rate | # of School Days | Total Cost |
|---|-------------------------------|-----------------------------|-------------------|
| 20 | 102.42 | 194 | \$19,869.50 |
| 24 | 106.96 | 194 | 20,750.30 |
| 36 | 132.45 | 194 | 25,695.60 |
| 48 | 135.42 | 194 | 26,271.80 |
| 54 | 135.54 | 194 | 26,272.70 |
| 60 | 139.54 | 194 | 27,070.30 |
| 72 | 143.94 | 194 | 27,924.40 |

Capital

Funding for capital construction and renovation requirements are not part of the regular formula funding provided to every school. Funding is provided by application to the B.C. Indian Affairs regional office. To qualify for funding a community must meet criteria which place them on a priority list.

The Department of Indian Affairs has not been able to meet the demand for band school construction in the past twenty years. In 1988 the Minister of Indian Affairs, Bill McKnight established a Policy for the Provision of Education Facilities and outline of the School Space Accommodation Standards. This policy did not put more funds in the system to meet the

rising needs, it simply was a methodology for prioritizing projects and a means to ensure school facilities met minimum standards. The federal priorities of the School Buildings Priority System Methodology (DIAND B.C. Region, School Buildings Priority System Methodology for Capital Construction, Capital Management Division, January, 1993) are used as factors in a ranking system for school projects.

The following chart shows the priorities/factors as well as their weighted "points":

| CATEGORY | FACTORS | POINTS |
|----------|---------------------------------------|--------|
| I | Health and Safety Factors | 200 |
| II | Overcrowding / Overloading | 110 |
| III | Curriculum Opportunities/Requirements | 70 |
| IV | Transfer from Provincial Schools | 30 |

Before this system was established in 1988, there were nine schools on the "old" priority list. The commitment to build these schools was maintained, so the new capital construction priority list was phased in. With limited funds available since 1988, five of these old projects are still in process. The 1988 policy did not actually start being implemented until 1991. Currently there are several schools in various stages of construction with a significant backlog of applications waiting approval. In 1995 the standard of construction has been altered to include pre-manufactured style buildings. This will result in a lowered cost, both in planning and in construction.

The Indian Affairs Funding Services Directorate has developed a comprehensive manual which describes procedures for project development as well as provides necessary project design and technical requirements.

Appendix E

Tables Describing First Nations Control and Jurisdiction Options

Table 1: What is Possible Now in First Nations Education Without Treaties

| What is Possible Now Without Treaties | Authority Rests With... | Advantages | Difficulties |
|--|--|--|--|
| First Nations Learners Attend Provincial School System | Provincial Government | With the existing system there are no administrative costs to First Nations. | First Nations learners have enjoyed limited success in Provincial system. There are limited opportunities for First Nations to influence decision-making. |
| First Nations Advisory Boards to School Districts | Provincial Government | First Nations have an opportunity to influence decision-making regarding provincial delivery of education to First Nations learners. | First Nations may influence decision-making but only if the school board is receptive. Final authority rests with the school board. |
| First Nations School Board | Provincial Government - jurisdiction (legislatively); First Nation - controlled | First Nations control the implementation of the provincial system and can provide an enhanced program to First Nations learners. | Ultimately the provincial government controls the financing, programming and standards set in the school district. This means they still have jurisdiction. |
| Parent Advisory Committees to School Boards | Provincial Government | First Nations parents have an opportunity to better understand the system and to be better informed regarding provincial decisions. | Parents can only advise on the implementation of programs; the ultimate authority still rests with the school board. |

| What is Possible Now Without Treaties | Authority Rests With... | Advantages | Difficulties |
|---|---|--|--|
| Aboriginal Language Programs in Provincial Schools | Provincial Government Some First Nations authority | First Nations learners can access instruction in their own language. | There is limited to no funding for curriculum development. Standards are set by the Provincial government. Program length, content and implementation decisions do not ultimately rest with First Nations. |
| Aboriginal Language Programs in First Nations Schools | First Nations | First Nations controlled. | There is limited to no funding for curriculum development, and it is therefore difficult to initiate and implement programs. |
| Aboriginal Post-Secondary Institutions | First Nations Some with Provincial Government | First Nations Education Authorities can direct the post-secondary institutions according to the direction they receive from First Nations. | First Nations Education Authorities do not have a legal standing until they incorporate under federal or provincial law. |

| What is Possible Now Without Treaties | Authority Rests With... | Advantages | Difficulties |
|--|--|--|---|
| First Nations Schools | <p>First Nations Department of Indian Affairs (DIA)</p> <p>To some extent the Provincial government (because they set the standards)</p> | First Nations communities can direct and control the delivery of education | <p>First Nations Education Authorities do not have a legal standing until they incorporate under federal or provincial law.</p> <p>DIA merely adopts provincial standards for First Nations schools, except with respect to special needs education.</p> <p>Limited funding exists to enable First Nations to deliver quality education programs due to factors such as a lack of economies of scale.</p> |
| Provincial First Nations Education Advisory Body | First Nations | <p>Collective approach to some education issues may provide greater support for First Nations issues.</p> <p>This could provide a mechanism for First Nations control and administration of programs and research.</p> | <p>Limited funding to support such an organization.</p> <p>Difficult to coordinate the needs of all First Nations.</p> <p>Must be representative of First Nations.</p> |

| What May be Possible Through First Nations Treaties | Authority Rests With... | Advantages | Difficulties |
|---|--|---|---|
| First Nations Controlled School Boards | Provincial Government First Nations | First Nations would have complete control of the implementation of provincial curriculum and the school system. | <p>First Nations education would still be under the ultimate control of the provincial government.</p> <p>This option is very expensive and the running of a separate school board may not be feasible in areas where the numbers do not warrant it.</p> |
| First Nations Post-secondary Institutions | First Nations (perhaps consortiums of First Nations in the area served by an institutions) | <p>First Nations would be able to develop and implement programs that meet First Nations needs directly.</p> <p>First Nations would be responsible for the setting and evaluation of standards of programs and granting of certification.</p> | <p>Recognition by mainstream that the degrees, certificates or diplomas granted are at least equal to those granted by non-First Nations institutions.</p> <p>Requires a close and coordinated working relationship between First Nations education authorities and this will be expensive.</p> |
| First Nations Schools | First Nations (School Board or Education Authority) | <p>Legally recognized entities.</p> <p>First Nations are able to accredit and evaluate their own schools according to their own standards.</p> | <p>It is expensive to provide quality education.</p> <p>There is a need for capacity building to ensure that there are adequately trained personnel to administer the school.</p> |

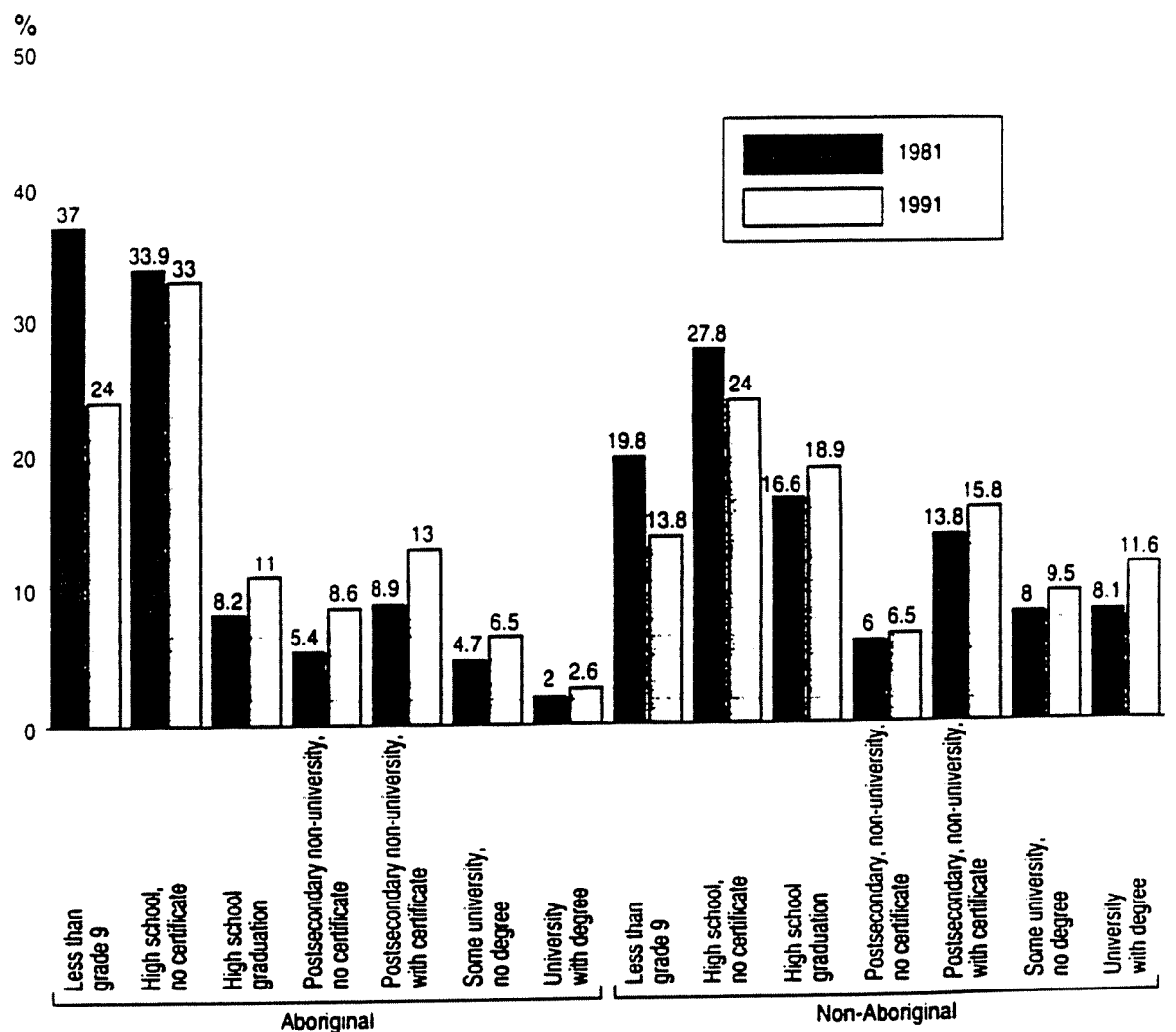
| What May be Possible Through First Nations Treaties | Authority Rests With... | Advantages | Difficulties |
|---|---|--|--|
| Setting Standards for First Nations Education | First Nations (Education Authority and Provincial Education Body) | First Nations are able to define, assess and evaluate their own standards for educating their citizens. The goal would be to provide a standard of education that is at least equivalent to the provincial standard, but that is culturally and community appropriate. | Expensive to provide quality education. Setting standards is necessary to ensure consistency and transferability between provincial and First Nations systems. Doing so is difficult. This requires appropriately trained First Nations people to implement. |
| Curriculum Development | First Nations (Education Authority) | First Nations are able to provide culturally appropriate and relevant curriculum to First Nations learners. | It is expensive to provide quality education. It also requires appropriately trained First Nations people to implement. |
| Aboriginal Language Instruction | First Nations (Education Authority or First Nations Language Authority) | First Nations are able to provide culturally appropriate and relevant curriculum to First Nations learners. First Nations languages are recognized by other orders of government. | It is expensive to provide quality education. It requires appropriately trained First Nations people to implement. |

| What May be Possible Through First Nations Treaties | Authority Rests With... | Advantages | Difficulties |
|---|---|---|--|
| Teacher Training | First Nations (Education Authorities and Provincial Education Body) | <p>First Nations are able to train their teachers and certify them according to their own standards.</p> <p>First Nations are able to ensure that people teaching First Nations learners are appropriately trained.</p> | Teacher training programs can be expensive to develop and implement. |

Appendix F

Royal Commission on Aboriginal Peoples Statistical Information Regarding National Graduation Rates for Aboriginal Learners Versus Non-Aboriginal Learners

FIGURE 5.1
Highest Level of Education, Aboriginal and Non-Aboriginal Populations
Age 15+, 1981-1991



Note: Includes persons still attending school.

Source: Statistics Canada, 1981 Census, 1991 Census, and 1991 Aboriginal Peoples Survey, custom tabulations.

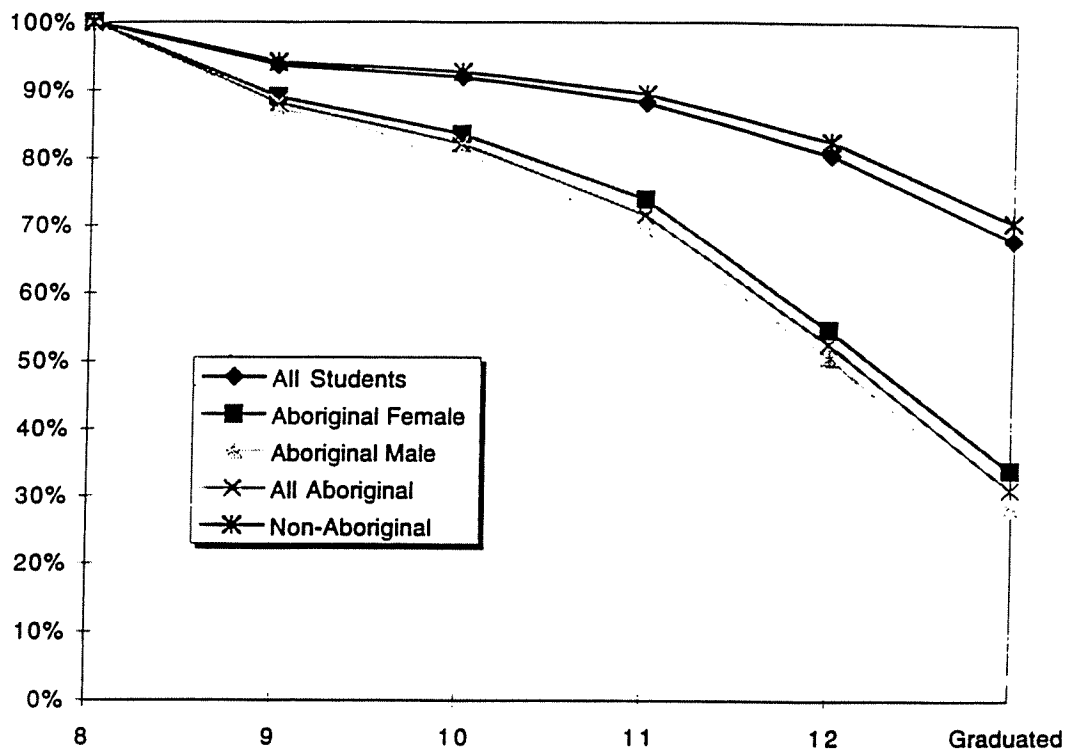
between Aboriginal and non-Aboriginal people in terms of high school completion had narrowed only slightly. We must ask why schooling has continued

Appendix G

1995 Provincial Statistics Regarding Graduation Rates for First Nations Learners in the Provincial System Versus Non-First Nations Learners

Grade and Graduation Transitions for 1990 Grade Eight Students in B.C.

| Grade | All Students | Aboriginal | | Populations | |
|-----------|--------------|------------|------|----------------|----------------|
| | | Female | Male | All Aboriginal | Non-Aboriginal |
| 8 | 100% | 100% | 100% | 100% | 100% |
| 9 | 94% | 89% | 87% | 88% | 94% |
| 10 | 92% | 83% | 81% | 82% | 93% |
| 11 | 88% | 74% | 69% | 71% | 89% |
| 12 | 80% | 55% | 51% | 53% | 82% |
| Graduated | 68% | 34% | 28% | 31% | 71% |



Notes:

The above rates are based on tracking the 1990 Grade Eight cohort forward through 1995. This provides an additional year for reaching Grade Twelve and graduation.

Rates are adjusted for out migration which is estimated by tracking the 1990 Kindergarten to Grade Four population over the same time period.

Data used originates in the Student Level Retention File developed by the School Finance and Data Management Branch.

For further information please contact Wayne Hoyle of the School Finance and Data Management Branch at 356-2440 or whoyle@mail.educ.gov.bc.ca.