DIR-IPFA
M. Barstow/MB179
14 December 1993

DEC 17 1993

S379584

Jim McCarthy
Director
Accounting Operations

E4000-10

INDIAN PROGRAM AUTHORITIES - ON AND OFF RESERVE

In response to your December 9, 1993, memo I would like to offer the following observations which apply to the authorities and practices of the Indian Program. For greater clarity I will address the points in your letter in the order in which they were presented.

As I understand the situation Indian Program authorities are in the main restricted to providing services directly to, or funding for the provision of services to, Indians who are registered under the provisions of the *Indian Act*. Generally speaking, whether or not we provide funding is determined by residence. Indians who are resident either on reserve (as defined in the *Indian Act*) or in Crown Land communities which have been recognised by both the federal and provincial/territorial governments as effectively a federal responsibility are eligible to receive services delivered directly by the department or, more likely, through another level of government (eg a Band Council) which has been selected as a vector for the services. At this time the department has officially recognised some responsibilities for 41 Crown Land communities. All these communities are populated almost 100% by status Indians, and they are all associated with Indian bands as defined under the *Indian Act*. To my knowledge, there are four exceptions to the federal position on status and residence. These are;

Post-secondary Education Assistance, which is available to qualifying status Indians regardless of normal residence.

Medical services not covered by provincial or territorial medicare plans. All status are eligible.

Universal programs established for the benefit of all aboriginal people regardless of status or residence.

.../2

Universal programs established for the benefit of all qualifying Canadians.

Apart from the above federal responsibilities, provinces/territories are expected to ensure that all their aboriginal citizens, with the exception of those status residents on reserve or in recognised Crown Land communities, have access to a level of services equivalent to all other citizens. For its part the federal government attempts to apply provincial standards to the on-reserve status element.

As you point out there are some exceptions to this general rule. For example a province may decide to extend specified services to status Indians resident on reserve, usually as a collectivity rather than as individuals. An example of this would be the participation by Ontario in retrofitting Indian homes on reserve for water and sewer services. In addition the department has entered into specific agreements with the Province of Newfoundland to assist that province to provide services to Inuit and Innu. However up to now the department has striven to maintain an "arms length" distance from direct involvement.

So far as the case of Davis Inlet is concerned it appears on the surface that the department's direct involvement is motivated by political considerations centred around the peculiar circumstances of that particular community, and does not fit within established norms. The pre-crisis existence of a cost-sharing agreement with Newfoundland regarding services to the Innu however would suggest that the federal government has acknowledged a degree of responsibility in the past for the welfare and well-being of the Innu, and indeed has had its authority in this case endorsed through the mechanism of the *Appropriations Act* (Main Estimates). If acknowledgement of Davis Inlet as principally a federal responsibility is the issue then a clear, specific and unique authority may be the most appropriate answer.

Ian MacLeod and Mansel Barstow have discussed this issue on December 14, 1993, and will arrange to continue the debate as necessary to help legal staff to understand the principles to which the department normally adheres so far as its funding practices are concerned.

A.H. Horner
Director
Indian Programming
and Funding Allocations