

**Measuring Cost Savings and New and Incremental
Costs under Yukon Self-Government Agreements –
Report to Yukon Justice
Final Report**

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Executive Summary

Under the terms of the Umbrella Final Agreement, seven of fourteen Yukon First Nations have completed final and self-government agreements. As implementation of the self-government agreements becomes more complete, attention is beginning to turn to who will pay for what as Yukon First Nations governments assert their legislative and program authorities. The purpose of this project is to assist with the development of appropriate guidelines, methodologies and systems which can be used to “sort out who will pay for what”. It builds on earlier work undertaken by MacKay & Partners.

Section 1 introduces the report, outlining the **project history** and the **methodology** used in the research.

Section 2 of the report considers **some potential approaches to government services costing** beginning with a review of lessons from other jurisdictions. These lessons include: a) credible numbers are important, b) other land claim implementation experiences are of marginal use in the Yukon context, and c) the Canada/Yukon devolution exercise has considered both direct and indirect costs.

After considering the context of the project requirements, three approaches to government services costing were selected for review: a) average/per capita costs, b) activity based costing, and c) alternative service delivery costing. The process chosen needs to ensure that all the relevant costs are identified, and to balance simplicity and credibility.

Of the three approaches examined, alternative service delivery costing is the most appropriate for the purposes of calculating both new and incremental costs and cost savings. The assurance with which the Yukon can use this approach in negotiations with Canada is enhanced because it is recommended by the Canadian Department of National Defence and Treasury Board.

Section 3 of the report looks specifically at the calculation of **new and incremental costs** as provided for in section 13.6.0 of the self-government agreements. New and incremental costs are defined as *those additional costs incurred by the Government of Yukon in the course of providing administration of justice services in respect of a charge made under a Yukon First Nation law*. They are triggered in two stages: the passing of a law by a First Nation that is subject to 13.6.0; and the laying of a charge under such a First Nation law in the Yukon’s judicial system.

Recommended guidelines for the calculation of new and incremental costs are:

- NI.1 When Yukon First Nation governments enact laws for which the Government of Yukon provides prosecution, adjudication and incarceration services, it is intended that there should not be either a cost or a windfall to the Government of Yukon.
- NI.2 The methodology should recognize that the provisions in the self-government agreements under which new and incremental costs will be incurred by the Government of Yukon are in force for a limited time period.
- NI.3 The calculation of costs associated with charges under First Nation laws will consider the full costs.

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- NI.4 The cost calculations will be based on assumptions and numbers that are credible and defensible.
- NI.5 The procedure for determining the new and incremental costs to be invoiced by the Government of Yukon will balance simplicity and completeness.

Section 3 of the report concludes with the presentation a recommended approach for calculating new and incremental costs. The main features of the recommendations are:

1. Base the calculation of new and incremental costs on full costs.
2. Use the Department of National Defence's alternative service delivery guidelines as the basis for calculating new and incremental costs.
3. Continue discussions and research into the method of calculating new and incremental costs that best meets the guidelines outlined in section 3.2.
4. Implement a system that will ensure that new and incremental costs are identified and invoiced to the Government of Canada on a timely basis.

The discussions and research to date have identified four options that appear to meet the guidelines for new and incremental cost calculations. A moderate amount of effort and discussion should enable a decision to be made on the method to be used. Once the preferred method is chosen, a detailed procedure can be determined, and appropriate staff training undertaken.

The calculation of **cost savings** as envisioned in section 18.0 of the self-government agreements is the subject of Section 4 of the report. An examination of the agreement indicates that the transfer of a program or service to a First Nation will not necessarily result in cost savings to the Yukon Government.

Recommended guidelines for the calculation of cost savings are:

- CS.1 When programs, or portions of programs, are transferred from the Government of Yukon to the First Nation, it is intended that there should not be either a cost or a windfall to the Government of Yukon.
- CS.2 The identification of **costs** associated with the transfer of programs and services to First Nation governments will consider the full costs.
- CS.3 The calculation of **cost savings** associated with the transfer of programs and services to First Nation governments will consider only avoidable costs.
- CS.4 The cost savings calculations will be based on assumptions and numbers that are credible and defensible.
- CS.5 The cost savings calculation will be based on the scope of the program or service at the point in time that it is transferred to the First Nation government.
- CS.6 The cost savings calculations are to be based on the experience of a time period which is long enough to be representative of the average actual experience of the Yukon government. This experience will serve as a source of information for determining the costs of the program or service as it exists at the point of time defined in CS.5.
- CS.7 The procedures for determining the cost savings will balance simplicity and completeness.

The main features of the recommended approach for calculating cost savings are:

1. Use the alternative service delivery guidelines as the basis for calculating cost savings.

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2. Perform a business case analysis for a program or service the first time it is transferred to a First Nation government.
3. Use the avoidable costs calculated for this initial transfer of a program to decide if the cost savings are enough to warrant a change to the fiscal transfer amount.
4. Use the information to decide whether future transfers of the same program to other First Nations need to be separately analyzed or whether this initial calculation can serve all future transfers.
5. Identify the points in the process of transferring programs and services to First Nations when the avoidable costs increase significantly.
6. Ensure that data needed to do credible baseline costing of programs and services transferred to First Nations is available.

In order to assist with the undertaking of a business case analysis as is proposed above, a cost savings template was developed. The template, shown below, is outlined in detail in section 4.4 and provides a procedure for calculating cost savings upon transfer of a program or service from the Government of Yukon to a First Nation government.

Cost Savings Template

1. Identification and description of program/service
2. Scope of program/service
3. Preliminary cost calculation
4. Cost savings calculation
5. Cumulative cost savings
6. Recommendations
7. Presentation and preservation of results

Almost every program and service currently delivered by the Yukon government may potentially be delivered by a Yukon First Nation government. Thus, the spectrum of program and service transfers to which the cost savings guidelines might someday be applied is virtually as broad as the spectrum of programs and services delivered by the Government of Yukon.

There are advantages to taking a consistent approach to cost savings calculations for all transfers of programs or services to First Nation governments, as described by the cost savings template. All governments can build experience in this new field, which will improve the efficiency and effectiveness of the calculations. Lessons learned over time can be passed on succinctly and clearly. Suggestions for useful modifications to the template and process can be made in a consistent context. Over time, negotiations with Canada will be able to focus on the specifics of the cost savings calculation rather than on the appropriateness of a particular approach.

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Information is required in order to calculate cost savings. Currently, some justice-related programs or services do not record the First Nation citizenship of their clients. This may make it difficult to gather reliable information for the cost savings calculations should these programs or services be transferred.

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1.0 Introduction

The Umbrella Final Agreement, signed in May 1993 by Yukon First Nations and the governments of Canada and the Yukon, is the template for a truly comprehensive land claim settlement. Yukon First Nations which have become self-governing under the terms of the UFA have access to an extensive list of governance powers similar in many aspects to the powers enjoyed by Canada's provinces and territories. Powers accessible by self-governing Yukon First Nations include social programs, education, health services, fiscal transfers as well as the administration of justice. To date, seven of fourteen Yukon First Nations have completed final self-government agreements.

While the self-government agreements contain a great deal of detail about which powers may be acquired (or, 'drawn down') via negotiation, a matching level of detail is not provided on the funding side of the equation. Instead, the agreements rely on rather more general conceptions of 'cost savings' and in the specific case of the administration of justice, the reimbursement of 'new and incremental costs' to describe how funding flows are to be altered. As implementation of the self-government agreements becomes more complete, however, attention is beginning to turn to sorting out who will pay for what when First Nations assert their legislative and program authorities.

The purpose of the *Measuring Cost Savings and New and Incremental Costs under Yukon Self-Government Agreements* project is to assist the Government of Yukon with the development of appropriate guidelines, methodologies and systems which can be used to help 'sort out who will pay for what'. The analysis has been undertaken with specific regard to the administration of justice provisions in the self-government agreements.

This report describes potential approaches to the costing of government services and identifies approaches which could be applied to the costing of the administration of justice provisions contained in sections 13.6.4 and 18.0 of the self-government agreements. Recommendations are made for further work to be done in both areas. Both adult justice and youth justice, administered by the Yukon Departments of Justice and Health and Social Services respectively, were reviewed. The complete terms of reference for the project may be found in Appendix A.

1.1 Project history

The *Measuring Cost Savings and New and Incremental Costs under Yukon Self-Government Agreements* project builds on earlier work undertaken in the same topic area by MacKay & Partners Chartered Accountants. In February 1999, the Yukon Department of Justice contracted Mackay & Partners to delineate the new and incremental costs to the Government of Yukon of administering justice services related to the prosecution, adjudication and punitive enforcement of offences created under First Nation laws. The resulting report, *Cost of Justice Services Arising from First Nation Self-Government Agreements*, dated March 1999, suggested a process for identifying and calculating new and incremental costs which was based on actual individual cases. This process assumed that the number of charges under First Nation laws would be small. The report identified the need for a mechanism to identify individuals

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charged and convicted under First Nation laws, something not presently in place. It also identified the need to identify a position in the department that would be a “central repository” for the cost information, and to train other staff to collect the necessary information and pass it on to the central repository.

In February, 2000 the Aboriginal Law Group of the Yukon Department of Justice contracted with Mackay & Partners to develop the method and approach to calculating cost savings when justice services or programs are transferred to a First Nation, pursuant to section 18 of the self-government agreements. This was in anticipation of the transfer of the administration of justice to Teslin Tlingit Council, which was being negotiated at that time. As part of the work, Mackay & Partners analysed the cost savings that would result from Phase I of the transfer of the administration of justice to Teslin Tlingit Council, as it was understood at that time.

The report produced in March, 2000, *Cost Savings and Other Issues under First Nation Self-Government Agreements (SGAs)*, illustrated that the cost savings to Yukon will not necessarily equal the cost of the program transferred. Because the Yukon government must be able to maintain its level of service to its other clients, the transfer of services to a First Nation may not enable the Yukon government to reduce staff or other expenses.

The *Cost Savings and Other Issues under First Nation Self-Government Agreements (SGAs)* report does acknowledge, however, that as more and more responsibilities are transferred to First Nations, there may be points at which Government of Yukon may reduce staff or other expenses significantly. The report suggested that the Government of Yukon needed to begin to identify these points. It also identified a number of limitations on the research into cost savings. A number of branches do not identify whether their clients are members of a Yukon First Nation. Even when such identification is made, it is not usually automated, so that considerable effort is required for gathering information according to First Nation citizenship. The report suggests that the Yukon Department of Justice’s court registry, legal services, legal aid and victim services, and for youth justice services, the Department of Health and Social Services, need to identify the use of their programs and services by First Nation citizens.

For the current project, the Yukon Department of Justice has contracted with Mackay & Partners and Vector Research to continue the work involved with developing guidelines and methodology for the Departments of Justice and Health and Social Services to determine new and incremental costs relating to section 13.6 of self-government agreements. The project also includes continuing to define and develop a set of principles and processes for determining the cost savings that can be used within the Departments’ various branches.

1.2 Methodology

Two main methodologies were employed in the preparation of this report. The first was in the form of a literature review of traditional sources of information such as cost accounting textbooks and research papers. Information found in paper-based sources was supplemented with information found via research on the world wide web. Sources used in the preparation of this interim report are listed in the references section which follows the main body of the

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report. The second main methodology used was in the form of discussions (in person, by telephone and by email) with Government of Yukon officials. Guidance was also provided by the Administration of Justice Implementation Negotiation Team.

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2.0 Potential Government Services Costing Approaches

2.1 Lessons from other jurisdictions

a) Credible numbers are important

An article called “*Who does what*” in Ontario: the Process of Provincial-Municipal Disentanglement was about huge municipal resistance to the provincial government’s proposal to download some responsibilities. An important point was that the provincial government underestimated the importance of having accepted and transparent numbers to accompany their plans. When it took a year for them to actually produce financial figures, their credibility was eroded.¹ Because both new and incremental costs and cost savings upon transfer of a program are untested concepts in the negotiations between Yukon and Canada, credible numbers may shorten the negotiations.

b) Other land claim agreement implementation experiences are of marginal use to the Yukon context

Tungavik Federation of Nunavut’s agreement resulted in the establishment of the new territory Nunavut which has a population which is 80% Inuit.² The government of Nunavut was funded from scratch. Cost savings calculations for NWT do not appear to have been required as part of this exercise. The NWT agreements do not seem to be program transfers. Instead they have apparently set up public bodies which are funded by both territorial and federal governments, and which serve all citizens.

The Nisga’a settlement with British Columbia and Canada is primarily a land-based settlement in which the Nisga’a received municipal-like powers. They receive fiscal transfers from Canada and British Columbia to enable them to provide government services. Neither new and incremental costs or cost savings exercises are required in this agreement.³

The Treaty Land Entitlement Framework Agreement in Saskatchewan provides cash compensation, with a specific amount to be spent on buying land on the open market, and the rest to be used as the First Nation sees fit. The First Nation has legal jurisdiction over planning, building standards, health regulations and municipal-type services and taxation. Self-government powers such as administration of justice, education, health and social services are not included in this agreement.⁴ This experience does not appear to offer much relevance to the situation in the Yukon.

¹ Graham, Katherine A. and Phillips, Susan D., “*Who Does What*” in Ontario: the Process of Provincial-Municipal Disentanglement, Canadian Public Administration, Volume 41, No.2, pp. 175-209

² Tungavik Federation of Nunavut (TFN) Comprehensive Claim: Northwest Territories: Indian and Northern Affairs website: [/ /www.inac.gc.ca/pr/info/info08_e.html](http://www.inac.gc.ca/pr/info/info08_e.html)

³ The Nisga’a Final Agreement in Brief, British Columbia website: www.aaf.gov.bc.ca/aaf/treaty/nisgaa/docs/newbrief.htm

⁴ Dust, Theresa M., *The Impact of Aboriginal Land Claims and Self-Government on Canadian Municipalities: The Local Government Perspective*, ICURR Press, 1995

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c) Devolution has included indirect costs

A Government of Yukon Health and Social Services policy analyst indicated that First Nations did some “due diligence” work in the course of negotiating program transfers from Canada, and included indirect costs such as the share of head office costs in their calculations. Canada seems to have accepted this premise.

The federal Department of Indian Affairs and Northern Development has described the resources to be transferred upon devolution to Government of Yukon as including salaries, wages and benefits and other operations and maintenance budget items available in the Yukon and associated with the headquarters positions in support of Yukon programs. They mention using a “reasonable method of allocation” for the latter.⁵

2.2 Lessons from the field of cost accounting

Sections 13.6.4 and 18.0 of the self-government agreements are each concerned with different aspects of how to calculate the funding of First Nation administration of justice. A common element found in both, however, is a requirement to identify and account for the costs associated with implementing the administration of justice provisions. Accordingly, the starting point for this section of analysis was to perform a review of the general costing field.

The notion of costing, in an accounting sense, has its roots in the discipline of management accounting and was developed to provide a better understanding of how to improve the efficiency of production processes than could be provided with ordinary financial accounting methods. Given the private sector genesis of the cost accounting field, the usefulness of costing methodologies has generally been limited to processes which produce goods, as opposed to services, as the final output. During the last decade or so, however, the field has expanded to include applications to service producing industries including services provided by government. In the course of reviewing the literature in the cost accounting field, several approaches with potential application to the costing of government services were identified. After considering the context of the project requirements, three approaches were selected for review.

The terminology used to describe the costing approaches is specific to the field. Accordingly, some relevant definitions are presented below before moving on to the presentation of the three selected approaches.

The **full cost** of producing a good or service includes both the direct and indirect costs. By way of example, consider a process for the production of plywood. The **direct costs** associated with the manufacture of one piece of plywood would include the cost of the raw logs, plus the number of hours of labour spent by workers in the mill to produce that one sheet, plus the number of kilowatts of electricity, etc. The **indirect costs**, on the other hand, would include the capital costs of the mill building and equipment, overhead costs such as the salaries of the front office staff and generally all those costs which cannot be directly tied

⁵ *Devolution of the Northern Affairs Program to the Yukon Government: A Federal Proposal*, Indian and Northern Affairs Canada, 1996

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to the production of the sheet of plywood. An accurate estimate of the actual (or, full) cost must include both types of costs.

The cost accounting field also provides a pair of terms which separate production costs into one of two broad types, committed and flexible costs.⁶ A **committed cost** is a cost associated with resources expended by an organization to acquire productive capacity that must be put in place before any actual production can occur. Costs for personnel, communications (phones, computers, etc.), and amortized capital costs are all examples of committed costs. The key feature of committed costs is that they are unaffected by how much an organization actually uses the committed resources. As a result, the level of committed costs is related to the planned (or, historical) level of activities and is not affected by how much use is made of the committed resource during the period in question.

A **flexible cost** is one which arises from the use of flexible resources. Examples of flexible resources include labour that is acquired and paid for only in the amounts used, fuel used in vehicles to make deliveries of finished products, and the exact amount of electricity used in a production process. The quantity of flexible resources consumed is determined by the actual level of activities performed. The consumption of flexible resources corresponds with the actual demand for those resources. As a result, the organization pays for only the amount of flexible resources that it needs and uses.

The terms avoidable and non-avoidable costs constitute another way of describing the costs which make up full costs. **Avoidable costs** are defined as costs that would ‘go away’ if an organization ceased to provide a given product or service. Conversely, **non-avoidable costs** are those costs which would not ‘go away’. For example, consider a manufacturing operation which produces three types of boots in the same factory. If the company chose to stop producing one of the three lines of boots the costs of raw materials used making those boots are avoidable. The costs associated with the maintaining the factory building itself, however, are more likely to be non-avoidable since the factory must remain in reasonable repair in order that other two lines of boots can still be produced.

2.2.1 Average/per capita cost

One possible approach to the costing government services is to calculate some form of an average or per capita cost for the provision of government services. An example of the average cost approach would be to divide the sum of the operating and maintenance (O&M) budgets for the branches of the Department of Justice responsible for the administration of justice by the number of cases processed in a year. The value of new and incremental costs would then be calculated as the number of cases originating as charges under a First Nation law multiplied by the average cost per case.

An approach similar to the average cost method would be to calculate a per capita measure of the value of government services. An example of the per capita approach would be to divide the sum of the O&M budgets for the branches of the Department of Justice

⁶ The explanations of committed and flexible costs presented below draw heavily on Kaplan and Atkinson (1998).

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responsible for the administration of justice by the proportion of the population estimated to be affected by the legal system. The value of new and incremental costs would then be calculated as the number of cases originating as charges under a First Nation law multiplied by the per capita cost per case.

Note that there are two significant flaws to both the average and per capita cost approaches. First, each approach ignores some cost categories (for example, capital costs relating to the current value of the Department of Justice building). As a result, only a portion of the actual, or full, costs required to deliver the government service are included in the calculation.

Second, and more importantly, both approaches are based on an overly simplistic assumption that there is a one to one relationship between inputs (the resources required to be in place before a charge can be processed) and outputs (the administration of justice). The validity of the one to one assumption is crucial to both approaches as it allows for a reverse calculation beginning with the level of outputs and working backwards to estimate the amount of inputs required to produce the given level of outputs.⁷ As a consequence, neither the average nor the per capita cost approaches provide for an accurate measure of committed costs.

2.2.2 Activity based costing (ABC)

Activity Based Costing (ABC) is the second approach to the costing of government services identified for further review. Defined as a systematic, cause and effect method of assigning the costs of activities to products and services, ABC is based on the principle that “products consume activities”. Instead of allocating costs to cost centres (such as human resources, finance, manufacturing, etc.) costs are allocated to activities (such as processing a customer order, resolving a customer complaint, etc.).

To phrase it another way, the basic theory of the ABC accounting technique is that organizational activities are responsible for all cost occurrences but not all organizational activities contribute to the production of every product or service. Consider the following manufacturing example:

A furniture manufacturer produces 20 desks and 20 chairs. Both items go through the same finishing department (activity). It takes one hour to finish a desk and two hours to finish a chair. Typical cost accounting would attribute the cost of the finishing on a per unit basis. The desks and chairs would bear an equal share of the cost (50/50) because an equal number of desks and chairs were produced. ABC attributes the finishing cost on a per hour basis - the amount the activity actually

⁷ In mathematical terms, the average cost and per capita approaches are both of the form of simple linear functions. For example, the average cost calculation may be represented as: $Q = O\&M/C$

where Q is the average cost per case,
C is the number of cases, and
O&M are is the relevant O&M costs

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consumed. The desks and chairs would assume a fair share of the cost (1/3 to 2/3) because the chair uses twice the finishing hours as the desk.⁸

The activity based costing methodology is a *bona fide* full cost approach since it makes use of all the information contained in the financial accounting universe. Thus, all costs whether they are direct or indirect in nature, are included in the ABC cost calculations. The ABC methodology further distinguishes itself by recognizing that not all organizational activities contribute to the production of every product or service.

2.2.3 Alternative Service Delivery (ASD) Costing

A third potential approach to determining the value of a government service is found in Canada's Department of National Defence *Alternative Service Delivery Guidelines*. The guidelines are designed to allow Department of National Defence (DND) managers to make sound and justifiable business decisions when deciding on alternative delivery options. Potential delivery options range from the complete sale of assets, to the delivery of services by others (i.e., contracting out), to setting up new internal delivery models such as a Special Operating Agency.

Under the approach outlined in the ASD guidelines, baseline costing is carried out in the preparation of a business case analysis for costs for a targeted service.

The first step in the costing exercise is to describe the activity under review in terms of outputs and then detail all those factors that contribute to the output. Once the output has been defined, the inputs used in the provision of the output are costed in order to determine the cost of providing the targeted service according to the categories as follows:

Personnel Costs: both direct and indirect personnel costs, such as salary, wages, severance pay, and allowances such as uniform or environmental allowances

Operations and Maintenance (O&M) Costs: recurring non-personnel costs incurred in the provision of the targeted service including costs for:

- a) material and supplies (raw materials, parts, subassemblies, and components),
- b) repair and maintenance (costs for repairing and maintaining equipment in normal operating condition), and
- c) other costs (any other O&M expenditures that have not specifically been included above).

Facility Costs: costs for maintenance, rent, electricity, heating, and utilities related to buildings used in providing the targeted service.

Capital Costs: costs for equipment with a current net realizable value of more than \$5,000 and which have a life cycle of more than one year.

Overhead Costs: all indirect non-personnel support provided to a targeted service that has not been captured by the other costing categories.

Non-DND Costs: costs incurred by other Departments in support of DND targeted services such as statutory personnel benefits including pension

⁸ This example is reproduced from the United States Military's *Standard Service Costing Handbook* www.ceac.army.mil/web/ssc_handbook_concepts.html

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contributions, CPP, UI, etc., which are paid by Treasury Board on behalf of military and civilian employees.

Adjustments are then made to the resulting baseline cost estimate to include other relevant costs, such as one-time conversion costs and costs which will continue to be incurred by DND even if a service is contracted out (so-called non-avoidable costs). An important element in the baseline costing process is differentiating between avoidable and non-avoidable costs. Avoidable costs are the costs that will “go away” when the government stops providing the service; non-avoidable costs do not. Bids for the provision of the targeted service are then sought from interested parties outside of the DND. The outside bids are then compared to the avoidable costs.

The Alternative Service Delivery Guidelines contain a number points relevant to the project at hand:

- a) The DND Costing Handbook and the Treasury Board document *Stretching the Tax Dollar: Make or Buy*, both recommend avoidable costs as the basis to be used for decision making. The total of such costs is what the department could pay the private sector for the service.
- b) The guidelines say that generally all direct costs are avoidable, but determining what portion of overhead costs is avoidable is a matter of judgment. Several small contracts considered separately may have limited impact on overhead, however, aggregated they could reduce the overhead significantly.
- c) DND suggests doing baseline costing for the service. This is the full cost of providing the service, and includes all avoidable and non-avoidable costs at a specific point in time. The reasons for doing this are to understand the cost structure and scope of the service, to ensure the costs of all inputs are included, and to determine a benchmark for identifying potential savings. They see this baseline costing as a decision support document, and indicate that the level of detail required must be sufficient for making a reasonable decision about whether to contract out the service. It does not need to be as rigorous as the detail required for the bid evaluation decision, which is the decision about how much to pay for the contracted out decision.
- d) The DND guidelines identify that a frequent oversight is not identifying whether personnel involved with the activity are considered “core operational personnel”. Core operational personnel are positions that will remain regardless of whether the service continues to be provided by DND. The costs of such personnel should not be factored into the bid evaluation analysis. The Treasury Board document *Stretching the Tax Dollar: Make or Buy*, states that core policy personnel who would remain even when everything is contracted out should be excluded from the calculation of what the department would be able to pay for the contracted out calculation.
- e) The DND costing document addresses the issue of excess core operational personnel. It states that from a costing point of view, such excess should **not** be included in the evaluation of how much the department could pay for the contracted out service. They do note that the issue of excess personnel is relevant

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from a policy point of view and should be included in the baseline costing exercise in a qualitative fashion rather than in a quantitative fashion.

- f) Both DND and the Treasury Board identify the cost of administering and monitoring the contract as a legitimate cost which must be included in the cost of contracting out. They also suggest that all direct costs of personnel, consultants and operations & maintenance or capital costs associated with the contracting out process need to be captured in any calculation of savings arising from contracting out.

2.3 Materiality thresholds for cost calculations

Materiality is a threshold amount. Amounts above materiality are considered worth the resources of calculating or analyzing them. Materiality thresholds cannot be chosen without looking at the context and implications of the choice of threshold amount. The size of the budget of the program may be relevant because there may be more room to absorb additional costs or reduced revenue. Amounts which reduce revenue for years into the future are more material than those that are a one-time event. The cost of doing the analysis and calculation may be more than the amount saved or reimbursed.

There is little in the way of direct guidance from either other Yukon departments or other jurisdictions for calculating materiality in the context of government program costing. For instance, the Yukon transfer payment from Canada is calculated to the exact dollar amount; the Yukon government budget rounds its estimates to the nearest thousand dollars. There is some feeling in the Department of Finance that all costs should be calculated because the total may be significant.

If a significant number of charges will not be laid in the Yukon justice system under First Nations laws, the question arises as to whether it is worth committing resources and costs to monitor and invoice new and incremental costs. If there are few charges laid, then the cost of preparing to invoice the costs and the resources used to calculate the costs may outweigh what Canada will be required to pay. Section 13.6.7 provides that the costs of implementing the provisions of 13.6.4 incurred by the Yukon government shall be paid by Canada. However, some of the costs will be difficult to identify and track, for instance staff time and effort.

The calculation of the cost savings that would have been realized under the proposed agreement with Teslin Tlingit Council, done in the report produced in March, 2000, *Cost Savings and Other Issues under First Nation Self-Government Agreements (SGAs)*, indicates that cost savings may be negligible. In addition, the cost of calculating the cost savings may be significant and greater than the cost savings themselves.

It is pre-mature at this time to set a dollar materiality threshold in advance of any actual negotiations with Canada regarding cost savings. Instead it is useful to outline a process that acknowledges both the lack of current experience with calculating cost savings and the fact that each program transferred needs to be analyzed in a way that ensures all the relevant costs are identified. Other goals for this process are simplicity and credibility. Materiality

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considerations are discussed in the context of guidelines for the calculations of new and incremental costs, and cost savings in sections 3.2 and 4.2 respectively.

2.4 Recommended approach

Of the three costing approaches examined, it is the view of the project team that the methodologies outlined in Canada's Department of National Defence's Alternative Service Delivery (ASD) are the most appropriate in a government services costing context. The reasons for the recommendation are outlined below:

- The guidelines are supported by procedures recommended by the Treasury Board of Canada which is of course the same government with whom costing discussions are being undertaken.
- The guidelines require that baseline costing be done to identify the baseline cost of a service or program. Such an in-depth review will ensure that all the costs are identified and considered, and enhances the credibility of the costing.
- The same set of guidelines are appropriate for the calculation of new and incremental costs *and* cost savings. The specific application of the guidelines to each are addressed later in this report in section 3.3 (new and incremental costs) and in section 4.3 (cost savings).

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3.0 New and Incremental Costs

3.1 Calculating new and incremental costs

Under section 13.6.0 of their self-government agreements, Yukon First Nations are required to enter into negotiations with the governments of Canada and the Yukon in order to create administration of justice agreements. Matters which may be considered for negotiation include:

- adjudication
- civil remedies
- punitive sanctions (fine, penalty, and imprisonment)
- prosecution
- corrections
- law enforcement
- the relation of a First Nation court to other courts
- any other matter related to aboriginal justice to which the parties agree

With regard to timing, a self-governing First Nation may not exercise its administration of justice power until five years after the effective date of its self-government agreement unless it first negotiates an administration of justice agreement. Thus, while a self-governing First Nation has the power to make laws immediately after the effective date of its self-government agreement has passed, it does not automatically have the corresponding authority to immediately process those same laws through its own justice system.

In order to ensure that laws passed by a Yukon First Nation in the first five years are properly administered, the self-government agreements also contain provision for the use of the Yukon judicial system in that five year period. The provisions which apply in the five year period are known as the *interim provisions* and are described in section 13.6.4 of the self-government agreements. The provisions allow that:

- a First Nation shall have the power to establish penalties in the form of fines (up to \$5,000) and imprisonment (up to six months) for the violation of a First Nation law
- the Yukon court system (Justice of the Peace, Territorial and Supreme) can be used to adjudicate First Nation laws
- offences under a First Nation law are to be prosecuted according to the provisions of the Yukon's *Summary Convictions Act*
- if a term of imprisonment results from the violation of a First Nation law it is to be served in a facility provided for in Yukon's *Corrections Act*

The self-government agreements also provide that, in exchange for providing administration of justice services, all new and incremental costs incurred by Yukon in implementing the interim provisions may be billed back to Canada. Such payments are to be made according

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to the terms of guidelines which are to be negotiated between the governments of the Yukon and Canada.

3.1.1 Definition of a new and incremental cost

The calculation of new and incremental costs requires a working definition of what constitutes a new and incremental cost eligible for recovery in respect of implementation of the interim provisions. To date there have been no conclusive negotiations between the governments of Yukon and Canada to provide guidelines for the definition of new and incremental costs. Accordingly, we suggest that new and incremental costs be defined as *those additional costs incurred by the Government of Yukon in the course of providing administration of justice services in respect of a charge made under a Yukon First Nation law.*

First Nation laws that are significantly different from any Yukon law most clearly attract new and incremental costs. People charged under such laws attract costs that are additional to the justice system since no administration of justice costs would have been incurred without the First Nation law.

Less clear are the new and incremental costs associated with charges under those First Nation laws that to some extent replace Yukon laws. Some new and incremental costs may arise regardless of the extent to which the First Nations law replaces a Yukon law. A reasonable determination would need to be made at either the point when the First Nations law is passed, or when a charge is laid under the law.

Pre-costs have been defined as costs incurred in the development and implementation of the guidelines for the negotiation of the interim guidelines. An example of such a cost would be the professional fees paid to consultants for the development of the new and incremental cost guidelines. Pre-costs have not been considered to be new and incremental costs for the purposes of this study because payment of those costs has been provided for under a separate implementation funding arrangement.

3.1.2 Timing of new and incremental cost calculations

3.1.2.1 Operational timing

Having now outlined the statutory basis for calculating new and incremental costs, as well as a working definition, the next matter to be considered is the appropriate point in time at which to calculate new and incremental costs. A two stage trigger process is described below.

Stage 1 of the trigger is activated when a First Nation enacts a law under authority of its self-government agreement. Note that the passage of a law by a First Nation does not automatically imply that new and incremental costs will be incurred by the Government of Yukon. On the other hand, note that costs incurred by Yukon in the course of becoming prepared to administer a First Nation law do constitute new and incremental costs.

The Yukon Department of Justice has received information from the seven self-governing First Nations that they have passed a total of 12 laws. This list does not include the income

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tax legislation which has been passed by five First Nations, suggesting that this list is incomplete in this and perhaps other areas.⁹

The Aboriginal Law Group of the Yukon Department of Justice is currently responsible for reviewing First Nation laws for their impact on Yukon legislation. The Group believes that they receive notification of First Nations legislation which potentially affects Yukon laws, because First Nations are required to consult with the Yukon on such legislation pursuant to s.13.5.5 of their Self-Government Agreements. However, work still needs to be done by Yukon First Nations to establish a central registry of First Nation laws and to ensure that the Yukon government, and other interested parties, have a reliable, up to date reference point for all First Nation laws.

Stage 2 of the trigger process is activated when a charge is actually laid under a First Nation law. To date, the project team is not aware of any charges made under a First Nation law.

The Court Registry Information System (CRIS) data base is used to record charges as they enter the Yukon justice system. CRIS does not have a data field for identifying the First Nation that has originated a law under which a charge is laid. Court Services has identified an informal method of recording this information; they intend to assign file numbers from ranges that have been specifically assigned for each First Nation. A more formal procedure for recording this information needs to be incorporated into CRIS. A procedure is also needed to pass the information that a charge has been laid under a First Nation law on to the Aboriginal Law Group.

⁹ While a central registry of First Nation laws is required under section 21.2 of the Self-government Agreements (Public Register of Laws and Notification Provisions) it is not yet operational.

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The table below presents, to the extent that information is known by the Yukon Department of Justice, the operational history of Yukon First Nation laws.

**Table 1: Yukon First Nation Laws - Operational History
DRAFT**

Stage 1 trigger: First Nation Law	Stage 2 trigger: Charge laid (#)
Champagne and Ashihik	
<i>Fish & Wildlife Act</i>	0
<i>Income Tax Act</i>	0
<i>Lands Act</i>	0
<i>Self-government Act</i>	0
<i>Traditional Activities Protection Act</i>	0
Nacho Nyak Dun	
<i>Income Tax Act</i>	0
<i>Land & Resources Act</i>	0
<i>Self-government Act</i>	0
Little Salmon Carmacks	
<i>Income Tax Act</i>	0
Selkirk	
<i>Income Tax Act</i>	0
Teslin	
<i>Administrative Act</i>	0
<i>Fish and Wildlife Act</i>	0
<i>Income Tax Act</i>	0
<i>Land and Resources Act</i>	0
Tr'ondëk Hwëch'in	
<i>Income Tax Act</i>	0
Vuntut Gwitchin	
<i>Income Tax Act</i>	0
<i>Land and Resources Act</i>	0

Source: compiled using information supplied by the Government of Yukon, Department of Justice, Aboriginal Law Group, November 2000.

3.1.2.1 Statutory timing

As it is described in the self-government agreements, the concept of a new and incremental cost was intended to be temporary in nature. The interim provisions were to apply for only the first five years following a First Nation's effective date because it was expected that five years would be sufficient time for each First Nation to negotiate an administration of justice agreement pursuant to their section 13.3.17 powers. Contrary to the expectations of the negotiators, not one administration of justice agreement has yet been completed, notwithstanding that for the "first four" self-governing Yukon First Nations the initial five year interim period expired on February 14, 2000.

The interim provisions may be extended for an unbounded length of time through an exchange of letters at the ministerial level. Three of the "first four" have extended their

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interim provisions for at least one more year. The table below presents the status of the interim provisions for each of the self-governing Yukon First Nations.

Table 2: Interim Provision Status

	Effective Date:	Intended interim provision expiry date:	Extended interim provision expiry date:
Champagne and Ashihik	February 14, 1995	February 14, 2000	February 14, 2002
Nacho Nyak Dun	February 14, 1995	February 14, 2000	--
Teslin Tlingit	February 14, 1995	February 14, 2000	February 14, 2003
Vuntut Gwitchin	February 14, 1995	February 14, 2000	February 14, 2002
Little Salmon Carmacks	October 1, 1997	October 1, 2002	not yet applicable
Selkirk First Nation	October 1, 1997	October 1, 2002	not yet applicable
Tr'ondek Hwech'in	September 15, 1998	September 15, 2003	not yet applicable

In conclusion, on one hand, the self-government agreements clearly provide a statutory basis for the calculation of new and incremental costs which suggests that guidelines and methodologies will be required to properly implement the self-government agreements. On the other hand, the experience to date has been that the Government of Yukon has never adjudicated a Yukon First Nation law. While it has not been possible to estimate how likely it is that the Yukon government will never have to adjudicate a First Nation law, it is nonetheless a factor which should be considered when deciding on the optimal approach for calculating new and incremental costs.

3.2 Guidelines for new and incremental costs calculations

The project team proposes that the following set of guidelines be adopted for the calculation of new and incremental costs:

- NI.1 When Yukon First Nation governments enact laws for which the Government of Yukon provides prosecution, adjudication and incarceration services, it is intended that there should not be either a cost or a windfall to the Government of Yukon.
- NI.2 The methodology should recognize that the provisions in the self-government agreements under which new and incremental costs will be incurred by the Government of Yukon are in force for a limited time period.
- NI.3 The calculation of costs associated with charges under First Nation laws will consider full costs.
- NI.4 The cost calculations will be based on assumptions and numbers that are credible and defensible.
- NI.5 The procedure for determining the new and incremental costs to be invoiced by the Government of Yukon will balance simplicity and completeness.

3.3 Recommended approach for calculating new and incremental costs

1. *Base the calculation of new and incremental costs on full costs.*

Many of the costs within the administration of justice are costs that are not immediately affected by volume; for instance, if more charges are laid, many costs do not rise in the

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short-term. Instead, it will likely take longer for the charge to be addressed. For example, it may take longer for the information from the charge sheet to be entered in the system, longer for the case to make it to court, longer for a space to be available in a program, and perhaps less time with a probation officer. Costs do not rise, but extend for a longer time into the future. Therefore, if no more charges were to be laid, the administration of justice system would need to continue long enough to deal with the additional charges, and this incurs full costs. Using full costs will avoid either undue windfalls or costs to the Government of Yukon.

2. *Use the Department of National Defence's Alternative Service Delivery guidelines as the basis for calculating new and incremental costs.*

The Alternative Service Delivery guidelines are credible because they have been developed in accordance with Treasury Board guidelines and have been used for alternative service delivery decisions made by the federal government. The intention of the guidelines is to produce credible and defensible numbers.

Under the Alternative Service Delivery guidelines, it is necessary to identify avoidable and non-avoidable costs, and to decide which costs are appropriately included in new and incremental costs. Full costs are used. The guidelines state that baseline costing needs to be done in order to scope out all the costs. The update on tracking incremental costs of justice services done in the 2000 report, *Cost Savings and Other Issues under First Nation Self-Government Agreements (SGAs)*, provides a baseline costing analysis.

3. *Continue discussions and research into the method of calculating new and incremental costs that best meets the guidelines outlined in section 3.2.*

A variety of methods for calculating new and incremental costs have received preliminary attention. Further work will be required to finalize the method that best meets the criteria set by the governments involved.

The methods identified as being potentially suitable include:

A. Base the costs on the actual experience of each charge laid under a First Nation law.

This is the method suggested in the 1999 Mackay & Partners report titled *Cost of Justice Services Arising from First Nation Self-Government Agreements* and reiterated in the 2000 Mackay & Partners report titled *Cost Savings and Other Issues under First Nation Self-Government Agreements (SGAs)*. These reports suggested that because the number of charges laid under First Nations laws are likely to be small, each case could be tracked individually. The costs and other information to be collected were outlined in the reports.

B. Base the invoiced new and incremental costs on (a) costs to identify charges under First Nations laws; (b) court time; (c) prosecutor preparation time; (d) probation services costs; and (e) corrections services costs.

There is an impetus to simplify the calculation of new and incremental costs both because of their temporary nature and the experience that no charges have yet been laid

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under First Nations laws. Simplifying the calculation will have the added benefit of reducing training and monitoring costs, both of which are difficult to track and invoice.

From the 1999 report, *Cost of Justice Services Arising from First Nation Self-Government*, we can identify a few areas that could attract significant costs. One is the cost of preparing to identify charges under First Nation laws, because that may require changes to the data warehouse system. This is a one-time cost, and may be straightforward to track, especially if an outside contractor is used to do the work.

Court time is a significant cost; full costs are estimated at about \$950 per hour for the staff, support and facility costs. The court clerk has indicated that it would be possible to keep track of the hearing length of a relevant case. The rate used for court time will serve as a *proxy cost*, that is a cost that adequately serves to reflect a package of new and incremental costs associated with court registry services.

Preliminary discussions with the Department of Justice's Legal Services Branch indicates that the lawyers now keep track in a general way of how much time is spent on a case, and that it may be reasonable to ask them to keep close track of the time spent on particular cases. In the 2000 report, *Cost Savings and Other Issues under First Nation Self-Government Agreements (SGAs)*, the estimated hourly cost of legal services is \$120.

Probation services may also incur significant costs. In the 2000 report, *Cost Savings and Other Issues under First Nation Self-Government Agreements (SGAs)*, the manager of adult probation estimated the costs of typical tasks undertaken by Probation Services, based on full costs.

Although the kinds of laws that First Nations are likely to pass rarely attract incarceration time, the full cost of time spent in correctional institutions is significant enough to be considered in the calculation of new and incremental costs. In the 2000 report, *Cost Savings and Other Issues under First Nation Self-Government Agreements (SGAs)*, Canadian Centre for Justice statistics show the full cost per diem rate for 1996-97 was \$239.57.

C. Base the new and incremental costs to be invoiced on court time multiplied by a rate (e.g., 1.35) which reflects the other new and incremental costs incurred.

This method takes the impetus to simplify the calculation even further. Court time appears both to be the largest hourly cost in the administration of justice system and to be straightforward to measure. It may be possible to determine an hourly court cost rate that can reasonably approximate all the new and incremental costs associated with the charges laid under First Nations laws.

D. For either of the methods B or C above, determine multipliers that can reflect the degree to which a First Nations law triggers new and incremental costs.

As described in 3.1.1 above, the degree to which a First Nations law triggers new and incremental costs may vary from nothing to 100%, depending on how closely the law replace an existing Yukon law. For laws that add elements to an existing Yukon law, and so trigger some new and incremental costs, a multiplier may reasonably represent this. Such a multiplier could possibly be gleaned from the accounts of another government

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which already has an activity based accounting system in place and provides similar services.

4. *Implement a system that will ensure that new and incremental costs are identified and invoiced to the Government of Canada on a timely basis.*

Section 3.1.2.1 of this report describes the process to identify the timing for calculating new and incremental costs. Stage 1 requires a reliable way to ensure that the Department of Justice is notified of all laws passed by First Nation governments that are subject to Section 13.6.4 of their self-government agreements. Stage 2 requires that there be a way to identify when charges are laid under First Nation laws.

The process of calculating new and incremental costs will require that there is a staff person responsible for the calculations, communication, implementation and training needed. This staff person must receive the information needed to do the calculations. Depending on the specific method chosen from those outlined in item 3 above, such information may include:

- a) notification of the passage of a law by a First Nation subject to section 13.6.4 of their self-government agreement;
- b) results of an analysis on the extent to which the law will attract new and incremental costs;
- c) costs of identifying charges under First Nation laws;
- d) the laying of charges under First Nation laws that attract new and incremental costs;
- e) the length of court hearings pertaining to such charges;
- f) the length of preparation time spent by Legal Services;
- g) probation services costs associated with the charges; and
- h) corrections services costs associated with the sentence on the charges.

Other staff will be involved in collecting and producing some of the information. For instance, Legal Services staff may be involved in analyzing First Nation laws to identify whether they attract new and incremental costs and in recording the amount of preparation time associated with the charges; the court clerk will need to record the length of the court hearing pertaining to relevant charges; probation and corrections services will need to collect information on their services associated with the charges. Health and Social Services staff will be needed to provide similar data in the case of charges laid against young offenders. Alterations are likely to be needed to enable charges under First Nation laws to be entered into the Department of Justice data warehouse system.

3.4 Recommendations for future work on new and incremental costs

3.4.1 Continue discussions and research into the method of calculating new and incremental costs that best meets the guidelines outlined above in section 3.2.

The discussions and research to date have identified four options that appear to

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meet the guidelines for new and incremental cost calculations. These are detailed in point 3 of section 3.3. A moderate amount of further effort and discussion should enable a decision to be made on the method to be used.

3.4.2 Work with the appropriate departmental branches in both Justice and Health and Social Services to develop ways to identify and collect the costs required for the method chosen in 3.4.1.

Once the method has been chosen in 3.4.1, the mechanisms to record and collect the information needed to calculate new and incremental costs will need to be developed.

3.4.3 Make the necessary changes to the Court Registry Information System (CRIS) to enable a formal solution for identifying First Nation citizens and First Nation laws.

CRIS is the system where charges under First Nation laws will be recorded. It is an essential mechanism for recording and collecting the information needed to calculate new and incremental costs.

3.4.4 Identify the appropriate staff position to collect new and incremental cost information and to invoice Canada for them.

An important element of the process will be to identify the staff position responsible for noting the need to determine new and incremental costs as the situation arises, collecting the data and producing the invoice on a timely basis.

3.4.5 Work with various branch staff branches in both Justice and Health and Social Services to inform them of what is required of them when they are collecting new and incremental costs.

Branch staff will likely require written instructions on the collection and invoicing of new and incremental costs, and perhaps other training as well.

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4.0 Cost savings

4.1 Calculating cost savings

In general terms, section 18 of the self-government agreements provide that savings which accrue to the Government of Yukon as a result of the transfer of responsibility for programs and services to Yukon First Nation governments are to be passed back to the Government of Canada. The agreements specify that the passing back of cost savings is to occur via ‘any fiscal transfer arrangement in effect at the time’.¹⁰ In other words, should it happen that the Yukon experiences cost savings as a result of the transfer of a program or service, then that amount is to be subtracted, on a one-for-one basis, from a future transfer payment made by Canada to the Yukon. Section 18 is not specific to the cost savings which might accrue to the Yukon as a result of the negotiation and implementation of an administration of justice agreement; it applies to the transfer of any program or service.

At first glance, the one-for-one swapping of savings for revenue appears to be quite a simple concept. Delving a little deeper into section 18, however, shows that many other factors are also relevant to the calculation. Each of the factors are examined below.

4.1.1 Subsection 18.1.1

Under the terms of subsection 18.1.1 the calculation of cost savings is to take into account **economy** and **efficiency**. By definition:

economy measures the relationship between resources acquired and their costs. Economy is achieved when the appropriate resources are acquired at the lowest possible cost.

efficiency reflects the relationship between inputs and outputs. The relationship is said to be efficient when a maximum amount of output is produced from a given input or a minimum amount of input yields a maximum amount of output.

If the implicit meaning of the phrase ‘take into account’ is not obvious enough, section 18 goes on to require that, in the case of efficiency, ‘losses in efficiency’ which result from the Yukon’s continuing responsibility for such programs and services must also be taken into account when estimating cost savings. Thus, the calculation of any cost savings must demonstrate that the delivery of continuing Yukon programs and services will not be adversely affected in terms of economy and, especially, efficiency.

4.1.2 Subsection 18.1.2

Under the terms of subsection 18.1.2, any amount identified as cost savings is reduced by losses in revenues resulting from the occupation of “tax room” by a First Nation

¹⁰ While the context of section 18 suggests that the fiscal transfer arrangement through which cost savings are to be passed back is the Formula Financing Agreement, the use of the more general term *fiscal transfer arrangement* conceivably would permit the passing back of cost savings through other fiscal transfers.

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government in conjunction with a program or service transfer. When Yukon transfers a program to a First Nation government with which revenues are associated, the resulting loss of revenues by Yukon is taken into account. Provided that the revenue capacity is still measured under Formula Financing, the cost savings are to be calculated net of these revenues.

4.1.3 Subsections 18.1.3 and 18.1.4

In addition to being able to subtract the value of any lost revenues from identified cost savings, subsection 18.1.3 provides that Yukon may also subtract the monetary value of **technical assistance** and other **contributions in kind**. And finally, subsection 18.1.4 provides a residual window through which the value of **any other factors** mutually agreed upon may also be subtracted from identified cost savings.

4.1.4 Residual clause

While not referenced by a specific clause number, but clearly contained in section 18 of the self-government agreements is the following phrase:

but in all cases the Yukon shall continue to have the capacity to provide to Yukon residents the services for which it remains responsible, at a level or quality comparable to those prevailing prior to the assumption of responsibility by [a Yukon First Nation government] for the programs and services.

This clause is an important one because it spells out clearly that the Yukon government has the right and responsibility to continue providing the same level of service to all residents as it did before transfers to First Nation governments. Thus, even when a significant proportion of the client base for a program or service has been transferred to First Nations, there cannot be the assumption that the Yukon government will no longer provide the program or service to other residents.

4.1.5 Section 18 mathematics

For our more mathematically minded readers, the provisions of section 18 may be represented in the form of the simple linear equations presented below:

$$YC = YS - RT - VA - OF$$

where,

YC = Yukon contribution

YS = savings to Yukon resulting from program or service transfer to a First Nation

RT = revenue associated with the transfer

VA = the monetary value of in kind assistance provided by Yukon

OF = any other mutually agreed upon factors

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In its simplest form, the Canada-Yukon Formula Financing Agreement may be represented as:¹¹

$$FT = EB - RC$$

where,

FT = value of the fiscal transfer from Canada to the Yukon

EB = expenditure base

RC = Yukon's revenue capacity

Thus, for positive values of the Yukon contribution (YC), the expenditure base (EB) is reduced one-for-one which results in a decrease in the value of the fiscal transfer (FT) from Canada to the Yukon.

4.1.6 Section 18 trigger

In summary, any cost savings which accrue to the Yukon as a result of the transfer of programs and services are subtracted from the expenditure base of a fiscal transfer. Such cost savings, however, are net of revenue losses and the value of technical assistance and other in kind contributions and must be calculated with due regard for economy and efficiency in the delivery of the same programs by Yukon.

As a result, the transfer of a program or service will not necessarily result in cost savings to the Yukon. In fact, the calculation could produce a result that is a negative cost savings; that is, additional costs will be incurred by the Yukon after the transfer. For example, gathering the information for the Canadian Centre for Justice Statistics is the responsibility of the Yukon; this task would likely be more costly after the transfer of administration of justice or other programs and services.

4.1.7 Cost savings calculation timing

Section 18.3 provides that the cost savings calculation shall be made “solely at the time” the program or service is transferred from the Yukon to the First Nation government. The governments involved have but one opportunity to make the calculation. If hindsight demonstrates that the cost savings value was too high or too low, the calculation cannot be redone.

Note, however, that this “one kick at the can” approach does not necessarily require that the cost savings calculation be based on program/service activity levels and associated costs experienced at the time of program/service transfer. Program and service activity levels vary over time with a variety of factors (e.g., time of year, current economic situation, community size, etc.). As a result, the cost savings calculation should be based on the experience of a time period which is long enough to be representative of the average actual experience of the Government of Yukon.

¹¹ See Courchene (1992).

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4.2 Guidelines for cost savings calculations

- CS.1 When programs, or portions of programs, are transferred from the Government of Yukon to the First Nation, it is intended that there should not be either a cost or a windfall to the Government of Yukon.
- CS.2 The identification of **costs** associated with the transfer of programs and services to First Nation governments will consider the full costs.
- CS.3 The calculation of **cost savings** associated with the transfer of programs and services to First Nation governments will consider only avoidable costs.
- CS.4 The cost savings calculations will be based on assumptions and numbers that are credible and defensible.
- CS.5 The cost savings calculation will be based on the scope of the program or service at the point in time that it is transferred to the First Nation government.
- CS.6 The cost savings calculations are to be based on the experience of a time period which is long enough to be representative of the average actual experience of the Yukon government. This experience will serve as a source of information for determining the costs of the program or service as it exists at the point of time defined in CS.5.
- CS.7 The procedures for determining the cost savings will balance simplicity and completeness.

4.3 Recommended approach for calculating cost savings

1. *Use the Alternative Service Delivery guidelines as the basis for calculating cost savings.*

The Alternative Service Delivery (ASD) guidelines are credible because they have been developed in accordance with Treasury Board of Canada guidelines and have been used for alternative service delivery decisions made by the federal government. The intention of the Treasury Board guidelines is to produce credible and defensible numbers.

The ASD guidelines require that baseline costing be done to identify the baseline cost of a service or program. This in-depth review ensures that full costs are identified and considered, and enhances the credibility of the costing. Baseline costing also supports the intention that when programs are transferred from the Government of Yukon to a First Nation, there should not be either a cost or a windfall to the Government of Yukon.

2. *Using the template described in section 4.4, perform a cost savings calculation for a program or service the first time it is transferred to a First Nation government.*

Full costs need to be identified, and avoidable and non-avoidable costs broken out. This in-depth analysis will serve as credible template for any future transfers of the program. The cost savings calculation will be based on the scope of the program or service at the point in time that it is transferred to the First Nation. Cost experience over several years should be used in the baseline costing so that the calculation is representative of the average actual experience of the Government of Yukon.

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- 3. Use the avoidable costs calculated for this initial transfer of a program to decide if the cost savings are enough to warrant a change to the fiscal transfer amount.*

Decisions regarding the level of cost savings will also create a basis for determining what amounts the governments of Canada and the Yukon consider to be ‘material enough’.

- 4. Use the information to decide whether future transfers of the same program to other First Nations need to be separately analyzed or whether this initial calculation can serve all future transfers.*

The baseline costing assures completeness of the calculation. A decision made jointly by the Yukon and Canada to use the cost savings calculation of the initial transfer to serve all future transfers of the same service or program would simplify the process.

- 5. Identify the points in the process of transferring programs and services to First Nations when the avoidable costs increase significantly for the Yukon government.*

While the transfer of a single program to a First Nation may result in small cost savings to the Yukon government, it is possible that there will be points where staff positions may be eliminated or other significant cost savings occur. Identifying significant cost savings ensures that there is no windfall to the Yukon government and that the calculations continue to be credible and complete.

- 6. Ensure that data needed to do credible baseline costing of programs and services transferred to First Nations is available.*

Under section 17 of their self-government agreements, First Nations have the authority to assume responsibility for the management, administration and delivery of any program or service within the jurisdiction of the First Nation. The calculation of the cost savings requires identifying the use by First Nation citizens of Yukon government programs. Programs and services should therefore identify the citizenship of their clients. Changes will be needed to forms and the data warehouse system.

4.4 Cost savings calculation template

This cost savings template translates the recommended approach for calculating cost savings outlined in 4.3 into a step-by-step process that can be used for the transfer of a wide variety of programs or services. The intention of the template is to build a credible and well supported basis for the cost savings calculations for negotiations with Canada. The use of the template should also encourage a consistent approach to the calculations so that useful experience can be built on over time.

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Table 3: Cost Savings Template

1. Identification and description of program/service
2. Scope of program/service
3. Preliminary cost calculation
4. Cost savings calculation
5. Cumulative cost savings
6. Recommendations
7. Presentation and preservation of results

1. Identification and description of program/service

- 1.1 identification of Government of Yukon department/agency from which the program or service is being transferred
- 1.2 identification of First Nation government to which program/service is being transferred
- 1.3 brief description of the program/service being transferred
- 1.4 identification of the point in time that the transfer takes place
- 1.5 review of previous cost savings calculations and identification of similar elements which can serve as “lessons learned” for purposes of the present exercise
- 1.6 review of negotiations, including outcomes, principles established and agreements, between the federal and Yukon governments with regard to previous cost-savings calculations

2. Scope of the program/service

- 2.1 identification of who is served by the program/service pre-transfer, specifically including usage by First Nation citizens, and who is expected to still require the service post-transfer
- 2.2 examination of the history of the program/service (e.g., length of time in operation, changes in the scope of the program/service, whether previously delivered by federal government)
- 2.3 identification of major factors which affect output volume of program/service (e.g., economic factors, demographic factors, seasonality, etc.)
- 2.4 identification of major factors which affect the costs of program/service (e.g., number of clients, size of community served, funding history, etc.)

3. Preliminary cost calculation

- 3.1 Make an initial identification of the current and, where appropriate, historical costs which make up the full cost (i.e., both avoidable and non-avoidable costs) to the Government of Yukon for the provision of the identified program/service at the point in time that the transfer takes place.
 - Historical costs, and program volumes, including usage by First Nations citizens are to be used only as a resource for determining a reasonable

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estimate of the costs of a program/service as it exists at the date of transfer; the period of the historical costs should be chosen so that anomalies or unusual events are “smoothed out”.

- Avoidable costs are those costs that will “go away” after the program/service has been transferred, and non-avoidable costs those costs that will remain after the program/service has been transferred.
- 3.2 Through interviews with appropriate program managers, make an initial allocation of the costs to “avoidable” and “non-avoidable” costs.
 - 3.3 If the preliminary cost calculation shows that the full cost of a program or service is negligible then it is reasonable to assume that the avoidable cost is also negligible; consider terminating cost calculations at this point in the process.
 - 3.4 If the preliminary allocation of the costs to “avoidable” and “non-avoidable” costs indicates that it is reasonable to assume that the avoidable cost is negligible, consider terminating cost calculations at this point in the process.
 - 3.5 If the decision is made to terminate cost calculations at this point in the process, prepare a concise report supporting this decision.

4. Cost savings calculation

- 4.1 timing of cost calculation
 - identification of the most appropriate time period on which to base the cost savings calculation. The choice of the time period should consider the point in time that the transfer takes place, and any anomalies or unusual features of the experience of the program/transfer in the period immediately before the transfer.
- 4.2 identification of the avoidable and non-avoidable costs that make up the full costs of the program/service
 - include an assessment, to the extent possible in the absence of comprehensive audits, of the expected changes in economy and efficiency arising from the program/service transfer
 - as section 18 also requires that the Yukon shall continue to have the capacity to provide programs and services at a level or quality comparable to those prevailing prior to the transfer, identify legal or policy performance standards that affect the service level
- 4.3 calculation of avoidable costs
 - using current and historical cost information from the time period determined in 4.1, calculate the avoidable costs of the program/service, using grossed-up estimates of unit costs (e.g., labour) or other reasonable cost formulas, as appropriate
- 4.4 revenue associated with transfer
 - if the program/service transfer includes the revenue capacity/tax bases currently occupied by Yukon (at the time of cost savings), include an assessment of the fiscal impact on Yukon
- 4.5 in-kind contributions
 - calculate the monetary value of technical assistance and other contributions in kind provided by Yukon, including consideration of the costs of the administration of new reciprocal agreements, implementation committees and other work required to implement and sustain the agreement.

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- 4.6 other factors
- identify other factors that affect the Yukon contribution, and determine their costs
- 4.7 estimate of cost savings
- using the formula below, estimate the cost savings resulting from the program/service transfer.

$$YC = AC - RT - VA \pm OF$$

where

YC = Yukon contribution

AC = avoidable costs

RT = revenue associated with the transfer

VA = the monetary value of in-kind contributions

OF = any other factors

5. Cumulative costs savings

- 5.1 At the time of a cost savings calculation, where it is reasonable to believe that there may be cumulative impacts on the program/service in question from previous Program and Service Transfer Agreements (PSTAs), the Yukon should examine cumulative cost savings.
- The principle of “no windfall to Yukon” should be upheld.
 - Cumulative cost savings may arise when past PSTAs have directly or indirectly dealt with the program or service that is currently the object of the cost savings calculation.
- 5.2 cumulative cost savings to Yukon are said to be identified when the cost saving amounts previously deemed as negligible (i.e., below the materiality threshold) sum to an amount above the materiality threshold
- 5.3 in order to ensure a reasonable amount of fiscal certainty for the Government of Yukon and to uphold s. 18.3 of the Self-Government Agreements, cumulative cost savings will not be retroactive to the date of previous transfers but from the date of the current PSTA for which cost saving are being calculated.

6. Recommendations

- 6.1 make recommendations for things to consider in future calculations of cost savings, as appropriate
- 6.2 make recommendations about the way that the Yukon gathers and records information as it pertains to future calculations of cost savings, as appropriate

7. Presentation and preservation of results

- 7.1 assemble the information collected and calculations performed as outlined above into a concise report
- 7.2 ensure that the Yukon Department of Finance and the Land Claims Secretariat each have a copy of the report

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4.5 Application of the cost savings template

Under the provisions of section 17.0 of the self-government agreements, it is the responsibility of self-governing First Nations to identify which programs they wish to receive by transfer. As a result, the identification of programs and services which will next be transferred and to which the cost savings template can be used as a guide is a decision matter for Yukon's self-governing First Nations.

The self-government agreements provide that the transfer of programs and services is to occur via negotiation. Notification of the First Nation governments' program and service negotiation priorities in a given fiscal year must be made by March 31st of the preceding fiscal year. Upon provision of such notification, the governments responsible for the named programs and services are required to prepare a workplan which addresses the priorities for negotiation and which identifies the timelines and resources available for negotiation.

Note that while the self-government agreements are specific to individual Yukon First Nations, program and service transfer negotiations to date have, with one exception, occurred *en bloc*. That is, all seven self-governing First Nations have negotiated for the same set or package of programs and services. The one exception is, of course, the negotiations for the transfer of the administration of justice services between the Teslin Tlingit Council and the governments of Canada and the Yukon. It is also worth noting that, to date, all completed program and service transfers have taken place only between Yukon First Nation governments and Canada. A program and service transfer agreement between a Yukon First Nation government and the government of Yukon has yet to be finalized.

In order to identify the spectrum of program and service transfer possibilities, a Yukon First Nation self-government agreement was reviewed with an eye to constructing an inventory of the legislative powers contained in the agreement. The results of that review are presented in the table below in the form of summary keywords. Readers familiar with the powers of provincial and territorial governments in Canada will note that the list of powers available to self-governing Yukon First Nations is very similar to those of Canada's territories and provinces.¹²

The key result for the Government of Yukon is, of course, that almost every program and service which it delivers may also potentially be delivered by a Yukon First Nation government. Thus, the spectrum of program and service transfers to which the cost savings guidelines might someday be applied is virtually as broad as the spectrum of programs and services delivered by the Government of Yukon.

There are advantages to taking a consistent approach to cost savings calculations for all transfers of programs or services to First Nation governments, as described by the section 4.4 cost savings template. All governments can build experience in this new field, which will improve the efficiency and effectiveness of the calculations. Lessons learned over time can

¹² See section 17 of the *Yukon Act* for a listing of the Yukon's main legislative powers and sections 92 and 92A of the *Constitution Act, 1867* for the delineation of powers enjoyed by the provinces.

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be passed on succinctly and clearly. Suggestions for useful modifications to the template and process can be made in a consistent context. Over time, negotiations with Canada will be able to focus on the specifics of the cost savings calculation rather than on the appropriateness of a particular approach.

**Table 4: Potential Legislative Powers of Self-governing Yukon
First Nations**

SGA section	Power	SGA section	Power
13.1.3	public governance	13.3.6	business regulation
13.1.2	rights and benefits of Citizens	13.3.7	public games
13.2.1	spiritual, cultural beliefs	13.3.8	construction, buildings
13.2.2	language services	13.3.9	overcrowding
13.2.3	health care services	13.3.10	sanitary conditions
13.2.4	social, welfare services	13.3.11	planning, zoning
13.2.5	training programs	13.3.12	curfews
13.2.6	adoption	13.3.13	vehicle use
13.2.7	child welfare	13.3.14	intoxicants
13.2.8	education services	13.3.15	local services
13.2.9	will and estates	13.3.16	animals
13.2.10	mental competency	13.3.17	administration of justice
13.2.11	dispute resolution	13.3.18	threat to public order
13.2.12	marriage	13.3.19	public health
13.2.13	revenue from licenses	13.3.20	pollution
13.2.14	matters necessary residual	13.3.21	firearms
13.2.15	matters ancillary residual	13.3.22	dangerous substances
13.3.1	land management	13.3.23	good government residual
13.3.2	land rights	14.1.1	property taxation
13.3.3	natural resources	14.1.2	direct taxation
13.3.4	gathering, hunting, etc.	14.1.3	taxation agreements
13.3.5	posters, billboards		

4.6 Recommendation for future work on cost savings

4.6.1 Encourage the various branches that deliver programs and services pertaining to the administration of justice (in both the Department of Justice and the Department of Health and Social Services) to collect data identifying First Nation clients.

Currently branches vary in the information they gather with regard to the First Nation citizenship of their clients.

- The Court Registry Information System (CRIS) does not currently have the ability to record the First Nation citizenship of people charged within the Yukon justice system; it appears that it would be an expensive task to

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change the system to enable it to do so.

- Both Adult Probation Services and Corrections Services note this information and it is available for analysis through the Integrated Community Corrections System (ICCS) data base. However, changes may need to be made as a result of changes to the CRIS system. In addition, more work may have to be done to make all the necessary information available.
- Victim Services does not currently collect information on the First Nation citizenship of their clients, and has a manual system for collecting statistics. However, they are in the process of developing a computerized data base and will be changing their intake forms; in consultation with their director, they will be determining whether they should begin to collect this information.
- Youth justice statistics collected by Health and Social Services include band numbers that indicate the clients who are status Indians. Non-status youth are sometimes indicated by a code, but First Nation citizenship as such is not recorded. There is no field on the Young Offender Information System data base for this information, and modifications would be required to both the intake forms and the data base to enable collection of this data.

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5.0 Conclusion

This report provides a credible framework for the calculation of the new and incremental costs that the Yukon incurs for the administration of First Nation laws as provided under section 13.6.0 of the self-government agreements. It also provides both a credible framework and a detailed procedure for the calculation of the cost savings realized by the Yukon government when programs or services are transferred to a First Nation under section 18 of the self-government agreements. The assurance with which the Yukon can use the framework and procedure in negotiations with Canada is enhanced because they are based on the approach recommended by the Canadian Department of National Defence and Treasury Board for considering alternative service delivery possibilities.

The discussions and research to date have identified four options that appear to meet the guidelines for new and incremental cost calculations. A moderate amount of effort and discussion should enable a decision to be made on the method to be used. Once the preferred method is chosen, a detailed procedure can be determined, and appropriate staff training undertaken.

The cost savings template outlined in section 4.4 provides a detailed procedure for calculating cost savings upon transfer of a program or service from the Yukon government to a First Nation. Some justice-related programs or services do not currently record the First Nation citizenship of their clients. This may make it difficult to gather reliable information for the cost savings calculations should these programs or services be transferred.

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Appendix A: Project Terms of Reference

1.0 *Setting and methodology*

- Identify and examine potential approaches to the costing of government services;

2.0 *New incremental costs (section 13.6.4)*

- Create guidelines and methodology and/or formula for the departments of Justice and Health and Social Services to determine the new and incremental costs relating to the interim provisions in section 13.6.4 of the First Nations self-government agreements;

3.0 *Cost savings (sections 18.1.1 and 18.1.2)*

- Define and develop a set of principles and processes for determining the cost savings which can be used within the Departments' various branches;
- Propose a methodology and/or formula for calculating cost savings;
- Define categories that can be viewed as costs of calculating cost savings that may be subtracted from the amount YTG owes Canada (section 18.1.1 and 18.1.2 of SGAs);

4.0 *Systems development*

- Work with the various departmental branches to develop forms, data variables and systems to identify and track First Nation citizens and related costs through the system;
- Review and update existing statistical forms of the various branches to ensure that they identify First Nation citizens and what services or programs they are using;
- Compile existing statistical information that is available on First Nation citizens and which is relevant to this costing exercise;
- Work with various branch staff to inform them of what is required of them when they are collecting new and incremental costs or cost savings;
- Identify other YTG programs and services where the methodologies developed in the course of the project could also be applied in fulfillment of similar SGA requirements.

5.0 *Project Administration*

- Work in partnership with MacKay & Partners/Vector Research on the Financial Systems Analysis Services contract;
- Work closely with the Yukon Interdepartmental Subcommittee on Funding for the Administration of Justice. The subcommittee will provide the contractor with more detailed direction with respect to this project;
- Prepare an interim report by December 15, 2000.
- Prepare a final report which will identify the following: ongoing work to be completed, completed work, further recommendations, next steps and any other matters;
- Provide a monthly invoice to the Aboriginal Law Group - Department of Yukon Justice.

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