

# **RESPONSE OF CANADA TO THE REQUEST BY THE UN SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES IN RESPECT OF THE HOUSING SITUATION AT THE ATTAWAPISKAT FIRST NATION**

## **I. INTRODUCTION**

By way of letter dated December 19, 2011, the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, brought to the attention of Canada information that he had received concerning the housing situation of the Attawapiskat First Nation, as well as the allegedly poor living conditions on Aboriginal reserves in general. In response to the information received, the Special Rapporteur asked Canada for its cooperation in providing information and observations on:

- Measures being taken by Canada to resolve the situation in Attawapiskat, both on a temporary and permanent basis;
- General information on the situation in Attawapiskat; and
- Measures being taken, generally, to improve the socio-economic circumstances of Aboriginal Canadians.

The request for information from the Special Rapporteur raises matters within the competence of both the Government of Canada and the Government of the Province of Ontario. Consequently, this response contains information and observations from both levels of government.

## **II. BACKGROUND**

The Canadian constitution recognizes three groups of Aboriginal people: Indians (commonly referred to as First Nations), Métis and Inuit. These are three distinct peoples with unique histories, languages, cultural practices and spiritual beliefs. More than one million people in Canada identify themselves as Aboriginal persons, according to the 2006 Census.

Aboriginal communities are located in urban, rural and remote locations across Canada. They include:

- First Nations or Indian Bands, generally located on lands called reserves;
- Inuit communities located in Nunavut, the Northwest Territories, Northern Quebec (Nunavik) and Labrador;
- Métis communities; and communities of Aboriginal people (including Métis, Non-Status Indians, Inuit and First Nation individuals) in cities or towns which are not part of reserves or traditional territories (for example, the Aboriginal community in Winnipeg).

Currently, there are 615 First Nation communities, which represent more than 50 nations or cultural groups and 50 Aboriginal languages.

Attawapiskat is a First Nation located on James Bay in Northern Ontario, 670 kilometres northeast of Thunder Bay. It is a remote community accessible only by air for most of the

year, although it is accessible by winter road<sup>1</sup> in the winter months. Attawapiskat is a member of the Mushkegowuk Tribal Council<sup>2</sup>, and is affiliated with the Nishnawbe Aski Nation (NAN)<sup>3</sup>. Attawapiskat is party to a treaty with the governments of Canada and Ontario known as Treaty 9. The First Nation is governed by a Chief, Theresa Spence, as well as a Council. Both are elected by band custom<sup>4</sup>.

### **Housing situation in Attawapiskat**

On October 28, 2011, the Mushkegowuk Tribal Council declared a housing state of emergency, with reference to five families reportedly living in tents in Attawapiskat. On November 2, 2011 the Ontario Provincial Assistant Deputy Minister of Emergency Management Ontario (EMO)<sup>5</sup>, and the Department of Aboriginal Affairs and Northern Development Canada (AANDC) Regional Director General-Ontario discussed the roles and responsibilities of their respective organizations when an emergency has been declared by a First Nation. They also discussed the next steps in assisting Attawapiskat First Nation. Following that discussion officials from AANDC held a conference call with Chief Spence on November 4, 2011, at which time they emphasized AANDC's wish to assist with the situation, and during which Chief Spence indicated that members of her community did not wish to be evacuated. On November 7, 2011, Attawapiskat submitted a proposal to renovate existing houses for the benefit of the five families, with a request for \$499,500 in funding for this purpose. The following day, November 8, 2011, during a call organized by Emergency Management Ontario, AANDC confirmed that it would provide \$499,500 in emergency funding, as requested by Chief Spence, to deal with the community's immediate housing needs. This was later confirmed to Chief Spence by letter on November 9, 2011. Contrary to what is stated in the Special Rapporteur's letter, this funding was not contingent on the appointment of a Third Party Manager.

On November 12, 2011, Attawapiskat First Nation issued its own declaration of emergency. AANDC was not made aware of this declaration until November 21, 2011, during a conference call in which Chief Spence revealed that there were an additional 17 families living in tents and shacks at Attawapiskat. During this call, Chief Spence verbally requested an additional \$1.5 million to address the emergency housing requirements. She was invited to submit a further proposal to address these newly revealed needs for departmental consideration. Chief Spence stated that the declaration of emergency had been a means to activate its Emergency Response Team and to request assistance from EMO. It should be noted that most First Nations have an emergency management plan, which can be activated by the Chief and Council. Attawapiskat First Nation has a plan which lays out what steps are to be taken to manage an emergency.

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<sup>1</sup> Winter roads are temporary highways carved out of snow and ice. They facilitate transportation to and from communities without permanent roads, and are commonly seen in isolated regions in Canada's North. These roads are generally built in areas where construction of year-round roads is difficult due to many river crossings, and the presence of boggy muskeg land. Winter roads in Ontario are cost shared with the province and typically open 6 to 8 weeks a year.

<sup>2</sup> A regional group of First Nations members that delivers common services to a group of First Nations.

<sup>3</sup> NAN is a political territorial organization representing 49 First Nation communities within northern Ontario with the total population of membership (on and off reserve) estimated around 45,000 people.

<sup>4</sup> Band councils chosen "by custom" are elected or selected by traditional means, rather than by the election rules contained in the *Indian Act*.

<sup>5</sup> Emergency Management Ontario (EMO) provides emergency management services to Attawapiskat pursuant to an agreement with AANDC. These services are paid with funds provided by AANDC.

During a November 24, 2011 meeting with AANDC officials, Chief Spence reiterated that the families living in tent frames and shacks did not want to be evacuated and committed to developing a further proposal for \$1.5 million for needs of the additional families.

In a November 25, 2011 conference call organized by the Provincial Emergency Operations Centre, Chief Spence indicated that the Chief and Council lacked the resources and capacity to address the situation. Also on the call was the Canadian Red Cross (CRC) who had been requested by the Attawapiskat First Nation. At that point the CRC role was limited to managing and co-ordinating donations made for Attawapiskat First Nation, but they also wished to ensure that there was no duplication of services being provided by either government agencies or other non-government organizations. On a number of occasions the Chief indicated that the First Nation lacked the capacity and resources to manage the situation.

On the basis of observations of AANDC officials present in the community on November 28 and 29, 2011, AANDC determined that immediate action was needed to ensure that residents of Attawapiskat could have access to warm, dry and safe shelter. This assessment, in conjunction with the declared state of emergency in Attawapiskat, first by the Mushkegowuk Tribal Council and later by Chief and Council of Attawapiskat, led AANDC to advise the Minister that the health, safety or welfare of members of the Attawapiskat First Nation was at risk of being compromised, and that this constituted a default under the funding agreement between AANDC and Attawapiskat. On December 5, 2011, as provided for in the funding agreement, AANDC appointed a Third Party Manager to administer AANDC funding for Attawapiskat, in order to ensure the expeditious channelling of funds to remedy the risks to health and safety attributable to the housing situation and to ensure the continued delivery of AANDC-funded programs.

### ***Third-party management***

Canada, through AANDC, provides contributions<sup>6</sup> to First Nations, Inuit, Métis, and Northern communities to support capable accountable governments and to enable those governments to deliver essential services such as education, social assistance and housing and community infrastructure to their community members. In the normal course of affairs, First Nations administer funds under these agreements without day-to-day intervention from the department. According to the Attawapiskat First Nations audited financial statements, AANDC funding represents 52% of their revenue with a total of 58% of revenue being derived from federal sources. Other sources of revenue can include provincial or territorial funding, funding from other government departments, and funding from business enterprises or agreements. Details of funding for Attawapiskat First Nation can be found on their website at [www.attawapiskat.org](http://www.attawapiskat.org).

In order to support the success of these agreements, AANDC has put in place a Default Prevention and Management Policy<sup>7</sup>. This policy provides for varying levels of intervention where recipients have defaulted on their obligations under funding agreements. Note that “default” is not limited to financial default, but can include the failure to live up to any one of

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<sup>6</sup> Funding provided under the Funding Agreement for programs and services for which expenditures must be accounted, ineligible expenditures must be reimbursed to Canada, and unexpended funding must be reimbursed to Canada unless otherwise specified in the agreement.

<sup>7</sup> Made effective June, 2011, this replaced a previous policy known as the *Funding Agreements: Intervention Policy*. Default Prevention and Management Policy <http://www.aadnc-aandc.gc.ca/eng/1322682173587>.

a number of obligations. In the particular case of Attawapiskat, section 9.1(d) of the funding agreement provided that the recipient would be in default if the health, safety or welfare of band members was at risk of being compromised, and it was this provision that was invoked when AANDC decided to appoint a Third Party Manager. The level of intervention called for depends on the degree of risk associated with the default.

The policy provides for a number of different actions that can be taken where a default is identified, depending on the risk presented by the default (i.e. the severity/urgency of the situation). After informal measures have been tried (i.e. simply bringing the concern to the attention of the recipient), the first level of intervention is “Monitored Self-Correction”. At this stage, AANDC informs the recipient of the concern and of the option to prepare a corrective strategy to remedy the default. AANDC also may inform the recipient of support that may be available, for example in the form of expert resources that the recipient can call upon. AANDC may also withhold funding for services under the agreement that are deemed non-essential.

Where a somewhat higher-risk default has been identified, AANDC may require that the recipient prepare a Management Action Plan indicating how the recipient intends to remedy the default. Depending on the situation, AANDC may require that this plan contain certain elements – for example, the use of expert resources, or the assistance of a tribal council. The plan is developed and implemented by the recipient, and expert resources such as co-managers are hired, paid by and supervised by the recipient. Prior to the appointment of the Third Party Manager, Attawapiskat had been at this second level of intervention since 2001 because of previous financial difficulties, with a plan specifying that a co-manager be appointed to assist the First Nation. Consistent with the policy and with its predecessor policy, these co-managers were hired by, paid by and accountable to the Chief and Council of Attawapiskat. Contrary to what is implied by the information received by the Special Rapporteur, they were not hired by AANDC, nor did AANDC exercise control over them.

As a last resort, AANDC may appoint a Third Party Manager to manage AANDC contributions provided under the funding agreement. The Third Party Manager is appointed by AANDC, and is paid with money allocated under the funding agreement to band governance. Third Party Management is a last-resort measure, and is intended to be temporary. In this case, the appointment of the Third Party Manager, pursuant to the section 10.2.1 of Attawapiskat’s Funding Agreement, was used as a last resort measure because the band was already in co-management when the default occurred.

Canada would like to emphasize that the Third Party Manager does not take over management of the First Nation, nor does he play a legislative or general governance function. The Chief and Council of the First Nation remain the governing authority, and retain their ability to make by-laws and deliver programs and services – as well as control of the significant portion of their budget that comes from sources other than AANDC. The Third Party Manager is only appointed to manage AANDC funds in collaboration with the Chief and Council, not to “manage” the First Nation.

### **III. MEASURES TAKEN TO ADDRESS THE HOUSING CRISIS IN THE ATTAWAPISKAT COMMUNITY**

The Special Rapporteur has asked for information on Canada's actions to provide emergency housing and Canada's actions to permanently address the housing crisis. Canada will respond to these two questions together.

As mentioned above, AANDC agreed in early November, 2011, as requested by the First Nation, to immediately provide \$499,500 in funding to Attawapiskat, to be used to renovate existing houses on the reserve for the benefit of five families that had been identified by the First Nation at that time. The First Nation was advanced \$350,000 to begin work on the renovations. Since the funds were provided, supplies have been purchased and shipped to the community. The renovation work is expected to commence shortly.

On December 7, 2011, Minister Duncan, the Minister of AANDC, offered to Chief Spence to retrofit the community's healing lodge as an emergency shelter that could accommodate the families living in tents and shacks while repairs and other long-term measures were underway. This offer was initially refused by Chief Spence. Following the Chief's acceptance on December 17, 2011 for the CRC to implement a work plan funded by AANDC, progress began to be made on the retrofitting. The retrofitting of the healing lodge was completed on December 23, 2011. Following approval by Chief Spence, families began to move in on December 24, 2011.

AANDC has worked with EMO and the CRC to coordinate response efforts. In addition to the retrofitting of the healing lodge, these efforts have included repairs to a number of existing trailers to provide shelter for families identified by the Chief. EMO sourced high-efficiency woodstoves, composting toilets and plastic sheeting, to be used to improve living conditions in existing housing in Attawapiskat; these supplies arrived in Attawapiskat on December 9 and 10, 2011. AANDC, EMO and the CRC then collaborated to ensure the delivery of other critical supplies to the community, including Styrofoam insulation, beds, cots, diesel generators, drywall, rugs, portable heaters, flashlights, CO detectors, fire extinguishers, first-aid kits, hygiene products, basins, fluorescent bulbs and furnace filters.

The Third Party Manager has ordered 22 modular homes, as per the First Nation's request. These new homes, along with renovations to existing homes, will provide long-term housing for the families identified by the First Nation as living in tents and shacks. These homes have already been built, and have been shipped to the nearest rail-accessible point, Moosonee, Ontario. Delivery of these homes to Attawapiskat via the winter road will be done in phases, as sites are prepared. The first of these deliveries is already underway. AANDC has committed \$3.4 million in funding for repairs, retrofits and new housing being provided to the First Nation in addition to monies already payable under the funding agreement.

#### **How will the measures taken "recognize and affirm the self-governing authority of the Attawapiskat community"?**

As discussed above, Canada provides contributions to First Nations to support capable accountable governments and to enable those governments to deliver essential services such as education, social assistance and housing and community infrastructure to their community members. In the normal course of affairs, First Nations administer funds under these agreements without day-to-day intervention from AANDC. For example, First Nations set short, medium and long term priorities as well as enact their own by-laws.

In the case of Attawapiskat, the appointment of the Third Party Manager is intended to be a temporary measure to ensure the health and safety of the residents of Attawapiskat. Third Party Managers may use the First Nation's service delivery mechanisms and staff and, at the request of the First Nation, will assist the First Nation in remedying the conditions that led to the default.

AANDC's immediate goal is to resolve the emergency situation and hence to ensure the health and safety of band members. A broader goal, over the longer term, is to build capacity so that this First Nation can increase its ability to self-manage, and hence to resume management of AANDC funding. AANDC is also committed to long-term capital planning with the community. The community will likely be at full capacity for their existing serviced lots after the 22 modular homes are installed and will need to undertake work to prepare lots for future housing construction.

The Government of Canada has stated that it will act on the premise that an inherent right of self-government is an existing Aboriginal right within s. 35 of the *Constitution Act, 1982*, and that it will implement this right by means of negotiated agreements among all the parties concerned. These negotiated arrangements will differ depending on the diverse circumstances of Aboriginal peoples in the various parts of Canada. Canada is currently negotiating sectoral self-government agreements with the Nishnawbe Aski Nation (NAN), of which Attawapiskat is a member First Nation, and has reached Agreements-in-Principle with regard to governance and education. The goal of these negotiations is to provide the First Nations of NAN with treaty-based on-reserve jurisdiction over their governance and education systems, to take the place of jurisdiction under the education and governance provisions of the *Indian Act*.

**What evidence exists for any conclusion that the Attawapiskat First Nation has mismanaged funds provided by the Government in the past five years?**

Canada has not made any allegation that the Attawapiskat First Nation has mismanaged funds. As discussed above, AANDC funding for Attawapiskat was placed under third-party management, pursuant to section 9.1(d) and 10.2.1 of the Funding Agreement between the First Nation and AANDC. The objective was to ensure the health and safety of members of the community, and not to imply any allegation of mismanagement.

**If the Attawapiskat First Nation has indeed mismanaged funds provided by the Federal Government over the past five years, what role, if any, did AANDC have in such mismanagement, considering the co-management scheme that had been in place in Attawapiskat for some ten years?**

As discussed above, Canada has not accused the Attawapiskat First Nation of mismanagement of funds. Nevertheless, it should be underlined that co-managers are not employed by, nor do they report to, AANDC. Co-managers are hired by and accountable to the First Nation itself, in order to assist the First Nation in managing AANDC funds.

**IV. INFORMATION ABOUT OTHER ASPECTS OF THE SITUATION IN ATTAWAPISKAT**

Canada would like to respond to a number of other allegations contained in the information received by the Special Rapporteur, and to address some factual inaccuracies.

***“Many of the First Nation’s approximately 1800 members live in unheated shacks or trailers, with no running water”***

There are 316 residences in Attawapiskat which house the vast majority of the First Nation’s population. These 316 residences have heat, running water and sewer service. As discussed above, AANDC has taken measures to provide suitable long-term housing for the families previously identified by the Chief as living in inadequate accommodations.

***“Many public buildings also lack running water, including the local health centre, which is five kilometres out of town”***

The Attawapiskat Health Centre is located in the centre of Attawapiskat, as is the Attawapiskat wing of the James Bay General Hospital. Both of these facilities have running water. The facility that is located five kilometres from town is not a “health centre”, but a healing lodge. Healing lodges are used for various kinds of treatments including drug addiction, domestic abuse, etc. They are meant to provide a location for these treatments to take place in solitude, and away from day-to-day business. Accordingly, they are not generally maintained with a view to sheltering large numbers of people. This facility is currently being supplied with potable water brought from town on a truck, in order to support its temporary use as an emergency shelter.

#### ***Contaminated sites***

The Special Rapporteur notes an oil spill that occurred in 1979. Reports from AANDC and the First Nation’s consulting company indicated that substantial amounts of oil spilled during unattended filling of fuel tanks behind the teacherage, as opposed to the breakage in oil pipes referenced. A study of contamination at the school site was undertaken in 1995. Based on the results, a remediation project was developed and completed by Attawapiskat First Nation in 1997. In May 2000, the First Nation indicated that the remediation had not been properly done and closed the school. Steps have been taken in previous years to address immediate needs and full remediation is being conducted over the next 4 years at a cost to AANDC of just over \$10 million. AANDC is working with the First Nation, its project manager, and consultant to develop a detailed remediation plan to address soil and groundwater contamination at the former school, and to address another case of contamination at the former water treatment plant site. In March 2009, the Attawapiskat First Nation managed the preliminary work, including demolition of the old school and water treatment plant. The design and tender documents are completed and the project will be tendered shortly; the remediation work is expected to start in 2012.

The Special Rapporteur also makes reference to a sewage spill that occurred in 2009. AANDC has provided approximately \$1.5 million for clean-up work to 8 homes following this accident.

#### ***New elementary school***

On May 19, 2011, the Minister of AANDC announced that funding had been set aside over the next three years to accelerate progress on the detailed design and construction phases of a new elementary school for Attawapiskat First Nation. AANDC has committed approximately \$3.2 million for the design phase of the project, including some construction preparation. This project is on schedule and on budget. A design brief has been received from Attawapiskat’s design consultant, and a construction contract is expected to be awarded in February, 2012, with the school expected to open in early 2014. This new 5,808 square meters elementary school will accommodate approximately 540 students. The outdoor recreation

facilities will consist of a football and soccer field, an outdoor hockey area, two baseball diamonds and a basketball and volley ball court. The new school will also provide the community with centrally located gathering areas to facilitate events.

***Concerns raised about the insufficiency of benefits received from DeBeers***

As noted in the Special Rapporteur’s letter, Attawapiskat is located 90 kilometres to the east of the De Beers Canada Victor mine. It should be noted that the governments of Canada and Ontario have not played an intermediary role in the relationship between De Beers and Attawapiskat, although the governments of Canada and Ontario have contributed funding to the First Nations to support the negotiation and ratification of Impact Benefit Agreements (IBAs). It has been publicly reported that DeBeers negotiated an IBA with Attawapiskat, which governs the relationship between the two entities, including regarding any benefits that Attawapiskat is to receive from the mine – whether in the form of royalties or otherwise. This agreement is confidential, and Canada is not aware of its contents. Should the Special Rapporteur desire further information about the relationship between Attawapiskat and DeBeers, he may wish to refer to the DeBeers Canada website, which contains more specific details in relation to the Victor Mine project<sup>8</sup>.

The Special Rapporteur also notes that “no royalties from the mine go to Attawapiskat; they all go to the province of Ontario”. While no royalties collected by Ontario will flow directly to Attawapiskat, Attawapiskat is provided with a significant amount of provincial funding on an annual basis. The Attawapiskat First Nation Audited Financial statements show that in the 2010-2011 fiscal year, Ontario provided Attawapiskat with \$4,730,435, representing just over 13 per cent of the First Nation’s annual revenue for that year. In addition, substantial investments that benefit the Attawapiskat community have occurred since the start of the Victor Mine project. For example, from 2004 to 2011, the Ontario Ministry of Northern Development and Mines (MNDM) contributed \$3.7 million toward the construction and operation of the 312 kilometre winter road that operates between Moosonee and Attawapiskat, which links up with the winter road from Attawapiskat to the Victor Mine. The Ontario Ministry of Transportation has invested over \$2.3 million in improvements to the Attawapiskat airport from 2009 to 2011; in addition the province has provided \$190,000 per year in operating funding. Significant investments in education and training have also been made, including a contribution by the provincially-run Northern Ontario Heritage Fund Corporation (NOHFC) of \$423,150 towards a \$1.2 million Advanced Equipment Simulator that will be used for training of community and regional residents as loader operators and large truck drivers.

**What are the reasons for the 2% cap on spending increases by the Federal Government for core services for Aboriginal people?**

In the mid-1990s, the Government of Canada initiated a program review in order to reduce Canada’s deficit. This included spending freezes in a number of areas. Aboriginal core services were not only exempted from this spending freeze but the Government provided for a 2 per cent annual increase in spending for Aboriginal core services in order to ensure that real (inflation-adjusted) funding would not decrease. This 2 per cent increase is not a “cap”, but rather an escalator – it guarantees a minimum rate of increase in spending on Aboriginal core services.

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<sup>8</sup> [http://www.debeerscanada.com/files\\_3/pdf\\_documents/fast\\_facts\\_vm\\_attfn.pdf](http://www.debeerscanada.com/files_3/pdf_documents/fast_facts_vm_attfn.pdf)

Although AANDC's approved annual growth rate for a bundle of basic services has remained at 2 per cent since the mid-1990s, the overall annual growth rate is larger due to significant investments made in priority areas through successive budgets. Since 2006, the Department has invested \$1.9 billion in First Nations Water and wastewater, \$3.8 billion in First Nations Infrastructure including, School Construction Funding, and close to \$1 billion in First Nations housing.

Canada is not aware of the source of the numbers cited in the Special Rapporteur's letter regarding per-capita funding for Aboriginal and non-Aboriginal Canadians, and questions their accuracy. Nevertheless, it should be noted that such a comparison is misleading. Notably, the information in the letter compares federal funding for Aboriginal communities with funding from all sources for non-Aboriginal Canadians. First Nations receive revenue from a number of sources, and spend it in a number of ways. For example, according to the audited financial statements from Attawapiskat First Nations, federal funding accounted for 58% of their revenue in the 2010-2011 fiscal year. Moreover, a comparison of federal funding to First Nations governments with the total amount per capita spent on non-Aboriginal Canadians ignores the fact that First Nations governments only provide a certain range of services. Many services provided to Aboriginal Canadians are not provided directly through First Nations governments, and so would not be captured by the first figure. The 1996 Royal Commission on Aboriginal Peoples found that Aboriginal Canadians in fact benefited *more* from Government spending than non-Aboriginal Canadians.

#### **V. INFORMATION ABOUT THE ALLEGED GENERALLY POOR LIVING CONDITIONS ON ABORIGINAL RESERVES.**

The Special Rapporteur has asked for information on the allegedly poor living conditions in Aboriginal reserves, and has asked for information on programs in place to address these conditions. Canada acknowledges the gap in standards of living that exists, in aggregate terms, between Aboriginal and non-Aboriginal Canadians. It should be noted, however, that standards of living also vary widely between different Aboriginal communities.

Canada is working on reducing these gaps. While progress is being made on many fronts, challenging socio-economic gaps persist in contemporary Canadian society between Aboriginal people and other Canadians. Aboriginal people in Canada are more likely to be recipients of social assistance, to be unemployed, to be incarcerated, to live in poverty, to face increased health risks and to commit suicide.

In partnership with Aboriginal peoples, Canada is committed to addressing these pressing issues and ensuring an improved quality of life for Aboriginal individuals and groups through a policy agenda focused on five key areas: economic development; education; citizen empowerment and protection of the vulnerable; resolution of land claims and reconciliation; and governance and self-government. The Government of Canada provides over \$10 billion each year in programs directed to Aboriginal people through 34 federal departments and agencies. The bulk of the federal government's programs are delivered through partnership or in conjunction with Aboriginal communities, and provincial and territorial governments. Many provincial and territorial governments also provide significant services aimed at improving the standards of living of Aboriginal communities.

For example, in Ontario, a longstanding federal-provincial cost-sharing agreement facilitates the Government of Ontario extending provincial social services in First Nation communities.

Since 1965, under the *Memorandum of Agreement Respecting Welfare Programs for Indians*, Canada has reimbursed the province for most of its expenditures in First Nation communities on social assistance, child welfare, child daycare, and in-home supports for the elderly and disabled. AANDC reimburses the province for approximately 93 per cent of provincial program costs. The province also extends a variety of provincial health and social programs directly to First Nation communities, without federal reimbursement, including income support for the disabled and the Aboriginal Healing and Wellness Strategy.

Improving the socio-economic circumstances of Aboriginal communities is a long-term challenge. On average, the well-being of First Nations is improving, but the “well-being gap” has not narrowed since 2001. Nevertheless, there are a number of initiatives which have shown some promise in improving the situation of Aboriginal Canadians in various communities.

The Special Rapporteur has asked about successful programs aimed at addressing the gap between Aboriginal and non-Aboriginal people in Canada. Below are a few examples of promising initiatives in the areas of education, children, employment and infrastructure.

### **General**

In June 2011, the Government of Canada and the Assembly of First Nations launched a Canada–First Nation Joint Action Plan to improve the lives of First Nation people across Canada. The Government of Canada and First Nations remain committed to the completion of the Joint Action Plan, including by:

- Improving relationships and strong partnerships between Canada and First Nations respectful of Aboriginal and Treaty rights as recognized and affirmed in the *Constitution Act, 1982*;
- Building effective, appropriate, transparent and fully accountable governance structures;
- Empowering success of individuals through access to education and opportunity;
- Enabling strong, sustainable, and self-sufficient communities;
- Creating conditions to accelerate economic development opportunities and maximize benefits for all Canadians; and
- Respecting the role of First Nations’ culture and language in our history and future.

At the recent Crown First Nation Gathering on January 24, 2012, the Government of Canada and the Assembly of First Nations committed to the following steps:

#### **1. Renewed relationship**

As a tangible first step, Canada and First Nations will work on a renewed relationship that is based on:

1. Movement toward a single, multi-year Government of Canada financial arrangement for First Nations with high-performing governance systems;
2. Improved accountability provisions for all parties; and
3. Financial self-sufficiency of First Nations as the end-goal.

A working group with First Nations, AANDC, Finance Canada and other relevant departments will be established to review the structure of financial arrangements between the federal government and First Nations.

## **2. Removing barriers to first nations governance**

The Government of Canada and First Nations will work to develop solutions to remove barriers that hinder First Nations governance. The *Indian Act* cannot be replaced overnight, but through the use of existing tools and the development of new mechanisms, both parties can create the conditions to enable sustainable and successful First Nations.

## **3. Advancing claims resolution and treaty implementation**

The Government of Canada and First Nations commit to respect and honour our treaty relationship and advance approaches to find common ground on Treaty implementation. The parties also commit to ensuring federal negotiation policies reflect the principles of recognition and affirmation mandated by Section 35 of the *Constitution Act, 1982* and advance certainty, expeditious resolution, and self-sufficiency.

## **4. Education reform**

The Joint Action Plan launched a collaborative engagement process to make recommendations on quality K-12 education for First Nation children living on reserve. Upon mutual review of the National Panel's report, First Nations and the Government of Canada will work to implement agreed-upon recommendations as quickly as practicable and establish a process to work constructively through any areas of disagreement.

## **5. Capitalizing on economic development**

Within three months, Canada and First Nations will launch an economic task force as set out in the Joint Action Plan that will report back with recommendations to further unlock the economic potential of First Nations. This work will be completed in a timely fashion. Work has already been underway to define the scope of this task force.

### ***Education***

AANDC has signed tripartite agreements with the Alberta, British Columbia, Manitoba, New Brunswick, Prince Edward Island governments and with First Nations in those provinces, as well as a sub-regional agreement in Saskatchewan (with the Saskatoon Tribal Council) to improve educational outcomes for First Nation students in those provinces.

AANDC is also taking steps to improve educational outcomes for First Nation students by investing an additional \$290 million in new education programs designed to help students succeed:

- The First Nation Student Success Program was created to provide support to First Nations to develop school success plans, implement student learning assessments, and put in place performance measurement to assess and report on school and student progress; and
- The Education Partnerships Program was created to support the establishment and advancement of formal partnership arrangements that aim to develop practical working relationships among officials and educators in regional First Nation organizations and schools, and those in provincial systems.

## **Children**

### **New Approaches for Child and Family Services**

In Ontario, federal-provincial cost-sharing supports a broad array of First Nation programs to promote healthy family environments for children. These programs support children and parents to prevent instances where children would need to come into formal care of the child welfare system. These services have been progressively extended in Ontario First Nations for more than 30 years, with current provincial expenditures estimated to be \$24 million with Canada making contributions of over \$17 million. Self-evaluation studies by First Nations agencies delivering these services highlight the importance of this work in improving outcomes for children and families.

In addition to preventative services in Ontario AANDC launched its new Enhanced Prevention Focused Approach to funding on reserve First Nations Child and Family Services on a province-by-province basis in 2007. This prevention-based approach to funding is now underway in 6 Provinces (Alberta, Saskatchewan, Manitoba, Quebec, Prince Edward Island and Nova Scotia) and is reaching 68 per cent of First Nation children on reserve across Canada. An AANDC evaluation of this new approach in Alberta showed that there was an early decrease in the number of children brought into care; an increase in families accessing family enhancement programming; and a rise in permanent placements of children. Early results in Saskatchewan have shown that there has been a substantial increase in culturally appropriate placements demonstrating support for an increased sense of family. Statistics indicate that there is an increase of 18 per cent in kinship care from 2007-2008 to 2009-2010.

### **Child Benefit Reinvestment**

The National Child Benefit (NCB) was established in 1998 by federal, provincial and territorial governments with three objectives: (1) to help prevent and reduce the depth of child poverty; (2) to promote attachment to the workforce by ensuring that families will always be better off as a result of working; and, (3) to reduce overlap and duplication and simplify the administration of benefits for children. To achieve those objectives, the NCB has two components: (1) a financial benefits component for low to middle income families with children, which comprise the Canada Child Tax Benefit (CCTB), National Child Benefit Supplement (NCBS), and provincial/territorial integrated child benefits (such as the Ontario Child Benefit); and, (2) a reinvestment component, which provides community-based supports and services for children in low-income families. With a budget of approximately \$52 million per year, the National Child Benefit Reinvestment on-reserve provides funding in the areas of child care, child nutrition, support to parents, home to work transition, and cultural enrichment.

Attawapiskat First Nation targets their National Child Benefit Reinvestment (NCBR) program towards an in-school meal program, teaching parents about nutrition, and recreational, cultural, and healing activities for children and families. AANDC has contributed over \$661,000 annually since fiscal year 2008-2009.

Other First Nations have taken different approaches. The Kwanlin Dun First Nation, with the support of the First Nations' NCBR initiative, has taken action to help families improve the lives of their children. This has included the implementation of several reinvestment projects, such as the enhancement of the Ashea Daycare and the Aboriginal Headstart nutrition program for low income families. They have also assisted low income parents with daycare

costs while they were attending on the job training, workshops and courses to upgrade their education. Another project consisted of increasing parent involvement with their children's learning readiness and life skills. All of these projects were successful in creating a healthy environment for children to interact and learn proper social behaviours, in improving children's physical health, in creating more opportunities for parents to become self-sufficient, in providing role models for children, in providing parents and children with tools for managing stress, violence, budgets, employment, schedules, deadlines and many more of life's challenges.

### **Employment**

#### **Active Measures**

The Government of Canada is continuing to work with provinces and First Nations to expand the use of active measures, which are programs or services designed to enhance skills needed for employment readiness. This will enable a greater number of income assistance clients to transition from dependency to the workforce through training and employment experience.

Tripartite agreements (Federal/Provincial/First Nation) to support collaboration on improving income assistance program delivery or enhancing active measures are in place in both Quebec and Saskatchewan. Furthermore, tripartite forums that support active measures projects or initiatives are in place in British Columbia and Nova Scotia.

In Ontario, approximately 60 First Nations offer employment assistance services to income assistance recipients as part of the Ontario Works program. Increasingly, northern First Nations are beginning to access the funding available from Ontario and Canada for these services. Attawapiskat First Nation Council recently passed a resolution to move forward with delivering these services to help clients with employment readiness and skills development.

AANDC has strongly supported active measures in First Nation communities. In 2010-2011, the Department invested approximately \$12.5 million to support over 95 active measures projects. Additionally, Human Resources and Skills Development Canada (HRSDC) funds a suite of targeted initiatives that support the participation of Aboriginal people in the Canadian economy such as the Aboriginal Skills and Employment Training Strategy (ASETS) and the Skills and Partnership Fund (SPF). The Aboriginal Skills and Employment Training Strategy was launched in 2010 and supports a network of employment services with an investment of \$1.68 billion over five years. With over 400 points of service across the country, it is expected that ASETS will result in approximately 14,000-16,000 Aboriginal people placed in jobs per year. The Skills and Partnership Fund was launched in 2010, with an investment of \$210 million over five years to support projects aiming to encourage innovation and partnerships, test new approaches to the delivery of employment services, and address systemic gaps in service delivery.

The above-noted suite of skills development programs at HRSDC is designed and delivered through partnerships with Aboriginal organizations across Canada, and supports partnership building and training for market-driven job opportunities.

#### **Centre for Aboriginal Human Resource Development**

Through partnerships with industry, government and the community at large, the Centre for Aboriginal Human Resource Development Inc. (CAHRD) has helped Winnipeg's growing Aboriginal community find gainful and rewarding employment for over 30 years. CAHRD is

a community driven, non- profit organization serving Winnipeg's rapidly growing Aboriginal population. In addition to job placement services, it offers a number of literacy and upgrading programs. It also offers an academic program for mature students to obtain their Grade 12 diploma, as well as postsecondary education through the Neeginan Institute.

## ***Infrastructure***

### **Housing**

#### **Kamloops Indian Band On-reserve Housing Program**

To meet the twin challenges of a waiting list for housing and a deteriorating housing stock, the Kamloops Band has developed an innovative strategy known as the New On-Reserve Housing Approach. The program is funded by individual householders and the band, as well as by AANDC and Canada Mortgage and Housing Corporation (CMHC). The program has two main components: home ownership and home renovation. In both cases, band members who are approved for this program can obtain close to \$20,000 from the AANDC British Columbia Region's housing program for a new home. Similarly, renovators with mortgage-free homes can apply for \$9,935 to cover improvement costs, such as adapting homes for seniors' needs. In addition, new home owners can obtain a one-time grant of \$5,000 directly from the band. Further, both renovators and new home owners can apply to a bank for additional loans, for which the band will co-sign.

The program has had several spin-off social and economic benefits for the community. Its operations have led directly to increased on-reserve training and related job creation and business development. These skills are being put to good use close to home. The band has arranged to lease a portion of its reserve land to a development company that has been building new shops, a resort hotel, playing fields, parks, and a world-class golf course and up to 2,000 homes on the site.

This program has led to a flourishing on-reserve housing market and increased local economic development, both of which will benefit the reserve and the wider community in the Kamloops, British Columbia region.

#### **Housing Quality Initiative**

Through its Housing Quality Initiative CMHC works with First Nations communities to help them build their capacity to prevent, remediate and manage mould and other housing quality problems. These have led to successes in a number of First Nation communities. For example, leaders in the Kahnawake First Nation in Quebec have tackled their mould problem by requiring that all trades people performing renovation or construction work in the community receive CMHC training. At the Gitga'at First Nation in British Columbia, the band's housing manager attended a CMHC workshop, and then organized and trained unemployed youth on the reserve to tackle the mould clean-up. Training was also extended to other residents so they could maintain their homes and prevent the return of mould.

In the case of the Wikwemikong First Nation, mould was linked to construction practices that were not suitable for the community's geographic location near water. Training was a major part of the solution for this community. Crawlspace, basements and poor ventilation design were part of the problem identified by the team for this specific reserve. With training, First Nations builders began to build new homes that are well-insulated, energy efficient, have good ventilation and no crawlspaces or basements. These communities and others are

gathering knowledge, gaining experience and building partnerships in an effort to combat mould and make their homes safe and healthy.

### **Water**

The Government of Canada is committed to helping ensure First Nations have access to safe, clean, and reliable drinking water.

In 2006, the Government implemented a comprehensive strategy to ensure that water and wastewater systems in First Nation communities are effective and that First Nations have access to the same quality of water as other Canadians.

Between 2006 and 2013, the Government of Canada will have invested \$2.5 billion in water and wastewater infrastructure in First Nations communities. These investments have been made through AANDC's Capital Facilities and Maintenance Program, First Nations Water and Wastewater Action Plan (FNWWAP), and Canada's Economic Action Plan (CEAP). These investments are steadily increasing the effectiveness of water services in First Nation communities.

Bill S-11, the proposed *Safe Drinking Water for First Nations Act*, was introduced in Parliament in May, 2010. The legislation would have made it possible for the Government of Canada, in collaboration with First Nation communities, to develop enforceable federal regulations intended to address the provision of safe drinking water, effective treatment of wastewater and protect sources of drinking water in First Nation communities. Although Parliament was dissolved before this Bill could be passed, Minister Duncan announced in Parliament on November 15, 2011 that the Government would be reintroducing First Nations water quality legislation. The development of federal regulations that will ensure that First Nations have the same health and safety protection for drinking water in their communities as other Canadians remains a priority of the Government of Canada.

## **VI. MISCELLANEOUS OBSERVATIONS**

The Special Rapporteur brought to Canada's attention information received regarding some situations involving First Nations other than Attawapiskat. Canada welcomes the opportunity to respond.

### **Mohawks of the Bay of Quinte – Groundwater contamination**

The Special Rapporteur refers, on page 3 of his letter, to a groundwater contamination problem on the territory of the Mohawks of the Bay of Quinte. It is alleged that the Government has "repeatedly ignored requests for assistance". In fact, a new water treatment plant project is currently proceeding; the final design is complete with the only outstanding issue being a possible change to the intake due to the physical relocation of the proposed plant. Pending internal approvals, \$7.3 million is scheduled for construction in 2012-2013 and \$4.4 million for 2013-2014.

### **Canadian Human Rights Commission**

The Special Rapporteur refers, on page 3 of his letter, to allegations that the Government of Canada has been "resisting efforts by the Canadian Human Rights Commission to inquire into allegations of discrimination... related to disparities in funding provided to First Nations as compared to non-aboriginal communities."

The Canadian Human Rights Commission is an independent body created by Parliament in 1977. It plays a role in administering two pieces of federal anti-discrimination legislation, the *Canadian Human Rights Act* and the *Employment Equity Act*.

Under the *Canadian Human Rights Act*, the Commission is empowered to investigate allegations of discrimination in the provision of goods, services, facilities or accommodation customarily available to the general public, in areas that fall under the jurisdiction of the federal Parliament. Canada respects the jurisdiction of the Commission, and does not interfere with investigations by the Commission of matters within its jurisdiction.

## **VII. CONCLUSION**

Since being made aware of the situation in Attawapiskat, Canada has responded on an urgent basis, with the number one priority being the health and safety of the residents of Attawapiskat. The appointment of a Third Party Manager to manage AANDC funding was an action taken in furtherance of this goal, to ensure the fast and efficient distribution of money with an eye to resolving the short-term urgent housing situation. The appointment was made pursuant to the relevant funding agreement, based on observations that the health and safety of Attawapiskat residents was at risk.

Canada is actively negotiating self-government arrangements with Aboriginal communities across the country, including with the Nishnawbe Aski Nation (which represents Attawapiskat). Our vision is a future in which Aboriginal communities are healthy, safe, self-sufficient and prosperous - a Canada where people make their own decisions, manage their own affairs and make strong contributions to the country as a whole.

Canada, is taking action to address the on-going challenge posed by the gap in living conditions between Aboriginal and non-Aboriginal Canadians. Canada takes its international human rights obligations very seriously.

Canada trusts that this response has addressed the Special Rapporteur's concerns. We would be pleased to provide additional information should that be of assistance.

Ottawa

14 February 2012