

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**JENNIFER TANUDJAJA, JANICE ARSENAULT, ANSAR MAHMOOD,
BRIAN DUBOURDIEU, CENTRE FOR EQUALITY RIGHTS IN
ACCOMMODATION**

Applicants

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,
ATTORNEYGENERAL OF CANADA and
ATTORNEY GENERAL OF ONTARIO**

Respondents

*APPLICATION UNDER Rule 14.05(3)(g.1) of the
Rules of Civil Procedure, R.R.O. 1990, O. Reg. 194
and under the Canadian Charter of Rights and
Freedoms*

**AFFIDAVIT OF CHARLES TAIOWISAKARERE HILL
(Affirmed September 27, 2011)**

I, Charlie Taiowisakarere Hill, of the Town of Hagersville in Haldimand County in the Province of Ontario, SOLEMNLY AFFIRM:

1. I currently serve as the Executive Director of the National Aboriginal Housing Association/Association Nationale d'Habitation Autochtone ("NAHA/ANHA"). I have served as the Executive Director since 2005. NAHA/ANHA was incorporated in 1994. NAHA/ANHA is a membership-based organization that advocates on behalf of over 110 non-reserve Aboriginal housing shelter providers across Canada. NAHA/ANHA links

housing and shelter providers by providing support and guidance in strategic planning and national policy. NAHA/ANHA also focuses on advocating for predictable and sustainable funding from the Government of Canada to preserve the existing urban Native housing stock and add sufficient additional dedicated stock to respond to unmet and growing housing need among Aboriginal households living off reserve. I have attached a copy of NAHA/ANHA's 2009 report, "A Time for Action: A National Plan to Address Aboriginal Housing", and marked it as Exhibit "A". I have also attached a copy of NAHA/ANHA's 2004 report, "A New Beginning: The National Non-Reserve Aboriginal Housing Strategy", marked as Exhibit "B".

2. Prior to assuming the Executive Director position at NAHA/ANHA, I worked as the head of the On-Reserve Housing Program at the Department of Indian Affairs for the period 1984 to 1992. I then served as a policy analyst for the Assembly of First Nations National Housing Program for two years before becoming the program's Director in 1994. As such, I have knowledge of the matters to which I depose in this affidavit. A copy of my current *curriculum vitae* is attached to this affidavit and marked as Exhibit "C".

3. The purpose of my affidavit is to present evidence on housing conditions for Aboriginal populations. I have been retained by the Applicants to provide expert opinion evidence detailing the disproportionate incidence of homelessness and housing need among Aboriginal households, particularly those who migrate off-reserve, compared to

Canada's non-Aboriginal population. A copy of my Acknowledgment of Expert's Duty form is attached and marked as Exhibit "D".

4. My opinion is that poverty among Aboriginal communities is the principal cause of homelessness and substandard housing.

5. I believe that Aboriginal peoples require the assistance of the federal and provincial governments in obtaining on- and off-reserve housing that is affordable, free from major repair problems, and suitable for the household's size.

6. My opinions on the state of Aboriginal housing and the pathways to address Aboriginal housing-related problems are from research in, and knowledge of, Aboriginal housing issues. The right of special, specifically-targeted and effective housing programs to address Aboriginal housing issues flows from the over representation of Aboriginal peoples in housing need, compared to the general population of Canada.

Aboriginal Housing – a Comparative Overview

7. Studies show that inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates.¹ Access to proper housing is therefore an essential component of overall human health and welfare.

¹ See, for example: S. Hwang, E. Holton, E. Gogosis, "Housing Vulnerability and Health: Canada's Hidden Emergency" (Toronto: Research Alliance for Canadian Homelessness, Housing, and Health,

8. Unfortunately, the reality is that throughout Canada, Aboriginal peoples disproportionately face conditions of inadequate housing, overcrowding and homelessness, when compared to the mainstream population.

9. Federal and provincial funding to protect and expand the current stock of social housing for Aboriginal communities has continually declined over the past two decades, and no strategy exists at any level of government to add to the housing stock.

10. For Aboriginal people who live off-reserve, housing conditions and the rate of homelessness are especially worrisome.

11. In 1996, the Report on the Royal Commission on Aboriginal Peoples (“RCAP”) recognized that “Aboriginal housing and community services are in a bad state, by all measures falling below the standards that prevail elsewhere in Canada and threatening the health and well-being of Aboriginal people.”² A copy of Chapter 4, Volume 3 of the Report, which addresses housing need, is attached and marked as Exhibit “E”

12. Five years later, Statistics Canada released its Aboriginal Peoples Survey 2001. In its initial findings, Statistics Canada reported that “in all regions of the country, the

2010); H. Echenberg, H. Jensen, “Risk Factors for Homelessness” (2 February 2009), Parliamentary Information and Research Service, Library of Parliament Document Number PRB 08-51E; and Canadian Mental Health Association, “Housing, Health & Mental Health” (2004), at 4. Available online at: <http://www.cmha.ca/data/1/rec_docs/549_CMHA_Housing_EN.pdf>

² Canada, Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples: Gathering Strength*, vol. 3 (Ottawa: Supply and Services Canada, 1996) at 365.

homes of Aboriginal people living in non-reserve areas were more crowded than those of all Canadians”³, and that “the homes of Aboriginal people are more likely in need of major repairs than are the homes of others. Major repairs include such items as defective plumbing or electrical wiring, structural repairs to walls, floors or ceilings and so on.”⁴ A copy of the report is attached and marked as **Exhibit “F”**.

13. Housing conditions had not improved by 2006, when one in every five Aboriginal households (20.4%),⁵ and almost one in four off-reserve Status Indian households (24.8%),⁶ was in core housing need. This compares to one in eight households in the non-Aboriginal population (12.4%).⁷

14. The Canada Mortgage Housing Corporation (the “CMHC”) explains that core housing need refers to “households which are unable to afford shelter that meets adequacy, suitability, and affordability norms. [...] Affordability, one of the elements used to determine core housing need, is recognized as a maximum of 30 per cent of the household income spent on shelter.”⁸

³ Statistics Canada, *Aboriginal Peoples Survey 2001 – Initial Findings: Well-being of the Non-reserve Aboriginal Population*, Statistics Canada Catalogue No. 89-589, (Ottawa: Minister of Industry, 2003) at 24.

⁴ *Ibid.*, at 26.

⁵ “A Time for Action: A National Plan to Address Aboriginal Housing”, (Paper prepared by the National Aboriginal Housing Association/Association Nationale d’Habitation Autochtone, June 2009) [unpublished], at 7.

⁶ Canada Mortgage and Housing Corporation, *2006 Census Housing Series: Issue 6 – Off-reserve Status Indian Households: Housing Conditions and Core Housing Need* (CMHC Research Highlight, Socio-economic Series 09-024) (Montreal: Canada Mortgage and Housing Corporation, December 2009), at 14.

⁷ *Ibid.*

⁸ See CMHC definition of “core housing need”, available online at: <http://www.cmhc-schl.gc.ca/en/corp/faq/faq_002.cfm#4>

15. The lack of affordable housing is the leading cause of housing instability among Aboriginal households. This is because Aboriginal people experience poverty in disproportionate numbers when compared to Canada's general population.

16. In 1996, the CMHC's data on core housing need revealed that affordability problems accounted for over 90% of core housing need across all households. Noteworthy, however, is that in 2006, for example, Aboriginal renter households received just 83% of the level of income among non-Aboriginals.⁹ This means that, overall and consistently across Canada's jurisdictions, Aboriginal households have lower incomes and thus a lower capacity to pay rent than non-Aboriginal households.

17. In 2006, the CMHC's Research Highlight, "2006 Census Housing Series: Issue 6 – Off-reserve Status Indian Households: Housing Conditions and Core Housing Need", noted that 27.1% of Aboriginal households living off-reserve failed to meet the affordability standard (*i.e.*, housing costs that exceed 30% of gross income), compared to 21.3% of non-Aboriginal households.¹⁰ A copy is attached and marked as **Exhibit "G"**.

18. In 2001 according to the CMHC, the average income for an Aboriginal household was \$49,213, compared to \$61,311 for non-Aboriginal households. Aboriginal households also experienced average higher shelter-to-income ratios in 2001 (*i.e.*, 24.3 to 21.3). By 2006, Aboriginal households earned on average \$60,186, while non-Aboriginal

⁹ CMHC, "Housing in Canada Online", online: (2006) Housing in Canada Online <http://cmhc.beyond2020.com/TableViewer/tableView.aspx?ReportId=3&IF_Language=eng>

¹⁰ Canada Mortgage and Housing Corporation, *2006 Census Housing Series: Issue 6 – Off-reserve Status Indian Households: Housing Conditions and Core Housing Need*, *supra*, at 9.

households earned \$72,822. Aboriginal households continued to face average higher shelter-to-income ratios in 2006 at 23.2, compared to 21.7 for the non-Aboriginal population.¹¹

19. Programs that are aimed at creating rental units at the average market rent will therefore have little impact on addressing the affordability needs of many Aboriginal renter households. Instead, the focus must be on developing more affordable housing programs and allocating more money for rent subsidies to balance Aboriginal households' low incomes.

20. Aboriginal renters faced core housing need in disproportionate numbers when compared to the general population of Canada. In 2006, 34.9% of all Canada's Aboriginal renter households lived in core housing need. When disaggregated further, 37.9% of off-reserve Status Indian renter households lived in core housing need. These figures compare to 26.8% of non-Aboriginal renter households living in core housing need.¹²

21. According to the 2001 Census, 7% of the total Canadian population living in non-reserve areas lived in crowded conditions (defined as more than one person per room, excluding bathrooms, halls, and rooms used exclusively for business purposes). Among

¹¹ Canada Mortgage and Housing Corporation, "Housing in Canada Online", online: (2006) Housing in Canada Online <http://cmhc.beyond2020.com/TableViewer/tableView.aspx?ReportId=3&IF_Language=eng>

¹² Canada Mortgage and Housing Corporation, *2006 Census Housing Series: Issue 6 – Off-reserve Status Indian Households: Housing Conditions and Core Housing Need*, *supra*, at 20.

the non-reserve Aboriginal population, the figure was 17%.¹³ The 2001 Census data showed that overcrowding affected 53% of Inuit households living in Canada's Far North.¹⁴

22. In Saskatoon in 2006, 9% of the Aboriginal population lived in crowded conditions, compared to 1% of the non-Aboriginal population. In Prince Albert, 11% of the Aboriginal population lived in crowded conditions, compared to 1% of the non-Aboriginal population.¹⁵ Overall, throughout Canada in 2006, the off-reserve Aboriginal population faced crowding at a rate of 11%, compared to a rate of 3% among the non-Aboriginal population.¹⁶

23. Noteworthy is that the majority of Aboriginal households are made of families. In 2001, for example, 70% of Aboriginal households nationwide were families. This compares to 49% of non-Aboriginal households.¹⁷ Aboriginal families are therefore disproportionately burdened by housing need, compared to non-Aboriginal households. Lone parents experience the highest incidence of need (43% among Aboriginal family households, compared to 25% among non-Aboriginal family households).¹⁸

¹³ Statistics Canada, *Aboriginal Peoples Survey 2001 – Initial Findings: Well-being of the Non-reserve Aboriginal Population*, Statistics Canada Catalogue No. 89-589, *supra*, at 24.

¹⁴ *Ibid.*, at 25.

¹⁵ R. Walker, "Social Housing and the Role of Aboriginal Organizations in Canadian Cities" (2008) IRPP Choices, Vol. 14, No. 4, at 5.

¹⁶ *Ibid.*

¹⁷ "A New Beginning: The National Non-Reserve Aboriginal Housing Strategy" (Paper prepared by the National Aboriginal Housing Association/Association Nationale d'Habitation Autochtone, March 2004) [unpublished], at A-4.

¹⁸ "A Time for Action: A National Plan to Address Aboriginal Housing", *supra*, at 7.

24. Aboriginal households are also in greater need of major repairs to their dwellings than non-Aboriginal households. In 2001, for example, Census data showed that 16.5% of Aboriginal households nationwide reported a need for major repairs, compared to 9% of non-Aboriginal households.¹⁹ By 2006, some progress in reducing the incidence of inadequately-maintained and/or repaired residences had been made. However, the rate of improvement between Aboriginal and non-Aboriginal households was uneven, resulting in a wider gulf. By 2006, 15.2% of Aboriginal households reported requiring major repairs to their dwellings, while 6.9% of non-Aboriginal households reported the same.²⁰

Rates of Urban Homelessness among Aboriginal People

25. Studies show that Aboriginal people who migrate off-reserve are at a much greater risk of being homeless than non-Aboriginal people. Studies also show that Aboriginal families are more than twice as likely as a Caucasian family to change addresses two or more times in one year (*i.e.*, 17.0%, compared to 8.3%).²¹ That is, studies show that security of tenure among Aboriginal households is much lower than that of non-Aboriginal households.

26. Although there is no national, comprehensive, official study to enumerate homelessness, an examination of homeless counts across a range of cities shows that

¹⁹ “A New Beginning: The National Non-Reserve Aboriginal Housing Strategy”, *supra*, at 10.

²⁰ Canada Mortgage and Housing Corporation, *2006 Census Housing Series: Issue 6 – Off-reserve Status Indian Households: Housing Conditions and Core Housing Need*, *supra*, at 9.

²¹ N. Trocme, D. Knoke and C. Blackstock, “Pathways to the Overrepresentation of Aboriginal Children in Canada’s Child Welfare System” (2004) *Social Service Review*, at 586.

Aboriginal homelessness off reserves is a very significant issue and disproportionate to the experience of the rest of Canada. For example, in the April 2006 Toronto Street Needs Assessment, the City of Toronto found that Aboriginal people constituted 16% of all people surveyed, including those in shelters.²² Although Aboriginal people make up only 0.5% of the City of Toronto's general population, Aboriginal people constituted more than one-quarter (25.8%) of the homeless population.²³ The Toronto Street Needs Assessment also showed that Aboriginal people who were homeless remained homeless for 5.3 years on average, whereas non-Aboriginal homeless people remained homeless for 3.1 years.²⁴

27. In 2008, the City of Calgary's biennial street count was augmented by separate counts conducted by agencies involved in serving homeless people.²⁵ While 2007 Census data showed that only 3% of Calgary's population was Aboriginal, 15% of homeless people enumerated during the survey were identified as Aboriginal.²⁶ Furthermore, the combined data from the City's biennial street count showed that, while there was a decline in the proportion of Aboriginal people who were homeless over a period of 15 years (*i.e.*, down to 15.6% in 2008 from a high of 21.2% in 1994), the absolute number of both Aboriginal and non-Aboriginal homeless people in Calgary for that same period rose dramatically. In 1994, the street count identified 461 homeless

²² General Manager, Shelter, Support and Housing Administration, *2006 Needs Assessment: Results and Key Findings* (City of Toronto Staff Report) (Toronto: Shelter, Support and Housing Administration, June 20, 2006) at p. 22. Available online at: <<http://www.toronto.ca/housing/pdf/streetneedsassessment.pdf>>

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ City of Calgary, *Biennial Count of Homeless People in Calgary: 2008 May 14* by S. Stroik, L. Hubac, S. Richter-Salomons (City of Calgary Community and Neighbourhood Services Social Research Unit, July 15, 2008). Available online at: <http://intraspec.ca/2008_count_full_report.pdf>

²⁶ *Ibid.*, at X.

people. In 2008, that number increased to 4,060, with the Aboriginal count rising from 98 people in 1994 to 633 in 2008, an increase of 545%.²⁷

28. Summarizing the results of the February 2007 Homeless Needs Survey in Greater Victoria, B.C.,²⁸ although only 3% of Victoria's population is Aboriginal, the study revealed that one-quarter (25%) of the City's people who were homeless or unstably housed identified themselves as First Nations, Aboriginal, Métis, Inuit or Native. Local Aboriginal service providers have suggested that many Aboriginal people were missed by the survey and that the percent of homeless or unstably housed people who are Aboriginal is likely higher than 25%.²⁹

29. Edmonton conducts a biennial count of homeless people. Since 2000, the proportion of homeless people identified as Aboriginal has consistently hovered around 40%, although Aboriginal people only comprise approximately 5% of Edmonton's general population. While the 2006 Census showed that Edmonton's Aboriginal population accounted for 5.1% of the City's residents, in 2008, the proportion of homeless people identified as Aboriginal was 38%.³⁰

²⁷ City of Calgary, *Biennial Count of Homeless People in Calgary: 2008 May 14*, *supra*, at XVI.

²⁸ Victoria Cool Aid Society, *Homeless Needs Survey 2007 – A Pathway to Home: Housing First – Plus Supports* (Final Report of the Homeless Needs Survey 2007 in the Capital Region District, British Columbia) (Victoria: Victoria Cool Aid Society, 2007). Available online at: <http://www.coolaid.org/publications/HNS_Final_Report_2007.pdf>

²⁹ "A Time for Action: A National Plan to Address Aboriginal Housing", *supra*, at 9.

³⁰ Homeward Trust Edmonton, "A Count of Homeless Persons in Edmonton 2008" (October 21, 2008). Available online at: <http://intraspec.ca/HTE_2008FinalHomelessCountReport.pdf>

30. In Vancouver, a March 2008 count of homeless people revealed that Aboriginal people, who accounted for only 2% of Vancouver's population in the 2006 Census, accounted for 32% of the City's homeless population.³¹

Aboriginal Off-Reserve Housing Need

31. The great majority (73.4%³²) of Canada's Aboriginal population do not live on reserves, and this population is increasing. From 1996 to 2006, the number of off-reserve Status Indian households increased from 102,395 to 156,235: an increase of 53%. Non-Aboriginal households, by contrast, grew by 16% over this period.³³

32. The transition from on-reserve to off-reserve housing can be very difficult. Many people encounter cultural, linguistic and other barriers that severely limit their economic opportunities. Racism against Aboriginal peoples compounds this problem. Consequently, Aboriginal Canadians who migrate to urban centres in search of jobs, education and healthcare often require intensive support and life-skills training to succeed in living in their new environments.

³¹ Greater Vancouver Regional Steering Committee on Homelessness, *Still on our Streets: Results of the 2008 Metro Vancouver Homeless Count*, (Vancouver: December 2008). Available online at <<http://intraspec.ca/HomelessCountReport2008Feb12.pdf>.>

³² "A Time for Action: A National Plan to Address Aboriginal Housing", *supra*, at 6.

³³ Canada Mortgage and Housing Corporation, *2006 Census Housing Series: Issue 6 – Off-reserve Status Indian Households: Housing Conditions and Core Housing Need*, *supra*, at 2.

33. Except for the Off-Reserve Aboriginal Housing Trust - which started in 2006 and expired in March 2009, and which created to help provinces address short-term housing needs for Aboriginal households living off-reserve, and was distributed according to the province's share of Canada's Aboriginal population living off-reserve - there has been no funding from the Government of Canada to address the special housing needs of Canada's non-reserve Aboriginal population.

34. The special housing needs of Canada's off-reserve Aboriginal population are based on the importance of providing culturally appropriate housing services. The 1996 RCAP Report recognized the important link between housing and culture, affirming that:

Many cultures around the world are distinctive because of their immediately recognizable housing forms and styles and for the integration of their housing and community services with other patterns of daily living, economic and social activity. In Canada, unfortunately, the vibrant past of Aboriginal cultures, as embodied in housing, has been largely lost as a result of considerations of cost and administrative convenience. For example, housing designs have often been more typical of suburbia than the rain forests of the British Columbia coast, the tundra of the high Arctic, or the woodlands of rural Quebec.³⁴

35. The Commission studied four urban Aboriginal housing corporations and noted that the tenants of those corporations saw the preservation and reinforcement of their cultural identity as an important element of their housing services. The Report concluded: "In effect, the communities became more identifiable and could be contacted more readily to participate in various social, cultural and recreational activities. In

³⁴ Canada, Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples: Gathering Strength*, vol. 3, *supra*, at 372.

addition, these housing corporations have had, for the most part, a positive impact on relations between Aboriginal and non-Aboriginal people.”³⁵

36. Indeed, Canadian and American studies show that when social housing is provided by Aboriginal organizations to Aboriginal households, the social, health, economic, *et cetera*, outcomes are better than when housing is provided by mainstream organizations.³⁶ A copy of a 2008 report that explores this issue, entitled “Social Housing and the Role of Aboriginal Organizations in Canadian Cities” is attached and marked as **Exhibit “H”**.

37. Aboriginal housing providers are better able than mainstream social housing providers to serve Aboriginal tenants because of the formers’ intimate familiarity with Aboriginal culture and the barriers to social and economic inclusion that indigenous communities face. Aboriginal housing providers offer support and help residents settle and adapt to their new communities. Aboriginal housing providers provide good, affordable housing and foster a sense of community and well-being.

38. Adequate funding for Aboriginal housing providers is therefore an important factor in the social and economic security of Status Indians who migrate off-reserve, or of Inuit and Métis who move to urban centres.

³⁵ Canada, Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples: Gathering Strength*, vol. 3, *supra*, at 373.

³⁶ See, for example, R. Walker, “Social Housing and the Role of Aboriginal Organizations in Canadian Cities” (2008) IRPP Choices, Vol. 14, No. 4, at 6.

39. While the lack of affordable housing is the predominant issue among Canada's non-reserve Aboriginal population, the proportion of households experiencing adequacy (*i.e.*, need for major repairs) and suitability (*i.e.*, sufficient number of bedrooms) problems is also considerably higher among the Aboriginal population than among the rest of Canada:

- 15.2% of Aboriginal core need households experience adequacy problems, or homes that require major repairs; and
- slightly fewer 13.5% live in unsuitable (*i.e.*, crowded) dwellings.

By comparison, the rates in the non-Aboriginal population are 5.8% and 6.9% for adequacy and overcrowding, respectively.³⁷

40. Core housing need among the non-reserve Aboriginal population is highest among renters. 37.9% of non-reserve Aboriginal renter households are in core housing need. By contrast, 26.8% of non-Aboriginal renters faced core housing need in 2006. Among home owners, 10.0% of non-reserve Aboriginal households face core housing need, compared to 6.2% of non-Aboriginal households.³⁸ Additionally, the rate of off-reserve Aboriginal home ownership (for most households, the most significant indicator

³⁷ Canada Mortgage and Housing Corporation, *2006 Census Housing Series: Issue 6 – Off-reserve Status Indian Households: Housing Conditions and Core Housing Need*, *supra*, at 9.

³⁸ *Ibid.*

of wealth) lags far behind that for non-Aboriginals (47% versus 70%, respectively, and 15% versus 30% for outright ownership of a home without a mortgage).³⁹

The Decline of Affordable Non-Reserve Aboriginal Housing Stock

41. As of December 1994, the percentage of social housing throughout Canada that was dedicated to housing Aboriginal households was 3%. Although this figure reflects the proportion of the non-reserve Aboriginal population in Canada, it fails to reflect the disproportionately higher incidence of housing need among Aboriginal households. Consequently, Aboriginal households that are unable to secure culturally appropriate housing must join waiting lists for mainstream subsidized housing services that may not fully address their needs.

42. Over the past 40 years, non-reserve Aboriginal housing need has been served by two main housing programs set up under CMHC: the Rural and Native Housing Program (“RNHP”), which targets rural areas and small communities with populations under 2,500 people; and the Urban Native Housing Program (“UNHP”) for communities and cities with populations greater than 2,500 people.

³⁹ Canada Mortgage and Housing Corporation, *2006 Census Housing Series: Issue 6 – Off-reserve Status Indian Households: Housing Conditions and Core Housing Need*, *supra*, at 5.

43. Despite its name, the RNHP was not exclusively targeted to Aboriginal households; the UNHP, however, was. The RNHP was established to assist low-income families with dependent children in rural areas to obtain adequate and affordable housing.

44. The UNHP provided subsidies to help Urban Native (Aboriginal) housing corporations repay mortgages taken out to purchase houses which they rented to First Nations, Métis and Inuit tenants in urban centres, thereby providing culturally-appropriate social housing on a “Rent Geared to Income” basis.

45. Approximately 11,000 social housing rental units were created under the UNHP and other CMHC-assisted programs between 1960 and 1994. These units were administered by roughly 110 Aboriginal housing organizations.⁴⁰ These Aboriginal housing corporations are run by boards of directors and staff comprised mainly of Aboriginal people. The Aboriginal tenants were frequently from rural or reserve communities with little experience of urban life.

46. To help residents through their transition from rural to urban life, the UNHP provided funding in the 1970s to enable the UNHP housing corporations to hire counselors to provide services to Aboriginal tenants in their new environment. These positions still exist and are very beneficial to tenants in Aboriginal housing.

47. In conducting an evaluation of its urban social housing programs, the CMHC found that the UNHP outperformed mainstream social housing programs on a variety of

⁴⁰ R. Walker, “Social Housing and the Role of Aboriginal Organizations in Canadian Cities”, *supra*, at 6.

indicators, including the sense among Aboriginal tenants of improved access to social services and increased feelings of security, stability and independence.⁴¹

48. Funding under the UNHP was matched to housing projects' mortgages: *i.e.*, as the mortgages matured, funding from the UNHP would cease. Where new, purpose-built apartment developments were built, the mortgages and funding agreements were in place for 35-50 years. This is comparable to other social housing programs.

49. However, because a significant proportion of the Aboriginal population was composed of large families, there was a need to provide family-sized units. This was often done by acquiring existing dwellings to create a geographically scattered portfolio of urban Aboriginal housing, creating a fragmented urban Aboriginal community. It has been observed that, in urban settings, the most common model of Aboriginal self-determination and community well-being is based on associational communities.⁴²

50. The most serious concern, however, is that the amortization period for properties meant to house large families is typically only 25-35 years long, compared to the amortization period for multi-family dwellings, which may be up to 50 years. As with other housing projects under the UNHP, funding, including rent subsidies, will end as a mortgage matures. Thus, funding agreements that assist many Aboriginal families will expire sooner than agreements for multi-family apartment complexes. This will have a

⁴¹ R. Walker, "Social Housing and the Role of Aboriginal Organizations in Canadian Cities", *supra*, at 7.

⁴² *Ibid.*, at 8-9.

significant impact on affordability for Aboriginal households, and will also jeopardize the viability of the Urban Native Housing corporations, generally.

51. The expectations in the funding agreements are that, once a mortgage is fully retired, the property owner (*i.e.*, the Urban Native Housing corporation) will have sufficient rental income to cover operating and maintenance expenses. Urban Native Housing programs for Aboriginal tenants, however, have systemic features, including rent geared to income assistance, that will result in non-viable conditions once funding agreements with CMHC expire.

52. In any property where the rental revenues do not exceed operating expenses, the properties will be unable to meet operating and maintenance requirements. Housing portfolios that serve low-income households in receipt of social assistance and/or a rent subsidy are most likely to fail when their funding agreements expire.

53. Studies show that, in almost all cases, urban Aboriginal properties funded under the UNHP will not be viable when their funding agreements expire, since rent revenues are insufficient to cover the ongoing operating and maintenance expenses.⁴³ The 11,000 urban Aboriginal properties that currently exist are therefore at great risk and, without renewed rent subsidy support and ongoing investment in capital repair and modernization, could be lost.

⁴³ See for example, S. Pomeroy *et al.*, “Was Chicken Little Right: Trend Analysis and Impacts of Expiring Social Housing Agreements” (2006) Canadian Housing and Renewal Association, available online at: <<http://www.bcnpha.ca/media/documents/chicken.pdf>>

54. Funding agreements began to expire in 2007. Over the next 20 years the entire stock of urban Aboriginal housing will no longer operate under funding agreements with the Government of Canada.

55. The expiry of these agreements, however, will be gradual. Approximately 1,000 agreements will expire over the next five years. Nevertheless, planning must commence now to prepare for the expiry of these agreements to protect the current urban Aboriginal housing stock. The June 2008 Senate report, “Poverty, Housing and Homelessness: Issues and Options” recognized, for example, that some Aboriginal housing programs were “already reducing the number of affordable units, and others are expected to do so in the future. Because these projects were created and funded on the basis of all units being rent-g geared-to-income, there is no cross-subsidization possible between market and non-market units.”⁴⁴

56. Coupled with the issue of weak post-expiry viability, many existing UNHP-funded properties originally involved the acquisition of existing dwellings. Many of these properties are old and in need of capital replacement. Most urban Aboriginal housing providers have insufficient capital reserves because funding programs underestimated funding requirements.⁴⁵

⁴⁴ Canada, Senate, *Poverty, Housing and Homelessness: Issues and Options*, (Ottawa: June 2008) at 50. (Chair: The Hon. Art Eggleton). Available online at:

<<http://www.parl.gc.ca/Content/SEN/Committee/392/soci/rep/repfinaljun08-e.pdf>>

⁴⁵ “A Time for Action: A National Plan to Address Aboriginal Housing”, *supra*, at 12.

Aboriginal On-Reserve Housing Need

57. Until approximately the 1950s, housing and living conditions on reserves were mostly adequate. Smaller populations and cleaner natural environments permitted First Nations to continue traditional lifestyles and maintain their cultural and linguistic identities.

58. During the 1950s, the Federal Government's Indian Affairs Branch worked at the local level with on-reserve First Nations to develop a system of welfare housing to support those most in need of good shelter.

59. However, the rapid growth of First Nations populations over the last sixty years, combined with environmental degradation, the frequent inability to exploit and profit from mineral resources located under reserve lands and the Federal Government's retreat from Aboriginal housing programs, led to the decline of the quality and availability of decent housing on reserves.

60. The largest contributing factor to poor housing conditions on reserves, however, is the scarcity or absence of economic opportunities.

61. I was raised on the Six Nations Reserve near Brantford, Ontario. During the post-Second World War period, the economy around the Six Nations Reserve flourished and people were able to find good jobs. Although overt racial discrimination against

Aboriginal people was common at the time, members of the Six Nations Reserve were, by and large, able to enjoy good standards of living with few barriers to accessing mainstream goods and services because of their relative wealth.

62. Reserves located in remote or in economically stagnant regions, however, suffered considerably from poverty and its attendant problems, such as poorer housing and poorer health outcomes.

63. The 1996 RCAP Report compared the state of housing between the on-reserve Aboriginal population and the rest of Canada. Using data from 1991, the Report noted that Aboriginal households' homes were in disproportionate need of major repairs.⁴⁶ Houses occupied by Aboriginal people were twice as likely to need major repairs as those of all Canadians. The Report also noted that homes occupied by Aboriginal households were more likely be over-crowded, compared to other Canadians as a whole.

64. On reserves, the Department of Indian and Northern Development estimated that 13,400 homes (out of a total of approximately 74,000 homes) were in need of major repairs and that close to 6,000 needed to be replaced in their entirety, together amounting to 26% of the total number of Aboriginal homes, or two-and-a-half times the proportion of Canadian dwellings in need of major repairs.⁴⁷ Furthermore, 9.4%⁴⁸ of on-reserve

⁴⁶ Canada, Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples: Gathering Strength*, *supra*, at 366-369.

⁴⁷ *Ibid.*, at 369.

⁴⁸ *Ibid.*, at 367.

homes (or 90 times the number of non-Aboriginal homes) lacked piped water services, and 14% of on-reserve homes lacked indoor plumbing.⁴⁹

65. CMHC data show that housing conditions on reserves have not improved since the RCAP report.⁵⁰

66. In 2001, 27.7% of Aboriginal households living on reserve reported being in core housing need. With an average national on-reserve income of \$16,970, 5.3% of households reported that their living conditions were crowded (*i.e.*, unsuitable), 17.4% reported the need for major repairs (*i.e.*, adequacy), and 5.0% reported both problems.⁵¹ Conditions were worst in Manitoba, where 36.9% of on-reserve households reported living in core housing need.⁵²

67. By 2006, CHMC data showed that the situation had worsened: 33.5% responded that the condition of their on-reserve housing resulted in core housing need. With an average national on-reserve income of \$18,740, 5.5% reported unsuitable housing, 21.4% reported inadequate housing, and 6.6% reported both.⁵³

⁴⁹ Canada, Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples: Gathering Strength*, *supra*, at at 369.

⁵⁰ CMHC, *Housing Conditions of Aboriginal Households Living On-reserve, Canada, Provinces and Territories, 2001, 2006* (Canadian Housing Observer) (Canada Mortgage Housing Corporation, 2006). Available online at: <http://www.cmhc-schl.gc.ca/en/corp/about/cahoob/data/upload/Table4_Aborig_EN.xls>

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

68. By 2006, the overall conditions had worsened in Manitoba, with 43.4% of on-reserve households reporting living in core housing need.⁵⁴

69. Saskatchewan's conditions had also deteriorated over the same period from 36.4% of households reporting core housing need in 2001 to 45.7% in 2006.⁵⁵

70. The reserve system itself is partly to blame for the high rate of core housing need among on-reserve First Nations households. The Government of Canada claims and retains ownership over lands reserved for "Indians" (*i.e.*, First Nations). This, tied in with the *Indian Act* prohibits an individual from owning the land on which her or his home may be built.

71. In some First Nations communities, individuals hold occupancy rights to specific plots of land by way of Certificates of Possession ("CP") issued by the Department of Indian Affairs (now Aboriginal Affairs and Northern Development Canada) In these communities, allocation of land is approved by the Minister of Indian and Northern Affairs Canada, who issues the CP. Should one choose to sell her home or relocate, the CP enables the owner to transfer legal possession of the home and use of the parcel of land to another First Nations citizen of the community.

⁵⁴ CMHC, *Housing Conditions of Aboriginal Households Living On-reserve, Canada, Provinces and Territories, 2001, 2006* (Canadian Housing Observer) (Canada Mortgage Housing Corporation, 2006). Available online at: <http://www.cmhc-schl.gc.ca/en/corp/about/cahoob/data/upload/Table4_Aborig_EN.xls>

⁵⁵ *Ibid.*

72. On most First Nations' Reserves across Canada, however, the system of CPs is not in effect. In this case, allocation of a building site for a house rests with the local community, but the land itself rests in the hands of the federal government, and by delegation, the local band government.

73. High transactions costs and the uncertainty of tenure, coupled with poor economic prospects, have resulted in disincentives for band members for home ownership on reserve. As a result, many on-reserve First Nations households instead occupy social housing units, which are owned and operated by the band.

The Way Forward

74. It is apparent that the state of housing for Canada's Aboriginal population is in terrible condition, and that it will likely only worsen. Indeed, Aboriginal housing and homelessness is the worst in Canada. The impact on Aboriginal health and welfare is well-documented. In a 2007 report on "Suicide Among Aboriginal People in Canada" prepared for The Aboriginal Healing Foundation, the link between homelessness and suicide was explained:

Aboriginal people are overrepresented in the urban homeless population. For example, in Edmonton, Aboriginal people comprise about 6 per cent of the overall population, but 43 per cent of the homeless (Treasury Board of Canada Secretariat). A study of 330 homeless people in Toronto found that about 61 per cent had suicidal ideation and 34 per cent had made a suicide attempt (Eynan *et al.*, 2002). In

a qualitative study of street youth, 46 per cent attempted suicide at least once and the majority had made multiple attempts.⁵⁶

75. In 2007, the UNICEF Canada organization reported in its article, “Too Many Children Still Left Out Eighteen Years after Children’s Rights Convention Adopted”:

Aboriginal children are one of the most vulnerable populations in Canada, facing enormous challenges. Overall, the poverty rate for Aboriginal children is close to three times that of other Canadian children. As well, children in some remote Aboriginal communities lack access to adequate housing, clean water and quality education. In addition, Aboriginal children are disproportionately represented in the child welfare and juvenile justice systems.⁵⁷

76. In speaking to housing conditions off-reserve, the RCAP Report noted that “There is clearly a need for subsidized housing for Aboriginal people living in non-reserve communities.”⁵⁸ The Report concluded that “the federal government’s withdrawal from this area is unrealistic and at odds with one of its responsibilities to Aboriginal people. Governments have a duty to ensure that Aboriginal people have the means to afford their own housing”.⁵⁹

77. In order to address the comparative disparity in housing need between Canada’s Aboriginal and mainstream populations, and in so doing also address the absolute

⁵⁶ L.J. Kirmayer *et al*, *Suicide Among Aboriginal People in Canada* (Ottawa: The Aboriginal Healing Foundation, 2007) at 57.

⁵⁷ UNICEF Canada, News Release, “Too Many Children Still Left Out Eighteen Years After Children’s Rights Convention Adopted: UNICEF Canada” (20 November 2007).

⁵⁸ Canada, Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples: Gathering Strength*, *supra*, at 411.

⁵⁹ *Ibid*, at 412.

deficiency in the supply and adequacy of Aboriginal housing, NAHA/ANHA has identified five pursuable targets:

- (1) Prevent further growth in Aboriginal housing need: As the non-reserve population continues to grow, stem the growth in need by providing assistance to 1,000 new households annually;
- (2) Reduce and equalize core housing need: Reducing the incidence of Aboriginal core housing need below 12.5% among the non-reserve population requires the provision of 3,000 dwellings annually (combination of new construction, acquisition and rental assistance);
- (3) Preserve and improve the existing social housing stock: 1,000 dwellings improved annually;
- (4) Reduce Aboriginal homelessness: create 1,000 new transitional and supportive housing spaces with ongoing support services; and
- (5) Increase the non-reserve Aboriginal home-ownership rate (54% in 2006) to match that of the non-Aboriginal population (68%): Provide assistance to 4,000 households annually to access affordable ownership.

78. In order to address on-reserve housing need, a national policy with adequate funding must be implemented to provide for basic, essential services (*e.g.*, clean water and sewage systems) and to repair existing housing stock. Further funding is required to ensure that an adequate stock of affordable housing is available to First Nations households that live on-reserve as well as those Aboriginal peoples who live in non-reserve areas.

Affirmed before me at the City of)
 Toronto, on this 27th day of)
 September, 2011.)

_____)
 Harry Yeon Cho,)
 A Commissioner, *etc.*)

_____)
 Charles Taiowisakarere Hill