



On-Reserve Housing and Infrastructure: Recommendations for Change

Standing Senate Committee on Aboriginal Peoples

The Honourable Dennis Glen Patterson, *Chair*

The Honourable Lillian Eva Dyck, *Deputy Chair*

June 2015

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Photo on the cover page: Construction of new school in Membertou First Nation, Nova Scotia

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Membership

THE STANDING SENATE COMMITTEE ON ABORIGINAL PEOPLES

41st Parliament, 2nd Session

(October 16, 2013 –)

The Honourable Dennis Glen Patterson

Chair

The Honourable Lillian Eva Dyck

Deputy Chair

and

The Honourable Senators:

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The Honourable Senators Salma Ataullahjan, Douglas Black, Pierre-Hugues Boisvenu, Andrée Champagne, P.C., Jane Cordy, Don Meredith, Jim Munson, Victor Oh, Bob Runciman, Carolyn Stewart Olsen, John D. Wallace and Charlie Watt.

Committee Clerks:

Marcy Zlotnick (October 16, 2013 to April 3, 2015) and

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Research Service of the Library of Parliament:*

Julie Cool and Brittany Collier

Order of reference

Extract from the *Journals of the Senate* of Tuesday, February 25, 2014:

The Honourable Senator Patterson moved, seconded by the Honourable Senator Bellemare:

That the Standing Senate Committee on Aboriginal Peoples be authorized to examine and report on challenges and potential solutions relating to First Nations infrastructure on reserves, including, but not limited to:

- (a) housing;
- (b) community infrastructure (such as water and wastewater treatment, schools and other community buildings); and
- (c) innovative opportunities for financing and more effective collaborative strategies;

That the papers and evidence received and taken and work accomplished by the committee during the Second Session of the Forty-first Parliament, as part of its study on the federal government's constitutional, treaty, political and legal responsibilities to First Nations, Inuit and Metis peoples and on other matters generally relating to the Aboriginal Peoples of Canada, as authorized by the Senate on November 21, 2013, form part of the papers and evidence received and taken for the purposes of this study; and

That the committee submit its final report no later than December 31, 2015 and that the committee retain all powers necessary to publicize its findings for 180 days after the tabling of the final report.

After debate,

The question being put on the motion, it was adopted.

Gary W. O'Brien
Clerk of the Senate

Executive Summary

Infrastructure is not just about bricks and mortar. Ageing, inadequate and poor infrastructure can have significant negative effects on the social and economic outcomes of communities. In this respect, infrastructure is about meeting the most basic needs of individuals, families and communities – putting a roof over a family’s head and making sure that they have clean drinking water. The Standing Senate Committee on Aboriginal Peoples (the committee) began hearing from witnesses about housing and infrastructure needs on reserve in November 2013. The study included visits to communities from coast to coast to see first-hand the challenges and best practices relating to housing and infrastructure.

1. Housing

In February 2015, the committee tabled an **interim report on housing** which highlights severe housing shortages and overcrowding; poorly constructed housing that is in serious disrepair; and barriers which First Nation members and communities confront as they try to find innovative solutions to meeting their housing needs. The committee heard that the funding that First Nations communities receive from Aboriginal Affairs and Northern Development Canada (AANDC) is insufficient to properly maintain a community’s housing stock. Some First Nations have supplemented this funding by charging rent for housing, but many others do not have the human resource capacity to initiate or manage a rental regime, are unwilling to implement a rental regime, or are in communities where this is not financially feasible.

The committee identified the need to examine current initiatives to addressing housing on reserve. For example, although the \$300 million set aside by the federal government in a trust fund for the First Nations Market Housing Fund in 2008 was expected to result in 25,000 new homes in 10 years, the most recent data provided to the committee was that 99 homes had been built by May 2015.

This report makes recommendations to address some of these housing challenges, including:

- Removing the 2% cap on annual increases in departmental funding so that funding for housing and infrastructure can keep up with population growth and inflationary pressures;
- Putting in place the necessary measures to ensure that First Nations have the human resource capacity to manage their housing stock and to adopt and enforce building codes; and
- Re-evaluating, strengthening and expanding existing programs such as the Ministerial Loan Guarantee and the First Nations Market Housing Fund to make sure that these programs actually result in more homes for First Nations people.

2. Infrastructure

Since the autumn of 2014, the focus of the committee has been on community infrastructure – roads, water systems, schools, bridges, and community facilities. Infrastructure deficits are not unique to First Nations communities, but the magnitude of this deficit on reserve is particularly striking. Visiting First Nations communities, the committee saw first-hand over-flowing sewage lagoons and communities with boil-water advisories which had been in place for over a decade.

Unlike other levels of government, which finance infrastructure by borrowing in the bond market and by raising tax revenues, First Nations governments face unique barriers in their access to capital for infrastructure. Those who do not have own-source revenues are forced to apply for funding through AANDC for infrastructure projects, and to wait until funding becomes available. First Nations who have own-source revenue sometimes build their own infrastructure, like schools or community buildings, by resorting to conventional loans with banks on far less favourable terms compared to their municipal or provincial counterparts.

In this report, the committee emphasizes the important role that economic development can play in helping First Nations communities meet their

infrastructure needs. Lack of funding for basic infrastructure – such as roads, and water and wastewater services – is currently limiting the ability of First Nations to build much-needed housing. Similarly, the lack of infrastructure makes it difficult to take advantage of economic development opportunities. The committee recommends that additional support be provided to First Nations so that they can prepare comprehensive community plans which will allow them to benefit from economic development and plan for the housing needs of their communities.

The committee recognizes that federal government funding alone will not allow First Nations to meet these infrastructure needs. The federal government currently provides funding for infrastructure on a cash-based, current-year funding basis. It is impossible to catch up on the infrastructure deficit in First Nations communities in this way. The committee has heard from a broad spectrum of witnesses, including First Nations communities and financial institutions, that the federal government could make more progress on addressing infrastructure if it could help First Nations leverage financing. The committee is recommending that AANDC work with First Nations organizations to create a Ministerial Loan Guarantee program for First Nations infrastructure and housing on reserve, which would make it possible to securitize a substantially larger amount of financing dollars than annual AANDC funding allocations, thereby spreading the cost over the life of the asset.

First Nations communities are diverse; the tools to address their requirements must reflect this diversity. The committee's recommendations reflect this diversity, ranging from removing the 2% cap on annual increases in funding at AANDC, building First Nations capacity to manage housing, facilitating the ability of First Nations to prepare comprehensive community plans which facilitate economic development, and introducing mechanisms to allow First Nations to leverage financing. The committee hopes that the recommendations in this report provide options that can support First Nations communities in their ongoing efforts to meet their housing and infrastructure needs.

Introduction

In the fall of 2013, the committee began its study of on-reserve housing and related infrastructure. Recognizing that housing and community infrastructure are inter-related and essential to the social and economic well-being of First Nations communities, the committee decided to complete the study in two phases. The first phase focussed on housing on reserve, while the second phase focussed on community infrastructure. The committee felt that it was important to table an interim report focussed on housing, while continuing to hear testimony on community infrastructure. Accordingly, in February 2015, the committee tabled an interim report, *Housing on First Nation Reserves: Challenges and Successes*, documenting what the committee heard from its travels to 16 First Nations communities in Nova Scotia, Quebec, Ontario, and British Columbia; and the testimony received from over 40 witnesses comprising First Nations communities, individuals, national and regional Aboriginal organizations, tribal councils and technical services groups.

The committee's interim report on housing found that:

- There is a significant housing shortage on reserves across Canada, that has led to high levels of overcrowding;
- Much of the existing housing stock is poorly built and in serious disrepair, with many communities experiencing problems with mould which is exacerbated by the problem of overcrowding;
- The housing problems are most acute in remote communities, due to high transportation costs, limited economic opportunities, and lack of road access among other factors;

- There are a number of promising developments and practices, including a growing demand for private home ownership in many First Nations communities, and an increasing number of First Nations who are putting in place the necessary staff, practices and policies to manage and maintain their existing housing stock.

This report builds on the interim report on housing by discussing the second phase of the study, which focussed on community infrastructure including roads, bridges, water and sewer systems, schools and community buildings. Since November 2014, the committee has heard from witnesses about community infrastructure and innovative financing approaches. In this second phase of the study, which included over 12 meetings in Ottawa, the committee heard from over 40 witnesses including First Nations communities, financial institutions, regional and national Aboriginal organizations, and private sector companies.

As the committee’s study on community infrastructure was still ongoing, the interim report did not contain recommendations. The current report summarizes the committee’s hearings concerning infrastructure on reserve and includes recommendations from both the housing and infrastructure phases of the study. This report will discuss the major themes heard in the second phase of the study, and will refer back to the interim report for context and clarification where required. In writing this report, we share the hope expressed by Harold Calla during our final meeting of the study: “it has taken generations to get to where we are today. Hopefully, it will take us fewer generations to get out of where we are today.”¹

A. Infrastructure on reserve

Throughout the study, the magnitude of the infrastructure challenge on reserves across the country has been impressed upon the committee. The committee heard from and visited communities with boil-water advisories that had been in place for more than a decade³, over-flowing sewage lagoons, roofs covered by tarps because there is no money to repair them, and small overcrowded bungalows where between 16 and 18 people sleep at one time. As documented in the committee’s interim report, poor infrastructure on reserve contributes to a variety of health and social problems. Poor housing construction, combined with poorly resourced fire departments, can result in too many deaths from fires. However, the committee has seen First Nations who are thriving and using innovative approaches to address their housing and infrastructure needs. This dramatic contrast highlights the diversity among First Nations communities and the need for a new, multi-faceted approach to address First Nations on-reserve infrastructure needs.

“Government policy and decision makers should be looking for solutions outside the status quo. A two hundred year procurement strategy isn’t the answer.”²

1. Harold Calla, Executive Chair, First Nations Financial Management Board, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 13, 2nd Session, 41st Parliament, May 5, 2015.
2. Harold Calla, *Speaking notes: Presentation to the Senate committee on Aboriginal Peoples Study into on-reserve housing and infrastructure*, December 2, 2014.
3. Testimony of Charmaine McCraw, Economic and Resource Development Unit Manager, Nishnawbe Aski Nation, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 9, 2nd Session, 41st Parliament, November 19, 2014, referring to the Neskantaga First Nation.

There is widespread agreement among witnesses who appeared before the committee that the way on-reserve infrastructure is funded does not work, and is not likely to work in the future without dramatic action. Aboriginal Affairs and Northern Development Canada (hereinafter, “AANDC” or “the department”) calculated that the cost of meeting the immediate infrastructure needs on reserve in 2013 was \$8.2 billion, and is expected to increase to \$9.7 billion over five years.⁴ The department concluded that, “if new Capital Funding is not an option, fundamental decisions will need to be made,”⁵ concerning the amount of funding for on-reserve infrastructure and the role of the department in this area. Several witnesses explained the challenges of building and maintaining infrastructure on reserve with federal government funding alone. These witnesses urged the committee to explore new and innovative ways of meeting the infrastructure needs on reserves.

“...let’s stop tinkering around the edges in small increments and money and small changes. We need some fairly dramatic action that changes the game.”

— Ken Coates, Macdonald-Laurier Institute, April 21, 2015

Creating economic development opportunities is a key component of new and innovative solutions. While the committee agrees that economic development will be instrumental in helping First Nations meet their housing and infrastructure needs, it also recognizes that not all First Nations are able to take advantage of economic development opportunities. For these communities, the federal government will likely continue to play a key role to ensure that they are able to build and maintain on-reserve infrastructure that meets minimum standards of health and safety.

Aboriginal Affairs and Northern Development Canada, *Cost Drivers and Pressures – The Case for New Escalators*, June 2013. 4.

Aboriginal Affairs and Northern Development Canada, *Cost Drivers and Pressures – The Case for New Escalators*, June 2013. 5.

Setting the context



New housing developments need basic infrastructure such as streets, water, sewers and electricity (Eskasoni First Nation, Nova Scotia)

A. Defining infrastructure for the purpose of this report

Throughout this report, infrastructure will be defined as the fundamental components and structures needed to meet the basic needs of residents living on reserve. These include roads, water systems, schools, bridges, housing and community facilities among other structures. Under the Capital Facilities and Maintenance Program (CFMP), AANDC funds community infrastructure based on four broad categories: housing, education, water and wastewater systems, and other infrastructure. The category of ‘other infrastructure’ includes roads, bridges, fire protection, community facilities, and electrification.⁶ These funding categories are consistent with the understanding of community infrastructure on reserve presented throughout this report.

“Whether in the form of schools to educate our children, water treatment plants to provide clean potable water, or roads to deliver goods, infrastructure is the backbone of development.”

— David Crate, Member and Chief of the Fisher River Cree Nation, Manitoba, National Aboriginal Economic Development Board, December 2, 2014.

6. Aboriginal Affairs and Northern Development Canada, **Community Infrastructure**, last modified April 2015.

B. Infrastructure deficit in First Nations communities

The infrastructure deficit in Canada is not limited to First Nations communities. Quantifying the deficit for both on and off reserve communities is very challenging. Addressing this large infrastructure deficit will require innovative approaches. Focussing solely on housing and infrastructure on reserve, the First Nations Financial Management Board estimates that the current deficit is between \$3 and \$5 billion.⁷ AANDC's figures are higher; the department estimates the current infrastructure gap on reserve at approximately \$8.2 billion.⁸

Some provincial and regional First Nations organizations have evaluated the housing and community infrastructure needs within their respective jurisdictions. In Saskatchewan, for example, the Federation of Saskatchewan Indian Nations remarked that \$200 million in infrastructure projects had been approved by AANDC, but did not go forward due to a lack of federal funding.⁹ Similarly, the committee heard that the cost of bringing infrastructure up to a standard that "is acceptable in Canadian society"¹⁰ among the 49 First Nations who are members of the Nishnawbe Aski Nation, would be \$1.1 billion.

For water and wastewater systems alone, the needs of First Nations communities exceed available funding dollars. According to the *National Assessment of First Nations Water and Wastewater Systems – National Roll-Up Report*, the total estimated investment required for the construction of water and wastewater systems to meet AANDC standards is in excess of \$1 billion. Non-construction costs associated with water and wastewater systems including capacity development, maintenance of existing systems and the creation of emergency response plans requires an investment of \$79.8 million.¹¹ The *2015–16 Main Estimates* allocate \$1.2 billion for infrastructure and capacity, of which \$329.7 million is allocated to the construction, maintenance, planning, and operation of water and wastewater systems. These investments, while substantial, do not keep pace with the growing infrastructure deficit on reserve.

7. Harold Calla, Executive Chair, First Nations Financial Management Board, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 10, 2nd Session, 41st Parliament, December 2, 2014.

8. Aboriginal Affairs and Northern Development Canada, *Cost Drivers and Pressures – The Case for New Escalators*, June 2013.

9. Kevin McLeod, Director of Housing, Economic and Community Development Secretariat, Federation of Saskatchewan Indian Nations, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 10, 2nd Session, 41st Parliament, December 9, 2014.

10. Charmaine McCraw, Economic and Resource Development Unit Manager, Nishnawbe Aski First Nation, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 9, 2nd Session, 41st Parliament, November 19, 2014.

11. Aboriginal Affairs and Northern Development Canada, *National Assessment of First Nations Water and Wastewater Systems – National Roll-Up Report*, April 2011.

C. Important link between infrastructure and housing

Without investments in infrastructure, construction of much needed housing may be delayed or may not be possible. Housing-related infrastructure typically includes water infrastructure, sanitary and storm sewers, roads and street lighting, and individual installations when new homes are constructed. As some witnesses suggested, the inability to fund housing-related infrastructure can be a barrier to building new housing on reserve. As Tayven Roberts, Director of Public Works and Housing for the Lac La Ronge Indian Band in Saskatchewan stated, “There are over 200 applications on the waiting list for people wanting to get a house on reserve. We average about 11 new housing units per year, and right now we have no available serviced lots for next year’s construction.”¹² These challenges affect the number and quality of houses constructed each year, because First Nations require critical water hook-ups, roads, and sewage systems for their housing systems to be considered ‘adequate’ under AANDC and Statistic Canada’s ranking systems.

12. Tayven Roberts, Director, Public Works and Housing, Lac La Ronge Indian Band, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 11, 2nd Session, 41st Parliament, February 18, 2015.

The role of the federal government in housing and infrastructure

Similar to housing, the federal government maintains that it “provides funding for community infrastructure on reserve to First Nations as a matter of social policy.”¹³ Investment in infrastructure on reserves is fundamental to the functioning of First Nations communities because it provides the basic necessities of health and safety for First Nations and supports them when they undertake economic development activities.

Federal support, through AANDC, for infrastructure is provided primarily in three ways:

- The Capital Facilities and Maintenance Program (CFMP)
- The First Nations Infrastructure Fund (FNIF)
- The Gas Tax Fund

AANDC’s CFMP provides funding for Operations and Maintenance, Major Capital Projects (valued over \$1.5 million), and Minor Capital Projects (valued under \$1.5 million). First Nations receive an annual payment for minor capital repairs operations and maintenance calculated using a formula that takes into account the number of residents who live on reserve and the geographical remoteness of the community. Funding for Major Capital Projects is determined on the basis of project proposals and the departments’ ranking system which prioritizes health and safety.

Between 2007 and 2013, the FNIF provided \$234 million in funding for on-reserve infrastructure in First Nations communities. In 2014-2015, the FNIF was renewed to allocate a total of \$155 million over 10 years from the New Building Canada Fund to First Nations on-reserve infrastructure. To receive funding under the FNIF, First Nations communities

13. Daniel Leclair, Director General, Community Infrastructure Branch, Aboriginal Affairs and Northern Development Canada, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 9, 2nd Session, 41st Parliament, November 5, 2014.

must submit project proposals for funding for roads and bridges, community energy systems, planning and skills development, or solid waste management.

Budget 2013 announced a New Building Canada Plan, which provides infrastructure funding over the next 10 years. This plan included a Gas Tax Fund to provide infrastructure funding to municipalities and First Nations communities. This fund, which is managed by the FNIF, has allocated \$138.9 million in funding for on-reserve infrastructure development in First Nations communities between 2014 and 2019.¹⁴

As the committee noted in the interim report on housing, funding for the construction and maintenance of existing housing on reserve is provided by AANDC and the Canada Mortgage and Housing Corporation (CMHC). Through these entities, the federal government provides an annual investment of \$298 million in funding per year for housing on reserve. The committee heard that CMHC provides funding for the construction of approximately 400 new homes and the renovation of 1,000 homes per year.¹⁵

The majority of witnesses that appeared before the committee stated that it will be almost impossible to address the housing and infrastructure deficit with federal funding alone. However, the federal government will likely continue to play a significant role in the funding and financing of infrastructure on reserve.

14. Infrastructure Canada, ***The Federal Gas Tax Fund: Permanent and Predictable Funding For Municipalities***, 2014.
15. Canada Mortgage and Housing Corporation, ***Federal Government Spending on Housing***, 2015.

What the committee heard about federal government funding for infrastructure



First Nations communities, such as Tsartlip First Nation in British Columbia, have to defer necessary renovations because of funding shortages.

A. Federal government funding insufficient to meet housing and infrastructure needs

ANDC's estimate of the projected increase of the infrastructure deficit on reserve from \$8.2 billion to \$9.7 billion over 5 years suggests that the department recognizes that current funding is insufficient to meet on-reserve infrastructure needs. There was a general consensus among witnesses that appeared before the committee that federal funding allocations are inadequate to properly manage and maintain housing and infrastructure on reserve. Specifically, the current levels of federal funding make it difficult for First Nations to construct, operate, and properly maintain housing and community infrastructure. This problem is particularly acute for those communities who do not have access to other sources of revenue to supplement federal government funding.

Witnesses have identified three main reasons why departmental budgets are not keeping up with infrastructure needs:

1. AANDC pays in full for infrastructure during the construction period, rather than over time;
2. Funding at AANDC has been capped and has not kept up with inflation and population growth; and,
3. Funding which is budgeted for infrastructure has been reallocated to other programs within AANDC.

Due to insufficient funding, First Nations communities are often faced with difficult choices between essential infrastructure needs. For example, Jonathon Sylvestre, Chief of the Birch Narrows First Nation, spoke to the committee about on-reserve housing, remarking that: “as a result of low funding, we are unable to insure any of our band-owned homes. Therefore, if we lose a house to a fire or other event, we cannot replace it. This is a problem that many First Nations have faced for over the past 20 years.”¹⁶

First Nations communities need to be able to maintain existing infrastructure while also acquiring new infrastructure to replace the buildings and structures at the end of their useful life and to meet the needs of rapidly growing populations on reserve. Departmental funding decisions on major capital projects are based on its National Priorities Ranking Framework, which prioritizes capital projects with immediate health and safety impacts.¹⁷ In a written response to the committee, AANDC advised that decisions concerning funding for capital projects are assessed against the following departmental priorities, listed in order of importance:

1. Protecting and maintaining the life cycle of existing assets, with an emphasis on health and safety;
2. Mitigating health and safety risks through existing and new assets;
3. Addressing the backlog regarding water and sewage systems under Capital and Facilities Maintenance activities; and,
4. Investing in other priorities, including investments in sustainable communities (e.g. housing, electrification, roads, educational facilities and community buildings) and investments in community assets to resolve claims or self-government agreements.¹⁸

Several witnesses have suggested that the prioritization of projects using this grid means that certain infrastructure projects which are not directly related to health and safety, such as constructing housing-related infrastructure for the development of new housing projects, is difficult to fund through AANDC.

16. Jonathon Sylvestre, Chief, Birch Narrows First Nation, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 11, 2nd Session, 41st Parliament, February 18, 2015.

17. Aboriginal Affairs and Northern Development Canada, ***Fact Sheet: Capital Facilities and Maintenance Program***.

18. Aboriginal Affairs and Northern Development Canada, *Brief to the Senate Standing Committee on Aboriginal Peoples*, March 20, 2015.

1. AANDC pays in full for infrastructure during the construction period

Through the Capital Facilities and Maintenance Program, funding for major capital projects and repairs is proposal driven and provided on a per-project basis. Financing for community infrastructure projects is funded up to 100 per cent over the construction period rather than the life cycle of the project. By allocating funding for construction only, future operation and maintenance costs are not included in the costs of the project. This pay-as-you-go construction approach quickly depletes available funding, making it difficult to stretch funding over a number of projects when needed.

2. Funding at AANDC has been capped and has not kept up with inflation and population growth

Since 1997-1998, the annual rate of growth in overall funding for core on-reserve programs and services provided by AANDC has been capped at 2%.¹⁹ A document prepared by AANDC titled *Cost Drivers and Pressures: The Case for New Escalators*, suggests that this 2% cap on annual increases has created a significant funding gap in programs and services on-reserve, including in areas such as education, social development and infrastructure funding. According to witnesses, the 2% cap does not take into consideration population growth, or inflation, including the increasing costs of construction materials, transportation and skilled workers.²⁰ The Auditor General of Canada compared the level of funding to population growth and inflation, noting that “Indian and Northern Affairs Canada’s funding increased by only 1.6 percent, excluding inflation in the five years from 1999 to 2006, while Canada’s Status Indian population, according to the Department, increased by 11.2 percent.”²¹

3. Reallocation of funding

Due to a number of factors, including the 2% cap on annual increases in funding for on-reserve programs and services, the department has reallocated funding from infrastructure to other core needs in order to compensate for funding shortfalls. Departmental documents indicate that, from 2006 to 2012, approximately \$505 million was reallocated from infrastructure to address needs in others program areas, such as education and child welfare services.²² The 2013 Fall Report of the Auditor General of Canada reported that from 2004-05 to 2012-13, approximately \$64 million was reallocated from the CFMP to emergency management on reserves.²³

19. This 2% cap on annual increases for on-reserve programs and services was discussed by several witnesses, including Robert Scott Serson, former Deputy Minister, Aboriginal Affairs and Northern Development Canada and Karl Carisse Senior Director, Strategic Policy, Planning, and Innovation, Aboriginal Affairs and Northern Development Canada. Commonly referred to by witnesses as a “2% annual escalator”, the cap placed on the annual growth rate of core program funding is regularly supplemented by proposal-based funding targeted to specific program areas, such as education and drinking water systems, in an effort to address specific needs.

20. Aboriginal Affairs and Northern Development Canada, *Cost Drivers and Pressures: The Case for New Escalators*, June 2013.

21. Auditor General of Canada, *2006 May Status Report of the Auditor General of Canada*, 2006.

22. Aboriginal Affairs and Northern Development Canada, *Cost Drivers and New Pressures: The Case for New Escalators*, June 2013. This report was also cited in the testimony of Robert Scott Serson, Former Deputy Minister, Aboriginal Affairs and Northern Development Canada, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 11, 2nd Session, 41st Parliament, February 17, 2015; Peter Dinsdale, Chief Executive Officer, Assembly of First Nations, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 9, 2nd Session, 41st Parliament, November 18, 2014.

23. Auditor General of Canada, *2013 Fall Report of the Auditor General of Canada*, 2013.

Decisions to reallocate funding away from infrastructure budgets are also made at the regional and band levels. Due to limited funding, First Nations communities are required to prioritize needs and allocate funding accordingly. Depending on the needs of a community, infrastructure funding may be used to address significant shortfalls in other areas.²⁴

B. Moving forward

The committee has heard that “federal funding alone is likely not enough to address issues of this magnitude in a timely and effective fashion”²⁵ and recognizes that, “without the needed investments, the current crisis in housing and infrastructure faced by First Nations communities, cannot adequately be addressed.”²⁶

Several witnesses recommended that the 2% cap on departmental funding for basic programs be removed. In his testimony to the committee, former Deputy Minister of Aboriginal Affairs and Northern Development Canada, Robert Scott Serson, recommended that removing the cap should be followed by a discussion about “how to fill the service gaps that have been created over the last 18 years, and necessary structural reforms.”²⁷

The committee is of the view that removal of the 2% cap on annual increases on funding for AANDC is overdue, and that funding must consider cost drivers such as population growth and inflation.

The committee consequently recommends:

RECOMMENDATION 1

That Aboriginal Affairs and Northern Development Canada remove the 2% cap on annual increases on funding, effective Budget 2016-2017.

24. Aboriginal Affairs and Northern Development Canada, *Cost Drivers and New Pressures: The Case for New Escalators*, June 2013.
25. The Hon. Gerry St. Germain, P.C., Advisor, First Nations Financial Management Board, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 10, 2nd Session, 41st Parliament, December 2, 2014.
26. Peter Dinsdale, Chief Executive Officer, Assembly of First Nations, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 9, 2nd Session, 41st Parliament, November 18, 2014.
27. Robert Scott Serson, Former Deputy Minister, Aboriginal Affairs and Northern Development Canada, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 11, 2nd Session, 41st Parliament, February 17, 2015.

Federal government support for housing on reserves



Housing construction in We Wai Kai First Nation in British Columbia is inspected by city inspectors.

The key themes related to this committee's study of housing on reserve were set out in the committee's interim report, ***Housing on First Nation Reserves: Challenges and Successes***. Since the tabling of the report in February 2015, the committee has continued to receive testimony related to housing. This has allowed the committee to further refine its analysis of housing on reserve and to propose recommendations for change.

Among the recurring themes is the significant link between housing and infrastructure. Housing is one of the components of community infrastructure funded under AANDC's Capital Facilities and Maintenance Program (CFMP). Under this program, First Nations can use their operations and maintenance budgets and minor capital allowances to maintain their housing stock and to build new housing. The CFMP also provides funding for First Nations to put in place the housing-related infrastructure, such as roads and access to water and wastewater services, which is necessary to build new housing.

In addition to the funding provided under the CFMP, the federal government also provides funding for housing on reserve through the Canada Mortgage and Housing Corporation (CMHC). As the committee outlined in its interim report on housing, there is widespread agreement that the funding amounts provided by both AANDC and CMHC are insufficient to properly maintain, operate, and build housing on reserve.

The interim report also identifies growing trends among First Nations toward private home ownership on reserve and toward implementing rental regimes on reserve to help contribute to the costs of providing the necessary maintenance of existing housing. Both these trends demonstrate that First Nations people and communities across the country are finding creative ways to address the housing challenges in their communities. The committee commends First Nations leaders who have taken the lead in these areas. The committee also recognizes that the federal government has a role to play in facilitating these initiatives, by providing needed support for the administration of housing stocks, by addressing the regional disparities in the Shelter Allowance portion of the Income Assistance Program so that First Nations across the country have the means to introduce a rental regime; and by providing the necessary supports to ensure that homes on reserve are built to standards which meet the fire and building codes which protect all other Canadians. The committee also identified the particular role of the federal government in meeting the housing needs in remote and isolated communities.

Witnesses emphasized the importance of listening to what communities want and need. Yet First Nations leaders in communities across the country expressed concern that departmental officials from AANDC rarely visit their communities to see first-hand the particular challenges they face in housing and infrastructure. This view was particularly prominent in remote and northern communities – which are also the communities where the needs are generally the most acute.

Well-known architect, Douglas Cardinal emphasized the importance of culturally-appropriate planning of housing and infrastructure, and suggested that this was not how things were being done at this time. He was critical of the type of housing which is commonly seen on reserve:

Does the housing work? No. Do these modular houses work [...]?
I don't think they even work for the people here.²⁸

Connie Gray-McKay, Chief, Mishkeegogamang First Nation, also spoke about the need to ensure that houses reflect the needs of the people living in them:

28. Douglas Cardinal, Architect, as an individual, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 6, 2nd Session, 41st Parliament, May 14, 2014.

The importance of culturally-appropriate design

Architect Douglas Cardinal spoke to the committee about his work with the community of Oujé-Bougoumou, a Cree community of 696 people, which belongs to the James Bay Cree in northern Quebec.

He explained that the community was designed – through a process of extensive consultation with community members – to incorporate cultural values with the current and future needs of the community. He explained that “none of these innovations could happen through the structure of Indian Affairs. We were able to develop the community of Oujé-Bougoumou outside the framework of the department.”³⁰

29. Connie Gray-McKay, Chief, Mishkeegogamang First Nation, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 8, 2nd Session, 41st Parliament, September 15, 2014.

30. Douglas Cardinal, Architect, as an individual, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 6, 2nd Session, 41st Parliament, May 14, 2014.

31. See, for example, the testimony of Madeleine Paul, Chief, Eagle Village First Nation, Quebec, Assembly of First Nations, February 11, 2014; Bob Howsam, Executive Director of the Ontario First Nations Technical Services Corporation, March 5, 2014; Chris Maracle, April 2, 2014 and John G. Paul, Executive Director, Atlantic Policy Congress of First Nations Chiefs Secretariat, November 25, 2014.

I live in a log house and I have to live in a log house. I think one of the things we need to understand is our houses have to be culturally appropriate. When I walk into some of the newer houses, I'm in the living room right away, instantly. Where is the transition? Where am I going to put my rubber boots after walking around in the mud?²⁹

The committee has been impressed by the initiative taken by First Nations communities as well as housing manufacturers who want to be part of the solution. The committee urges all those involved in meeting the housing needs on reserve – federal government funders, First Nations, and the private sector – to think outside the box of conventional housing approaches in order to design homes and communities which are more durable, culturally appropriate, and designed to meet the needs of the people living in them. The committee also encourages efforts to explore the application of new technologies such as those related to sustainable energy.

1. Funding through the Canada Mortgage and Housing Corporation

There was unanimous agreement among witnesses, including departmental officials, that there is a significant housing shortage in First Nations communities. The On-Reserve Non-Profit Housing Program, also known as the Section 95 program, assists First Nations in the construction, purchase, rehabilitation and administration of suitable, adequate and affordable rental housing in First Nations communities. Through this program, CMHC provides a subsidy to assist First Nations with the financing and operation of rental housing projects over a period of 15 to 25 years.

The committee heard that the way that funding is announced and disbursed in the On-Reserve Non-Profit Housing Program created significant hardships for communities. The need to apply annually for funding made it very difficult to undertake proper community planning. Also, federal government funding support for new construction and ongoing maintenance of housing was too low.³¹

First Nations communities across the country told the committee that the process of applying for funding from the On-Reserve Non-Profit Housing Program was challenging. Witnesses complained that there are often long delays between the submission of an application for housing, and the announcement of funding. Delays in funding approvals can place enormous pressure on communities, since the allocated funds need to be spent within the fiscal year. The committee has heard that this process makes it difficult to organize construction – particularly where the weather conditions make it almost impossible to start construction in the winter.

The committee heard considerable evidence that funding for on-reserve housing is insufficient to address the magnitude of existing housing shortfalls. Accordingly, the committee recommends:

RECOMMENDATION 2

That the Canada Mortgage and Housing Corporation allocate sufficient funds to the *On-Reserve Non-Profit Housing Program*, also known as the Section 95 program, in order to address the growing shortage of housing on reserve; and

That the CMHC explore options to ensure greater flexibility in the way that funding is allocated for the *On-Reserve Non-Profit Housing Program*, in particular, to allow for multi-year commitments which would give communities adequate time to organize construction.

2. Building First Nation capacity to manage housing stocks and infrastructure

As discussed in the interim report on housing, the committee heard that managing and maintaining housing and infrastructure is complex and many First Nations do not have dedicated staff available to fulfil this role. The committee has heard that it is important to ensure that First Nations have the capacity to manage their housing and infrastructure stock.³² The committee has heard that building this human resource capacity is an important part of addressing the housing and infrastructure needs on reserve.

Similarly, First Nations require human resource and management capacity to explore alternative financing mechanisms for on-reserve infrastructure.³³ As John Kiedrowski, President, Compliance Strategy Group stated, capacity helps First Nations people, organizations and communities manage their own affairs. He emphasized the importance of ensuring that capacity development strategies focus on maintaining capacity over an extended period of time.³⁴

The committee has heard that housing managers could help set up housing authorities, or, where these already exist, could work with the housing authority to manage and maintain housing on reserve including the creation of housing policies; the development and enforcement of building codes; the development of rental regimes; and the capacity to evaluate and address maintenance needs.

32. See for example, the testimony of Charmaine McCraw, Economic and Resource Development Unit Manager, Nishnawbe Aski First Nation, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 9, 2nd Session, 41st Parliament, November 19, 2014.

33. Arnold Gardner, Chief, Eagle Lake First Nation, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 8, 2nd Session, 41st Parliament, September 15, 2014.

34. John Kiedrowski, President, Compliance Strategy Group, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 13, 2nd Session, 41st Parliament, May 5, 2015.

The committee's interim report on housing observed that several witnesses called for the federal government to provide dedicated funding for housing management and maintenance positions in First Nations communities as part of their core funding. The committee agrees that moving forward in addressing the housing and infrastructure needs on reserve requires trained staff who are dedicated to that purpose. The committee recommends:

RECOMMENDATION 3

That the Annual Band Support Program at Aboriginal Affairs and Northern Development Canada provide funding for the hiring of a qualified housing manager on reserve, if necessary.

3. Building codes

While building codes are in place and systematically enforced throughout Canada, the committee has heard that this is not the case in many First Nation communities. The absence of enforceable building codes on reserve has resulted in housing that deteriorates rapidly as well as unsafe living conditions for some people who live in First Nations communities. Building codes were not applied when much of the existing housing stock on reserve was built, which has contributed to the low quality of housing on reserve – this problem persists today. As First Nations try to stretch limited budgets to meet the housing needs in their communities, the committee was told that, “Far too often we see First Nations that barely get enough to build a home and they build whatever they can, and it just doesn't last and you have the same problem over and over again.”³⁵ There are also examples where housing is over-built, which incurs unnecessary expenses to cash-strapped housing budgets.³⁶

Witnesses have suggested that the lack of building and fire codes both contribute to unsafe conditions, which can leave residents more vulnerable to fire deaths. Vincent Genereaux of the Prince Albert Grand Council described this issue:

35. Keith Martell, Chairman and Chief Executive Officer, First Nations Bank of Canada, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 11, 2nd Session, 41st Parliament, February 4, 2015.

36. John Kiedrowski, President, Compliance Strategy Group, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 13, 2nd Session, 41st Parliament, May 5, 2015.

37. Vincent Genereaux, Housing Advisor, Technical Services, Housing Department, Prince Albert Grand Council, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 6, 2nd Session, 41st Parliament, May 27, 2014.

Probably fifty per cent of our fire deaths can be attributed to wood burning systems. It's not that we inspected them wrong. It's because they don't tell us they're putting them in. They purchase equipment themselves, and there's something missing usually. We find that out in the investigation part.³⁷

The federal government maintains that First Nations are the authority having jurisdiction for housing, meaning that they are the level of government with the authority to enact bylaws in relation to building codes on reserves. This understanding is not widely shared among First Nations,

however. Appearing on behalf of the First Nations National Building Officers Association, John Kiedrowski told the committee:

it has never been clear through policy or legislation how First Nations became the authority having jurisdiction [for housing]. Throughout a series of presentations with chiefs and councils, we found that they strongly believe that homes being built on First Nations are the responsibility of the federal government; but with the comprehensive agreements, the onus is back on the chiefs and councils.³⁸

The lack of clarity about jurisdictional responsibility was also flagged in the testimony of Jerome Berthelette, Assistant Auditor General from the Office of the Auditor General of Canada. He pointed out that at the provincial level, services such as education, housing, and child welfare are well defined, have clear service levels and established legislative and regulatory frameworks: “Anybody who wants to know what is required of them can go to the legislation, to the regulation and to the officials who support the implementation of the regulations and the legislation and get answers. What is required of people is fairly clear.”³⁹ In many cases, as in the case of building codes, this clarity is lacking on reserve. The 2011 report of the Auditor General of Canada made the point that “the federal government has often developed programs to support First Nations communities without establishing a legislative or regulatory framework for them.”⁴⁰

Clarifying the role of First Nations in adopting and enforcing building codes would be a significant step toward ensuring that housing on reserve meets basic health and safety requirements; it would also ensure that homes are built to last. This was the view of several witnesses who appeared before the committee, though there were differences among witnesses regarding the best way to move forward on this.

Witnesses such as John Kiedrowski of the First Nations National Building Officers Association recommended the introduction of national legislation similar to *Safe Drinking Water for First Nations Act*. This Act provides for the development of federal regulations governing the provision of drinking water, water quality standards and the disposal of waste water in First Nations communities. While emphasizing the importance of building safe housing, other witnesses such as (then) National Chief of the Assembly of First Nations, Shawn (A-in-chut) Atleo argued that “imposing standards through legislation is not the answer.”⁴¹

Several witnesses highlighted the importance of consultation with First Nations communities when it comes to finding a solution to the regulatory gap relating to building codes. For example, Chief of the Federation of Saskatchewan Indian Nations, Perry Bellegarde, urged the government to “carefully adopt a coordinated approach with First Nations.”⁴² In his

38. John Kiedrowski, Project Manager, First Nations National Building Officers Association, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 2, 2nd Session, 41st Parliament, December 3, 2013.

39. Jerome Berthelette, Assistant Auditor General, Office of the Auditor General of Canada, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 3, 2nd Session, 41st Parliament, February 5, 2014.

40. Office of the Auditor General of Canada. *2011 June Status Report*.

41. Shawn (A-in-chut) Atleo, National Chief, Assembly of First Nations, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 3, 2nd Session, 41st Parliament, February 11, 2014.

42. Perry Bellegarde, Chief, Federation of Saskatchewan Indian Nations, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 5, 2nd Session, 41st Parliament, April 9, 2014.

testimony before the committee, John G. Paul, Executive Director of the Atlantic Policy Congress, emphasized the importance of talking “to the people at the receiving end of this in the communities to understand it from their view of the world.”⁴³ They pointed out that First Nations currently do not have the necessary capacity for enforcing building codes, even if building codes were adopted. Other witnesses pointed to increased costs associated with enforcing building codes. For example, there is a cost associated with ensuring that inspectors have the necessary errors and omissions insurance to conduct these inspections on reserve. Witnesses suggested that issues like this need to be identified and resolved before building codes are implemented and enforced.

John G. Paul of the Atlantic Policy Congress of First Nations Chiefs Secretariat illustrated why it is important for the federal government to consult with affected organizations before implementing new programs or policies. Speaking about new code compliance requirements under CMHC’s section 95 housing program, he told the committee:

In February 2014 our communities received a letter stating that at the onset of the new fiscal year, First Nations would be required to submit certificates of code compliance at a minimum of three stages of construction, which is basically a new cost. During the first year of enforcement, communities in the Atlantic have had trouble finding qualified inspectors to perform these inspections. CMHC has recently informed our housing working group that they plan on subsidizing training for 12 professionals to become code compliance inspectors. However, this perfectly illustrates the difficulties, at times, of working with the federal government. The response more often than not is reactionary. A new initiative is rolled out without consultation and when problems arise the government has to scramble to correct a problem they created. Time must be taken to consult and plan to mitigate potential risks and challenges that could arise when doing something different.⁴⁴

The committee understands consultation to mean “working in close collaboration with First Nations.” Recognizing that the ambiguity relating to building codes on reserve needs to be resolved, the committee recommends:

John G. Paul, Executive Director, Atlantic Policy Congress of First Nations Chiefs Secretariat, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 6, 2nd Session, 41st Parliament, May 13, 2014. 43.

John G. Paul, Executive Director, Atlantic Policy Congress of First Nations Chiefs Secretariat, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 10, 2nd Session, 41st Parliament, November 25, 2014. 44.

RECOMMENDATION 4

That Aboriginal Affairs and Northern Development Canada

- Consult with First Nations organizations to identify concerns related to the jurisdictional authority for implementing and enforcing building codes and to assess the capacity issues which would be required to adopt and then enforce building codes;
- Put in place the necessary measures to address the capacity of First Nations (and organizations which provide support to First Nations) to comply with legislated standards as a precondition of a new legislative framework for the application of building codes on reserve; and,
- Develop such legislation, in consultation with affected First Nations.

4. Regional disparities in shelter allowance portion of the Income Assistance Program

Many First Nations have begun to collect rent on band-owned housing to help defray the costs associated with managing and maintaining the community's housing stock. People on Income Assistance in these communities use the Shelter Allowance portion of their monthly allocation to pay the rent. This provides First Nations with a revenue stream to pay for maintenance, utilities, and other housing-related services. The committee has heard, however, that the shelter allowance is inadequate to meet the shelter-related costs of First Nations people (including heating and insurance)⁴⁵ and that there are significant regional discrepancies in the way that the shelter allowance is allocated.⁴⁶

As identified in the committee's interim report on housing, the committee heard that in some regions, First Nations communities are not able to collect revenue from shelter allowances for band-owned housing. In these regions, shelter allowance is only provided to income assistance recipients living in housing which still have outstanding mortgages under CMHC's Section 95 Program. When the mortgages on these homes are paid off, the First Nation can no longer collect a shelter allowance for these homes. At that point, they become a liability for the First Nation, which is charged with maintaining the housing without the benefit of rental revenue. In his testimony to the committee, Kevin McLeod, Director of Housing, Economic and Community Development Secretariat, Federation of Saskatchewan Indian Nations identified the need to fund shelter allowances so First Nations can collect revenue from social assistance clients residing in band-owned homes. He noted that such a measure would be

45. Aboriginal Affairs and Northern Development Canada, Evaluation, Performance Measurement and Review Branch, Audit and Evaluation Sector, *Evaluation of Shelter Allowance as it Relates to On-Reserve Housing*, 2010, revised 2011.

46. Vincent Genereaux, Housing Advisor, Technical Services, Prince Albert Grand Council, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 6, 2nd Session, 41st Parliament, May 27, 2014.

“the one thing that would make the biggest difference on the ground for First Nations in Saskatchewan.”⁴⁷

“Due to the northern location we also have higher economic costs to repair, maintain and run these homes. As the Chief of Birch Narrows, I receive dozens of calls every week from the people in the community, needing things repaired in their houses, and I can only help the ones whose situation is most dire.”

— Jonathon Sylvestre, Chief,
Birch Narrows First Nation,
February 18, 2015

The question of regional inconsistency in applying the shelter allowance policy was highlighted in a 2003 audit of the Auditor General of Canada. At that time, it was estimated that the additional cost of fully applying the policy nationally would be between \$40 million to \$65 million a year.⁴⁸ Several witnesses have urged the committee to recommend that the shelter allowance policy be applied nationally to eliminate regional disparities in the way the program is currently being delivered.⁴⁹

Recognizing the important role that the shelter allowance component of the Income Assistance Program plays in developing rental regimes in First Nations across the country, and highlighting the need to address the regional discrepancies in the way the shelter allowance is allocated, the committee recommends:

RECOMMENDATION 5

That Aboriginal Affairs and Northern Development Canada review the shelter allowance component of the Income Assistance Program to: Assess whether the level of shelter allowance is adequate to cover the housing costs of recipients, including rent and heating, and to ensure that it is applied in a consistent manner across regions and reflects the provincial comparability principle; and

That the results of this review be tabled in Parliament no later than June 30, 2016.

Kevin McLeod, Director of Housing, Economic and Community Development Secretariat, Federation of Saskatchewan Indian Nations, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 10, 2nd Session, 41st Parliament, November 25, 2014. 47.

Office of the Auditor General of Canada, *2003 April Report of the Auditor General of Canada*, “Chapter 6: Federal Government Support to First Nations – Housing on Reserves,” p. 20. 48.

See for example the testimony of Glenn Hudson, Chief, Peguis First Nation, Manitoba, Assembly of First Nations, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 3, 2nd Session, 41st Parliament, February 11, 2014; Aaron Ledoux, Director of Housing, Muskeg Lake Cree Nation, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 12, 2nd Session, 41st Parliament, March 31, 2015. 49.

5. Housing in remote and isolated communities

The cost of construction in remote and isolated communities is compounded by the cost of transporting building supplies by barge or by winter road.

When the winters are not cold enough for the opening of the winter roads, the materials must be flown into the community. Witnesses suggested that the funding levels for housing in remote and isolated communities had not kept up with cost increases, making it even more difficult to build housing. These challenges are exacerbated by the fact that many of these communities have limited access to a local economy and face high unemployment levels, making it almost impossible for individuals to build their own homes.

Therefore, these communities are thus particularly reliant on the federal government to provide their housing. While AANDC takes into account the increased costs of northern and remote communities through a remote and isolation index in their funding formula, witnesses remarked that this index is not reflective of the needs of these communities,⁵⁰ and that the amount allocated for the remoteness factor “must be greatly increased.”⁵¹

The committee recommends:

RECOMMENDATION 6

That Aboriginal Affairs and Northern Development Canada and the Canada Mortgage and Housing Corporation collaborate in the development of a housing strategy for remote and isolated First Nations communities; that this strategy address the specific challenges and costs of building in remote communities; and that AANDC review the adequacy of the remote and isolation index to ensure that it reflects actual costs.

“[T]he ability for First Nations to access the money necessary to invest in infrastructure projects — remains the elephant in the room.”

— Harold Calla, Executive Chair,
First Nations Financial
Management Board

50. Alex McDougall, Chief, Wasagamack First Nation, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 8, 2nd Session, 41st Parliament, September 15, 2014.

51. Kasabonika Lake First Nation. *Submission to the Senate Committee on Aboriginal Peoples*, September 15, 2014, p. 4

Creating opportunities for First Nations to fund or finance infrastructure



Construction materials in remote communities, like Kitchenuhmaykoosib Inninuwug in northern Ontario, have to be flown in or brought in on winter roads.

Government policy and decision makers should be looking for solutions outside the status quo. A two hundred year procurement strategy isn't the answer.⁵²

Harold Calla, *Speaking notes: Presentation to the Senate Committee on Aboriginal Peoples Study into on-reserve housing and infrastructure*, December 2, 2014. 52.

David Crate, Member and Chief of the Fisher River Cree Nation, Manitoba, National Aboriginal Economic Development Board, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 10, 2nd Session, 41st Parliament, December 2, 2014. 53.

The committee heard that current levels of funding from AANDC are not adequate to meet existing infrastructure and housing needs. Many witnesses emphasized that, “relying on cash-based, current-year funding, as is currently practised by the federal government, is not an answer” and that innovation is required.⁵³

Off reserve, homes and infrastructure are typically financed over time, rather than paid for up front. Individuals generally finance their homes through 25-year mortgages, while governments finance infrastructure projects through tax revenues and the bond markets. In contrast, many First Nations on reserve do not have access to these financing sources to meet their infrastructure needs.

First Nations face several barriers which limit access to innovative financing opportunities for infrastructure development on reserve. The committee heard that the seizure restrictions flowing from section 89 of the *Indian Act*, a lack of own source revenue, and difficulty attracting private

sector investment, are some of the barriers affecting the ability of First Nations to take advantage of alternative sources of funding. While many communities have shown remarkable adaptability and creativity in addressing these barriers, the committee heard that more work needs to be done to eliminate these barriers.

Apart from federal contributions, economic development represents an important alternative source of funding that can potentially address a range of community needs. Economic development is closely linked to the ability of First Nations to access capital, and provides jobs which allow First Nations members to purchase their own homes on reserve. Economic development also provides the necessary revenue streams for First Nations to supplement current federal government funding for infrastructure development.⁵⁴

In the fall of 2012, the committee tabled a report on the federal Additions to Reserves (ATR) policy and process, including the recommendation that the AANDC-AFN Joint Working Group create and table a plan before March 31, 2013 that includes targets and timelines for the implementation of changes to improve the ATR process. Throughout the current study on infrastructure and housing, the committee heard that land obtained through the ATR process could be used for economic development opportunities or to construct additional homes.

Using the ATR process, the Muskeg Lake Cree Nation converted land within the city of Saskatoon into an urban reserve in 1988. When Aaron Ledoux, Director of Housing for the Muskeg Lake Cree Nation appeared before the committee, he explained that the community's urban reserve provided them with significant opportunities for economic development and generated revenues to supplement existing AANDC funding for infrastructure development on reserve.⁵⁵ Three years following the tabling of our report and recommendations, witnesses, including the Eskasoni First Nation, continue to express concerns with delays associated with the ATR process. The committee recognizes the important link between timely conversion of lands to reserve status under the ATR process and economic development. While the committee welcomes the proposed revisions to the Policy on Additions to Reserve and Reserve Creation, given the potential economic value of reserve lands, we urge the department to continue working to improve and streamline the ATR process.

Recognizing the link between economic development and infrastructure development on reserve, Ken Coates of the Macdonald-Laurier Institute told the committee, "you can't ask Aboriginal folks to pay for things if they don't have a safe source of revenue."⁵⁶ Witnesses have told the committee that a growing number of First Nations communities have own-source revenue which can be invested back into the community. Witnesses have pointed to the role that resource revenue-sharing and taxation⁵⁷ can play in

54. See the testimony of the Hon. Gerry St. Germain, P.C., Advisor, December 2, 2014; Harold Calla, Executive Chair, First Nations Financial Management Board, December 2, 2014; Desmond Gould, Director of Operations, Swan Lake First Nation, December 3, 2014; Keith Martell, Chairman and Chief Executive Officer, First Nations Bank of Canada, February 4, 2015; Tsawout First Nation, March 31, 2015.

55. Aaron Ledoux, Director of Housing, Muskeg Lake Cree Nation, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 13, 2nd Session, 41st Parliament, March 31, 2015.

56. Ken Coates, Senior Fellow in Aboriginal and Northern Canadian Issues, Macdonald-Laurier Institute, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 13, 2nd Session, 41st Parliament, April 21, 2015.

57. See, for example, the testimony of Julie Catley, Vice-President, Public Policy Forum, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 11, 2nd Session, 41st Parliament, February 17, 2015.

raising the revenue necessary to finance infrastructure. The committee recognizes, however, that not all First Nations have access to own source revenue and economic opportunities to finance their infrastructure. Some First Nations will continue to be dependent on annual transfers from the federal government.

Having heard consistently that a ‘one-size fits all solution’ will not work for First Nations as their situations are very diverse,⁵⁸ the committee agrees that a variety of alternative financing options will be necessary to provide all First Nations with the opportunity to meet the infrastructure needs of their communities. In order to better understand the testimony received on innovative financing approaches – such as leveraging own source revenue and property taxes through bonds, using AANDC funding streams to leverage financing, public-private partnerships and collaborating with neighbouring municipalities – the reasons why First Nations have difficulty accessing capital will first be discussed.

Andrew Beynon, Acting Assistant Deputy 58.
Minister, Lands and Economic
Development, Aboriginal Affairs and
Northern Development Canada,
*Proceedings of the Standing Senate
Committee on Aboriginal Peoples*,
Issue No. 12, 2nd Session, 41st Parliament,
March 24, 2015.

Barriers to financing housing and infrastructure on reserve



One of ten new homes being built in Sandy Lake First Nation, Ontario, where there are 154 applicants waiting for housing.

In comparison to other Canadian jurisdictions and individuals, First Nations face unique challenges when accessing financing for on-reserve housing and infrastructure. The application of the *Indian Act* and federal jurisdiction over First Nations on reserve are some of the factors explaining these differences. Several witnesses told the committee about the challenges of accessing capital from financial institutions for community infrastructure development under section 89 of the *Indian Act*, which prevents the seizure of real and personal property on reserve. The committee heard that Section 89 does not permit the use of property on reserve as collateral, which may prevent First Nations from accessing loans to finance community infrastructure development.

The committee's Interim Report on First Nations housing noted a growing interest in private home ownership among First Nations, which could address the critical housing shortage on reserve. Several witnesses suggested that First Nations individuals who own their homes are more likely to

maintain them. However, section 89 of the *Indian Act*, can act as a barrier to private home ownership on reserve because it limits the ability of First Nations people to obtain mortgages.

The committee visited communities operating under a variety of land tenure regimes, including those based on the *Indian Act*, the *First Nations Land Management Act* (FNLMA), and self-government agreements. Few communities identified the nature of their land tenure regime as being directly linked to the quality and quantity of the housing stock on reserves. In fact, many communities were able to provide a variety of housing options – including homeownership – regardless of their land tenure regime. However, several communities expressed concerns about barriers to homeownership under the *Indian Act*, in particular restrictions on seizure and transferability.

As noted in the committee’s interim report on housing, leases have been used to obtain mortgages on reserve since they do not enjoy Section 89 protection. Communities such as the Westbank First Nation use 99-year leases for housing and economic development under various types of land tenure. The Westbank First Nation operates under a self-government agreement and uses “A to A leasing,” where residents lease their land allotments to themselves, and successfully use the lease as collateral. This allows community members to obtain mortgages, while addressing Section 89 restrictions.

Financing options for housing and community infrastructure

In order to address the challenges of financing community housing and infrastructure under section 89 of the *Indian Act*, the federal government introduced two measures to facilitate private home ownership options on reserve: the Ministerial Loan Guarantee and the creation of the First Nations Market Housing Fund. Some communities who have been unable to access either of these options for a variety of reasons, have developed their own innovative approaches, such as revolving loan funds.

Together, these three options help First Nations to finance housing on reserve and facilitate private home ownership. However, they are not available to all First Nation communities. This reality demonstrates that access to capital and financing for infrastructure development on reserve continues to be a challenge for many First Nation communities. The committee recognizes that there are factors that prevent First Nations from accessing stable financing for housing and infrastructure on reserve, such as Section 89 and a lack of stable own-source revenue streams. Therefore, innovative financing options will be required to address these cases.

1. Ministerial Loan Guarantee program for housing on reserve

AANDC currently administers a Ministerial Loan Guarantee (MLG) program for housing on reserve. The program aims to address restrictions created by section 89 of the *Indian Act* that prevent the seizure of reserve lands. MLGs permit First Nations to obtain loans from financial institutions for housing on reserve, because the federal government backs the loan. Currently, the guarantee authority limit is \$2.2 billion, of which \$1.8 billion has been issued.⁵⁹

59. Karl Carisse, Senior Director, Strategic Policy, Planning, and Innovation, Aboriginal Affairs and Northern Development Canada, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 12, 2nd Session, 41st Parliament, March 24, 2015.

First Nations eligible to obtain an MLG must have sound financial management, and comply with AANDC's financial reporting requirements. The committee has heard from several witnesses about the challenges of obtaining an MLG. For example, the time-consuming process and inflexibility of rules relating to the approval of MLGs in communities where a single community member might have defaulted was a recurring complaint. The committee heard from many witnesses who suggested that the approval process for MLGs could be streamlined for eligible First Nations. For example, when the committee visited the We Wai Kai First Nation in British Columbia, it heard that if even one member was behind on a mortgage payment, the First Nation was considered to be in default, and no new MLG would be granted. Witnesses recommended that operational guidelines for the MLG program be reviewed to ensure that they provide First Nations with flexibility to manage the risks related to mortgages backed by MLGs.

Financial institutions have provided options for First Nations with access to MLGs to obtain mortgages for housing on reserve. Financial institutions, such as RBC Royal Bank, the Native Commercial Credit Corporation, and Aboriginal Savings Corporation of Canada have created on-reserve housing programs to provide mortgages to reserve residents eligible for MLGs. To address section 89 barriers, these financial institutions sign agreements with a First Nations government, where the band council agrees to seize or repossess an asset and manage it on behalf of the financial institution in the event of a default.⁶⁰ This innovative approach addresses some of the section 89 barriers, but the committee heard that the program does not address the housing needs of all First Nations. Importantly, First Nations without access to stable revenue streams and/or MLGs are not able to access these programs.

CMHC also offers a loan insurance program for First Nations to obtain loans from financial institutions for the construction, renovation, or maintenance of homes on-reserve. To participate in the program, First Nations must be eligible to obtain an MLG. These programs demonstrate that although there are ways to obtain mortgages on reserve, only First Nations eligible for MLGs can take advantage of these opportunities. Accordingly, the committee recommends:

For example: Jean Vincent, President and General Manager, Native Commercial Credit Corporation, Aboriginal Saving Corporation of Canada, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 11, 2nd Session, 41st Parliament, February 3, 2015. 60.

RECOMMENDATION 7

That Aboriginal Affairs and Northern Development Canada, in consultation with First Nations, take immediate steps to improve the efficiency of the Ministerial Loan Guarantee (MLG) approval process and the operational guidelines of the MLG program to ensure that they provide First Nations with the required flexibility to manage risks associated with mortgages backed by MLGs. Also, that the government expand the MLG program to grant First Nations governments access to the program, rather than just individual First Nations members; and the government increase the guarantee authority limit to \$3.2 billion with consideration for future increases.

Allowing bands access to the MLG program would allow First Nations governments to obtain loans for larger scale housing projects. The expansion of the MLG program to First Nations governments should include additional measures for financial certification from existing organizations (like FNFMB and FNFA) and should utilize band own-source revenue. For further information on the suggested characteristics of the expanded MLG program, please refer to the chart on the next page.

Proposed Characteristics of a Ministerial Loan Guarantee Program

First Nation: What they want to secure funding for	Own-Source Revenue: The First Nation has to support loan	Minister: 1) Participation in FNFMA required 2) Approve Ministerial Loan Guarantee	First Nations Financial Management Board: 1) Criteria for Certification 2) Additional Responsibilities
<ul style="list-style-type: none"> – Economic Development – Social Development – Community Owned Housing – Equity Involvement (power projects, pipelines, etc.) – Land Purchases – Infrastructure – Vehicles and Equipment 	100%	Yes N/A	1) Financial Administration Law 1) Financial Performance Certification 1) Financial Management System Certification
<ul style="list-style-type: none"> – Community owned housing – Infrastructure 	100%	Yes Yes; Benefit: Lower the interest rate for the First Nation	Same as above
<ul style="list-style-type: none"> – Community owned housing – Infrastructure 	1-99%	Yes Yes	Same as above, PLUS: 2) Building Code compliance 2) Rent policy 2) Land use plan 2) Good governance
<ul style="list-style-type: none"> – Community owned housing – Infrastructure 	0%	Yes Yes	Same as above

for First Nations Infrastructure On Reserve

<p>First Nations Finance Authority:</p> <ul style="list-style-type: none"> 1) Criteria for Certification 2) Additional Responsibilities 	<p>AANDC:</p> <p>Provide “top-up” above core funding to support loan</p>
<ul style="list-style-type: none"> 1) FNFMB Certification 1) Unanimous approval from board of directors (incl. CEO FNFMB) 1) “Leverageable” own-source revenue 1) Other considerations? 	<p>No</p>
<p>Same as above</p>	<p>No</p>
<p>Same as above, PLUS:</p> <ul style="list-style-type: none"> 2) Identify what % annual payment top-up above own-source revenue would be required to service loan 	<p>Yes. Top-up formula negotiated based on current and future potential own-source revenue</p>
<p>Same as above</p>	<p>100% Top-up to fund project until there are conditions for future own-source revenue opportunities. Future own-source revenue would eventually be used to reduce top-up</p>

2. First Nations Market Housing Fund

The First Nations Market Housing Fund (FNMHF) provides an alternative to MLGs for First Nations wishing to obtain mortgages on reserve. The FNMHF provides security for housing loans and “gives First Nations leverage to negotiate more favourable interest rates, risk-sharing agreements, reduced program access fees, and administrative arrangements.”⁶¹ The FNMHF is a national fund containing a one-time contribution of \$300 million held in its trust fund for housing loans secured by First Nations communities.

As the committee noted in its interim report, when the FNMHF was established in 2008, it was projected that it would enable the construction of 25,000 homes over ten years. Now, seven years later, with only 99 homes constructed, the FNMHF is far from meeting those expectations.⁶² These numbers led a number of witnesses to suggest that the mandate of the FNMHF be reviewed and that the funding be more effectively channeled to result in more houses being constructed on reserve. The testimony of Guy Latouche, Consultant, Assembly of First Nations of Quebec and Labrador reflects a common sentiment:

We think that the mandate of the First Nations Market Housing Fund should be revised. Even if the idea of this fund is interesting, and capacity development is interesting too, we have to admit that the fund has generated very little new construction — at least in Quebec — since its inception six years ago.⁶³

The committee agrees that it would be important to review the mandate of the FNMHF, and recommends:

RECOMMENDATION 8

That the Canada Mortgage and Housing Corporation commission a value for money evaluation of the First Nations Market Housing Fund, and develop a series of proposals for expanding the possible uses of the Fund, including the possibility of securitizing the Fund to finance innovative housing projects; and

That the proportion of the First Nations Market Housing Fund allocated to the Capacity Development Program component be increased and eligibility for this program component be extended to First Nations who are at the first stages of applying for the FNMHF.

61. First Nations Market Housing Fund, Written submission to the Standing Senate Committee on Aboriginal Peoples, January 2015.

62. John Beaucage, Chair, First Nations Market Housing Fund, *Proceedings of the Standing Committee on Aboriginal Affairs and Northern Development*, Evidence No. 44, 2nd Session, 41st Parliament, May 28, 2015.

63. Guy Latouche, Consultant, Assembly of First Nations of Quebec and Labrador, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 10, 2nd Session, 41st Parliament, November 25, 2014.

3. Revolving loan funds

Revolving loan fund programs permit First Nations to lend capital to their members for home construction and repairs. The committee has seen some examples of very successful communities such as the Nation Huronne Wendat who have used revolving loan funds to facilitate private home ownership on reserve. Today, the Nation Huronne Wendat provides loans for individuals of up to \$210,000 to build or repair their homes. Once the mortgage is paid off, the individual owns their home and “they can borrow against their home to start a business or fund other aspects of their life’s activities.”⁶⁴

64. Jean Vincent, President and General Manager, Native Commercial Credit Corporation, Aboriginal Saving Corporation of Canada, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 11, 2nd Session, 41st Parliament, February 3, 2015.

Facilitating access to capital through land management

1. The *First Nations Land Management Act*

The past decade has seen the introduction of legislation, including the *First Nations Fiscal Management Act* and the *First Nations Land Management Act*, which, among other things, provide First Nations with the possibility to opt into regimes that address some of the impacts of section 89 restrictions. Witnesses have suggested that these provisions permit First Nations to access economic development opportunities and develop their infrastructure more efficiently.

The committee has heard that through the development of land codes, the First Nations Land Management regime: facilitates access to capital such as mortgages for individuals and leases for commercial development; provides First Nations with the authority to develop their lands; and creates a more efficient process for economic development in comparison to the *Indian Act*.⁶⁵

To be part of the FNLMA, First Nations must demonstrate that they have not defaulted on their annual funding agreements, were not under third party management, and have submitted annual financial statements to AANDC for the past three years. Applications are ranked and, depending on available funding, First Nations are scheduled to the Act and receive funding to develop their land codes. There are currently 36 First Nations who have operational land codes and another 58 First Nations are in the developmental stages of the process. To provide this opportunity to more First Nations, Budget 2015 allocated \$30.3 million over 5 years to permit 25 additional First Nations to join the FNLMA.

Aaron Ledoux, Director of Housing, Muskeg Lake Cree Nation and Gwen Underwood, Lands Manager, Tsawout First Nation, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 12, 2nd Session, 41st Parliament, March 31, 2015.

65.

While witnesses agreed that the FNLMA provided significant opportunities for First Nations, several noted that not all of the barriers to infrastructure development under the *Indian Act* land management system were addressed.⁶⁶ Under the FNLMA, section 89 still applies, as operational First Nations still face difficulty in leveraging their land to obtain loans or mortgages from financial institutions.

The committee has heard that the FNLMA provides the opportunity for participating First Nations to benefit from economic development, which, can generate revenues to help contribute to meeting community infrastructure costs. Recognizing that the FNLMA provides First Nations with greater possibilities to control development on their lands and access economic development opportunities, the committee echoes the recommendation of the *Study of Land Management and Sustainable Economic Development on First Nations Reserve Lands*, tabled by the Standing Committee on Aboriginal Affairs and Northern Development in March 2014:

RECOMMENDATION 9

That Aboriginal Affairs and Northern Development Canada take the necessary steps to extend the application of the *First Nations Land Management Act* (FNLMA) with a focus on:

- Ensuring that First Nations currently operating under the *Indian Act* land management regime are provided with the training necessary to transition to the FNLMA in a timely manner;
- Ensuring that the current signatory First Nations to the FNLMA regime are provided with the support necessary to become fully operational and to meet the increased requirements of the regime, including developing their land codes; and,
- Addressing, on an urgent basis, the backlog of applicants currently awaiting entry to the FNLMA regime, and exploring, in collaboration with the First Nations Lands Advisory Board, financing options to allow for greater First Nations participation in the regime.

66. Keith Martell, Chairman and Chief Executive Officer, First Nations Bank of Canada, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 11, 2nd Session, 41st Parliament, February 4, 2015.

2. Proposed opt-in private property legislation

In his presentation to the committee, C. T. (Manny) Jules, Chief Commissioner of the First Nations Tax Commission, suggested that introducing the option of private property ownership on reserve would facilitate a move to private homeownership and create more economic development opportunities on reserve. His initiative, which proposes opt-in legislation, would require a transfer of title for reserve lands from the Crown to individual First Nations. Each First Nation could then transfer fee simple ownership to its members, or to third parties.⁶⁷ The committee considers the proposal to be worthy of discussion, and thus also recommends as follows:

RECOMMENDATION 10

That Aboriginal Affairs and Northern Development Canada explore the possibility of opt-in legislation, in consultation with First Nations, which would make Section 89 of the *Indian Act* inapplicable. Such opt-in legislation could facilitate private property ownership for First Nations members living on reserve.

C.T. (Manny) Jules, Chief Commissioner,
First Nations Tax Commission,
*Proceedings of the Standing Senate
Committee on Aboriginal Peoples*,
Issue No. 10, 2nd Session,
41st Parliament, December 9, 2014.

67.

Innovative approaches to funding or financing infrastructure



First Nations such as Pic River in Ontario supplement funding with their own-source revenue to provide basic services such as fire services.

1. Facilitating the creation of taxation regimes on reserve

In Canada, municipal, provincial and federal governments have access to a variety of different revenue sources to fund infrastructure, including: property and local taxes; transfers from other levels of government; payment from developers; fees; and targeted funding for infrastructure. Witnesses who appeared before the committee agreed that First Nations do not have access to the majority of these revenue sources which makes it challenging to obtain long-term financing for infrastructure on reserve.⁶⁸

Several witnesses who appeared before the committee identified taxation as an important potential source of revenue for First Nations communities to address on-reserve infrastructure needs. Currently, First Nations have two legislative options for levying property taxes on their reserve lands: pursuant to the relevant provisions of the *Indian Act* or to the *First Nations Fiscal Management Act*. Under Section 83 of the *Indian Act*, First Nations are

68. C.T. (Manny) Jules, Chief Commissioner, First Nations Tax Commission, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 10, 2nd Session, 41st Parliament, December 3, 2014; André Le Dressay, Director, Fiscal Realities Economists and Tulo Centre of Indigenous Economics, Fiscal Realities Economists, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 12, 2nd Session, 41st Parliament, March 10, 2015.

permitted to make by-laws to levy taxes on land or interest in land on their reserves. The authority to approve these bylaws has been delegated to the First Nations Tax Commission by the Minister.⁶⁹ Through the *First Nations Fiscal Management Act*, participating First Nations are able to create taxation regimes, access capacity development opportunities, and obtain long term loans backed by property tax revenues.

Over the past few decades, nearly 140 First Nations have created and implemented property tax by-laws.⁷⁰ The committee heard that taxation regimes were able to partially address the infrastructure needs of some communities. For example, through their self-government agreement, the Tsawwassen First Nation charges property tax to corporations and individuals on their lands. Taxation revenue has permitted the Tsawwassen First Nation to obtain a stable source of revenue that can be used to finance infrastructure projects while facilitating access to various economic opportunities.⁷¹

However, not all taxation revenues are sufficient to address community infrastructure needs. For example, the committee heard that while the Muskeg Lake Cree Nation reinvests its property taxation revenues from businesses situated on its downtown Saskatoon urban reserve into its reserve communities, these revenues are not adequate to meet existing infrastructure needs. Aaron Ledoux, Director of Housing for the First Nation, commented that once these revenues are used to supplement shortfalls in infrastructure funding, there is little money left for economic development to raise additional own source revenues.⁷²

C.T. (Manny) Jules, Chief Commissioner of the First Nations Tax Commission, suggested that First Nations would benefit from further jurisdiction over taxation on their lands. Mr. Jules proposed that First Nations should be able to collect taxes from resource development on their lands. According to Mr. Jules, under this system, First Nations with natural resources would have access to significant and stable own source revenues that could be used to meet infrastructure, health, education, and other needs in First Nations communities.

Although taxation revenues provide one possible solution to the infrastructure deficit, the benefits are not enjoyed equally among all First Nations communities. The committee heard from several First Nations communities who rely primarily on federal funding transfers to meet their communities' needs. With few economic development possibilities on their lands and high unemployment rates, property taxation would contribute limited own source revenues to meet the infrastructure needs in these communities.

69. Aboriginal Affairs and Northern Development Canada, *Fact Sheet – Taxation by Aboriginal Governments*.

70. First Nations Tax Commission, *First Nations with Property Tax Jurisdiction*, 2014.

71. Colin Ward, Director of Public Services, Tsawwassen First Nation, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 12, 2nd Session, 41st Parliament, March 31, 2015.

72. Aaron Ledoux, Director of Housing, Muskeg Lake Cree Nation, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 12, 2nd Session, 41st Parliament, March 31, 2015.

2. Leveraging own-source revenue and property taxes through bonds

Leveraging financing through the bond market is one of the ways that infrastructure is financed off reserve. With the 2006 enactment of the *First Nations Fiscal Management Act* (FNFMA), this tool is now also available to First Nations.

The FNFMA is an optional piece of legislation that provides participating First Nations with the opportunity to establish by-laws for property taxation on reserve; develop financial administration laws; build capacity related to financial administration; and access long-term loans to finance infrastructure development on reserve. These opportunities are made possible through the three institutions created under the FNFMA, including the First Nations Tax Commission (FNTC), the First Nations Financial Management Board (FNFMB), and the First Nations Finance Authority (FNFA). 158 First Nations have adhered to this legislation and more than 80 of these are leveraging property taxes.

The FNFA provides low interest loans, investment options, and financial planning advice to member First Nations. The FNFA finances First Nation community projects such as infrastructure development, land purchases, independent hydro projects and community housing. To access these financing options, First Nations must become borrowing members, which requires the development of financial administration laws and certification by the FNFMB. The FNFMB certifies First Nations to established standards of financial management and performance. Of the 158 First Nations that have adhered to the FNFMA, only 9 are considered borrowing members with the ability to access the financing tools available from the FNFA.

The FNFA is a pooled borrowing system which means that participating First Nations submit loan requests and the FNFA issues bonds for purchase by investors. The money that is earned from the sale of these bonds is, in turn, loaned out to First Nations. In June 2014, the FNFA issued its first bond of \$88 million. Several witnesses highlighted the significance of the FNFMA, as it provides First Nations with the opportunity to leverage own source revenues and secure them through bonds. With this opportunity, First Nations can access similar funding opportunities to finance infrastructure as municipal governments.

The committee heard that the FNFA borrowing program can provide a way for First Nations to use their own-source revenues to meet their infrastructure needs by supplementing annual government funding. When the committee visited Membertou First Nation in Nova Scotia, they heard that prior to obtaining financing from the FNFA, the community was required to obtain five to ten year bank loans to finance infrastructure projects. Since participating in the FNFA process, Membertou First Nation

“First Nations need a secure fiscal benefit through taxation to build and finance infrastructure. The FNFMA and the First Nations Tax Commission provide a strong regulatory framework to support this concept.”

— C.T. (Manny) Jules,
Chief Commissioner,
First Nations Tax Commission

has had access to longer term loans and has saved \$150,000 per month in loan charges.

Several witnesses suggested that amendments to the FNFMA could streamline the process for First Nations to adhere to the legislation and access financing for infrastructure development in their communities.⁷³ Keith Martell, Chairman and Chief Executive Officer of the First Nations Bank of Canada, suggested that the FNFA financing process was flawed. He argued that combining government-like revenues and business-like revenues in one bond is a mistake. The system does not follow the basic principles of credit, as in each of these revenue streams; there are different levels of risk that can affect the credit of individuals in the pool.⁷⁴ Several witnesses also suggested amendments to the FNFMA could streamline the process for First Nations to adhere to the legislation and access financing for infrastructure development in their communities. Bill C-59, tabled in Parliament on May 7, 2015, proposes amendments to the FNFMA which reflect some of the issues raised in the testimony, particularly the request to simplify the process for First Nations to opt into the Act.

“We can’t tell you how many times these partnerships have been formed, momentum built and then everything stops in its tracks because funding isn’t available. I personally have seen this happen many times.”

— Owen Matheson, Vice-President,
Business Development,
Corix Infrastructure

3. Using AANDC funding streams to leverage financing

In 2015-16, Parliament approved approximately \$8 billion in appropriations to AANDC for funding arrangements that support the provision of a variety of programs and services to First Nations communities. When AANDC appeared before the committee, they stated that because funding is provided on an annual basis, “it is more difficult to use these funding agreements to support long-term, low-cost borrowing.”⁷⁵ The committee heard that annual funding made it difficult for First Nations to secure long term financing to pay for infrastructure on reserve. Annual funding does not provide the security required to attract private sector investment and, as a result, First Nations may not have the opportunity to participate in projects such as public-private partnerships. For public-private partnerships, communities require long term stable revenue streams, as P3 projects typically last between 20 and 30 years.

Ernie Daniels, President and Chief Executive Officer, First Nations Finance Authority, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 10, 2nd Session, 41st Parliament, December 2, 2014. 73.

Keith Martell, Chairman and Chief Executive Officer, First Nations Bank of Canada, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 11, 2nd Session, 41st Parliament, February 4, 2015. 74.

Andrew Beynon, Acting Assistant Deputy Minister, Lands and Economic Development, Aboriginal Affairs and Northern Development Canada, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 12, 2nd Session, 41st Parliament, March 24, 2015. 75.

The committee heard about several approaches to address the challenges of annual funding provided by AANDC. Through several subsidiaries, the Corix Group of Companies provides water, wastewater and energy infrastructure to small communities (including First Nations) in Canada and the United States. The committee heard that to work around AANDC’s annual funding for First Nations communities, a subsidiary of the Corix Group of Companies known as Corix Infrastructure, developed long term partnerships with First Nations. By supplementing annual funding allocations from AANDC with private sector funding, Corix Infrastructure develops long-term partnerships with First Nations communities. Corix Infrastructure provides First Nations with utility infrastructure and

assists them to build capacity and create and manage a utility company. This innovative business model provides First Nations with the opportunity to leverage financing to create a secure and stable source of revenue for the First Nation.⁷⁶

AANDC also uses innovative financing approaches to overcome the challenges created by annual funding allocations. The committee heard that for certain projects, AANDC may provide a letter of comfort to financial institutions, which allows First Nations to obtain longer-term funding for infrastructure projects. Letters of comfort assure financial institutions that AANDC will repay the loan over a period of time. As funding from AANDC is subject to annual parliamentary appropriations, the Department rarely provides letters of comfort for infrastructure on First Nations reserves since they commit the Department to a guaranteed funding allocation over several years. AANDC provided a letter of comfort to the Bande des Innus de Pessamit who were able to obtain a bank loan for the construction of a water intake line and treatment plant.⁷⁷

As we have previously stated, AANDC estimates that the cost of meeting the immediate infrastructure needs on reserve in 2013 was \$8.2 billion. The committee strongly believes that the best way for the government to tackle such a large cost is through leveraging a portion of annual spending over a long period of time (25-30 years).

Andrew Beynon, Acting Assistant Deputy Minister, Lands and Economic Development, Aboriginal Affairs and Northern Development Canada, made the point before the committee that: "... The First Nations Finance Authority estimated that... every [annual] dollar of secured federal funding could generate \$13 in immediate capital. For example, if just \$250 million of [annual] federal infrastructure funding were to be used for this purpose, more than \$3 billion could be raised, and very quickly."⁷⁸ Using FNFA's numbers, we can extrapolate that \$770 million in annual dollars could be leveraged immediately to cover a \$10 billion deficit.

This is the basis for the committee's recommendation that,

RECOMMENDATION 11

Aboriginal Affairs and Northern Development Canada explore, in consultation with First Nations, the creation of a ministerial loan guarantee program for First Nations infrastructure on reserve.

An MLG program specifically for community infrastructure would make it possible to securitize a substantially larger amount of financing dollars than annual AANDC funding allocations. The beauty of creating such a program is threefold: First, almost the entire infrastructure deficit could be covered with funds from private lending institutions. Second, the government can

"In 2010 it was estimated that own-source revenues were around the \$6 billion area for First Nations... Of the 633, [our expert] estimated about two thirds have revenues that can be leveraged into projects that would supply infrastructure or needs to communities."

— Steve Berna, Chief Operating Officer, First Nations Finance Authority

76. Owen Matheson, Vice-President, Business Development, Corix Infrastructure, Corix Group of Companies, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 12, 2nd Session, 41st Parliament, March 10, 2015.
77. Andrew Beynon, Acting Assistant Deputy Minister, Lands and Economic Development, Aboriginal Affairs and Northern Development Canada, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 12, 2nd Session, 41st Parliament, March 24, 2015.
78. *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 12, 2nd Session, 41st Parliament, March 24, 2015.

UK infrastructure model

If this MLG model for infrastructure looks at all familiar, it may be because it is based on the UK model for financing infrastructure.

In 2012, the UK government made £40 billion of financial guarantees available for infrastructure projects with the UK Guarantees Scheme. As of April 2014, there have been guarantees awarded for Drax Power Station (£75 million), Northern Line Extension (£750 million) and Mersey Gateway Bridge (£257 million). Forty other infrastructure projects worth £37 billion have passed the prequalification stage to make them eligible for the UK Guarantees Scheme.⁷⁹

use existing legislation and proven organizations to execute the program. Finally, the program would recognize the role of that First Nations themselves play to fund their infrastructure; money would be lent to First Nations on a case by case basis, depending on their ability to support their loans – at least in part – with their current and potential future own-source revenue.

The committee suggests that the following characteristics could form part of an MLG program for infrastructure on reserve:

- Participation in the First Nations Fiscal Management Act;
- Certification of management practices through existing mechanisms, such as the First Nations Financial Management Board;
- Administration through existing legislative bodies, such as the First Nations Financial Management Board and/or the First Nations Finance Authority; and,
- “Top-up” function to address the needs of all First Nations, including those with and without access to own source revenues.

For further information on the suggested characteristics of an MLG program for First Nations infrastructure on reserve, please refer to the chart on page 34 of this report.

4. Public-private partnerships (P3s) on reserve

The committee has heard from proponents of P3s that the model is beneficial for infrastructure projects because it is cost effective, minimizes risk, and it addresses maintenance standards upfront. Despite the potential benefits of P3s highlighted by proponents, the committee heard that there has been limited uptake of the P3 model on reserve. To date, only two projects are moving ahead: a provincial correctional facility being built on the Osoyoos reserve in British Columbia and the Kokish hydroelectric project involving the Namgis First Nation in British Columbia.⁸⁰ The committee heard that the Atlantic Policy Congress is still considering using P3s to provide water and wastewater services to some of their communities. There was also a plan to build four schools in northern Manitoba using the P3 model; however, that project has been discontinued.

Mark Romoff, President and CEO, The Canadian Council for Public-Private Partnerships, and Naresh Debidin, Director, Project Development – Federal, PPP Canada identified several barriers to building P3s on reserve:⁸¹

- Governance and capacity: To participate in a P3 project, a First Nation requires money and expertise in several fields, including: capacity development training, knowledge of best practices; and access to professionals who can provide support on legal, financial, and technical challenges as they arise.

⁷⁹ *Investing in UK Infrastructure*, HM Treasury, Government of UK, July 2014.

⁸⁰ Department of Finance, “*Government of Canada and ‘Namgis First Nation Announce Run-of-the-River Hydroelectric Development*,” News release, September 23, 2014.

⁸¹ Naresh Debidin, Director, Project Development – Federal, PPP Canada, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 12, 2nd Session, 41st Parliament, March 11, 2015; Mark Romoff, President and CEO, The Canadian Council for Public-Private Partnerships, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 10, 2nd Session, 41st Parliament, November 25, 2014.

- Access to capital: First Nations require tools to develop long term revenue streams that are available to other governments. P3 contracts typically last between 25 and 35 years which is much longer than annual funding agreements from AANDC.
- Bundling: Most First Nations are too small for a P3 project that fits with “the market’s expectations for size and value,”⁸² bundling could be an option for P3s on reserves. Therefore bundling several communities’ projects in the same sector lend themselves to the P3 model. For projects that are bundled, the federal government would play a coordinating role.

The committee heard that due to potentially high financial risks as a result of annual funding of infrastructure projects by AANDC, the private sector is often reluctant to work with First Nations on projects that are not revenue generating. The majority of essential infrastructure on reserve in First Nations communities (such as schools, housing, and water treatment plants) is not revenue generating. This factor may explain why there is limited uptake of P3 projects on reserve.

As P3s are still being explored as an alternative to traditional procurement processes and there has been little uptake on reserve, the committee observes that P3s may provide a potential option to address the infrastructure deficit on reserve in the future. However, with such limited uptake on reserve, it was difficult for the committee to assess the viability of P3s for on-reserve infrastructure projects.

5. Facilitating access to Indian Moneys

The *Indian Act* stipulates that the Government of Canada collect what is called “Indian moneys” for the use and benefit of First Nations individuals and communities. Indian moneys includes all capital and revenue moneys “collected, received or held by Her Majesty for the use and benefit of Indians and/or bands.” Capital moneys are proceeds derived from the sale of surrendered lands or non-renewable resources belonging to a band, including, among other things, profits or royalties derived from the sale of gas, timber, or oil. Revenue moneys comprise the rest of moneys held by the Government of Canada and include profits from the sale of renewable resources, rights of way, and interest earned on capital and revenue monies.

Indian moneys are held in the Consolidated Revenue Fund in separate accounts for each First Nations community. AANDC administers Indian Moneys in the Consolidated Revenue Fund according to sections 61 to 69 of the *Indian Act*. These sections outline policies and procedures for accessing, using, and administering Indian moneys. As of 2014, AANDC administers approximately \$830 million in capital and revenue moneys for First Nations in Canada.

82. Naresh Debidin, Director, Project Development – Federal, PPP Canada, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 12, 2nd Session, 41st Parliament, March 11, 2015.

Sections 61 to 69 of the *Indian Act* create restrictions on accessing Indian moneys. Section 64 of the *Indian Act* defines some possible uses for First Nations' capital moneys, which must be consented to by the Band and approved by the Minister. Under this section, the Minister can permit Bands to use their capital moneys for the construction and maintenance of infrastructure, to purchase land for the band, and to grant loans to band members for constructing homes or other infrastructure. First Nations are not restricted in the use of the capital or revenue moneys that they have generated in the Consolidated Revenue Fund. To obtain access to these funds, the First Nation must file an application which is subsequently assessed by the Minister. The Minister determines whether the proposed expenditure will benefit the band. If the Minister decides that it would be beneficial, the First Nation is provided with the money to fulfil their request.

As mentioned, Indian moneys may be used for any purpose that is beneficial to the First Nation, such as infrastructure development. However, the committee heard that the statutory restrictions on the use of Indian moneys, such as the application and approval process, prevented access to alternative financing mechanisms. David Crate, Chief of the Fisher River Cree Nation, Manitoba and member of the National Aboriginal Economic Development Board, told the committee that AANDC's administration of Indian moneys was outdated and that the inability for First Nations to invest these funds limited their use for on-reserve infrastructure development. If First Nations had the opportunity to use these funds within pooled borrowing systems such as the First Nations Finance Authority, First Nations could use these invested funds towards infrastructure development on reserve.⁸³

In 2006, the *First Nations Oil and Gas and Moneys Management Act* (FNOGMMA) became law, providing First Nations with the opportunity to control and manage their Indian moneys. FNOGMMA permits participating First Nations to opt out of sections 61 to 69 of the *Indian Act* dealing with Indian moneys. All First Nations with capital or revenue moneys held in trust by the Crown can opt into this regime. However, First Nations with outstanding Ministerial Loan Guarantees higher than the amount of their moneys, or those with financial management issues (such as third party management), may not be eligible to participate.

Participating First Nations must develop a financial code, including a management and administration plan, in order for AANDC to transfer their capital and revenue moneys from the Consolidated Revenue Fund. Opting into this system provides First Nations with the authority to manage and spend their "Indian moneys", without requiring ministerial approval, including for the purpose of investing the trust revenues toward community infrastructure projects. The Kawacatoose First Nation is

David Crate, Chief, Fisher River Cree Nation, and member of the National Aboriginal Economic Development Board, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 10, 2nd Session, 41st Parliament, December 2, 2014. 83.

currently the only community that has a financial code and is fully participating in the Indian moneys management portion of the FNOGMMA. A September 2010 evaluation of the FNOGMMA conducted by AANDC identified the complexity of the process for participating First Nations, citing a lack of available funding and community capacity challenges as significant barriers to participation in the money management portion of the FNOGMMA.

Recognizing that increased First Nation management and control of their capital and revenue trust moneys can have important implications for addressing on-reserve infrastructure, this committee recommends as follows:

RECOMMENDATION 12

That Aboriginal Affairs and Northern Development Canada take immediate steps to convene a national roundtable with the National Aboriginal Economic Development Board and other First Nations organizations to explore ways to facilitate First Nations access to Indian moneys, whether through amendments to the *First Nations Oil and Gas and Moneys Management Act* or through other appropriate legislative or policy measures.

6. Sharing infrastructure costs with neighbouring municipalities

Municipal-type service agreements provide First Nations with the opportunity to use existing funding transfers from AANDC to obtain services in partnership with local municipalities. Developing these partnerships provides a possibility for innovative financing opportunities to address gaps in housing-related infrastructure that prevent First Nations from constructing homes and other community infrastructure on reserve.

Municipal type service agreements are cost-sharing agreements between First Nations and municipalities. They provide First Nations with the opportunity to access essential services, such as water, sewer, emergency and fire protection services offered by municipal governments. The Department provides 80% of the funding for service agreements related to water supply/distribution; wastewater collection/disposal; landfill fees; garbage collection and disposal; and recycling services. AANDC also provides 90% of the funding for municipal service agreements related to fire suppression; roads and bridges; emergency services; street lighting; and some railway crossings. First Nations are responsible for the remainder of the costs associated with these agreements.

First Nations-Municipal Partnerships

In La Ronge, Saskatchewan, the town of La Ronge, the Village of Air Ronge, and the Lac La Ronge Indian Band worked together to build a shared water treatment plant. The communities required upgrades to existing plants to meet new standards for water treatment, which were expected to increase by 60% over the next 20 years. To meet these additional water treatment requirements, the Lac La Ronge Indian Band, the village of Air Ronge, and the Town of Lac La Ronge joined together to form the Lac La Ronge Regional Water Corporation to construct the plant providing access for their communities to the water supply.

Increasingly, First Nations are working closely with municipalities for the provision of essential services, including infrastructure and economic development. Many of these partnerships are developed through two programs, both of which are offered by the Federation of Canadian Municipalities (FCM): the First Nations-Municipal Community Economic Development Initiative and the First Nations-Municipal Community Infrastructure Partnership Program. The FCM has documented a growing trend in partnerships between First Nations and municipalities. Since 2010, over 28 service agreements have been signed by First Nations communities and municipalities using templates provided by the First Nations-Municipal Community Infrastructure Program.

Not all First Nations can benefit equally from municipal-type service agreements, as they must be located in proximity to a municipality. Even then, the committee heard that services may not be provided to all members depending on location. For example, the Lac La Ronge Indian Band has 6 reserves, but only the one located near a municipality has access to services covered by the municipal-type service agreement. The other five reserves are dependent on the band to provide these services.⁸⁴

The committee also heard about some challenges for First Nations when signing municipal-type service agreements. The Assembly of First Nations identified the sharing of resources as a potential problem within municipal-type service agreements. Irving Leblanc, Director of Housing for the Assembly of First Nations noted that the needs of the municipality come before those of the First Nation in many of these agreements. In addition, First Nations do not have control over their water rates, which may be increased depending on the needs of the municipality.⁸⁵

The committee heard from several communities that were able to successfully develop relationships between themselves and neighbouring municipalities. The Lac La Ronge Indian Band in Saskatchewan has had a strong partnership with the neighbouring town of La Ronge and Village of Air Ronge for many years. Noting the benefits of these type of partnerships, Tayven Roberts, Director of Public Works and Housing for the Lac La Ronge Indian Band stated that, “We are a close-knit community...All three councils get along well. We have several projects that we work on together. We share the landfill. We’ve got a regional waste management corporation. We share the regional fire services with the three communities. We’ve got the water.”⁸⁶

Tayven Roberts, Director, Public Works and Housing, Lac La Ronge Indian Band, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 11, 2nd Session, 41st Parliament, February 18, 2015. 84.

Irving Leblanc, Acting Director, Housing and Infrastructure, Assembly of First Nations, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 9, 2nd Session, 41st Parliament, November 18, 2014. 85.

Tayven Roberts, Director, Public Works and Housing, Lac La Ronge Indian Band, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 11, 2nd Session, 41st Parliament, February 18, 2015. 86.

Comprehensive community planning and infrastructure related to economic development



Communities, such as Tsartlip First Nation in British Columbia, need support for comprehensive community plans to move forward on economic and residential development.

Community infrastructure is directly related to meeting the basic needs of residents; examples of this type of infrastructure include water and sewer systems in residential areas, and roads. In addition to this infrastructure, some First Nations also require infrastructure to support economic development projects. The committee heard that the current prioritization of infrastructure related to the health and safety of residents makes it more difficult for First Nations to obtain financial help from the federal government for commercial infrastructure.⁸⁷ This, in turn, makes it more difficult for First Nations to develop the economic opportunities that could help them meet their infrastructure needs. C.T. (Manny) Jules, of the First Nations Tax Commission referred to this as the “infrastructure financing Catch-22”⁸⁸:

“First Nations want to invest on their lands to generate revenues, but they need infrastructure to attract investment. Current infrastructure programs are generally designed to address basic housing and physical infrastructure requirements and does not support land

87. C.T. (Manny) Jules, Chief Commissioner, First Nations Tax Commission, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 10, 2nd Session, 41st Parliament, December 9, 2014. See also the brief submitted by the Tsawout First Nation on March 31, 2015.

88. C.T. (Manny) Jules, Chief Commissioner, First Nations Tax Commission, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 10, 2nd Session, 41st Parliament, December 9, 2014.

development. As a result, many communities are caught in an economic development trap and are unable to build commercial infrastructure.”⁸⁹

The committee heard that the “infrastructure financing catch-22” is compounded by a lack of comprehensive community planning which may prevent some First Nations from taking advantage of economic opportunities.

The committee heard that proper community planning is much broader than identifying infrastructure needs alone. Developing community plans means looking at how land will be used in the future to combine the residential and commercial needs in the community. Some funding for this type of community planning is provided by the First Nations Infrastructure Fund (FNIF), which funded 117 community planning projects on reserve between 2007 and 2013.⁹⁰ Other funding for community planning is provided through AANDC’s Community Economic Development Program, which provides funding for capacity development and community economic development planning. Witnesses emphasized that the federal government has an important role to play in adequately funding comprehensive community planning to help communities strategically guide their development.”⁹¹

The committee heard that more coordination is required in the way that AANDC provides support to First Nations to create comprehensive community plans which incorporate the residential and economic development needs of their communities. Federal government support for community planning is currently fragmented. AANDC’s Capital Facilities and Maintenance Program requires First Nations to prepare 5-year infrastructure investment plans which are updated on an annual basis. These plans are limited to community infrastructure needs and the 5-year time frame is too short for First Nations to properly plan for the future.

As First Nations communities grow, it is important to have the necessary housing-related infrastructure and infrastructure for economic development in place. This requires comprehensive needs assessment within the community and the development of comprehensive community plans. The committee recognizes this as an important part of the planning for, and addressing, the housing and infrastructure needs on reserve, and therefore recommend as follows:

RECOMMENDATION 13

That Aboriginal Affairs and Northern Development Canada ensure that adequate funding be provided to First Nations for the development of comprehensive community plans; that such plans reflect both community infrastructure and economic development needs; and that they cover a period of longer than 5 years.

Tsawout First Nation created the Tsawout Initiative with funding from AANDC (\$190,000) – “They funded us to develop this concept master plan to bring in engineers, such as we have here, and other experts with regard to infrastructure needs on the reserve. We were able to access some money from AANDC and combine it with our own-source revenues to develop a concept master plan for infrastructure development on our reserve.”

— Eric Pelkey,
Director of Operations,
Tsawout First Nation

C.T. (Manny) Jules, Chief Commissioner, First Nations Tax Commission, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 10, 2nd Session, 41st Parliament, December 2014. 89.

Aboriginal Affairs and Northern Development Canada, *Evaluation of the First Nations Infrastructure Fund*, April 2014. 90.

Charmaine McCraw, Economic and Resource Development Unit Manager, Nishnawbe Aski First Nation, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 9, 2nd Session, 41st Parliament, November 19, 2014. 91.

Conclusion

Witnesses have pointed to the role that resource revenue-sharing and taxation⁹³ can play in leveraging the revenue necessary to finance infrastructure. The committee recognizes, however, that a variety of alternative financing options for infrastructure are needed in order to provide all First Nations with the opportunity to meet the needs of their communities, irrespective of their circumstances. From that perspective, the committee is very optimistic about what could be accomplished with a ministerial loan guarantee program that is dedicated to infrastructure.

Recognizing this diversity of circumstance is among the key challenges when developing a comprehensive federal government approach to infrastructure on reserve.⁹⁴ As we have noted in our report, not all First Nations enjoy access to own source revenue and economic opportunities required to help finance their infrastructure. Indeed, some First Nations will be dependent on annual transfers from the federal government for some time to come. In part this can be attributed to ‘geographic luck,’ as First Nations have different opportunities depending on their geographic location.⁹⁵

Despite these challenges, a growing number of First Nations communities have been able to take advantage of economic development opportunities, and more will inevitably continue to do so. It is anticipated that as a result of these opportunities, First Nations will increasingly be able to contribute financially to meeting some of the housing and infrastructure needs of their communities. Yet, as Ken Coates of the Macdonald-Laurier Institute pointed out, we have not yet had a debate in Canada about expectations and standards for infrastructure development on reserve, including which level of jurisdiction is required to pay for this development. Addressing the housing and infrastructure needs on reserve will require entering into meaningful dialogue with First Nations to ensure that all partners work together to develop viable solutions.

*Canada is at a pivotal moment in terms of the evolving role of First Nations in the future of this country.*⁹²

92. Assembly of First Nations, Working Group on Natural Resources Development, *First Nations and Natural Resource Development Advancing Positive, Impactful Change*, February 2015, p. 37.

93. See, for example, the testimony of Julie Cafley, Vice-President, Public Policy Forum, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 11, 2nd Session, 41st Parliament, February 17, 2015.

94. Andrew Beynon, Acting Assistant Deputy Minister, Lands and Economic Development, Aboriginal Affairs and Northern Development Canada, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 12, 2nd Session, 41st Parliament, March 24, 2015.

95. Ken Coates, Senior Fellow in Aboriginal and Northern Canadian Issues, Macdonald-Laurier Institute, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, Issue No. 13, 2nd Session, 41st Parliament, April 21, 2015.

Appendix A: Recommendations

A. Overarching recommendation

RECOMMENDATION 1

That Aboriginal Affairs and Northern Development Canada remove the 2% cap on annual increases on funding, effective Budget 2016-2017.

B. Recommendations relating to housing

RECOMMENDATION 2

That the Canada Mortgage and Housing Corporation allocate sufficient funds to the *On-Reserve Non-Profit Housing Program*, also known as the Section 95 program, in order to address the growing shortage of housing on reserve; and

That CMHC explore options to ensure greater flexibility in the way that funding is allocated for the *On-Reserve Non-Profit Housing Program*, in particular, to allow for multi-year commitments which would give communities adequate time to organize construction.

RECOMMENDATION 3

That the Annual Band Support Program at Aboriginal Affairs and Northern Development Canada provide funding for the hiring of a qualified housing manager on reserve, if necessary.

RECOMMENDATION 4

That Aboriginal Affairs and Northern Development Canada

- Consult with First Nations organizations to identify concerns related to the jurisdictional authority for implementing and enforcing building codes and to assess the capacity issues which would be required to adopt and then enforce building codes;
- Put in place the necessary measures to address the capacity of First Nations (and organizations which provide support to First Nations) to comply with legislated standards as a precondition of a new legislative framework for the application of building codes on reserve; and
- Develop such legislation, in consultation with affected First Nations.

RECOMMENDATION 5

That Aboriginal Affairs and Northern Development Canada review the shelter allowance component of the Income Assistance Program to: Assess whether the level of shelter allowance is adequate to cover the housing costs of recipients, including rent and heating, and to ensure that it is applied in a consistent manner across regions and reflects the provincial comparability principle; and

That the results of this review be tabled in Parliament no later than June 30, 2016.

RECOMMENDATION 6

That Aboriginal Affairs and Northern Development Canada and the Canada Mortgage and Housing Corporation collaborate in the development of a housing strategy for remote and isolated First Nations communities; that this strategy address the specific challenges and costs of building in remote communities; and that AANDC review the adequacy of the remote and isolation index to ensure that it reflects actual costs.

RECOMMENDATION 7

That Aboriginal Affairs and Northern Development Canada, in consultation with First Nations, take immediate steps to improve the efficiency of the Ministerial Loan Guarantee (MLG) approval process and the operational guidelines of the MLG program to ensure that they provide First Nations with the required flexibility to manage risks associated with mortgages backed by MLGs. Also, the government expand the MLG program to grant First Nations governments access to the program, rather than just individual First Nations members; and the government increase the guarantee authority limit to \$3.2 billion with consideration for future increases.

RECOMMENDATION 8

That the Canada Mortgage and Housing Corporation commission a value for money evaluation of the First Nations Market Housing Fund, and develop a series of proposals for expanding the possible uses of the Fund, including the possibility of securitizing the Fund to finance innovative housing projects; and

That the proportion of the First Nations Market Housing Fund allocated to the Capacity Development Program component be increased and eligibility for this program component be extended to First Nations who are at the first stages of applying for the FNMHF.

C. Recommendations related to infrastructure and financing

RECOMMENDATION 9

That Aboriginal Affairs and Northern Development Canada take the necessary steps to extend the application of the *First Nations Land Management Act* (FNLMA) with a focus on:

- Ensuring that First Nations currently operating under the *Indian Act* land management regime are provided with the training necessary to transition to the FNLMA in a timely manner;
- Ensuring that the current signatory First Nations to the FNLMA regime are provided with the support necessary to become fully operational and to meet the increased requirements of the regime, including developing their land codes; and

- Addressing, on an urgent basis, the backlog of applicants currently awaiting entry to the FNLMA regime, and exploring, in collaboration with the First Nations Lands Advisory Board, financing options to allow for greater First Nations participation in the regime.

RECOMMENDATION 10

That Aboriginal Affairs and Northern Development Canada explore the possibility of opt-in legislation, in consultation with First Nations, which would make Section 89 of the *Indian Act* inapplicable. Such opt-in legislation could facilitate private property ownership for First Nations members living on reserve.

RECOMMENDATION 11

Aboriginal Affairs and Northern Development Canada explore, in consultation with First Nations, the creation of a ministerial loan guarantee program for First Nations infrastructure on reserve.

RECOMMENDATION 12

That Aboriginal Affairs and Northern Development Canada take immediate steps to convene a national roundtable with the National Aboriginal Economic Development Board and other First Nations organizations to explore ways to facilitate First Nations access to Indian moneys, whether through amendments to the *First Nations Oil and Gas and Moneys Management Act* or through other appropriate legislative or policy measures.

RECOMMENDATION 13

That Aboriginal Affairs and Northern Development Canada ensure that adequate funding be provided to First Nations for the development of comprehensive community plans; that such plans reflect both community infrastructure and economic development needs; and that they cover a period of longer than 5 years.

Appendix B: Witnesses

Date	Witnesses
Tuesday, November 26, 2013	
<i>Aboriginal Affairs and Northern Development Canada</i>	Karl Carisse, Senior Director, Innovation and Major Policy Transformation Directorate; Tara Hutchinson, Senior Policy Analyst.
<i>Canada Mortgage and Housing Corporation</i>	Debra Darke, Vice-President, Regional Operations and Assisted Housing; Jeannie Dempster, Director, Strategic Policy Coordination.
Wednesday, November 27, 2013	
<i>Aboriginal Affairs and Northern Development Canada</i>	Karl Carisse, Senior Director, Innovation and Major Policy Transformation Directorate; Annie Comtois, Senior Program Manager, Planning, Monitoring and Reporting Directorate; Patrick Haggerty, Senior Policy Manager, Innovation, and Major Policy Transformation Directorate; Paul Schauerte, Senior Policy Manager, Program Design and Regional Partnerships.

Tuesday, December 3, 2013	
<i>First Nations National Building Officers Association</i>	Keith Maracle, Vice President, Government Relations; John Kiedrowski, Project Manager.
<i>National Aboriginal Economic Development Board</i>	Dawn Madahbee, Vice-Chair.
Tuesday, December 10, 2013	
<i>First Nations Market Housing Fund</i>	John Beaucage, Chair of the Trustees; Deborah Taylor, Executive Director.
Wednesday, January 29, 2014	
<i>First Nations Financial Management Board</i>	Harold Calla, Executive Chair.
Tuesday, February 4, 2014	
<i>Health Canada</i>	Ivy Chan, Director, Environmental Public Health Division, Interprofessional Advisory and Program Support, First Nations and Inuit Health Branch; Debra Gillis, Acting Director General, Interprofessional Advisory and Program Support, First Nations and Inuit Health Branch.
<i>Canadian Institutes of Health Research</i>	Nancy Edwards, Scientific Director, Institute of Population and Public Health; Malcolm King, Scientific Director, Institute of Aboriginal Peoples' Health.
Wednesday, February 5, 2014	
<i>Office of the Auditor General of Canada</i>	Michael Ferguson, Auditor General of Canada; Jerome Berthelette, Assistant Auditor General; Frank Barrett, Principal.
Tuesday, February 11, 2014	
<i>Assembly of First Nations</i>	Shawn (A-in-chut) Atleo, National Chief; Glenn Hudson, Chief, Peguis First Nation, Manitoba; Madeleine Paul, Chief, Eagle Village First Nation, Quebec.

Wednesday, February 12, 2014	
<i>Aboriginal Firefighters of Canada</i>	Arnold Lazare, Director; Richard Kent, Secretary and Treasurer.
<i>Canadian Association of Fire Chiefs</i>	John De Hooge, Fire Chief, Ottawa Fire Service.
<i>National Research Council Canada</i>	Guy Gosselin, Director, Building Regulations, NRC Construction; Philip Rizcallah, Manager, Canadian Codes Centre, NRC Construction.
Tuesday, March 4, 2014	
<i>BMO Financial Group</i>	Jason M. Cameron, Director, Aboriginal Banking, Ontario Regional Division.
<i>RBC Royal Bank</i>	Harry Willmot, Senior Manager, Aboriginal Market Development.
Wednesday, March 5, 2014	
<i>Ontario First Nations Technical Services Corporation</i>	Bob Howsam, Executive Director; Wes Bova, President.
<i>First Nations of Alberta Technical Services Advisory Group</i>	Vaughn Paul, Chief Executive Officer.
Tuesday, April 1, 2014	
<i>Turtle Island Associates Inc.</i>	Roxanne Harper, Vice-President.
Wednesday, April 2, 2014	
<i>As an individual</i>	Chris Maracle
<i>Chiefs of Ontario</i>	Chief Shining Turtle, Whitefish River First Nation.
<i>Curve Lake First Nation</i>	Tammy Juszczynski Banks, Capital Projects Coordinator.

Tuesday, April 8, 2014	
<i>Aboriginal Affairs and Northern Development Canada</i>	Daniel Leclair, Director General, Community Infrastructure Branch; Karl Carisse, Senior Director, Innovation and Major Policy Transformation Directorate; David Smith, Director, Program Design and Regional Partnerships.
<i>Employment and Social Development Canada</i>	Irwin Bess, Director General, Federal Programs, Compliance Operations and Program Development Branch; Annik Wilson, Director General, Regional Operations and Compliance Directorate.
Wednesday, April 9, 2014	
<i>Meadow Lake Tribal Council</i>	Merv Buckle, Advisor; Joe McKay, Manager, Technical Services.
<i>Federation of Saskatchewan Indian Nations</i>	Perry Bellegarde, Chief.
Tuesday, May 13, 2014	
<i>Atlantic Policy Congress of First Nations Chiefs Secretariat</i>	John G. Paul, Executive Director.
Wednesday, May 14, 2014	
<i>As an individual</i>	Douglas Cardinal, Architect.
Tuesday, May 27, 2014	
<i>Prince Albert Grand Council</i>	Frank Bighead, Director, Technical Services; Vincent Genereaux, Housing Advisor, Technical Services, Housing Department.
Wednesday, May 28, 2014	
<i>Siksika Housing Administration</i>	Stewart Breaker, Service Area Manger.
Tuesday, June 17, 2014	
<i>Canada Mortgage and Housing Corporation</i>	Charles MacArthur, Senior Vice-President, Regional Operations and Assisted Housing; Carla Staresina, Executive Director, Assisted Housing.

Monday, September 15, 2014	
<i>Temagami First Nation</i>	Elizabeth (Liz) Potts, Housing Coordinator.
<i>Mishkeegogamang First Nation</i>	Connie Gray-McKay, Chief; Donna Roundhead, Mental Health Counsellor.
<i>Lac Seul First Nation</i>	Basil Goodchild, Housing Manager.
<i>Eagle Lake First Nation</i>	Arnold Gardner, Chief.
<i>Constance Lake First Nation</i>	Charles Sr. Baxter, Housing Manager.
<i>As an individual</i>	Bryan Poulin, Associate Professor, Lakehead University.
<i>Wasagamack First Nation</i>	Alex McDougall, Chief.
<i>Attawapiskat First Nation</i>	Theresa Spence, Chief; Katherine Hensel, Counsel; Monique Sutherland, Housing Manager; Wayne Turner, Executive Director.
<i>Kasabonika Lake First Nation</i>	Mike Morris, Councillor.
<i>Muskrat Dam First Nation</i>	Gordon Beardy, Chief.
<i>Nishnawbe Aski First Nation</i>	Les Louttit, Deputy; Charmaine McCraw, Economic and Resource Development Unit Manager.
Wednesday, November 5, 2014	
<i>Aboriginal Affairs and Northern Development Canada</i>	Daniel Leclair, Director General, Community Infrastructure Branch; Karl Carisse, Senior Director, Strategic Policy, Planning and Innovation; David Smith, Senior Director, Program Design and Partnerships; Allan Clarke, Director General, Policy and Coordination Branch.
<i>PPP Canada</i>	Greg Smith, Vice President of Finance, Risk, Administration and CFO.
<i>Health Canada</i>	Sony Perron, Senior Assistant Deputy Minister, First Nations and Inuit Health Branch.

Tuesday, November 18, 2014	
<i>Assembly of First Nations</i>	Irving Leblanc, Acting Director, Housing and Infrastructure; Peter Dinsdale, Chief Executive Officer.
Wednesday, November 19, 2014	
<i>Nishnawbe Aski First Nation</i>	Charmaine McCraw, Economic and Resource Development Unit Manager.
Tuesday, November 25, 2014	
<i>The Canadian Council for Public-Private Partnerships</i>	Mark Romoff, President and CEO.
<i>Tiree Innovation Inc.</i>	Dale Booth, President.
<i>Assembly of First Nations of Quebec and Labrador</i>	Madeleine Paul, Chief, Eagle Village First Nation, Quebec; Guy Latouche, Consultant.
<i>Atlantic Policy Congress of First Nations Chiefs Secretariat</i>	John G. Paul, Executive Director.
<i>Manitoba Keewatinowi Okimakanak Inc.</i>	David Harper, Grand Chief; Michael Anderson, Natural Resources Secretariat, Research Director.
<i>Federation of Saskatchewan Indian Nations</i>	Kevin McLeod, Director of Housing, Economic and Community Development Secretariat.
Tuesday, December 2, 2014	
<i>First Nations Finance Authority</i>	Steve Berna, Chief Operating Officer; Ernie Daniels, President and Chief Executive Officer.
<i>First Nations Financial Management Board</i>	Harold Calla, Executive Chair; The Honourable Gerry St. Germain, P.C., Advisor.
<i>National Aboriginal Economic Development Board</i>	David Crate, Member and Chief of the Fisher River Cree Nation, Manitoba.

Wednesday, December 3, 2014	
<i>Swan Lake First Nation</i>	Desmond Gould, Director of Operations.
Tuesday, December 9, 2014	
<i>First Nations Tax Commission</i>	C.T. (Manny) Jules, Chief Commissioner.
<i>Federation of Saskatchewan Indian Nations</i>	Kevin McLeod, Director of Housing, Economic and Community Development Secretariat.
Wednesday, January 28, 2015	
<i>Manto Sipi Cree Nation</i>	Michael Yellowback, Chief; Daniel Ross, Councillor.
Tuesday, February 3, 2015	
<i>Castlemain Group</i>	Jeffrey Frank, Senior Director.
<i>Native Commercial Credit Corporation, Aboriginal Savings Corporation of Canada</i>	Jean Vincent, President and General Manager.
Wednesday, February 4, 2015	
<i>RBC Royal Bank</i>	Doris Bear, Head of Regional Aboriginal Banking Strategies; Harry Willmot, Senior Manager, Aboriginal Markets.
<i>Bank of Montreal</i>	Stephen Fay, Head of Aboriginal Banking, Commercial Banking Headquarters.
<i>TD Bank Group</i>	Clint Davis, Vice President, Aboriginal Banking.
<i>First Nations Bank of Canada</i>	Keith Martell, Chairman and Chief Executive Officer.
Tuesday, February 17, 2015	
<i>As an individual</i>	Robert Scott Serson, former Deputy Minister, Aboriginal Affairs and Northern Development Canada.
<i>Public Policy Forum</i>	Julie Cafley, Vice-President.
Wednesday, February 18, 2015	
<i>Birch Narrows First Nation</i>	Jonathon Sylvestre, Chief.
<i>Lac La Ronge Indian Band</i>	Tayven Roberts, Director, Public Works & Housing.

Tuesday, February 24, 2015	
<i>Dentons Canada LLP</i>	Michael Ledgett, Co-Chair, National Infrastructure & Public-Private Partnership Group.
Wednesday, February 25, 2015	
<i>Nak'azdli Indian Band</i>	Peter Erickson, Hereditary Chief and Capital, Housing and Lands Administrator, Band Office.
<i>District of Fort St. James</i>	Rob MacDougall, Mayor; Kevin Crook, Chief Administrative Officer.
<i>Federation of Canadian Municipalities</i>	Jacques Nadeau, Director, National Programs; Theo Breedon, Manager, Program Development, National Programs.
Tuesday, March 10, 2015	
<i>Fiscal Realities Economists</i>	Andre Le Dressay, Director, Fiscal Realities, Economists and Tulo Centre of Indigenous Economics.
<i>Corix Group of Companies</i>	Owen Matheson, Vice-President, Business Development, Corix Infrastructure.
<i>Thunderbird Commercial Insurance</i>	Malcolm Smith, Partner; John Kiedrowski, President, Compliance Strategy Group.
Wednesday, March 11, 2015	
<i>Office of the Auditor General of Ontario</i>	Bonnie Lysyk, Auditor General.
<i>PPP Canada</i>	Stefan Dery, Director, Investments; Naresh Debidin, Director, Project Development – Federal.
Tuesday, March 24, 2015	
<i>Treasury Board of Canada Secretariat</i>	Brian Pagan, Assistant Secretary, Expenditure Management Sector.
<i>Aboriginal Affairs and Northern Development Canada</i>	Karl Carisse, Senior Director, Strategic Policy, Planning and Innovation; Andrew Beynon, Acting Assistant Deputy Minister, Lands and Economic Development; Rob Harvey, Acting Director General, Corporate Accounting and Material Management.

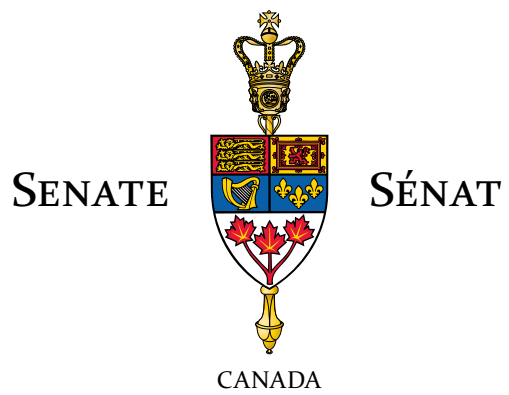
Tuesday, March 31, 2015	
<i>Muskeg Lake Cree Nation</i>	Aaron Ledoux, Director of Housing; Jamie Arcand, Housing Manager; Dana Greyeyes, Councillor.
<i>Tsawassen First Nation</i>	Colin Ward, Director of Public Services.
<i>Tsawout First Nation</i>	Harvey Underwood, Chief; Eric Pelkey, Director of Operations; Gwen Underwood, Lands Manager; Stanley Sam, Councillor; Eric Pettit, Senior Project Engineer, WSP Canada Inc.; Ron Akehurst, General Manager, WSP Canada Inc.; Allan Claxton, Councillor.
Wednesday, April 1, 2015	
<i>National Research Council of Canada</i>	John R. McDougall, President, Executive Offices; Michael Swinton, Research Officer, Building Envelope and Materials, Construction; Philip Rizcallah, Manager, Canadian Codes Centre, Construction.
Tuesday, April 21, 2015	
<i>Macdonald-Laurier Institute</i>	Ken Coates, Senior Fellow in Aboriginal and Northern Canadian Issues.
<i>First Nations Tax Commission</i>	C.T. (Manny) Jules, Chief Commissioner.
Wednesday, April 22, 2015	
<i>All Nations Trust Company</i>	Paul Donald, Chief Executive Officer.
<i>The Usand Group</i>	Sean McCoshen, Chairman and Chief Executive Officer; Erinn Mah, Chief Operating Officer.
<i>Forrest Green RMC</i>	Murray Rowe Junior, President.
<i>Assembly of First Nations</i>	Richard Nerysoo, Member, Working Group on Natural Resources Development.

Tuesday, May 5, 2015

<i>First Nations Financial Management Board</i>	Harold Calla, Executive Chair.
<i>Compliance Strategy Group</i>	John Kiedrowski, President.

Fact-finding Missions

<i>Nova Scotia</i> <i>May 21-23, 2014</i>	Membertou First Nation Eskasoni First Nation Sipekne'katik First Nation
<i>Ontario</i> <i>September 15-19, 2014</i>	Sandy Lake First Nation Kitchenuhmaykoosib Inninuwug Ojibways of the Pic River First Nation Atikameksheng Anishnawbek Six Nations of the Grand River First Nation
<i>British Columbia</i> <i>October 5-10, 2014</i>	Tsartlip First Nation Nanoose First Nation We Wai Kai First Nation Ahousaht First Nation Osoyoos Indian Band Westbank First Nation Tk'emlups te Secwépemc
<i>Québec</i> <i>October 27, 2014</i>	Kitigan Zibi Anishinabeg



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