



Government of Canada
Permanent Mission of Canada
to the United Nations and the
Conference on Disarmament

Gouvernement du Canada
Mission permanente du Canada
auprès des Nations Unies et de la
Conférence du désarmement

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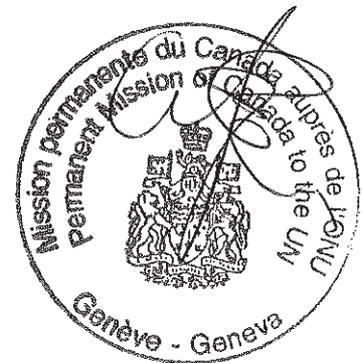
Note No.: YTGR0404

Reference: Letter from the Special Rapporteur on the Rights of Indigenous Peoples requesting additional information in respect of the Attawapiskat First Nation (dated 10 May 2012)

The Permanent Mission of Canada to the Office of the United Nations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit the response of the Government of Canada to the letter from the Special Rapporteur on the Rights of Indigenous Peoples, dated 10 May 2012, requesting additional information on the original response submitted on 17 February 2012 concerning the housing situation of the Attawapiskat First Nation, as well as the allegedly poor living conditions on Aboriginal reserves in general.

The Permanent Mission of Canada avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 10 September 2012



**FOLLOW-UP RESPONSE OF THE GOVERNMENT OF CANADA TO THE ADDITIONAL LETTER
FROM THE UN SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES
IN RESPECT OF THE ATTAWAPISKAT FIRST NATION**

REFERENCE: Letter dated December 19, 2011 from the Special Rapporteur on the Rights of Indigenous Peoples, Mr. James Anaya. Canada responded to this appeal by way of letter dated February 14, 2012 (the “previous submission”).

REFERENCE: Letter dated May 10, 2012, wherein the Special Rapporteur requested additional information with respect to Canada’s response.

REFERENCE: July 12, 2012 meeting between the Special Rapporteur and Canada’s Ambassador and Permanent Representative to the United Nations and the Conference on Disarmament in Geneva, Ms. Elissa Golberg, and Aboriginal Affairs and Northern Development Canada (AANDC) Senior Assistant Deputy Minister, Mr. Jean-François Tremblay.

Canada welcomes this opportunity to provide certain additional clarifications sought by the Special Rapporteur in his letter of 10 May. Some of these issues were addressed during the meeting of 12 July, but are re-capped for ease of reference.

Current Situation of the Attawapiskat First Nation

Housing

As of May 9, 2012, the First Nation reported that all 22 new modular homes were occupied. The installation of the new modular homes and a total of \$500,000 in funding towards renovation work on three existing houses have allowed for the 25 affected families to move into safe, warm and dry accommodations.

The federal department of Aboriginal Affairs and Northern Development Canada (AANDC) continues to support the Attawapiskat First Nation. From 2006-2007 to 2011-2012, the Department has provided this First Nation with \$8,322,606 in direct investments in housing, and an additional \$5,830,172 in Ministerial Loan Guarantees. Ministerial Loan Guarantees, meant to provide assistance with bank financing for social housing programs and individual home ownership, are provided to First Nations to support the development of on-reserve housing. First Nations can also secure other sources of funding, both governmental and non-governmental, in order to address their funding needs.

AANDC has also provided over \$660,000 for the set-up and subsequent renovations to the community’s ATCO trailer complex since 2009-2010. Canada has also received confirmation that all of the deficiencies and repairs identified by the First Nation for the ATCO trailer complex had been addressed.

Federal officials have regularly and continue to offer assistance to the Attawapiskat First Nation to improve capacity and develop a detailed and comprehensive housing strategy that will serve

as a basis for addressing the community's housing needs. First Nations are responsible for managing their housing needs, and a sound housing strategy developed by the First Nation would lay the framework for budget planning, identify sources of funding to support housing, and serve as a guide for long-term sustainability of the First Nation's housing program.

Financial Management

As the Special Rapporteur has pointed out, the Third-Party Manager is no longer in place in Attawapiskat. As stated in the previous submission, the primary goal of the appointment of the Third-Party Manager was to remedy the emergency situation in Attawapiskat as expeditiously as possible. In recognition of the accomplishments that were made toward substantially addressing the urgent health and safety needs of the affected families, AANDC moved the First Nation out of third-party management and back to co-management, effective April 19, 2012. Canada would like to point out that the Federal Court, on August 1, 2012, granted a judicial review of the appointment of the Third-Party Manager.¹ Canada is currently reviewing the judgment, and no decision has been taken with respect to a possible appeal.

As also stated in the previous submission, one of Canada's longer-term goals is to build capacity within the Attawapiskat First Nation to enhance its ability to self-manage; Canada remains committed to this goal.

It is important to note that under third-party management, the First Nation's Chief and Council remained in place as did the Band's financial management staff. Thus, even while the Third Party Manager was in place, the Attawapiskat First Nation's Chief and Council continued to manage the First Nation's own funds. They retained full control over all resources and funding that did not relate to their funding agreement with the Government of Canada. Additionally, the Chief and Council of Attawapiskat First Nation continued to govern and to be responsible for setting the strategic direction of the First Nation.

The Special Rapporteur's letter of May 10, 2012 refers to allegations that the Third Party Manager mishandled funds. Canada is unaware of any basis for this allegation, and in the absence of any information that might substantiate the claim, Canada is unable to respond.

Educational Facilities

The Government of Canada believes that education is an important foundational element of strong, healthy First Nation communities. Since 2006, the Government has invested in 37 new schools, 22 major renovation projects and 184 projects involving minor renovations to First Nation schools across Canada.

On May 19, 2011, the Government of Canada announced that funding had been set aside to accelerate the design and construction phase of a new school for the Attawapiskat First Nation. Since then, the First Nation and AANDC officials have been working collaboratively to develop detailed plans and designs to ensure that the new elementary school for the community is

¹ *Attawapiskat First Nation v. Canada (Aboriginal Affairs and Northern Development)*, 2012 FC 948

constructed to meet the long-term needs of the community in a manner that is cost-effective, transparent, and subject to public accountability.

On March 6, 2012, the Attawapiskat First Nation and the Minister of AANDC jointly announced the award of a construction contract to build the new elementary school. The design, completed in January 2012, calls for a 5,808 square metre school that will accommodate 540 students from Kindergarten to Grade 8. The Government of Canada has committed \$31 million over three fiscal years to support the completion of this project, representing 100% of the estimated cost of construction. To date, approximately \$6 million has been provided by AANDC for expenditures incurred on this project.

Construction of the facility has already commenced, with the general contractor purchasing and mobilizing some of the materials required to build the school, as well as working to prepare the site for foundation construction. A celebration to mark the start of construction took place in Attawapiskat on June 22, 2012. AANDC officials joined the community to mark this milestone. The new elementary school is expected to open during the 2013-2014 school year.

Over the last six fiscal years (from 2006-2007 through to 2011-2012), AANDC has provided almost \$17 million (\$16,853,368.00) to support education infrastructure in the Attawapiskat First Nation. These investments include operations and maintenance funding for the elementary and secondary schools, an addition to the secondary school completed in 2007-2008, renovations to teacher accommodations, and investments in the feasibility study and design of the new elementary school.

Social and Economic Situation of First Nations in Canada More Generally

This portion of Canada's submission provides some additional information on the general social and economic issues raised by the Special Rapporteur, including information on the "2 per cent funding formula" for core services for Aboriginal people.

A) "Are there any plans to increase the approved annual growth rate for basic services from 2 per cent to a higher percentage?"

As mentioned in Canada's previous submission there is no 2% "cap" on spending increases for Aboriginal core services. An escalator (an annual growth rate) is applied to increases in funding for core services for Aboriginal people such that a minimum increase has been maintained each year. Further, there is a certain amount of flexibility in the administration of funding envelopes, such that actual expenditures have in fact increased by more than 2% annually for some time.

To illustrate this, the chart below sets out the Government of Canada's actual expenditures for a number of Aboriginal core services at the beginning and at the end of the ten-year period ending March 31, 2011. These figures demonstrate that average annual expenditures increased by considerably more than 2% per year for all four service areas and that the levels of increases varied across service areas. This funding approach enables the Government of Canada to remain responsive to the priority needs of Aboriginal Canadians.

	Year ended March 31, 2001	Year ended March 31, 2011	Increase (%)	Annualized growth rate
Health ²	1266.5	2402.1	89.7%	6.61%
Education ³	1249	1785.2	42.9%	3.64%
Social Development ²	1102	1610.9	46.2%	3.87%
On-reserve housing ⁴	283.9	406.8	43.3%	3.66%

All figures in millions of CAD

Canada also reiterates that, over and above baseline funding allocations for core services such as health care, education and housing, it has made significant targeted investments over the last several years in priority areas. For example, the 2012 federal Budget Plan (Economic Action Plan 2012) identified funding for initiatives relating to First Nations education, labour market participation, fishing enterprises, urban Aboriginal people, land management, water infrastructure, family violence and mental health issues.

B) Impact of deficit reduction on funding levels

As stated in Canada’s previous submission, the spending freeze imposed on overall government spending in order to reduce Canada’s deficit *excludes* funding for core services for Aboriginal peoples. As described in the answer to the previous question, funding for core services for Aboriginal peoples is subject to an escalator which increases the level of funding year to year and does NOT limit annual increases to 2%.

C) Canada Health Transfer, Canada Social Transfer and the Equalization Program

The Special Rapporteur has asked about a comparison between rates of increase of the Canada Health Transfer, Canada Social Transfer and the Equalization program on the one hand, and funding for “core services” for Aboriginal peoples on the other hand. These expenditures are not comparable. The Canada Health Transfer and Social Transfer serve the purpose of providing funding to provinces and territories for services within their constitutional areas of jurisdiction, in exchange for the meeting of certain conditions. The Equalization Program serves the purpose of remedying fiscal disparities between the provinces. These purposes are entirely different from those of funding for services for Aboriginal Canadians.

The Canada Health Transfer, the Canada Social Transfer and the Equalization program support provincial delivery of services to their populations.

² Canada, Treasury Board Secretariat, *Departmental Performance Reports* for Health Canada

³ Canada, Treasury Board Secretariat, *Departmental Performance Reports* for Indian and Northern Affairs Canada (now Aboriginal Affairs and Northern Development Canada)

⁴ AANDC and Canada Mortgage and Housing Corporation, actual fiscal year expenditures for 2000/01 and 2011. The 2010-11 CMHC expenditures include funding provided under Canada’s Economic Action Plan (CEAP).

The Canada Health Transfer provides provinces and territories with long-term predictable funding in support of public health care. Provinces and territories must fulfill the conditions in the *Canada Health Act* (universality, comprehensiveness, portability, accessibility and public administration, as well as the provisions relating to prohibiting extra-billing and user charges) in order to receive their full federal cash contribution. Since 2004-05, the Canada Health Transfer cash levels are set in legislation to grow by six per cent annually.

The Canada Social Transfer is a federal block transfer to provinces and territories in support of post-secondary education, social assistance and social services, early childhood development and early learning and childcare. In order to receive their full federal cash contribution under the Canada Social Transfer, provinces or territories must not impose minimum residency requirements for social assistance. Total Canada Social Transfer cash levels are set in legislation to grow by three per cent annually.

Equalization addresses fiscal disparities across provinces. Equalization payments allow less prosperous provincial governments to provide their residents with public services that are reasonably comparable to those provided in other provinces at reasonably comparable levels of taxation. The year-over-year growth in Equalization is commensurate with the overall growth of the Canadian economy based on a three-year moving average of nominal growth in Canada's Gross Domestic Product. Equalization payments are not conditional on providing specific services.

Both the Canada Health Transfer and the Canada Social Transfer represent only a portion of provincial/territorial spending on the services in question. The funds transferred by the federal government to the provinces and the territories under these two transfer payments do not constitute the total cost of these services, nor do changes in the level of funds transferred necessarily mirror changes in the total amounts spent by the provinces and territories in providing these services. In other words, an increase of a given percentage in federal funding under the transfers will not necessarily imply an increase of the same percentage in actual spending on the service. Federal funding for services for Aboriginal peoples, on the other hand, represents a different proportion of total spending on a given service depending on the particular funding agreement, and can often represent nearly 100% of spending on a given service. A comparison between these transfers and federal funding provided to First Nations for core services is therefore inapt.

The Equalization Program, for its part, serves a distinctive purpose in remedying fiscal disparities between provinces, a purpose which explains both its funding formula based on GDP and the fact that only some provinces will receive a payment under the program in a given year depending on the provinces' ability to raise revenues. Federal funding for services for Aboriginal peoples, on the other hand, is not meant to remedy fiscal disparities between First Nations, but is intended to help ensure that specific services are available to Aboriginal Canadians. Like the Canada Health Transfer and Canada Social Transfer, the Equalization program does not serve as an appropriate comparator with federal funding provided to First Nations.

D) Comparison of provincial and federal funding

The Special Rapporteur has asked about a comparison between the level of funding provided by the Government of Canada to Aboriginal governments for certain “province-like services”, on the one hand, and the level of spending by the provinces on these services, on the other hand. As explained in Canada’s previous submission, First Nation governments have different sources of revenue from provincial governments and provide a different bundle of services to their communities; their funding and their spending profiles cannot be compared to that of provinces and territories. This issue is the subject of ongoing litigation and, consequently, Canada refrains from further comment at this time.

E) Reallocation of funding by First Nations

The Special Rapporteur refers to reallocation of funds by First Nations from certain programs to others. Each First Nation is responsible for the administration and allocation of its own funds, subject to any conditions imposed by applicable legislation and funding agreements. For example, some funding agreements may require that funding provided for a specific purpose be used for that purpose. Any decision to reallocate funds from one spending area to another is the responsibility of the First Nation in question.

Conclusion

Canada trusts that the above provides clarification with respect to the questions posed in the Special Rapporteur’s letter dated May 10, 2012. The Government of Canada is committed to working with Indigenous peoples to ensure that First Nations, Inuit, Métis and northern communities are healthy, safe, self-sufficient and prosperous. Canada stands ready to provide additional information should that be of assistance.

Ottawa