

Successful Housing
in First Nation Communities

A REPORT ON COMMUNITY CASE STUDIES

Success cannot be created, it can only be supported

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1.0 BACKGROUND

The provision of housing for Aboriginal people on reserve is a major issue that provides a challenge for everyone involved in the issues of governance, administration, procurement and construction of residential facilities in First Nation communities. The need for housing is growing along with the impending demographic explosion that is projected to take place in First Nation communities in the next few years. The life span of the existing housing stock, along with the potential for new family formations, creates an enormous demand for new housing units, as well as raising the quality on the existing stock.

History of the Housing Policy and its Impact at the Community Level

In the 1960s, Indian and Northern Affairs Canada (INAC) introduced a Welfare Housing Program that was designed to assist people who had incomes under \$2,500 per year. A high percentage of people living on reserve at that time, unfortunately, fell into this category. However, prior to this program, a royal commission report commonly referred to as the *Hawthorne Report*, recommended policies designed at integration and support for people to move away from reserves. It was felt that jobs could be found in major cities and the key to erasing any social and economic disparity was to have Aboriginal people abandon the reserves and the lifestyle that seemed to be perpetuated there and become part of the Canadian mainstream. Many people did, in fact, leave the reserves to search for a better life, only to be met with urban poverty compounded by racial intolerance. Many people moved back to the reserve disillusioned and bitter. The migration back and forth did not go unnoticed by government and the pressures to provide further assistance for housing increased.

In 1965, the federal cabinet gave approval in principle to carry out a five-year housing program designed to eliminate the backlog and provide for the projected needs of on-reserve housing. This was undertaken by allocating three different programs: a subsidy housing program, an Indian on-reserve housing program and a band-administered housing program. All these programs are essentially in place and active in one way or another to this day. The subsidy started at \$7,000 in 1966, increased to \$10,000 in 1973, increased to \$12,000 in 1977, and then to \$22,125 in 1980. At the community level, the subsidy was received as an allocation and, with no other source of revenue for the construction of a house, it therefore became the standard to construct houses for the amount that was being provided under this program. Thus houses on reserve were being built for an amount that was originally intended to be only a partial subsidy. Obviously, the quality suffered but more importantly, the process was being ingrained that, for one, INAC was building houses and, secondly, councils and individuals need not take any responsibility for the provision of shelters.

It must be remembered that, at the time of the initiation of this program, there were Indian Agents located in almost every community. The presence of the department was far more visible than it is today and its primary responsibility was to run the affairs of each and every First Nation. This was also the era of post WWII and housing was being provided *en masse* to veterans for little to no fee. The provision of housing to Aboriginal people along with the strategy as outlined in the "*Hawthorne Report*" followed this pattern.

The template for Aboriginal housing was set and controlled by people other than the First Nation people and the continuing and revised programs have generally been built on this foundation. However, regardless of the general effectiveness of the programs and policies, some communities worked within the parameters which have resulted in safe, quality housing. This report presents the results of an investigation into how this became possible within a number of selected First Nation communities in Canada. The report also presents an analysis of the factors of success that were consistent in each of the communities visited.

2.0 OBJECTIVE OF THE REPORT

The objective of the exercise was to identify the elements of success that contribute to successful housing projects and programs within selected First Nation communities in Canada.

3.0 METHODOLOGY

The methodology for this project was not intended to be a scientifically-based exercise, using data collection techniques with a large sampling base that could stand up to methodological scrutiny. Rather, it was based on the fact that people at the community level would be more forthcoming if an informal approach was taken by community visits from a principal interviewer. Admittedly, the information provided becomes biased. However, primary observation of the physical conditions can be documented as a primary sampling technique.

The information for the report was collected using primary and secondary research techniques on a three-phase basis, after the work plan and outlines were approved. The first phase was to request of the regional offices, the locations of housing projects or the administration of programs in First Nation communities that, in their opinions, had “good housing”. This was a purely subjective opinion on the part of the people providing the lists, reflecting a somewhat personal opinion of what constitutes “good housing”.

The second phase was to travel and meet with a number of communities that provided a cross section of elements including population, location, and land tenure. The third phase was to collect data on housing including information from the United States.

Information from all sources was collected and analyzed looking for threads of similar instances that contributed to success regardless of the differing conditions and different interpretations of what “successful housing” meant.

Efforts were also made to include regional personnel in discussions surrounding the results. Further inclusion on interpretation of information and particularly recommendations will be sought from regional officials.

4.0 KEY FINDINGS

4.1 *Governance is the key. If a First Nation has a strong governance system in place, the ability to run a housing program is inherent.*

Of all the communities visited, the one and only similarity was the fact that they all had relatively strong governing systems. While Councils had differing political views, they all had a sense of obligation to the community that housing had to be addressed.

In most cases, the housing programs were well set out with comprehensive rules and regulations. However, not all the communities with these policy procedures in place operate under the Housing Policy of 1996. Similarly, not all the communities visited have the same land tenure. Some operate under the Certificate of Possession (CP) system, some under the community land system and others under settlement agreements emanating from a claims settlement.

Councils appeared to be relatively stable although the political element was not overly involved in the day-to-day operation of the housing program. This was generally the case in each of the communities visited. In one case, where a community-owned financial institution was located on the reserve, the council had no involvement in any manner with the administration and approval process of loans provided to members. The institution was indeed operating at an arm's length relationship from the political element.

The contemporary thoughts regarding governance appear to be centred around the capacity of the elected officials to undertake a governing role. However, Jorgenson (2000) in her paper entitled "*History's Lesson for HUD [Housing and Urban Development] and Tribes*", suggests there are several types of governance that make a difference in the performance of the housing authorities in the United States.¹

- 1) Legal Governance - Court action or the threat of court action may have motivated renters to pay up, vandals to desist and opportunistic officials to restrain from self-dealing.
- 2) Political Governance - Incentives provided by the democratic process, especially the desire to be re-elected, may have constrained political officials to behave well.

¹. History's Lessons for HUD and Tribes - Jorgenson 2000 - Graduate thesis for Harvard

- 3) Bureaucratic Governance - Clear models of, and rules for, appropriate behaviour, and sanctions against inappropriate behaviour, may have limited the inherent politicization of the system and motivated good official behaviour by example or coercion.

- 4) Informal, Socio-Cultural Governance - Socio-cultural approbations, shaming, or shared values may have disciplined renters, vandals, and officials who sought to use Indian Housing Authorities resources for personal gains.

If we accept this example for governance, the application to the Canadian models would be somewhat different and it would, by necessity, address some different policy concerns.

Legal Governance - What is the ability to base a governing system founded on? There are many complex pieces to this question which go directly to the heart of the relationship between Aboriginal people and the Government of Canada. Most tribal groups had a system of government that ensured their survival far before any contact with European-type governmental systems was introduced. At the early stages of contact, numerous treaties were signed that varied in legal effect. Some were peace and friendship, while others dealt with land and a range of services.

With the introduction of the *Indian Act* in 1867, a new system of government was introduced with varying degrees of acceptance. However, most tribal groups did not have a choice of accepting or rejecting this new system and, as such, this foreign manner of administration proved instrumental in breaking down many of the social systems and structures. Indian Agents were posted on each reserve to ensure that the federal government's authority was omnipresent. History documents that any cultural prerogatives that were seen as valuable were in fact systematically assaulted and destroyed. With the cultural systems torn apart, the traditional systems of governing became obsolete. Most traditional systems of governing went underground and only remnants remain.

The legal system of governance that is recognized by Canada is through the administration of the *Indian Act* or, more recently, self-governing agreements such as Sechelt, or through the signing of treaties such as the Nisga'a treaty. In all cases, the state continues to have a strong presence and continues to insist on a certain level of involvement in order to protect its domestic sovereignty.

First Nations today continue to redress the interpretation of the treaties and a revised fiscal relationship based on a fair share to resources. These two elements are seen as fundamental ingredients to restructuring sound Aboriginal governing systems. The ability of a First Nation to make and enforce rules that will serve their communities' interests must be paramount. The *Indian Act* was founded on the basis that First Nation interests were subsidiary to the Crown. Aboriginal people believed they were equal. A legal system that supports the socio-economic foundation for governance must be founded and instituted as a primer for positive involvement.

Political Governance - The foundation of any democratically-based governing body is that people elected to represent their interests must have the authority to make decisions. The authority of the First Nation Councils recognized by the Government of Canada is vested through the *Indian Act* and other Acts of Parliament. However, the manner in which this authority is exercised can be directly related to the culturally-based decision-making process within the First Nation. Band Councils do not operate in the same manner as municipal councils. Discussion tends to be much more fulsome and attempts to reach consensus is usually laboured.

There is a basic management principle that responsibility and authority cannot be separated. If they are, neither will work. A considerable number of Band Councils are being asked to assume the responsibility of programs but the authority remains within the government. In general, the present administrative system requires approval by departmental officials of a Band Council Resolution (BCR) after a council decision is made. The political governing bodies can never be held totally responsible if the concomitant authorities are not in place to support them. The question of accountability also comes into question. Can the council members be accountable if they are not responsible or do not have the full requisite authority to make decisions.

In many communities, council members are elected on the basis of their handling of the housing allocation system. With the numbers of units to be built each year at a premium, housing becomes a political commodity. The more housing units that can be delivered, the more votes. The absence of rules and regulations governing the allocation process leads ultimately to political suspicion, regardless of any real concerns of foul play. Political power in some respects seems to be held in the hands of those in office; but, in reality, decisions are simply a function of administrative necessity. The allocation process also appears to be separated from the maintenance and upkeep of the housing units. Hence, poor quality of housing can be separated from the issue of having enough housing and, in too many cases, issues such as overcrowding exacerbates the issues relating to quality.

Bureaucratic Governance - A strong administrative arm of a First Nation government is necessary for effective performance of any program, housing being no exception. A strong government requires a capable bureaucracy which is built on a clear delineation of roles and responsibilities, internal capacity to manage programs, provide effective oversight, and offer examples of sound management. The wider the range of “services” that are offered in this regard, the stronger the government. Requirements such as office policies, which outline the manner in which an office chooses to operate, support an effective bureaucratic governance system.

With respect to housing, the rules and regulations from the allocation process to the financing, construction and inspection procedures need to be documented and published. This is central to the Housing Policy of 1996, but not all communities have opted into this policy. Capacity can be built around this requirement and with the capacity comes the ability to create employment. For example, if a person was certified as a building inspector, the First Nation would be able to find administrative dollars to support this function more easily than if they did not have the in-house capacity. The inspection capability would necessitate an enforcement capacity and the councils would be required to deal with policy issues pertaining to enforcement. Whether it is enforcement of a building code or collection of rent or mortgage moneys, the determination to enforce rules is an important factor in bureaucratic governance.

Socio-Cultural Governance - The ability of a people to govern themselves is fundamentally socio-cultural governance. Aboriginal people did in fact govern themselves for thousands of years and developed some precepts and concepts of governing that were appropriated by other governments. For example, the structure of the United States government was in part modelled after the Iroquoian Confederacy. The powers and succession of responsibilities were built into ceremony and culture much as they are in present day governing systems. This governing ability that was inherent in First Nations people was repressed for generations by the superimposition of a different method of governing, but the abilities to reconstitute an effective manner of governing is tied into the strength of a culture to survive and provide an effective foundation for contributing to the societies we live in.

Jorgenson quotes “...a society’s capacity to practice social control is determined by its stock of social resources. Capable societies are rich in trust, interpersonal networks and most generally, social capital which refers not only to trust and networks, but to any aspect of informal social organization that constitutes a productive resources for one or more actors”².

The interpersonal networks and social organization are abundant within the First Nation communities; hence, the social capital and the potential for its effective use is very high.

². Ibid

4.2 *Those communities who have successful housing programs have broken out of the social housing only mode and offer a range of options for the provision of homes directly to their members.*

The roots of the INAC housing program are firmly embedded in social housing which dates back to the early 1950s and the *Hawthorne Report*. For years, the responsibility of building housing was assumed by INAC, leaving the dweller with the responsibility of moving into, and living in, the housing unit provided. In most First Nation communities today, and primarily because of the massive devolution program carried out in the 1980s, the provision of housing has been shifted from the federal government to the Chief and Council. With little change in the level of responsibility from the home owner or dweller, the conditions have changed minimally over the past 10 years.

In 1965, the Federal Cabinet gave approval in principle to carry out a five-year housing program designed to eliminate the backlog of houses and to provide for the projected needs of on-reserve Aboriginals. However, the manner in which the houses were constructed impacted on the effectiveness of the program and the longevity of the units. The housing program was to have three components. A subsidy portion, an on-reserve housing program where loans to individuals from Canada Mortgage and Housing Corporation (CMHC) were made, and a band-administered housing program.

The results of this three-pronged approach was generally that the construction of homes on reserve were being undertaken for the amount of the subsidy provided. In most cases, the individuals did not have any supplemental dollars to assist in the construction and, therefore, houses were constructed for amounts available from the subsidy. As this was the only available funding other than INAC, the ability to build residences other than typical “reserve” houses was minimized. CMHC also required ministerial guarantees which allowed the lenders to be fully secured as they were financing individual mortgages. The effect at the community level was that funding sources outside INAC still required INAC’s involvement, effectively entrenching the “social welfare” approach to housing. Government and government agencies were undertaking everything with respect to the provision of housing and thus not allowing the First Nations to benefit from learning how to undertake their own programs and build capacity within their own membership.

Communities that have developed successful housing programs have been able to move beyond this policy and have undertaken programs of their own that are designed to meet the general needs of their communities. In some cases, they utilize the funding to offer packages to their memberships; in other cases, they offer only a portion of the resources and have the householder find the remainder. In all cases where there were successful housing packages, the householder was involved in a significant way. This involvement ranged from being involved in the design and financing of the unit to the selection of the builder.

There is also a community compliance issue that needs to be illustrated as a feature of the majority of these communities. In some communities, some members challenged the fact that they had to pay but had previously agreed to the rules of repayment. Local courts upheld the ability of First Nation governments to institute and enforce a repayment policy.

Additionally, most of the communities offered a range of services to their membership that would affect their ability to obtain housing that was suitable for their needs and financial ability. These services often mirrored the programs that were available through standard INAC or CMHC programs but, in some cases, the First Nation was able to further supplement the subsidy through their own resources. Some communities offered rental programs, home ownership, elders rental, or rent to purchase. All the communities visited dealt with their members in a different manner. Transactions dealing with the provision of housing required a range of commitments and agreements between the individual and the governing body. In some areas, CPs were required as chattels. In others, the CPs were actually turned over to the administration and returned only when the financial obligation was fully paid to the First Nation. Some took on the responsibility of packaging the financing available from a number of sources, while others required the home dweller to put the package together themselves. In all cases, the Chief and Council acted as the final authority on all transactions regarding the provision of housing and the elements that support the provision of housing.

4.3 There was a clear delineation of roles and responsibilities of the political element and that of the administration.

In the majority of cases, the administration had very clear manuals and procedures on how to conduct and operate their housing program. While the function was administrative in nature, there was consistently an acknowledgement that the Council had to be the body approving major decisions. Although the actual allocation or housing assignment process was different in each community, the distribution of housing units and financial allocations consistently had to receive approval from their respective Councils.

There were communities where the Councils provided financing only. In these particular communities, the administration normally undertook a screening process but required final approval from Council before moneys were expended on construction.

Councils effectively retained the authority but relied on their administrations to follow the regulations as approved by their community governing bodies. The level of policy manuals ranged from highly comprehensive to overviews. In all communities visited, the houses appeared to be well maintained and, in the majority of communities visited, the responsibility of maintenance was the responsibility of the home dweller.

Administrations generally provided a range of services but were mostly infrastructure related, such as water and sewer hook ups and electrical service.

The political element felt strongly that their responsibility to provide housing was being severely limited by the amount of available resources. They also felt that, if the housing responsibility were to be relegated to a completely autonomous body, even if it were an Aboriginal organization, the impact would not be any different unless there were more resources to work with.

4.4 The institutional environment in which successful housing programs operated was a critical determinant of its success.

More than one successful program, other than housing, was evident in the communities visited. The fact that Councils had set up governing systems, complete with procedures, staff and support systems, “reinforced” the perception that a positive institutional environment had created a successful environment. Certainty was also created as a by-product in that community members could be assured that their institution of government was transparent and offered programs that were relevant to their specific needs. It was evident that other programs, such as education and infrastructure, were being well run; hence, the success of the housing program was often only one of a cadre of programs that were being successfully managed by the First Nation.

In addition, one feature of this “good governance” institutional approach was evident in the enforcement of First Nation policies. Whether it was compliance to building standards or collection of rent or mortgage amounts, the compliance rate was extremely high. This is probably due to collection procedures that are common within the First Nation community; that is, informal application of very stringent regulations. In reality, where community populations are small, there is a greater level of peer pressure to ensure that one is not seen as shirking their responsibility [to make the necessary or obligated payments]. As an example, the default rate of payments within the communities that have established local loan funds is extremely low. This is a feature that the major banks have observed and they are basing some of their lending policies for on reserve housing on this fact.

4.5 *The earlier the householder is involved in the process, regardless of land tenure, the higher the quality of housing.*

The procedures for involving the householder were different in every community. Some communities, where home ownership was in place, required the home owner to participate, or make the decisions outright, in everything from site selection to financing costs above the mortgage ceiling available from the First Nation. Others provided a package that the home owner purchased, utilizing the subsidy provided by the First Nation. In some cases, before construction could begin, the home owners were required to demonstrate that they had the ability to cover the remaining costs. In other cases, proof of a cash balance [in a bank account] necessary to complete the cost of construction was required.

In some cases, once the people who would occupy the houses were selected, the First Nation would select the design of the house they were to live in. In other cases, the individual had the sole responsibility of selecting the design. In all cases, the design and the construction had to meet some approval criteria which for the most part was in compliance with the National Building Code. In most cases, the First Nation had the capacity to inspect and approve the various stages of construction but, in some cases, the First Nation purchased this service from the neighbouring municipality or CMHC. The most salient factor remains that the successful communities monitored and complied with a predetermined set of standards and regulations regarding the quality of construction.

4.6 *The ability to enforce rules regarding housing regulations increases the overall quality.*

Whether it is inspection on construction or rent collection, the ability to enforce the rules set out by the First Nation administrations was a critical factor in the success of the program. Different administrations carried out this function in a different manner but, when it was necessary, it was not overlooked. In the case of overdue payments, some administrations took a very neighbourly approach by talking to the client and trying to work out a way to address the problem while others sent letters from lawyers or other enforcement agencies. Councils were notified and kept apprised of any serious delinquencies.

The social mores of the community or cultural attributes come very strongly into play here. Where there are seemingly harsh approaches, but ones that work, the community has to accept this as a standard and every one *de facto* agrees with the rules. Rules are important and when they are the community's rules, they work. For instance, one community did not offer any social housing programs. All housing was provided on a mortgage basis or by some other type of loan. Perhaps as a qualifier, when the proximity of the community is such that it is geographically near an urban centre, there are social service agencies, other than on-reserve agencies, that can provide essential services. The fact remains that in one particular community, it had chosen to provide the "financing only" to its members instead of participating directly in the construction of the houses. This local decision and tacit acceptance by the community reflects in the sustainability and quality of their housing stock.

This also supports the concept stated in previous paragraphs that stipulates, when people are involved in the development of the rules that govern their affairs, the programs that emanate from those policies will be far more successful. This concept is successfully illustrated and supported by community members where housing programs are working well.

The ability to enforce the regulations is predicated on three factors: one, the support of the political system; two, the published regulations and acceptance by the overall community; and three, a well-known process of enforcement, i.e., who will take actions in what cases. In most communities where a revolving loan fund was in place, there was usually some example of a delinquent client. However, in 99 percent of the cases, the issue was solved by family members or some other local and informal mechanism. The ability of the administration to be able to walk between the lines of formal structures and regulations and reach into the community in more of an informal manner meant that the loan losses were extremely low. In most cases, the delinquency rate was less than one percent in each of the communities that had loan provisions in place.

In the case of loan collection, the success of the administrations is clearly based on the informal and personalized application of formal rules. This is a feature that truly can only be set up and structured at a local level.

4.7 The availability of capital is increasing but only enough to address the current pace of construction and the increased cost of the construction of housing units.

While the departmental budgets have been frozen for a number of years, dollars have been directed from other “one time” sources to effect the construction of new homes. It was reported on numerous occasions that CMHC units have also been reduced.

The senior financing institutions (banks) have shown great interest in becoming involved in the financing of the Aboriginal housing industry. The approach that each has taken varies a fair amount. Some are directing their efforts towards developing infrastructure and capacity within the Aboriginal community through supplying technical in house services, while others are looking to provide mortgage money directly to individuals.

Almost all the banks have undertaken programs that do not require a ministerial guarantee. However, they do require a Council resolution guaranteeing the loans to either the Bands or the individuals. The banks require the Council to be involved and approve each loan the bank makes to any individual. Some banks require each individual to be approved, while others have a system set up where the loans are monitored by a financial ceiling. Some banks require an exclusive relationship with the First Nation, while others do not. One bank is currently seeking approval within their own system to provide mortgages on reserve without Councils' involvement. This program has yet to be announced. All banks apply the concept of due diligence on the potential mortgage holder; however, level of income is not as important as a good credit rating. The banks also prequalify which First Nations they will do business with. As an example, if a First Nation is in third-party management, the bank will try to assist them in their financial management and bring them to a point where they can do business with the bank on an ongoing basis.

In the majority of communities visited, the administration of the housing programs was successful in providing good quality housing units but the backlog was not being addressed in any capacity. In most cases, the number of units constructed was determined by the number of units allocated through the housing subsidy program of INAC and/or the allocation of CMHC towards that community. The housing administrations were very careful to build within the resources available to them, hence, the backlog was not being dealt with.

4.8 *Construction procedures varied drastically.*

The method of construction varied as opposed to the quality of construction. In some communities, where housing was the most successful, the construction was undertaken by community members with trades certification. In some cases, this was by Aboriginal contractors from that same community and, in others, it was through First Nation programs that hired qualified workers to undertake construction as an employee of the First Nation. There were cases where non-Aboriginal contractors were hired because of a particular region's interpretation of the tendering policy. In this case, the Aboriginal contractors could not meet the bonding and tendering qualifications. Communities which appeared to have sustainable housing programs relied heavily on Aboriginal contractors from their own community. Some of these builders had certification through provincial certification programs, i.e., carpenters, electricians etc., but some did not. Where licenced workers were required and there was no capacity within the community, the required skills were hired from outside contractors. In all cases, compliance with building codes were attained and this compliance was tied back to the financing.

In the more successful cases, the First Nation had also organized bulk purchases through a lumber yard. In some cases, the First Nation either owned the lumber yard outright or had an equity interest in it.

4.9 *Inspections were a constant.*

Inspections tied to the successful completion of different stages of work, and to the financing, were a constant element found in all of the communities. Attention to the building standards and to the quality of workmanship resulted in a high quality house. Inspectors were retained through a variety of mechanisms. Some trained their own and had on staff inspectors, some used services from a provincial body (Indian Inspection Units) others utilized CMHC and some purchased the service from neighbouring municipalities. However, the main fact remains that all had an inspection capability and this capability was tied into the successful completion of a house. It is also important to note that this service was consistent to the point made in section 6.6 of this report; that is, there was an institutional capability to enforce the building regulations as adopted by the respective First Nations.

4.10 *The use of subsidies varies.*

While the amount of subsidy allocated from INAC was constant and could be determined through an understanding of the allocation formula, the manner in which it was used differed from community to community. Some put the subsidy money into the loan fund to top up the capital amount available for loans; others used it like an equity component or a subsidy for the individual home owners; others used it as security to arrange for bank financing and some who dealt with outside contractors, used it as a straight buy down to reduce the amount of the cost of construction.

With the most successful communities, the onus was on the home owner to put the financing together. In most cases, the only location for financing purposes was the First Nation administration office but, in few and emerging cases, the individuals were able to approach the bank to support a direct loan. When dealing with the bank, it was always a prerequisite to have the agreement in place between the financial institution and the First Nation Council.

4.11 *Land Tenure Systems restrict further innovative approaches.*

The *Indian Act* is the primary prohibitive factor in the development of lands and successful housing programs on Indian lands. The legal concept of fixtures stipulates that any built structure attached to the land becomes part of that land. Therefore, housing becomes part of the land and falls under section 89(1) of the *Indian Act* that restricts pledges, seizures, etc., of the land. As the foundation of the Canadian government, title of the land is vested in the Queen and as such, Aboriginal people are seen as tenants on reserve land. The legal regime supports this theory but, in doing so, has restricted the ability to make innovative approaches using the land as a base. Wherever this has been tried, there are usually extremely complicated ramifications.

Case in point is the land issue surrounding Musqueam where, although it appears to be a contract issue, the Supreme Court of Canada will now decide whether, in fact, contracts regarding Aboriginal land have some other factors other than the agreements between two principals. There are lesser well known instances of the same type at numerous locations throughout the country.

The issue is who owns the land. If the Crown is steadfast in its position that title is vested in the Crown, there may be financial obligations that cannot be escaped. The issue of Aboriginal title has been recently challenged in the Supreme Court through *Delgamuukw* but the issues put forward in this case did not come into play overnight. Aboriginal people have been questioning the very foundation of the title issue for generations but have only recently been supported by the Courts. Perhaps the boldest step taken by any group is the Nisga'a where they claim fee simple status to designated lands as part of the recently signed treaty. It will be interesting to observe how this legislation affects any change in living conditions over the upcoming years.

The banks are all too willing to proceed with supporting Aboriginal housing provided they do not take any risk in doing so. As recently as 25 years ago, financing on reserve was completely out of the question. The next step was to finance, but with a ministerial guarantee. This was followed by getting a Band Council guarantee and, in very rare cases, dealing directly with the individual. The banks can all recite section 89 of the *Indian Act* chapter and verse and have taken very little effort to explore alternatives for financing. When the *Indian Act* was revised in 1985 due to Bill C-31, there were changes to the *Act* that allow different legal approaches that would support bank financing.

4.12 *Indian housing historically and legally has no value*

Consistent with the previous chapter, because housing is attached to the land, there is no recognized economic value attached to the house. This concept has been reinforced for years and years on reserve and was in fact supported by the British Columbia Supreme Court in the Musqueam rent dispute whereby the courts assessed a different value for land simply because it was reserve land.

In the communities where the housing was most successful, this concept (of not actually owning their house) simply did not come into play. The home owner or dweller, felt as comfortable in his home as any other person in any part of Canada.

In order to affect the value of the house, a number of elements need to be present. First, there needs to be a recognition of value and a willing buyer (or market) for the commodity which, in this case, is a house. Within the First Nation community, it is well recognized that the market for such items is limited to the Band membership. As a basic principle, this will not change soon. In order to facilitate an economic exchange between members, there needs to be some formal recognition of the value put into a house. This recognition needs to associate the value with either a person or a family unit. Reserve land should also have some recognition of value, albeit within a limited market area. The recognition instruments to date have been CP or Certificates of Occupancy. More need to be developed. The *Lands Management Act* provides a mechanism to do just that but it is limited to 14 First Nations only.

4.13 Employment is a critical factor but income is crucial

In each of the communities visited, there was a relatively high level of employment or at least the availability of employment in the immediate area. Some relied on the surrounding communities to provide employment in whatever sector while some communities created their own employment opportunities. The First Nation would create jobs, through utilizing training programs, and build some skills. In some cases, the job with the First Nation would last only long enough to qualify for other federal programs, in effect creating a job sharing approach that ensured that every one in the community had equal access to employment.

In most successful community housing programs, the level of income was not as important as the fact there was an income or a work history. Credit rating was important and was critical to the banks but not as critical for community housing programs. In fact, most of the banks will accept social assistance clients if they have good credit ratings. Most First Nations view the “most needy” as being the ones they will assist first. In the communities where a rental program was firmly in place, or a mortgage program, and where the client was on social assistance, the administration simply took the shelter allowances at source to pay the required payment. In cases where the client was not on social assistance, rent was due and was collected. It was up to individuals to find the money and not the responsibility of the administration. Some added incentives, including forgiving the 12th payment of the year, if the previous 11 were paid full and on time.

4.14 Market economies are starting to emerge with respect to housing

In some cases, a market economy is starting to emerge as it pertains to housing and to land. This appeared to be evident only in cases where land is on a CP system and where there is a significant difference in the geographic features of the land, i.e., waterfront versus subdivision layouts.

Consistent with this emerging trend is the design of the unit. With a housing unit on reserve carrying a value, the design becomes a commodity that has value and is saleable. More and more, individual designs are being used by home owners. Initially, most of these designs are slight modifications of designs that come from package homes; however, the fact that individuals are putting effort into the planning and design of their own facilities seems to reinforce the concept of ownership and value.

In all of the communities visited and where there were successful housing programs, not one had utilized or even experimented with alternate housing building systems such as straw bale or steel house construction. While the administrative structure was in place to ensure any such system could be properly inspected, the fact that there was an equity component required meant that the cost of experimenting was not going to be absorbed by the home owner. The administrations expressed no interest whatsoever in being involved in any type of experimental housing - their main concern was running the program and providing good housing.

4.15 Housing committees really work

In almost every instance in the successful community, a housing committee was in place to undertake the prescreening and, in some cases, set the regulations for housing standards as well as establish the rules for an allocation process. One community had a note on the bulletin board requesting volunteers for the housing committee, an indication of its openness and transparency. Each committee, however, operated in a very different manner. Some had administrative responsibilities while others served more of a semi-political function. The communities with a larger population (2000+) base did not have volunteer committees in place; rather, the functions normally served by the committees in the smaller communities were undertaken by paid housing staff.

4.16 Internal loan funds make a difference

In some of the communities, an internal loan fund was established whereby the First Nation administrations used funds to loan to members for housing purposes. Interest rates varied and the administration of the fund varied but the basic premise of loaning the money and getting it back was consistent. As the funds grew, the First Nation was able to increase the amount they allocated for a mortgage ceiling and they were also able to increase the numbers of renovation loans that could be issued. The major attribute for its success was the participation of the community in repayments.

The revolving loan fund has been and should be recognized as an incredible success. A basic principle of building local economies is that there must be mechanisms in place that will allow the local funds to regenerate within the community before it leaves. The revolving loan funds are doing exactly that. One Chief did indicate that they are not too excited about the major banks' initiatives in making mortgage money available because it takes away from their loan fund and serves only to take funds out of the community. He suggested there should be more money allocated to their internal funds.

In all cases where a local loan fund was in place, the administration of this fund was undertaken in a highly professional and prudent manner. One community held a reserve fund of \$1 million from their housing fund for emergency and unidentified requirements even with a backlog list of over 100 people. This amount represented about five percent of their loan fund portfolio. As successful as this program has been, it has not been able to reduce the backlog of units required.

5.0 ATTRIBUTES OF FIRST NATION INSTITUTIONS REQUIRED TO SUPPORT EFFECTIVE HOUSING PROGRAMS

5.1 Cultural legitimacy

In order for a First Nation government to be accountable to its own constituents, it must reflect the prevailing cultural and social values of that community. In many situations where policy and program requirements are developed either outside the community or outside the culture, the resulting program has little chance of being successful. The power of socio-cultural forces is critical to the success of any program. This element, sometimes referred to as "social capital" is as important as monetary capital to ensure the success of a program. With respect to housing, programs that support the development of the housing stock must be, at the very least, acceptable to the community they are serving. This applies equally to the overall policy, operation of the program, and procedures to sustain the program.

The majority of communities visited collected rent or mortgage payments. The communities were not exceptionally wealthy but there was an expectation that members would pay for an obligation they had made by way of an agreement to repay the Band. In the majority of cases, the economic structure of these communities mirrored national averages for Aboriginal communities. There were lots of young people, the unemployment rate was considerably higher than the surrounding communities, and there were a significant number of families on social assistance. However, it was obvious there was an accepted community value that accommodations would be paid for by way of rent or mortgage payments.

5.2 Management capacity

There is a school of thought that believes that the only way for housing or economic development to be successful in First Nation communities is if there is a clear separation between the administrative and political elements. From observations, it appears that, more precisely, the requirement necessary is a clear delineation of the differing roles of each of the elements within a community structure with a clear understanding of how they support each other.

When the Council set the overall policy and the administration deals with the details, the results are generally good.

In all the cases where successful housing programs were in place, there was a high degree of management and internal capacity not only in the housing program but in the administration in general. In most cases, there was an approach or philosophy that was very strong in the community that supported the “willingness to do it ourselves”. With respect to the housing program, there was an overriding element that individual involvement was a crucial part of the housing program. There was an expectation that community members would contribute and work towards keeping their housing conditions at a very high level.

This capacity does not relate to formal education as much as it does to community or cultural standards. The study by Jorgenson of Harvard indicates that cultural confidence impacts on how a community operates and, in the case of this study, the same holds true. The data base of the communities visited and the methodology appears to yield consistent findings with respect to internal capacity in that, in successful communities, a cultural confidence was evident. In addition, there appeared to be a favourable working relationship with surrounding communities in each of the locations evidenced by the fact that the majority of jobs held by community members were in surrounding communities. Direct correlations with respect to education levels and requisite skills would necessitate further and more detailed investigation with a scientifically designed sampling frame and data base.

The capacity apparent in the First Nation administrations visited appeared to be developed from experience in a range of activities and businesses, rather than as a result of meeting the criteria of federal policies. Not all the locations visited complied with the housing policy of 1996 and, as such, were not required by agreement to undertake the planning and forecasting. However, the successful communities did have very well planned and documented procedures and processes. There was a transparency about these as well, as they were readily available to community members.

All the communities appeared to have a technical capacity. Some acquired this capacity through training programs while others acquired their technical training elsewhere and were now working back in their own communities. Some were continuing to add training and certification while others were working with their trained staff only and were not directing their efforts to any future requirements. A small number bought technical services from outside tradespeople.

6.0 ATTRIBUTES OF COMPREHENSIVE HOUSING PROGRAMS

6.1 Providing a range of housing program options

A range of options for financing are available from various First Nations. These range from a subsidy on the house to straight mortgage financing. In one case, where there is a financial institution within the community, individuals go directly to this institution without any intervention from Chief and Council. Their relationship with this institution is strictly on a financial basis with no political input. In this particular case, there is a sophisticated three way trust relationship set up that offers the institution the security it requires to make loans.

Banks are making their capital available but all require some direct form of guarantee from the Council, thus requiring the Council to commit its involvement on an long-term basis. This “head lease” or “securitization” approach has been undertaken by CMHC in the past with varied results. Where the governing structures of the community were strong, the system worked well, but where the governing structures were susceptible to political influence and reversal of positions, the loans ultimately became an unbearable burden and caused severe economic hardships. In most cases, this type of economic hardship exacerbated the political crisis thus creating an extension to the downward cycle.

Some administrations “packaged” the financing and offered financing to their members as a one stop (and only) option. While this may sound restrictive, within the First Nation community where there was no option a few short years ago, this is viewed as a premier service.

6.2 Creative and flexible financing

The use of the subsidy from INAC was used in a variation of ways. In summary, it was used to leverage the ability to pay for house construction. Some used all the money to support labour with the stipulation that it be local labour. Some used all the subsidy as additional capitalization for their internal loan program fund. Some used the money to put on deposit at a local financial institution that would act as a guarantor for their members to be able to borrow to build their own equity. Cases were evidenced where the housing dollars were totally expended on as many houses that could be constructed for that amount. Some used subsidy money to service a debt on CMHC loans for housing that had been built in past years, consequently not building any new units.

The ability to leverage money was based on the tacit agreement of the community members to repay loans. In part, the political determination to enforce a collection policy was also a major factor in providing financing options.

6.3 Inclusion of the householder

Regardless of the land tenure and the financing procedures, the early inclusion of the dweller will make a difference in the quality and upkeep of the home. It was apparent that, when the home owners were involved at an early stage, their connection to the home was much stronger and they were in a better position to put sweat equity into the house.

As an inherent component of some First Nation policies, this early involvement is required by the home owners. By virtue of their policies, the owner is required to make decisions and choices on fundamental issues that affect their home.

6.4 Creation of monetary value

It appears that the *Indian Act* is the main prohibitive factor that affects the tenure of the land resulting in the devaluation of Aboriginal land. The *Indian Act*, being the oldest piece of legislation in Canada (1876), has made an indelible footprint into the entire breadth of the Canadian psyche and changing the *Act* will, in all probability, result in very few changes in attitude in the immediate future.

Land and the built environment must be valued and have the recognition of having value within Canadian society. Marginalization cannot take place under the guise of protection. Allowing people (Aboriginal) to feel pride in their housing situation means they have to feel it is worth something. In the existing situation, where we constantly reinforce that houses are the property of the Queen and land is worth nothing, we defeat any kind of policy initiative that will entice people to undertake their responsibilities and put something into their own dwelling and, in fact, their own well-being. We must not try to make people feel like they “own their house”, we must support a structure that recognizes real equity.

There are a number of initiatives being undertaken in different parts of the country that are looking at how to revise the accounting procedures that will more effectively reflect the worth of activities within First Nations. Considerable effort should be directed towards this area in order to support the change in valuation procedures.

7.0 THE POLICY ISSUES

7.1 *Housing is a social issue?*

While there is a social responsibility attached to the issue of adequate shelter, housing construction has been used throughout the world as a prime mechanism to stimulate the economies of those respective countries and regions. The current number of houses that are being constructed and financed by the federal government number about 2,700 per year, while the estimated requirements number 3,900 per year. In addition, the backlog of housing units on First Nations has been estimated between 6,000 and 30,000 units. Renovations are required in a further estimated 34,400 units.

The demand and requirements are staggering to say the least. The issues surrounding financing and availability of capital have been central issues. The federal government's position has been to provide assistance for housing as a matter of social policy. The primary agencies supplying housing support on First Nation land, namely INAC and CMHC, maintain this position.

The continuation for housing as an instrument of social policy will undoubtedly provide the same returns as it has in past years. If the manner and state of housing is acceptable within the First Nation communities and the requirements for housing are restricted to more units only, the existing policies and approaches need not be examined for appropriateness. However, the availability of adequate resources pose a challenge that leave no choice but to consider alternate methods which will result in meeting the housing needs on reserve.

An additional challenge for government is how to address the issues related to the provision of housing within the existing legal and policy framework established by the Government of Canada.

7.2 *Treaty right to housing*

For the majority of Aboriginal people in this country, treaty rights have differing interpretations by each of the signatories to the treaty. First Nations people residing in areas where treaties were signed firmly believe their treaty right entitles them to a house, effectively as a prepaid expense. The government's position deals more with the letter of the law and their own interpretations of the First Nations' position. The Royal Commission on Aboriginal People (RCAP) report acknowledges that there are no specific pronouncements on the treaty right to housing by the federal government and goes on to say that “... *The federal government has not recognized a universal entitlement to government financed housing as either a treaty right or an Aboriginal right.*”

First Nations people, particularly in the numbered treaty areas, hold a much different view. Generally their view is summarized by Chief Blaine Favel “...*First Nations have always maintained and continue to maintain that the right to adequate housing is a right guaranteed under treaty.*”³ In asserting this right, the Federation of Saskatchewan Indian Nations further advance that “...*consistent with the treaty right to shelter, and moreover asserts that the resources exist to fulfil the Treaty obligation, and that housing programs from construction through to administration be controlled by First Nation communities.*”

It is interesting to note that within the Treaty communities, this ideology has been consistently held for some time and has been reinforced by the elders. The majority of elders today still have close ties with the people who actually signed the treaties and their recollections are consistent from one community to another. In essence, the oral representation of the elders recalls the promises the First Nations people were made as they negotiated the terms of the treaties. With respect to shelter, there are two important themes that emerge to shape the current debate. The first was that the

³. Housing Treaty Right to Shelter Forum, September 27, 1994 by Chief Blaine Favel, Poundmakers First Nation

Aboriginal people were encouraged, expected, and finally forced, to give up a way of life and take up agriculture as a new way of life. The second, from recollections of the elders, indicates that “Aboriginal people would be assisted in every way not only with the provision of farming implements and instruction in the means of agriculture, but in every other aspect in which they may require assistance.”⁴

However, this was not an obligation that was hard fought for and won. As a matter of occupying the country and dealing with the original inhabitants, the colonial government’s position was to negotiate and reach a settlement. Chief Favel points out: “In respect of the Government of Canada’s understanding and past practice for treaty negotiations with Canadian Indian Nations, it can be fairly concluded that following the Royal Proclamation of 1763, that the Crown in Canada had recognized Aboriginal title to the lands which became Canada. As early as 1670, under the reign of Charles II, a code of instruction was issued in respect of the governance of Colonies, which included directions that due process of law and justice be observed as preserved in respect of the Indian Nations and the British Crown.”⁵

⁴. Ibid page 12.

⁵. Report on the Affairs of the Indians in Canada Legislative Assembly, Province of Canada March 20, 1845 by Charles Bagot, Section 1 at p.3

While the recognition of the existence of Aboriginal people occurred at that time of contact, and treaties were concluded, there are serious issues regarding the interpretation of the details of the treaties. The provision of housing is a case in point. Treaty people maintain a position that the government states it has no legal obligation to meet. However, regarding this ongoing debate, the Supreme Court of Canada has consistently held that the practice of strict application of contract law has no place in treaty interpretation. *Nowegijick*, *Sioui*, *Sparrow* and *Delgamuukw* are all cases that would indicate that the terms of treaties and interpretations of the Aboriginal people indeed have merit that can be enshrined in jurisprudence. During the recent Manitoba Justice enquiry, Mr. Justice Murray Sinclair dealt with an issue of a “conceptual” treaty right. The conceptual interpretation means only that in terms of treaty, when a particular guarantee is given, it will be construed not only for what the signatories understood it to mean, but what the concept of the right included. ⁶

Regardless of the legal value placed on the debate, the provision of houses needs to be addressed and, in some regards, needs to become the focal point for a new approach. If current positions are maintained by both government and First Nation leaders, we already know the outcome. Limited new houses will be built, the backlog will continue to grow and maintenance will become more of an issue. There appears to be a willingness among some treaty First Nations to try to solve this dilemma themselves. Some groups are looking at bank financing and others are looking at putting specific by-laws in place that will address their ability to provide housing for their members. Government must support this effort and allow the First Nation administrations flexibility, time and resources to develop their own solutions.

⁶. Ibid page 9

7.3 *Legal issues*

The present system pertaining to lands and buildings attached to the lands is controlled solely by the *Indian Act*. While changes have been made to specific parts of the *Act*, and there is other legislation that affect the land status, i.e., *the Lands Management Act, C-49*, the overriding issue is the administration of the *Indian Act*.

The legal issues as set out in Section 89(1) of the *Indian Act* prohibit lands reserved and set aside for the use and benefit of Aboriginal people to be free of seizure. Herein lies a major issue in that the system of mortgages and loans in Canada is based on a chattel system where money is loaned and the ownership of the land can change hands. Also implicit in this is the nature of the land holding where title in the land is held by either individuals, corporations or governments. Land holdings by First Nations are held in common by First Nations people with the title vested in the Queen. This land recognition structure provision was first documented in the first *Indian Act* set out in 1876. The *First Nations Land Management Act* of 1999 is the first amendment addressing the authority of First Nations to deal with their own land matters. However, this *Act* applies to only 14 First Nation communities with only three having instituted the required regulations to make the bill operational.

Whereas land is seen as a commodity in general Canadian society, the same cannot be said of First Nation land. Aboriginal land has been deemed to have no value because it cannot be pledged or mortgaged. However, in some communities, there appears to be a market economy growing among community members. This is happening for two reasons; first, the amount of available land is not increasing whereas the population is increasing dramatically; and, second, the land tenure in some areas is conducive to sale and trade among members. Basic market principles of supply and demand are having an effect in some First Nation communities where these two basic elements exist.

Concomitant with the land status is the financing issue. Private sector financiers require a guarantee on their investment and traditionally have looked to the federal government to provide such a guarantee. The federal government under the auspices of the social policy framework has been able to provide a significant amount of guarantee but not enough to meet or keep up with the demand.

7.4 Impact of ancillary legislation and policy

The passage of Bill C-31 has had a dramatic effect on the amount of housing units required. The response to Bill C-31 was far beyond expectations and the number of people moving to First Nation communities has increased dramatically. Although statements were made by the Minister at the time *“that no First Nation community will be worse off than before with the passage of this legislation”* the requirements for housing have increased far beyond the resources allocated to address the initial population increase. The expanded population base adds to the growing number of new family formations as well as adding to the backlog of housing required.

While the Corbière decision deals only with voting rights on reserve, it is of concern to many First Nation communities that the effect will cause further pressures on housing resources within a First Nation administration. With a significant off-reserve population, many people require similar services and access to housing. There is concern that pressures will be brought to First Nation administrations to allocate housing resources to members residing off reserve. These pressures may be further exacerbated by the ability to exercise and, in some cases, control votes in the First Nation Councils.

8 RECOMMENDED OPTIONS

8.1 *Support some communities who are willing to create their own success*

There are numerous communities that are more than willing to undertake a different approach but need some focussed facilitated assistance. With the assistance and concurrence of the respective regional offices, I would recommend that INAC dedicate a specific amount of time to assist specific First Nations, perhaps on a test basis, to identify their goals, set up a strategic plan along with implementation, including the identification of required resources and simply create their own success. Requisite training may be required, and manuals would in all probability be produced. The successes would be measured in construction starts and standards.

8.2 *Build on the success of the loan funds and leverage more funds into them*

The banks have had limited success in accessing Aboriginal communities in terms of providing loan moneys. However, the loan funds operated by First Nation administrations have been overwhelmingly successful in terms of their operation. The loan losses have been negligible and the operation has been for the most part completely run by the First Nation administrations. While the banks have what amounts to unlimited capital, it may be feasible to explore the possibility of marrying these two components.

If money was made available to either start loan funds or to enhance an existing capital pool, this type of mechanism would be instrumental in supporting the local economy. Explorations could also be made with groups such as the National Aboriginal Capital Corporations Association (NACCA), regarding the use of their infrastructure and experience in financial management to support a mortgage capacity.

8.3 *Support the development of an institutional mechanism that will focus on increasing the capacity for governance and the development of systems to support housing development.*

The development of a housing program in isolation will result in marginal increases in quality and improved living conditions. Effective governance is the key and the most effective manner to reach these goals is through some Aboriginal institution.

An Aboriginal institution would have to address a range of things, such as technical and administrative capacity. It could offer courses to Councils on responsibilities and provide expert advice on issues such as legal or accounting advice. These may be built into the existing service providers, such as CCMD, Banff, or the Institute on Governance, or through a regenerated National Aboriginal Housing Institute.

An institutional approach that is Aboriginally controlled and run could provide the development of the capacity in all the areas required.