

# Urban Aboriginal Housing

## Who's Responsibility Is It Anyway?

Charles W. Hill, President, National Aboriginal Housing Association/Association Nationale d'Habitation Autochone

In 1972, Ron Basford, the Trudeau minister responsible for housing, declared that access to adequate housing was a right of all Canadians, including Aboriginal people. He committed his government to ensuring the building or acquisition of 50,000 housing units for Aboriginal people residing off reserve. To deliver on this commitment, in 1973, the rural and remote housing program was established and urban native housing targets were established within the private non-profit housing program. A distinct Urban Native Housing Program was created in 1985.

In the intervening thirty years, only 20,000 units were delivered, - 9,000 in rural communities and 11,000 in cities. It should be noted, however, that the urban program was specifically targeted to those of native ancestry. A large percentage of the rural program serves non-Aboriginal households.

In 1993, the federal government, as part of fiscal restraint, halted all new spending for social housing, including any new urban Aboriginal housing. Like the rest of the Canadian community, we were willing to do our part to address the staggering deficits of the time. However, we fully expected a return to normalcy once the government got its fiscal house in order.

Then the announcement in the 1996 federal budget that the government would transfer future responsibility for social housing, including the ongoing administration of the off-reserve Aboriginal existing portfolio, to the provinces and territories!

Buried in this 'transfer future responsibility for social housing' was a major policy shift with respect to Aboriginal peoples. It implied that in the future, provinces and territories would assume the responsibility for the assisted housing needs of off-reserve Aboriginal peoples, regardless of their status. And this has remained the position of federal officials since 1996.

What was the basis for the federal decision to abdicate responsibility for urban Aboriginal housing? What parliamentary committee debated the proposed policy. Where was the consultation with Aboriginal peoples? Ironically, this unilateral decision by the federal government was made only a few short months before the final report of its Royal Commission on Aboriginal Peoples was tabled in the House of Commons. It is worth quoting the government's own Commissioners on the nature of federal fiduciary duty:

"The concept of fiduciary duty and the principle of participation are intimately connected. Whenever governments intend to exercise their constitutional powers to legislate or make policies that may affect Aboriginal peoples in a material way, particularly in an adverse way, they would be wise to engage first in a process of consultation. The constraints imposed by the common law and the constitution on the exercise of arbitrary governmental power would seem to require no less."

Both NAHA/ANHA and other Aboriginal leaders challenged the 1996 federal decision. My Association launched a campaign to Halt the Transfer! Others presented briefs to Parliament, and the Confederacy of Nations, meeting in Quebec City in 1997 called upon Ottawa to "cease and desist in its efforts to transfer urban native/First Nations social housing" to the provinces.

In Manitoba, Carolyn Bruyere, a status Indian and the then President of Ayawin Housing Corporation, a non-profit urban Aboriginal organization filed an action against the transfer of her housing agreements and the related financial resources to the province. Underlying the Bruyere action is the belief that the federal transfer of responsibility discriminate against some Aboriginal peoples by maintaining on-reserve housing and transferring housing responsibility for Aboriginal people off-reserve. In particular, this impacts upon Aboriginal women who disproportionately live off-reserve.

The Bruyere action also has Mobility Rights implications. In the land mark Delgamuuk case, Justice La Forest expanded on how the courts would look at a claim for Aboriginal rights. He said:

"The court will focus on the occupation and use of the land as part of the aboriginal society's traditional way of life. In pragmatic terms, this means looking at the manner in which the society used the land to live, namely to establish villages, to work, to get to work..."

The Charter of Rights and Freedoms guarantees the right "to move to and take up residence in any province; and to pursue the gaining of a livelihood in any province." By restricting Aboriginal housing to on-reserve communities (which remains a federal responsibility), where unemployment levels are unacceptably high, the federal government may be undertaking a process which could result in Aboriginal peoples Mobility Rights being restricted, especially where Aboriginal access to housing is prevented because of affordability and discrimination.

Despite these actions by Aboriginal leaders and organizations, and the court challenge, the then housing minister, Alfonso Gagliano remained adamant, and refused to open any doors for consultation, or to review the federal decision. And a succession of housing ministers since, have held to the same position. No discussion, no debate: the provinces are now responsible for urban Aboriginal housing. To date, no province or territory has agreed to this new 'responsibility'. Consequently, no new assisted housing has been added to the off-reserve stock, despite the dramatic increase in the urban Aboriginal population.

Seven years later, no new housing. Although the recent federal Affordable Rental Housing Program agreements with provinces do not preclude urban Aboriginal housing, there are no federal requirements to ensure any take-up by Aboriginals.

As recently as April 2003, federal officials continued the mantra that Ottawa was no longer responsible. In a letter to me from the then President of Canada Mortgage and Housing Corporation, Jean-Claude Villiard, he stated: "off-reserve housing is a provincial-territorial responsibility, including services to Aboriginal people". This echoed, in a much firmer and bureaucratic language, the same message given to me by David Collenette, the Minister of Transport when I met with him earlier.

And what are the prospects that there will be a change in the federal position? Many of my colleagues are not optimistic. But there are promising signs.

Forefront is the changing political landscape. Jack Layton, leader of the New Democratic Party advanced the case of urban Aboriginal housing while president of the Federation of Canadian

Municipalities and has developed a positive rapport with housing providers and understands our position. There is a new leader of the Progressive Conservatives.

Paul Martin, the next Prime Minister has reached out, in his leadership campaign to Aboriginal peoples more than any other Liberal leader before him. We believe that he has a firm grasp of the issues and that his government will be open to dialogue and consultation on urban Aboriginal issues, including housing. And with Layton and MacKay, he will have allies in the House of Commons.

On the public policy front, there is the overwhelming evidence that housing is a key to achieving other federal Aboriginal objectives in health, early childhood education and youth crime prevention. The committee of federal/provincial/territorial ministers for Aboriginal affairs has added housing to their 2003 agenda. At the time of writing this article, the junior Minister responsible for Canada Mortgage and Housing Corporation, Steve Mahoney, has mused publicly that he tends to agree that urban Aboriginal housing is a federal responsibility.

On the legal front, the Court Challenges Program has provided additional funding in the Bruyere action in Winnipeg. This is further indication that they believe the case has merit and has a reasonable chance of success. Federal social housing transfer agreements now have a proviso that should the courts decide that the transfer of the urban Aboriginal housing portfolio must be reversed, Ottawa will assume the responsibility from the provinces and territories.

These are encouraging signs.

Who will end up responsible for urban Aboriginal housing? The next few months will be critical as a new Prime Minister sets his stamp on public policy. I continue to be optimistic.

One thing that is clear, NAHA/ANHA's position has not changed. We continue to believe that Ottawa has the primary responsibility for housing Aboriginal people. Ottawa must set specific urban Aboriginal targets in any future housing programs. We are prepared to work with provinces and municipalities, but Ottawa must make urban Aboriginal participation a prerequisite of any future bilateral agreements. Aboriginal people must have input to the design and development of future programs and the housing must be owned and operated by the Aboriginal community.