

January 28, 2011

BY EMAIL

John Chamberlin

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Dear Mr. Chamberlin,

**Re: *Grand Chief Stan Louttit et al. v. Canada*
Federal File Nos.: 20070826 and 20070993**

We are writing to respond to the Investigation Report issued by Deirdre Hilary on December 23, 2010. Ms. Hilary's report is thorough, fair, and well researched. In these submissions we highlight and support the key conclusions in Ms. Hilary's report, and also add to and elaborate on some aspects of the Investigation Report.

By way of general background, this complaint is brought on behalf of seven First Nations communities which are members of the Mushkegowuk Tribal Council. The complainants argue that they receive inferior policing services in comparison with other non-First Nations communities in Canada, and that this amounts to discrimination on the basis of race. The Mushkegowuk First Nations are policed by the Nishnawbe-Aski Police Service ("NAPS"), which is funded primarily by the federal government, and is subject to the federal government's First Nations Policing Policy.

Key Conclusions of the Investigation Report

The Investigation Report is very well-reasoned and logical; the Applicants concur with its main conclusions and its recommendation. The key conclusions and recommendations of the Investigation Report are excerpted here, with emphasis added throughout:

The evidence gathered during this investigation suggests that **individuals living in the complainants' communities are disadvantaged as compared to other, [non-First Nations] communities in regard to the police services they are receiving.**¹

The evidence gathered indicates that **the buildings and resources in the OPP communities appear to be in a better state than those in the NAPS**

¹ Investigation Report (December 23, 2010) at para. 62.

communities. The evidence gathered indicates that **officers in the NAPS communities work longer shifts more frequently, often work alone, and have problems finding suitable accommodation.**²

It appears that the level of funding by the respondents leads to **a shortage of police officers and services, difficult and unsafe working conditions for officers, and concerns about the safety and quality of the infrastructure.**³

The evidence reviewed indicates that **the respondents are involved in the provision of the service of policing** in the complainant's communities. As such, **the respondents' role is considered a "service" for the purposes of this report.**⁴

It is **recommended**, pursuant to paragraph 44(3)(a) of the *Canadian Human Rights Act*, that the Commission request that the Chairperson of the Canadian Human Rights Tribunal **institute an inquiry** into the complaint because:

- the evidence gathered appears to show that **the respondents are service providers** within the meaning of section 5 of the *Canadian Human Rights Act*,
- the evidence gathered suggests that **individuals living in communities served by NAPS are disadvantaged as compared to other, non-First Nations communities.**⁵

Again, the complainants concur with these key conclusions.

Adding to and Elaborating on the Investigation Report

More Officers Required Per Person to Provide Equal Services

The number of officers serving in NAPS communities is inadequate in comparison with OPP communities even though, in some NAPS communities, the number of officers per capita might actually be higher than in some OPP communities. The investigator touches on this point in her report, stating that:

“At first glance, the per capita ratio of officers in NAPS communities does not seem inadequate as compared to the OPP. However, NAPS Police Chief Robin Jones says that the area served encompasses almost two-thirds of Ontario, from the Manitoba to Quebec borders. She also notes that according to Statistics Canada Crime Severity Index, the region has one of the highest rates of violent crime in the country.”⁶

The Investigation Report goes on to examine the sufficiency of NAPS staffing using indicators other than the number of officers per capita.

² Investigation Report (December 23, 2010) at para. 35.

³ Investigation Report (December 23, 2010) at para. 54.

⁴ Investigation Report (December 23, 2010) at para. 22.

⁵ Investigation Report (December 23, 2010) at para. 65.

⁶ Investigation Report (December 23, 2010) at para. 38.

Evidence discussed in the Investigation Report indicates that NAPS does *not* have enough officers to provide police services equal to non-First Nations, OPP policing. For example, the investigation found high levels of (1) overtime, (2) stress and burnout, and (3) solo shifts with NAPS officers but not with OPP officers.⁷ This shows that the NAPS officers are overwhelmed by their workload in comparison with the OPP officers. It also shows that NAPS requires more police resources (e.g. more officers, training, support staff, etc.) to be able to provide the level of service provided by the less-stretched OPP officers.

A simple comparison of officers per capita is not a true comparison of *service levels* in the community. Section 5 of the *Canadian Human Rights Act* refers to differential treatment in relation to “*services*.” Therefore, the key issue is a comparison of service levels, not a comparison of per capita police resources, such as officers per person. It likely requires more police resources, on a per capita basis, to police a Mushkegowuk First Nation community as compared to a typical community policed by the OPP. This is because of factors such as remoteness, isolation, and the frequency and distribution of calls for service in Mushkegowuk First Nation communities. These lead in turn to higher staffing costs, higher operating costs, and significantly higher workload. It is the service levels (not per capita police resources) that must be equal under the *Canadian Human Rights Act*.⁸

Further Comparative Evidence

The Investigation Report provides a very useful comparison between two NAPS-policed communities and two OPP-policed communities. Key deficiencies reported in relation to NAPS include: long hours for officers, significant time working alone, no clerical staff, no cleaning staff, motel/trailer for officer accommodation instead of a proper house/home, and no accommodation for officers’ families. Key benefits for the OPP include: housing for families, cleaning staff, many additional rooms (e.g. workout room), many vehicles, and more.

However, further comparative evidence would be provided during Tribunal hearings. For example, Mushkegowuk Council does not concur with the population figures cited in the Investigation Report. The report lists Pickle Lake (OPP) as 3,300 people in the summer whereas the most recent Statistics Canada census (2006) reported 479 people living in the township.⁹ The Investigation Report lists Moosonee’s population as 3,500 people, yet the 2006 census reported only 2,006 people.¹⁰ A change in population figures affects the number of officers per capita, discussed above. Mushkegowuk Council would provide further evidence regarding this and other aspects of the comparative analysis during Tribunal hearings.

⁷ Investigation Report (December 23, 2010) at paras. 35, 38-45.

⁸ Letter from the complainants dated November 12, 2009 at pgs. 5 & 6.

⁹ Statistics Canada. 2007. *Pickle Lake, Ontario (Code3560049)* (table). 2006 Community Profiles. 2006 Census. Statistics Canada Catalogue no. 92-591-XWE. Ottawa. Released March 13, 2007. <http://www12.statcan.ca/census-recensement/2006/dp-pd/prof/92-591/index.cfm?Lang=E>.

¹⁰ Statistics Canada. 2007. *Moosonee, Ontario (Code3556106)* (table). 2006 Community Profiles. 2006 Census. Statistics Canada Catalogue no. 92-591-XWE. Ottawa. Released March 13, 2007. <http://www12.statcan.ca/census-recensement/2006/dp-pd/prof/92-591/index.cfm?Lang=E>.

Discriminatory Treatment Involves More Than Inadequate Funding

The Investigation Report states that the complainants “allege that First Nations communities in Ontario are receiving lower quality policing services and facilities compared to services customarily available to the public in Ontario *because the respondents are not providing adequate funding*”¹¹ (emphasis added). Although this is true, the inequality of services also stems from actions, decisions, and policies of the federal government other than a lack of funding. For example, significant flaws in the terms and conditions of the federal government’s First Nations Policing Policy lead to the inequality in question.¹² Therefore, this complaint also concerns the federal government’s roles in the provision of First Nations police services that go beyond its responsibility as the primary funder.

Complaints at the Human Rights Tribunal of Ontario

The Investigation Report states that “complaints were filed simultaneously with the CHRC and the OHRC (now OHRT) ...; however, the complaints are not being pursued at the HRTO.”¹³ To clarify, the Human Rights Tribunal of Ontario complaints have been adjourned until further notice but have not been abandoned or withdrawn.

Quotes Regarding the Inequality in Policing Services

Again, the Investigator concludes that the complainant communities receive inferior policing services compared to non-First Nations communities.¹⁴ The following quotes from the evidence support that conclusion:

“Our research, consultations, forums, and submissions from the parties have consistently confirmed that **First Nation police services are working with restricted budgets and substandard facilities, which frustrates their efforts to provide high quality police services.**”¹⁵

The Honourable Sidney B. Linden, Report of the Ipperwash Inquiry (2007)

“**There is no reason why residents of First Nations in Ontario should have lower-quality policing than non-Aboriginal Ontarians do.**”¹⁶

The Honourable Sidney B. Linden, Report of the Ipperwash Inquiry (2007)

¹¹ Investigation Report (December 23, 2010) at para. 1.

¹² Letter from the complainants dated November 15, 2010, at pgs. 5 and 6 (Further examples include: (1) lack of major capital funding, (2) lack of budget certainty and stability, (3) inequality in the negotiation process, (4) lack of police standards, and (5) the inability to appeal to an independent commission for a hearing and a binding decision on the adequacy of a police board budget)

¹³ Investigation Report (December 23, 2010) at para. 6.

¹⁴ Investigation Report (December 23, 2010) at paras. 62, 35, 54, & 65.

¹⁵ The Honourable Sidney B. Linden, Report of the Ipperwash Inquiry, Complainants’ Record, Tab 3, pg. 265

¹⁶ The Honourable Sidney B. Linden, Complainants’ Record, Tab 3, pg. 249

“Proper Policing facilities have been a huge issue for NAPS, and their horrible state has been documented by PWGSC during their on site inspections.

...
It is well-documented and general knowledge that many of the buildings **meet no industry standards** and suffer from **serious health and safety problems**, such as the lack of fire protection, no running water, inadequate cells for prisoners etc.”¹⁷

Winona Embuldeniya, Public Safety Canada (2004)

“NAPS detachments generally fall a long way short of acceptable facility and operational standards for the RCMP and OPP in remote locations. The detachments are poorly equipped, basic facilities (cells, toilets. etc.) are missing or inadequate, and **the buildings are riddled with building code violations.**

...
Typically, the buildings are **functionally inadequate, poorly equipped, not properly built-out for police purposes, and in an advanced state of disrepair.**

...
most of the existing facilities **should probably be replaced with new facilities immediately** or in the very near future

...
Only 7 of the 26 inspected detachments have some form of **officer accommodation**.... Most of this residential space **is in very poor condition and recommended for demolition.**

...
In comparison with the standard for remote RCMP detachments, **none of the NAPS detachments meet the recommended space requirements.** On average, the NAPS detachments are less than half the size of the recommended RCMP standard “

...
10 of the 16 **fly-in locations** “are in poor or very poor condition and are considered to be **beyond repair**”¹⁸

Federal Government Assessment of NAPS Detachments (2001)

Regarding various police stations in Mushkegowuk First Nations communities:

“It is believed that the exterior walls are **not insulated** ...

The ceiling and the upper walls in the bathroom are **covered with mildew** due to the fact that the detachment is not supplied with fresh air, though exhaust fan is installed in the rooms, the ventilation is basically non-existent. The smell in the detachment, at times, was hard for the officers to tolerate. **Lack of ventilation in a crowded room is a major deficiency which could lead to serious health problems caused by moulds, airborne diseases, etc. ...**

¹⁷ APD (Winona Embuldeniya), Minor Capital Funding Amendment to the Nishnawbe-Aski Nation Police Service Agreement, Negotiation Mandate Document, December 31, 2004 at ATIP pgs. 000266 & 000271.

¹⁸ PWGSC, *Building Condition Report and Needs Analysis for N.A.P.S. Detachments*, 2001 (prepared for the Solicitor General Canada, now Public Safety Canada) at pgs. 9, 11 & 4.

The police station is in such a poor condition that a new accommodation should be provided **without delay**.

...
The foundation has shifted due to freeze & thaw cycles, as a result, the floor surface is uneven and the flooring has cracked at various locations.... Some of the window panes are broken and the frames are damaged. ...

The existing landings and steps at the main entrance of the police station is in **extremely poor and unsafe condition**. ...

...with the problems of **shifting foundation, poor building exterior, inadequate detention facilities and the lacking of fire separation**, the police station is considered to be in very poor condition and **recommended for demolition and re-build**.

...
Based upon **the lack of cells, minimal office space**, security and privacy issues and occupational requirements of the NAPS officer's it is **recommended to relocate this police station to a new facility**.

There are no cells. ¹⁹

Federal Government Assessment of NAPS Detachments (2001)

"...many of the First Nations police services demonstrably have the poorest quality policing facilities in Canada."²⁰

Federal Government Assessment of First Nations Police Detachments (2003)

"The [federal First Nations Policing Policy] assumes that First Nation policing will be an add-on or enhancement to basic policing services provided by the RCMP or a provincial police service. That assumption leads to **inadequate funding** where self-administered First Nation police services are actually the primary service providers for their communities, as is the case in Ontario and some other provinces."²¹

The Honourable Sidney B. Linden, Report of the Ipperwash Inquiry (2007)

"The **comparative lack of capital and operational funding** for First Nation police services has significant consequences in a number of areas, including their ability to recruit and retain qualified police officers, respond to occupations and

¹⁹ Public Works and Government Services Canada, Nishnawbe-Aski Police Service Building Condition Reports, August 3, 2001 at ATIP pg. 000394, 000410-000415, 000496 & 000351 (Note: Although some of these police stations have now been replaced, these facilities were in use during the time period covered by this complaint.)

²⁰ Public Works and Government Services Canada, Renewal of First Nations Policing Facilities, February 2003 at pg. 9 (at ATIP pg. 000635).

²¹ The Honourable Sidney B. Linden, Report of the Ipperwash Inquiry, Complainants' Record, Tab 3, pg. 252

protests, provide professional, efficient police services, train and support their officers, and meet even basic capital and infrastructure requirements.”²²

The Honourable Sidney B. Linden, Report of the Ipperwash Inquiry (2007)

“Government documents ... have identified the **central challenges for NAPS** as capital requirements (facilities for the 35 detachments), recruiting and retaining officers, inexperienced front-line officers, service levels and the quality of investigations, logistics associated with policing widely scattered, isolated small communities, and social problems such as suicide and substance abuse. These are quite valid comments but stop short of the fundamental need for "new thinking" on the part of federal and provincial authorities. On the federal side, there has to be more focus on the fact that NAPS and other SA police services, certainly in Ontario and Quebec, are here to stay and have replaced OPP policing, not just enhanced it.”²³

Professor Don Clairmont (2006)

Quotes Regarding the Federal Government's Role in the Provision of Policing Services

Again, the Investigator concludes the respondents are service providers within the meaning of section 5 of the *Canadian Human Rights Act*.²⁴ The following quotes from the evidence support that conclusion:

“jurisdiction over on reserve policing is shared and ... both levels of government have a measure of responsibility and a role to play.”²⁵

Federal Government Assessment Document (2003)

“The objectives of the [federal First Nations Policing Policy] are:

To provide First Nations communities with on-reserve policing services equal in quality to those provided in non-First Nations communities...²⁶

Federal First Nations Policing Policy (1992)

“First Nations communities should have access to policing services which are responsive to their particular policing needs and which are **equal in quality and level of service to policing services found in communities with similar conditions in the region.**”²⁷

Federal First Nations Policing Policy (1996)

²² The Honourable Sidney B. Linden, Report of the Ipperwash Inquiry, Complainants' Record, Tab 3, pg. 265

²³ Prof. Don Clairmont, Aboriginal Policing in Canada (September 2006) Complainants' Record, Tab 4, pg. 97

²⁴ Investigation Report (December 23, 2010) at paras. 22 & 65.

²⁵ Public Safety Canada, *Results-Based Management and Accountability Framework: First Nations Policing Policy and Program*, at page 2.

²⁶ APD, First Nations Policing Policy, 1992, at pg. 2 (at ATIP pg. 000003).

²⁷ APD, First Nations Policing Policy, 1996, at pg. 4 (at ATIP pg. 000020).

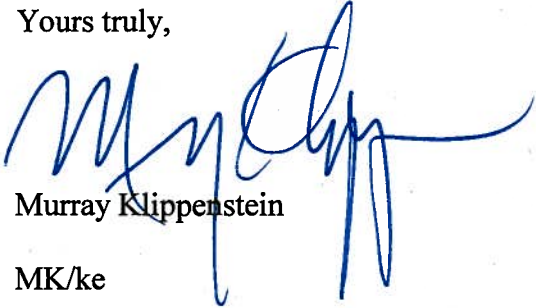
“[The federal Aboriginal Policing Directorate] implements the First Nations Policing Policy for the **provision of First Nations policing services** to First Nations and Inuit communities through the negotiation and **implementation** of tripartite agreements...”²⁸

Federal Government Document (1995)

Conclusion

The Investigation Report is thorough, fair, and well-reasoned. The complainants support its key conclusions that: (1) the respondents are service providers within the meaning of section 5 of the *Canadian Human Rights Act*, and (2) individuals living in communities served by NAPS (such as the Mushkegowuk First Nations) are disadvantaged as compared with other, non-First Nations communities. A Tribunal inquiry into this complaint is clearly warranted.

Yours truly,



Murray Klippenstein

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²⁸ APD, Description of the Aboriginal Policing Directorate, in Jamieson, Beals, Lalonde & Associates, Evaluation of the First Nations Policing Policy and Program, September 1995, Part 4: Component Profile. at pg. 2 (at ATIP pg. 000078).