

November 15, 2010

**BY COURIER**

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Dear Ms. Hilary,

**Re: *Grand Chief Stan Louttit et al v. Canada and Ontario*  
Simultaneous Federal and Provincial Human Rights Complaints  
Related to the Provision of Police Services and Facilities to  
Mushkegowuk First Nations  
Federal File Nos.: 20070826 and 20070993  
Provincial File Nos.: TR-0598-09, TR-0599-09, TR-0600-09, TR-0601-09,  
TR-0602-09, and TR-0603-09**

We are writing to provide you with some evidence relating to your investigation into the unequal policing provided to the Mushkegowuk First Nations.

Enclosed on compact disc are a number of documents we recently received through access to information requests.<sup>1</sup> These documents are briefly described below. We have also excerpted some key passages below, with certain portions in bold for emphasis, as the documents are fairly lengthy and you will likely not be able to read each document in detail.

We roughly divide the documents into two topics: 1) documents that support the conclusion that policing services in Mushkegowuk territory are not equal in level or quality to those provided to non-Aboriginal people in Canada; and 2) documents that discuss Canada's role and responsibilities in the provision of Aboriginal police services, which are relevant to Canada's assertion that its role in Aboriginal policing is not subject to section 5 of the *Canadian Human Rights Act*<sup>2</sup> (i.e. the "services" issue).

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<sup>1</sup> In this letter, the citations include a reference to the name we have given to the enclosed PDF file (i.e. see enclosed: "PWGSC - Building Condition Reports 2001").

Pinpoint citations to "ATIP" page numbers refer to the six-digit page numbers assigned to documents in the Access to Information process (i.e. *Ibid.* at ATIP pg. 000331), which have been cited alongside original page numbers when possible.

<sup>2</sup> R.S.C. 1985, c. H-6.

## **Inequality in police services between Aboriginal and non-Aboriginal communities**

### ***Evaluation of the First Nations Policing Policy and Program (1996)***

The federal First Nations Policing Policy was created in 1991, and soon after, the federal government commissioned an evaluation of the new program. The evaluation (enclosed) was published in 1995.<sup>3</sup> In one survey conducted by the authors, a majority of the participants felt that funding levels were insufficient, and that police service levels in First Nations communities were lower than those in non-First Nations communities.<sup>4</sup> The authors also concluded that further attention is required regarding “the concept and interpretation of police services ‘equal in quality, similar to comparable communities.’”<sup>5</sup>

The inequality between Aboriginal and non-Aboriginal police services has been a known problem since the inception of the federal government’s program.

### ***Briefing Note Re Government Visit to NAPS Detachments (2000)***

In early 2000, the Nishnawbe-Aski Police Service (“NAPS”) took federal and provincial government representatives on a tour of some NAPS detachments to show them, first hand, the detachment conditions, housing shortages, and human resource issues. A briefing note summarizing the tour is enclosed.<sup>6</sup> It describes critical housing shortages, officers forced to live with relatives or friends, detachment plumbing that freezes in the winter, a detachment without plumbing, insufficient cells (at times with 14 detainees to a cell), rotten wood floors, no capital funds to build new detachments, and more.

The widespread substandard and unsafe conditions in NAPS detachments did not exist in police facilities serving non-Aboriginal communities.

### ***Nishnawbe-Aski Police Service Building Condition Reports (2001)***

In July, 2001, the federal government carried out comprehensive inspections of 27 NAPS detachments. The resulting Building Condition Reports<sup>7</sup> (enclosed) confirm the deteriorating and dangerous conditions in these facilities and note major deficiencies which include “shifting foundation, inadequate detention facilities, and lack of barrier-free access and fire separations.”<sup>8</sup>

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<sup>3</sup> Jamieson, Beals, Lalonde & Associates, Evaluation of the First Nations Policing Policy and Program, September 1995 (see enclosed: “Jamieson – Evaluation of FNPP 1995”).

<sup>4</sup> *Ibid.* at ATIP pg. 000185.

<sup>5</sup> *Ibid.* at ATIP pg. 000033.

<sup>6</sup> NAPS, Briefing Note (Re Government Visit to NAN Detachments), March 30, 2000 (see enclosed: “NAPS Briefing Note 2000”).

<sup>7</sup> Public Works and Government Services Canada, Nishnawbe-Aski Police Service Building Condition Reports, August 3, 2001 (see enclosed: “PWGSC - Building Condition Reports 2001”). Mushkegowuk First Nations building reports are located at ATIP pgs. 000351, 000392, 000410, 000459, and 000491.

<sup>8</sup> *Ibid.* at ATIP pg. 000331.

The following passages highlight the appalling state of several Mushkegowuk First Nations detachments at the time of these inspections:

Fort Albany:

It is believed that the exterior walls are not insulated and do not have air/vapour barriers.

...

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.**

...

The police station is in such a poor condition that a new accommodation should be provided **without delay.**<sup>9</sup>

Kashechewan:

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.**<sup>10</sup>

Taykwa Tagamou (formerly New Post):

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.**<sup>11</sup>

Chapleau Cree

**There are no cells.**<sup>12</sup>

***Renewal of First Nations Policing Facilities Document (2003)***

In 2003, a federal report on First Nations police facilities<sup>13</sup> (enclosed) declared that there was a "compelling and urgent requirement to regularize and rationalize government's involvement

<sup>9</sup> *Ibid.* at ATIP pg. 000394.

<sup>10</sup> *Ibid.* at ATIP pgs. 000410 to 000415.

<sup>11</sup> *Ibid.* at ATIP pg. 000496.

<sup>12</sup> *Ibid.* at ATIP pg. 000351.

and investment in the provision of police facilities....”<sup>14</sup> NAPS facilities were found to be in particularly poor condition,<sup>15</sup> and the report cited chronic under-funding as the primary cause of the deteriorating condition of First Nations facilities across Canada, alongside a misunderstanding of various parties’ roles.<sup>16</sup> The report also stated that:

...many of the First Nations police services demonstrably **have the poorest quality policing facilities in Canada.**<sup>17</sup>

***Minor Capital Funding Mandate Document (2004)***

Major capital funding is not available under the federal government’s First Nations Policing Policy.<sup>18</sup> Because of this restriction, NAPS could not replace its unsafe and substandard police detachments even though the need for replacements had been long known and documented. In an attempt to get around this restriction, federal government employees made a proposal to address some of the facility needs under a budget category called “minor capital.” This proposal is discussed in the enclosed “Mandate Document” authored by the Aboriginal Policing Directorate (“APD”).<sup>19</sup> The proposal notes that:

**Proper Policing facilities have been a huge issue** for NAPS, and **their horrible state has been documented** by PWGSC during their on site inspections.<sup>20</sup>

...

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.<sup>21</sup>

The document proposes that “**low-cost moveable structures**” be used in communities “where there is an immediate need for **temporary, transitional accommodation.**”<sup>22</sup>

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<sup>13</sup> Public Works and Government Services Canada, *Renewal of First Nations Policing Facilities*, February 2003 (see enclosed: “PWGSC – Facilities Renewal 2003”).

<sup>14</sup> *Ibid.* at pg. 11 (at ATIP pg. 000635).

<sup>15</sup> *Ibid.* at p. 21 (at ATIP pg. 000647).

<sup>16</sup> *Ibid.* at pg. 31 (at ATIP pg. 000657).

<sup>17</sup> *Ibid.* at pg. 9 (at ATIP pg. 000635).

<sup>18</sup> The original 1992 policy allowed for “limited capital expenditures”: APD, *First Nations Policing Policy*, 1992 (see enclosed: “APD - FNPP 1992”) at pg. 9 (at ATIP pg. 000010 ). This provision was removed in the updated 1996 version of the policy: APD, *First Nations Policing Policy*, 1996 (see enclosed: “APD - FNPP 1996”) at pg. 8 (at ATIP pg. 000024).

<sup>19</sup> APD (Winona Embuldeniya), *Minor Capital Funding Amendment to the Nishnawbe-Aski Nation Police Service Agreement, Negotiation Mandate Document*, December 31, 2004 (see enclosed: “ADP – Minor Capital Mandate 2004”).

<sup>20</sup> *Ibid.* at ATIP pg. 000266.

<sup>21</sup> *Ibid.* at ATIP pg. 000271.

<sup>22</sup> *Ibid.* at ATIP pg. 000266.

### ***Policing Infrastructure – Project Details (2009)***

This APD document lists police infrastructure project status as of September 11, 2009.<sup>23</sup> The document states that three Mushkegowuk communities still require a new facility (Chapleau Cree, Fort Albany, and Taykwa Tagamou [formerly New Post]).

### **Canada’s role and responsibilities in the provision of First Nations police services**

#### ***Description of the Aboriginal Policing Directorate***

As part of the 1995 evaluation report, APD produced a document entitled “Description of the Aboriginal Policing Directorate.”<sup>24</sup> It describes some of APD’s roles and responsibilities in providing police services to First Nations people. For example, the document states that APD:

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...<sup>25</sup>

#### ***First Nations Policing Policy (1992 & 1996)***

The federal government’s First Nations Policing Program (“FNPP”) is governed in part by its *First Nations Policing Policy*. We have enclosed the original version of the policy from 1992,<sup>26</sup> as well as the more recent 1996 version.<sup>27</sup> This policy sets out the goals, principles, funding framework, and application process for FNPP participants, including First Nations and provincial governments. This policy is one of the ways in which the federal government is involved in the provision of First Nations police services.

Both the original 1992 policy and the revised 1996 policy confirm the federal government’s role and responsibility in ensuring that First Nations get the same quality of police services as non-Aboriginal communities:

The objectives of the policy are:

**To provide First Nations communities with on-reserve policing services equal in quality to those provided in non-First Nations communities...**<sup>28</sup>

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**

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<sup>23</sup> APD, *Policing Infrastructure – Project Details*, September 11, 2009 (see enclosed: “APD – Policing Infrastructure 2009”).

<sup>24</sup> APD, *Description of the Aboriginal Policing Directorate* (see enclosed: “APD – Description of APD 1995”) in Jamieson, Beals, Lalonde & Associates, *Evaluation of the First Nations Policing Policy and Program*, September 1995, Part 4: Component Profile.

<sup>25</sup> *Ibid.* at pg. 2 (at ATIP pg. 000078).

<sup>26</sup> APD, *First Nations Policing Policy, 1992* (see enclosed: “APD - FNPP 1992”).

<sup>27</sup> APD, *First Nations Policing Policy, 1996* (see enclosed: “APD - FNPP 1996”).

<sup>28</sup> APD, *First Nations Policing Policy, 1992*, at pg. 2 (at ATIP pg. 000003).

of service to policing services found in communities with similar conditions in the region.<sup>29</sup>

### *APD Funding Directives and Guidelines*

Policing and police funding for First Nations people are governed and regulated in part by federal government directives and guidelines. We have enclosed a number of these directives<sup>30</sup> as well as APD's "Funding Guidelines."<sup>31</sup> We do not ask that you read these documents in detail. We provide them as an example of another way in which the federal government is involved in the provision of policing services to First Nations people.

### *The Federal Government's Role in the Unequal Treatment at Issue*

The above documents evidence some of the ways that the federal government is involved in the provision of Aboriginal policing services. Further, the documents highlight some of the federal government's actions, decisions, and policies that cause the inequality of services between the Mushkegowuk First Nations and non-Aboriginal people in Canada. For example:

- The First Nations Policing Policy does not allow for major capital expenditures.<sup>32</sup> Because of this, NAPS was for many years unable to replace its decrepit, unsafe facilities, and is now mostly restricted to the "low-cost moveable" facilities discussed above. Non-Aboriginal police forces can make capital expenditures and are not restricted to low-cost moveable facilities.
- The number of officers is only based on demographics and workload to the extent that there are "funds available."<sup>33</sup> This puts a cap on the number of available officer positions. In other words, staffing is ultimately determined by overall federal budget allocations, not by needs or the goal of equivalency with non-Aboriginal communities.
- According to the 1995 FNPP evaluation, "[t]he concept of 'equal in quality' has been interpreted to mean that First Nations communities should receive funding similar to communities with comparable geographic locations and populations."<sup>34</sup> However, equal per-capita funding will lead to unequal services in First Nations communities where the per-capita workload is higher or costs are higher. This is likely the case in many Mushkegowuk First Nations communities.

However, it is even more important to note what is missing from those federal policies, directives, and guidelines. For example, there is no recourse for NAPS, or other Aboriginal police forces, if federal funding and support is insufficient to allow them to provide equal and

<sup>29</sup> APD, First Nations Policing Policy, 1996, at pg. 4 (at ATIP pg. 000020).

<sup>30</sup> APD, Various Directives (see enclosed: "APD – Various Directives").

<sup>31</sup> APD, Funding Guidelines (see enclosed: "APD – Funding Guidelines").

<sup>32</sup> APD, First Nations Policing Policy, 1996, at pgs. 7-8 (at ATIP pg. 000023-000024).

<sup>33</sup> *Ibid.* at pg. 7 (at ATIP pg. 000023).

<sup>34</sup> Jamieson, Beals, Lalonde & Associates, Evaluation of the First Nations Policing Policy and Program, September 1995, at ATIP pg. 000030.

adequate services. This is in contrast to municipal police forces in Ontario, which have the power to appeal to an independent commission for a hearing and a binding decision on the adequacy of a police board budget (see section 39 of the *Police Services Act*).<sup>35</sup>

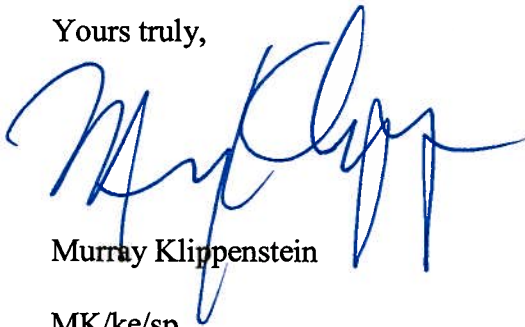
Furthermore, there is no guarantee that First Nations policing will be sufficiently funded and supported under the FNPP to ensure equality of services. The policy documents and policing agreements consistently indicate that First Nations police services are required to meet provincial standards in training, facilities, and quality of service. Notably absent are statements that the federal government will provide the funding and support to make that possible.

### **Conclusion**

As detailed in this letter and the enclosed documents, the federal government plays a central role in the provision of policing services to First Nations communities such as the Mushkegowuk First Nations. The policing in the Mushkegowuk First Nations is not equal in quality to the policing in neighbouring non-Aboriginal communities because of the federal government's own actions and policies, including a lack of funding and flaws in the terms and conditions of the First Nations Policing Policy. The federal government has allowed these unequal service levels to persist, to the detriment of Mushkegowuk communities.

We trust this letter and the enclosed evidence will assist your investigation of this matter.

Yours truly,



Murray Klippenstein

MK/ke/sp

Encl.

Cc: Sean Gaudet, Senior Counsel, Department of Justice Canada

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<sup>35</sup> R.S.O. 1990, c. P.15.