Committee on the Elimination of all Forms of Racial Discrimination (CERD)

Six Nations of the Grand River Shadow Report

Responding to Canada's 19th and 20th Reports to the CERD

January 2012

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Committee on the Elimination of all Forms of Racial Discrimination (CERD)

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Background

1. In Canada there are three (3) groupings of Indigenous Peoples who have their rights identified and protected by Canada's Constitution. They include the Métis, the Inuit, and Indians or First Nations. The grouping of Indians or First Nations comprises sixty (60) to eighty (80) individual Indigenous nations. Six Nations of the Grand River is included in the third grouping and this paper comes from that perspective. It is the First Nations who entered into government-to-government and Nation-to-Nation Treaties with European and other nations, including the British Crown (now in right of Canada). The earliest Treaties with Six Nations date back to the 1600s.

2. Six Nations of the Grand River is an Iroquoian Indigenous community located in what is now southwest Ontario, Canada. It has the largest population (24,152) of any Indigenous community in Canada and has some of the oldest treaties with the British Crown, pre-dating the formation of Canada. The traditional system of government at Six Nations is over one thousand years old and was used as a model by the United States of America (USA) when it formed in 1776. The original Treaty territory of Six Nations of the Grand River included lands located in upper New York, USA. Following the American Revolution the US portion of our lands were arbitrarily given by Great Britain to the United States without our knowledge and consent. In exchange the British Crown established a 1 million acre tract, within our 1701 Beaver Hunting Grounds for the Five Nations (later the Six Nations) "which Them and Their Posterity are to enjoy forever". Today, we have less than 5% of the lands so promised.

3. Six Nations has an ancient Treaty relationship with the Crown. The Two-Row (Gusentah) Treaty is a Nation-to-Nation non-interference Treaty between Nations wherein we agree we will not interfere with each other's governance. The continued development and imposition by Canada of federal legislation violates our Treaty. It also violates Section 37 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

4. Six Nations has the right to self-government and self-determination as recognized by the UNDRIP, and these rights have consistently been violated by Canada.

Executive Summary

5. Canada continues to practice colonialism toward the First Nations Indigenous Peoples in Canada through its words and actions. Canada's policies when dealing with land rights, Treaty recognition and implementation and self-government all have the effect of subjugating First Nations and keeping Indigenous Peoples as second class citizens, living in third world condition.

6. Canada continues to impose federal legislation on Indigenous Peoples against their will, contrary to the UNDRIP. Legislation dealing with matrimonial property and citizenship/membership continues to discriminate against Indigenous Peoples. Under a current legislative Bill on matrimonial property First Nations would be required to hold community referenda to enact local laws, yet no other level or type of government – municipal, provincial or federal is required to hold referenda to enact laws. This is clearly racist. The *Equity in Indian Registration Act* (Bill C-3, otherwise referred to as the *McIvor* Bill) continues the discrimination it was supposed to correct for over 200,000 First Nations citizens.

7. State institutions in Canada discriminate against Indigenous Peoples. Canada's Supreme Court has made decisions of the past several decades that clearly discriminate against First Nations Indigenous Peoples . The Supreme Court has said First Nations rights are frozen in time, yet Canadians enjoy contemporary rights; The Court has said First Nations lands are only worth half the value of Canadians land; the Court has said First Nations Indigenous Peoples are only entitled to a moderate livelihood from the sale of their resources, yet Canadians can sell our resources on the open market to the highest bidder. Canadian courts are simply being used to justify the theft of First Nations lands and resources.

8. Canada's qualified approval of the UNDRIP has resulted in Canada disrespecting its provisions. Canada sees it as an "aspirational" document and views its domestic laws as having precedence over international human rights.

9. Canada continues to violate the UNDRIP by consistently violating the Free and Prior Consent provisions in the Declaration. Six Nations has attempted to put in place fair processes for settling land rights disputes with Canada, as set out in the UNDRIP (s. 27) only to have Canada impose its one-sided and unfair approach.

10. Canada continues to apply the Doctrine of Discovery which in itself is a racist approach. Canada has never been able to explain how it acquired legitimate title to Indigenous First Nations lands in Canada. Canada continues to use a policy of extinguishment of First Nations lands, resources and title which discriminates against First Nations Indigenous people.

11. Canada has also engaged in environmental racism by giving access to Indigenous lands and resources to non-Indigenous developers, who are then allowed to exploit and destroy our lands. Further, contrary to the UNDRIP, Indigenous rights

and access to these lands and resources are denied, which results in economic racism. Others make money from our lands and resources but we are denied access to the same lands and resources, or payment for past use or exploitation.

12. Canada continues to violate the rights of self-determination of Indigenous Peoples in Canada through its policies and imposed legislation. Treaties between First Nations and the Crown in Canada continue to be violated in spite of the fact that they are supposed to be protected by Canada's Constitution. Six Nations has non-interference treaties with the Crown that continue to be violated.

13. Canada's unilateral name change of the federal department responsible for First Nations from Indian and Northern Affairs Canada (INAC) to the Aboriginal Affairs and Northern Development (AAND) is an attempt to undermine the historical relationship and rights of Indian First Nations in Canada, and once again displays the colonial attitude Canada has. Treaties refer to Indian nations, not aboriginal nations.

14. Canada continues to discriminate against First Nations Indigenous Peoples in the levels of funding it provides for Indigenous services and programs, compared to that of Canadians. Child welfare, women's programs, education, training, health, wages, justice and corrections, capital and community infrastructure are but a few areas.

UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

15. Six Nations is concerned that Canada's endorsement of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) is conditional and qualified. Canada has described the Declaration as an "aspirational document" only and continues to hold the position that the Declaration is subject to domestic laws in Canada. This would defeat the purpose of international human rights instruments. Canada's actions serve to undermine the international human rights system and the rule of law.

16. To quote the Grand Council of the Crees (Quebec) , *"the Canadian government has deliberately and consistently ignored its constitutional duties to consult and accommodate Indigenous Peoples. Canada is Subordinating international human rights standards to domestic law. International standards are intended to uplift existing domestic standards. For such purposes, countries are often urged by UN Treaty bodies to amend their domestic constitutions or laws. These international standards are not subordinated to the legal framework of any particular State. To do the reverse would undermine the universality of human rights and perpetuate existing injustices."*

17. Canada has failed to respect the rights identified in the UNDRIP adopted by the UN General Assembly in September 2007 including, in particular the right to free prior informed consent. Canada's actions and interference with Indigenous

Peoples has resulted in negative consequences and impacts for the rights and survival of Indigenous Peoples in Canada.

18. Important concerns for Indigenous Peoples in Canada include institutional racism and discrimination within the criminal justice and court systems, Treaty violations, discriminatory funding and treatment in the areas of social services and living conditions, gender discrimination and lack of protection against violence towards Indigenous women, youth and children (including high levels of deaths of Indigenous children in state- managed foster care). Indigenous Peoples in Canada continue to suffer disproportionate rates of incarceration, children in foster care, youth suicides, health problems, substandard housing, contaminated water and a range of other conditions.

19. Canada also continues to push development projects on Indigenous Peoples' lands, waters and traditional subsistence without their free prior and informed consent. Canada has engaged in a process of misinformation about the nature of the UNDRIP. It has informed Canadians that the Declaration only contains collective rights, however it has 17 provisions dealing with individual rights.

Omissions and Misrepresentations In Canada's Report

20. Six Nations is troubled with the terminology used by Canada throughout its report. Six Nations and other Indigenous Nations in Canada are not "aboriginal groups," but rather Indigenous Nations in the full international sense. Our treaties with the Crown pre-date the formation of Canada. Canada's use of this terminology is an attempt to diminish the rights and status of Six Nations of the Grand River and other Indigenous Nations in Canada.

21. **Section 4** in Canada's report indicates that Canada sought input from 85 Non-Governmental Organizations. The Six Nations of the Grand River is the largest populated First Nation in all of Canada; is politically active within Canada and Internationally and has never once been approached by Canada seeking our input on the issues covered in Canada's Nineteenth and Twentieth Reports of the International Convention on the Elimination of All Forms of Racial Discrimination covering the period June 2007-May 2009.

Aboriginal Peoples Census Data

22. Canada refers to Statistics Canada Census data, which is unreliable because many Indigenous people do not participate in the Canadian Census. Even according to Stats Canada, 22 FN communities did not participate in the 2006 Census, but they do not provide the actual population numbers as to how many those 22 communities constitute. The numbers are misleading in the sense that population of Aboriginal youth is double of main stream, yet overall First Nations population isn't growing as fast.

Insufficient Funding for First Nations' Children's Services and Programs

23. The Government of Ontario provides $500,000 annually for after school programs for 134 First Nations communities in Ontario ($3,731 per community). If Aboriginal children account for 6.3 percent of all children in Canada and proportionately higher compared to the non-Aboriginal population the funding for Aboriginal children needs to be adequate to address the number of children and the multiple quality of life issues that exist.

Questions to ask:

24. How many of our First Nation children are graduating from high school?
25. How many of our First Nation children are in the child welfare system? These facts need to be documented.
26. What is Canada's plan regarding these important issues?

Legislative, Administrative, Judicial or Other Measures

Gender Based Violence

27. There is insufficient funding available for First Nations domestic violence shelters. The Six Nations domestic violence shelter struggles to acquire on-going funding for sexual assault counseling services.

28. There is insufficient funding for initiatives to reduce the vulnerability of young First Nation women to violence and developing community safety plans. The one million allocated for school and community-based pilot projects for 640 First Nations communities (not including urban Aboriginal communities) allocates $1,587 per community. Very little can be positively accomplished with such a limited amount.

29. The $1.5 million allocated over two years to develop community safety plans for 640 First Nations communities (not including urban Aboriginal communities) translates into $1,171 per community per year. Again, little can positively be accomplished with this limited amount.

30. There is insufficient funding for on-reserve family violence prevention programs and protection services. Funding provided by Canada, $29.8 million for programs and services for 640 First Nations reserve communities translates into $46,562 per community. This would not support the salary and benefits of one qualified staff member who would have to deal with the highest rates of family violence in Canada and the most vulnerable population. All other programming/service expenses are not supported.

31. Canada stated its Family Violence Initiative (FVI) also funds the Shelter Enhancement Program (SEP) that assists in repairing and improving existing

shelters for women and children in areas such as security, access for persons with disabilities and improvement in play areas.

32. SEP has assisted the Six Nations Women's Shelter Program, Ganohkwasra, with minor capital renovations in the past. Ganohkwasra regularly applies for SEP, because of a twenty year old building, however, our applications are not always successful. In 2010, Ganohkwasra applied to SEP for a much needed expansion of an Administration/Board Room/Shelter Resident Programming Room due to overcrowding of staff within our main building. We were denied.

33. In 2011, Ganohkwasra applied to SEP for an expansion of the Gayenawahsra Second Stage Housing Office. We hope to re-build our office space up and secure our complex to decrease the risk of flooding during the heavy rain season. Ganohkwasra has not been notified if we have been approved to date.

34. Six Nations plans to do a community needs assessment in 2012 to find out if we need a Sexual Assault Centre on-reserve. According to our research, even though First Nations women are the highest risk to be sexually assaulted (and on-reserve First Nations women are documented to be at the highest risk), there is no Sexual Assault Centre in any First Nations community in Canada. If our community believes we need a Sexual Assault Centre, Ganohkwasra plans to submit a proposal for a Sexual Assault Centre on the Six Nations of the Grand River Territory.

Employment

35. Canada states that the number of visible minorities in the executive group in the federal public service has increased from 3.1 per cent (103) in 2000 to 6.9 per cent (353) as of March 2009. There has been no identification of the number of First Nations people within the executive group in the federal public service.

Questions to ask Canada:

36. What is the First Nations percentage in the executive group within the federal public service overall?
37. What is the First Nations percentage in the federal departments that are responsible specifically for Aboriginal people, e.g.: Indian and Northern Affairs and Health Canada's First Nations Inuit Health Branch?

38. Canada states that members of visible minority groups are well represented in the scientific and professional domains in the federal public service. As well, they state salary levels for employees who are visible minorities compare favourably with the levels for all employees in the federal public service. However there is wage inequity between federal public servants and federally funded service professionals. As an example – federally employed (Health Canada First Nations Inuit Health) registered nurses receive on average $10,000 - $15,000 more

annually than First Nations communities are funded (Health Canada First Nations and Inuit Health) to pay Indigenous government-employed registered nurses within the same community.

Justice Issues

Aboriginal Diversion Programs

39. Canada references its alternative, or diversion programs for Aboriginal offenders. However, in the proposed federal Safe Streets and Communities Act (Bill C-10), Canada has combined a number of different Bills and removed the *Gladue* decision provisions for Aboriginal offenders, which were put in place by the Supreme Court of Canada, and instead imposed mandatory sentences, which remove the courts discretion. The Supreme Court held that when Courts are considering an Aboriginal offender, there are special cultural considerations that the court must take into account. *Gladue* asks judges to apply a method of analysis that recognizes the adverse background cultural impact factors that many Aboriginals face. Judges are then asked to consider all reasonable alternatives to jail in light of this.

40. Canada has also made direct reference to terrorism and First Nations Indigenous Peoples. The ability for First Nations to stand up and fight for their Treaty rights can now be deemed to be an act of terrorism and we can now be held financially liable for damages. This may allow the voting public to also seek damages and still have them treat First Nations as terrorists. How is this Bill eliminating racism, when in fact it promotes it?

41. Six Nations only receives funding for "supervision" of provincial probation and parole services" and the staff are considered Native Corrections Officers, paid less even though they have the same education and qualifications as Provincial recognized Probation and Parole Officers required to meet the same standards of service.

42. Six Nations has been unable to receive any diversion support funding and was denied funding from Corrections Canada in fall 2011 to do a community meeting on safety issues. The request was for a meagre $6,500.00 with no explanation of why the request was denied.

Community Policing

43. Since 1985 the Six Nations Police had been part of an Ontario Indian Constable Program and under an Ontario wide policing arrangement that eventually led to a self-administered Six Nations Policing Agreement in 1989. The development of this initiative being one that was community driven with the goal in mind of having First Nations Constables take the responsibility of policing its territory.

44. At this particular point in time, the Six Nations Police Service (SNPS) is operating under a Tripartite Policing Agreement with the Federal and Provincial Governments and the Six Nations Council being signatories to the agreement. It is the only mechanism that is available at this time to maintain the recognition of constitutional rights of Six Nations as pertains to policing and at the same time allowing for recognition of the appointment of SNPS members to carry out duties as police constables throughout the province of Ontario.

45. The Ontario Police Service is recognized under the Six Nations Policing Agreement for appointment purposes only. The remainder of the agreement recognizes the respective positions as relates to the Federal and Provincial signatories to the agreement.

46. Progression and enhancement are supposed to be achieved through a negotiation process but has not happened in the usual forum. The Six Nations Police and Commission have been operating with inadequate amendments and extensions for the past 4 years. In addition to the lack of resourcing available, an evaluation of the First Nations Policing Policy which provides for the parameters of on-reserve policing has been an ongoing excuse not to proceed with negotiations.

47. In its most recent study prepared in 2009 for the purpose of negotiating a Six Nations Police Agreement and identified as "A Case For Action" the Consultant engaged for this purpose made note of a number of areas where shortfalls were apparent due to disparity in Canada and Ontario resourcing both human and financial. <u>The following excerpts from that report are as follows</u>:

48. "The transition from police services provided to Six Nations by the Royal Canadian Mounted Police (RCMP) and the Ontario Provincial Police (OPP) to the self administered stand alone service has not been a simple, easily accomplished task. While it may be argued that the SNPS together with the Six Nations community has made nothing short of incredible progress in this evolution, the process must be kept in perspective. Non-native stand alone police services have been in existence in Ontario in a range of 100 to 150 years. These police services have evolved gradually as have the communities they serve and along with their needs and expectations. That has not been the case with the SNPS. Simply put, it can be well argued that SNPS was in deficit position at the moment of its origin and continues to be.

49. Conventional government wisdom suggests funding will be advanced only for direct on territory policing. Perhaps there might have been a time when that reasoning was sound but it is certainly not applicable today. Clearly, in sensitive situations such Land Rights confrontations, jurisdiction notwithstanding, the police service best able to ensure the public peace should be utilized; in this case SNPS. Justice Sydney Linden in one of his recommendations following the Ipperwash Inquiry very clearly articulated using First Nations police services in similar Land Rights situations should be adopted as a standard operating

procedure. There is nothing to suggest that Justice Linden had any expectation First Nation police services would be expected to undertake these additional responsibilities pro-bono.

50. The SNPS is currently funded for 25 constable positions. From this fiscal position, the SNPS must fund their internal rank structure, technology, vehicles, infrastructure and various salary grid differentials as well as full and part time civilian member positions. Review of both the existing rank structure and civilian member compliment suggests that it is only adequate to meet need. The base per constable funding amount does not accurately reflect required actuals and must be addressed.

51. The SNPS is viewed Canada wide as the "bench mark" for what self-administered First Nations police services should be. It is clear that the drive and dedication of individual members to both their community and their police service has kept the SNPS in this position. While flattering and a well deserved comment, it is a reputation that the SNPS is finding more and more difficult to maintain. An ever increasing workload both in terms of numbers and call severity along with increased public expectations both internal and external has and continues to have a considerable impact on the morale of all members of the service given their current resourcing.

52. Six Nations members' policing their own community have clearly demonstrated merits. However, the resource deficit coupled with the close familial fabric within the community and with at time conflicting traditional value has made the job increasingly more difficult. The resultant morale of the service is seen to be at an all time low. Members candidly indicate they do not want to give up policing their home but many allude to considering employment with another non First Nation police service where the demands on them personally are less and the recourses are invariably greater.

53. Ultimately the future success of the SNPS rests with this negotiation. There is a compelling body of evidence that identifies effective police services delivered by the SNPS, based upon reasonable community expectations and supported by Six Nations Council with governance carried out by the Six Nations Police Commission are at risk and indeed makes out a compelling case for action in the short and longer terms that must not be ignored.

54. The SNPS funds their internal rank structure, technology, vehicles, police and infrastructure along with various salary grid differentials as well as full and part time civilian member positions. This, unlike the RCMP and OPP models, necessarily reduces the number of officers available for deployment in the community. As well, the current per constable dollar figure is considerably less than that which is used for budget development in all municipal police services in Ontario.

55. To put this in a more meaningful and specific human resource perspective, the 25 constable funding base equates to 41 sworn and unsworn, full and part time members of the SNPS today. If these numbers are further extrapolated and the rank structure contemplated, 16 constables are actually available for deployment to address calls for service. The current population on Six Nations is 15,530 or a police to population ratio of 1:971.

56. Police to population ratios cannot be relied upon alone as a definitive identifier or complement need. Workload both in terms of calls for service numbers and severity and complexity of the occurrence, experience must be factored in. Workload will be discussed later in this report. What these police to population numbers do support is that despite all best efforts, in terms of deployed constables, the SNPS started out in a deficit position and remains in a deficit position.

Workload Analysis and Comparisons

57. Police to population ratios standing alone are not suggested to be an accurate predictor of actual police resource needs. They do provide a perspective of police resourcing that should be considered when determining current and future human resources. The following chart identifies a sampling of 2007 police to population figures:

Police Service Constables	***Constable***	***Population***	***Police To Population***
Six Nations Police	*16*	*15,530*	*971:1*
Brant County OPP	*41*	*30,330*	*740:1*
Haldimand County OPP	*60*	*46,260*	*771:1*
All Ontario Average			*661:1*

58. There is a clear disparity with respect to population serviced by one Six Nations constable compared to all Ontario police services. The disparity between the SNPS and OPP detachments in Brant and Haldimand is of particular interest given the commonalities in policing in this geographic area. A chart comparing 2007 calls for service (CFS) experiences of the SNPS and the nearby OPP detachments is detailed.

Police Service	**Constable Complement**	**CFS**	**CFS per Constable-yr**
SNPS	16	6300	394
Brant County OPP	41	12,274	299
Haldimand County OPP	60	14716	245

59. A considerable disparity in the number of calls for service handled by one Six Nations constable to the surrounding Non Native services is most evident.

60. Again, this underfunding for First Nations is contrary with the 2009 Ontario Coroner's report on two First Nations persons deaths from a fire while in a deplorable and unsafe First Nations Police building. Recommendation 28 of the Coroner's report states that First Nations, Canada and Ontario should work together to ensure that policing standards and service levels in First Nations Communities are equivalent to those in non-First Nations communities in Ontario. For a fact this is not happening at Six Nations

61. Six Nations has many land claims and reclamations in progress with others yet to be contemplated. Many will be resolved without any need of police involvement or intervention, others will. Douglas Creek Estates in Caledonia Ontario is one claim that has required the significant involvement of the SNPS. The SNPS has assumed policing responsibilities for an area that is the jurisdictional responsibility of Haldimand OPP. The Six Nations Police Services have stepped up to the plate and have taken on this new responsibility as it was the right thing to do having regard to the safety of both native and non-native communities in Land Rights disputes. These extra policing demands have caused significant increased fiscal pressures for the SNPS and further stretched its already beleaguered human resources.

62. Six Nations Police Services does this is in support of Justice Sydney Linden, Commissioner of the Ipperwash Inquiry recommendations for implementation when governments and police agencies deal with disputes that involve First Nations."

***The Gender Equity in Indian Registration Act* (Bill C-3): Implementation of the *McIvor* Decision**

63. Bill C-3 deals with Indigenous citizenship and membership in Indigenous communities in Canada. Canada continues to intrude into the jurisdiction of Indigenous First Nations as they have done with Bill C-3, commonly referred to as the *McIvor* Bill.

64. Colonization refers to the formal and informal methods, behaviours, ideologies, institutions, policies and economies that maintain the subjugation or exploitation of Indigenous Peoples and their lands and resources. This is a classic example of the continued colonization policies of the Canadian government. What is more fundamental to the rights of Indigenous Peoples in Canada than determining who their citizens are and who the members of their communities are. Bill C-3 is a clear violation of Sections 3, 4, 5, 6 and Section 9 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

65. In fact the McIvor legislation continues the discrimination it was supposed to end. All Canada has done is put an arbitrary date (1951-1985) on those whose rights it chose to reinstate under Canadian law. Sharon McIvor, who brought the case to

the courts estimated that only 45,000 individuals would be reinstated under the legislation which is a far cry from the 250,000 she estimated should have had their rights reinstated. Even those reinstated will still only have a limited right to pass on their rights to future generations. The discrimination continues with a clause added by Canada to the Bill that would indemnify the federal government against lawsuits by Indigenous people who lost their rights to programs and services because of Canada's actions. This continues the discrimination against those Indigenous people who were reinstated.

66. Canada also chose to ignore input from Indigenous Peoples who appeared before Parliamentary Committees, thus violating Section 19 of the UNDRIP which requires states to "obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect Indigenous Peoples."

67. The *McIvor* court case ruling is expected to result in approximately 10,000 new citizens eligible to be reinstated to our Six Nations community. These individuals can go directly to Ottawa and have themselves added to any First Nations community membership list after meeting federal guidelines, with no involvement from Six Nations. The federal government has already indicated that no new funding will be provided to any First Nation government following any new community members being added to a First Nations membership list. First Nations funding has grown at 50% of the cost of living over the last ten years, which creates a double impact effect because Six Nations suppliers have incorporated annual increases to products and services. An additional direct affect of this limited funding is the inability to equitably compensate First Nations wages, which are now at a 20%-45% lower rate than federal public service workers.

Measures To Enhance the Social, Economic and Cultural Rights of First Nations Peoples

68. Canada's response to CERD Concluding Observation 21, (s.101) states the Government of Canada views negotiation as the best means for engaging Aboriginal groups, and provincial and territorial governments in considering pragmatic, practical options that respond to different needs across the country.

69. This section makes reference to Canada's view that negotiation is the best option in dealing with First Nations. Yet for Six Nations, it took twenty years to get our land rights grievance case into Canadian courts and after seven years nothing has happened. Canada has cut all funding related to land rights grievance research at Six Nations. Then the 52nd elected Chief took the Six Nations case out of Court, based on a promise to restart research funding. Six Nations started negotiations for a land rights grievance settlement, again with no restart of funding and no settlement.

70. Another situation where negotiations were non-existent occurred in the 2005-2006 when Canada set up a national water panel to study potable water for First Nations across Canada. Canada's national panel made recommendations to invest in capital and human resource training and not to develop new legislation. The federal government rejected the recommendations of its own national panel and developed proposed legislation Bill S-11. The Safe Drinking Water for First Nations Act. For decades Canada provided First Nations with only 20% to 50% of needed funding (capital and operations and maintenance) thereby allowing infrastructure to deteriorate and operate below normal guidelines/standards for potable water. With Canada's new Bill it has transferred 100% of its liability to Indigenous governments for "all water" on First Nation territories. However, it has not provided any additional resources for First Nations training or to build or upgrade their water systems. It is impossible to meet new standards without new resources.

71. According to Canada's (INAC) cost reference funding manual the eligible funding Canada gave to Six Nations, for its water and sewer operations, only represented 25% of its operations and maintenance (O&M) funding. Then, in 2004-2005 Canada began providing enhanced funding which increased its share to only 49% of the O&M cost. Six Nations therefore had to cover off one million dollars of debt every five years to be able to provide potable water services to its community members.

72. Another example of lack of negotiation occurred in 2004-2005. The federal government was dealing with Gas Excise Tax, whereby all local and municipal governments could apply to get millions of dollars for infrastructure repairs. With thirteen gas stations on Six Nations, Six Nations was estimated to receive about $5 million; however Canada kept the dollars slated for First Nations, and added it to two other sources of capital dollars. The end result was the imposition of a change to a "proposal driven process." This allowed Canada to decide which First Nations received funding dollars. Six Nations submitted proposals for three consecutive years for capital projects totaling $16 million and to date only received approximately $200,000 for further studies to be done. Canada did offer Six Nations $700,000 for a project that required $1.5 – $1.8 million, but Six Nations had to fund the balance, thereby resulting in Canada pulling funds from Six Nations. In a 2008 report on bridges, from a third party engineering firm, it outlined that 3 to 5 bridges needed to be replaced starting in 2011 to 2015 and Canada has not stepped forward other then to make offers whereby Six Nations has to share 50% of the costs with funds that the community does not have.

73. In 2009 Canada announced that Economic Development funding would be cut from all budgets over the next two years. There was no logical reason to the cut back and they indicated funding would from then on be proposal driven. For Six Nations this meant $560,000 was cut and resulted in the loss of 6 to 8 full time jobs including the Six Nations Forestry Program. Six Nations has the largest remaining Carolina forest in Canada with no means of protecting it.

Self-Government Negotiations

74. In 1996, the *Royal Commission on Aboriginal Peoples* (RCAP) tabled approximately 450 recommendations to the federal government and proposed solutions for a new and better relationship between Aboriginal Peoples and Canada, including the recognition of the right to self-government. The *Royal Commission* recognized the inherent right to self-government as an "existing" Aboriginal and Treaty right as recognized and affirmed by Section 35(1) of Canada's Constitution.

75. The spirit and intent of the 1784 Haldimand Treaty and 1701 Fort Albany Treaty between the Six Nations of the Grand River and the Crown, was to allow for the sharing of these lands and resources for economic purposes and the creation of a *Perpetual Care And Maintenance* trust for the Six Nations people. These principles will be respected in our continued and relentless efforts for restitution, justice and self- government.

76. We expect Canada and the Province of Ontario to work with Six Nations to develop solutions to address their ever-growing debt to us. Six Nations is proposing a new mandate for Canada's negotiators based on justice, sharing, and certainty without extinguishment of Six Nations interests in the land and resources underlying the Treaty.

77. We are going to require agreements capable of building a strong and stable economic base for a Six Nations government, and create stable and secure resource and revenue sharing agreements with municipalities, the Province of Ontario, Canada and the corporate sector.

78. Six Nations will also require that these negotiated agreements be protected in Canada's Constitution to ensure our governance, the local economy and our public programs are sustained based on Six Nations' standards and needs. We will then be able to sever ties with Canada's imposed and divisive *Indian Act*. We will be able to develop a true self-governing model for the peoples of Six Nations of the Grand River, specific to our needs and desired form of governance.

Health

79. Canada states its Aboriginal Health Transition Fund aims to improve access to existing health services for all Aboriginal Canadians through the improved integration of federally funded programs with those of the provinces/territories, as well as the adaptation of health services to better suit the health care needs of First Nations, Inuit and Métis. However, Ontario non-Aboriginal organizations receive the majority of the Aboriginal Health Transition Funds. Thirty-three projects were funded with only eleven projects allocated to an Aboriginal organization.

80. The majority of the funded projects went to the non-Indigenous Local Health Integration Network in Ontario and to hospitals, both of which should have implemented integration and/or adaptation health services without utilizing funds earmarked for the Aboriginal population. Aboriginal organizations are more appropriate to develop and implement meaningful integration health services that will impact on Aboriginal Peoples. Aboriginal organizations are more appropriate to identify what is needed to be adapted in the health system to better suit the health needs of First Nations, Inuit and the Métis.

Economic Development

81. Canada states that its Economic Action Plan of 2009 makes significant labour market and regional investments of almost one per cent of its Gross Domestic Product (approximately $1 billion) in Aboriginal communities in the following areas: Aboriginal skills development and training; health; education; employment partnerships; housing; water treatment infrastructure; policing infrastructure; and northern economic development. However, there is insufficient funding for Aboriginal training, health, education, employment partnerships, housing, water treatment infrastructure, policing infrastructure and northern economic development. Based on the 2006 Census (inaccurate, as stated above) there were 1,172,790 Aboriginal people in Canada and 640 First Nations communities (not including urban Aboriginal populations/organizations/communities). A $1 billion investment constitutes approximately $852 per Aboriginal person (and much less based on the actual population). Were it allocated on a per capita basis, a $1 billion investment amounts to approximately $1,562,500 for each First Nations community to support training, health, education, employment partnerships, housing, water treatment infrastructure, policing infrastructure and northern economic development.

Lands and Aboriginal Title

82. Canada takes the position and its domestic courts have stated, that Aboriginal rights only include those practices, traditions and customs that were central to our societies at the time of contact, and must be central to our distinctive cultures. In other words the Aboriginal rights and title of Indigenous Nations in Canada are essentially frozen in time with the arrival of white Europeans. [*Delgamuukw v. British Columbia*] and we cannot update them to modern times.

<u>The 1701 Fort Albany (Nanfan) Treaty Lands</u>

83. In 1701, the imperial Crown entered into the Fort Albany Treaty with Five Nations - (later becoming the Six Nations) in which the Crown undertook to protect from disturbance or interference a large portion of lands the Six Nations had obtained from the Huron by conquest. This Treaty would ensure Six Nations' right to exercise freely the right to pursue their economic livelihood utilizing the natural resources contained in the said Treaty lands - an area of 400 miles x 800

miles (320,000 square miles) throughout central and south western Ontario, Canada and the eastern United States.

84. Our Treaty rights as affirmed by the 1701 Fort Albany Treaty are protected under Section 35(1) of Canada's *Constitution Act, 1982* and as such are subject to the Crowns' (Canada and Ontario) duty to consult and accommodate and to seek our free and informed consent on a broad range of interests. In addition to our undisturbed right to hunting and fishing, consultation and accommodation includes Six Nations participation in environmental monitoring and revenue-sharing by others intending to develop and exploit any resources from within our 1701 Fort Albany Treaty lands. This principle is consistent with *Article 28 of the United Nations Declaration on the Rights of Indigenous Peoples.*

The Six Nations Haldimand Treaty 1784 Lands

85. The Haldimand Treaty of October 25, 1784, promised a tract of land consisting of approximately 950,000 acres along the Grand River to the *"Mohawk Nation and such others of the Six Nations Indians as wish to settle in that Quarter"* in appreciation of their allegiance to the King and for the loss of their settlements in the American States. They were *"to take possession of and settle upon the Banks of the River, commonly called Ouse or Grand River, running into Lake Erie, allotting to them for that purpose Six Miles deep from each side of the River beginning at Lake Erie and extending in that proportion to the Head of said River, which Them and Their Posterity are to enjoy forever."*

86. The Haldimand Treaty of 1784 is also protected under Section 35(1) of Canada's *Constitution Act, 1982* and as such is subject to the Crowns' (Canada and Ontario) duty to consult and accommodate our broad range of interests. This principle is consistent with Article 28 of the United Nations Declaration on the Rights of Indigenous Peoples.

Canada's Indigenous Rights Extinguishment Policy

87. It was evident after thirty-five years of research, Six Nations was merely stock piling validated "land claims" under Canada's Specific Claims Policy. Canada's arbitrary and undefined discount factors were unacceptable not only to the Six Nations Elected Council (SNEC) but also to many First Nations across Canada. The most offensive term of Canada's Specific Claims and Comprehensive Claims Policy is the pre-requisite for extinguishment of our children's rights to the lands at issue before Canada will entertain any form of settlements with Indigenous Peoples within Canada. These extinguishment policies are direct attempts by Canada to break the Crowns' Treaty with the Six Nations Peoples and are contrary to our inherent right of self-government as recognized and affirmed by Section 35(1) of Canada's own *Constitution Act , 1982*.

Land Rights Settlements (Claims) Recommendations

88. Six Nations is averse to using the term "land claim" because we should not have to claim our own territory. If there is ever any doubt as to ownership, the title must go to the original owners, the Indigenous First Nations in Canada. Presently there is no place in Canada (other than the expense of courts) to table our land, resources and trust fund issues which are in excess of $150 million; or to have our Treaties honoured without the requirement of extinguishing our children's rights.

Our experience has demonstrated the following:

89. The need for mediators with appropriate mechanisms for dispute resolution to ensure good faith negotiations are practiced by all, as required by Section 27 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

90. The need for neutral dispute resolution tribunals (possibly at the international level) to resolve legal disagreements should impasses occur. The neutral tribunals must have authority to make binding decisions on the validity of issues, compensation criteria and innovative means for resolving issues including the return of lands (Article 28(2) UNDRIP).

91. Progress on negotiations need to be reported directly to the United Nations Permanent Forum on Indigenous Issues, and the Parliament of Canada through a special joint Six Nations / Parliamentary Committee.

The Doctrine of Discovery

92. Canada has never explained how it acquired title to Indigenous lands and resources. They were not acquired through conquest or discovery. Indigenous nations in what is now Canada entered into treaties with European settlers to share their lands and resources. Title, or ownership was never passed to the Crown, regardless of what Crown negotiators and translators recorded in their written versions of our treaties. Oral history records that the only land acquired by settlers was that needed for growing crops – the depth of a shovel.

93. The Doctrine of Discovery as applied by the European Nations (Britain, France, Holland and Spain) and later adopted by the United States and Canada means that when European Christians first "discovered" new lands, the discovering country automatically gained sovereign and property rights in the lands of non-Christian, non-European nations even though obviously Indigenous nations already owned, occupied and used these lands. The property right was defined as being a future right, a "limited" fee simple ownership right, or an exclusive fee title held by the "discovering" European country but subject to the Indian occupancy right. In addition, the discoverer also gained sovereign governmental rights over native Peoples and their governments, which restricted tribal international political

relationships and trade. This transfer of political, commercial and property rights was accomplished without the knowledge or the consent of the Indian Peoples.

94. The exact nature and rules of the Doctrine can be found in the decision of the United States Supreme Court in *Johnson v. McIntosh* decided in 1823. In Canada the Doctrine was affirmed and applied in the case of *St. Catherine's Milling and Lumber Co. v. The Queen* decided by the Judicial Committee of the Privy Council (England) in 1888. The Doctrine is further enshrined the 1763 *Royal Proclamation, 1763* and many of its principles are contained in the *Indian Act*, first enacted by Canada in 1876.

95. The Doctrine is clearly racist. Its implication is that Indigenous Peoples are inferior to the European Christian Peoples. It also implies that Indigenous Peoples have limited rights to their own land. The Doctrine must be condemned by Canada and measures taken to extinguish its harmful effects, even if it means amending Canada's Constitution and repealing the *Indian Act*.

96. Indigenous or Aboriginal title must be recognized as being superior to the British concept of fee simple. It is more than a right of occupancy dependent on the goodwill of the sovereign or the Crown. It is title that underlies the title of the Crown. Once the fundamental assumptions are overturned then the process of determining how the First Nations are to share and benefit from their traditional lands and the resources that are taken from those lands can begin in a meaningful way.

Effective Protection and Remedies

97. Canada references amendments to the *Canadian Human Rights Act* (*CHRA*) which enable Indigenous citizens to launch human rights complaints against their Indigenous governments. Again, this is an example of Canada's intrusion into First Nations jurisdiction and in violation of their FPIC rights under the UNDRIP.

98. With the federal government repealing Section 67 of the *CHRA* (Bill C-21) it is unclear how this is an effective protection remedy for First Nations. First Nation Indigenous governments will now be open to lawsuits for not being able to provide accessible facilities and infrastructure. At that time community facilities and buildings were built to meet existing building standards and no additional funding was provided to make them accessible. Now, to avoid lawsuits First Nations governments will be required to renovate many of their structures at a time when Canada has cut back funding for capital construction. In other words, there are no resources to do the necessary renovations and no resources are provided to Indigenous governments to defend against lawsuits from community members.

99. Canada was made aware of these concerns during Parliamentary hearings on Bill C-21 but once again the FPIC rights of Indigenous Peoples were violated when

their consent was not sought or obtained in the passage of these legislative amendments. The *CHRA* is based on the individual rights of citizens. However, in First Nations communities many of the rights are collective. This sets up a scenario for a conflict between the two and this imposes a western culture ideology and political system over the resident Indigenous system. This also is contrary to the UNDRIP, Section 34.

100. The joint study cited by Canada did not involve Six Nations, and Six Nations did not delegate to the Assembly of First Nations the authority to conduct such a study.

101. Rather than provide effective remedies, Canada has perpetuated discrimination against First Nations Indigenous Peoples in the areas of treaties, land rights and title, self-determination, environment, economic rights, matrimonial property and human rights by failing to respect and truly implement the United Nations Declaration on the Rights of Indigenous Peoples.

Education, Culture And Information

102. Canada states it delivers four annual public education and promotion activities, which help combat prejudice and discrimination. However, there is a lack of recognition and acknowledgement of First Nations history, achievements and contributions. As the First Peoples of this country, a First Nations History Month is required. Efforts to eliminate racial discrimination should start with a positive re-enforcement of the contributions that the original First Peoples had in the development of Canada. A First Nations History Month would make all Canadians aware of the positive and accurate contributions made by First Nations Peoples and what has transpired in the past. Even during the International Decade for Indigenous Peoples, Canada's biggest contribution was the creation of some posters and sponsoring a few cultural events. Canada's actions do nothing to combat racism against First Nations students attending non-First Nations schools off-reserve.

103. There are five schools located on the Six Nations of the Grand River Reserve. All of these schools are categorized as Federal Schools and are operated by the Department of Indian Affairs. The Department has a position entitled "Superintendent of Education" which oversees the operation of these schools and supervises the Principals who supervise the Teachers. The Superintendent of Education position has been vacant for approximately three years. In February 2011, the Department of Indian Affairs finally posted the position and held interviews. The Six Nations Elected Council was invited to have a representative sit on the interview board. This invitation was accepted and a representative was duly appointed. It is understood that two individuals, both of whom are Six Nations citizens and are educators, were invited back for a second interview in March 2011. Our school year starts on the last week of August. One week prior to that, Teachers were still being hired and school supplies were short. In fact, it was

five weeks after the first day of school before some Teachers received their first pay cheque. During the last week of August, the Director of Education was asked when a Superintendent would be announced. His response was that ``they were still going through the process``. On October 3rd, 2011, the Regional Director General of the Department of Indian Affairs met with the Elected Council and said ``I had hoped to make an announcement today, but hope to make an announcement by the end of the week``. The end of that week came and went and there is still no announcement.

104. On November 9th, 2011, the Regional Director General informed us that the whole interview process for the Superintendent of Education was cancelled and that they were, instead, re-deploying the Director of Education to a special assignment to oversee Six Nations Schools. The two candidates were notified of the cancellation of the interview process. The Six Nations Elected Council representative on the interview board informed us that a successful candidate was indeed chosen and that they only thing left to do was to check references. The fact that the Department of Indian Affairs would cancel this selection process and reassign one of their own staff is a clear indication that they do not value the education that our students receive. They do not care that the education is not comparable to that received by students in the surrounding municipalities. As of this date, the Department of Indian Affairs is not answering our concerns about this position or about the education that is provided to our students by their Department.

Ontario Government Specific

Family Violence

105. Six Nations does not receive funding for a Partner Assault Response (PAR) Program. The Attorney General of Ontario Ministry of Attorney General indicated that Brantford receives funding instead of Six Nations. Six Nations had been asked some years ago to oversee a PAR program, however, it did not have the manpower to do this at that time. The funding therefore went to Brantford – Nova Vita. We are now ready to have a program for mandated clients (Aboriginal men and women who are mandated by the courts and CAS to attend Family Violence Programming) however, now we cannot obtain funding for this program. The Chief Crown Attorney of Ontario informed Six Nations there is a great need for an Aboriginal PAR Program as many Aboriginal men and women prefer Aboriginal programming. Nova Vita's PAR Program is highly attended beyond what their PAR program can maintain due to the court mandating all domestic violence cases to attend PAR Programming. There needs to be funding specifically for Aboriginal PAR Programming due to the high number of Aboriginal specific domestic violence cases documented across Canada.

106. Canada's report indicates the Government of Ontario is committed to protecting women from domestic violence, sexual assault and other forms of gender-based

violence, such as sexual harassment, and has provided more than $208 million in 2009 to services and programs to protect women from gender-based violence, including $87 million from its Domestic Violence Action Plan.

107. However, Six Nations staff were notified during the last week of December that Canada's Indian Affairs department (INAC) is recommending cutting Six Nations Family Violence Prevention funding (either 25% over the next 2 years, or 50% starting April 1, 2012). INAC has stated that the original formula for Family Violence Prevention Funding was based on population. And apparently, the amount given to Six Nations was not fair in comparison to what is given to other First Nations communities. Therefore, Canada is cutting funding to Six Nations and Akwesasne and increasing the Family Violence Prevention funding for the other INAC funded First Nations Shelters.

108. Six Nations was also informed by the Attorney General of Ontario's Program that Six Nations and Haldimand-Norfolk are two territories NOT funded for sexual assault counseling. Aboriginal women are at highest risk for sexual assault in Canada, yet Six Nations, Canada's largest populated First Nation, is not able to secure funding for even one sexual assault counselor.

109. The Government of Canada stated it invested $29.8 million in 2008-2009 in family violence prevention programs and protection services on-reserve. However Six Nations was notified by two funding sources from November to December 2011, that we were not eligible to submit proposals because we are located on Indigenous Indian reserves. The dollars were not for Indians on-reserves. Is this not discrimination?

110. Six Nations' experience is that the funding is focused on urban Natives not on-reserve Aboriginal women. The past five calls for proposals were specifically for those organizations that are incorporated. If your organization is not incorporated you are not eligible to apply. Most on-reserve shelters are not incorporated. Six Nations facility, Ganohkwasra, is not incorporated but certainly is feeling the pressure to become incorporated. This will impact our sovereign rights as First Nations people. If the eligibility to apply for proposals requires organizations to be incorporated, it excludes on-reserve Indigenous organizations.

111. There seems to be a strong funding focus and support for urban Aboriginal issues. i.e. The Ontario Federation of Indian Friendship Centers in Toronto is well supported financially. They receive funding for "I Am A Kind Man; they have funding for Alternative Learning Classrooms for Aboriginal Children. Six Nations is not able to obtain funding for a PAR Program (Partner Assault Response) Program and can only hope our application for a Section 23 Classroom receives funding approval. Ganohkwasra is currently in the process of submitting an application for a Section 23 Classroom at the Youth Lodge in partnership with the Grand Erie Education School Board. More focus needs to be given to on-reserve, as well as urban Aboriginal communities alike.

112. Canada indicated funds were added to the Department of Justice's Victims Fund to help develop or adapt victim services for Aboriginal people and specific culturally sensitive victim services for families of missing and murdered Aboriginal women. The Victims Services Program recently informed Six Nations that there is money available to the parents of individuals who were murdered. They specifically requested names of women from the community who were murdered by their partner since 2006. This, however, leaves out individuals who were murdered prior to 2006 (including a local woman, the late Paula Martin). It is recommended that funding be made available to the children of these victims, not just the parents.

113. Missing and murdered Aboriginal women and girls remains a very important issue. This is an issue Canada does need to address. However, what is not even in Canada's radar is the amount of missing and murdered Aboriginal men in Canada. Quite frankly, Canada has failed Aboriginal women, children and men.

114. In Concluding Observation 13, the Committee on the Elimination of Racial Discrimination (CERD) asks Canada to reflect on the use of the term "visible minority." The term is specific to the administration of the *Employment Equity Act* (EEA). Six Nations is aware that there is legislation that requires employers and employees to be sensitive to people with disabilities as well as French language people and to maintain policies that respect and are sensitive to their experiences and rights. There should also be legislation that requires employers/management and staff to undergo a Native sensitivity training on an annual basis, as well as develop and adhere to policies that respect Aboriginal Peoples as well.

Strengthening the Justice System

115. Canada indicated two million dollars in one-time funding over two years has been provided to improve services to Aboriginal victims of crime through the Aboriginal Victims Support Grant Program. Ganohkwasra received funding from this two-year pilot project. It partially funded the salaries of two sexual assault workers for two years. This much needed funding ended in September 2011. The short-term pilot project funding only creates disappointment for clients who must move on to other agencies in order to complete their therapeutic work. Long-term funding is needed for Aboriginal people.

Training for Law Enforcement

116. All police forces, (even those located on reserve) need to develop policies and protocols with local family violence and sexual assault organizations. There needs to be on-going protocol development with <u>all police services</u> and local family violence and sexual assault organizations. Just because police forces are Aboriginal and may in fact be aware of the cultural aspect does not mean they are

aware of the family violence or sexual assault issues they need to be aware of in order to adequately and sensitively respond to Aboriginal family violence or sexual assault issues.

117. Six Nations is in great need of a Domestic Violence Officer trained to respond to cases of domestic violence and sexual assault in a sensitive manner. The other police force in Brantford have officers trained for this purpose. Six Nations would like to see full – time funding for Aboriginal Family Violence Family Court Worker. Presently, the Ministry of the Attorney General (M.A.G.) provides funding for one worker to be shared by three court systems (Simcoe, Cayuga and Brantford). Therefore, a partnership needs to be formed between three different shelters. M.A.G. provides funding for a Family Violence Family Court Worker for two days per week only. With the amount of Aboriginal families in court due to domestic violence related issues, M.A.G. needs to fund a full time position for Six Nations.

118. Ganohkwasra facilitated training with the Ministry of Community and Social Services in 2010. In 2011, Ganohkwasra and Child & Family Services jointly facilitated training to the Ministry of Child & Youth Services on Aboriginal child welfare. This should be mandatory training for all ministries/government officials to attend.

Review of Jurisprudence

119. The history of Canadian jurisprudence has a foundation of racism. Canada's Supreme Court has issued decisions that are patently racist. For example, the decision in *Delgamuukw v. British Columbia, 1997*, already referenced, essentially stated that Indigenous rights are frozen in time, to the period when white settlers arrived on our shores. The Court's decision in *Marshall, 1999* said that Indigenous Peoples in Canada were only entitled to a "moderate livelihood." In its decision in *Musqueam, 2005* the Supreme Court said that land on Indian reserves had only half the value of non-Indian lands, simply because they were Indigenous lands.

120. The recent amendments to the Criminal Code could have an effect to undermine the *Gladue* decision offering reduced sentences to Aboriginal offenders which will now be lost with the new law. Judges have lost their discretion in sentencing.

Discriminatory Funding Issues

121. Six Nations does not receive the same or a comparable level of funding to run its government and infrastructure as other levels and types of governments in Canada. Examples include:

Salaries, Benefits and Retirement

122. Six Nations of the Grand River is the largest populated reserve in Canada with a population of 24,152. The Six Nations First Nations Government is the largest employer within the Six Nations of the Grand River community. The staff number at 700 employees, who are either full-time, part-time, term contract and/or casual employees. The Department of Indian and Northern Affairs (INAC) provides Band Support Funding to cover certain salary and benefits for some of the employees.

123. Employees working for this organization have not had a salary increase in over 20 years. The only adjustments to full-time employee salaries have been a small cost-of-living increase based upon an averaged federal/provincial average. This has never been above 3% and the increase does not attach to the annual salary, but is only given as a one-time percentage amount in early December of each year. Thus the salary remains consistent year after year.

124. In 2001 a salary grid was established for the Six Nations of the Grand River Council but was constructed not comparable to surrounding municipality wages, but based upon the amount of funding that Canada already provided for salaries to the Six Nations of the Grand River. Therefore wages remained at status quo levels. A grid showed that higher level positions in comparison to off-reserve higher level positions showed a wider gap of approximately 80% difference.

125. A Salary Comparison Review was performed again in 2009, which showed a wider gap in the salaries paid at Six Nations and those paid off-reserve and in particular those salaries paid in comparison to Canadian Public Service employees.

126. As a result of low salary income, employees who are within the Registered Pension Plan will retire to a below poverty-line income level. This has been proven by those employees who have already retired and living with a very low pensioned income and have to find alternative small jobs to supplement their pension incomes. These employees have worked for over 30 years at this organization and still find this necessary.

127. Many people attempt to justify paying lower wages/salaries to First Nation employees because they do not pay income tax on their income. However, this is a non-issue, and should never be part of the equation when calculating a reasonable salary for First Nations staff. The tax exemption or immunity is an aboriginal and treaty right. Salary levels paid should be the same as off-reserve for non-indigenous people. This is basically discriminating against Native people's human rights, to even consider that as a reason to deny First Nations adequate income and pension. More of a problem is that the government's calculation of how much they send to each First Nation. Of course smaller First

Nations are going to get the same amount as the most populous reserve in Canada. This in itself makes no common sense.

128. Many Six Nations Council trained employees eventually leave their positions and go to other businesses that can pay a reasonable salary and allow the employee the dignity of knowing that their employment efforts are realized and compensated according to non-discriminatory reasonable standards.

129. When employees of Indian and Northern Affairs retire, they do so with a comfortable pension that does not place them into a poverty income level. It provides them with 70 per cent of their 5 best years of employment. Six Nations employees retire to live on whatever contributions they have made to their pensions, resulting in having to live on an income that is below the poverty line.

Funding Recommendations

130. That all Six Nations positions be compensated at the same rate as all comparable federal government positions. Comparable salaries will allow Six Nation Council employees to build up their pensions to a reasonable retirement income level.

131. That all Six Nation Council employees regardless of position or title be eligible to participate in the Canada Pension Plan and funding be provided by Canada to cover the cost for all employees as well. There are many contracted employees who work for the Six Nations Council and whose future retirement is not being considered because this First Nations government does not participate in the Canada Pension Plan.

Fire Protection

132. The basic necessity of protection of persons and property are the root of any community. The ability to provide this protection is paramount. Fire Protection and Emergency Management capabilities and capacities are severely under funded and inadequate when conducting a comparison of non-native communities in Canada of similar size and circumstance.

133. First Nations death from fire rate is ten times greater than the rest of the Canada. One can't help but question why this is happening. Certainly the inequitable funding levels are a key factor.

134. Funding directly affects the service levels of fire protection. Service level requirements are driven by risk assessment and hazard identification. The Corporate Manual System, 1997, states *"…are the levels of service that DIAND is prepared to financially support to assist First Nations in providing community services comparable to the levels of service that would generally be available in non-native communities of similar size and circumstances."* A study of similar size and circumstance communities was conducted (partially funded by Indian

and Northern Affairs Canada in 2008) identified the necessary requirements to achieve National Fire Protection Association (NFPA) standards in staffing, apparatus, equipment and stations for Six Nations of the Grand River.

135. Six Nations will not have the capacity to achieve and maintain the level of services as outlined in the recommendations in the 2008 community risk assessment. It identified the necessary standards that our fire department should attain to lessen the liability to the responders, the community leadership and the Canada.

136. The comparatives derived from this study in 2008 show that the funding formula applied by Canada is inadequate in meeting the minimum needs of communities, and also does not allow the communities the ability to provide a level of service that would generally be available in non-Native communities of similar size and circumstances. Simply by doing a per capita calculation we find that funding in non-Native communities is often in the range of $100-$150 per person, whereas Six Nations is receiving a minimal $25 per person. It should be noted that other First Nations in Ontario only receive $20 per person if their population is less than 2,000 people).

137. Specific areas that are lacking in Six Nations, that non-Native communities have the benefit of achieving and maintaining are:

    a. Identified training standards through the Ontario Fire College.
    b. Identified minimal requirements for service delivery through the FPPA.
    c. Provision for communication/dispatch services.
    d. Enforcement ability of recommendations through inspections and investigations.
    e. Access to fire protection advisors from the provincial government.
    f. Ability to plan based on future growth of the community.

138. There is currently no agreement that binds the provincial government to provide any type of service(s) to First Nations in Ontario. Access to fire protection advisors, investigations, training and certification/standards, etc., is simply based on the ability of the province to provide these services. The relationships that exist are done either on a basis whereby the province provides this service in the absence of the federal response. In the absence of a defined agreement/arrangement, these services can be terminated or not fulfilled if the needs at the provincial level strain the current workload abilities of the province, which could potentially be the case in a large scale emergency situation.

Emergency Management

139. The need for emergency management and the discrepancies between First Nations and non-First Nations communities is ever increasing. The development of the

Framework document identifies the necessity for four pillars of emergency management.

140. In the broadest sense, emergency management raises the understanding of risks and contributes to a safer, prosperous, sustainable, disaster resilient society in Canada. Emergency management is comprised of four interdependent components as follows:

Prevention and Mitigation – To eliminate, or reduce the risks of disasters in order to: protect lives; property; the environment; and reduce economic disruption. Prevention and mitigation includes structural mitigative measures (e.g. construction of floodways and dykes) and non-structural mitigative measures (e.g. building codes, land-use planning, and insurance incentives). Prevention and mitigation may be considered independently, or one may include the other.

Preparedness – to be ready to respond to a disaster and manage its consequences through measures taken prior to an event, for example: emergency response plans; mutual assistance agreements; resource inventories and training; equipment and exercise programs.

Response – to act during, or immediately before or after, a disaster to manage its consequences through, for example: emergency public communication; search and rescue; emergency medical assistance; and evacuation to minimize suffering and losses associated with disasters.

Recovery – to repair or restore conditions to an acceptable level through measures taken after a disaster, for example: return of evacuees; trauma counseling; reconstruction; economic impact studies; and financial assistance. There is a strong relationship between long-term sustainable recovery and prevention and the mitigation of future disasters. Recovery efforts should be conducted with a view towards disaster risk reduction.

141. The ongoing issue surrounding emergency management and its ongoing relationship to First Nations, is that there is nothing being provided to First Nations communities. They are being left to their own devices, with the exception of immediate evacuation in the event of a catastrophic event such as wildfires or floods.

142. Applying these four pillars and providing First Nations communities with the capacity and ability to conduct this would be an important tool for "preventing and mitigating" foreseeable community emergencies when completed in accordance with a hazard identification, risk assessment and evaluation of the community infrastructure.

143. Six Nations has the capacity to develop and administer emergency plans, to prevent, mitigate, and prepare for community emergencies. The ability to respond

would be dependent on services available to the community – fire, EMS and police – in conjunction with services such as various health professions, social services professions and/or public works.

144. In the Framework document, it is interesting to point out that there is no mention of First Nations in Canada. It is geared towards the provincial and federal governments and their respective departments.

Emergency Management Questions:

145. What are the immediate plans to institute "similar size and circumstances" standards in accordance with Indian and Northern Affairs Canada (INAC) policy so that Six Nations can achieve minimum standards of level of service.

146. What directives have been applied to INAC to address the chronic under funding of the Six Nations Fire Department?

147. What measurables are going to be used to define standards, expectations as it pertains to fire protection in First Nations?

148. How are these measurables going to be evaluated?

149. How is emergency management programming being operated in INAC? How does this reflect the relationships provincially and/or locally at the First Nation level?

150. What is the plan for emergency management consultation and review with First Nations to determine the needs?

151. If the Framework document was developed in conjunction with Canada and all provincial and territorial emergency management authorities, why were the issues surrounding the lack of emergency management capacity in First Nations not an identified aspect?

Emergency Management Recommendations:

152. INAC to define the standards as it pertains to level of service for fire services and emergency management (i.e. NFPA 1001 – Firefighter qualifications)

153. INAC to immediately conduct a pilot project using Six Nations as a test site to provide adequate funding to address the risk assessment recommendations so that Six Nations is able to provide services as would be generally found in non-Native communities of "similar size and circumstance."

154. INAC and the Aboriginal Firefighters Association of Canada to develop a peer-review process whereby regular and routine evaluations would be completed to

ensure compliance with expectations and standards as outlined in recommendation #1 above.

155. Develop standards for emergency management, similar to those policies outlined for the federal government that when evaluated, and substantiated, are directly funded to the First Nations.

Summary of Recommendations

156. Canada endorse the UNDRIP without qualification. This includes the immediate implementation of the requirement for Free, Prior and Informed Consent.

157. Canada implement the provisions of the UNDRIP in cooperation with Indigenous First Nations in Canada with oversight being done by the Permanent Forum on Indigenous Peoples

158. Canada review all of its funding protocols and processes and with First Nations and fund all programs and services at levels comparable to all Canadians.

159. Canada develop, in cooperation with First Nations, a fair system to assess, evaluate and provide just and fair compensation for the past and ongoing use of First Nations lands and resources.

160. Canada end the use of any policy of extinguishment of land and resource rights and title. This includes abandoning any policies based on the Doctrine of Discovery.

161. Canada respect the Treaties and the Treaty Relationship.

162. Canada stop imposing legislation on First Nations and instead work with First Nations governments and communities to implement policies and legislation that will recognize First Nations rights and enable First Nations communities to prosper.

163. Canada ends its self-government policy and instead put in place a process to recognize First Nations jurisdiction within First Nations territories.

164. Canada enters into resource revenue sharing agreements with First Nations, based on the value of their traditional territories and the money made from these lands and resources since Confederation.

Questions for Canada

165. Why has Canada provided only qualified support for the UN Declaration on the Rights of Indigenous Peoples? Is Canada now prepared to give its unqualified support for the Declaration?

166. Why is Canada discriminating against indigenous First Nations peoples in Canada by not providing an equitable level of funding for programs and services to indigenous peoples compared to that received by Canadian citizens? What is Canada prepared to do to correct this inequity in the years to come?

167. Why do state institutions in Canada, such as its Supreme Court, continue to discriminate against Indigenous First Nations peoples and is it prepared to enact domestic legislation requiring the Supreme Court to correct is past mistakes and to end this practice?

168. Why is Canada including discriminatory clauses in its legislation impacting on indigenous First Nations in Canada and is it prepared to amend its legislation to correct this error. In particular the requirement to conduct referenda in its Matrimonial Property legislation.

169. Why is Canada developing and imposing legislation on indigenous First Nations in violation of the requirement under the UNDRIP for Free, Prior and Informed Consent? Going forward, how will Canada correct this?

170. Why does Canada continue to impose land, title and resource rights extinguishment policies against indigenous First Nations contrary to previous recommendations by this Committee to end this practice and when will Canada end this practice? Why is it that only First Nations citizens are required to give up all their rights and interests in lands and resources in exchange for limited defined rights and interests, when non-indigenous Canadians enjoy full and free access to exploit and plunder indigenous lands and resources without limitation?

171. In this way, why do indigenous First Nations face economic discrimination and are prohibited by Canada from benefiting or profiting from the development of, or share in revenues made from, our lands ands resources?

172. Why does Canada continue to advance the disproven and illegitimate Doctrine of Discovery as the justification for the theft of indigenous peoples lands and resources in Canada and when will it end this practice?