Decolonizing Home:
A re-conceptualization of First Nations' housing in Canada

by

Lindsay Monk
B.A., Queen's University, 2006

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Abstract

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While it is generally agreed that First Nations in Canada are facing a housing crisis in their communities, the Canadian public has largely misunderstood what the crisis of housing is, thus frustrating efforts to improve the situation. A re-conceptualization of the problem of on-reserve housing as a crisis of governance with roots in processes of colonialism (both historical and ongoing) offers the possibility of addressing the crisis and moving forward. This research seeks to situate housing as an important site of engagement for First Nations and settler society (as important in decolonization efforts as it was in colonization) and points to the importance of relationships both within Indigenous communities and with settler society in restoring governance and improving housing. Housing has been a contested site throughout the history of First Nations-settler relations, with colonial policies focusing on reshaping how First Nations lived. These policies have been consistently resisted by First Nations. This history of struggle provides the crucial context for understanding how and why housing has reached an impasse. This impasse is illustrated by examining federal housing policy, which appears to offer increased community control over housing but does so without addressing underlying governance and capacity issues. First Nations are becoming increasingly responsible for on-reserve housing without corresponding supports or redress for the history of colonialism that has created the crisis. Current approaches to solving housing problems on-reserve are then critically assessed, focusing on policy and legislative moves toward homeownership and privatization on-reserve. I argue that this approach circumscribes self-determination for First Nations in particular ways, reducing these claims to a set of market based options. Finally, several innovative community housing initiatives are examined, moving beyond the debate to privatize. Priorities identified are consistent across the examples: housing is at the service of the community, is affordable, builds

local capacity, is self-sustaining, is culturally and environmentally appropriate, and the locus of authority remains in the community. The initiatives were achieved by cultivating relationships, both within First Nation communities and with settler society. In this thesis, I suggest the importance of housing for decolonization efforts for First Nation and settler alike.

Keywords: Indigenous, housing, federal policy, colonialism, decolonization, on-reserve.

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List of Acronyms

AANDC: Aboriginal Affairs and Northern Development Canada (as of May 2011); formerly INAC: Indian and Northern Affairs Canada; formerly DIA: Department of Indian Affairs

AFN: Assembly of First Nations

CMHC: Canada Mortgage and Housing Corporation

FNLMA: First Nations Land Management Act

FNMHF: First Nations Market Housing Fund

FNPO: First Nations Property Ownership Initiative

HASI: Housing Adaptations for Seniors' Initiative

HRSDC: Human Resources and Skills Development Canada

JBNQA: James Bay and Northern Québec Act

MLG: Ministerial Loan Guarantee

MLI: Mortgage Loan Insurance

OAG: Office of the Auditor General

PDF: Proposal Development Funding

RCAP: Royal Commission on Aboriginal Peoples

RRAP: Residential Rehabilitation Assistance Program

SEP: Shelter Enhancement Program

UBC: University of British Columbia

VIHA: Vancouver Island Health Authority

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Chapter 1 – What's in a crisis?

1.1 Introduction

This thesis is, in part, about housing in First Nation communities in Canada. As is becoming increasingly apparent, many First Nation communities are experiencing a housing crisis, and this situation is likely to worsen with increased demographic pressure in years to come. Most centrally, however, this thesis is about the need to re-conceptualize this crisis. I argue that the general public, including federal policy makers, has largely misunderstood what the crisis of housing is and that this collective misconception has continuing consequences for all of us. Our present misconception frustrates attempts to create more effective relations between First Nations and settlers, and continues to exacerbate problems on-reserve that, in turn, increase the resentment felt between the two groups. This misunderstanding is blocking efforts to solve the problem, leaving us not only ill-prepared to assist First Nations, but also unwilling to offer space for First Nations to address devastating living conditions in their communities. Thus a re-conceptualization of the problem of housing on-reserve offers the possibility of addressing the crisis and, with it, opening space for moving forward from the stalemate in which First Nation-settler relations are currently mired.

The problematic state of housing in First Nation communities is not news to those working in housing or health, and it is certainly not news for First Nations. To give a quantitative dimension to the housing crisis, in 2006, First Nations people (here including those living both on- and off-reserve) were five times more likely than non-Aboriginal people to live in crowded homes. First Nations people living on-reserve reported the highest rate of crowding (26%). In 2006, 44% of First Nations people on-reserve lived in homes that needed major repairs versus 7% of the non-Aboriginal population; an increase from 36% in 1996.[1] Furthermore, 33% of Aboriginal on-reserve households lived in homes that did not meet Canada Mortgage and Housing Corporation (CMHC)'s

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[1] The need for major repairs was in the judgement of the respondent. Linda Gionet, "First Nations people: Selected findings of the 2006 Census," *Canadian Social Trends 2009 Special Edition* (2009): 11.

adequacy or suitability standards and did not have the income to be able to access an acceptable alternative.[2] This represents an increase from 28% living in substandard homes in 2001. The backlog of housing infrastructure was estimated in 2011 at 20,000-35,000 housing units needed, 16,900 housing units in need of major repair and 5,200 housing units in need of replacement, although First Nations representatives suggest their estimates of these numbers to be much higher.[3] This situation is exacerbated by demographic pressure. The 2006 Census revealed that between 1996 and 2006, the First Nations population in Canada grew by 29%. This growth rate was 3.5 times more than the 8% growth recorded by the non-Aboriginal population in Canada during the same period.[4] Further, the First Nations population is a youthful one: the median age of First Nations people living on-reserve was 23 years in 2006, compared to 40 years for the non-Aboriginal population, and children under 15 years represented 34% of First Nations people living on-reserve.[5] This demographic pressure could potentially be compounded by community members living off-reserve who are likely to return home, should housing become available for them. The deteriorating housing conditions on-reserve are expressed in the table below:

Table 1 – State of housing on-reserve

Housing requirements	Fiscal year 2003-4	Fiscal year 2008-9	**Increase**
Demand for housing on-reserve	8,500	20,000 +	135+%
Housing units requiring replacement	5,199	5,480	5%
Housing units requiring major renovations	16,878	23,586	40%
Average cost per house (constructed or significantly renovated)	$42,750	$64,000	50%

(as per Exhibit 4.4, June 2011 Status Report of the OAG)

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[2] Adequate housing does not require any major repairs, according to residents. Suitable housing has enough bedrooms for the size and make-up of resident households. Jeremiah Prentice, "2006 Census Housing Series: Issue 13 – On-Reserve Housing Conditions," Canada Mortgage and Housing Corporation Research Division (2011): 11.

[3] AANDC, "5.1.1 New Unit Production," Evaluation of INAC's On-Reserve Housing Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5 Feb 2013).

[4] Gionet, "First Nations people: Selected findings of the 2006 Census,"11.

[5] Ibid., 16.

Housing demand is exacerbated by rising costs of labour and construction materials[6] (particularly for remote or isolated communities), by the increasing wear and tear on existing housing stock (largely due to overcrowding), and by issues related to the cultural and environmental appropriateness of the houses themselves. Optis et al. (2012) describe the prevalence of mold in First Nations homes as a crisis situation in itself and call for a renewed and lasting commitment on the part of the federal government to improve the socioeconomic conditions on-reserve that perpetuate the growth of mold in homes.[7] This call for federal leadership echoes the Auditor General, who noted in 2011: "we found that housing conditions on reserves are worsening. We also found that federal organizations have not taken significant direct actions to remediate mould contamination (...)."[8]

Calls for leadership at the federal level result from the key differences inherent in the on-reserve housing system as opposed to the off-reserve context. On-reserve housing differs in two key ways: on-reserve housing is under federal jurisdiction and the land is owned communally. Both of these result from stipulations in the *Indian Act*, in that a reserve is understood as land which has been set apart by the Crown for the use and benefit of a specific First Nation, the legal title to which is held by the federal Crown.[9] This means that housing on-reserve comes under the jurisdiction of the federal government, as opposed to the off-reserve context in which the provinces and territories are the authorities having jurisdiction for housing for their residents. Further, the land is communally owned; an elected band council is entrusted with the property rights/interests of the community (ultimately in trust from the Crown). *Indian Act* provisions (Sections 28 and 89) also do not allow seizure of property on-reserve in the event of a default. As a result of impoverished conditions on many reserves, as well as these stipulations, government-subsidized housing accounts for most of housing on-reserve. While some

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[6] AANDC, "5.1.1 New Unit Production".

[7] Michael Optis et al. "Mold Growth in On-Reserve Homes in Canada: The Need for Research, Education, Policy, and Funding." *Journal of Environmental Health* 74, no.6 (Jan/Feb 2012): 14-21.

[8] OAG, "Chapter 4 – Programs for First Nations on Reserves. Section 4.35 Federal housing initiatives are not keeping pace with needs." *2011 June Status Report of the Auditor General of Canada* (OAG Reports to Parliament, June 2011).

[9] Indian and Northern Affairs Canada and Canadian Bankers Association, *Understanding the Regulatory Environment for On-Reserve Lending* (Ottawa, 2005): 11.

market housing does exist on-reserve, as do several forms of private property, most communities rely on federal funding for housing construction and maintenance.[10]

1.2 Attawapiskat – framing of a crisis

Despite these impoverished conditions and despite both the Royal Commission on Aboriginal Peoples and the United Nations Special Rapporteur on Adequate Housing criticising Canada on the international stage for failing to improve the state of housing on-reserve,[11] and indeed the United Nations going so far as to describe the situation as one of "Third World conditions in Canada,"[12] mainstream Canadian society has remained largely ignorant of, or perhaps indifferent to, the housing crisis and little attention has been paid to calls for change.

This situation was highlighted in the fall of 2011, when a small community in northern Ontario was thrust into the media spotlight and the Canadian public was confronted with a graphic reminder of the on-reserve housing crisis. In including this case, my intention is to not to address or debunk each of the issues and assumptions contained within the reactions to the crisis; this important work has been done effectively by others.[13] Rather, I begin with a discussion of the crisis in Attawapiskat because it is revealing both in terms of just how dire housing conditions currently are in many (though, significantly, not all) First Nation communities, as well as the problematic ways in which the crisis is currently being understood.

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[10] In 2006, of the 94,900 on-reserve households, 57% reported that they live in band housing, 31% reported owning their home, and 13% reported renting (from bands). Prentice, "2006 Census Housing Series: Issue 13 – On-Reserve Housing Conditions," 4.

[11] RCAP, "Volume 3: Gathering Strength, Chapter 4: Housing," *Report of the Royal Commission on Aboriginal Peoples*. October 1996. http://www.collectionscanada.gc.ca/webarchives/20071124125633/http://www.ainc-inac.gc.ca/ch/rcap/sg/sim4_e.html (accessed 5 Feb 2013).
United Nations Human Rights Council. *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Raquel Rolnik*. 4 Feb 2009.

[12] Ibid.

[13] See, for example: Chelsea Vowel, Weblog entry on "Dealing with comments about Attawapiskat," posted November 30, 2011, http://apihtawikosisan.com/2011/11/30/dealing-with-comments-about-attawapiskat/ (accessed 5 Feb 2013).

On October 28, 2011, the remote community of Attawapiskat in northern Ontario declared a state of emergency with respect to housing on their reserve. This small community of 1,800[14] was thrust into the spotlight once Charlie Angus, MP for Timmins-James Bay wrote a piece on his blog (later picked up on social media sites and published in the Huffington Post) detailing the housing conditions in Attawapiskat and criticising the lack of government action following the declaration of an emergency.[15] Pictures of families living in uninsulated shacks and tents without heat or running water gave graphic evidence of the urgency of the housing crisis. Journalists reporting from Attawapiskat noted that approximately 90 people were living in portable structures that were brought into the community in 2009 as a result of a sewage spill that destroyed homes – temporary solutions that became permanent due to the housing shortage. This shortage, estimated at a five-year wait list for housing, had also resulted in severe overcrowding in existing houses. These conditions are having an effect on the health of the community, as evidenced by reports of mold and skin conditions related to the lack of running water.[16]

Reactions to the situation in Attawapiskat ranged from outrage over the lack of federal and provincial response, with then-interim NDP leader Nycole Turmel saying: "I am upset at both governments, at both federal and provincial governments... for not taking any action to ensure that those people live in a decent place,"[17] to a belief that Attawapiskat's Chief had mismanaged funds and that the community had simply squandered the money it had been 'given' by the federal government. This latter response was typified by Canadian Prime Minister Stephen Harper, who was quoted as saying that his government had spent "some $90 million since coming to office just on Attawapiskat," noting that "Obviously we're not very happy that the results do not seem to have been achieved for [Attawapiskat]. We're concerned about that, we have officials

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[14] According to CBC news article: "Harper vows 'action' on Attawapiskat." *CBC News*, Nov 29, 2011. http://www.cbc.ca/news/canada/story/2011/11/29/attawapiskat-tuesday.html. 2001 Census data indicates a population of 1300; 2006 Census information was not available for this First Nation. AANDC, Population Census Statistics Attawapiskat. http://pse5-esd5.ainc-inac.gc.ca/fnp/Main/Search/FNPopulation.aspx?BAND_NUMBER=143&lang=eng.

[15] Charlie Angus, "What if they declared an emergency and no one came?" *Huffington Post*, Nov 21, 2011. http://www.huffingtonpost.ca/charlie-angus/attawapiskat-emergency_b_1104370.html#undefined.

[16] "Harper vows 'action' on Attawapiskat."

[17] Ibid.

looking into it and taking action."[18] Finally, amid media scrutiny, Aboriginal Affairs and

Northern Development Canada (AANDC)[19] pledged $500,000 to renovate five

condemned houses and the Canadian Red Cross began operating in the community,

providing supplies and aid.[20] While Harper was criticized for seeming to blame the victim

for the problem,[21] the federal government's response was that "This government has

made significant investments, it's taken its responsibility seriously … we will make sure

we get the results we need."[22] Local residents indicated that the federal government

should have known there were issues in the community already, as Attawapiskat had

been in co-management for a decade,[23] underscoring the fact that most people remain

unaware of conditions on reserves.

Here we can see clearly the belief that the problem was in the community itself – the

money had been misspent, the community had already received ample funding to deal

with the housing problems, the Chief was making too much money.[24] Thus, the solution

that appeared obvious was to put the community under third-party management despite

their fierce objection to this remedy.[25] Attawapiskat was put into third-party management

on November 30, 2011, meaning that all of the band's programs relating to their federal

funding agreement are placed under the management of the external third party (selected

by the federal government). Under this regime, the band's assets are frozen and the only

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[18] Ibid.

[19] Known until May 2011 as Indian Affairs and Northern Development Canada (INAC), http://www.ainc-inac.gc.ca/eng/1314808945787. I refer to the department as Aboriginal Affairs and Northern Development Canada (AANDC) throughout the thesis.

[20] Kazi Stastna, "First Nations housing in dire need of overhaul," *CBC News*, Nov 28, 2011. http://www.cbc.ca/news/canada/story/2011/11/25/f-native-housing.html.

[21] Liberal Party leader Bob Rae accused Harper of blaming Attawapiskat for their housing problems. Ibid.

[22] "Harper vows 'action' on Attawapiskat."

[23] "Attawapiskat crisis sparks political blame game," *CBC News*, Dec 1, 2011. http://www.cbc.ca/news/canada/story/2011/12/01/attawapiskat-thursday.html

[24] See the section on Chief's salary in: Vowel, "Dealing with comments about Attawapiskat".

[25] Chief Teresa Spence, in collaboration with the Assembly of First Nations (AFN), released a statement linking the imposition of this manager to that of a modern-day Indian Agent and stating that this move is "mere political deflection (...), this rational [sic] has been used by the Department to silence us when we brought these conditions to the attention of Canadian society." Attawapiskat First Nation, "Statement by Attawapiskat Chief and Council on notice of Third Party intervention," Nov 30, 2011, http://www.attawapiskat.org/wp-content/uploads/Press-Release-Afn-Third-Party-Intervention-Nov-30-2011.pdf (accessed 5 February 2013).

person who continues to be paid is the manager himself.[26] Ultimately, the third-party manager appointed to Attawapiskat was told to leave by Chief Teresa Spence, though the manager remained in complete control of the community's funding allocations.[27] There is no indication that the housing conditions in the community have improved as a result of this measure. In the wake of the crisis in Attawapiskat, a 'First Nations Property Ownership Initiative' (FNPO) was also offered up as a potential solution to on-reserve housing problems.[28] This proposal locates the housing problem as one of a lack of private property rights, arguing that if First Nations were to have access to private property they would be able to solve the housing crisis. Meanwhile, Chief Spence's declaration that third-party management was just a means of deflecting scrutiny of the crisis in her community would seem clairvoyant: The third-party manager's contract ended June 30, 2012,[29] yet Attawapiskat has largely faded from public view, with no indication that the underlying issues creating poor housing conditions on-reserve have been addressed nor even that community members now have access to better housing options. Thus the on-reserve housing crisis returns to obscurity until the next crisis explodes and similar reactions are heard.[30]

Attawapiskat was framed as an example of poor management, band council incompetence or misspending, it seemed to exemplify the cycle of poverty and accompanying social ills in which, from the perspective of Canadian society, First

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[26] Michael Posluns, "Dunkin' the Victim: a Note on Legal-Political Background of the Current Attawapiskat Campaign," *Slaw* (Dec 2, 2011), http://www.slaw.ca/2011/12/02/dunkin%E2%80%99-the-victim-a-note-on-legal-political-background-of-the-current-attawapiskat-campaign/ Posluns claims that third-party managers are typically paid at about 25% of the bands income for the duration of their contract.

[27] "Attawapiskat tells 3rd-party manager to leave." *CBC News*, Dec 5, 2011, http://www.cbc.ca/news/canada/story/2011/12/05/attawapiskat-manager-response.html

[28] Larissa Katz, "'No strings attached' hurts governance," *Globe and Mail*, Jan 18, 2012, www.theglobeandmail.com/commentary/no-strings-attached-hurts-governance/article1359228/

[29] AANDC. Backgrounder – Third-Party Management. http://www.aadnc-aandc.gc.ca/eng/1323967235719/1323967361810 (accessed Nov 11, 2012).

[30] This is in keeping with the concept of the "issue-attention cycle," which theorizes about the difficulty of focusing media and public attention on any one issue for enough time to allow political pressure to mount in order to effectuate change. This theory attributes the difficulty to three characteristics of these types of social problems: they affect a minority of the population, i.e. most people do not suffer directly enough from the problem to keep their attention on it; the sufferings caused by the problem are generated by social arrangements that provide significant benefit to a majority or powerful minority, thus they have a disincentive to work to improve the situation and in fact are motivated to maintain the status quo; third, the problem doesn't remain exciting or dramatic enough to keep interest. Thus, even if the issue is of crucial importance and remains unresolved, it will fade from public view. See Anthony Downs, "Up and down with ecology: the issue-attention cycle." *Public Interest* 28, no.1 (1972): 38-50.

Nations are mired, and from which they cannot escape. The housing crisis, when it is acknowledged at all, seems insurmountable, unsolvable. Insofar as Canadians are trying to solve it, the solutions on offer respond to the assumption that the problem lies with First Nations themselves or with the housing itself – believing that the problem is that First Nations don't know how or aren't able to build enough affordable, adequate homes, don't have a private property regime that would allow them to do so, or aren't able to manage their money in order to do so. As such the solutions Canadian society offers fail to take into account the historical and policy contexts from which the housing crisis emerges and within which it is perpetuated.

In place of this conception, I argue that the housing crisis facing First Nations communities is more accurately and more effectively understood as a crisis of governance. Governance is here understood as the way we construct collective decision-making; that is, the way that a group of people determine what to decide, how to decide, and who shall decide, whether formally or informally.[31] In this sense, governance is a practice whereby collective decision-making processes are constituted and legitimated. The governance crisis, then, refers to Indigenous peoples' ability (both authority and capacity) to undertake those processes about what to decide, how to decide and who shall decide; an ability that has been undercut by a history of colonialism aimed at undoing traditional governance structures in order to assimilate that population. I argue that housing cannot be understood without placing it in its historical context as an instrument of colonial policy that has undermined the practice of governance.

Crucially, what is at stake for First Nations in seeking to improve their housing is not only the physical health of their people who live in these homes but also the ability of housing to be a focal point for self-determination and decolonization efforts. This brings me to the aim of this thesis, which is to re-conceptualize the housing crisis as a broader crisis of governance, not housing, for two interrelated reasons. This re-conceptualization

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[31] Vasudha Chhotray and Gerry Stoker, *Governance Theory and Practice: A Cross-Disciplinary Approach* (London: Palgrave MacMillan, 2009): 3-4. The United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) also defines governance as "the process of decision-making and the process by which decisions are implemented (or not implemented)." UNESCAP, "What is good governance?" http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp (accessed 5 Feb 2013).

is necessary in order to recognize that the solutions we offer when we misunderstand the housing crisis are ineffective, and also in order to argue for the importance of housing for decolonization efforts. In other words, it is important that we understand what the housing crisis is, first of all so that the living conditions of Indigenous people improve, but also so that housing can become a source of renewal for communities as opposed to a source of difficulty, swallowing up resources and creating a debilitating backlog that cannot seem to be addressed. This thesis focuses on First Nations' housing because there are particularities of that situation that are especially stark and highly relevant to the challenges at hand. As illustrated by public reactions when confronted with the oft-ignored reality of housing on-reserve, there are ongoing processes of colonialism at play that need addressing. I argue that the centrality of housing offers particularly compelling ways forward.

Chapter 1 thus begins to explore the need for a different understanding of housing in crisis. This chapter has identified some of the present misconceptions of the housing crisis and provided some illustrative detail of the depth of the housing problems on-reserve. From here I turn to the past: Chapter 2 situates the housing crisis in its historical context in order to understand how colonialism has worked to undermine Indigenous governance practice in order to benefit settlers, which remains the issue that needs addressing. I argue that housing has been an important site of engagement for both First Nations and settler society, with settler governments pursuing colonial policies of assimilation and civilization through housing. These policies were resisted and responded to by Indigenous people, and housing remains a crucial place where colonialism (both historical and ongoing) plays out. Moving forward in time, Chapter 3 situates the housing crisis in its policy context, trying to understand how and why federal housing policy has failed to improve housing on-reserve. In this chapter I explore the impetus behind the policy, working to demonstrate that our housing policy, as well as the housing system that results from it, is incapable of addressing the governance and capacity issues that are products of colonialism. Chapter 4 considers how to assess the present situation, given the historical and policy contexts in which I have now situated the housing crisis. I argue that the policy and legislative moves towards homeownership and privatization on-

reserve circumscribe self-determination for First Nations in particular ways. The final chapter, Chapter 5, will look to the future of housing in First Nation communities, given the arguments presented in the earlier chapters. If the housing crisis is more accurately understood as a governance crisis, and if the direction federal housing policy is taking circumscribes self-determination, what are ways forward for both First Nations and wider Canadian society? In this chapter I will explore these questions and seek to offer housing as an important site of resistance and renewal, focusing on deinstitutionalizing housing and on the role of settler society in providing assistance or space to First Nations looking to improve their housing and, in so doing, restore governance practices within their communities.

1.3 A word about terminology

There is much debate about the correct term for Indigenous peoples. The United Nations Permanent Forum on Indigenous Issues offers the distinction that they are the descendants of "those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived. The new arrivals later became dominant through conquest, occupation, settlement or other means."[32] The term is based on the following:

> Self-identification both by the individual and recognition
> by the community; historical continuity with pre-colonial
> and/or pre-settler societies; a strong link to territories and
> surrounding natural resources; distinct social, economic, or
> political systems; distinct language, culture and beliefs;
> forming non-dominant groups of society; a resolve to
> maintain and reproduce their ancestral environments and
> systems as distinctive peoples and communities.[33]

The Canadian government uses the term "Aboriginal peoples" to refer to First Nations, Métis and Inuit,[34] however Alfred and Corntassel have criticised the term "aboriginal" as a state imposed conception of Indigenous identity with the goal of creating a discourse of

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[32] UNPFII. "Who are indigenous peoples?"
http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf (accessed 5 Feb 2013).
[33] Ibid.
[34] AANDC, Aboriginal Peoples and Communities, http://www.aadnc-aandc.gc.ca/eng/1100100013785/1304467449155 (accessed 5 Feb 2013).

assimilation.[35] Earlier prevalent terms include Native and Indian, though these have largely fallen out of favour due to their colonial resonance. Each of these terms is politically loaded and helps to make meaning of the context in which it is being used. In this thesis, I have tried to follow the term used by the text I am drawing from, and I have tended to use the term "First Nations" or "Indigenous" when making my own analysis.

A term for the rest of Canada is equally problematic. Here I should note my positionality as a settler Canadian; as such my thesis takes the vantage point of settler society. The terms "Euro-Canadian" and "white society" are problematic in a context of multiculturalism; however I use them when following the context of the texts I am drawing from. I have tended to use settler society when making my own analysis in order to draw attention to our ongoing occupation and settlement of Indigenous lands. To paraphrase Dan Francis, it is part of the legacy of colonialism that we lack a vocabulary with which to speak about these issues clearly.[36]

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[35] Taiaiake Alfred and Jeff Corntassel, "Being Indigenous: Resurgences against Contemporary Colonialism," *Government and Opposition* 40, no.4 (2005): 598.

[36] Daniel Francis, *The Imaginary Indian: the Image of the Indian in Canadian Culture* (Vancouver: Arsenal Pulp Press, 1992): 9.

Chapter 2: Housing in and as colonialism

2.1 Colonial intervention in Indigenous housing

> In the published and unpublished writing of both
> missionaries and government agents, housing was not
> simply a matter of wood, mud, and mortar or even human
> shelter, it was an animate social force that was generative
> of proper gender roles, work habits, and domestic ways. ...
> [H]ousing became a significant site of conflict in the
> colonial encounter, a vehicle through which the
> reorganization of First Nations society was imagined,
> attempted, resisted, and ultimately refashioned. ... More
> than simply reflecting the organization and use of space,
> homes, like maps, actively shape the way people both
> imagine and live their social roles. Given the many
> meanings attached to houses, it is not surprising that they
> became contested sites in the colonial encounter. When
> natives and newcomers clashed over the household space,
> they were playing out one component of a larger clash over
> appropriate gender, economic, and settlement patterns,
> over, in other words, the politics of daily life.[37]

Housing has been a significant site of the colonial encounter, that is, settlers pursued colonial interests *through* the housing of Indigenous people, and indeed these interests were at times *shaped by* the housing settlers encountered. This intervention has had a lasting impact on Indigenous housing specifically and more broadly on the ability of communities to govern themselves according to their traditions and practices. Colonizers required Indigenous land in order to pursue a resource extraction economy that would support the development and expansion of a state; the dispossession of Indigenous land was pursued systematically through policy by the British and later Canadian governments. The intended outcome of this policy was and is to gain and maintain possession of land and resources and this was to be achieved by assimilating Indigenous people into the larger colonial and then Canadian body politic. In a broad sense this

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[37] Adele Perry, "From the 'hot-bed of vice' to the 'good and well-ordered Christian home': First Nations housing and reform in nineteenth-century British Columbia," *Ethnohistory* 50, no.4 (2003): 587-588.

dispossession meant the loss of governance for Indigenous people: they were no longer in control of collective decision-making processes for their communities. In this chapter I illustrate the ways in which colonial policies of dispossession and assimilation were pursued through housing (housing is an instrument of colonialism) and the consequences of these policies (housing is an effect of colonialism). A history of intervention in housing has undermined Indigenous governance in an effort to achieve colonial policies of assimilation and this is the issue that needs addressing with respect to the housing crisis in Indigenous communities today.

To begin then, what are the colonial interests that I argue were pursued through Indigenous housing? Colonialism can be understood as a belief in the superiority of one culture over another and the purposeful domination of one culture over another.[38] This domination occurs on several fronts: the most visible is the forcible takeover of land and resources by the colonizers and the re-structuring of the economies of the countries it conquered in order to fuel European capitalism.[39] This re-structuring differentiates modern European colonialism from earlier forms of conquest. The domination of colonized territory permitted a flow of natural resources to Europe, ensuring the expansion of industry and growth of capitalism in the mother countries:

> The essential point is that although European colonialisms involved a variety of techniques and patterns of domination (...), all of them produced the economic imbalance that was necessary for the growth of European capitalism and industry. (...) Without colonial expansion the transition to capitalism could not have taken place in Europe.[40]

Equally crucial was the creation of markets for European goods; colonialism restructured the whole economies of colonized countries to allow for the growth of European capitalism. Based as it is on a resource extraction economy, Canada has in the past and remains to this day deeply dependent upon colonized land and resources to sustain its

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[38] Alfred and Corntassel contrast an earlier form of colonial enterprise with contemporary colonialism: "a form of post-modern imperialism in which domination is still the Settler imperative but where colonizers have designed and practise more subtle means (in contrast to the earlier forms of missionary and militaristic colonial enterprises) of accomplishing their objectives." Alfred and Corntassel, "Being Indigenous: Resurgences against Contemporary Colonialim," 597-598.
[39] Ania Loomba, *Colonialism/Postcolonialism* (New York: Routledge, 1998): 3-4.
[40] Ibid., 4.

economy. The understanding that colonialism not only took over land and resources but actually actively restructured the economies it encountered in order to fuel the expansion of capitalism "allows us to understand modern European colonialism not as some transhistorical impulse to conquer but as an integral part of capitalist development."[41] Such material domination of the means of production was not without its accompanying justification, which brings us to the second form that colonialism has taken: that of the subjective domination of colonized people.

Whereas a Marxist analysis posits that: "colonialism was the means through which capitalism achieved its global expansion. Racism simply facilitated this process, and was the conduit through which the labour of colonized people was appropriated,"[42] theorists like Franz Fanon and others have argued that an exclusive focus on economic explanations ignores the reality of the psychological and subjective oppression of colonized peoples.[43] Albert Memmi, in *The Colonizer and the Colonized*, paints a compelling picture of a colonizer who recognizes and therefore needs to justify his nonlegitimate position of privilege, nonlegitimate in that it is gained by dispossessing those who are rightfully entitled. It is in his attempts at legitimizing his usurpation that the colonizer undertakes his subjective domination of the colonized:

> [A]ccepting the reality of being a colonizer means agreeing
> to be a nonlegitimate privileged person, that is, a usurper.
> (...) [T]o possess victory completely he needs to absolve
> himself of it and the conditions under which it was attained.
> (...) How? How can usurpation try to pass for legitimacy?
> One attempt can be made by demonstrating the usurper's
> eminent merits, so eminent that they deserve such
> compensation. Another one is to harp on the usurped's
> demerits, so deep that they cannot help leading to
> misfortune. His disquiet and resulting thirst for justification
> require the usurper to extol himself to the skies and to drive

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[41] Ibid., 20.
[42] Ibid., 68.
[43] See, for example, Franz Fanon's *Black Skin, White Masks*, trans. Charles Lam Markmann (New York: Grove Press, 1982).

the usurped below the ground at the same time. In effect,
these two attempts at legitimacy are actually inseparable.[44]

Colonialism, then, involves the subjugation of the colonized in an attempt by the
colonizer to feel justified in his takeover of land and resources, attempting to legitimize
an illegitimate process by either locating himself as deserving of this land or the
colonized as undeserving, or both. The insight that both Fanon and Memmi have brought
to analyses of colonialism is that the "mythical portrait" of the colonized that is created
by the colonizer and communicated back to the colonized, ends up being internalized and
lived with to a certain extent by the colonized.[45] In this way, colonialism is often seen as
just as damaging psychologically to the colonized as is the dispossession of their lands. In
effect, the two are inextricably linked. As Taiaiake Alfred argues in the Canadian context,

> It is the forced, rapid reshaping of indigenous existence
> during this process of colonial-capitalist expansion and
> consolidation which is the most important aspect of the
> colonial experience for Indigenous peoples themselves –
> every aspect of their lives was reshaped in the interests of
> capitalism and to ensure the opportunity and profit potential
> of the white population recently settled in their
> homelands.[46]

Indeed Alfred posits that the loss of land contributes directly to psychological oppression
by limiting the cultural practices that are intimately connected to land:

> This is a major effect of colonization: denial of access to
> land-based cultural practices leading to a loss of freedom
> on both the individual and collective levels equating to the
> psychological effect of *anomie*, or the state of profound
> alienation that results from experiencing serious cultural
> dissolution, which is then the direct cause of serious
> substance abuse problems, suicide and interpersonal
> violence.[47]

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[44] Albert Memmi, *The Colonizer and the colonized*, trans. Howard Greenfield (Boston: Beacon Press, 1991):
52-53.
[45] Ibid., 88.
[46] Taiaiake Alfred, "Colonialism and State Dependency," *Journal of Aboriginal Health* (November 2009): 46.
[47] Ibid., 49.

Hence Fanon's insistence that colonialism must be resisted on both the objective and subjective fronts, as resistance to only one form of oppression cannot overcome the debilitating effects of colonization, arguing that "it was the interplay between the structural/objective and recognitive/subjective realms of colonialism that ensured its hegemony over time."[48]

The Canadian context likewise relied (and continues to rely) on the internalization of the colonizer's "mythical portrait" of the colonized. This is necessary to maintain the usurpation of Indigenous lands and resources in order to generate profits for the colonizers (no longer to profit Britain but retaining the structure of unequal flow of profits from resources). As both Fanon and Memmi sought to reveal, "over time, colonized populations tend to internalize the derogatory images imposed on them by their colonial 'masters', and how as a result of this process, these images, along with the structural relations with which they are entwined, come to be recognized (or at least endured) as more or less natural."[49] This is absolutely necessary to ensure the long-term viability of the colonial system. As explained by Memmi: "In order for the colonizer to be the complete master, it is not enough for him to be so in actual fact, but he must also believe in its legitimacy. In order for that legitimacy to be complete, it is not enough for the colonized to be a slave, he must also accept this role."[50] In Canada, illegitimate occupation is often justified and internalized on the basis of a Lockean doctrine of property rights and on a related mythical portrait of a lazy colonized population that was 'undeserving' of the land. Appropriation of land thus followed Locke's theory of property whereby man owned his labour and was deserving of the fruit of his labour, as he has been industrious and rational in cultivating land and improving it: "The thinking went something like this: Improvement is the engine of civilization and progress. Indians waste land, and settlers improve it; therefore, settlers should take Indian lands, by force if necessary."[51] This later morphed into taking Indigenous land by treaty, a more 'civilized'

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[48] Glen Coulthard, "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada" *Contemporary Political Theory* 6 (2007): 444.

[49] Ibid., 444.

[50] Memmi, *The colonizer and the colonized*, 89.

[51] Tony Penikett, *Reconciliation: First Nations Treaty Making in British Columbia* (Vancouver: Douglas & McIntyre, 2006): 28.

approach to forcible takeover of land. Operating alongside this doctrine of improvement was the portrait of Indigenous peoples as lazy, indolent and non-industrious, all traits which were anathema to European settlers in the wake of capitalist expansion. As John Lutz has demonstrated in his book, *Makúk*, Indigenous peoples were labeled as such largely due to their "lack of interest in participating in a European form of labour subordination and refusing to exchange subsistence activities for accumulation."[52] Further, framing Indigenous labour as existing outside the economy underscored the concept of land lying in waste and available for settlement and improvement.[53] As Memmi reasoned, this portrait of a wasteful, lazy colonized population serves the dual purposes of exalting the colonizer (who works hard and is therefore deserving), humbling the colonized (who is lazy and undeserving), and, crucially, is economically fruitful.[54]

The Canadian "mythical portrait" has shifted over the years but retains crucial assumptions that are unquestioned. The first is that Canadian history began with the arrival of Europeans; the second is that Indigenous peoples were doomed to die out, unable to cope with a superior civilization. Thus their only hope was to assimilate as best they could, leave behind traditional practices, and become civilized. Their imminent disappearance was welcomed by some, lamented by others, but universally recognized as inevitable. As Dan Francis points out in *The Imaginary Indian*:

> Canadians did not expect Indians to adapt to the modern
> world. Their only hope was to assimilate, to become White,
> to cease to be Indians. In this view, a modern Indian is a
> contradiction in terms: Whites could not imagine such a
> thing. Any Indian was by definition a traditional Indian, a
> relic of the past. (...) Indians were defined in relation to the
> past and in contradistinction to White society. To the
> degree that they changed, they were perceived to become
> less Indian.[55]

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[52] John Lutz, *Makúk: A New History of Aboriginal-White Relations* (Vancouver: UBC Press, 2009): 35.
[53] Ibid., 34.
[54] Memmi, *The colonizer and the colonized*, 79.
[55] Francis, *The Imaginary Indian*, 59. This remains an issue in contemporary Indigenous-settler relations – settler culture and society are allowed to change but Indigenous culture and society remain crystallized in the past and any adaptation to modern life is seen as becoming less authentically Indian. This has implications for a number of critical issues, notably in the pursuit of Aboriginal rights through the courts.

In keeping with this imagined image of the Indian, Canada chose to go about eliminating the Indian problem by eliminating the Indian way of life. Indigenous peoples have been cast as both noble and ignoble savages, depending on whether settlers needed justification for further encroachment on land, as well as whether settlers encountered resistance to further settlement.[56] Settler society enacted an image of the Indian, based on Euro-Canadian imaginings of what life was like prior to contact and created in contrast to their own superior society. Significantly, they devised public policy based on that assumption.[57]

The policies pursued by the various governments of Canada (British, dominion, and Canadian) have been ones of civilization and assimilation, as the means of controlling land and resources including the decisions surrounding use of these resources.[58] The acquisition of land and resources has certainly been economically advantageous to the settler population; as such the systematic dispossession of Indigenous people has been vigorously pursued by the Canadian state throughout its history. But how has this scenario played out in relation to housing?

Housing has been a significant site where the policies of civilizing and assimilating Indigenous people have played out, but housing has not merely been a site of colonial interest and policy. It has been constitutive of it in an ongoing relationship between colonizers and colonized. As Fanon and Memmi took pains to outline, the dual structure of colonialism cannot be considered in isolation. Thus colonialism has had economic/material effects on Indigenous peoples in Canada through the loss of land but has also been about cultural domination and transforming Indigenous society. Housing is intimately connected to the economic project of colonization through its effort to fix

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See John Borrows, "Frozen Rights in Canada: constitutional interpretation and the trickster," *American Indian Law Review* 22, no.1 (1997): 37-64.

[56] Francis, *The Imaginary Indian*, 221.

[57] Ibid., 194.

[58] While an in-depth discussion of the history of Indigenous-settler relations in Canada is well beyond the scope of this thesis, others have examined both Canada's Indian policy and the specificities of Indigenous politics and histories. See, for example: J.R. Miller, *Skyscrapers Hide the Heavens: a History of Indian-White Relations in Canada*, revised ed. (Toronto: University of Toronto Press, 1991).Olive Patricia Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times* (Toronto: McClelland Stewart, 1992). Lutz, *Makúk: A New History of Aboriginal-White Relations*.

Indigenous people on the land in ways particular to the culture of settlers. Housing policy has sought to create a particular type of relationship to the land, one that is about owning one's own home, owning land as private property, and thus creating a relationship to the land that is crucial to the economic project of its colonizers. But housing is also a part of the subjective oppression of colonialism because it is so connected to culture by recreating Indigenous society through the home. Housing allowed colonizers to promote an ethic of individual responsibility for financing and maintaining one's home, as well as promote the idea that single families should live together. Settling people on the land in this particular way also represents a contest of cultural values, indeed the project of fixing people on the land has long been a preoccupation of the state that is intimately linked to colonialism. As Hugh Brody points out in the Canadian context,

> Supporters of the colonial process have cited the apparent "nomadism" of native populations to justify advances of the settlement frontier. They have made much of the fact that hunter-gatherers lack year-round permanent settlements. They insist that these are peoples without the institutional life of the village; they equate a relative indifference to possessions and an absence of manmade monuments with a low level of human evolution.[59]

Permanent settlement through housing represented values and norms that come from the culture of the colonizer and was a means of attempting to reorganize Indigenous society into something more like that of the colonizers. Indeed these two facets of housing's role in colonialism are obviously intertwined: the home creates a good economic subject of its Indigenous inhabitants and the home itself represents a new economic relationship with the land, as a single-family dwelling on an individual allotment of land. These concepts are neither ahistorical nor acultural and altered how families lived together, how communities lived together and how decisions impacting those communities were made. To that end, I will point to three examples where housing makes manifest this relationship between colonizers and colonized and its resulting loss of governance for Indigenous peoples: the use of location tickets, missionary and government work in

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[59] Hugh Brody, *The Other Side of Eden: Hunters, Farmers and the Shaping of the World* (Vancouver: Douglas & McIntyre, 2000):159.

housing reform, and the fashioning of Indigenous peoples as economic subjects through the home.

While I am working within the framework of colonialism as part of a larger argument for the re-conceptualization of housing as an issue of governance, it is important that colonialism does not become the *only* story told of Indigenous peoples, nor that colonialism be understood as affecting only the colonized. As will become clear through the examples given, Indigenous peoples resisted and refashioned the pursuit of colonialism through their housing as well as the effects of this imposition. And, as decolonization theorists have pointed out, colonial interests are not simply imposed from outside but rather are actually shaped and constituted as a result of interaction with the subjects of those interests.[60] Housing has been a crucial site of this colonial clash and constitution.

2.2 Assimilation through location – location tickets in Canadian Indian policy

Colonialism in Canada has largely been pursued by systematic policy aimed at absorbing those with a prior claim to the land into Euro-Canadian society. Thus, Canada's policy towards Indigenous peoples has always been focused on the goals of civilization and assimilation, goals which were pursued under the previous governments (British and colonial) prior to Confederation and continued upon establishment of the Canadian government. Concepts of civilization were closely tied to Enlightenment ideas of progress and cultural advancement. The traditional customs and practices of Indigenous peoples were seen as backward and unenlightened when contrasted with modernity and rationalism. Indigenous people were to strive, if possible, to become more modern, more civilized, by casting off traditional practices and assimilating.[61] One was rewarded for

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[60] Perry "From the 'hot-bed of vice' to the 'good and well-ordered Christian home': First Nations housing and reform in nineteenth-century British Columbia," 590, 605. Alfred and Corntassel also make the argument that colonization should not be the only story of Indigenous lives: "It must be recognized that colonialism is a narrative in which the Settler's power is the fundamental reference and assumption, inherently limiting Indigenous freedom and imposing a view of the world that is but an outcome or perspective on that power." Alfred and Corntassel, "Being Indigenous: Resurgences against Contemporary Colonialism," 601.

[61] Alan Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: UBC Press, 2000): 25.

leaving behind traditional customs and moving forward toward civilization with enfranchisement. Alan Cairns, in *Citizens Plus*, notes that the Canadian policy of enfranchisement for individual Indians who had 'advanced' to acceptable levels of civilization mimicked the policies of imperial powers. In each case the premise was that a given individual had advanced to a higher level of civilization, had left tribal practices behind and was now worthy of a greater degree of, if not full, equality with the citizens of the imperial power.[62] *Location tickets* were meant to be an incentive for Indigenous peoples to enfranchise, as well as a means of tying their communities ever more closely to Euro-Canadian attitudes toward land, property, and concepts of political and economic organization. Location tickets were a form of property title: the superintendent general would survey reserve land and divide it up into individual allotments which the band council could then grant to individuals. The superintendent would give a location ticket to that individual for that allotment, once the individual had demonstrated his suitability (the details of which will be explored below).

Location tickets were part of a suite of changes imposed upon Indigenous peoples for the purpose of their civilization and assimilation. The creation of the reserve system, the imposition of democratic governance structures (including enfranchisement and elected band councils), and the erection of private property on-reserve were all key policy changes pursued by colonial and later Canadian governments. It was believed that these reforms would train the Indian to become more civilized and assimilate him into a settler population in order to allow continued dispossession of Indigenous land.

The goals of civilizing and assimilating Indigenous peoples can be seen throughout the history of Canada's Indian policy. The *Royal Proclamation of 1763* first codified the distinct status of Indians by asserting that Indian land could only be sold to the government.[63] The distinction or 'special status' conferred upon Indians was continued and indeed made part of the political structure of Canada through the *British North*

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[62] Ibid., 24.
[63] John L. Tobias "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy." In *Sweet promises: a reader on Indian-White relations in Canada,* J.R. Miller, ed. (Toronto: University of Toronto Press, 1991): 128.

America Act of 1867, by granting exclusive jurisdiction over "Indians and Indian land" to the government.[64] As historians have noted, "the legislation by which the governments of Canada sought to fulfil their responsibility always had as its ultimate purpose the elimination of the Indian's special status. The means to achieve this goal was by training, that is, 'civilizing,' the Indian in European values, to make him capable of looking after his own interests."[65]

Following calls from missionaries to evangelize the Indians, the British developed a direct civilizing approach in their policy. This led to the establishment of Indian reserves, as isolated areas where Indians would be encouraged to gather and settle in one area, farm the land and receive religious and educational instruction in order to be prepared for "coping" with the European.[66] Thus Indian lands, as Crown land, could not be encroached upon by settlers and the special status of Indians, along with other stipulations, were legislated in 1850 by the passing of the first *Indian Act* (formally titled *An Act for the better protection of the Lands and Property of Indians in Lower Canada* and *An Act for the protection of the Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespassing and injury*). Significantly, the Indian Act of 1850 also defined who an Indian was by setting out the conditions to attain Indian status.

By the late 1850s, policymakers were largely disillusioned with the reserve system and its failure to produce 'civilized' Indians, but it was felt that this failure was due to the isolated nature of reserves. As such, smaller reserves for individual bands were placed near Euro-Canadian communities, believing that the latter would serve as an example for the Indian. The *Act to encourage the gradual civilization of the Indians in this Province, and to amend the laws respecting Indians*, passed in 1857, was specifically intended to speed up the process of assimilation into European culture. Significantly, this act also set out the standards the Indian would have to achieve in order to be granted enfranchisement (and later a location ticket). As explained by Tobias:

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[64] Ibid.,127.
[65] Ibid.
[66] For an in-depth study of the creation of reserves in BC, see Cole Harris, *Making Native Space* (Vancouver: UBC Press, 2002).

> [T]he legislation proceeded to define who was an Indian
> and then to state that such a person could not be accorded
> the rights and privileges accorded to European Canadians
> until the Indian could prove he could read and write either
> the French or English language, was free of debt, and of
> good moral character. If he could meet such criteria, the
> Indian was then eligible to receive an allotment of twenty
> hectares of reserve land, to be placed on one-year probation
> to give further proof of his being civilized, and then to be
> given the franchise.[67]

As Tobias points out, these are criteria that few Euro-Canadians at the time would have met, thus the 'civilized' Indian would have to be more 'civilized' than the Euro-Canadian.[68]

By the time of Confederation in 1867, the goals of civilization and assimilation were intact in Indian policy. The transition from a dominion government to a Canadian following Confederation therefore did not change the principles pursued by the government towards Indians, but emphasis began to move from civilization to enfranchisement.[69] This was established in the *Act for the gradual enfranchisement of Indians* in 1869. The consequences of this policy shift were the imposition of the European political ideal of elected local government onto a band and granting power to remove elected officials if deemed unfit by the colonial government, made mandatory in the 1880 changes to the *Indian Act*.[70]

The reserve system was meant to prepare the Indian for coping with European society and as a place for Indigenous people to receive education and training in order to become civilized. The imposition of democratic ideals and the use of property rights were believed to be hallmarks of civilized society (and the lack of such signposts a clear sign of Indigenous backwardness). In this way, not only were settlers able to confirm their virtue by contrasting it with Indigenous vice (defining themselves in opposition to the

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[67] Tobias, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy," 130.
[68] Ibid.
[69] Tobias, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy," 131. Miller, *Skyscrapers Hide the Heavens*, 189.
[70] Miller, *Skyscrapers Hide the Heavens*, 189-190.

Indigenous other), but they were also able to seriously impact Indigenous governance practices in the name of civilization: "The attempt to teach the Indians democracy was part and parcel of the assimilationist agenda. The elected councils were intended to replace traditional forms of Native government over which federal officials lacked control."[71] Further,

> [n]ot only was the Indian as a distinct cultural group to disappear, but also the laboratory where these changes were brought about would disappear, for as the Indian was enfranchised, that is, became assimilated, he would take with him his share of the reserve. Therefore, when all Indians were enfranchised, there would no longer be any Indian reserves.[72]

This desire to "end the Indian problem" has remained a feature of Canada's Indian policy and has been fiercely contested by Indigenous peoples, who have recognized the impetus of assimilation and colonization behind such attempts.[73] The desire to ultimately absorb Indigenous peoples into the body politic of the Canadian state is the end game of assimilation – as in keeping with a Canadian public that, as per Cairns, "did not in the past and does not now see itself as an empire ruling over subject peoples."[74] Canada's Indian policy has thus always been geared toward achieving the eradication of such subject peoples. After having located Indigenous peoples on the land through the reserve system, acquiring private property was seen as a crucial step on the path toward such civilizing.

It was in 1876 that location tickets became introduced through an *Act to amend and consolidate the laws respecting Indians* (commonly referred to as the Indian Act of 1876). The most important aspect of the new act was that it provided the means by which Indians could prove they had assimilated: by adopting the European concept of private property. This was achieved through location tickets (providing individual 'title' to allotments of reserve land) which could only be obtained by those who were enfranchised:

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[71] Francis, *The Imaginary Indian*, 204.
[72] Tobias, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy," 132-133.
[73] Karena Shaw, *Indigeneity and Political Theory* (New York: Routledge, 2008): 57.
[74] Cairns, *Citizens Plus*, 19.

> The new policy stipulated that the superintendent general have the reserve surveyed into individual lots. The band council could then assign these lots to individual band members. As a form of title the superintendent general would then give the band member a location ticket. Before an individual received a ticket he had to prove his suitability in the same manner as under the earlier legislation [i.e. able to read and write either English or French, free of debt and of good moral character]. On passing this first test and receiving his location ticket, the Indian entered a three-year probationary period during which he had to demonstrate that he would use the land as a Euro-Canadian might and that he was fully qualified for membership in Canadian society. If he passed these tests, he was enfranchised and given title to the land.[75]

The Indian had to demonstrate that he would use the land as a Euro-Canadian might – this denotes permanent settlement, cultivation, and accepting a Euro-Canadian understanding of owning land. Brody notes in the Canadian Arctic that settlement was understood as "a place where "native people" are expected to settle – that is, to come in from their hunting "camps" and begin to receive modern housing and services.[76] Thus location tickets, in tandem with the reserve system, were intended to settle Indigenous people on the land in homes as this would serve colonialism. Location tickets are in this way able to connect to the economic project of the colonizers by creating relationships to the land that facilitate settlement and economic expansion. Location tickets, as part of a suite of reforms including reserve creation and imposition of governance structures, are equally connected to the subjective front of colonialism – not least because of their connection to building homes more closely resembling those of the colonizers. The ability of housing to reorganize Indigenous society will be explored below and, as we will see, Indigenous people responded to this policy and pressure in a variety of ways. This is perhaps the earliest evidence of a form of private property on-reserve and also recognition on the part of the colonisers of the ability of property to radically change the social organization of Indigenous peoples, so as to assimilate.

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[75] Tobias, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy," 132.
[76] Brody, *The Other Side of Eden*, 26.

The location ticket is the precursor to the modern day certificates of possession, one of the few forms of private property that exist on reserve (See Appendix A for a detailed explanation of the forms of private property on-reserve). As of 2003, the Department of Indian Affairs estimated that approximately 10,059 location tickets and 145,000 certificates of possession have been issued to individuals on 301 reserves since 1888.[77] What becomes clear through this piece of legislation, is the government's determination to assimilate Indigenous peoples into Euro-Canadian society and their understanding that property rights can be a powerful tool in that process. J.R. Miller quotes Indian Commissioner Reed as saying "'The policy of destroying the tribal or communist system is assailed in every possible way and every effort made to implant a spirit of individual responsibility instead.'"[78] Accepting a particular understanding of, and relationship toward, land and property became the means of achieving citizenship, proving one had reached a higher level of civilization through the various tests administered. In this way, the reserve system and the creation of location tickets are intimately linked to the ways in which settlers pursued their colonial interests.

As mentioned, Indigenous peoples have not been mere subjects of colonial pressures and interests. They have sought to exert their agency in various contexts and through various means throughout the process of colonization. The context of location tickets was no different; band councils simply refused to allot reserve lands to individual members. Without these allotments, no location tickets could be issued and enfranchisement became impossible. The response from the federal government was to make policy increasingly coercive:

> Therefore, in 1879 power to allot reserve lands was taken
> from the band and given to the superintendent general.
> Because most bands refused to alienate their land, even for
> a limited period, persons who held locations tickets and
> wanted to lease their land to non-Indians as a source of
> revenue could not do so, since the band refused to vote for
> the required surrender. Consequently, the Indian Act was

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[77] Christopher Alcantara, "Individual Property Rights on Canadian Indian Reserves: The Historical Emergence and Jurisprudence of Certificates of Possession," *The Canadian Journal of Native Studies* 23, no.2 (2003): 393.

[78] Miller, *Skyscrapers Hide the Heavens*, 191.

amended in 1884 and 1894 to allow the superintendent
general to lease such lands for revenue purposes without
taking a surrender [similar to present day leasehold
lands].[79]

Here we see the government responding to active resistance from Indigenous peoples,
and exerting even more control over the band's governance, political organization, and
relationship with the land. The story of location tickets as a means of assimilating
Indigenous peoples is a window into the ability of property rights to fundamentally
change social organization and governance practice in order to achieve the policy goals
of civilization and assimilation.

Tying people ever more closely to specific pockets of land through the reserve system
and then attempting to impose Euro-Canadian attitudes toward land and property had the
effect of wresting control of communities and resources away from Indigenous peoples.
These concepts derived from and were in service of a different cultural context and were
parts of the policy of assimilation pursued so determinedly by the government of Canada.
That private property was an important site of the colonial encounter is seen by both the
dogged pursuit of it on the part of the government and the fierce resistance on the part of
Indigenous peoples: "Next to political control, Ottawa was most interested in reshaping
Indian attitudes toward land and land ownership. As had already become apparent in the
contests in Upper Canada before Confederation, the Indians regarded communal land-
holding as essential to the preservation of their identity."[80] The resistance to attempts to
create an individual property regime through the location tickets is what kept the
communal land tenure system in place for Indigenous peoples (though, significantly,
pockets of private property exist on-reserve in the present-day forms of certificate of
possession, leasehold lands, etc.). The point is not so much to argue whether Indigenous
communities have always had communal land tenure, as we understand that relationship
to the land to be or whether that system is more culturally appropriate than an individual
property regime (indeed Bryan and others have pointed out that Indigenous conceptions

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[79] Tobias, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy," 135.
[80] Miller, 190.

of land and property are ontologically different from Western conceptions of such and cannot be simplified to communal land tenure versus individual property rights),[81] rather the point is that individual land ownership was pursued as part of a policy of assimilation through civilization.

2.3 Assimilation through the house – reforming Indigenous housing.

In this section, I argue that housing was an important site for reorganizing Indigenous society towards assimilation. Indigenous housing came to be seen by missionaries, settlers and government officials as representative of what was wrong with Indigenous culture and was contrasted with the virtue seen in European style housing. As such, housing was an important site for refashioning Indigenous culture into something more aligned with European ideas and values. Indigenous housing as a mechanism for reorganizing society has not been directly argued in many places, thus this section draws primarily on Adele Perry's article "From 'the hot-bed of vice' to the 'good and well-ordered Christian home': First Nations Housing and Reform in Nineteenth-Century British Columbia."[82] Perry argues that "European reformers connected First Nations housing with what they saw as the profoundly flawed state of Aboriginal society."[83] As a consequence, they sought to reform it and encountered both resistance and accommodation in their efforts. In a similar vein to the effort put in on both sides surrounding implementing and resisting location tickets, this suggests that housing became a significant site of conflict in the colonial encounter. Housing, along with private property, was recognized by colonizers and colonized alike as a "vehicle through which the reorganization of First Nations society was imagined, attempted, resisted and ultimately refashioned."[84]

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[81] Bradley Bryan, "Property as Ontology: On Aboriginal and English Understandings of Ownership," *Canadian Journal of Law and Jurisprudence* 13, no.3 (2000): 3-32.

[82] Perry, "From the 'hot-bed of vice' to the 'good and well-ordered Christian home': First Nations housing and reform in nineteenth-century British Columbia," 587-610.

[83] Ibid., 587.

[84] Ibid., 588.

In the context of arrivals to British Columbia specifically, newcomers brought with them changing notions of gender and domesticity and these played out in the houses that were constructed in the new colony. The notion of separate spheres was becoming increasingly hegemonic in mid-nineteenth century Britain, and this separation gave new and powerful significance to the home.[85] Private, single-family dwellings were indicative of economic wealth and status and living in one's own home marked the separation of public from private. This was an ideal born of the colonizers' culture and had little to do with the homes of the Indigenous peoples of Canada, whose homes also reflected their social and economic organization.[86] As increasing numbers of settlers arrived in British Columbia, they brought with them these notions of the proper home. The homes they encountered upon arrival (multi-family, multigenerational, often under matrilineal organization, with economic and spiritual rituals carried out within the home) were not only seen as wrong, they were also construed as a threat to dominant notions of the domestic. Indigenous housing did not separate the world into the public and the private or delineate the limits of family, as per the European norm. In the colonial discourse, this threat became understood as a problem of Indigenous culture itself: "For missionaries, settlers and government officials, Aboriginal housing came to function as the opposite of European household space, as both representative of and responsible for what they saw as the deeply problematic character of First Nations culture."[87] As such, they set about reforming housing, understanding that, in so doing, they would be reforming Indigenous society. In this sense, we can understand how colonialism also affects the colonizers – settler Canada defined itself in opposition to the Indigenous populations it found there and cast their society as superior by contrasting it with the backward and vice-filled Other it encountered.

In keeping with the theme seen throughout Canada's Indian policy, Indigenous peoples were seen as lesser but reformable subjects. Thus missionaries and federal Indian agents

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[85] Ibid., 589.

[86] Lutz, *Makúk*, 61-64. For example, the Lekwungen people were organized into three social strata and the large winter houses they occupied had significance both in terms of a strata and gender division of labour and for spiritual rituals.

[87] Perry, "From the 'hot-bed of vice' to the 'good and well-ordered Christian home': First Nations housing and reform in nineteenth-century British Columbia," 591.

set out to reform housing, attempting to "create the 'good and well-ordered Christian home' where 'the hot-bed of vice' existed."[88] In British Columbia this occurred throughout 1849-1886, during approximately the same time that James Douglas was pursuing his reserve system during his time as governor of the colony.[89] Missionaries encouraged Indigenous peoples to give up their traditional uses of the land and settle in villages with European-style homes. Model mission villages were created at Metlakatlah (near present-day Prince Rupert) and housing played a central role in reshaping culture to reflect dominant European norms of domesticity and virtue. The work of missionaries was supported by the government (buying window sashes and nails for the Metlakatlah village) and further institutionalized by establishing a federal Indian agent under the *Indian Act* of 1876.[90] Indian agents pursued the work of reforming Indigenous housing into European-style homes, indeed "[a]gents proudly reported when Aboriginal people under their jurisdiction abandoned collective housing and adopted the Western styles thought to both represent and constitute European norms of domestic and familial life."[91] As with settling on a reserve and acquiring private property through location tickets, Indigenous people could demonstrate they had assimilated by conforming to a style of house that reflected another culture's norms.

And, as with location tickets, Indigenous peoples resisted the reformation of their housing in a myriad of ways, indeed they sometimes used their Western-style homes as political leverage to make demands of the federal government. Nisga'a leader Arthur Calder used just such an approach in 1887 when he argued for land and treaty rights on the basis that his people deserved these as they had built houses "like the white people."[92] The most prevalent form of resistance, however, was simply that Indigenous people continued to carry out their cultural practices, as best they could, inside the Western-style homes in which they were now living. So, families would continue to sleep in a central room

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[88] Perry, "From the 'hot-bed of vice' to the 'good and well-ordered Christian home': First Nations housing and reform in nineteenth-century British Columbia," 593.

[89] Paul Tennant, *Aboriginal Peoples and Politics* (Vancouver: UBC Press1990): 26-38.

[90] Perry, "From the 'hot-bed of vice' to the 'good and well-ordered Christian home': First Nations housing and reform in nineteenth-century British Columbia," 595.

[91] Ibid., 595-596.

[92] Perry, "From the 'hot-bed of vice' to the 'good and well-ordered Christian home': First Nations housing and reform in nineteenth-century British Columbia," 602-603.

around a fire, as was their custom, despite missionaries' attempts to have them sleep upstairs, as well as having multiple families living in the same row house, as in the example of the European-style houses in Metlakatlah.[93] This resistance is not surprising; housing is as much a site of cultural significance for Indigenous peoples as it is for settlers. The Royal Commission on Aboriginal Peoples notes:

> Since housing and related facilities are so closely intertwined with the rest of life, their quality and appearance are important indicators of a culture as a whole. Many cultures around the world are distinctive because of their immediately recognizable housing forms and styles and for the integration of their housing and community services with other patterns of daily living, economic and social activity. In Canada, unfortunately, the vibrant past of Aboriginal cultures, as embodied in housing, has been largely lost as a result of considerations of cost and administrative convenience.[94]

The impact of undoing traditional housing reverberates across a community: from governance practices to gender roles. For example, in many Cree communities it is the women who were solely responsible for constructing seasonal homes and the rest of the family would provide the woman putting up the tent with food while she prepared the canvas.[95] This traditional role, while not lost, is often subsumed with the advent of Western-style housing and construction practices. Traditional housing was fine-tuned to local social organization, culture and environment, thus dismantling of these structures in favour of "modern" housing on a permanent settlement impacts the ability of that community to practice traditional governance and cultural customs. In this context, resistance to such imposition and dismantling of housing finds resonance. And, as Perry points, out: "That there was much to recommend Aboriginal housing (...) lent material

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[93] Ibid., 604. It is important to note that Indigenous people continue to resist Western-style housing in a similar fashion today: houses are used to prepare game and carry out cultural activities despite being situated in homes ill-suited for these purposes.
[94] RCAP, "Volume 3: Gathering Strength, Chapter 4: Housing."
[95] Maïti Chagny. "Native Women and their Homes: Gender, Housing and Identity Case Study: Chisasibi, Northern Quebec," (Master of Architecture Thesis, McGill University, 1998), 9.

weight to these objections and abstentions."[96] In the context of the housing crisis described in Chapter 1, this resistance seems warranted.

The attempts to have Indigenous peoples conform to Western-style homes was thus a multi-faceted project: adopting Western-style homes was a means of proving one had assimilated to European norms and was thus due the rights and privileges of citizenship, and simultaneously, houses were rightly understood as a powerful tool in refashioning Indigenous society. Homes embody cultural norms and ideals, and these were pursued through missionary and government attempts at housing reform. Houses also denoted permanent settlement and a different understanding of and relationship to the land than had previously been experienced by the colonized. The struggle over Indigenous homes in the colonial encounter was thus about the physical form of the houses, but also and more importantly, it was about a contestation of meanings and experiences, that is, it enacted colonialism itself.

2.4 Assimilation through economy – wage work & domesticity and housing

Through the use of location tickets, assimilation became equated with a concept of ownership and of permanent settlement in colonial discourse and in Canadian Indian policy. Missionary and government agent work in housing reform has indicated the importance of having a "proper" home in this same discourse. These were both means by which Indigenous people were to prove to the colonizers that they had achieved a higher level of civilization and thus were ready to be accorded equal rights of citizenship (or something akin to) as the European colonizers. These elements came together and were linked in a particular way in colonial discourse, and it is one that has significant implications for Indigenous housing in the present day. Simply put, the notions of locating Indigenous people on reserves, advocating individual allotments of land through location tickets, and encouraging Western-style homes as the means of reorganizing Indigenous society culminate in a colonial discourse that values individual ownership of private, single-family dwellings as a significant indicator of assimilation and of virtue.

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[96] Perry, "From the 'hot-bed of vice' to the 'good and well-ordered Christian home': First Nations housing and reform in nineteenth-century British Columbia," 603.

These are values that remain contested in the interaction between colonizers and colonized today.

As before, early colonial interactions in British Columbia provide a useful lens into this interaction. James Douglas was the first governor of the colony of British Columbia and of Vancouver Island and left a significant, if contradictory, legacy. Between 1850 and 1853, he made 14 purchases of Indigenous land from various groups on Vancouver Island, known as the Douglas treaties, and these have been much debated as to whether Douglas considered the Indian peoples he encountered as in possession of (and therefore having underlying title to) the land.[97] On the mainland of British Columbia, however, Douglas arranged no treaties and white settlers flooded into the area with the discovery of gold in the territory in 1858, forever altering the political and geographical landscape.[98] While debate continues as to the extent to which both the British and colonial governments recognized the underlying Indigenous title to the land, what both Douglas and Sir Edward Lytton, the colonial secretary during Douglas' tenure as governor, agreed upon was the best means of civilizing the Indigenous population. In 1858, shortly after the formation of the mainland of B.C as a colony (owing to the influx of settlers in search of gold), Lytton wrote to Douglas concerning the treatment of the Indians of the new colony:

> The success that has attended your transactions with these tribes induces me to inquire if you think it might be feasible to settle them permanently in villages; with such settlement civilization at once begins. Law and Religion would become naturally introduced amongst the red men, and contribute to their own security against the aggressions of immigrants.[99]

The administrators of the new colony saw the potential of permanent settlement as a civilizing force and, as interpreted by Paul Tennant, "The village Lytton had in mind was that of the English countryside with its neatly fenced cottages, dominated by church and

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[97] Tennant, *Aboriginal Peoples and Politics: the Indian Land Question in British Columbia, 1849-1989*, 19-20.

[98] Ibid., 21.

[99] Ibid., 27.

castle, surrounded by agricultural fields, and peopled by tenant farmers, craftsmen, and manual workers."[100] Douglas was in fervent agreement with Lytton, noting in his response that it was the "only plan which promises to result in the moral elevation of the native Indian races (...)."[101] Douglas was critical of the policies implemented in California with respect to the Indigenous inhabitants there, feeling that the Indians were lead to be too dependent on colonial intervention and that they were "being kept in a state of pupilage, and not allowed to acquire property of their own,"[102] here again equating individual property with a higher state of civilization. The idealizing of private property as a civilizing force would continue, with Catholic missionaries to Vancouver Island in the 1870s being mandated to "see to it that the Indians themselves shall acquire property and settlement and improve their condition of life."[103]

The reserve system, as mentioned, was not intended to last. The belief among policy makers was that Indigenous people would eventually become civilized (through the means of permanent settlement, property ownership, religious and educational instruction, etc.) and would assimilate in to the larger Canadian society. Housing is an important element in this part of the colonial project as well, as houses also held out the promise of reforming Indigenous peoples into proper economic subjects. This promise is encapsulated in a quote from Perry: "'Improvement would finally be achieved,' wrote one Indian agent, 'if more of the young men could be induced to leave the large 'Ranches' altogether, and reside in smaller houses on their allotments.'"[104] Here then, is a clear linking of the concept of permanent settlement on small allotments for the purpose of building private dwellings where families could play out proper gender roles, as understood by Europeans, and achieve assimilation into settler society. In the present day, Christopher Alcantara notes the purpose of private property on-reserve: "The most common type [of private property] is the Certificate of Possession system, which allows individual Indians to obtain ownership of a tract of reserve land for the purpose of

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[100] Tennant, *Aboriginal Peoples and Politics: the Indian Land Question in British Columbia, 1849-1989*, 27.
[101] Ibid., 28.
[102] Ibid.
[103] Perry, "From the 'hot-bed of vice' to the 'good and well-ordered Christian home': First Nations housing and reform in nineteenth-century British Columbia," 597.
[104] Ibid., 596.

building a house, constructing a business, or exploiting its resources."[105] The desire to "induce" the young men to "reside in smaller houses on their allotments" was to create the necessary conditions for men to engage in the settler economy: "Collective homes were inimical to the proper development of individual property rights, a foundation upon which a reconstituted Aboriginal order rooted in agriculture and wage-work would necessarily be built."[106]

John Lutz's history of the economic interactions between Indigenous peoples and settlers in B.C., *Makúk*, illustrates the extent to which agriculture and wage-work were linked to notions of civilization and progress in colonial discourse. In the interior of the province the Tsilhqot'in were encouraged to take up agriculture, despite the fact that the environment was ill suited to such a venture (and reluctance on the part of the Tsilhqot'in to engage in an activity that they would have known was doomed to fail was seen as laziness and non-cooperative by the settlers), with an eye to have them settle in permanent locations and begin the process of civilizing.[107] The significance of Western-style homes was thus in part derived from their ability to settle people in permanent locations, a necessary precondition for assimilation into wage work. In a similar vein, missionaries to the coal-mining town of Nanaimo linked housing and the economy in particular ways: "the adoption of Western housing forms on the local reserve was positively correlated with the increasing prevalence of wage-labour among young men. The agent called them "the most civilized and farthest advanced" people in the agency and noted that they had regular work in the mines and the wharves."[108] Indigenous people were assimilating if they were participating in colonial society and economy in the appropriate ways; in colonial discourse this meant Western-style housing and wage-labour for men, domesticity for women. The emphasis on the home as the proper space for women was reinforced through residential schools, where Indigenous girls and

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[105] Alcantara, "Individual Property Rights on Canadian Indian Reserves: The Historical Emergence and Jurisprudence of Certificates of Possession," 391.

[106] Perry, "From the 'hot-bed of vice' to the 'good and well-ordered Christian home': First Nations housing and reform in nineteenth-century British Columbia," 596.

[107] Lutz, *Makúk*, 147.

[108] Perry, "From the 'hot-bed of vice' to the 'good and well-ordered Christian home': First Nations housing and reform in nineteenth-century British Columbia," 596-597.

women were to learn domestic economy skills and secure their gender roles through the home.[109]

As with both location tickets and housing reform, resistance to integration in the economy and the reformation of gender roles through the home occurred. Indeed Lutz has argued that some Indigenous peoples in British Columbia participated in the capitalist economy in order to augment their subsistence economies and opted in and out of this formal economy when it suited them, depending on availability of resources for their traditional pursuits. He argues that Indigenous peoples "created an economy that linked their own prestige and subsistence economies to a capitalist economy and, later, a welfare economy. (...) Aboriginal British Columbians have an economy that combines wage labour, capitalist investment, prestige, subsistence, and welfare."[110] Lutz proposes this emergent economy be named "moditional economy," and it is an example of the ways in which the interactions between Indigenous peoples and colonizers resulted in complex systems that belie efforts to label them as simply a story of domination of one culture over another. In the story of attempts to recast Indigenous society through the home, this effort was closely tied to ideas of permanent settlement, individual private property, and homeownership as a means of assimilating the Indigenous groups found. In the colonial discourse housing was well understood as a powerful tool in the quest to assimilate, and one that had significance in its potential to transform the whole of Indigenous society.

2.5 Conclusion

Housing connects us to land and culture. The ways that Indigenous housing was necessarily finely tuned to Indigenous culture and environment – seasonal, transitory, often inter-group use – was problematic from the perspective of colonizers. Colonizers advocated permanent settlement in order to civilize the Indian and provide the foundation for their integration into private property regimes and the capitalist economy. Reshaping housing and thus reshaping these relationships to land and culture became a key target for

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[109] Perry, "From the 'hot-bed of vice' to the 'good and well-ordered Christian home': First Nations housing and reform in nineteenth-century British Columbia," 597-599.
[110] Lutz, *Makúk*, 281.

colonial policy. As such housing is a crucial part of the encounter between Indigenous and settler. Missionaries noted the "building of houses and the cultivation of land the first step toward civilization,"[111] inextricably linking housing to the wider colonial project of assimilation through civilization. As per Perry, "The adoption of Western-style houses thus came to stand in minutiae for wholesale acculturation of First Nations people to European norms, if not standards, of living."[112] Throughout the colonial encounter, Indigenous peoples have resisted the imposition of Western-style houses and individual allotments, indicating the significance accorded to these projects on both sides. A conversation between anthropologist Hugh Brody and an Innu woman from Sheshashiu reveals what is at stake in settlement through housing:

> Mary Adele sat at her kitchen table and talked to Alex. She spoke slowly, carefully, with great force. "These houses were built to trap us," she said. "They told us, 'Stay here, you'll get a house.' But it was a trick to get our children to go to school and to make sure we stayed in one place. It was a lie, so we wouldn't see our land being destroyed."[113]

In this chapter, I have argued that housing has always been a critical part of the colonial project, of an attempt to impose one culture's meanings and understandings onto another; as such it forms part of the political terrain of Indigenous experience of and resistance to colonialism. Housing remains a part of that political terrain today, with a housing system that has succeeded in putting Indigenous peoples into Western-style homes and with a housing policy that has its roots in the colonial encounter here described. The housing crisis unfolding at present thus has to be understood as a consequence of colonialism: colonial intervention into housing was part of and constitutive of the colonial project to transform Indigenous society and was a key site of contest in that encounter. It remains a key site of contest today, as this intervention changed not only the houses but also changed the ways in which that society governed itself. By reforming Indigenous peoples into economic subjects, tying them to the land in particular ways, and attempting to

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[111] An Anglican missionary as quoted in Perry, "From the 'hot-bed of vice' to the 'good and well-ordered Christian home': First Nations housing and reform in nineteenth-century British Columbia,"594.
[112] Ibid., 599.
[113] Brody, *The Other Side of Eden*, 276-277.

assimilate them through concepts of property and proper homes, colonizers altered Indigenous peoples' ability to govern their communities and their resources.

Chapter 3 – On-Reserve Housing Policy

3.1 Introduction – Why isn't federal on-reserve housing policy working?

As we saw in Chapter 2, housing policy is intimately linked to the colonial project of assimilation through civilization. Indeed, in that chapter we were able to situate the pursuit of colonial policy and resistance to it by looking at the construction of Western-style homes on Indigenous reserves in Canada. These homes are now failing to even provide adequate shelter for their inhabitants and federal agencies seem at a loss to respond to the crisis. This situation leads to the question of why it is that federal housing policy seems to do little to improve the housing crisis that exists on so many reserves in Canada.

The current policy framework for on-reserve housing was developed by Aboriginal Affairs and Northern Development Canada (AANDC) in 1996; it is known as the "1996 On-Reserve Housing Policy." The 1996 policy is based on four principles: First Nations' control, First Nations' expertise, shared responsibilities and increased access to private sector financing.[114] The intended outcomes of the 1996 policy are the protection and extension of dwelling life; construction of affordable new housing; promotion of individual pride and responsibility; and the creation of effective linkage between housing activities and training, job creation and business development on a reserve.[115] The 1996 federal housing policy is not achieving these intended outcomes; this is clear from the state of housing on-reserve reviewed in Chapter 1 and confirmed by successive federal evaluations and audits. Indeed housing on-reserve is only getting worse, as we saw in Chapter 1. Why is this? Why isn't federal housing policy working?

My challenge in this chapter is to answer that question and I begin with a discussion of the history of on-reserve housing policy and programs. This sheds light both on the legacy of housing policy in First Nation communities and on how the 1996 policy came

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[114] AANDC, First Nation On-Reserve Housing Program, http://www.aadnc-aandc.gc.ca/eng/1100100010752/1100100010753 (accessed 5 Feb 2013).
[115] INAC, Guidelines for the Development of First Nations Housing Proposals (Ottawa: July 1996).

to be, as a way of beginning to understand why and how the policy is unable to improve on-reserve housing. Why did the federal government decide to create a policy for on-reserve housing in the first place? From there I explore the substance of the 1996 policy: how does it differ from what was in place previously? What are the means by which the intended outcomes were to be met? Next I turn to the failures of the policy and argue that the 1996 policy is failing to meet its own intended outcomes because of a lack of institutional support, a lack of Indigenous perspective in and communication of the policy, and because it was designed to address a fiscal crisis rather than address housing in any significant way. This is explored using the 2011 AANDC evaluation of its on-reserve housing policy and programs, as well as earlier federal evaluations and audits. Finally, I argue that the 1996 housing policy is not addressing the housing crisis because it is not designed to do so; rather it is still designed to encourage First Nations to fit within the needs of the Canadian state.

3.2 History of on-reserve housing policy

While information on government intervention in on-reserve housing during the early part of the 20th century is scarce, what is known is that the federal government through AANDC set up a housing program in the 1960s that provided subsidies for the construction and renovation of residential homes on-reserve.[116] In 1962, only 44% of on-reserve homes were equipped with electricity and only 13% with potable water.[117] Canada Mortgage and Housing Corporation (CMHC) introduced its first native housing program in 1973,[118] when regulation of on-reserve housing was finally mandated under the National Housing Act,[119] however these were isolated programs, without an overarching policy for the programs.

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[116] AANDC, Evaluation of the 1996 On-Reserve Housing Policy. February 2008. http://www.aadnc-aandc.gc.ca/eng/1100100011910/1100100011915 (accessed 5 Feb 2013): 6.

[117] Optis et al., "Mold Growth in On-Reserve Homes in Canada: The Need for Research, Education, Policy, and Funding," 17.

[118] J. David Hulchanski, "What Factors Shape Canadian Housing Policy?" in *Canada: The State of the Federation 2004. Municipal-Federal-Provincial Relations in Canada*, ed. Robert Young and Christian Leuprecht (Montreal & Kingston: McGill-Queen's University Press, 2006): 7.

[119] Optis et al., "Mold Growth in On-Reserve Homes in Canada: The Need for Research, Education, Policy, and Funding," 17.

The programs available prior to 1996 included subsidies from AANDC for capital costs, some operating costs for persons on welfare, and divested responsibility for the program administration costs to communities. These programs were direct proposal-driven housing subsidies, tied to the specific housing project through capital financing. The Ministerial Loan Guarantee (MLG) program was in use during this time and guaranteed loans by private lenders (banks) as well as direct loans from CMHC.[120] CMHC's housing program prior to 1996 was the so-called 2% subsidy program. The government provided First Nation communities with a subsidy that would bring the interest rate on the loan down to two percent. This was introduced in the 1980s during a time of high interest rates and was meant to subsidize the gap between the operating costs, including mortgage payments, of the housing project and what the community members could afford to pay in rent. First Nations would borrow construction costs from private lenders, receive the AANDC capital costs subsidies, at prevailing interest rates and typically with an amortization period of about 25 years. Once the loans were insured under the *National Housing Act* and guaranteed by the Minister of AANDC under the MLG program, a First Nation would sign project agreements with CMHC wherein the rents were agreed upon and the lifetime costs of the project determined.[121] The 2% program ultimately proved untenable, as the CMHC subsidies, both for debt servicing and for operating costs, were tied to interest rates, and as the inflation rate dropped at the end of the 1980s, so did interest rates. As a result, the subsidies from CMHC dropped substantially and it is estimated that perhaps half of all social housing projects on-reserve were "pushed into financial difficulty because of these reduced subsidies."[122]

Why did the federal government decide to create a policy in 1996 for on-reserve housing? Certainly the financial difficulty associated with falling interest rates (and thus falling CMHC subsidies) was a reason to make changes to the housing programs. Additionally, AANDC internal working groups noted the following limitations with the existing (pre-1996) programs: "limited support for maintenance, repair and renovation, unrealistic subsidy levels, an approach based on universality versus needs and ability to pay, limited

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[120] RCAP, "Volume 3: Gathering Strength, Chapter 4: Housing."
[121] Ibid.
[122] Ibid.

First Nations control of policy and design, an absence of multi-year funding arrangements and overreliance on single unit housing."[123] The Royal Commission on Aboriginal Peoples (RCAP) released its report, *Gathering Strength*, in 1996 and concluded that housing conditions on-reserve were "intolerable."[124] However the most important factor in the federal government's decision to intervene in on-reserve housing in a new way may have been financial. The early 1990s also saw a fiscal crisis at the federal level, to the extent that there was broad public and governmental consensus that deficits had to be eliminated and federal spending curbed.[125] To that end, a 2% nominal cap on federal expenditures was introduced in 1993-94 and the 1996 policy was born, at least from the federal perspective, out of the need to address fiscal concerns with "some mix of cost-cutting, revenue generation, privatization, efficiency measures, and downloading."[126] The emphasis on managing public sector debt as the impetus behind this policy rollout, as opposed to a motivation to address on-reserve housing in any systematic way, sheds light on some of the problems found with the policy some fifteen years later.

3.3 1996 on-reserve housing policy

The federal government, under Jean Chrétien's Liberal Party, announced a new approach for housing on July 25, 1996: the On-Reserve Housing Policy. The policy increased the number of programs offered to First Nations and was meant to improve flexibility in terms of how First Nations could use housing subsidy money (previously housing capital funding from AANDC had to be used for construction, rehabilitation or renovation and was released on a project-by-project basis). The 1996 policy came attached with $160 million over the following five years – as an incentive for First Nations to opt in. This

[123] AANDC, "6.1.1 Evolution of 1996 On-Reserve Housing Policy," Evaluation of INAC's On-Reserve Housing Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5 Feb 2013).
[124] RCAP, "Volume 3: Gathering Strength, Chapter 4: Housing".
[125] David Cameron and Richard Simeon, "Intergovernmental Relations in Canada: The Emergence of Collaborative Federalism," *Publius: The Journal of Federalism* 32, no.2 (Spring 2002): 53.
[126] Ibid., 53.

was in addition to the base budget allocated to housing in 1996 of $138 million per year.[127]

First Nations who did not voluntarily opt into the new policy continue to operate under the previous subsidy program established in the 1960s. None of the First Nations in British Columbia opted in and about 20% of those in Ontario declined as well, and thus continue to operate under the previous housing subsidy program. Those who didn't opt in after the introduction of the policy in 1996-97 were not eligible for any portion of the additional $160 million allocated at the beginning of the policy. AANDC reported in its 2011 evaluation that there is no clear evidence that the decision to opt out has had an effect for better or worse. This is attributed to the "unique circumstance of BC," as there are relatively more First Nation communities with smaller populations than are found in other parts of Canada, rendering a valid comparison difficult.[128] It is difficult to draw conclusions about the effectiveness of the pre versus post-1996 policies from this example, however at the very least it can be deduced that not choosing to opt into the 1996 policy has not made the communities of BC worse off relative to the housing conditions of communities who did opt in.

It is worth noting that CMHC's programs are the same for First Nation communities, whether they have opted into the 1996 policy or not. That is, the 2% subsidy program has been phased out in favour of the On-Reserve Non-Profit Housing Program – Section 95, which provides a subsidy based on the difference between the revenue of a project (rent collected) and operating expenses plus loan repayment costs for a given project.[129] The renovation program continued on from the previous era and remains in place today; that is the Residential Rehabilitation Assistance Program (RRAP). RRAP provides forgivable loans to First Nations up to $25,000 (of which a maximum of $5,000 to $8,250 can be forgiven), based on income and geographic location.

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[127] Please see Appendix A for a breakdown of the AANDC housing budget per year from 1996-2011.
[128] AANDC, "4.1.1 Is there a continued need to support on-reserve housing? Regional dimension to continued need for housing support," Evaluation of INAC's On-Reserve Housing Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5 Feb 2013).
[129] See Appendix A for the differences in programming and for a complete list of AANDC and CMHC housing programming on-reserve.

As mentioned, the 1996 policy is based on the principles of First Nations' control, First Nations' expertise, shared responsibilities and increased access to private sector financing[130] (this last principle will be discussed in Chapter 4). These principles were supposed to lead to the intended outcomes of the 1996 policy, which are the protection and extension of dwelling life; construction of affordable new housing; promotion of individual pride and responsibility; and the creation of effective linkage between housing activities and training, job creation and business development on a reserve.[131]

The policy was championed by the federal government on the notion of the flexibility it granted to First Nations who opted in: under the new policy, funds are allocated using a population-based formula and First Nations are obliged to create community-based multi-year housing plans and can then use AANDC housing funds in support of the plans – be it for maintenance, insurance, debt charges, training, establishment of housing authorities, etc. This is as opposed to the previous program where capital funds were tied to specific projects. The subsidies provided are not intended to cover the full cost of constructing or renovating a house and range from $19,000 to $45,000, with an average of about $6,000 per unit for a renovation. AANDC indicates that the subsidies are calculated "using remoteness and environmental indices that are based on several factors, including construction and transportation costs and economic conditions in the community."[132]

3.4 Failures of the policy

AANDC undertook comprehensive evaluations of its 1996 policy in both 2008 and 2011, as well as an audit of its on-reserve housing programs in 2010, and the Auditor General contributed reports on the state of on-reserve housing in 2003, 2006, and 2011. Each of these documents brings up numerous issues and problems associated with the policy and its programs, with more detail than is possible to include here (See Appendix B for a list of operational issues associated with the policy). For the purposes of this discussion, I

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[130] AANDC, First Nation On-Reserve Housing Program.

[131] INAC, Guidelines for the Development of First Nations Housing Proposals.

[132] AANDC, "2.3.1 Program Management," Evaluation of INAC's On-Reserve Housing Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5 Feb 2013).

will focus on large-scale problems of the policy that are related to stated principles and intended outcomes of the policy – i.e. did the policy do what it set out to do? I turn to the most recent comprehensive evaluation of on-reserve housing, the 2011 AANDC evaluation, as this evaluation builds upon the earlier iterations and documents (though these will be referenced where appropriate).

Major issues reported in the 2011 AANDC evaluation include (but are not limited to) the lack of accountability and achievement with respect to the community housing plans; the lack of clarity surrounding the shared responsibilities for housing on-reserve; and the fact that capacity has not significantly improved, nor have the economic opportunities or job training associated with putting responsibility (and, in some cases, liability) for housing increasingly in the hands of communities. In other words, by their own admission, AANDC's 1996 policy has failed significantly to achieve the intended outcomes of protection and extension of dwelling life, affordable new housing, and effective linkage with job creation and business development. It is my contention that these failures can largely be explained by a combination of the lack of Indigenous perspective in the policy and communication of the policy, the lack of institutional support, and the fact that the policy responded to a fiscal crisis and was intended to address that problem rather than address the problem of on-reserve housing in a meaningful way.

Indigenous perspective and communication

Both First Nation and government officials cite a lack of First Nation perspective in the policy, despite First Nations' control and expertise being two of the guiding principles of the policy.[133] The lack of Indigenous perspective in the policy is linked to the other issue with the design and implementation of the 1996 policy: the fact that the policy was never properly communicated to its beneficiaries. As noted in the 2011 AANDC evaluation subsection "6.1.2 Communicating and Supporting the Policy":

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[133] AANDC, "6.1 Was the design of on-reserve programming consistent with the First Nations housing needs? Could the design reasonably be expected to contribute meaningfully to the desired outcomes?" Evaluation of INAC's On-Reserve Housing Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5 Feb 2013).

> Given the evidence, particularly from all levels of *key*
> *informants*, there is no question that some of the concerns
> raised by First Nations' stakeholders in this evaluation
> about the extent to which the 1996 Policy reflects their
> perspective links directly back to their consistent view that
> the housing policy was never clearly communicated to
> them. While the *Guidelines for the Development of First*
> *Nations Housing Proposals* (...) was distributed, there was
> no document in which the entire policy was articulated.[134]

Many First Nation respondents to the AANDC evaluation noted that the Guidelines were
made available to their community and, in some instances, there was a simple Q&A
session with an AANDC official, and that was the extent to which this policy (again,
based on principles of First Nation control and expertise) was communicated with First
Nations themselves: "They came to the community and made us aware of some of the
programs and activities but in terms of implementing them, really nothing [...] just Q's
and A's - a process where First Nations would ask questions on policies and procedures,"
leading 71% of direct First Nation respondents to conclude that they cannot support the
policy.[135]

Additionally, some government officials suggested that, while the policy did provide
more decision-making control to First Nations, the implementation of the policy
"required more highly complex local policy-making and planning capacity than existed
on most First Nations communities; there was insufficient funding to build capacity; and
the 1996 Policy assumed a homogeneity among First Nations."[136] The evaluation found
in both the design and delivery of the housing policy: "the On-Reserve Housing Policy
was poorly communicated to First Nations. More importantly, the evidence suggests that
the design of the program does not reflect what First Nations would have wanted for their

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[134] AANDC, "6.1.2 Communicating and Supporting the Policy," Evaluation of INAC's On-Reserve Housing
Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5
Feb 2013).
[135] Ibid.
[136] Ibid.

communities."[137] This runs directly counter to the assertion found in the Guidelines, which stated that the approach of the new policy was "the result of extensive consultations with First Nations (...)",[138] as well as the principles of control and expertise upon which the policy was supposedly founded. If the policy does not reflect what Indigenous people want for their communities, nor was it effectively communicated to them, the principles of First Nations' control and expertise are not being implemented in a way that improves either housing or governance in Indigenous communities.

The lack of Indigenous perspective in and communication of the policy has had implications in terms of the creation of community-based housing plans (which is a key tenet of the policy) and in terms of building capacity necessary to create economic development and improve housing on-reserve.

Community housing plans

First Nations were encouraged, through the "Guidelines for the Development of First Nations Housing Proposals" that accompanied the policy, to develop housing policies, programs and plans for their communities, ideally spanning a five-year period. The policies were to determine what programs are available and how to apply for them, how decisions are made and resources allocated, how the programs are managed, and the role of Chief and council and the housing manager (as well as presumably policies for dealing with arrears, tenant selection criteria, etc.). The multi-year housing plans were to be composed of a work plan and a resource plan, the development of which was to enable First Nations to link planned housing activities with training and job creation initiatives.[139] With training plans like these in place, First Nations would be better equipped to seek funding from HRSDC and other sources and lead to increased self-sufficiency within the community. Undertaking these activities of planning and linking housing to job creation was meant to align First Nation housing activities with the principles of "community control and decision making, capacity development/self-

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[137] AANDC, "6. Evaluation Findings – Design and Delivery," Evaluation of INAC's On-Reserve Housing Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5 Feb 2013).
[138] INAC, Guidelines for the Development of First Nations Housing Proposals".
[139] INAC, Guidelines for the Development of First Nations Housing Proposals".

sufficiency, shared responsibility, and improving access to investment," emphasized in the Guidelines.

The difference between the previous housing programs and the ones accompanying the 1996 policy was largely the flexibility that the latter offered by tying housing funds to community housing plans, as opposed to a specific project. Yet, despite this, it is unclear that these plans have benefitted communities by allowing them to plan for multiple years of housing or have improved their ability to link housing to job creation:

> The key policy change introduced in the 1996 On-Reserve Housing Policy was to give First Nations the flexibility to use their housing allocations for construction and renovations and implement improvements to the way they delivered housing assistance in their communities. However, this new-found flexibility did not necessarily lead to substantial improvements in housing conditions.[140]

It remains unclear as to whether these plans even exist or are being utilized in a meaningful way by First Nations:

> Participation in the 1996 Housing Policy did carry with it the obligation for First Nations communities to develop housing plans. However, the current evaluation did not seek to review or verify the existence of these community housing plans and they were never referred to in the key informant interviews or in any discussions about capacity building requirement.

AANDC's 2008 Evaluation of the On-Reserve Housing Policy notes that "according to the questionnaire responses and interviews with housing officials, the situation in the regions with regard to community housing plans varies considerably. In some regions, plans are not being submitted to the regional office, not being update or not being implemented."[141]

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[140] AANDC, "5.4 Have INAC's on-reserve housing policies and programs increased community capacity to manage and administer housing?" Evaluation of INAC's On-Reserve Housing Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5 Feb 2013).

[141] AANDC, "3.3.3 Considerations, Strengths, Limitations," Evaluation of INAC's On-Reserve Housing Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5 Feb 2013).

If the plans are not being used or, in some cases, even created in the community, they obviously will not be used to link housing activities with job creation or to increase capacity in any systematic way. Creating effective linkage with job creation and business development on a reserve, one of the intended outcomes of the policy, was to be achieved by applying the principles of greater First Nation control and expertise through the use of community-based housing plans. This outcome, much like the plans intended to achieve it, has largely not come to pass. Many aspects of the policy were dependent upon community-based, adequately resourced housing plans and, in many cases, these plans aren't being done or utilized. This should no longer be surprising, given the lack of Indigenous perspective in the policy and the haphazard way in which it was communicated to First Nations in the first place.

Community housing plans have the potential to be a useful tool for communities, however the lack of provision for capacity, the lack of clarification on federal roles and responsibilities, the lack of communication and the lack of Indigenous perspective are all key factors in understanding why housing plans did not form the new approach to housing touted in the Guidelines. Further, as described in Chapter 2, this approach has been imposed here on communities from a federal body that has imposed its policies on reserves throughout their history – and often to the detriment of the recipients. The housing plans are also problematic from the perspective of the federal government, as there is a lack of transparency and accountability if AANDC is unable to produce these plans should they be asked for them. To that end, funding agreements are now subject to audit review, whereas the initial policy did not oblige First Nations to inform AANDC on how they spend housing funds.[142]

Lack of institutional support and capacity building

In terms of fulfilling the principles of the policy through its allocated resources, the 2011 AANDC evaluation found:

> There was no provision in the 1996 Policy Guidelines for
> strengthening First Nation capacity (although capacity

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[142] AANDC, "6.1.2 Communicating and Supporting the Policy".

> development is identified as one of the principles along
> with self sufficiency). It was silent on clarifying federal
> responsibilities and improving the delivery and
> coordination of federal programs but spoke at length about
> the need for First Nations to develop local housing policies,
> programs and multi-year housing plans (...). The third
> component was to link the activities with training, job
> creation and business development initiatives. The initial
> discussion paper suggested multi-year funding to
> correspond with the multi-year housing plan but this did
> not translate into reality for most communities.[143]

So, without resources for strengthening capacity, clarity on federal and First Nation roles and responsibilities (discussed below), or multi-year funding to correspond to the requested multi-year planning, the principles of the 1996 policy lacked the institutional support to be realized. This lack of support, particularly the fact that the policy contained no additional funding for capacity building initiatives, goes a long way towards explaining why, thirteen years after the announcement of the policy, capacity in key housing functions is still absent in many communities. The lack of adequate support for capacity building, given how crucial this function is to the success of the policy, indicates that the policy was inherently flawed.

CMHC defines its capacity building activities as facilitating "the acquisition of tools in terms of knowledge, skills, training and resources that will allow First Nations to work towards self-sufficiency in housing, and take on more responsibility for the functioning of their community."[144] Here we can see the emphasis on accruing responsibility, as opposed to overreliance on government – this ignores the history laid out in Chapter 2 of creating the conditions whereby reliance would be necessary. The 1996 policy mandates improved capacity but provides no additional supports to build that capacity and ignores its own accountability for the on-reserve housing crisis by emphasizing the need for First Nations to assume responsibility for the "functioning" of their community without built capacity. As such, these efforts do not represent a sincere attempt to reverse earlier

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[143] AANDC, "6.1.1 Evolution of 1996 On-Reserve Housing Policy".
[144] CMHC, "Aboriginal Capacity Development," On First Nations, http://www.cmhc.ca/en/ab/onre/onre_003.cfm (accessed 5 Feb 2013).

colonial policy; rather they actively reproduce it. First Nation communities are encouraged to resemble settler communities, where individual homeowners and renters are responsible for both the financial upkeep and maintenance of their homes and government involvement is offered as a last resort. This echoes the analysis of Chapter 2, where colonial policy worked to construct Western-style homes on Indigenous reserves in order to correct what they perceived to be wrong with that society as a whole. The 1996 policy continues that work by emphasizing the need for Indigenous communities to, once again, look to settlers for models of how to build homes and organize their communities.

In perhaps the most stark finding of the 2011 Evaluation, AANDC reported regarding its capacity development support that: "Thirteen years after the introduction of the policy, First Nations are still asking for help to build capacity. There is little evidence that the efforts of AANDC have yielded positive results in this regard. This evaluation found no evidence of a strategic and coordinated approach to capacity building between AANDC and CMHC."[145] As expressed by a First Nation respondent to AANDC's evaluation,

> The primary fault of existing capacity development
> initiatives is that they are reactive, that there is no realistic
> assessment of what the community's capacity needs are.
> Most activities are one day workshops when longer training
> sessions are required, there is no overall training plan in
> place, when nothing is tailored to the needs of each First
> Nation and there is not enough funding."[146]

Even if capacity requirements have not been well articulated, the evaluation notes that capacity building in financial literacy, economic development, property management, housing related trades training, and etc. could be assumed to be required. A similar issue was raised with respect to the lack of economic development associated with housing activities whereby the major fault seems to have been a lack of "situational analysis" – to identify the training needs of a community and begin to address those needs in order to create economic development and employment opportunities. AANDC did appear to

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[145] AANDC, "5.4 Have INAC's on-reserve housing policies and programs increased community capacity to manage and administer housing?"
[146] Ibid.

understand that such development requires a significant amount of capacity, but capacity building has not been meaningfully engaged through the policy. In terms of economic development through housing activities, the evaluation states that "The starting point should have emerged from the process of developing a community plan,"[147] returning to the fact that much in the 1996 policy depended on communities developing housing plans – and these weren't developed in the way that their government funders may have anticipated.

Fiscal crisis and lack of information

The 2011 AANDC evaluation acknowledges that AANDC had little data on or understanding of the level and type of housing need on-reserve when the 1996 policy was formed. A footnote attached to the overview section of the evaluation reveals that "there are limited data which describe what level of need existed for on-reserve housing in 1996."[148] The decision was made to overhaul existing programs on-reserve because of an acknowledged need for improved housing, yet no comprehensive study of the extent of and type of need that existed at the time was undertaken. The only information available comes from the 2008 evaluation of the 1996 policy, which indicated that, in 1996, 36% of First Nations lived in dwellings in need of major repair and only 52% of the existing on-reserves houses were considered adequate, that is not in need of major renovation or replacement and with the basic plumbing facilities.[149] The lack of comprehensive information about the level of need in 1996 corresponds to the ad hoc manner in which the policy itself was developed, and its function as a response to the fiscal deficit facing the federal government at that time.

As the history of on-reserve housing policy indicated, the 1996 policy responded to a fiscal crisis at the federal level. The federal government was therefore responding to that crisis when it created the new policy and not, at least not primarily, to the need to

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[147] AANDC, "5.4.2 Key capacity: Economic Development and Training linked to housing," Evaluation of INAC's On-Reserve Housing Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5 Feb 2013).

[148] AANDC, "Footnotes," Evaluation of INAC's On-Reserve Housing Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5 Feb 2013).

[149] Ibid.

overhaul or address on-reserve housing in a meaningful way. This analysis allows us to understand how, although there were internal working groups that brought some of the housing problems to the forefront during the development of the policy, these weren't addressed in the policy in a significant way. The 1996 policy failed in its use of the principles of First Nations' control, expertise and shared responsibilities in order to achieve its intended outcomes for on-reserve housing. The policy failed in its most basic aim: it is failing to even provide people with adequate shelter and protect their health. Many houses are ill-suited to the local environment (cold or wet climates in particular), are severely overcrowded (creating further health issues and concerns), and are consuming resources and funding in a cycle that this policy seems to only perpetuate.

3.5 Co-opting control and shared responsibilities

The principle of First Nations' control over housing was meant to lead to the intended outcomes of protection and extension of dwelling life, construction of affordable new housing, promotion of individual pride and responsibility and perhaps even effective linkage with job creation. As revealed in the 2011 AANDC evaluation: "A reasonable expectation of the 1996 On-Reserve Housing Policy was that, with the funding increasingly in their hands, First Nations would find a way to create economic development and employment opportunities related to construction, maintenance and renovation."[150] However, it is not clear how, exactly, communities were expected to "find a way" to create economic development, particularly in the absence of capacity development (as the evaluation does admit).

The capacity required to fulfill this principle has largely gone unsupported and unfunded, with the result that a principle of control without capacity has translated into increasing liability for First Nation band councils. Nowhere is this more evident than in the compliance of on-reserve housing construction with the National Building Code (the Code). All construction, renovation, and maintenance of housing units on reserve is supposed to meet this standard, at a minimum, and the 2008 AANDC Evaluation states

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[150] AANDC, "5.4.2 Key capacity: Economic Development and Training linked to housing".

that "The Government of Canada's position is that the First Nation is responsible for ensuring that all housing units on reserves meet the National Building Code as a minimum and that inspections are conducted by qualified inspectors at various stages."[151] Compliance with the Code is meant to ensure the health and safety of the occupants, as well as extend the useful life of houses, however placing responsibility for ensuring the Code on the shoulders of band councils without accompanying capacity development has resulted in many homes not being built to Code.[152] In response to this problem, the 2011 evaluation recommended that AANDC develop a strategic approach to advance capacity building initiatives in order to (among other things) achieve the minimum standards of the National Building Code. The department concurred with this recommendation and, as of 2012, there is now a caveat in the application for a Ministerial Loan Guarantee whereby First Nations must confirm that the project will be inspected by qualified inspectors who confirm that it will meet or exceed the National Building Code standards. Records of this compliance must be kept by the First Nation for the duration of the MLG.[153] Perhaps in recognition of the amount of capacity that is required to enforce these standards, AANDC states:

> The approach has been taken to support and encourage compliance rather than enforce it. INAC provides funding to Tribal Councils and First Nations technical services to provide technical support, including house inspections. (...) Evaluators were not able to determine what portion of First Nations has an adequate inspection regime. INAC's regional offices do not track inspections consistently.[154]

AANDC is providing support by funding some inspection services, however it is the First Nation itself which is signing off on insurance certificates for the houses being built, thus

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[151] AANDC, Evaluation of the 1996 On-Reserve Housing Policy, 22.

[152] As per the 2008 INAC evaluation: "The Auditor General reported in 2003 that there was little assurance that all new construction that INAC and CMHC funded met the National Building Code standards. In a follow up report (2006), however, based on an examination of files in two regions, the Auditor General found that the appropriate codes and standards were being met including those in the National Building Code." AANDC, Evaluation of the 1996 On-Reserve Housing Policy, 22.

[153] AANDC, "Management Response/Action Plan," Evaluation of INAC's On-Reserve Housing Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5 Feb 2013).

[154] AANDC, Evaluation of the 1996 On-Reserve Housing Policy, 22.

should an accident occur, it is the band council, and not the federal government despite its role as funder, that is liable for the damage or loss of life accrued.

The principle of First Nations control is thus an insidious one: First Nations have been arguing that control over housing should be in the hands of the community and the 1996 policy ostensibly seems to provide just that. Yet, as the above example illustrates, increased control has actually translated into increased liability for band councils and the housing remains substandard. This is a way of co-opting the means of resistance: it appears as though First Nations are getting what they've been asking for in terms of increasing community control over housing. However without corresponding capacity and support, there is no way for First Nations to improve their housing – they are now liable for it and have less recourse in terms of resisting the colonial relationship with the federal government.

Shared responsibilities was, similarly, one of the principles guiding the 1996 policy, however all stakeholders have admitted to a lack of clarity as to just what shared responsibility for housing means. The Auditor General's 2003 report "called for greater clarity on the roles and responsibilities of the two federal entities [AANDC and CMHC] and greater clarity from each as to the objectives of their interventions."[155] Further, the Auditor General noted in the same report that there is,

> little consensus among main parties (INAC, CMHC, First Nations, their organizations like tribal councils and the families that live in the houses) as to what they believe their respective roles and responsibilities are in addressing the housing needs of people living on reserve; and that INAC and CMHC have not defined, jointly or separately, what the federal assistance is intended to achieve in terms of addressing the critical housing shortage, nor have they defined a time frame in which to achieve it. Further, the

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[155] OAG, "Chapter 6 – Federal Government Support to First Nations – Housing on Reserves," *2003 April Report of the Auditor General of Canada* (OAG Reports to Parliament, April 2003).

organizations are not always clear about their respective roles.[156]

While the 2006 report of the Auditor General noted better integration of housing programs,[157] there remains a fundamental lack of consensus as to whom, exactly, is responsible for housing on-reserve, what the intended outcome for housing on-reserve is, or how that goal is to be achieved. So, there is confusion, primarily among First Nations, as to the role of the two departments involved in housing (as well as what programs and services are available from each and how to access them), which results in concern that there is a duplication of administrative effort caused by housing programs from two separate agencies.[158] Additionally, the concept of *shared* responsibility remains vague and undefined. The consensus from stakeholders interviewed for the 2011 AANDC evaluation is that the federal government does have a role to play in on-reserve housing – primarily that of a funder.[159] The 1996 policy did not clear up this question of the role of the federal government in terms of on-reserve housing, rather it used the principle of shared responsibilities in order to lessen the responsibility of federal funders for improving housing.

These principles are very much in keeping with previous Indian policy that has focused on Indigenous people taken on an ethic of individual responsibility (as we saw in Chapter 2, the *Indian Act* itself had as its goal civilizing the Indian so as to make him capable of looking after his own interests.). Given the lack of funding for capacity and the creation of the 1996 policy as a response to a fiscal crisis, the principles of control over housing and shared responsibilities are a means of removing the burden of responsibility for on-reserve housing from the shoulders of the federal government.

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[156] AANDC, "4.1.3 Is providing on-reserve housing a legitimate role for INAC?" Evaluation of INAC's On-Reserve Housing Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5 Feb 2013).

[157] Ibid. The OAG also reported in 2006 that a management control framework that defines respective roles and responsibilities for the on-reserve housing shortage has been developed, however there is ongoing confusion as to those roles and responsibilities primarily among First Nations (i.e. the intended recipients). OAG, "Chapter 6 – Federal Government Support to First Nations – Housing on Reserves".

[158] AANDC, "4.1.3 Is providing on-reserve housing a legitimate role for INAC?"

[159] Ibid. See also AANDC, "5.3 How has existing governance impacted on-reserve housing outcomes?" Evaluation of INAC's On-Reserve Housing Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5 Feb 2013).

3.6 Inadequacy of the policy

This chapter has argued that federal housing policy isn't improving the housing situation on-reserve by any significant measure (and indeed successive federal evaluations of on-reserve housing programs show a continued decline in quality of housing stock) and is failing to meet its own goals. The crucial point is that even if the 1996 policy had accomplished what it is designed to do, this would still not have resolved the housing crisis on-reserve. This is because the policy is designed to relieve the federal government of its obligation to Indigenous peoples, while maintaining a colonial relationship of inequality. The federal government seeks, through its housing policy, to hand off control over housing to First Nation band councils, but largely without accompanying capacity development or housing supports, and certainly without rethinking the economic and subjective relationship between the two groups.[160]

The Auditor General reached a similar conclusion in 2011; as per that report, "In our view, many of the problems facing First Nations go deeper than the existing programs' lack of efficiency and effectiveness. We believe that structural impediments severely limit the delivery of public services of First Nations communities and hinder improvements in living conditions on reserves."[161] These impediments are lack of clarity about service levels (i.e., the lack of a clear objective for on-reserve housing and timeframe for which to achieve it), lack of a legislative base (i.e. the federal government's ambiguous commitment to provide services based on a fiduciary or historic responsibility as opposed to a legislative mandate to do so – which can lead to ad hoc policy as seen in the case of on-reserve housing), lack of an appropriate funding mechanism, and lack of organization to support local delivery.[162] The point here is that, ultimately, even if the policy were working, it wouldn't be addressing core issues of

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[160] Arguably, the Kelowna Accord Roundtables of 2005 were a step in the direction of questioning this relationship; this is taken up in the final chapter.

[161] OAG, "Chapter 4 – Programs for First Nations on Reserve," 2.

[162] For further analysis of these structural impediments as they relate to the housing crisis in Attawapiskat, please see Vowel, "Dealing with comments about Attawapiskat".

governance which have created structural impediments to improving on-reserve housing – and it was not designed to do so.

Instead, the 1996 policy is geared toward assimilation: through the principles of First Nation control and expertise and shared responsibilities, subjects are expected to take on an ethic of individual responsibility. Housing is seen as a market commodity and is the responsibility of the individual homeowner or tenant, effectively ignoring the history of dispossession pursued through government policy. By aiming to disinvest itself of the problem of First Nations housing by promoting self-sufficiency without accompanying capacity support and without addressing inequality, the federal government continues the colonial project through the 1996 On-Reserve Housing Policy.

Thus Canada has an on-reserve housing policy that seeks to continue the colonial project: to assimilate Indigenous peoples into Western-styles homes and encourages self-sufficiency as means of proving that assimilation. Federal policy seeks to hand off control over housing to First Nation band councils under the guise of promoting local governance (prescribing agency) but without the necessary capacity to ensure adequate, suitable homes for Indigenous peoples and without challenging the underlying inequality that exists (denying agency). On-reserve housing remains part of and constitutive of a larger Indian policy aimed at continuing to lay claim to the territory of Canada and, necessarily, assimilating Indigenous peoples whose very existence threatens the legitimacy of that claim. The federal government, while professing its desire to assist Indigenous peoples in realizing their ambitions for self-determination, has instead utilized housing as a means of co-opting self-determination language – including principles of First Nations' control and expertise, increased decision making and shared responsibilities, yet using these to offload responsibility to band councils while maintaining control of land and resources and the ability to govern these.

This analysis allows us to understand that it is not that social housing is "failing" – rather, it is that the social housing system in its present incarnation is not set up to address core issues of governance (and is itself a relic of colonial processes and resistance to these processes). We end up in a situation where the only options appear to be a social housing

system that doesn't work or a private property scenario, to which we turn in the next chapter. Chapter 4 will also take up the final principle of the 1996 policy, that of increased access to private sector investment. But we fail to ask ourselves *why* the social housing system doesn't work (or, rather, what is it set up to do) as well as why private property appears to be the solution. Crucially, we fail to consider what we want housing to be and why the problem of on-reserve housing is being framed as a problem of land tenure or of band council corruption, as seen in Chapter 1. The final chapter of this thesis will challenge us to consider what it is that Indigenous people want from their housing. Arising as it did out of a period of financial crisis, and intended to aid in capping the level of funding being provided for social services on-reserve, the 1996 policy was in no uncertain terms simply not intended to support a housing system that could foster cultural renewal or restoration of governance to communities. Governance, thus, is not being addressed through federal housing policy – despite increasing rhetoric surrounding Indigenous capacity and control over housing. Herein lies further danger, as it is through this rhetoric at a policy level that federal policy is beginning to co-opt the means of resistance – prescribing agency in the form of homeownership and a language of self-sufficiency – and denying agency by not being willing to revisit the economic imbalance between Indigenous and settler populations created through colonialism.

Chapter 4 – Assessing the trend toward homeownership

4.1 The homeownership trend

The final policy principle of the 1996 On-Reserve Housing Policy is increased access to private sector investment. This approach has gained traction in recent years with federal programs and initiatives dedicated to promoting homeownership on-reserve, culminating in a proposed "First Nations Property Ownership" act currently with the federal finance minister.[163] The policy trend toward increasing homeownership and privatizing reserve land is presented by its proponents as a solution to the housing crisis that federal policy can't fix:

> There will never be adequate housing on Indian reserves as long as most homes are built and owned by government. Only a housing market, based on a combination of rental and home ownership as exists in the rest of Canada, can balance supply and demand and keep the housing stock in good repair.[164] In short, it is a question of property rights (...).

In many ways this is the most salient of the policy's principles and the one with the most potential to align First Nations' housing with housing one would find off-reserve. This chapter argues that there are important consequences for both housing and First Nation communities of such an approach, and these are not being articulated in the promotion of homeownership on-reserve.

Increased access to private sector investment as the final principle of the 1996 policy is in keeping with the policy's emphasis on First Nation self-sufficiency with respect to housing and with managing the public sector debt. To that end, the 1996 federal budget devolved responsibility for social housing to the provinces and territories and

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[163] "First Nations property ownership proposal goes to Flaherty," *Kamloops Daily News*, Dec 15, 2011. http://www.kamloopsnews.ca/article/20111215/KAMLOOPS0101/111219870/-1/kamloops01/first-nations-property-ownership-proposal-goes-to-flaherty.

[164] Tom Flanagan, Christopher Alcantara and André LeDressay, *Beyond the Indian Act*, (Montreal & Kingston: McGill-Queen's University Press, 2010), 6-7.

substantially reduced its provincial transfers for social programs.[165] How has this principle of increased access to private sector investment been applied in programs and initiatives? AANDC made commitments to partner with the AFN and CMHC to explore approaches to private sector investment in 1998 and 1999,[166] but it was not until more recently that the push toward the private and away from the public sector has been pursued through dedicated housing initiatives on-reserve.

This emphasis on decreased reliance on federal government programming has been coupled with an emphasis on the private sector and homeownership on-reserve. This push has manifested in a number of federal program and initiatives in recent years. To facilitate on-reserve homeownership, CMHC currently offers several different financing options, including loan insurance without a Ministerial Loan Guarantee (MLG). This is a pilot project, launched in 2005, whereby a First Nation sets up a minimum $150,000 trust to provide security for the loan. Under the pilot project it is the band council (or the trust) who backstops the loan – this differs from the MLG whereby it is the federal government who signs a guarantee that they will backstop the loan in the event of a default (see Fig. 1, Appendix A). While a loan is ultimately secured by AANDC under the MLG program, in practice it is the band council who faces repercussions should financial obligations remain unmet. For example, repercussions for defaulting on loans could see the First Nation placed in a co-management or third party management structure by AANDC. Arguably, this new loan insurance product simply removes the MLG and makes the First Nation more directly responsible for their housing loans. From the federal perspective, however, removing the MLG is a clear move to devolve responsibility and liability for on-reserve housing from the federal government to band councils. The 2011 Evaluation noted that the pilot program has been operating since about 2005, in fewer than five communities,[167] belying the relevance of this product for First Nations.

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[165] Cameron and Simeon, "Intergovernmental Relations in Canada: The Emergence of Collaborative Federalism," 54.

[166] AANDC, "4.1.2 Are on-reserve housing initiatives aligned with federal and INAC priorities?" Evaluation of INAC's On-Reserve Housing Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5 Feb 2013).

[167] AANDC, "7.3 Are there alternative approaches which could achieve program outcomes more effectively?" Evaluation of INAC's On-Reserve Housing Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5 Feb 2013).

 Perhaps the most visible indication of a shift toward privatization is the First Nations Market Housing Fund (FNMHF), announced in 2007. Designed to increase homeownership on-reserve, this is a $300 million fund intended to provide a backstop for private sector loans and is run as a non-profit organization with a Board of Trustees. While the day-to-day activities of the fund remain managed by CMHC, it is anticipated that this will become a stand-alone organization governed by trustees, with few ties to the federal government.[168] Again, the federal government is decreasing its role in on-reserve housing and actively opening up the sector to private investment through the 1996 policy and the creation of this Fund. But in so doing, the responsibilities of band councils are multiplied and, as seen in the previous chapter, there is no similar emphasis on capacity building or incorporating Indigenous perspective in housing.

As of January 2013, the FNMHF website lists twenty-two First Nations as 'participating' in the Fund, meaning that they have been approved by the Fund. [169] Once approved, individual members of that First Nation are able to apply for a housing loan from the lender (e.g. bank) and make their mortgage payments as would occur off-reserve (with no MLG). If the borrower is unable to make the payments, the band council is expected to step in and repay the lender. The Fund only becomes involved if both the borrower and the band council are unable to repay the loan, in which case the lender can turn to the Fund for repayment. The First Nation would then lose access to additional credit from the Fund until the default amount is repaid. Even in the event of a default on the part of both the individual borrower and the band council itself, it is not clear that the Fund would be obliged to repay the full amount to the lender (and the First Nation would have to repay the default amount in full regardless in order to continue to participate in the Fund).[170]

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[168] FNMHF, "About the Fund," FNMHF, http://www.fnmhf.ca/english/about/index.html (accessed 5 Feb 2013).

[169] FNMHF, "Participating First Nations," FNMHF, http://www.fnmhf.ca/english/participating_fn/index.html (accessed 5 Feb 2013).

[170] AANDC's Frequently Asked Questions on the subject are ambiguous: "First Nations Market Housing Fund Q7. Will the fund pay for 100 per cent of the lender's loss? The qualified First Nation will negotiate an arrangement with a lender or lenders to allow its members to obtain a housing loan. The amount the First Nation must repay will be set out in its arrangements with the lender or lenders." AANDC, Archived –

Furthermore, it is important to note that the qualification process to be approved by the Fund is an onerous one and requires First Nations to demonstrate "an ability to manage their finances and loans." [171] Those communities that do not meet the fund's criteria will continue to have access to federal social housing programs and the Fund offers to "work with these First Nations to help them strengthen the way they manage housing and finances in their communities so that they can meet the fund criteria."[172] So while the FNMHF appears to be an innovative new option for First Nations to access market housing in a way that limits risk to both lenders and First Nations, in reality it is highly unlikely that the Fund would end up paying out a defaulted mortgage and it is much more probable that the band council would be required to take on the debt. Given the stringent qualification process, it is furthermore unlikely that this tool will do more than benefit those First Nations already in a position to access homeownership. At the very least, the Fund is not offering an innovative solution to those who may have the most urgent housing needs. The FNMHF is part of a larger policy emphasis on market-based housing and a trend toward promotion of homeownership on-reserve that began with the announcement of the new on-reserve housing policy in 1996.

4.2 First Nations property ownership initiative

Proposing to move away from federally funded social housing is not a radical departure from Canadian housing policy – rather it is in keeping with the ongoing trend towards devolution in Canadian housing. An analysis of federal housing policy in Canada reveals the marked policy devolution that has occurred since the postwar period and reached its culmination in 1996, when the Conservative government announced its withdrawal from social housing delivery:

> In 1986, the federal Conservative government embarked on
> a process of policy devolution that significantly changed
> the manner in which social housing is provided in Canada.
> This was the first of several policy shifts that led to the

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Frequently Asked Questions – First Nations On-Reserve Housing – Indian and Northern Affairs Canada, http://www.aadnc-aandc.gc.ca/aiarch/mr/nr/j-a2007/2-2872-faq-eng.asp (accessed 5 Feb 2013).

[171] Ibid. First Nations Market Housing Fund Q3.

[172] Ibid. First Nations Market Housing Fund Q9.

> discontinuation of the federal government's direct role in
> delivering any form of subsidized housing program and to
> the transfer of operating authority for housing programs to
> the provinces and territories. The result is that the federal
> government has vacated this policy area; and the leadership
> role has devolved to lower levels of government.[173]

And, in fact, encouraging homeownership on-reserve is not a new move for the federal government either: there has been an explicit emphasis on homeownership since the 1996 housing policy, culminating in the $300 million market housing fund announced in 2007, as was just described. What we are seeing at the present moment is proposed legislation that would change the *Indian Act* to allow for fee simple individual ownership on reserve land. As described in Chapters 1 and 2, reserve land is held in trust by the Crown for the use and benefit of First Nations, thus a communal property scenario is currently in place on-reserve. The proposal to reverse such communal property ownership is called the "First Nations Property Ownership Initiative" and the act it advocates is, as mentioned, being reviewed by the federal finance minister. The March 2012 federal budget came out in support of such an initiative:

> Some First Nations have expressed an interest in exploring
> the possibility of legislation that would allow private
> property ownership within current reserve boundaries.
> Economic Action Plan 2012 announces the Government's
> intent to explore with interested First Nations the option of
> moving forward with legislation that would allow for
> this.[174]

This proposal is thus moving quickly in the federal policy arena – but a change of land tenure has implications for both First Nations and housing.

The arguments in favour of privatizing reserve land are being put forth most prominently by former advisor to Stephen Harper, Tom Flanagan, and by First Nations Tax

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[173] Barbara Wake Carroll and Ruth J.E. Jones, "The Road to Innovation, Convergence or Inertia: Devolution in Housing Policy in Canada," *Canadian Public Policy* 26, no.3 (2000): 277-278.

[174] James M. Flaherty, "Investing in Communities," *Jobs, Growth, and Long-Term Prosperity: Economic Action Plan 2012* (Ottawa: Government of Canada, 2012), 165.

Commission Chief commissioner, Manny Jules. Indeed Flanagan, in a 2010 co-authored book, *Beyond the Indian Act*, puts forth the concept of a First Nations' property ownership act as the means by which the economic situation of First Nations' communities can be improved. Flanagan and his co-authors, Christopher Alcantara and André LeDressay, argue that the best and indeed only means of improving living conditions on-reserve is through the creation of a regime of individual property rights, similar to the rest of Canada. They link their argument quite explicitly to housing by locating housing as the most visible benefit of a private property regime: "Its greatest benefits will fall upon ordinary First Nations people, especially through the improvement of housing on reserves."[175] The initiative is now formally being run by the First Nations Tax Commission (www.fnpo.ca). There are compelling advantages to this proposal:

- It offers to grant legal title to the land to the First Nation, (as opposed to being held by the Crown, this change would require the majority support of the First Nation's members);

- First Nations would be able to transfer title to part or all of this land in fee simple to individuals without any loss of their jurisdiction over the land despite any change in ownership;

- The act is supposedly going to be a voluntary one whereby First Nations can opt in when they choose; and

- Safeguards will be included to "preserve the First Nation character of the land."[176]

The benefits claimed in terms of housing are that it would allow for easier access to mortgage financing (as the reserve land could now be used as a security) and, through this mechanism, improve housing on-reserve. Beyond housing, however, the benefits of such an act are seemingly limitless:

> With a stroke of a pen, First Nations land values could rise to those prevailing in the rest of Canada. It would recognize underlying First Nations title, and thus formally bring First Nations governments into the federation. It could increase home equity for homeowners on First Nations lands so they

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[175] Flanagan, Alcantara and LeDressay, *Beyond the Indian Act*, 6.
[176] FNPO, "Proposal," First Nations Property Ownership Initiative, http://www.fnpo.ca/Proposal.aspx (accessed 5 Feb 2013).

can be more entrepreneurial, plan for their retirement and
bequeath their wealth *just like other Canadians*. (...) It
would provide market incentives for improved financial
management and for completing self-government and land-
claim negotiations. (Emphasis mine).[177]

Thus Flanagan and his co-authors, as well as the advocates of a property ownership act,
locate the source of the impoverished living conditions in the communal property rights
of reserve lands and, in so doing, call upon the work of Hernando de Soto. In his book,
The Mystery of Capital, de Soto claims: 'Without formal property, no matter how many
assets they accumulate or how hard they work, most people will not be able to prosper in
a capitalist society.'[178] De Soto believes that the difference between the West and the rest
of the world, in terms of prospering in a capitalist system, has been the process by which
the West is able to fix the economic potential of an asset in such a way that it can be
converted into capital. This process is, for de Soto, the integration of all forms of property
into a unified system supported by both legal and political apparatuses.[179] What is
needed, according to both de Soto and Flanagan, is the creation of a legal property rights
system that represents the assets of individuals 'in a manner that makes them widely
transferable and fungible, that allows them to be encumbered and permits their owners to
be held accountable.'[180] De Soto directs the Institute for Liberty and Democracy (ILD) in
Peru and has been widely influential, carrying out titling programs for the World Bank
and promoted by the International Monetary Fund.[181]

The problem for de Soto is that wealth that is held by the poor largely exists outside the
formal economy in forms that cannot enter the market and therefore cannot be invested to
create further wealth (used as collateral to borrow funds). This "dead" wealth that is in
the hands of the poor consists principally of land and housing. Mitchell (2007) notes that
The Mystery of Capital offers no advice for how assets 'outside' the market can turn into
financial prosperity within – there is no clear evidence that people will use their houses as
collateral for loans in order to get credit to launch a business and stimulate economic

[177] Flanagan, Alcantara and LeDressay, *Beyond the Indian Act*, 161.
[178] Hernando de Soto, *The Mystery of Capital* (New York: Basic Books, 2000), 159.
[179] Ibid., 46.
[180] Ibid., 210-211.
[181] Timothy Mitchell, "The properties of markets," in *Do economists make markets?*, ed. D. MacKenzie, F. Muniesa, and L. Siu (Princeton, NJ: Princeton University Press, 2007), 251.

growth.[182] In fact, a majority of households in the West are not in a position to use their home as collateral for a business loan because the majority of homes are mortgaged and not owned outright and thus credit cards are often used instead.

Mitchell uses a case study of property reform in Egypt to demonstrate that, rather than creating "live" capital to address the problem of impoverished living conditions, the "creation of formal legal title and property registration becomes a machinery for transferring property from small owners and concentrating it into larger and larger hands."[183] The rights of property owners increased, but this meant an increase in rent paid by tenant farmers whose income then declined. Furthermore, the value of the land increased exponentially – to be expected under these reforms, but most people can't sell their property, since that would leave them homeless, and the need to buy another property would negate any gain. Mitchell points out that:

> Only those holding property not for their own needs but for speculation would benefit. Likewise (...), only wealthy owners could take the risk of using their dwelling as collateral for a loan, and turn its increased value into credit for investment. Over time, titling leads to the concentration of property in the hands of those able to purchase it at the higher values it now commands, and it creates speculators, who also benefit from the opportunities for income from the rent that such property now offers.[184]

The result is a concentration of property in the hands of large owners and speculators who benefit immediately from the property reform. Smaller property owners see no benefit from the increased value of the land and a transfer of wealth occurs: "The gains of large owners and speculators are paid for by future owners, who face the prospect of paying increasing amounts for housing."[185]

Rather than benefiting from being able to use property as collateral for loans, there seems to be no evidence that the ILD's titling programs, changing ownership status, carried out

[182] Mitchell, "The properties of markets," 254.
[183] Ibid., 259.
[184] Ibid., 262.
[185] Ibid.

in de Soto's native Peru affected credit: "The titling program the ILD itself devised and managed in Peru, the largest to date, demonstrated this clearly. Four separate studies of the program found that it had no discernible effect on the supply of business credit."[186] In fact, Mitchell suggests that it serves to deepen pre-existing inequalities; women may lose claims and status they had under an informal system and titling programs often favour those with political connections rather than the land rights of vulnerable groups. This leads Mitchell to conclude: "Rather than a problem of transferring assets from outside to inside the boundary, rearrangements of power, inequality and poverty are at stake."[187]

Furthermore, Mitchell points out in the case of Egyptian property reform that the lack of private property ownership is not because such mechanisms were unknown or not 'extended' to Egyptians, but rather were in part the outcome of resistance to such dispossession.[188] This finds resonance in the context of Indigenous peoples in Canada, who have resisted attempts to extend property ownership mechanisms through location tickets and who have a communal land tenure system in part because of that resistance to dispossession.

In addition to the fact that these property reforms tend to make housing less affordable for the poor, benefitting speculators and concentrating power instead, there is continuing absence of any reliable evidence that de Soto's ideas work.[189] My point here is not so much to apply this analysis in the context of Indigenous reserves in Canada, but rather to draw attention to the uncritical way they are being applied in this context. In addition to the concern that these largely unsuccessful reforms are being applied uncritically, how is the privatization argument framing the problem facing First Nations and their housing, and what are the implications of such a frame?

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[186] Mitchell, "The properties of markets," 260.
[187] Ibid., 260.
[188] Ibid., 253-254.
[189] Ibid., 261. See also: "For the last two decades, a variety of international organizations – notably the World Bank – have sought to reduce poverty and increase economic productivity in the global South through projects designed to strengthen private property rights and increase access to formal credit. Such work has rarely been successful in the way that Flanagan and Alcantara claim." Jessica Dempsey, Kevin Gould and Juanita Sundberg, "Changing Land Tenure, Defining Subjects: Neo-Liberalism and Property Regimes on Native Reserves," in *Rethinking the Great White North*, ed. Andrew Baldwin, Laura Cameron, and Audrey Kobayashi (Vancouver: UBC Press, 2011), 245.

4.3 Implications of privatization

The property ownership proposal makes a number of assumptions about what the problem facing First Nations is, and thus what problem the proposal is going to solve. The First Nations Property Ownership Initiative as a remedy behaves as if the lack of private property is the reason First Nations face poverty and poor living conditions. This divorces the issues from their historical context of colonialism and systematic dispossession of First Nations. The "problem" of housing in this context is simply that First Nations can't put up their land as collateral and therefore often can't access credit or a mortgage without cumbersome bureaucratic regulations (e.g. The MLG process, criticized by Alcantara for its inefficiency).[190] As was the case with earlier colonial policy, in this sense First Nations are different from settlers: have different investment opportunities, operate in a different land tenure system, and it is this difference that must be reconciled and brought into line with how settlers live. The "answer" then is to create a private property regime on-reserve, facilitate mortgage loan financing, and "solve" the housing crisis. In a move synonymous with earlier colonial policy that dictated living in Western-style homes as a means of civilizing and proving virtue, the answer is to organize First Nations like "us" (i.e., settlers) and attempt to ensure they assimilate. Privatization discourse views the on-reserve housing crisis as an economic problem, rooted in the inability of First Nations to own houses. As such, the problem is located as a lack of individual property rights creating barriers to financing.

But what are the implications for First Nations of accepting such an understanding of the problem they face? Framing the problem as one of a lack of integration into private land tenure ignores an entire history of systematic dispossession of land; it ignores the fact that control over the community, over the way people govern themselves, has been systemically removed in the name of gaining access to land. This framing also ignores the historic resistance to this dispossession, which has shaped the current situation. The on-reserve housing system and the communal land tenure from which it arises are the

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[190] Christopher Alcantara, "Certificates of Possession and First Nations Housing: A case study of the Six Nations Housing Program," *Canadian Journal of Law and Society* 20, no.2 (2005): 196.

result of that push and pull, much as it is in Mitchell's example of Egypt. Furthermore, Chapter 2 of this thesis pointed out that this removal was pursued deliberately and intentionally through Indian policy throughout Canada's history, and, ironically, housing itself has been a significant site of this removal of governance.

Housing, as we saw in Chapter 2, is intimately connected to both the economic aspect of colonization, as it creates a relationship to the land that is critical to the exploitation of resources so important to the colonizers, and to the subjective aspect of colonization, because of the ability of housing to render Indigenous society more aligned with that of the colonizers. Nowhere is this more apparent than in the way that homeownership creates a good economic subject of its Indigenous inhabitants – you have to make a monthly mortgage payment or your land can be re-possessed, thus tying you to the wage labour economy – and owning your own home represents a new economic relationship with the land. If location tickets were the means by which Indigenous people could enfranchise and become civilized at the time of contact, then owning property in fee simple is surely the height of proving one is worthy of citizenship through integrating into the market economy. The federal move toward privatization embodies many of these same assumptions: that Indigenous people need to advance to a higher level of civilization and that this advancement can be proven by taking on the values of the dominant culture, including an ethic of individual responsibility and a relationship to the land that is dominated by private property. Such a move (toward privatization) is thus potentially quite problematic for First Nations. It is a continuation of an assimilationist colonial agenda that works to create a relationship to the land that resonates with the culture of the colonizer and has potential to alter land-based governance practices by changing that relationship to the land. This change in housing and concurrent change in relationship to the land may reverberate more broadly across the community, if it is seeking to alter governance practices that are based on the land.

There are implications for self-determination of the policy trajectory toward homeownership; that is, for the aspiration of Indigenous communities to articulate their own futures. This policy move toward increasing privatization on-reserve (and possible

implementation of a First Nations property ownership act) may circumscribe efforts to achieve self-determination in particular ways, most significantly if privatization is implemented without concurrent or prior restoration of governance to communities.

Privatizing reserve land without renewing or restoring governance asks First Nations to accept the mechanisms of the dominant culture: this would mean integrating fully into the market economy and Western liberal state. Rather than articulating a future that resonates within the cultural context of the community, self-determination here becomes about succeeding in the marketplace. Privatization discourse co-opts terms like self-determination, ultimately reducing such claims to a set of market based rights and options. The removal of stipulations found in the *Indian Act* that are argued to hinder economic development is championed as a way for First Nations to throw off the colonial yoke and get out from under the *Indian Act*. Such a framing ignores the fact that this act has "always had as its ultimate purpose the elimination of the Indian's special status. The means to achieve this goal was by training, that is, 'civilizing,' the Indian in European values, to make him capable of looking after his own interests."[191] First Nation *individuals* are, through this proposal, invited to "become *equal* with other Canadians by becoming property-owning, entrepreneurial citizens"[192] in largely the same fashion they were invited to become citizens of the colony by applying for a location ticket. Canadian Indian policy has always had as its goals assimilation and civilization – and these goals, as we saw in Chapter 2, have been met with resistance by Indigenous peoples who recognized the enormity of what is at stake in the quest to dispossess and assimilate them (that is, their identities, political claims).

But what of the claim that the move toward private property is actually removing the governmental interference that has hindered the ability of Indigenous people to self-determine through the stranglehold of the *Indian Act*? Flanagan, in *Beyond the Indian Act*, takes pains to dismiss any notions of Indigenous property being held communally as

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[191] Tobias, "Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy," 127.
[192] Dempsey, Gould and Sundberg, "Changing Land Tenure, Defining Subjects: Neo-Liberalism and Property Regimes on Native Reserves," 235.

part of an Indigenous cultural context, indeed the understanding that Indigenous societies also had individual property rights is crucial to the project at hand.

As we saw in Chapter 2, Indigenous peoples resisted attempts to create an individual property regime through the use of location tickets and retained the communal land tenure system in place today. Flanagan counters any assertion that communal land tenure formed part of Indigenous culture or worldview. He proposes the property ownership act on the basis that First Nations have always had a conception of individual property rights which he attempts to document through instances of property rights: farming by the Aztecs of central Mexico as well as in the south western, south eastern and northeast of the United States and into Canada, fishing among the various societies of the Pacific coast, and hunting among the natives of the Great Plains.[193] Flanagan asserts that there is nothing inherent in First Nation culture which would prevent private property from gaining acceptance, and indeed argues that property rights have always existed among indigenous peoples in North America. These are presented as a 'panorama of Indian property rights,' and allow Flanagan to conclude:

> Aboriginal people everywhere in North America practiced personal ownership of possessions such as clothing, tools, weapons, animals, and housing. With respect to land, there was always a collective sense of territory based on the tribe or nation, combined to varying degrees with specific use rights of families and individuals. Property institutions were related to the economy and culture of the particular society.[194]

If there is nothing inherent in the culture of First Nations that prevents their entrance into the market economy, then it is government who is preventing entrance through its restrictive and oppressive interference.

This approach reduces Indigenous culture and worldviews to something that is intelligible to our own, that is; it takes a wide variety of practices, customs, traditions and

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[193] Flanagan, Alcantara and LeDressay, *Beyond the Indian Act*, 31-40.
[194] Ibid., 41.

relationships to the land and reduces them to a Western understanding of relationship to the land in terms of possession and property.[195] Such a reductive approach misses many nuances of what are commonly referred to as Aboriginal conceptions of property, including the embedding of notions of "use rights" in the cultural context of the particular group. If we view property as a system of social relations that govern our relationship to the material world, then we can see that understandings of proprietary entitlement are inextricably bound up with the ontological conceptions of the society (Bryan 2000). It is not a simple matter, then, of seeking to prove that Indigenous societies had social relations that we can identify as "property rights" as Western societies understand property rights. Equally problematic is the fact that equating Indigenous customs and practices, which are specific to and rooted in the culture in question, with Western understandings of ownership and possession actually alters these traditional "use rights."

As Bryan (2000) points out, when we go looking for 'Aboriginal property rights,' in our own language and on our own terms, we eventually believe we have found what we are looking for and this act has far-reaching consequences for those whose practices are being so named: "As we approach Aboriginal society in our quest to find 'property,' we inevitably name practices and customs in a way not previously done. (...) [T]o re-describe native reality is to actually change native reality: changed descriptions create new webs of meaning, and hence practices, identity, and worldviews will all be affected."[196] Thus the question of 'what is Aboriginal property?' only arises in the context of a worldview that demands such relationships with the environment. Bryan argues that approaching Aboriginal society with such questions in mind colonizes that society by "actually creating a picture of society and reality that *is not there*."[197] The peril of choosing to understand Aboriginal property rights *as such* is that we risk re-inscribing past injustices and past misunderstandings of a culture and ontological foundations that differ from our own, with the potential to further erode that culture by changing its reality through these practices of naming. Such activity is in itself assimilative.

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[195] Bryan, "Property as Ontology: On Aboriginal and English Understandings of Ownership," 4.
[196] Ibid., 5.
[197] Ibid.

Similarly, this proposal is aimed at aligning the on-reserve housing context with that found off-reserve, and this is a context that predominantly conceives of housing as a market commodity, with state intervention only when strictly necessary (John Bacher's 1993 history of Canadian housing policy is aptly titled *Keeping to the Marketplace*.) As per the AANDC website:

> An enhanced market-based approach to housing will give First Nations access to the same housing opportunities and responsibilities as other Canadians. Market housing can bring many benefits to First Nations, including employment growth based on new home construction, increased housing supply, improved quality of life, and opportunities for First Nations families to build equity and generate wealth. Market-based housing leads to a stronger economy and more stable community.[198]

Here again, Indigenous people are being invited to participate in the economy and culture of the settler, much as they were during the location ticket period. But, in so doing, their ability to determine their future is compromised – it becomes a future that is centred on assimilating into settler society and this may mean giving up claims to historical entitlement based on colonial appropriation of lands and resources and subjective oppression pursued through policy. Privatization of on-reserve lands sets out the conditions under which First Nations can determine their futures (by integrating into the market economy, individualistic ownership), and these are not conditions they have determined. The implicit danger is that inclusion in this society may entail giving up claims to historical entitlement and redistribution. The proposal to privatize states that treaty rights will not be affected by a change in land tenure, but does note that the fiduciary responsibility of the federal government with respect to reserve lands would be dissolved under this act.[199] At the very least, this proposal undermines the ability of Indigenous people to demand that the federal government assume responsibility for centuries of Indian policy that has created the housing crisis today.

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[198] AANDC, Archived – Frequently Asked Questions – First Nations On-Reserve Housing – Indian and Northern Affairs Canada.

[199] FNPO, "FAQs: Questions about the First Nations Property Ownership Initiative," First Nations Property Ownership Initiative. http://www.fnpo.ca/FAQs.aspx (accessed 5 February 2013).

The First Nations Property Ownership Initiative remains a seductive proposal for both First Nations and settlers. From the perspective of First Nations, it seems to at last offer the means by which they can improve their housing and open up new economic opportunities for their members, as well as the means by which they can achieve independence from unresponsive and debasing government intervention in their affairs under terms that First Nations themselves have set. For settlers, a proposal like privatization likewise opens up new economic opportunities in the form of new markets, and also holds out the chance to alleviate guilt surrounding centuries of coercive Indian policy as well as embarrassment on the international stage when cases like Attawapiskat reveal the poor state of housing in Canadian Indian reserves. However, these opportunities are nothing new in the context of Indigenous-settler relations. As was seen in Chapter 2, settlers have repeatedly tried to justify their illegitimate position with respect to Indigenous people by purporting to have the solution to the impoverished conditions of the colonized; behaving as though the latter's condition is not a direct result of the settling of Indigenous land. Assimilation is held out as the means by which Indigenous people can improve their situation – and indeed it is their seeming inability to assimilate that proves they were deserving of their treatment in the first place. This leads to a paradox wherein Indigenous people are urged to assimilate and reap the benefits of full integration into the market economy, yet are never fully to be allowed to do so as this would disrupt the image of the colonized as fundamentally different from the colonizer (which, as we saw through the insight of Fanon and Memmi in Chapter 2, has been the justification for their treatment at the hands of the dominant society). In the context of this initiative, the act does not actually behave as an equalizer, despite being portrayed as the means by which First Nations can "have the same opportunities as other Canadians"[200] (revealing the assimilative nature of this proposal). Rather than levelling the playing field, this initiative ignores centuries of policy that attempted to remove traditional governance structures and offers no additional means by which communities can build their capacity or articulate a vision for their future beyond accessing mortgages.

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[200] Flanagan, Alcantara and Le Dressay, *Beyond the Indian Act*, 161.

In a practical sense, this act requires or assumes tremendous capacity in order to ensure that developers aren't simply purchasing land and thus once again dispossessing First Nations. It isn't clear how this legislation will protect Indigenous governance over the land despite a change in ownership. The proposal seems aware of this danger and seeks to curb such possibility. It states:

> The legislation should recognize the First Nation as holding fee simple title to its former reserve land. The First Nation should have the power to transfer title to individual members of the First Nation and to allow members of the First Nation to transfer title in fee simple (or some lesser form of interest) to non-members. Jurisdiction of First Nations over First Nation Lands should be substantially extended, along the lines of the powers set out in the lands provisions of the Nisga'a and Tsawwassen Agreements. It should be made explicit that lands remain First Nation Lands regardless of any change in ownership.[201]

Despite such claims, it is hard to see how the legislation could alter the fact that land would be bought and sold as fee simple, or put up as collateral on a mortgage loan from a bank, and therefore liable to be seized upon non-payment. The proposal is assuming so much: that on-reserve communities will not only have in place land codes and other jurisdictional tools, but also that these will be in service of their governance practices and resonate with the community, as well as assuming that jurisdiction alone is enough to restore or renew governance practices within Indigenous communities, including ensuring the capacity to do so is present.

The issue of land being used as collateral, and therefore liable to be seized, reveals an additional danger: de Soto's argument acknowledges that this property system does make owners less secure (despite their security of tenure) but claims that this is necessary in order to release wealth from their dead capital. What is needed is property that can be lost: "People of the global south remain 'trapped in the grubby basement of the precapitalist world' not because they have no property [de Soto] claimed, but 'because they have no property to lose.'"[202] Borrowers who default must be evicted for the system

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[201] FNPO, "Proposal".
[202] Mitchell, "The properties of markets," 264.

to work. As Dempsey et al. (2011) point out, this holds particular danger in the context of First Nations in Canada:

> For First Nations, the danger of this discourse of inclusion is that if and when they lose their land – either because of foreclosure or not being able to earn enough from land-attached investments – their dispossession is rationalized by land market discourse: they didn't work hard enough, or their culture held them back. According to this discourse, there is no dispossession, only the market-driven –and prosperity-enhancing – *reallocation* of land to those who will manage it most productively.[203] (emphasis in original)

The danger of this further dispossession is not being articulated in a discourse that holds out private property as the only means to improve housing conditions on-reserve.

Furthermore, this act is modeled on the Nisga'a final agreement, finalized in 2000. That case represents a modern treaty process aimed to address some of the questions of political authority and governance over land and resources that have been discussed in this thesis. While the Nisga'a agreement was by no means a flawless process,[204] it does represent an instance in which the property regime was changed concurrent with a change in leadership, governance and jurisdictional authority. By modeling the FNPO act on the Nisga'a final agreement, it remains unclear whether the questions of governance and jurisdiction need to be settled first, or if not, how the scheme proposed would allow First Nations who have opted into the act to govern their lands independently despite otherwise remaining legislatively governed by the federal government.

The proponents of the act laud it as being voluntary. In reality were a critical mass of First Nations to sign on, there would be little option to opt out. Reserve land already represents pockets of communal land tenure surrounded by off-reserve land that is held almost entirely in fee simple and the infrastructure in place to support it is something of

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[203] Dempsey, Gould and Sundberg, "Changing Land Tenure, Defining Subjects: Neo-Liberalism and Property Regimes on Native Reserves," 251.

[204] Alfred and Corntassel assert that only 40% of the Nisga'a people voted on the final agreement at all and it was a lengthy process that ultimately does not mention the word 'treaty.' Alfred and Corntassel, "Being Indigenous: Resurgences against Contemporary Colonialism," 604.

which the federal government is eager to disinvest itself. Furthermore, those who wish to maintain communal land tenure would be under enormous pressure from developers and adjacent non-Indigenous communities to open up their land for economic development, and the already limited economic opportunities available under communal land tenure would likely disappear. Similarly, those with significant capacity (either in terms of financial knowledge and management or in terms of having a significant land base – something that is most definitely not the case in most reserves across Canada) would be in a position to benefit from such a scheme. Crucially, those without capacity would now not even have the recourse they have now (in terms of applying pressure on the federal government to uphold its fiduciary responsibility to First Nations). The 2011 AANDC evaluation goes so far as to state:

> Regional government officials suggested that expectations
> within the policy about First Nations' interest in
> homeownership and ability to achieve it needed to be
> adjusted. Some key informants and respondents in the case
> studies indicated that homeownership may be more suitable
> for "strong" [that is, solvent] First Nations but impossible
> for small remote ones. (Parentheses theirs)[205]

Thus whether the act actually offers First Nations the ability to have the "same opportunities as other Canadians," in addition to ignoring a history of dispossession, is questionable – at the very least, it does not offer the same opportunities to all First Nations.

The off-reserve context suggests the need for caution, as well, as Carroll and Jones note that: "Throughout the period of federal government activism in housing policy, it had been the provinces' position that federal government policy ignored the specific needs of individual provinces and that provincial responsibility would lead to more appropriate and more innovative policy. This does not seem to have occurred."[206] If devolution to lower levels of authority has not resulted in more responsive and suitable housing solutions off-reserve, what then are the implications for First Nations who could receive

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[205] AANDC, "6.1.2 Communicating and supporting the policy".
[206] Carroll and Jones, "The Road to Innovation, Convergence or Inertia: Devolution in Housing Policy in Canada," 289.

the same type of devolved responsibility (and arguably are already in the process of receiving devolved responsibility) to provide housing for their members?

Finally, the First Nations Property Ownership Initiative has implications for housing. The articulation of the housing problem as a lack of access to mortgage financing for homeownership sets up a narrow range of choices available to First Nations: either the land remains communally owned, which means reverting to a social housing system that is failing to meet their needs, *or* land becomes private property, which allows homeownership to flourish on reserve:

> There will never be adequate housing on Indian reserves as long as most homes are built and owned by government. Only a housing market, based on a combination of rental and home ownership as exists in the rest of Canada, can balance supply and demand and keep the housing stock in good repair. In short, it is a question of property rights – there must be owners who take pride in their own homes and see them as a savings vehicle, as well as landlords for whom housing is an investment to yield a profitable return.[207]

By setting up the situation as one of either a seriously flawed social housing system or homeownership through private property, this framing ignores both the implications for First Nations of privatizing their land (including ignoring an entire history of colonialism and the ability to make claims for redistribution of resources based on that history) and the fact that the social housing system is itself governed by a policy that, as we have seen throughout the previous chapter, was not designed to seriously address the housing crisis or the governance crisis from which it arose. Private property and homeownership are cast as the obvious choices when compared to owning land communally and seeking to build houses through the federal social housing system, and thus Indigenous peoples' ability to demand more from and for their housing becomes moot – they can buy and sell on the market place, but no more than that.

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[207] Flanagan, Alcantara and LeDressay, *Beyond the Indian Act*, 6-7.

4.4 Conclusion

As has been the case throughout Canadian Indian policy, Indigenous people are responding to moves from settlers in a variety of ways. Despite the push from government toward market housing on-reserve, this is not necessarily the impetus for Indigenous peoples to include homeownership within their housing continuum. Indigenous peoples themselves recognize the need to diversify the housing options available on-reserve and it is important to note that organisations representing First Nations have long argued that housing is a federal responsibility stemming from the fiduciary responsibility the federal government has toward First Nations. In some provinces this is extended to the belief in a treaty right to shelter.[208] This claim becomes increasingly complex in light of the fact that the Minister of Indian Affairs is, in many cases, no longer providing the guarantee on loans to the First Nation. Thus with increased homeownership options come increased liability and responsibility for loan maintenance on the already burdened shoulders of band councils across the country.

It is important to consider how privatization would affect the fiduciary responsibility of the federal government and the potential for First Nations to leverage this consideration into change to the housing system on-reserve. It is also critical to ask whether First Nations themselves are all that interested in this option, as it is reported that, "As yet, only a handful of native leaders support the idea," with AFN National Chief Shawn Atleo coming out against the proposal.[209] Finally, there remains the issue of how to determine market driven rates for housing in remote areas when, in many of these areas, there is no evidence that a housing market actually exists.[210]

Ultimately the First Nations Property Ownership Initiative is not interested in developing capacity or restoring community control over decisions that affect them. Rather, it

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[208] See AFN, "Policy Areas – Housing," Assembly of First Nations, http://www.afn.ca/index.php/en/policy-areas/housing (accessed 5 Feb 2013).

[209] John Ibbitson, "Harper government to introduce law to allow for private property on reserves," *Globe and Mail*, August 5, 2012. http://www.theglobeandmail.com/news/politics/harper-government-to-introduce-law-to-allow-private-property-on-reserves/article4464434/

[210] Peter Collings, "Housing Policy, Aging, and Life Course Construction in a Canadian Inuit Community," *Arctic Anthropology* 42, no.2 (2005): 57 (in the context of the Arctic).

subordinates that control to the rule of the market. This proposal is not getting at issues of governance and capacity that result from a history of colonialism and, further, would have repercussions for those interested in pursuing self-determination for their communities. It limits what self-determination can be. Rather than restoring governance practices or articulating a vision to do so, self-determination in this scenario becomes about success in the marketplace and creating an appropriate investment climate or limiting transaction costs. Doing business on-reserve may become easier under this proposal, but the ability of housing to become a place around which to begin considering what Indigenous people want for the future of their communities is subordinated to an ability to buy and sell on the market. In sum, this proposal is framing the problem in particular and problematic ways: settler government continues to attempt to solve problems through its own mechanisms (in this case through a piece of legislation that ties First Nations ever more tightly to dominant regimes of private property and homeownership). It is doing so despite a lack of support from First Nations and it is doing so without critically examining whether the proposal works in the first place and what the implications are for self-determination and for housing of such a proposal.

Chapter 5 – Looking inward: post colonialism through housing

This thesis began with the argument that the housing crisis on First Nation reserves in Canada is not a crisis of housing but, rather, is symptomatic of a larger, more systemic issue that has its roots in the country's status a colonial state. In pursuit of this argument, I examined a history of Canada's Indian policy, as it relates to housing, and found that far from being an incidental part of colonialism, Canada's colonial policy of civilization and assimilation was constituted and practised at least in part *through* the housing of Indigenous peoples. In other words, housing has been an important site of engagement both for settlers pursuing goals of dispossession and assimilation and for Indigenous peoples resisting these efforts. This was seen with the use of location tickets as a means of promoting private property – here assimilation became equated with a concept of ownership and of permanent settlement. Missionaries and government agents were involved in reforming Indigenous housing, equating the housing they found in the colony with what they perceived to be wrong with that society as a whole, thus explicitly recognizing the centrality of housing to both their colonial project of assimilation and to cultural practices on both sides. Both the possession of location tickets and of a Western-style "proper" home were means by which Indigenous peoples could prove to the colonizers that they were "civilized" and thus due the privileges of citizenship afforded to Euro-Canadian settlers. Housing was also a means of linking Indigenous peoples ever more closely to the wage-labour economy and promoting gender roles more aligned with those of the settlers. Each of these elements was connected in a particular way in colonial discourse. Locating Indigenous people on reserves, advocating assimilation through individual ownership of land, and encouraging Western-style homes as a means of reorganizing Indigenous society culminate in a discourse that values individual ownership of private, single-family dwellings and also recognizes this ownership as an indicator of assimilation and of virtue.

Chapter 3 moved to the more recent past with an examination of the current on-reserve housing policy (AANDC's 1996 On-Reserve Housing Policy). The intention with this investigation was to understand how and why the current on-reserve housing policy isn't

working and is failing to improve Indigenous housing. That chapter argues that the policy fails to achieve its own intended outcomes because of a lack of institutional support, Indigenous perspective in the policy and communication to its recipients, and because the policy was designed primarily as a response to a fiscal crisis rather than from a desire to address on-reserve housing in a significant way. Furthermore, Chapter 3 forwards the argument that, even if the on-reserve housing policy had achieved its outcomes, it would not have addressed the underlying crisis of governance described in Chapter 2. This is because the policy is not designed to address colonial injustice; it is designed to relieve the federal government of its responsibility to Indigenous people while maintaining a colonial relationship of economic and subjective inequality. The social housing system is failing Indigenous people, certainly, but it is important to ask what it is trying to do in the first place. Federal policy works to create housing on-reserve that more closely resembles settler housing, having market housing; homeownership; individual responsibility for housing; and private sector investment. In this way, it is an example of ongoing colonialism. The 1996 policy aims to hand off responsibility for housing to First Nations without accompanying capacity or supports and without acknowledging the federal role in creating the housing crisis. The housing crisis, as we saw in Chapter 1, is presented as the fault of First Nations themselves, the result of financial mismanagement, or the fault of the housing itself, with the social housing system held up as an example of a failed land tenure arrangement. This deflects attention from questions about how this crisis came to be; it ignores the role of coercive government policy aimed at dispossessing and assimilating Indigenous people by attempting to remove their ability to govern themselves according to their traditions and desires. It also creates the conditions for privatization to be presented as the solution: the social housing system and the communal land tenure system on which it is based are failing to provide adequate shelter, not because of any historical or policy issues but because of their inefficiency and difference from the rest of Canadian housing. As such, housing becomes a battleground for a debate over whether to privatize reserve land or not – the options become limited to a social housing system that is failing to meet Indigenous needs or a private property initiative.

Chapter 4 examines the proposal to privatize more fully, arguing that this proposal frames the problem as a lack of access to financing. Such a framing ignores the history of dispossession and coercive federal Indian policy that has had devastating consequences for Indigenous societies. It also ignores resistance to this dispossession and the role of that resistance in maintaining communal land tenure on-reserve. In the same manner as federal housing policy, the initiative continues the colonial project of assimilation by attempting to render Indigenous housing more in line with settler housing, promoting an ethic of individual responsibility and homeownership. This serves the dual purpose of effectively dissolving the fiduciary responsibility of the federal government toward First Nations for their housing and rationalizing any further dispossession of land with "market" logic, should mortgage defaults occur. Under this scenario, First Nations are invited to become "equal" with other Canadians – by making it easier for them to access mortgages. This framing has implications for self-determination. It attempts to assimilate First Nations and manage claims to redistribution and self-determination by reducing such claims to a set of market based rights and options. First Nations would have the ability to buy and sell housing on the market place but the implicit danger is that they would lose their ability to make demands of the federal government for redistribution based on historic entitlement. This initiative also has implications for housing. In trying to manage claims to self-determination, that is, an ability to articulate an alternative future for Indigenous communities, it limits the ability of housing to be a focal point for that articulation. Rather than considering what kinds of housing Indigenous communities want for themselves and how housing can serve their wider community and governance practices, housing on-reserve would simply become a commodity on the market, thus limiting what housing can be for a community.

However, this analysis still leaves us with the question of how to improve the state of housing on First Nations' reserves in Canada. After all, people are still living in deplorable conditions and, while we can now understand how and why these conditions came to be, we seem to remain at a loss to know what to do. Chapter 5 takes up this problem and seeks to unpack the assumptions behind this question of what to do. This chapter also examines some innovative partnerships and practices of the present moment

in Canada. These examples offer hope as well as suggestions for ways forward for the future of Indigenous housing in Canada and elsewhere. The gravity of housing on-reserve, the fact that it is such a seemingly desperate situation and that the institutions responsible only serve to exacerbate the problem, perhaps offers a way forward. Despair in one path or institution can lead to the location of alternatives, or to their creation.[211]

5.1 What do we do about on-reserve housing?

To begin with, I argue that this is an inappropriate framing of the problem. As Indigenous scholars have argued, looking at an issue like on-reserve housing and asking ourselves "what's the problem? How can we fix it?" squarely locates the problem in Indigenous communities.[212] Not only do we risk continuing the practice of blaming Indigenous communities for the housing crisis (the most recent egregious example of which was seen coming from the federal government when confronted with the reality of Attawapiskat's housing situation),[213] but this practice of locating the problem in Indigenous communities repeatedly tells Indigenous people that they are incapable of solving their own problems.[214] In a paradox that is reminiscent of colonial discourse, this is disempowering in and of itself, as Indigenous people are blamed for problems that are the result of policy designed to dispossess and assimilate them, and then are told that they are not capable of solving these problems themselves and must look to further colonial policies to fix the issues in their communities. This plays out quite explicitly in on-reserve housing; rather than examining the role of federal policy and colonialism in creating a housing crisis, Attawapiskat First Nation's request for help saw them blamed for the problem. The proponents of an on-reserve property ownership initiative then cried out that the answer lies in privatization, a policy of further dispossession and assimilation. This thesis argues that the current framing continues to view the housing crisis as the fault of Indigenous peoples and as something that can be solved by privatization. Not only is settler society

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[211] Rebecca Solnit, *Hope in the Dark* (New York: Nation Books, 2004), 14.

[212] Linda Tuhwari Smith makes a compelling argument against this type of problem location in her book, *Decolonizing Methodologies: Research and Indigenous Peoples* (New York: Zed Books, 1999).

[213] See Prime Minister Harper's comments questioning where federal funding to Attawapiskat went to: "Harper not happy federal funds haven't alleviated housing crisis," *Huffington Post*, Nov 29, 2011.

[214] Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, 92.

ignoring the history of colonialism that caused these issues, but it is actively continuing such policy by purporting to have the solution – one that would further attempt to assimilate Indigenous peoples – and by refusing to acknowledge the ability of communities to articulate alternative solutions.

As our look at the history of on-reserve housing policy has indicated, we would perhaps do well to be wary of our solutions. Here I should note again that by "we" I am referring to settler society, as I cannot speak for Indigenous communities who are attempting to address housing in their own communities (though these initiatives will be touched on later in the chapter). Without suggesting that all of settler society has the same encounter with and reaction to the problem of Indigenous housing, the crisis in Attawapiskat certainly showed a range of reactions emanating from our society that I point to as problematic. Even with the best of intentions, when asking ourselves what "we" can do to improve First Nations' housing, settler society continues to be convinced that it is our society that can provide the solutions to a situation its policies created. After all, it was in order to make settlement possible that the Indian policy of civilization and assimilation was pursued by successive federal governments, and it is a result of this sustained policy that Indigenous communities are dealing with substandard housing.

Keeping both of these points in mind, I want to argue that we need to get away from framing the on-reserve housing crisis as being "their" (i.e. Indigenous communities) problem that "we" (i.e. settler governments) purport to solve. This sort of framing disempowers Indigenous people who are actively struggling (and succeeding) to decolonize their communities and it privileges solutions like privatization, which are extensions of colonial policy aimed at assimilating Indigenous peoples into the Canadian body politic, something Indigenous people have steadfastly resisted throughout the occupation of their lands.

Instead, reframing the problem as one of colonial policy pursued and resisted *through* housing (which is what this thesis has sought to do) opens up new possibilities and spaces for action. This is partly because reframing the problem in this way removes the dichotomy in which the conversation around housing has become mired. As described in

Chapters 3 and 4, at present the only options available to First Nation communities appear to be a social housing system that is inherently flawed (as seen in the analysis of the on-reserve housing policy that had as its goal a cap on expenditures in order to address the fiscal deficit) *or* privatization of reserve land in order to be able to put that land up as collateral and receive easier access to mortgage financing. But if we examine how that housing system came to be, as well as understand how both the current housing system and policies of privatization are extensions and continuations of colonial policy, then we can look for alternatives, perhaps outside of our institutions. This relates to the previous point: if we can resist locating the problem in Indigenous communities, to which we believe *we* have the solution, then the options available to those communities become much more open than the dichotomy of social versus market housing.

5.2 The political question

Reframing the problem of on-reserve housing as an issue of colonial policy undermining Indigenous governance also opens up the possibility of recognizing the political dynamics that lie beneath. This was referenced in Chapter 3, where I argue that the 1996 on-reserve housing policy was not designed to address the unequal economic and subjective relationship between Indigenous people and settler society. Despite claiming to want to improve the relationship between Indigenous peoples and the settler population and improve living conditions on-reserve (and occasionally making efforts to do so that include monetary support, such as the Royal Commission on Aboriginal Peoples), the federal government has never been prepared to alter the relationship between the two groups in any significant way (or even recognize the need to do so). This steadfast position holds true with respect to housing, seemingly no matter how poor the housing conditions on-reserve become.

Why is this? Simply (and crudely) put, addressing the unequal relationship and situation of Indigenous peoples in Canada would mean opening up the question of Canada's claim to sovereignty, and thus the legitimacy of the Canadian state. This claim is challenged by

Indigenous people who have asserted a prior and non-extinguished claim to the land.[215]
Were the government of Canada willing to address the structural inequalities between
settlers and First Nations, it would have to involve radical fiscal and political
consequences for the former – recognizing that Indigenous peoples' standard of living is
a condition of possibility of our own and, crucially, investing money in improving that
situation, as well as taking steps toward an authentically post colonial society.

The analysis of the housing crisis as a governance crisis reveals that what needs to be
done to address this and other issues plaguing Indigenous communities is to address the
economic and subjective realities of colonialism – that is, to begin the process of
decolonization. Has the government ever been willing to address this underlying issue?
Arguably, the process of the Kelowna Accord was a step in that direction and, at times,
the government has been challenged to consider addressing colonialism through legal
developments.

The Kelowna Accord of 2005 was an unprecedented set of policy negotiations between
First Nations leaders and the Prime Minister and First Ministers. It promised a new
relationship between settlers and Indigenous at the federal policy level, one that included
a substantial redistributive component in order to "close the gap" between the two
groups.[216] During the 18-month process of Roundtable negotiations, housing was
identified as a key priority area for the Indigenous organizations and participants at the
table. The result was a ten-year plan to raise the standard of living of Aboriginal people
to that of other Canadians by 2016. While the process and the Accord that came out of it
were by no means perfect, the negotiations were unique in that the federal government
was willing to negotiate policy directly with Indigenous organizations (notable in that
these organizations were concerned with long-standing issues particular to women and
children)[217], as well as, crucially, investing substantial funds towards those policy

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[215] Michael Asch, "First Nations and the Derivation of Canada's Underlying Title: Comparing Perspectives on
Legal Ideology," in *Aboriginal Rights and Self-Government*, ed. Curtis Cook and Juan D. Lindau (Montreal
& Kingston: McGill-Queen's University Press, 2000): 148-167.
[216] Lisa L. Patterson, "Aboriginal Roundtable to Kelowna Accord: Aboriginal policy negotiations, 2004-2005.
Library of Parliament, Government of Canada, 2006.
[217] Ibid., 3.

directions. Kelowna committed the federal government to an investment of $1.6 billion over five years to reduce housing shortages by 40% by 2010 (the entire Accord pledged over $5 billion over five years to the priority areas).[218] Furthermore, the Accord endorsed the principle of Indigenous people determining their own housing solutions and facilitated discussion on the interconnectedness of economic development, health, housing and education. While such a high level of involvement is indicative of Kelowna as a positive step forward, it also had the effect of raising hopes and expectations, such that when Parliament dissolved before the agreements and federal monies could be approved,[219] it seems to have further entrenched the stagnant nature of on-reserve housing policy. Certainly little has been subsequently attempted on this scale, which called for both the means and the political will to really do something about the state of housing on-reserves. Instead of implementing the full Accord, the new Conservative federal government invested $300 million in 2005 to both on- and off-reserve housing (i.e. only 42% of what was committed in the Kelowna Accord).[220] It should be noted that many communities were not even able to take advantage of this influx into the housing system due to a lack of serviced lots available that would meet the time frame in which the additional money was available. I digress into this story of the failed Kelowna Accord, as it represents one of the few times that the federal government has seemed to recognize or express that actually improving Indigenous housing and other issues requires more than dictating policy – it requires listening to Indigenous perspectives about what they want for their housing and providing the political and economic means to achieve it. This will mean a focus on community governance and capacity building.

The federal government has also been confronted with the reality of its colonial past through legal discourse. Indigenous people have pursued their claims to prior rights over the land now known as Canada through the Canadian legal system (despite the contradiction inherent in doing so). In *Delgamuukw v. BC*, the Supreme Court of Canada

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[218] Ibid., 12.

[219] Canada's Budget 2005 came out in February of that year, and the Kelowna Accord was announced in November. Thus when Parliament dissolved later that month, in November 2005, the monies had not yet been approved.

[220] Tracey MacTavish et al., "A participatory process for the design of housing for a First Nations community," *Journal of Housing and Built Environment* (2012): 3.

recognized the existence of Aboriginal title[221] but didn't award it to the claimants in that case. The court refused to acknowledge the implications of the continued existence of Aboriginal title to the land (i.e. that the Crown's claim to sovereignty is rendered untenable by such pre-existing and non-extinguished title) and found in favour of the Crown.[222] The *Constitution Act* of 1982, s. 35 enshrined in law the existence of Aboriginal rights and jurisprudence since that time has had as its goal the reconciliation of these pre-existing rights with the colonial regime. The tests both for proving an Aboriginal right exists, as well as proving infringement upon that right, (as laid out in *Sparrow* and *Van Der Peet*) are onerous. Further, the federal and provincial Crowns can infringe upon these Aboriginal rights if they can justify that infringement (the infringement of the aboriginal right must be in furtherance of a legislative objective that is compelling and substantial, as per *Gladstone* and *Delgamuukw)*.[223] As Glen Coulthard states, "even though the Court has secured an unprecedented degree of protection for certain 'cultural' practices within the state, it has nonetheless repeatedly refused to challenge the racist origin of Canada's assumed sovereign authority over Indigenous peoples and their territories."[224] So, while legal recourse to lay claim to land and use rights, as well as underlying Aboriginal title to the land, exists for Indigenous people, it is by no means a panacea. This is hardly surprising, given that Indigenous people are here challenging the legal apparatus that has legitimized their historical treatment,[225] just one of the many paradoxes of colonialism.

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[221] That is, a *sui generis* proprietary interest in land that is held collectively by an indigenous community can only be alienated or sold to Crown and is a burden on Crown title, arises from prior use and occupation of land at the time of colonization thus explicitly predates Crown regulation. Where it is established, it confers on a community the exclusive use and occupation of the land. Crown has duty to consult and accommodate Aboriginal people if there is a known claim to the area.

[222] For a more in-depth discussion, see John Borrows, *Rediscovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002), 77-110, and Shaw, *Indigeneity and Political Theory*, 109-131.

[223] *Delgamuukw v. British Columbia*: "The range of legislative objectives that can infringe upon Aboriginal title include the development of agriculture, forestry, mining, and hydroelectric power, the general economic development of the interior of British Columbia, protection of the environment or endangered species, the building of infrastructure and the settlement of foreign populations to support those aims." John Borrows and Leonard I. Rotman, *Aboriginal Legal Issues: Cases, Materials and Commentary*, 3rd ed. (Canada: Lexis Nexis, 2007), 151-152.

[224] Coulthard, "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada," 451.

[225] As Shaw points out, "although their [the plaintiffs'] attempt was to insist upon an alternate sovereignty, their attempt was constantly up against the necessity of achieving permission for their sovereignty from the sovereign as expressed in the judge." Shaw, *Indigeneity and Political Theory*, 113.

So, understanding housing as a problem of governance that results from a history of colonialism allows us to understand why we would have an on-reserve housing policy that is more interested in offloading responsibility for housing to band councils than in seriously addressing the housing crisis – to do so would mean addressing existing structural inequalities through meaningful consultation, economic redistribution, institutional change, capacity building and empowerment of Indigenous governance practices. While the government has at times taken steps towards such action, through the Kelowna Accord and when case law dictates, Canada remains bound by its colonial past and Indigenous people remain mired in a housing system that fails to provide shelter, let alone restore community governance practices.

Yet, even in the absence of a government that is willing to recognize the housing crisis as symptomatic of larger issues and willing to rethink the economic and subjective relationship between the two groups in a meaningful way, housing still needs to be improved. The federal government appears to be vacating this area (as evidenced by decreased monetary support and endorsement of privatizing proposals that would seriously diminish the role of government in housing on-reserve), which is not in itself a negative for Indigenous people. As I have sought to demonstrate throughout this thesis, government intervention in housing has been an important site of pursuing a policy of civilization and assimilation in order to allow for dispossession of lands, resources, and governance – thus removing the federal government from that intervention would appear to be an optimal solution. Indeed proponents of privatizing reserve land point to just that as a benefit of the scheme. However, divesting itself of the 'Indian problem' has also long been an aim of government's assimilation policy, and I argue in Chapter 3 that the on-reserve housing policy of 1996 attempts to offload responsibility for housing to band councils without appropriate supports or capacity. In vacating this area without ensuring that Indigenous communities will have a full range of authority and capacities in order to not only take on responsibility for their housing but improve it, the federal government is abrogating its responsibility. Thus, while I have been arguing that it is important that settler society stop purporting to have the solution to the problem of Indigenous housing, it is equally crucial that those responsible for the problem do not simply walk away.

5.3 Community initiatives

So, in a context of an ever-worsening housing situation and a federal government that appears to be vacating this policy area, and given that we know we need to look at our own society for an understanding of the problem, as opposed to within Indigenous societies for something wrong, what are we left with in respect to on-reserve housing? Reframing the problem as one of governance and colonialism also allows us to put focus and value on what Indigenous communities themselves are doing to address this and other issues in their communities. This thesis has thus far been a critique of the current framing of the problem and an attempt to understand what we have done wrong with respect to housing. However, we learn best from what we do well. In the context of on-reserve housing, what is being done well varies from place to place and partnership to partnership (as it should) yet the focus is on community and on relationships. In much the same vein of Leanne Betasamosake Simpson's argument for Indigenous education, where she asks:

> What if we took all the energy we put in trying to change a broken education system and put it into local, community-controlled immersion education programs? Programs centred on our own ways of knowing – programs deliberately connecting our peoples to the land, our political traditions, our languages and the local issues of relevance. What if we *purposefully* educated our own?[226]

The three initiatives I am highlighting here all engage in directing their gaze inward at what works for their community and their housing. The first community initiative is Oujé-Bougoumou, a Cree community in Québec which has eschewed government housing programs. The second is a partnership between Cowichan Tribes on Vancouver Island, BC, M'akola Housing, a non-profit housing corporation, and the province of BC. This partnership has resulted in an Elder's residence for Cowichan. The third initiative focuses on design partnerships various communities have formed with architects,

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[226] Leanne Betasamosake Simpson, Weblog entry on "Turning inward and purposefully educating our own," *Leanne Betasamosake Simpson,* posted October 1, 2012, http://leannesimpson.ca/2012/10/01/turning-inward-purposefully-educating-our-own/, (accessed 5 Feb 2013).

university institutions and NGOs. What each of these initiatives has in common is their emphasis on the centrality of relationships in the creation of housing that meets the needs of the community. These examples are focused on Québec and British Columbia, the former because this is where I had my formal work experience for CMHC as an Aboriginal Housing Program Officer and thus am familiar with some of the interesting things happening in that province, and the latter because it happened to be the place I found myself when time came to write this thesis, as well as because of relationships I have cultivated through this Master's research that made me aware of these initiatives. But in addition to that, I believe these initiatives to be important. They represent a range of models, are at different stages in their execution, and, with the possible exception of Oujé-Bougoumou, are not well known outside of the field of First Nations housing. I also believe they represent new possibilities for community housing initiatives. That is, they were achieved by looking outside existing institutional arrangements, bending these to accommodate the vision, or creating alternatives where necessary. Most importantly, they place value on community and on relationships. These are not the only possible examples. There are most definitely innovative and inspiring housing initiatives occurring across the country, as well as additional examples to be found in Québec and BC, and it is with regret that I cannot include more here.

Oujé-Bougoumou

As mentioned, Oujé-Bougoumou is a Cree Nation in Québec, with a population of about 725 people in 2011.[227] It is one of nine Cree communities in the province, and one with an innovative and inspiring vision for their community. The history of the community is an all too familiar one, with colonial occupation of their territory in the pursuit of natural resources leading to the loss of their traditional village site. As per their website (www.ouje.ca), the community was forcibly relocated seven times over fifty years, to make room for settlers who were developing the mining and forestry resources in the area. After several years of negotiations and intense pressure from the community (including a blockade of the access road to the community in 1989), the province of Québec signed an agreement in September 1989 committing to contribute financially to

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[227] Statistics Canada, "Census Profile Oujé-Bougoumou" Government of Canada, 2011.

the construction of a new permanent village for the community. Oujé had been excluded from both the James Bay and Northern Québec Agreement (JBNQA) and Cree-Naskapi Act because they did not have their own village site (their population was often included with that of nearby Mistissini). Oujé then successfully concluded the 1992 Oujé-Bougoumou/Canada Agreement whereby the federal government also agreed to contribute financially to the new village. Crucially from the perspective of the community, these agreements acknowledged a degree of local jurisdiction over the area, as Oujé maintain that they have an unrelinquished claim to jurisdiction over their traditional territory, which remains an unresolved issue. In 2011, Oujé-Bougoumou's status as a distinct Cree community was formalized in a complementary agreement to JBNQA.[228]

Important to our discussion is that Oujé recognized the centrality of housing while pursuing these agreements with both levels of government. As noted on their website,

> The Oujé-Bougoumou Cree Nation is in the unique position of being one the few aboriginal communities to be able to develop and finance its own housing program. This is a consequence of the negotiations which took place between the Oujé-Bougoumou Cree Nation and the Government of Canada on the nature of Canada's financial contribution toward the construction of the Oujé-Bougoumou village. One of the key elements of the agreement which resulted from the negotiations was that certain funds would be transferred to Oujé-Bougoumou for housing purposes.[229]

Thus, the community's housing committee developed a housing program consisting of two components: homeownership and rental housing. This, according to their website, was developed in consultation with community members and designed so that the "Oujé-Bougoumou people could look after their own housing needs in the future."[230] For the homeownership program, four criteria were articulated by the community: that the houses be built in such a way that the local people would learn to build houses themselves, that

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[228] Mary Hurley, "Legislative Summary Bill C-28: An Act to Amend the Cree-Naskapi (of Quebec) Act," Library of Parliament, Parliamentary Information and Research Service, June 2009.

[229] Oujé-Bougoumou, "A Unique Approach to Aboriginal Housing," Oujé-Bougoumou – the place where people gather, http://www.ouje.ca/content/our-story/housing.php (accessed 5 Feb 2013).

[230] Ibid.

the houses be designed to be appropriate to Cree culture, that the houses be easy to maintain and inexpensive to operate (this led to highly energy efficient homes), and that the houses be affordable without sacrificing quality.[231] Through their homeownership program, a portion of construction costs as well as ongoing maintenance and utilities are borne by the homeowner and the monthly payment is geared to income, with no more than 25% of a family's income devoted to shelter costs (note that this is even less than the CMHC-recommended 30% of income on shelter). Sweat equity is also considered under this program. Oujé also offers a rental housing program, with monthly rents set at a fixed rate for all renters. The website states that the housing committee offers three categories of rental rates to account for differences in income, yet beyond a program whereby future homeowners can engage in a rent-to-own scheme by contributing monthly to an eventual homeownership account, these different rates are not made explicit. The emphasis on energy efficiency as a means of keeping costs down has been highly effective, with many homes in Oujé exceeding the provincial energy efficiency standard (the Québec energy efficiency standard is R-2000. Oujé-Bougoumou states that the homes in the community are closer to an R-3000 standard). In 1992, the community installed a village-wide district heating system based on biomass resources from the nearby sawmill,[232] effectively reclaiming a colonial process for the renewal of their community. Oujé has received numerous awards for both the district heating system and the overall community planning, including a United Nations award in 1995.[233]

When the community began to seriously plan their new permanent village, they began with a vision to pursue their traditional way of life as much as possible within the context of modern institutions, as this had historically provided for their well-being, noting that:

> In our traditional way of life there were no formal
> distinctions between work and play, between teaching and
> learning, between the richness of family ties and the
> establishment of specific roles for people, nor for that
> matter between healing and daily life. Daily life itself was

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[231] Ibid.

[232] Oujé-Bougoumou, "District Heating System," Oujé-Bougoumou – the place where people gather, http://www.ouje.ca/content/our-story/energy.php (accessed 5 Feb 2013).

[233] Oujé-Bougoumou, "Awards of Excellence," Oujé-Bougoumou – the place where people gather, http://www.ouje.ca/content/awards.php (accessed 5 Feb 2013).

> infused with elements of learning, healing, play and a
> deeply rich network of social relationships. Our new village
> would have to be a source of learning, a source of spiritual
> renewal, a source of physical and economic sustenance, and
> a source for the healing of many wounds, both past and
> present. And all this would be embedded in the context of
> our traditional Cree ways of relating to one another.[234]

Oujé partnered with Indigenous architect Douglas Cardinal for the development of many of the community buildings as well as the overall community plan. Cardinal has noted that his preliminary designs were "torn to shreds" by elders in the community. He redesigned the village based on the ideas of the elders and cites that community has "changed their lives forever" by building their own future.[235] Oujé notes that community members were involved at every level in the development and creation of the new village, and presumably remain involved in how the village is run today.

There are limitations to the model presented by Oujé-Bougoumou, the first being of course that (as Oujé itself admits) they were able to implement these programs as a direct result of their unique position receiving financial contributions for the new village from both levels of government. Due to that fact, this is perhaps not a transferable model, yet it is important to note that the community itself made sure funds for housing were included in those agreements and that the community would be able to provide housing for their members without relying on the usual suite of government programming. In so doing, they placed housing firmly at the center of the creation of their new village. Further limitations to this model are that it is difficult to assess how successful the housing programs are, given that the information is coming from the Oujé-Bougoumou website. I cannot confirm the extent to which these processes were and are community-driven, as is claimed on the website, nor how satisfied the community are with their housing today. What can be concluded, however, is that the community of Oujé-Bougoumou understood the importance of safe, affordable, culturally appropriate housing in the vision they had for their permanent village and have been able to continue to provide housing for their

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[234] Oujé-Bougoumou, "Our Vision in Planning the New Village," Oujé-Bougoumou – the place where people gather, http://www.ouje.ca/content/our-story/vision.php (accessed 5 Feb 2013).

[235] Maria Cook, "Douglas Cardinal says a life surrounded by just concrete and people can be devastating," *Ottawa Citizen*, February 25, 2012.

members independent of additional government intervention – thus fulfilling a key tenet of articulating their own future.

<u>Cowichan Tribes, M'akola Housing, and BC government</u>

Cowichan Tribes is located in the Cowichan Valley on Vancouver Island and is the largest single First Nation in British Columbia. M'akola Housing Corporation is an off-reserve Aboriginal housing provider located in Victoria. The two partnered with Vancouver Island Health Authority (VIHA) and, in an unprecedented move, the provincial housing authority, BC Housing, to develop Ts'i'ts'uwatul' Lelum, a 50-unit Elders' residence on Cowichan territory near Duncan, BC.[236] As part of an Indian reserve, the land is technically under federal jurisdiction; however Cowichan and M'akola were able to pitch the project to BC Housing by pointing out that off-reserve Aboriginal housing needs *are* under provincial jurisdiction. While Elders would prefer to remain on their traditional territory, they will be forced into nearby urban areas to seek housing and health care if it is not available at home, thus placing additional demand on the provincial system.

The project is thus funded by BC Housing, for both capital costs (approximately $14 million) and monthly subsidies ($39 million over the 35 year lease agreement) and VIHA provides a monthly subsidy ($4.3 million over the first five years) for hospitality and personal care services. Neither AANDC nor CMHC contributed financially to this project. Elders are required to pay 70% of their after tax income and the two provincial partners subsidize the difference between what Elders can pay and the actual costs of the unit, care and services. Cowichan was able to provide the land under a leasehold agreement and M'akola undertook the project and property management. As per the operating agreement, VIHA is in charge of tenant selection.[237]

The obvious benefits of such a project are that Cowichan Elders are able to stay in their traditional territory as opposed to seeking care facilities in nearby Duncan or other urban

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[236] M'akola Group of Societies, Cowichan Elders Assisted Living, http://www.cowichanelders.com (accessed 5 Feb 2013).

[237] Kevin Albers, "Government Partnerships," Presentation at *World Indigenous Housing Conference* (Vancouver, BC. June 14, 2012).

centres. The facility itself is designed around cultural features and these as well as the type of food served were at the discretion of Cowichan. It is meant to be a resource for the community, providing employment and the opportunity to benefit from Elders in the community. Prioritizing accessible housing for Elders on traditional territory underscores both the esteem with which Elders are regarded by First Nations and recognizes the importance of Elders as cultural historians and knowledge repositories. This was a lengthy and difficult project to bring to completion; M'akola notes that it took approximately 10 years from conception to tenants moving in to the complex. Challenges included concluding the leasehold arrangement and legal issues surrounding when and how Cowichan assumes responsibility from BC Housing and VIHA. As such, the emphasis on partnerships was critical to the ultimate success of the project. As per Kevin Albers (CEO of M'akola Housing): BC Housing understood the complexity of the issues (given the nature of on-reserve housing) and demonstrated willingness to commitment financially to this project as well as support a project on-reserve, despite it being federal jurisdiction. VIHA provided support to an on-reserve project, again outside of its jurisdiction, with the understanding that it will provide service to the entire Cowichan community. M'akola expanded its services to the on-reserve community and invested in managing this project for the length of time it took to reach fruition. Cowichan was able to contribute the land for the development at a nominal cost and resources for the development of the lease and, Albers notes, had the courage to move forward with this project.[238] Ts'i'ts'uwatul' Lelum opened its doors in the summer of 2012.

As was the case with the example of Oujé-Bougoumou, there are limitations to this project. As the facility only recently opened, there is a need for ongoing monitoring of the project in order to make sure that it remains a success from the perspective of the Elders themselves, the wider Cowichan community and the partners involved. The process was an onerous one; however it is now documented and can be replicated. The key success factors of this project were the fact that it was viewed as mutually beneficial, the stakeholders were involved throughout, and the partners were able to remain patient and goal focused. Crucially, Cowichan had the land to contribute at a nominal cost,

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[238] Albers, "Government Partnerships".

raising the question of whether this type of project would work in a more remote or smaller community where responding to needs may be more challenging. Cowichan Elders living at Ts'i'ts'uwatul' Lelum remain connected to their community through their housing, and this was created by cultivating unlikely partnerships and pursuing housing solutions that responded to the needs of their community – understanding how important housing is to renewing and maintaining culture.

Institutional partnerships

Finally, I would like to touch on several partnerships between Indigenous communities and various institutions and/or organizations that have potential to leverage that partnership in developing capacity within a community and improving housing.

In 2007, the firm of Marceau-Evans-Johnson Architects and researchers at the University of Victoria partnered with the Kitamaat reserve of the Haisla First Nation to engage in a consultative design process that would "directly engage community members in articulating needs and priorities and directly involve them in addressing these through the design process itself."[239] The goal here was to collaborate on developing a culturally appropriate, environmentally responsive and energy-efficient housing type that could be used in the future by the community. Kitamaat is located on the Northwest coast of BC with a village population of roughly 750-800 people. The study was compromised of a series of workshops with Haisla First Nation members, first to define housing needs and priorities, and then to create physical models that were intended to reflect those priorities. The ranked housing priorities were as follows: affordability, lack of available housing, durability (quality), accessibility (particularly for Elders), mould, capacity building (housing policy that would provide employment and training opportunities in design, building and maintenance), energy efficiency, large and flexible space, cultural aesthetics, food preparation, and outdoor living.[240] The community members participated in a gaming session during the second workshop to produce housing designs and the

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[239] MacTavish et al., "A participatory process for the design of housing for a First Nations community," 4.
[240] Ibid., 7.

architects then produced a concept design of one of the housing designs, as chosen by the workshop participants.

The concept design attempted to strike a balance between the identified housing priorities, with an emphasis on affordability and higher density to address shortages. The concept design also utilizes construction and finishing techniques that would encourage the use of local materials and labour. Opportunity for cultural expression through aesthetics was incorporated into the design, particularly the entryway and there is an indoor/outdoor transition area to allow for outdoor living and the preparation of traditional foods.[241] As before, there are limitations to this type of study. The researchers note that the concept design document is intended as a starting point for the Haisla First Nation in developing their housing program, and emphasize the need for more complete community ownership of the process, particularly at the leadership level.[242] Despite the limitations, the concept design document does provide a starting point in the development of culturally and environmentally appropriate housing models that accommodate what community members actually want for their housing. As such, it contributes to strengthening that community's ability to articulate an alternative housing future, one that resonates with their relationship to their land and culture.

In a similar vein, researchers at Université de Laval's School of Architecture undertook a partnership with the Innu of Uashat mak Mani-Utenam in the fall of 2003 to "explore the problem of preserving different ways of being in the world through architectural design and practice."[243] A professor in the school, André Causault, was approached by the Tribal Council for Uashat, which is located near Sept-Îles, Québec, to help them conceive two "concept-Innu" houses that would be built to scale on typical sites by Innu contractors living on-reserve. This request was made into a semester-long project for eight architectural students, who were challenged to work with the Innu to develop a conception of an "Innu" house. As Causault explains, the pedagogical goal was to "train future architects to design *with* rather than *for* cultural groups other than their own," in

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[241] MacTavish et al., "A participatory process for the design of housing for a First Nations community," 15.
[242] Ibid., 16.
[243] Tania Martin and André Causault, "Thinking the Other: Towards Cultural Diversity in Architecture," *Journal of Architectural Education* (2005): 4.

other words to, *think the other.*[244] From the perspective of the Innu, this was a chance to build two houses at the same cost as typical CMHC-funded houses that, ideally, would respond to the cultural and environmental needs of the community. Additionally, the school was asked to introduce alternative construction practices in order to increase the knowledge base of the Innu contractors and provide hands-on training through the realization of the project.[245]

Innu aspirations for these homes included getting rid of the basement, a place found somber and isolating, and locating sleeping places above ground, in a mezzanine for example, to encourage contact between members of the household and with nature. They placed great importance on letting daylight in and having views to the outdoors. The students were shown traditional Innu homes, including tipi which many have in their backyards for seasonal use and many Innu expressed a desire to incorporate this design feature into the "concept Innu" home. As can be imagined, this project was a lesson in cross-cultural communication:

> Discussions about Innu notions of privacy and intimacy challenged students. Confronted with Innu attitudes about family and neighbors, towards living among others, the students were forced to question their own cultural habits and home environments, those that promote an atomistic lifestyle in comparison with the communalism that underlies Innu societal and spatial structures. For the Innu, having a clear view of the entrance from almost anywhere in the house is essential (as long as that person cannot see the kitchen sink full of unwashed dishes!). They want to see who is arriving.[246]

This discussion also reinforces the ways in which settler society has reimagined Indigenous society through housing – we are often unaware of the ways in which Western-style houses promote Western values and cultural habits, and how these might oppress expression of other cultures. A process of decolonization, then, requires settler society to become aware of the subtle and non-subtle ways that colonialism plays out, in this case, through architectural design. Interestingly, the students were at times frustrated

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[244] Martin and Causault, Thinking the Other: Towards Cultural Diversity in Architecture," 5.
[245] Ibid.
[246] Ibid., 7.

by the community's decision to start from rather conventional designs, and then incorporate different elements that were important to them, instead of utilizing more avant-garde architectural ideas. From the Innu perspective, however, these choices were about affordability (and therefore replicable) and utilizing the skill already in the community, in addition to ensuring the homes were culturally and environmentally responsive. The community chose two different prototypes from four design options and the two homes were constructed on Innu territory. Ultimately, it would be necessary to ask the present inhabitants of the eventual homes how well the architects were able to transcribe Innu social and cultural values into spatial and physical form, yet this study put focus on the need for the design teams to be educated by their user-clients, the Innu, rather than educate them. This focus gestures at the impact of housing on a decolonization process for professional practice like architecture.

The project of decolonization, then, requires capacity to be built on both sides and at multiple sites. Individuals, as exemplified by the architecture students in the above example, have to undergo a process of decolonization in order to become aware of their own cultural values at play in their professional practice. The students were challenged to listen to their user-clients, the Innu, and incorporate values and ideas from outside the students' culture. In this way, a process of individual decolonization can build toward the decolonization of the professional practice itself: first by becoming aware of the role of that practice (in this case architecture) in reimagining Indigenous society and then by cultivating relationships that build the capacity on both sides to transform housing from a colonial project to one in service of the community. The project of decolonizing settler society thus requires much more than simply reforming government policy or looking to institutions, it requires engagement at multiple sites through processes of building relationships.

In my final example, the Nuu-chah-nulth communities on the west coast of Vancouver Island, BC have partnered with a non-governmental organization (NGO), Ecotrust Canada, to design green and culturally appropriate homes; this is part of the Clayoquot Forest Communities Program, Q^{w}ii-q^{w}iq-sap: Standing Tree to Standing Home

initiative.[247] This larger initiative aims to develop local economic opportunities and benefits to these First Nation communities who own two forest licenses. The goal of the program is to use local materials to build homes and community infrastructure. The original intention for the "green and culturally appropriate building design" project came from a community visioning exercise held in 2008, whereby all five Nuu-chah-nulth communities identified housing as a priority area for improvement. Ecotrust then began work with the communities and partners at the UBC School of Architecture & Landscape Architecture and the ISIS and Sauder School of Business, as well as professional architects to develop a prototype home design sketch that is meant to incorporate green and culturally appropriate elements. Crucially, the goal is also to have these types of homes improve the local wellbeing of the community members, the surrounding ecosystem and the local economy. It was originally conceived of as a concept design process, yet a community member from the Tla-o-qui-aht First Nation decided to build a new home for his family based on the prototype design sketch, and also was able to take advantage of the geothermal heat source of the new subdivision of Ty-Histanis.[248]

The next stage of the project will be an ongoing long-term monitoring program in order to determine whether and how "these designs and construction methodologies can improve community health and social well-being." To that end, Ecotrust has partnered with a number of partners, including government, universities, and other organizations to carry out long-term monitoring of the housing prototype being built at Ty-Histanis. The Q^wii-q^wiq-sap: Standing Tree to Standing Home initiative is focused on a 'circle of wealth' approach, whereby the communities seek to reverse the trend of local resources being used to benefit distant interests first (by now a familiar process). Thus, the initiative is organized around utilizing forest resources to grow what the local communities need, harvesting that resource with those needs in mind, designing homes so they address climatic and cultural needs and can take advantage of the harvested forest resources, and

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[247] Ecotrust Canada, "Green and Culturally Appropriate Building Design," Ecotrust Canada, http://ecotrust.ca/clayoquot-fcp/green-and-culturally-appropriate-building-design (accessed 5 Feb 2013).

[248] In 2006, the Tla-o-qui-aht Village of Esowista reclaimed 86 hectares northwest of the village site from the Pacific Rim Nation Park Reserve and added it previously reclaimed land from the federal government; this subdivision is now known as Ty-Histanis. Ty-Histanis is an expansion of the Esowista Village to accommodate 160+ new homes and community buildings.

training local people to manage this cycle from forestry to construction[249] – thus benefitting the economy, the environment, and the community. It remains to be seen what the long-term outcomes of this project will be, but insofar as it recognizes and affirms the potential inherent in housing to be of economic, cultural, social and environmental benefit for a community, it represents a model that is a far cry from the government models too often imposed on communities across Canada.

These examples, from Oujé-Bougoumou to Ecotrust, have much in common. Most significant is the common vision to build housing that improves the wellbeing of the community – housing is at the service of the community. This is striking from the perspective of settler housing, where the model is one of housing serving the needs and interests of the individual first and foremost. The priorities are remarkably consistent across each of the examples presented here: housing is at the service of the community, is affordable, builds local capacity, is self-sustaining, is culturally and environmentally appropriate, and the locus of authority remains in the community. The Nuu-chah-nulth visioning exercise identified housing as a priority area for improvement, understanding that improved housing would benefit the community, the economy, and the local environment. Kitimaat showed how important community ownership of the entire design process is for a successful project. Oujé-Bougoumou spent years negotiating with both levels of government in order to ensure their community remained in control of housing, for the benefit of their community. There are common aspirations for housing that is healthy, accessible and nurtures the community. The housing of settlers embodied cultural norms and was understood as a vehicle for reorganizing Indigenous society; the housing put forth in these initiatives offers that same potential from a locus of community control.

Additionally, these examples place emphasis on relationships – none of these initiatives works without a focus on cultivating relationships throughout the process. These relationships are cultivated both from within the community and from outside the community. In the case of Oujé-Bougoumou, it was important that the community

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[249] The Iisaak sawmill operated by the Ahousaht First Nation is an example of this initiative in action.

undertake an internal visioning exercise to determine what they wanted for their community and from their housing. This vision was sustained through the process of negotiating with both levels of government and ensuring that the buildings aligned with the community's desires. The relationships within the community had to be maintained and nurtured throughout this process or it would not have been so successful. Similarly, the visioning exercise that occurred in Nuu-chah-nulth territory revealed that all five communities prioritized housing as the most important area for improvement. In order for an external group, Ecotrust, to partner with these communities, they needed to figure out how they could best support the communities' focus on housing. This approach to relationship-building is one where Indigenous partners provide leadership and the non-Indigenous partners take action in support of the direction determined by Indigenous leadership. In the context of housing, which has been such a key site of colonialism and offers such potential for the assertion of self-determination, such an approach is critical for the continued assertion of Indigenous self-determination.

Lynne Davis, in *Alliances: Re-Envisioning Indigenous – non-Indigenous Relationships*, asks:

> Is it even possible to imagine relationships of mutual respect while looking squarely at the bald truth of Indigenous trauma and dispossession that flowed from colonization historically, and is perpetuated in ongoing colonial processes of violence in the present day? Is 'respect' enough? What are the ethical responsibilities of non-Indigenous people collectively and individually in supporting the self-determination of Indigenous peoples? Can relationships be re/envisioned, based on a shared future on Indigenous lands and embracing the self-determination of Indigenous peoples?[250]

The example of M'akola Housing's partnership with Cowichan Tribes provides inspiration for how to address these very real concerns. In addition to respecting Cowichan's vision for its Elders, M'akola remained committed to the project for over a decade and provided expertise and support for the project and for Cowichan's desire to

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[250] Lynne Davis, "Introduction," in *Alliances: Re-Envisioning Indigenous – non-Indigenous Relationships*, ed. Lynne Davis (Toronto: University of Toronto Press, 2010), 2.

engage in housing that is at the service of the community. Given the amount of time, energy and resources that both M'akola and BC Housing invested in the Cowichan Elders' project, it is clear that this was in service of a relationship with that community. The goal was the completion of the project, but the relationship was made meaningful to all partners in that it was a journey taken together to build an unprecedented project and it was sustained over a decade

In this way, these relationships are about literally building homes but they are also about building alliances with settler society in ways that are rooted in the needs of the community. These relationships are substantive and professional – in the case of Ecotrust, the organization has its own focus on building the conservation economy.[251] But the Nuu-chah-nulth were interested in improving their housing, thus the NGO professionals had to individually get behind that aspiration and understand the importance of housing for those communities in order to be a meaningful part of the project. In so doing, the relationships they formed are interpersonal, deeply so, but also professional as this represents a new model for housing at the service of a local community and economy. A similar case can be made for the other initiatives presented here. The relationships are important from the perspective of the Indigenous communities, indeed they were crucial in helping build the capacity to achieve these visions, but they are equally important from the perspective of settler society. For the relationships to be meaningful, they require settler society to respect their Indigenous partners and they challenge settler society to change its understanding and practice, from both a personal and professional vantage point.

In the context of colonialism, these relationships become even more important. The colonial project attempts to destroy Indigenous relationships to the land and to their traditional governance practices (that are, in turn, based on the relationship to the land and to each other). It attempts to replace these governance practices with different structures that facilitate greater resonance with (and subjection to) settler society.

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[251] Ecotrust Canada, "Building the conservation economy," Ecotrust Canada, http://www.ecotrust.ca (accessed 5 Feb 2013).

Establishing and maintaining relationships: within the community, between communities, and with external partners, in ways that restore those relationships to the land and those governance practices offers the potential to confront colonialism on its economic and subjective fronts. And it is in this manner that these initiatives offer both Indigenous communities and settler society a way forward from colonialism and towards better housing and healthier communities.

5.4 Housing and decolonization

The emphasis on relationships seen throughout the examples given here is in tune with a body of literature that points to a grassroots understanding of self-government beginning at the level of the individual and the community. This approach is contrasted with state-centred demands for recognition, which Indigenous thinkers have argued only reproduces the very power relations they seek to transcend.[252] Decolonization literature suggests that taking over the institutions of governance may not be at all effective at deconstructing colonization. Rather than moving toward a post or de-colonized society, seeking to engage with the state on its own terms may mean losing or subordinating elements of one's own culture by transforming complex cultural values and worldviews into something that can be understood and recognized by the state (or institutions of governance).[253]

In fact, as Glen Coulthard points out in "Subjects of Empire: Indigenous people and the 'Politics of Recognition' in Canada," Fanon anticipated this struggle when writing of decolonization in 1950s Algeria. As we saw in Chapter 2, Fanon argued that colonialism maintains its hegemony by acting on both economic and subjective fronts – dispossessing the colonized of land and resources and simultaneously creating a discourse that labels them as deserving of this treatment – and thus has to be attacked on both fronts in order to achieve decolonization. As such, Fanon argued against looking to the state for

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[252] Coulthard, "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada," 439.

[253] Paul Nadasdy makes this claim in his book, *Hunters and Bureaucrats*, arguing that the land claim and wildlife management frameworks in the Yukon are impeding First Nations' ability to engage in their cultural pursuits by even coming to the negotiating table. Paul Nadasdy, *Hunters and Bureaucrats* (Vancouver: UBC Press, 2003), 3.

recognition (for example, of Aboriginal rights or an inherent right to self-government), as this merely bestows recognition upon the colonized and does not significantly modify the relationship between the two groups. Similarly, looking for economic redistribution from the colonial power does not account for the subjective trauma inflicted on the colonized. Fanon argues that it is only through struggle that the colonized can undergo fundamental self-transformation and achieve authentic freedom from the colonial relationship.[254] Fanon's, and later Coulthard's, analysis utilizes Hegel's master/slave dialectic to understand the relationship between colonizer and colonized. In Hegelian terms, the master/slave narrative is one wherein each requires for the realization of oneself as a self-determining agent that one is not only recognized as self-determining but that also that one be recognized by another self-consciousness that is also recognized as self-determining, as "It is through these reciprocal processes and exchanges of recognition that the condition of possibility for freedom emerges. Hence, Hegel's repeated insistence that relations of recognition be mutual."[255] Yet the master can only be recognized by the slave; this hardly constitutes recognition at all. Thus while the master continues to "wallow in a lethargic state of increased dependency,"[256] the slave through his/her transformative labour is able to realize his/her independent consciousness. The slaves, having come to consciousness through transformative labour, do not reinscribe past injustice by becoming masters themselves, as this would merely recreate the situation and leave them the same fate as the former masters, but rather are the means of saving the master. This is echoed in Paulo Freire's *Pedagogy of the Oppressed*, where he argues "As the oppressed, fighting to be human, take away the oppressors' power to dominate and suppress, they restore to the oppressors the humanity they had lost in the exercise of oppression. It is only the oppressed who, by freeing themselves, can free the oppressors."[257] Thus, oppressors "concede the right to survival of the oppressed only because the existence of the oppressed is necessary to their own existence,"[258] hence the dialectical relationship described by Hegel that he believed provided the conditions of possibility for mutual freedom.

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[254] Coulthard, "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada," 454.
[255] Ibid., 440.
[256] Ibid.
[257] Paulo Freire, *Pedagogy of the Oppressed*, trans. Myra Bergman Ramos (New York: Continuum, 1982), 42.
[258] Ibid., 43.

Fanon's crucial insight is that it is not recognition that the master wants from the slave in the colonial context, but rather land, labour, and resources. As such, "colonial powers will only recognize the collective rights and identifies of Indigenous peoples insofar as this recognition does not throw into question the background legal, political, and economic framework of the colonial relationship itself."[259] This mirrors the argument pursued in Chapter 3 of this thesis, where the federal government allows, and indeed encourages, Indigenous people to take control of their housing but without throwing into question the colonial relationship. The danger here is that attempts to pursue decolonization through the state or through state-sanctioned processes run the risk of subtly shaping the worldview of Indigenous people through this interaction. As I described in Chapter 4, this is the concern in relation to property rights. We risk changing Indigenous reality by choosing to understand Indigenous property rights *as such* – to name Indigenous practices or customs in a way not previously done re-describes those practices or customs. Re-describing Indigenous practices or customs in a way that resonates with settler culture risks *subtly changing* those practices or customs and, as such, colonizes by "creating a picture of society and reality that *is not there*."[260] Paul Nadasdy makes a similar argument with respect to the land claims processes in the Yukon, noting that Indigenous people were invited to come to the negotiating table and re-describe their traditional hunting culture in ways that could be translated into wildlife management frameworks. These frameworks originated in an entirely different culture, that of the titular bureaucrats, and thus Indigenous people in the Yukon risk losing their distinct way of viewing the world by participating in processes that alter their practices into a reality that is not there. They also have to forego actually practicing their culture in order to be present at the negotiating tables.[261] The assimilative danger is thus very present in state-sanctioned decolonization processes.

If decolonization, then, cannot be pursued by looking to the state, Fanon and others argue that is through the transformative 'praxis' or labour of the colonized that this process can

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[259] Coulthard, "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada," 451.
[260] Bryan, "Property as Ontology: On Aboriginal and English Understandings of Ownership," 5.
[261] Nadasdy, *Hunters and Bureaucrats*, 3.

occur. The colonized must turn inward and away from the master and from settler state sanctioned recognition and toward self-affirmative actions. It is this approach that can confront colonialism on both the subjective and economic fronts. This is echoed in contemporary decolonization literature: Taiaiake Alfred has offered that a process of individual and then community decolonization must occur for Indigenous communities before engagement with the state can occur in a meaningful fashion. For Alfred, what is needed foremost is a focus on community and on regenerating cultural practices, and only then will Indigenous communities be strong enough in their own ideological underpinnings to engage with mainstream Canadian society about how to negotiate the future of relations between the two groups.[262] The need for this type of collective politics is echoed by others who have argued that "the most promising practices are those which on the one hand are rooted in everyday life and on the other hand are connected with movements that transcend the state."[263]

Housing is particularly well suited for the kind of decolonization and self-determination that is being advocated. Just as housing was a crucial site for the deployment of colonialism, so too can it be a site of engagement in decolonization efforts. Housing is intimately connected to everyday life. The community initiatives were also able to dictate the terms of the state's involvement. Each of the examples given here are able to either avoid directly engaging the state or engage with it on their own terms. This is achieved by communities focusing on what housing works for their particular community. Whether it is Oujé-Bougoumou eschewing government involvement in its housing by placing housing as a critical part of its vision for its new village site and negotiating financial contribution for that housing, or Cowichan partnering with an off-reserve Aboriginal housing provider and engaging the provincial government on terms that meet Cowichan's needs, each of these communities understood the importance of turning inward and asking themselves what type of housing is needed by their community, and then creating the relationships that could facilitate that vision. In each case, the importance of housing in that process of decolonization is affirmed. It remains important to keep in mind that

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[262] See Taiaiake Alfred, *Wasawé* (Peterborough, ON: Broadview Press, 2005); Taiaiake Alfred, *Peace, Power, Righteousness* (Don Mills, ON: Oxford University Press, 1999).

[263] Warren Magnusson, *The Search for Political Space* (Toronto: University of Toronto Press, 1996), 90.

housing is not disconnected from the state, indeed much of this thesis has been about demonstrating how intimately linked the two have been and remain and why. Oujé-Bougoumou acknowledges that they were in a unique position due to funding from the state and Cowichan relied on provincial funding for the creation of their Elders' home. Yet the innovative partnerships and projects that are emanating from Indigenous communities are focused on cultivating relationships and use those relationships to create housing that meets the needs of the community.

Indigenous communities, as is exemplified by the history of colonialism, do not exist in isolation from the rest of the world. Thus the constraint that approaches such as Alfred's will always run up against is the fact that whatever form of self-determination becomes realized for Indigenous communities, it will do so in a globalized economy. How able will revitalized Indigenous governments be to resist further encroachment on their traditional values by the forces of late neoliberal global capitalism? Alfred's position is as follows:

> The only position on [economic] development compatible with a traditional frame of mind is a balanced one, committed at once to using the land in ways that respect the spiritual and cultural connections indigenous peoples have with it and to managing the process so as to ensure a primary benefit for its natural indigenous stewards. The primary goals of an indigenous economy are to sustain the earth and to ensure the health and well-being of the people.[264]

I argue that housing provides a key site for establishing and nurturing this balance. It is explicitly connected to the economy and each of the initiatives presented here is well aware of the need to both ensure affordable housing is built and to utilize this resource to encourage economic development. Yet this economic focus does not prohibit the housing from being culturally appropriate, environmentally responsive, nor, crucially, what the community wants. By valuing housing and working to ensure that housing is more in line with the values of the community, Indigenous people engage in the transformative labour outlined by Fanon and thus come closer to realizing that freedom. Further, they are doing

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[264] Alfred, *Peace, Power, Righteousness*, 62.

so by cultivating relationships, often with non-Indigenous partners. The crucial issue will be to ensure that the housing remains at the service of the community and that the community has the capacity to do so.

Housing is a nexus connecting inhabitants to social, environmental, economic, political sites. It is a site of personal space and of community interactions; it embodies economic concerns associated with affordability and construction; it is a site of decision-making and authority legitimating between occupants; and it is the site of one of the most basic human-environment interactions. Colonial discourse well understood the ability of housing to reorganize Indigenous society into something that served settler society. Decolonization efforts do well to understand the ability of housing to engage in the transformative labour that can bring about authentic self-determination.

5.5 Conclusion

In this thesis I have presented an investigation into on-reserve housing. I have looked at Canada's colonial and recent past and examined both what the state offers housing and what housing offers to decolonization efforts. Though many communities remain in a crisis situation with respect to their housing, it is important to underscore the fact that what Indigenous people are actually asking for in terms of their housing is not tremendous; in fact the community initiatives presented here are modest in their ambitions. Affordability, places for preparing meals and for gathering, the inclusion of cultural aesthetics, ensuring the building materials are appropriate for the environment, ensuring the locus of authority remains in the community – each of these demands should be achievable for communities. On this reading, improving on-reserve housing, even in the absence of a federal government (or settler society) that accepts the governance problem underlying these issues, appears more possible: there is abundance and not lack in Indigenous communities. The biggest obstacle from the perspective of Indigenous communities is engaging in the kind of transformative labour encouraged by Fanon, Coulthard, Alfred and others. I argue that placing housing at the centre of that labour can have positive impacts for both housing itself and for the community. Yet the biggest obstacle from the perspective of settler society, my own vantage point, is quite different.

Our challenge is not so much knowing the other or trying to solve Indigenous problems as it is knowing ourselves, that is, having enough distance from our own culture to understand how we are determined by it and what the problems are with this.[265]

This thesis has attempted to engage that issue – to shine a light on the on-reserve housing crisis and reveal it as not, in the end, an Indigenous problem, but a settler problem. This is in contrast with the approach to Indigenous housing that the FNPO advocates: privatization and acceptance of the mechanisms and values of settler society. The proposal remains attractive – it appears to offer economic opportunities and a way to get out from under government intervention in housing on-reserve. Yet it is a dangerous proposal for several reasons: first of all, this approach is so consistent with past efforts at assimilation, as we saw with the comparison of location tickets. Indigenous people are being invited to join the economy and culture of settler society, as they were in an earlier colonial era, yet inclusion in this culture may mean giving up wider claims to historical entitlement or redistribution. Furthermore, it compromises Indigenous people's ability to determine the future of their housing and their communities by reducing these articulations to the ability to buy and sell in the market place – and they can be dispossessed by market logic if conditions are not met. A third danger of the proposal to privatize is that it distracts both Indigenous people and their potential settler allies from the important work that needs to be done by both groups. Much as Alfred and Corntassel have argued that there is a 'politics of distraction' at play in state-sanctioned legal and political discourses of Indigeneity, the debate over failing social housing versus private property similarly "diverts energies away from decolonizing and regenerating communities."[266] Emphasis on the ways in which settler governments have created this problem of housing allows us to place value on community actions, such as the initiatives highlighted here. It also allows us to consider how governance is impacted by housing and how communities can reclaim their ability to construct collective decision-making (for example, about what their most pressing housing needs are, or about whether they

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[265] Lutz, *Makúk*, 27.
[266] Alfred and Corntassel, "Being Indigenous: Resurgences against Contemporary Colonialism," 600.

want to engage government programming or not); whereas privatizing land subordinates community control to the rule of the market.

Much work remains to be done, both in terms of Indigenous communities' asking what they want from their housing and also in terms of settler society seeking to become responsible allies in this work. In focusing on this understanding of the problem at hand, new avenues centred on fostering grassroots self-determination through housing and through the innovation of communities open up. Our challenge is to step back in order to think creatively about how to move forward in a way that is about establishing and maintaining relationships, that allows our institutions to become more flexible so as to nurture the type of self-determination being advocated.[267] Perhaps then we can look to a post colonial future for Indigenous and settlers alike.

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[267] This echoes a list of principles advocated at the World Indigenous Housing Conference held in June 2012 in Vancouver, BC. This conference brought together Indigenous housing practitioners, as well as government representatives, from Australia, New Zealand, U.S.A, and Canada and was focused on solutions to housing problems from these four parts of the world. The last day of the conference saw a list of principles for institutions that foster self-determination. These institutions are: Designed as living systems, Based on assumption that there is abundance in community (look in community first), Authentically engage with each other at every level, Fundamentally change way housing business is done (not top-down or imposed), Cannot be done in isolation (social development, health, education, etc). For more information and to download presentations, visit Indigenous Housing Gateway, World Indigenous Housing Conference, www.indigenoushousing.org (accessed 15 June 2012).

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(UN) United Nations Human Rights Council. *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Raquel Rolnik.* 4 February 2009.

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Appendix A – On-reserve housing system

Table 2 – Federal government on-reserve housing programming

AANDC program	Purpose
On-reserve Housing Support Program	Provide funding and other supports for new housing unit construction, renovation/repair, lot servicing and capacity building related to on-reserve housing.
Ministerial Loan Guarantee (MLG)	Assist First Nations in accessing loans for housing on-reserve.
Shelter Allowance	An allowance paid to assist with the costs of rental housing and utilities, paid to income assistance recipients, at rates largely established by provincial governments.
CMHC program	**Purpose**
On-reserve Non-profit Rental Housing Program (Section 95)	Provides a subsidy for the financing and operation of rental housing units. The subsidy covers the difference between the loan repayment + operating expenses and the revenue that the tenant is paying. CMHC direct lending is offered to all existing Section 95 projects.
Residential Rehabilitation Assistance Program (RRAP)	Funding to repair existing homes. RRAP provides forgivable loans to First Nations up to $25,000 (of which a maximum of $5,000 to $8,250 can be forgiven), based on income and geographic location. The suite of RRAP programs is: • RRAP — On-Reserve • RRAP — Rental • RRAP — Persons with Disabilities • RRAP — Conversion • RRAP — Rooming Houses • RRAP — Secondary/Garden Suite
Home Adaptations for Seniors' Independence (HASI)	This provides a forgivable loan of up to $3,500 to carry out minor home modification for seniors who meet eligibility criteria (age, low-income, permanent residence, difficulty with daily living activities brought on by ageing). The loan is forgiven so long as the homeowner continues to occupy the unit for six months.
Shelter Enhancement Program (SEP)	Financial assistance for the renovation or construction/acquisition for shelters for victims of family violence. It also provides for the acquisition or construction of new shelters and second stage housing where needed. Assistance is in the form of a fully forgivable loan provided the Band Council adheres to

	the conditions of the program (for new developments, loans for the full cost of the construction must be secured with a 15-year MLG. For renovations, the maximum loan is based on the number of units and the geographic zone of the project).
Aboriginal Capacity Development	CMHC has an annual budget of $2 million to undertake capacity building initiatives on-reserve. These include: - Support to industry professional, such as the development of the Native Inspection Services - Builders' workshops, demonstration projects on innovative construction techniques, dissemination of research results, building trades courses, use of local building materials, National Building Code - Support to First Nation housing administrators and occupants including training courses (Section 95, mortgage insurance), client counselling, rental arrears management, succession planning, communications household maintenance - Healthy housing - disseminating existing research findings particularly on indoor air quality - Housing internship initiatives, as part of Youth Employment Program - Information transfer
Homeownership Loan Insurance (Pilot) without MLG	Allows for purchase, construction or renovation of a home on reserve for qualifying First Nations communities. It allows eligible First Nations to facilitate insured mortgage financing for qualifying band members without a MLG.
National Housing Act insurance and lending	On-reserve loan insurance product that provides insurance without using the MLG.
First Nations Market Housing Fund	2007 Budget set aside $300 million for fund. Serves as financial security for eligible First Nation members to obtain home ownership, rental and renovations loans while leaving reserve land in communal ownership.

(With information from: AANDC, Evaluation of INAC's On-Reserve Housing Support, February 2011; CMHC, "On-Reserve Housing Programs.")

Table 3 – Differences in housing programming pre and post-1996

1960s – 1996	1996
INAC	INAC/AANDC
• Proposal-driven housing subsidies*	• On-Reserve Housing Support program
• Ministerial Loan Guarantee (MLG)	• Ministerial Loan Guarantee (MLG)
• Welfare payments	• Shelter allowance
CMHC	CMHC
• 2% housing program	• On-Reserve Non-Profit Rental Housing program (Section 95)
• RRAP	• RRAP
	• Aboriginal Capacity development
	• HASI, SEP, PDF, Section 10, FNMHF.

*Note that this AANDC program continues for those First Nations who didn't opt in to the 1996 policy.

On-reserve housing system

Federal housing programs on-reserve

In the context of housing for First Nations, the government is represented by the department of Aboriginal Affairs and Northern Development Canada (AANDC) and Canada Mortgage and Housing Corporation (CMHC), with Health Canada implicated in matters related to the occupants' health. AANDC and CMHC together fund the on-reserve social housing programs. Split almost evenly between CMHC and AANDC, the Government of Canada provides approximately $272 million per year in social housing funding on-reserve. In 2009, this translated into approximately 820 units across Canada built as part of the Section 95 program and approximately 2,300 units per year as part of AANDC's on-reserve housing programs.[268] In 2005, as a result of the failed Kelowna Accord (taken up in more detail in Chapter 5), a further $295 million was injected into the housing system and in 2009, as part of Canada's Economic Action Plan, $400 million

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[268] AANDC, First Nation On-Reserve Housing, http://www.aadnc-aandc.gc.ca/eng/1100100010752/1100100010753 (accessed 5 Feb 2013); CMHC, "Our Performance Against Objectives," *2009 Annual Report* (Ottawa: 2009), 54.

was committed to on-reserve housing.[269] The total AANDC funds for housing since the introduction of the policy in 1996 are expressed in the table below:

Table 4 – On-reserve housing funding

Year	Total AANDC funds spent on on-reserve housing (in 000s)
1996-1997	$161,000
1997-1998	$166,000
1998-1999	$198,000
1999-2000	$169,000
2000-2001	$175,000
2001-2002	$153,180
2002-2003	$164,170
2003-2004	$136,784
2004-2005	$136,317
2005-2006	$165,155
2006-2007	$254,526
2007-2008	$155,000
2008-2009	$117,000
2009-2010	$150,000
2010-2011	$150,000

(As per AANDC, "Table 2.2 Program Resources," Evaluation of INAC's On-Reserve Housing Support, February 2011)

Even without adjusting for inflation, we can see that in the fifteen years since the introduction of the policy in 1996 (excluding the Budget 2005 and the committed Economic Action Plan funding) funding has been steadily decreasing – clearly funding is not keeping pace with demand.

AANDC provides funding as part of a capital allocation, based on a population-driven formula, which is transferred to First Nations annually as part of either Comprehensive Funding Agreements (CFAs) or through five-year funding agreements (DFNFAs).[270] This funding can then be used for construction and renovation of houses, as well as for implementing different elements of that First Nation's community-based plans (a key tenet of the 1996 On-Reserve Housing Policy, which is discussed in-depth in Chapter 3).

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[269] AANDC, "2.4 Program Resources," Evaluation of INAC's On-Reserve Housing Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5 Feb 2013).
[270] AANDC, "2.3.1 Program Management".

These might include maintenance, insurance, debt servicing, training, etc. If a First Nation chose not to opt in to the 1996 policy, they continue to operate under a proposal-driven housing subsidy program established in the 1960s (again, see Chapter 3 for more details). The department states that it does not cover the full cost of housing and that First Nations are expected to contribute funding from other sources.[271] This runs counter to the conception in many communities that housing is a treaty right. Even in those communities where this belief is not widely held, it is often not well understood that the federal government does not intend for its funding to cover the full cost of housing.

CMHC operates the Non-Profit On-Reserve Housing Program (*National Housing Act, Section 95*).[272] As a rental housing program, CMHC operates the Section 95 initiative by providing a subsidy for the financing and operation of rental housing units, which is allocated nationally based on population need and regionally through working committees. CMHC's subsidy is calculated to last through the project's mortgage payment period, up to a maximum 25-year mortgage period (whichever is less). The amount of subsidy is determined as follows: Project Subsidy = Loan Repayment + Operating Expenses - Revenue.[273] While Section 95 is the primary subsidized housing program available for First Nations, federal programming does include additional housing supports. CMHC offers direct lending services for First Nations (backed by both CMHC mortgage loan insurance and a MLG from the Minister of AANDC), as well as a suite of funding for specific housing needs (see Table 1 for a complete list of CMHC's on-reserve programs and initiatives).

Ministerial Loan Guarantee

Due to stipulations in the *Indian Act*, individual band members cannot apply for a mortgage as in the off-reserve lending environment, because the property cannot be put up as collateral on the loan from the financial institution. Likewise, mortgage security is rarely available to First Nations, providing disincentives for banks to invest in loans on-reserve. In place of direct financing with banks or other financial institutions, First

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[271] AANDC, "First Nation On-Reserve Housing Program".
[272] CMHC, "On-Reserve Non-Profit Housing Program (Section 95)," On First Nations, http://www.cmhc.ca/en/ab/onre/onre_010.cfm (accessed 5 Feb 2013).
[273] Ibid.

Nations must obtain a "Ministerial Loan Guarantee" (MLG) before negotiating a loan or
mortgage from the bank.

The Ministerial Loan Guarantee (MLG) means just that: it is a guarantee that the federal
government will back stop the loan in the event of a default by a First Nation. The loan is
guaranteed by the Minister of the department of Aboriginal Affairs and Northern
Development Canada (AANDC). Further complicating matters is the fact that First
Nations can also obtain a direct loan from CMHC itself, and CMHC requires the First
Nation obtain CMHC mortgage loan insurance (MLI) under the *National Housing Act*
before releasing any funding under their programs. Thus financial institutions will
provide a loan, receiving mortgage loan security from one federal agency, CMHC, which
will in turn receive a loan guarantee from another federal agency, the Minister of
AANDC (See Figure 1 for visual representation). While the loan is ultimately secured by
the department of Aboriginal Affairs and Northern Development, in practice it is the First
Nation who will face repercussions in terms of being placed in a co-management or third
party management structure by AANDC, should financial obligations remain unmet. A
MLG is a requirement for almost all financing that occurs on-reserve, due to the legal
title residing to the land residing with the Crown, and, in most cases, a First Nation must
obtain this certificate from AANDC before pursuing either social housing through a
government agency or any form of financial investment from a lending institution.[274]

Figure 1. On-reserve loan process

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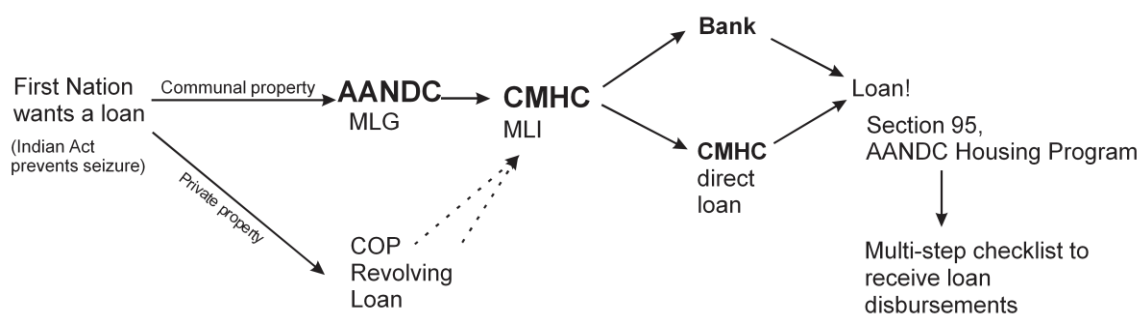
[274] Recently, banks are becoming willing to do business on-reserve without the formal MLG in place. See
   Bank of Montreal's on-reserve housing program. Additionally, CMHC has a pilot project which provides
   loan insurance without a MLG. In both cases the band council is liable in case of default.

Forms of private property on-reserve

Faced with the unique land tenure arrangement described above, First Nations have either treated land as a communal possession, thus creating housing largely through accessing government funds and programs, or have created a facsimile of private property on reserve. Private property exists on-reserve in four distinct forms: certificates of possession, customary rights (referring mostly to non-transferable "use rights"), leases (through designated lands), and rights incurred through the *First Nations Land Management Act*. Certificates of possession are most commonly used in order to obtain financing for housing, while customary rights are more relevant in a natural resources context and the latter two forms of private property are more often for commercial use.

Certificates of possession are, for the majority of First Nations, the closest semblance of a private property regime existing on reserve, and offer the potential for individual ownership of housing on reserve, once a mortgage has been paid and the certificate returned by the band to the individual. Certificates of possession are usually given by the band council to individuals who were historically in possession of what later became land parcels under the *Indian Act*. A certificate of possession "gives its holder an interest in property that falls somewhere between a fee simple and life estate interest."[275] A certificate of possession does provide security of tenure (as certificates of possession have been upheld by the courts) to the individual and indicates lawful possession of an individual tract of reserve land, though this land has to have been formally allotted to that individual by both the band council and approved by the Minister of AANDC.[276] As AANDC, in collaboration with the Canadian Bankers' Association, explains to lending institutions:

> INAC [AANDC] administers and controls reserves, and
> manages reserve land for the benefit of First Nations. The
> Minister or the Governor in Council may delegate authority
> to a First Nation to manage reserve land. Where this occurs,

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[275] Alcantara,"Certificates of Possession and First Nations Housing: A case study of the Six Nations Housing Program," 186.
[276] Ibid.

> the First Nation can approve allotments and other
> transactions, and sign leases and other agreements on the
> Minister's behalf.[277]

Holding a certificate of possession does not circumvent the prevention of seizure of property on reserve and thus financial institutions often remain reluctant to grant a mortgage to an individual even with this form of private property. Certificates of possession do offer a means of accessing financing in that they offer both security of tenure and the freedom to transfer property. It is through the latter that First Nations have accessed financing – that is, through the creation of a revolving loan program using certificates of possession.

Revolving loan programs have been used by various communities with considerable success, particularly in First Nations where access to land is limited. Christopher Alcantara provides a overview of a revolving loan fund, as well as the on-reserve loan programs of the Royal Bank and the Bank of Montreal in his study, 'Certificates of Possession and First Nations Housing: A case study of the Six Nations Housing Program.'[278] Revolving loans require an individual to sign over their certificate of possession to the band council for the duration of the loan. The band council will then negotiate a mortgage with the financial institution on behalf of the individual(s) and CMHC will provide loan insurance with a Ministerial Guarantee from AANDC. Alcantara notes that revolving loan programs are an important means of accessing financing, however challenges remain in their implementation due to what he perceives as overly onerous administrative burdens placed on First Nations by federal government agencies.[279] Certificates of possession and the revolving loan funds that accompany them thus remain an important housing option for First Nations.

In case of leasehold lands, a First Nation may choose to designate lands and then grant a lease to a commercial interest. Unusually, this third party interest does not have to be a

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[277] Indian and Northern Affairs Canada and Canadian Bankers Association, *Understanding the Regulatory Environment for On-Reserve Lending*, 11.

[278] Alcantara, "Certificates of Possession and First Nations Housing: A Case Study of the Six Nations Housing Program," 183-205.

[279] Ibid., 196.

member of that First Nation to obtain the lease. This option is found within the language of the *Indian Act*, as explained by AANDC and the Canadian Bankers' Association:

> The Indian Act provides that an agreement whereby a First
> Nation or individual member of that First Nation grants
> third parties (persons not belonging to that First Nation)
> rights to use, occupy, reside on – or otherwise exercise any
> rights on – a reserve is void. [Section 28 (1)]. However,
> there are a number of mechanisms under the Indian Act
> whereby First Nations can request that reserve land be
> leased on their behalf. The most common way for long
> term leasing or for a long term grant of easement is for a
> First Nation to designate a parcel of reserve land to the
> Crown for the purpose of leasing or easement pursuant to
> the designation provisions of the Indian Act.[280]

Interestingly, this situation parallels the revolving loan fund, whereby individual members designate their certificate of possession to the band council, however in this case it is the band council that designates a particular plot of land to the federal government (AANDC) for the express purpose of requesting the federal government to lease that land on their behalf. Once this agreement is in place, a leasehold mortgage is possible for designated land. Individual members of a First Nation who have lawful possession may apply to AANDC asking that the Minister lease their land on their behalf.[281] This strategy has been used with success by various First Nations and for various scales of projects. A well known example is that of Cowichan Tribes, who have designated land and successfully negotiated leases to create a variety of commercial and institutional enterprises, allowing for third party development on reserve lands.[282]

In addition to both leasehold designated lands and certificates of possession, First Nations who have signed the *First Nations Land Management Act* gain access to private property options under this relatively new legislation. First Nations who have chosen to opt into this voluntary act are legally responsible for managing their land in accordance with the

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[280] Indian and Northern Affairs Canada and Canadian Bankers Association, *Understanding the Regulatory Environment for On-Reserve Lending*, 16.
[281] Ibid.
[282] For a list of Cowichan Tribes lease holdings, see Cowichan Tribes, "Lease Holdings," Cowichan Tribes, http://www.cowichantribes.com/about/Facts/Economy/Lease%20Holdings (accessed 5 Feb 2013).

Framework Agreement and the *FNLMA*, as opposed to the *Indian Act*. Each First Nation who signs the Framework Agreement must then develop a land code setting out specific provisions and processes for dealing with interests in land. The First Nation and the Government of Canada must also enter into an individual agreement to determine the level of operational funding for land management and to set out the specifics of transition to the new regime. Both the land code and the individual agreement must be ratified by the First Nation membership. As explained by Alcantara:

> In essence, the *FNLMA* allows its signatory First Nations to opt out of the land management sections of the *Indian Act* to develop their own land codes for administering their lands according to their own rules and customs. For a land code to come into effect, a First Nation must develop and draft a land code, submit it to a jointly appointed verifier, negotiate a funding agreement with INAC, and then hold a community vote on both the land code and the funding agreement. If it is approved by the community, the verifier certifies the land code and the First Nation takes over all land management responsibilities from the Crown. On the day the land code takes effect, it acquires legal standing and becomes enforceable in Canadian courts. [283]

A completed land code will address a number of issues, including the use and occupancy of First Nation's land, including licences, leases, and allotments under s. 20(1) of the *Indian Act*; the transfer of land interests and the revenues from natural resources obtained from reserve land; conflicts of interest in the management of First Nation land; the establishment of a forum for the resolution of disputes in relation to interests in First Nation land; granting or expropriating interests in First Nation land; delegation by the council of its authority to manage land; approvals of an exchange of First Nation land; and amending the land code.[284] The *FNLMA* does not require the institution of a private property regime but certainly provides the opportunity for First Nations to do so.

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[283] Christopher Alcantara, "Reduce transaction costs? Yes. Strengthen property rights? Maybe: The First Nations Lane Management Act and economic development on Canadian Indian reserves," *Public Choice* 132, no.3-4 (2007): 427.
[284] Thomas Isaac, "First Nations Land Management Act and third party interests," *Alberta Law Review* 42 (2004): 1049-1050.

Thus, while housing on-reserve remains anchored in a communal property ownership scenario, there are forms of private property that exist on-reserve and, as was seen in Chapter 3, federal government policy and initiatives are increasingly geared toward promotion of market-based housing and homeownership for First Nations.

Appendix B – Additional operational issues

From the perspective of First Nations, there are a number of operational issues with the 1996 On-Reserve Housing Policy, in addition to its failure to meet its own goals. These are meant to be illustrative but not exhaustive examples of operational issues, which, in the views of the 2011 INAC evaluation's First Nation respondents, "compromised the effectiveness of the program."[285] These are (as listed in the 2011 INAC evaluation, among others):

- The amounts permitted for housing repairs are insufficient and that both INAC and CMHC fund repairs but their programs have different ceiling amounts;
- Housing policy guidelines state INAC projects must be completed within a year, which prevents long-term planning;
- Often there is a delay for First Nation communities in receiving their annual funding allocation, which means that "the shovel only hits the ground" in October, and in many First Nations communities, that is too late in the season to build; and
- There can be substantial delays in the mobilization process, particularly in the delivery of building materials.[286]

The fact that INAC's own guidelines prevent long-term planning is a critical point, given that much of the success of the 1996 policy depended on developing housing plans that were to bring about the intended outcomes of the policy. Additionally, CMHC's Section 95 program carries with it the obligation to fund "replacement reserves" meant to be available for maintenance work over the course of the unit's useful life, however, these are often poorly funded as communities' will utilize housing funds to fund other activities (such as health care or education) while waiting for the funding cycle for those activities.

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[285] AANDC, "6.2.2 Operational issues which affected the delivery of the housing program," Evaluation of INAC's On-Reserve Housing Support. February 2011. http://www.aadnc-aandc.gc.ca/eng/1325099369714/1325099426465 (accessed 5 Feb 2013).
[286] Ibid.

Thus there is often not enough capital in the replacement reserve to pay for needed repairs and there is no additional maintenance funding available.

Finally, the 1996 policy did not achieve culturally and environmentally appropriate housing design:

> Almost all key informants and especially First Nations key informants made some reference to housing designs which were poorly thought out for the locales in which the houses were to be built. There are two dimensions to what appears to have made the designs unacceptable: structurally, they did not take into account the environmental stresses; and culturally, they were inappropriate in many ways.[287]

Arguably, the 1996 policy did not have the creation of culturally or environmentally appropriate housing as part of its goals. However, it did states in its Guidelines that both INAC and CMHC were committed to developing a new approach to housing, one that was community-based, and that would "bring about overall and sustainable improvements in on-reserve housing conditions."[288] Given what we have learned, the policy has not led to improvements in housing conditions, indeed the inhabitants of the houses have found them unacceptable.

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[287] AANDC, "7.3 Are there alternative approaches which could achieve program outcomes more effectively?"
[288] INAC, Guidelines for the Development of First Nations Housing Proposals, 3.