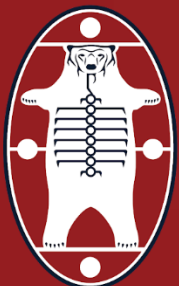


Submission to the Standing Committee on Indigenous and Northern Affairs

Arctic Sovereignty, Security and Emergency Preparedness of Indigenous Peoples

Grand Chief Derek Fox,
Nishnawbe Aski Nation
June 7, 2022



Nishnawbe Aski Nation
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**Executive
Summary**

Executive Summary

Nishnawbe Aski Nation (NAN) is pleased to present the attached submission to assist the Standing Committee on Indigenous and Northern Affairs with its study on the Arctic Sovereignty, Security, and Emergency Preparedness of Indigenous Peoples.

NAN has undertaken a review of emergency management for First Nations in Ontario. This review was completed in early 2021, and the findings highlight deficiencies and gaps in the emergency management system specific to Ontario. The review consists of twenty (20) recommendations which are contained across five subject areas:

1. Jurisdiction of Emergency Management on First Nations Land
2. Canada's "All-Hazards" Approach and Types of Emergencies
3. Emergency Management Assistance Program
4. Measuring Remoteness for First Nations in Ontario
5. Ontario's Role in Emergency Management

For First Nations in Ontario, involvement of both the federal and provincial governments for emergency management creates jurisdictional complexities. Emergency management efforts for First Nations are primarily funded by the federal government but operate within a provincial emergency management system. The review addresses how involvement by both levels of government can affect the efficient delivery of emergency management services to First Nations, and this review offers recommendations on how to improve emergency management despite these jurisdictional complexities.

Further, Canada's framework of policies that relates to emergency management for First Nations are not entirely compatible with Ontario's emergency management laws and policies. An important consideration moving forward would be to achieve alignment of emergency management principles, which would contribute to a more consistent approach to emergency management between First Nations, Ontario, and Canada.

Funding for emergency management for First Nations is largely through the federal Emergency Management Assistance Program. Funding is organized through the four pillars of emergency management:

- i. Mitigation
- ii. Preparedness
- iii. Response
- iv. Recovery

A significant finding in this review was the disproportionate amount of funding in the "response" and "recovery" pillars in Ontario, and a lack of funding in the "mitigation" and "preparedness" pillars. The result is a significant amount of attention on "response" and "recovery" activities to the detriment of other pillars.

A key recommendation is to focus more attention and resources on the "mitigation" and "preparedness" pillars. This would result in more resilience in communities by giving First Nations the tools to address emergencies and disasters before they occur. This approach may also reduce costs in the long-term. This review also highlights an important consideration that impacts many First Nations in Ontario: remoteness. Many First Nations communities in Ontario are remote with no year-round road access.

To date, very little work has been done to try to measure and accommodate remoteness as it relates to emergency management, and it is recommended that more work is done to understand how remoteness interacts with emergency management.

Finally, an overarching theme is that an emergency management system that is attuned to the realities of First Nations communities and culture is crucial for the success of emergency management moving forward.

Respectfully submitted June 7, 2022.

Submission to the Standing Committee on Indigenous and Northern Affairs

Arctic Sovereignty, Security and Emergency Preparedness of Indigenous Peoples



Grand Chief Derek Fox,
Nishnawbe Aski Nation

June 7, 2022



Nishnawbe Aski Nation

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Appendix



About Nishnawbe Aski Nation

Nishnawbe Aski Nation (NAN) was established in 1973, and was originally known as Grand Council Treaty No. 9 until 1983. Grand Council Treaty No. 9 made a public declaration – A Declaration of Nishnawbe-Aski (The People and the Land) – of our rights and principles in 1977.

NAN territory encompasses James Bay Treaty No. 9 and the Ontario portion of Treaty No. 5, a landmass covering two-thirds of the Province of Ontario, spanning 210,000 square miles. Our people traditionally speak Cree and Algonquin in the east, OjiCree in the west, and Ojibway in the central south area.

NAN represents 49 First Nations with a total population (on and off-reserve) of approximately 45,000 people grouped by Tribal Council. Six of our member Nations are not affiliated with a specific Tribal Council.

Executive Summary

Deficiencies and gaps in emergency management for First Nation communities is a significant area of concern in the Province of Ontario. The lack of a tripartite agreement has led to ineffective implementation of Canada’s “All-Hazards Approach”, and stymied meaningful partnerships between First Nations and the federal and provincial governments.

The lack of clear distinction between “emergency” and “disaster” has further contributed to the stalled progression of wholistic and comprehensive emergency management for First Nations in Ontario. As a compounding result, the pillars of emergency management continue to be viewed in isolation of each other rather than through the lens of a disaster cycle.

A thorough analysis of how remoteness intersects with emergency management along with genuine considerations for alternative service delivery models is key to the progression and advancement of First Nation emergency management in Ontario. Establishment of an emergency management system specific to First Nation reserves and culture is necessary for successful emergency management for First Nations moving forward.

1. Jurisdiction of Emergency Management on First Nations Land

1.1 Overview

*The Constitution Act, 1867*¹ does not assign emergency management to any head of legislative power. Since emergency management has many provincial attributes, jurisdiction for emergency management generally falls to the province.² Provincial jurisdiction can

¹ *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5 [*Constitution Act, 1867*]

² Jocelyn Stacey, “Vulnerability, Canadian Disaster Law, and the Beast” (2018), 55 Alta. L. Rev. 853 at 864 [Canadian Disaster Law] citing the *Constitution Act, 1867* ss. 92(8), (13), (16); Brittany Collier, “Emergency Management on First Nations Reserves” (9 November 2015), Publication No. 2015-58-E at page 2, online: Library of Parliament Canada <<https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2015-58-e.pdf>>. [LOP EM Report]



encompass emergencies related property³, or emergencies to health.⁴ Section 91(24) of the *Constitution Act, 1867* states the federal government has exclusive jurisdiction over “Indians, and Lands reserved for the **Indians**”. In a 2015 report to the Library of Parliament, the role of the federal government was described as:

Although in the past the purview of Public Safety Canada extended to First Nations reserves, this is not the case today. For the purposes of the *Emergency Management Act*, Indigenous and Northern Affairs Canada (INAC) and Health Canada both have identified emergency management on reserves as a risk related to their departmental responsibilities.⁵

A critical difference between a municipality and a reserve under the *Indian Act* is that a municipality is a creature of provincial statute and derives all its powers from provincial statute.⁶ First Nations under the *Indian Act* are characterized differently, where:

Although First Nations do not owe their existence to the *Indian Act* or any other statute and that an Indian Band is more than a creature of statute they nevertheless constitute entities that, as Bands and Councils, are regulated by the *Indian Act* and exercise powers in accordance with that Act.⁷

The jurisdictional distinction is important because emergency management laws that apply to municipalities in Ontario will not apply to First Nations.⁸ In Ontario, the *Emergency Management and Civil Protection Act* (EMCPA) outlines emergency management requirements a municipality must abide by. The EMCPA applies to municipalities and does not mention First Nation reserves. This lack of jurisdictional protection from the province regarding First Nations has been discussed in light of COVID-19, where:

While there are opportunities for emergency responses from federal and provincial governments, both Ontario’s *Emergency Management and Civil Protection Act* and the federal *Emergencies Act* do not specifically allocate federal financial aid for First Nations communities when declaring a state of emergency. In other words, even in the context of a pandemic or similar scale of emergency, Canadian law does not expressly include Indigenous jurisdictional capacity, despite the constitutional requirement to do so based on treaties and the *Constitution Acts, 1867 and 1982*. Thus, it is left to First Nations to provide leadership without full constitutionally recognized jurisdictional authority, given the occupation of the legislative field by the federal and provincial governments and their control over First Nations’ financial and other resources.⁹ [Emphasis added]

This concept is an important consideration moving forward. Consider what had occurred in the health context leading to “**Jordan’s Principle**”. Similar to emergency management, healthcare jurisdiction as it relates to First Nations is complicated and does not fit neatly into any head of power, where:

³ This would fall under s. 92(13) of the *Constitution Act, 1867*.

⁴ Colleen Flood et al, “Federalism and Health Care in Canada: A Troubled Romance?” (2017) at 1-2, Working Paper, online: <https://digitalcommons.schulichlaw.dal.ca/working_papers/17>. [Federalism and Health Care]

⁵ LOP EM Report, *supra* note 2 at 2.

⁶ *R. v Greenbaum*, 1993 CanLII 166 (SCC), [1993] 1 SCR 674.

⁷ *Canada (Attorney General) v Munsee-Delaware Nation*, 2015 FC 366 at para 51.

⁸ Office of the Fire Marshal and Emergency Management, Provincial Emergency Response Plan 2019 (Toronto: Ministry of the Solicitor General, 2019) at 12, online:

<www.emergencymanagementontario.ca/sites/default/files/content/emo/docs/Provincial_Emergency_Response_Plan_2019b_Accessible.pdf>. [2019 EM Plan]

⁹ Colleen M. Flood et al, “Vulnerable: The Law, Policy and Ethics of COVID-19” (Ottawa: University of Ottawa Press, 2020) at 58, online: University of Ottawa <https://ruor.uottawa.ca/bitstream/10393/40726/4/9780776636429_WEB.pdf>.



[T]he *Constitution Act, 1867* is not explicit on whether the federal or provincial governments have jurisdiction over health care. Section 92(7) is the only constitutional provision that explicitly defines a branch of health care as a provincial matter, but it is restricted to the “[m]anagement of [h]ospitals”. Nevertheless, through judicial interpretation, health care has primarily (though not exclusively) been assigned to provincial jurisdiction. As stated in *R v Schneider*, “[the] view that the general jurisdiction over health matters is provincial ... has prevailed and is ... not seriously **questioned**.” However, the issue of Aboriginal health is further complicated as section 91(24) assigns “Indians” to federal jurisdiction. Thus, whilst both levels of government may provide health care to Aboriginal peoples, it is yet to be determined whether either level of government *must* do so. It speaks volumes that with respect to Aboriginal health, both levels of government have sought to avoid rather than assume responsibilities in this area.¹⁰

The same type of jurisdictional second-guessing and lack of coordination between federal and provincial levels of government could negatively impact service delivery to First Nations in the emergency management context.¹¹ However, a November 2020 report by the Office of the Auditor General of Ontario stated:

One area where the province, not municipalities, is responsible for emergency management is the response for First Nations communities experiencing emergencies. The province does this on behalf of the federal government under a funding agreement with it.¹²

Since Ontario has assumed responsibility for emergency management in First Nations, there should not be any issues in this jurisdictional context. There is an omnipresent risk in this arrangement however, where discrete jurisdictional arguments could arise depending on the nature of an emergency. Moving forward, there should be clear guidance on the handling of all emergencies regardless of the nature of the emergency (health or otherwise).

1.2 Agreements with First Nations

In 2018, the Standing Committee on Indigenous and Northern Affairs (INAN) published a report entitled, “From the Ashes: Reimagining Fire Safety and Emergency Management in Indigenous **Communities**” (INAN Report) which reviewed emergency management practices for Indigenous communities in Canada.¹³ The INAN Report outlined how, in 2014, the federal government assumed responsibility for all costs for on-reserve emergency events.¹⁴

The federal government will now enter into funding agreements, where the federal government provides reimbursement to any provincial or third-party organizations that provide services to assist with emergency management on First Nation lands.¹⁵ Currently, Ontario has a funding agreement with the federal government to respond to emergency events on behalf of the federal government.¹⁶

¹⁰ Federalism and Health Care, *supra* note 4 at 15.

¹¹ Jordan’s Principle was instrumental in conceptualizing the bureaucratic issues funding created when jurisdiction is ill-defined. Health jurisdiction has the potential to be analogous to emergency management.

¹² Office of the Auditor General of Ontario, *COVID-19 Preparedness and Management: Special Report on Emergency Management in Ontario—Pandemic Response* (Toronto: Office of the Auditor General of Ontario, 2020) at 9, online: <www.auditor.on.ca/en/content/specialreports/specialreports/COVID-19_ch1EMO_en20.pdf>. [2020 OAG Report]

¹³ Canada, House of Commons, Standing Committee on Indigenous and Northern Affairs, *From the Ashes: Reimagining Fire Safety and Emergency Management in Indigenous Communities* (June 2018) at 10 (Chair: MaryAnn Mihychuk), online: House of Commons <www.ourcommons.ca/Content/Committee/421/INAN/Reports/RP9990811/inanrp15/inanrp15-e.pdf>. [INAN Report]

¹⁴ *Ibid* at 14.

¹⁵ *Ibid*.

¹⁶ 2020 OAG Report, *supra* note 12 at 9.



The INAN Report stressed the importance of tripartite agreements between First Nations, provinces and the federal government for emergency management activities.¹⁷ INAN reasoned that tripartite agreements are important because they clarify various roles and responsibilities of stakeholders for emergency management activities in First Nation communities.¹⁸

A necessary feature of the recommended tripartite agreements is to promote “equal **partnerships**” between First Nations, provincial governments, and the federal government.¹⁹ The INAN Report also highlighted how there are no tripartite agreements in Ontario for emergency management for First Nations.²⁰

In 1997, First Nation Provincial Territorial Organization Nishnawbe Aski Nation (NAN), Ontario, and the federal government signed a “Protocol **Agreement**” (NAN Protocol Agreement).²¹ One of the purposes of the NAN Protocol Agreement is:

To clarify and streamline roles and responsibilities of all government departments, ministries, and other agencies which provide or may provide emergency assistance to NAN First Nations, territories and traditional lands.²²

Another purpose is to address issues outlined in Schedule A of the NAN Protocol Agreement that mainly relate to evacuations.²³ A major focus of the NAN Protocol Agreement is emergency management of forest fires and floods²⁴, although s. 3.2 of the NAN Protocol Agreement seeks to clarify and streamline roles of all stakeholders “which provide or may provide emergency **assistance**” in NAN territory.²⁵

The “Province of Ontario Emergency Response Plan (2008)” (2008 EM Plan) enshrined the NAN Protocol Agreement as a relevant authority under s. 1.3.1(d).²⁶ The NAN Protocol Agreement is described in the 2008 EM Plan as:

This is a protocol between the Nishnawbe-Aski Nation (NAN), INAC and the Government of Ontario by which NAN is responsible for emergency preparedness, planning and evacuation; the federal government provides support and funding; and the province of Ontario, through Emergency Management Ontario (EMO), provides liaison and coordination with provincial ministries.²⁷

¹⁷ INAN Report, *supra* note 13 at 13-14.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid* at 12-13.

²¹ Appendix A [NAN Protocol Agreement].

²² Appendix A at 5, s. 3.2.

²³ Appendix A at 5, s. 3.3.

²⁴ Appendix A at 3-4.

²⁵ Appendix A at 5, s. 3.2.

²⁶ Ministry of Community Safety & Correctional Services, *Province of Ontario Emergency Response Plan (2008)* (Toronto: Ministry of Community Safety & Correctional Services, 2008), online:

<https://web.archive.org/web/20161006231937/http://www.emergencymanagementontario.ca/english/emcommunity/responses_resources/plans/provincial_emergency_response_plan.html#P135_11549>. [2008 EM Plan]

²⁷ *Ibid.*



Ontario updated their response plan in 2019 resulting in the “Provincial Emergency Response Plan **2019**” (2019 EM Plan).²⁸ There is no mention of the NAN Protocol Agreement nor is there any reference to any agreements with other First Nations in the 2019 EM Plan. It is curious why the 2008 EM Plan includes the NAN Protocol Agreement but the 2019 EM Plan does not.

NAN did not agree to deactivate the NAN Protocol Agreement, meaning the Ontario government chose to unilaterally exclude this prior agreement when updating their Provincial Emergency Response Plan. Further, all mentions of agreements relating to First Nations in the 2019 EM Plan only refer to bilateral agreements between Ontario and Canada²⁹ suggesting an overt effort to exclude First Nation partners.

The use of bilateral agreements runs counter to the 2018 recommendation in the INAN Report which clearly recommended that First Nations work with province and Indigenous Services Canada (ISC) as “equal **partners**” through trilateral agreements.³⁰ Since the NAN Protocol Agreement had been unilaterally abandoned, both governments are actively moving away from the concept of equal partnerships with First Nations as recommended by the INAN Report.

1.3 Recommendations

- Establish tripartite agreements with First Nation leadership, Provincial Territorial Organizations and/or Tribal Councils that ensure equal partnership among First Nations, the provincial government, and the federal government; and
- Establish clear roles for the federal government, the provincial government, and First Nations in the tripartite agreement.

2. Canada’s “All-Hazards” Approach and Types of Emergencies

2.1 Overview

Canada uses the four pillars approach to emergency management. The four pillars are:

1. Prevention and Mitigation;
2. Preparedness;
3. Response; and
4. Recovery.³¹

In Ontario, the first pillar is divided into two separate pillars, making it a five-pillar approach.³² This distinction does not have a significant impact since prevention and mitigation still exist in both models.

²⁸ 2019 EM Plan, *supra* note 8.

²⁹ *Ibid* at 40, 50, 64, 100.

³⁰ INAN Report, *supra* note 13 at 14.

³¹ Ministers Responsible for Emergency Management, *An Emergency Management Framework for Canada*, 3rd ed, (Ottawa: Public Safety Canada, 2017) at 7-8, online: <www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2017-mrgnc-mngmnt-frmwrk/2017-mrgnc-mngmnt-frmwrk-en.pdf>. [EM Framework]

³² 2020 OAG Report, *supra* note 12, at page 9.



The Emergency Management Assistance Program (EMAP) uses the four pillars to breakdown their funding.³³ Since First Nations are funded from EMAP funding and the federal government uniformly uses four pillars³⁴, this report will use four pillars in its analyses.

The conceptualization of emergencies and disasters consisting of the categories listed above is typical in literature related to disasters and emergencies, and has been referred to as a “cycle” of emergency management.³⁵ What is important for the analysis is that the response and recovery pillars are usually triggered by an emergency event, whereas the prevention and mitigation and preparedness pillars “...emphasize the importance of planning in advance of any emergency event occurring to identify risks and hazards and preventative measures that can be taken to minimize the impact of potential emergency events.”³⁶

2.2 All-Hazards Approach in Canada

2.2.1 Definition of All-Hazards Approach

Canada uses an “all-hazards” approach when responding to emergencies.³⁷ This approach is described below:

An all-hazards approach to emergency management recognizes that emergencies can be caused by nature, humans or both. The approach includes four interrelated components that can be applied to all real or potential emergencies: prevention and mitigation, preparedness, response and recovery. These four components drive emergency management activities all across Canada, including on First Nations reserves.³⁸

The all-hazards approach is meant to minimize the creation of arbitrary and unhelpful distinctions between types of emergencies. The rationale for an all-hazards approach is “the actions required to mitigate the effects of emergencies are essentially the same, irrespective of the nature of the event”.³⁹ The 2017 Federal Emergency Management Framework (EM Framework) specifically addresses that hazards can be both natural and human caused.⁴⁰

2.2.2 Definitions of “Emergency” and “Disaster”

The 2015 “Emergency Management of First Nations Reserves” Parliamentary Report states the following definition of “disaster”, as cited in the federal Canadian Disaster Database in 2015:

A social phenomenon that results when a hazard intersects with a vulnerable community in a way that exceeds or overwhelms the community’s ability to cope and may cause serious harm to the safety, health, welfare, property or environment of people.

³³ Evaluation, Performance Measurement, and Review Branch Audit and Evaluation Sector, *Evaluation of the Emergency Management Assistance Program: Final Report* (Ottawa: Crown-Indigenous Relations and Northern Affairs, 2017), Project Number: 1570-7/16122, online: <www.rcaanc-cirnac.gc.ca/DAM/DAM-CIRNAC-RCAANC/DAM-AEV/STAGING/texte-text/ev_eema_1521732392261_eng.pdf>. [EMAP Evaluation]

³⁴ LOP EM Report, *supra* note 2 at 2.

³⁵ Canadian Disaster Law, *supra* note 2 at 863-864.

³⁶ EMAP Evaluation, *supra* note 33 at 23.

³⁷ EM Framework, *supra* note 31 at 11.

³⁸ LOP EM Report, *supra* note 2 at 2.

³⁹ Public Safety Canada, *Emergency Management Planning Guide 2010-2011* (Ottawa: Public Safety Canada, 2010) at page 60, online: <www.publicsafety.gc.ca/cnt/rsracs/pblctns/mrgnc-mngmnt-pnnng/mrgnc-mngmnt-pnnng-eng.pdf>. [2010 EM Planning Guide]

⁴⁰ For a non-exhaustive list of hazards, see: EM Framework, *supra* note 31 at 11-12.



Currently, the Canadian Disaster Database (CDD) defers the definition of a disaster to the 2017 version of the EM Framework. Below are the definitions of disaster and emergency found in this framework:

Disaster

Essentially a social phenomenon that results when a hazard intersects with a vulnerable community in a way that exceeds or overwhelms the **community's** ability to cope and may cause serious harm to the safety, health, welfare, property or environment of people; may be triggered by a naturally occurring phenomenon which has its origins within the geophysical or biological environment or by human action or error, whether malicious or unintentional, including technological failures, accidents and terrorist acts.

Emergency

A present or imminent event that requires prompt coordination of actions concerning persons or property to protect the health, safety or welfare of people, or to limit damage to property or the environment.⁴¹

The definition of disaster changed from 2015 to 2017 in the CDD, which now includes human actions or error (although the definition of disaster has remained the same from the Second to Third Edition of the "An Emergency Management Framework for **Canada**"⁴²). The fundamental difference between these two definitions is that disasters focus on the magnitude of harm (i.e. the "**ability to cope**"), whereas emergencies focus on the suddenness of the event and the need for governmental intervention.⁴³

Since disasters focus on magnitudes of harm, entries into the CDD have thresholds. The criteria for the number affected individuals to constitute a disaster are below:

- 10 or more people killed
- 100 or more people affected/injured/infected/evacuated or homeless
- an appeal for national/international assistance
- historical significance
- significant damage/interruption of normal processes such that the community affected cannot recover on its own⁴⁴

Interestingly, Ontario's *Emergency Management and Civil Protection Act* defines "**emergency**" in almost the same way as a disaster in the EM Framework by focusing on magnitudes of harm. The definition of emergency is:

(1)... "**emergency**" means a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise; ("situation d'urgence")⁴⁵

2.3 Social Emergencies

For First Nations in Ontario, there is a separate category of "social **emergencies**" which trigger certain interventions by governmental and non-governmental agencies. The Mushkegowuk Council was the lead in creating a "social **emergencies**" protocol. In Ontario's 2016-2017

⁴¹ EM Framework, *supra* note 31 at 21-22.

⁴² Ministers Responsible for Emergency Management, *An Emergency Management Framework for Canada*, 2nd ed, (Ottawa: Public Safety Canada, 2011) at 14, online: <www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mrgnc-mngmnt-frmwrk/mrgnc-mngmnt-frmwrk-eng.pdf>; EM Framework, *supra* note 31 at 21.

⁴³ Canadian Disaster Law, *supra* note 2 at footnote 9.

⁴⁴ The Canadian Disaster Database (19 Sept 2019), online: <www.publicsafety.gc.ca/cnt/rsrscs/cndn-dsstr-dtbs/index-en.aspx>

⁴⁵ *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s.1 [EMCPA]



Annual Report, the activities related to a stand-alone “Social Emergencies Protocol” are summarized as:

Launched Phase I of the Social Emergencies Actions Plan working collaboratively with First Nations partners, the federal government and Ontario Ministries. A series of two focus groups, including participants from northern and remote First Nations, were held to frame the issues, context, and potential solutions. As well, work began on drafting a protocol between Canada, Ontario and First Nations leadership outlining commitment by the parties to solidify ongoing responses to social emergencies.⁴⁶

In 2017, Phase 2 of the Social Emergencies Action Plan was activated, which included a summit of First Nation stakeholders.⁴⁷

The definition of “social emergency” in the “Nishnawbe Aski Nation Guide for Responding to Social Emergencies” uses the following definition:

An event or situation which carries risk to human health/life, mental wellness, or to the social fabric and well-being of the community. It exceeds the resources and capacities of a community, and requires the immediate response and support of governments, external agencies, and service providers.⁴⁸

Curiously, an earlier draft of this definition was brought forward in March 2017 during a “Social Emergencies Summit”. This definition expressly excluded natural disasters requiring evacuation, where the definition stated:

An event or situation, with the exception of natural disasters requiring community evacuations, that exceeds the resources and capacities of a community and requires the immediate response and support of external agencies and service providers.⁴⁹ [Emphasis added]

It is unclear why there is a separate social emergency definition. Most jurisdictions in Canada do not use the term social emergency⁵⁰, nor is there much literature on what exactly a social emergency is and what separates it from other emergencies.⁵¹ Judging from the draft

⁴⁶ Ontario, *Annual Report 2016-2017* (Toronto: Ministry of Indigenous Affairs and Reconciliation, 2017), online: <www.ontario.ca/page/published-plans-and-annual-reports-2017-2018-ministry-indigenous-relations-and-reconciliation>.

⁴⁷ *Ibid.*

⁴⁸ *Nishnawbe Aski Nation First Nations Guide for Responding to Social Emergencies*, Working Document.

⁴⁹ Jody Porter, “First Nations Say Suicide Crisis Requires Same Response as Natural Disasters - ‘Social Emergencies Summit’ Aims to Create Template for Government Response in First Nations.” (24 March 2017) online: CBC <www.cbc.ca/news/canada/thunder-bay/social-emergencies-summit-1.4038363>.

⁵⁰ In 2011, the First Nations of Quebec and Labrador Health and Social Services Commission released a report entitled “Implementation Evaluation of the First-Line Social Services Pilot Project in Four Quebec First Nations Communities”. This report uses the term “social emergency” throughout but is mostly related to child-welfare. “Social emergency” is conflated and used interchangeably with “crisis” frequently in this document: First Nations of Quebec and Labrador Health and Social Services Commission, *Implementation Evaluation of the First-Line Social Services Pilot Project in Four Quebec First Nations Communities*, (Wendake: First Nations of Quebec and Labrador Health and Social Services Commission, 2011), online: <www.cssspnql.com/docs/centre-de-documentation/rapport-1re-ligne-eng.pdf?sfvrsn=2>; The Manitoba Red Cross has also used the term in August 2020: Red Cross, *Supporting Communities Facing Social Emergencies* (20 August 2020), online: Red Cross <<https://www.redcross.ca/in-your-community/manitoba/manitoba-news-and-stories/supporting-communities-facing-social-emergencies>>.

⁵¹ Quebec’s Centre Local de Services Communautaires has been using the term “urgence sociale” since at least the late 1970’s. “Urgence sociale” translates to “social emergency”, which may or may not have influenced the concept of “social emergencies” in Ontario. A 1988 literature review of definitions of “urgence sociale” show similarities between what a “social emergency” in Ontario is, and what a “urgence sociale” was in the 1980’s: Rachel Lépin et al, *Pour les CLSC de la région des Laurentides et de Lanaudière: un système d’urgences sociales régional et décentralisé* (Quebec: Université Laval, 1988) at 15-16. online: <www.santecom.qc.ca/Bibliothequevirtuelle/santecom/35567000020716.pdf>.



definition of social emergency above, a social emergency is likely meant to encompass emergencies that do not fall under a natural hazard requiring an evacuation. The problem with this definition is that all social emergencies should be categorized as a disaster under the EM Framework, since the threshold for a social emergency and a disaster is the inability to cope with an emergency event. In other words, all social emergencies are disasters, and all disasters are social emergencies.

At this time, there is no dedicated funding for social emergencies. The result is whenever an emergency hazard is labeled as a social emergency, that emergency hazard enters a process that has no financial certainty. Emergency hazards not labeled as social emergencies are funded through the federal government's EMAP program since the federal government assumed the role of reimbursing costs incurred by emergency hazards.⁵² This creates an absurd situation: if an event happens that exceeds a **community's** ability to cope but happens to be labelled as a social emergency, there is no dedicated funding stream to apply to nor any guaranteed assistance structure.

Conversely, if that same event is labelled a disaster, EMAP funding and related assistance is available. Since all social emergencies are disasters, there is a needless bifurcation of procedural processes by creating a separate social emergencies protocol. The impact is the same for both scenarios - the **community's** ability to cope has been exceeded. A consequence of this bifurcation is if the federal government does not want to fund a disaster, they can label it a social emergency and evade responsibility for providing assistance to that disaster.

There are two options to address this. The first option is to eliminate the social emergency distinction and fold it back into the normal emergency management structure. The second option is to have guaranteed funding and assistance for social emergencies. Without financial certainty, the social emergencies distinction is not useful and potentially detrimental to responding to emergency hazards. An important consideration is that the addition of a separate social emergencies protocol into the typical emergency management regime goes against the all-hazards approach outlined above.

The rationale of the all-hazards approach is that "the actions required to mitigate the effects of emergencies are essentially the same, irrespective of the nature of the event".⁵³ The nature of the event is less important than actually responding to the event. The creation of a social emergencies protocol could create potentially arbitrary distinctions between emergency hazards. Adherence to the all-hazards approach would support limiting these distinctions and folding social emergencies back into the federal emergency management regime funded by the EMAP.

2.4 Declarations of Emergency

Declarations of emergency for municipalities and provinces are used to grant extraordinary legal powers outside of normal statutory powers. The process is described as:

The law of disaster response has two key features mirrored at each level of government: (1) the legislated ability to declare a state of emergency; and (2) special delegated powers to respond to the emergency. These features operationalize the "toggle switch" approach to

⁵² INAN Report, *supra* note 13 at 10.

⁵³ 2010 EM Planning Guide, *supra* note 39.



disasters... meaning that these special sets of powers govern during a state of emergency, in contrast to the operation of ordinary legislative requirements that apply at all other times.⁵⁴

Ontario's mechanisms for declaring an emergency are found at ss. 4 and 7.0.1 of the *Emergency Management and Civil Protection Act* (EMCPA). Section 4 focuses on a municipality's ability to declare an emergency, whereas s. 7.0.1 focuses on the province's ability to declare an emergency. For the purposes of this report, s. 4 of the EMCPA will be used in the analysis of emergency powers since the Ontario municipal legislative framework will be used as an analogue to the legislative framework that governs First Nation reserves.

Section 3 of the EMCPA requires a municipality to have an emergency plan. O. Reg. 380/04: STANDARDS (Standards Regulation) outlines the specific requirements for that emergency plan. Section 4 of the EMCPA allows that emergency plan to go into effect by declaring an emergency. Section 4(1) of the EMCPA allows the head of a municipal council to "take such action and make such orders as he or she considers necessary and are not contrary to law to implement the emergency plan of the municipality and to protect property and the health, safety and welfare of the inhabitants of the emergency **area**".

It is important to think of s. 4 of the EMCPA as a 'toggle switch' mentioned above. The purpose of s. 4(1) of the EMCPA is to empower a head of a municipal council to exercise powers outside of the normal daily decision-making process if it is not contrary to law. Outside of emergency situations, a municipal council can only exercise their power through by-laws pursuant to s. 5(3) of the *Municipal Act*.⁵⁵

As noted in section 1 of this report, municipalities are creatures of provincial statute and exist solely within the realm of provincial jurisdiction. Reserves exercise their powers within the *Indian Act* - a federal statute. There are no requirements in the *Indian Act* for a First Nation to have an emergency management plan. There is also no equivalent of s. 4 of the EMCPA found in the *Indian Act*, therefore there are no extraordinary legal powers available to a First Nation in an emergency.

Emergency plans on-reserve serve a different function than a municipality. There is no requirement that an emergency plan must be activated to unlock any funding or extra powers. Rather, a First Nation "should activate its emergency response **plan(s)**" as the first step if there is an EMAP eligible emergency event.⁵⁶

There is no guarantee that a First Nation will have an emergency plan nor have the capacity to create one.

A 2017 report on the Emergency Management Assistance Program found the following:

The importance for First Nations communities to have updated and tested emergency preparedness plans is complicated by several factors. First, most communities do not have the capacity or expertise to develop and manage plans on their own. As a result, many choose to contract consultants to develop and help implement emergency plans on their behalf.

This method, although more efficient, usually involves the creation of emergency plans that are not specifically tailored to the needs of a community. Second, evaluators heard from some communities that there is a need for an in-house emergency management coordinator to assist in the creation and maintenance of their own plan.

⁵⁴ Canadian Disaster Law, *supra* note 2 at 871.

⁵⁵ *Municipal Act*, SO 2001, c 5.

⁵⁶ Indigenous Services Canada, *Building Back Better: Emergency Management Assistance Program Strategy Guide* (Ottawa: Indigenous Services Canada, 2019), online: <www.sac-isc.gc.ca/eng/1534954506773/1535121720820>. [BBB Strategy Guide]



Third, in the absence of an imminent emergency threat or identified hazard, there seems to be a lack of interest in engaging in preparedness activities.

And finally, most community members seemed confused or unaware of their emergency point of contact and who is responsible for what during an emergency event.⁵⁷

The INAN Report also recognized the lack of capacity to create emergency plans, with many First Nation representatives denouncing the lack of funding for preparedness activities.⁵⁸ INAN noted that First Nation representatives from Saskatchewan and British Columbia expressed that there was little to no funding allocated for the creation and implementation of emergency plans.⁵⁹ The fundamental difference between municipalities and First Nations is the municipal structure requires an emergency plan to unlock emergency powers, whereas First Nations generally do not have emergency plans to begin with.

Further, some First Nation's emergency plans are not specifically tailored to their own needs, contrary to the finding in the INAN Report where "First Nations are in the best position to identify the threats they **face**".⁶⁰ If a First Nation does not have an emergency plan tailored to its needs, all threats may not be accurately captured in their emergency plan resulting in a deficient plan, assuming one even exists.

When an emergency event is deemed sufficiently important to a band council, the band council often issues a Band Council Resolution (BCR) addressing the emergency event. Under s. 2(3) of the *Indian Act*, powers conferred to a band are properly exercised when a majority of electors consent to the exercise of that power⁶¹, and powers conferred to a band council are properly exercised when a majority of band councillors consent to the exercise that power at a duly convened meeting.⁶²

The Indian Band Council Procedure Regulations (Procedure Regulations) outline the procedures for how band council meetings are conducted, and how resolutions are passed.⁶³ All BCRs bound by the Procedure Regulations must be passed by a majority vote of Councillors⁶⁴ with a quorum present.⁶⁵

Uses for BCRs are wide-ranging, including:

- determining lease rates for properties on reserve lands⁶⁶;
- authorizing the transfer of funds from a settlement agreement into a trust⁶⁷;

⁵⁷ EMAP Evaluation, *supra* note 33 at 25.

⁵⁸ INAN Report, *supra* note 13 at 15.

⁵⁹ *Ibid.*

⁶⁰ *Ibid* at 18.; It should also be noted the Ontario First Nations Technical Services Corporation (OFNTSC) is a purveyor of emergency plans to First Nations. These are usually boilerplate plans and lack the specificity required for proper emergency plans. The OFNTSC also provides emergency management education and training to First Nations. An issue with OFNTSC education and training is their offerings are more applicable to First Nations in southern Ontario. As a result, OFNTSC education, training, and emergency plans are deficient for remote First Nations.

⁶¹ *Indian Act*, RSC 1985, c. I-5, s. 2(3)(a).

⁶² *Ibid* at s. 2(3)(b).

⁶³ Indian Band Council Procedure Regulations, C.R.C., c. 950. [Procedure Regulations]

⁶⁴ *Ibid* at s. 18(1).

⁶⁵ *Ibid* at s.6.

⁶⁶ *Canada v Piot*, 2019 FCA 53 at para 10.

⁶⁷ *Taylor et al. v Ginoogaming First Nation*, 2019 ONSC 328 at para 11.



- providing guidance for custodial arrangements in childcare⁶⁸;
- providing a stance for sentencing in a criminal matter⁶⁹;
- to remove police from reserve lands⁷⁰; and
- other specific and expansive purposes.

Generally, a BCR is “an act of the government of the First Nation and is done on traditional governance principles or those set out in the *Indian Act* which require a quorum for passing. One can be assured that a BCR is the First Nation **speaking**.”⁷¹

The 2019 EM Plan outlines how a BCR fits into Ontario’s emergency management scheme where:

First Nations can declare emergencies that trigger the bilateral agreement for emergency response between Ontario and Canada. An emergency declaration from a First Nation does not have any direct links to provincial or federal legislation. Indigenous Services Canada typically requires a band council resolution be made to declare the emergency, but they may verbally declare an emergency if experiencing a telephone or power outage with a band council resolution to follow.⁷²

Based on this, it is unclear what the 2019 EM Plan means when it states that ISC typically requires a BCR to “declare the **emergency**”. Passing a BCR is not dependent on approval by ISC. An interpretation of this passage could be that ISC requires a BCR to fund emergencies, although the wording in the passage does not explicitly say so. Regardless, BCRs are generally used to indicate emergencies and to authorize potential corrective action by a band council. Lastly, if ISC requires a BCR for a specific reason, a BCR could be used to meet formal requirements.

The importance of the toggle switch regarding extraordinary powers in a municipal/provincial context and in an on-reserve context is critical in understanding the differences between a reserve and a municipality declaring a state of emergency. A municipality unlocks powers outside of the normal purview of their daily duties.

A reserve does not have any special powers when they declare a state of emergency, nor does it automatically unlock any sort of extra funding.⁷³ A BCR may indicate there is an emergency hazard highlighted by Chief and Council, and a declaration of a state of emergency may be made to increase visibility of this issue.

However, declaring a state of emergency on-reserve serves a markedly different function than a municipality. Arguably the most pressing reason to declare an emergency on-reserve is to serve more of a political function than a legal function, serving to draw attention to issues and to communicate potential corrective actions.

The reason for the difference between municipalities and reserves is that the legislative framework for band councils and municipalities shares no likeness for responding to emergency events. Creating a toggle switch mechanism to employ extraordinary legal powers

⁶⁸ *M.M.-A., P.A., M.D. and A.D. v E.L. v Kunuwanimano Child and Family Services, Attiwapiskat First Nation*, 2020 ONSC 4597 at para 6; *J.E.O. v M.D.*, 2020 ONSC 6106 at para 5.

⁶⁹ *R v Collins*, 2011 ONCA 182 at para 28.

⁷⁰ *R v Suggashie*, 2017 ONCJ 67 at para 11 citing *R. v. Conway* [2006] Q.J. No.2015.

⁷¹ *D.A. v G.H. and Dilico Anishinabek Family Care*, 2021 ONCJ 95 at para 71.

⁷² 2019 EM Plan, *supra* note 8 at 64.

⁷³ A BCR has the potential to unlock funding, but any BCR declaring an emergency may or may not receive funding depending on ISC’s determinations of that situation.



to band councils will not be possible due to the way the *Indian Act* gives legal authority to band councils. Therefore, the toggle switch mechanism will need to be modified to accommodate the difference between reserves and municipalities.

An example of a toggle switch mechanism for First Nations could be the automatic activation of EMAP funding and assistance for a First Nation once they declare that their emergency thresholds have been exceeded. Since disasters are focused on the ability to cope with an emergency hazard, an assessment will need to be done with every First Nation to quantify the thresholds of when an emergency event overwhelms the community thus constituting a disaster. Each threshold for every First Nation will vary due to numerous factors, including:

- remoteness;
- population;
- fiscal capacity; and
- any other relevant considerations.

This hazard assessment should be a part of creating an emergency plan for every First Nation. Each First Nation will then reach an agreement with the federal and provincial government on acceptable thresholds for their community. Since these thresholds will be agreed upon prior to any emergency hazards, when a First Nation declares a state of emergency that surpasses the mutually agreed upon thresholds, the release of funds and assistance would flow automatically.

The advantages of this system would be the reduction of ad hoc discretionary decision-making, the establishment of clear and identifiable measures of capacity for First Nations, and produce a tangible result when a First Nation declares a state of emergency. Disadvantages could include the oversimplification of hazards and capacity, and potential disagreements on acceptable thresholds.

2.5 Recommendations

- Maintain the distinction between an “**emergency**” and “**disaster**”, where an “**emergency**” focuses on institutional response, and a “**disaster**” focuses on the degree of harm;
- The definition of “**disaster**” should be scalable to each individual First Nation, focusing on each First Nation’s ability to cope as a benchmark;
- Eliminate the distinction between social emergencies and other types of emergency hazards, or provide dedicated funding for social emergencies; and
- Create a mechanism to empower emergency declarations by First Nations.

3. Emergency Management Assistance Program

3.1 Overview

The federal Emergency Management Assistance Program (EMAP) is a program designed to provide funding to support on-reserve emergency management. The program is designed to help build resiliency, prepare for natural hazards, and respond to reserves using the 4 pillars of emergency management.⁷⁴

⁷⁴ Indigenous Services Canada, *Emergency Management Assistance Program* (Ottawa: Indigenous Services Canada, 2020) online: <www.sac-isc.gc.ca/eng/1534954090122/1535120506707>.



EMAP has multiple funding programs under the mitigation and preparedness pillars. Ancillary funding streams are the Capital Facilities Maintenance Program and the First Nations Infrastructure Fund. While these funding streams are not specifically tied to emergency management, infrastructure can be built/fixed/maintained that can benefit First Nation emergency management.

3.2 Emergency Management Assistance Program Evaluation (2017)

Funding for emergency management activities is through EMAP. In March 2017, an evaluation of EMAP (EMAP Evaluation)⁷⁵ was released. The following sections highlight some important points found in the EMAP Evaluation.

3.2.1 Response: Ontario's Portion of EMAP Funding

The evaluation spans the 2012-2013 to 2015-2016 fiscal years. The following table is found at page 17 of the EMAP Evaluation⁷⁶:

INAC Emergency Management 2012-13 to 2015-16 by Region by Pillar (\$000,000)					
Region	Mitigation	Preparedness	Response	Recovery	Total Cost
Atlantic	0.65	0.19	16.01	1.59	18.44
Quebec	0.06	0.99	1.33	0.00	2.38
Ontario	1.16	6.93	54.70	21.93	84.72
Manitoba	0.37	1.80	56.47	11.06	69.70
Saskatchewan	0.84	9.12	14.80	53.94	78.70
Alberta	0.35	2.82	1.54	4.47	9.18
British Columbia	0.07	3.15	0.98	1.35	5.55
Northwest Territories	0.00	0.07	0.00	0.00	0.07
Yukon	0.00	0.20	0.02	1.13	1.35
Headquarters-Regional Operations	0.00	0.84	0.00	0.00	0.84
Total:	3.50	26.11	145.85	95.47	270.93

* Does not include expenditures for Search and Recovery or Wildfire Management Services.

Comparatively, Ontario uses a disproportionate amount of EMAP funding. Ontario used 31.27% of the entire EMAP expenditures from 2012-2016. A large portion of the EMAP funding is spent in the response and recovery pillars. For the purposes of the table above, the response pillar is described in the EMAP Evaluation as:

⁷⁵ EMAP Evaluation, *supra* note 33.

⁷⁶ *Ibid* at 17, table 3.



...**key** activities that are undertaken immediately before an event (public communication), during an event (such as medical assistance or evacuation support), or directly after an event (including damage assessment and reconstruction).⁷⁷

The recovery pillar is described in the EMAP Evaluation as:

... repairing, restoring or rebuilding post disaster conditions to a pre-emergency state or to a level deemed acceptable (including trauma counseling, return of evacuees, reconstruction, economic impact studies and financial assistance), while at the same time considering mitigation enhancements to reduce vulnerability to future similar emergencies.⁷⁸

Between the fiscal years of 2012-2016, there were 16 evacuations⁷⁹ that occurred in NAN territory.⁸⁰ Fourteen evacuations were due to flooding.⁸¹ An example of the cost of an evacuation is an evacuation of Fort Albany and Kashechewan in 2012 which costed \$6.7m⁸², or 12% of the expenditures for the response pillar in the table above.⁸³

Further investigation and access to documents is required to determine why Ontario's costs are significantly higher than other provinces.

3.2.2 Building Back Better

For the following sections, the four pillars will be divided into the "pre-**disaster**" pillars (Mitigation/Prevention and Preparedness) and "post-**disaster**" pillars (Response and Recovery).

Building Back Better bridges the gap between recovery and mitigation.⁸⁴ Building Back Better is an important concept in the Sendai Framework for Disaster Risk Reduction⁸⁵ (Sendai Framework), is promoted for Canadian EMAP funding⁸⁶, and has found favour in Emergency Management literature.⁸⁷ The concept has been described by the Organization for Economic Co-operation and Development recently:

[Building Back Better] generally refers to the recovery, rehabilitation and reconstruction phase after a disaster to increase the resilience of communities through the restoration of physical infrastructure and societal **systems**...The emphasis is not only on preventative measures to

⁷⁷ *Ibid* at 25.

⁷⁸ *Ibid*.

⁷⁹ Not including those due to wildfires which is separate from EMAP funding.

⁸⁰ Appendix B [NAN Disaster Table].

⁸¹ The other two evacuations were both due to environmental contamination: Appendix B.

⁸² Canadian Disaster Database, *Kashechewan and Fort Albany* (24 March 2012 to 1 April 2012), online:

<[https://cdd.publicsafety.gc.ca/dtpg-eng.aspx?cultureCode=en-](https://cdd.publicsafety.gc.ca/dtpg-eng.aspx?cultureCode=en-Ca&provinces=9&eventStartDate=%2720120101%27%2c%2720161231%27&normalizedCostYear=1&dynamic=false&eventId=1063)

[Ca&provinces=9&eventStartDate=%2720120101%27%2c%2720161231%27&normalizedCostYear=1&dynamic=false&eventId=1063](https://cdd.publicsafety.gc.ca/dtpg-eng.aspx?cultureCode=en-Ca&provinces=9&eventStartDate=%2720120101%27%2c%2720161231%27&normalizedCostYear=1&dynamic=false&eventId=1063)>.

⁸³ This event occurred from March 24 to April 1, 2012, so it is unclear if this was included in the 2012-2013 fiscal year's budget. Since the event started in the 2011-2012 fiscal year, this evacuation could have been included in that year's funding.

⁸⁴ Canadian Disaster Law, *supra* note 2 at 880.

⁸⁵ United Nations Office for Disaster Risk Reduction, *Sendai Framework for Disaster Risk Reduction 2015-2030* (Geneva: United Nations Office for Disaster Risk Reduction, 2015) at 21, online:

<www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf>. [Sendai Framework]

⁸⁶ BBB Strategy Guide, *supra* note 56.

⁸⁷ Canadian Disaster Law, *supra* note 2 at 880; Organisation for Economic Co-operation and Development, "Building Back Better: A Sustainable, Resilient Recovery after COVID-19" (Paris: OECD, 2020) at 2, footnote 1, online: <https://read.oecd-ilibrary.org/view/?ref=133_133639-s08q2ridhf&title=Building-back-better-_A-sustainable-resilient-recovery-after-Covid-19>. [OECD BBB].



reduce cost of recovery, but also on incorporating social and environmental improvements for increasing well-being of impacted societies.⁸⁸

Building Back Better is also focused on how the recovery pillar is used to reduce or limit vulnerabilities that existed prior to a disaster where:

Building back better is a now ubiquitous concept in disaster management that highlights the “need to place environmental hazards within the wider contexts of building sustainable communities and not re-creating or exacerbating **vulnerabilities**.”⁸⁹

The federal government’s “An Emergency Management Framework for **Canada**” also recognizes the need to Build Back Better to “help overcome past **vulnerabilities**.”⁹⁰

In emergency management, emergency events belong to a “disaster **cycle**”, meaning a disaster is only one stage of an ongoing, four-stage social and institutional response.⁹¹ A disaster only represents a point in time when an emergency event occurs, and does not represent all aspects of emergency management. Post-disaster efforts tend to be the areas where most EMAP funding is spent, where the bulk of Ontario’s emergency management efforts from 2012 to 2016 were under the response and recovery pillars.⁹²

From 2005 to 2019, it is very clear the response pillar takes up most of all EMAP disbursements by a large margin.⁹³ The EMAP Evaluation therefore recommended increasing support for the mitigation and preparedness pillars⁹⁴, not only for cost-saving measures⁹⁵, but also to develop a more proactive approach to emergency management.⁹⁶ The INAN Report also highlighted the need for increased support for emergency preparedness for First Nation emergency management.⁹⁷

Canada developed a policy document entitled “Building back better: Emergency Management Assistance Program Strategy **Guide**”⁹⁸ (BBB Strategy Guide). The BBB Strategy Guide seems to miss the point of Building Back Better as a concept. For example, under the heading “Recovery **Assistance**” in the BBB Strategy Guide, it states:

In the context of the EMAP, recovery refers to the measures taken after an emergency event to repair and restore impacted community infrastructures. This rebuilding phase may include a

⁸⁸ OECD BBB, *supra* note 87 at 2, footnote 1. The federal government’s “Emergency Management Strategy for Canada: Towards a Resilient 2030” uses much of the same language when describing Building Back Better: Public Safety Canada, *Emergency Management Strategy for Canada: Towards a Resilient 2030* (Ottawa: Public Safety Canada, 2019) at 23, online: <www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mrgncy-mngmnt-strtyg/mrgncy-mngmnt-strtyg-en.pdf>. [2030 Strategy].

⁸⁹ Canadian Disaster Law, *supra* note 2 at 880 citing: Jim Kennedy et al, “The Meaning of ‘Build Back Better’: Evidence From Post-Tsunami Aceh and Sri Lanka” (2008) 16:1 J Contingencies & Crisis Management 24 at 25.

⁹⁰ EM Framework, *supra* note 31 at 8.

⁹¹ Canadian Disaster Law, *supra* note 2 at 863.

⁹² EMAP Evaluation, *supra* note 33 at 12.

⁹³ Indigenous Services Canada, *Graph of Costs Imbursed* (8 Aug 2019), online: Government of Canada, <<https://www.sac-isc.gc.ca/eng/1560363002018/1560363016109>>.

⁹⁴ EMAP Evaluation, *supra* note 33 at v.

⁹⁵ The EMAP Evaluation states that “literature suggests that mitigation measures are expected to provide an estimated \$4 in subsequent disaster loss reduction for every \$1 spent”: EMAP Evaluation, *supra* note 33 at 18. The INAN Report also uses the same figures as the EMAP Evaluation, where \$1 spent in preparedness and prevention results in a savings of \$4 in response and recovery: INAN Report, *supra* note 13 at 14. The 2030 Strategy states the return on investment for prevention/mitigation activities could result in savings up to \$6 for every \$1 spent in prevention/mitigation: 2030 Strategy, *supra* note 88 at 17.

⁹⁶ EMAP Evaluation, *supra* note 33 at 19.

⁹⁷ INAN Report, *supra* note 13 at 15.

⁹⁸ BBB Strategy Guide, *supra* note 56.



mitigation component to reduce vulnerabilities. The affected First Nation is responsible for taking the necessary actions to ensure that the community and/or its properties can be restored to pre-disaster condition.⁹⁹ [Emphasis Added]

This assessment is problematic since the concept of Building Back Better is to build structures better than before, not to “pre-disaster” condition. Similarly, the “Contributions for Emergency Management Assistance for Activities on Reserve: Terms and **Conditions**” (EMAP Terms and Conditions) state:

Eligible repair and restoration costs include the actual costs required for repairing or restoring an item or facility to its immediate pre-disaster condition as the maximum amount eligible. In the case of permanent repairs or replacement to better than pre-disaster condition, the amount eligible may be no greater than the amount required for restoration, repair or replacement to the immediate pre-disaster condition as estimated by a technical authority acceptable to the department in addition to any eligible mitigation measures as described below.¹⁰⁰

Building to pre-disaster condition implies the restoration and reconstruction phases will focus on building to the status quo pre-disaster, thus inheriting the same vulnerabilities prior to the disaster. Building Back Better in this scenario would actually mean reducing or eliminating prior vulnerabilities.

It is important to note both the BBB Strategy Guide and the federal government’s “National On-Reserve Emergency Management **Plan**” (On-Reserve Plan)¹⁰¹ both recognize the Sendai Framework as a guiding document for emergency management for First Nations in Canada. A problem is the BBB Strategy Guide focuses on the recovery pillar as an opportunity to build back to pre-disaster condition, whereas the Sendai Framework presents the recovery pillar as a critical opportunity to Build Back Better through increasing capacity to reduce future disaster risks.¹⁰² While the BBB Strategy Guide does outline some mitigation measures, it does not highlight the importance of those mitigation measures. The On-Reserve Plan outlines Canada’s commitment to the Sendai Framework through “enhancing preparedness and recovery to build back better following a **disaster**.”¹⁰³

The exact details of *how* Canada will do so is not laid out in the On-Reserve Plan. The BBB Strategy Guide does not explicitly contain information on what can be achieved through preparedness as mentioned in the On-Reserve Plan.¹⁰⁴ The BBB Strategy Guide instead opts only for vague descriptions of how mitigation can be used for Building Back Better.

It is clear there is a lack of attention to the entire disaster cycle in the BBB strategy. Commitments to Building Back Better seem misguided, unclear, and underdeveloped. More attention must be paid to best implement Building Back Better outside of current practice.

⁹⁹ *Ibid.*

¹⁰⁰ Government of Canada, *Contributions for Emergency Management Assistance for Activities on Reserve: Terms and Conditions*, (Ottawa: Crown-Indigenous Relations and Northern Affairs Canada/Indigenous Services Canada, 2020) online: <www.aadnc-aandc.gc.ca/eng/1386012167936/>. [EMAP Terms and Conditions]

¹⁰¹ Indigenous Services Canada, *Indigenous and Northern Affairs Canada National On-reserve Emergency Management Plan* (Ottawa: Indigenous Services Canada, 2017) at 4-5, online: <https://www.sac-isc.gc.ca/DAM/DAM-ISC-SAC/DAM-EMPL/STAGING/texte-text/emergency_plan_1496943857348_eng.pdf>. [On-Reserve Plan]

¹⁰² Sendai Framework, *supra* note 85 at 21-22. It should be noted the 2030 Strategy does expand on Building Back Better as it relates to the Sendai Framework in a Canadian context. However, there is a lack of guidance on what Building Back Better would look like for First Nations and how to integrate it into the current First Nation emergency management regime: 2030 Strategy, *supra* note 88 at 23-24.

¹⁰³ On-Reserve Plan, *supra* note 101 at 4-5.

¹⁰⁴ *Ibid* at 5.



3.2.3 Conclusions from the EMAP Evaluation

The EMAP Evaluation provides valuable insights into some of the areas of improvement for the EMAP program. One of the main conclusions is the EMAP program spends most of its funding on the response pillar in Ontario, with the recovery pillar taking up the second most amount of funding. There is a large funding disparity between those post-disaster and the pre-disaster pillars. As the EMAP Evaluation mentions, “[i]n Ontario, the province’s emergency management involvement on-reserve is focused on the response **pillar**.”¹⁰⁵

Focusing mainly on the response portion of the EMAP is not in line with the concept of Building Back Better. A possible reason for the lack of spending in the pre-disaster pillars could be due to a lack of awareness of the mitigation and preparedness funding streams. The EMAP Evaluation found many First Nations did not know about funding for mitigation and preparedness projects.¹⁰⁶

The INAN Report also found deficiencies in funding for preparedness specifically, which prompted a recommendation to the House of Commons to ensure the needs of First Nation preparedness are met.¹⁰⁷ Since the pre-disaster pillars are often underused under the EMAP program, enhancing pre-disaster pillars will bolster First Nation emergency management and increase community resilience.

Lastly, a central problem with the BBB Strategy Guide is a severe lack of connection between what Building Back Better is as a general concept, versus what the EMAP provides for First Nations.

The recognition of Building Back Better in the On-Reserve Plan and the BBB Strategy Guide shows only that Canada understands that Building Back Better is a concept used in emergency management. The lack of meaningful guidance of *how* to Build Back Better shows that implementing this concept has proven to be a challenge for the federal government. The lack of funding dedicated to pre-disaster pillars is a testament to the lack of adherence to Building Back Better. Moving forward, there should be a focus on how to implement Building Back Better outside of the narrowly prescribed situations outlined in the BBB Strategy Guide and EMAP Terms and Conditions.

3.3 Recommendations

- Determine the reason for high “**response**” and “**recovery**” costs in Ontario;
- Implement accepted principles of “**Build Back Better**”. This may require going beyond **Canada’s “Building Back Better Strategy Guide”**, the “**National On-Reserve Emergency Management Plan**”, and the Emergency Management Assistance Plan “**Terms and Conditions**”;
- Ensure that all pillars of emergency management are not viewed in isolation of each other. This means conceptualizing emergency management as a “**disaster cycle**” and all pillars of emergency management are given equal consideration; and
- Contribute more resources to the pre-disaster pillars.

¹⁰⁵ EMAP Evaluation, *supra* note 33 at 12.

¹⁰⁶ *Ibid* at 19.

¹⁰⁷ INAN Report, *supra* note 13 at 15-16.



4. Measuring Remoteness for First Nations in Ontario

4.1 Different Approaches to Remoteness

Definitions of “rural” and “remote” differ depending on context. In some contexts, there is another category of “northern” communities.¹⁰⁸ The inherent difficulty in defining these terms is exemplified in the follow passage from a 2011 Ontario Ministry of Health and Long-Term Care report:

From the onset of the Panel’s work, it was recognized that the terms “rural”, “northern” and “remote” are difficult to define. Across Ontario the degree of each is relative. Rurality can be measured on a sliding scale, and demarcation between rural and non-rural areas may be both unclear and rapidly changing. For the north, it includes both urban and remote populations widely dispersed over vast geography.¹⁰⁹

The complexity of these terms means there can be overlap between definitions, especially since northern can overlap with both urban and remote populations due to how a government at the time demarcates planning districts.¹¹⁰ Creating an arbitrary line of what constitutes a northern community does not measure the impact of service delivery. It also does not contribute to the analysis of spatial distances relative to mode of travel (i.e. fly-in reserves due the lack of year-round road access).

In 2011, Natural Resources Canada and Aboriginal Affairs and Northern Development Canada captured remoteness as:

1. Any community not currently connected to the North-American electrical grid nor to the piped natural gas network; and
2. Is a permanent or long-term (5 years or more) settlement with at least 10 dwellings¹¹¹

This definition was used to catalogue the communities in Canada that are not connected to a larger electrical grid or piped natural gas network, and it focuses largely on energy consumption and the impact of having an unconnected supply of consumables. This definition inadvertently focuses on connectedness in a general sense and can be useful in identifying challenges faced by communities who face issues related to basic infrastructure.

Another phrase used to describe remoteness has been “isolated communities”, which focuses on the ease of travelling to those communities. For example, the Nutrition North Canada program requires the following for eligibility into the program:

[L]ack year-round surface transportation (no permanent road, rail or marine access), excluding isolation caused by freeze-up and break-up that normally lasts less than 4 weeks at a time.¹¹²

¹⁰⁸ “Northern” is often used in the healthcare context: Ontario Ministry of Health and Long-Term Care, *Rural and Northern Health Care Framework/Plan: Stage 1 Final Report* (Toronto: Ontario Ministry of Health and Long-Term Care, 2011) at 7-8, <www.health.gov.on.ca/en/public/programs/ruralnorthern/docs/report_rural_northern_EN.pdf>. [2011 OMHLTC]; Registered Nurses Association of Ontario, *Coming Together, Moving Forward: Building the Next Chapter Of Nursing Workforce Report* (Toronto: Registered Nurses Association of Ontario, 2015), at 12-13, online: <https://rnao.ca/sites/rnao-ca/files/RR_May8.pdf>.

¹⁰⁹ 2011 OMHLTC, *supra* note 108, at 25.

¹¹⁰ *Ibid* at 8.

¹¹¹ Government of Canada, *Status of Remote/Off-Grid Communities in Canada*, (Ottawa: Natural Resources Canada/ Aboriginal Affairs and Northern Development Canada, 2011) at 1, online: <www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/canmetenergy/files/pubs/2013-118_en.pdf>.

¹¹² Nutrition North Canada, *Eligible Communities* (Ottawa: Government of Canada, 2020), online: <www.nutritionnorthcanada.gc.ca/eng/1415540731169/1415540791407>.



For the purposes of a the H1N1 outbreak in 2009, the Public Health Agency of Canada attempted to delineate and create definitions of remote and isolated. In the discussion of the differences and considerations for separate definitions, the Public Health Agency of Canada wrote:

The definition of **“remote”** should include a specified distance and/or specified travel time required from the community to the nearest community with an acute care hospital.

The definition for **“isolated”** should be distinct in defining the access to the community (whether reached by air only, water only, and how this changes during the year). Communication access should also be considered.¹¹³

“Isolated” is used to gauge ease of access, whereas **“remote”** is the actual distance between a service center (i.e. an acute care hospital) and the community.

4.2 Problems with Past Definitions of Remoteness

The term **“northern”** is arbitrary and should not be used. The problem with using northern is that it does not provide a clear picture about accessibility. For example, a place like Fort William First Nation could be considered northern, but does not have the same access issues as Fort Albany First Nation.

Using connectedness to an electrical grid or a pipeline can be useful in measuring whether a place is considered remote at a very high level. The main problem with equating access to pipelines or an electrical grid is that it does not necessarily give a clear picture about accessibility either. For example, Ramsey, Ontario has a population of 4000+ but is 203km from Sudbury with year-round road access, and is south of Chapleau and north of Sudbury. As of 2011, this community was off grid, but it was still on rail lines and had year-round road access. This shows that this metric does not capture ease of access.

The bifurcation of **“remote”** and **“isolated”** can be helpful if there is a way to make a clear distinction between distance (remote) vs. access (isolated). Functionally, these two definitions seem to capture two separate ideas which may or may not be opposed. Without clear guidance on the thresholds of where distance becomes remote or where lack of access becomes isolated makes these terms generally unhelpful.

4.3 Index of Remoteness

Statistics Canada has been developing an Index of Remoteness which was originally released in May 2017¹¹⁴, but has been updated and available to the public since April 3, 2020.¹¹⁵ This data set uses the 2016 census data to create values (RI values) from 0 (least remote) to 1 (most remote) which calculates the level of remoteness for census subdivisions.

RI values do not have much meaning unless they are put into a comparative context. Otherwise, RI values are simply numbers between 0 and 1. One problem with the

¹¹³ Public Health Agency of Canada, *Considerations for Definitions of “Remote” and “Isolated” in the context of Pandemic (H1N1) 2009* (Ottawa: Public Health Agency of Canada, 2009), online:

<https://web.archive.org/web/20091118023500/http://www.phac-aspc.gc.ca/alert/alerte/h1n1/guidance_lignesdirectrices/cdricp-cdeicp-eng.php>.

¹¹⁴ Alessandro Alasia et al, *Measuring remoteness and accessibility –A set of indices for Canadian communities* (Ottawa: Statistics Canada, 2017) Cat. No. 18-001-X, online: <www150.statcan.gc.ca/n1/pub/18-001-x/18-001-x2017002-eng.htm>.

¹¹⁵ Minister responsible for Statistics Canada, *Index of Remoteness*, (Ottawa: Statistics Canada, 2020), Cat. No. 17-26-0001 online: <www150.statcan.gc.ca/n1/pub/17-26-0001/172600012020001-eng.htm>.



methodology with the index of remoteness is that it is not tailored to any specific purpose. In order for remoteness to be accurately measured, RI values must be tied to what they are trying to measure where “[a]ny application of the remoteness index to education, health care or any other specific services is problematic since the [Index of Remoteness] does not measure the proximity to any of the specific service provision centres.”¹¹⁶

4.4 Conclusion

Remoteness will undoubtedly effect the delivery of emergency management services in Ontario. How these effects will manifest will vary by degrees of remoteness. For example, having uniform emergency standards across all Ontario First Nations may not be feasible since remote or very remote communities may not have the infrastructure or capacity to maintain these standards. For example, Kashechewan First Nation and Fort Albany First Nation have collectively been evacuated 11 times since 2012.¹¹⁷ These First Nations are both fly-in communities and this poses challenges for evacuation compared to places with easier access.

Moving forward, attention should be paid to how remoteness interacts with the common paradigm of contemporary emergency management. Focus should also be on how well Ontario’s emergency management system accommodates remoteness. Consideration should be paid to places like British Columbia which have multiple regional offices to help serve communities¹¹⁸, where Ontario does not.

4.5 Recommendations

- Develop remoteness indices/indicators for emergency management that consider the uniqueness of **NAN’s** remote communities;
- Apply the remoteness indices/indicators to NAN communities;
- Determine and accommodate the cost of remoteness as it relates to emergency management; and
- Analyze different methods of service delivery to remote First Nations, including the advantages of having regional offices.

5. Ontario’s Role in Emergency Management

5.1 Overview

Jurisdiction for emergency management is perceived as being primarily under provincial jurisdiction. Provinces should then have the infrastructure and capabilities to respond to emergencies. The EMAP Evaluation outlined the role of provinces:

Provinces and territories are key partners to develop and sustain a robust emergency management structure that can tackle both localized and large-scale emergency events. Provinces and territories govern their respective emergency management organizations and coordinate response activities, conduct planning and research, provide training and administer and deliver the disaster financial assistance programs in their jurisdiction.

¹¹⁶ Bakhtiar Moazzami, “Remoteness Indicators and First Nation Education Funding” (Ottawa: Assembly of First Nations, 2018) at 11, online: Assembly of First Nations <www.afn.ca/wp-content/uploads/2018/07/Remoteness-report.Final_.May7-2018.pdf>.

¹¹⁷ Appendix B.

¹¹⁸ 2020 OAG Report, *supra* note 12 at 45.



INAC provides assistance and support to the provinces to manage emergencies that have the potential to threaten the health and safety of First Nations communities and individuals. INAC enters into collaborative service agreements with provincial governments to provide First Nations communities with access to comparable emergency assistance services available to other residents in their respective province.

Through these agreements, INAC is able to cover eligible costs related to emergency assistance in First Nations communities provided by the provincial government emergency infrastructure.¹¹⁹

A 2015 Library of Parliament report described the role between the federal and provincial governments:

INAC negotiates agreements with provincial and territorial governments for the delivery of emergency management services to First Nations communities. These agreements aim to clarify roles and responsibilities and ensure that First Nations receive services comparable to those available to provincial residents. Eligible emergency management costs provided by First Nations, provincial/territorial governments, and/or third parties are reimbursed by INAC.¹²⁰

In short, the federal government provides funding to provinces to use their existing emergency management system, and this system will be used to service First Nations. An underlying assumption of this arrangement is that the provincial system is sufficiently robust and capable of providing adequate services to First Nations. As a result, emergency management for First Nations can only be as good as the province's emergency management system, but has the potential to be worse.

5.2 Ontario's Emergency Management System

5.2.1 Role of Municipalities

Ontario uses a "bottom-up **approach**" to emergency management, where municipalities are mostly responsible for emergency hazards.¹²¹ The bottom-up approach emphasizes the roles of individual communities and individual citizens when responding to emergency hazards. The federal On-Reserve Plan reflects this bottom-up approach by stating the responsibility for emergency hazards starts at an individual level, then moves to each successive level of government as the ability to cope with the emergency hazard diminishes.¹²²

As discussed in section 2.4 of this document, the EMCPA lays out a framework that municipalities must follow for emergency planning. In this structure, the municipality is mostly left to fund emergency management activities themselves¹²³, but can apply for funding post-disaster through the "Municipal Disaster Recovery **Assistance**" (MDRA) program if certain

¹¹⁹ EMAP Evaluation, *supra* note 33 at 10.

¹²⁰ LOP EM Report, *supra* note 2 at 3.

¹²¹ 2020 OAG Report, *supra* note 12 at 9.

¹²² On-Reserve Plan, *supra* note 101 at 6-7.

¹²³ The onus is largely on the municipality to have sufficient funds budgeted and insured for emergencies, where "it is important that municipalities consider maintaining sufficient reserves and appropriate insurance coverage to manage the costs of disasters, within their capacity.": Ministry of Municipal Affairs and Housing, *The Ontario Municipal Councillors Guide 2018: Chapter 12. Emergency management and disaster financial assistance* (Toronto: Ministry of Municipal Affairs and Housing, 2018), online: <www.ontario.ca/document/ontario-municipal-councillors-guide-2018/12-emergency-management-and-disaster-financial-assistance>.



criteria are met. An important criterion for the MDRA is the cost of the disaster must be at least equal to 3% of the municipality's own purpose taxation levy.¹²⁴

Ontario's emergency management structure focuses heavily on normative views of how Ontario municipalities function. The implicit assumption is that municipalities can generate money through property taxation which then can fund emergency management activities.¹²⁵ Most First Nations do not have any sort of property taxation regime¹²⁶ resulting in an incompatibility with Ontario's emergency management system. Property taxation on First Nation lands can only occur through two different legal mechanisms: a First Nation can establish property taxation by-laws through s. 83 of the *Indian Act*, or they can opt-in to the *First Nations Fiscal Management Act*¹²⁷ (FNFMA) which requires being added to the Schedule of the FNFMA in order to make taxation laws under the FNFMA framework.¹²⁸

Currently, there are no First Nations in Ontario who have a property taxation by-law under s. 83 of the *Indian Act*.¹²⁹ There are 3 First Nations in Ontario with "Telephone Companies Taxation" by-laws under the *Indian Act*¹³⁰, which are by-laws that tax telephone companies operating on reserve land.¹³¹

Out of 302 First Nations in the Schedule of the FNFMA, 123 First Nations(40.7%) have established taxation on their lands.¹³² Only 50 First Nations in Ontario have been added to the Schedule of the FNFMA.¹³³ In Ontario, 5 First Nations have Telephone Companies Taxation by-laws under the FNFMA.¹³⁴ There are only 3 First Nations in Ontario with Property Assessment/Taxation laws under the FNFMA: Chippewas of Georgina Island First Nation, Chippewas of Kettle and Stony Point First Nation, and Wasauksing First Nation.

To summarize, only 3 First Nations have a property taxation regime in Ontario, and 8 First Nations only tax property used by telephone companies. This means the majority of First Nations in Ontario do not have access to the same property tax revenues that municipalities do. The INAN Report recognized that most First Nations do not have the capacity to fund emergency management activities and are thus reliant on federal funding for emergency preparedness.¹³⁵

¹²⁴ Ministry of Municipal Affairs and Housing, *Guidelines to apply for Municipal Disaster Recovery Assistance (MDRA)*, (Toronto: Ministry of Municipal Affairs and Housing, 2019), online: < <https://www.ontario.ca/page/guidelines-apply-municipal-disaster-recovery-assistance-mdra>>.

¹²⁵ INAN Report, *supra* note 13 at 12.

¹²⁶ As of 2020, only 30% of 624 First Nations have established taxation on their reserves: First Nations Tax Commission, *Taxpayers: Property Taxation on Reserve* (Kamloops: First Nations Tax Commission, 2020), online: <<https://fnct.ca/property-taxation-on-reserve/>>.

¹²⁷ *First Nations Fiscal Management Act*, SC 2005, c 9. [FNFMA]

¹²⁸ *Ibid* at ss. 2(1), 2(3).

¹²⁹ The information about which communities had property taxation laws and bylaws were provided by the First Nations Tax Commission. Copies of laws and by-laws are available online at the First Nations Gazette: First Nations Gazette, online <<https://fng.ca/>>.

¹³⁰ Fort Severn First Nation, Kasabonika Lake First Nation, and Lac La Croix First Nation.

¹³¹ First Nations Tax Commission, *Section 83 Toolkit: Specific Activity or Services Options* (Kamloops: First Nations Tax Commission, 2020), online: <<https://fnct.ca/specific-activity-or-service-options-s-83-toolkit/>>.

¹³² Indigenous Services Canada, *First Nations Fiscal Management* (Ottawa: August 2020), online: <www.sac-isc.gc.ca/eng/1393512745390/1591985622069>.

¹³³ FNFMA, Schedule.

¹³⁴ Atikameksheng Anishnawbek First Nation, Beausoleil First Nation, Chippewas of Rama First Nation, Nipissing First Nation, and Serpent River First Nation.

¹³⁵ INAN Report, *supra* note 13 at 12.



The distinction between municipalities and First Nations' abilities to fund emergency management activities is important since Ontario's emergency management system is predicated on municipalities having a tax base to fund their community-level emergency management program. Remoteness, compounded with a lack of a tax base, poses significant challenges to First Nations in Ontario, since there is a geographical hurdle coupled with a financial hurdle to being prepared for and responding to emergencies.

There also seems to be no funding opportunities other than the MDRA for small communities to enhance their emergency management systems pre-disaster in Ontario. In British Columbia, there is a "Community Emergency Preparedness **Fund**" which assists First Nations and other local communities for funding for various preparedness initiatives.¹³⁶ There is no similar fund in Ontario to help fund the needs of smaller communities that are unable to support a fulsome emergency management program in their community.

5.2.2 Host Communities and Evacuations

When an emergency hazard requires evacuation of a community, the Ontario Joint Emergency Management Steering Committee document "**Service Level Evacuation Standards**" (JEMS Standards) is used to coordinate the roles of host communities and other stakeholders.¹³⁷ The JEMS Standards outline the roles and responsibilities of many provincial ministries when a community is evacuated. For the purposes of this report, the roles of each Ministry will not be analyzed.

When communities are evacuated, evacuees are usually brought to municipalities. In the context of First Nation evacuations, host communities provide meals, health care and personal support services to evacuees. Host communities are expected to operate on a cost-recovery basis, where the host community will pay for the costs of hosting evacuees until they are reimbursed by ISC within 90 days of submitting receipts.¹³⁸

One issue with the cost-recovery model is that costs are incurred up-front by a host community. Incurring expenses up-front may act as a deterrent for host communities. For First Nations that have more frequent evacuations, such as Kashechewan First Nation due to yearly flooding¹³⁹, the importance of establishing mutual agreements about hosting before an evacuation occurs is critical for a smooth evacuation. This may prove to be more difficult if host communities have not actively budgeted to absorb hosting costs until reimbursement by ISC.

An additional concern is the overreliance of ex post facto determinations by the federal government when deciding to provide funding to host communities. For example, if a host community is planning and preparing to initiate their host community procedures to receive evacuees, and the evacuation is ultimately not necessary, there may be no reimbursement by ISC. This is despite the fact that the host community incurred expenses in order to prepare

¹³⁶ The program is funded by the British Columbia Provincial Government and is administered by the Union of BC Municipalities. As of September 2020, the funding streams include evacuation route planning, structural flood mitigation, flood risk assessment, flood mapping, flood mitigation planning, emergency support services and emergency operations centres and training. All First Nation communities are eligible to apply: Union of BC Municipalities, *Community Emergency Preparedness Fund Emergency Support Services 2021 Program & Application Guide* (Richmond: Union of BC Municipalities, 2020) at 1, online: <www.ubcm.ca/assets/Funding~Programs/LGPS/CEPF/CEPF-2021-ESS-Program-Guide.pdf>.

¹³⁷ Office of the Fire Marshal and Emergency Management, *Joint Emergency Management Steering Committee (JEMS) Service Level Evacuation Standards* (Toronto: Office of the Fire Marshal and Emergency Management, 2021). [JEMS Standards]

¹³⁸ *Ibid* at 57.

¹³⁹ Appendix B.



and is contrary to JEMS Standards and direct municipal agreements. This situation actively disincentivizes communities to properly prepare for evacuations since it is uncertain if their efforts will be reimbursed.

The above scenario is not hypothetical. On April 13, 2021, there was a threat that Kashechewan could be evacuated, but did not evacuate as anticipated. The PEOC activated procedures for 4 host communities to be on standby to receive potential evacuees. ISC responded that they were not going to reimburse the preparation costs, claiming they did not authorize PEOC to activate those host sites. ISC further stated that host sites would not be eligible for funding for preparation.

An issue arises in this situation where 4 host communities are saddled with preparation costs without any reimbursement, potentially dissuading any of those 4 host sites from preparing themselves to host in the future. Even more alarming that ISC would not defer the activation of host sites to the PEOC, despite the PEOC's role as a coordinating body that is meant to be quick and responsive to potential emergency hazards in Ontario. Eventually, on April 17, 2021, ISC decided to reimburse the host communities for their preparations. This situation demonstrated a lack of coordination between governments and an overall lack of certainty for funding, which may dissuade host communities from continuing to host, or deter potential host communities from ever hosting.

The situation above is more egregious considering evacuations due to flooding have happened many times before in Kashechewan. These evacuations are regular enough to be anticipated annually. By now, one would expect an efficient emergency management protocol for Kashechewan flooding, specifically. It is clear this level of efficiency has not been reached. It is also imperative to consider that communities are not obligated to be host communities. Any deterrents to becoming a host community, whether financial or administrative, will have detrimental effects for evacuees. There will be a point where it is either too expensive or too administratively complicated for a community to be a host community, and it is important to lift the financial and administrative burdens.

The JEMS Standards seeks to resolve some funding issues. A section in Chapter 3 titled "Advancing Funds" outlines that:

A municipality that requires start-up funding to prepare to act as a Host Community or requires interim funding in order to sustain its operations during a hosting event, may request advance funding from ISC.¹⁴⁰

A 2021 addition to this section reads:

Interim invoices can be submitted to ISC as well for faster reimbursements. Timely and accurate invoice submissions are important for prompt reimbursements.¹⁴¹

Two inferences can be drawn from these provisions. The first is that there is clearly a need for host communities to be able to have interim funding. The ability to provide interim invoices highlights the reality that communities could become financially constrained midway through hosting. The second is there is funding available by ISC for preparations to act as a host community, but the funding is dependant on a determination by ISC since municipalities "may request" advance funding for start-up costs.

¹⁴⁰ JEMS Standards, *supra* note 137 at 21.

¹⁴¹ *Ibid.*



Funding is, and will always be, an ongoing concern. If all host communities could fund all evacuations front-to-end, there would be no need for interim funding. If all communities had funds to prepare to be a host community, there would be no need for start-up funding. Interim funding make sense since it is difficult to foresee how long an evacuation may be, therefore interim funding bridges that gap. A problem with start-up funding is that it is entirely a discretionary decision by ISC. There are no guarantees a host community will receive start-up funding, and the disagreement about funding host **communities'** preparations for Kashechewan act as an alarming example.

Lastly, it seems logical that providing funding to host communities to prepare for evacuees should rightly fall into the preparedness pillar. The EMAP Evaluation displayed a massive imbalance for funding in pre-disaster pillars.¹⁴² The INAN Report was clear that preparedness is an issue for emergency management for First Nations.¹⁴³ It is therefore nonsensical not to fund preparedness activities. In the case of Kashechewan, a foreseeable annual flood zone, it is especially nonsensical to push back against preparedness initiatives when the hazards are well-known.

The core of the problem is the current emergency management system has an inherent insistence on spending most funding in the post-disaster pillars. The cost-recovery model forces funding to be spent in the post-disaster pillars by the very nature of the system being a cost-recovery model. The fact that host communities rely on decision-making by ISC to receive start-up funds also creates a system where preparedness initiatives are stifled by discretionary, and potentially arbitrary, determinations by ISC officials. The effect of these stifled preparedness initiatives further increases spending on greater response and recovery costs¹⁴⁴ which host communities are expected to incur up-front in the cost-recovery model.

5.2.3 Emergency Management Ontario and Provincial Emergency Operations Centre

Ontario uses the PEOC as a hub for emergency management. The PEOC is authorized by the Standards Regulation under the EMCPA.¹⁴⁵ The intended purpose of the PEOC is to **"enable** a centrally co-ordinated provincial response to emergencies, where [Emergency Management Ontario] can work with its partners: ministries, municipalities and the federal government, jurisdictions outside of Ontario, and **others.**"¹⁴⁶ Since established in 2015, the Ontario government claims the PEOC has been mainly used **"to** respond to First Nations emergencies such as flooding, to assist municipalities during emergencies and to host meetings."¹⁴⁷

In November 2020, the Auditor General of Ontario released a report entitled **"COVID-19 Preparedness and Management: Special Report on Emergency Management in Ontario—Pandemic Response"** (**"2020 OAG Report"**).¹⁴⁸ This report highlights some of the problems with EMO and the role of the PEOC. One issue was the lack of field officers in Ontario compared to other provinces. Ontario had one field officer per 1.8 million residents (1:1,800,000), compared to 1:137,000 in British Columbia and 1:273,000 in Alberta.¹⁴⁹

¹⁴² EMAP Evaluation, *supra* note 33 at 17, table 3.

¹⁴³ INAN Report, *supra* note 13 at 15.

¹⁴⁴ *Supra* note 95.

¹⁴⁵ O. Reg. 380/04: STANDARDS

¹⁴⁶ 2020 OAG Report, *supra* note 12 at 10.

¹⁴⁷ *Ibid* at 12.

¹⁴⁸ *Ibid*.

¹⁴⁹ *Ibid* at 9.



Another metric found in the 2020 OAG Report is the field officer to municipality ratio. At the time of the 2020 OAG Report, there was only 10 field staff to support 444 municipalities¹⁵⁰, or 1 field officer to every 44 municipalities. There are 133 First Nations in Ontario¹⁵¹, meaning there are 577 distinct communities in Ontario. Therefore, there is 1 field officer for every 13 First Nations, and 1 field officer for every 58 communities in Ontario. The 2020 OAG Report also highlighted lack of staffing for the PEOC generally.¹⁵²

This lack of field officers in Ontario should be read in tandem with the following finding in the EMAP Evaluation:

One key informant recommended improving engagement between field officers and First Nation community leaders when planning for potential emergencies. Evaluators did not find direct evidence of any level of communication during non-events. Not having an adequate and updated emergency management plan, compounded by inadequate communication with First Nations communities on expected actions before an emergency event, substantially increases the risks to all community members and will most certainly have a negative impact on activities related to the response and recovery pillars of emergency management.¹⁵³ [Emphasis Added]

This highlights a significant problem within the EMAP program. Most field officers tend to only deal with First Nations during an emergency. This is reflected in the JEMS Standards, where during an evacuation, field officers **"will** only remain in communities as long as their assistance is required and/or until responsibility for the situation transitions fully to the federal government."¹⁵⁴ The 2019 EM Plan outlines how a field officer fits into the deployment of provincial representatives to an affected community where:

During an emergency, a provincial representative may be deployed to a community as a liaison, to provide emergency management support and advice. The PEOC is responsible for coordinating the deployment of the provincial representative. This representative will frequently be an OFMEM Field Officer, but depending on the scale of emergency additional staff may be requested from within the provincial ERO.¹⁵⁵

As outlined in the 2019 EM Plan, field officers are not to direct any community response or recovery activities, but to provide advice and assistance for the following:

- Facilitating contact with ministry offices where normal community/provincial linkages are not available (for example outside of normal business hours);
- Initiating a request for provincial assistance;
- Canvassing other communities to identify resources that might be made available.¹⁵⁶

The JEMS Standards outlines some of the support field officers provide to host communities, which is largely consists of coordination, and there is no guarantee the field officers will be

¹⁵⁰ 2020 OAG Report, *supra* note 12 at 30.

¹⁵¹ Indigenous Services Canada, *Indigenous Communities in Ontario* (Ottawa: Indigenous Services Canada, 2020), online: <www.sac-isc.gc.ca/eng/1603371542837/1603371807037>.

¹⁵² 2020 OAG Report, *supra* note 12 at 30.

¹⁵³ EMAP Evaluation, *supra* note 33 at 25.

¹⁵⁴ JEMS Standards, *supra* note 137 at 8.

¹⁵⁵ 2019 EM Plan, *supra* note 8 at 68.

¹⁵⁶ *Ibid* at 68-69.



deployed in every event.¹⁵⁷ In 2021, the JEMS Standards were updated where support from field officers can now be deployed virtually¹⁵⁸, meaning there is an even greater chance that field officers may not appear in-person in the field.

In the 2020 OAG report, it was found during the COVID-19 pandemic that field officers in Ontario could not provide the same level of direct assistance to municipalities as field officers in other provinces¹⁵⁹, and calls to municipalities were continually decreasing in frequency with no taking of minutes of those calls.¹⁶⁰ Some municipal officials provided direct comments in the 2020 OAG Report on the lack of support and performance from EMO and field officers during COVID-19, including:

- “**There** were a number of municipalities like myself who have never been through this process before and our leadership teams and Council were looking to us as the experts on how the process worked and we received no help from our field **officer.**”
- “**Essentially**, the only benefit EMO and our field officer has been is to raise questions to the appropriate ministry with no guarantee of **response.**”
- “**I** have significant concerns after seeing the lack of a co-ordinated response and support during COVID-19 about the ability of EMO or the [EMO Centre] to manage/coordinate and direct a response in a potential nuclear **event,**” (note: EMO and the Ministry of the Solicitor General is directly responsible for the emergency response to a nuclear event).¹⁶¹

In many ways, the function of field officers as it relates to emergency management for First Nations in Ontario, and the EMO generally, is to coordinate stakeholders. The 2020 OAG Report went in depth to describe why **EMO’s** coordination abilities for municipalities are lacking and need improvement.¹⁶² Given the above, it is difficult to discern the benefit of having provincial field officers providing support to First Nations given their lack of personnel and inability to provide meaningful attention to communities.

It is also alarming that out of the 29 newly approved positions at EMO, from 2017 to the time of the 2020 OAG Report, 11 of those were funded by ISC. This means that 37% of the newly created positions at EMO were created to service 23% of the total number of communities in Canada.¹⁶³ At the time of release of the 2020 OAG Report, only 18 of those 29 positions were filled.¹⁶⁴ It unknown if the ISC funded positions to assist First Nations are also being used to assist municipalities in Ontario. Regardless of whether the ISC positions also assist municipalities, these ISC funded positions would be better used outside of the EMO context. An example would be to hire First Nation field officers in place of more EMO staff.

To summarize, there is a severe lack of staffing at a provincial level, the emergency management regime is uncoordinated, and the overall utility of Ontario field officers is questionable. It is clear that emergency management in Ontario for municipalities needs improvement in many areas, as outlined in the 2020 OAG Report. The cumulative effects of poor emergency management in Ontario, coupled with the other deficiencies outlined in this report, create a deficient emergency management regime for First Nations in Ontario.

¹⁵⁷JEMS Standards, *supra* note 137 at 6,8,26.

¹⁵⁸ *Ibid* at 6, 26.

¹⁵⁹ 2020 OAG Report, *supra* note 12 at 31.

¹⁶⁰ *Ibid*.

¹⁶¹ *Ibid* at 31-32.

¹⁶² *Ibid* at 27-34. These criticisms will not be outlined here due to the comprehensive and nuanced nature of the analyses found in the report.

¹⁶³ 133 First Nations communities/577 total communities in Canada = 23.05%.

¹⁶⁴ 2020 OAG Report, *supra* note 12 at 30.



5.2.4 Ontario's Emergency Management System – 2017 to 2020

It is clear from the 2020 OAG Report that since the Auditor General's 2017 audit of Ontario's emergency management regime, there has been a lack of meaningful progress on recommendations put forward by the Auditor General.¹⁶⁵ Since only 11% of the recommendations from the 2017 audit of emergency management have been implemented¹⁶⁶, the pace of Ontario's emergency management improvements are a concern for First Nations.

Since Ontario's emergency management system is predicated on being a bottom-up approach, the lack of support to municipalities and small communities also raises concerns for First Nations. As noted in section 2.4 of this report, there are capacity issues for First Nations being able to create a strong, localized emergency management program. As a result, Ontario's emergency management system seems ill-prepared to support First Nations, which will have a most significant impact on those which are remote.

6. Summary

This review represents the first step in identifying and resolving the issues that limit First Nation emergency management. While the negative effects of the current pandemic have been experienced by all, nowhere have longstanding issues been exacerbated more than for First Nations trying to manage emergencies, while simultaneously protecting their citizens from COVID-19.

We have also seen that the way to get through this pandemic is to work together in a meaningful way, with common goals, adequate resources and mutual support. While numerous gaps were identified throughout this review, there is also an abundance of opportunities to enhance comprehensive First Nation emergency management. If these opportunities are not explored, many First Nations will not only continue to suffer from faulty emergency management practices, but will also remain stagnant as the rest of the province progresses within the realm of emergency management.

The need for robust and comprehensive First Nation emergency management will continually increase. It is therefore imperative that the problems identified within the report be addressed in a meaningful way to enhance capacity, to increase resiliency, and most importantly, to further reconciliation.

As a result of this review, the recommendations are as follows:

1. Establish tripartite agreements with First Nation leadership, Provincial Territorial Organizations and/or Tribal Councils that ensure equal partnership among First Nations, the provincial government, and the federal government;
2. Establish clear roles for the federal government, the provincial government, and First Nations in the tripartite agreement;

¹⁶⁵ *Ibid* at 3.

¹⁶⁶ *Ibid*.



3. Maintain the distinction between an **"emergency"** and **"disaster"**, where an **"emergency"** focuses on institutional response, and a **"disaster"** focuses on the degree of harm;
4. The definition of **"disaster"** should be scalable to each individual First Nation, focusing on each First **Nation's** ability to cope as a benchmark;
5. Eliminate the distinction between social emergencies and other types of emergency hazards, or provide dedicated funding for social emergencies;
6. Create a mechanism to empower emergency declarations by First Nations;
7. Determine the reason for high **"response"** and **"recovery"** costs in Ontario;
8. Implement accepted principles of **"Build Back Better"**. This may require going beyond **Canada's "Building Back Better Strategy Guide"**, the **"National On-Reserve Emergency Management Plan"**, and the Emergency Management Assistance Plan **"Terms and Conditions"**;
9. Ensure that all pillars of emergency management are not viewed in isolation of each other. This means conceptualizing emergency management as a **"disaster cycle"** and all pillars of emergency management are given equal consideration;
10. Contribute more resources to the pre-disaster pillars;
11. Develop remoteness indices/indicators for emergency management that consider the uniqueness of **NAN's** remote communities;
12. Apply the remoteness indices/indicators to NAN communities;
13. Determine and accommodate the cost of remoteness as it relates to emergency management;
14. Analyze different methods of service delivery to remote First Nations, including the advantages of having regional offices;
15. Establish a system of emergency management for First Nations that takes into account the inherent differences between First Nation reserves and Ontario municipalities. This includes accounting for the lack of tax base on most reserves;
16. Establish strong ties with host communities;
17. Ensure that pre-disaster funding will be made available for host communities;
18. Establish the optimal support roles for the Provincial Emergency Response Centre (PEOC), Emergency Management Ontario (EMO), and any other stakeholders;
19. Ensure that field officers provide adequate support for First Nations, and consider employing First Nation field officers in place of provincial field officers; and
20. Ensure that First Nations are considered when implementing the recommendations from Auditor General reports.





Nishnawbe Aski Nation

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RESOLUTION 19/30: NAN FIRE AND EMERGENCY MANAGEMENT SERVICE

WHEREAS tragic house fires continue to devastate First Nations in Nishnawbe Aski Nation (NAN) territory, resulting in loss of life and homes;

WHEREAS NAN First Nations are increasingly experiencing emergency situations such as wildfires, flooding, extreme weather events and other crises that affect community health and safety, leading to evacuations and additional risks to community members;

WHEREAS fire protection and prevention services and fire infrastructure in NAN First Nations are often inadequate, and face common deficiencies in funding and maintenance, resulting in a significant risk to life, homes and infrastructure;

WHEREAS a report completed by the Assembly of First Nations *First Nations Emergency Management Think Tank* in March 2019 indicates that on-reserve First Nations are 18 times more likely to be evacuated due to natural disasters than the general population;

WHEREAS emergency situations require planning, preparation and prompt coordination with municipal, provincial, and federal governments and their related agencies, and dedicated funding and resources are needed for improved emergency management in NAN First Nations to mitigate the impacts to community well-being, health and safety in times of crises;

WHEREAS Resolution 16/35: *Amber's Fire Safety Campaign* mandated the NAN Executive Council to pursue a long-term plan to address fire protection and safety, including fire services and fire emergencies, to ensure housing and infrastructure meet fire safety standards;

WHEREAS Resolution 17/14: *Fire Safety Inquest* mandated the Executive Council to call on the governments of Canada and Ontario for a coroner's inquest into fire safety in NAN First Nations, which led to an Ontario Chief Coroner's Table on Understanding Fire Deaths in First Nations and a review and evaluation of First Nation fire deaths over the past 10 years, and a report of findings that may not be completed until the end of 2019;

THEREFORE BE IT RESOLVED that NAN Chiefs-in-Assembly direct the Executive Council to begin the development of a NAN Fire and Emergency Management Service for NAN First Nations;

FURTHER BE IT RESOLVED that NAN is mandated to seek resources to complete an assessment of fire protection and prevention infrastructure and capacity, the level of operation and maintenance funding, as well as complete a data history of fire threats and occurrences for NAN communities to inform the development of a NAN Fire and Emergency Management Service;

FURTHER BE IT RESOLVED that a NAN Fire and Emergency Management Service will establish standards of the same or higher quality as elsewhere in Canada, to be culturally appropriate and reflective of the unique needs of NAN First Nations;

FURTHER BE IT RESOLVED that NAN shall establish a working group to determine a governance structure and framework for a NAN Fire and Emergency Management Service;

FURTHER BE IT RESOLVED that NAN is mandated to seek funding and related resources, and build on existing partnerships of the Amber's Fire Safety Campaign to ensure continued support and growth in the development stages of a NAN Fire and Emergency Management Service;

FURTHER BE IT RESOLVED that the implementation of this Resolution shall take into account related fire and emergency initiatives at the Tribal Council and First Nation levels;

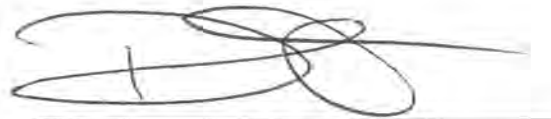
FINALLY BE IT RESOLVED that NAN shall report on progress at the next Chiefs Assembly.

DATED AT KINGFISHER LAKE FIRST NATION THIS 17TH DAY OF JULY 2019.

MOVED BY: Chief Sam Mamakwa, Wunnumin Lake First Nation
SECONDED BY: Proxy Michael Bottle, Mishkeegogamang First Nation
DECISION: CARRIED



Grand Chief Alvin Fiddler



Deputy Grand Chief

RESOLUTION

Nishnawbe Aski Nation

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Thunder Bay, ON P7J 1L2



20/10

First Nations Emergency Management

WHEREAS Indigenous Services Canada (ISC), Ontario Region, has stated that approximately 86% of all emergency events occur in the North, and occur more often in First Nation communities as a result of various factors, including geographic location and relative isolation;

WHEREAS the Library of Parliament concluded that First Nations face additional challenges in responding to emergencies, including lack of emergency management plans, negative socio-economic conditions, limited economic opportunities, and a high frequency of emergencies;

WHEREAS the Emergency Management Doctrine for Ontario 2005 states that since all emergencies are essentially local in nature, the implementation of emergency management programs should begin at the community level, through prevention, mitigation, preparedness, response, and recovery activities;

WHEREAS Resolution 19/30: *NAN Fire and Emergency Management Service* mandated the Nishnawbe Aski Nation (NAN) Executive Council to seek funding and related resources, and build on the existing partnerships of Amber's Fire Safety Campaign, to ensure continued support and growth in the development stages of a NAN Fire and Emergency Management Service;

WHEREAS Resolution 06/11: *Pandemic Planning* directed the federal and provincial governments to provide NAN the equitable and comparable resources needed to fully prepare communities that are vulnerable, experience overcrowded living conditions, and are severely under-resourced for both human health and health infrastructure, which are integral to implementing a successful emergency pandemic and influenza plan;

WHEREAS the Minister of Indigenous Services (ISC) mandate letter, dated December 13, 2019, states that ISC will continue to work with First Nations communities to ensure they control the development and delivery of services;

WHEREAS the Minister of Crown-Indigenous Relations (CIRNA) mandate letter, dated December 13, 2019, states that the Minister is to work with the Minister of Finance and the Minister of ISC to establish a new fiscal relationship with Indigenous Peoples that ensures sufficient, predictable and sustained funding for communities, including revenue generation and fiscal capacity to govern effectively and to provide programs and services;



RESOLUTION 20/10: First Nations Emergency Management

THEREFORE BE IT RESOLVED that NAN Chiefs-in-Assembly direct the NAN Executive Council to seek resources and funding in partnership with the federal and provincial governments to advance emergency management training and capacity at the First Nation level equivalent at a minimum to that offered elsewhere in the Province;

FURTHER BE IT RESOLVED that the NAN Executive Council is directed to seek resources to complete an assessment of emergency management resources in First Nations and historic emergencies that have occurred within NAN First Nations territory;

FURTHER BE IT RESOLVED that Chiefs-in-Assembly direct the Executive Council to develop a culturally appropriate and accessible training program and platform that meets the provincial standards for emergency management at a minimum;


FURTHER BE IT RESOLVED that NAN is mandated to review emergency management policy and procedures, inclusive of the NAN 1997 Protocol Agreement and business continuity aspects, and to develop partnerships and practices that are culturally appropriate, meet the needs of NAN First Nations, and focus on the development of more resilient communities;

FURTHER BE IT RESOLVED that NAN shall work with existing emergency management coordinators and initiatives at the First Nation and Tribal Council levels;

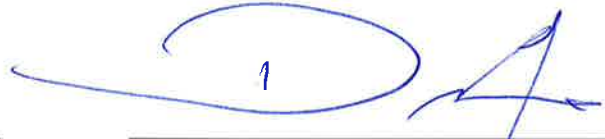
FINALLY BE IT RESOLVED that NAN is mandated to build on the implementation of this Resolution to inform and develop the basis for a NAN Fire and Emergency Management Service.

DATED AT THUNDER BAY, ONTARIO, THIS 21ST DAY OF OCTOBER 2020.

MOVED BY: Chief Cheryl St. Denis, Brunswick House First Nation
SECONDED BY: Chief Derek Maud, Lac Seul First Nation
DECISION: CARRIED



Grand Chief Alvin Fiddler



Deputy Grand Chief