

National Virtual Engagement on the Proposed Elements for Federal First Nations Police Service Legislation

Date: March 19th 2024

Location: ILDI Zoom Meeting Space

In-Attendance: 34 people attended virtually, representing the following:

- Manager of Crime Prevention
- Police Service Advisor
- Public Safety
- Community Justice and Policing
- Communications
- Department of Justice
- President, Police Services Board
- Chief Designate, Police Services Board
- Board Member, Police Services Board
- Lieutenant
- Legal Counsel
- Manager, Policies and Communications
- Student
- Band Manager
- Councillor
- Director
- Chief
- Chairperson, Police Commission
- CEO

Welcome and Opening Remarks

Dennis Meeches shared an opening prayer.

Presentation – Chris Moran, Assistant Deputy Minister, Public Safety Canada:

https://ildii.sharepoint.com/sites/ILDIIArchive/Shared%20Documents/EXECUTIVE%20TRAINING/2024/APPROVED%20Proposals/FN%20Policing%20Legislation/FN%20Policing%20Leg%20-%20Documents/IAB_IPTF_PS%20Presentation%20ILDI%20Engagement.pdf

Elements to Inform the Legislation

1. Context

Discussion Question

The context emphasizes that the federal legislation should recognize and support First Nations police services with funding and foster effective partnerships between First Nations, the Government of Canada and the province/territory. Are there other concepts that you feel need to be included in the context to properly set the tone of this envisioned legislation?

Participant Answers

- *Is there going to be an early draft version available to review amongst the communities beforehand and is recognition within the co-development going to be a top priority?*
- Need to ensure that the province is following through on the legislation once it comes into place.
- *Are the communities going to see what's going to be put in the draft and be able to make a comment that goes along with the elements in the legislation?*
 - PSC: There won't be a draft filled posted online but the intention of this engagement is to collect feedback on these elements and then circulate an updated copy of the elements once we incorporated the feedback and taken into account the issues that has been raised and provide an updated version which would inform the final drafting introduction for the bill. Once the bill is tabled, there would be opportunities to bring forward additional concerns through that process but in advance to that, it would be an updated version that gets shared.
- I'm a skeptic and I understand as a police officer, it is a surface level and face value sometimes comes off that "yeah we're there, yes, we want to help this" but I want to ensure that the aspect of the elements is adhered to by both parties including the Federal government as well. I think part of the reason why we are having this discussion is because there is a certain element in good faith that hasn't been necessarily followed the way it should have been previously. And we are working towards a better path, not just a reconciliation, but a better cooperation moving forward. But I believe in moving forward that the communities are taking part in this. *Are we assured that we are moving in the right direction, and everybody is going to win from this?*

- Treaty 6 from Alberta: it's unfortunate that we are not going to see a copy of this draft which we should be seeing because I represent 6 chiefs where I come from. So, we should be making copies of the draft before it goes to the House of Commons. The reason why we need a copy of the draft resolution is we want to see what the actual changes are. I'm going to ask a few more things too, given the engagement sessions that you have across Canada, *have you actually gone through chiefs and councils at some point as well to present this?*
- Is First Nations and Inuit Policing Program (FNIPP) a part of this legislation?
 - FNIPP is a combination of several streams or models of policing. You have the self-administered streams where the Inuit or First Nations police services. And then you also have streams where the RCMP in some situations is providing some dedicated policing to some communities. So, this legislation is not about the second model of policing. It's not about CTA's or RCMP or Municipal policing, it's about the First Nations police services at this point in time.
 - This is focused on First Nations Police Services and the FNIPP will continue to operate through the program. In terms of engagement wherever we have been invited, we have presented or engaged in councils, our key partners that have helped to develop these elements were the First Nations Police Association, First Nations Police Governance and Council, provinces, and territories but that is not to say that other First Nations voices are not reflected in the technical work that resulted in these elements. Wherever we had been invited to talk about this legislation, we have made our way to have these discussions and that door continues to be open.
 - The point about holding provinces and territories accountable, it's a common concern that we have heard across the country through this engagement. It's definitely heard. Federal Legislation can't impose anything on the Provincial Government, but we have been engaging in this process to ensure that we have been building a consensus the whole way through. Provinces and territories have been a key partner in the technical work that we have been doing to establish these elements. It's our intention to ensure that provinces and territories are on board with our policy intentions for the legislation. So, when the time comes to support First Nations Police Services with funding, we have a co-share partner there. The federal government cannot guarantee provincial or territorial government commitments, but we have no reason to believe that we don't have that support.
- Historical background on Treaty 1, which is the first Police Service in the country. I know, having been there for 26 years as chief, the challenges of police service through the years. Just to negotiate funding can be a daunting task for any Indigenous government.
- I know there have been concerns in the jurisdiction through the engagement sessions and for the case law claim, we definitely have challenges in infrastructure development for investing in our police attachment through Long Plane.
- Many of our First Nations committees, at least in our region, are in a current state of emergency because of the drug crisis. Other challenges are the retention of Indigenous officers, we lose a lot to RCMP. There's a lot of police services such as the RCMP. There is a lot of community support and concerns in the legislation. We see what's happening in the justice system with the high incarceration rates of child welfare.
- There should be a different approach to how policing is done in our communities. A lot of that is done when we look to our knowledge keepers and cultural practices within the justice system. We can take a holistic approach. I know it would be difficult to find that balance, but that is my hope with the expansion of self-administration of police services Indigenous. I think that might be a positive direction, where we are heading. It might reduce the amount of incarceration rates. We can't predict what the future holds but we are a part of the policing evolution, I'm looking forward to how Indigenous police would evolve in the government.
- *Is there anything just from someone's experience that can help guide the process around the complexities, opportunities to foster partnerships within the legislation between the provinces, with nations or with the federal government so it can properly meet or set the tone for the obligations that many of you talked about? Is there anyone that can share that can help guide the process in terms of identifying gaps, opportunities, challenges and talking about those partnerships and fostering that would work for First Nation communities?*

- We are in Quebec, and the partnerships as they are, are effective. They work well. However, what I was thinking when everybody was talking about the different areas where they're from, we are talking about communities that currently don't have police departments being placed. I speak from where we are in Eastern Canada, there are many communities in the New Brunswick area that are currently served by the RCMP through a contract agreement that they have with the province of New Brunswick. Of those communities, *the question that I have is, if they want to become self-served or independent within their community policing program?*
- I was one of the facilitators from last week in New Brunswick. I can say that there are a few people that spoke about where the lines lay once legislation comes in.
- Treaty 6: Here in Alberta, we have 3 self-administered police services and there were several in the mid-90s and unfortunately, some of them died in the 90s because of lack of funding. The Provincial Government of Alberta is looking to replace the RCMP within the next several years, and if that happens the Chief of Alberta Treaty 6, have been clear that they don't want a police force within their nation lands. This puts us into a difficult situation where this whole process needs to be expedited because we want to begin our own self-administered policing services.
- This needs to be expedited because this has been discussed and debated for three years. This needs to happen now otherwise, we lose our opportunity.
- Personal Story: My childhood dream was to be a constable of the RCMP and when I graduated high school I applied to RCMP. My original goal was to become a staff sergeant. Because I thought to myself, what's better than having an Indigenous officer that's in charge of a detachment that recognizes the efficacies of First Nations Policing? I ended up leaving 5 years later for a couple of reasons. One, my two-week pay cheque back then was \$322 and so I was living on \$640 a month with my wife and two children. At that time, there was no opportunity for promotion. I also wanted to have a career where I could help people to reach their goals and so I became a Native Special Agent Counsellor for 9 years. With respect to this particular guide, this was written in a format, and I think what would help me, is if this would be written in a resolution. This can be part of our reconciliation through the Federal Government securing funding.
- The wording and the presentation of this information could be written not as a presentation but as a resolution.

Summary:

The discussion revolved around the development of legislation concerning First Nations policing services. Concerns were raised about the lack of early access to draft legislation and the need for recognition within the legislative process. The feedback collection process was explained, and that it assures opportunities for further input once the bill is tabled. Concerns were expressed about the legislative process's transparency and inclusion of programs like FNIPP. It was clarified that the legislation's focus is on First Nations police services and ongoing engagement efforts. Participants sought insights into fostering partnerships within the legislation, and it was suggested to present discussion questions in resolution form. Overall, the dialogue highlights the importance of transparency, community involvement, and addressing complex jurisdictional issues in developing legislation for First Nations policing services.

2. Purpose and Funding Arrangements

Discussion Question 1

What are your views of the roles and responsibilities of the Government of Canada, First Nations and the provinces/ territories as articulated in the Elements?

Discussion Question 2

Do you have any suggestions for how to increase the likelihood that funding arrangements will be successfully concluded?

Participant Answers

- Our elders would always tell us that the RCMP was created to protect the Indigenous people when they came to the West and that's where the elders tell us it's part of our treaties that it's the federal government's responsibility to protect our people. I want to put that in there because it's coming from the elders. The

funding arrangements, this police force were made in the 90s. Will all the levels of governments help? This is where I have hesitation.

- The issue is around policing and funding and these notions of services... One thing that you want to consider is the notion of those cross jurisdictions of those treaties and provinces.
- I know in Quebec; I have been asked a question whether the funding was a fixed level of 52 or 48? Additionally, what are the roles and responsibilities for the funding arrangement? Will that be in place? Is it going to be a top priority for the government to ensure that these things at a legislative level are held at a high accountability and importance?
- There is a misconception between where the funding goes for certain communities. Is it sub commissions versus the councils, versus the bands etc. – how to ensure that nations and communities are implicated as early on and possible.
- Focus on funding capacity building, and funding for shared resources or combined services. There needs to be the ability of community policing to have the capacity whether by board or council.
- I personally lean more on the commission as opposed to having a council. I see it as more effective to tie in two or more chiefs' councils as well as bands to have their perspectives on things. However, the police departments should have a governance. I feel that commission is an effective way to do it.
- I am from Northwest Territories. In our area, we are self-governing, and we are in a unique situation. Our self-government agreement is to try to partake in an agreement meaning it's an agreement within the Northwest Territories and government of Canada. So, it's a three-government agreement. Therefore, in order for us to get funding, the federal government would have to go to the Northwest Territories and funding comes to us. We end up not getting the full funding that we should be getting. Our government is not fully recognized in that way yet, but we are working into it. We want to be able to get funding fully. We don't have any policing in the Northwest Territories at all but in our area, we are starting to look into it. I see something that we would be able to do in the next 10 years from now. Because we are in a unique situation, we are not able to get policing because we have to go to the federal government and since Northwest Territories have to go through the government of Canada. But we are able to get safety officers through our own community government which looks after municipal services, but they are safety officers, they are not policing at all. Those two are totally different. This is the reason why we are here.
 - Under the funding arrangements that would be pursued into the legislation, the funding would not go to the provinces and territories. The funding would flow both from the level of government individually, and directly to First Nations Police services depending on how they are organized. 52% would go from Canada to police service and 48% would go from the province and territories First Nation Police service.
- Role and Responsibilities of the Government of Canada and Provinces/Territories is to ensure that "adequate" funding is provided to First Nations to effectively foster community safety.
 - The provincial laws will impact on how much funding will be received depending on what First Nations Police Service proposes for what the budget is. There is no policing provincial legislation that says how much a police service should receive so there is no clear delineation between what provincial policing prescribes and how much money should be supported to support those activities. The intention is there should be a conversation between those three parties on how the First Nation police service is able to meet its requirements under the policing services act or under the legislation within their jurisdictions.
- *Will provincial laws not impact how much funding First Nations receive?* Our concern is that Ontario's new policing act says that First Nation law enforcement is not included in adequate and effective policing. We're concerned that essential service funding will be limited by that.
 - If it's not a prescribed requirement would that still be eligible for funding? The answer is yes. If it's an enforcement activity that police can undertake then that's open for discussion in the negotiations. Just because it's prescribed doesn't mean it would not be funded. There would be a discussion about what the implications are, and how it supports the broader community safety goals of the First Nations. It won't necessarily be a "no".

- Regarding funding arrangements, can recipients hold the funder accountable? Will recipients have a say before the auditor is engaged to audit the funds? *What type of funding arrangement will be placed? Grant or something else?*

3. Dispute Resolution

Discussion Question

How successful do you think the proposed dispute resolution processes will be in supporting the resolution of disputes? Do you have any suggestions that may help the Government of Canada, First Nations and provinces/territories work together to respectfully resolve disputes?

Participant Answers

- **Public Safety:** The vision is for the dispute resolution process to have two types. The first would be through a mediation process where the third party is selected by the three parties: the First Nation, the province and territories and federal government. That third party would support a collaborative dialogue whatever the dispute is. This is meant to be an intro step before escalating to litigation. We are trying to be as collaborative as possible and create space for open dialogue and sharing different perspectives. We may not be able to see things from the same place, but a third party may be able to support that discussion. Alternatively, a second approach which is contemplated, is the federal government may participate in the process that is proposed by one of the other parties. They will offer a solution in this case, that would be another avenue that we could pursue as well.
- *Has anyone looked at dispute resolution processes in First Nation communities as passed by referendum appeal tribunals?*
- Mediation will be tricky as many do not trust the RCMP and some RCMP don't respect first nations.
- Educate some RCMP members on indigenous world view on mediations.
- The guidelines for the adjudicator or mediator will have to somehow deal with the unequal bargaining powers, if it is to be seen with legitimacy.
- Not to have provisions in the law that allow the federal or provincial government to unilaterally change or limit funding, or to change or limit terms.
- The roster of mediators is a thing to consider. And their mandatory training before they can take on mediating for this.
- Respecting that each nation has its own cultural traditions and protocols, I like the second option. It provides more flexibility to allow for a respectful collaboration.
- Cultural awareness needs to be part of the resolution process.
- Dispute Resolution could have mechanisms that are triggered if a mediator or adjudicator finds bad faith on the provincial or federal government's side - as a way to deal with unequal bargaining. These consequences could be specific to the First Nation and the individual customs and traditions. Otherwise, First Nations will have to invest in a 'fight', and whereas the government has resources for that, and 'fighting' a First Nation can happen without too much concern over their funds. There needs to be an extra consequence for the more powerful party to have additional consequences for bad faith behavior, so if a mediator or adjudicator finds in favor of a First Nation, the governments have more to lose and won't automatically fight everything the First Nations ask for.
- Wellness checks for remote First Nations health can only do so much. Repeat offenders always seem to get off with a short-term probation, and no repercussions when they breach.
- Involvement of individual Chief and Council to help determine the consequences for offenders.

Summary:

Indigenous and RCMP representatives discussed potential dispute resolution mechanisms for addressing issues between the two groups. It was suggested to have a mediator-facilitated process, and a more flexible approach accommodating cultural traditions and protocols. There was an inquiry about considerations for the mediator, and it was emphasized to respect cultural differences and address power imbalances. It was highlighted to ensure the importance of cultural relevance and be aware of the challenges in rural and remote communities.

Actions Points:

- Develop guidelines for qualifications and training of mediators who can facilitate dispute resolution processes.
- Allow flexibility for First Nations communities to propose culturally relevant dispute resolution approaches that honor their traditions.
- Consider involving First Nation leadership like Chiefs and Councils in determining consequences for repeat offenders.
- Research existing indigenous-led justice models like the one developed by AMC in Manitoba as potential dispute resolution approaches.
- Build mechanisms into dispute resolution processes to address power imbalances between governments and First Nations.
- Use language and terminology carefully to find common ground between Western and indigenous worldviews on concepts like "dispute resolution".
- Allow dispute resolution processes to have culturally specific triggers and consequences when bad faith is identified.

4. Implementation

Discussion Question 1

Do you have any other ideas that could help support the implementation of a First Nations police services legislation?

Discussion Question 2

The Elements envision that First Nations would be significantly involved in the implementation of the legislation. What is needed to support First Nations participation in this implementation?

Participant Answers

- *Would this be a "National" Indigenous police service? Or a multi-nation police force?*
 - There would not be a national Indigenous police service contemplated in this legislation. But eventually that might happen.
- *At a national or federal level, is there going to be a change in the way that this money itself is diffused to different services or is it going to remain in the same setup?*
- I'm not sure about the other provinces but in BC, there is a growing opportunity for First Nations to provide health services in band for example. People are coming for doctor's appointments and other medical needs. I'm wondering if this type of service could partner with Indigenous health?

Summary:

Indigenous policing and reconciliation in Canada face challenges and opportunities. It was emphasized for a more inclusive and culturally sensitive approach to policing, and the importance of prioritizing essential services for First Nations. It was highlighted to involve First Nations in the decision-making process and ensuring accountability, and to clarify funding arrangements. The speakers emphasized the need for greater understanding and support for Indigenous self-governance and funding arrangements, and the importance of partnership and cooperation between the government, provinces, and communities to advance community policing. Reconciliation and cooperation were central themes in the conversation. The importance of recognizing AFN resolutions in the context of First Nations policing was emphasized and questions were raised about ensuring good faith among parties involved in community policing and legislation. Concerns were expressed about the lack of transparency in the legislation, and challenges faced by indigenous communities in Manitoba were discussed. The need was addressed about funding challenges faced by First Nations police services, historical background was provided with context on the treaty one law claim and the challenges faced by indigenous police services.

Action points:

- Expedite the process for First Nations to establish their own police services, as the current situation is difficult.
- Ensure the First Nations policing legislation is the first priority.
- Move federal government investment and focus towards First Nations policing, as it has been delayed for 3+ years already.
- Secure funding for First Nations policing and acknowledge it as an essential service like other core services across Canada.
- Entrench First Nations policing in the legislation, so funding is not short-term like a typical program.
- Include considerations for treaties, jurisdictions, and sovereignty issues between First Nations and provinces in the legislation.
- Allow First Nations police services to access funding for continual capacity building and developing shared resources/partnerships with other services.
- Give First Nations communities the time and opportunity to articulate their own policing needs and priorities as part of the legislation and funding arrangement processes.
- Explore including First Nations governments in addition to federal/provincial governments in the self-governance agreements for First Nations policing in the Northwest Territories.

5. Broader Indigenous Policing and Community Safety Programs

Discussion Question

How can the FNIPP and FNIPFP, as well as other Public Safety Canada programming, better respond to broader policing and community safety needs in your communities?

Participant Answers

- There needs to be more than a general understanding, there needs to be a consensus so that a community knows exactly what is in this legislation.
- I think that part of a lot of the conversation we had in Saskatoon and Calgary was that notion of a community collaboration that's required to make the policing succeed and health was one of those considerations. Health and job family services were some of the big considerations that they had when they were talking about the implementation of the legislation.
- It needs to be within the policing spectrum, that it's community related. There should be less dictated by the federal and provincial levels. We need to ensure the safety of the community and allow them to determine their safety standards and understand there should be certain foundation elements which are in place such as accountability standards, training standards, and investigative standards.
- Suggestions:
 - a. Provide funding and support for communities/police services to complete a needs assessment.
 - b. Have flexible/sustainable/adequate funding allocation.
 - c. Offer capacity building/training.
 - d. Ensure community led - respects protocols, restorative justice measures.
- You know the walls that surround our communities are as real as the wall that separated East and West Germany after WWII "that wall only came down after movements from both sides of the wall. In order to break down these barriers we need full support from both the federal and provincial/territory governments. Working collectively we can only then make a lasting impact in our communities.
- Significant and non-one-time capital investment funding is needed to better enable autonomy and self-governance that is controlled and administered by the FNs themselves.
- Police acts could be amended to provide for the appointment of First Nation police commissioners.
- Collaboration in complete good faith requires a paradigm shift, where First Nations are not groups that are less-than. The idea that First Nations could have policing that non-First Nations would want to be policed

by is a way to move into that paradigm; Empowering FNs to have and maintain police services that neighboring municipalities admire.

- There needs to be an understanding more than just a consensus.
- Recognize and share the plans that are being discussed across Canada and across different governments.
- Make sure to move forward with an attitude of helping each other. Provide help instead of dictating how an individual/smaller government should run its respective business and come to terms of a view on justice being shared. Work in a collective manner and a collaborative manner.

Summary:

There was a discussion on the upcoming legislation regarding Indigenous Affairs, focusing on engagement and facilitation. Chris Moran provided a presentation on the Assistant Deputy Minister's perspective, highlighting the need for reform in funding for First Nations police services. Speakers emphasized the importance of culturally appropriate and accountable policing services, and acknowledged progress made in establishing a branch dedicated to Indigenous Affairs at Public Safety. A participant expressed gratitude for the opportunity to provide input.

Action points:

- Review the discussion guide and proposed legislative elements.
- Continue engaging with participants to gather feedback on proposed legislative elements.
- Refine proposed legislative elements based on feedback received (Chris Martin, Indigenous Policing Task Force).
- Develop recommendations on improving other federal supports like FNPP, CBM, and IPP as new legislation comes into place.
- Table legislation after incorporating feedback on proposed elements.
- Draft legislation based on finalized legislative elements.

Closing Comments

There are complexities surrounding Indigenous policing, reconciliation, and community safety. The diverse perspectives shared have highlighted the importance of cultural sensitivity, inclusivity, and effective collaboration in shaping legislation and dispute resolution processes. Moving forward, let's remain focused on actively engaging Indigenous communities, refining proposed legislative elements based on feedback, and fostering genuine partnerships to ensure the equitable advancement of Indigenous rights and self-governance.

Closing prayer.