



FNPP: First Nations Policing Policy vs. Program

PRESENTATION TO THE STANDING COMMITTEE ON INDIGENOUS AND
NORTHERN AFFAIRS – MAY 13, 2021

FNPP – The Phantom Policy

TERMS AND CONDITIONS

FUNDING FOR FIRST NATIONS AND INUIT POLICING

1. Authorities for Transfer Payments

Pursuant to transitional provision 8(1) of the *Department of Public Safety and Emergency Preparedness Act*, S.C. 2005, c. 10, any power, duty or function that was vested in or exercisable by the then Solicitor General became vested in the Minister of Public Safety and Emergency Preparedness. This includes the transfer to the Solicitor General of Canada in 1992 of the powers, duties and functions of the Minister of Indian Affairs and Northern Development relating to the Indian Policing Services Program in accordance with Order-in-Council P.C. 1992-0270.

Section 6(1)(c) of the *Department of Public Safety and Emergency Preparedness Act*, S.C. 2005, c. 10, provides that the Minister of Public Safety and Emergency Preparedness may, in exercising his or her powers and in performing his or her duties and functions and with due regard to the powers conferred on the provinces and territories, make grants or contributions.

2. Purpose and Objectives

The Government of Canada is committed to promoting the safety and security of all Canadians.

The federal government has played a long-standing role in supporting policing in First Nation and Inuit communities in Canada. While there is no specific legislative requirement for the federal government to support policing service to First Nation and Inuit communities, its interest is anchored in the *Constitution Act, 1867* whereby provincial and territorial governments have jurisdiction over the administration of justice, including policing, and the federal government has jurisdiction over "Indians and lands reserved for Indians".

The First Nations Policing Program (FNPP) and the Inuit Policing Program (IPPP) were created in 1991 to enhance the safety and security of First Nation and Inuit communities in terms of cultural and public safety need of communities.

The objectives of this funding are to support the safety and security of First Nation and Inuit communities that are professional, dedicated and serve.

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1996

FIRST NATIONS POLICING POLICY



FNPP: Terms and Conditions vs. Policy

- NAPS is currently funded under the First Nations Policing Program (FNPP), overseen by Public Safety Canada (PSC).
- The FNPP Program is restrictive, imposing Terms and Conditions that limit NAPS's ability to serve communities.
- Notably, the Terms and Conditions prevent police ownership of infrastructure. The Terms also include this list of ineligible expenditures:
 - costs related to amortization, depreciation, and interest on **loans**;
 - **legal costs** related to the negotiation of the agreement and any dispute related to the agreement or the funding received under the agreement;
 - **profit**, defined as an excess of revenues over expenditures; and,
 - costs for **specialized policing services, such as ERT, Canine Units and Forensic Services.**
- However, the mandate for the FNPP program comes directly from a 1996 policy. What about that policy?



Is the Policy “outdated”? (aka The Big Lie)

- In 2014, PSC told the Auditor General of Canada that the Terms and Conditions were intended to replace the original Policy document:
 - “According to Public Safety Canada, the **principles of the 1996 First Nations Policing Policy are outdated and impractical**, and the First Nations Policing Program **has evolved** since these principles were endorsed. The **Department plans to update** the principles of the Policy and incorporate them in the **Program's terms and conditions.**” (Auditor General, Report on the FNPP, Chapter V, s. 5.28)
- Since 2014, the Policy has vanished. Public Safety Canada does not mention it in any public-facing materials. It is not on the PSC website.
- Whenever questions are asked about the unfair restrictions in the modern FNPP, Public Safety Canada points to the Terms and Conditions. They do not mention the 1996 Policy.



The Reality

The reality: the Terms and Conditions (today) are outdated. The Policy (1996 – present) is the progressive document. To start, let's compare the restrictions:

■ **Terms and Conditions (2021), List of Ineligible Expenditures:**

- costs related to amortization, depreciation, and interest on **loans**;
- **legal costs** related to the negotiation of the agreement and any dispute related to the agreement or the funding received under the agreement;
- **profit**, defined as an excess of revenues over expenditures; and,
- costs for **specialized policing services, such as ERT, Canine Units and Forensic Services.**

■ **Policy (1996) – Complete List of Eligible Expenditures:**

- Program administration
- Recruiting, training and education
- Salaries and benefits
- Expenditures

- The Policy contains none of the restrictions or “ineligible expenditures” that appear in the Terms and Conditions (2021).



The Reality

Public Safety says that the Terms and Conditions are an “evolution” of the original Policy.
Which of the below looks more forward-thinking?

- **FNP Policy Principle #1, 1996**

- “First Nations communities should have access to policing services which are responsive to their particular policing needs and which are **equal in quality and level of service** to policing services found in communities with similar conditions in the region. **First Nations communities should have input** in determining the level and quality of the police services they are provided.”

- **FNP Program T&C, 2017:**

- “The objectives of this funding are to support policing services to First Nation and Inuit communities that are professional, dedicated and responsive to the communities they serve.” – T&Cs, 2017, p. 1



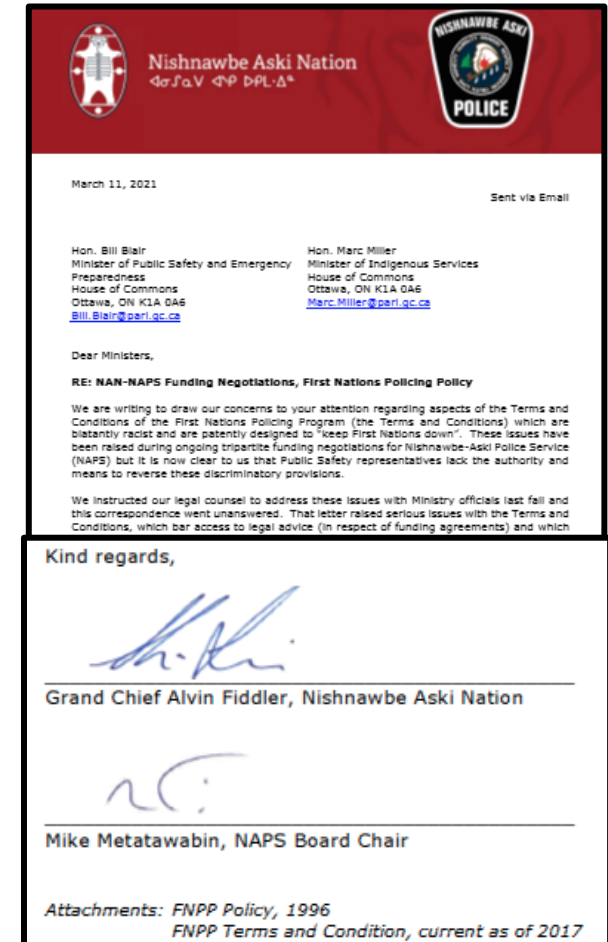
Canada's failure to evolve

- NAPS has, alongside Nishnawbe Aski Nation, repeatedly pointed out the failure of the Terms and Conditions to meet the requirements established in the original 1996 policy.
- For example, in NAN-NAPS correspondence to Minister Blair and Minister Miller, March 2021:

“This Policy, which we tracked down, is oddly missing from any current government statements on the FNPP. Instead, the regressive Terms and Conditions are front and centre.

The explanation provided to the Auditor General (in 2014) makes no sense when one considers the regressive nature of the Terms and Conditions, in contrast with the progressive nature of the 1996 Policy, which is missing in action. **It is apparent that these Terms and Conditions were created to dial back commitments made on Indigenous policing.**”

(letter of March 11, 2021 – no response has been received to date)





Conclusion: Colonial Terms and Conditions

- The reality is that the FNPP T&Cs are outdated, colonial, and prevent First Nations from receiving the same standard of adequate and effective policing available to non-First Nations.
- In conclusion, where else do we find a provision limiting Indigenous people from accessing legal advice?

▪ FNPP Terms and Conditions (2021)

Ineligible expenditures include:

legal costs related to the negotiation of the agreement, and any dispute related to the agreement or the funding received under the agreement.

▪ Art. 141 of the Indian Act (1927-1951):

PROHIBITION ON RAISING MONEY AND PROSECUTING CLAIMS TO LAND OR RETAINING A LAWYER

Every person who, without the consent of the Superintendent General expressed in writing, receives, obtains, solicits or requests from an Indian any payment or contribution or promise of any payment or contribution for the purpose of raising a fund or providing money for the prosecution of any claim which the tribe or band of Indians to which such Indian belongs, or of which he is a member, has or is represented to have for the recovery of any claim or money for the benefit of the said tribe or band, shall be guilty of an offence and liable upon summary conviction for each such offence to a penalty not exceeding two hundred dollars and not less than fifty dollars or to imprisonment for any term not exceeding two months.

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