Canadian human rights commission | Commission canadienne des droits de la personne

YOUR COMPLAINT

Your Name:

Chief of Police Kai Liu (President, Indigenous Police Chiefs of Ontario)

ORGANIZATION YOUR COMPLAINT IS AGAINST

(This is the respondent)

If there is more than one respondent, you must file a separate complaint against each one.

Name of business, organization or association

Public Safety Canada

In what city and province (or territory) did the alleged discrimination happen? (If the events took place outside Canada, please contact the Commission)

City or town:	Province or territory:
Throughout Ontario	Ontario

When did the alleged discrimination take place? (The alleged discrimination has to be less than one year old, but exceptions may apply):

Start date (dd/mm/yyyy):	Last date (dd/mm/yyyy):
01/01/1991	29/03/2023

I have a reasonable basis to believe that the respondent discriminated against me based on one or more of the following ground(s) of discrimination (Please check only the ones that apply to your situation):

- [X] Race
- [X] National or ethnic origin
- [ ] Colour
- [ ] Religion
- [ ] Age
- [ ] Sex
- [ ] Sexual orientation
- [ ] Gender identity or expression
- [ ] Marital status
- [ ] Family status
- [ ] Genetic characteristics
- [ ] Disability
- [ ] A conviction for which a pardon has been granted or a record suspended

Schedule A to the Complaint of the Indigenous Police Chiefs of Ontario ("IPCO")

Contents

I. Overview

1. This complaint arises out of the ongoing systemic discrimination perpetuated by the government of Canada through its deliberate and wilful under-funding and under-resourcing of the safety of Indigenous communities through the First Nations and Inuit Policing Program ("FNIPP", also known as "First Nations Policing Program" or "FNPP").

2. This complaint is filed in accordance with s. 40 of the *Canadian Human Rights Act* (the "*CHRA*" or the "*Act*"), on behalf of the nine (9) self-administered First Nations police services represented by the Indigenous Police Chiefs of Ontario ("IPCO" or the "Complainants"):

    a. Akwesasne Mohawk Police Services ("AMPS"), which provides services to 15,000 residences in the territory of Akwesasne. AMPS has 40 officers and 2 civilian members.

    b. Anishinabek Police Service ("APS"), which is comprised of 12 detachments spanning across 16 First Nation member communities. APS has 71 officers and 20 civilian members.

    c. Lac Seul Police Service ("LSPS"), which provides services to Frenchman's Head, Kejick Bay, and Whitefish Bay. LSPS has 9 officers and 2 civilian members.

    d. Nishnawbe-Aski Police Service ("NAPS"), which provides services to 34 First Nation communities in the Nishnawbe Aski Nation Territory. NAPS has 189 officers and 30 civilian members.

    e. Rama Police Service ("RPS"), which provides services to the community of Rama First Nation and in the vicinity of Casino Rama. RPS has 19 officers and 3 civilian members.

f. Six Nations Police Service ("SNPS"), which is responsible for policing the roads and property of the Six Nations of the Grand River Territory.

g. Treaty Three Police Service ("T3PS"), which provides services to 18,550 residents in 28 First Nation Territories in the Kenora and Rainy River districts. T3PS has 85 officers and 24 civilian members.

h. UCCM Anishinaabe Police Service ("UCCM"), which provides services to the six U.C.C.M.M. First Nation Communities located on Manitoulin Island and Highway 6. UCCM has 18 officers and 6 civilian members.

i. Wikwemikong Tribal Police Service ("WTPS"), which provides services to the Unceded Territory of Wiikwemkoong on Manitoulin Island. WTPS has 18 officers and 5 civilian members.

3. IPCO is the single coordinating body for all nine self-administered First Nations police services in this province, providing policing services to 85 First Nations communities. While each IPCO member service is governed by a Police Board consisting of First Nation community representatives, the member services then appoint their Chief of Police as its representative within IPCO. The majority of IPCO uniform and civilian members are Indigenous despite there being no requirement that a prospective applicant identify as a First Nation or Indigenous in order to be recruited. All nine IPCO member services have consented to IPCO advancing this application on their behalf.

4. The Respondent, Public Safety Canada ("PSC"), is a federal government ministry which presently administers the FNIPP.

A. The Complainants allege discrimination in the delivery of a service, the FNIPP

5. The Complainants allege discrimination, contrary to s. 5 of the *Act*, in the form of the discriminatory provision of a service, namely the provision of policing to First Nations communities under the federal government's FNIPP.

6. The FNIPP is governed by an underlying First Nations Policing Policy, adopted in 1991 and last updated in 1996 (the "Policy"), which sets out the minimum threshold standards for the provision of equitable policing to First Nations. The Policy, which arose out of recommendations from the Royal Commission on Aboriginal Peoples ("RCAP"), represents Canada's own self-imposed standards for equity, requiring, at minimum, that First Nations benefit from the same standard of policing available to non-Indigenous communities, and that policing be provided in a culturally responsive manner.

7. Canada's persistent failure to deliver on the very standards it has set out in this Policy, dating back to at least 1991, means that there is a deliberate dimension to Canada's discriminatory denial of safety to Indigenous people. This chronic and documented failure to implement the terms of its own Policy unequivocally proves two key realities:

    a. Canada is alive to the appropriate standard for the achievement of equitable policing in the Indigenous context, as evidenced by what is a substantive and progressive Policy; and

    b. Having set the bar for equitable policing (through the Policy), Canada's chronic under-funding and under-resourcing of the safety of Indigenous communities represents deliberate and wilful discriminatory conduct and amounts to systemic discrimination.

8. As a result of Canada's discriminatory conduct, the establishment of equitable policing for Indigenous communities, comparable to the policing and safety the rest of the country experiences, remains out of reach for Indigenous people in Canada.

9. Put simply and tragically: The reason Indigenous people on reserve are not as safe as non-Indigenous Canadians off-reserve is their Indigenous identity. The Government of Canada, through the pertinent Ministry, ironically the Ministry of "Public Safety", is fully knowledgeable of what is necessary to achieve equitable and comparable safety for Indigenous people (exemplified by the underlying Policy), but they have nevertheless permitted and orchestrated the ongoing discriminatory implementation of the FNPP.

10. The failed implementation of the Policy is an ongoing deliberate exercise intended to relieve Canada from making funding commitments that would be commensurate with the policing budgets associated with the safety the rest of Canada experiences.

11. This perpetuation of inequitable policing is engineered by, among other tactics, (1) the deliberate concealment of the underlying Policy, instead imposing discriminatory and restrictive terms and conditions which are designed to keep First Nations down; and (2) resort on the part of Canada – through its Ministry officials – to unconscionable bargaining tactics with First Nations, with respect to the expiry and negotiation of tripartite funding agreements under the FNIPP. Stark examples of these sharp dealings are itemized in this complaint and represent an all too familiar pattern of conduct (towards First Nations) on the part of Ministry officials across the country.

B. Current Circumstances

12. While this complaint is based on a longstanding pattern of discriminatory conduct, two recent important developments have prompted the timing of this filing. First, the Federal

Court's recent February 27, 2023 ruling, in *Canada (Procureur général) c. Première Nation des Pekuakamiulnuatsh*, 2023 CF 267 ["*Pekuakamiulnuatsh* FC"], upholding this Tribunal's finding that the FNIPP discriminates against First Nations, as held in *Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada*, 2022 CHRT 4 ["*Dominique*"]. Second, this complaint arises as a response to the latest actions in Canada's longstanding pattern of unconscionable negotiation tactics aimed at forcing First Nations to sign unfair, discriminatory funding agreements under the FNIPP.

13. To be clear, however, while this complaint may have been *precipitated* by Canada's recent actions, those actions are only the latest in a long line of discriminatory practices under the FNIPP. By bringing this complaint, the Complainants hope to prevent Canada from ever again relying on the same oppressive tactics, whether dealing with IPCO members or any other First Nations across the country.

14. In stark defiance of this Tribunal's findings in *Dominique* – and without limiting the generalities of the foregoing – Canada has demonstrated a pattern of conduct which puts First Nations community safety on the line with its bad faith negotiation tactics, which are aimed at forcing First Nations to accept discriminatory, inadequate funding arrangements under the FNIPP. This conduct includes, but is not limited to:

    a. Refusing to convene negotiations with First Nations to arrive at reasonable terms for their tripartite funding agreements made under the FNIPP;

    b. Presenting First Nations with pre-written FNIPP funding agreements, which have benefitted from zero input, consultation, or negotiation, and informing First Nations that their only options are to sign the agreement or receive no funding at all;

c. Deliberately allowing FNIPP funding agreements to expire (or come within days of expiry) in order to force First Nations to sign whatever terms Canada puts to them;

d. Prohibiting First Nations from retaining legal counsel to negotiate, discuss, or otherwise engage with said funding agreements, even as Canada relies on extensive legal teams to draft and provide advice on these agreements, which are worth millions of dollars and which have a profound impact on the safety of hundreds of First Nations communities across the country;

e. Deliberately concealing the existence of Canada's own underlying 1996 Policy, which contains a set of detailed commitments requiring that Canada adequately fund First Nations policing to a standard at least equivalent to policing in non-First Nations communities;

f. Imposing discriminatory terms and conditions within FNIPP agreements which directly contravene the aforementioned Policy;

g. Falsely claiming to the Auditor General of Canada that these discriminatory terms represent an improvement or evolution on the original Policy; and

h. When challenged to reform the FNIPP to address its discriminatory nature, continually relying on the promise of new First Nations policing "essential services" legislation, even while aware that there is not even draft legislation, let alone a clear commitment that this hypothetical legislation will divest the FNIPP of its discriminatory elements.

C. Issue Estoppel in this Complaint

15. The Claimants rely on the doctrine of *res judicata* in respect of:

a. the factual and legal findings made by this Tribunal in *Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada*, 2022 CHRT 4;

b. the factual and legal findings made by the Federal Court (on judicial review of the aforementioned Tribunal decision), as reported in *Canada (Procureur général) c. Première Nation des Pekuakamiulnuatsh*, 2023 CF 267; and

c. the factual and legal findings made by the Quebec Court of Appeal in *Takuhikan c. Procureur général du Québec*, 2022 QCCA 1699 (this latter decision representing a civil action on the part of Pekuakamiulnuatsh First Nation, the Complainants in the two cases named above, against Canada and Quebec for reimbursement of funds related to systemic underfunding under the FNIPP).

16. These findings include, but are not limited to:

a. That Canada perpetuates discrimination against First Nations through the implementation of the FNIPP;

b. That Canada's discriminatory practices stem, in part, from a failure to fulfil the objectives of the underlying Policy that governs the FNIPP;

c. That the goal of substantive equality set out in the underlying Policy is not achieved and cannot be achieved by the FNIPP because of its very structure;

d. That the Canadian government is legally bound to guarantee a standard of policing in First Nations communities that is adapted to their needs and that is equal in quality and quantity to services provided in non-Indigenous communities with similar conditions;

e. That this obligation extends to a legal guarantee that police service models in First Nations communities should be at least equivalent to those offered in neighbouring communities with similar conditions, and that First Nations should be involved in choosing a model that is adapted to their particular needs while also being as cost-effective as possible;

f. That the very structure of the FNIPP, as implemented, results in a denial of service, as the FNIPP makes it impossible for First Nations to receive basic policing services, since those service standards are effectively ruled out under the funding formula;

g. That funding under the FNIPP is both arbitrary and inadequate;

h. That, as a result of this systemic underfunding, Canada exacerbates existing discrimination against First Nations by increasing their dependency on the federal Crown; and

i. That Canada cannot justify its discriminatory conduct based on its excuse that the FNIPP is merely a "contribution program" which is subject to its own set of restrictions that prevent Canada from expanding funding or resources for First Nations.

17. The Respondent is therefore estopped from making any pleadings which deny that Canada discriminates against First Nations through the FNIPP; which deny that Canada is directly liable for this discrimination; or which in any way seek to dispute the fact that Canada systemically discriminates against First Nations in the context of the FNIPP, including by its failure to fulfil the underlying Policy which sets the minimum threshold for equitable policing.

II. Context: Canada's Failure to Clear its Own Threshold for Equitable Policing

18. As this Tribunal recently held in *Dominique*, the FNIPP perpetuates discrimination against First Nations persons and communities. Importantly, at the core of the Tribunal's findings is its conclusion that the source of that discrimination is Canada's own failure to fulfil the underlying Policy which sets the terms for the FNIPP. This Policy, through which Canada has acknowledged the minimum required terms to ensure First Nations benefit from an equitable standard of policing, has been deliberately violated by Canada for decades, resulting in the discriminatory impacts seen today.

19. To be clear, this is not merely the result of Canada's negligence or unwillingness to implement the Policy, but rather is a direct result of Canada's conscious efforts to avoid and conceal the Policy, even going so far as to substitute a discriminatory set of terms and conditions which contravene the Policy. We discuss these efforts, including the convenient "disappearance" of the Policy, in this section.

A. The First Nations Policing Policy, and a Minimum Threshold for Equitable Policing

20. All IPCO member services operate and receive funding under the FNIPP, which is administered by the federal government through PSC. Funding is provided 52% by PSC and 48% by the Ontario provincial government, through the Ministry of the Solicitor General ("SOLGEN").

21. As mentioned, the FNIPP is governed by an underlying policy, last updated in 1996, known as the First Nations Policing Policy. This Policy establishes a goal of substantive equality in the delivery of culturally responsive policing to First Nations communities, including the provision of a standard of policing at least equal to that of non-First Nations communities.

22. The Policy, which includes detailed principles and policy objectives, reflects consultations with First Nations about the minimum threshold for ensuring equity in the policing context. In other words: it is the "bar" that Canada has set for itself to ensure that First Nations receive equitable levels of policing based on concrete standards; in failing to meet that bar, Canada has by definition perpetuated discrimination against First Nations persons and communities.

23. Despite the commitments set out in the Policy, self-administered First Nation policing in the province of Ontario has for decades been chronically underfunded under the FNIPP. First Nations officers have been forced to work in conditions which other officers throughout the province would never be subjected to, posing a real and substantial safety risk to the First Nations communities served. At the same time, Canada has continually refused to negotiate FNIPP funding agreements with First Nations, instead relying on unconscionable bargaining tactics by which First Nations are forced to sign pre-written template agreements without any discussion of the actual context or needs of communities. This extends to Canada's deliberate tactic of allowing FNIPP funding agreements to "run out" to their expiry date, forcing First Nations to accept terms presented by Canada in order to avoid having their funding get cut off.

24. To that end, the Complainants plead and rely upon the First Nations Policing Policy (1996), including, but not limited to, the following objectives and principles laid out in the Policy:

    a. (At p. 3) Ensuring that First Nations peoples enjoy their right to personal security and public safety;

    b. (At p. 3) Ensuring access to policing services that are responsive to the particular needs of First Nation communities served, and which meet acceptable standards with respect to the quality and level of service;

c. (At p. 4) Ensuring that First Nations receive policing services which are equal in quality and level of service to policing services found in communities with similar conditions in the region;

d. (At p. 5) Establishing national standards for First Nations policing on the basis of consistent and equitable funding arrangements;

e. (At p. 3) Supporting First Nations in acquiring the tools to become self-sufficient and self-governing through the establishment of structures for the management, administration, and accountability of First Nations police services; and

f. (At p.3) Implementing the FNIPP in an atmosphere of partnerships based on trust, mutual respect, and participation in decision-making.

25. However, and as Canada has itself (belatedly) admitted, the reality is that Canada has engaged in a systemic pattern of violating those minimum equitable standards, thereby perpetuating discrimination against the First Nations persons under the FNIPP.

26. The Complainants therefore further plead and rely upon the recent report of Public Safety Canada (February 2022), "Evaluation of the First Nations and Inuit Policing Program", which contains, but is not limited to, the following conclusions:

a. (At p. 10) The FNIPP's current funding model is outdated and insufficient to address the continuing public safety needs of communities;

b. (At p. 10) The FNIPP's contribution agreement funding model and process for determining funding allocations for agreements have been criticized as inflexible in addressing the unique public and community safety needs of individual First Nations and Inuit communities;

c. (At p. 12) That chronic underfunding hampers the ability of First Nations police services to develop and implement policing approaches that are culturally appropriate, and community determined, as required under the Policy; and

d. (At pp. 31, 38) That PSC does not consistently engage recipient communities in consultations concerning its renewal processes and funding decisions. Recipient involvement in renewal processes is limited to "coming in at the 11th hour," and "negotiating under the gun".

B. Canada hides the underlying Policy

27. Strikingly, not only have the above-described Policy guarantees been ignored by Canada, but the federal government has also gone to some lengths to conceal them.

28. To begin with, Canada has failed to make a copy of this Policy available for public access. The Policy does not appear in any published reports from PSC. As of the filing of this complaint, and following years of requests by the Complainants, the Policy still does not appear on any government of Canada website.

29. Indeed, when an IPCO representative appeared in front of the Parliamentary Standing Committee on Indigenous and Northern Affairs in May 2021 to speak about the Policy, none of the Committee members were even aware of its existence. Following that session (which also included presentations/input from other First Nations representatives), the Committee issued a report on its work in June 2021.

30. The Complainants therefore also rely upon this recent Report of the Standing Committee on Indigenous and Northern Affairs (June 2021), *Collaborative Approaches to Enforcement of Laws in Indigenous Communities*, ; in particular, its recommendation that the Government of Canada, in collaboration with the provinces, work with local Indigenous police

representatives to create continued collaboration and recommendations on best practices within Indigenous policing, and to provide both general increases in funding for First Nations police services as well as specific capacity-building funding to communities, in line with the Policy.

31. The reality is that Canada has established a pattern of avoiding reference to the Policy whatsoever, instead relying on a set of arbitrary, discriminatory *Terms and Conditions* ("*T&Cs*"), which impose restrictions not present in – and directly contravening – the original Policy. This "bait and switch" – adopting a progressive, culturally responsive Policy and then burying it in favour of racist, restrictive *T&Cs* – in fact lies at the heart of Canada's discriminatory practices.

C. The Bait and Switch: Canada's Discriminatory *T&Cs*

32. Since at least 2012, Canada has required that any First Nation which signs an FNIPP funding agreement must also agree to abide by a set of *T&Cs* which have been drafted by Canada with no consultation with Indigenous communities.

33. While these *T&Cs* purport to describe requirements for the receipt of funding under the FNIPP, including annual reporting requirements and eligible categories of funding, the *T&Cs* also impose restrictions and prohibitions designed to impede the ability of First Nations police services to deliver adequate, effective, and culturally responsive policing. As Canada has itself admitted, this present approach and its imposed funding terms are outdated and insufficient to address the continuing public safety needs of First Nations communities. (See: Canada's recent (2022) evaluation of the FNIPP, which we have pleaded and relied upon at the outset of this Complaint.)

34. In particular, section 6 of the *T&Cs* lists the following as 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.

35. To be clear, the underlying Policy contains no "ineligible" expenditures whatsoever.

36. In comparison, the restrictions in the *T&Cs* have had profound consequences for the First Nations who are attempting to provide culturally responsive, self-administered First Nations policing in their communities. To that end, it is worthwhile to briefly consider each restriction in turn, before turning to see the present community safety crisis that Canada has manufactured with respect to three IPCO member services.

i. Blocking Access to Legal Advice

37. Perhaps the most disturbing practice of Canada in its administration of the FNIPP is the way Canada outright prohibits First Nations from retaining legal counsel to provide advice on their funding agreements. The text of the *T&Cs* indicates that First Nations are blocked from hiring a lawyer to negotiate whenever their funding agreements are up for renewal, and they are also blocked from seeking legal advice related to disputes associated with the agreement, or any questions with respect to funding received under the agreement. In effect, First Nations are asked to negotiate and sign highly sophisticated contractual agreements, worth millions of dollars, drafted by a veritable army of lawyers from both Canada (and its co-funder Ontario), while being told that they are not allowed their own lawyers to provide advice.

38. As with the broader concerns about discrimination under the FNIPP, this specific issue has been repeatedly raised with Canada. Notably, in March 2021 the NAPS Board Chair and Chief of Police wrote to Minister of Public Safety Bill Blair and Minister of Indigenous Services Marc Miller, copying the Prime Minister, to reiterate their objection to the FNIPP prohibition on First Nations legal representation. In their letter, NAPS writes:

> The bar against accessing legal counsel stands in stark contrast to what we see our federal and provincial counterparts do before, during, and after funding agreement negotiations, as they repeatedly and regularly consult with their legal counsel. It is ironic that Canada would dictate to First Nations that they cannot access legal counsel in respect of the FNPP, while at the same time heavily relying on counsel for that exact purpose.[1]

39. In response, Minister Blair wrote to NAPS that the prohibition on legal representation was a direct consequence of the FNIPP being a "contribution program":

> In particular, the issue you raise with respect to legal representation toward reaching an agreement on policing for the Nishnawbe Aski Nation is a consequence of the Nishnawbe Aski Police Service and First Nations Policing being funded through a contribution program.[2]

40. Further, Minister Blair in his June 2021 response deflected any responsibility in respect of the issues with the T&C's that NAPS raised, instead stating that:

> With respect to specialized policing services and the ownership of infrastructure, I recognize these are important elements to the renewal of the NAPS policing services agreement and <u>I encourage you to continue working with PS officials on this matter</u>.[3]

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[1] Letter from NAPS to Ministers, RE*: NAN-NAPS Funding Negotiations, First Nations Policing Policy,* March 11, 2021, at p. 2 [NAPS Letter].
[2] Letter from Minister Blair, RE: FNPP Terms and Conditions, June 2, 2021, at para 2 [Blair Letter].
[3] Ibid, at para 2. <u>Emphasis added</u>.

41. More recently, this has been exemplified in Canada's recent "manufactured" public safety crisis with respect to three IPCO services operating in 45 communities. As recently as March 23, 2023, PSC's Assistant Deputy Minister Chris Moran ("ADM Moran") has written to three IPCO member services to state that they are blocked from relying on a lawyer during funding negotiations:

> You have requested funding to reimburse you for the cost of your travel and that of your legal counsel [to] discuss the agreements. These are ineligible expenses that are specifically prohibited in the First Nation and Inuit Policing program Terms and Conditions.[4]

42. Strikingly, this latest response comes after this Tribunal already declared that the FNIPP is not a contribution program, in its *Pekuakamiulnuatsh* decision of January 2022. Yet Canada continues to rely on this excuse in order to prevent First Nations from even having the resources – such as legal counsel to serve as negotiator – to conduct funding negotiations.

43. This unacceptable *status quo* is sadly reminiscent of the unfortunate period in Canada's history when the federal government made it a crime for First Nations to obtain legal representation. In 1927, the federal government amended the *Indian Act*, R.S.C. 1927, c. 98, to include a provision making it a crime, punishable by a fine of up two hundred dollars and/or two months' imprisonment, for an "Indian" to hire a lawyer. This provision remained in effect for nearly a quarter-century, only being repealed in 1951:

> Every person who, without the consent of the Superintendent General expressed in writing, receives, obtains, solicits or requests from an Indian any payment or

[4] This phrase appears verbatim in three separate letters from ADM Chris Moran to T3PS, March 23, 2023; from ADM Chris Moran to UCCM, March 23, 2023; and from ADM Chris Moran to APS, March 23, 2023. [ADM Moran Letters, March 23, 2023]

> 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.
>
> *(emphasis added)*

44. It is frankly shocking to the conscience that the federal government of 2023 would again prohibit First Nations from hiring lawyers, the way they did in 1927 almost 100 years ago.

ii. Prohibition on Mortgages and Loans

45. This restriction in the *T&Cs* means that any First Nation signatory to the FNIPP cannot take out loans or mortgages with respect to their First Nations police service, not even, for example, with respect to acquisition of a police headquarters or detachments.

46. This arises in the context of a well-documented infrastructure crisis in First Nations communities across the country and has resulted in First Nations police services being forced to operate out of old, unsafe, decaying, and crowded buildings. For services that operate in remote communities, their officers further suffer from the lack of adequate, safe housing.

47. Indeed, the deplorable conditions found in First Nations police service detachments – including unsafe jail cells and detention areas – have been subject to judicial comment before, notably in a series of inquests resulting from the deaths of Indigenous persons while in custody of a First Nations police service. Again and again, inquest juries have called on Canada to adequately fund First Nations to improve infrastructure conditions. At present,

too many of these buildings represent clear violations of building codes and safety standards, all of which is directly attributable to Canada's discriminatory implementation of the FNIPP.

iii. Canada blocks Specialized Policing Units which are available to non-First Nations

48. Equally problematic – and clearly discriminatory – is Canada's unilateral prohibition on the ability of First Nations police services to develop specialized policing services.

49. In practice, this means that – unlike any non-Indigenous police service – the Complainants are blocked from receiving funding for, among others, Emergency Response Teams ("ERTs"), Canine Units, and Forensic Services. This has resulted in a situation where First Nations must either go without these specialized policing services entirely, find ways to self-fund these units, or rely on other (non-Indigenous) police services to provide these specialized services.

50. The prohibitions on ERTs – responsible for responding to high-risk situations – and Canine Units are particularly problematic given the widely-documented mental health and drug/alcohol crisis present in First Nations communities. Even as the Complainants are asked to deal with extremely difficult community contexts (often in remote communities) and contend with an ongoing drug crisis, they are not even permitted to have police dogs or dedicated teams to respond to these high-risk scenarios.

iv. Canada Prohibits Budget Surpluses

51. Even though other non-First Nations police services are able to run budget surpluses, the *T&Cs* define any surpluses as "profit" and require that surpluses be paid back to the funders (Canada and Ontario) in full.

52. Although, in practice, there is little risk of these chronically underfunded police services having funding left over at the conclusion of an agreement, the effect of this restriction is that it is impossible for these services to even consider reallocation of surplus funds should they become available.

D. Canada's Misrepresentations to the Auditor General

53. Canada's indefensible actions extend to the fact that in 2014, PSC falsely claimed to the Auditor General of Canada that the *T&Cs* have replaced the Policy on the basis that the *T&Cs* represented an evolution of the Policy.

54. To that end, the Complainants plead and rely upon the Auditor General's 2014 *Spring Report of the Auditor General of Canada: Chapter 5—First Nations Policing Program—Public Safety Canada*, in which the Auditor General quotes the PSC's explanation that the Policy is no longer in use because, "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."

55. Clearly, the opposite is true: in every measurable way, the *T&Cs* are regressive, discriminatory, and go against the Policy commitments which Canada once promised to implement.

E. Canada's cultural incompetence

56. On this note, it is also worthwhile pointing out that many of these problems have been exacerbated by the complete lack of cultural competence at the ministry which, somewhat bizarrely, has been handed responsibility for administering the FNIPP, namely Public Safety Canada. It is evident that the discrimination suffered by Indigenous people in respect of their

safety has arisen in the context of assigning responsibility for the FNIPP to a ministry that has no interest or competence in its dealings with Indigenous people or policing.

57. To be clear, the two federal ministries responsible for Indigenous relations – Indigenous Services Canada ("ISC") and Crown-Indigenous Relations and Northern Affairs Canada ("CIRNAC") – are not involved in the FNIPP whatsoever.

58. Instead, PSC, which is responsible for coordination across all federal departments and agencies responsible for national security and the safety of Canadians, was assigned responsibility for the FNIPP, presumably on the basis that policing falls within the definition of "national security and safety."

59. However, this approach has inevitably led to a situation where arbitrary and discriminatory funding terms are imposed on First Nations – for example, the prohibition on canine units described above – by PSC officials who lack even a basic understanding of the First Nations community safety context. This is habitually exacerbated by Canada's repeated pattern of assigning negotiators with no expertise in the Indigenous context, or even for that matter in the policing context.

60. In any other context, this type of behaviour – imposing terms drafted by bureaucrats with no expertise or experience in the context; sending "negotiators" who do not even have the bare minimum experience with the subject matter – would be unacceptable. It is revealing that Canada has allowed this to happen in the context of Indigenous safety, in clear contravention of the *CHRA.*

F. Canada is aware of the problem and does nothing (James Smith Cree Nation tragedy)

61. Indeed, this discriminatory conduct is even more striking given this government's own recent commitments to bolstering First Nations community safety.

62. In the wake of the James Smith Cree Nation tragedy of September 2022, when eleven people were killed and eighteen injured in a violent rampage in a remote First Nations community, Prime Minister Trudeau announced a renewed commitment to ensuring First Nations benefit from the same standard of policing available to non-Indigenous communities.

63. Policing in James Smith Cree Nation is funded through the FNIPP. However, unlike the Complainants, the Nation does not have its own police service, instead relying on the Royal Canadian Mounted Police ("RCMP"), which receives funding under the FNIPP to serve the community. This model, of so-called "Community Tripartite Agreements" ("CTA"), which flows funding to the RCMP through the FNIPP, is common for First Nations which lack their own self-administered First Nation police service. FNIPP funding to the RCMP under a CTA is provided 52% by Canada and 48% by the province.

64. However, it has recently become apparent that the RCMP's FNIPP funding is not being used to serve First Nations. Instead, so-called "CTA officers" are being hired using FNIPP funds, but then assigned to general RCMP duties outside First Nations communities. While this would apparently violate the terms of the FNIPP agreements made between the RCMP, the province, and Canada, the federal government has tacitly endorsed this practice since at least the late 1990s. As one Assistant Commissioner at the RCMP has explained, "Unfortunately someone recognized there could be cost savings" by using FNIPP funding to hire RCMP officers to work outside First Nations.[5]

65. In the meantime, the Prime Minister has made commitments in the wake of the tragedy, including an investment of over $20 million towards Indigenous-led community safety

[5] C. Freeze, *The Globe and Mail* (March 26, 2023), "Who pays for First Nations policing, and who benefits? Saskatchewan's struggles point to problems with funding models", online at: https://www.theglobeandmail.com/canada/article-who-pays-for-first-nations-policing-and-who-benefits-saskatchewans

projects in First Nations across the country".[6] Acknowledging First Nations' ongoing demands for adequate and effective policing, the Prime Minister has stated, "An important part of supporting community safety is policing. Our government knows that we need to work together to improve policing and community safety services."[7]

66. Yet despite these commitments made by the leader of this country, the Complainants now find themselves in a manufactured public safety crisis, thanks to Canada's unconscionable negotiation strategies, by which they have willfully wielded First Nations community safety as a bargaining tactic. As discussed in the next section, Canada's discriminatory actions fly in the face of the Prime Minister's recent commitments, and this country's commitments to Reconciliation and improving First Nations community safety.

III. Canada's Unconscionable Bargaining Tactics

67. For decades, Canada has engaged in unfair and outright unconscionable tactics aimed at forcing First Nations to sign "agreements" – in actuality, pre-written contracts absent any input from, or consultation with, the First Nations – in order to receive FNIPP funding. Indeed, what lies at the very heart of Canada's discriminatory practices is the way Canada creates a sense of dependence, by refusing to convene genuine negotiations with First Nations.

68. Once an FNIPP funding agreement expires, First Nations have been told in no uncertain terms that their police service funding will be cut off. This threatens what are potentially

[6] Aaron D'Andrea & Sean Boynton, Global News (November 28, 2022) "Trudeau commits $62.5m to Indigenous safety, healing projects in James Smith Cree Nation", online at: https://globalnews.ca/video/9311117/trudeau-commits-62-5-million-to-james-smith-cree-nation-rocked-by-mass-stabbings

[7] News Conference of Prime Minister Justin Trudeau (November 29, 2022) APTN News, online at: https://www.youtube.com/watch?v=Mm9JJuowRvQ

disastrous consequences for the safety of First Nations communities, many of which are already contending with multiple, overlapping states of social emergency, including: high crime rates; poverty; housing shortages and overcrowding; and that Indigenous people are at the bottom of almost every available index of socio-economic well-being, including educational levels, employment opportunities, housing conditions, and per capita incomes.

69. This "take it or leave it" approach is intended only to create pressure on First Nations communities who are already facing difficult socioeconomic conditions, with Canada dragging discussions out until the "hard deadline" when these FNIPP agreements expire.

70. By threatening to cut off funds, Canada is in effect telling First Nations that their only option is to sign a bad deal, or no deal at all. To be clear, what Canada has called – and will likely call, in its Response to this complaint – an "Agreement" is in fact a pre-written, unilaterally defined set of terms that Canada has developed with zero input, consultation, or negotiation with the First Nations who are being told to sign it.

71. This type of negotiation tactic is not only unconscionable and deeply unethical, but it also flies in the face of this government's commitments to Reconciliation, Honour of the Crown, and consultations with First Nations. In fact, Canada has already admitted its discriminatory behaviour with respect to funding agreements, as evidenced by the conclusions of its self-evaluation – which we have pleaded and relied upon at the outset of this complaint – that recipient involvement in renewal processes is limited to "coming in at the 11th hour," and "negotiating under the gun".

A. Case Study: Canada Manufactures a First Nations public safety crisis, March 2023

72. At the time of filing this complaint, there are three IPCO member services – namely, APS, UCCM, T3PS – with FNIPP funding agreements set to expire on March 31, 2023, who have

been unsuccessful in attempting to engage with Canada to begin negotiations on new agreements. These three agreements (which represent only one-third of the total number of funding agreements signed under the FNIPP by the nine member services of IPCO), represent more than $150 million in combined funding and affect the provision of policing to 45 First Nations communities with a combined population of over 30,000 persons.

73. Despite months of efforts, dating back to at least October 2022, Canada, through PSC, has resolutely refused to agree to negotiations, instead attempting to force the services to sign one-year extensions to their present agreements, in the absence of any negotiated terms.

74. Canada's bad faith refusal to negotiate rests in its unwillingness to agree to a set of reasonable, minimum terms that would form the underlying framework for negotiations. To be clear, these minimum terms – outlined below – are the underlying terms for the negotiations themselves, and do not ask of Canada (or its provincial partner Ontario) to agree to any substantive terms with respect to the funding agreements themselves. While these terms have been repeatedly communicated to the funders since at least October 2022, a letter summarizing the three key minimum terms was sent to the funders on March 17, 2023, considering the upcoming expiry of several agreements and Canada's failure to respond to previous requests to commence negotiations.[8]

75. Specifically, Canada has (1) refused to commit to including a representative with decision-making authority at negotiations, instead relying on bureaucrats who lack the authority to actually negotiate any terms, and (2) refused to agree to mutually acceptable Terms of Reference ("ToR") for the conduct of negotiations. Additionally, Canada has (3) explicitly

[8] Letter from APS, T3PS, UCCM, and WTPS to ADM Moran and ADM Stubbings, March 17, 2023. [Joint Police Service Letter, March 17, 2023]

stated that it will not provide any funding for First Nations to participate in negotiations, even going so far as to warn that they cannot use existing FNIPP funding to pay for their negotiations or hire a negotiator.

76. These three preconditions are, in the view of the Complainants, eminently reasonable and the bare minimum required to even commence negotiations on funding agreements. It is deeply distressing, and a clear example of Canada's discriminatory practices, that the federal government cannot even agree to such basic terms as (1) bringing a decision-maker to the negotiation table who has authority to negotiate, (2) jointly drafting ToR that establish the framework for negotiations or (3) providing adequate funding and resourcing for the conduct of the negotiation table itself.

77. Instead, Canada provides excuses or outright ignores the request for the above terms. We highlight some of these instances below.

B. In defiance of *Dominique*, Canada uses the false "contribution program" excuse

78. For decades, the Complainants' concerns about inadequate funding or restrictive terms have been with Canada's disingenuous argument that the FNIPP is merely a discretionary contribution program, subject to funding limits, and terms that Canada is free to impose. Canada has argued that, rather than provide a service – which would then create obligations with respect to discrimination provisions in the *CHRA* – it merely provides discretionary funding through a program.

79. However, as this Tribunal recently held, "through the implementation and application of the FNPP, Public Safety Canada provides a service within the meaning of the *CHRA*."[9]

[9] *Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada,* 2022 CHRT 4 ["*Dominique*"], at para 190.

Specifically, the Tribunal held that the FNIPP is not "merely a funding or contribution program and that the Canadian government has no obligation to fully fund Indigenous police services", but rather, that having decided to implement this service, "which includes not only funding but also other benefits associated with the implementation of the program, then it must do so in a non-discriminatory manner."[10]

80. Shockingly, in flagrant disregard of this Tribunal (and the Federal Court, which upheld the Tribunal's *Dominique* decision), Canada has recently doubled down on this argument, in its dealings with the three IPCO member services with expiring funding agreements.

81. Specifically, in November 2022, both T3PS and UCCM provided Canada with draft ToR for funding negotiations in respect of their FNIPP tripartite agreements, inviting comment. With T3PS, a multi-day meeting was in fact convened to work on the ToR, while UCCM provided an initial draft and requested comment. In both cases, Canada ultimately came back to the services to indicate they would not sign the ToR, on the basis that the FNIPP's structure as a "contribution program" limited Canada's ability to agree to the ToR, with ADM Chris Moran of PSC indicating:

> I remain uncomfortable with the proposed Terms of Reference on the basis that Public Safety's ability to advance many of the issues referenced in the Terms of Reference is limited by the fact that the FNIPP is a grants and contributions program with established parameters, and the fact that these tripartite discussions are related to the contribution agreement.[11]

[10] *Ibid*, at para 310.
[11] Letter from ADM Chris Moran to UCCM Board Chair Derek Assiniwe, February 27 2023 [Moran/Assiniwee Letter, February 27, 2023]

82. This is a rather striking position for the ADM responsible for administering the FNIPP to take, given this Tribunal's definitive statement about the "contribution program" excuse over a year earlier, in the January 2022 *Dominique* decision.[12]

83. More recently, on March 23, 2023, Ontario's FNIPP representative, Assistant Deputy Minister Richard Stubbings, wrote to these three services – APS, UCCM, and T3PS – to share his understanding that Canada's refusal to sign ToR for funding negotiations stems from the fact that the FNIPP is a "grants and contributions program with established parameters."[13] We understand the ADM to have formed this opinion based on discussions with ADM Moran, his counterpart at PSC.

C. Canada's repeated promise of "essential service" legislation.

84. Finally, whenever Canada has been challenged to reform the FNIPP to address its discriminatory nature, it has habitually relied on the promise of new First Nations policing "essential services" legislation, creating a misleading picture that there is draft legislation "in the works". However, to date neither Indigenous political nor police leadership have been presented with any draft policing legislation whatsoever. Indeed, given the realities of what goes into any substantive, collaborative process, it is self-evident that even if any eventual draft legislation is shared by Canada, it will take months if not years to be the subject of negotiations and further drafting with Indigenous leadership. This constant refrain, dating back to at least 2020, represents yet another bargaining tactic used to keep First Nations down. In other words, it represents a deliberate strategy by which Canada dangles the

[12] In a remarkable coincidence, the ADM's "contribution program" excuse was provided by letter on February 27, 2023 – the same day on which the Federal Court issued its decision upholding this Tribunal's *Dominique* decision.
[13] Letter of ADM Stubbings to APS, March 23, 2023; Letter of ADM Stubbings to T3PS, March 23, 2023; Letter of ADM Stubbings to UCCM, March 23, 2023. [ADM Stubbings Letters, March 23, 2023]

prospect of new legislation as a remedy for the many injustices of the FNIPP and Canada's refusal to negotiate.

85. In fact, this excuse was once again wielded in March 2023, when PSC's ADM Chris Moran wrote to three IPCO member services in response to their concerns about the ongoing failures of the FNIPP – notably, within the context of funding agreements that Canada was refusing to negotiate. Rather than commit to specific negotiation terms or FNIPP reform, the ADM once again attempted to "misdirect" by referring to the promised legislation:

> The co-development of legislation to recognize First Nations policing as essential services and this commitment was accompanied with a significant investment in the program through Budget 2021. Those funds have been committed, and Public Safety will continue to track spending closely with a view to making available to First Nations police services any unspent funds identified, as we have done this year.[14]

86. By way of context, in Canada, the statutory responsibility for policing falls with the provinces, because of the constitutional division of powers. At the same time, the federal Crown is responsible for the safety and well-being of First Nations communities. The consequence of this, in Ontario (and, as this Tribunal noted in *Dominique,* in other provinces as well) is that the legal definition of "police officer" excludes First Nations police.

87. "First Nation Constables" are not included in the definition of "police officers" under section 2 of Ontario's *Police Services Act* ("*PSA*"). They are instead appointed by the Commissioner of the Ontario Provincial Police ("OPP") pursuant to section 54 of the *PSA* to perform

[14] ADM Moran Letters, March 23, 2023, *supra n. 4,* at p. 2

specified duties. The appointment requires the approval of the reserve's band council or police governing authority where the duties relate to a "reserve" as defined in the *Indian Act*.

88. As a result of this appointment, a First Nation Constable can exercise the powers of a police officer. However, the service they work for is not considered a "police service" and is not subject to the legislative carve-out for "essential services" – i.e., non-Indigenous police, firefighters, paramedics – which, among other things, guarantees that these services cannot be disrupted by labour stoppages, and that they can be made to work extra hours during a state of emergency.

89. Following years of advocacy on the "essential services" issue, in December 2020 the federal government announced $1.5 million in funding for the development of federal "essential services" legislation which would statutorily establish that policing in First Nations communities is an essential service. Since that time, however, Canada has not even provided a first draft of the legislation, nor has it signalled whether this hypothetical legislation will in fact address the various racist, discriminatory provisions of the FNIPP.

90. Despite being given the opportunity to at least voice such commitments, not least in the wake of this Tribunal's *Dominique* decision last year, Canada has remained tellingly silent. It is beyond unacceptable that, even today, Canada has again held out the promise of some undefined legislation at some undefined date as a supposed response to concerns about its failure to negotiate with the services with expiring funding agreements.

IV. Relief Requested

91. The Complainants have alleged discrimination based on a protected characteristic, namely race, national, or ethnic origin, which has resulted in an adverse impact in the provision of a service, under section 5 of the *CHRA*.

92. The adverse impact experienced by the Complainants is a denial of service, as it is impossible for the Complainants to provide basic policing services to First Nations, as basic services are effectively ruled out under the funding formula under the FNIPP. The funding becomes arbitrary and inadequate, reinforcing First Nations' dependency on the Crown.

93. As this Tribunal previously found in *Dominique*, the Respondent simply cannot justify the conduct within the framework of exemptions available under human rights statutes.

94. The Complainants therefore seek the following relief:

    i. A declaration that the Crown has breached the *Act*, and an order that it cease and desist from doing so;

    ii. An order that the Crown comply with the terms of its own First Nations Policing Policy, including, but not limited to the guarantees described in this complaint above;

    iii. Damages of $40,000 per person based on the total population of communities served by the Complainants, reflecting the wilful and reckless nature of the discriminatory conduct (ss. 53(2)(e) and 53(3) of the *Act*);

    iv. Appropriate public interest remedies; and

    v. Such other relief as may be requested.

All of which is respectfully submitted this 29th day of March 2023.

Kai Liu, President, IPCO (Chief of Police, T3PS)

Jerel Swamp, Vice-President, IPCO (Chief of Police, Rama Police Service)

Kristine Gagne, Secretary-Treasurer, IPCO (Director of Corporate Services, T3PS)