



INDIGENOUS POLICE CHIEFS OF ONTARIO

SENT VIA E-MAIL (justin.trudeau@parl.gc.ca)

May 3, 2023

The Right Honourable Justin Trudeau, Prime Minister of Canada
Office of the Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2

Dear Prime Minister:

***Re: Community Safety Crisis; Federal Court Emergency Motion Pending;
Human Rights Complaint Filed by Indigenous Police Chiefs of Ontario***

We are writing to you on behalf of all nine self-administered Indigenous police services in Ontario which make up the Indigenous Police Chiefs of Ontario (“IPCO”). As the Executive of IPCO, we are reaching out directly in an effort to salvage what is a quickly deteriorating situation for a portion of the communities we serve: 45 Indigenous communities (comprising of over 30,000 community members) protected by three of our member services: Anishinabek Police Service (“APS”), Treaty Three Police Service (“T3PS”), and UCCM Police Service (“UCCM”).

We write to you in the hopes that you will insert yourself and assert leadership where it is currently sadly lacking. We have been impressed with the language you have used in citing the importance of having Indigenous communities be the lead for their safety needs. What is deeply regrettable, is that this has not translated into action by your ministries. Far from listening to Indigenous people, the Public Safety Canada under the leadership of Minister Marco Mendicino and Deputy Minister Shawn Tupper, have engaged in a form of pressure tactics that are leading to a public safety boiling point.

You will know by now that both the Canadian Human Rights Commission Tribunal and the Federal Court, which upheld the Tribunal's decision, have ruled that the current First Nations and Inuit Policing Program (“FNIPP”) is discriminatory. Nevertheless, Public Safety Canada requires APS, T3PS and UCCM to sign agreements and submit to the very terms that have been found to be discriminatory.

These services are taking a principled stand that, while they will negotiate one-year extensions, it must be on terms that are not oppressive, and which respect their right to both negotiate and have the benefit of legal representation. The unconscionable tactic of insisting that these three services “knuckle-under” to discriminatory terms and conditions to access funding does a disservice to this country and your government's claim that you are listening to Indigenous people.

Since the funds for these three services are running out and a public safety crisis looms, we are resorting to the Federal Court on an emergency basis to address Canada’s abject rejection of the authority of the Canadian Human Rights Tribunal and the Federal Court of Canada. The terms under which these three services are prepared to sign one-year extensions of their funding agreements are reasonable, but properly contemplate a partial departure from the discriminatory terms and conditions that Public Safety seeks to enforce. Tragically, it appears that you are forcing us to go to court. Surely there is another way.

Background: FNIPP is Discriminatory (Existing Law)

In January 2022, the Tribunal ruled that PSC's implementation of the FNIPP discriminates against Indigenous people.¹ In February 2023, that ruling was upheld on judicial review by the Federal Court.² Additionally, the Quebec Court of Appeal recently ruled in a related case that Canada's systemic underfunding of Indigenous policing under the FNIPP is a clear breach of the Honour of the Crown.³

Despite these rulings, PSC has doubled down on the most discriminatory aspects of the FNIPP, in particular, the requirement that Indigenous people accept strict restrictions on the quality of policing in their communities. At the same time, PSC continues to engage in deplorable negotiation tactics which are designed to force Indigenous people to accept the discriminatory FNIPP terms or else lose access to funding.

In response to these tactics, and, in particular, the fact that PSC has deliberately allowed the funding agreements for three police services to expire on March 31, 2023, our organization has recently filed a complaint under the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6) (the "CHRA"). We have also been forced to go to the Federal Court on an emergency basis, to request an order that Canada immediately reinstate funding for the three services, and that Canada cease imposing the most egregious of the discriminatory restrictions found in the "Terms and Conditions" of the FNIPP.

The 2022 Tribunal and 2023 Federal Court rulings contain clear findings that your government discriminates against Indigenous people through the FNIPP. The rulings take particular issue with the systemic underfunding of the FNIPP, and the fact that it clearly violates your government's own commitments, as set out in the underlying First Nations Policing Policy (1996). Notably, the Policy guarantees that Indigenous people should benefit from policing which is responsive to their particular needs, and which is equal in quality and level of service to policing in non-Indigenous communities.⁴

The fact is, the communities we represent face some of the most severe public safety crises in the country, including high crime rates, crumbling infrastructure, insufficient resources (including police personnel), and severe mental health and addictions challenges. As you acknowledged in the wake of the James Smith Cree Nation tragedy, Canada's approach to Indigenous community safety has, for far too long, relied on a "colonial structure", when what is important is for communities to "lead and determine what exactly is most needed." As you have stated, "our job... is not to tell people anymore what they need to do or tell them what the solutions are."⁵ PSC's actions undermine that goal.

Canada's Bad Faith Tactics

The present crisis is a direct result of PSC's longstanding unconscionable practices when it comes to allocating funding for Indigenous policing. Rather than negotiate terms that reflect the on-the-ground realities of communities, let alone the unique cultural context of Indigenous policing, PSC forces Indigenous police services to sign pre-written agreements based on transparently discriminatory terms.

The most striking of these, found in section 6 of the "FNIPP Terms and Conditions", block Indigenous police services from basic aspects of policing that non-Indigenous police take for granted. Notably, section 6 blocks Indigenous police services from having specialized units such as emergency response teams or canine units; blocks Indigenous police services from owning their detachments; and denies

¹ *Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada*, 2022 CHRT 4.

² *Canada (Procureur général) c. Première Nation des Pekuakamiulnuatsh*, 2023 CF 267.

³ *Takuhikan c. Procureur général du Québec*, 2022 QCCA 1699.

⁴ Government of Canada, *First Nations Policing Policy*, 1996, at p. 4: "Policy Principles".

⁵ Prime Minister Justin Trudeau, Press Conference on James Smith Cree Nation Tragedy, November 28, 2022.

Indigenous police services legal representation with respect to funding agreement negotiations, the interpretation of funding agreements, and any disputes over funding agreements. The last item in particular is a stunning repeat of the old *Indian Act* provision (section 141), which until 1951, made it a crime for an Indigenous person to retain legal advice.

In the face of these restrictions, our services have repeatedly attempted to set minimum terms for the conduct of funding negotiations – that is, the baseline for how funding negotiations play out. These minimum pre-conditions include: (1) the setting of Terms of Reference (“ToR”), containing a basic acknowledgment of the unique context of Indigenous policing, ahead of any funding negotiations; (2) a commitment from your government to fund the negotiations process, and (3) a commitment to include government representatives with actual decision-making authority at negotiation tables.

Instead, your Ministry rejects any ToR which do the bare minimum of acknowledging Indigenous self-determination. PSC also persists in sending low-ranking officials to discuss funding, and outright refuses to subsidize the costs of negotiation tables. This is despite the fact that, in the many other contexts where Canada negotiates with Indigenous people, you do, in fact, commit to the attendance of appropriate ministerial representatives, and provide “table” funding. For reference, we invite you to review (and can provide, if needed) the “Remoteness Quotient” ToR from the on-reserve child welfare negotiations, alongside the ToR for the Nishnawbe Aski Nation “Choose Life” and “Education Reset” tables. These ToR are striking examples of what happens when a ministry with meaningful cultural competence, Indigenous Services Canada (“ISC”), sits down to negotiate. PSC’s actions suggest that the safety of Indigenous communities is somehow a lesser priority.

Canada’s Defiance of the Rule of Law and the Honour of the Crown

As outlined in the attached complaint, the worst of PSC’s conduct can be seen in their refusal to negotiate funding with the three police services with expired funding agreements.

In the case of T3PS, an initial two days of negotiations in November 2022 were completely derailed by PSC’s insulting revisions to a set of draft ToR, cutting all reference to Indigenous self-determination and the unique context of policing in Treaty #3 territory. Even after T3PS was told that the (heavily reworked) ToR were “90%” complete, it took another five months until April 19, 2023 – no less than three weeks after the T3PS funding agreement expired – for your government to produce *another* revised draft, again cutting out these important acknowledgements.

Adding insult to injury, this latest version even removes references to “negotiation”, instead referring only to the “renewal” of funding agreements – as if Canada is no longer willing to even negotiate terms. (It took the same amount of time for PSC to produce ToR drafts – substantively the same as the T3PS drafts – for both APS and UCCM.)

PSC has repeatedly justified its behaviour with the excuse that the FNIPP is a “discretionary contribution program”, subject to Canada’s self-imposed limits on funding and resource allocation. However, in both the Tribunal and Federal Court decisions, this “contribution program” excuse was roundly dismissed, with the courts stating that Canada cannot first commit funding for Indigenous policing, and then create discriminatory funding rules to hamstring itself.⁶

At the same time, PSC’s conduct flies in the face of Canada’s obligations under the Honour of the Crown and your government’s own guidelines on negotiations with Indigenous people. As your guidelines provide, Canada’s obligations go beyond even the basics of acting with honour, integrity,

⁶ We draw your attention to the Tribunal’s ruling in *Dominique*, at para 310, and the Court’s ruling in *Pekuakamiulnuatsh*, at para 78.

good faith, and fairness in all dealings with Indigenous people.⁷ The new baseline in Crown-Indigenous relations is the understanding and acknowledgment that Indigenous nations are self-determining, self-governing, and increasingly self-sufficient,⁸ and that Canada will negotiate in a spirit of cooperation and partnership, based on the recognition of our rights.⁹

It is clear from the actions of PSC that these commitments are being outright ignored, including by the Department of Justice lawyers who are providing advice to PSC. In your government's own words, "adversarial litigation cannot and should not be a central forum for achieving reconciliation".¹⁰ However, this is what we have finally been forced to make recourse to, in order to protect ourselves.

As a final note, we have copied Public Safety Minister Mendicino and Indigenous Services Minister Hajdu on this correspondence. We respectfully request that you work with the Ministers to find an urgent solution to PSC's ongoing discriminatory conduct, and in particular to reinstate funding for APS, T3PS, and UCCM, so that their communities are no longer placed at risk by PSC's actions. At a minimum, these services should be permitted to continue receiving funding without having to submit to the most discriminatory restrictions outlined in section 6 of the FNIPP "Terms and Conditions."

On behalf of our communities, we thank you for taking the time to consider and act in respect of our urgent situation. We look forward to your prompt reply.

Yours sincerely,



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)

⁷ Department of Justice ("DoJ"), *Directive on Civil Litigation Involving Indigenous Peoples* (2018), page 9. ["*Litigation Directive*"]

⁸ DoJ, *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples* (2018), page 4. ["*Principles*"]

⁹ *Litigation Directive*, page 4.

¹⁰ *Litigation Directive*, page 6.

CC's LIST OF RECIPIENTS

- cc.** Anishinabek Police Service, c/o:
- Debi Bouchie, Chair, Anishinabek Police Governing Authority;
 - Travis Boissoneau, Regional Deputy Grand Council Chief, Anishinabek Nation.

Treaty Three Police Service, c/o:

- Christine Jourdain, President, Treaty Three Police Service Board;
- Ogichidaa Francis Kavanaugh, Grand Council Treaty #3.

UCCM Anishnaabe Police Service, c/o:

- Derek Assiniwe, Chair, UCCM Anishnaabe Police Service Commission;
- Chief Patsy Corbiere, UCCMM Tribal Chair.

Julian Falconer, Falconers LLP
Legal Counsel, IPCO

The Hon. Marco Mendicino, Minister of Public Safety
Shawn Tupper, Deputy Minister, Public Safety Canada

The Hon. Patty Hajdu, Minister of Indigenous Services
Gina Wilson, Deputy Minister, Indigenous Services Canada

Katie Telford, Chief of Staff, Office of the Prime Minister
Deliah Bernard, Indigenous Affairs Advisor, Office of the Prime Minister

The Hon. Michael Kerzner, Solicitor General of Ontario
Mario Di Tommaso, Deputy Solicitor General of Ontario

Encl. (1):

- **IPCO, Complaint filed under the *CHRA*, March 29, 2023.**

ADDITIONAL CC's

Katherine Koostachin, Senior Policy Advisor, Indigenous Affairs, Office of the Prime Minister

Samantha Khalil, Chief of Staff, Office of the Minister of Public Safety

Chris Moran, Assistant Deputy Minister – Indigenous Secretariat, Public Safety Canada

Connor Moen, Senior Policy Analyst, Public Safety Canada

Katherine Heus, Chief of Staff, Office of the Minister of Indigenous Services

Clint Couchie, Director of Regional Affairs, Office of the Minister of Indigenous Services

Richard Stubbings, Assistant Deputy Minister (Public Safety), Ministry of the Solicitor General

Alana Jones, Director, First Nations Policing, Ministry of the Solicitor General

Jagmeet Singh, Leader of the New Democratic Party

Chris Mockler, Parliamentary Assistant, New Democratic Party

Niki Ashton, Member of Parliament, Churchill-Keewatinook Aski

Charlie Angus, Member of Parliament, Timmins-James Bay

Carol Hughes, Member of Parliament, Algoma–Manitoulin–Kapusking

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