



INDIGENOUS POLICE CHIEFS OF ONTARIO

PRESS ADVISORY

Federal Court Orders Funds to Flow, Rescuing Three Indigenous Police Services from Being Forced to Cease Operations

June 30, 2023

Today, the Federal Court granted, in part, an emergency motion for interim relief brought by the Indigenous Police Chiefs of Ontario (“IPCO”) on behalf of three Indigenous Police Services: Anishinabek Police Service (“APS”), Treaty Three Police Service (“T3PS”) and UCCM Anishnaabe Police (“UCCM”).

On June 14, 2023, IPCO’s emergency motion was heard by the Honourable Justice Denis Gascon. IPCO sought to have the Court relieve the three police services from compliance with discriminatory clauses found at section 6 of the Terms and Conditions of the First Nation Inuit Policing Program (“FNIPP”).

Today, the Honourable Justice Gascon ordered that the three services be relieved from compliance with the offending clauses in the FNIPP terms, which (1) prohibited the financing of policing infrastructure and (2) prohibited expenditures on legal representation for Indigenous police services. A third clause, which prohibited specialized policing services such as canine units and homicide investigation teams, was removed by Public Safety Minister Mendicino earlier this week, in what the Court called a “last-minute” change to the FNIPP Terms and Conditions while the matter was under reserve.

Justice Gascon also ordered that funding immediately flow to APS, T3PS, and UCCM whose funding agreements expired on March 31, 2023, after they refused to accept Canada’s discriminatory terms.

In addition to the above orders, Justice Gascon ruled that Canada had not acted honourably in its dealing with the three Indigenous police services:

“... [Public Safety Canada] did not consistently follow its duty to act honourably and in the spirit of reconciliation as it kept insisting on the impossibility to negotiate the Terms and Conditions and the prohibitions they contain. The controlling question in all situations involving First Nations is “what is required to maintain the honour of the Crown and to effect reconciliation between the Crown and the Aboriginal peoples with respect to the interests at stake” (*Haida* at para 45). Canada always has an obligation to act in ways that maintain the honour of the Crown vis-à-vis Indigenous peoples and that are in line with the objective of reconciliation. PSC’s omissions in that respect in the context of the renewal of the funding agreements of the Three Police Services is another element weighing in favour of IPCO on the balance of convenience” (paragraph 174 of Decision).

Further, Justice Gascon found that Canada’s characterization of the Terms and Conditions as “constraints” on the federal government’s ability to work with Indigenous peoples was both “incorrect and troubling”:

“With respect, it is fundamentally incorrect — and somewhat troubling — for Canada, PSC, and Minister Mendicino to keep labelling the prohibitions listed in the Terms and Conditions as “constraints,” when the evidence clearly demonstrates that PSC can unilaterally decide to modify any provision of the Terms and Conditions at its own leisure and how it sees fit. The last-minute removal of the prohibition on using funds for specialized policing services is a most eloquent reflection of that. A self-imposed limitation or restriction over which a person has total control is not a constraint. It is a choice. And here, it appears that, for the time being, PSC and Canada have made the deliberate choice to maintain the prohibitions on using the funding of self-administered Indigenous police services for the financing of infrastructure or for the costs of legal representation, even though there is no evidence of any rationale supporting it” (paragraph 194 of Decision).

Kai Liu, President of IPCO and Chief of Police of T3PS, said the following about Justice Gascon’s decision:

“Our services have always been forced to operate with less funding and less resources than those of municipal police services. We have always had to do more with less. Not only does the decision of the Federal Court save our three services from being forced to cease operations, but the Court also found that Canada has not been honourable in its dealings with us. We knew that we could not sign another funding agreement that was based on the discriminatory clauses found in section 6 of the Terms and Conditions, and we are overjoyed that the funding will flow again without these conditions attached. I am humbled by the decision today and on behalf of Chief Skye (APS) and Chief Killeen (UCCM), wish to express my sincere gratitude to community members, leaders, police service members, municipal neighbours, and first responder and community safety partners for their continued support.”

Julian Falconer, counsel for IPCO, stated:

“This decision is a complete vindication of the principled approach that the brave leaders of these three Indigenous police services have adopted in order to provide safety and security to the communities they serve. It is a shame that it took a Judge’s order to force Prime Minister Trudeau and Minister Mendicino to do the right thing. It is an honour to act for IPCO in this matter as it continues its fight for equitable and fair policing for Indigenous communities.”

In accordance with traditional protocols held by the affected communities, a sacred fire was lit at APS detachment when the Federal Court hearing began. A sacred ceremony was also held in Treaty #3 Territory where Ogichidaa (Grand Chief) Francis Kavanaugh presided over documents that were later submitted to the federal government as part of the proceedings.

For further information, please visit the website of our legal counsel at www.falconers.ca