



BC FIRST NATIONS
JUSTICE COUNCIL

***FORGING A NEW REALITY IN PEACEKEEPING
FOR FIRST NATIONS***

***Written Submission to the
Special Committee on Reforming the Police Act***

April 30, 2021

BC First Nations Justice Council

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MESSAGE FROM THE BC FIRST NATIONS JUSTICE COUNCIL CHAIR

April 30, 2021

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Dear Honourable Members of the *Special Committee on Reforming the Police Act*:

Throughout the past several decades, a litany of reports, commissions, and studies have repeatedly concluded that policing and the justice system in Canada have failed Indigenous peoples. The outcomes of policing on First Nations people are dire, and the role of police continues to fragment our communities and disrupt our traditions, legal orders, and governance. The Black Lives Matter movement has highlighted the disproportionate number of Black and Indigenous lives lost to police brutality and negligence. It has served as a flashpoint in mobilizing Indigenous, Black, and minority communities across the globe to advocate for a new vision of public safety and policing that prioritizes community wellness and that eliminates racism and the grips of colonial violence. Over the past year, public interest in the matter has opened the space for critical discussion on the role and nature of police in our society. These discussions are particularly relevant to First Nations whose relations with police are founded on fraught colonial assertions of control, jurisdiction, and authority.

The decision of the BC Government to strike this important Special Committee is a welcome and overdue opportunity to address many of the challenges Indigenous peoples face with law enforcement. The BCFNJC strongly encourages each of you, your respective parties, and your legislative colleagues to take bold action and ensure this opportunity does not go to waste. We feel a collective sense of urgency to ensure this province, and indeed this country, is safe for all those who call it home, in particular, Indigenous people who continue to pay the price of colonialism with their lives. We are calling on you to work with us to help deliver the transformative change in policing that is long overdue, and to champion the vision of the BC First Nations Justice Strategy which the BC Government endorsed in 2020.

Framing the modernization of the *Police Act* is a new legal and political reality enshrined by the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA). To be DRIPA compliant, the modernized BC *Police Act* must enshrine space for Indigenous self determination. On behalf of the BC First Nations Justice Council, we thank the Special Committee for the opportunity to contribute to this important discussion and we look forward to continued collaboration.

Respectfully,

Doug White, Q.C., Chair, BC First Nations Justice Council

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CONTENTS

MESSAGE FROM THE BC FIRST NATIONS JUSTICE COUNCIL CHAIR.....	2
ACKNOWLEDGMENT AND DEDICATION.....	4
EXECUTIVE SUMMARY	5
INTRODUCTION	6
<i>The BC First Nations Justice Council</i>	8
<i>BC First Nations Justice Strategy</i>	8
<i>Strategy for Policing</i>	9
HISTORY AND CONTEXT	11
<i>History of Policing First Nations in Canada and BC</i>	11
<i>The United Nations Declaration on the Rights of Indigenous Peoples and the Police Act Review</i>	12
RECOMMENDATIONS FOR REFORM.....	15
<i>Nothing About Us Without Us: Decolonizing the Police-Community Relationship</i>	15
<i>Addressing Structural Racism</i>	19
<i>Putting the Person and Community at the Centre</i>	20
<i>An Open and Honest Relationship</i>	26
<i>Advancing Self-Determination</i>	28
SUMMARY OF RECOMMENDATIONS.....	31
NEXT STEPS	33
APPENDIX A – SUPPLEMENTARY MATERIALS (ORAL PRESENTATION (MARCH 26, 2021)).....	34
REFERENCES.....	42

ACKNOWLEDGMENT AND DEDICATION

This submission is dedicated to the memory of all the Indigenous peoples who have lost their lives at the hands of law enforcement agencies and to those who continue to face oppression by police.

The BC First Nations Justice Council also honours the memory of all missing and murdered Indigenous women and girls, and the survivors of violence, as well as their families and communities who continue to endure inexplicable heartache for the loved ones they have lost to colonial violence.



Within the BCFNJC, policing / peace keeping is represented by a broken arrow.

***Arrows were used by many Indigenous Nations to represent war.
The symbolic breaking of an arrow can signify peace.***

EXECUTIVE SUMMARY

There is no group of people in BC who have been more profoundly or adversely affected by policing than Indigenous people, and yet no group of people who have had less say in how policing has been established. The social contract between Indigenous peoples and police was never established in good faith and Indigenous peoples continue to be criminalized at individual and systemic levels.

The *Police Act*, and policing in its current form, is nowhere near meeting the basic human rights standards in the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and affirmed by the *Declaration on the Rights on Indigenous Peoples Act* (DRIPA). The Special Committee review process was designed without a clear process of consultation and co-operation with Indigenous peoples and BCFNJC is concerned that there is no apparent mechanism in place for how free, prior, and informed, consent will be obtained.

The BCFNJC, through the BC First Nations Justice Strategy, seeks to: (1) achieve balance in the current system of policing in BC, and (2) to create space and support Indigenous peoples to move towards models of public safety founded upon self-determination. To this end, we offer a number of recommendations to guide the Special Committee in accordance with the following priorities:

- **Nothing about us without us:** BC can no longer act in ways and make decisions about us without our free, prior, and informed consent. It is imperative that the police-community relationship is decolonized.
- **Addressing systemic racism:** Indigenous peoples experience with police is characterized by long standing systemic patterns of violence and racism. Dismantling this is a top priority.
- **Putting the person and community at the centre:** Approaches to community safety must be guided by and tailored towards community need. A complete overhaul is needed that restores balance by putting the person and the community at the centre.
- **An open and honest relationship:** Transforming the relationship between police and Indigenous peoples towards one that is open, honest, transparent and accountable, and founded upon the recognition of jurisdiction is a fundamental part of the reconciliation process.
- **Advancing self-determination:** Tinkering with the existing *Police Act* is not enough to create the conditions for Indigenous people to become self-determining in policing. The Special Committee must take seriously their obligations under DRIPA.

The BCFNJC and all Indigenous participants in this review are not simply "stakeholders". We therefore expect and anticipate, per DRIPA, a sustained level of engagement throughout this process and into the legislative drafting.

INTRODUCTION

The BC First Nations Justice Council (BCFNJC) offers this written submission to the Special Committee on Reforming the Police Act as a complement to the oral presentation made by BCFNJC Chair, Doug White, Q.C., on March 26, 2020. This submission highlights the priorities identified by the BC First Nations Justice Council to be considered by the Special Committee.

We are in the defining moment in Indigenous Peoples and Crown relations: it is a moment of opportunity and imperative for change. Changing the way BC polices its citizens, both Indigenous and non-Indigenous, requires us to address the racism that is at the core of our government systems and our institutions. For over 150 years these systems have governed policing, and we need a new solution and a new approach that meets the needs of society and aligns with shifting political attitudes. Most importantly, this new solution must be one that creates space for self-determination and that is founded upon the rightful and never extinguished jurisdiction of Indigenous peoples in BC.

Dismantling decades of police practices and reshaping the nature of what it means to police society will not be easy, and will not come overnight, but we know that change happens when people commit to change happening. BC committed to change happening in the province through the unanimous endorsement of the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA). The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) emphasizes Indigenous peoples' rights to live in dignity, to maintain and strengthen Indigenous institutions, cultures and traditions and to pursue self-determined development, in keeping with Indigenous needs and aspirations. The most powerful tool that you can wield as a Legislature is to shape the way things happen on the ground and to shape the way the system functions. The BC First Nations Justice Council (BCFNJC) wholly rejects the current model of policing in this province, and we see this opportunity as one to create a new origin story and new structures in the province of BC founded upon recognition, jurisdiction, and trust.

The colonial powers of police must be constrained while allowing for the jurisdiction of Indigenous peoples to increase. We must rethink how we as communities and society respond to crisis. The social contract that affords police extensive powers to protect the public is clearly broken. Such a contract was never established in good faith with Indigenous peoples, and it is time to reconcile this serious reality and the consequences it continues to have on Indigenous peoples. To reach its full potential, the BC First Nations Justice Strategy must be matched with new, meaningful legislative and policy directions on the part of British Columbia and Canada to support needed reforms of the colonial system and to yield space for self-determined Indigenous justice approaches.

The Special Committee on Reforming the Police Act must not fall back on old colonial patterns of 'tinkering' with legislation to only make marginal changes: while on one hand there are indeed many things that can change within the Police Act to better reflect Indigenous peoples needs and create space for them, this must happen concurrently with the creation of new systems and institutions that are Indigenous-led in accordance with

DRIPA, UNDRIP, and the commitments made by the BC Government to Indigenous peoples in BC.

Through its Terms of Reference, the Special Committee on Reforming the Police Act is mandated to examine, inquire into, and make recommendations to the Legislative Assembly of BC on the following:

- i. *Reforms related to independent oversight, transparency, governance, structure, service delivery, standards, funding, training and education, and any other considerations which may apply respecting the modernization and sustainability of policing under the Police Act (R.S.B.C. 1996, c. 367) and all related agreements.*
- ii. *The role of police with respect to complex social issues including mental health and wellness, addictions, and harm reduction; and in consideration of any appropriate changes to relevant sections of the Mental Health Act (R.S.B.C. 1996, c. 288).*
- iii. *The scope of systemic racism within British Columbia's police agencies, including the Royal Canadian Mounted Police, independent municipal police and designated policing units, and its impact on public safety and public trust in policing.*
- iv. *Whether there are measures necessary to ensure a modernized Police Act is consistent with the United Nations Declaration on the Rights of Indigenous Peoples (2007), as required by section 3 of the Declaration on the Rights of Indigenous Peoples Act (S.B.C. 2019, c. 44).¹*

It is important to note that the above mandate was not developed in consultation with Indigenous peoples. The BCFNJC finds this problematic and disappointing. Indigenous peoples have been affected adversely, intrusively, culturally and violently by policing to a level and over a breadth of history not approached by other groups in society. We are not just another “policing stakeholder.” Policing has defined and continues to define our relationship to the Canadian state. Our exclusion from developing this mandate speaks to the ongoing colonial approach to law making in this province, even with the historic *Declaration on the Rights of Indigenous Peoples Act* in place. We expect that going forward, the work of the Special Committee will reflect this understanding.

The BCFNJC believes that a fundamental transformation of policing in BC is required. The work of the Special Committee has the potential to make a significant difference, but this opportunity to transform policing must rise above tinkering with existing legislation: legislation which continues to represent the model of policing in BC that the BCFNJC rejects. Recognizing that there are a number of immediate operational concerns which have been the source of public concern in recent years, it is vital that the Special Committee also engages with more foundational issues, examining and challenging the assumptions on which policing as Indigenous peoples experience it is based.

While developing this new model of public safety and policing will take time and careful deliberation, there are steps that can be taken in the short term to help facilitate the broader systemic changes to policing in BC. This submission outlines many recommendations that—if implemented in good faith—can help restore balance to the current system as we work towards a more holistic model of public safety for Indigenous peoples in BC.

¹ Legislative Assembly of BC. “Special Committee on Reforming the Police Act: Terms of Reference.” 2020. <https://www.leg.bc.ca/parliamentary-business/committees/42ndparliament-1stsession-rpa/termsreference>

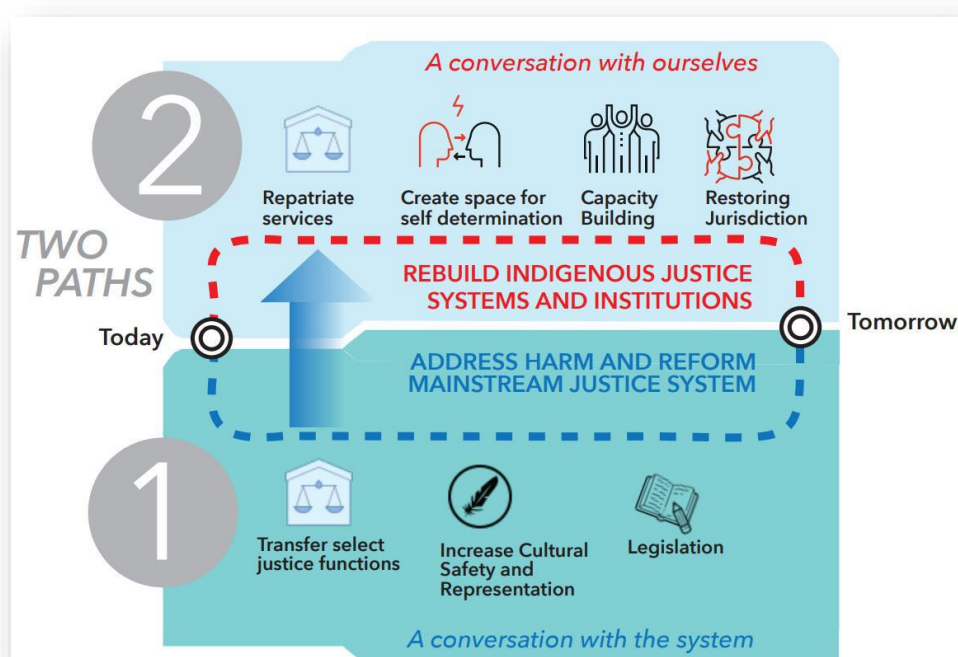
The BC First Nations Justice Council

The BC First Nations Justice Council (BCFNJC), established in 2015 by the First Nations Leadership Council (FNLC), represents all First Nations in BC on justice-related issues and works collaboratively with BC First Nations, the Province of BC and key justice system stakeholders to bring about transformative change to government policy, programming and initiatives related to criminal justice and child welfare.

BCFNJC is mandated to advance actions that support the rebuilding of First Nations justice systems and institutions, including enhanced community justice and policing programming, and to address critical transformation of the provincial and federal justice systems, including legal aid for both criminal and family law matters, policing, corrections, prosecution, and the courts.

BC First Nations Justice Strategy

The BC First Nations Justice Strategy,² signed March 6, 2020, was developed over two years by the BCFNJC, BC First Nations communities, and the Province of British Columbia, with input from key justice system stakeholders participating at two Indigenous justice summits. Contained within the document are 25 strategies with corresponding lines of action which, as illustrated by the graphic below, follow along two paths: (1) Transforming the existing criminal justice system; and (2) Rebuilding Indigenous justice systems and institutions.



² BC First Nations Justice Council. "BC First Nations Justice Strategy." 2020.

A foundational aim of the Strategy is to see a presumption of diversion entrenched throughout the justice system; from the moment the police are first engaged to the time in which an individual may be in the corrections system after sentencing. At every point in time – pre-charge, post-charge, post-plea, and post-conviction – actors should be instructed to fully consider opportunities for culturally appropriate alternative responses to the existing justice system, with the presumption that, whenever appropriate, these alternative responses should be the first option pursued.

Key to achieving operationalization of the presumption is ensuring that Gladue principles are incorporated throughout the existing justice system, including interactions with police. Gladue principles represent an established approach by the Supreme Court of Canada to help reduce over-incarceration of Indigenous peoples, and effect meaningful Path 1 reform of the existing justice system. The lack of tangible and measurable results from this approach are rooted in a generation-long failure to implement the Gladue ruling in a comprehensive manner, and in a parallel failure to recognize that effective Gladue implementation requires resourcing of meaningful supportive alternatives to incarceration.

The BC First Nations Justice Strategy is unique in many ways: it is the first of its kind in Canada, and it represents the first time Indigenous peoples have been involved in shaping justice matters in a manner consistent with the principles articulated in UNDRIP. To reach its full potential, the Strategy must be matched with new, meaningful legislative and policy directions on the part of British Columbia and Canada to support needed reforms of the colonial system and to yield space for self-determined Indigenous justice approaches.

Strategy for Policing

Policing intersects with both Path 1 and Path 2 reforms outlined in the BC First Nations Justice Strategy. Strategy 22 sets out efforts to transform the current law enforcement system and to support First Nations to assume greater control of community-based policing, all underpinned by stronger working relationships and protocols (see **Table 1**). Specifically, Strategy 22 seeks to transform mainstream policing through:

- Embedding protocols that increase diversion and break the cycle of escalating engagement with the justice system experienced by First Nations people;
- Participating in reform of the outdated *Police Act*; and
- Enhancing cultural safety and anti-racism training and associated accountability.

Through the BC First Nations Justice Strategy, First Nations will be supported to assume greater control of community policing, through an expansion of the current community policing program, and implementation of required changes to Community Tripartite Agreements. New relationships are critically needed in the policing sector. A major piece of the work requires federal coordination of some kind. As outlined in the BC First Nations Justice Strategy, this work must include the RCMP.

TABLE 1: STRATEGY 22 (BC FIRST NATIONS JUSTICE STRATEGY)

Strategic Objective	Lines of Action
<p>Establish new models of structured relations between First Nations, the RCMP, and other police forces, that support new strategic and policy level, as well as community level, and cooperative change, while supporting greater community-level police forces.</p>	<ol style="list-style-type: none"> <li data-bbox="824 275 1421 716">1. Develop protocols between the BCFNJC and the RCMP, as well as the BCFNJC and other local police forces in BC which focus on collaboration at the strategic level to advance and support the goals of the BC First Nations Justice Strategy. The protocols may identify additional actions to be taken directly between BCFNJC, RCMP, and other local police forces. BC has committed to actively encourage the establishment of the protocols. <li data-bbox="824 722 1421 1528">2. Co-Develop and implement a new approach to Community Tripartite Agreements (CTAs). The new approach should: <ul style="list-style-type: none"> <li data-bbox="867 869 1421 1163">o Strengthen how CTAs are used to address First Nation priorities, ensure they are not inflexible in adapting and meeting the needs and circumstances of particular communities, and include strengthened communication protocols; <li data-bbox="867 1169 1421 1316">o Ensure space for negotiation of community-led priorities, which are not fixed or take it or leave it models; and <li data-bbox="867 1323 1421 1528">o Consider shifts and actions that will reflect First Nations jurisdiction and governance, the role of bylaw development and enforcement, and build understanding around First Nations laws and law-making. <li data-bbox="824 1535 1421 1864">3. Work with BC and Canada to co-develop a framework for expansion and transition to increased community-based First Nations police forces. The approach will include interim steps such as community safety constable programs, changes to the First Nations policing program, and new peacemaking and safety initiatives.

HISTORY AND CONTEXT

Among the most damaging of colonial patterns has been efforts to marginalize and dismantle First Nations legal orders and governance institutions, including as it relates to criminal justice. Concurrent with this has been the imposition of a common law justice system that has long reflected and struggled with racist and outdated perspectives, policies and practices regarding Indigenous peoples. The result is a contemporary reality where Indigenous peoples in British Columbia, and across Canada, are disproportionately and negatively impacted by the justice system, often with devastating consequences for individuals, families, communities, Nations, and society at large.

Prior to colonization, First Nations peoples had our own model of peacekeeping subject to our laws, governance systems, principles, practices, and customs. Neither the impacts of colonization on removing these systems, nor the origin story of policing in Canada (which has been problematic from the beginning), have ever been addressed. From the forced removal of our peoples from our territories, stealing children from their families and forcing them into residential schools, to the criminalization of our laws, cultures, and our people writ large, the foundation and rationale for these policies is rooted in racism and colonial attitudes. Police were created to be the frontline agents and enforcers of these policies, and it is this history that has resulted in the deeply flawed system we seek to repair today. The current realities with policing Indigenous peoples are tied to a historical and colonial context which must remain part of the discussion.

History of Policing First Nations in Canada and BC

Framed by colonial objectives, policing in Canada evolved along with patterns of settlement and economic development. Prior to 1873, Canada had no national police force. Several political crises and the need to establish sovereignty in the west led to the founding of the federally-funded North-West Mounted Police (NWMP) in 1873 and with their successors – the Royal North-West Mounted Police, and Royal Canadian Mounted Police (RCMP) – delivered most policing in Indigenous communities until the 1960s. These police services were also tasked with conducting a wide range of non-policing responsibilities that included acting on behalf of the Department of Indian Affairs. Once expected to be temporary, fears of an Indigenous uprising in the West caused Prime Minister Wilfred Laurier to keep the force in operation, and over time it expanded. The repressive role these forces were designed to play from the outset in protecting white settlers and imposing western legal structures on Indigenous peoples in BC and Canada cannot be understated.

During the 1980s the federal government solicited feedback from Indigenous communities about their policing arrangements. The results of these consultations found: a lack of preventative patrol, crime prevention programs, understanding and sensitivity to Aboriginal culture by non-Aboriginal police officers, and clear federal policy or provincial legislation, leadership and professional standards for Aboriginal police services across Canada.³ They

³ John Kiedrowski, Nicholas A. Jones & Rick Ruddell (2017) 'Set up to fail?' An analysis of self-administered indigenous police services in Canada, *Police Practice and Research*, 18:6, 586.

further noted a chronic under-policing, confusion over jurisdiction and responsibilities with and between governments, and insufficient and inequitable funding of Aboriginal policing.⁴

The British Columbia Provincial Police Force was established in 1866 with the amalgamation of the Vancouver Island Police Force and the Constabulary of the Mainland. The Provincial Police Force was largely responsible for policing rural areas until 1923, after which time it also policed many towns and municipalities.

The last major structural change to policing in British Columbia took place in 1950. The coalition government of the day was experiencing serious financial difficulties and were also perceived as unable to combat the supposed threat of communism, and a decision was made to disband the Provincial Police Force and to contract with the RCMP to take on its responsibilities. In 1974, a major review and reform of policing procedures and methods resulted in the passage of BC's present *Police Act*. This Act was amended in a significant way in 1988, when the Office of the Complaint Commissioner was created within the BC Police Commission in order to monitor and receive public complaints.

Special Committee members need to understand how visceral the reaction to the RCMP is from Indigenous people. We heard this, repeatedly, during the justice strategy consultations in the summer of 2019: that the RCMP could never be accepted as a good faith, legitimate policing entity. The historical background cited above helps illuminate why that is the case.

The United Nations Declaration on the Rights of Indigenous Peoples and the Police Act Review

The work of the Special Committee on Reforming the Police Act is occurring within a new legal and policy environment that requires that the basic human rights of Indigenous peoples in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) be fully upheld and implemented.

UNDRIP states the "minimum" human rights standards for the "survival, dignity, and well-being" of Indigenous peoples (article 43). In passing the Declaration on the Rights of Indigenous Peoples Act in November 2019, British Columbia agreed that the standards of UNDRIP applies to the laws of British Columbia. This means that UNDRIP must be used by government to interpret all provincial enactments (section 2). Further, BC has an obligation in DRIPA to take "all measures necessary" to achieve consistency between UNDRIP and the laws of British Columbia (section 3).

This legal obligation to take all measures necessary to achieve consistency applies to proposed new laws, and to existing laws. It applies to the existing *Police Act*, and to this *Police Act* review.

⁴ Ibid.

The minimum standards within UNDRIP that the *Police Act* and this review must be consistent with include those of Indigenous self-determination and the inherent right of self-government:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.⁵

The BC First Nations Justice Strategy has been specifically designed - and agreed to by the British Columbia - to help implement those standards in relation to the justice system, including law enforcement.

Further, and of critical importance to this *Police Act* review, is Article 19 of UNDRIP which states the standard that must be met when legislative or administrative measures are being contemplated that may affect Indigenous peoples:

Article 19

States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.⁶

It is not apparent how the standard of Article 19 is being met through the process of this review. This review process was designed without a clear process of consultation and co-operation with Indigenous peoples. There is no apparent mechanism in place for how free, prior, and informed, consent will be obtained.

There is also no clarity anywhere in the review process of what "measures" (let alone "all necessary measures") are being taken to ensure that the outcomes of the review are consistent with UNDRIP - ensure that the minimum human rights standards of Indigenous peoples are upheld.

⁵ United Nations. "The United Nations Declaration on the Rights of Indigenous Peoples." 2011. <https://undocs.org/A/RES/61/295>

⁶ Ibid.

In addition to self-determination and self-government, UNDRIP affirms and upholds many rights and standards that are to be met, even as the work of Nations re-building their justice systems is on-going. These include, for example, rights of Indigenous individuals, including rights to life, physical and mental integrity, and liberty and security of person (Article 7) and the right to be free from forced assimilation and destruction of culture (Article 8). They also include collective rights regarding promoting and developing systems of justice:

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

The *Police Act*, and policing in its current form, is nowhere near meeting these basic human rights standards in UNDRIP and affirmed by DRIPA.

The *Police Act* appears to be among the first major legislative reviews since the passage of DRIPA. Section 3 of the Act cannot be violated. "All necessary measures" must be taken to ensure both the process and outcomes of the review are consistent with the basic human rights of Indigenous peoples. This means the standard in Article 19 must be met in how the review is designed and undertaken, and other standards, including in Article 3, 4, 5, 7, 8, and 34 of UNDRIP be met in its outcomes.

RECOMMENDATIONS FOR REFORM

Transforming the nature and form of policing in BC necessitates bold actions from political leaders and the cooperation and compliance of police agencies and officers. There is a continuing divide between police and First Nations at individual and systemic levels that must be addressed. Myriad issues and problems Indigenous peoples have with policing help illuminate this divide and are highlighted in this section in addition to recommendations that promote systemic solutions. The issue areas contained within this section often overlap and should therefore be considered as interrelated threads that when woven together form a strong rationale for transformative change in BC's police legislation, polices, culture, and practices, and within the criminal justice system writ large.

In this section, the recommendations made to the Special Committee by the BCFNJC are set out within five important themes relevant to the fact of policing in British Columbia and the experience of Indigenous peoples:

- Decolonizing the police-community relationship
- Addressing structural racism
- Putting the person and the community at the centre
- An open and honest relationship
- Advancing self-determination

Nothing About Us Without Us: Decolonizing the Police-Community Relationship

It is imperative that government take seriously the implications of DRIPA, namely that no longer can legislation or policy be developed that impacts Indigenous peoples without our consent. Decolonizing the police-community relationship demands that equitable funding is provided to Indigenous peoples with respect to policing, in addition to fair, proportionate and equal representation and authority in governance of policing. In addition to achieving a strong balance in the current policing framework, decolonizing the police-community relationship must also create space for Indigenous peoples to develop self-determined models of public safety, policing, peacekeeping, or whatever permutation it may take.

Current Legal Framework for First Nations Policing in BC

There are 203 First Nations in British Columbia and 32 distinct Nations. In different geographical areas of BC, the policing authority may be RCMP or a municipal police force. Over half of BC First Nations live in urban areas and are subject to existing policing services within those cities. First Nations policing lacks dedicated legislation. Rather, it is conceived as a “program” authorized primarily by agreements between provincial and federal governments under their respective legislation regarding policing.

In 2012, the provincial government signed a 20-year Provincial Police Services Agreement (PPSA) with the federal government to contract the RCMP as BC's Provincial Police Service. This agreement was negotiated and finalized without input from First Nations and Indigenous people. Under the terms of the PPSA and the *Police Act*, rural and unincorporated areas of BC are policed by the RCMP Provincial Police Service, with the provincial government paying 70% of the cost-base described in the Agreement; the federal government pays the remaining 30%. The RCMP polices the unincorporated areas of the province and municipalities with populations of fewer than 5,000. A municipality with more than 5,000 persons has the option of contracting with the RCMP or another municipal police force to provide policing or of establishing and maintaining its own municipal police force.

The First Nations Policing Program (FNPP) is the primary instrument providing policing for on-reserve communities. It also plays a role as a national program that provides enhanced policing for First Nations communities. The Program is cost shared between the Federal and Provincial governments and administered by the Province. Approximately 132 communities in BC are part of the program, through which they try to reset policing priorities and enhance policing services. The program relies on two main models of police service delivery: self-administered agreements (SAA), which are stand-alone and semi-autonomous First Nation police services, and community tripartite agreements (CTA), which rely on contractual agreements with standing services such as the RCMP.

Although the FNPP was introduced with much optimism, a quarter century after its introduction, residents and other stakeholders are critical of the efficacy of the police services delivered on First Nations reserves.⁷ Rather than augmenting existing police services, as was the intention, FNPP funding is often used to provide basic services, and often in ways that are not sufficient given the challenges faced in many Indigenous communities.⁸ The FNPP is classified as a discretionary program which permits its underfunding in comparison to municipal and provincial police forces. The program's inefficient funding structure and "cookie-cutter" approach has led to chronic underfunding of essentials for First Nations to operate a sufficient police service, such as underfunding for infrastructure, salaries, equipment and training.

The only First Nations-administered police force in BC is operated by the Stl'atl'imx Nation. The force which was established in 1992 polices the 7 communities of that Nation and there is a protocol agreement with the RCMP, in which the RCMP are responsible for the investigation of indictable offences while the Stl'atl'imx Nation Tribal Police (SNTF) are responsible for the investigation of summary offences. The authority of the SNTF is limited to the reserve. This police service is modeled on the structure of an independent municipal police department, with governance provided by a police board whose members are selected from the communities served.

There is one Quadripartite Agreement in British Columbia, where one Delta police officer focuses their efforts on providing a proactive approach to policing the Tsawwassen First

⁷ See Auditor General of Canada, 2014; Canadian Association of Police Governance, 2016; Kiedrowski, Petrunik, & Ruddell, 2016.

⁸ Council of Canadian Academies (2016): xv.

Nation community. The agreement includes Canada, the Province, the City of Delta, and Tsawwassen First Nation.

Overall, there are extreme limitations to the current model of First Nations policing described above. Most notably, these models are not developed in accordance with specific community needs, often prioritize enforcement over crime prevention, and are severely underfunded. In short, the current options available to First Nations are wholly inadequate in that they derive their authority from colonial governments and prevent the expression of self-determination.

To be compliant with DRIPA, the structure of policing in BC as we know it must change. Current policing agreements such as the ones developed under the First Nations Policing Program are outdated and a legislative framework should be developed that provides for the formal recognition of First Nations' power to enact laws concerning the service in question or to enter into agreements with provinces for delegated authority if we so choose.

Funding

While important steps are being taken at the federal level to shift away from programmatic funding of policing to recognition of policing as an essential service, there remains a lack of clarity in defining which level of government is responsible for regulating and funding policing and other essential services for Indigenous Peoples, and the goals of ensuring equal services and self-determination have often been neglected in the past. Moreover, rather than exploring what new models can look like, there is often a focus on expanding the existing programs cited above.

Jurisdictional ambiguity between federal, provincial/ territorial, and Indigenous governments has resulted in the development of a “programming and funding” approach to policing that neglects to treat policing as an essential service on reserves as it is in non-Indigenous communities across Canada.⁹ Modest funding increases to existing First Nations police programs, such as the FNPP, are not enough.

Where CTAs and SAAs differ from policing in settler communities is that the funding stream cannot vary on the basis of community needs. When a city council is motivated to allocate more funds to police, they can do so in one of two ways: then can re-allocate property taxes, or they can increase taxes. They can also lobby provincial and federal governments as a municipality, or as a coalition of municipalities. This flexibility in the source of funding is not available to CTA or SAA models which rely on whatever budget is assigned to them.

Recommendation:

Work with Indigenous peoples and the federal government to provide financial resources for police services similar to the approach for municipalities, with a specific focus on northern and remote areas.

The new funding model should include resources for Indigenous peoples to begin establishing self-determined models of policing/public safety for their communities.

⁹ Council of Canadian Academies. “Toward Peace, Harmony, and Well-Being: Policing in Indigenous Communities. The Expert Panel on Policing in Indigenous Communities.” 2019. xiv – xv.

Governance

Due to the reality that more First Nations live off-reserve or in urban centres than on-reserve, changes to the governance structure of policing will need to occur on two fronts: in the short term, changes to the existing governance structures to ensure broad Indigenous representation, while in the medium to longer term, developing new Indigenous-led and owned governance structures.

Municipal decision making can have a big impact on local First Nations. This is especially so with respect to decisions made regarding police service delivery and budgets. Parts 5 and 6 of the *Police Act* outlines the governance structure of Municipal Police Boards (part 5) and Police Committees (part 6). The BCFNJC strongly advises that the Special Committee make space within the legislation to ensure all boards and committees have Indigenous members, if Indigenous peoples so choose to be represented.

The BC First Nations Justice Council is also concerned about the amount of power handed over to Canada and the RCMP, without clear, binding standards or expectations, not to mention without the consent of Indigenous peoples. In particular, the role of the Director of Police Services is one of critical importance, and we are concerned that the position has historically been filled by former RCMP members. Given the reality of turnover in government, the close-knit culture of the RCMP and the secure and specialized nature of policing, the knowledge and power imbalance between successive Directors with strong RCMP ties and other government roles and elected officials has been structural and substantial. This lack of distinction between RCMP perspectives and governance is a barrier to achieving the change required of BC's policing.

BCFNJC recommends that the BC Government revisit the recruitment and criteria for the position of Assistant Deputy Minister/Director of Police Services. At a minimum, consider a cooling off period of at least five years between police employment and the Directorship and ensure that the candidate has a variety of experience outside policing (e.g. government). The vetting process must include Indigenous peoples and accountability and reporting mechanisms must be built in to support greater transparency. The appointment could be a term of five years renewable upon review and sign off of Indigenous peoples.

As noted in the introduction of this submission, change happens when people commit to change happening: the BCFNJC is concerned that the BC government is perpetuating old patterns of policing at the highest bureaucratic levels.

Recommendation:

Revisit the recruitment and criteria for the Assistant Deputy Minister/Director of Police Services.

While to some extent already in existence, civilian Indigenous advisory committees for each police service or division should be mandatory. At present these committees are largely toothless and therefore consideration and coordination with Indigenous peoples to

empower these committees with legitimate tools and authority will need to occur.

Recommendation:

Work with Indigenous peoples to enhance the powers of civilian Indigenous advisory committees and ensure each police service or police division creates the space for these groups.

Recommendation:

Legislate space for Indigenous representatives to sit on police boards and committees if they so choose.

Addressing Structural Racism

The systemic racism that exists in policing systems in Canada is part of a continued system of colonialism that police forces defend and perpetuate. The negative impacts of systemic racism are eroding public trust and confidence in police and the ongoing inaction to tackle and address systemic racism is failing First Nations and Indigenous peoples. Unequivocal evidence of systemic racism in policing in Canada are presented in the Cariboo-Chilcotin Justice Inquiry (1993), *Closing the Gap: Policing and the Community* (the Oppal report) (1994), Final Report by the National Inquiry into MMIWG (2019), the Truth and Reconciliation Commission of Canada (2015), and the Report into Workplace Harassment in the RCMP by the Civilian Review and Complaints Commission (2017). It is also promising that the Minister of Public Safety and Solicitor General Mike Farnworth acknowledged in 2020 that systemic racism is built into BC's institutions.¹⁰

While widely reported by mainstream media and on social media, examples of discriminatory treatment and racial profiling of Indigenous peoples also occur covertly and in less obvious ways. One recent overt example is the treatment of Maxwell Johnson and his 12-year-old granddaughter Tori-Anne, both members of the Heiltsuk Nation, who in late 2019 were handcuffed outside the Bank of Montreal in downtown Vancouver after bank staff looked at the pair's identification documents—government-issued Indian Status cards—and called 911 to report an alleged fraud in progress.¹¹ The matter remains before the BC Human Rights Tribunal and the Canadian Human Rights Commission.¹²

There are very concrete steps this Special Committee and this government can take if they are serious and committed to genuine reform. The responsibility to diminish the gap between civilians and police and to build a healthier culture void of eliminate systemic racism lies, first and foremost, with the Legislature.

¹⁰ Dirk Meissner, "B.C. Names All-Party Police Reform Committee to Examine Scope of Systemic Racism." CTV News, July 9, 2020. <https://vancouverisland.ctvnews.ca/b-c-names-all-party-police-reform-committee-to-examine-scope-of-systemic-racism-1.5016701>.

¹¹ Angela Sterritt, "Indigenous Man and Granddaughter Handcuffed at Vancouver Bank File Human Rights Complaint against BMO, Police | CBC News," CBC News, November 24, 2020. <https://www.cbc.ca/news/canada/british-columbia/bmo-human-rights-complaint-1.5812525>.

¹² Maria Weisgarber, "Human Rights Complaints Filed after Indigenous Man and Granddaughter Handcuffed Outside Vancouver Bank." CTV News, November 24, 2020. <https://bc.ctvnews.ca/human-rights-complaints-filed-after-indigenous-man-and-granddaughter-handcuffed-outside-vancouver-bank-1.5201200>.

The BC Government has shown little interest in repeated calls to abolish the practise of street stops or police stops (*Provincial Policing Standard 6.2.1 Police Stops*) which studies show disproportionately target minorities, including Indigenous people.¹³

Recommendation:

Legislate an end to the practice of street stops. Law makers have the power to stop this at the highest level rather than regulating street stops through Provincial Policing Standards.

Addressing systemic racism in policing in BC (including within the RCMP) requires bold political leadership. Only sweeping institutionalized changes will help redress the structural oppression that exists against First Nations peoples today. The BCFNJC is pleased to see that the Hon. Rachna Singh, Parliamentary Secretary for Anti-Racism Initiatives is a member of the Special Committee on Police Reform and we look forward to continued work under her important mandate.

Putting the Person and Community at the Centre

The BCFNJC rejects the current approach that increasingly sees police at the centre of a range of complex social issues including mental health, addictions, and homelessness. A complete overhaul is needed here that challenges how we as a society respond to crisis, and that puts the person and community wellbeing at the centre.

Police are ill-equipped to deal with complex situations of a social rather than criminal nature, and the outcomes for Indigenous peoples illustrate this. The goal should be to keep police out of contact with individuals who are experiencing a substance issue or breakdown in their mental state. Communities should not be subjected to the blunt instrument first response and rather, a multidisciplinary approach to crisis intervention must be implemented as an alternative to police involvement.

Recommendation:

Establish a completely new model of crisis intervention with multidisciplinary expertise and competency and significantly guided by Indigenous participation.

There is an endless stream of reports in the news about “wellness checks” gone badly and RCMP or municipal police responding with deadly or near deadly force all across Canada. To halt what can only be called an atrocity that continues to happen, communities might wish to delineate the scope of services that police are to attend. The idea that police should spend less time reactively “fighting crime” and more time on proactive intervention, mitigation, prevention and, importantly, diversion, is echoed by the CCA’s 2014 Expert Panel report, *Policing Canada in the 21st Century: New Policing for New Challenges*, which also found that police are no longer the primary and dominant provider of safety and security to communities.¹⁴

¹³ Jon Woodward. “Horgan says defunding the police ‘simplistic’ but BC will review Police Act.” Canadian Press. June 12, 2020. <https://bc.ctvnews.ca/horgan-says-defunding-police-simplistic-but-b-c-will-review-police-act-1.4982572>

¹⁴ Council of Canadian Academies. “Policing Canada in the 21st Century: New Policing for New Challenges.” 2014. https://cca-reports.ca/wp-content/uploads/2018/10/policing_fullreporten.pdf

Part 2 of the *Police Act* (The Minister) identifies civilian, quasi-civilian and non-civilian (ss. 6 to 9) roles under the direction of the Minister. One option to promote community policing is to create a legislated role for community peacekeepers. This can be done by giving the Minister the authority to empower community safety officers under the existing Part 2—The Minister, s.4.02 Specialized Service Agreement. This type of professional is employed elsewhere in Canada with success.

One example comes from Kwanlin Dun in Yukon, who in 2017 introduced a small group of safety officers who patrol neighbourhoods. As unsworn, unarmed officers, they have received training in first aid, substance abuse and addictions, conflict resolution, investigation and case management, bylaws, critical incident stress management, patrol and traffic, and child, youth and family dynamics. All are trained in a trauma-informed manner and are local members of the community.¹⁵ They are responsible for responding to incidents, providing support and intervention where appropriate and acting as a referral agent and point-of-contact for citizens, internal and external partners and agencies, such as the RCMP, Bylaw, conservation officers and environmental monitoring officers. They are also involved with citizens experiencing crisis, supporting investigations and enforcement.”¹⁶

The creation of community peacekeepers as a legislated unsworn policing role/function would reduce contact between police and the public and result in more de-escalation of situations. Because safety officers’ role is one of public safety (thus under the direction of the Solicitor General), and because in jurisdictions where they are active, they work in tandem with police, this role is worth considering for inclusion in the *Police Act* to remove administrative or bureaucratic barriers to communities who might consider non-sworn enhancement to their policing services. The inclusion of a community peacekeeper category could help reduce or remove police from complex situations of a social nature and would help build in the presumption of diversion into the *Police Act*. In general terms, a hypothetical division of duties for unsworn officers would be as follows:

TABLE 2: SUGGESTED DIVISION OF DUTIES FOR SWORN AND UNSWORN OFFICERS	
Sworn	Unsworn
Response to major crime	Public education
Investigation	Environmental design to reduce property crime/mischief
Forward matters to Crown Counsel	Response to mental health crisis
	Response to substance use

This new approach to community policing could result in a reduction in the number of convictions for small matters, including bail and probation breaches, which have the downstream effect of greater criminal involvement, and where needed, people are diverted to services to assist with their needs.

¹⁵ Kwanlin Dün. “Community Safety Officers & Land Steward Background Information.” 2017. https://www.kwanlindun.com/wp-content/uploads/2020/05/Backgrounder_for_media_release_V6.pdf

¹⁶ Ibid.

Recommendation:

Add a community peacekeeper category to the *Police Act*, the role of which would be to respond to non-violent complaints and to carry out proactive public safety. Adding a community peacekeeper category – one who would be connected to the community they serve, and the community would determine the scope of their response would be consistent with the principle of diversion. This category of officer would be built into FNPPs/CTAs and could be integrated into self-administered policing agencies.

Militarization of Police and Use of Force

From the perspective of the BC First Nations Justice Council, the militarization of police is a costly, triggering reality that takes focus and resources away from its proven alternatives which include community-centred policing. Policing in BC and across Canada has become increasingly militarized. Academics contend that the global shift towards militarized policing occurred and continues to develop because police forces are simply prone to adopt militarized forms of policing.¹⁷

The militarization of police effectively divides society into two groups: one to be protected, and one seen as a threat. The consequences of militarization fall disproportionately upon minority groups, those with mental health issues, and those exercising democratic rights associated with political expression.

First Nations in BC have a long history of militarized police experiences¹⁸ that continue to the present despite claims in the 1996 *Royal Commission on Aboriginal Peoples* that conflicts such as that in Oka should never be repeated. Canada's law enforcement agencies continue to be deployed against First Nations peoples asserting our constitutionally protected rights on our territories. For example, the police and private security presence on Wet'suwet'en territory remains in place despite calls from the *United Nations Committee on the Elimination of Racial Discrimination* for police and security forces to withdraw.¹⁹

The militarization of police goes beyond the criminalization of peaceful political demonstrations and land defenders and has implications for day-to-day policing as well.

Activities and tactics used by police that emulate those of the military, particularly in response to high-risk incidents, the rise of police paramilitary units and emergency response teams (ERT) in BC and Canada, and the use of these units in routine policing activities (that would normally fall under regular duty officers), is of serious concern to the BC First Nations Justice Council.

Police paramilitary units are an active part of modern police departments in BC. Prior to the Vancouver Olympics, the Vancouver Police Department created a *Military Liaison Unit* to improve communications and training relationships between the Department and the

¹⁷ Nicholas S. Bolduc. "Global Insecurity: How Risk Theory Gave Rise to Global Police Militarization Source: Indiana Journal of Global Legal Studies , Vol. 23, No. 1 (Winter 2016), pp. 267-292."

¹⁸ See Gustafson Lake Standoff, TMX demonstrations, Wet'suwet'en Blockade

¹⁹ Matt Simmons. "'Localized Harassment': RCMP patrol Wet'suwet'en Territory Despite UN Calls for Withdrawal." 2021. <https://thenarwhal.ca/rcmp-wetsuweten-territory-february-2021/>

military. The *Military Liaison Unit* was not disbanded after the Olympics and it now conducts regular training sessions with the USA National Guard to learn how military technologies and tactics might assist with urban policing.²⁰

Police agencies (including the Vancouver Police Department) do not release sufficient data to enable the understanding of the scope of the increase in use of police paramilitary units and the impact on First Nations. Moreover, there is no national or provincial policy or law regulating the conduct or growth of these forces and units.

On the opposite side of the militarization spectrum is the community police model. The BC First Nations Justice Strategy outlines our plan to focus on community policing and the expansion and transition of increased community based First Nations police forces in BC. Community policing models must reflect community need, both current and future.

We need to explore options for increased civilianized delivery of services and return to real community policing. When uniformed members do not live in the community, or not long-term, the nature of policing and the way uniformed members treat the public is affected. This is particularly problematic for the RCMP as in many locations, such as remote communities like Telegraph Creek, the RCMP provides contract policing, and therefore uniformed members are neither members of the community they police, nor do they live in that community.

A 2020 analysis found that Indigenous peoples are 10 times more likely than a white person in Canada to have been shot and killed by a police officer since 2017.²¹ That same analysis found that 1.5 out of every 100,000 Indigenous peoples have been shot by police since 2017, compared to 0.13 out of every 100,000 white Canadians.²² Even when adjusted for population growth over the 17-year window, the number of people dying in encounters with police has increased steadily. Individuals with mental health and substance use disorder (more than 70%), Black and Indigenous people are especially overrepresented in fatal encounters with police. The RCMP report the greatest number of fatal encounters.²³

There is a dearth of systemic data and reporting that includes ethnicity related to excessive force and deaths in custody, and it is a critical priority of Indigenous peoples that this data be disaggregated and include ethnicity, gender, and age. The collection of this data, and the transparency required in terms of reporting it, must be done in partnership with First Nations.

Recommendation:

Systematically collect use-of force data for policing (including within the RCMP), in addition to data on deaths in custody.

²⁰ Roziere, Brendan and Walby, Kevin. "The Expansion and Normalization of Police Militarization in Canada. 2017. 31.

²¹ Brandi Morin. "Julian Jones latest Indigenous person to be killed by the RCMP." March 2, 2021.

<https://www.thestar.com/opinion/contributors/2021/03/02/julian-jones-latest-indigenous-person-to-be-killed-by-the-rcmp.html>

²² See note 20 above.

²³ Inayat Singh. "2020 already a particularly deadly year for people killed in police encounters, CBC research shows." July 23, 2020. <https://newsinteractives.cbc.ca/fatalpoliceencounters/>

One issue with police use of force is a general lack of de-escalation training. The goal of de-escalation is to avoid the use of physical force through communication with subjects and therefore to only use force when it is a last resort. De-escalation is a feasible substitute for physical force given the low-level resistance that is encountered by officers in many of the physical force incidents. All police officers in BC should be required to complete competency training on the use of de-escalation tactics. As much time should be spent on de-escalation tactics as on defense and arrest tactics

More has to be done to reduce the propensity for violence and use of force by police against legitimate, non-violent dissent and Indigenous expressions of sovereignty. There is a disproportionate amount of violence directed against Indigenous land defenders on the frontlines of conflicts over resource extraction BC must think of these not just as conflicts over specific developments but also as conflicts between legal and political orders grounded in different sources of legal authority.²⁴ Reforms need to be instituted that allow for the resolution of dispute through a reasoned interchange of ideas and negotiation, rather than through the exercise of force and power in an attempt to suppress the voice of dissent and/or the assertion of jurisdiction.²⁵

Body-worn videos have been proposed in BC as a new way of reducing police use of force. The basic rationale for police body-worn videos is to reduce both the use of force by police and complaints against the police. In spite of this, research shows there is no overall discernible effect on the use of body-worn videos and police use of force.²⁶

Recommendation:

Prohibit the militarized approach to policing Indigenous peoples in the province.

Policing Standards

Provincial Policing Standards are developed by the Policing and Security Branch of the Ministry of Public Safety and Solicitor General. An issue with the Provincial Policing Standards is that they are not binding, and compliance mechanisms are unclear. The wide discretion granted to police in the interpretation of their law enforcement duties allows them to stretch the boundaries of the law in ways that actively give shape to it. To that end, stronger standards are needed in addition to measures to ensure compliance.

While the discretionary powers of the police are increasingly being documented and exposed through the proliferation of self-recorded evidence and the reach of social media, the extent to which they are being eroded is less clear as police continue to enjoy relative impunity and evade accountability when misconduct is involved. Reforms are needed to reign in, regulate, and reshape police discretion.

²⁴ Simpson, 118.

²⁵ Hedican, E. J., Policing Aboriginal Protests and Confrontations: Some Policy Recommendations. The International Indigenous Policy Journal, 2012. 3(2).

²⁶ Ariel et al. "Wearing body cameras increases assaults against officers and does not reduce police use of force: Results from a global multi-site experiment." 2016. 750.

One tool available to regulate discretion is through BC Provincial Police Standards. Section 40 of the *Police Act* gives the Minister of Public Safety and Solicitor General the authority to make policing standards (e.g., street stops, unbiased policing, sexual assault investigations). The challenge with these Standards is the limits on authority as they are not binding. They mandate police to develop policies but the extent to which they regulate enforcement and compliance is not clear. Compliance and enforcement measures that accompany Provincial Police Standards must be legislated.

Another tool to regulate discretion is the entrenchment of Gladue factors in police interactions with Indigenous people. Implementing the Gladue decision in BC, as prescribed by the BC First Nations Justice Strategy, will lead to better outcomes for both police and First Nations. With respect to discretion, however, Gladue reports and the information contained within them must never be used for criminal risk assessments.

Recommendation:

Work with BCFNJC, First Nations, to ensure diversion is built into the justice system at every step, including interactions with police. As part of this, provide training to police on Gladue and ensure the protection of information contained in Gladue reports can not be used to inform or evaluate risk assessments.

Recommendation:

Standardize compliance measures for Provincial Police Standards with stronger regulations and sanctions for noncompliance. This includes filling the existing gaps in standards for all police forces in BC (including RCMP Emergency Response Teams).

Training and Education

Strategy 20 of the BC First Nations Justice Strategy outlines actions to develop standards of cultural competency, and a training program regarding First Nations and the justice system, to be used by all who interact with the First Nations in the justice system, including police. The need for clear standards of cultural competency, and a consistent and systematic training program regarding First Nations people and the justice system, is consistently identified by Indigenous peoples for all actors in the justice system. While there are various forms of training taking place in different parts of the system, a coherent and consistent approach is needed so that core practices are being reinforced throughout the system. BCFNJC, as part of the Strategy implementation plan, is set to begin this important work in April 2021.

Training and education for police must be steeped in trauma-informed practices and must seek to address racism and bias. Specialized child and youth development training, and training tailored to the needs of youth, women, 2SLGBTQA, and other marginalized and vulnerable peoples.

Meeting the Needs of Indigenous Women and Minority Communities

Indigenous women in BC, and across Canada, are underserved and overpoliced. The criminalization and over-incarceration of Indigenous women and girls is a modern manifestation of the ongoing colonial oppression and marginalization of Indigenous women and girls.

There is a clear imperative for us all, coming out of the MMIWG Inquiry and taking into consideration its Final Report, to set out clear and shared approaches to ending the grim reality faced by First Nations women as victims of crime. Strategy 11 of the BC First Nations Justice Strategy focuses on ending the grim reality faced by First Nations women as victims of crime, an imperative for us all. The work of the BCFNJC compliments the myriad critical Calls to Justice included in *Reclaiming Power and Place*.

BC must also take into consideration the needs of minority communities, including the two-spirit, LGBT community. There is a responsibility for all to address the systemic racism and eliminate the gendered colonial violence perpetrated against Indigenous women, girls, and two-spirit, lesbian, gay, bisexual, trans, queer, questioning, intersex and asexual (2SLGBTQIA) people within Canada.

Recommendation:

Work with Indigenous peoples to advance implementation of the MMIWG Calls to Justice within provincial jurisdiction.

An Open and Honest Relationship

The relationship between police and Indigenous people cannot be open and honest until there is a complete change in how police are held accountable for their actions, and how data about Indigenous Peoples is collected, shared, stored, and disseminated, and how investigations are conducted.

Accountability and Transparency

Indigenous peoples have long voiced our concerns with a lack of police accountability and transparency. Considerably more Indigenous oversight is required within the existing accountability structure in BC, but more importantly, a new independent oversight function designed to address challenges and concerns regarding Indigenous people and the justice system is needed. Past commissions and inquiries²⁷ have called for greater Indigenous participation within inherently colonial processes (like reviewing critical incident planning), but they have not sought to provide a meaningful, powerful Indigenous voice on the basic principles under which colonial justice structures interact with Indigenous peoples in the first

²⁷ Key reports on police oversight include: Oppal report (1994), Wood report (2007), Davies Commission (2009), Braidwood Commission (2011), Tulloch report (Ontario, 2017), and the National Inquiry on MMIWG (2019).

place. As noted above, the “social contract” underpinning justice and policing has never been established in good faith. For this reason, a new Indigenous-led oversight entity is needed.

Recommendation:

Establish an Indigenous-led oversight body with jurisdiction to audit police services and to investigate claims of police misconduct.

While complaints about conduct of all persons exercising powers under the *Police Act* should be subject to independent oversight, currently that is not the case. Many roles do not have independent oversight, and First Nations have reported retaliation for making complaints against police. Within the current legislation, changes can be made to better ensure police accountability. For example, Part 7.1 of the *Police Act* sets out the nature and role of the Independent Investigations Office. The Independent Investigations Office requires Indigenous representation to carry out investigations where an incident involves police and an Indigenous person, or police in an Indigenous community. This should be regular, appointed, qualified staff, and should not be temporary or ad hoc. These individuals would be equipped with the same investigative training and resources to carry out their jobs, and their focus would be exclusively the above-mentioned incidents.

This category of investigator could be defined under s.38.06 (or in the vicinity) where the make-up of the IIO is legislated. Section 38.08 of the *Police Act* allows for civilian monitors to be appointed to oversee IIO investigations. Relatedly, some number of members of the civilian monitors should be Indigenous (s. 38.08). Civilian monitors are appointed on a case-by-case basis; however, BCFNJC strongly recommends a more permanent approach to having Indigenous voices heard in investigations.

Recommendation:

Implement a permanent approach to having Indigenous voices heard in investigations.

Section 21 of the *Police Act* absolves constables of personal liability unless his or her action has resulted in their being guilty of dishonesty, gross negligence, or malicious or wilful misconduct. It may be time to abandon this shield to liability in cases where officers are found guilty of racist action against Indigenous members of the public. This would signal administrative commitment to rooting out systemic racism.

The language in s.21(3)(a) of the *Police Act* could be amended to explicitly include racially motivated actions. As written, malicious or wilful misconduct is a wide net that might be expected to capture racist behaviour, however, those reviewing such misconduct might not agree that racist behaviour rises to the level of such misconduct. Effectively this would cause reviewers to address racism specifically and not allow it to be muddled. Hopefully, language as such would cause individual officers to consider their behaviour when interaction with Indigenous members of the community, and in cases where they do not, then there would be professional consequences for those individual officers.

Recommendation:

Abandon the shields to liability per Section 21 (2) of the *Police Act* in cases where officers are found guilty of racist action against Indigenous members of the public and amend the language in s.21(3)(a) of the *Police Act* to explicitly include racially motivated actions.

Key data regarding policing and Indigenous communities is not something to be kept in a secure police environment where it is difficult to access but is available to Indigenous peoples because it is information about them, gathered by institutions which have caused them great harm in the past. The presumption must be one of transparency. The current pattern is unacceptable. When it comes to data and reporting, to enable stronger transparency, there is a need to disaggregate “Indigenous” demographics” to include “First Nations” “Inuit” “Metis” specific metrics. Avoiding the identification of racial origin in the collection of statistics underserves Indigenous peoples and the public and must change.

Recommendation:

Ensure data collected on Indigenous peoples within the existing oversight apparatus is disaggregated to “First Nations” “Metis” and “Inuit” peoples. This includes ensuring that data is collected self-reported ethnicity.

Advancing Self-Determination

The Special Committee Terms of Reference mandates the Special Committee to examine whether there are measures necessary to ensure a modernized *Police Act* is consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* (2007), as required by section 3 of the *Declaration on the Rights of Indigenous Peoples Act* (S.B.C. 2019, c. 44). The short answer to this question is: yes, significant measures will be necessary to ensure that the modernized *Police Act* is consistent with UNDRIP per DRIPA. Not only will changes be needed to the current system, but also, Government plays a key role in creating an environment of readiness for Indigenous peoples to become fully self-determining in policing and public safety.

This Special Committee must work with First Nations to create the space for self-determination in the delivery of police services for Indigenous people. The Special Committee must also recognize that moving forward, the question cannot be framed as to “whether there are measures necessary” to ensure DRIPA-compliance, but rather, “what measures” are needed. Ultimately, policing as we know it, where Indigenous peoples are concerned, is changing. The actions and recommendations of this Special Committee must reflect that.

First Nations peoples have the inherent right of self-determination and long-established and comprehensive legal orders, traditions, and justice systems that maintain social order, and the safety and wholistic wellbeing of our citizens. These rights, legal orders, traditions, and justice systems have been undermined by the history of colonialism that sought to displace them through the establishment of various institutions (including the RCMP and the courts), laws, and policies.

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Within BC's settler colonial context, it is critical to understand that Indigenous legal orders and claims to jurisdiction have never been extinguished. Self-determination and a constitutional right to self government includes the right to design, develop, and deliver police services.

With respect to policing and justice matters broadly, Indigenous peoples need what Indigenous peoples have never relinquished: jurisdiction over our own lands and peoples, based on our own legal orders and in accordance with our own understandings of justice. Each Nation is unique and therefore it is a mistake to suggest a unified system of policing is appropriate for all BC First Nations. There are no 'pan' First Nation solutions and approaches.

If BC is serious about shifting into a period of rights recognition per UNDRIP we must be talking about and advancing the implementation of self-determination in terms of justice and policing. This includes a clear recognition of First Nations jurisdiction and right to establish and deliver policing/police services (or whatever permutation that may take). Through the work of the BC First Nations Justice Council (BCFNJC) and the BC First Nations Justice Strategy, the commitment and capacity to rebuild these structures and decolonize existing models of policing has never been stronger.

Recommendation:

Ensure modernized Police Act is DRIPA compliant by legislating clear recognition of First Nations jurisdiction and rights to establish and deliver policing/police services to their people. In the short term, and within the current *Police Act*, this could include making room in the definitions (s.2) for a First Nations Police Officer and a First Nations police force, and room in s.3(1), (2) under *The Minister for First Nations Communities*.

Transforming the relationship between First Nations and policing is complicated by the multiple structures of policing across British Columbia. It is further complicated by the fact that the Canadian Courts have not answered the specific question of which government has jurisdiction with respect to policing in Indigenous communities.²⁸ It is important to note here that the long-term agreements signed between provinces and Canada (RCMP) provide no provisions for First Nations policing services and that the federal *RCMP Act* is also silent on the matter.

Recommendation:

Revisit bilaterally negotiated RCMP agreement and involve First Nations in tripartite negotiations moving forward where future agreements may impact First Nations.

RCMP policy changes will be needed in a range of areas, including to support community relationship, to ensure greater transparency and oversight, to restrict discretion/standardize process. Indigenous peoples and BC will need to coordinate on this process to ensure alignment with the changes to the *Police Act*. For example, CTAs involve contracts with

²⁸ Council of Canadian Academies (2016): 65.

RCMP. If there are to be significant change to policing in Indigenous communities in BC within the CTA policing model, that will require significant changes to the *RCMP Act*.

Recommendation:

Coordinate with the federal government and First Nations to develop a process to review the *RCMP Act* to ensure it aligns with the reforms made to the *BC Police Act*.

At the heart transforming policing is the need for First Nations to be in the lead, applying the solutions we have developed in the context of our specific traditions, laws, knowledge, experiences, and contexts. Many First Nations in BC live off reserve and they too have rights with respect to policing. The policing of urban Indigenous people must be done in a manner that is sensitive and respectful to the diversity of Indigenous cultures.

SUMMARY OF RECOMMENDATIONS

This submission is founded upon the need to achieve balance in the current system while at the same time creating space and authority for Indigenous peoples to develop self-determined models of public safety/policing. Per DRIPA, BC must take **all measures necessary** to ensure that the legislative changes achieve the free, prior, and informed consent of Indigenous peoples in BC. Clearly, this would entail engagement that goes well beyond the timelines and mandate of the Special Committee, including involvement in the legislative drafting process. The legislative drafting process has primarily been designed and thought of as an internal government process; however, this can no longer be the case in BC. The following recommendations should be considered as a starting point as we work to restore balance and build new models of policing founded upon rights, jurisdiction, and self-determination.

Funding

- Work with Indigenous peoples and the federal government to provide financial resources for police services similar to the approach for municipalities, with a specific focus on northern and remote areas. A new funding model should include resources for Indigenous peoples to begin establishing self-determined models of policing/public safety for their communities.

Governance

- Revisit the recruitment and criteria for the Assistant Deputy Minister/Director of Police Services.
- Work with Indigenous peoples to enhance the powers of civilian Indigenous advisory committees and ensure each police service or police division creates the space for these groups.
- Legislate space for Indigenous representatives to sit on police boards and committees if they so choose.

Addressing Systemic Racism

- Legislate an end to the practice of street stops. Law makers have the power to stop this at the highest level rather than regulating street stops through Provincial Policing Standards.

Putting the Community and Person at the Centre

- Establish a completely new model of crisis intervention with multidisciplinary expertise and competency and significantly guided by Indigenous participation.
- Add a community peacekeeper category to the *Police Act*, the role of which would be to respond to non-violent complaints and to carry out proactive public safety. Adding a community peacekeeper category – one who would be connected to the community they serve, and the community would determine the scope of their response would be consistent with the principle of diversion. This category of officer would be built into FNPPs/CTAs and could be integrated into self-administered policing agencies.

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Militarization of Police and Use of Force

- Systematically collect use-of force data for policing (including within the RCMP), in addition to data on deaths in custody. Data should be disaggregated and include ethnicity, gender, and age. The collection of this data, and the transparency required in terms of reporting it, must be done in partnership with First Nations.
- Prohibit the militarized approach to policing Indigenous peoples in the province.

Policing Standards

- Work with BCFNJC, First Nations, to ensure diversion is built into the justice system at every step, including interactions with police. As part of this, provide training to police on Gladue and ensure the protection of information contained in Gladue reports can not be used to inform or evaluate risk assessments.
- Standardize compliance measures for Provincial Police Standards with stronger regulations and sanctions for noncompliance. This includes filling the existing gaps in standards for all police forces in BC (including RCMP Emergency Response Teams).

Meeting the Needs of Indigenous Women and Minority Communities

- Work with Indigenous peoples to advance implementation of the MMIWG Calls to Justice within provincial jurisdiction.

Accountability and Transparency

- Establish an Indigenous-led oversight body with jurisdiction to audit police services and to investigate claims of police misconduct.
- Implement a permanent approach to having Indigenous voices heard in investigations.
- Abandon the shields to liability per Section 21 (2) of the *Police Act* in cases where officers are found guilty of racist action against Indigenous members of the public and amend the language in s.21(3)(a) of the *Police Act* to explicitly include racially motivated actions.
- Ensure data collected on Indigenous peoples within the existing oversight apparatus is disaggregated to “First Nations” “Metis” and “Inuit” peoples. This includes ensuring that data is collected self-reported ethnicity.

Readiness for Self-Determination

- Ensure modernized *Police Act* is DRIPA compliant by legislating clear recognition of First Nations jurisdiction and rights to establish and deliver policing/police services to their people. In the short term, and within the current *Police Act*, this could include making room in the definitions (s.2) for a First Nations Police Officer and a First Nations police force, and room in s.3(1), (2) under *The Minister* for First Nations Communities.
- Revisit bilaterally negotiated RCMP agreement and involve First Nations in tripartite negotiations moving forward where future agreements may impact First Nations.
- Coordinate with the federal government and First Nations to develop a process to review the *RCMP Act* to ensure it aligns with the reforms made to the *BC Police Act*.

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NEXT STEPS

Opportunities for change must begin with providing meaningful options for policing arrangements that support self-determination and the minimum standards set out by UNDRIP. Engagement cannot end with this written submission but rather, Indigenous peoples must be engaged throughout the legislative drafting process. Per DRIPA, BC must take “all measures necessary” to ensure that the free, prior, and informed consent of Indigenous peoples is achieved prior to any legislative changes that may affect them. To this end, we look forward to further discussions on this critical matter.

While police bear some responsibility for the issues identified in this submission, the primary responsibility for civil-police relations lies with politicians who set the framework conditions. As we have stated throughout this submission, change happens when we commit to change happening: it is time to create a new origin story of policing in BC.

The province of BC must undertake negotiations with Indigenous people, the federal government, and the RCMP to bring the policies and practices of the agency in line with the recommendations of the Special Committee on reforming the Police Act. Given the fact so many Indigenous peoples are policed by RCMP in BC, it will be important that a coordinated approach is taken while we move towards new models of self-determined policing.

APPENDIX A – SUPPLEMENTARY MATERIALS FOR BCFNJC ORAL PRESENTATION (March 26, 2021)



BC First Nations Justice Council Oral Presentation to the Special Committee on Reforming the Police Act: *Supporting Materials*

March 26, 2021

Note: The following supporting materials accompany BCFNJC's oral presentation to the Special Committee on Reforming the Police Act. This supporting materials package will be included in BCFNJC's written submission to the Special Committee.

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BC First Nations Victims of Police use of force including death and death in custody

The following table represents the Indigenous victims of known incidents involving serious injury and death caused by police/while in police custody, since 1998. This list is incomplete and omits many Indigenous victims of police violence in BC and in Canada.

NAME/AGE	DATE	LOCATION	INCIDENT OVERVIEW
Frank Paul, 47	Dec 6, 1998	Vancouver, BC	Paul, a Mi'kmaq man, was dragged by Vancouver Police unconscious and soaking wet from a holding cell to a back alley where he froze to death. Incident led to <i>The Davies Commission Inquiry into the Death of Frank Paul</i> .
Anthony James Dawson, 29	Aug 13, 1999	Victoria, BC	Dawson, a member of the Musgamagw Tsawataineuk Nation, died of cardiac arrest and asphyxiation after five Victoria police officers tackled and repeatedly punching him repeatedly before loading him in an ambulance. He died of asphyxiation while in police custody. His mother has testified that he was mistreated by police and dismissed as an alcoholic or drug abuser at the hospital. No fault to any police officers was found.
Paulsey Alphonse, 64	Apr 18, 2000	Williams Lake, BC	Paulsey (Paul) Alphonse, a Secwepemc man, was beaten by RCMP officers and later died in hospital of his injuries, including broken ribs, a head injury and a boot print on his chest.
Darrell Paquette, 43	Sep, 2002	Prince George, BC	Paquette died after being subdued by an off-duty RCMP officer.
Lorraine Jacobson (Moon), 40	Feb 28, 2003	Alert Bay, BC	Jacobson (Moon), a Squamish Nation woman, was shot dead on a Kwagiutl reserve in Alert Bay by an RCMP officer responding to a domestic dispute.
Clayton Alvin Willey, 33	Jul 22, 2003	Prince George, BC	Clayton Alvin Willey, Metis man, died in hospital after being hog tied, dragged, banged against an elevator, and eventually tasered by two RCMP officers. Detachment video, that was withheld from the public for nearly a decade, implicates police.
Gerald Chenery, 29	Dec 26, 2004	Vancouver, BC	Chenery, a Nisga'a man, was shot 12 times and killed by two Vancouver police officers.
Kyle Tait, 16	Aug 23, 2005	Burnaby, BC	Tait, Gitksan man, was passenger in a vehicle shot trying to escape New Westminster Police. He died from a single gunshot wound to the torso.
Jay Louis, 35	May 19, 2006	Vernon, BC	Okanagan Indian Band member died after being released from RCMP police custody. According to police, Louis was detained and handcuffed so he did not further harm himself or others.
Rodney Jackson, 35	Sep 26, 2009	Hazleton, BC	Jackson was shot in the back by an RCMP tactical team member and died later in hospital. While officers claimed Jackson was armed with a rifle, no weapon was found on the scene. At the coroner's inquest in 2011, lawyers for Jackson requested more Indigenous people on the jury (only 1 in 5 was Indigenous) request was denied.

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NAME/AGE	DATE	LOCATION	INCIDENT OVERVIEW
Jamie Haller, 17	Sep 10, 2011	Williams Lake, BC	Haller was being chased and asked a stranger to call 911. RCMP arrived, handcuffed and assaulted her, took her into police custody only to be released within hours, without charges. Abbotsford Police Department conducted an independent investigation and recommended charges against Const. Andy Yung on March 7, 2012. Const. Andy Yung was cleared of all charges.
2012 - INDEPENDENT INVESTIGATIONS OFFICE OF BRITISH COLUMBIA (IIO) ESTABLISHED			
Robert Wright, 50	Apr 21, 2012	Terrace, BC	While in RCMP custody, Wright was thrown to the ground which led to permanent brain damage. RCMP settled out of court with Wright's family in 2016. RCMP Const. Brian Heideman has faced other allegations of using excessive force in the arrest of two other First Nations men. Heideman was reprimanded and docked two days pay for using excessive force to subdue a man at the detachment in 2016.
Ryan Jacob, 45	Jan 31, 2013	Burnaby, BC	Jacob, member of Squamish Nation, was shot dead by RCMP following an altercation.
Naverone Woods, 23	Dec 28, 2014	Surrey, BC	Woods, a member of Gitksan First Nation, was shot by a transit police officer inside a Safeway in Surrey.
James Butters (Hayward), 24	Jul 8, 2015	Port Hardy, BC	Butters (Hayward), was shot and killed by RCMP during a confrontation in Port Hardy.
James McIntyre, 48	Jul 16, 2016	Dawson Creek, BC	McIntyre was killed at a Site C protest by RCMP officers responding to a call about a disturbance. The investigation revealed the whole encounter lasted no more than 21 seconds. The investigation cleared the officers.
Marvel Woodhouse	Mar 2, 2016	Surrey, BC	Woodhouse died in RCMP custody in Surrey, BC.
Jövan Williams, 39	Apr 21, 2016	Granisle, BC	Jövan Williams and mother, Shirley Beatrice Williams interacted with police and were shot and killed after neighbours called the RCMP. IIO determined police not at fault. A scheduled death review has been postponed due to COVID-19.
Dale Culver, 35	Jul 19, 2017	Prince George, BC	Dale Culver, Gitksan and Wet'suwet'en man, was arrested and sprayed with pepper spray where upon he developed problems breathing. He was pronounced dead at the hospital. In 2019 IIO recommended laying charges against four RCMP officers but in of June 2020, they were all still working as police. The BCCLA reported that police asked bystanders to delete the videos they recorded of the arrest that led to Culver's death.
Everett Patrick, 42	April 20, 2020	Prince George, BC	Patrick was arrested at a sporting goods store in downtown Prince George. The RCMP Emergency Response Team (ERT) was called in and police dogs were let loose to attack him. Patrick was treated for dog bites at the hospital and then brought into the detachment. Hours

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NAME/AGE	DATE	LOCATION	INCIDENT OVERVIEW
			later he went into medical distress and was transported to hospital where he was found to be suffering from serious injury (bleeding of the brain). Patrick was taken off life support and died.
Chantel Moore, 26	June 4, 2020	Edmundston, New Brunswick	Chantel Moore, a member of the Tla-o-qui-aht First Nation was shot and killed by Edmundston Police, who were called to perform a wellness check on her. Moore had recently moved to New Brunswick from BC to be closer to her six-year-old daughter.
Julian Jones, 28	February 27, 2021	Meares Island, BC	Tla-o-qui-aht First Nation member Julian Jones was shot dead by Tofino RCMP who were responding to a call for help from a female individual. RCMP arrived to the Opitsaht reserve (one of three Tla-o-qui-aht First Nation communities) which is only accessible by boat. Julian was shot dead upon answering the door.

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<https://www.cbc.ca/news/canada/british-columbia/police-related-deaths-canada-bc-vancouver-boyd-edey-database-1.4603820>
<https://www.cbc.ca/news/canada/british-columbia/civil-liberties-ii-pg-rcmp-1.4489925>

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Death of Everett Patrick: RCMP Emergency Response Team, Prince George, BC, 2020



Source: <https://ckpgtoday.ca/2020/04/12/mounties-investigating-downtown-commercial-break-enter/>

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Criminalization of Peaceful Protest: Wet'suwet'en blockade, 2019-20



Source: <https://www.cbc.ca/news/canada/british-columbia/wetsuweten-arrests-coastal-gaslink-pipeline-1.5454007>

Source: <https://www.thestar.com/vancouver/2019/01/07/calm-before-the-storm-as-wetsuweten-nation-members-await-ramp.html>

Source: <https://dogwoodbc.ca/news/rcmp-wetsuweten-raid/>

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Maxwell and Torianne Johnson, Dec, 2019



Source: <https://vancouverun.com/news/local-news/human-rights-complaints-filed-by-indigenous-grandfather-arrested-at-vancouver-bank>

Source: <https://www.thestar.com/news/canada/2020/11/23/a-year-after-this-indigenous-man-and-his-12-year-old-granddaughter-were-handcuffed-at-a-bank-hes-fighting-for-change-its-just-got-to-be-made-right.html>

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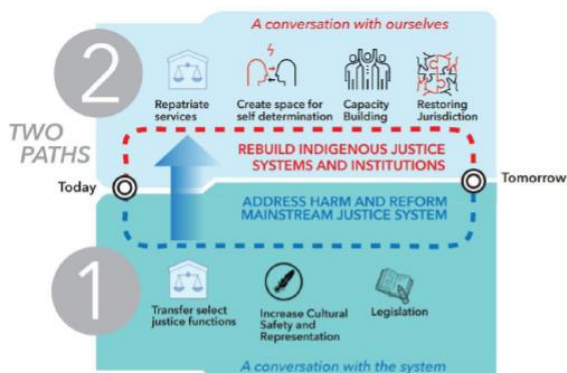
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BC First Nations Justice Strategy (2020)



BC FIRST NATIONS JUSTICE STRATEGY

February
2020



STRATEGY 22 (POLICING)	LINES OF ACTION
Establish new models of structured relations between First Nations, the RCMP, and other police forces, that support new strategic and policy level, as well as community level, and cooperative change, while supporting greater community-level police forces.	<ol style="list-style-type: none"> 1. Develop protocols between the BCFNJC and the RCMP, as well as the BCFNJC and other local police forces in BC which focus on collaboration at the strategic level to advance and support the goals of the BC First Nations Justice Strategy. The protocols may identify additional actions to be taken directly between BCFNJC, RCMP, and other local police forces. BC has committed to actively encourage the establishment of the protocols. 2. Co-Develop and implement a new approach to Community Tripartite Agreements (CTA's). The new approach should: <ul style="list-style-type: none"> o Strengthen how CTA's are used to address First Nation priorities, ensure they are not inflexible in adapting and meeting the needs and circumstances of particular communities, and include strengthened communication protocols; o Ensure space for negotiation of community-led priorities, which are not fixed or take it or leave it models; and o Consider shifts and actions that will reflect First Nations jurisdiction and governance, the role of bylaw development and enforcement, and build understanding around First Nations laws and law-making. 3. Work with BC and Canada to co-develop a framework for expansion and transition to increased community-based First Nations police forces. The approach will include interim steps such as community safety constable programs, changes to the First Nations policing program, and new peacemaking and safety initiatives.

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