



First Nations Leadership Council

Presentation to the Special Committee on Reforming the *Police Act*

March 26, 2021 9:00 am

Order of Presentations (15 minutes each, followed by Q and A)

1. Kukpi7 Judy Wilson, Secretary-Treasurer, Union of BC Indian Chiefs
 2. Lydia Hwitsum, Political Executive, First Nations Summit
 3. Terry Teegee, Regional Chief, BC Assembly First Nations
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1. KUKPI7 JUDY WILSON

- Good morning everyone. I would like to thank the Special Committee for the invitation to speak on the important topic of Police Act reform with you today.
- My name is Judy Wilson, I'm the Chief of Neskonlith Indian Band, which is part of the Secwepemc Nation. I am calling from the unceded, traditional territories on which my people have resided and cared for since time immemorial.
- I'm also the Secretary-Treasurer for the Union of BC Indian Chiefs. I uphold the mandate of UBCIC alongside our President Grand Chief Stewart Phillip and Vice President Chief Don Tom. The UBCIC advocates for the advancement of Aboriginal Title and Rights.
- I would like to acknowledge my colleagues – Lydia Hwitsum, Executive for the First Nations Summit, and Terry Teegee, Regional Chief of the BC Assembly of First Nations.
- Together, our organizations work collaboratively as the First Nations Leadership Council. The FNLC works together to advocate for and develop coordinated approaches to issues of priority to First Nations communities throughout the province.
- Together, the membership of the FNLC organizations is comprised of all 204 First Nations in BC. The mandate and work of the FNLC is collectively directed by Nations' governments through resolutions of the three political organizations.

- The BCAFN, UBCIC, and FNS each have longstanding mandates, received through resolutions by Chiefs and leaders, to advance and uphold the rights and interests of First Nations with respect to the justice system, policing, and the complex social issues this Special Committee is tasked with considering.
- However, the FNLC is not a Nation, and does not hold Aboriginal Title, Rights or Treaty Rights. Therefore, engagement with the FNLC cannot be used as a substitute for direct engagement and partnership with First Nations. We strongly encourage that the proper Title and Rights holders are engaged, consulted, and that you seek their free, prior and informed consent.
- Rather, through our presentation and subsequent written submission we intend to amplify the voices of First Nations communities, and ensure that Police Act reform work is properly situated within the broader context.
- This Police Act reform work occurs at a pivotal time. Policing and justice institutions in BC and across Canada have been challenged to reckon with disturbing levels of systemic injustice and discrimination.
- The gravity of this committee's mandate cannot be over stated. For Indigenous peoples, it is literally a matter of life and death.
- The BC First Nations Justice Strategy, which was jointly developed by the BC First Nations Justice Council, BC First Nations communities, and the Province of British Columbia, and which the FNLC unequivocally supports, explains that a major challenge we have faced has been the lack of systemic support and implementation of proactive and preventative measures within the existing justice system.
- We need to follow the BC First Nations Justice Strategy road map to fundamentally transform the justice system in B.C. for both Indigenous and non-Indigenous people, and ensure the *Police Act* is consistent with the UN Declaration. At a high level, we need to:
 - (i) reduce the number of First Nations people who become involved with the criminal justice system;
 - (ii) improve the experience of those who do;
 - (iii) address violence against Indigenous people, especially women, girls and 2SLGBTQQIA+ individuals;
 - (iv) increase the number of First Nations people working within the justice system;
 - (v) improve access to justice services by Indigenous people; and
 - (vi) support First Nations to restore their Indigenous justice systems and structures.
- The Justice Strategy sets out a path to accomplish this vision along two tracks – reform, and transformation.
- On one hand, we must reform the justice system so that it stops perpetuating harm against Indigenous people. We must improve people's encounters with police and the justice system.
- This is urgent work, given the prevalence of systemic racism in Canada's institutions and broader society.

- The systemic nature of racism in healthcare was exposed in Mary Ellen Turpel-Lafond's recent report, *In Plain Sight*. Systemic and deeply troubling issues were found in every aspect and stage of the healthcare system.
- From numerous reports, commissions, inquiries, and personal stories, we know that systemic racism is just as prevalent within the justice system, and in fact, is ingrained in every sector.
- We will not repeat the wealth of evidence today, out of respect for those who have already raised their voices, and contributed their truths toward numerous recommendations regarding policing and justice reform.
- We urge you to consider seriously the imperatives of the National Inquiry into MMIWG2S Calls for Justice, and the recommendations of Red Women Rising: Indigenous Women Survivors in Vancouver's Downtown Eastside.
- Further, we draw your attention to the reports of:
 - the Davies Commission Inquiry into the Death of Frank Paul,
 - the 2009 Commission for Public Complaints Against the RCMP: Police Investigating Police,
 - the 2011 BC Civil Liberties Association report Small Town Justice - on the RCMP in Northern and Rural British Columbia,
 - the Oppal Inquiry report - Forsaken: The Report of the Missing Women Commission of Inquiry,
 - the 2012 Police-Involved Deaths in BC Report by the BCCLA,
 - the 2013 Human Rights Watch report: Those who take us away: abusive policing and failures in protection of indigenous women and girls in Northern British Columbia,
 - and the 2017 Commission for Public Complaints Against the RCMP regarding Policing in Northern British Columbia
- It is often said that the justice system is broken. However, Indigenous people know that it is functioning exactly as it was intended to – to disposes us of our lands, undermine our political and legal systems, criminalize our people, and destroy our families.
- For this reason, we urge the committee to look beyond reform, to transformation. We need a new foundation.
- The second pathway of the BC First Nations Justice Strategy emphasizes the need to revitalize and stand up First Nations justice systems and laws. It revolves around creating new ways of being and relating to one another as orders of government.
- The vision that First Nations people have for self-determined systems of justice must be recognized and upheld. We do not need to tweak policing services when it comes to First Nations people. Rather, we need a complete overhaul.

- We need what First Nations have never relinquished: jurisdiction over our territories and peoples, based on our own legal orders, cultural protocols and our own understandings and approach to justice.
- In fact, in order for this work to align with the *Declaration on the Rights of Indigenous Peoples Act*, it MUST recognize First Nations jurisdiction as authoritative orders of government.
- Section 3 of DRIPA obligates the Province to “take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration”. Police Act reform is a pressing and clear opportunity to do this properly.
- This would include ensuring the Police Act upholds the rights of Indigenous peoples: to be free of any kind of discrimination; the right to self-determination and participation in decisions that affect them; the right to liberty, peace and security; and the right to establish our own systems and institutions.
- This would also mean processes for consultation and cooperation with Indigenous peoples including expert review of the Bill by our justice and legal experts, and an opportunity for our leaders to review the Bill.
- The *Police Act* modernization process must ensure that First Nations governing bodies are engaged on a government-to-government basis that respects the inherent Rights, Title, and Treaty rights of First Nations - the government of BC must engage First Nations governing bodies as partners in the development of legislation.
- In this case, self-determination means both recognizing First Nations jurisdiction and ensuring that First Nations have the requisite authorities and capacity to choose and develop for themselves, how they would like to see policing, justice, and community safety initiatives operate within their territories; and how those activities should be governed.
- It means that no one but First Nations themselves should determine how they promote wellbeing and community safety for their peoples.
- Whether First Nations wish to establish partnerships, service agreements, or their own police services, they should be respected and empowered to do so.
- Finally, a key imperative of the UN Declaration is that proactive measures and an intersectional lens is required to promote substantive equality. We must ensure that the “rights to life, physical and mental integrity, liberty and security of person” are guaranteed on an equal basis to all people, regardless of their identity and experience.
- This requires particular consideration for the rights of women, gender-diverse people, children, elders, those living with disabilities, those living with addictions, those experiencing homelessness, those engaging in sex work, and both status and non-status First Nations, regardless of their place of residence.
- I will now pass the floor over to my colleague Lydia, Thank you.

2. LYDIA HWITSUM

- Thank you. Greetings to all the members of the Special Committee, the Clerk of the Committee, Hansard, and those watching online.

- My name is Lydia Hwitsum. I am a member of the Cowichan Tribes and a Political Executive of the First Nation Summit.
- I would also to acknowledge my colleagues at the First Nations Summit, Robert Phillips and Cheryl Casimer.
- In my remarks I will focus on some more granular and specific changes we would like to see along the lines of reform.
- Too many First Nations people have suffered injury, abuse, and even death at the hands of police. Together, these incidents point directly to deeply embedded racism operating at systemic and personal levels. In turn, this is responsible for the high levels of fear, mistrust, and normalization of police harassment and brutality.
- New legislation must explicitly address systemic racism, anti-Indigenous, and misogynistic attitudes within institutions, and seek to remedy these.
- A public, systemic review of practices and policies that disproportionately negatively impact Indigenous peoples should be conducted.
- Data must be reported in a number of areas, including use of force, police procurement of paramilitary unit and military equipment, and many others, to better understand the current reality of policing and to measure progress towards change
- In turn, problematic practices must be reformed or eliminated.
- There are several key concerns and recommendations we would like to highlight:
 - **Inadequate community policing functions, the militarization of police, and use of force:** 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, as seen in the examples of wellness checks resulting in injury and death.
 - There is a crisis in over-representation of Indigenous peoples killed by use of deadly force by police: over 15% of all fatal police encounters since the year 2000. Resources must be diverted from militarized policing to community policing options.
 - For example, the practice of street checks should be completely eliminated as they enable the arbitrary perpetuation of biases against those experiencing homeless and poverty, those who use drugs, sex workers, and those with mental health challenges.
 - The level of hypervigilance and surveillance involved in the practice is not conducive to healthy relationships between police and community members, and creates opportunities for escalating encounters. At the same time a defensible justification for police stops remains wanting.
 - The use of all lethal weapons, restraint devices, and police dogs must be eliminated. Officers must be equipped to de-escalate situations without perpetuating violence.
 - Searches and monitoring of Indigenous women and girls by male officers must also be eliminated.

- **Criminalization of addictions:** Decriminalization of drugs can play a key role in the presumption of diversion, and ultimately the successful implementation of path one of the BC First Nations Justice Strategy.
- Recent changes to federal mandatory minimum sentences related to non-violent drug offences are a step in the right direction, but it is imperative that both the provincial and federal government champion initiatives and policies that provide support and programs intended to divert Indigenous peoples from the criminal justice system towards programs focused on their health and wellness.
- **Police Discretion:** 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.
- Legislation must address discretion by carefully weighing the degree, scope, and locus of discretion given to members of police services with an eye toward standardizing protocols to restrict discretion, and create opportunities to divert Indigenous peoples from the justice system.
- So many issues come down to practice. We need a combination of strong, enforceable written guidelines, and comprehensive, meaningful training for those that must implement and oversee their practice.
- **Training and representation:** Current police training is inadequate and more focus on de-escalation and cultural safety is needed. The need for clear standards of cultural competency, and a consistent and systematic training program regarding First Nations people and the justice system, was identified 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. In addition to this, more Indigenous peoples must be recruited to law enforcement roles at all levels.
- This training and standards are especially important when it comes to vulnerable populations and issues such as sexual assault and other forms of gender-based violence, mental illness, homelessness, substance use, and child welfare.
- For example, we need guidelines throughout the province to support the safety of sex workers, and better protocols for communications between police, family and housing organizations. Too often we see people fall through the cracks.
- We must explicitly prioritize an evidence-informed, trauma-informed, non-punitive, destigmatizing, and harm-reduction focused approach throughout policing standards and in police training.
- We recommend that these types of issues must be given much more emphasis at the outset, as well as throughout members' careers. All members should have thorough training in de-escalation, implicit bias, intercultural competency, trauma-informed practice, and on the ground training and education with the local First Nations they serve.
- We must ensure appropriate protections for women, girls, and gender diverse people, and ensure accountability when officers fail to uphold best practices and standards.
- In his final 2012 report regarding numerous women who went missing from the Downtown Eastside, Commissioner Wally Oppal concluded that "the initiation

and conduct of the missing and murdered women investigations were a blatant failure.”

- The Commissioner attributed these failures to discrimination, system institutional bias, and political and public indifference; a want of leadership; poor systems, limited and outdated policing approaches and standards; fragmentation of policing; inadequate resources and allocation issues; police force structure and culture, personnel issues and inadequate training; and allegations of conspiracy and cover-up.
- More must be done, to ensure the recommendations arising from this report are fully implemented.
- Moreover, we really need to equip and integrate the whole host of community-based service providers who provide front line and wrap-around services into our models of community safety with the aim of reducing the presence of police officers where they are not required, and increasing the presence of community advocates.
- Unfortunately, these organizations tend to be underfunded and are reduced to competing for project funds with onerous and bureaucratic administrative and evaluative requirements. A vital part of crime prevention in the context of police reform is that Indigenous-led service organizations need to remain secure in their funding while being self-determining.
- The MMIWG Final Report found that systemic underfunding and mis-funding of Indigenous programming of all kinds is a manifestation of discrimination and a contributing factor to ongoing genocide.
- The 2019 Path Forward Report on Women and Girls Safety Community Sessions Action Plan focused on the need for healing supports and safe spaces, capacity and resources for community-based action plans, and made specific recommendations for service providers.
- It points to one example of how community-level priorities can show the way to improving safety and well-being in an integrated way, but that shift in resource allocation is needed if this is to be a reality.
- **Finally, I'll speak to Accountability and Oversight:** There have long been calls for an independent oversight and accountability function to address challenges and concerns regarding Indigenous people and the justice system.
- A principled approach to police oversight demands that complaints about conduct of all persons exercising powers under the *Police Act* (BC) should be subject to independent oversight. Currently, that is not the case. Many roles do not have independent oversight.
- To restore trust, we require civilian and Indigenous oversight and accountability mechanisms which are transparent, timely, well-resourced, and equipped with a broad mandate and enforceable recommendations.
- In a review of data regarding the Office of the Police Complaints Commissioner we found that less than half of registered complaints were considered admissible. Only a fraction of those were fully investigated. And the vast majority of complaints that were investigated were unsubstantiated. Few matters move to a discipline proceeding, and even fewer receive a public disciplinary hearing.
- Officers who are found to have committed misconduct are often disciplined with a verbal or written reprimand.

- If an independent civilian oversight body were fully responsible for these investigations and findings, Indigenous members of the public might have more confidence that they are procedurally fair and proper. However, because these investigations are conducted by the police departments themselves, that confidence, and confidence in the complaints process, is eroded.
- The result is that Indigenous people in urban areas rarely consider filing a formal police complaint as an effective method for holding the police accountable.
- Currently, the OPCC Commissioner also has no authority to substantively investigate policy level allegations. Our concern is that discriminatory practices hidden within policy and service complaints go under-investigated.
- The Commissioner should:
 - i. have the discretion to retain jurisdiction over investigations of misconduct rather than forwarding them to police departments for investigation,
 - ii. have the discretion to retain jurisdiction over policy and service complaints and, if deemed necessary, conduct systemic reviews, rather than monitor policy issues from arms-length, and
 - iii. have freestanding power to hold public hearings, call witnesses, and commission evidence - in short, the power to become their own mini-Commission of Inquiry if a systemic issue is identified.
- More accessible complaint processes would include anonymous avenues, and in-person options, straight-forward email submission options, public engagement to gather anecdotal data, and better training about how to effectively make public trust complaints.
- The definition of “serious harm” as it relates to what can be investigated by oversight bodies must also be expanded to include sexual assault, psychological harm, and less serious physical injuries than the current standard.

The BC Ombudsperson has also raised concerns that jail guards in RCMP-run municipal jails are not subject to oversight either by the OPCC or by the RCMP’s Civilian Review and Complaint Commission (CRCC). It is an important and concerning issue that directly affects Indigenous peoples in municipalities throughout BC, and we urge for this gap to be urgently addressed.

- Further, we urge that RCMP under the CRCC be brought under a BC-specific oversight body in effort to facilitate more timely and accountable investigations under the model we have put forward.
- I’ll leave my comments there. Thank you for your time. I’ll now pass it over to the Regional Chief Terry Teegee.

3. REGIONAL CHIEF TERRY TEEGEE

- Good morning. My name is Terry Teegee. My traditional name is Maxweeum Tsimghee. I’m the Regional Chief of the BC AFN and a member of the Takla Lake First Nation.
- I’m calling from the traditional, continuously occupied, and unceded territory of the Lheidli T’enneh.
- In my language we have a word for the police - _____, which means “those who take us away”. The gravity of the issues highlighted by Kukupi7 Wilson, Lydia, and the others who have presented to this committee regarding First Nations experiences with the police, must be dealt with squarely if we are to have a hope of restoring the trust of Indigenous peoples.
- Revisiting the jurisdictional considerations raised by Kukupi7 Wilson, we must also raise the ongoing issue of the criminalization of land defenders.

- In 2020, the RCMP's implementation and enforcement of the exclusion zone in Wet'suwet'en territory infringed on the inherent title and rights of the Wet'suwet'en. A large contingent of RCMP were brought in and prepared to use lethal against the land defenders. Language of "rule-of-law", "national security", and "radicalized protestors" served to de-legitimatize the laws, authority, and legitimate interests of Indigenous communities involved.
- As noted in Red Women Rising, "Part of the government strategy to dispossess Indigenous lands is to criminalize Indigenous land defenders, and the use of the RCMP (and in some cases, military and paramilitary forces) and criminal justice system to arrest and charge Indigenous land defenders with trespass, obstruction, unlawful assembly, and criminal contempt for violating civil injunctions has actively undermined Indigenous rights."
- Targeted surveillance, encroachment onto First Nations territory, and disregard for First Nations law by the RCMP is unacceptable and not aligned with the UN Declaration.
- We must also address the issue of lack of policing and public safety services. First Nations people find themselves simultaneously over-policed *and* under-protected, which result in different, but serious safety gaps, and which are similarly rooted in racism, sexism, and colonialism.
- You've also heard from other presenters about the issues First Nations encounter in receiving adequate policing response. Remote communities are particularly challenged in accessing the most basic levels of policing services, not to mention victims' services and other wrap-around supports.
- The lack of public safety capacity within First Nations communities represents a crisis.
- First Nations people are more likely to be victims of violent crime. In BC in 2018, 60.11% of First Nations people reported they experienced violent victimization since the age of 15, compared to 42.12% among non-Indigenous peoples.
- Indigenous women and girls experience violent victimization at a rate 2.7 times that of non-Indigenous women and girls.
- And according to the National Inquiry Final Report, Indigenous women made up roughly 16% of all female homicides between 1980 and 2012, despite making up only 4% of the female population. ... Indigenous women and girls now make up 24% of female homicide victims.
- While addressing the root causes of this violence is key to transformational change, it is important that, when First Nations people do seek help from police and first responders, they receive it.
- A critical gap in the existing legislative framework is the ability for First Nations to effectively enforce and prosecute their own by-laws and laws.
- While the Police Act reform cannot wholly deal with this issue, it should take into account the critical need for First Nations governments to be able enforce their laws and undertake community safety and prevention initiatives either through their own dedicated services or in partnership with the federal and provincial governments.
- Currently, there are gaps in jurisdictional coordination regarding which order of government is responsible for prosecution. Often neither the provincial or federal government will choose to prosecute, and First Nations governments typically do

not have the capacity to dedicate the financial resources required for prosecution. The result is that many police forces ignore First Nations by-laws.

- This contributes to a lack of public safety and is part of the broader issue of under-protection experienced by First Nations.
- Moreover, it demonstrates a fundamental gap in the recognition of First Nations jurisdiction.
- In addition to challenges enforcing by-laws there is the greater challenge of enforcing First Nations laws, especially those that may not align with federal or provincial law.
- First Nations may also wish to decide how to have police, first responders, social service professionals, or other community-led bodies respond to incidents or infractions within their territory; and how to go about prosecution or undertake another approach to resolution and enforcement, such as a process based on traditional practices and laws.
- To address these challenges, the legislative framework should set a strong basis for enhancing partnerships, coordination, integration, and communication, and First Nations jurisdiction within all sectors.
- The First Nations Policing Program (FNPP) is another prime example of how under-resourcing contributes to basic gaps in public safety.
- The FNPP is intended to provide policing services over and above the level of policing services provided under the Provincial Police Services Agreement, and which are professional, effective, culturally appropriate, and accountable to the communities they serve
- However, according to the report *Toward Peace, Harmony, and Well-Being: Policing in Indigenous Communities*, since its inception, the program has suffered from a range of problems, including insufficient resources and support.
- 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
- The RCMP in BC has been operating with vacancies under the FNPP in order to stay within budget as funding under the current Framework Agreement has failed to cover rising policing costs.
- This means First Nations communities will continue to experience underfunded and inadequate policing. Further, underfunding has meant that the program is not able accommodate new communities who are interested in participating in the FNPP.
- Underfunding of such elementary components of policing have real implications on the FNPP's ability to meet its goals of enhanced, culturally appropriate policing.
- The limited number of officers per community are often stretched thin and spend their time attending to basic policing functions. Community Consultative Groups, and Letters of Expectations – key mechanisms by which community are meant to *laissez* and develop priorities with local RCMP detachments and FNPP officers - are difficult to sustain, and regularly monitor for accountability.
- In addition to underfunding, there are aspects of Community Tripartite Agreements (CTAs) that hinder the FNPPs ability to deliver truly enhanced, culturally appropriate policing. The short-term nature of agreements makes long-term, strategic planning challenging. Without this ability, community leadership is not able to effectively build vision and capacity around community safety needs.

- Lack of protection is also evidenced in inadequate police response to the issue of missing and murdered Indigenous women, girls, and two-spirit people.
- While the federal government has announced additional funding for First Nations policing in recent years, these funds are not sufficient to bridge the gap created by chronic, program-based underfunding.
- Further, while increased, sustainable funding is direly required, on its own, it is not the solution.
- There is opportunity to fundamentally transform the FNPP into a policing model that upholds self-determination and meets community needs.
- On December 9, 2020 Minister Bill Blair announced funding to support for the AFN to begin discussion on the co-development of legislation which recognizes First Nations policing as an essential service.
- The announcement highlighted the need for collaborative engagement with provincial partners.
- A legislative basis that recognizes the inherent title and rights, and treaty rights of First Nations will provide an appropriate foundation for closing the gap in policing services, while responding to the imperatives of the UN Declaration, the TRC Calls to Action, and the Calls for Justice.
- We urge the Special Committee to fully engage with matters such as First Nations Policing, which currently intersect with both federal and provincial mandates.
- While provincial work is crucial, it will take partnership and collaboration with federal partners as well.
- This type of tripartite work is envisioned in the BC First Nations Justice Strategy, and is also relevant as we seek commitments toward a National Indigenous Justice Strategy.
- With that, I'll conclude, urging you to use the UN Declaration as a benchmark for this work, and to continue to seek direct engagement with First Nations.
- Thank you for listening to our presentation today. We look forward to your questions.