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# Standing Committee on Indigenous and Northern Affairs

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Chair: Mr. Bob Bratina





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• (1835)

[English]

**The Chair (Mr. Bob Bratina (Hamilton East—Stoney Creek, Lib.)):** I call the meeting to order.

We start with the acknowledgement, of course, that when we are in Ottawa, we meet on the traditional unceded territory of the Algonquin people.

Pursuant to Standing Order 108(2) and the motion adopted on April 29, 2021, the committee continues its study of enforcement on first nation reserves.

To ensure an orderly meeting, those of you online may speak and listen in the official language of your choice, but choose at the bottom centre of your screen the globe icon from which you can select floor, English or French. Whatever you select, you can actually change from English to French without further technical change. When speaking, ensure that your video is turned on, and please speak slowly and clearly. When you're not speaking, your microphone should be on mute.

Pursuant to the motion adopted on March 9, 2021, I must inform the committee that all witnesses have completed a technical pretest, so we're awaiting Chief Mathias of the Long Point First Nation, but we do have with us the chief of police, Roland Morrison, and Julian Falconer, partner at Falconers LLP, both on behalf of the Nishnawbe Aski Police Service.

Mr. Morrison and Mr. Falconer, we're going to start with a six-minute presentation from you, followed by questions.

Please go ahead.

**Chief Roland Morrison (Chief of Police, Nishnawbe Aski Police Service):** Good evening, committee members. My name is Roland Morrison. I'm the chief of police for Nishnawbe Aski Police Service.

Nishnawbe Aski Police Service is the largest indigenous police service here in Canada. We have over 220 officers, and with civilian staff, we have nearly 300 employees. We are responsible for policing 34 communities within the Nishnawbe Aski Nation territory, which is situated in northern Ontario. Of the 34 communities, 23 are remote fly-in communities and 11 are road access. However, I would probably deem some of our road access communities as remote, because they are in remote locations.

NAPS is a member of the First Nations Chiefs of Police Association, and we are also an IPCO member, which is the Indigenous Police Chiefs of Ontario. We are a self-administered police service,

and we are a signatory to a tripartite agreement with federal and provincial governments under the first nations policing program.

I want to thank everyone for the opportunity to speak here today. I am sure if this opportunity had gone out to the other chiefs, they would be more than welcome and very happy to be here before you, especially to talk about the enforcement on first nation reserves.

I'm aware that there is various justice programming in first nation communities across our country, from Tsuut'ina in Alberta, to Kahnawake in Quebec, to Akwesasne in Ontario, and also most recently to the Treaty 3 area in northwestern Ontario. I don't know particular details on the programming for these communities. However, what I can speak to you about is what is occurring in the Nishnawbe Aski Nation area.

What we do for enforcement in our communities is basically Criminal Code enforcement. Many of our first nations have enacted band bylaws. However, those bylaws are not prosecuted anymore. In the early 2000s, the Ministry of the Attorney General stopped prosecuting the band bylaws. The communities have been pressing MAG to get their bylaws heard. However, there has been a lot of reluctance from MAG to do this.

In some of our mostly road access communities, a few communities have adopted provisions from various provincial acts, such as the Highway Traffic Act and the Liquor Licence Act. It allows us to perform enforcement, and prosecution of that rests with the Ontario provincial offences court systems. Many of our communities, especially in the north, don't have access to the provincial offences systems.

As I mentioned earlier, NAPS falls under the first nations policing program, FNPP, which is an outdated program. The terms and conditions that govern the first nations program are very restrictive in what are eligible expenses. For example, right now, crime units, emergency response and victim services are deemed ineligible. Under the current Police Services Act and the forthcoming community policing and safety act, law enforcement, emergency response and victim services are all core functions for a police service.

Yet, under the first nations policing program, funding for these aspects of core police functions are not allowed. For example, within our police service, we have a program called the survivor assistance support program. The SASP, which is what we call it, is designed to support the immediate needs of victims of intimate partner abuse and sexual abuse.

When you look at the recommendations from recent inquiries such as the MMIWG, which the federal government has recognized, why is it that indigenous police services such as NAPS have to apply for funding for core policing functions? This is why the FNPP needs to be updated.

Without the proper funding to meet core functions in policing, and with no avenue of prosecution for first nation community-enacted laws, we had to be creative, especially when it comes to COVID enforcement. COVID enforcement in Ontario, as everyone is aware, used the existing provincial offences systems. As I stated, in many remote communities that we police, there is no system for enforcement. Like I said, we had to be creative.

This is where we asked our legal counsel, Falconers LLP, to come up with what we feel is something that our communities can use for code enforcement.

I am going to have our legal counsel explain exactly what we did.

Julian, I'll turn it over to you.

• (1840)

**Mr. Julian Falconer (Partner at Falconers LLP, Nishnawbe Aski Police Service):** Thank you, Chief.

I have the honour of not only speaking to you from the headquarters of Nishnawbe Aski Police Service in Thunder Bay, but I acknowledge that I do so in the traditional territory of Fort William First Nation, a treaty partner of the Robinson-Huron Treaty. As well, I simply acknowledge how fortunate and honoured we are, as a law firm, to act for the Nishnawbe Aski Police Service.

I have been party to commentary by many from Canada, and when I say "Canada", that's the Canadian federal government, many from the provincial Government of Ontario, all tripartite partners with NAPS. As we work our way through difficult negotiations, they routinely observe NAPS' very credible standing as a police service, in fact, one of the top indigenous police services, if not police services, in this country.

That said, we sent some materials that would have been distributed to each committee member in the last 20 minutes. There should have been three attachments, three PDFs. One of them is a Power-Point, and I would simply ask you to open that up. There are a few slides. Uncharacteristic of a lawyer, I'm going to try not to inundate you with materials, but I think I can whip through these slides pretty quickly and make the point that Chief Morrison asked me to make.

Do folks have access to their email, and in particular, the Power-Point? It's a PDF that my associate, Shelby Percival, would have sent you. Is that something that people have access to?

**Ms. Pam Damoff (Oakville North—Burlington, Lib.):** I don't have it.

**The Chair:** No.

**Mr. Julian Falconer:** The system didn't work.

**The Chair:** We're past the actual presentation time itself.

**Mr. Julian Falconer:** Okay, so I'll go quickly, then.

**The Chair:** Yes. Please go ahead.

**Mr. Julian Falconer:** First of all, when it comes to the template band council resolutions, or BCRs, I want to emphasize what Chief Morrison is referring to.

In fact, the traditional message to first nations about how they are to protect their communities, and in particular, control the flow of people coming into their communities has been routinely the subject of a claim that you have to use the Indian Act. You will have heard repeatedly how inefficient and difficult that process has been.

Chief Morrison reached out to communities, keeping in mind that there are 34 first nation communities under NAPS' jurisdiction, and reached out to community leaders. Really, in what in my view is a perfect example of true community policing, he engaged with the political chiefs and used their inherent sovereignty to help them. He offered legal support to create what we call template band council resolutions. These template resolutions, which are attached in the materials we provided you, assert inherent authority, pre-contact inherent sovereign authority, to protect the safety of community members in the context of pandemic.

It was our legal opinion that the assertion of that inherent authority is well founded based on, literally, pre-contact laws, and more importantly, based on the recognition of the courts of the role of the community in protecting its membership.

At the same time, these same BCRs adopted the provincial laws for Ontario around Emergency Management Civil Protection Act regulations and the Trespass to Property Act. They adopted them so that in addition to the assertion of sovereignty, so there would be respect for the sovereignty, the police service would have tools through the Trespass to Property Act, the law of general application, and the Emergency Management Civil Protection Act, a way forward to prosecute, to lay charges. The Attorney General for Ontario, in written correspondence, has committed to pursue those matters.

These template BCRs were all created so that each community could simply add the list of exceptions to their closure rules and the list of exceptions to their regulatory requirements under COVID. While they would be making the BCR their own, the BCRs were in template format so that each community would have a user-friendly way to engage with the police service and the police service would have a reliable means by which to enforce the community's laws.

These template BCRs are not only found in places in Nishnawbe Aski Nation territory that NAPS polices; they are being used in Treaty No. 3 territory, are being used on Manitoulin Island, and I'm pleased to observe, are being used as far south as Kettle and Stony Point. The bottom line is that they found a way to disabuse themselves of the Indian Act.

I want to move on, though—

• (1845)

**The Chair:** We're going to run out of time for the questioning round.

**Mr. Julian Falconer:** I'll take 30 seconds to complete.

**The Chair:** Okay.

**Mr. Julian Falconer:** I want to move on to a last point.

You will repeatedly hear in the context of submissions made around indigenous policing how limiting the first nations policing program is, what they refer to as FNPP. I want to make an observation as a lawyer that acts for NAPS, for Treaty 3, for the Indigenous Police Chiefs of Ontario.

Something really squirrely is going on. There are these terms and conditions that people find very limiting, naturally, because they are. As an example, they prohibit the usage of a lawyer to receive advice about funding agreements. But there's never a reference to the 1996 document, which is the first nations policing policy. It is an actual, visionary policy created in the 1990s that disappeared. The FNPP is still in effect, but you never hear about it. We call it the phantom policy. It has wide-ranging expectations that first nations will enjoy an equitable level of policing as everybody else. Instead, all you hear about are these very limiting terms and conditions. I believe a bit of a shell game has been played with what I call this phantom policy. It's important that you get access to this 1996 policy that Public Safety literally never displays or tells people about. Take a look at it. It has everything you need to create equitable policing. Sadly, the terms and conditions undermine that policy. How odd.

The terms and conditions used by Canada, used by Public Safety are inconsistent with the policy that is supposed to be behind the program. This needs to be recognized and addressed.

I thank you for the time you've given me.

**The Chair:** I'm sorry to stop that, but in view of the limited time, we do need to get to our committee questions.

I need to ask who will start for the Conservatives.

Are you up first, Jamie, or Mr. Vidal? I didn't get the list.

**Mr. Arnold Viersen (Peace River—Westlock, CPC):** It's Eric, and then me.

**The Chair:** Eric Melillo, please go ahead.

**Mr. Eric Melillo (Kenora, CPC):** Thank you, Mr. Chair.

I'm joining today from Kenora, in Treaty 3 territory. My riding extends right up to Hudson Bay and encompasses much of the territory that you operate in as well. I'm very appreciative to have the opportunity to have a conversation with both of you today.

Chief Morrison, I'll direct my questions to you, but if you, Mr. Falconer, want to jump in at any point, please don't be shy in doing so.

Chief Morrison, the expression you used was the “outdated program” that you're operating within. I'm hoping you can touch a bit more on that and maybe provide some more thoughts. We've already heard good testimony, but perhaps you could provide some more thoughts on how the program should be updated, how the agreement itself could change to improve the resources that you're offered.

**Chief Roland Morrison:** It's good to see members from north-western Ontario here. I think we also see Dr. Powlowski.

It's good to see you as well.

Eric, when we look at the first nations policing program, it is so restrictive in what policing can do. We have service gap deliveries. You heard me mention victim support. We have high rates of domestic violence occurring in our communities, yet we have to apply for funding to run a program to support victims. When you look at crime units, we look at our crime severity index for indigenous policing. Many indigenous policing services are very high on this index, yet we can't have crime units to investigate major crimes.

You look at emergency response and how many emergency response incidents occur, like missing people when they're out on the land harvesting. We can't have a program to go to search for them. We have to bring in all these services. We have to bring in our policing partners such as the OPP to conduct these services on our behalf.

Those are just a couple of the aspects when I say that the first nations policing program needs to be updated. When you look at a police service such as the Nishnawbe Aski Police Service with over 200 members, front-line police officers, and you think about another.... We are almost the size of the Thunder Bay Police Service. We're very similar in size, yet the Thunder Bay Police Service has victim support. They have emergency response. They have court sections. We have as well, but they have more court sections, more court programming. When you look at the size of our service and you compare us to the Thunder Bay Police Service, there is a lot of disparity there. We should have the same services as our counterpart just on Balmoral Street, but we don't have it.

When I say that the first nations policing program is outdated, we should be able to have these services within our police service delivery, but we don't because of the terms and conditions of the first nations policing program. Again, like you heard from our legal counsel, it is very restricted.

• (1850)

**Mr. Eric Melillo:** Do you feel there is still an opportunity to work within the framework and the system that has been created, or would you suggest working towards a new arrangement?

**Chief Roland Morrison:** With the federal government's announcement to make first nations policing an essential service, all the chiefs of police welcome this, but, to be honest, I'm not holding my breath for it. I'm not. It's going to take some time to get this legislation in place. With the consultation that has to occur, it's going to take time to update this program. It is.

We welcome the money that's been announced for first nations policing programs; however, when you look at the money that's been announced, and there's a lot of it, we still have to apply for this funding. Why are we applying for core function policing when it should already be available in our agreements? That's what is hindering our services.

The restrictiveness of the terms and conditions is what is restricting us. If we were to outfit all these programs or what we're doing onto the OPP, they would probably be able to get this money because of their access to dollars, but for us, we have to write proposals and business cases and apply for funding. Do we get it? Sometimes we do and sometimes we don't.

Not only do we have our own funding agreement, we also have several bilateral agreements. I have to praise my finance department for keeping track of all the reporting requirements for all these bilateral agreements that we have just to ensure that we can provide a service to our communities.

**The Chair:** Thanks very much. That's pretty well the six minutes.

Our next committee member is Pam Damoff.

Please go ahead.

**Ms. Pam Damoff:** Sorry, Chair, I didn't realize I was up just yet.

**The Chair:** Sorry, that's what I have on my list.

**Ms. Lenore Zann (Cumberland—Colchester, Lib.):** I thought it was supposed to be me. I'm ready to go. Thanks.

Mr. Falconer, what you proposed was very interesting regarding the first nations policing program policy of 1996. The mandate letters for the Minister of Public Safety and Emergency Preparedness and the Minister of Indigenous Services Canada refer to co-developing a legislative framework that recognizes first nations policing as an essential service, as was already said.

Many of the calls for justice from “Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls” relate to justice and policing. Specifically the call for justice 5.4 states:

We call upon all governments to immediately and dramatically transform Indigenous policing from its current state as a mere delegation to an exercise in self-governance and self-determination over policing. To do this, the federal government's First Nations Policing Program must be replaced with a new legislative and funding framework, consistent with international and domestic policing best practices and standards, that must be developed by the federal, provincial, and territorial governments in partnership with Indigenous Peoples.

Could this new legislative framework work? What do we need in order to address the issue of missing and murdered indigenous women and girls in a sustainable way?

• (1855)

**Mr. Julian Falconer:** Thank you for the very insightful question.

I would say that all of those recommendations are essential. We need to respect and recognize the reality of women and girls and indigenous victims honestly, in general, and that their being treated as less than worthy victims is part of the reality of colonialism and racism. The truth of the matter is, there is a long journey ahead of us.

Let me be a practical lawyer for a minute. You have a policy that says the following.... This is the 1996 policy, which you can't find on Public Safety's website. You can't find it in any of their literature. I'm told and I know it's still in force, but it has disappeared. This is what the policy says. It says—

**The Chair:** I'm sorry. Where did you find it, Mr. Falconer?

**Mr. Julian Falconer:** I found it buried in the 2014 Auditor General's report. It was very interesting. Here's the quote from the Auditor General's report in 2014. For the record, this is chapter 5, section 5.28 of the report:

According to Public Safety Canada, the principles of the 1996 First Nations Policing Policy are outdated and impractical, and the First Nations Policing Program has evolved since these principles were endorsed. The Department plans to update the principles of the Policy and incorporate them in the Program's terms and conditions.

This calls black white, and calls white black, because the terms and conditions are not in any way an evolution. They actually are a means by which they keep first nations down. Let me read to you from the 1996 policy:

First Nations communities should have access to policing services which are responsive to their particular needs and which are equal in quality and level of service to policing services found in communities with similar conditions in the region. First Nations should have input in determining the level and quality of the police services they are provided.

MP Zann, I appreciate your question, but I would say, yes, I want to see all of that happen, but you actually have an existing policy that they're hiding and they replaced it with the terms and conditions.

The most disturbing.... On March 11, Grand Chief Fiddler, the grand chief of Nishnawbe Aski Nation, and Chair Metatawabin, the chair of NAPS, wrote a letter to Minister Blair, a letter that has yet to be acknowledged—a letter dated March 11, two months ago—citing the phantom policy, asking what happened to it, and then citing the terms and conditions.

This is the last part I need you to know about these terms and conditions. They prohibit first nations from accessing legal counsel to interpret their funding agreements, to give them legal advice in respect of disputes around the funding agreements, or to get legal advice around negotiating their funding agreements. That is reminiscent of the Indian Act prohibition on accessing lawyers, and all of that is in a letter of March 11 to the minister. All of that is in the terms and conditions. None of it is consistent with the existing policy, but they buried the policy.

It's a shell game. I'm sorry to sound so dramatic. I call it the phantom policy. What they did, I'm assuming, is they realized they couldn't afford to do what the policy provides, so they made it disappear.

I ask you as a committee, to find the phantom policy and make them adhere to their own policy today. Yes, we should do all the things we're talking about, but, my God, you have what you need.

I'm sorry for the speech.

**Ms. Lenore Zann:** No, thank you very much. It was very informative.

Does this older policy also mention two-spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual people and how we can help protect them or how they can be protected?

• (1900)

**Mr. Julian Falconer:** No, but here's the "but". It specifically mentions legislated services at the same level of equity as the rest of the country. If you take that requirement for equity and transpose it to 2021, presto: The very issues you identify could be done. I'm not saying it's the answer; I'm saying telling the truth is to tell police leadership....

By the way, AFN just had a conference on policing. Everybody knows that. However, the phantom policy wasn't mentioned once, because nobody knows about it. It's a trick. I'm sorry to sound so dramatic, but it's really quite extraordinary.

You're quite right that there are many things missing. As a human rights lawyer, what you're saying is music to my ears.

**Ms. Lenore Zann:** Yes, and times have progressed, haven't they?

**Mr. Julian Falconer:** That's right. Yes, they have.

**Ms. Lenore Zann:** We need to deal with systemic racism, poverty and the intergenerational abuses. We need to put a stop to this to try to make equality right across the board.

**Mr. Julian Falconer:** That's fantastic.

**The Chair:** Lenore, I apologize for my intervention, but I felt it was helpful for the analysts to be able to access that—

**Ms. Lenore Zann:** I appreciate it.

**Mr. Julian Falconer:** Our materials include the policy. We are sending you, Mr. Chair, a full package. Attached to the letter to Minister Blair is the policy and the terms and conditions. We've attached a full package for the committee's consideration and all at Chief Morrison's instruction. I want to say he's quite a chief of police.

**Ms. Lenore Zann:** We will make sure it gets there. Thank you so much.

I'm sure my time is up.

**The Chair:** Yes. Thanks, Ms. Zann.

Go ahead, Madam Bérubé, for six minutes.

[Translation]

**Ms. Sylvie Bérubé (Abitibi—Baie-James—Nunavik—Eeyou, BQ):** Thank you, Mr. Chair.

I represent the territory of the Anishinaabe Crees of northern Quebec, Abitibi—Baie-James—Nunavik—Eeyou.

My question is for the chief of police.

We were just talking about systemic racism in policing, which leads to a lot of distrust of law enforcement, and the over-representation of indigenous inmates.

How do you build trust within your communities?

[English]

**Chief Roland Morrison:** Thank you very much for the question.

To give some context, my *kokoom* and *mooshum*, I would call them, my grandmother and grandfather, are originally from northern Quebec, the Cree nation, the Eeyou Eenou, so I'm very familiar with what's happening up there.

Certainly what's happening in those communities with respect to incarceration is occurring in our communities as well. When I mentioned earlier only enforcing the Criminal Code in our communities, in NAN communities, in NAPS, Nishnawbe Aski Police Service communities, we are charging people under the Criminal Code because that is the only law in many of our communities.

So what are we doing? We're just exacerbating the problem by putting people into jail. Indigenous culture has been here for thousands of years. We were a functioning society. We had laws, traditions, values and customs, and we need to get back to that, because the colonial system that we were using for law and order is not working.

That's why when we look at the first nations policing program, we need to be creative in how we're going to look at protecting indigenous people, their culture, their traditions, their values and their customs. We have to look at meeting those needs, because the current system is not working. Until we can look at alternative measures and get appropriate measures for indigenous people, we are always going to see overrepresentation of indigenous people in our corrections system, not only for our adults, but for our youth. It's going to keep happening until we can look at providing a system that fits the indigenous peoples across Canada.

As I mentioned earlier, a lot of communities are implementing their own systems. Is that working? I couldn't tell you. We'd have to find out from those communities whether or not it is. I can't speak to any alternative measures that are happening other than that cases are diverted at the criminal court. But they are still criminal cases, so people are getting criminal records for something that could be diverted. However, because it's the only system in place, many people are ending up with criminal records and that will hinder them in their own development. If they want to leave their communities to further themselves, that is going to be a hindrance to them. Yes, we have a pardon process, but we're still going to be creating people with criminal records.

• (1905)

[Translation]

**The Chair:** Ms. Bérubé, you have two minutes left.

**Ms. Sylvie Bérubé:** You still have a great organization.

Have you had difficulty recruiting police officers during the pandemic?

[English]

**Chief Roland Morrison:** Fortunately, we have been creative in how we recruit. We have gone into other parts of Canada. Actually, we've been to Manitoba to do a lot of recruiting.

Prior to COVID our human resources department always travelled to these colleges and universities to attract people. They have remembered the Nishnawbe Aski Police Service because we are a large service. We offer a very unique schedule of going in for two weeks and coming out for two weeks. We offer a good quality of work and home life, which is attractive to people. We offer competitive salaries that are comparable to those for the OPP and benefits as well, so we do get people who come to us.

However, because we are only a program, we are a revolving door. We get officers for a short period of time, and then they go on to larger police services with sustained funding. For example, my badge number is 1059 and our badge numbers are now in the 1700s. That's in the 24 years I've been with NAPS.

**The Chair:** Thanks, Chief, and thanks, Madam Bérubé.

Next is Ms. Blaney for six minutes.

**Ms. Rachel Blaney (North Island—Powell River, NDP):** I want to thank everyone for their testimony today.

I would come to you first, Mr. Falconer. Thank you for what you've shared today. I think it's incredibly important, but I'm just trying to clarify. I think you said there's a tripartite agreement, and I'm just wondering, if that's the case, whether you can tell us what the process was for negotiating that, how long it took and who was involved.

I can't help it. I'm going to come back to you, Chief Morrison. I'm just feeling hit by that reality, and I heard it earlier today about having a service if you are non-indigenous, and having a program if you are indigenous. That is just resonating in my brain.

Perhaps I can start with you, Mr. Falconer, and I'll come back to you, Chief Morrison.

**Mr. Julian Falconer:** The funding agreements operate under this umbrella of the FNPP, keeping in mind it's a program that was initiated pursuant to that policy in the 1990s that I referred to. In order to administer that policy, each first nation either does it in the so-called stand-alones—they're pure indigenous police services, and in Ontario there are nine—or through a shared arrangement. It could be with the OPP in Ontario, or it could be with the RCMP elsewhere in the country.

I don't mean to do a lecture—and thank you for the question, MP Blaney. I do want to emphasize the Ontario case is special. It's special because we successfully, over a period of years, negotiated amendments to the Police Services Act that are about to come into force in January. They permit the exercise of a legislative option by first nations to become a legislated police service in Ontario. This is very important because it does away with the discussions about “being an essential service”, and all that stuff. In Ontario, a first nation can apply and, if constituted, can actually become just like other police services, so that's important.

Getting back to MP Blaney's question, really it's been consistent with all other vestiges of colonialism, which is, whereas for the rest of Canada, health is legislatively protected, whereas for the rest of Canada, education is legislatively protected, when it comes to first nations, when it comes to indigenous people across the country, of course, these are all done by programs. Policing was no exception. The history has been that they show up with a cheque to indigenous people, and they say, “This is your allotment under the funding agreement for this round.” That was historically called a negotiation. It was nonsense. They simply said, “This is what's there. Take it or leave it.”

So, indigenous services struggled along.

Along came, frankly, Grand Chief Yesno and then Grand Chief Fiddler of Nishnawbe Aski Nation, along with Chief Terry Armstrong, the predecessor to Roland Morrison, and then Chief Morrison. They said to Ontario and Canada, “Do you know what? If you don't, one, give us a process for creating a legislated service”—and that's that option I talked about—“and, two, sign these terms of reference that will actually determine how we negotiate in good faith, we're not doing it anymore. We're going to give you back the vehicle that has no brakes and you drive it.”

Because of what Chief Morrison does, which is police so many remote communities, no surprise, they ran the numbers and found out it would cost them a zillion dollars to police these communities. So, all of a sudden, NAN and NAPS enjoyed a leverage, and used it in the negotiations. Now, funding agreement negotiations for NAPS, I'm told, and I've been a negotiator for them—with them—for two or three rounds now, look different than they used to.

What I need to communicate to everybody is that that is not the case for the smaller services. That is not the case for the smaller indigenous communities. They remain complete hostages to this totally “keep first nations down” approach. I'm sorry to sound shrill, but it is important to appreciate that the people who suffer more today are...these services that don't have the leverage. They continue to believe they're not allowed to have legal advice. They continue to engage in this tripartite process, which is not a negotiation. It's, “Here's your cheque and this is what you get,” and they leave.

I hope that answers your question.

• (1910)

**Ms. Rachel Blaney:** It does answer my question, and quite well, might I add.

Chief Morrison, you talked about the victim services, emergency response and so on that are not considered eligible expenses, which is interesting. You talked about how you deal with that by bringing the other police in. I'm wondering if you could talk about that and what that does to your relationship building and trust building within the community. I know there's a history there that can be very painful, and I would assume there's trust for your police force, but maybe not for other police forces.



**Chief Roland Morrison:** That is correct. We rely heavily on the OPP to supplement our service gap deliveries. They come in for major crimes, obviously for homicide investigations. They have the capacity to do so. When we look at providing emergency response and access to specialized units, such as their tactical and emergency response unit, helicopters, identification units and forensics, these are programs or services that we have to access from our policing partners. We don't have them.

Comparing the size of our service to Thunder Bay, Thunder Bay has all those services. We don't. That's why the terms and conditions are so restrictive in the first nations policing program.

**The Chair:** I'm sorry to interrupt. This is quite important, but we have time for only four more questions, one from each of the parties, before our allotted time is up.

Ms. Blaney, thank you.

Mr. Viersen, you're up next for five minutes.

**Mr. Arnold Viersen:** Thank you, Mr. Chair.

I want to thank the witnesses for appearing at our committee today. I appreciate your testimony.

This 1996 document has really piqued my interest. We'll have to get our hands on that. I'm sure the clerk will be able to dig it up. If we can't do that, then I guess our individual offices will have to work on that as well.

That's unless you have a copy of it, Mr. Falconer.

• (1915)

**Mr. Julian Falconer:** Yes. The package, including the 1996 policy, has been sent to Mr. Clerk. We got an acknowledgement. I see in an email that it's been received. It was sent to you today in the last hour and a half.

**Mr. Arnold Viersen:** Then I'm sure it will be in my inbox shortly. I appreciate that.

It's been fascinating to see as we move across the country, starting out on the west coast and now moving to Ontario, that every jurisdiction, every province, is different. Your testimony is proving that again today. It seems interesting that you are well integrated with the provincial system in terms of prosecution. Where I am from, we have an indigenous police service, and yet they're unable to get prosecution to happen. Who is going to pay for that, and where is the jurisdiction, particularly when it comes to band council laws?

I'm wondering if both of you could flesh that out a little bit. How does that work in your area? Are there things like nation or band tribunals or courts that you can appeal to, or is that an option that you would suggest?

I'll start with Mr. Falconer and then go to Mr. Morrison.

**Mr. Julian Falconer:** First of all, I want to be clear about the initiative that Chief Morrison has led and that has caught on beyond his territory. That's the idea of these BCRs that combine assertions of inherent jurisdiction in the context of the pandemic but incorporate provincial laws around trespass and the emergency management laws that the Ontario provincial government ordered. These

are unique. There is still a struggle to even get them to catch on across NAN territory.

So the integration we're talking about...and the attorney general's agreement, which is part of the material, to prosecute these is brand new. I wouldn't describe us as having been successful. Historically, what's happened is that the pandemic has created that initiative. I think that is incredibly important momentum to say that this is a crisis and we expect you to support us.

I also would observe this. The shock is that it's not just the machinery of government that makes the issue of recognizing indigenous law challenging. Chief Morrison and I were chatting about this. I can tell you that law firms are used to a tool box, the Indian Act tool box. If it's not in the tool box they historically have used, they look at it with suspicion and don't want to help indigenous people go forward. I don't mean to sound like a competitive, nasty guy. I am simply trying to tell you that the challenge comes from all quarters. That Indian Act thinking is ingrained in all of us.

I'll leave Chief Morrison to answer you as well, but I do say that this is new. What we're pushing is pushing because of the pandemic, in part.

**Mr. Arnold Viersen:** To sum up the thought, if it doesn't say that you can't do it, that's not allowing that you can't do it kind of thing, right?

**Mr. Julian Falconer:** That's true, and I should draw something to your attention, because it just came out in February of this year. To be honest, I think it speaks to what Chief Morrison said.

It's a quote from a judgment involving *Iskatewizaagegan*, so Shoal Lake No. 39 versus Winnipeg. Winnipeg's sole source of drinking water is my client Shoal Lake, since 1913, 100 million gallons a day.

This is what a judge said. It's one paragraph. I promise this won't take long. He recognized the role of indigenous law. I think you will be fascinated by this. It's paragraph 48 of a February judgment, just this February:

The law that governs the relationship between Canada and Aboriginal peoples of Canada is what is now known as Aboriginal law. Indigenous law is not the same as Aboriginal law. Both before and after the arrival of European settlers, the Aboriginal peoples in North America had well-developed civilizations that had legal systems and legal customs. Those discrete legal systems are the source of Indigenous law.

We will make sure we get you that passage, but it's exactly what Chief Morrison was talking about before, and it reflects a Superior Court Judge, Justice Perell, who has gone to the next level. We all have to get there, right?

• (1920)

**The Chair:** I think that's just about time, Arnold.

**Mr. Arnold Viersen:** Thank you, Mr. Chair.

**The Chair:** Pam Damoff, you have five minutes.

**Ms. Pam Damoff:** Thanks, Chair.

Mr. Falconer, it's nice to see you again. You appeared at the public safety committee when we were studying racism in policing.

Chief Morrison, I want to commend you and the NAN police service for the tremendous work you do. You really are an example for the entire country.

By your description of the challenges you have, I know you have made a case for validating why Minister Blair has been tasked with making policing an essential service, in collaboration with Minister Miller. However, you're right; it's not going to happen overnight.

You're also president of the Indigenous Police Chiefs of Ontario. This gets complicated in the jurisdiction between federal and provincial. The tripartite agreement, if I'm not mistaken, is 52% federal funding and 48% provincial funding.

We will use Ontario as an example. We need to get Ontario at the table. In your role as president of the police chiefs, are there conversations going on right now with the federal and provincial governments on how we can modernize these agreements?

**Chief Roland Morrison:** Yes. We have ongoing discussions with the IPCO entity. We have ongoing discussions with both levels of government, and we're able to bring forward items of concern and things that we feel are necessary to address.

As an example, right now, with the modernization of policing here in the province of Ontario, Six Nations Police Service and Akwesasne are using a reporting system that I guess is called the Inter-pol system.

In order to look at what MAG is doing in terms of its court systems, police services have to be on the records management system called Niche. Everything is flowing through Niche. However, Six Nations and Akwesasne will not be able to have this modernization for their service, because, like Julian said earlier, it's, "Here's your cheque. This is what you're getting for your agreement." To modernize, it's going to cost them hundreds of thousands of dollars.

The problem is—

**Ms. Pam Damoff:** There's no money for them to do it.

**Chief Roland Morrison:** Exactly. Their budgets are set.

Here in the province of Ontario, the provincial government has been very, very co-operative in terms of making sure that we have access to the financial resources to make these changes. The discussions with Ontario have been very positive.

I would love to say that—

**Ms. Pam Damoff:** Some of that was because you were so adamant, though. You had people die in custody because you didn't have a proper place to put them.

If you hadn't sort of drawn a line in the sand—and Mr. Falconer described it earlier—you wouldn't be in the position you were.... You basically said you were not going to have this happen to your citizens any longer, right?

**Chief Roland Morrison:** Yes.

When you look at the death of Ricardo Wesley and Jamie Goodwin in Kashechewan in 2006, if we didn't have that happen, if we didn't have that tragedy, what improvements would have occurred in the Nishnawbe Aski Nation for policing?

**Ms. Pam Damoff:** What a horrible situation to be in, though, that two people had to die in order to make change.

I know my colleague, Dr. Powlowski, wants to ask a question, because the NAN is very near and dear to his heart.

Marcus, I'm going to turn it over to you.

Thank you, Chief Morrison and Mr. Falconer.

**Mr. Marcus Powlowski (Thunder Bay—Rainy River, Lib.):** Mr. Falconer and Chief Morrison, you talked to the limitations in the services that the Nishnawbe Aski Police Service have because of the restrictions in the terms and conditions under the first nations policing program.

You also mentioned there's an upcoming amendment to, I guess, the Ontario Police Services Act which would allow you to become a police force like other police forces. Would this get rid of these limitations which are preventing you from accessing the same level of service as the Thunder Bay Police Service? Is this the solution for you guys?

**Chief Roland Morrison:** Yes, absolutely. There are adequacy standards under the legislation, within the province of Ontario, so if we don't meet the standards, there is an avenue for us to make an application to receive funding to bring us up to the standard.

That is why, when you look at the legislation here in Ontario, which we've been told is going to be ready in January 2022, we are going to be making a submission to opt in under the legislation, so we can get the resources to have a proper police service that delivers all the service requirements for the Nishnawbe Aski Nation people, because they deserve it.

• (1925)

**The Chair:** Thank you.

The Ontario Police Services Act calls for adequate and effective policing.

We'll now go to Madam Bérubé for two and a half minutes.

[*Translation*]

**Ms. Sylvie Bérubé:** Thank you, Mr. Chair.

We're talking about the budget. The government proposed \$860 million over five years and \$145 million thereafter.

Are you satisfied with the budget?

Will it address some of the financial problems you were talking about earlier?

[English]

**Chief Roland Morrison:** When you have money set aside for first nations policing, and you look at all the policing services across Canada, we have to compete with the respective indigenous services for this money. When you look at the province of Ontario and here in northwestern Ontario, you have the Lac Seul Police Service. It is an 11 member police service. The distribution of money is not going to be fair. It should be fair. It should ensure that each police service has the same service delivery to ensure that it's meeting the needs of its people.

As grateful as we are for the money, when we look at legislation, we should be able to have this money within our police service to deliver programs, and that should come through the legislation. Yet, when you look at what's being provided, we are still having to compete with each other in a divisive manner to access funding.

Today, I informed the NAN chiefs—we have a call every two weeks—about the particulars of this funding that was announced, and that communities need to access programming as well to basically secure themselves, to have security programs for their communities to supplement and assist policing.

It shouldn't be that way, but that's what communities have to do. They have peacekeepers, because we don't have adequate funding to employ a lot of officers in many of our communities.

This is a great budget. It's going to improve our communities; however, it needs to be sustainable. When you look at it, it's only for five years, and then what?

**The Chair:** Thanks, Chief.

The final intervention will be from Ms. Blaney.

**Ms. Rachel Blaney:** Thank you, Chair.

My question is for Chief Morrison.

You talked about the impacts on the reality of missing and murdered indigenous women and girls, because of the lack of funding. I just can't help but tie that in with the limited resources you have for victim services. I'm wondering if you can talk about that, and the cultural responsiveness that you must have versus an outside police force.

**Chief Roland Morrison:** When you look at our police service and you look at the Nishnawbe Aski Nation territory in our north-west area, we have the Ojibway culture. In our more centralized area north of Thunder Bay and in between James Bay, we have the Oji-Cree culture. Then you have the Muskego Cree on the east coast of James Bay. These are different cultures, different values and traditions.

What we did with the survivor assistance support program was we looked at getting people who are from our communities, who speak the languages and who can work with our victims. We advertised for social workers. Because of the trauma that they're already facing, do they want to continue to speak to a police officer? What we did was creative. We looked at employing social workers to work directly with our victims.

Unfortunately, as beneficial as.... We were happy to get the funding, but that funding that we had was only for one year, so we have a program for one year to help our victims, and then we're going to have to reapply. It's sad. It's a sad state when that has to happen, especially when you look at the recommendations coming out of the inquiry and the commitment to ensure there is service delivery to meet the needs, yet for a police service servicing 34 communities, we got funding for three people for a population of nearly 40,000. It's not hitting the mark. That's way off.

● (1930)

**Ms. Rachel Blaney:** After a year, it's not going to be fixed, I would assume.

**The Chair:** We'll have to leave it at that.

**Ms. Rachel Blaney:** Thank you so much.

**The Chair:** Thanks very much, everybody.

Time is our enemy. It's such a fascinating, and beyond that, an important conversation.

All of the material that you spoke about will be brought into our testimony. You can be assured of that.

We have to suspend briefly and I'll ask everyone to leave the meeting and come right back again in camera.

[Proceedings continue in camera]





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