

BC First Nations Justice Plan

June 20, 2007

Introduction

As the original stewards and owners of the land now known as British Columbia, First Nations have cultures and ways of life, including systems of governance and law. First Nations have never ceded, surrendered or agreed to abandon the land, their culture, or their jurisdiction and governance systems. These diverse systems include specific laws and institutions, which assist in resolving disputes within and between communities and addressing individual and community justice matters.

There are key differences in the way that First Nations and Canadian society view justice. Primarily, society as a whole tries to control actions it considers potentially harmful, and the key focus of justice policies is on punishment of the person to protect society and to prevent re-occurrence of the behaviour. However, First Nations view justice as a way to restore the peace and balance within the community; there is a sense that the entire community has been affected and that reconciliation needs to occur with everyone involved: the accused, the victim, and the community. This difference in perspective challenges the appropriateness of the present legal and justice system for First Nations.

Socio-economic Impacts

The justice system, as it currently exists in British Columbia, often results in the systemic, cultural discrimination of First Nations. The system does not recognize that differences in culture, values, language and traditions directly impact the experience and treatment of First Nations in the justice system, including in court appearances, defense case reasoning, choosing pleas of defense, confronting accusers, and showing emotion in court – the system assumes that punishment equally affects all persons regardless of background or culture.

There are many reports illustrating that First Nations people are disproportionately represented at all levels of the criminal justice system. For instance, Aboriginal people account for approximately 3% of Canada's population (Statistics Canada, 2001), yet account for approximately 18% of the population incarcerated in federal correctional facilities (Trevethan, S., Tremblay, S., & Carter, J. 2000). In British Columbia, 20% of the prisoner population consists of Aboriginal peoples (Juristat-Statistics Canada). Based on these statistics, either Aboriginal people commit a disproportionate amount of crime, or more likely, the justice system systemically discriminates against Aboriginal peoples.

The devastating history of colonization, social inequality, and the historic and modern government policies of oppression and alienation of lands and resources contribute to the current socio-economic conditions inflicting First Nations communities. The intergenerational and continuing effects of residential schools, as well as the loss of land, jurisdiction, and culture, has led to often devastating social conditions including high levels of poverty, alcohol and drug abuse, suicide rates, violence, and a loss in parenting skills. This myriad of socio economic factors directly contributes to First Nations involvement in the justice system. First Nations

carry a collective responsibility to take care of the health and well-being of their communities and land and studies have confirmed the explicit link between self-determination and “closing the gaps” in socio-economic outcomes. Thus, jurisdiction and self-determination are key to reconciling inequities in justice matters.

Political Context

Leadership Accord

On March 17, 2005, the political Executives of the First Nations Summit, Union of BC Indian Chiefs and BC Assembly of First Nations signed a Leadership Accord, committing to work together through a First Nations Leadership Council to politically represent the interests of First Nations in British Columbia and develop strategies and actions to bring about significant and substantive changes to government policy that will benefit all First Nations in British Columbia.

New Relationship

In March 2005, the First Nations Leadership Council and the Province of British Columbia entered into a New Relationship, in which the Parties committed to:

- a new government-to-government relationship based on respect, recognition and accommodation of Aboriginal title and rights;
- reconciliation of Crown titles and jurisdictions;
- establish processes and institutions for shared decision-making about the land and resources and for revenue and benefit sharing; and
- work together to achieve strong governments, social justice and economic self-sufficiency for First Nations.

A First Nations- Federal Crown Political Accord

On May 31, 2005 A First Nations-Federal Crown Political Accord on the Recognition and Implementation of First Nation Governments was signed between the Assembly of First Nations (AFN) on behalf of First Nations and Indian and Northern Affairs Canada (INAC) on behalf of Canada. It commits the Parties to work jointly to promote meaningful processes for reconciliation and implementation of constitutionally recognized aboriginal rights to achieve an improved quality of life and to support policy transformation in areas of common interest.

Transformative Change Accord

On November 25, 2005, a Transformative Change Accord was signed by the First Nations Leadership Council, the Government of Canada, and the Province of British Columbia. The Accord commits the parties to close the socio-economic gap between First Nations and other British Columbians over the next 10 years, reconcile Aboriginal title and rights with Crown title, and establish a new relationship based on mutual respect and recognition. Specific areas of focus under the Accord are: relationships; health; education; housing; and economic opportunities.

Taken together, these agreements demonstrate a new era of unity amongst First Nations, and a commitment between First Nations and governments to work

collaboratively to implement respect and recognition for one another, address historical inequities, and resolve existing disparities.

In the February 14, 2005 Speech from the Throne, Premier Campbell stated that "community courts and Aboriginal courts offer the potential to take pressure off our traditional court system through innovative approaches that have worked well in other jurisdictions". The Premier committed to using traditional approaches as an integrated strategy to improve public safety, to reduce property crime, and to examine new approaches for correctional facilities that better meet the needs of First Nations and society.

Given this political context, BC First Nations called upon the First Nations Leadership Council to hold a BC First Nations Justice Forum to develop a BC First Nations Justice Action Plan. This Action Plan, produced by BC First Nations, sets out a vision, goals, principles and actions designed to implement First Nations jurisdiction over justice programs within First Nations communities; allow for dialogue among all parties; reduce overrepresentation of First Nations in correctional facilities; eliminate systemic discrimination within the justice system; and create processes for the involvement of First Nations individuals, cultures and values within the mainstream justice system.

Vision

Justice is the process of maintaining peaceful relations and harmonious co-existence between all elements of creation. The full acknowledgment and respect of natural and First Nations laws ensures the overall health and well-being of First Nations on physical, emotional, social, and spiritual levels.

Goals

- 1) To decrease the over-representation of First Nations peoples in Canada's jails and prisons, both federal and provincial.
- 2) To ensure that First Nation justice is viewed with a holistic approach which would place an emphasis on healing and the recognition of First Nations jurisdiction and authority to enact their own laws and justice systems within their territories.
- 3) To see the enactment of legislation that recognizes the right of First Nations people to establish our own justice systems.
- 4) To increase the involvement of people of First Nations ancestry in criminal justice professions (i.e. First Nations Police Officers, translators, Native Courtworkers, and Aboriginal judges).
- 5) To ensure those who work in the criminal justice system take the proper steps to enhance their understanding of the First Nations cultures with which they interact.
- 6) To empower First Nations to identify, direct and implement comprehensive community healing and prevention strategies as a long term initiative to reduce crime and criminal activity at a local level.

Principles

- 1) Respect, Recognition, and Accommodation: Aboriginal title and rights must be recognized through shared decision-making arrangements and appropriate consultation and accommodation processes.
- 2) Diversity: The diverse cultural values, laws, customs, traditions and languages among BC First Nations, shall be respected and supported. Diverse approaches and processes with regards to First Nations involvement in the justice arena will also be encouraged.
- 3) Innovation: New approaches and creative means of developing and responding to the administration of justice will be supported.
- 4) Research and Information Sharing: Traditional knowledge and research conducted by First Nations will be respected and incorporated into mainstream justice activities. All relevant studies and information will be shared with First Nations.
- 5) Education and Training: Opportunity to learn will be promoted and the training of First Nations individuals will be prioritized.
- 6) Capacity and Financial Resources: First Nations must have the appropriate human resource and financial capacity to engage in discussions and negotiations with respect to justice.

Section I: General

Action Items:

- Establish a First Nations Justice Council responsible for the implementation of this Plan.
- Work with the First Nations Leadership Council to implement the commitment in the New Relationship to “develop new institutions or structures to negotiate Government-to-Government Agreements for shared decision-making.”
- Establish a BC First Nations Ombudsman responsible for receiving, investigating and resolving complaints brought forward by First Nations against judges, police, child protection agencies, corrections or other provincial service delivery agencies. The Ombudsman would ensure that areas of concern are appropriately identified and addressed, advocate on behalf of First Nations complainants and ensure the safety of complainants, and provide support and a safe environment for government or justice personnel to disclose necessary information regarding serious crimes that impact First Nations people and communities.
- Work to preserve and revitalize and integrate First Nations laws, customs, traditions and languages into mainstream justice systems
- Facilitate the full involvement of First Nations, including the participation of First Nations Elders, in the development of federal and provincial legislation and policy which deals with justice including, but not limited to, areas such as the Criminal Code, Corrections, First Nations Policing, the Inquiries Act, First Nations youth

justice.

- Work with federal and provincial governments to establish a common vision and strategy including processes and timelines, with respect to the administration of justice including:
 - o the development of administrative capacities and infrastructure, the conduct of training, and certification of personnel; and
 - o the establishment, funding, legal recognition, and procedural integration of all aspects of administration of justice, including policing, courts, and corrections.
- Support the appointment of a First Nations representative on the Judicial Council, Supreme Court of BC and Canada.
- Advocate for a First Nations role in the appointment of the judge, the mandate, and the development of the terms of reference in relevant judicial inquiries.
- Conduct a review of all relevant inquiries to date in order to lobby for the implementation of all recommendations which have yet to be carried out.
- Lobby for timeliness in the holding of relevant inquiries (so that evidence and testimony will be at its best) and in the implementation of all recommendations.
- Support meaningful First Nations participation on justice panels and appropriate advisory boards.
- Work with BC First Nations and the national AFN on the renewal of the Aboriginal Justice Strategy.
- Support the development of community based Justice Plans, including justice components of comprehensive community plans.
- Support equal access for First Nations people to justice programs and services provided by the provincial and federal governments.
- Develop public education and awareness campaigns to recognize the value and contribution of First Nations and to address systemic racism that is entrenched throughout society.
- Support the establishment of cross-cultural awareness, training programs, and educational materials for all levels of government and justice agencies, to enhance respect for First Nations values.

Section II: Improving Policing/Correctional Services in First Nations Communities

Action Items:

- Establish a provincial First Nation Police Commission and Commissioner to develop culturally appropriate policing standards.
- Support an integrated and harmonized approach to policing between the Royal

Canadian Mounted Police (RCMP), Municipal Police Forces, and First Nations.

- Advocate for First Nations input in the development of community tri-partite (CTAs) agreements.
- Incorporate First Nations input into bilateral federal/provincial agreements which have an impact on police services in First Nations communities.
- Support local/regional relationships between First Nations and local detachments, and/or First Nations police, which includes positive relationship-building events between the police and the community.
- Work with Community Safety Constable pilot programs to identify adequate resources for Community Safety Constables.
- Advocate for First Nation input in selection of police member(s) stationed in their community.
- Support the development of First Nations Police officers within First Nations communities on and off-reserve.
- Lobby for revenue sharing derived from fines collected within First Nations communities to help build First Nations capacity.
- Promote culturally-relevant and community-based approaches to youth justice programs and agencies.
- Lobby for a policy that requires that, once First Nations people are taken into custody, a First Nations person is immediately engaged to ensure the health and safety of the person in custody.
- Develop effective and transparent communication strategies between police and First Nations communities especially in occurrence of a First Nations death in custody.
- Lobby for increased transparency, accountability and First Nation involvement in police processes for internal investigations and police complaints.
- Work with First Nations leaders in the development of community-specific and community-driven First Nations sentencing panels.
- Support First Nations that wish to establish community-based correctional facilities which are staffed by First Nations Corrections Officers.
- Support culturally-appropriate programs for First Nations inmates.
- Develop a strategy for the successful reintegration and rehabilitation of First Nations inmates back into their communities.
- Support the establishment of probation services for remote First Nations communities.
- Support the representation of First Nations on the National Parole Board.

Section III: Improving Public Safety

Action Items:

- Encourage the development of community-based crime prevention measures and other strategies to ensure community safety.
- Lobby for the appointment of First Nations Peacekeepers as officers of the court.
- Renew, and educate First Nations about, the Public Safety Protocol between the First Nations Leadership Council and the Royal Canadian Mounted Police.
- Lobby for implementation of restorative justice programs in fisheries and wildlife in order to increase the protection and safety of First Nations hunters and fishers.
- Work with the First Nations Fisheries Council to:
 - o Lobby government to address the over-representation of First Nations fishing and hunting charges, stemming from the exercise of First Nations rights.
 - o Lobby government to develop First Nations justice and conservation courts.
 - o Hold a restorative/reconciliation ceremony between all users of fisheries to ensure a new relationship of respect and safety.
- Lobby to increase gang and organized crime awareness initiatives within communities.

Section IV: Community Strategies for Health and Safety for First Nations Children and Families

Action Items:

- Work with the First Nations Health Council to:
 - o Design, develop, and implement culturally appropriate treatment programs “closer to home” to ensure First Nations connection with their home territory.
 - o Create awareness of Fetal Alcohol Syndrome and other related diseases that contribute to the increased numbers of First Nations within the justice system.
- Work with appropriate First Nations partner organizations to:
 - o Negotiate data-sharing agreements with governments with respect to First Nations children in care, apprehensions of First Nations children, and deaths of First Nations children in care.
 - o Work with governments to implement open and transparent reporting processes when there is a death of a First Nations child in care.
 - o Support and lobby for First Nations jurisdiction and responsibility over children

and youth with adequate resources and increased capacity.

- o Facilitate working relationships between Child Welfare Agencies, Youth Justice Personnel and the Youth Court.

- o Advocate that the rights First Nations of children, including international rights, are recognized and inform how we should proceed.

- o Advocate to have the voices of First Nations children are heard, as this will reveal broader and more comprehensive issues that need to be addressed.

- o Advocate for meaningful family involvement in Child Death Reviews to create preventative and protective measures for children.

- o Develop strategies and provide resources for supporting First Nations families to prevent apprehension, crisis intervention, trauma, and re-victimization.

- o Advocate for programs that provide safe and protective environments and other supports for children who have been victimized.

- Lobby for the development of Safe Houses for First Nations women and children within traditional territories and in urban centers.

- Given that there is a direct link between early childhood experiences and youth/adult involvement in the justice system, work with Early Childhood Development partners to:

- o Promote cultural teachings for First Nations children;

- o Reduce poverty in First Nations communities;

- o Encourage parenting circles in First Nations communities; and

- o Promote Early Childhood Development programs for First Nations children.

- Support the development of peacemaking programs in First Nations communities to assist in conflict resolution.

- Advocate for the provision of mediation, counseling, and other support services for victims and offenders.

- Create new holistic methods for interventions and healing.

- Lobby for the support and recognition of restorative and/or traditional justice systems as effective and legitimate means of prevention, resolution and rehabilitation in First Nation communities.

- Work with governments to eliminate duplication of services between the government and First Nations communities.

Section V: Improving Linkages with First Nations Justice Organizations

Action Items:

- Establish and support positive linkages and networks between the diverse range of First Nations justice organizations.
 - Create standards for the professional delivery of justice programs and services to First Nations people.
 - Encourage and support the First Nations Education Steering Committee (FNESC) to develop curriculum materials on administration of justice issues for First Nations schools.
 - Develop programs in conjunction with Local Education Authorities (LEA) to acquaint community members with the law and the justice system, and encourage First Nations participation as jurors.
 - Provide information, educational materials, workshops, and general support for communities who are dealing with justice issues.
 - Advocate for adequate resources and support for existing First Nations programs and services. Funding for any new policy and program development initiatives is not to be derived from existing programs and services.
 - Recognize the multi-dimensional roles and responsibilities of justice service and support providers in First Nations communities.
 - Coordinate meaningful First Nation input into funding formulas for Aboriginal justice organizations.
 - Lobby to increase the capacity of Aboriginal justice service providers so that they may take on referrals of repeat offenders.
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- **BC First Nations Justice Council/Working Group
Draft Terms of Reference – Working Draft**

Preamble

The BC First Nations Justice Council Action Plan (“Action Plan”) was drafted at a province-wide forum held in Vancouver, BC on May 14-16, 2007. The Action Plan calls for:

- Immediate appointments by the First Nations Leadership Council of an interim working group who will, under the terms of reference, develop an interim budget and work plan in order to initiate and support immediate action related to the roll out of this plan;
- Immediate appointment by the First Nations Leadership Council of an interim host agency to administer start-up funds related to coordination activities and to support immediate developments associated with this action plan.

Purpose

A BC First Nations Justice Council Working Group will implement the BC First Nations Justice Plan and advise First Nations peoples throughout BC, and the First Nations Leadership Council, on justice issues.

Structure

The BC Assembly of First Nations, the Union of BC Indian Chiefs, and the First Nations Summit will each appoint a representative to the Justice Council Working Group. These appointees should be made up of people that are representative of the various regions across British Columbia. The members should also be well versed in justice issues, as well as the histories and cultures of the First Nations that are located within British Columbia. They will be responsible for reporting to the First Nations Leadership Council on a quarterly basis.

Mandate

The objectives of this working group will include, but are not limited to:

- Guiding the implementation of the BC First Nations Justice Plan;
- Developing a five-year work plan and budget as a first order of business. This will include:

Development and maintenance of working relationships with the Provincial and Federal Governments in the areas of policing, enforcement, public safety, community correctional services, courts, and social services

Development of working relationships with First Nations Justice Organization and First Nations Service Delivery Organizations.

- o Identification of opportunities to create policies and expand existing services and

programs with government partners that will support the development of First Nations justice services.

- o Creation of annual communication plans, internal and external, to the Working Group to ensure First Nations community is informed.
- o Creation of a process whereby First Nations complaints about the justice system can be heard.
- o Organization of another BC First Nations Justice Forum to solicit First Nations input into the five year plan.

- Advocating on behalf of First Nations community with the provincial and federal governments.
- Support the implementation of strategies and delivery of services that benefit all First Nations residing within British Columbia, including urban centres.
- Find creative ways to meet the needs of small and remote communities that do not have same access to resources and capacity.
- Liaising with other Aboriginal groups and organizations within British Columbia, i.e. Metis Nation British Columbia, non-Status First Nations, etc.
- Working with the various First Nations and Aboriginal justice programs that are already established in British Columbia.
- Publishing reports to help build First Nations specific expertise on justice issues enabling informed responses to specific justice proposals and government initiatives.
- Where mandated, assisting First Nation communities to negotiate on specific issues of concern that may be identified from time to time.
- Producing a report of the BC First Nations Justice Forum held in Vancouver, BC on May 14-16, 2007.
- Formulating recommendations for the establishment and ongoing operations of a BC First Nations Justice Council and for other structures related to the implementation of the BC First Nations Justice Action Plan.

Reporting

The Working Group will report to the First Nations Leadership Council and the First Nations Summit, the Union of BC Indian Chiefs and the BC Assembly of First Nations as required.

Timeline

It is anticipated that the Working Group will complete the 2007/2008 work plan by March 31, 2007. The Working Group can, however, be renewed upon the recommendation of the First Nations Leadership Council.

Next Steps

- Appoint an interim technical team to take direction from the appointed Working Group
- Develop its terms of reference to be approved by the First Nations Leadership Council.
- Seek federal and provincial funding support to resource the Working Group.

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