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# Engaging on Federal First Nations Police Services Legislation

## Discussion Guide

Spring 2022



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## Purpose

The purpose of this document is to support your participation in Government of Canada-led engagement sessions on federal First Nations police services legislation. It outlines the co-development process, relevant background information on First Nations police services and questions that will be raised during the engagement process to help foster discussion. The concepts and ideas proposed in this document are designed to spark dialogue and could evolve over time.

First Nations in Canada have long called for reform to how First Nations police services are funded and have advocated for federal legislation that recognizes First Nations policing as an essential service. These calls for reform were heightened with the release of the [Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls](#), which included Call for Justice 5.4 to reform the delivery of policing services in Indigenous communities.

Budget 2021 proposed to provide \$43.7 million over five years, beginning in 2021-2022, to co-develop a legislative framework for First Nations policing that recognizes First Nations policing as an essential service. The [Federal Pathway to Address Missing and Murdered Indigenous Women, Girls and 2SLGBTQIA+ People](#) reiterated the commitment to co-develop a legislative framework. In the December 2021 Mandate Letters, the Minister of Public Safety was mandated to “continue to work with First Nations partners to co-develop a legislative framework for First Nations policing...” with the support of the Minister of Indigenous Services and the Minister of Crown-Indigenous Relations.

Recognizing First Nations police services as an essential service through legislation would underscore that these services are indispensable for community safety and security, and need to be adequately resourced to provide culturally responsive policing services. Legislation could outline clear processes for federal support, as well as speak to the establishment of measures to provide First Nations police services with stable funding. The federal legislation would only apply to First Nations police services and would not impact the services of the Royal Canadian Mounted Police, Ontario Provincial Police, Sûreté du Québec or other non-Indigenous municipal, regional or provincial police services.

As knowledge keepers and rights holders, First Nations are best positioned to share what their policing needs are with the Government of Canada (Public Safety Canada, Indigenous Services Canada and Crown-Indigenous Relations). The Government of Canada is also committed to working with provinces and territories to make sure that federal legislation would be informed by provincial and territorial perspectives, is complementary to existing provincial/territorial police legislation and regulations, and does not infringe on existing provincial/territorial authorities pertaining to policing.

It is important to note that the creation of legislation to address how Canada supports First Nations police services would not extinguish or undermine existing Aboriginal and Treaty rights, which are protected by section 35 of the *Constitution Act, 1982*. The legislation would not prevent First Nations peoples from continuing to exercise Aboriginal rights that may be protected under section 35, or from negotiating the implementation of rights in future modern treaties, agreements or other constructive arrangements.

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## The Process

Co-development is a collaborative process which acknowledges the lived experiences of First Nations and supports the concept of “nothing about us without us.” This approach will be guided by the Government of Canada’s commitment to reconciliation, including [the United Nations Declaration on the Rights of Indigenous Peoples Act](#) and the [Principles respecting the Government of Canada’s relationship with Indigenous peoples](#).

The Government of Canada is engaging with First Nations, Provinces and Territories, First Nations organizations, First Nations police services, First Nations police boards/commissions, First Nations women’s organizations, First Nations youth organizations, First Nations 2SLGBTQQA+ people and organizations, subject matter experts and others to support the co-development of federal First Nations police services legislation. The Government of Canada and the Assembly of First Nations (AFN) are undertaking separate but complementary engagement processes to support the co-development of federal First Nations police services legislation.

We want to make it as easy as possible for people to provide their input, so the Government of Canada’s engagement process includes three ways to participate:

- **Virtual engagement sessions**
- **Online engagement platform**
- **Written comments/submissions – Indigenous Policing email address:** Input may be sent to [PS-IndigenousPolicing-PoliceAutochtones@ps-sp.gc.ca](mailto:PS-IndigenousPolicing-PoliceAutochtones@ps-sp.gc.ca)

This engagement will culminate in the public release of a “What we heard” report and inform an expert symposium with a small group of experts on First Nations police services to explore what was heard at the engagement sessions and discuss practical and technical considerations for the co-development of the legislation.

Throughout the process the Government of Canada will collaborate with provinces and territories, the First Nations Chiefs of Police Association, the First Nations Police Governance Council, and with First Nation modern treaty and self-governing agreement signatories to identify practical considerations to inform the federal legislation. Informed by the perspectives shared through the engagement and collaborative processes, the Government of Canada will co-develop with the Assembly of First Nations policy options to be considered for this federal legislation.

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## About First Nations Police Services in Canada

There are currently 35 First Nations police services across Canada and one Inuit police service, serving 155 First Nations and Inuit communities. They are located mainly in Ontario and Quebec, with a smaller presence across all western Canadian provinces. All First Nations and Inuit police services operate according to existing provincial police legislation and regulations.

First Nations police services all receive financial support through the [First Nations and Inuit Policing Program](#) (FNIPP), a discretionary contribution program created in 1991 that provides federal funding to support professional, dedicated and culturally responsive policing services in eligible First Nations and Inuit communities. Under the FNIPP, eligible costs are shared with provinces and territories in accordance with a 52% federal and 48% provincial/territorial cost-share ratio. Self-Administered Police Service Agreements, which are the agreements used to provide federal and provincial funding for First Nations and Inuit police services, are signed by three parties: the First Nation(s) or Inuit communities, the relevant province, and the federal government.

For many years now, First Nations police services have faced significant challenges and financial obstacles in being able to deliver adequate and culturally appropriate policing services, in part due to the limitations of the FNIPP. First Nations police services and community leaders have raised various issues, including:

- *Limited Budgets*, as well as First Nation communities competing with each other to access limited government funding;
- *Time-limited government contribution agreements* impacting the ability of police services to undertake long-term planning;
- *Inequities “at the table”* whereby First Nations do not feel they have a true voice at the negotiating table, due to the limitations of negotiating agreement provisions and government funding levels; and,
- *Restrictive program terms and conditions*, which limit the ability of police services to offer certain specialized services to respond to the specific needs of the communities they serve.

Recognizing these challenges, many reports, inquiries and research studies have called for reforms to the program and/or the creation of federal legislation recognizing First Nations police services as essential services, including:

- The Expert Panel on Policing in Indigenous Communities, Council of Canadian Academies report “[Toward Peace, Harmony, and Well-Being: Policing In Indigenous Communities](#)” (2019); and,
- Call for Justice 5.4 of the [Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls](#).

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## Themes for Discussion

In December 2021 Public Safety Canada and Indigenous Services Canada hosted three pre-engagement sessions with a small number of First Nations, First Nations police services representatives, provinces and territories and other organizations to seek views on how to engage, as well as the engagement themes and questions. Among other things, we heard from participants that discussions should focus on the co-development of the federal legislation and not revisit concerns with the First Nations and Inuit Policing Program (FNIPP), which were raised during the [2016 engagement on the FNIPP](#). We also heard that participants want to have rich conversations on the roles of First Nations, Canada and provinces/territories in supporting First Nations police services. These views led to the following themes and the development of contextual information intended to help inform discussions.

- Theme 1: First Nations Police Services as Essential Services
- Theme 2: First Nations, Provincial/Territorial and Federal Roles in Supporting First Nations Police Services
- Theme 3: Funding First Nations Police Services

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## Theme #1 : First Nations Police Services as Essential Services

First Nations police services are essential to the safety and security of the communities they serve. They don't just enforce the law – they are a part of the community – participating in events, visiting schools, working with Elders, and building relations with community members. However, some First Nations police services have expressed that they are unable to do some of these activities because they don't have enough financial or human resources. Recognizing First Nations police services as an essential service would underscore that these services are integral to community safety and security, and need to be adequately resourced to provide culturally relevant and responsive policing services.

A proposed objective of federal First Nations police services legislation would be to recognize First Nations police services as essential services. To support this objective, it is important to have a common understanding of what First Nations police services need to do to meet communities' safety and policing needs. Beyond day-to-day policing operations, this could also include First Nations police services' fostering a positive relationship with the communities they serve. While not an exhaustive list, a First Nations police service which is recognized as an essential service may have the capacity to:

- Uphold the safety and security of all persons and property.
- Facilitate co-operation between First Nations police services and the communities they serve.
- Be responsive to the unique histories and cultures of First Nations.
- Consist of membership which is representative of the communities the First Nations police services serve.
- Provide First Nations equitable levels of policing as non-Indigenous communities.
- Be responsive to the policing and community safety priorities as set by the First Nations.

Fulfilling the proposed objective of federal legislation also requires the development of concrete processes and mechanisms to support its implementation. The current mechanism to support First Nations police services (i.e., the Self-Administered Police Service Agreements of the First Nations and Inuit Policing Program) has been criticized as being inadequate to support First Nations police services as essential services. We would like to hear from you what needs to change, as well as your ideas of what other mechanisms could support the implementation of the legislation.

### *Discussion Questions*

1. You are invited to consider:
  - a) What does a First Nations police service recognized as an essential service look like to you?
  - b) What are the characteristics of a First Nations police service which is recognized as an essential service? What services would the First Nations police service be able to provide to the community?
2. We have heard criticisms that self-administered police service agreements do not effectively support First Nations police services.
  - a) What mechanisms do you think would be needed to support the implementation of the proposed legislation? Please describe these mechanisms.

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## Theme #2 : First Nation, Provincial/Territorial and Federal Roles in Supporting First Nations Police Services

The delivery of policing services to communities in Canada, including First Nations, is largely determined by the Canadian Constitution. Generally, the provinces and territories have legislative responsibility over the administration of justice, including policing services. As such, First Nations police services are established and operate in accordance with the relevant provincial/ territorial police legislation and regulations.

Since 1991, the federal government's role in this area has been to provide funding for First Nations police services via the [First Nations and Inuit Policing Program](#). Any federal legislation in the area of First Nations police services must be informed by engagements with provincial and territorial governments, and with careful attention to the constitutional division of powers.

First Nations have an important role in supporting the delivery of culturally responsive policing services. They played a fundamental role in establishing existing First Nations police services and often work with these services to inform policing and community safety priorities. The establishment of federal First Nations police services legislation would be an opportunity to advance First Nations self-determination in alignment with the United Nations Declaration on the Rights of Indigenous People.

The Government of Canada recognizes that in order for the federal First Nations police services legislation to work, the federal legislation would need to complement provincial/territorial policing legislation and regulations, and respect First Nations self-determination.

### *Discussion Questions*

1. What role could First Nations play in supporting First Nations police services in their work?
2. How could the federal, provincial and territorial governments work collaboratively with First Nations to best support First Nations police services?

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## Theme #3 : Funding First Nations Police Services

First Nations police services must be sufficiently funded to do their work and First Nations police services should be funded to a level consistent with their recognition as essential services.

Since 1991, the Government of Canada provides funding to support First Nations police services through the First Nations and Inuit Policing Program (FNIPP). Funding under the FNIPP is cost-shared at a 52%-48% ratio between the federal and provincial/territorial governments, respectively.

The current process by which First Nations police services receive federal and provincial funding is through self-administered police service agreements, which are signed by three parties: the First Nations, the relevant province, and the federal government. Currently, federal funding available for First Nations police services is limited and its allocation is based on eligible expenses under the FNIPP's Terms and Conditions. While the Government of Canada made significant program investments in 2018, and additional investments in Budget 2021, there remain criticisms that the program's Terms and Conditions lack the flexibility required to meet the needs of First Nations police services and that there is not enough federal funding to effectively support First Nations police services.

### *Discussion Questions*

1. What are your views on what would be necessary to ensure that funding that supports First Nations police services is:
  - accessible;
  - equitable; and,
  - stable?

Are there other aspects that you feel are important for ensuring appropriate funding for First Nations police services, not captured by the above?

2. What are your expectations around processes and roles of decision makers in determining funding for First Nations police services?