

The Tripartite Collaborative Technical Table on the Enforcement and Prosecution of First Nations Laws

**Co-Chairs Report: Year One
May 2021 – May 2022**

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Message from the Co-Chairs

To the readers of this Report,

We are honoured and humbled to have the role as Co-Chairs of the Tripartite Collaborative Technical Table on the Enforcement and Prosecution of First Nation Laws (“Collaborative Table”).

The Collaborative Table was established in May 2021 in response to the current and longstanding gaps in services for the enforcement and prosecution of First Nations Laws. The first of its kind in Ontario, the Collaborative Table is a tripartite forum in which obstacles to the enforcement and prosecution of First Nations laws are to be identified, with a view to developing recommendations and identify pathways forward for implementation. The goal of the Table is to develop concrete and lasting recommendations that will ensure First Nations laws can be consistently and reliably enforced and prosecuted.

This work is challenging, as we knew it would be. The barriers to the enforcement of First Nations laws are multifaceted, and the pathways to overcome them are similarly varied and complex. Despite these challenges, the Co-Chairs have maintained a focus on finding respectful, creative, sustainable, and long-term pathways forward.

Having just recognized the first anniversary of the Collaborative Table, as Co-Chairs, we would like to take this opportunity to acknowledge what we’ve heard from the Elders, First Nations Working Group, and Table representatives over the past twelve months, and to recognize the contributions that they have individually and collectively made to the Table in its inaugural year. For this, we as Co-Chairs thank you, and extend our utmost appreciation for all of the important work done thus far.

We look forward to continuing this important work with open minds and open hearts.

Jackie Lombardi
A/Director of Justice
Chiefs of Ontario

Jane Mallen
Assistant Deputy Attorney General
Ministry of the Attorney General,
Ontario

Laurie Sargent
Assistant Deputy Minister
Department of Justice
Canada

Message from Elder Donna Debassige and Elder Barney Batise

Since time immemorial, our Elders and our Clan Leaders have passed down the laws that have governed and cared for our People. Initially, the laws were not written, but they were shared orally and in Ceremony, in visual depictions, and sealed in Wampum. Today, our laws continue to govern the way First Nation people treat each other, care for the land, and live our lives.

Despite efforts to separate us, as Peoples, from the laws and the systems we have always known, we still know who we are and we know there is a path forward.

For some communities, the first step will be sitting with their Elders and learning the laws again or perhaps for the first time. For others, the laws are known but need to be written down to ensure enforcement can take place. For others still, the laws are already known and written, and now government funding and resources are needed for prosecution.

Regardless of where a First Nation may be on this journey, there is a path forward; a path that reflects our values and who we are as a People.

What is the Collaborative Table?

The Collaborative Table is a technical table that was established to identify issues and develop recommendations on how to overcome and bridge obstacles related to the enforcement and prosecution of First Nations laws, as well as to identify pathways to support the implementation of those recommendations.

The Table was publicly launched on May 6, 2021, in the presence of former Ontario Regional Chief RoseAnne Archibald and former Grand Chief Alvin Fiddler, federal Ministers Lametti, Blair, and Miller, Ontario Attorney-General Downey, and Solicitor-General Jones. The Table is composed of First Nations, federal, and provincial representatives, as well as two Elders. The Collaborative Table is Co-Chaired by the Chiefs of Ontario, the Department of Justice Canada, and the Ontario Ministry of the Attorney General.

Chiefs of Ontario has a mandate to participate at this Table through *Resolution 21/37: The Tripartite Collaborative Technical Table on the Enforcement and Prosecution of First Nations' Laws*.

Who are the members of the Collaborative Table?

Three Co-Chairs:

- Jackie Lombardi, A/Director of Justice, Chiefs of Ontario
 - Formerly: Sarah-Grace Ross, Director of Justice, Chiefs of Ontario (on leave)
- Jane Mallen, Assistant Deputy Attorney General, Ministry of the Attorney General Ontario
- Laurie Sargent, Assistant Deputy Minister, Department of Justice Canada

Two Elders:

- Elder Barney Batise
- Elder Donna Debassige

Representatives from First Nations governments informally referred to as the “First Nations Working Group”, representing the following organizations:

- Nishnawbe Aski Nation
- Grand Council Treaty #3
- Association of Iroquois and Allied Indians
- Anishinabek Nation
- Mushkegowuk Council Independent First Nations
- Independent First Nations
- Six Nations of the Grand River Territory (*observer status*)
- Mohawk Council of Akwesasne (*observer status*)

Representatives from the following Ontario and Canada ministries and departments:

- Ministry of Indigenous Affairs Ontario
- Ministry of the Attorney General, including staff from the Indigenous Justice Division (Secretariat)¹
- Ministry of the Solicitor General
- Department of Justice Canada
- Indigenous Services Canada
- Department of Public Safety and Emergency Preparedness

Observers:

- First Nations Land Management Resource Centre (LABRC)
- Indigenous Police Chiefs of Ontario (IPCO)
- Ontario Provincial Police (OPP)

How is the Collaborative Table doing its work?

The Collaborative Table has met nine times since it was established in May 2021. These virtual meetings ran from 2 to 3.5 hours long.

The Collaborative Table’s first task was to develop its Terms of Reference, which was approved in Fall 2021. Following the development of this foundational document, the Table held three meetings dedicated to hearing and learning from informative presentations by members of the First Nations Working Group on enforcement and prosecution barriers experienced in their region and within their communities. In addition to identifying enforcement and prosecution barriers, the presentations canvassed potential recommendations to overcome identified challenges. The following

¹ Representatives from the Indigenous Justice Division (IJD) at the Ministry of the Attorney General act as the Collaborative Table’s Secretariat. Per the Collaborative Table’s Terms of Reference, IJD representatives prepare draft agendas and meeting minutes, manage meeting logistics, ensure that any legal and/or policy research and analysis that is needed to support and further discussions at the Collaborative Table is completed, and provide updates to the Elders’ Council, which guides IJD’s work, on the work of the Table.

presentations by members of the First Nations Working Group were shared during the Collaborative Table's first year (copies of presentation materials available upon request):

- *AIAI Prosecution and Enforcement Presentation* (presented by Tristan Nugent, AIAI, at the November 10, 2021 meeting)
- *Mississauga First Nation Exercises in Enforcement Presentation* (presented by Laura Mayer, Mississauga First Nation, at the November 10, 2021 meeting)
- *Enforcement of Laws and Tribunal Orders Presentation* (presented by Joyce King, Mohawk Council of Akwesasne, at the December 14, 2021 meeting)
- *Presentation on General Issues re: Enforcement* (presented by Crystal Head Stevens, Anishinabek Nation, at the December 14, 2021 meeting)
- *Presentation Grand Council Treaty #3 Justice Services* (presented by Arthur Huminuk, Grand Council Treaty #3, at the January 20, 2022 meeting)
- *Avoiding Vacuous Political Bromide – Enforcement and Prosecution of First Nations Laws* (presented by Darian Baskatawang, Independent First Nations, at the January 20, 2022 meeting).

While the Working Group delivered these presentations, the Table members worked on developing a Work Plan to guide the Table's work. Based on recommendations from the First Nations Working Group, the Table's Work Plan takes a phased approach to identifying barriers related to the enforcement and prosecution of First Nations laws and by-laws through intensive study, with a view to developing recommendations and pathways to address those barriers. The Table's first intensive study is dedicated to exploring in-depth First Nations' trespass laws and by-laws.

As set out in the Work Plan, the Table held its first substantive meeting of the intensive study on March 30, 2022. This meeting focused on providing Table representatives with an overview of existing enforcement measures and related obstacles. The meeting began with a level-setting presentation prepared and delivered by representatives from the First Nations Land Management Resource Centre which looked at sources for trespass laws, elements of the offence of trespass, existing First Nations trespass laws, and relevant case law on the topic (copies of presentation materials available upon request). Following this presentation, the Table engaged in a collaborative dialogue canvassing the various obstacles to enforcement. These obstacles included funding and resources, capacity challenges, legislative and policy directives, and review procedures. Representatives from the First Nations Working Group, Indigenous Police Chiefs of Ontario, and the Ontario Provincial Police shared some of the on-the-ground challenges with respect of the enforcement of First Nations laws, highlighting their experiences as well as potential ways of moving toward the consistent and reliable enforcement of First Nations trespass laws.

The next meeting of the Collaborative Table took place on April 22, 2022. The focus of this meeting was on pathways forward and to brainstorm potential recommendations to improve the enforcement of First Nations laws within Ontario. The meeting served as an important introduction to this work, and the Co-Chairs are in agreement that a subsequent meeting to further explore potential pathways and recommendations is needed. This meeting is tentatively scheduled for July 2022.

What has the Collaborative Table learned and accomplished to date?

To date the Collaborative Table has learned that many of the barriers to the enforcement and prosecution of First Nations laws are deeply entrenched, layered, and complex. First Nations in Ontario are all in unique situations, and have varied needs and priorities. This complexity and variety extends to the types of First Nations laws that First Nations are looking to have enforced. For example, the path to the enforcement of by-laws passed pursuant to the *Indian Act* may look different than the tools required for the enforcement of Land Code laws or laws passed by First Nations pursuant to inherent jurisdiction.

As a result, a one-size-fits-all approach to addressing the barriers to enforcement and prosecution of First Nations laws will not serve communities in a meaningful way. To that end, the Collaborative Table has learned that collaboration, flexibility, and creativity are essential for the Table to be successful in meeting the diverse needs and priorities of First Nations across the province. In many cases, this includes various parties working together, including First Nations, police services, and the federal and provincial governments, to ensure lines of communication are always open and respect is prioritized. Above all, the Table has learned that its work must reflect the guidance received from the Elders and the direction from the First Nations Working Group to have a meaningful impact.

The Collaborative Table also learned that First Nations are, and have been, working to achieve the ongoing and sustainable enforcement and prosecution of their laws, despite barriers and challenges. First Nations Leaders and citizens are working to revitalize their laws and legal systems; laws that have always existed and guided communities. First Nations have been working directly with police services and the courts to collaborate on enforcement and adjudication of their laws, and are establishing and operating their own courts and legal processes. In their work, First Nations are leading the way to a future where First Nations laws are enforced and prosecuted consistently and effectively to ensure the safety and wellbeing of First Nations citizens and communities, however additional progress requires additional supports and solutions.

We have further heard from the First Nations Working Group members that, in certain circumstances, the federal and provincial governments need to create space for First Nation governments to advance this work in accordance with the needs and priorities of their communities. In other cases, there is a need for federal and provincial

governments to provide services and other supports, including the required funding, to ensure the enforcement of First Nations laws. In all cases, the Collaborative Table must be open to developing recommendations that capture a combination of these approaches, in accordance with the diverse needs and priorities of each and every First Nation in Ontario region.

Following the March 30 and April 22, 2022, Collaborative Table meetings, a number of basic principles and considerations, obstacles, and potential solutions were compiled. The next step for the Collaborative Table is to work to develop written recommendations based on the potential solutions and pathways that have been identified at the Table for review and approval by the necessary decision-makers and implementation by the relevant parties.

How can I get involved?

The Collaborative Table was established with a view to pursuing open, transparent, and collaborative approaches to developing recommendations on how to overcome identified barriers to the enforcement and prosecution of First Nations laws.

If you have questions or are interested in discussing or providing feedback on the Collaborative Table, please feel free to contact the Table's Co-Chairs at Jackie.Lombardi@coo.org, Jane.N.Mallen@ontario.ca, and Laurie.Sargent@justice.gc.ca.

What's next?

There remains a great deal of work to be done. The Work Plan charts a path forward, including a plan to continue to meet every four to six weeks.

Also in accordance with the Work Plan, the next stage of the Collaborative Table's work will focus on developing concrete, comprehensive, and flexible recommendations to overcome the barriers that continue to be faced by First Nations within Ontario in their efforts to enforce their trespass laws and by-laws.

The Collaborative Table's focus will then shift to the identification of barriers to the prosecution and adjudication of infractions of First Nations trespass laws and by-laws. The Table will hear from all parties involved in the prosecution and adjudication process in Ontario, and based on what is learned and unlearned through this process, prosecution and adjudication-focused recommendations will be developed and actions needed to implement the recommendations will be subject to the necessary approvals, as mentioned above.

This or a similar process will then be undertaken, as needed, for other areas of First Nations laws beyond trespass, in accordance with the guidance and preferences of the Elders and First Nations Working Group.

It is important to note that the work of the Collaborative Table is not strictly linear. Work to develop recommendations to improve the enforcement and prosecution of First Nations laws in all areas is ongoing, and the recommendations that are developed may be applicable to areas beyond an identified intensive study / subject area, as may be appropriate.

As set out in the Terms of Reference, the Table's recommendations may include interim measures, as well as longer-term approaches, and will be presented to the relevant decision-makers (including First Nations Leadership and federal and provincial Ministers). Any actions to implement the Collaborative Table's recommendations are subject to the necessary approvals, as may be required. Recommendations will also be included in one or more additional written reports produced by the Collaborative Table.

Thank You

A sincere and heart-felt thank you to the Elders and members of the First Nations Working Group who have contributed to the development and direction of the Collaborative Table. We are also in appreciation of the Table members and observers who have shared their views and experiences in order to help the Collaborative Table work towards the consistent and reliable enforcement and prosecution of First Nations laws.