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# What We Learned: Discussions with Four First Nations about the Administration and Enforcement of their Laws and By-laws

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## Executive summary

Justice Canada held discussions with representatives of four First Nations—Mohawks of Akwesasne, Tsuut'ina Nation, Tsawwassen First Nation and Whitecap Dakota Nation—to learn about their experiences with developing, administering, and enforcing their own laws and by-laws, as well as building their own justice systems. The discussions occurred from June to August 2023, and centred around First Nations' justice systems, with a focus on what has worked well with the enforcement, prosecution and adjudication of their laws and by-laws, as well as lessons learned that might be of interest to other First Nations, justice system professionals (i.e., enforcement officers, police, prosecutors, legal counsel, adjudicators, etc.), and federal, provincial and territorial government officials working in this field.

This report provides a summary of what was shared during these discussions and reflects the views of the participating First Nations' representatives. It is important to note that a full research study was not undertaken on First Nation justice systems; as a result, it is only possible to report on what was shared by the representatives of these four First Nations.

Community support and leadership were identified by the participating First Nations' representatives as playing a key role in continuously advocating for the advancement of the First Nations' justice systems, and as being essential to the Nations' success in developing and administering their own justice systems. Community engagement and communication during law-making processes and for policing, prosecution and adjudication, were said to be critical for identifying issues and concerns the community would like to have addressed. The representatives of the First Nations who participated in the discussions described how their communities provide a large part of the funding for their justice systems through the revenue they have from residential, commercial, and industrial leases and activities on their land. Education is also prioritized by some of the First Nations to raise community awareness of their by-laws and laws, and to address enforcement issues.

Strong partnerships with municipal police services and the Royal Canadian Mounted Police (RCMP) were also noted by the First Nations' representatives as a key factor for law enforcement within First Nations, particularly for the enforcement of First Nations' laws and by-laws. Participating First Nations have also indicated that partnerships with provincial governments and courts are important for ensuring that First Nations' laws and by-laws are enforced and prosecuted in provincial courts. The representatives of the four First Nations discussed different possible approaches to help increase the recognition of their laws and by-laws, including agreements with provincial Crowns<sup>1</sup> to prosecute their laws when they are comparable to provincial laws, the use of templates and standard terminology for laws to ensure consistency and familiarity, and community-specific training for law enforcement officers.

The lack of ongoing and stable funding for the administration of justice was identified as one of the most prominent challenges by the representatives of all four Nations. The representatives indicated a strong need to move away from program- and project-based funding models to more stable alternative funding models so that communities can fully develop, administer, and maintain their own justice systems over time. Further gaps in funding were identified by the participating First Nations' representatives, including funding for hiring non-legally trained Indigenous prosecutors, legislative drafters and researchers, in addition to funding to train justices of the

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<sup>1</sup> During discussions different terms were used to refer to provincial Crown, including Crown counsel, provincial Crown attorneys, prosecutors. For the purposes of this report the term provincial Crown is used to allow for consistency of terminology.

peace so that they are able to interpret First Nations' laws, and funding for research to gather data and measure the impacts of justice programs and services.

When asked how the administration and/or enforcement of their laws and by-laws have impacted their communities, representatives from the four First Nations provided several examples, such as improved relationships between the community and the police service, the benefits of having some matters heard in their own court where they are able to protect their people's rights and interests, as well as being able to support those who need to go through the provincial court process through an Indigenous Courtwork Program. Although the First Nations' representatives spoke about some of the positive impacts they have observed as a result of administering their First Nations' justice systems, they also highlighted the need and desire to document and measure these impacts. However, the First Nations' representatives noted that this would require funding for research and data collection.

When asked what their justice systems could look like outside of a Western context, the representatives indicated the importance of the communities having control of their own justice systems with the autonomy to make decisions. They also highlighted the important role of Elders, culture, and language in the justice system.

Some of the key messages that were shared for other First Nations looking to do this work include the need to be patient and to not let barriers stop progress. It was also shared that it is helpful to not try to do everything at once, rather start small so it is possible to build the political, leadership and community supports that are needed to move forward. Also, when developing a justice system, the First Nations' representatives highlighted that it is important to consider the growth and change of the justice system over time.

The representatives also highlighted the uniqueness of their communities. Given that all First Nations have distinct legal traditions, cultures, histories, and languages, the First Nations' representatives explained from their perspective that federal, provincial and territorial governments should recognize that the needs of First Nation justice systems are distinct from one Nation to another. During discussions, the representatives of the four First Nations shared the need for space to develop and implement justice systems that their communities need and want. However, they also indicated that this takes time and resources. For the representatives, this means that federal, provincial and territorial governments' approaches to funding the administration of justice in First Nations will have to change to provide long-term funding, rather than project-based funding models.

The representatives of the four First Nations who contributed to this report all reported significant successes in the establishment of their own justice systems, while navigating many challenges. They shared that First Nation justice systems are essential for the well-being and safety of their community members, and are key to their self-determination and self-governance.

## Introduction

The ability of First Nations to administer their own laws<sup>2</sup> and by-laws<sup>3</sup> is key to their self-determination and self-government (Standing Committee on Indigenous and Northern Affairs 2021). However, First Nations report that longstanding challenges around overlapping jurisdictions, legislative authority, resourcing, infrastructure, and the lack of coordination between key government departments and agencies have resulted in the inconsistent enforcement and prosecution of these laws and by-laws (for more information, see: Standing Committee on Indigenous and Northern Affairs 2021, Public Safety 2022b, Metallic et al. 2023). This contributes to serious health, safety, and economic development issues within First Nations, and hinders effective governance (Standing Committee on Indigenous and Northern Affairs 2021).

Despite these challenges, some First Nations have been successful in developing, administering, and enforcing their own laws and by-laws, as well as building their own justice system. In an effort to understand what successes some First Nations have experienced, Justice Canada led discussions with representatives of four First Nations—Mohawks of Akwesasne, Tsuut’ina Nation, Tsawwassen First Nation and Whitecap Dakota Nation—that have established mechanisms for the enforcement, prosecution and adjudication of their laws and by-laws. The discussions centred around their justice systems, with a focus on what has worked well with the enforcement, prosecution and adjudication of their laws and by-laws as well as lessons learned that might be of interest to other First Nations, justice system professionals (i.e., enforcement officers, police, prosecutors, legal counsel, adjudicators, etc.), and federal, provincial and territorial government officials working in this field. This report provides a summary of what the participating First Nations’ representatives shared during these discussions.

## Understanding the context

Indigenous peoples continue to be overrepresented in the Canadian criminal justice system as offenders and as victims of crime (Clark 2019). Their experiences in the Canadian justice system have been overwhelmingly influenced by prejudice, systemic racism and colonial practices that continue to perpetuate intergenerational trauma among Indigenous families and communities.<sup>4</sup> Enforcement of First Nations’ laws is considered important to ensure the safety and well-being of their communities (Standing Committee on Indigenous and Northern Affairs 2021). For First Nations to exercise their inherent right to self-determination and self-governance, some experts have concluded that it is important that they can develop and enact laws to govern their Nation, as well as administer, enforce, prosecute, and adjudicate offences under their laws to address issues within their communities (Metallic 2023).

In light of longstanding challenges around the enforcement of First Nations laws and by-laws, the House of Commons Standing Committee on Indigenous and Northern Affairs undertook a study to explore these issues. The study’s final report, released in June 2021, provides an overview of some of the collaborative approaches used to enforce laws in First Nations and presents recommendations to address the issues that were raised (Standing Committee on Indigenous and Northern Affairs 2021). The report also provides an overview of the law-

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<sup>2</sup> Laws are enactments by First Nations under self-government legislation, treaties, or in accordance with a First Nation’s inherent right.

<sup>3</sup> By-laws are enactments by First Nations under the *Indian Act* (R.S.C., 1985, c. I-5).

<sup>4</sup> The State of the Criminal Justice System Dashboard provides information about the experiences of Indigenous people in the Canadian criminal justice system: <https://www.justice.gc.ca/socis-esjp/en?themeid=3>.

making authority of First Nations and the role of federal and provincial governments in enforcing First Nations' laws and by-laws.

By-laws are local laws passed to regulate the affairs within the community (Standing Committee on Indigenous and Northern Affairs 2021). Some First Nations enact by-laws under section 81<sup>5</sup>, 83<sup>6</sup>, or 85.1<sup>7</sup> of the *Indian Act*. Additionally, under section 107 of the *Indian Act*, justices of the peace may be appointed by the Governor General in Council to adjudicate offences under the *Indian Act* and some *Criminal Code*<sup>8</sup> offences. Other than under the *Indian Act*, First Nations laws can also be enacted pursuant to self-government agreements, modern treaties, or through sectoral federal legislation such as the *Framework Agreement on First Nation Land Management Act*.<sup>9</sup>

In addition to law-making, some First Nations have taken on varying aspects of administering their own justice systems such as the enforcement, prosecution and adjudication of their laws. The degree to which the Nations have control over their own justice system determines the components of the Canadian justice system with which they need to engage. For example, a First Nation may rely on the RCMP or municipal police to enforce their laws, or they may have their own enforcement agency but not an adjudication body. In such cases, the lack of a separate adjudication body necessitates offences to be prosecuted in provincial courts.

Generally speaking, the implementation of First Nation's justice systems will often require coordination with the Canadian justice system. This has resulted in several documented issues and challenges pertaining to the administration of justice in First Nations. These challenges include, but are not limited to: a lack of awareness and recognition of the legitimacy of First Nations' laws (Metallic 2023); a lack of enforcement of First Nations' laws and by-laws (Standing Committee on Indigenous and Northern Affairs 2021, Metallic 2023); overlapping jurisdiction between federal, provincial and territorial governments which results in confusion over responsibilities and inaction (Standing Committee on Indigenous and Northern Affairs 2021, Metallic 2023); using time-limited programs to address essential services, which is unsustainable and can lead to gaps in coverage (Public Safety 2022a); mistrust of enforcement agencies and governments (Standing Committee on Indigenous and Northern Affairs 2021, Metallic 2023); and, insufficient funding structures and lack of stable funding (Standing Committee on Indigenous and Northern Affairs 2021, Standing Committee on Indigenous and Northern Affairs 2022, Public Safety 2022a, Metallic 2023).

It has been documented that when First Nations are unable to enforce, prosecute, and adjudicate their own laws and by-laws, their communities are negatively impacted (for more information on impacts, see: Metallic 2016, Metallic 2023, Standing Committee on Indigenous and Northern Affairs 2021, Standing Committee on Indigenous and Northern Affairs 2022). For First Nations, this results in their inability to govern effectively, to ensure that the community is safe, and to attract economic investment, which limits better socioeconomic outcomes for community members (ibid).

Although some First Nations have raised these issues and challenges, what is less known is how First Nations have been working to advance their justice systems (Standing Committee on Indigenous and Northern Affairs 2021). This report is intended to highlight what was shared by four First Nations that have been successful in

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<sup>5</sup> Section 81(1) allows for 'general' by-law powers in 22 areas including traffic, health, trespassing, public works, commercial activities on reserve as well as residency and trespass on reserve.

<sup>6</sup> Section 83 sets "taxation by-laws" which are powers to pass taxation, licensing, or other spending by-laws.

<sup>7</sup> Section 85.1 provides powers to pass "intoxicant by-laws," which are by-laws that allow communities to "prohibit the consumption, sale, barter, supply or manufacture of intoxicants" on their reserves.

<sup>8</sup> *Criminal Code* (R.S.C., 1985, c. C-46)

<sup>9</sup> For more information, see: <https://laws-lois.justice.gc.ca/eng/acts/f-31.46/FullText.html> (S.C. 2022, c. 19, s. 121).

advancing their justice systems, so that others working in this area and within the Canadian justice system can learn about their experiences.

## Approach

Justice Canada worked with the Lands Advisory Board and First Nations Land Management Resource Centre to identify multiple First Nations that are currently administering their own justice systems, including enforcing their own laws and by-laws. These First Nations were invited to participate in discussions with representatives from Justice Canada<sup>10</sup> to discuss the administration of justice and the enforcement of laws and by-laws within their Nations. The purpose of these discussions was to create a space for First Nations to share what has worked well in their view with the enforcement, prosecution and adjudication of their laws and by-laws as well as lessons learned in developing and administering their own justice systems.

Between June and August 2023, representatives from four First Nations met with representatives from Justice Canada. A virtual roundtable discussion with five representatives from Tsawwassen First Nation, Tsuut'ina Nation and Whitecap Dakota Nation was held in June 2023. This session was moderated by INDsight Consulting, an Indigenous-led consultancy, with the assistance of Elder Cat Criger. A follow-up discussion was held with representatives from Whitecap Dakota Nation and a Senior Counsel from the Saskatchewan Ministry of Justice who was working closely with the Nation. Two virtual discussions took place with representatives from a fourth First Nation, the Mohawks of Akwesasne, in July and August 2023. Those participating in the discussion held diverse roles, including working in the Nations' justice and self-government departments, the Nations' police services or community safety programs, and legal counsel from some of the Nations.

To prepare for these discussions and provide context, a review of academic and government literature was undertaken by Justice Canada researchers. The list of documents reviewed is included in the [Bibliography](#) section of this report. In addition, two questions were sent to the First Nations' representatives in advance to situate the discussions and facilitate their thinking about the topic of the administration and enforcement of laws and by-laws. They were asked to consider what administration of justice means to them and to their Nation, as well as to identify which areas of the law their Nation administers and enforces.

During the discussions, the representatives were asked to share any successes or lessons learned about administering and/or enforcing their First Nation's laws and by-laws as well as any impacts they may have seen as a result of these successes, including on community well-being. They were also asked what their First Nation justice system could look like if their legal traditions were recognized and revitalized, as well as what types of support, short- and long-term, could be provided to First Nations working on their own justice systems. The responses to these questions, as well as other information provided in the discussions are described in the [What we learned](#) section of this report.

It is important to note that this report contains an account of the discussions held between the representatives of the four participating First Nations, one provincial Senior Counsel and Justice Canada representatives. This is not a comprehensive study of First Nation justice systems, therefore it is only possible to report on what was shared by the representatives of the four First Nations.

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<sup>10</sup> A total of 13 First Nations were invited to participate in the discussions; however, some were unavailable at the time.

## Participating First Nations and their justice systems

The following section provides information shared by the representatives from the four First Nations about their justice systems, with a focus on their law-making, enforcement, adjudication, and resolution mechanisms. Additional information from websites is provided for context and has been referenced.

### Mohawks of Akwesasne

The Mohawks of Akwesasne are part of the Kahniakehaka (Mohawk Nation) that is situated along the St. Lawrence River across three borders - the state of New York (United States of America) and two Canadian provinces, Quebec and Ontario. According to the Mohawk Council of Akwesasne, they have about 12,000 community members of whom, 1,800 members live outside the community “due to housing, economic and land constraints” (Mohawk Council of Akwesasne n.d.). The Akwesasne justice system deals with Canadian governments, while St. Regis, on the other side of the land, has their own justice system that deals with American governments.

Akwesasne representatives spoke about their robust justice system that was initially established in the 1960s to address practical administrative issues such as garbage collection and management, and door-to-door solicitation. They report that the community now develops, enforces and adjudicates its own laws, and Akwesasne’s representatives explained how they see their justice system operating in ways that are comparable to those of the provincial and federal governments.

#### Law-making

Akwesasne’s Justice Department has a mandate to create and enforce their Nation’s laws. The Nation has a diverse system of laws in place that has been around since 1973, when the first Akwesasne by-law came into effect. There are 34 Akwesasne laws in the Akwesasne Law Registry, such as the Election Law and Couples Property Law.

Legislative development in Akwesasne is done in five phases, which include the engagement and approval of Chief, Council, and the community. The Akwesasne Justice Department is also in the process of developing a template for laws that provides standardized definitions and structures to make the legislative development process more consistent.

#### Enforcement of laws and by-laws

The Akwesasne Mohawk Police Service can charge individuals with criminal offences and enforce Akwesasne laws. In addition, the First Nation has enforcement and compliance officers, who are responsible for ticketing, for example, traffic infractions. They also address other areas such as regulations and laws for leases, mortgages, and tobacco.

#### Adjudication and resolution mechanisms

For more than 40 years, the Mohawks of Akwesasne have had their own court to adjudicate Akwesasne laws and by-laws. However, the representatives indicated that community members must go to provincial court for criminal matters. Akwesasne’s Community Justice Program provides services and guides community members who must go to provincial courts. Akwesasne’s representatives indicated that this is a very important service to the community; the workers provide excellent support as these processes are overwhelming and challenging.

When applicable, the Nation uses restorative justice and diversion for minor *Criminal Code* offences. They expressed that they would like to continue to expand the use of restorative justice for other areas, such as community laws and traffic offences.

The Mohawk Council of Akwesasne developed a “Good Standing in Community” policy to incentivise community members to pay their traffic fines. For example, community members who apply for services in the community, such as childcare, school lunch subsidies, and loans for building a home could face repercussions if they have outstanding fines. Akwesasne’s representatives felt that this internal policy has proven to be successful as community members are paying their fines.

## Tsawwassen First Nation

Tsawwassen First Nation has been a Modern Treaty Nation since April 2009.<sup>11</sup> It is an urban Nation situated to the south of Vancouver and directly above the United States border, adjacent to the state of Washington. Tsawwassen First Nation has a population of slightly more than 500 members. Approximately half of the members live on Tsawwassen Lands, while thousands of non-members also live, work and shop on Tsawwassen Lands.

There is substantial residential, commercial, and industrial development on the Nation’s land. Real estate is the main economic driver as there is a high number of residential lease holders, due to the lack of housing in Vancouver, as well as a high number of non-residential lease holders.

### Law-making

Tsawwassen First Nation has their own legislature which has enacted 25 to 30 laws with community input. The representative indicated that the Nation has adopted a concurrent laws model whereby most provincial and federal laws of general application apply on Tsawwassen Lands (for example, employment laws, landlord and tenant laws, criminal laws and many others). The representative explained that this ensures that the applicable laws are already familiar to people who are not members of the community, such as residential, commercial, and industrial investors and residential lease holders living on Tsawwassen Lands. The representative indicated that these laws are enforced in the same way as they are enforced elsewhere in British Columbia.

### Enforcement of laws and by-laws

Under Tsawwassen First Nation’s *Laws Enforcement Act*, all police officers who belong to a force authorized under provincial law are considered enforcement officers with the authority to enforce Tsawwassen laws or regulations. The Nation has an agreement with the Delta Police Department, a local municipal police service, which provides policing services to the community. Tsawwassen First Nation provides training to the dedicated liaison team in Delta’s police service, which has a Tsawwassen First Nation community liaison officer as well as a team responsible for handling criminal issues in the community. When community members call the station for service, they can speak with someone who knows the community. The Delta fire department also has an agreement to enforce certain aspects of Tsawwassen First Nation laws.

For non-criminal matters, Tsawwassen First Nation has their own enforcement officers, who are also designated as peace officers in Tsawwassen First Nation’s regulations for the purposes of the *Offence Act* (British Columbia).

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<sup>11</sup> For more information, see: <https://www.rcaanc-cirnac.gc.ca/eng/1677073191939/1677073214344>.

Most of the enforcement officers are former police officers, and they are required to have and maintain certification in use of weapons, operation of emergency vehicles and crisis intervention. Tsawwassen First Nation also employs resource management officers to enforce laws on fishing and other gathering activities. They have significant relevant training and experience, although they do not carry weapons. None of Tsawwassen First Nation's enforcement officers or resource management officers are currently Tsawwassen First Nation members.

### **Adjudication and resolution mechanisms**

Although Tsawwassen First Nation's Treaty provides authority for Tsawwassen laws to be prosecuted through the provincial court system and gives Tsawwassen First Nation the power to hire their own prosecutor, this power is not currently being used (see the [What we learned](#) section for further details).

Some cultural aspects of Tsawwassen First Nation have been incorporated into sentencing proceedings in provincial courts. For example, a few years ago, a community member was charged with a *Fisheries Act* offence and entered a guilty plea. The Nation worked with the provincial Crown to set up a Restorative Justice Circle with Elders, community members from Tsawwassen First Nation and an Elder from a nearby Nation. This Circle produced recommendations for sentencing, and the provincial Crown agreed to make a joint submission to the judge.

### **Tsuut'ina Nation**

Tsuut'ina Nation is a Treaty 7 Nation,<sup>12</sup> with a population of about 2,300 registered community members living on their land. The Nation is situated in southern Alberta, with Calgary to the east. Tsuut'ina Nation's economy is mostly based on residential and commercial development. There is a casino, hotel and event centre that bring many Calgarians and tourists onto their land, as do popular retailers, and real estate development.

### **Law-making**

Representatives from the Nation reported that Tsuut'ina Nation has a robust legislative process. However, by-laws must be created under the *Indian Act*, which has resulted in challenges (please see the [What we learned](#) section for further details).

### **Enforcement of laws and by-laws**

The Nation has their own police service, the Tsuut'ina Nation Police Service, to enforce the Nation's legislation, as well as federal criminal law and provincial law. The Nation's representatives reported that the RCMP only enforces criminal law in Tsuut'ina Nation if requested by the Nation's police. The Nation funds 16 police officers, and another 15 officers are funded by the provincial and federal governments through the First Nations and Inuit Policing Program.

The Tsuut'ina Nation Police Service has mutually beneficial partnerships with the Calgary Police Service and the RCMP, as all three police services provide each other with supports. For example, these partnerships provide the Tsuut'ina Nation police access to additional police equipment, such as a helicopter, which they would not have access to otherwise.

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<sup>12</sup> Treaty Seven was signed in 1877. For more information, see: [Treaty Research Report - Treaty Seven \(1877\)](#).

## Adjudication and resolution mechanisms

Tsuut'ina Nation has a Peacemaking Court<sup>13</sup> with an Indigenous judge, an Indigenous prosecutor, Indigenous court workers, and the accused can be represented by anyone they choose. There are very few areas of law that cannot go to the Peacemaking Court; however, serious criminal offences such as homicide and sexual assault, for example, must be prosecuted in provincial court. The Tsuut'ina Peacemaking Court can be accessed by community members at any point in the justice process (i.e., pre-charge, post-charge or through a provincial judge).

Trained community members and Elders also support the Nation's justice system through a healing circle. This is a restorative justice model which integrates the community's voice.

## Whitecap Dakota Nation / Wapaha Ska Dakota Oyate

Whitecap Dakota Nation, which became a self-governing Nation on September 1, 2023,<sup>14</sup> is located to the south of Saskatoon. There are about 600 members, and many live in the community (Whitecap Dakota Nation n.d.). The Nation also has a casino, resort and golf course which draws over one million tourists a year into the community.

### Law-making

The Nation has been enacting laws under their Land Code and the *Indian Act*. However, with the Self-Government Agreement now in place, the Nation's representatives reported they would like to generate the capacity for community justice procedures, including the creation of their own laws that could be enforced through either their own or existing legal systems, including the provincial courts.

### Enforcement of laws and by-laws

The representatives from Whitecap Dakota Nation indicated that the casino, resort and golf course create challenges for the Nation as the high volume of visitors introduces safety and peacekeeping issues. The Nation's leadership have been emphasizing the need for the Self-Government Agreement to address crime and justice issues. As well, the Nation continues to seek outside investment for the community and appreciates the need for a robust justice system to support public safety and economic stability.

In May 2021, Whitecap Dakota Nation developed a two-year pilot, the Community Safety Officer (CSO) program, to address community safety issues through education and de-escalation.<sup>15</sup> The CSO program currently has five CSOs authorized under provincial policing legislation; however, the RCMP is still responsible for addressing criminal matters in the Nation. Although the aim of the CSO program is to focus on education for diffusing situations, if someone is disturbing the peace, the First Nation would eventually like to be able to issue tickets, as well as prosecute the First Nation's laws. Currently, the Nation's laws are being enforced and adjudicated through provincial traffic court with the participation of CSOs.

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<sup>13</sup> The Peacemaking Court, established in 2000, was the first Indigenous court in Canada. It brings together two separate systems: the Alberta Court of Justice and the Peacemaker process. <https://www.albertacourts.ca/cj/areas-of-law/criminal/special-courts/ICIC>

<sup>14</sup> *An Act to give effect to the self-government treaty recognizing the Whitecap Dakota Nation / Wapaha Ska Dakota Oyate and to make consequential amendments to other Acts*, accessed at [Government Bill \(House of Commons\) C-51 \(44-1\) - Royal Assent - Self-Government Treaty Recognizing the Whitecap Dakota Nation / Wapaha Ska Dakota Oyate Act - Parliament of Canada](#). Whitecap Dakota Nation has been recognized as "Aboriginal peoples of Canada" with the rights listed under sections 25 and 35 of the *Constitution Act, 1982*.

<sup>15</sup> The CSO program was also implemented in Muskoday First Nation, and the work on developing these programs was done with support from the Saskatchewan Ministry of Justice and Attorney General.

### **Adjudication and resolution mechanisms**

The provincial courts hear summary offences under the Nation's Land Code as well as criminal offences. The Nation has been working with the Saskatchewan Ministry of Justice and Attorney General to have provincial courts recognize the First Nation's laws as it transitions to a self-governing model. The Nation's representatives reported that this has been facilitated through Saskatchewan's recent amendments to its *Summary Offences Procedures Act*.

## What we learned

To frame the discussions, the representatives of the four First Nations were asked what the administration of justice means to their First Nation. The representatives emphasized that the administration of justice needs to be community-based and that it is necessary to ensure that all the aspects of the justice system, namely, legislation, administration, enforcement, prosecution, and adjudication, are functioning well to serve the community. The representatives shared that the administration of justice is also not solely about administering pieces of the justice system, but that the underlying objective is for a Nation to regulate themselves in a way that respects their values and traditional teachings.

“Our children and grandchildren know we have [our own] police, a court and justice department, as well as laws that they have to follow. They know that if they get in trouble, the Justice Department has a program to guide them through the justice system.” (Mohawks of Akwesasne)

## Successes and lessons learned in the administration of First Nation justice systems

During the discussions, the four First Nations were asked to share how they have been successful in administering and/or enforcing their own laws and by-laws. This included any processes that worked well or partnerships that helped them to be successful. In addition, the Nations were asked if there were any lessons learned that they would like to share with other Nations looking to advance their own administration of justice initiatives, as well as justice system professionals (i.e., enforcement officers, police, prosecutors, legal counsel, adjudicators, etc.), and federal, provincial and territorial government officials working in this field.

### Community-led justice systems

“It’s thanks to our past leaders’ resilience and push to make this happen, it’s astounding, and you don’t know the pride you get when someone turns to you and talks about how well-known and holistic the Akwesasne justice system is. This is based on the work of generations and generations of people who have done so much.” (Mohawks of Akwesasne)

The representatives of all four Nations indicated that the reason their Nations have been able to advance their own justice systems is largely based on support from their communities, and the continuous engagement from their leadership, who advocate repeatedly for the community with municipal, provincial, and federal governments and organizations. They reported that communities often provide a large part of the funding for their justice systems through the revenue from residential, commercial, and industrial leases and activities on their lands.

All of the representatives highlighted that community engagement is critical as it provides insight into issues in the community that members would like to have addressed. For the participating First Nations, engagement with community members permeates every aspect of their justice systems, from legislative development to enforcement, prosecution, adjudication, and other methods of resolution. Representatives from two Nations described how their communities are regularly engaged in law-making, such as identifying issues to address in

legislation, reviewing laws in draft form to provide feedback on what the community would like to see advanced, and includes a community vote to pass certain laws.

“Policing has historical issues, and that can be handled through solid relationships and understanding the community. Community members’ voices are heard through the Peacemakers who are Nation members and Elders. If you have community buy-in the people will respect and appreciate the service.”  
(Tsuut’ina Nation)

Community engagement is also a critical component for policing in the four First Nations, as police and Community Safety Officers are responsible for community safety. For example, one Nation’s police service takes a community-centered approach to policing; there is a dedicated team of plain clothed municipal police officers that work in the First Nation. These officers are trained by the First Nation, and the Nation’s Chief sits on the municipal police governing Board. Further, the Nation’s Chief and Executive Council meet regularly with the municipal police chief and senior officers. The First Nation’s representatives reported that this level of involvement has greatly enhanced relationships between the community and the municipal police service. They also noted that regular communication between the community and the municipal police service has helped to ensure that the community’s input is considered in all policing matters.

Another Nation’s approach to community engagement in policing includes having their Nation’s police officers attend community events each month, including Band meetings two or three times each year to get feedback from community members. Additionally, their Nation’s police officers meet with each household on the Nation every five years, and they present at an Elders’ luncheon on what they have heard from the community. They then work with the Elders to address community concerns. For example, one Nation’s representatives shared that community members had expressed concern to the Nation’s police about trespassing, which is a major issue. There is a large city near the Nation’s land, and many people cut through the First Nation as a shortcut on their commute. This had led to the deterioration of the Nation’s roads and created safety hazards. The representative stated that the Nation has addressed this issue by creating a program to address trespassing, which includes having Nation’s police officers issue tickets with significant fines.

“Education is a big part of what they are doing - it is clear what their [CSOs] roles are as they go through and enforce the laws and there are no surprises for the community.” (Whitecap Dakota Nation)

Representatives from two of the Nations indicated they prefer to use an educational approach to enforcement rather than issuing tickets. One of the Nations indicated they are prioritizing education whenever possible with community members and visitors. With a hotel and casino in their community, they have a large number of visitors, so CSOs try to diffuse situations by educating people about their laws and by-laws, and only use ticketing and prosecution when necessary. They also use a community bulletin (by way of email and posters) to educate the community about their laws, by-laws, and the legal authority that CSOs have to issue tickets.

One Nation instituted a “Good Standing in Community Policy,” where access to community services (e.g., childcare or loans) are dependent on whether they have good standing in the community, including payment of any fines.

Finally, a representative from one of the participating Nations indicated that currently their First Nation’s court has Indigenous staff, but not all are community members. The goal is to eventually have a prosecutor and judge from within the community to truly become a community-based court.

## Strong partnerships

“A strong partnership with external agencies and systems is crucial for the system to function effectively; without partnerships the system won't work.” (Tsaawwassen First Nation)

Representatives of First Nations noted the importance of having strong partnerships to support the enforcement of their laws and by-laws. Partnerships with municipal police services and the RCMP have resulted in policing agreements focused on fostering good relationships and positive enforcement within First Nations. One Nation's police representative highlighted that their Nation's police service has a partnership with two other police services that provides access to additional equipment. They also have reciprocal powers to enforce laws and make arrests in the other police services' jurisdictions.

Representatives also highlighted the importance of partnerships with the provinces for ensuring that First Nations' laws and by-laws are prosecuted in provincial courts. One First Nation described their agreement in place with the provincial Crown, which stipulates that where provincial legislation is comparable to the Nation's laws, the provincial Crown will proceed with the prosecution of the Nation's laws. Another Nation's representative explained that they are working closely with provincial counsel to have protocols put in place so that their Nation's laws can be prosecuted in provincial court. While the province will assist, currently the Nation is still responsible for the prosecution of its own court cases.

## Recognition of laws

“The Nation would like to generate capacity for internal justice procedures, such as making laws to work within the broader legal system. We worked with the province to get some recognition of the Nation's laws in the courts, and while there has been some progress, there is no federal legislation on procedures for prosecution as this is primarily a matter of provincial legislation.” (Whitecap Dakota Nation)

One of the greatest challenges that the representatives highlighted for advancing First Nations' justice systems is the lack of recognition of the First Nations' laws and by-laws by provincial governments and courts, the federal government, external police services, and even sometimes the Nations' community members.

The representatives of the four First Nations discussed different approaches they use to help increase the recognition of their laws and by-laws, given that this has been a challenge they have encountered for advancing their justice systems. Two First Nations are working with the provincial Crown in their respective jurisdictions to develop recognition of their Nations' laws in provincial court.

Another approach to increase recognition of the Nations' laws within their communities and in provincial courts that the First Nations' representatives discussed is the use of templates for writing laws that include standard definitions for commonly used terms. This provides consistency in the development, interpretation and application of the First Nations' laws by law enforcement, judges and justices of the peace. Additionally, one of the First Nations regularly provides training for their Nation's Justices of the Peace to ensure they understand the Nation's laws.

However, even with these successes the First Nations' representatives reported that there continue to be challenges with the recognition of these Nations' laws and by-laws. One Nation's representative indicated that even though there is an agreement in place with their Nation's own police service to enforce their laws and by-laws, the police push back because they interpret the laws themselves and have concerns about the validity of

those laws. Another Nation's representative reported that even though their Nation's Treaty provides the right for their Nation to prosecute their laws in provincial courts, and to hire a prosecutor, there are many logistical challenges. This Nation's representative also described how the provincial court system is set up for prosecutions to be conducted by the provincial Crown and not by private or Treaty prosecutors who do not have the same access to processes, scheduling and software as the provincial Crown. The Nation hired a private prosecutor in the past, but these types of logistical challenges limited its success. Accordingly, the representative indicated that the Nation has not attempted to have their laws enforced in provincial court since this earlier prosecution.

### **Ongoing and stable funding**

"We need to be able to offer our justices the same things provinces offer to their justices and judges. We need the same resources that Canada has for the development of laws. We have to be able to remove laws from our registry, and update and amend laws as needed." (Mohawks of Akwesasne)

One of the most prominent challenges that the representatives of the four Nations raised is regarding the lack of ongoing and stable funding for the administration of justice. The representatives indicated that there is a strong need to move away from program- and project-based funding models to more stable alternative funding models so that communities can fully develop, administer, and maintain their own justice systems over time.

The representatives of the participating First Nations shared that the program- and project-based funding models used for law enforcement services do not take into consideration the demand for service when there is an increase in non-members coming to the communities due to tourism and for shopping. The representatives noted that this means that the First Nations must find other sources of funding. One of the First Nation representatives noted that their community is funding more than half of their Nations' police officers; the number of officers they are able to resource through the First Nations and Inuit Policing Program is not sufficient to meet the increased demand for police services resulting from the high number of tourists. There are tens of thousands of visitors arriving daily in this First Nation, which stretches the Nation's policing resources that are required for maintaining safety in the community. The Nation's representatives also mentioned that their police service has had to take on extra services, such as police record checks, in order to supplement their funding.

In addition, some representatives explained that since First Nations' police services are funded as a program rather than as an essential service, they are not being sufficiently resourced for support positions other than police officers. For example, the representatives of some of the participating First Nations reported that the program funding is restricted to hiring and paying officers' salaries; it does not include support staff and specialized services or units that are standard for many police services across Canada (for example, forensic services, police dogs, traffic units). There is also a gap in the funding models to pay for honorariums provided to Elders involved in administering the justice system.

Further, the representatives from a couple First Nations identified the need for funding of First Nations' police services to provide a competitive salary so that law enforcement staff can be retained. More than one representative expressed concerns over not being able to pay officers at the same rate as the RCMP. Funding was also noted by the representatives as an issue for a Nation that is piloting a two-year CSO program as there is no guarantee that they will have the resources after the pilot. The representatives asserted that sustained funding is essential to build capacity for policing within the Nation. In addition, the program funding models require Nations to go back and justify their programs for continued funding, which they believe would not be required if the justice systems were considered essential services.

“Funding is not given for justice systems in First Nations, even with self-governing First Nations, which is concerning. There is funding for language, culture and infrastructure but not justice. There is a need for long-term stability; communities can contribute if they are capable, but they need to know what resources are required to administer a Nation-based justice system.” (Whitecap Dakota Nation)

Representatives of the participating First Nations reported that the use of program- and project-based funding models also make it challenging for First Nations to ensure ongoing maintenance of their justice systems. One of the First Nations that has been administering their own justice system for many years indicated that they already have all of the pieces of their system in place, but that there is no funding available to update the pieces that are getting older, including the buildings being used to deliver the justice system. The representatives noted there is also no ability to grow programs that have been operating for decades to meet the growing demand each year.

Other gaps in funding were identified by the representatives of the four First Nations. Notably, one First Nation’s representative indicated that they were looking for funding for non-legally trained Indigenous prosecutors to take over the role of prosecution that the CSOs are currently doing. They also noted that funding is needed to help gather data to measure the impacts of the Nation’s justice programs and services. Furthermore, another First Nation’s representative indicated that there is a need for funding to hire a legislative drafter and researcher, which are key positions for First Nations that are planning to develop their own laws. They also indicated that there is a need for funding to train justices of the peace so that they are able to interpret the Nation’s laws.

### Impacts of the administration of First Nation justice systems

“It’s a robust model of a justice system; to be able to do that [administer justice] internally without sending adjudication outside of Akwesasne is important for the survival of Akwesasne and for our people. When the people leave this territory and undergo prosecution outside, it is difficult to return physically, and when they return, they are not coming back in the best mind.” (Mohawks of Akwesasne)

The representatives of the four First Nations were asked how the administration and/or enforcement of their laws and by-laws have impacted their Nations. More specifically, they were asked whether they have seen improvements in their community’s well-being, or if they have been able to do something differently in their community because of these administration of justice initiatives.

One Nation’s representative indicated that as a result of their CSO program, there has been an improvement in the relationship between the community and the police service. Since the officers are from the community, they are known and are seen as being there to help the community, whereas external police do not have those same relationships. Another First Nation’s police service administers an annual community satisfaction survey, and it was shared that 97% of community respondents were satisfied with their police service in 2022.

In another First Nation, the Nation’s own laws and traffic infractions are heard in their own court, in the community and the Nation’s representatives shared they feel their court is able to protect their people’s rights. It was emphasized that having to physically leave the Nation to attend provincial court is a significant barrier to the well-being of community members. The same community’s justice program is also seen by the community to offer valuable services as it guides its members through the Canadian justice system. For example, this First

Nation's court worker program supports their people through the provincial court process, which can be scary and overwhelming.

Although the First Nations' representatives were able to speak to some of the impacts they have observed as a result of administering their Nation's justice systems, they also spoke about the need and desire to comprehensively measure these impacts. However, the Nations' representatives reported that this is not currently possible as it would require funding for research and data collection.

### Re/Imagining First Nation justice systems

“Many First Nations in British Columbia are trying to preserve and revitalize traditional laws; much has been lost through the loss of Knowledge Keepers. It can be challenging to say what First Nations' legal systems looked like before settlers came and imposed their justice systems.” (Tsawwassen First Nation)

As a final topic of discussion, the First Nations' representatives were asked what their justice system could look like outside of the Western justice system. Recognizing that the representatives of the four First Nations may not have had time to think about this, it was initially raised during the first discussion and was expanded on in follow-up discussions with some of the First Nations.<sup>16</sup> Even with another opportunity, the First Nations' representatives displayed some hesitancy around being prescriptive about what the systems could look like given they had not had sufficient time to discuss this with the members of their Nations.

Instead, the First Nations' representatives noted the importance of having control of their own justice system and the autonomy to make decisions. For one representative, this means that they would have a community-run justice system with community members working as judges, prosecutors, court workers, etc. They also highlighted the important role of Elders, culture, and language in the justice system. Some of the representatives also suggested that a phased approach can help build capacity. For example, stagger the passing of laws, and take the time to put in place the processes, structures, and people needed to preserve and revitalize traditional laws since so much knowledge was lost through colonization. There was also mention of using restorative justice approaches and shifting from Western models of policing to focus on community safety and well-being.

### Key messages to share

At the end of each discussion, the representatives of the First Nations were asked if there were any lessons learned or promising practices that they would like to share with other Nations who are looking to develop or update their own justice systems as well as with justice system professionals (i.e., enforcement officers, police, prosecutors, legal counsel, adjudicators, etc.) and federal, provincial and territorial government officials working in this field. The following are some of the key messages shared by representatives of the four Nations.

For First Nations looking to do this work, the representatives expressed the need for patience and ongoing work; it is important to not let barriers stop progress. It was also shared that it is helpful to action items in an incremental way, starting small so it is possible to build the political, leadership and community supports that are needed to move forward. It was emphasized that when a Nation is planning the development of their justice

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<sup>16</sup> Unfortunately, it was not possible to meet with two of the First Nations after the roundtable discussion so only preliminary responses were provided by the representatives of these two Nations.

system, it is important to consider the growth and change of the system over time. This includes maintenance of the system components, as well as the need for funding, staffing, infrastructure, and training.

The representatives highlighted the uniqueness of their communities. Given that all First Nations are distinct Nations with their own cultures, histories, languages and practices, the federal and provincial governments are required to recognize that the needs of First Nation justice systems are sometimes distinct from one another. The representatives of the four First Nations spoke of the need to create the space to develop and implement the justice systems that their communities need and want, while noting that this will take time and resources. For these Nations, this means that governments' approach to funding the administration of justice in First Nations will have to change.

The First Nations' representatives indicated that their justice systems provide essential services. As such, they stated that First Nations require long-term funding and not program- or project-based funding models. The representative of one First Nation explained that Self-Government Agreements have not typically provided funding for First Nation justice systems, whereas there is funding provided through these agreements for other areas such as language, culture and infrastructure.

In addition, the representatives of the four First Nations shared that funding for First Nation justice systems should not solely be meant for establishing justice systems; it should also cover the maintenance and growth over time of the justice systems as this is critical for communities' well-being. This includes updating justice system infrastructure, establishing specialized police units to address specific issues in the community, and improving the salaries for staff in all justice system components to attract and retain trained community members. Even for First Nations with a well-developed set of laws, the Nations' representatives noted that communities may need to update laws and make amendments over time.

The four First Nations who contributed to this report have all seen significant successes in the establishment of First Nation justice systems while navigating many challenges. The representatives stressed that First Nation justice systems are essential for the well-being and safety of their communities and are key to their self-determination and self-governance.

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