

Draft BC First Nations Justice Action Plan

Introduction

As stewards and owners of the land, First Nations have pre-existing cultures and ways of life, including systems of governance and law. First Nations have never ceded, surrendered or agreed to abandon the land, their culture, or their jurisdiction and governance systems. These diverse systems include specific laws and institutions, which assist in resolving disputes within and between communities.

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

Socio-economic Impacts

The present justice system often results in the systemic, cultural discrimination of First Nations. The system does not recognize that differences in culture, values, language and traditions directly impact a myriad of events and issues such as court appearances, defense case reasoning, choosing pleas of defense, confronting accusers, and showing emotion in court. There is also the assumption that punishment equally affects all persons regardless of background or culture.

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

Indeed, the devastating history of colonization, social inequality, and the historic and modern government policies of oppression and alienation of lands and resources contribute to the current socio-economic conditions inflicting First Nations communities. The intergenerational and continual effects of residential schools and poverty as well as the loss of land, jurisdiction, and culture, has led to often devastating social conditions including high levels of alcohol and drug abuse, staggering suicide rates, loss in parenting skills, and increased violence. This complexity of socio economic factors directly contributes to First Nations involvement in the justice system. However, First Nations carry a collective responsibility to take care of the health and well-being of their communities and land. Thus, reconciling issues of justice through jurisdiction and self-determination are key to achieving this important responsibility.

Political Context

Leadership Accord

On March 17, 2005, the political Executives of the First Nations Summit, Union of BC Indian Chiefs and BC Assembly of First Nations signed a Leadership Accord, committing to work together through a First Nations Leadership Council to advance respect, recognition and reconciliation.

New Relationship

In March 2005, the First Nations Leadership Council and the Province of British Columbia entered into a *New Relationship*, in which agreed to a new government-to-government relationship based on respect, recognition and accommodation of Aboriginal title and rights. Goals set by First Nations in the *New Relationship* include:

- To restore, revitalize and strengthen First Nations and their communities and families to eliminate the gap in standards of living with other British Columbians, and substantially improve the circumstances of First Nations people.
- To implement new institutions and structures to achieve recognition of each First Nations decision-making authority.
- To implement new institutions and structures to achieve dispute resolutions processes which are mutually determined for resolving conflicts rather than adversarial approaches to resolving conflicts.

A First Nations- Federal Crown Political Accord

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

Transformative Change Accord

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

Taken together, these agreements demonstrate a new era of unity amongst First Nations, and a commitment between First Nations and governments to work collaboratively to implement respect and recognition for one another, address historical inequities, and resolve existing disparities. Given this political context, it is time to create a clear First Nations Justice Action Plan. The February 14, 2005 Speech from the Throne reconfirms this time of action as Premier Campbell made further commitments that "community courts and Aboriginal courts offer the

potential to take pressure off our traditional court system through innovative approaches that have worked well in other jurisdictions". The Premier further committed to using traditional approaches as an integrated strategy to improve public safety, to reduce property crime, and to examine new approaches for correctional facilities that better meet the needs of First Nations and society.

The development of a First Nations Justice Plan will ensure First Nations jurisdiction over justice programs within First Nations communities; allow for dialogue among all parties; develop strategies to reduce overrepresentation of First Nations in correctional facilities; eliminate systemic discrimination within the justice system; create processes for the involvement of First Nations individuals, cultures and values within the mainstream justice system; and ensure the well-being of First Nations and non-First Nations alike

Draft Vision

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

Draft Goals

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

Draft Principles

- 1) **Respect, Recognition, and Accommodation:** Aboriginal title and rights must be recognized through shared decision-making arrangements and appropriate consultation and accommodation processes.

- 2) **Diversity:** The cultural diversity among BC First Nations is respected and supported. Diverse approaches and processes with regards to First Nations involvement in the justice arena will be encouraged.
- 3) **Innovation:** New approaches and creative means of developing and responding to the administration of justice will be supported.
- 4) **Research and Information Sharing:** Traditional knowledge and research conducted by First Nations will be respected and incorporated into mainstream justice activities. All relevant studies and information will be shared with First Nations.
- 5) **Education and Training:** Opportunity to learn will be promoted and the training of First Nations individuals will be prioritized.
- 6) **Capacity and Financial Resources:** First Nations must have the appropriate human resource and financial capacity to engage in discussions and negotiations with respect to justice.

Section I: General

- Implement the commitment in the New Relationship to “develop new institutions or structures to negotiate Government-to-Government Agreements for shared decision-making...”
- First Nations will work with federal and provincial governments to establish a common vision and strategy including processes and timelines, with respect to administration of justice.
- First Nations will enter into agreements with Canada and British Columbia concerning the development of administrative capacities and infrastructure, the conduct of training, and certification of personnel.
- First Nations will enter into agreements with Canada and British Columbia concerning the establishment, funding, legal recognition, and procedural integration of all aspects of administration of justice, including policing, courts, and corrections.
- Ensure that the Aboriginal Justice Strategy is renewed with First Nations Participation.
- Develop measures to protect, restore, and strengthen First Nations knowledge, customs, and traditions, including leadership mentoring of Youth.
- Support the establishment of cross-cultural awareness and training programs at all levels of government to ensure that First Nations values are respected.
- Establish a First Nations Justice Council.

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

Action Items:

- Require that public safety measures include meaningful First Nations input.
- Ensure that each First Nations community has immediate and equal access to police services.
- Ensure Community Safety Constables have adequate resources to effectively protect the First Nations communities they serve.
- Create provincial First Nation Police Commission and Commissioner to develop policing standards that are First Nations driven and directed.
- Establish community-based correctional facilities that are staffed by First Nations Corrections Officers.
- Ensure correctional facilities provide culturally appropriate programs for First Nations inmates.
- Develop a protocol that could be used to help with the reintegration of First Nations inmates back into their communities.
- Require First Nations representation on National Parole Board.
- Work with First Nations leaders in the development of community specific and community-driven First Nations sentencing panels.
- Ensure First Nations input into policing priorities and improvements with local detachments and/or First Nations police.
- Support the development of community based Justice Plans.
- Develop effective and transparent communication strategies between police and First Nations communities especially in occurrence of a First Nations death in custody.
- Ensure a mechanism is in place for First Nations to make complaints against enforcement officers.
- Require aboriginal liaison or advocate to establish trust and ensure safety for First Nations bringing forth complaints.
- Encourage community-based preventative measures and strategies to ensure community safety.
- Ensure that the First Nations Justice Council meets with all the Community Safety Constable pilot programs to ensure collaborative efforts and success.

- Implement positive relationship-building events between the police and the community.
- Focus initiatives, programs and activities that build, reconcile, and promote positive relationships between First Nations youth and police.
- Ensure youth justice programs and agencies are community-based and culturally relevant.
- Build relationships with the business community to increase First Nations capacity and opportunity as well as include the business sector in the solutions of the problem.
- Establish two-way process for involving police in understanding and responding to the needs, demographics, culture, and values of the community.
- Increase cross-cultural training and awareness for police and First Nations alike.
- Ensure each First Nation has input in selection of police member(s) stationed in their community.
- Identify and work towards common objectives shared by First Nations and justice service providers.
- Create ongoing opportunities for continued dialogue between all stakeholders.
- Need to be innovative and assertive in developing measures for successful rehabilitation.
- Lobby for revenue sharing derived from fines collected within First Nations communities.
- Need for an integrated and harmonized approach to policing i.e. RCMP/BC Police Act.
- Increase gang and organized crime awareness initiatives within communities.
- Develop public education and awareness campaigns to recognize the value and contribution of First Nations and to address systemic racism that is entrenched throughout society.
- Support the development of First Nations Police officers within First Nations communities on and off-reserve.
- Develop a strategy to incorporate First Nations representation when the Province renegotiates its contract with the RCMP.

Section III: Improving Public Safety

Action Items:

- Work with and support First Nations to undertake comprehensive community planning.

- Ensure First Nations entering into community tri-partite agreements have sufficient input when developing these agreements.
- Appoint First Nations Peacemakers as officers of the court who would take referrals.
- Ensure First Nations people have equal access to justice programs and services provided by the provincial and federal governments.
- Renew the Public Safety Protocol.
- Educate First Nations on the Public Safety Protocol.
- Ensure that all enforcement officers receive proper cultural training.
- Lobby for restorative justice programs in fisheries and wildlife.
- Prioritize the protection of our traditional and sacred sites (including culturally modified trees).
- Ensure meaningful First Nations participation on justice panels and appropriate advisory boards, including Ministry of Forests and Range.
- Lobby government to deal with the over-representation of First Nations fishing charges stemming from exercising First Nations rights.
- Ensure the protection and safety of First Nations fishers and hunters (i.e. Safety protocol).
- Develop dispute resolution protocols between governments and First Nations.
- Ensure First Nations jurisdiction is recognized and affirmed.
- Lobby government to develop First Nations justice and conservation courts.
- Develop public education and awareness campaign on First Nations Title and Rights.
- Ensure cultural connection to lands and resources is recognized, protected and affirmed by government.
- Work towards a restorative/reconciliation ceremony between all users of fisheries (FN, DFO enforcement and conservation, commercial fishers, sports fishers) to ensure a new relationship of respect and safety.
- Work towards enabling First Nations authority and laws to ensure safety and sustainability of First Nation communities.
- Incorporate traditional justice practices (informed by traditional knowledge, traditional Ecological knowledge) into new or existing policies and legislation.

- Ensure Traditional Ecological Knowledge (TEK) is enshrined legislative and policy changes.
- Preserve and revitalize First Nations languages to ensure the protection and integration of traditional laws and customs into modern justice systems.

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

Action Items:

- Design, develop, and implement culturally appropriate treatment programs “closer to home” to ensure First Nations connection with their home territory.
- Development of Safe Houses for First Nations women and children within traditional territories and in urban centers.
- Provide mediation, counseling, and other support services where the victim wishes to see the offender treated and the family held together.
- Ensure that Child Welfare Agencies work more closely with Youth Justice Personnel and with the Youth Court.
- Remain non-judgmental and inclusive of all of our community members.
- Create methods for interventions and healing that deal both with the individuals and with the larger systemic issues.
- Lobby for the recognition of restorative and/or traditional justice systems as effective and legitimate means of prevention, resolution and rehabilitation in First Nation communities.
- Encourage family and community support and teachings
- Lobby for additional support and capacity for restorative justice programs.
- Teach our children to be responsible and act in meaningful ways that reflect back to the community who they are and the values of the community
- Require that First Nations children are heard in the justice system as First Nations children have rights, including international rights, which inform the way in which we move forward.
- Recognize that listening to and hearing children reveals broader and comprehensive issues and contexts that need to be addressed.

- Protect children by protecting the fundamental and important relationships between children, their primary care-givers, and their communities.
- Enable First Nations jurisdiction and responsibility over children and youth with adequate resources and increased capacity.
- Ensure families are meaningfully involved in Child Death Reviews to create preventative and protective measures for children.
- Recognize that community strategies for health and safety for First Nations children and families transcend spatial boundaries of the reserve and urban centre.
- Ensure that First Nation families have tools available to provide healthy environments for their children.
- Develop strategies and provide resources for supporting First Nations families to prevent apprehension, crisis intervention, trauma, and re-victimization.
- Recognize the importance of Indigenous laws in the application of the justice system as it pertains to children and families.
- Incorporate strategies in the justice system and in the communities that connect western laws with First Nations traditional laws to create new legislation that encapsulates First Nations laws, traditions, values and culture.
- Recognize the critical and vital importance of Elders to the health and well-being of First Nations communities ensure inclusion of Elders into safe and healthy community strategies. Resourcing and honouring the time and contributions is central to their inclusion. Ensure that Elders influence and advise government and policy-makers.
- Ensure that children who have been victimized have safe and protective environments for disclosure and healing
- Implement open and transparent reporting processes when there is a death of a child in Ministry care.
- Find creative ways to meet the needs of small and remote communities that do not have same access to resources and capacity.
- Implement mandatory and on-going cultural education and sensitivity training for all ministry and front-line service providers for First Nations communities.
- Require full disclosure of information and statistics of First Nations children in care, First Nations children that have been apprehended, and First Nations children that have died in care.
- Ensure that children have access to and understanding of their culture, traditional practices and values, and communities.

- Address that there is a direct link between early childhood experiences and youth/adult involvement in the justice system.
- Ensure that First Nations children are not apprehended due to conditions of poverty.
- Support the development of peacemaking programs in First Nations communities to assist in conflict resolution.
- Encourage parenting circles in First Nation communities.
- Ensure that there is no duplication of services between the government and First Nations communities.
- Create awareness of Fetal Alcohol Syndrome and other related diseases that contribute to the increased numbers of First Nations within the justice system.
- Reconnect children, who are permanent wards of the Crown, with their First Nation community and culture.

Section V: Improving Linkages with First Nations Justice Organizations

Action Items:

- Ensure when entering into agreements with other governments, either Aboriginal or non-Aboriginal, that standards are in place resulting in the professional delivery of justice programs and services to First Nations people.
- Encourage and support the First Nations Education Steering Committee (FNESC) to develop curriculum materials on administration of justice issues for First Nations schools.
- Develop programs in conjunction with Local Education Authorities (LEA) to acquaint community members with the law and the justice system, and encourage First Nations participation as jurors.
- Ensure provision of information, educational materials, workshops, and general support for communities who are dealing with justice issues.
- Require adequate resources and support for existing programs and services. Ensure that funding for any new policy and program development initiatives is not derived from existing programs and services.
- Lobby for increased capacity for First Nations justice service providers and support workers including, but not limited to, youth correctional workers, victim support providers, prison liaison workers and family advocates.
- Recognize the multi-dimensional roles and responsibilities of justice service and support providers in First Nations communities.
- Address the revolving door of First Nations in the justice system.

- Establish and support positive linkages and networks between the diverse range of First Nations justice organizations.
- Improve communications and establish linkages among First Nations and Aboriginal justice organizations.
- Ensure meaningful First Nation input into BC-Federal government cost-sharing formulas for Aboriginal justice organizations.
- Support the establishment of probation services for remote First Nations communities.
- Define and clarify the linkages between restorative justice and Aboriginal justice.
- Assist program providers to increase their referrals from first time offenders.
- Focus on recovery programs to decrease aboriginal numbers in the justice system.
- Ensure that meaningful First Nations input is incorporated into the Federal Aboriginal Justice Strategy.
- Support a First Nations representative on the Judicial Council, Supreme Court of BC and Canada.
- Ensure Early Childhood Development (ECD) within First Nations communities.
- Ensure linkages with the Aboriginal Justice Strategy.