

National Inquiry into Missing and Murdered Indigenous Women and Girls: Criminal Justice Oversight and Accountability Hearing

Anticipated Evidence of NAPS Board Chair Mike Metatawabin and Chief Terry Armstrong

Nishnawbe-Aski Police Service (“NAPS”) Board Chair Mike Metatawabin served as the NAPS Board Chair from 2000 to 2009, and resumed the position of Board Chair in 2015. Between 2009-2012, Chair Metatawabin served as an ex-officio member of the NAPS Board while he was the Deputy Grand Chief of Nishnawbe Aski Nation.

Chief Terry Armstrong became the Chief of Police of the NAPS in 2013. Chief Armstrong began his policing career serving as a First Nation Constable in Pikangikum in 1984. Prior to becoming Chief of NAPS, he worked in nearly every aspect of policing, including many years of service in the Northwest Patrol. Chief Armstrong served as the Deputy Chief of the Treaty 3 Police Service, the Acting Chief of Police for the Lac Seul Police Service, and the Detachment Commander of the Ontario Provincial Police, Sioux Lookout Detachment.

OVERVIEW AND GENERAL BACKGROUND

NAPS Legal Status

NAPS was created in 1994 to provide effective and culturally appropriate police services to First Nations communities in Nishnawbe Aski Nation (“NAN”) territory. NAN was established in 1973 as the Political Territorial Organization (“PTO”) representing the political, social and economic interests of its member nations. NAN’s mandate is to represent the socioeconomic and political interests of its First Nation communities to all levels of government on a nation-to-nation basis. In particular, NAN advocates to improve the quality of life for all citizens within its territory through the delivery of appropriate programs and services, including policing services. NAN represents 49 First Nation communities within northern Ontario, with its total population of membership (on and off reserve) estimated around 45,000 people.

NAPS is a standalone Indigenous police service, and by numbers, the largest First Nation Police Service in Canada. NAPS currently provides primary policing services to 35 First Nations. NAPS is funded by way of tripartite agreement, with signatories to the agreement being the Federal government, the Province of Ontario and NAN. Because NAPS was founded under Canada’s First Nations Policing Program (“FNPP”), not the Ontario Police Service Act (“PSA”), NAPS was prohibited from owning assets and using government funds for major capital expenditures. Further, given its program status, NAPS has not been subject to provincial adequacy standards under the PSA. NAPS has not been considered an essential service and the quality of its service delivery is not guaranteed by law.

The declaration of principles set out in the PSA, while providing that police services throughout Ontario shall “ensure the safety and security of **all persons and property in Ontario**”, did not actually extend to First Nations people because their police services did not have the same legislative backing as other non-Indigenous police services throughout the province. This resulted in First Nations people being deprived of policing backed by the Rule of Law. Bill 175, however, seeks to ensure equality with respect to policing in Ontario, providing specifically in its declaration

of principles that Ontario shall “ensure the safety and security of all persons and property in Ontario, **including on First Nation reserves**”. In addition, Bill 175 provides that policing shall be “responsive to the unique histories and cultures of First Nation, Inuit and Métis communities”.

Most of the communities (23 of 35) served by NAPS are remote and/or fly-in only. NAPS currently polices this vast territory with 162 uniformed officers and 35 civilian employees. Policing in the remote North presents unique challenges, particularly in relation to staff deployment – including training and supervision, accommodations, communications, and officer safety.

Role of the NAPS Board and Chief of Police

NAPS is governed by an independent Board and is administered by a Chief of Police who reports to the Board. The Board is entrusted to act as the civilian oversight of NAPS. The Board is responsible for setting policies to ensure the effective and efficient governance of NAPS. Furthermore, the Board is responsible for approving NAPS’ objectives, priorities and budget. The Chief of Police is responsible for the day-to-day management and operation of NAPS. The Chief of Police is an employee of the Board and is required to furnish the Board with information about the operational aspects of NAPS.

The Board has an obligation, in consultation with the Chief of Police, to establish and implement general policies governing the administration of NAPS. These policies will direct the Chief of Police on what types of operational policies shall be put into place to ensure that the Service is conducting business in a manner consistent with the NAPS mission statement, and that ensures the efficient and effective governance of NAPS.

NAPS Funding

Funding under the tripartite agreement is divided between Canada and Ontario, with Canada contributing 52% and Ontario contributing 48% of NAPS’ total funding. From the outset, NAPS was chronically underfunded. This 52/48 percentage split is arbitrary and has no legal significance. Until now, funding terms have historically been dictated by the Federal FNPP without significant negotiation or real consideration of operational realities.

NAN Chiefs-in-Assembly passed at least eleven (11) resolutions between 1999 and 2014 with respect to inadequate resources for NAPS. Nothing significant was ever done, in large part because there was no legal duty to fund First Nation policing to meet the legal standards set out under provincial legislation, and there was no dispute mechanism available to NAN and NAPS regarding the underfunding. NAN and NAPS have long advocated for the creation of a legislative foundation that would ensure that NAPS is funded to meet the same standards as other police forces in Ontario.

To this end, in 2015, NAN and NAPS engaged in negotiations and signed Terms of Reference with the Provincial government relating to adequacy standards. The goal of the Adequacy Standard Table (AST) was to create a legislative framework for First Nation policing.

In 2016, the AST legislative recommendations were accepted and formed part of the proposed Bill 175.

Bill 175 (“passed third reading in the legislature and received Royal Assent on March 8, 2018. Together with the May 2018 renegotiated tripartite agreement, the face of NAPS policing is finally changing.

HISTORIC INADEQUATE FUNDING AND THE DEADLY IMPACTS

Ipperwash Inquiry

The issues of inadequate funding and a lack of a regulatory framework were addressed in the Final Report of the Ipperwash Inquiry:

59. Federal, provincial, and First Nation governments should commit to developing a secure legislative basis for First Nation police services in Ontario.

Inquest into the Deaths of Jamie Goodwin and Ricardo Wesley (“Kashechewan Inquest”)

Early in the morning of January 8, 2006, NAPS officers detained Jamie Goodwin and Ricardo Wesley and placed them in separate cells in the Kashechewan detachment of NAPS. There was no direct sightline or video surveillance of the cells, and upon hearing shouts and detecting smoke from Mr. Wesley’s cell, the officers made determined and repeated efforts to unlock the cells. Their efforts were impeded by the fact that there was no master key, and the heat of the fire made the padlocks too hot to hold. Within minutes, smoke and heat made attempts at rescue impossible and Mr. Goodwin and Mr. Wesley died in their cells. Following the 2009 Kashechewan Inquest, the jury made several recommendations as related to the delivery of policing in NAN territory:

28. First Nations, Canada and Ontario should work together to ensure that policing standards and services levels in First Nations communities are equivalent to those in non-First Nations communities in Ontario.

29. Canada and Ontario should develop a method for establishing equivalence in policing standards and services between First Nations and non-First Nations communities. The unique characteristics of remote NAN communities should be addressed.

30. Canada and Ontario should provide NAPS with the funding required to ensure that the communities it serves receive the same level and quality of policing services and infrastructure that non-First Nations communities receive. Funding levels should be sufficient to allow NAPS to comply with adequacy standards set out in the Ontario Police Services Act and the Policing Standards Manual of the MCSCS and Royal Canadian Mounted Police (RCMP) guidelines.

31. An operational review of NAPS, in consultation with NAN, should be immediately undertaken.

32. The operational review should define common goals and objectives based on the observations and findings of an independent party that is mutually agreed upon by Canada, Ontario and NAN.

33. It is recommended that Canada and Ontario pay the cost of this operational review.

34. The operational review should consider the uniqueness of the NAN communities, and the requirements of the NAPS police service for adequate staffing, organizational structure, and infrastructure. Particular consideration should be given to the remoteness of the communities, the lack of social services, the lack of officer housing, officer retention issues, high transportation costs and the growing population.

35. The funding provided by Canada and Ontario should be sufficient to ensure that the needs identified by the operational review are implemented.

36. Canada, Ontario and NAN should retain a mutually agreeable independent consultant to conduct a comprehensive evaluation of the costs of appropriate policing in remote First Nations communities in Ontario. This evaluation requires the development of a method to cost unique, remote/fly-in police services.

37. Canada and Ontario should provide funding for this evaluation under clause 12 of the Tripartite Agreement.

38. NAPS should develop a business plan outlining its vision, goals and objectives for policing the NAN communities.

39. Permanent purpose-built detachments speaks to equality of service, pride of policing and professionalism. The standard for NAPS detachments should be brick and mortar buildings.

40. NAPS should establish a Property Management Department that has access to appropriate resources and staff. This department is encouraged to investigate funding options for apprentice training to develop in-house skilled workers.

Inquest into the Death of Lena Anderson

Lena Anderson died in February, 2013 in Kasabonika Lake First Nation by suicide after being left in the back of a NAPS police truck. The NAPS officer on duty was forced to lodge Ms. Anderson in the truck because there was no working furnace in the NAPS Kasabonika detachment in the middle of winter. The officer on duty had no radio and had to go physically to look for backup, leaving Ms. Anderson alone in the back of the running cruiser so that she could be kept protected from the harsh temperatures, where she ultimately died by suicide. In the 2016 Inquest into her death, the jury made recommendations relating to policing, including the following:

5. To Canada, Ontario and NAN: In order to ensure that policing standards and service levels in First Nations communities are identical to those in non-First Nations communities in Ontario, the PSA should be followed as the primary governing legislation. First Nations, Canada and Ontario will commit to work together to ensure that policing standards and service levels in First Nations communities are equivalent to those in non-First Nations communities in Ontario. Canada and Ontario will determine how to fund policing in First Nations communities. Funding levels will be sufficient to allow First

Nations communities to comply with adequacy standards set out in the PSA and the Policing Standards Manual of the MCSCS and RCMP Guidelines. The governments of Canada and Ontario shall ensure capital and operational funding for First Nations police services in Ontario.

6. To Canada, Ontario and NAN: Ensure the provision of adequate and sustainable funding to provide an adequate complement of backup officers and supervising officers to ensure that community members have access to the police services.

7. To Canada, Ontario and NAN: Ensure adequate and sustainable funding and policy support to ensure that the police officers in First Nations communities have access to a central communications dispatch centre that meets the requirements of the PSA.

STATUS QUO

NAPS officers face numerous practical barriers in the delivery of policing services. Understaffing means that NAPS officers rarely work with a partner, and routinely lack the standard backup available to non-First Nation police officers. Given the remoteness of NAN communities, officers frequently wait hours or days for backup or specialized unit support.

As of April 4, 2018, Remote Scheduling Coverage in NAPS Regions was as follows:

- Northeast Region – 1/5 remote locations had one officer working;
- Central Region – 6/8 remote locations had one officer working, 1 had more than one officer working, and one had no coverage whatsoever;
- Northwest Region – 5/11 remote locations had one officer working.

Further, over half of the communities had one officer or less working at any given time. Given this shortage, during an emergency, an officer cannot call for assistance with their radio. Of the detachments NAPS operates, fewer than 10 are able to communicate with a CommCentre (North Bay/Thunder Bay). These particular communities are the ones that are vehicle-accessible throughout the year. The remaining 20-plus detachments have isolated radio systems where they can only talk to another radio in the immediate physical area. There is no communication between detachments. There is no communication to a CommCentre. There is no panic mode in the event of an emergency. There are no call groups. Depending on the particular detachment, there may only be one other officer in the community. A radio, in this instance, is only being used to answer telephone calls forwarded to the radio.

The following are some examples of situations where public safety was threatened as a result of the lack of resources available to NAPS:

- **January 2015, Neskantaga First Nation:** An officer was working alone. A lone suspect fired five (5) shots at the NAPS constable on duty. During the course of the day, the suspect fired approximately 30 rounds. The officer had no communications and was working alone.

- **December 2015, Fort Severn First Nation:** Homicide with three (3) crime scenes, subject at large. The officer on duty received a gun call during the investigation. He called for backup at 8:00 p.m., and the other officer did not arrive until 1:00 p.m. the following day. The officer had to secure the body, and monitor 3 crime scenes.
- **December 2017, Cat Lake First Nation:** Double homicide with a junior officer working alone with no backup and no radio. The officer arrested the accused, and with no backup, had to manage multiple crime scenes.

Further consequences of the lack of resources include:

- Burned out officers are a threat to public safety;
- Communities are at risk with only one assigned officer. Chief and Council are forced to do the job of the police without the training or qualifications;
- The quality of investigations is greatly affected when there is only one officer, or there are no officers, in the communities. It is impractical and dangerous to believe that one officer can watch multiple crime scenes, apprehend suspects etc.;
- Overtime levels are over double what NAPS is funded for, due to shortage of officers;
- Lack of proactive policing;
- Emergency response times are lengthened;
- Officers are disconnected from sources of support/backup;
- High stress leads to burnout/retention issues;
- Dynamic situations become more dangerous; and
- Supervision suffers.

On April 4, 2018, Chief Armstrong received a drug analysis from a drug bust that NAPS did with respect to “percs”. The Percocets turned out to be caffeine and carfentanil. This was the first exposure to the very dangerous drug in NAN communities and there is a real and grave risk to officers with respect to exposure. What happens when an officer is working alone under these circumstances? Would they be able to administer naloxone to themselves? The answer is no.

The OPP’s Orders Chapter 2: Law Enforcement, Section 2.14.3 Initial Response states that:

“a domestic violence occurrence is considered a life-threatening call and the PCC shall dispatch **two uniform** members to the scene, regardless of the call being disconnected, i.e. hang-up, or the caller indicating that the police are no longer required”.

“A uniform member who has been dispatched to a domestic violence occurrence shall: wait for the **second uniform member** to attend the scene, unless there is an obvious or perceived danger that requires immediate police intervention”. (emphasis added).

OPP are not required to attend calls such as domestic and severe crimes alone, but NAPS officers have no other choice.

Staffing and Resourcing Issues

In addition to holding different legal status, NAPS officers have historically been paid significantly less than similarly situated police officers, such as OPP officers.

NAPS officers also face numerous practical barriers in their delivery of policing services:

- Understaffing means that NAPS officers rarely work with a partner and routinely lack the standard backup available to non-First Nation police officers. Given the remoteness of NAN communities, officers frequently wait hours or days for backup or specialized unit support.
- 20% of NAPS officers are currently on stress or disability leave.
- NAPS lacks standard radio communications equipment, meaning officers are often only connected to the outside world by their cell phone. This is an especially significant problem in remote communities where reception is unreliable.
- At least eight (8) NAPS detachments currently do not meet provincial safety standards.

In July 2015, a federal arbitrator awarded NAPS officers a pay increase, retroactive to 2014, that would raise the pay of NAPS officers in line with the pay of First Nation Constables in the OPP. That would still be lower than the salary of regular OPP police officers.

The arbitration decision was nullified when the Federal Court of Appeal subsequently ruled that NAPS labour relations are a matter of provincial jurisdiction. Chief Armstrong repeatedly advocated to Ontario that it should nevertheless honour the arbitration award, but received no response. NAPS has historically had no ability to negotiate financial terms with its officers without funds allocated by its tripartite partners.

In July 2016, NAPS officers voted overwhelmingly in favour of strike action. A deal to avert a NAPS strike was reached on September 15, 2016. It was ratified by NAPS officers on October 13, 2016 and included commitments from Canada and Ontario including:

- Implementing the financial terms of the 2015 arbitration award;
- A \$500,000 commitment from Public Safety Canada to review and implement enhanced voice radio capacity, accompanied by a NAPS-operated console at the Provincial Communications Centre; and
- Funding to hire a minimum of 15 new relief unit officers to commence with the Ontario Police College intake of January 2017.

NAPS officers are permitted to strike because NAPS is not considered an essential service. A strike would no longer be possible after the implementation of the PSA amendments.

NAPS Response to Inquest Recommendations

Following receipt of the jury recommendations, the federal and provincial governments provided funding for new NAPS detachments. Despite the recommendation from the Wesley and Goodwin Inquest that the detachments be built of brick and mortar, only funding for modular buildings was

provided. Furthermore, sufficient funding for the operation and maintenance of the new buildings has never been provided.

The NAPS Board sought tender applications in and around August or September of 2009 for the construction of modular buildings for use as NAPS detachments in remote First Nations communities. A company from Southern Ontario, NRB Inc., was the successful bidder for the contract. NRB contracted to provide new modular detachments for Kasabonika Lake First Nation; Peawanuck First Nation; Webequie First Nation; Wunnumin First Nation; Fort Albany First Nation and Cat Lake First Nation. All modules were to be installed in early 2010.

Kasabonika Lake First Nation was scheduled to have its new module delivered and installed by March 31, 2010. However, NRB did not deliver the module to Kasabonika Lake until March 12, 2011. Upon delivery of the module it was inspected and found to contain numerous deficiencies that required immediate repair. This included a malfunctioning furnace that failed to provide heat in the cells and made the detachment unusable. These deficiencies were not corrected by NRB until the end of February 2013, after the death of Ms. Anderson.

Public Safety Notice – February 2013

Following Ms. Anderson's death, NAN and NAPS jointly issued a public safety notice on February 19, 2013 declaring that the lives of those policed by NAPS are in grave danger and stressed the need for a regulatory framework for NAPS. The Notice stated:

“NAN communities have been put in grave jeopardy because of the Federal and Provincial government's decision to chronically underfund NAPS. This chronic underfunding is exacerbated by Ontario's failure to legislate a regulatory framework for NAPS. As a result, provincial standards that apply to the Ontario Provincial Police and municipal police forces do not apply to NAPS. While NAPS' goal is to ensure that it exceeds the standards required by the Police Services Act, this goal is rendered unattainable by the Federal and Provincial Government's decision to underfund NAPS.”

Despite the public safety notice being sent to every policing minister at each level of government, the notice fell on deaf ears, with not one response, save that from the chief coroner, to the notice.

2014 Auditor General's Report on First Nation Policing

The inevitable conclusion of the 2014 Auditor General's report is that First Nations communities in Ontario do not receive the same level of policing that the rest of the province does. In response, now Grand Chief Alvin Fiddler, who previously held the justice portfolio at NAN, said that “this report shows that First Nations have been set up for failure and the federal approach to First Nation policing is seriously flawed”.

The Auditor General's report concluded that:

- First Nation police services lack the protection of a legislative framework which other police services have;
- The program is not accessible or transparent to First Nations;

- There is no meaningful input by First Nations into the negotiation of policing agreements; and
- First Nations are constantly presented with final agreements and told they would not receive funding unless they sign.

Further in response, then-chair of NAPS, Shawn Batise, stated that “the lack of legal and financial security is a major barrier to the recruitment and retention of officers and impairs the forces’ ability to secure facilities that meet provincial standards for the safety of our officers and community members”.

Radio Request

In August 2016, NAPS requested funding for radios, and Ontario confirmed Public Safety Canada’s (“PSC”) support for a feasibility study and radio pilot. In July 2017, Bell and OPP provided a cost-estimate for NAPS’ requested radios, which information was shared with PSC and MCSCS: It was estimated that start-up costs would be \$1,826,823.76, and annual operating costs would be \$2,354,371.80. Ontario’s response was that “the province is not in a position to bilaterally fund this project at this time” (Ontario, November 2017).

NAPS Operational Policy Updates

While NAPS is not required to adhere to provincial policing policies and standards, NAPS has always tried to achieve these standards in its policing to ensure the safest and highest level of service for the communities it polices. The NAPS policies prior to 2015 were all modelled after OPP Policies. In 2014, NAPS undertook to update all of its policies and craft new policies to fill any gaps as it related to the operational, administrative or management components of the organization. NAPS received assistance in the updating of its policies from seconded OPP D/Sgt. Chris Lawrence. D/Sgt. Lawrence provided updates to each policy. The updates were reviewed by a committee comprised of Chief Armstrong, D/Sgt. Brad Deuce, and Deputy Chief Roland Morrison to ensure these policies were appropriate for the community-based policing approach used by NAPS. The updated policies were then provided to the Board for review and approval. The updated policies came into effect on January 1, 2015. The subjects of the updated policies include, but are not limited to: (1) Arrest and Detention; (2) Prisoner Care and Control; and (3) Emotionally Disturbed/Mentally Ill/Developmentally Disabled.

Recent Legislative and Tripartite Negotiations

While negotiating the 2014-2015 tripartite funding agreement, NAN and NAPS again pushed Ontario to begin work on a legislative framework. Ontario had to unilaterally fund NAPS’ entire operations during those negotiations after the federal Harper government tried to impose a national template funding agreement that the Grand Chief and NAPS Board refused to sign. The template agreement would have made NAN and NAPS legally responsible for the inadequate state of the police service and facilities. Canada ultimately relented on the unreasonable conditions after extensive pressure from NAN/NAPS and the Anishinabek Police Service (APS). However, Canada still refused to negotiate the amount of funding available under the FNPP. After significant pressure from NAN and NAPS, Ontario agreed to create the Adequacy Standards Table (“AST”) to permanently address the inequality of First Nation police standards and funding.

The legislative reform process finally began on February 18, 2015. The Grand Chief of NAN and Chair of the NAPS Board signed terms of reference for the AST with the Minister and Deputy Minister of Community Safety and Correctional Services.

An agreement was reached on August 5, 2016. The AST agreement included over 100 collaboratively drafted amendments to allow First Nation police services to be governed by the PSA. The key feature of the AST agreement was to allow First Nation police services boards, such as the NAPS Board, to make a request to the Minister to be regulated by the PSA. This would be formalized by the “constitution” of the NAPS Board through a ministerial regulation under the PSA. The effect would be to require NAPS to meet all adequacy standards that exist for police services in Ontario. The province would then be required to provide sufficient funding for NAPS to meet those standards.

Ontario provided NAN and NAPS with a consultation draft of the proposed legislation in August 2017. NAN Grand Chief Alvin Fiddler met with the Minister to discuss various concerns with the draft. The parties subsequently held three technical meetings where those concerns were addressed. The final draft legislation was introduced in the Ontario legislature on November 2, 2017 as part of broader law reform efforts under Bill 175, the Safer Ontario Act, 2017.

Bill 175 passed third reading in the legislature and received Royal Assent on March 8, 2018.

BILL 175: SAFETY BACKED BY RULE OF LAW

Overview

Bill 175 received Royal Assent on March 8, 2018. It is historic legislation in respect of First Nation policing. It puts an end to the unconscionable choice that only First Nations communities had to make:

- Community-directed policing; **or**
- Policing by full-status police officers who are funded to meet provincial standards.

For the first time, Bill 175 allows First Nation police services to be governed by provincial policing legislation and have access to community safety backed by the rule of law.

The core achievement of Bill 175 is ensuring that public safety for First Nation communities is backed by the rule of law. The foundation of this new paradigm is that First Nation police will have to meet the same legal standards as a municipal police service.

Police service boards are the bodies that are legally responsible for the services that police deliver. If police have to meet legal standards, it is ultimately the board that has to make sure they do so. Boards create police policy, hire officers, pay expenses, and are liable to the public if things go wrong. The mechanism to impose adequacy standards on First Nation police therefore begins with the board.

Safety backed by the rule of law starts with First Nation police service boards being legally “constituted” as bodies that will be subject to the PSA. Once a First Nation board is constituted under the PSA, it will have the same powers and duties as a municipal board and be subject to the same adequacy standards.

The “constitution” process includes:

- Sections 32(1) and (2): First Nation(s) may request that the Minister constitute a new or pre-existing police service board for the purposes of the PSA.
- Section 32(6): the Minister must consider the request and determine whether to constitute the board.
- Section 32(17): the Minister may provide additional funding to the First Nation beyond what is available from the tripartite process or any other source. Funding may assist with the constitution process or with delivering police services once constituted.

Once “constituted” under the PSA, the board becomes the mechanism for adequacy standards to apply to the police service in several different ways:

- Section 2(1): the term “police service board” is defined to include both municipal and First Nation boards. A First Nation board has essentially the same status and duties as a municipal board all throughout the amended PSA.
- Section 10(1): First Nation boards are required to deliver “adequate and effective” police services “in accordance with the needs of the population in the area and having regard for the diversity of the population in the area”. The delivery of “adequate and effective” services is the minimum standard under the PSA. This is the same legal standard that applies to municipal boards as well as the OPP. If there is a dispute over funding, as addressed below, an arbitrator will answer the question of whether the funding is sufficient to deliver “adequate and effective” services.
- O. Reg. 3/99, Adequacy and Effectiveness of Police Services specific operational adequacy standards are also detailed under the regulations to the PSA. These include standards with respect to crime prevention, law enforcement, victim assistance, public order maintenance, emergency response, and administration and infrastructure. There are specific requirements for numbers of officers needed for certain functions, services that are mandatory, a prescribed manner of delivering some services, and necessary support infrastructure such as communications. These regulations are likely to change when the amendments come into force. New proposals have not yet been released. However, such regulations will impose the same service standards on First Nation police boards as on municipal boards and the OPP.
- Section 32(9): the board will be required to maintain a “police service” that employs “police officers” as defined by the PSA. The regulation of police officers is addressed below as another category of adequacy standard. Legal duties are imposed on officers themselves, but that is only possible if the board has the power to bestow them with the legal status of a “police officer”.

Equality in Funding – Independent Arbitration

Adequacy standards are meaningless if police do not have the resources to meet them. Safety backed by the rule of law therefore requires a funding commitment backed by the rule of law.

There are two mechanisms under the PSA to ensure that police boards have the resources they require to meet applicable legal standards:

1. Funding review by an independent arbitrator; and
2. Complaints to the Inspector General.

Prior to Bill 175, neither of the above mechanisms were available with respect to First Nation police.

The independent funding review is the key tool for ending the days of chronic underfunding. Such a review was previously only available to municipal police service boards. Under the old PSA, municipal boards could seek a review by the Ontario Civilian Police Commission if they believed they were not receiving sufficient funding from their municipality. Under the new legislation, a municipal police funding review will be conducted by an arbitrator pursuant to s. 50 of the PSA. First Nations will have an identical right to seek an independent review of their funding pursuant to the new s. 51.

Under ss. 51(1) and (2), a First Nation board may refer its funding to an arbitrator at any time simply by giving notice to Ontario. The test to be applied by the arbitrator is whether the total funding available to the board is sufficient to:

- (a) provide adequate and effective policing in the area for which it has policing responsibility, including the amounts required to provide the police service with required equipment and facilities, having regard for the various ways that the board can discharge this obligation; and
- (b) pay the expenses of the board's operation.

Under s. 51(3), the board and the Minister may jointly appoint an arbitrator. Under s. 51(4) an arbitrator will be appointed by the Arbitration Commission if the parties do not agree. Ontario acknowledged during the final technical table meeting that a roster of culturally competent arbitrators will have to be developed for the parties and/or Commission to choose from.

Under s. 51(7), the Minister must provide additional funding if the arbitrator determines that it is required to deliver "adequate and effective" services. The only exception, pursuant to s. 51(6), is if it would be more reasonable and cost-efficient for certain services to be provided by contract with another police force. This might apply to services that are considered essential in large urban centres (e.g. a public order unit or bomb squad) but would be unreasonable to fund First Nation police to deliver as a regular service in small First Nation communities.

Equality for Members – "Police Officer" Status

The legal duties imposed directly on chiefs of police and police officers are another source of adequacy standards. "First Nations Constables" have the powers of police officers, but not the corresponding duties and legal status. First Nation "officers" will now have identical status to municipal and OPP police officers. This affects not only their duties to the public, but also their employment rights. Among other things, they will no longer be allowed to unionize or go on strike, as they will be considered an essential service.

Like all other chiefs of police, First Nation chiefs will have particular duties under s. 107 to “manage the members of the police service to ensure that they carry out their duties in accordance with this Act and the regulations and in a manner that reflects the needs of the community.”

Under s. 110, First Nation police officers will have the following legal duties:

- (a) preserving the peace;
- (b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;
- (c) assisting victims of crime;
- (d) apprehending criminals and other offenders and others who may lawfully be taken into custody;
- (e) laying charges and participating in prosecutions;
- (f) executing warrants that are to be executed by police officers and performing related duties;
- (g) performing the lawful duties that the chief of police assigns;
- (h) completing the prescribed training;
- (i) complying with any investigations conducted by the Complaints Director, the SIU Director or the Inspector General;
- (j) complying with the prescribed code of professional conduct; and
- (k) performing such other duties as are assigned to him or her by or under the PSA or any other Act, including any prescribed duties.

Equality for the People – Cultural Autonomy

Respect for leadership of First Nations communities and police organizations was a central theme of AST negotiations. NAN and NAPS fought doggedly to introduce cultural autonomy provisions in the new legislation.

The cultural autonomy of First Nation police is protected under the new legislation in the following ways:

- First Nations drive the board “constitution” process under s. 32. The process only begins upon First Nation request, and the Ontario Minister must consider all such requests. The Minister may impose terms and conditions that have to be accepted by the First Nation(s) as part of the request. However, the final business proposal is up to the First Nation(s). If Ontario constitutes the board, it may only do it in accordance with the First Nation request.
- The structure of First Nation boards is determined on a case-by-case basis in accordance with the First Nation constitution request. This is a welcome difference from municipal boards, which have standardized structures and must include representatives of the provincial government. First Nation boards have no such requirements.

- First Nation boards do have a unique requirement under s. 38(3) to consult the band council(s) of the First Nation(s) being policed about cultural traditions. The board must then consider those traditions when establishing its policing policies.
- In the case of a funding dispute, s. 51(5) provides that an arbitrator must consider whether any First Nation board policies intended to reflect the cultural traditions of First Nation communities being policed affect the funding required to provide adequate and effective policing. In other words, even if it is more expensive for First Nation police to deliver necessary services in a manner that is culturally appropriate, Ontario must still fund those services. Funding for First Nation police to provide “adequate and effective” services must therefore cover adequate, effective, and culturally appropriate services.
- Once constituted under the PSA, a First Nation police service’s status can only be amended or revoked by Ontario on request from the communities being policed or if strict conditions are met pursuant to ss. 32(10)-(12). Unless the First Nation(s) consent, there must be a material change in circumstances and the Minister must also consider:
 - (a) the importance of First Nation(s) determining the means by which culturally responsive policing is provided on their First Nation reserves; and
 - (b) the effect of the revocation or amendment on the long-term viability of providing policing through First Nation boards.

Equality for Communities – Culturally Competent Oversight

Accountability to the public is an essential aspect of policing in a democratic society. Prior to Bill 175, First Nation communities were the only communities in Ontario that did not have access to provincial police oversight services.

Police oversight was the subject of considerable discussion at the AST. Ontario made a commitment that First Nation police would not only have access to police oversight, but that the oversight bodies would raise their game to ensure the cultural competence necessary to work with First Nation communities and policing issues.

Under the system that is being replaced, there are three police oversight bodies:

- **Special Investigations Unit**, to investigate serious injuries to members of the public;
- **Independent Review Director**, to investigate public complaints; and
- **Ontario Civilian Police Commission**, to investigate police compliance with provincial adequacy standards and address police disciplinary matters.

None of those bodies had jurisdiction over First Nation police. Under the new legislation, there will be four police oversight bodies:

- **Special Investigations Unit (SIU)**, to investigate serious injuries to members of the public;
- **Ontario Policing Complaints Director (OPCD)**, to investigate public complaints;
- **Inspector General**, to investigate police compliance with adequacy standards; and
- **Ontario Policing Discipline Tribunal (OPDT)**, to address police disciplinary matters.

These bodies will all have jurisdiction over any First Nation police board that has been constituted under the PSA.

The SIU and OPCD are controlled by the Ministry of the Attorney General (MAG). NAN and NAPS secured a written commitment from the Attorney General himself that those oversight bodies would achieve the necessary cultural competence. The Ministry of Community Safety and Correctional Services (MCSCS) controls the Inspector General and OPDT. MCSCS negotiators advised that the cultural competence standards for those bodies will mirror the standards created by MAG.

Ontario has committed to provide NAN and NAPS with input into the development of cultural competence regulations for the oversight bodies as an extension of the AST work.

Next Steps for NAPS Under Bill 175

The following items remain on NAPS' list of next steps:

- Development of the board "constitution" policy agreed to at the AST to reflect the final form of the new legislation;
- Practical considerations to generate and manage a NAPS proposal to become the first police service constituted under the PSA; and
- Development of regulations concerning cultural competence of the oversight bodies.

MAY 2018 TRIPARTITE AGREEMENT

Pursuant to Resolution 14/07, NAN Chiefs in Assembly mandated the NAN Executive Council, as a signatory to the tripartite agreement, in partnership with the NAPS Board, to execute a one (1) year extension to the tripartite agreement, and to enter into a long-term agreement based on the results of the review and report of the Auditor General. NAN took a clear stance through the negotiation process that status quo was no longer good enough. A ground-breaking tripartite was formalized in May 2018 addressing significant funding gaps and the NAPS' significant lack of resources.

Terms of Tripartite Agreement

Following extensive negotiations, NAN/NAPS reached an agreement with the Government of Canada and the Government of Ontario on May 8, 2018. The Nishnawbe-Aski Policing Services Agreement between NAN/NAPS, Ontario and Canada ("the Tripartite Agreement") is a three-year agreement that enables NAPS to continue as a service and addresses many of the gaps and shortfalls of prior agreements. Canada and Ontario have agreed to jointly fund NAPS in the amount of \$92,216,509 from 2018 to 2021.

As part of the Tripartite Agreement, a bilateral agreement between Ontario and NAN/NAPS will address the lack of radio communication among NAPS officers as well as the concern of officers working alone without a partner. Ontario has agreed to provide \$37,419,263 to fund the appointment of 79 new NAPS officers by 2022-2023, with 55 new officers within the first three

years of the agreement. In addition, Ontario will provide \$9,286,803 in funding for the implementation and management of a radio communications system for NAPS. This agreement alone represents a massive breakthrough in terms of officer safety and a step toward ensuring that all NAPS officers work with a radio and a partner.

It was also agreed that Ontario would extend the funding originally provided in 2017-2018 under the 1000 Officers Partnership Program and provide \$1,756,889 in funding for 15 new full-time NAPS officers. This funding will extend until March 31, 2019.

In regard to officer remuneration, Ontario and NAN/NAPS agreed to a one-year top-up agreement in the amount of \$1,721,017. This funding will be dedicated to ensuring that NAPS officers are paid wages that are at parity with wages paid to Ontario Provincial Police Association uniformed officers for the period of April 1, 2018 to March 31, 2019.

Additionally, in an effort to address the historic underfunding, the funding provided by Ontario will support NAPS in retiring its accumulated deficit up to a maximum of \$2,599,147 and offsetting any ongoing budget shortfalls up to a maximum of \$721,829 per funding year.

The Tripartite Agreement as a whole provides a funding structure that will equip NAPS with the appropriate and necessary resources to provide adequate, effective and culturally responsive police services to the communities it serves.

Exhibit: *National Inquiry into Missing and Murdered Indigenous Women and Girls*

Location/Phase: Parts 2/3: Quebec

Witness: Armstrong & Metatawabin

Submitted by: Christa Big Canoe

Add'l info: P02-07 P02 P0101

Date: SEP 17 2018

Initials

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