



Nishnawbe Aski Nation

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PUBLIC SAFETY NOTICE

CONFIDENTIAL

DELIVERED BY COURIER

February 19, 2013

Dr. Dan Cass
Chief Coroner for Ontario
Office of the Chief Coroner
26 Grenville St, Toronto,
Ontario, M4Y 1A3

Dear Dr. Cass:

Re: Public Safety Notice for Communities Policed by Nishnawbe-Aski Police Service

We are writing to the Office of the Chief Coroner to put you on formal notice that the Board of the Nishnawbe-Aski Police Service ("NAPS") and the Chiefs of the Nishnawbe Aski Nation ("NAN") are of the view that the safety of 35 of NAN's communities currently policed by NAPS is in severe jeopardy.

We understand that your office is conducting an investigation into the death of a twenty-three year-old female who died while in the custody of the NAPS, Kasabonika Lake Detachment. Based on the information currently known, it would appear that the female was being detained in a police cruiser because the Kasabonika Lake Detachment did not have heating. As a result, officers lodged the prisoner in the cruiser to ensure that she was kept warm. While in the police cruiser, the female appears to have committed suicide.

Sadly, this death is reflective of a larger frightening reality – NAN’s 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.

The best example of how the safety of NAN's communities is being put at risk is found in the appalling conditions of many of NAPS' detachments. Since the end of the Kashechewan Inquest (May, 2009), there were 7 communities that were designated to receive new modular units. Of those seven communities, only one has actually received and installed the modular unit. Of course, there were far

more than 7 communities that required new modular units. In fact, evidence heard at the Kashechewan Inquest demonstrated that there were at least 19 NAPS detachments that did not meet the National Building Code and did not have sprinkler systems. As a result, there are still a number of communities that are relying on detachments that are unsafe. The lives of First Nation people living in these communities are being put at severe risk because both levels of government refuse to ensure that First Nation people in Northern Ontario receive the same level of service as their non-native counterparts. Simply put, accounting has put First Nation lives at risk.

Nishnawbe Aski Police Service

Policing in many NAN First Nations is provided by NAPS. NAPS is the largest First Nations police service in Canada and the 2nd largest First Nations police service in North America. NAPS employs over 134 uniformed officers and 30 civilians. NAPS serves 34 communities across the NAN territory which encompasses nearly 2/3 of the Province of Ontario from Thunder Bay to Hudson's Bay and from Manitoba to Quebec. NAPS is larger than 50 other police services in Ontario and is the 20th largest police service in Ontario. NAPS is governed by an independent Board, and administered by a Chief of Police who reports to the Board. The intent behind the creation of NAPS, like other First Nation police forces, is to provide policing specific and appropriate to the unique culture and circumstances of First Nations people.

The Tripartite Agreement and a Lack of Legislative Framework

NAPS was founded on a Tripartite Agreement among NAN, Canada and Ontario, formulated under Canada's First Nations Policing Policy ("CFNPP"). NAPS was created in 1994. Pursuant to the current Tripartite Agreement and the CFNPP, funding for NAPS is divided between Canada and Ontario. Canada provides 52% of the agreed upon funding and Ontario provides 48% of the agreed upon funding. The Tripartite Agreement and the CFNPP both prohibit NAPS from owning assets and using government funds for major capital expenditures. As a result, NAPS cannot purchase their own detachments and the monies provided by either level of government cannot be used to purchase brick and mortar detachments. Inferior modular detachments are used as a "work around" to the prohibition on providing funding for capital expenditures. Despite the fact that an inferior work around has been developed, the modular units have not been made available to all communities that require them. As a result, at least 18 NAN communities are still operating in detachments that do not comply with the National Building Code and do not even have proper fire suppression systems. While NAPS is underfunded in all areas, the failure to ensure that all communities have proper detachments has put the lives of many of NAN's citizens in grave danger.

Unlike the Ontario Provincial Police and municipal police forces, NAPS is not regulated by the *Police Services Act*. NAPS is a creation of the Tripartite Agreement and is not subject to most provisions of the *Police Services Act*. Significantly, the *Police Services Act* ensures basic adequacy of services which are not applicable to NAPS. In the Inquest into the Death of Jamie Goodwin and Ricardo Wesley, the Coroner, Dr. Eden, described the effect that the lack of a regulatory framework can have on these matters:

Because it is a funding program without a legislative mandate, it can be discontinued at any time, which negatively affects both staff retention and long-term contracts such as rental agreements. Furthermore, when a police service governed by the *Police Services Act* disagrees with its funder (e.g. the municipality) about the level of funding required to maintain services, there is a binding external review mechanism

available in the legislation. No such provision exists for NAPS: Any funding issues are to be resolved among the 3 signatories.

The jury heard evidence that NAPS detachments, especially those in remote communities, suffered from a variety of problems, some of which could affect occupant health and safety. Federal/provincial funding of NAPS does not extend to 'major capital' (essentially, permanent structure) projects, although funding has been provided for new modular detachments, on the grounds that they are movable in future. The jury heard evidence that detachments have improved substantially over the last few years as older buildings have been replaced with newer.

Current State of the Tripartite Agreement

The last Tripartite Agreement was executed by NAN, Canada and the Province in 2009. The terms of the agreement were to last from April 1, 2009 to March 31, 2012. The Agreement was extended from March 3, 2012 to March 31, 2013, with no additional funding provided. Incredibly, the one-year extension did not include additional funding for inflationary costs or for policing needs. The Agreement is set to expire in six weeks and we have received no notice from either level of government about an intention to further negotiate a new Tripartite Agreement. The Tripartite Agreement has no provision for a binding arbitration process. As a result, there is no real form of negotiations. NAPS is forced to accept whatever funds are provided by the Federal and Provincial governments.

Last year, the Federal Government provided all police services with funding through a program entitled Police Officer Recruitment Fund ("PORF"). This funding allowed NAPS to hire 11 more police officers. These additional officers are essential to our police service. On any given day, NAPS has approximately 18% of its police officers off-duty as a result of vacation, stress-leave or other personal matters. Policing in the North is extremely difficult and it takes a toll on officers. The additional 11 officers are essential for NAPS to maintain some level of safety in the communities. This year, NAPS has been advised that the Federal Government will no longer be providing PORF funding. As a result, there is a real possibility that we will have to reduce our police force to accommodate the reduction in funding. Losing 11 police officers will significantly further jeopardize the safety of NAN's communities.

Past Recommendations Regarding Funding and Regulatory Gap

In the Inquest into the Death of Jamie Goodwin and Ricardo Wesley, the jury made several recommendations regarding funding and the regulatory gap. The relevant recommendations are as follows:

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.

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.

43. It is recognized that as many as nineteen (19) of the NAPS detachments do not meet National Building Code standards and do not have sprinkler systems installed. It is recommended that Canada, Ontario and NAN convene a meeting no later than June 30, 2009, to determine the most expeditious way to resolve this serious problem. Further, it is recommended that remedial plans and strategies arrived at through the negotiations be forwarded to the Director General of the Aboriginal Policing Directorate (Canada) and the Minister of Community Safety and Correctional Services (Ontario) no later than October 30, 2009, for immediate action.

45. NAN, Canada and Ontario should work together to establish a legislative framework for NAPS, pursuant to section 9 of the Nishnawbe-Aski Police Service Agreement. As well, other First Nations in Ontario serviced by First Nations police services should be invited to participate in this process. The federal government should take the lead in promoting this negotiation process.

46. Ontario should amend existing legislation to provide the NAPS Police Board with the same opportunities and rights as a municipal police board (under section 39 of the Ontario Police Services Act) to appeal to an independent commission for a hearing and a binding decision regarding the adequacy of its budget.

47. NAN should be adequately funded by Canada and Ontario to be able to meaningfully and actively participate in consultations and negotiations about a legislative framework for NAPS.

81. Canada should amend the terms and conditions of the First Nations Policing Policy (FNPP) to allow for major capital funding.

82. Canada, Ontario and NAN should amend the terms of the Tripartite Agreement to allow for major capital funding.

83. Sections 14.2 and 15.1 in the Tripartite Agreement should be amended to include a binding arbitration process.

86. Contextual evidence provided at this inquest has suggested many contributing factors to these deaths. A public inquiry or Royal Commission should be conducted for the NAN communities which addresses parity of services, community health and safety, and quality of life.

These jury recommendations are by no means novel. The issues of inadequate funding and lack of a regulatory framework were also 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.

60. The provincial government should work with the Nishnawbe Aski Nation, the Nishnawbe-Aski Police Services, and other First Nations in Ontario as appropriate to develop a "made in Ontario" legislative or regulatory framework for First Nation policing in Ontario. The provincial government should also amend the Police Services Act to allow First Nation police services or boards to appoint their own officers.

62. The federal and provincial governments should increase capital and operational funding for First Nation police services in Ontario. This funding should be secured by renewable, five-year agreements between the federal, provincial, and First Nation governments.

The safety of NAN communities has been put at risk for far too long. Canada and Ontario have long been on notice that these issues create real jeopardy to the safety of NAN's communities. How many deaths must occur before both levels of government realize that NAPS cannot operate as a "straw man"? As things currently stand, NAPS has been setup to fail.

Conclusion:

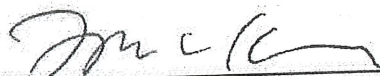
To date, the recommendations detailed above have been ignored by the Federal and Provincial government. The blind eye they have turned to these issues has created a significant safety risk for NAN communities policed by NAPS. It is our view that on a going forward basis, the Federal and Provincial governments will be responsible, legally and morally, for future deaths that are caused by inadequate resources.

As the leadership entrusted with ensuring the safety of a large community, we can no longer sit idly by and allow for these long standing issues to continue to jeopardize the safety of First Nation communities.

Sincerely,



Grand Chief Yesno, Grand Chief of NAN



Frank McKay, Chair of the NAPS Board

cc: The Honourable James Moore, Acting Federal Minister of Department of Indian Affairs and Northern Development
The Honourable Madeleine Meilleur, Ministry of Community Safety and Correctional Services
The Honourable Vic Toews, Minister of Public Safety
The Honourable John Gerrestsen, The Attorney General for Ontario
The Honourable David Zimmer, Minister of Aboriginal Affairs

RECEIVED

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February 26, 2013

Grand Chief Yesno
 Grand Chief of Nishnawbe Aski Nation
 100 Back Street
 Unit 200
 Thunder Bay, ON P7J 1L2

Mr. Frank McKay
 Chair, Nishnawbe-Aski Police Service Board
 309 Court Street South
 Thunder Bay, ON P7B 2Y1

Dear Grand Chief Yesno and Mr. McKay:

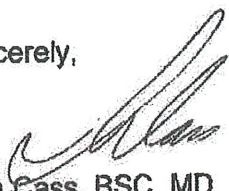
I am writing in response to your letter dated February 19, 2013, which I received via email from Mr. Julian Falconer.

In your letter, you raise public safety concerns with respect to communities currently policed by Nishnawbe-Aski Police Service (NAPS). Your letter makes reference to the recent death of a woman in the custody of NAPS, Kasabonika Lake Detachment. Your letter further states your position with respect to the impact of "the Federal and Provincial government's decision to chronically underfund NAPS", as well as "Ontario's failure to legislate a regulatory framework for NAPS".

As you are aware, the recent custody death in Kasabonika is the subject of an ongoing investigation by the Office of the Chief Coroner for Ontario, and will be the subject of a mandatory coroner's inquest. As such, I am unable to engage in any public discussions with respect to the circumstances of that death. However, it is my understanding that the investigating coroner and the Regional Supervising Coroner for Thunder Bay recently travelled to Kasabonika, and that on February 20, 2013, they met with the decedent's family and with Chief Gordon Anderson and his Council. My further understanding is that preliminary information regarding the coroner's investigation was shared with the family and Chief Anderson at that time.

While I am sensitive to the concerns you have raised in your letter with respect to the broader issues pertaining to NAPS policing, the funding agreements and regulatory framework for NAPS fall outside of the mandate of the Office of the Chief Coroner. These concerns are more appropriately directed to the appropriate Federal and Provincial government ministries, to which your letter and this response are copied.

Sincerely,



Dan Cass, BSC, MD, FRCPC
Interim Chief Coroner for Ontario

DC/ks

- c: The Honourable Bernard Valcour, Federal Minister of Aboriginal Affairs and Northern Development
The Honourable Vic Toews, Federal Minister of Public Safety
The Honourable Madeleine Meilleur, Minister of Community Safety and Correctional Services for Ontario
The Honourable John Gerretsen, Attorney General for Ontario
The Honourable David Zimmer, Minister of Aboriginal Affairs for Ontario

Exhibit: National Inquiry into Missing and Murdered Indigenous Women and Girls		
Location/Phase: <u>Parts 2/3: Quebec</u>		
Witness: <u>Armstrong & Metatawabin</u>		
Submitted by: <u>Christa Big Canoe</u>		
Add'l info: <u>P02-03 P02 P01 01</u>		
Date: <u>SEP 17 2018</u>		
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