

---

## Assembly of First Nations

---

55 Metcalfe Street, Suite 1600  
Ottawa, Ontario K1P 6L5  
Telephone: 613-241-6789 Fax: 613-241-5808  
www.afn.ca



---

## Assemblée des Premières Nations

---

55, rue Metcalfe, Suite 1600  
Ottawa (Ontario) K1P 6L5  
Téléphone: 613-241-6789 Télécopieur: 613-241-5808  
www.afn.ca

**ANNUAL GENERAL ASSEMBLY  
JULY 11, 12, & 13, 2023; HALIFAX, NS**

**Resolution no. 42/2023**

---

**TITLE:** Support for the Legal Challenge by Three First Nations Police Services (Anishinabek Police Service, Treaty 3 Police Service, and UCCM Anishnaabe Police Service)

---

**SUBJECT:** Policing and Community Safety

---

**MOVED BY:** Chief Brian Perrault, Couchiching First Nation, ON

---

**SECONDED BY:** Chief Adam Pawis, Shawanaga First Nation, ON

---

**DECISION** Carried; 2 opposed; 2 abstentions

---

**WHEREAS:**

**A.** The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:

- i. Article 7 (1): Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
- ii. Article 19: States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
- iii. Article 23: Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, Indigenous peoples have the right to actively be involved in developing and determining health, housing, and other economic and social programs affecting them, and as far as possible, to administer such programs through their own institutions.

**B.** Earlier this year, three self-administered First Nations police services – the Anishinabek Police Service (APS), Treaty 3 Police Service (T3PS), and United Chiefs and Councils of Mnidoo Mnising Anishnaabe Police Service (UCCMM Police) – refused to sign funding agreements with Public Safety Canada (PSC) because of the

---

**Certified copy of a resolution adopted on the 12th day of July 2023 in Halifax, Nova Scotia**

---

**JOANNA BERNARD, INTERIM NATIONAL CHIEF**

**42 – 2023**  
Page 1 of 4

discriminatory Terms and Conditions of Canada's First Nations and Inuit Policing Program (FNIPP). Specifically, these three police services refused to submit to three clauses found under section 6 of the FNIPP Terms and Conditions, as follows:

- i. The clause which prohibits First Nations police services from funding specialized units, such as Domestic Assault Units and Major Crime Units;
  - ii. The clause which prohibits First Nations police services from accessing legal representation for the purpose of negotiating funding agreements or obtaining legal advice on funding agreements; and
  - iii. The clause which prohibits First Nations police services from financing the ownership of policing infrastructure.
- C.** Despite the concerns expressed by the three police services, PSC adopted a "take it or leave it" approach and insisted that the services submit to the discriminatory FNIPP Terms and Conditions, or else the federal government would refuse to provide funding. In doing so, PSC directly risked the safety of forty-five First Nations, consisting of over 50,000 community members. In response, the political leadership of the Anishinabek Nation, Grand Council Treaty #3, and United Chiefs and Councils of Mnídoo Mnísing declared states of emergency over their concerns about the potential closure of their designated First Nations police services, while also advocating for Canada to stop trying to impose the discriminatory Terms and Conditions.
- D.** On March 29, 2023, the Indigenous Police Chiefs of Ontario (IPCO), citing the experience of the three police services described above, filed a human rights complaint against Canada under the Canadian Human Rights Act, R.S.C., 1985, c. H-6, challenging the discriminatory implementation of the FNIPP, including the arbitrary Terms and Conditions. The complaint is presently under review by the Canadian Human Rights Commission, pending referral to the Canadian Human Rights Tribunal.
- E.** On May 3, 2023, IPCO filed an Emergency Motion in Federal Court, with the support of the Assembly of First Nations, seeking urgent relief in the form of (1) reinstatement of FNIPP funding for APS, T3PS, and UCCM Police; and (2) relieving the three services from adhering to the three discriminatory clauses described above.
- F.** On June 24, 2023, Public Safety Minister Marco Mendicino amended the Terms and Conditions to remove the prohibition on "specialized policing services", which was one of the clauses the three police services had objected to.
- G.** On June 30, 2023, the Federal Court issued its decision in *Indigenous Police Chiefs of Ontario v. Public Safety Canada*, 2023 FC 916 (the Decision).
- H.** In the Decision of June 30, 2023, Justice Denis Gascon of the Federal Court ruled that:

---

**Certified copy of a resolution adopted on the 12th day of July 2023 in Halifax, Nova Scotia**





- i. Public Safety Canada must immediately reinstate funding for APS, T3PS, and UCCM Police for twelve months under the FNIPP (para 198);
  - ii. Public Safety Canada must further relieve T3PS, APS, and UCCM Police from compliance with the discriminatory clauses in the Terms and Conditions which (a) prohibit the financing of policing infrastructure and (b) prohibit expenditures on legal representation (para 198);
  - iii. IPCO's human rights complaint against Canada has a "high likelihood" of success at the Canadian Human Rights Tribunal (para 100);
  - iv. Public Safety Canada did not consistently follow its duty to act honourably and in the spirit of reconciliation by continually insisting on the impossibility to negotiate the Terms and Conditions and the prohibitions they contain (para 174);
  - v. Canada's discriminatory practices stem from its failure to fulfil the guarantees of the underlying 1996 First Nations Policing Policy which governs the FNIPP, as previously held in three separate court rulings (para 98);
  - vi. The 1996 Policy creates a legally binding guarantee of a standard of policing for First Nations that is both culturally responsive and "equal in quality and quantity" to services in non-First Nations communities (para 98);
  - vii. Canada's claim that the FNIPP is "only a discretionary contribution program — which would allow [Public Safety Canada] to impose any terms and conditions it deems appropriate" has been clearly rejected by the courts (para 169); and
  - viii. Canada's characterization of the Terms and Conditions as "constraints" is "fundamentally incorrect", since the "evidence clearly demonstrates that PSC can unilaterally decide to modify any provision of the Terms and Conditions at its own leisure and how it sees fit" (para 194).
- I. This ruling follows on three earlier decisions, which collectively found that Canada discriminates against First Nations through the FNIPP, in breach of its obligations under the Honour of the Crown, as follows:
- i. On January 31, 2022, the Canadian Human Rights Tribunal ("CHRT"), in the matter of Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada ("Dominique"), held that the implementation of the FNIPP is perpetuating existing discrimination, and that the goal of substantive equality of the underlying 1996 Policy is not achieved and cannot be achieved by the FNIPP because of its very structure;

---

**Certified copy of a resolution adopted on the 12th day of July 2023 in Halifax, Nova Scotia**



---

**JOANNA BERNARD, INTERIM NATIONAL CHIEF**

**42 – 2023**  
Page 3 of 4

- ii. On December 15, 2022, the Quebec Court of Appeal issued its ruling in a related case, *Takuhikan c. Procureur général du Québec*, in which it held that Canada's underfunding of First Nations policing was a direct violation of Canada's Honour of the Crown obligation towards Indigenous Peoples;
  - iii. On February 27, 2023, the Federal Court issued its decision in *Canada (Attorney General) v. Pekuakamiulnuatsh First Nation*, upholding, on judicial review, all findings of the CHRT in *Dominique* and holding that Canada could not justify the discriminatory funding restrictions by relying on the excuse that the FNIPP is a discretionary contribution program.
- J. Finally, the Prime Minister has directed the federal government to refrain from pursuing any appeals or positions inconsistent with Canada's commitments to First Nations peoples, the Canadian Charter of Rights and Freedoms, and Canadian values. (Department of Justice, *The Attorney General of Canada's Directive on Civil Litigation Involving Indigenous Peoples*, 2018, at p. 3.)

**THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:**

1. Call upon the federal government, in the spirit of reconciliation and its duty to deal honourably with First Nations peoples, to respect the Decision of June 30, 2023, by not filing an appeal of the Decision.
2. Condemn Canada and PSC for their dishonourable conduct and repeated breaches of their commitments to reconciliation, in failing to negotiate FNIPP funding agreements in good faith with First Nations, as found by the Court in the Decision of June 30, 2023.
3. Call upon the federal government to immediately flow funds to the three First Nations police services – APS, T3PS, UCCM Police – as required by the Decision of June 30, 2023.
4. Call upon the federal government, in line with the Honour of the Crown, Canada's commitments to reconciliation, and the Decision of June 30, 2023, to take immediate steps to create a plan for negotiating revised Terms and Conditions with all First Nations which receive funding under the FNIPP, ensuring that funding fulfils the guarantee of equitable policing set out in the 1996 Policy.

---

**Certified copy of a resolution adopted on the 12th day of July 2023 in Halifax, Nova Scotia**



---

**JOANNA BERNARD, INTERIM NATIONAL CHIEF**

**42 – 2023**  
*Page 4 of 4*