



WOLASTOQEY NATION IN NEW BRUNSWICK

Matawaskiye • Neqotkuk • Wotstak • Pilick • Sitansisk • Welamoktok

[DELIVERED VIA EMAIL]

Ref: WNNB [046-20]

July 8, 2020

Hon. Blaine Higgs

Premier of New Brunswick
premier@gnb.ca

Hon. Carl Urquhart

Minister of Public Safety
Carl.Urquhart@gnb.ca

Hon. Andrea Anderson-Mason Q.C.

Minister of Justice and Attorney General
Andrea.AndersonMason@gnb.ca

Hon. Jake Stewart

Minister of Aboriginal Affairs
Jake.Stewart@gnb.ca

Re: Inquiry to Review Discrimination against Indigenous People in the New Brunswick Justice System

Dear Premier Higgs, Minister Stewart, Minister Urquhart and Minister Anderson-Mason:

We are very disappointed with your overall lack of commitment at our June 17th meeting and specifically your lack of commitment to an inquiry to review systemic discrimination against Indigenous people in the policing and justice systems in New Brunswick and your suggestion instead for a lesser option — a Task Force that merely reviews old reports and recommendations on the same subject. Your response to our call is just another example of the paternalistic attitude of your government towards our people and the systemic discrimination that exists (i.e., the government telling us what is best for us). A Task Force is not enough and is not the prompt action we are looking for in the wake of recent tragedies. We should not have to negotiate on the best option to address this issue while lives hang in the balance.

As you surely know, the province of New Brunswick previously appointed a Task Force on Aboriginal Issues that prepared its report over the course of 10 months from May 1998 to March 1999. While the primary mandate of the Task Force was forestry, it had a broad opportunity to look into other matters. That Task Force made 25 recommendations that were mostly ignored. We cannot go down the road of yet another Task Force.

We stand firm in our belief that this province must have an independent inquiry that reviews the systemic discrimination against Indigenous people in the policing and justice systems in New Brunswick. We also stand with the Mi'gmaq in calling for immediate and actionable reforms. An inquiry and immediate and actionable reforms are not mutually exclusive and a Task Force that merely reviews old reports and recommendations on discrimination in the justice system alone does not accomplish either goal. A Task Force cannot be a replacement for an inquiry. It has no teeth — it cannot force government to collaborate

and it cannot access information that government wants to hide. An inquiry can get to the bottom of things and force the government, prosecutors and police to fully cooperate. Unlike a Task Force, an inquiry is a process that government cannot manipulate, control or delay. Inquiries are established to conduct a comprehensive and transparent review that is independent from government.

In saying this, we would like to be clear that we are not naïve to the criticisms of inquiries and acknowledge that numerous past inquiries across Canada have already reviewed discrimination against Indigenous people in the justice system. We are not suggesting that this work go to waste or not be considered. But, many of the recommendations of past inquiries are not implementation ready and do not specifically consider the administration of justice within New Brunswick. An inquiry specific to this province needs to happen. We need an inquiry that explicitly looks at how the justice system in New Brunswick is failing the Indigenous people of this province. The inquiry would bring a high level of public awareness to the issues that we face each day. As stated by the Honourable Sidney B. Linden, in the Report of the Ipperwash Inquiry:

“Critics of public inquiries....point out that the resulting recommendations may not be immediately adopted, and maintain that inquiries are therefore not an effective use of public resources. Conversely, governments may resist the call for an inquiry in favour of internal mechanisms for review. While these concerns should not be ignored, and in fact should be considered before the decision to call an inquiry is made, it is also worth considering the extent to which an inquiry contributes to policy debate and to public education. This can prove to be a catalyst for reform in itself, and only manifest itself in legislative or policy changes some time after the inquiry is completed.”

The circumstances surrounding the deaths of Chantel Moore and Rodney Levi are tragic, but they are not isolated incidents and are only the tip of the iceberg of longstanding issues our people have with the justice system in this province. This is not just a systemic discrimination in the policing system issue. This is a window into the systemic discrimination that exists within every facet of the justice system in New Brunswick—a system that is failing our people on a massive scale.

Just a few weeks ago Premier Higgs stated that discrimination does not exist within the justice system here in New Brunswick. Days later, he had no choice but to recognize that it does. We are not convinced that the Premier, the Government of New Brunswick, and the general population of New Brunswick know the full extent of the discrimination that we face. An inquiry that reviews the systemic discrimination within the justice system would provide concrete data on this issue so that the people and Government of New Brunswick can understand the full, true scope of the issue here in this province.

We therefore propose the following:

- An inquiry be immediately established to examine the relationship and state of conditions between Indigenous people and the justice system in New Brunswick and suggest ways to improve.
- The inquiry be Indigenous led (i.e., the Indigenous Nations select a Commissioner to lead the Inquiry Commission) and the Terms of Reference be developed by the Indigenous Nations.



- To ensure that the work from previous inquiries on the same topic do not go to waste, the Inquiry Commission shall be mandated to review the Truth and Reconciliation Commission Calls to Action, United Nations Declaration on the Rights of Indigenous Peoples, Missing and Murdered Indigenous Women and Girls Report, Ipperwash Inquiry and various other inquiries that have been undertaken across this country and provide an interim report within 60 days recommending what recommendations from these other reports can be implemented immediately.
- To address the criticisms of inquiries, the inquiry shall be mandated to report back in short timeframes and provide implementation ready recommendations (by specifically articulating how the recommendations can be implemented).
- Finally, to signal the Province’s commitment to addressing systemic discrimination in the justice system and implementing recommendations from the inquiry, a Memorandum of Understanding (“**MOU**”) and Implementation Committee should be established to work to implement the recommendations of the inquiry. The MOU and Implementation Committee should be established immediately to work on immediate and actionable reforms (as outlined in the letter from Mi’gmawē’l Tplu’taqnn dated July 2, 2020) and to review and implement the recommendations in the Interim Report. The MOU should also have tight timelines explicitly set out in an appended workplan.

To ensure that there is no delay in the establishment of the Inquiry and Commission, we have attached a draft Terms of Reference for review and consideration.

We would like to be clear that our ultimate goal is to have our inherent right to self government and jurisdiction over the administration of justice recognized and implemented. But, we recognize it is inevitable that Indigenous people in this province will continue to interact with colonial systems of justice and to that end, we need to address needed changes within the provincial justice system. The system needs to be indigenized to improve administration of non-Indigenous forms of justice, law enforcement and incarceration.

Woliwon/Wəliwən,

Wolastoqey Nation in New Brunswick Chiefs



Chief Ross Perley, Neqotkuk (TFN)

Chief Shelley Sabattis, Welamukotuk (OFN)

Chief Alan Polchies Jr., Sitansisk (SMFN)

Chief Gabriel Atwin, Pilick (KFN)

Chief Patricia Bernard, Matawaskiye (MMFN)

Chief Tim Paul, Wotstak (WFN)

cc. Shyla O'Donnell, Consultation Director, WNNB
Megan Fullarton, Senior Advisor, WNNB
Gillian Paul, Legal and Governance Advisor, WNNB
Martha O'Sullivan, Assistant Deputy Minister, DAA
Cade Libby, Deputy Minister, DAA

encl: Draft Inquiry Terms of Reference



Draft Inquiry Terms of Reference

WHEREAS the deaths of Brady Francis, Chantel Moore and Rodney Levi have revealed some of the ways in which the justice system in New Brunswick fails Indigenous people and Indigenous Communities;

WHEREAS the First Nations in New Brunswick have collectively called on the Government of New Brunswick to take immediate steps to address the issue of systemic discrimination as against Indigenous people within the justice system in New Brunswick;

WHEREAS the Government of New Brunswick has committed to launching an inquiry to review the issue of systemic discrimination as against Indigenous people within the justice system in New Brunswick (the "Inquiry");

AND WHEREAS the Government of New Brunswick is committed to addressing the issue of systemic discrimination as against Indigenous people in the justice system in New Brunswick and is supportive of identifying and examining the root causes of this issue, and to identifying positive actions and measures to be taken to eliminate this issue;

AND WHEREAS it is in the public interest to entrust to [INSERT NAME OF INQUIRY] the mandate to carry out its work in accordance with the *Inquiries Act*, RSNB 2011, c 173;

NOW THEREFORE, effective [INSERT EFFECTIVE DATE]:

Pursuant to section 2 of the *Inquiries Act*, the Lieutenant Governor in Council directs a Commission to issue, under the Great Seal of the Province, appointing [INSERT NAMES OF COMMISSIONERS] as Commissioners:

1. The Commission shall conduct an Inquiry into the issue of systemic discrimination as against Indigenous people within the justice system in New Brunswick.
2. The Commission shall:
 - a. inquire into and report on all forms of systemic discrimination as against Indigenous people within all aspects of the justice system in New Brunswick (policing, access to and adequacy of legal counsel, courts, correctional services) including underlying social, economic, cultural, institutional and historical causes contributing to the ongoing discrimination against Indigenous people in the justice system in New Brunswick;
 - b. make recommendations on:
 - i. concrete and effective action that can be taken to remove systemic causes of discrimination against Indigenous people in the justice system in New Brunswick, and
 - ii. the steps that need to be taken to implement the recommendations;
 - c. to work with Indigenous communities in New Brunswick to adopt procedures that are culturally appropriate and sensitive all while being expedient for the proper conduct of the Inquiry, to sit at the times and the places, especially in Indigenous communities in New Brunswick, that the Commission, while working with Indigenous communities in New Brunswick, considers appropriate and to conduct the Inquiry, to the greatest extent possible, by means of informal processes such as the gathering of statements by qualified trauma-informed persons to record the experiences of those participating in the Inquiry;
 - d. take into account that the Inquiry process is intended, to the extent possible to:

- i. be trauma-informed and respect the persons, families and communities concerned;
 - ii. provide an opportunity to persons, families and community members to express and share their experiences and views, particularly on ways to prevent and eliminate systemic discrimination in the justice system;
 - iii. be culturally appropriate and acknowledge, respect and honour the diverse cultural and spiritual traditions of Indigenous people; and
 - iv. promote and advance reconciliation and contribute to public awareness about the causes of, and solutions for, ending systemic discrimination experienced by Indigenous people in the justice system in New Brunswick.
 - e. provide any person having a substantial and direct interest in the subject matter of the Inquiry with an opportunity to participate in the Inquiry;
 - f. conduct the Inquiry as they consider appropriate with respect to accepting as conclusive or giving due weight to the findings of fact set out in relevant reports, studies, research and examinations, whether national or international, including
 - i. the Final Report of the Truth and Reconciliation Commission of Canada (2015)
 - ii. the Report of the Royal Commission of Aboriginal Peoples (1996)
 - iii. the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (2019)
 - iv. the Royal Commission on the Donald Marshall, Jr., Prosecution (1989)
 - v. the Aboriginal Justice Inquiry of Manitoba (1991)
 - vi. the Cawsey Commission (1991)
 - vii. the Stonechild Inquiry (2004)
 - viii. the Saskatchewan Commission in First Nations and Metis Peoples Justice Reform (2004)
 - ix. the Ipperwash Inquiry (2007)
 - x. the Review of First Nations Representation on Ontario Juries (2013)
 - xi. the Report of the Task Force on Aboriginal Issues (1999)
 - g. make available to participants in the Inquiry trauma-informed and culturally appropriate counselling services that the Commission considers appropriate.
3. All departments and all boards, agencies and commission of the Government of New Brunswick shall assist the Commission, including by producing documents in a timely manner, so that the Commission may carry out its duties.
4. The Commission shall deliver to the Attorney General of the Province of New Brunswick, with a copy to each of the First Nations in New Brunswick:
 - a. An interim report, to be submitted within 60 days of being established, setting out the Commission's preliminary findings, conclusions and recommendations, and recommend what measures aimed at addressing systemic discrimination against Indigenous people in New Brunswick that can be implemented immediately, including in areas not limited to:
 - i. including a review of work already done and identified in section 2(f),
 - ii. changes to the approach to law enforcement in communities and throughout the province,
 - iii. changes to police training and standards,
 - iv. increasing Indigenous involvement in police oversight, and

- v. Indigenous investigations into police shootings and other serious incidents,
 - b. A final report, to be submitted within 180 days of the Commission completing the fact-finding stage of the Inquiry, setting out the Commission's findings and recommendations, and
 - c. The reports shall be made available in English, French, Wolastoqey, Mi'gmaq and Passamaquoddy
5. The Commission shall ensure, insofar as practicable, that the Interim Report and Final Report are delivered in a form appropriate for public release, consistent with the requirements of New Brunswick's *Right to Information and Protection of Privacy Act* and other applicable federal and provincial legislation.
 6. The Commission shall be responsible for translation and printing and shall ensure that the interim and final report are available in electronic and printed format.

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