



BC FIRST NATIONS
JUSTICE COUNCIL

Improving Public Safety by Addressing Unmet Needs:
Submission to the Investigation Panel of the “Investigation into Prolific
Offenders”

July 29, 2022

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Introduction

The BC First Nations Justice Council (BCFNJC) offers this submission in response to the “Investigation into prolific offenders” commissioned by the BC Attorney General and the Province of British Columbia, in coordination with the British Columbia’s Urban Mayors’ Caucus (BCUMC). The BCFNJC has a clear and strong mandate from the 203 First Nations in BC to transform the existing criminal justice system to make it less harmful to First Nations while at the same time aiding and supporting First Nations in advancing self-determination through the recognition and implementation of their legal orders, traditions and customs related to justice. The BC First Nations Justice Strategy (Justice Strategy) outlines this critical work, is the embodiment of reconciliation in action, and provides a framework for the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) as it relates to criminal justice in British Columbia.

This submission highlights the concerns, issues, and priorities identified by the BCFNJC to be considered by the Investigation Panel, specifically regarding First Nations peoples. This submission also includes a proposal enabling BCFNJC to support better those who find themselves in reoccurring conflict with the justice system.

As stated in the May 5, 2022 press release,¹ the BC Attorney General and the BCUMC agree that creative solutions within their authority are needed to improve public safety. BCFNJC agrees, and as this submission will make clear, any solutions involving First Nations must be led by First Nations and align with the Justice Strategy. In addition, actions taken here by BC and municipalities must have at their foundation the government’s legal obligation to implement the minimum standards of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) per the *Declaration Act on the Rights of Indigenous Peoples* (DRIPA). The BC First Nations Justice Strategy establishes a vital pathway for implementing UNDRIP that the Investigation Panel must reference in their recommendations.

Victoria Mayor Lisa Helps (Co-chair of the BCUMC) said in the above-noted press release, “We know that some, not all, prolific offenders experience mental-health and substance-use challenges and for these individuals a path to care and treatment is needed to address the root cause of the problem.” Indeed, a path to care and treatment is needed. Still, more importantly, it is necessary to unpack the harms of an unchecked criminal justice system that long ago was understood to be plagued by systemic racism. This status quo has been devastating for Indigenous peoples, with close to a third of Canada’s prison populations being Indigenous. We cannot continue to target and criminalize the most vulnerable in this province while failing to provide the most essential supports that have the potential to reverse the outcomes the BCUMC and the government of BC seek to address. A bedrock principle of the Justice Strategy is the ‘presumption of diversion’ whereby, for First Nations, *all* alternatives to further entanglement with the criminal justice system must be explored to address immediate and urgent challenges,

¹ Attorney General, “Province, mayors co-ordinate investigation into prolific offenders,” *Government of British Columbia*, 5 May 2022, <https://news.gov.bc.ca/26763>.

including the growing overrepresentation of Indigenous peoples in all facets of the criminal justice system.

BCUMC co-chair and Kelowna Mayor Colin Basran stated in the press release: “We are hopeful that the work of this report will be a catalyst for improved integration of health and justice and offer meaningful solutions that builds up the public’s confidence in the administration of justice.” The Justice Strategy has a comprehensive and detailed roadmap geared toward meaningful solutions and transformative change. The Investigation Panel must acknowledge how the work of the BCFNJC, and our partners in BC and Canada, can support the objectives of the BCUMC.

Considering the deadline of just 120 days and the time taken to perform the necessary work, the extent to which this Investigation will result in meaningful solutions remains unknown. As a point of comparison, the Cullen Commission inquiry into money laundering had 18 months to study and report on the issue. The degree to which this review is designed to appease municipal politicians versus a genuine attempt to bring clarity and resolution to the problem is unclear. BCFNJC understands municipal governments to be a key partner in our work, and as proposed later in this submission, we hope to work with them to implement the Justice Strategy to address the ongoing criminalization of homelessness and poverty. These complex social problems can no longer be addressed through criminalization absent social supports and resources. BCFNJC works with BC through the Justice Strategy to provide solutions, build proper approaches, and illuminate a better path forward. It is imperative that municipalities and municipal leadership join in this important transformative work.

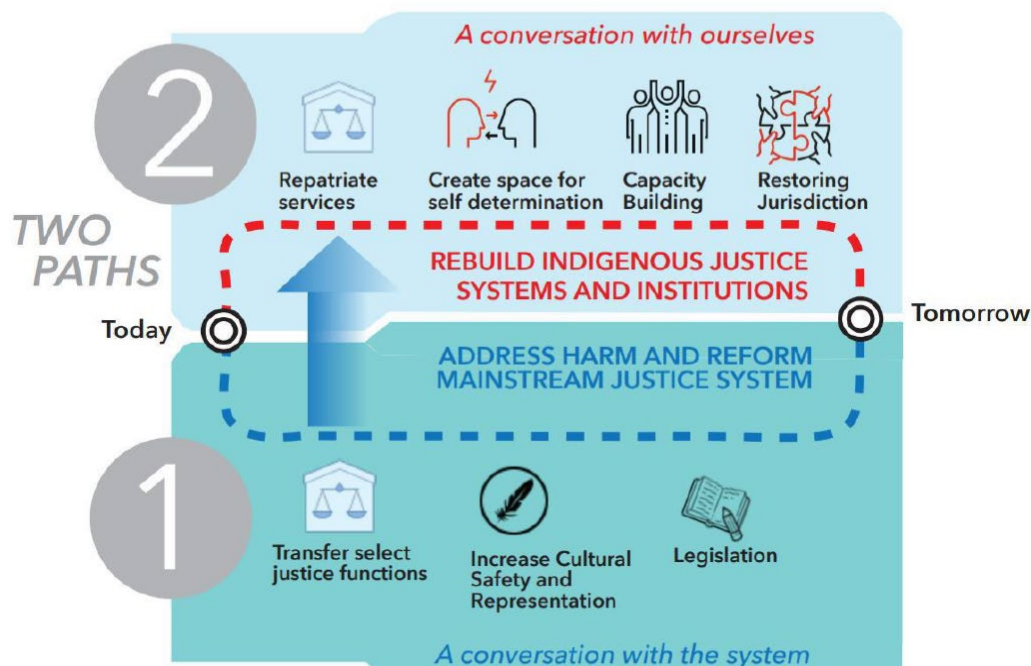
BCFNJC has reservations about the Investigation’s ability to build relationships, rebuild trust, reduce harm, and break the cycles of structural inequalities that perpetuate harm in just 120 days. These goals and objectives are the work of the BCFNJC, as prescribed by the Justice Strategy, of which British Columbia has been a partner since March 2020, with Canada joining in the Summer of 2021 through a Tripartite Memorandum of Understanding. The tripartite commitment to the presumption of diversion in this province is a direct counterpoint to labelling people as prolific offenders, treating them as inherently bad, seeing them as in need of endless monitoring and, at base, believing them unworthy of the help they so clearly need.

This submission first provides general information about the BCFNJC, the Strategy, and BCFNJC’s Indigenous Justice Centres (IJC’s). Second, we provide comments on what we see as problematic aspects of the Investigation’s Terms of Reference (TOR). Finally, we propose to develop a pilot program in Prince George, in coordination with the Prince George IJC, that would meet the unmet needs of those who find themselves in reoccurring conflict with the colonial criminal justice system.

BCFNJC, The BC First Nations Justice Strategy, and the Indigenous Justice Centres

The BC First Nations Justice Council (BCFNJC) was established in 2015 by the 203 First Nations of British Columbia through parallel resolutions of Chiefs assembled in the BC Assembly of First Nations, the First Nations Summit, and the Union of BC Indian Chiefs. The urgent mandate provided by the Chiefs directs the BCFNJC to work to address the failings in the criminal justice system and the child protection system that have so significantly harmed our people, families, and Nations. BCFNJC works collaboratively with BC First Nations, the Province of BC, the government of Canada, and key justice system stakeholders to bring about transformative change to government policy, programming and initiatives related to criminal justice and child welfare.

An MOU between the BCFNJC and the government of BC was signed in September 2017 to commit to each other the co-development of a First Nations Justice Strategy, which was achieved in March of 2020. Canada's Minister of Justice and Attorney-General signed on to the Strategy in August of 2021, making the Strategy a tripartite initiative. The Strategy contains 25 sub-strategies with corresponding lines of action that follow two paths: (1) Transforming the existing criminal justice system; and (2) Rebuilding Indigenous justice systems and institutions. The Strategy aims to decrease the overrepresentation of Indigenous peoples in the justice system; improve the experience of Indigenous peoples within the justice system; address violence against Indigenous peoples - especially Indigenous women and girls; engage with Indigenous communities and organizations in a respectful and culturally appropriate manner; improve access to justice and justice services for Indigenous peoples; and design services that provide Indigenous peoples with culturally relevant, flexible, and user-focused processes. See the graphic below for a visualization of the two paths.



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A core value of the Strategy is to establish a presumption of diversion throughout the justice system from the moment the police are first engaged to when an individual may be in the corrections system after sentencing. At every point in time – pre-charge, post-charge, post-plea, and post-conviction – actors should be instructed to fully consider opportunities for culturally appropriate alternative responses to the existing justice system, with the presumption that, whenever appropriate, these alternative responses should be the first option pursued.

The BC First Nations Justice Strategy is unique in many ways: it is the first of its kind in Canada, and it represents the first time Indigenous peoples have been involved in shaping justice matters in a manner consistent with the principles articulated in UNDRIP. To reach its full potential, the Strategy must be matched with new, meaningful legislative and policy directions on the part of British Columbia and Canada to support needed reforms of the colonial system and to yield space for self-determined Indigenous justice approaches.

One critical initiative of the Strategy is the creation of Indigenous Justice Centres (IJC) (Strategy 4). IJCs provide culturally appropriate information, advice, support, and legal services directly to Indigenous people at the community level. Currently, there are 3 brick-and-mortar IJCs and 1 virtual IJC (which provides no-cost legal services to Indigenous peoples regardless of their geography). We have a mandate, and financial commitments from BC and Canada, to open 12 more physical IJCs across the province in the next 5 years.

IJCs reflect a partnership between the BCFNJC and local First Nations leadership, being informed by the priorities set by First Nations leaders in the province – primarily on criminal justice and child protection services – but IJCs also offer additional services based on community and cultural needs. The IJCs are linked to social and health determinants and take a holistic approach to client and community wellness by facilitating client connections to supports such as housing, mental health and addictions treatment, and employment services.

Therefore, the IJCs are in place to support individuals in their interactions with the justice system and communities seeking to expand and improve their justice infrastructure.

The three brick-and-mortar IJCs in British Columbia are located in Prince Rupert, Merritt, and Prince George. The IJC in Prince George is especially significant in the context of this Investigation because the City of Prince George acts as a hub for many displaced and unhoused Indigenous people in British Columbia. Similar to other IJCs in the province, the IJC in Prince George offers legal services to Indigenous people in the community who otherwise cannot access it. They may not be eligible for Legal Aid or need legal advice on matters not covered by Legal Aid.

Overview of Investigation and Terms of Reference

BCFNJC is deeply concerned that rather than being solution-oriented, this Investigation is designed in a way that further stigmatizes people convicted of crimes and neglects to understand the root causes of the problems at hand. Where Indigenous people are caught in the criminal justice system, it is critical to understand the context and realities of the intergenerational trauma caused by racist and colonial governmental policies such as the *Indian Act*, the Indian Residential School System, and the 60s Scoop, among others. Further criminalizing those dealing with these lasting and traumatic consequences is unacceptable.

When people cannot provide for themselves and experience chronic poverty, they may be vulnerable to interactions with the criminal justice system. This is the case for Indigenous peoples who continue to be overrepresented across the system, from interactions with police to time served in corrections. The colonial justice system has failed Indigenous peoples. To better serve Indigenous peoples in BC, governments need to support Indigenous-led solutions, such as the Justice Strategy, which contains two clear pathways to fix the colonial system to make it less harmful to Indigenous peoples while at the same time supporting the recognition and implementation of Indigenous legal traditions and self-determination in justice.

While the Terms of Reference (TOR) mandate the investigators to “reach out to key stakeholders with practical or academic knowledge and expertise related to the issue of prolific offenders,” a key stakeholder group is noticeably absent from this consultation process (one that *should* be the priority): the people who have been arbitrarily labelled “prolific offenders.” The problems flagged by BCUMC cannot be solved without listening to the subjects of this Investigation. Lived experience, no matter how stigmatized and marginalized the subjects may be, is vital to this Investigation and must be given the same priority as those on the other side of the issue (namely private property holders, politicians, and state actors such as police).

It is unclear who the Investigation Panel will be consulting and how these stakeholders will be identified. Similarly, who will be left out of the consultation process is unknown. The TOR mentions only two organizations: BCFNJC and the Crown Counsel Police Liaison Committee working group. BCFNJC expects full transparency and a complete list of all stakeholders engaged for this Investigation. BCFNJC is willing to support the Investigation Panel in identifying stakeholders and strongly recommends the Panel engage with the Coalition on Murdered and Missing Indigenous Women and Girls, Butterflies in Spirit, and others.

The term “prolific offenders” derives from police service agencies' use across the province - it has no legal definition. In a document named *BCUMC Crime Statistics for Prolific Offenders* created by the BCUMC, BCFNJC gained insight into how police services have classified individuals as “prolific offenders” and “super chronic offenders.”² According to that document, these classifications are based on the number of convictions entered against a person and the number of negative contacts and charges that police record. We know that Indigenous people and people

² Attachment to correspondence from Derrick Harder to Amanda Carling, 03 MAY 2022.

who experience homelessness, poverty, addictions, untreated mental health and cognitive diagnoses and so on, are more likely to be wrongly convicted for several reasons, including false guilty pleas. Therefore, we have reason to question the veracity of the BCUMC's so-called statistics.

What's more troubling, however, is the application of a "prolific offender" designation based, if only partly, on the number of contacts police have had with an individual that have not established anything *beyond a reasonable doubt*. The BCFNJC rejects the making of law or policy in any situation where, as here, the presumption of innocence is not upheld. It is well known that Indigenous people are underserved as victims of crime and overpoliced as suspects: for that very reason, Indigenous people are likely to be unfairly overrepresented on what is, at base, a racist and arbitrary list of so-called "prolific" and "super-chronic offenders." Section 11(d) of the Charter enshrines the presumption of innocence and exists to ensure that only those who are guilty are condemned by the criminal justice system. The liberty interests and human rights of some of the most vulnerable community members are at stake in this investigation: if the presumption of innocence is ignored, this investigation has no legitimacy.

With respect to police, the Investigation Panel needs to understand how visceral the reaction to police is for Indigenous people. BCFNJC heard this repeatedly during the justice strategy consultations in the summer of 2019: that the RCMP and other police service agencies could never be accepted as a good faith, legitimate policing entity. BCFNJC provided an oral and written submission to the Special Committee on Reforming the Police Act (SCORPA) in March/April 2021. Here, we spoke to the ongoing challenges Indigenous peoples face with respect to police service agencies and policing more broadly. Among the challenges cited were systemic racism, the role of police in responding to mental health and other complex social problems, police discretion, police use of force, and the increasing militarization of police (among others).

The systemic racism that exists in policing systems in Canada is part of a continued system of colonialism that police forces defend and perpetuate. The negative impacts of systemic racism are eroding public trust and confidence in police, and the ongoing inaction to tackle and address systemic racism is failing First Nations and Indigenous peoples. Unequivocal evidence of systemic racism in policing in Canada is presented in the Cariboo-Chilcotin Justice Inquiry (1993), Closing the Gap: Policing and the Community (the Oppal report) (1994), the Truth and Reconciliation Commission of Canada (2015), the Report into Workplace Harassment in the RCMP by the Civilian Review and Complaints Commission (2017), and the Final Report by the National Inquiry into MMIWG (2019). The responsibility to diminish the gap between civilians and police and to build a healthier culture void of systemic racism lies, first and foremost, with the Legislature, but also within municipalities insofar as mayors typically sit on police boards. Addressing systemic racism in policing in BC (including within the RCMP) requires bold political leadership. Only sweeping institutionalized changes will help redress the structural oppression that exists against First Nations peoples today. BCFNJC is pleased to see this work taking shape by virtue of the recommendations of the SCORPA.

Increasingly, police are seen at the centre of a range of complex social issues, including mental health, addictions, and homelessness. A complete overhaul is needed here that challenges how we as a society respond to crisis, and that puts the person and community wellbeing at the centre. Police are ill-equipped to deal with complex situations of a social rather than criminal nature, and the outcomes for Indigenous peoples illustrate this. The goal should be to keep police out of contact with individuals experiencing a substance issue or breakdown in their mental state. A multidisciplinary approach to crisis intervention must be implemented as an alternative to police involvement. BCFNJC recommended in our submission to the SCORPA that a completely new model of crisis intervention be established with multidisciplinary expertise and competency and significantly guided by Indigenous participation.

The wide discretion granted to police in the interpretation of their law enforcement duties allows them to stretch the boundaries of the law in ways that actively give shape to it. While the discretionary powers of the police are increasingly being documented and exposed through the proliferation of self-recorded evidence and the reach of social media, the extent to which they are being eroded is less clear as police continue to enjoy relative impunity and evade accountability when misconduct is involved. Reforms are needed to reign in, regulate, and reshape police discretion. BCFNJC is pleased with the SCORPA final report and recommendations and strongly advises the Investigation Panel to incorporate these findings in their final report, including a call for immediate implementation.

A 2020 analysis found that Indigenous peoples are 10 times more likely than a white person in Canada to have been shot and killed by a police officer since 2017.³ That same analysis found that 1.5 out of every 100,000 Indigenous peoples have been shot by police since 2017, compared to 0.13 out of every 100,000 white Canadians.⁴ Even when adjusted for population growth over the 17-year window, the number of people dying in encounters with police has increased steadily. Individuals with mental health and substance use disorder (more than 70%), Black and Indigenous people are especially overrepresented in fatal encounters with police. The RCMP reports the greatest number of fatal encounters.⁵ There is a dearth of systemic data and reporting that includes ethnicity related to excessive force and deaths in custody, and it is a critical priority of Indigenous peoples that this data be disaggregated and include ethnicity, gender, and age. The collection of this data, and the transparency required in reporting it, must be done in partnership with First Nations.

Our SCORPA submission also spoke to the increasing militarization of police which effectively divides society into two groups: one to be protected and one seen as a threat. Sadly, this Investigation seems to be framed in a similar manner. As stated in the SCORPA submission, the consequences of militarization fall disproportionately upon Indigenous peoples, minority groups, and those with mental health issues. We strongly advise the Investigation Panel to

³ <https://www.thestar.com/opinion/contributors/2021/03/02/julian-jones-latest-indigenous-person-to-be-killed-by-the-rcmp.html>

⁴ Ibid.

⁵ Inayat Singh. "2020 already a particularly deadly year for people killed in police encounters, CBC research shows." July 23, 2020. <https://newsinteractives.cbc.ca/fatalpoliceencounters/>

explore the role of police as it pertains to the investigation at hand, in addition to the Strategy (particularly Strategy 22) which calls for a fundamentally different approach to policing.

BCUMC called for this investigation without data to support motivations for it or even to substantiate the alleged problem. Without such data, it will be a challenge to design solution-oriented policies that address the core of the problems being investigated. In addition, disaggregated race-based data needs to be collected and provided to stakeholders and Indigenous rights-holders.

Our Proposal – The City of Prince George and the Province of British Columbia should fund the development of a pilot project

In the context of Prince George, the “prolific offender” problem remains unclear, considering the lack of data mentioned earlier. In some cases, those labelled as “prolific offenders” are only classified based on the number of files they each have with a police response, despite the lack of charges on any of these files. This categorization seems to act as a justification for over-policing these particular individuals.

Excessive monitoring, especially the kind of electronic monitoring proposed in the Investigation’s TOR, stops First Nations individuals from visiting or moving back to their remote home communities, which creates barriers preventing them from accessing pro-social ties and being involved in their home community. On the healing path, community involvement is more restorative than maintaining displacement to monitor an individual. This, alongside over-policing, inevitably leads to future arrests due to one’s failure to comply with challenging conditions.

It is crucial to consider how racial discrimination and systemic racism factor into over-policing. In Prince George, BCFNJC’s front-line workers report the need for better-trained officers who are highly competent, culturally sensitive, and trauma-informed to serve a diverse Indigenous population. Without appropriate training and skills, the increased police monitoring within this initiative is being directed at Indigenous communities in general.

Ultimately, Indigenous-led initiatives rooted in Indigenous culture and laws are the only way to build robust solutions. The BC First Nations Justice Strategy and the IJCs have the potential to be that solution if supported with resources from the provincial and municipal governments.

The Prince George IJC houses a diverse team providing services to surrounding communities. An in-house Community Outreach Coordinator works with Nations and local service providers to maintain accurate, up-to-date information on each program, eligibility criteria, waitlists, and more for programming that may be of interest to its clients. In addition, there is a staff lawyer who works mainly on criminal law files, an office administrator, a legal assistant, a receptionist, a Gladue report writer, a Gladue services and support worker, a legal assistant, and a team of Elders in Residence. Further, our Provincial Manager for Diversion and Early Intervention is based in Prince George.

The Prince George IJC has proven helpful and accessible for many Indigenous peoples who find themselves in the region. In fact, in the *Community Votes Prince George* campaign, the Prince George IJC was nominated and awarded the Platinum Award for Best Non-Profit in May 2022.⁶ The overwhelming community need and support for the IJC has caused us to outgrow the space we are currently in – the IJC will be relocating to a larger space in October 2022. The Prince

⁶ <https://princegeorge.communityvotes.com/2021/12/services/non-profit>

George IJC is a resounding success story and a flagship for BCFNJC. It is a perfect home for a pilot project to serve Indigenous people whose needs are the subject matter of this Investigation.

One reason for the Prince George IJC's success is the focus on establishing trust between its staff and community members, which is essential to providing individuals with a meaningful level of support. Ensuring that individuals can develop and maintain a personal connection at IJCs across British Columbia, but especially in Prince George, is important for ensuring that the cycle of harm is no longer repeated and that individuals can grow and heal to find safety and security in a good way.

In addition to the IJC's relationship-based approach to client service, in the short time since the IJC has opened, staff have built relationships with several organizations that could support the scoping and running of a pilot project. These include Central Interior Native Health, Positive Living North, Connective, Elizabeth Fry, Prince George Urban Aboriginal Justice Society, Community Transition Team with BC Mental Health & Substance Use Services, Unlocking the Gates Services Society, Prince George Native Friendship Center, Carrier Sekani family services, Carrier Sekani Tribal Council, Nazul Be Hunuyeh Child and Family Services Society, St Patrick's Transition Society and Prince George Activators Society. In sum, we are willing and well positioned to support vulnerable community members to end their involvement with the criminal justice system.

Pilot project: Scope, funding, and how to serve the people who are the subject of this Investigation

BCFNJC's Indigenous Justice Centres are hubs for social and culturally appropriate services for First Nations people in BC. If adequately funded, BCFNJC could work with the City of Prince George to serve the Indigenous people who are considered "prolific offenders" by this Investigation.

In Prince George, there is currently a fragmentation of social services provided. It is difficult for social service agencies to recruit and retain professionals due to burnout and low pay. In some agencies, staff working with Indigenous people lack the proper training to do so in a good, trauma-informed way. Solutions need to be built through an Indigenous lens to address the needs of First Nations people involved in the criminal justice system using Indigenous agencies and Indigenous knowledge.

To make this a reality, BCFNJC is willing to build a pilot program to be developed in Prince George. The goal is to create a flexible program for each region's needs, with multidisciplinary teams that can support First Nations individuals and their particular and unique needs, where an Indigenous-led restorative justice approach is favoured and upheld. Our proposed budget is as follows:

BUDGET (Six months to scope pilot project)

ITEM	COST (CAD)
Salary – Staff person to lead development of project	65,000
Elder Honoraria and Gifts	15,000
Food, room rentals, etc.	10,000
Admin for BCFNJC	10,000
Total	100,000

If a feasible pilot project is developed through this scoping exercise, we anticipate submitting a proposal to fund the pilot to the City of Prince George and the Province of BC. If it is successful, it could serve as a model for other cities struggling to support the most vulnerable Indigenous people in those cities. As well, as BCFNJC opens new IJCs in the province, the support offered in these places will be informed by the learnings of this proposed pilot program in Prince George.

Conclusion and Recommendations

This Investigation fails to define who or what is being investigated and is founded upon a flawed understanding of those involved, thereby failing to acknowledge the structural barriers preventing individuals from breaking the cycle of harm. Importantly investigating the supposed criminality of individuals who have not been found guilty beyond a reasonable doubt is an unconstitutional affront to the presumption of innocence.

BCUMC called for this Investigation without providing data to support the “recent rise in violent incidents.” There was also a lack of evidence to support the anecdotes and numbers provided by police to substantiate the argument that there is an objective “issue of prolific offenders.” The degree to which municipal leadership is committed to addressing the roots of this issue is unknown. Given that the BCUMC requested the Investigation, it would be helpful to know what they are willing to do to be part of the solution. While BCFNJC has a strong partner and ally in the Governments of BC and Canada, addressing the issues identified in this submission requires the support and attention of municipalities as well.

Despite the fact that reconciliation is a priority for the federal and provincial governments and that they have committed to ensuring the minimum standards of UNDRIP are reflected in law and policy, there is a lack of funding and resources for services to better the health and safety of Indigenous peoples in BC and across Canada. Implementing programs and supports available to Indigenous peoples across Canada is impossible without sufficient funding. The same is true for implementing a pilot program at the Prince George IJC.

For this Investigation, the BCFNJC recommends that:

- The term “*prolific offenders*” is abandoned by government authorities and all police, as this term not only perpetuates harm and stigma but also fails to address that these individuals lack security and safety;
- Harm reduction efforts should be centred to focus on the underlying systematic issues that perpetuate a cycle of abuse and harm;
- A new process of consultation is put in place, including other Indigenous organizations, front-line workers, and people who commit crimes;
- The collection of race-based disaggregated data to inform stakeholders and investigators of their mandate, with contextual information on the different categories to be considered;
- Funding of \$100,000 and resource allocation should be granted for the design of a pilot program by BCFNJC in Prince George’s IJC to address the issue of criminal recidivism amongst First Nations people.

BCFNJC looks forward to further engagement with the Investigation Panel as they develop their report and recommendations to government. Should you have any questions, comments, or concerns, please contact Amanda Carling, Sr. Policy Counsel for BCFNJC at amanda.c@bcfnjc.com.

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