

STATUS OF FIRST NATION BAND CONSTABLES AND SPECIAL CONSTABLES

Assembly of Manitoba Chiefs –General Chiefs Assembly
February 24, 25 and 26, 2015 – Treaty One Territory, Brokenhead Ojibway Nation

Issue:

- Three important developments have affected the status of those provincially-appointed First Nation Special Constables who act with the protections and powers of a peace officer and who have been carrying out secondary policing roles while enforcing Band By-laws and while carrying out “first responder” and “front line policing” activities in support of the RCMP:
 1. The former *Provincial Police Act* was repealed and replaced by the *Police Services Act* effective June 1, 2012, without proclaiming into force the power to confer peace officer status on persons who may be appointed as Special Constables after June 1, 2012 (s. 80, Peace officer status, of the *Police Services Act*);
 2. In January, 2014, Public Safety Canada announced that the First Nation Band Constable program agreements with 31 First Nations in Manitoba will terminate as of March 31, 2015 and that the total of \$1.5 million in federal funding will be transferred to the province of Manitoba toward the cost of providing professional policing services in the province; and
 3. On November 26, 2014, the province of Manitoba introduced The Police Services Amendment Act (First Nation Safety Officers) and announced that the current First Nation Band Constable program would be replaced by “First Nation Safety Officers”.
- There has been no known process of consultation with First Nations in Manitoba regarding any of these developments and prior to these actions being taken by Manitoba and Canada.

Background:

- For the past 46 years (since about 1969), Band Constables have enforced Band Bylaws and have acted in a “first responder” and “front line policing” role in support of and pending the arrival of the RCMP. These “first responder” and “front line policing” roles of Band Constables were described as “secondary policing” by the former Assistant Commissioner and Commanding Officer of RCMP “D” Division, Bill Robinson.
- Acting in these secondary policing roles are perhaps the primary present duties of those First Nation Band Constables who are also provincially-appointed Special Constables and who act with the protections and powers of a peace officer, as defined by the *Criminal Code* (Canada).
- Subject to check, all currently serving First Nation Special Constables who are believed to hold a peace officer status were appointed prior to June 1, 2012 under the former *Provincial Police Act*. Subsection 108(3) of the *Police Services Act* provides that a prior appointment under the *Provincial Police Act* continues under as if it were made under the *Police Services Act*. In that s. 80, Peace officer status, of the *Police Services Act* was not proclaimed into force as of June 1, 2012, there is a question as to whether any deemed continuing appointment also continues to confer the protections and powers of a peace officer.

Recommendations:

- 1) **Manitoba and Canada to recognize that the secondary policing services currently being provided by First Nation Special Constables with peace officer appointments are an essential part of the overall policing services delivered in Manitoba under the Manitoba Provincial Police Service Agreement (PPSA); and**
- 2) **Manitoba to immediately proclaim into force s. 80 of *Police Services Act* and take steps to confirm the peace officer status of all First Nation Special Constables.**

Bill 5, THE POLICE SERVICES AMENDMENT ACT (FIRST NATION SAFETY OFFICERS)

Assembly of Manitoba Chiefs –General Chiefs Assembly
February 24, 25 and 26, 2015 – Treaty One Territory, Brokenhead Ojibway Nation

Issue:

- On November 26, 2014, the provincial Minister of Justice, James Allum, introduced Bill 5, The Police Services Amendment Act (First Nation Safety Officers) and announced that the current First Nation Band Constable program would be replaced by “First Nation Safety Officers”.
- Bill 5 does not address or create certainty regarding the present role and peace officer status of First Nation Special Constables when carrying out the enforcement of Band Bylaws or when First Nation Special Constables are acting in a “first responder” and “front line policing” role in support of or pending arrival of the RCMP.
- Bill 5 does not confer the powers and protections of a peace officer, as defined in the *Criminal Code*, when a "First Nation safety officer" is acting to enforce Band Bylaws or when a First Nation safety officer is providing "general assistance to the local policing authority", being the RCMP.
- Subsection 77.15(2) of Bill 5 provides that an appointment as a "First Nation safety officer" confers peace officer status only when a First Nation safety officer is enforcing "prescribed provincial enactments".

Background:

- In January, 2014, Public Safety Canada announced that the First Nation Band Constable program agreements with 31 First Nations in Manitoba will terminate as of March 31, 2015 and that the total of \$1.5 million in federal funding will be transferred to the province of Manitoba toward the cost of providing professional policing services in the province.
- The provincial Justice Minister has publically stated that Manitoba will “match” the \$1.5 million in former federal Band Constable Program funding, for a total potential budget of \$3 million for the First Nation Safety Officer Program. This level of funding will be significantly less than the total amounts currently being expended on policing by First Nations.
- The overall effect of Bill 5 would appear to be to: 1. shift the focus of community-based law enforcement activities on reserve from the enforcement of Band Bylaws to the enforcement of "prescribed provincial enactments"; and 2. create an increased requirement for the RCMP, who will be the only local policing authority on reserve in respect of any matter not addressed in a "prescribed provincial enactment", to act in the same "first responder" and “front line policing” roles in remote communities that are now being provided by Band Constables who also have Special Constable appointments with a peace officer status.

Recommendation:

- ✓ **Manitoba to substantially amend, replace or withdraw Bill 5 in order to:**
 - 1) **recognize that the secondary policing services currently being provided by First Nation Special Constables with peace officer appointments are essential to public safety in First Nation communities and to the overall policing services delivered in Manitoba under the Manitoba Provincial Police Service Agreement (PPSA); and**
 - 2) **include all of the costs of training, salaries, insurance and equipment for First Nation Special Constables with peace officer appointments as part of the policing activities and expenditures which are cost-shared 70% by Manitoba and 30% by Canada under the Manitoba Provincial Police Service Agreement.**

**ASSEMBLY OF MANITOBA CHIEFS
GENERAL CHIEFS ASSEMBLY
South Beach Casino and Resort
Brokenhead Ojibway Nation
February 24, 25 & 26, 2015**

CERTIFIED RESOLUTION

**FEB-15.07
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**RE: SERVING NOTICE TO MANITOBA AND CANADA ON CONSTITUTIONAL AND
FIDUCIARY OBLIGATION TO ENSURE EFFECTIVE POLICING SERVICES IN FIRST
NATIONS**

Moved by:

Chief Jim Tobacco
Mosakahiken Cree
Nation

WHEREAS, under Section 92(14) of the *British North America Act, 1867*, (*Constitution Act, 1867*) the Province of Manitoba is responsible for the administration of justice in the province, including policing; and

Seconded by:

Chief Ron Evans
Norway House Cree
Nation

WHEREAS, the RCMP delivers policing services as the Provincial Police of Manitoba under contract with the province through the Provincial Police Service Agreement (PPSA). The parties to the Provincial Police Service Agreement are the Manitoba Minister of Justice and the Minister of Public Safety Canada; and

CARRIED

WHEREAS, the Chiefs-in-Assembly assert that the level of policing services in the majority of First Nations in Manitoba are inadequate in relation to any reasonable standard of measurement or comparison to those policing services provided to non-First Nation communities, with the result that the safety of the citizens of the majority of First Nation communities is placed at risk; and

WHEREAS, the Chiefs-in-Assembly are deeply concerned that the Province of Manitoba has not proclaimed into force s.80 of the Police Services Act (Peace officer status), with the result that First Nation Special Constables who provide secondary policing services in support of the RCMP and who were appointed under the former Provincial Police Act may no longer be acting with the protections and powers of a peace officer, potentially placing both the Special Constables and their First Nation employers at risk.

THEREFORE BE IT RESOLVED, the Chiefs-in-Assembly serve notice on the Manitoba Minister of Justice, as the constitutional authority responsible for policing in the province in accordance with 92(14) of the *British North America Act, 1867*, that immediate action must be taken to ensure and provide for measurably adequate and comparable levels of policing and public safety and security in the First Nations in Manitoba, particularly in those First Nations without full-time RCMP Detachments and which continue to rely on secondary policing services provide by Special Constables who are believed to hold the protections and powers of a peace officer;

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**ASSEMBLY OF MANITOBA CHIEFS
GENERAL CHIEFS ASSEMBLY
South Beach Casino and Resort
Brokenhead Ojibway Nation
February 24, 25 & 26, 2015**

CERTIFIED RESOLUTION

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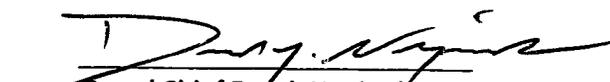
RE: SERVING NOTICE TO MANITOBA AND CANADA ON CONSTITUTIONAL AND FIDUCIARY OBLIGATION TO ENSURE EFFECTIVE POLICING SERVICES IN FIRST NATIONS (cont'd)

FURTHER BE IT RESOLVED, the Chiefs-in-Assembly serve notice on the Minister of Public Safety in respect of Canada's constitutional and fiduciary responsibilities regarding First Nations people under Section 91(24) of the British North America Act, 1867, and as a party the Manitoba Provincial Police Service Agreement, that immediate action must be taken to ensure and provide for measurably adequate and comparable levels of policing and public safety and security in the First Nations in Manitoba, particularly in those First Nations without full-time RCMP Detachments and which continue to rely on secondary policing services provide by Special Constables who are believed to hold the protections and powers of a peace officer;

FINALLY BE IT RESOLVED, the Chiefs-in-Assembly serve notice to the Manitoba Minister of Justice and the Minister of Public Safety that the First Nations in Manitoba will hold the governments of Manitoba and Canada to be liable, individually and collectively, in the event that any citizen of any First Nation in Manitoba or any First Nation government or any First Nation Special Constable is placed at risk due to the failure of the Manitoba Minister of Justice and the Federal Minister of Public Safety to provide measurable and comparably adequate levels of policing services and due to the failure of Manitoba to proclaim into force s. 80 of the Police Services Act.

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*of a resolution adopted
on February 24, 25 & 26, 2015
Brokenhead Ojibway Nation, MB*


Grand Chief Defek Nepinak

**ASSEMBLY OF MANITOBA CHIEFS
GENERAL CHIEFS ASSEMBLY
South Beach Casino and Resort
Brokenhead Ojibway Nation
February 24, 25 & 26, 2015**

CERTIFIED RESOLUTION

**FEB-15.08
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**RE: SUPPORT FOR THE MANITOBA FIRST NATION COMMUNITIES AFFECTED BY THE
TERMINATION OF THE BAND CONSTABLE PROGRAMS**

Moved by:

Chief Ron Evans
Norway House Cree
Nation

WHEREAS, the termination of the Band Constable Program funding by the government of Canada end on March 31, 2015; and

Seconded by:

Chief Jim Tobacco
Mosakahiken Cree
Nation

WHEREAS, 31 Manitoba First Nation communities will be affected by the termination; and

CARRIED

WHEREAS, No Consultation occurred with the 31 affected First Nations and on November 26, 2014, the provincial Minister of Justice introduced Bill 5, The Police Service Amendment Act and announced that the intent of the bill was to replace the Band Constable Program with "First Nation Safety Officers"; and

WHEREAS, the provincial Justice Minister has publically stated that Manitoba will "match" the \$1.5 million in former federal Band Constable Program funding, for a total potential budget of \$3 million for the First Nation Safety Officer Program. This level of funding will be significantly less than the total amounts currently being expended on policing by First Nations; and

WHEREAS, Bill 5 proposes that the First Nation Safety Officers in First Nation communities will be appointed by a First Nation Chief and Council pursuant to an agreement with the provincial government to enforce provincial laws but that First Nation Safety Officers will not have the protections and powers of a peace officer when enforcing Band By-laws on-reserve or when acting in a secondary policing role in support of the RCMP, even though it is recognized by the provincial government that for the past 46 years (since about 1969), Band Constables have enforced Band Bylaws and have acted in a "first responder" and "front line policing" role in support of and pending the arrival of the RCMP;

THEREFORE BE IT RESOLVED, the Chiefs-in-Assembly support the following recommendations tabled by the Manitoba Keewatin Okimakanak at the Chief Assembly on February 24, 2015:

**ASSEMBLY OF MANITOBA CHIEFS
GENERAL CHIEFS ASSEMBLY
South Beach Casino and Resort
Brokenhead Ojibway Nation
February 24, 25 & 26, 2015**

CERTIFIED RESOLUTION

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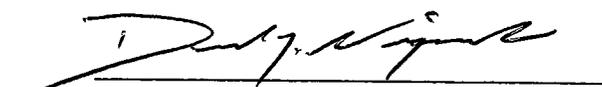
**RE: SUPPORT FOR THE MANITOBA FIRST NATION COMMUNITIES AFFECTED BY
THE TERMINATION OF THE BAND CONSTABLE PROGRAMS (cont'd)**

1. Engage Manitoba to substantially amend, replace, or withdraw Bill 5 in order to:
 - a. recognize that the secondary policing services currently being provided by First Nation Special Constables with peace officer appointments are essential to public safety in First Nation communities and to the overall policing services delivered in Manitoba under the Manitoba Provincial Police Service Agreement (PPSA); and
 - b. include all of the costs of training, salaries, insurance and equipment for First Nation Special Constables with peace officer appointments as part of the policing activities and expenditures which are cost-shared 70% by Manitoba and 30% by Canada under the Manitoba Provincial Police Service Agreement.
2. Engage Manitoba and Canada to recognize that the secondary policing services currently being provided by First Nations Special Constables with peace officer appointments are an essential part of the overall policing services delivered in Manitoba under the Manitoba Provincial Police Service Agreement; and
3. Engage Manitoba to immediately proclaim into force s. 80 of Police Service Act and take steps to confirm the peace officer status of all First Nations Special Constables.

FURTHER BE IT RESOLVED, the Assembly of Manitoba Chiefs call on the First Nations of Manitoba to assert the inherent sovereignty of the First Nations of Manitoba through the development and enactment of First Nation legislation to establish and license First Nation police forces and to appoint and arm First Nation police officers.

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*of a Resolution Adopted
on February 24, 25 & 26, 2015
Brokenhead Ojibway Nation, MB*



Grand Chief Derek Nepinak