



BC FIRST NATIONS JUSTICE STRATEGY

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The following is a BC First Nations Justice Strategy developed in partnership with the BC First Nations Justice Council, First Nations Leadership and Ministry of Attorney General & Ministry of Public Safety and Solicitor General, in consultation with First Nations and their Chiefs and Leadership, First Nations Elders and First Nations communities and service providers.

Executive Overview

The BC First Nations Justice Council (BCFNJC) and the Province of British Columbia (BC) signed a Memorandum of Understanding (MOU) in Fall 2017, committing to the development and implementation of a joint justice strategy, with a focus on:

1. Reconciliation with Indigenous people;
2. Decreasing the overrepresentation of Indigenous people in the justice system;
3. Improving the experience of Indigenous people within the justice system;
4. Addressing violence against Indigenous people, especially women and girls;
5. Engagement with Indigenous communities and organizations in a respectful and culturally appropriate manner;
6. Improved access to justice services by Indigenous people; and,
7. Designing services that provide Indigenous people with culturally relevant, flexible and user-focused processes.

This strategy was delivered to BC on October 29, 2019, wherein it received support from Minister Eby and Minister Farnworth.

This strategy was delivered to the FNLC on October 30, 2019, wherein it received endorsement in principle.

The strategy is built upon four Foundational philosophies:

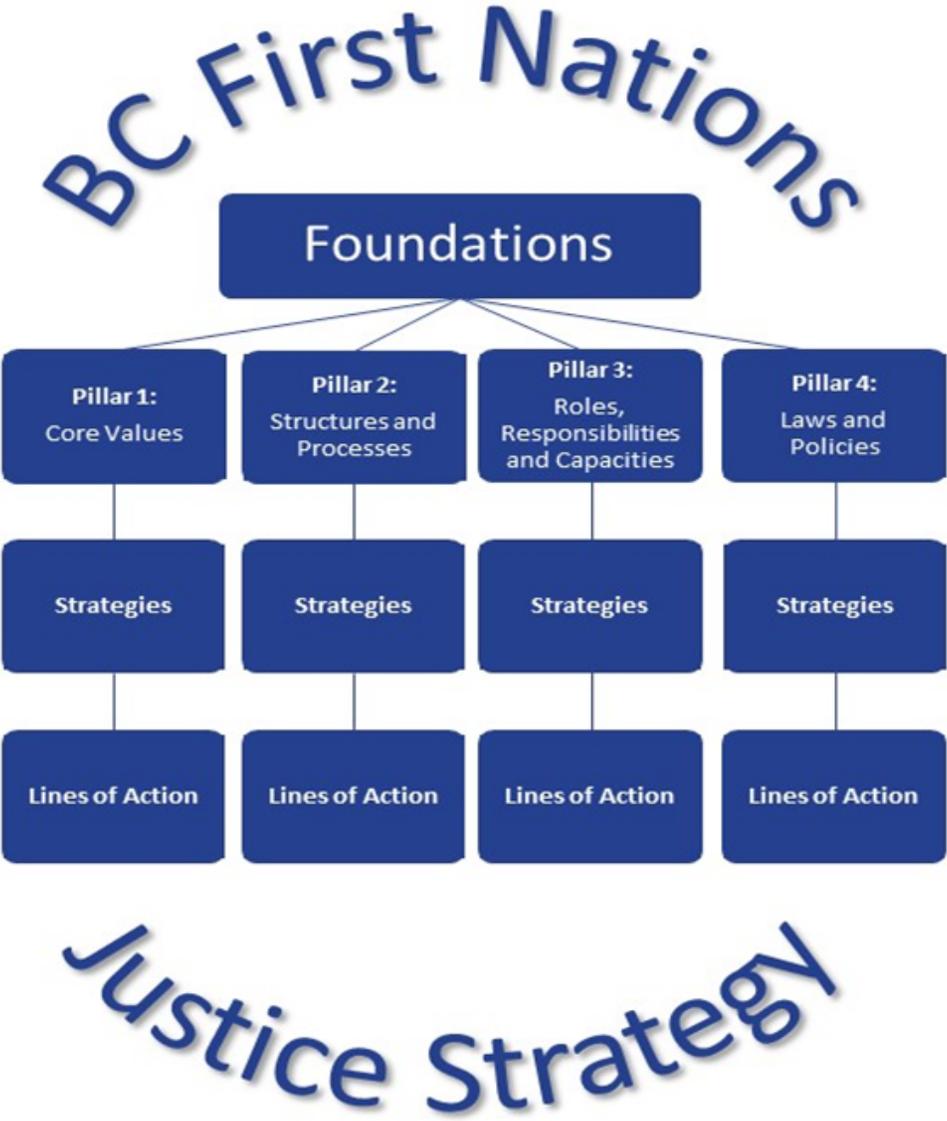
Foundation 1: *A Strategy must adopt an integrative, holistic, and comprehensive approach that addresses all forms of interaction between First Nations and the justice system.*

Foundation 2: *A Strategy must pursue two tracks of change at once: (1) Reform of the existing justice system; (2) Transformation through the rebuilding of Indigenous justice systems.*

Foundation 3: *A Strategy must be proactive in creating conditions where First Nations people are no longer disproportionately interacting with, nor being impacted by, the justice system.*

Foundation 4: *A Strategy must achieve a 180-degree shift from the current reality of First Nations people being overrepresented in all stages of interaction with the justice system, while at the same time being underrepresented as actors with roles and responsibilities within the system.*

Upon these Foundations there are 25 Strategies that are organized into Pillars which are at the root of the justice system. Each strategy has Lines of Action attached to them to guide the implementation of the strategy.



Pillar 1: Core Values

Transformation of the relationship between First Nations and the justice system requires certain core values to be upheld and implemented. To that end, there are two core values from Foundation 2 that are essential, and around which many specific strategies and lines of actions are built: *(1) Reflecting a presumption of diversion throughout the existing justice system; and (2) Advancing First Nations self-determination of justice systems and institutions.*

Pillar 2: Structures and Processes

Fourteen strategies guide transformation of the relationship between Indigenous peoples and the justice system which requires changes to structures and processes in two ways:

- First, changes are needed within the existing justice system, starting with the establishment of an Indigenous Justice Secretariat that will lead this work, assist with the application of a presumption of diversion, increase Indigenous peoples' access to justice, and build greater cultural awareness, knowledge and understanding through the system. These are all vital aspects of reform on track 1.
- Second, investments, supports, and actions need to be put into place to assist First Nations in the re-building of their structures and processes around criminal justice. At the core of this is the expansion of many community-based programs, which are vital to advancing transformation along track 2.

The BC First Nations Justice Council anticipates taking a significant role in the Lines of Action shaping legal services to Indigenous people, the comprehensive implementation of Gladue and to support oversight and accountability for Indigenous justice processes.

Pillar 3: Roles, Responsibilities and Capacities

Transformation of the relationship between First Nations and the justice system requires changes in who is playing roles within the system, and how these roles are being played. Seven strategies in Pillar 3 include opportunities for Crown Counsel and the BC Prosecutorial Service, Elders and Knowledge Keepers, RCMP and front-line justice workers to adapt to and implement these strategies.

The work of effecting positive shifts in how individual actors do their work also encompasses how to build new and growing capacity within First Nations, ensuring they have the supports in place for this Track 2 work.

Pillar 4: Laws and Policies

Transformation of the relationship between First Nations peoples and the justice system requires legal and policy change. These changes will create space to structure proper relations between the existing criminal justice system and emerging First Nations justice systems and processes and enable tangible shifts on track 2.

The implementation of Bill C-41 will have far reaching implications. This strategy anticipates and is structured to support that implementation in multiple ways.

Summary

This strategy provides a clear, well defined and comprehensive road map to the fundamental transformation of the justice system in BC for both Indigenous and non-Indigenous people. The BC First Nations Justice Council and the Indigenous leaders they represent look forward to seeing this transformation occur and undertaking the work alongside their Provincial and Federal partners. The sustained financial and human resourcing of these strategic initiatives over the long term will be the measure of the commitment of all of the partners.

Part 1 – Background

A. COMMITMENT TO DEVELOP AND IMPLEMENT A FIRST NATIONS JUSTICE STRATEGY

The BC First Nations Justice Council (BCFNJC) and the Province of British Columbia (BC) signed a Memorandum of Understanding (MOU) in Fall 2017, committing to the development and implementation of a joint justice strategy to transform the criminal justice system and the relationship between Indigenous peoples and the criminal justice system. The MOU identified the following priority topics to be addressed through a First Nations Justice Strategy (the Strategy):

- Reconciliation with Indigenous peoples;
- Decreasing the overrepresentation of Indigenous peoples in the justice system;
- Improving the experience of Indigenous peoples within the justice system;
- Addressing violence against Indigenous peoples – especially women and girls;
- Engagement with Indigenous communities and organizations in a respectful and culturally appropriate manner;
- Improved access to justice and justice services for Indigenous peoples;
- Designing services that provide Indigenous peoples with culturally relevant, flexible, and user-focused processes.

The development of a comprehensive justice strategy has been a focus for First Nations in BC for many years. Over a decade ago, in 2007, First Nations developed a “BC First Nations Justice Action Plan” (the Action Plan) in conjunction with processes that were being advanced as a result of the *New Relationship Vision*, the *Transformative Change Accord* and other developments. The Action Plan identified the vision, goals, principles, and set of actions that were to address structural challenges and accountability of the justice system, policing, safety, community-based initiatives, and the role of First Nations Organizations. While the Action Plan was not systematically implemented, work around the Action Plan led to the creation of the BC Aboriginal Justice Council (now the BCFNJC).

The commitment to jointly develop the Strategy represents the potential for a significant transition away from long entrenched, historic, colonial patterns regarding the criminal justice system. Among the most damaging of colonial patterns has been efforts to marginalize and dismantle First Nations legal orders and governance institutions, including as it relates to criminal justice. Concurrent with this has been the imposition of a common law justice system that has long reflected and struggled with racist and outdated perspectives, policies and practices regarding Indigenous peoples. The end result is a contemporary reality where Indigenous peoples in British Columbia, and across Canada, are disproportionately and negatively impacted by the justice system, often with devastating consequences for individuals, families, communities, Nations, and society at large.

Throughout the history of the colonial interaction of First Nations with the justice system, rarely, if ever, has there been the commitment, will, support and vision, for systematic, joint efforts to transform

these harmful realities. While constructive and important efforts have been made over many decades to improve the reality of the relationship of Indigenous peoples with the justice system, and some important steps taken, these efforts and achievements have never been comprehensive or transformative in scope and intent. Despite best intentions and good faith efforts, First Nations have not been viewed and respected as leaders and partners in the work of making these fundamental changes.

In these respects, the MOU and the development of the Strategy represents a shift. In many aspects, it is reflective of a shift going on across BC and Canada as a whole. The changes that are emerging include the realization that fundamental to reconciliation is the recognition and implementation of First Nations title and rights, and of the human rights standards for the survival, dignity, and well-being affirmed in the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration). Central is the work of First Nations rebuilding their governments, including First Nations justice systems and institutions, consistent with the right of self-determination and the inherent right of self-government. Success in all of this requires true partnership and working together, with the knowledge, lived experience, and solutions of First Nations helping lead the way.

The necessity and importance of implementing the UN Declaration was affirmed in November 2019 with the historic passage of the *Declaration on the Rights of Indigenous Peoples Act (DRIPA)*. *DRIPA* confirms that the UN Declaration applies to the laws of BC (s. 3), that BC must take all necessary measures to align the laws of BC with the UN Declaration (s. 4), and there must be an action plan to meet the objectives of the UN Declaration (s. 5). This work must be done in co-operation and consultation with Indigenous peoples. This Strategy has been developed with meeting the standards of the UN Declaration at its core, and designed so that its implementation can be co-ordinated with, and supportive of, the processes and efforts that are now being moved forward to implement *DRIPA*, including the development of an action plan to meet the objectives of the UN Declaration and the alignment of the laws of BC with the standards of the UN Declaration.

B. PROCESS OF STRATEGY DEVELOPMENT

The MOU committed to make best efforts to develop the Strategy within two years. This timeline was grounded in the acknowledgement that the Strategy must be properly co-developed between First Nations and BC and reflect the solutions that First Nations have developed.

Over the past two years systematic work has been done by First Nations across British Columbia, supported by the efforts and coordination of the BCFNJC, to develop the elements of the Strategy. The UN Declaration was a framing point of reference for all of these efforts. All of this work was done in partnership with BC and has included multiple venues and processes to ensure that First Nations and BC political leadership were aligned. This included technical and expert work that was collaborative, cooperative and informed by a mutual commitment to ground new approaches in the recognition of rights and support for the First Nations of British Columbia.

The process of the development of the Strategy has taken place in three phases.

- Phase 1 *Knowledge Sharing*; during which First Nations, BC political leadership, the BCFNJC, justice system actors, and experts, built shared understandings, knowledge, and perspectives about the challenges to be addressed, and approaches to strategies and solutions. Some of the main aspects of this phase included:
 - The 10th Justice Summit – May 31 – June 2, 2018. The Summit focused on Indigenous justice, gathered a cross-section of leaders and experts, and included a full day Indigenous caucus;
 - The 11th Justice Summit – November 2 – 3, 2018. The Summit built on the 10th Justice Summit, with the goal of providing concrete recommendations on transforming Indigenous justice;
 - *Gladue* Knowledge Sharing Gathering – October 3 – 4, 2018. The Gathering brought together leaders and experts to share information and identify actions for the full implementation of the principles of the Supreme Court of Canada’s *Gladue* decision in British Columbia; and,
 - Indigenous Strategy Planning Session – November 4, 2018. A facilitated dialogue between the First Nations Leadership Council (FNLC), the BCFNJC, and BC Ministers to discuss the planning, elements, and development of the Strategy.
- Phase 2 *First Nations Engagement*; during which First Nations provided guidance and direction on the elements of the Strategy. Some of the main elements of this phase included:
 - First Nations Provincial Justice Forum – April 24 – 25, 2019. A Province-wide gathering of First Nations leaders to provide direction on the substance of the Strategy. The Forum included intensive small-group sessions where all First Nations participants could provide direction and perspectives on the Strategy;
 - Regional Justice Forums – June – July 2019. Four Regional Forums were held in Nanaimo, Prince George, Vernon, and Chilliwack, for First Nations leaders to provide guidance on the substance of the Strategy, including sharing of specific perspectives and experiences; and,
 - Dialogue at British Columbia Assembly of First Nations (BCAFN), Union of British Columbia Indian Chiefs (UBCIC), and First Nations Summit (FNS) – 2018 and 2019. The BCFNJC had dialogue regarding the elements of the Strategy, and the implementation of the UN Declaration in the justice sector, with the assembled leadership at multiple meetings of First Nations organizations.

- Phase 3 was *Strategy drafting and Testing*; during which the BCFNJC and BC presented draft elements of the Strategy to First Nations and others, received guidance and input, and made revisions. This included working with experts in the UN Declaration, including those with knowledge and involvement of recent efforts by First Nations, as well as Federal and Provincial Governments, to advance UN Declaration implementation. This phase is on-going. Some of the main elements of this phase include:
 - Presentation and Review of Strategy at meetings of First Nations organizations:
 - BCAFN September 19, 2019
 - UBCIC October 3, 2019, and
 - FNS October 16, 2019.
 - Ministers’ meeting October 29, 2019;
 - Presentation to First Nations Leadership Council October 30, 2019;
 - First Nations Justice Strategy release (internal to Government) November 20, 2019; and
 - Presentation to AG and PSSG Joint Executive December 13, 2019.

C. SOURCES INFORMING STRATEGY DEVELOPMENT

In addition to the specific guidance and direction developed through the three phases of development, and in particular the perspectives shared by First Nations leadership over the past two years, this Strategy has been shaped and informed by three bodies of knowledge, experience, and information.

First, an essential context that shapes this Strategy is the reality of the experience of Indigenous peoples with the justice system; the lived experience of individuals, families, and communities. This reality is borne witness in the voices and testimonies of those who have experienced the system, both as victims and offenders. It is a reality that is reflected in the data and statistics that document the disproportionate harms from the justice system faced by Indigenous peoples.

Throughout the development of the Strategy, in all three phases of the process, the understanding of this reality, including through testimonies and data, were shared and reflected upon. The voices of those who have experienced the justice system were included and heard. Witnesses and Elders were present at all major events in the development process, to ensure the proceedings were informed and appropriate. As Betty Gladue, one Witness at the 10th Justice Summit stated: “I am overwhelmed because peoples are listening, and I had an impact.... They’re going to listen to me. I have pride in myself, my community. I have pride and I have hope.”

In addition, while this Strategy is not a study, inquiry, or report, it is rooted in deep analysis and consideration of the data that reveals the depth and urgency of the necessity to transform the relationship of Indigenous peoples and the justice system. At the beginning of the process of Strategy

development, at the 10th and 11th Justice Summits, a thorough review of the most recent data took place.

Attached as **Schedule A** is a summary of some of the main events and proceedings that were part of this Strategy development process, including brief summaries of some of the main reports developed that have informed and shaped the Strategy.

Second, the relationship between Indigenous peoples and the justice system has been, and continues to be, the subject of studies, inquiries, and reports. Collectively, these studies, inquiries, and reports document a deep, and incontestable understanding of the harmful relationship between Indigenous peoples and the justice system. Many of these studies and reports have also documented the collective wisdom and lived experience of First Nations regarding the justice system, while also collecting and analyzing data regarding the disproportionate impacts of the justice system on Indigenous peoples. During the development of this Strategy, important events were occurring, including notably the National Inquiry into Murdered and Missing Indigenous Women and Girls. The strong evidence base provided through comprehensive reviews and studies of the criminal justice system in British Columbia and Canada, and consideration of the research literature and data, have informed all steps of the process. However, because often this material is “pan-Indigenous” and does not adequately differentiate the experience of First Nations peoples in the context of the colonial restrictions of the Indian Act and its continuing impacts, such as through the application of section 88 of the Indian Act that applied all provincial laws of general application on reserve, there are limitations in the data. The exclusions of First Nations peoples from jury pools, and other dimensions of the discrimination experienced by First Nations peoples – which is often intersectional involving a combination of federal and provincial factors, and local considerations – have a more significant impact on the development of appropriate strategic responses which must be informed by First Nations leadership, experts and technical leads.

This Strategy has not set out to reproduce or restate the voluminous insights and work of those studies, inquiries, and reports. But it does set out a distinct approach and viewpoint, given some of the limitations noted, seeks to apply the body of evidence regarding shortcomings and best practices, and draws on the knowledge and calls to action they share. One goal of this Strategy is to implement the solutions that have been identified over many years. Some of the seminal inquiries or studies that have been relied upon in the development of this Strategy include:

- *Royal Commission on Aboriginal Peoples, 1996*. The comprehensive study of the state of Indigenous peoples in Canada, that includes particular emphasis on the essential role of self-determination and self-government in addressing systemic challenges and barriers.
- *The Ipperwash Inquiry Report, 2007*. The Ontario inquiry and report on events surrounding the death of Dudley George, who was fatally shot in 1995 during a protest by First Nations representatives at Ipperwash Provincial Park. A focus of the report was on how to avoid similar future acts of violence.

- *Alone and Cold, The Davies Commission Inquiry into the Death of Frank Paul, 2011.* The inquest into the death of Frank Paul, who died after being left by police in an alleyway in Vancouver.
- *Truth and Reconciliation Commission Final Report, 2015.* The study of Canada's residential school system, and its enduring impacts on Indigenous children, families, and communities, which also calls for the UN Declaration to be adopted as "the framework for reconciliation" (Call to Action 43);
- *Reclaiming Power and Place: Final Report, National Inquiry into Murdered and Missing Indigenous Women and Girls, 2019.* The report on the systemic causes of all forms of violence against Indigenous women and girls, including sexual violence and the examination of the underlying social, economic, cultural, institutional, and historical causes that contribute to the ongoing violence and vulnerabilities of Indigenous women and girls in Canada.
- *The Report of the Royal Commission on Aboriginal Peoples (RCAP): Concerns government policy with respect to the original historical nations of this country. Those nations are important to Canada, and how Canada relates to them defines in large measure its sense of justice and its image in its own eyes and before the world.*
- *British Columbia Representative for Children and Youth, 2015. Paige's story: abuse, indifference and a young life discarded.* This report examines the life and death of Paige, an Aboriginal young adult from British Columbia, who had involvement with the Ministry of Children and Family Development (MCFD) from birth until she aged out of care. Paige died from a drug overdose at the age of 19 in Vancouver's Downtown Eastside (DTES). The report cites the lack of transition planning for Paige to have been a contributing factor in her escalated drug use, a month after she left ministry care.
- *Report on Youth Justice by Representative for Children and Youth and Provincial Health Officer, Youth Justice in British Columbia: B.C. study that shows, although children and youth in care are at higher risk of becoming involved with the youth justice system, early interventions targeted at risk factors can change the paths of these vulnerable adolescents. The study is a joint project of the Representative for Children and Youth, and the Provincial Health Officer.*
- *McCreary Centre studies and surveys on Aboriginal Youth in British Columbia: Risk and protective factors for alcohol use among female adolescents are often different from those for males, as are their motivations for drinking. For these reasons it is important to carefully consider which strategies are the most promising for addressing underage*

girls' problematic alcohol use. An extensive search of the academic and grey literature was performed to identify policies and interventions which addressed risky drinking among underage girls. Although most studies did not separate out data for underage girls, 27 rigorously evaluated interventions and nine policy studies were identified which provided gender-specific data or were targeted only at female adolescents. In addition, our search identified a number of promising programs that had adequate (non-gender specific) evidence to include them in this report.

Attached as **Schedule B** is a summary of some of the key findings and recommendations from critical studies, inquiries, and reports. In addition, the schedule lists some studies and reports of the justice system in BC that did not specifically address the relationship between Indigenous peoples and the justice system.

Third, this Strategy is shaped by the UN Declaration, and informed by the decisions of the courts regarding Indigenous peoples, Indigenous rights, and the relationship between Indigenous peoples and the justice system. The UN Declaration was advanced by the Truth and Reconciliation Commission as the “framework for reconciliation” because of the requirement of having a solid human rights basis upon which to build new programs, services and approaches. In terms of the guidance that is offered by courts in relation to the rights and experiences of First Nations peoples in the Canadian and British Columbia Justice System, there are significant limitations of this jurisprudence. First, the caselaw developed often in a vacuum of First Nations participation and involvement, in defending those cases or deciding them.

Many leading decisions remain sources of controversy and are problematic for First Nations peoples and governments who have been mostly treated as “ordinary citizens” and not as rights holders with treaties, inherent rights and cultural and traditional practices that are valid and sustaining. Others are vitally important and directly relevant to shaping core elements of the Strategy—such as cases which have attempted to delve more deeply into the colonial experience of mass human rights violations that have led to the overrepresentation of First Nations peoples in custodial facilities. Youth and Adult court decisions have been informed in some instances by outstanding advocacy and support from Justice organizations in British Columbia—such as PIVOT, LEAF and other important entities. Their advocacy on behalf of individuals has been welcome. What has been less evident though, is proper space for advocacy from First Nations peoples and their governments regarding safety, justice and appropriate consequences when there is anti-social behaviour that must be resolved. And, as was witnessed during the period of development of the Strategy, court processes remain a potential flashpoint regarding the relationship between Indigenous peoples and the justice system. For example, the verdict in the Gerald Stanley trial in February 2018, regarding the shooting of Colten Boushie, reinforced the urgency of the goal of the MOU to jointly develop and implement a transformative approach to the criminal justice system and the relationship between Indigenous peoples and the justice system. While involving another province, the themes that emerged from the trial, and the need to reform the jury system and the conduct of trials to be more respectful and inclusive of First Nations peoples' rights and experiences, do resonate in British Columbia.

Relied upon and reflected in the Strategy are foundational court decisions aimed at addressing issues related to Indigenous peoples and the justice system. The most well-known examples are *R. v. Gladue*, [1999] 1 S.C.R. 688 and *R. v. Ipeelee*, 2012 SCC 13 regarding section 718.2(e) of the Criminal Code which has the goal of helping reduce the overrepresentation of Indigenous peoples in the justice system. As the Supreme Court of Canada noted in *Ipeelee* “section 718.2(e) of the Criminal Code has not had a discernible impact on the overrepresentation of Aboriginal people in the criminal justice system,” and “statistics indicate that the overrepresentation and alienation of Aboriginal peoples in the criminal justice system has only worsened” (paras. 62-63). One aspect of this Strategy is to meet the purpose and potential of section 718.2(e).

Attached as **Schedule C** are a list and brief summaries of critical decisions from the Supreme Court of Canada, as well as lower courts, that have been important to informing this Strategy.

D. Scope of Strategy

Three important clarifications about the scope of this Strategy should be kept in mind as the Strategy is reviewed and used.

First, the Strategy sets out to be comprehensive and to touch on all major lines of action necessary to transform the relationship between Indigenous peoples and the justice system and implement the UN Declaration in relation to the justice sector. To be clear, however, the Strategy is not a fixed or static document. As will be seen, the specific strategies it contains explicitly identify how the work of setting directions and implementing new initiatives is ongoing, new realities and conditions will emerge that require attention and shifts in direction, and new learnings will necessitate strategy refinement. As such, flexibility and adjustment are assumed. In this regard, many areas of the Strategy identify additional processes that are part of filling out the lines of action that must be taken.

Second, this Strategy has been set between First Nations and BC. Canada has a necessary and vital role to play in transforming the relations between Indigenous peoples and the justice system, including meeting the standards of the UN Declaration in the justice sector. Canada’s necessary role is a matter of law and is as a result of the division of powers in the Constitution of Canada, as well as Canada’s role with Indigenous peoples entrenched in section 35 of the Constitution. It is also a matter of resourcing, capacity, and political and social responsibility. As such, this Strategy sets out specific elements regarding working with Canada.

Third, this Strategy has been specifically prepared to address the realities faced by First Nations peoples in British Columbia. At the same time, there are shared, as well as some distinct, realities faced by other Indigenous peoples in BC, in particular the Métis. There are separate processes going forward between Métis and BC regarding the justice system. Potential areas of linkage or co-ordinated action between the distinct processes and strategies being advanced may be explored.

Part 2 - Foundations

Through the Strategy development process, a clear, shared understanding emerged. Effecting the necessary transformation between First Nations and the justice system is ultimately the work of supporting and advancing the rebuilding and implementation of First Nations justice systems and institutions, through their own legal orders and governments, consistent with the standards in the UN Declaration. This was reiterated by First Nations leadership, and also articulated by BC Ministers. The province-wide First Nations Justice Forum in April 2019 stated this vision:

Transforming the relationship of First Nations with the criminal justice system through Nation to Nation partnerships, with a goal of advancing First Nations' self-determination and self-governance through the application of First Nation laws, traditions, and jurisdictions, making changes to the existing system and its administration, and building capacity for Nations to increase holistic wellness, safety and security for their communities.

As Attorney General Eby conveyed at the leadership dialogue with the First Nations Leadership Council and BCFNJC in November 2018, "we should ask ourselves on each of the directions [in a Strategy], 'does it build capacity toward an Indigenous based justice system'".

This understanding shapes the ultimate goal of this Strategy: *to systematically and coherently advance the development and implementation of First Nations justice systems and institutions, in which First Nations laws and governments are ensuring the safety and well-being of their citizens and maintaining order and protection within their communities.* All the specific strategies in Part 3 are part of, and in support of, making this systematic and coherent shift from the *status quo* to a future where roles and responsibilities are played by First Nations justice systems. This Strategy further acknowledges that this transition will not happen overnight, that different First Nations will advance this shift in diverse ways on their own timetables, and that there are certain things that can and must happen immediately, while others must be built over time in a multiplicity of ways.

Reflecting this, all the specific strategies and lines of action in Part 3 have been organized to reflect and reinforce four foundations. These foundations are critical to meeting the ultimate goal of supporting and advancing First Nations justice systems and institutions, while effecting tangible changes that will positively impact the lives of individuals, families and communities today, as part of the path to a transformed future.

Foundation 1 – A Strategy must adopt an integrative, holistic, and comprehensive approach that addresses all forms of interaction between First Nations and the justice system

Effecting a transformation requires that a holistic orientation is adopted that looks at all forms and points of interaction between First Nations and the justice system, and systematically pursues change that has considered how these interactions are interrelated and influenced by one another. To say it

another way, a transformative approach requires working coherently at addressing the root challenges in all sectors of the justice system, not merely picking or choosing lines of action that may be deemed the most practical or easiest. The goal is not change for the sake of change, but change through vision, will, and determination; change that will ensure that the experience of future generations will be markedly different and better than those of the past and present.

Typically, the sectors of the justice system are described in terms of different roles, responsibilities, and processes: “policing”, “prosecutions”, “courts”, and “corrections”. There are also principles that need to be greater reflected through the system, such as “prevention”, as well as specific values that are challenging to meet, such as “access to justice”. In all of these elements, there are specific challenges and issues that must be addressed through the Strategy. In a comprehensive and holistic approach, the interrelationship between all of these is recognized. The challenges facing First Nations in relation to “corrections” cannot be transformed without coherent action on “policing”, “prosecutions”, and the “courts”. Similarly, potential successes in relation to “policing”, may be effectively limited or even undermined by not taking parallel and coherent action in relation to “prosecutions” and “courts”. In other words, transformation is not affected through a laundry list of lines of action from which some may be pursued, while others are delayed or failed to be acted upon.

For these reasons, while the Strategy in Part 3 does set some context around the challenges in key sectors of the justice system such as “policing”, “prosecutions”, “courts”, and “corrections”, the Strategy itself is not organized in these discrete categories. Rather, the Strategy is organized around four pillars which are at the roots of the justice system, and asks how those four pillars must be changed through the Strategy:

Pillar 1 Core Values

Pillar 2 Structures and Processes

Pillar 3 Roles, Responsibilities and Capacity

Pillar 4 Laws, Policies, Practices

These Four Pillars are discussed further in Part 3.

Foundation 2 – A Strategy must pursue two tracks of change at once: (1) Reform of the existing Justice System; (2) Transformation through the rebuilding of Indigenous Justice Systems consistent with the standards of the UN Declaration

The work that must be done to transform the justice system exists on two interrelated and interdependent tracks. Track 1 involves specific actions to deal with urgent crises and challenges within the existing justice system. Many of these actions are intended to lessen the daily negative impacts of

the justice system on Indigenous peoples, and concurrently build greater trust, working relationships, and functionality between First Nations and sectors throughout the justice system. Track 2 involves consistent and coordinated action to support the development of First Nations justice systems and institutions consistent with the UN Declaration, and in particular reflecting the right of self-determination and the inherent right of self-government. This includes actions that must be led and taken by First Nations, as well as governments, to reform laws, policies, and practices to ensure proper recognition and support for First Nations justice systems.

Taking an explicitly two-track approach reflects and builds upon long recognized methodologies to effect change in Crown-Indigenous relations. In November 2018, former Minister of Justice and Attorney General of Canada Jody Wilson-Raybould described to a gathering of BC First Nations leaders and the BC Cabinet the two tracks of reconciliation work that are required:

Track one is closing the gap issues – ensuring potable water, access to quality education, addressing issues of children and family and the unacceptable rate of kids in care. The second track is the foundation and transformational piece – of rights recognition. This track is making the transformative changes to laws, policies, and practices, and doing the work of Nation and government re-building – by replacing denial with recognition as the foundation of our relations.

Both tracks are needed and interrelated. The first will never be fully realized and the gaps will not be closed, until and unless the second is made real. It is naïve to think that good intentions, tinkering around the edges of the *Indian Act*, or making increased financial investments, however significant and unprecedented, will close the gaps. Transformative change and new directions are required.

Think of it through the analogy of a tree. If the roots of a tree are dead, no amount of water will make the tree grow. And while the trunk may stand for years, at some point it will fall over and begin to rot. For too long, the main strategy has been to pour water on dead roots, hoping that the tree will grow. Of course, it will not.

This analogy and the explanation of the two tracks of work describe what must be done regarding criminal justice in BC. A two-track approach is also intrinsic to the substance of fundamental instruments such as the UN Declaration. At the heart of the UN Declaration is the upholding of fundamental rights regarding self-determination and self-government:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

At the same time, the UN Declaration affirms and upholds many rights and standards that are to be met, even as the work of advancing self-determination and self-government may be ongoing. These include, for example, rights of Indigenous individuals, including rights to life, physical and mental integrity, and liberty and security of person (Article 7) and the right to be free from forced assimilation and destruction of culture (Article 8). They also include collective rights regarding promoting and developing systems of justice:

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

The work of transforming the relationship between First Nations and the justice system does not wait for First Nations to complete a process of rebuilding their institutions and processes. The work must be steadily advanced in a multiplicity of ways and actions, that are coherent and systematic in their approach. This Strategy, designed to be co-ordinated with work that must take place to implement DRIPA, reflects such a diverse, coherent, and systematic approach.

One further point of emphasis, which arises from the focus on self-determination, self-government and Indigenous legal orders and justice systems, is that there are no 'pan' First Nation solutions and approaches. At the heart of the transformation, which is necessary and pursued by this Strategy, is the need for First Nations to be in the lead, applying the solutions they have developed in the context of their specific traditions, laws, knowledge, experiences, and contexts. As such, the focus of many of the specific strategies is to support both the work that the First Nations are currently doing, and the work they will lead. Similarly, many of the specific strategies focused on the existing justice system are designed to ensure they neither interfere with, nor detract support from, the work of First Nations regarding the rebuilding of their justice systems.

For these reasons, Part 3 of the Strategy, which is organized around the Four Pillars, identifies specific lines of action. These lines of action should be focused on both track 1 efforts to urgently reform

the existing justice system and track 2 efforts to support the rebuilding of First Nations justice systems and institutions.

Foundation 3 – A Strategy must be proactive in creating conditions where First Nations people are no longer disproportionately interacting with, nor being impacted by, the Justice System

A perpetual theme for the change that is needed in the justice system, is a fundamental shift from a “reactive” to a more “proactive” and “preventative” focus. This shift should occur within the current justice system and should be a particular focus of First Nations justice systems.

The focus on a “proactive” and “preventative” orientation has many roots. First, it is grounded in Indigenous legal orders and criminal justice practices themselves, where there often was a greater focus on proactive and preventative mechanisms than seen in European legal traditions, grounded in the particularity of Indigenous worldviews. In 2016 *“A Report on the Relationship between Restorative Justice and Indigenous Legal Traditions in Canada”* summarized this point well:

...Indigenous communities had to create laws that could prevent, or at least minimize, conflict that arises when human beings live together. Moreover, communities also needed to be able to address the conflict and pain after an incident occurred, which usually took the form of a sanction. Much like contemporary Canadian sentencing goals, Indigenous legal sanctions were not necessarily punitive/retributive, since they were also motivated by notions of healing, reconciliation, and reintegration, and if need be, they demonstrated deterrence and denunciation (Milward 2012). In other words, Indigenous legal systems were a source of complex proactive and reactive mechanisms that attempted to produce and maintain a stable and predictable social world for Indigenous communities.....

The proactive orientation of Indigenous worldviews and systems has some of its grounding in a worldview that emphasizes the importance of balance; how law operates and is enforced through kinship patterns, and not central enforcement bodies. As the 2016 *Report* observed:

While there were Elders and other respected leaders of the community that might get involved in weighing evidence and judging the truth of an incident, (Milward 2012) for the most part, law in communities was lived (i.e. individuals aspired to always fulfill their kinship responsibilities) and enforced in decentralized kinship networks. Indeed, kinship was a crucial feature of Indigenous legal traditions, (Borrows 2010; Chartrand 2013; Napoleon and Friedland 2014) since it produced a series of legal obligations and responsibilities towards others in one’s family, clan, and larger nation, while also causing those same clan/family members to remind and support individuals to fulfill their kinship obligations. In other words, kinship was multidirectional, in that it shaped the behaviour of individuals, as much as it informed and shaped the behaviour of the collective.

Second, and reflecting the above, the proactive and preventative focus reflects and builds upon a critical area of work that First Nations are actively engaging and advancing as part of the work of rebuilding their governments. In a range of ways, First Nations have, and continue to take, ever greater control of the programs and services required to address the needs of their children, youth, families, and communities, including through healing and trauma-centred approaches. In taking control, First Nations have steadily emphasized the goal to provide programs and services that will prevent or reduce challenging circumstances from arising. At the heart of these programs and services is a focus on cultural and community connectivity, the support and fostering of identity, and forms of intervention and support that are culturally appropriate and led by members of the community. By expanding and deepening such efforts and continuing to build on the solutions that First Nations are already moving forward, significant capacity and resources are increased. In doing so, the transition to First Nations justice systems is advanced, while taking effective steps to reduce immediate harms and challenges, cultivate healing and address trauma.

Third, the proactive and preventative focus reflects a shift that the existing justice system has been striving to make, and which legal decisions have called for, but which requires significant expansion and re-focused energy. The reasoning and focus of *Gladue* is one illustration of this. Underlying *Gladue* is the view, as expressed by the Supreme Court of Canada, that Indigenous offenders will do better and be less likely to reoffend, and that shifts in rates in overrepresentation can be affected through appropriate use of culturally-grounded and community-based alternatives, rather than incarceration. In this view, restorative justice becomes a means of both seeking to address current overrepresentation while laying a foundation for less recidivism through a preventative focus.

The challenge has been the lack of systematic support and implementation of proactive and preventative measures within the existing justice system. The Strategy in Part 3 reflects this focus in discussion of the Four Pillars. This begins with specific strategies in Pillar 1: Core Values, where a presumption of diversion is identified as a core strategy element. The Four Pillars also reflect an overarching approach to entrenching a proactive and preventative approach through the transition of greater roles and responsibilities for First Nations Justice systems.

Foundation 4 – A Strategy must achieve a 180-degree shift from the current reality of First Nations people being overrepresented in all stages of interaction with the justice system, while at the same time being underrepresented as actors with roles and responsibilities within the system.

The overrepresentation of Indigenous peoples in the justice system as accused, offenders, and victims is talked about extensively. At the same time, the significant underrepresentation of Indigenous peoples in roles of authority and responsibility, within the justice system, is far less acknowledged. This is supported by the following Statistics Canada data:

Indigenous Population in BC

- Statistics Canada census data for 2016 reports that there were over 270,585 Aboriginal people¹ in B.C., representing 5.9% of the province's population.²
- The Aboriginal population has risen from 241,000 in 2011, when it represented 5.4% of the population.³
- The B.C. Aboriginal population represents over 16% of the Aboriginal population in Canada. B.C. has the second largest number of Aboriginal people in the country.⁴
- Of the 270,585 British Columbians that identify as Indigenous, 172,520 or 63.8% are First Nations, 89,405 or 33% are Métis, and 1,610 or nearly 0.6% are Inuit. A further 4,350 or 1.6% reported multiple Indigenous identities, and 2,695 people or 1% reported Aboriginal identities not included in other census categories.⁵
- In 2016, there were 270,585 people who identified as Aboriginal who lived in B.C., as compared to 4,289,655 non-Aboriginal people. In 2006, there were 196,075 people who identified as Aboriginal who lived in B.C., as compared to 3,878,310 non-Aboriginal people. Over this 10-year span, the Aboriginal population in B.C. has grown by 38%, compared to a 9.6% increase for non-Aboriginal people.⁶
- Overall, 1,673,785 people in Canada identified as Aboriginal in 2016, and this figure is expected to increase to approximately 2,510,000 by 2036. In 2036, the Aboriginal population in B.C. is expected to be approximately 416,000. At that time, B.C. will have the third largest Aboriginal population behind Ontario (approximately 605,000) and Alberta (approximately 430,000).⁷

¹ The term Aboriginal is used here since that is the term used by Statistics Canada. According to Statistics Canada, Aboriginal identity includes persons who are First Nations (North American Indian), Métis or Inuk (Inuit) and/or those who are Registered or Treaty Indians (that is, registered under the *Indian Act of Canada*) and/or those who have membership in a First Nation or Indian band. Aboriginal peoples of Canada are defined in the *Constitution Act, 1982*, section 35 (2) as including the Indian, Inuit and Métis peoples of Canada. See: Statistics Canada, *British Columbia [Province] (table). Aboriginal Population Profile*, 2016 Census, Statistics Canada Catalogue no. 98-510-X2016001, Ottawa, Ontario (Released July 18, 2018), <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/index.cfm?Lang=E> (accessed September 20, 2019).

² Statistics Canada, *British Columbia [Province] and Canada [Country] (table). Census Profile*, 2016 Census, Statistics Canada Catalogue no. 98-316-X2016001, Ottawa, Ontario (Released November 29, 2017), <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm?Lang=E> (accessed September 20, 2019).

³ Statistics Canada, *Projections of the Aboriginal Population and Households in Canada, 2011 to 2036*, Prepared by Jean-Dominique Morency, Éric Caron-Malenfant, Simon Coulombe and Stéphanie Langlois, Statistics Canada Catalogue no. 91-552-X, Ottawa, Ontario (Released September 17, 2015), <https://www150.statcan.gc.ca/n1/en/pub/91-552-x/91-552-x2015001-eng.pdf?st=zDNUIBn8> (accessed September 20, 2019): p. 28, Table 9.

⁴ Statistics Canada, *Aboriginal peoples in Canada: Key results from the 2016 Census*, Ottawa, Ontario (Released October 25, 2017), <https://www150.statcan.gc.ca/n1/daily-quotidien/171025/dq171025a-eng.htm?indid=14430-1&indgeo=0>; Statistics Canada, *British Columbia [Province] and Canada [Country] (table). Census Profile*, 2016 Census, Statistics Canada Catalogue no. 98-316-X2016001, Ottawa, Ontario (Released November 29, 2017), <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm?Lang=E> (accessed September 20, 2019).

⁵ Statistics Canada, *British Columbia [Province] and Canada [Country] (table). Census Profile*, 2016 Census, Statistics Canada Catalogue no. 98-316-X2016001, Ottawa, Ontario (Released November 29, 2017), <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm?Lang=E> (accessed September 20, 2019).

⁶ Statistics Canada, *British Columbia [Province] and Canada [Country] (table). Census Profile*, 2016 Census, Statistics Canada Catalogue no. 98-316-X2016001, Ottawa, Ontario (Released November 29, 2017), <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm?Lang=E> (accessed September 20, 2019); Statistics Canada, *Profile of Aboriginal Peoples for Canada, Provinces, Territories, Census Divisions and Census Subdivisions, 2006 Census*, Statistics Canada Catalogue no. 94-578-XCB2006001, Ottawa, Ontario, <https://www12.statcan.gc.ca/census-recensement/2006/dp-pd/prof/rcl/Rp-eng.cfm?TABID=2&LANG=E&APATH=3&DETAIL=1&DIM=0&FL=A&FREE=1&GC=0&GK=0&GRP=1&PID=89904&PRID=0&PTYPE=89103&S=0&SHOWALL=No&SUB=0&Temporal=2006&THEME=73&VID=0&VNAMEE=&VNAMEF=>.

⁷ Statistics Canada, *British Columbia [Province] and Canada [Country] (table). Census Profile*, 2016 Census, Statistics Canada Catalogue no. 98-316-X2016001, Ottawa, Ontario (Released November 29, 2017), <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm?Lang=E> (accessed September 20, 2019); Statistics Canada, *Projections of the Aboriginal Population and Households in Canada, 2011 to 2036*, Prepared by Jean-Dominique Morency, Éric Caron-Malenfant, Simon Coulombe and Stéphanie Langlois, Statistics Canada Catalogue no. 91-552-X, Ottawa, Ontario (Released September 17, 2015), <https://www150.statcan.gc.ca/n1/en/pub/91-552-x/91-552-x2015001-eng.pdf?st=zDNUIBn8> (accessed September 20, 2019): p. 28.

- B.C.'s Aboriginal population is relatively young. The average Aboriginal person is less than 33 years of age, as compared to the average non-Aboriginal who is over 42 years of age. Nearly 43% of the Aboriginal population is under 25 years of age, compared to nearly 28.3% of the non-Aboriginal population.⁸
- The Aboriginal population is growing both on and off reserve, with over 80% residing off reserve.⁹
- The largest urban Aboriginal population was in Greater Vancouver where 61,455 people identify as Aboriginal.¹⁰

Indigenous adults and youth over-represented in custody

- In 2017/18, Aboriginal adults¹¹ accounted for 32% of B.C. custody admissions (8,505 of 25,976), as compared to 22% (5,343 of 24,440) in 2007/08. While the overall rate of adults in custody in B.C. varies from year to year, the 6% increase in the general population between 2007/08 and 2017/18 is minor compared to the 64% increase in the number of Aboriginal adults over that period.¹²
- In Canada, Aboriginal youth are also overrepresented in correctional services at 43% of the youth population in custody or under community supervision (7,194 of 16,664).¹³

Indigenous victims of crime

- In 2014, overall rates for violent and household victimization were significantly higher among Aboriginal people compared with non-Aboriginal people. 28% of Aboriginal people aged 15 and older reported that they or their household had been

⁸ Statistics Canada, *British Columbia [Province]* (table). *Aboriginal Population Profile*, 2016 Census, Statistics Canada Catalogue no. 98-510-X2016001, Ottawa, Ontario (Released July 18, 2018), <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/index.cfm?Lang=E> (accessed September 20, 2019); Statistics Canada, *British Columbia [Province] and Canada [Country]* (table). *Census Profile*, 2016 Census, Statistics Canada Catalogue no. 98-316-X2016001, Ottawa, Ontario (Released November 29, 2017), <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm?Lang=E> (accessed September 20, 2019).

⁹ Ibid.

¹⁰ Statistics Canada, *British Columbia [Province] and Vancouver [Census metropolitan area]*, *British Columbia* (table). *Census Profile*. 2016 Census. Statistics Canada Catalogue no. 98-316-X2016001, Ottawa, Ontario (Released November 29, 2017), <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm?Lang=E> (accessed September 18, 2019).

¹¹ Aboriginal people, in this bullet point, includes individuals those individuals initially classified as “unknown” Aboriginal identity, as a result of administrative limitations.

¹² Statistics Canada, *Adult Correctional Services Survey, Integrated Correctional Services Survey and Canadian Correctional Services Survey, 2017/2018*, Canadian Centre for Justice Statistics, <https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00010/tbl/tbl05-eng.htm> (accessed September 18, 2019).

¹³ Statistics Canada, *Integrated Correctional Services Survey and Canadian Correctional Services Survey*, Canadian Centre for Justice Statistics, Youth Custody and Community Services Survey, 2017/2018, <https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00010/tbl/tbl10-eng.htm> (accessed September 18, 2019), Table 10; Statistics Canada, *Table 35-10-0016-01 Adult custody admissions to correctional services by aboriginal identity*, <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510001601&pickMembers%5B0%5D=1.11&pickMembers%5B1%5D=2.1> (accessed September 18, 2019); Correctional services include individuals in custody and under community supervision. Custody refers to sentenced custody (including intermittent sentences), remand and other temporary detention. Community supervision includes probation, conditional sentences, provincial parole, full parole, day parole, statutory release, and long-term supervision. The data exclude other types of community supervision and inmates on temporary absence. Definitions are drawn from: Statistics Canada, *Juristat Article—Adult and youth correctional statistics in Canada, 2016/2017*, Statistics Canada Catalogue no. 85-002-X, Ottawa, Ontario (Released June 19, 2018), <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2018001/article/54972-eng.pdf?st=zgCcwOWD> (accessed September 18, 2019), p.14, Table 1.

a victim of at least one type of offence in the previous 12 months. This was a significantly higher proportion than for non-Aboriginal people (18%).¹⁴

- The overall rate of violent victimization among Aboriginal people was more than double that of non-Aboriginal people (163 incidents per 1,000 people versus 74 incidents per 1,000 people).
- Non-spousal violence also disproportionately leads Aboriginal victims not to report crime to police (77%) as compared to non-Aboriginal people (66%).
- Aboriginal households have significantly higher rates of victimization (244 incidents per 1,000 households) as compared to non-Aboriginal households (138 incidents per 1,000 households).¹⁵

Indigenous peoples under-represented in roles of authority and responsibility

In addition, there is a significant underrepresentation of Indigenous peoples in roles of authority and responsibility within the justice system which is rarely acknowledged.

There is an important connection between underrepresentation in roles of authority and responsibility, and the lack of systematic progress in addressing the challenging relationship between Indigenous peoples and the justice system. Representation is vitally important for a range of reasons, including injecting cultural awareness and understanding, bringing diverse and lived perspectives to the interpretation and application of the law, illustrating an understanding of the relevant contexts and conditions within First Nations, and informing the development of new policies and practices that can address the challenges of the current status quo.

Addressing this underrepresentation is also a vital part of supporting the transition to roles and responsibilities for First Nations justice systems. A significant part of this work is increasing the capacity within and amongst First Nations to enable an increase of Indigenous peoples in roles of authority and responsibilities within the justice system.

Achieving this 180-degree shift is reflected throughout all the Four Pillars through specific lines of action, but specifically reflected in Pillar 3: Roles, Responsibilities, and Capacity.

¹⁴ The General Social Survey on Victimization surveyed Canadians on their experiences with eight types of offences, which are: sexual assault, robbery, physical assault, theft of personal property, breaking and entering, theft of motor vehicle or parts, theft of household property, and vandalism. See: Statistics Canada, *Victimization of Aboriginal people in Canada, 2014*, Statistics Canada Catalogue no. 85-002-X, Ottawa, Ontario (Released 2016), <https://www150.statcan.gc.ca/n1/pub/85-002-x/2016001/article/14631-eng.htm> (accessed September 19, 2019).

¹⁵ Ibid.

Part 3 - Strategies

This Strategy has been organized around Four Pillars:

Pillar 1: Core Values

Pillar 2: Structures and Processes

Pillar 3: Roles, Responsibilities and Capacity

Pillar 4: Laws and Policies

Within each Pillar core specific strategies are identified, along with lines of action to be pursued. In considering the Strategy the following should be kept in mind:

- The Four Pillars, the specific strategies, and the lines of action are:
 - Interconnected and interdependent. They are designed to move forward together, as part of a comprehensive and integrative approach. One cannot pick and choose some, to the exclusion of others.
 - Primarily related to reforming the existing justice system (track 1) and to advancing the re-building and implementation of First Nations Justice Systems (track 2).
 - Respect for gender diversity, human rights of all First Nations citizens, and particular focus on safety, support and protection for girls, women and 2SLGBTQQIA persons.
 - Diverse in nature and focus. For example, some of the strategies are substantive lines of action to be achieved, including potential legal, policy, or practice changes. Others focus on forms of capacity building and capacity investments. Additionally, there are strategies that are primarily pathways for further required engagement to guide and shape more specific actions.
 - Informed and shaped by what needs to be done to implement the UN Declaration in the justice sector.
- It is recognized that effecting the transformative change that is necessary must occur in a coherent and systematic fashion, in which actions build on each other towards fulfilling a clear and transparent vision. This was emphasised by many First Nations leaders throughout the three-phases of engagement, whereby they identified how past efforts at change were not transparent, consistent, or comprehensive enough. As such, many of the specific strategies include aspects which should be completed in the near-term, while others are intended to be completed over the medium or longer term.

- In presenting each of the Four Pillars, and the specific strategies and lines of action, some context and analysis of the current realities and challenges regarding the interaction of First Nations peoples and the justice system have been provided. These brief contextual descriptions are part of the rationale for the strategies.

PILLAR 1: CORE VALUES

Transformation of the relationship between First Nations and the justice system requires certain core values to be upheld and implemented. To that end, there are two core values that are essential, and around which many specific strategies and lines of actions are built: *(1) Reflecting a presumption of diversion throughout the existing justice system;* and *(2) Advancing First Nations self-determination of justice systems and institutions consistent with the UN Declaration.*

The presumption of diversion is integral to all track 1 work pertaining to the reform of the existing justice system and addressing immediate and urgent challenges. Advancing First Nations self-determination of justice systems and institutions is integral to all track 2 work to effect transformation through the rebuilding of First Nations governments and legal orders as related to criminal justice and meeting the standards of the UN Declaration and the successful implementation of *DRIPA*.

Strategy 1: Reflecting the core value of a presumption of diversion throughout the existing justice system

A core challenge with the existing justice system, as supported by extensive evidence, is that First Nations individuals (disproportionately males) initial contacts and interactions with the criminal justice system often lead to cycles of escalating interaction that are very hard to break. This pattern was described by the former Minister of Justice and Attorney-General of Canada based on her direct experience as a First Nations person, and as a Crown prosecutor:

A young person, often an Indigenous man, commits a non-violent crime, comes into contact with the criminal justice system, and never is really able to pull himself free.

He gets caught in a vicious cycle of court appearances, court orders, breaches of court orders, and returns to custody. Soon, he is spending more time behind bars than he is out of them. This man's interactions with the criminal justice system have further marginalized him, making him even more vulnerable.

We need to find better ways of preventing Indigenous people from experiencing that first contact with the criminal justice system. And for those already in the system, we need to better support them when they leave it. This could mean more treatment for addictions or mental health issues, or more services aimed at helping to find housing, employment, and educational opportunities.

To be successful, we first must acknowledge and act on the understanding that the current circumstances faced by Indigenous people in the criminal justice system, are inseparable from the historic and contemporary impacts of colonialism and the denial of Indigenous rights.

It is in such a context that disempowerment, hopelessness, cycles of violence, and desperation grow. It is also in that context that a criminal justice system has emerged with structures, patterns, and norms that are often alienating, unresponsive, and not culturally relevant.

There are many aspects to breaking these cycles, and stemming the harms that come from first, and multiple, contacts with the justice system. The aim of Strategy 1 is to see a presumption of diversion entrenched throughout the justice system, from the moment the police are first engaged to the time in which 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.

It is vital to be clear about what is meant by a “presumption of diversion”. It means that at every opportunity, the least restrictive appropriate response to criminal conduct should be pursued. Both the principles articulated in Gladue, with regard to offenders, and the recognition of the harm to Indigenous women and girls as victims, must be addressed. It does not mean, and never can mean, that there should not be consequences for criminal acts by individuals. It means that, prior to taking other, more conventional steps, actors and structures within the existing justice system should approach situations involving a First Nations individual by asking themselves “how may alternatives operate in this context?”, and “has every reasonable alternative been considered?”, prior to taking other, more conventional steps.

In taking this approach, the intent is to (1) entrench throughout the system multiple checkpoints where the cycle of ever deeper interaction, leading to prolonged incarceration, can be broken, and (2) ensure that true recognition is being given to the reality that contemporary rates of incarceration are intertwined with the on-going legacy of colonialism and denial of Indigenous rights.

Currently, the presumption of diversion is present in some ways in the justice system, but it is *ad hoc* and not comprehensive. The clearest legal requirements to consider alternatives at the stage of sentencing where *Gladue* requires consideration of alternatives to incarceration. A goal of this Strategy is to have a presumption extend throughout the justice system that there will always be a requirement on all actors to consider dealing with a situation involving a First Nations individual in ways that may assist in avoiding future incarceration.

To this end, many of the specific strategies and lines of action in Pillars 2, 3, and 4 below are direct aspects of entrenching the presumption of diversion throughout the justice system. The

following specific line of action is intended to ensure the integration and co-ordination of those efforts.

Line of Action

- A. BCFNJC and BC will establish a presumption of diversion workplan identifying every opportunity within the justice system where the presumption of diversion may be operationalized.
- The workplan will be completed within six months of the completion of this Strategy (subject to the Province's ability to resource).
 - The workplan will identify each potential application of the presumption of diversion, and the options for operationalizing that application. It will include the insertion of resources such as wrap-around health, mental health, addiction and housing services to support the marginalized population in the justice system.
 - The workplan will include a review of all current restorative justice approaches and measures across BC, as well as pathways for expansion.
 - The workplan will include education components for all actors in the justice system on the presumption of diversion.
 - BCFNJC and BC will work with relevant actors to develop a plan for how the specific application of the presumption of diversion will be put into effect in their sector.
 - While the workplan is being developed, the specific actions identified elsewhere in this Strategy that are part of entrenching the presumption of diversion will continue to be advanced.

Strategy 2: Advancing First Nations self-determination of justice systems and institutions

Never in the history of Canada has respect for First Nations justice systems and legal orders been a value that has informed the structure and operation of the criminal justice system. Indeed, an opposite idea and value has been long entrenched; that the only criminal laws and criminal justice system that matter are the ones constructed after Confederation, consistent with the division of federal and provincial powers in section 91 and 92 of the *Constitution*. At Confederation, Canada effectively applied the criminal laws of England. The first Canadian federal *Criminal Code* was enacted in 1892, with a specific act for youth offenders enacted in 1894. Since then, until today, there has been no recognition of the role of Indigenous legal orders in criminal justice. Even today, the federal government, as a matter

of policy, typically maintains that core matters related to criminal laws and the criminal justice system are not open to discussion as part of the implementation of self-government.

This Strategy replaces the historical emphasis on denial of First Nations justice systems and legal orders, while upholding the value of their recognition and the implementation of the UN Declaration as “the framework for reconciliation”. Without such a shift in values, where self-determination and self-government are supported and upheld, achieving the transformation of the justice system cannot occur. As such, Strategy 2 is about affirming this value in multiple ways throughout the justice system and making sure it helps inform the work in all sectors.

To be clear, the work of self-determination as it relates to rebuilding First Nations justice systems is complex and will take time. It involves multiple areas of work. There is the work of articulating and expressing criminal laws themselves and replacing the *Criminal Code*. There is work in establishing the institutions and processes of criminal justice, from policing through to corrections. There is building the capacity to play these roles and responsibilities. As well, for significant advancement to take place in relation to any of these areas of work, real changes will be needed to Crown laws, policies, and practices. Space must be created for the recognition and operation of First Nations laws, institutions, and jurisdictions. This is facilitated by DRIPA, and the specific strategies and actions in this Strategy have been designed to be aligned with and supportive of efforts that will occur under DRIPA to implement the UN Declaration.

The right of Indigenous self-determination, as expressed in articles 3, 4, and 5 of the UN Declaration, also means there cannot be a single approach or model for how First Nations choose to undertake this work. Correspondingly, Crown approaches to supporting this work cannot impose or create limitations, but rather must be supportive and facilitative of the priorities and visions set by First Nations.

To this end, many of the specific strategies and lines of action in Pillars 2, 3, and 4 below are direct aspects of advancing the strategy of First Nations self-determination as related to criminal justice. The following specific lines of action are intended to ensure support and integration of these efforts.

Lines of Action

A. BCFNJC, with support of BC, will develop a detailed “guidebook” to support First Nations in the work of re-building their First Nations Justice system and institutions.

- The goal is to complete the guidebook within two years.
- The guidebook will include:
 - i. Detailed direction about the history of the justice system, its current operations, and the categories of work to be done by First Nations to re-build their own First Nations justice systems and institutions.

- ii. Detailed information on ‘how’ First Nations may approach the re-building work, including roles that Elders, members, youth, and others may play.
 - iii. Best practices and templates that First Nations may choose to use.
- Processes for revitalization of First Nations legal orders, in relation to criminal law.
 - It will include and explain the standards of the UN Declaration as related to criminal justice.
 - It will include identified linkages to elements of this Strategy which support the advancement of self-determination, and how First Nations may utilize those.

BCFNJC may collaborate with experts in Indigenous laws, including law schools, to develop aspects of the guidebook.

- B. Co-develop a policy for how the administration of justice will be a subject-matter open for negotiation between First Nations and BC, in both stand-alone negotiations, and as part of comprehensive negotiation processes
 - BCFNJC and BC will co-develop a policy to guide provincial negotiators on the inclusion of administration of justice, including support for the rebuilding of First Nations justice systems and legal orders in agreements.
 - BC will confirm to First Nations by letter that the administration of justice is a subject matter that can be negotiated in agreements, and that a policy is being developed to help inform these negotiations.
 - In parallel, BCFNJC and BC will advance Tripartite policy development with Canada regarding negotiations and agreement-making criminal justice, including the inclusion of criminal justice powers in self-government agreements.

PILLAR 2: STRUCTURES AND PROCESSES

Transformation of the relationship between Indigenous peoples and the justice system requires changes to structures and processes in two ways. First, changes are needed within the existing justice system, starting with the establishment of an Indigenous Justice Secretariat that will lead this work, assist with the application of a presumption of diversion, increase Indigenous peoples’ access to justice, and build greater cultural awareness, knowledge and understanding through the system. These are all vital aspects of reform on track 1. Second, investments, supports, and actions need to be put into place

to assist First Nations in the re-building of their structures and processes around criminal justice. At the core of this is the expansion of many community-based programs, which are vital to advancing transformation along track 2.

Strategy 3: First Nations Justice Capacity and Legal Services

First Nations in BC have provided a clear mandate to the BC First Nations Justice Council to advocate to:

- Challenge approaches that contribute to the growing overrepresentation of First Nations children and youth in the care of government, and First Nations men and women in incarceration; and,
- Productively engage with the government to advance effective strategies that can achieve better outcomes for our people in the justice system.

Many of the strategies confirm the following roles of the BC First Nations Justice Council:

- **Implementation of Indigenous Justice Strategy.** The Justice Council will be responsible for much of the work under the Indigenous Justice Strategy and will require stable and predictable resources to meet stated goals, milestones, and objectives.
- **Coordination of Indigenous Justice Centres.** The Justice Council is responsible for the development and implementation of 15 Indigenous Justice Centres across the province. While there will be a provincial framework within which each Justice Centre operates, each centre will uniquely reflect the needs and approaches of First Nations in each region.
- **First Nations Legal Services.** Legal Aid for First Nations individuals should be provided through a newly established provincial First Nations Legal Services, under the control of the First Nations Justice Council. These services, while coordinated provincially, may be delivered through the Indigenous Justice Centres.
- **Provision of Gladue Services.** The Justice Council will be responsible for establishing a provincial Gladue Services entity that will be in a position to provide Gladue related services, including Gladue Reports, to First Nations individuals that require these services. These services will be delivered through Indigenous Justice Centres.
- **Supporting First Nations in Developing Justice Capacity.** A key role of the First Nations Justice Council is to support First Nations in developing their own Justice Capacity. These services will be delivered through Indigenous Justice Centres.

- **Oversight and Complaint Processes.** The Justice Council will have an oversight role with respect to criminal justice system conduct that includes the development of a unique process for First Nations complaints about policing service
- **Lines of Action**
 - A. Province and BCFNJC to confirm sustained long-term support for the work of the BCFNJC in implementing this Strategy
 - B. BCFNJC to develop and present to First Nations a plan for the long-term roles and responsibilities of the FNJC in implementing this Strategy, and how those confirm mechanisms for the on-going direction and guidance of First Nations and proper BCFNJC accountabilities to First Nations
 - C. BCFNJC to work with the Province to develop an action plan for the implementation of the objectives of UNDRIP where it intersects with justice
 - D. BCFNJC to proactively identify and work with partner organizations to advance the implementation of this Strategy, including but not limited to the Indigenous Bar Association, Law Foundation, BC law schools, and the Law Society of BC

Strategy 4: Expand and invest in a comprehensive network of Indigenous Justice Centres

During the process of the development of this Strategy, a concrete initiative was advanced; the establishment of a network of Indigenous Justice Centres in BC. The Justice Centre model is of culturally safe and welcoming places that provide legal help and early resolution programs, as well as support services for healing and wellness. This includes service delivery at the “case” level as well as engagement and justice solution development at the community level. Stated another way, the Centres provide support both to individuals in their interactions with the justice system, and to communities seeking to expand and improve their justice infrastructure. In Budget 2019 BC agreed to initially support up to 3 Indigenous Justice Centres on a pilot basis.

Lines of Action

- A. Establish a network of 15 Justice Centres across British Columbia within 5 years
 - BCFNJC and BC will complete evaluation and assessment of the current pilot phase of Justice Centres.

- BCFNJC and BC will establish a plan for roll-out of 3 Indigenous Justice Centres across British Columbia each year.
- BCFNJC and BC will engage with the Legal Services Society regarding how certain services and functions of First Nations individuals, currently played by the Legal Services Society, will be transitioned to the Justice Centres.
- BCFNJC and BC will engage with First Nations in BC on the plan for the roll-out of Justice Centres across BC.

Strategy 5: Establish First Nations Legal Services: Ensuring increased and more effective access to justice, and in particular defense counsel, for Indigenous accused

Currently, the vast majority of Indigenous accused have no access to counsel except through legal aid provided by the Legal Services Society of BC. Legal aid was the subject of significant cuts in the 2000's. Even though some of that funding was reinstated in Budget 2018, there remains broad and systemic concerns about the availability of counsel to Indigenous accused. Evidence demonstrates this challenge is in urban areas, but it is even more intense in rural areas where, in some regions, up to 90% of legal aid clients are Indigenous. For many years, First Nations have been advocating for transformation of the legal aid regime BC. The current status quo is both a factor contributing to over-incarceration and raises basic questions about how the standards of fundamental *Charter* rights may not be met for Indigenous accused. Part of this advocacy has included calls for First Nations control over legal aid funding for First Nations accused. A common theme heard throughout the BCFNJC engagements was the need for better, more effective, more culturally informed, legal counsel and legal aid services to First Nations people dealing with the criminal justice system.

Line of Action

A. BCFNJC and BC will develop a workplan to transition legal aid services for Indigenous people in BC from LSS to an Indigenous controlled entity.

- BCFNJC and BC will work with LSS on transition, similar to what is happening with Gladue services.
- The workplan will identify how the transition will result in increased access to justice for Indigenous accused and outline clear criteria and standards for legal aid service.

Strategy 6: Implement a comprehensive Gladue strategy supported by a dedicated First Nations controlled Gladue implementation agency

Gladue principles represent an established approach by the Supreme Court of Canada to help reduce over-incarceration of Indigenous peoples, and effect meaningful track 1 reform of the existing justice system. The lack of tangible and measurable results from this approach are rooted in a lack of comprehensive implementation of *Gladue*. The challenges in implementation were systematically examined in the preparation of this Strategy and documented in the report of the *Gladue* Knowledge Sharing Gathering in 2018. Currently, the Legal Services Society of BC (LSS) has been funded by the Law Foundation and BC to run a pilot project on *Gladue* services. It is understood that a transition of the pilot project will occur from LSS to an Indigenous entity.

Lines of Action

A. Establish a *Gladue* Implementation Agency (Agency)

- BCFNJC and BC will design and reach agreement on establishment and support for the Agency within 12 months.
- BCFNJC and BC will co-ordinate with LSS in the transition.
- The Agency will be First Nation controlled, and not an agency of government.
- The Agency will be responsible for advancing all lines of action in Strategy 3.

B. Increasing capacity and numbers of *Gladue* writers

- The Agency will establish a set of credentials for *Gladue* writers.
- The Agency will establish and offer *Gladue* writer training program.
- The Agency will establish and implement a recruitment and retention program for *Gladue* writers.

C. Development of *Gladue* awareness and education programs

- The Agency will offer First Nation community education regarding *Gladue* and the roles communities play in *Gladue* implementation.
- The Agency will develop and provide training programs for all relevant justice actors on their roles and responsibilities to implement *Gladue*.

D. Formalizing the *Gladue* reporting process

- The Agency will develop materials that standardize and communicate the *Gladue* reporting process in BC.
- BCFNJC and BC will determine how the standardized process will be communicated and formalized across all relevant justice sectors.

Strategy 7: Establish a legislative and policy foundation for an independent oversight and accountability function regarding Indigenous peoples and the justice system, and to provide public education and reporting on First Nations justice matters, including the implementation of the UN Declaration in the justice sector

There have long been calls for an independent oversight and accountability function to address challenges and concerns regarding Indigenous people and the justice system. While such calls are most typically related to policing and corrections, they also have arisen in relation to issues of access to justice, prosecutorial practices, and court decisions. Also, of concern is the need to audit issues like jury selection and race bias. Numerous studies, inquiries, and reports have also highlighted the need for forms of independent oversight and accountability.

The establishment of such an independent oversight and accountability function requires the identification and appropriate balancing of a number of principles including judicial independence, prosecutorial independence, the rights of accused and victims, *Charter* rights, the standards of the UN Declaration, and others. Careful consideration must also be given to how such a function will operate in distinct and proper ways with each of the different sectors of the existing justice system, and whether such a function will have relationships, responsibilities, and roles in relation to First Nations governments and their justice institutions and processes.

Line of Action

- A. BCFNJC and BC will establish an oversight and accountability model which will be used as a basis for legislative and policy proposal development.
 - BCFNJC and BC will conduct a survey of oversight and accountability models in other jurisdictions.
 - BCFNJC and BC will develop models and options for an oversight and accountability function in BC.

- BCFNJC and BC will use the Justice Summit process, including potential Indigenous specific Justice Summits, as a forum for vetting options and models of oversight and accountability.

Strategy 8: Undertake a joint review of legislation to align laws with the UN Declaration as required by DRIPA, and ensure space for the recognition and operation of First Nations justice systems and institutions

As discussed above, one central foundation of this Strategy is to implement the standards of the UN Declaration in regard to the justice system. This is one of the reasons why the rights of self-determination and the inherent right of self-government are at the core of the Strategy. In various ways, all of the specific strategies touch on work that must be done to implement the UN Declaration in the justice sector. As noted above, this Strategy has been prepared through a process involving First Nations across BC, and in contemplation of what work needs to be done to achieve the objectives of the UN Declaration in relation to the justice system.

Part of this work, as required by DRIPA, is the alignment of the laws of BC with the UN Declaration. In relation to the justice sector, relevant legislation that needs to be reviewed for these purposes include all statutes which are related to the administration of justice. It is necessary and vital that the review of these laws, as required by DRIPA, is co-ordinated and advanced in a timely and effective manner, consistent with the processes that are put in place in co-operation and consultation with Indigenous peoples to fulfill the obligations in section 3 of DRIPA.

More broadly, facilitating success in several elements of the Strategy, including entrenching the core value of supporting self-determination and the re-building of First Nations justice systems and institutions, will require legislative change by both BC and Canada. In some respects, this legislative change is intertwined with broader legislative work that must be done to support self-determination, affirm the inherent right of self-government including the moving out from under the Indian Act, and the recognition and implementation of Indigenous rights consistent with section 35 of the Constitution and the UN Declaration. Other legislative changes are more specifically related to justice issues, including change required to facilitate some of the structural, process, and other changes identified in this Strategy. Ultimately, it is expected that a range of approaches and forms of legislative change will need to be considered over time, from specific and relatively straightforward amendments, to broader foundations for transformed relations and potential amendments related to facilitating specific agreements or initiatives with First Nations.

Line of Action

- A. BCFNJC and BC will co-ordinate with processes being undertaken pursuant to section 3 of *DRIPA* to ensure review and necessary legislative changes in relation to the justice sector take place.

- BCFNJC and BC will establish a joint review plan in co-ordination with section 3 of *DRIPA* processes to identify a staged approach to potential legislative changes
- The review will establish near-term, medium-term, and long-term legislative change priorities.
- The BCFNJC and BC will undertake engagement with First Nations, stakeholders, and the public, as necessary and appropriate, regarding the legislative review and potential changes.
- The BCFNJC and BC will co-ordinate elements of the review involving federal legislation through a Tripartite process that includes Canada.

Strategy 9: Establish a Cross-Ministry Indigenous Justice Secretariat under the leadership of the Ministry of the Attorney General to lead the transformative work within government as identified within this Strategy

In order to build capacity toward an Indigenous based justice system, structures must be put in place within the Province to ensure this work proceeds as a sustainable, and funded, priority led by Indigenous people. Two things must be done:

- First, a new integrated, strong and coordinated cross-ministry structure must be created that can help lead the implementation of this Strategy throughout government including influencing social sector areas that provide health and housing supports for individuals in the justice system;
- Second, Indigenous people must be in the lead throughout the system in championing this work.

Foundation 4 clearly articulates the importance of addressing the underrepresentation of Indigenous people as actors with roles and responsibilities within the system. To change the status quo, change needs to occur from within. That change needs to be led by Indigenous actors who can inject the necessary elements of Indigenous world views and values into the system in order that the Province’s commitment to “do things differently” can be fully realized. Indigenous leaders need to be in high-level executive positions within the Province, in order to lead the work in culturally-relevant and culturally appropriate ways.

British Columbia is currently home to 198 First Nations, Métis Nations and Inuit people, representing 270,585 Indigenous people, and the numbers continue to grow. Despite British Columbia having the second largest number of Indigenous people in the country, or 5.9% of the total population, only three of its 27 Deputy Ministers and 106 Assistant Deputy Ministers positions are held by

Indigenous people, representing only 2.3% of the executive leadership. This disparity in Indigenous representation within the government must change.

Efforts are being made by the Province to increase diversity through commitments such as those contained within the *Public Service Act* and, under the Province's Diversity and Inclusion Action Plan, wherein 15 commitments were made to strengthen diversity and inclusion by October 2020, including the commitment to "establish Indigenous assistant deputy minister roles". The establishment of a Cross Ministry Indigenous Justice Secretariat with an Indigenous Assistant Deputy Minister aligns with previous commitments made by the Province and addresses a key recommendation of the Truth and Reconciliation Commission. Additional roles will be identified by the BCFNJC and the Province as per the recommendation of the Truth and Reconciliation Commission.

Line of Action

A. Establish a Cross-Ministry Indigenous Justice Secretariat

- BC will convert the current Indigenous Justice Strategy Secretariat (IJSS) to the Indigenous Justice Secretariat (Secretariat) on or before March 31, 2020.
- The Secretariat will be led by a newly established Assistant Deputy Minister, through appointment of the current IJSS Executive Director. For future appointments, BC and BCFNJC will jointly hire for the ADM position and agree that the position must be filled by an Indigenous person who has a degree in law.
- BC will provide a budget to the Secretariat. It is understood that new funding will not be secured within 2019/2020; however, BC will provide base funding for the Secretariat on a go forward basis. The base funding will provide for, at a minimum, 6 resources.
- BC will announce, both internally and externally, the formation of the Secretariat and clarify the role of the Secretariat as responsible for implementation of the Strategy and operationalization of the identified priorities within government, including the implementation of UNDRIP where it intersects with justice.

Strategy 10: Prevention and Youth

A commonly stated goal and objective of participants across various engagements and discussions was the desire to support proactive preventative programming to assist in keeping First Nations people out of the criminal justice system. This requires concerted and coordinated approaches focused on First Nations youth. As with other demographics, First Nations youth are disproportionately represented in engagement and detention within the criminal justice system.

Line of Action

- A. BCFNJC and BC will develop a First Nations Youth Justice Prevention and Action Plan within 12 months.

Strategy 11: First Nations Women

There is a clear imperative for us all, coming out of the MMIWG Inquiry and taking into consideration its Final Report, to set out clear and shared approaches to bringing to an end the grim reality faced by First Nations women as victims of crime.

Lines of Action

- A. BCFNJC and BC, working with relevant partners, will develop a First Nations Women Justice Plan within 12 months that includes consideration of the MMIWG Inquiry Final Report and Calls for Justice.
- B. Jointly develop a strategy to address the challenges of intimate partner violence and the range of issues caused by enforcement of no contact orders, administrative offences and providing safety to victims of violence in communities.

Strategy 12: Establish a joint approach to the future of First Nations Courts

There are currently six First Nations iterations of provincial courts in BC: New Westminster First Nations Court, North Vancouver (Chet wa nexwníw ta S7eḱw'í7tel), Kamloops (Cknucwentn), Duncan First Nations Court, Nicola Valley Indigenous Court, and Prince George Indigenous Court. These courts are provincial courts that focus on specific aspects of the decision-making process. Primarily they are sentencing courts, where different processes and procedures, including those that are more healing-based and culturally appropriate, can occur at the sentencing stage. While an important initiative, First Nations Courts are not Indigenous courts where First Nations laws and jurisdictions are applied through First Nations institutions. An approach needs to be developed which ensures that future investment and expansion in the current model of First Nations Courts, a track 1 initiative, is at the same time co-ordinated with track 2 efforts towards the development of First Nations justice institutions and the implementation of the UN Declaration.

Line of Action

- A. Co-develop a joint policy and approach regarding First Nations Courts

- BCFNJC and BC will establish a joint policy on expansion of First Nations Provincial Courts within 12 months.
- The policy will consider ways in which First Nations Courts may support and form a bridge towards roles and responsibilities for Indigenous courts, as well as the role and function of Indigenous Justice Centres.
- The policy will include a plan for how and when First Nations Courts may expand.
- The policy will consider where First Nations legal order courts are emerging and how to support the development of these decision-making and dispute resolution practices and entities based on self-determination and the priorities of First Nations.
- In preparing the policy, BCFNJC will work with First Nations across BC, including in regions where First Nations courts currently operate.

Strategy 13: Implement measures to ensure there is a standard and accessible process for ensuring First Nations know where their members are being held in the corrections system, so that they can support and contact them

First Nations must be able to support their members who are within the corrections system. To do this, First Nations must know where they are, when they may be moved, and when a move has occurred. Without such basic information, a significant obstacle exists for First Nations to provide cultural and other supports to their members, as well as to their families within communities. Lack of such information can interfere with the identification of alternatives and the operationalization of the presumption of diversion. Currently, there are no established data governance protocols regarding the sharing of this information for those who are incarcerated. Mechanisms need to be established to address any concerns regarding the *Freedom of Information and Personal Privacy Act* and ensure that standards in the UN Declaration, regarding the relationship between communities and their members, are respected.

Of critical importance with respect to this strategy is the ability of First Nations and their members to be able to build effective transition, reunification and reintegration programs to support the decrease in recidivism and encourage restorative justice practices and outcomes.

Lines of Action

- A. Review and, if required, update the existing MOUs that First Nations and Corrections have in place, which can be used as templates to confirm and standardize the process for sharing of information.

- BCFNJC and Corrections will review protocols that have been used with some First Nations, to identify what works best and what issues may need to be addressed.
 - BCFNJC and Corrections will review the MOU model and process, which is currently in place, and come to agreement on a model and process that First Nations may use going forward.
- B. Review and identify potential legislative and policy changes to ensure that First Nations have access to information on their members who are incarcerated.
- BCFNJC and BC to conduct a legislative and policy analysis and develop proposals for change.

Strategy 14: Expand culturally-based programs throughout corrections, and supports for use of alternatives within First Nations

Studies and experience have re-iterated the central importance of cultural norms, practices, and programming within corrections, both as part of rehabilitation and healing, and as part of reducing rates of recidivism. Such programming is also critical to the appropriate reconnection and reintegration with families and communities after sentences have been served. Currently, examples can be seen of multiple approaches trying to grapple with this challenge. There are examples of cultural programming, and special programs within adult custody centres, which seek to assist those incarcerated with healing and therapeutic learning opportunities and support. An example of a healing focused program is the one currently running at Guthrie Therapeutic Community, located at the Nanaimo Correctional Centre. There are also initiatives such as the Kwikwexwelhp Healing Village, a federal facility for Aboriginal men, created under section 81 of the *Corrections and Conditional Release Act (CCRA)*, in which traditional and holistic teachings are utilized. The facility provides holistic programs, as well as training and maintenance skills to improve employability. To implement a provincial model, Provincial legislation may need to be developed. The expansion of cultural programming throughout BC Corrections, including within adult custody centres and community corrections supervision, and the development of a network of First Nations corrections alternatives are both needed.

Lines of Action

- A. BCFNJC and BC will pilot two new correction alternatives within First Nations in BC over the next three years, as a basis for informing the development of a network of alternatives over the next decade.

- BCFNJC and BC will develop a workplan and budget to guide the pilots. The workplan will include any potential legislative changes required to the *Correction Act*.
 - The workplan will include identifying and working with potential First Nations that may form part of the pilot.
 - The pilots will be distinct, and regionally spread so that the learnings can be broad.
- B. BCFNJC and BC will establish a workplan and budget for the expansion of cultural programs within BC Corrections.
- Workplan will be completed within twelve months.
 - Workplan will include a survey of all existing programs and services; a list of which BC Corrections can provide.
 - Workplan will identify specific pathways and options for expansion of programs over the next 1, 3, and 5 years.

Strategy 15: Support First Nations community-based justice programming, with the goal that within 5 years every First Nations community that seeks it, has a long-term community justice programming plan and has begun offering expanded programming

First Nations community-based programming is critical to making progress on both track 1 and track 2. The full implementation of *Gladue* requires that community-based supports and alternatives be in place. Practical reflection of the presumption of diversion at all stages of interaction with the criminal justice system will be facilitated where communities have programs that are prevention and healing-based, trauma-informed, and culturally grounded. At the same time, such programs are building blocks for First Nations justice systems and institutions, and opportunities for the application of First Nations laws and practices regarding criminal justice.

Lines of Action

- A. Create a long-term, sustainable, community-based programming fund.
- BCFNJC and BC will establish a long-term, sustainable fund to be accessed by First Nations to support new justice community-based programming within 12 months.

- The fund will be focused on providing First Nations with sustained funding over time, to build programs that will endure, as opposed to one-off projects.
 - The fund will include dedicated supports for specific types of programs, including support for youth programming that is preventative in focus.
 - The fund will include support for the recruitment and retention of First Nations mediators on the various provincial mediator rosters, including the family mediator roster and the child protection mediator roster.
 - Core criteria for accessing the fund will include community need; the programming will be First Nations led, designed and delivered, and will directly support justice-related programming within the community.
 - The fund will be managed by the BCFNJC through a streamlined, objective, and independent funding process.
- B. Identify and report on best practices in community-based programming
- BCFNJC will compile and disseminate to First Nations examples of best practices in community-based programming on a regular basis.
- C. Establish a co-ordinated approach with the First Nations Health Council on community-based programming that addresses healing initiatives.
- The goal is to ensure there is no duplication of efforts, and that co-ordinated approaches support the most effective and successful expansion of community-based programming.
 - BCFNJC will approach and begin dialogue with FNHC; BC will be engaged by the Councils as necessary and appropriate.

Strategy 16: Establish formal mechanisms to track progress on the Strategy, and ensure that it is progressing and having an impact on both track 1 and track 2

In recent years, the work of raising awareness and advancing action regarding First Nations and the justice system has been supported by formalizing work through the MOU, convening the 10th and 11th Justice Summits (being specifically focused on Indigenous issues), and establishing structures between

the BCFNJC and BC for regular discussion and assessment of progress. As the Strategy advances, the formalization of opportunities for evaluating and assessing progress on the Strategy is needed.

Lines of Action

- A. Establish an annual Justice Summit on First Nations Issues
 - In addition to the current Justice Summit under the *Justice Reform and Transparency Act*, establish an annual Justice Summit co-planned by the BCFNJC and BC that is dedicated to First Nations issues, inclusive of a broad cross-section of First Nations leadership, and has a focus on evaluating and assessing progress on the Strategy.
 - Pursue amendment to the *Justice Reform and Transparency Act* to include the requirement for an annual Justice Summit dedicated to First Nations issues.
- B. Establish a joint process and standards for data collection and reporting on measurable outcomes, including the evaluation of the effectiveness of this Strategy.
 - BCFNJC and BC to establish a workplan for data collection and reporting on the Strategy.
 - BCFNJC and BC will make annual data available to First Nations, the BC justice sector, and the public on the progress of implementation of the Strategy.

Strategy 17: Engage and incorporate Canada in the work of this Strategy and broader Tripartite including BCFNJC, BC, Canada efforts on both track 1 and track 2

Many aspects of this Strategy assume and require some levels of participation by Canada. In addition, there are vital elements that have not been addressed in this Strategy, such as reform of the *Criminal Code*, because they require direct federal government action.

Line of Action

- A. BCFNJC and BC to approach Canada to form a Tripartite process and protocol around the implementation of this Strategy.
 - Protocol will address specific strategies and lines of action in this Strategy that Canada will participate within.
 - Protocol will identify track 1 and track 2 actions where leadership of Canada is needed beyond those in this Strategy, and the steps to be taken by the BCFNJC, BC, and Canada in relation to those actions.

- BCFNJC will engage and update First Nations regarding the protocol and process development with Canada.

PILLAR 3: ROLES, RESPONSIBILITIES, AND CAPACITIES

Transformation of the relationship between First Nations and the justice system requires changes in who is playing roles within the justice system, and how these roles are being played. This includes a wide range of issues including how people are trained, who is recruited to play certain roles, how certain roles are defined, and how responsibilities are met. Without effecting change in how individuals understand their roles and fulfil their responsibilities, the pace and scale of constructive track 1 shifts will be limited. The work of affecting positive shifts in how individual actors do their work also encompasses the issue of how to build new and growing capacity within First Nations, to design and implement their own visions and priorities for their justice systems, and to ensure they have the supports in place for work on track 2.

Strategy 18: Significantly increase First Nations representation in the BC Prosecutorial Service and as Crown Counsel

The BC Prosecution Service (BCPS) and Crown Prosecutors play a critical role in the criminal justice system. Crown Prosecutors exercise significant and expansive prosecutorial discretion at key points, including charge assessment, election of mode of prosecution, the conduct of prosecutions and appeals, and at sentencing. There is no current, accurate data on the number of First Nations or Indigenous people working within the administration of the BCPS. Currently, of the approximately 460 Crown Prosecutors, less than some 5 or fewer identify as First Nations. It is essential that the BCPS and Crown Counsel significantly increase representation of First Nations people.

Line of Action

- A. Set a target of 6% Indigenous people within BCPS and Crown Counsel.
 - BCFNJC will work with the BCPS in it's jointly established recruitment strategy to achieve the target.
 - BCFNJC will work with the BCPS and the Law Society of BC, the Law Foundation, the University of Victoria, University of British Columbia, and Thompson Rivers University Law Schools to promote the recruitment strategy.
 - BCFNJC will identify to the BCPS, First Nations counsel who may be appropriate to consider for appointment as Special Prosecutors.

Strategy 19: Establish structured relations between First Nations and Crown Counsel offices across the Province

It is important to increase relations between Crown Counsel offices across the Province and their local First Nations. Structured relations can help achieve many purposes, including:

- Learning about forms of cultural appropriateness,
- Deepening knowledge about alternatives that can support the presumption of diversion and build relationships that can help facilitate the implementation of alternatives,
- Building an understanding about the roles of Crown Counsel and how they perform their functions, and
- Ensuring First Nations have knowledge about their members who may be facing charges and the member wants to inform their First Nation.

Line of Action

- A. Establish models of protocols to be established between First Nations and Crown Counsel offices.
 - BCFNJC and BCPS will develop examples and models of protocols that will support the direct establishment of bilateral protocols between First Nations and Crown Counsel offices.
 - BCFNJC and BCPS will prepare messages to be sent to First Nations across BC explaining background information for pursuing bilateral protocols between First Nations and Crown Counsel offices.

Strategy 20: Development of standards of cultural competency, and a training program regarding First Nations and the justice system, to be used by all who interact with the First Nations in the justice system including police, BCPS and Crown Counsel, courts, and corrections.

Throughout the Strategy development process, the need for clear standards of cultural competency, and a consistent and systematic training program regarding First Nations people and the justice system, was identified for all actors in the justice system, including police, prosecutors, courts, and corrections. While there are various forms of training taking place in different parts of the system, a coherent and consistent approach is needed so that core practices are being reinforced throughout the system.

Lines of Action

- A. BCFNJC will establish a set of a core content and standards for cultural competency to enhance training programs related to justice matters. BCFNJC and BC will conduct a review of the existing training that could inform the content and standards.
- Core content and standards will include
 - i. Relevant topics related to the history of First Nations and the criminal justice system,
 - ii. A distinctions-based approach reflective of the diversity of Indigenous peoples across BC,
 - iii. The experiences of Indigenous women and children,
 - iv. The current context and challenges of overrepresentation,
 - v. Relevant standards and rights, including the UN Declaration and section 35 of the *Constitution*,
 - vi. *DRIPA*, and
 - vii. Understandings of healing and trauma.
 - The core content and standards will also include specific topics that may be particularly relevant to different actors in the justice system, such as how to identify and communicate potential alternative measures that may be available as part of supporting the presumption of diversion.
 - The BCFNJC will engage with First Nations experts in developing the core content and standards.
- B. BCFNJC and BC will co-ordinate working with each sector within the justice system, police, BCPS and Crown Counsel, courts, and corrections, to establish or enhance a process and understanding of the implementation of the core content and standards.
- a. BCFNJC and BC will establish a joint workplan within 12 months for how to achieve understandings with each sector on the roll-out of the core content and standards.

- b. BCFNJC and BC will work with each branch of the justice sector on implementation of the core content and standards.

Strategy 21: Systematically establish roles for Elders and Knowledge Keepers across BC to help ensure cultural competency and appropriateness, support for First Nations community-based justice programming and the work of First Nations Justice Centres

A critical aspect of both track 1, reform of the existing justice system, and track 2, transformation the rebuilding of First Nations justice institutions and legal orders, is the roles to be played by Elders and Knowledge-Keepers. These roles include everything from ensuring and reinforcing the cultural appropriateness of how the justice system is operating, to having knowledge of First Nations laws and teachings relevant to how a matter should be addressed. Elders also have an important role to play in healing and trauma-centred approaches to building well-being and effective and proactive justice programming in communities.

Lines of Action

- A. BCFNJC to establish an Elders and Knowledge Keepers Council to provide advice on all aspects of the implementation of this Strategy.
 - Elders and Knowledge Keepers Council to be established within 3 months.
 - Elders and Knowledge Keepers Council to have representation from across BC.
- B. BCFNJC and BC, with advice from the Elders and Knowledge Keepers Council, will establish a network of regional Elders and Knowledge Keepers Councils who have formal relationships with, and can provide support to all sectors of the justice system, including police, BCPS and Crown Counsel, courts, and corrections.
 - BCFNJC will develop a proposal, including a budget, for a network of regional Elders and Knowledge Keepers Councils within 12 months.
 - BCFNJC will work with First Nations across the Province in developing the proposal.
 - The proposal will include the role of the Elders and Knowledge Keepers Councils and how each of the police, BCPS and Crown Counsel, courts, and corrections may interact and engage with the Elders and Knowledge Keepers Councils.
 - BCFNJC and BC will co-ordinate establishing formal relationships with all sectors of the justice system and the network of Elders and Knowledge Keepers Councils.

Strategy 22: Establish new models of structured relations between First Nations, the RCMP, and other police forces, that support new strategic and policy level, as well as community level, and co-operative change, while supporting greater community-level police forces

Policing is most often the first aspect of a person’s interaction with the justice system. In the First Nations context, this first interaction comes within a historical context where police forces have played a role in imposing colonialism, including forcible land dispossession, enforcement of the residential school system, a contemporary context of massive distrust, concerns of systemic racism, and enforcing policies and outcomes in relation to First Nations children, which perpetuate conflict and apprehension. A direct by-product of these realities is that often when First Nations people require assistance, including protection by the police, they will not reach out for that help, thus allowing the perpetuation of other harms.

Transforming the relationship between First Nations and policing is also complicated by the multiple structures of policing across British Columbia. In different geographical areas the policing authority may be RCMP or a municipal police force. In many places there will be agreements in place between First Nations and the RCMP or local policing authority. The First Nations Policing Program also plays a role as a national program that provides enhanced policing for First Nations communities. The Program is cost shared between the Federal and Provincial governments and administered by the Province. Approximately 132 communities in BC are part of the program, through which they try to reset policing priorities and enhance policing services. Indigenous representation is also a major issue to be addressed.

Intertwined with these historical and structural factors are daily, on the ground challenges related to staff rotations, employee incentives, and patterns of relations that can impinge upon practices that build knowledge and respect between police and First Nations. Fostering direct, personal, and strong relations within communities is pivotal to change, something that is extremely challenging in regions where the RCMP, the national police force, operate. Additionally, without stronger relationships and knowledge, the presumption of diversion is hard to implement.

Lines of Action

- A. Develop protocols between the BCFNJC and the RCMP, as well as the BCFNJC and other local police forces in BC.
 - Protocols to be established within 12 months.
 - Protocols will focus on collaboration at the strategic level to advance and support the goals of this Strategy.

- Protocols may identify additional actions to be taken directly between BCFNJC, RCMP, and other local police forces.
 - BC will actively encourage the establishment of the protocols.
- B. Co-Develop and implement a new approach to Community Tripartite Agreements (CTA's).
- BCFNJC, based on feedback from First Nations, will develop proposals for changes to the CTA model within 6 months.
 - New approach should:
 - Strengthen how CTA's are used to address First Nation priorities, ensure they are not inflexible in adapting and meeting the needs and circumstances of particular communities, and include strengthened communication protocols,
 - Ensure space for negotiation of community-led priorities, which are not fixed or take it or leave it models, and
 - Consider shifts and actions that will reflect First Nations jurisdiction and governance, the role of bylaw development and enforcement, and build understanding around First Nations laws and law-making.
- C. Co-develop a framework for expansion and transition to increased community-based First Nations police forces.
- BCFNJC and BC to develop a framework to expand the development and transition to increasing community-based and First Nations police forces in BC.
 - BCFNJC and BC will work with Canada in developing the approach, including interim steps such as community safety constable programs, changes to the First Nations policing program, and new peacemaking and safety initiatives.
 - BCFNJC and BC will, with the RCMP and other local police forces, identify forms of co-ordination needed as expansion and transition of increased community-based First Nations police forces takes place

Strategy 23: Development of a coordinated strategy to increase First Nations people serving as judges in British Columbia

In British Columbia, 95% of criminal cases are heard in the Provincial Court of BC, with only the most serious crimes being heard in the Supreme Court of BC. At the same time, only 5 out of 150 Provincial Court Judges are Indigenous, despite the fact that a large proportion of both victims and accused are Indigenous.

Diversity and representation on the bench are an important value of the justice system. In recent years, various jurisdictions, including the federal government, have prioritized diversity in appointments, including placing an emphasis on Indigenous peoples. Greater numbers of Indigenous judges can be an important factor in bringing the understanding of different lived experiences into the judicial function, engendering understanding of Indigenous history, culture, and experience into the judiciary, innovating and pioneering approaches to addressing over-incarceration, and rebuilding trust between First Nations and the justice system.

One challenge in such appointments is identifying and recruiting Indigenous candidates. There are several reasons for this including:

- the relatively low number of Indigenous lawyers
- challenges that exist with retention of Indigenous lawyers
- lack of encouragement and support to apply
- the fact that some Indigenous lawyers often pursue cutting-edge and diverse forms of legal practice that may not fit the profile that is traditionally highlighted in appointments
- and the reality that it may be particularly challenging for some Indigenous lawyers to leave the forms of practice they have in the complete manner that judges must.

While judicial appointments are subject to a structured, independent, process of appointment, there are steps that can be taken to effectively encourage and increase numbers of Indigenous judges.

Lines of Action

- A. Work with the Law Society of BC, the Judicial Council of BC, the Canadian Judicial Council, BCFNJC and BC to establish an approach to identifying and encouraging potential First Nations candidates for judicial appointments.

- The approach will include opportunities for judges to act as mentors to First Nations lawyers in the early years of practice.
 - The approach will identify ways in which to ensure First Nations lawyers are informed of the application process, the criteria to be met, and when and how planning to apply may take place.
 - The approach will explore identification of suitable First Nations experts and organizations who may be contacted as part of the process of vetting potential applicants, to ensure First Nations perspectives form part of that process.
- B. BCFNJC will develop a system for regularly reaching out to and encouraging potential First Nations judicial applicants.
- BCFNJC will establish an informal roster, and regular system of reaching out to potential candidates.

Strategy 24: Establish a sustainable set of supports to increase the numbers of First Nations justice workers to lead justice related work within First Nations

The work of First Nations re-building their First Nations justice systems and institutions requires a systematic increase within First Nations of justice work capacity, whether it be to support and implement community-based justice programs, new protocols and understandings as identified in this Strategy or help First Nations governments establish strategic plans and initiatives to move their internal work forward. In the past, there has not been sustained support that First Nations can access to build up the numbers and capacity of justice workers. Funding is often tied to specific projects, and not provided as part of a vision of systematic Strategy that views First Nations capacity building around justice as central to tackling pressing and immediate challenges.

Line of Action

- A. Create a long-term, sustainable plan to support First Nations in developing teams of justice workers within their communities, including an investment fund that can be accessed by First Nations to retain and build capacity.
- BCFNJC will work with First Nations across BC to identify categories of justice workers, including roles to be played, that will most effectively support First Nations doing internal work related to the success and implementation of this Strategy.

- BCFNJC will evaluate what training may be needed or developed to support First Nations in identifying and retaining individuals to be on justice worker teams within their communities.
- BCFNJC and BC will establish a fund within 24 months that can be accessed by First Nations to support communities with both justice worker training and establishment of justice worker teams.

PILLAR 4: LAWS AND POLICIES

Transformation of the relationship between First Nations peoples and the justice system requires legal and policy change. Such changes are necessary to entrench many of the elements of this Strategy, including track 1 shifts related to the presumption of diversion, structural and process reform, and how roles and responsibilities are played. At the same time, legal and policy change will be essential to ensuring there exists space to structure proper relations between the existing criminal justice system and emerging First Nations justice systems and processes and enable tangible shifts on track 2. Such legal and policy change is also a critical part of the implementation of DRIPA, and meeting the obligations contained within it.

Strategy 25: Establish a new, self-standing prosecution policy related to Indigenous Peoples

The *Crown Counsel Policy Manual*, issued by the BCPS, is a key tool in shaping the discretion of prosecutors in BC. In April 2019, The BCPS issued both an amended and a new policy in the *Policy Manual* that sets out Indigenous specific guidance in relation to Bail, Charge Assessment Guidelines, and Probation as well as an Indigenous Justice Framework. While these changes are positive, it was identified at the time of the amendments, and has been discussed for some time, that further work must be done. For example, in August 2016 the BCPS published “Championing Positive Change: Findings of the Review of the BC Prosecution Service” that included “Recommendation 11: Advance a self-standing prosecution policy related to Indigenous peoples.” In consultation with the BCFNJC and others, the BCPS determined that it was necessary to review and revise the entire *Policy Manual* and that Indigenous specific considerations should be included in all relevant policies.

Lines of Action

- A. The BCFNJC will continue to support the BCPS in its review and revision of its *Policy Manual* with regard to Indigenous peoples.
 - The BCPS policy review will continue until all relevant policies in the *Policy Manual* have been reviewed and revised or, where needed, new policies have been created. .

- A guiding principle of this policy review will continue to be that, as set out in this strategy, at every opportunity, the least restrictive appropriate response to criminal conduct should be pursued.

Doug White
Chair, BC First Nations Justice Council
First Nations Summit, Appointee

Date

Boyd Peters
Director, BC First Nations Justice Council
Union of BC Indian Chiefs, Appointee

Date

Rosalie Yazzie
Director, BC First Nations Justice Council
BC Assembly of First Nations, Appointee

Date

Tracy Downey
Director, BC First Nations Justice Council

Date

Annita McPhee
Director, BC First Nations Justice Council

Date

The Honourable Mike Farnworth
Minister of Public Safety and Solicitor General
Province of British Columbia

Date

The Honourable David Eby, QC
Attorney General
Province of British Columbia

Date