

The Indigenous Justice Strategy: “Progressive and Transformative Reform”?

by Kanatase Horn

EARLIER THIS SPRING, on March 10, 2025, the Department of Justice (DOJ) released the Indigenous Justice Strategy (IJS). The IJS is an attempt to make fundamental changes to the country’s criminal justice system and how it intersects in the lives of Indigenous peoples. It is an example of a rare collaborative and comprehensive shared vision between Indigenous peoples and Canada. A key priority of the IJS is to address the inherent violence that is embedded in Indigenous over-incarceration rates. What makes the IJS unique compared to similar strategies of the past is that it sets out to accomplish this goal by seeking to respect the right of Indigenous peoples to self-determination, including being able to control and administer justice in our own communities – something that Indigenous peoples have long advocated for.

In other words, while the IJS can be described as a vision for necessary change – reducing Indigenous over-representation while also supporting Indigenous self-determination – more than anything, the IJS is best understood as a framework or pathway to achieve this sort of change.

Developing the Indigenous Justice Strategy

The manner in which the IJS was developed is in itself noteworthy. The DOJ initiated the development of the IJS by first engaging in extensive consultations with Indigenous communities, organizations, and practitioners in the field. The consultation process lasted two years (2022–2024), and featured both Indigenous-led and government-led consultation tables. These tables provided Indigenous community members (including Indigenous people in prisons), service-providers, academics, and

leadership with an opportunity to share their experiences with the Canadian justice system, and how it impacts their lives. They also provided an opportunity for many to forward their recommendations to change the criminal justice system. Throughout the two-year consultation period, the DOJ released two ‘What We Learned’ reports – the first released in 2023, while the second was released in 2024.

The IJS represents an important intervention into the field of ‘Indigenous criminal justice’ for a number of reasons. The first is its adoption of a distinctions-based approach, which is best reflected by the way the strategy avoids a ‘pan-Indian’ approach to Indigenous policy and law. For example, the IJS recognizes that there are important distinctions amongst our communities, which often hold different understandings of self, community, and conceptions of justice. The IJS also recognizes there are important political distinctions that are reflected in the country’s legislative and constitutional documents (i.e., First Nations, Inuit, and Métis, but also, historic and modern treaty partners). The IJS notes that these distinctions mean there will be important differences in how the IJS is adopted and implemented in different Indigenous communities across the country.

Besides pursuing change using a distinctions-based approach, the IJS also recognizes that changing the criminal justice system requires an ‘all of government’ approach that recognizes the complexity of Canada’s constitutional framework. Not only are both federal and provincial governments responsible for administering different parts of the criminal justice system, but different ministries, departments, and agencies within these two levels of government have different roles and responsibilities as well. As a result, the IJS advocates for an approach that would be comprehensive and uniform

to ensure that different governments, departments, and agencies are working together.

Priority Action Areas

A key feature of the IJS is its inclusion of a list of 26 'Priority Action' areas, which emerge from the two-year consultation period. The IJS asserts that political action and investment in these areas has the potential to lead to fundamental change in the arena of Indigenous criminal justice more broadly. The 26 Priority Actions can be categorized in terms of how they attempt to address over-representation on the one hand, and advance self-determination on the other.

In terms of advancing Indigenous self-determination, the IJS points to the role of UNDRIP, which seems to form the basis of support for the revitalization of Indigenous laws and legal traditions (Priority Action 26). The IJS also recognizes that supporting Indigenous self-determination in the area of criminal justice means providing Indigenous governments with stable and predictable funding.

Supporting communities as they deliver local justice programming appears to be a priority throughout the IJS and its list of Priority Action areas. Priority Action 8, for example, recognizes the role of community justice programs, and seeks to expand them to different parts of the country. This not only reflects the right of Indigenous communities to control and administer criminal justice, but it also limits the number of incarcerated Indigenous peoples by keeping folks in their community. This is also reflected in Priority Action 12, which calls for the expansion of Indigenous Community Justice Centres, which currently provide various wrap-around supports for Indigenous peoples going through the criminal justice system.

The IJS also addresses the need to support those who are incarcerated inside Canadian prisons, and cannot access community justice programs. Priority Action 16, for instance, calls for the expansion of community-led correctional facilities, also known as healing lodges. In Priority Action 18, the IJS also calls for reviewing and reforming the risk-assessment process. This is a critically important policy area, as the current risk-assessment process tends to over-classify Indigenous peoples as 'high risk', which has prevented many incarcerated folks from

accessing programs inside prison, since such programs are usually made available to low-risk prisoners.

Interpreting the IJS: Pushing for Necessary Change

At a time when Canadian police officers continue to kill Indigenous peoples across the country; when Indigenous over-representation in Canadian prisons has been recognized as a national crisis; and when Indigenous peoples themselves continue to call for the decolonization of the criminal justice system, the IJS represents an important opportunity to make fundamental changes to the criminal justice system. While previous efforts to change the criminal justice system have fallen well short of the stated aims to reduce over-representation – nor fully meet Indigenous demands for change – there are important strategies and pathways within the IJS that suggest cause for optimism. For example, the acknowledgment within the IJS about the need to provide predictable funding is important. Stable funding ensures Indigenous justice programs, services, and institutions – in the present and in the future – are able to function and execute their justice responsibilities. Further, the strategy's acknowledgement about the importance of UNDRIP and self-determination is significant, as it informs the more specific call to support the revitalization of Indigenous legal traditions.

We need to consider, however, that while the IJS provides a pathway and framework to move forward in a way that can advance fundamental change, the IJS is noticeably silent about future funding commitments to achieve this kind of change.

The federal budget in 2024 does commit \$87 million over five years to renew existing Indigenous community justice programs. However, the type of change that is advanced in the IJS, including within its list of Priority Actions, will require substantial effort and funding commitments, including for things such as the establishment of future discussion tables to negotiate and ratify important criminal justice reforms. The Liberal Government Fall Budget will indicate whether the IJS will actually move forward and with the support it needs. If it does not, the IJS will be added to the long list of proposals for change that offer hope, only to ultimately crush it, as so often has happened in the past.

These considerations highlight the ongoing and frustrating reality for Indigenous peoples; always waiting for the goodwill of governments to commit funding and resources to critical initiatives in our communities. Nonetheless, the work of those in our communities that prioritized this work, and saw the IJS as an opportunity to change how Canada's criminal justice system impacts our communities, should be honoured. We should recognize and honour their resilience, love, and obligation towards their community members, reflected in their own commitment to this work, and continue to advocate for change in the criminal justice system.

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