

# REPORT: Assembly of Forum

APRIL 7, 2022









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"Solutions to overrepresentation lie within our own nations, communities and the traditional knowledge of our peoples. We need support and resources to reclaim our own justice systems. We know best how to bring about real change to the justice system."

AFN National Chief RoseAnne Archibald



# **EXECUTIVE SUMMARY**

# **Introduction and Background:**

Colonial attitudes, systemic racism and discrimination against Indigenous Peoples continue to be pervasive in Canada, including within the Canadian justice system, and they are direct causes of the vast overrepresentation of Indigenous people in the criminal justice system.

The Assembly of First Nations (AFN) has long advocated for changes to First Nations policing and justice in Canada, including for the establishment of First Nations policing as an essential and fully funded service, and for more recognition of and support for the reclamation of First Nations legal traditions and justice systems. To further these objectives, the AFN held its first annual National Forum on Policing and Justice in March 2021. As a follow up to the 2021 gathering, the AFN held two National Forums on April 6 and 7, 2022, with Day One dedicated to Policing and Day Two to National Justice. Both were held virtually. This report is specific to the National Justice Forum.

# **Objectives of the National Forum:**

One of the key objectives of the forum was to redirect the conversation away from conventional notions of restorative justice to the reclamation of First Nations legal traditions and laws. Traditionally, restorative justice encompasses programs that are used to address overrepresentation in a piecemeal way, often only coming into play once a First Nations person has already been involved in the justice system. The Truth and Reconciliation Calls to Action specifically speak to the need for revitalization of Indigenous legal traditions as a way of addressing the legacy of Residential Schools and the overrepresentation of First Nations Peoples in the justice system. Therefore, rather than focusing solely on programs such as sentencing circles and Gladue reports, there is a need for a comprehensive rethinking of restorative justice, based on the reclamation of First Nations legal traditions and laws as a holistic way of addressing overrepresentation. Self-determination and self-governance for First Nations Peoples is an integral aspect to supporting the restoration and reclamation of First Nations justice systems.

## **Participants:**

In total, 184 people participated in the forum, including representatives from British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, Prince Edward Island and Newfoundland and Labrador. Participants included Chiefs, Regional Chiefs, First Nations delegates, representatives from non-governmental organizations, police/law enforcement, government representatives, and other delegates.

## **National Justice Forum Agenda:**

The National Justice Forum included welcoming remarks and a traditional song by Dr. Gwendolyn Point, Knowledge Keeper, BCAFN, living on the Ts'elxwéyeqw Tribal Territory part of the Sto:lo Territory in the Coast Salish Region. Opening remarks were provided by the AFN National Chief RoseAnne Archibald and Regional Chief Terry Teegee as well as by the Minister of Justice and Attorney General of Canada, David Lametti and the Minister of Crown-Indigenous Relations Marc Miller.

A plenary session featured three panelists, each of whom provided examples of how First Nations are reclaiming or helping to reclaim Indigenous legal traditions. Boyd Peters from the British Columbia First Nations Justice Council discussed the development of the BC Justice Strategy and the work they have done to advance justice through the exercise of First Nations self-determination. Koren Lighting-Earle with Wahkohtowin Lodge at the University of Alberta explained how the Lodge provides support to First Nations as they conduct research and legislate their own customary laws and legal traditions. Joyce King from Akwesasne discussed Akwesasne's court and justice program, and how they have implemented their own court as an alternative to provincial courts.

# **Discussion Groups:**

The plenary session was followed by three facilitated group discussions with forum participants. Simultaneous translation (English and French) was provided and the two lead facilitators were Indigenous women with one speaking English and the other French. The key themes emerging out of each discussion group are presented below.

#### Group One: Revitalization of Indigenous Legal Traditions

- 1. What are the sources of First Nations legal traditions and laws?
- 2. What resources are needed to reclaim Indigenous legal traditions and laws?

#### Key Themes:

🔀 The core elements of Indigenous identity – the land and water, language, origin

stories, traditional rituals and ceremonies, Elders, traditional understandings of roles and responsibilities, and respectful relationships – are the source of Indigenous legal traditions and laws.

- First Nations are diverse, and each will need to identify their own priorities for a justice system based on their particular traditions.
- ★ There are challenges to consider in reclaiming Indigenous legal traditions and laws, including the fact that traditional laws were sometimes very strict and as such may be too harsh and out of alignment with the Canadian legal system, that reclamation of traditional laws will have to consider the effects of intergenerational trauma, and that women's rights must be respected, and women should be actively engaged in the process of reclamation.
- ✗ The sources of legal traditions and laws also represent resources to guide the process of reclamation.
- Adequate funding must be made available for reclamation, based on First Nations' priorities. This is a key requirement for reconciliation.

#### Group Two: Reclamation of First Nations Jurisdiction over Justice Systems

- 1. What reforms are needed to address overrepresentation of First Nations people in the justice system?
- 2. How can self-determination and reclamation of justice allow First Nations to exert jurisdiction over justice?

#### **Key Themes:**

- Transformational change is required, not simply process or systemic change. First Nations need their own justice systems that are representative of their traditional worldviews.
- ✗ It is important to address the social conditions on First Nations which influence the issue of overrepresentation, such as lack of adequate housing and overcrowding.
- Cultural training at all levels within the Canadian justice system and automatic diversion to restorative justice for Indigenous people must be mandated.
- There should be a position created within the Federal Department of Justice for an Indigenous Deputy Attorney General for Indigenous legal and corrections services.
- Rethways to funding for Indigenous justice initiatives should be clear, transparent, and communicated to First Nations.
- First Nations need to seize emerging opportunities for developing capacity to exert jurisdiction by working with provincial and federal governments. Working towards self-determination in justice takes time, but the political climate has changed sufficiently so that achieving that goal is now a real possibility.
- Work collaboratively to develop a national or regional plans for Indigenous policing, so that both large and smaller communities have equitable access.
- Continue to work on land back, so that First Nations can control their own resources and reduce their reliance on the colonial system.

#### Group Three: First Nations Legal Traditions and the Canadian Criminal Justice System

- 1. What is the relationship between the Canadian Justice System and First Nations Courts and how should Restorative Justice principles evolve within this context?
- 2. How can First Nations courts balance the internal and external challenges First Nations communities face and what resources are needed to support First Nations courts?

#### **Key Themes:**

- Build an Indigenous Justice System based on traditional stories and legends; these contain valuable lessons that apply to justice.
- Cevelop First Nations' Justice Systems incrementally, starting with a community justice program, then a small justice committee which can transform into a tribunal, and then into an administrative body with a clearly defined mandate.
- Create laws and systems based on Two-Eyed Seeing, by gaining knowledge about both Indigenous values and traditions and Western criteria for justice.
- Find ways to work effectively with non-Indigenous justice systems, including advocating for mandated cultural training for non-Indigenous personnel, translating Indigenous justice concepts into terms non-Indigenous people can relate to, developing protocol agreements, and emphasizing the return on investment of restorative justice initiatives.
- Control of the structure (e.g., a community panel) and processes for effective healing/release plans that focus on building Indigenous identity.
- Ensure program sustainability through documentation of key program elements (e.g., by producing a manual or resource books).
- **Work collaboratively with other First Nations and Community Organizations to share knowledge and best practices.**

# **INTRODUCTION AND BACKGROUND**

Indigenous Peoples in Canada continue to be negatively affected by colonial attitudes, systemic racism and discrimination. These issues pervade the Canadian justice system and function as direct causes of the vast overrepresentation of Indigenous people in the criminal justice system. In 2016/2017 for example, Indigenous adults accounted for almost one-third of custody admissions and in-custody populations in Canada, despite representing only 4.1% of the adult Canadian population.

The Assembly of First Nations (AFN) has long advocated for changes to First Nations policing and justice in Canada, including for the establishment of First Nations policing as an essential and fully funded service, and for more recognition of and support for the reclamation of First Nations legal traditions and justice systems. These are core aspects of reconciliation, which align with Article 34 of the UN Declaration on the Rights of Indigenous People, as well as with the Truth and Reconciliation Commission Calls to Action and the Calls to Justice from the National Inquiry into Missing and Murdered Indigenous Women, Girls and 2SLGBTQQIA+ people.

# 2021 National Forum on Policing and Justice:

To further these objectives, the AFN held its first annual National Forum on Policing and Justice in March 2021. The goal of the National Forum was to bring First Nations people together to discuss:

- The evolution of First Nations policing and a national justice reform strategy.
- Important considerations to include in the development of a legislative framework for First Nations policing as an essential service.
- How to best address systemic racism in Canada's law enforcement and justice systems.
- The status of relevant Call-to-Justice and Calls-To-Action in the final reports of the National Inquiry into Missing and Murdered Indigenous Women, Girls, and 2SLGBTQQIA+, and the Truth and Reconciliation Commission.

## Key themes that emerged from the 2021 forum included:

- Jurisdiction
  - Respect for First Nation Customary Laws
  - Establishment of First Nations justice and policing systems
  - Navigating "multi-jurisdictional nightmares"
- Governance
  - Enhancing board governance
  - Extending oversight into municipal jurisdictions
- Infrastructure and Personnel
  - Infrastructure inherently linked to funding
  - Police involvement within First Nations
- Funding
  - Longer term agreements for more stable funding
  - Funding for specific programs and services
  - Using a needs-based approach.

# 2022 National Forums on Policing and Justice

As a follow-up to the 2021 gathering, the AFN held two National Forums on April 6 and 7, 2022, with Day One dedicated to Policing and Day Two to National Justice. Both were held virtually. This report is specific to the National Justice Forum.

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# **Objectives of the National Justice Forum**

One of the key objectives of the forum was to redirect the conversation away from conventional notions of restorative justice to the reclamation of First Nations legal traditions and laws. Traditionally, restorative justice encompasses programs that are used to address overrepresentation in a piecemeal way, often only coming into play once a First Nations person has already been involved in the justice system. The Truth and Reconciliation Calls to Action specifically speak to the need for revitalization of Indigenous legal traditions as a way of addressing the legacy of Residential Schools and the overrepresentation of First Nations peoples in the justice system. Therefore, rather than focusing solely on programs such as sentencing circles and Gladue reports, there is a need for a comprehensive rethinking of restorative justice, based on the reclamation of First Nations legal traditions and laws as a holistic way of addressing overrepresentation. Self-determination and self-governance for First Nations Peoples is an integral aspect to supporting the restoration and reclamation of First Nations justice systems.

## **National Justice Forum Agenda**

The National Justice Forum included opening remarks from the AFN National Chief RoseAnne Archibald and Regional Chief Terry Teegee as well as from the Minister of Justice and Attorney General of Canada, David Lametti and the Minister of Crown-Indigenous Relations Marc Miller. Three presentations about Indigenous justice initiatives were featured and these were followed by three facilitated group discussions with forum participants. Simultaneous translation (English and French) was provided and the two lead facilitators were Indigenous women with one speaking English and the other, French.

*Note: Direct quotes from participants in the discussion groups are italicized, but no names are attached to the quotes in order to preserve confidentiality.* 

## **Forum Participants**

In total, 184 people participated in the forum. Chart 1 shows the type of participants who attended, and the regional breakdown of participants is shown in Chart 2.





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# **OPENING PRAYER**

Dr Gwendolyn Point, Knowledge Keeper, BCAFN, living Ts'elxwéyeqw Tribal Territory part of the Sto:lo Territory in the Coast Salish Region, welcomed the participants and opened the forum with a traditional song from her territory.

# **OPENING REMARKS**

National Chief RoseAnne Archibald, Regional Chief Terry Teegee, Justice Minister David Lametti and Minister of Crown-Indigenous Relations Marc Miller provided opening remarks. Key messages from their remarks are presented below.

#### National Chief RoseAnne Archibald

"In order to truly commit to implementing the many calls for change to the justice system, all levels of government must acknowledge that the legal system is this country is deeply entrenched in long-standing, overt, covert and systemic racism as well as discriminatory attitudes and beliefs about First Nations people. And that must change. All governments must take substantive measures to stem the tide of over-incarceration of and commit to reforming the criminal justice system to ensure that First Nations people receive fair treatment whether they are accused, survivors or witnesses. Restorative justice measures currently being undertaken are not enough to stop the increasing levels of overrepresentation.

We need more action "

#### Regional Chief Teegee, British Columbia, Co-portfolio Holder of the AFN Justice File <sup>1</sup>

"First Nations people are vastly overrepresented in the criminal justice system to the point where numbers have reached critical levels. The statistics fail to show the devastating impacts on the health and well-being of our communities. Nor do they demonstrate how colonialism, centuries of discriminatory institutions, laws and policies are a direct cause of the unacceptable high numbers of incarcerated First Nations people. We have before us an opportunity to make real systemic changes to the justice system based upon First Nations legal traditions and Indigenous views of justice that will fundamentally address overrepresentation. But we need much greater resources and commitment from the federal, provincial and territorial governments to make it a reality. This work today is crucial for addressing the root causes of First Nations overrepresentation in the legal system."

> <sup>1</sup>The other holder of the AFN Justice Portfolio is Regional Chief Ghislain Picard of Québec.

#### Regional Chief Teegee highlighted AFN's priority policy areas for restorative justice, including:

- Addressing systemic racism that leads to increased interactions of First Nations people with Canada's policing and justice systems
- Fuller implementation and expansion of the Gladue principles, which consider the impact of colonialism during criminal sentencing.
- Establishing and funding First Nations Gladue courts
- Reducing the rates of pre-trial detentions, thereby decreasing the likelihood of incarceration.
- Improving jury selection processes
- Providing greater resources for court worker programs and sentencing circles.

Regional Chief Teegee also provided an overview of the British Columbia Justice Council, established to address systemic discrimination in Canada's justice system and to revitalize First Nations justice systems. The Council played an integral role in the development of the British Columbia Justice Strategy, which was signed on March 6, 2020, and which bring First Nations and the government of British Columbia into partnership to address poor justice system outcomes for First Nations people. It aims to reduce the number of First Nations people who become involved with the criminal justice system, improve the experience of those who do, increase the number of First Nations people working within the justice system, and support First Nations to restore their justice systems and structures. There are 42 actions along two pathways:

- Reform of the current justice system
- Restoration of FNs legal traditions and structures.

Implementing similar strategies on the federal level in accordance with customary laws, legal traditions and orders will bring real justice for First Nations across Canada.

#### Minister of Justice and Attorney General of Canada, David Lametti

"A justice system that works has to account for the needs of the people it serves. It must embrace healing and restoring relationships. Restorative justice does that. It focuses on accountability and restoration as well as on repair and healing relationships through dialogue. As I have learned, these are all things Indigenous people have understood through millennia, and I am grateful for your leadership in advancing restorative justice. We are moving forward on reconciliation, and in doing so, laying the groundwork for a transformed justice system. That transformation is happening on multiple fronts.

We cannot change what happened or undo the intergenerational harms that still haunt survivors and families today, but we have the opportunity to be part of a transformation that dismantles the colonial and racist policies, practices and systems that led to those harms. Restorative Justice is part of this work, work we will do together. We are putting strong foundations in place: programs, policies, law reform, and perhaps most importantly, a change in thinking. I am confident all of this will lead to greater use of restorative justice and lead to the transformational change we all want."

Minister Lametti provided some examples of the work that is occurring at the federal level to support restorative justice. These include:

• The implementation of the United Nations Declaration of the Rights of Indigenous Peoples Act or UNDA, which is about forging a profound change in the relationship between the Crown and Indigenous Peoples. The development of an Action Plan that describes how we reach the objectives of UNDA, in consultation and collaboration with Indigenous people, is essential for success. The Plan will describe how we reach the objectives of UNDA.

- A broad and inclusive engagement process with Indigenous Peoples on the UNDA implementation, launched in December 2021, which involves First Nations, Métis and Inuit right holders, governments, and representative organizations in developing and communicating priorities.
- Justice initiatives underway guided by the UN Declaration on the Rights of Indigenous People, including support for the revitalization of Indigenous legal traditions and justice systems.
- The allocation in 2019 of close to \$10 million over five years in response to the Truth and Reconciliation Calls to Action to actualize initiatives relating to Indigenous rights throughout Canada. This investment will support over 20 projects across the country involving various Indigenous laws and legal traditions.
- The current legislative agenda, including Bill C-5 which proposes eliminating certain mandatory minimum penalties that disproportionately impact Indigenous people and will remove many restrictions on the availability of conditional sentence orders.
- The development of an Indigenous Justice Strategy to address systemic discrimination and overrepresentation of Indigenous people in the Canadian justice system which involved a recent Call for Proposals to support Indigenous-led engagement that will inform the development of the Strategy.
- In response to the discovery of unmarked burial sites at former Indian Residential Schools, the government's announcement of an Independent Special Interlocutor. This individual will work with First Nations, Inuit and Métis governments, representative organizations, communities and families. Their role will include providing independent advice on matters such as a new federal legal framework while also supporting communities as they work through the next stages in ensuring the respectful and culturally appropriate treatment of these burial sites. The Justice department is actively collaborating with Indigenous partners, including the AFN, on the hiring mandate for the Interlocutor.

#### The Honorable Marc Miller, Minister of Crown-Indigenous Relations

"To this day, colonial violence and racism are embedded in many Canadian institutions, including the justice system and have resulted in long-standing disparities between Indigenous and non-Indigenous Peoples. Over the past year, the location of unmarked burial sites at former residential schools highlighted the tragic consequences of this colonial and systemic violence. For many survivors, families and communities, the legacy of residential schools has caused ongoing health and mental health issues, high suicide rates, alcohol and drug use, and interpersonal violence. Other issues such as inadequate access to housing, education, healthcare and job opportunities as well as inherent bias in the justice system, have contributed to the overrepresentation of Indigenous people in the justice system.

We acknowledge this problem and are committed to addressing the harm and providing opportunities for healing, reintegration and growth rather than criminalizing those who are coping with the consequences of colonization. By working hand-in-hand with First Nations to improve these broader socio-economic inequities, we can truly begin to address the root causes of Indigenous overrepresentation in the Canadian justice system. We ae committed to responding to the Calls for Justice that focus on accessibility to restorative justice practices and the development of culturally appropriate rehabilitation programs."



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# PLENARY SESSION

## Presentations

The plenary session featured three panelists, each of whom provided examples of how First Nations are reclaiming or helping to reclaim Indigenous legal traditions. Boyd Peters from the British Columbia First Nations Justice Council discussed the development of the BC Justice Strategy and the work they have done to advance justice through the exercise of First Nations self-determination. Koren Lighting-Earle is with Wahkohtowin Lodge at the University of Alberta. The Lodge provides support to First Nations as they conduct research and legislate their own customary laws and legal traditions. Joyce King from Akwesasne discussed Akwesasne's court and justice program, and how they have implemented their own court as an alternative to provincial courts.



# ADVANCING JUSTICE THROUGH SELF-DETERMINATION: THE BC FIRST NATIONS JUSTICE STRATEGY Boyd Peters, Director, British Columbia First Nations Justice Council

The salmon in the logo represent past, present and future, as well as the concept of purposefulness, never giving up and returning home, which for First Nations people means returning home to self-determination and ancestral teachings about justice.

Statistics show that the rate of violent victimization among Indigenous Peoples in Canada is more than double that of non-Indigenous people, and the overall rate of violent victimization among Indigenous women remains close to triple that of non-Indigenous women. A First Nations individual's initial interactions with the justice system often lead to an escalating series of interactions which are very hard to break – a continuing cycle. These realities are completely unacceptable and must change. As a result, work has begun to transform the justice system in British Columbia, led by the BC First Nations Justice Council (BCFNJC).

The BCFNJC was established in 2015 with a mandate from the BC Assembly of First Nations, the Union of BC Indian Chiefs and the First Nations Summit. Its mandate is to transform the justice system into a system First Nations can trust and believe in, including:

- 1. Challenging approaches that contribute to the growing overrepresentation of Aboriginal children and youth in the care of government, and Aboriginal men and women in incarceration and,
- 2. Productively engaging with the government to advance effective strategies that can achieve better outcomes for our people in the justice system.

The BC First Nations Justice Strategy was developed by the BC First Nations Justice Council, BC First Nations communities, the Province of British Columbia, and with input from key justice system stakeholders. It contains within it a pathway to modernize the existing criminal justice system and seeks to facilitate the rebuilding of Indigenous justice system. The Strategy reflects and advances the Truth and Reconciliation Commission Calls to Action and is consistent with the United Nations Declaration on the Rights of Indigenous People. It mandates the justice system and its partners to undertake systemic change along two paths:

- 1. reform of the current justice system, and
- 2. restoration of First Nation legal traditions and structures.

These include consideration of culturally appropriate alternative responses for First Nations people at every point of contact with the justice system with a presumption that, whenever appropriate, these alternative responses should be the first option pursued. Overcoming the long and tragic history of colonization will not occur overnight, but a better path toward First Nations justice, as exemplified by the Strategy, could serve as a model for a national Indigenous Justice Strategy which can usher in a new reality for First Nations across Turtle Island.

# Policing: Strategy 22

This Strategy is aiming to 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 cooperative change, while supporting greater community-level police forces.



# WAHKOHTOWIN LAW AND GOVERNANCE LODGE, UNIVERSITY OF ALBERTA FACULTY OF LAW, Koren Lightning-Earle, Legal Director.

The purpose of the Wahkotowin Law & Governance Lodge is to uphold Indigenous laws and governance. The Wahkohtowin

Lodge responds to the expressed needs of Indigenous communities and organizations and specifically answers the TRC Call to Action #50, which calls for the creation of Indigenous Law Institutes for the "development, use and understanding of Indigenous laws."

To accomplish this, the Lodge:

- Supports Indigenous communities' goals to identify, articulate, and implement their own laws.
- Develops, gathers, amplifies, and transfers wise practices, promising methods and research tools.
- Produces useful and accessible practical legal resources and public legal education.

# **Guiding Principles**

Wahkohtowin and Miyo Wichetowin, as legal principles governing relationships, and good relationships, are the guiding principles with the work we support or do with Indigenous communities.

- Indigenous laws need to be treated seriously, as laws.
- Indigenous legal research must be conducted with the highest standards of rigor and transparency.
- Indigenous laws are one aspect of Indigenous governance, and part of comprehensive whole societies.
- Revitalizing Indigenous laws and legal processes are essential for rebuilding healthy communities and for reconciliation in Canada.

# What are Indigenous Laws?

- NOT Aboriginal law (state laws applied to Indigenous Peoples)
- NOT Restorative Justice, Aboriginal Courts, or Healing Programs

#### **Indigenous Laws:**

- May be ancient, deeply rooted, sourced in the sacred or the earth
- May be recent, drafted as Treaty, agreements, bylaws, or legislation
- May have elements of both Indigenous legal traditions and other sources of law
- Involve Deliberation and Debate, not Declarations, and Principles and Processes, not Positions
- May be being used in an implicit or informal way
- May be damaged, unevenly understood, mistrusted
- May be shared in ways that are not familiar to legal professionals
- Are rarely recognized, resourced and enforced adequately

# Roots to Renaissance\*: Four Eras of Indigenous Laws

- 1. Roots (1000+ years): A Logical Starting Point–Where there are groups of people, there is law. Indigenous people have always had legal processes in place
- 2. Repression and Resilience (100-400 years)
- 3. Recovery and Revitalization (10-40 years)
- 4. Resurgence and Renaissance (1-10 years): Engaging with Indigenous Laws as LAWS

\*Napoleon and Friedland, Oxford Handbook of Criminal Law (2014)

# Indigenous Laws and the Truth and Reconciliation Commission (TRC) report

The TRC Final Report found:

"Aboriginal peoples must be able to recover, learn, and practice their own, distinct, legal traditions." *–TRC Final Report, at 206.* 

"Establishing Respectful Relations...requires the Revitalization of Indigenous Laws."–*TRC Final Report, at 213 (16).* 

Relevant TRC Calls to Action include:

#27 & 28 – Space in legal education and continuing legal education for deconstructing knowledge and learning to engage with Indigenous laws.

#42 – Indigenous laws formally implemented, practiced, resourced and enforced.

#50 – Space for Indigenous Peoples to reconstruct and develop Indigenous laws.

# Wahkotowin Law & Governance Lodge Approach

The Lodge has a broad reach, including to the general public, Indigenous and legal communities. It provides:

- Accessible Public/Legal Education (PLE) resources on website and social media,
  - PLE presentations to communities and various groups
  - PLE and judicial education re: TRC, anti-racism, cultural humility, Indigenous laws
  - Curation and amplification of wise practices, methods, other useful Indigenous law resources, etc. to make connections and provide options
  - One-on-one coaching and advising to support communities doing the work
- Major community-led research projects, specific to work by a particular Nation, which are time and labour intensive

# AN OVERVIEW OF THE AKWESASNE JUSTICE SYSTEM: THE AKWESASNE COURT AND RESTORATIVE JUSTICE PRINCIPLES, Justice Department Director, Joyce King

Akwesasne is a Mohawk Nation territory that straddles the intersection of international borders and provincial boundaries on both banks of the St. Lawrence River. It is not contiguous to mainland Canada, as it is surrounded by International Seaway and New York State. Although divided by an international border, the residents consider themselves to be one community. People have the right to a justice system based on cultural values and to have their disputes heard and resolved.

# The Akwesasne Legal System

Akwesasne has a law enacting procedural regulation and a legal review committee. Laws are voted on and, once passed, the law is posted in a registry. Laws are developed using templates for consistency, clarity and continuity, working with an oversight commission to make sure the laws are priority laws and accepted by the Council. The court law is not part of Justice Canada, Justice Ontario, or Justice Québec. It is a separate law created by the community based on community values and principles as well as on traditional laws. There is a Review Commission that oversees the justices to ensure there is no interference with the political system. The court law meets the criteria of Canadian law, with an overlay of Akwesasne values and principles, and it applies to all residents. The Akwesasne Mohawk Police Service enforces laws. Akwesasne also has compliance officers and conservation officers to enforce their laws and band funds are used to cover these costs.

The Akwesasne Court functions as both an appellate court and a court of first instance in relation to community laws, by-laws and peace bond hearings. Community members who have violated the law are offered court mediation services, but they are also able to bypass this process and go straight to court if they wish. There are several processes in place in the community for resolving disputes including mediation with certified mediators, facilitated conferencing between persons, community service hours and monitoring, and webinars/educational programming based on wrongdoing and reduction of fines.

# Akwesasne Restorative Justice Principles

- People own the Court not the government
- Ability to link traditional leaders to those who violate community norms (laws)
- We believe youth are basically good (born with a pure mind)
- Elders needed to teach "healthy Mohawk" behaviour
- Struggle to overcome fast money to ensure sustainability
- Keep charges of the individual at Akwesasne
- Structure has to be acceptable to Akwesasne community (done through the law consultation process).

As the table below shows, the Akwesasne have a distinct and holistic community approach to justice, which differs significantly from Western, colonial approaches to justice.

CATEGORY	<b>RESTORATIVE JUSTICE PRINCIPLE</b>
APPROACH TO HEALING	Wholistic (Holistic)
FAMILY RIGHTS	Extended Family Unit
NEIGHBOURS	We watch out over each other (but we also know each other's business) but it's to see where we can help
DECISION MAKING	Based on ability to make a decision
ENVIRONMENT	Inclusive (OhentonKariwatehkwen)
EDUCATION	Life/lessons learned (Elder)
YOUTH	Raised until they decide to leave
ROLES	By gender
LEADERSHIP	Familial/Clanship
JUSTICE	Bringing the balance to the person, victim
CHARACTER	Persons have gifts
MAJOR CRIME	No Rape, No Murder, No Theft
WARNINGS	3 warnings then banishment
WRONGDOING	Accepting responsibility for the action
SANCTIONS	Rehabilitation/Remuneration/Removal
BANISHMENT	Removal from the community
RECORD	Person is forgiven if offense is not repeated

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# **Plenary Discussion**

Boyd Peters pointed out that Indigenous laws are First Nations traditional teachings, and he is pleased to see all of the work happening to reclaim traditional Indigenous laws in First Nations across the country. Bringing back self-determination, self-governance and First Nations laws is critical work. One challenge in implementing Indigenous justice systems is the fact that First Nations are still bound by the Canadian justice system, which is a broken, colonial system. Each community is also at a different place in their capacity. He also noted that many communities have tried to set up their own systems, but funding resources are lacking, so First Nations will have to do it on their own. He very much appreciates the important work that Koren and Joyce are doing.

Koren Lightning-Earle said how great it is to see communities taking control and doing this work, and they can be mentors and provide guidance to other communities, showing them what is possible.

Joyce King said she would like the Akwesasne justice system to inspire other First Nations. Although the Akwesasne system will not be the answer for every First Nations community, as they are all different, there are things there that other First Nations can certainly reflect on. First Nations are welcome to review and assess Akwesasne templates and distinct processes, for their utility for each particular community. Another key point is responsibility: First Nations people will generally accept responsibility for committing a crime as taking responsibility is part of the culture. However, in the Canadian justice system, taking responsibility is discouraged (people are read their rights, they are told not to talk to police, to wait for a lawyer, etc.) but First Nations people will say "yes, I was there; yes, I take responsibility" and this results in a high number of incarcerations. Another issue is that of intellectual property. Akwesasne is trying to maintain intellectual property rights because they developed their justice system over a long period of time. Therefore, they will not make information available to third parties with the exception of other First Nations with whom they are willing to dialogue and share information government to government. Ms. King also pointed out that Akwesasne does not work alone; they have relationships with universities who are working with them on implementing various projects and laws (e.g., a Child's Rights and Responsibilities Law, which is currently under development).

# **Q & A Session**

#### **Question:**

As we continue to evolve, as our environment changes, the principles that guide this evolution remain largely the same: collective rights, kinship ties and responsibilities, etc. I like the balance between traditional and contemporary requirements of just relations that I believe is shown by the presenters. There has to be restorative policing, law enforcement and crime prevention, restorative judicial proceedings, alternatives to incarceration where possible, restorative sanctions (banishment to jail or out of the community where necessary), rehabilitation, and reintegration where possible.

I'm interested in the developing of systems among the Cree, Dené, Saulteaux Nations after the artificial barriers created by 150 years of the Indian Act administration. We may have differences, but we also have commonalities in culture, language, laws and history. How can we bring the Nations back together under a common system? Do the Mohawks of Kahnawake Six Nations have similar systems as Akwesasne?

**Joyce King:** We have common systems, and you can find those within the principles of the traditional Council, which was called the Confederacy of Six Nations. The Great Law piece was developed back in the 1100s, and their principles within the Great Law were peace, power and righteousness. So, you can translate that: you don't use the Great Law in yours because that belongs with the traditional Council, but what you can do is use those principles within your law itself. So, we have some commonalities. The other thing that happened among the elected systems of Six Nations was saying, "we are able to do the same things you are – consider a traveling tribunal – because we do have a court." For example, Kahnawake has a court also. They use Section 107 Justice of the Peace of the Indian Act– we don't, we use Justices that we train under the Akwesasne court law. Other Iroquois Nations do not have a court and so they asked if we would have a traveling tribunal when it comes to matrimonial real property on reserve. We agreed and that is written into our law, that we will have a travelling tribunal, and we have our own Justices to resolve disputes, so that is a placeholder until other systems can be fully developed. **Koren Lightning-Earle**: Part of it is just having a conversation with communities, whether it is simply a focused conversation about how to bring people together. Sometimes when we want to create these processes, we don't address the underlying barriers as to why we cannot move forward. Some of what we do is to go in where there are some highly contentious issues and bring a process where we are able to work with people through focused conversations, which allows them to work through those issues that are holding them back from moving forward. That way they can have it all in a safe place and a way that is respectful and meaningful to people, and where they feel heard. Then they can share their opinions on the issues, strengths and barriers of a common system, and how to move forward. Who the participants would be will depend on the question at hand and on the parties who need to be involved. In some cases, we have been invited to several Nations who have a shared interest, meeting with those Nations' leaderships and working through a process to find a common vision.

#### Question:

*First, thank you so much to the panelists for sharing your expertise. My question is: does apology theory fit in with Indigenous restorative practices?* 

**Boyd Peters:** When it comes to our traditional laws, here in our Coast Salish territory, we have the longhouse and that's where everything took place, so when you have a ceremony or a gathering – whatever the occasion is – sometimes it has to do with making someone accountable or responsible for their actions. I've been a part of that myself where the Elders said we want to talk to you, we're going to stand you up in the middle of the floor and you stand there, sometime for hours, and they tell you about the traditional laws and about how they want you to behave yourself. In our traditions, there are respected witnesses and it's up to them to validate the work that has happened on the floor and bring that back to their respective communities. So, it's very much in accordance with our traditional laws. Usually, we leave it up to how confident that person is when they've been talked to for that amount of time, and they'll say I've learned from this lesson and I know that I've hurt certain individuals or hurt myself or hurt the community and there are impacts, so I want to make an apology and to say that I'm going to make things better.

And that's the difference between our system and the Western system. In the Western system, you've broken the law, you're found guilty, therefore you go to jail. This way, you're actually going to be accountable, and you want to make reparation. So, apology is a good part of what we do because it's a two-way thing and it's not just guilty or innocent, you have to go through the processes. Apology is part of the way we do things.



# PARTICIPANT DISCUSSIONS

# **Discussion Group #1: Revitalization of Indigenous Legal Traditions**

There were forty-six (46) people in this group, including two facilitators, two interpreters, and a technical support person. The other forty-one (41) participants were from a range of First Nations and Indigenous organizations across the country located in British Columbia, Ontario, Nova Scotia, and Newfoundland and Labrador.

First Nations legal traditions, Indigenous law and customary laws are foundational to identity, self-determination, and sovereignty. As Koren Lighting-Earle's presentation explained, Indigenous Laws are not laws applied to First Nations people nor are they restorative justice– they are laws rooted in tradition, culture, and relationships. The questions posed with respect to this topic were focused on how best to support First Nations as they work to reclaim their laws and legal traditions.

## **Discussion Questions:**

- 1. What are the sources of First Nations legal traditions and laws?
- 2. What resources are needed to reclaim Indigenous legal traditions and laws?

# **Key Themes**

The Core Elements of Indigenous Identity Are the Source of Legal Traditions and Laws

There was a strong consensus among the participants that the sources of First Nations' legal traditions and laws are the land and water, language, origin stories, traditional rituals and ceremonies, Elders, traditional understandings of roles and responsibilities, and respectful relationships between individuals and First Nations. These are core elements of Indigenous identity, and it was noted that all First Nations had their own laws based on these elements prior to contact with settlers. The loss of these has led to the current situation of the overrepresentation of Indigenous people in the Canadian justice system and reconnecting with them will be critical in reclaiming Indigenous legal traditions and laws.

"Some Elders don't pass the teachings down and the majority of our youth struggling in a system that is not ours don't know their roles."

"I think the answers lie in our traditions. They lie in our long-lasting relationships that we have with one another. Back in the day my grandmother spoke several languages of all the neighbouring nations. That's just one tradition and I think that the notion of supporting one another, acknowledging one another, and holding one another up is certainly one of the ways we move forward in our traditions."

#### **Recognition of the Diversity of First Nations**

First Nations are diverse, and each has its own legal traditions and laws, so there can be no overarching mandate imposed on every First Nation. Each one will have to establish their own priorities based on their particular traditions and this will involve a process of reflection and deliberation.

"It has to be a self-driven thing; it has to come from the Nation. It has to be a self-reflective that comes from the Nation and then the Nation says: 'Okay this is how we're going to do things, because they are our ways.' There's no one blank slate for every First Nation. The community has to identify the priority areas and then they have to be planned out through the administration body for the First Nation."

#### Recognition of Challenges to Implementing Traditional Laws in the Current Environment

There were some concerns raised about possible negative implications of reclaiming legal traditions and laws in the current environment. One of these was that traditional laws were sometimes very strict and as such may be too harsh and out of alignment with the Canadian legal system.

"I just have to say we talk about putting our laws together, that our laws need to align with the government of today and we have to be really careful because our laws were strict long ago. A long time ago when people weren't acting nice, we used to put them in a canoe with all of their belongings and shove them offshore [in British Columbia]. I think we may be playing with fire, and it scares me."

Another challenge is the question of how best to reclaim Indigenous laws in face of the effects of intergenerational trauma on First Nations people. For example, how could ancestral Indigenous laws be brought forward and applied in the complex situation of dealing with the aftermath of and, in many instances, ongoing colonialism? Perhaps research should be conducted to find the best way forward in providing fair and equitable justice for Indigenous people in the context of these realities.

Women's rights also came up as a concern, as traditionally men have been in positions of power and may abuse that power to benefit themselves when there has been an offense committed against a woman. The engagement of more women in reclaiming Indigenous laws may help to mitigate this issue, but it is something to take into consideration.

"One of the complaints I've heard, particularly from Indigenous women is how, unfortunately, it's been men in positions of power when there's been sexual assault or some wrongdoing, in the sense that they will use restorative justice to have an easier sentence. And I don't know what the solution is, but this is something that needs to be researched."

#### The Sources of Legal Traditions and Laws Are Resources for Reclamation

In terms of resources required to reclaim legal traditions and laws, the above-mentioned sources (origin stories, Elders, ceremonies, etc.) also represent valuable resources that can help to guide the process of reclamation.

#### **Reconciliation Means Adequate Funding Based on First Nations' Priorities**

With regard to external resources, participants were clear that provincial and federal governments should provide adequate funding to First Nations based on the Nations' self-identified needs and priorities.

"We shouldn't have to beg every single day for help to fix what they broke, like the logging industry – the company comes in and just kills our forest and we as a nation are scrambling and begging for money to fix our streams. We shouldn't have to do that with police and justice. If they don't give us what we need it's not really reconciliation."

# Discussion Group #2: Reclamation of First Nations Jurisdiction over Justice Systems

There were forty-eight people in this group, including two facilitators, one interpreter, one technical support person, and one AFN representative. There was one federal government representative in attendance. The remaining forty-two (42) guests came from various First Nations and Indigenous organizations located across the country including British Columbia, Saskatchewan, Ontario, Québec and Nova Scotia.

Prior to contact with European settlers, First Nations exercised their jurisdiction over their own justice systems which were based upon their own legal traditions and laws. Within the Canadian justice system First Nations people are overrepresented to an unacceptable degree. Restorative justice programs are not addressing overrepresentation. The questions with respect to this topic focused on what reforms are needed to address overrepresentation of First Nations people in the justice system.

## **Discussion Questions:**

- 1. What reforms are needed are needed to address overrepresentation of First Nations people in the justice system?
- 2. How can self-determination and reclamation of justice allow First Nations to exert jurisdiction over justice?

## **Key Themes**

#### The Need for Transformational Change

Reforms can involve different types of changes: process change, systemic change, or transformational change. With regard to reforms to the justice system, the latter is what is required and the time for that is now. The question appears to imply that reforms are needed to the Canadian justice system to address overrepresentation, but there is a larger issue at stake, which how First Nations can develop their own systems that are fairer and more equitable, and representative of First Nations traditional worldviews regarding justice. Unfortunately, the existing justice system is resistant to change because that is the primary mechanism it has for exercising control over people. At the same time, the government is speaking about developing Nation to Nation relationships, which presents new opportunities for First Nations to design and operate their own justice systems. So, there is a pathway opening up for transformational change. "They – [the federal government] – are going to change back to a Nation-to-Nation relationship, as they talk about. So, we are coming back together again as Nations and Treaty areas, and they are going to have to take that and use it to make some significant transformation to the justice system as it now stands so that we have our own justice system. And it's not necessarily adversarial to the provincial or federal system, it's making space for ours so there's a coexistence of the systems. I think it's possible, we just have to make that role and within the constitution now, the recognition is in Section 35...so it's going to take a little bit of time, but I think we are on the right path. Transformation rather than systems and process change is what we need if we are serious about reform."

#### The Need to Address Social Conditions on First Nations

There is over-policing of First Nations people, and the rules of the system itself are stacked against them, but the material conditions in which people are living also influence who ends up in the justice system. Social conditions such as lack of adequate housing and overcrowding definitely play a role in overrepresentation.

"Social conditions within our communities – overcrowding, lack of adequate housing – do lead to certain situations in which individuals are more prone to being interacted with by police. This comes from the fact that learning those techniques and having those spaces to be able to calm yourself down, self-soothe, etc. are much more difficult when you have about 4-5 cousins around you."

# Mandated Training within the Canadian Justice System and Mandated Diversion to RestorativeJustice

Participants talked about both short and longer-term strategies that could be adopted to create positive change. In the shorter term, cultural training and training on reconciliation should be mandated within all aspects of the justice system, including policing, courts and corrections. In addition, it was suggested that courts need to be required to divert First Nations cases to Restorative Justice programs.

"Here in Manitoba, we have one of the highest Indigenous incarceration rates – its like 94%. I can only speak for here but there is no extra training for Indigenous reconciliation or on the culture, which is important especially for police in far northern communities who don't know the history, the intergenerational trauma and the culture. Focusing on officer training would help to bridge some of those connections."

#### Advocate for an Indigenous Deputy Attorney General in the Federal Department of Justice

Having a position in the federal Justice Department (Deputy Attorney General) for Indigenous legal and corrections services would help in the assertion of jurisdiction. This is a question that the Indigenous Law Society could weigh in on, as well as the Canadian Law Society, the current President of which is Indigenous.

#### Advocate for Clear Pathways to Funding

There are ongoing challenges trying to access adequate funding for Indigenous justice initiatives. Pathways to funding for Indigenous justice initiatives should be clear, transparent, and communicated to all First Nations. One participant spoke of years of effort put into relationship building for programs such as Indigenous community policing agreements, only to see key parties moving on to other positions and promised funding never materializing. The concern is that this is a common problem, and it is holding First Nations communities back from implementing their priority justice projects and programs. Not only that but adequate funding for community justice initiatives provides a huge return on investment when incarceration can cost upwards of \$150,000 annually for one individual.

"I'm always excited to hear about all of the Indigenous initiatives and projects moving forward. The only issue I have is what if all of the plans go by the wayside? We've worked 36 months on an Indigenous community policing agreement which passed all of the way up to the Commissioner and everyone who signed on to it at the RCMP level is retired now or has been shuffled around and so funding is at a standstill. There was a lot of work done and a lot of people weighing in... We get to this stage, and they turn their back on us, and I'm looking for a clear pathway to the funding. Is there somebody who can outline a clear path to the funding process? Because if it doesn't work for us then a lot of the work that the other Nations are doing is going to be at this spot. We need that funding question answered right up front."

#### Work with Provincial and Federal Governments to Build Capacity for Indigenous Justice

One participant said that federal initiatives are finally making space for First Nations to reclaim their jurisdictions and now it is up to the First Nations themselves to develop a unity of purpose and begin the process of developing that capacity to exert jurisdiction. The process of change is underway in a piecemeal fashion, with the overarching goal being a jurisdictional umbrella for First Nations.

Further to that, it was noted that a number of self-governance agreements, including those of the James Bay Cree, Yukon First Nations, and some First Nations in British Columbia have clauses that speak to the power of self-governing Nations, including over issues relating to policing and courts. Additionally, some First Nations living in Treaty Areas are focused on rebuilding treaty relationships in contrast to the legislative relationship. This will allow them to develop and operate a justice system, although it may be a blended or cross-jurisdictional system, depending on the needs and priorities of each community.

"Where I'm from in the Treaty areas in the prairies, we are in the process of rebuilding the treaty relationship rather than the legislative relationship and I really believe we are going to develop that capacity that has been taken away by legislative framework, and I think it will be a blended or cross-jurisdiction system because some communities would prefer not to deal with criminal code matters but would for more civil matters – land, family issues, program areas, etc. Already some First Nations have established their own jurisdiction over child and family services."

In British Columbia, the process is well underway, with the First Nations' Justice Council having signed a Justice Strategy with the government of British Columbia to reform the existing justice system and also to create space for the development, recognition and implementation of an Indigenous justice system. In 2019, the BC government unanimously passed the Declaration on the Rights of Indigenous Peoples Act (DRIPA), followed by a draft action plan released on June 11, 2021. This includes a commitment to make sure that the implementation of the First Nations' Justice Strategy is a priority for the government. The next step involves seeking similar kinds of commitments from Canada over the course of time, and last year Canada did join the First Nations' Justice Strategy, with Minister Lametti signing an MOU with the First Nations' Justice Council, announced earlier this year. Working towards self-determination in justice takes time, but the political climate has changed sufficiently so that achieving that goal is now a real possibility. "There is a story I often tell about jurisdictional issues and self-determination with respect to justice – I remember in the early years of the BC Treaty Process in 1993-1994, Canada was very clear with my Nation – they said flat out with respect to criminal law, don't even think about it, it doesn't belong to you, it never will, that's our jurisdiction and it's not going to be part of treaty law. That was their position, and we see how that has played out across the whole system, excluding Indigenous Peoples from being part of building the criminal justice system, so it's a complete distance for Canada to go from that basic position they have always held to starting to create some recognition that we need to have a multi-juridical approach to this with coordinated jurisdiction in the justice system. Obviously in BC we have an enormous amount of work to do but that's work that belongs to the Nations: Nations who are already implementing and doing work in different ways but also Nations who are thinking about the kind of work they need to be involved in over the upcoming years to start to build that capacity and to create that solid strong foundation for their own self-determination of justice."

#### Move Toward a National or Regional Plan for Indigenous Policing

Neither the training of non-Indigenous police officers nor the recruiting of more Indigenous officers within the mainstream justice system will solve the problem of overrepresentation. Eventually, non-Indigenous police services must be replaced by Indigenous police services to effectively address the issues of over-policing and disproportionate rates of incarceration of First Nations people. Currently, some larger communities can sustain their own police services, but that is not a viable option for smaller communities which lack that capacity. A national or regional Indigenous policing strategy would address those gaps and it needs to be led by First Nations themselves.

"It's going to take a removal of Indigenous policing from the non-Indigenous forces. Our Indigenous police shouldn't be drawn from the RCMP or provincial, we should be working towards national Indigenous policing, with a training program and academy, that we can draw from...it seems like a national strategy or a regional strategy would be the case. I think it has to be something that isn't just an extra training day for non-Indigenous police officers; it has to be from the ground up, for us, by us."

"This is such an important issue to figure out I just want to emphasize that we all have to work together and steer the ship, so we are not just responding to what Canada puts in front of us. We need to be in control and work collaboratively on a national strategy. Connections through forums like this are very important."

#### Focus on Land Back

The most basic and effective way to secure funding and address the conditions that continue to oppress and marginalize Indigenous people is land back. This will allow First Nations to take control of their own resources and improve their lives, materially and socially.

"If we have our own land bases, our own economic and material bases to work for ourselves we're not going to be searching for fast money. Fast money is a problem but that's because of the material conditions the colonial system has placed us in for 300 years. If you want to address that, land back is the answer, real land back, not just some sort of half measure."

# Discussion Group #3: First Nations Legal Traditions and the Canadian Criminal Justice System

There were forty-three people in attendance in this discussion group, including two facilitators, two interpreters and one technical support person. Participants came from various regions across the country including British Columbia, Alberta, Ontario, Akwesasne (which straddles Ontario, Québec and New York State), and Nova Scotia.

Increasingly, First Nations are looking to implement their own court systems as an alternative to the mainstream courts in Canada. In so doing, there will be a balance between the Canadian court systems, restorative justice principles, and customary laws and traditions. The questions with respect to this topic focused on the interplay between all three aspects.

## **Discussion Questions**

- 1. What is the relationship between the Canadian Justice System and First Nations Courts and how should Restorative Justice principles evolve within this context?
- 2. How can First Nations courts balance the internal and external challenges First Nations communities face and what resources are needed to support First Nations courts?

## Key Themes Build an Indigenous Justice System Based on Traditional Stories and Legends

It can be difficult for a First Nation to know where to start in developing a justice system. Where it has been done, reviewing traditional stories and legends can help to guide the process. For instance, what lessons can be found in those stories and legends that apply to justice? Many of them refer to responsibility: to individuals, the family, and the community. This in turn invites reflection on how to translate concepts of responsibility into law. Similarly, many First Nations traditions focus on the individual gifts that each person possesses, and that important concept needs to be incorporated into the justice system, especially when thinking about appropriate sanctions, and how those sanctions can serve to benefit the community and create better relationships.

"In those stories we see things like people have gifts but how do you translate that into a court law? We make sure, that when a sanction is coming down from the Justices, the Justices look at their gifts and use it for a positive thing and reinforce it. An example: a person will go and spray graffiti on a school wall and is caught. The judge might order the person, 'You know what? You're not going to clean that up right now. You have a gift as a good Lacrosse player. As a gift you are going to go into that school and teach those children your gift.' So, the gift is, he's teaching those kids how to play Lacrosse. And when he's doing that, he's going to walk by that school and he's going to see the graffiti but as well, he's going to start creating a relationship with these children who want to learn Lacrosse. Hopefully, we're going to see this person going, 'What have I done to these children? I've destroyed something they have to see every day.' He's creating a relationship with these children; he's going to start thinking about it, and hopefully, it's not going to happen again. That's restorative justice."

#### **Build First Nations' Justice Systems Incrementally**

The ideal way to start is with a law, but if a community is not yet at that point, they should develop a community justice program. This is not optimal because people have to plead guilty first and sometimes, they plead guilty just to get everything over with, but it is a starting point. Another option communities can consider if they cannot afford a fully developed court system, is setting up a small community justice system (a justice committee) and expand from there into a tribunal, and then into administrative bodies with a clearly defined mandate, to which council delegates authority over justice and provides oversight to ensure they are working within their mandate. This process can eventually evolve into a full-fledged court system.

#### Create Laws and Systems Based on Two-Eyed Seeing

First Nations need a "200%" education, meaning they have to be knowledgeable about their own values and traditions as well as about what the outside wants, because they do have to follow some aspects of the Western justice system.

"Create your laws and your systems so you have the values from the two cultures in place because it is two worldviews. If you have the [outside] criteria of what a judge is supposed to do, the criteria of what a Justice Act is supposed to do, also have criteria for how your decisionmakers used to make decisions, and what attributes you want to see in them. We do need to follow the outside because if we're going to get any traction on being recognized by the outside, we have to follow their system. But then, once we follow their system, it's the sanctions that we can really develop and have things like restorative justice, things like removal from the community, and the three-warning system."

#### Find Ways to Work Effectively with Non-Indigenous Justice Systems

All persons working in the provincial and federal justice systems need to be educated about Indigenous history, knowledge, values, and traditions, as well as about the local resources, culture, and history of the First Nations they interact with. Indigenous history, traditions and values are largely unrecognized, devalued and ignored within the Western justice systems. This type of training should be mandated. First, because this knowledge is generally lacking within the Western justice systems, but second, because those staff who do receive cultural training often leave their positions, impacting advancement and relationships that have been under development for years.

"There are many lawyers and judges who have no idea or try to familiarize themselves with who we are. Indigenous values, traditions and languages are not valued in the Canadian justice system. Education and public awareness need to happen on a broader level with meaningful understanding. All of these workers in the justice system we come into contact with must have knowledge of us. Indigenous Peoples, our diversity is our strength...we need to teach the true history and share traditional Indigenous knowledge with non-Indigenous folks. This is relationship building with our non-Indigenous relatives." With regard to the provision of cultural training specific to justice, it can be very effective to translate Indigenous justice concepts into terms that non-Indigenous people can relate to, and this helps with relationship building as well.

"All you have to do is make sure, when you are talking about banishment you relay it as, 'You have banishment too. It's called jail.' When you talk about justice you talk about wrongdoing; we talk about making it right. You have this in your ship; we have that in our canoe. And know that we are just using certain words differently than you – those different words are mine is banishment, yours is jail; mine is family rights—meaning extended family; yours is only the mother, father and children. And say we want to push the envelope a little and how are we going to do it. I'm sure no one is going to be upset that a grandmother has a right to see that child, that a grandmother or an auntie or an uncle has a right to take care of that child if the nuclear family can't. That's all you have to do: relay to them that we have the same thing, we're just calling it differently."

As a First Nation, or Nations begin the process of envisioning and establishing their own justice system, the development of a protocol can serve to define how the two parties – Indigenous and non-Indigenous – are going to work together. This should be one of the first products of the dialogue, because it will set up boundaries and subject areas for both groups. It could be a 10-year agreement, subject to review and revision after that time.

Finally, Indigenous justice systems using principles of restorative justice are highly effective in reducing incarceration rates. It is important to emphasize to government funders that these programs are much more cost efficient compared to jail or prison.

"Our court [Akwesasne] costs \$200,000 a year to run...And we tell the provinces or Canada, it costs you \$200,000 to incarcerate someone, if you would just give us that, it will keep them out of jail. So that's the idea behind it, if you want people out of jail let's do restorative justice principles, let's make sure that we can follow the process – and we have a process in place that meets the outside world and meets our world – then let's work together and keep these people from being incarcerated."

# Develop Structures and Processes for Healing/Release Plans, Focused on Building Indigenous Identity

It was suggested that First Nations create a community panel for people who are being released back into the community from prison. A community call out can be done to invite applicants, with defined criteria for selection to ensure the right people are in place. A structure also needs to be developed for the panel through a Terms of Reference or Resolution. The Council then gives a delegated authority to the panel, which outlines their roles and responsibilities (e.g., vetting parolees, doing welcoming ceremonies, and developing release plans with specific conditions, objectives, and activities).

This can be done in conjunction with Corrections Canada, such that each individual is mandated to appear before the community panel in order to secure an early release. Corrections Canada will allow First Nations to put a release plan together, with the First Nation telling them what the release conditions are. These conditions need to be specific and concrete.

"You tell them [Corrections Canada] what the conditions are and if it's getting your identity then put in things that will help them get their identity, and have concrete examples, not just find your name. Just saying find your name, the person could just take it from the air, but if they have to go to their Elders or their Clan mother or to their Chief or Faith Keeper, then it's really specific. And when they find that name, there's a responsibility of that name...of living up to that ceremonial name."

Healing plans should also focus on Indigenous identity. This is a key component of healing, and it keeps the person busy, thus reducing the chances of recidivism.

"When you have an identity, they teach us that you have to have your medicine name, your clothing, your language, your song, and your clan. And all those things, if you're trying to regain your identity, you're going to be very busy so you're not going to be able to get into trouble anymore because there's lots of things to do. If you have to relearn your language, if you have to make your clothing, you know the way ceremonies are going, then you're going to be busy, and this is part of the healing process. So, I encourage the person who is on parole, that you guide them towards their identity and they're going to be a better person because then they know who they are, and they can function out there in the community."

#### **Ensure Program Sustainability through Documentation**

For a community justice program to be sustainable, the key elements of the program – policies, procedures, and even unwritten rules – need to be documented. This could take the form of a manual and/or resource books, which can be shared with someone who is taking a new position in the program, as well as with existing staff.

#### Work Collaboratively with Other First Nations Communities and Community Organizations

Working collaboratively with other First Nations communities and community organizations is extremely valuable in terms of sharing knowledge and best practices. Regular meetings could be set up for this, in order to build relationships and help in the development and improvement of Indigenous justice programs.

GROUP	<b>KEY THEMES</b>
	The core elements of Indigenous identity – the land and water, language, origin stories, traditional rituals and ceremonies, Elders, traditional understandings of roles and responsibilities, and respectful relationships – are the source of Indigenous legal traditions and laws.
Group One: Revitalization of Indigenous Legal Traditions	First Nations are diverse, and each will need to identify their own priorities for a justice system based on their particular traditions.
What are the sources of First Nations legal traditions and laws? What resources are needed to reclaim Indigenous legal traditions and laws?	There are challenges to consider in reclaiming Indigenous legal traditions and laws, including the fact that tradition- al laws were sometimes very strict and as such may be too harsh and out of alignment with the Canadian legal system; that reclamation of traditional laws will have to consider the effects of intergenerational trauma; and that
	women's rights must be respected, and women should be actively engaged in the process of reclamation.
	The sources of legal traditions and laws also represent resources to guide the process of reclamation.
	Adequate funding must be made available for recla- mation, based on First Nations' priorities. This is a key requirement for reconciliation.

# Table 1: Key Themes by Discussion Group

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GROUP	KEY THEMES
Group Two: Reclamation of First Nations Jurisdiction over Justice Systems What reforms are needed are needed to address overrepresentation of First Nations people in the justice system? How can self-determination and reclamation of justice allow First Nations to exert jurisdiction over justice?	Transformational change is required, not simply process or systemic change. First Nations need their own justice systems that are representative of their traditional world- views.
	It is important to address the social conditions on First Nations which influence the issue of overrepresentation, such as lack of adequate housing and over-crowding.
	Cultural training at all levels within the Canadian justice system and automatic diversion to restorative justice for Indigenous people must be mandated.
	There should be a position created within the Federal Department of Justice for an Indigenous Deputy Attorney General for Indigenous legal and corrections services.
	Pathways to funding for Indigenous justice initiatives should be clear, transparent, and communicated to First Nations.
	First Nations need to seize emerging opportunities for developing capacity to exert jurisdiction by working with provincial and federal governments. Working towards self-determination in justice takes time, but the political climate has changed sufficiently so that achieving that goal is now a real possibility.
	Work collaboratively to develop a national or regional plans for Indigenous policing, so that both large and smaller communities have equitable access.
	Continue to work on land back, so that First Nations can control their own resources and reduce their reliance on the colonial system.



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GROUP	<b>KEY THEMES</b>
Group Three: First Nations Legal Tra- ditions and the Canadian Criminal Justice System What is the relationship between the Canadian Justice System and First Nations Courts and how should Restorative Justice principles evolve within this context? How can First Nations courts balance the inter- nal and external challenges First Nations com- munities face and what resources are needed to support First Nations courts?	Build an Indigenous Justice System based on traditional stories and legends; these contain valuable lessons that apply to justice.
	Develop First Nations' Justice Systems incrementally, starting with a community justice program, then a small justice committee which can transform into a tribunal, and then into an administrative body with a clearly defined mandate.
	Create laws and systems based on Two-Eyed Seeing, by gaining knowledge about both Indigenous values and traditions and Western criteria for justice.
	Find ways to work effectively with non-Indigenous justice systems, including advocating for mandated cultural train- ing for non-Indigenous personnel, translating Indigenous justice concepts into terms non-Indigenous people can re- late to, developing protocol agreements, and emphasizing the return on investment of restorative justice initiatives.
	Develop a defined structure (e.g., a community panel) and processes for effective healing/release plans that focus on building Indigenous identity.
	Ensure program sustainability through documentation of key program elements, e.g., by producing a manual or resource books.
	Work collaboratively with other First Nations and Commu- nity Organizations to share knowledge and best practices.

# CLOSING REMARKS AND TRADITIONAL SONG, DR. GWENDOLYN POINT, KNOWLEDGE KEEPER

What I've seen today is amazing and an important step. In our territory we travel by canoe, and I see this legal system starting to move in a good way, together. Words are so important and the words that were shared today are really going to guide the work for the future. It's like filling the canoe with the resources – both people and the knowledge – to move forward. It doesn't mean it's going to be easy, and it doesn't mean we have all the answers. What's important is that First Nations people are standing up and taking their rightful place throughout our territories to being able to take care of our families and our communities in a good way. And one of the leaders said as well, "we can't cherry pick, we can't pick and choose," and I think when it comes to our traditions, it's not rigid, under no uncertain terms. Rather, our people looked after one another and there were traditions if we didn't behave, and it was in our stories, all our stories.

I say this because what was said to me one time was you can't go back to the way you were, you don't have your longhouse, and it hurt my feelings and I didn't have an answer. But when I shared that with my grandmother she said, "They don't know, they don't understand. Our people survived the flood, they survived the Ice Age, and they survived the coming of the non-Native people. We're not afraid of change. We're not afraid to adapt." She said her grandmother was the first one to trade her basket for an iron pot. We knew how to use technology. We knew how to forge forward, and it was always to benefit our families and communities. So, I'm excited and I'd like to end with this, our traveling song. It was one of the only that was shared with our people and kept on the reel to reel. So, everyone is at a different place and I know coming together over the last two days you brought the hearts and the minds of our people, that everyone carries part of this answer. My hands go up to you and the travelling song is a way to bless each one of you, to keep your hearts and mind strong and your families and communities safe.

#### **Appendix: Resources**

The following resources were shared by participants in the discussion groups' chat.

https://www.newswire.ca/news-releases/canadian-human-rights-tribunal-decision-canada-has-been-discriminatory-in-its-funding-of-indigenous-policing-services-888903636. html

<u>https://www.cca-reports.ca/reports/policing-in-indigenous-communities/</u>





