

RE-INVENTING CRIMINAL JUSTICE:

THE FIFTEENTH NATIONAL SYMPOSIUM

FINAL REPORT

River Cree Resort

Enoch, AB

May 26-27, 2023

Re-Inventing Criminal Justice: The Fifteenth National Symposium

“Healing, Wellness and Justice”

Introduction

The Fifteenth National Criminal Justice Symposium gathered on May 26-27, 2023, on Enoch Cree Nation territory, by invitation of Chief Cody Thomas and Council of Enoch Cree Nation. Enoch Cree Nation is located on Treaty 6 territory, a traditional gathering place.

The Symposium, with the generous support of the Canadian Association of Chiefs of Police and the Department of Justice Canada, is a regular forum for justice leaders to share candid non-attributed perspectives and solutions regarding the creation of a responsive, accessible, and accountable criminal justice system. The Symposium topic – “Healing, Wellness and Justice “ – drew approximately 100 justice leaders together from across Canada including criminal justice practitioners and professionals, Indigenous leaders and staff with Indigenous-serving organizations, non-profit executives, advocates, researchers, and other experts.

As in previous years, the Symposium was chaired by the Honourable Judge Raymond Wyant of the Manitoba Provincial Court and facilitated by Harold Tarbell.

Development of the 2023 Symposium

The theme of the Fifteenth Symposium, “Healing, Wellness and Justice,” was intended to continue discussions that began at the Eleventh Symposium in Winnipeg in January 2019 under the theme of “Decolonizing Criminal Justice.”

The 2019 event was a success in many ways. It featured a robust discussion on the dilemma for Indigenous leaders and experts of advancing reform of the colonial system of justice vs. directing energy towards self-determination. Both participants and organizers looked forward to an immediate follow-up event, with an agenda of primarily Indigenous design and featuring the voices and experiences of Indigenous women more centrally. However, the arrival of the pandemic delayed the Symposium’s return to a focus on Indigenous justice. An in-person event was considered necessary for this theme, and thus required relaxation of pandemic travel and gathering restrictions. In addition, it became clear that building an agenda that would appeal to both Indigenous and non-Indigenous attendees required more time to be done in a good way.

The organizing committee chose 2023 as the right time to return to this theme. With the kind assistance of the Native Counselling Association of Alberta and following the offer of protocol, Enoch Cree Nation graciously invited the Symposium organizers to hold the Symposium at the River Cree Hotel on May 26-27, 2023.

Building the agenda for the 2023 Symposium began in June 2021, with the formation of an Indigenous advisory group to guide the Symposium organizing committee (see Appendix I). A small number of non-Indigenous subject matter experts were also invited to participate in the

advisory group. Over 18 months, the advisory group considered many aspects of the Symposium's design, including objectives of the event, key elements of the agenda, the method of discussion, choice of speakers, and cultural components, and together developed and recommended an overall plan for the event which was accepted and implemented by the organizing committee.

How the Symposium evolved

The discussion was intended from the organizers' earliest discussions to feature an agenda of Indigenous design, specifically one designed by and featuring the voices and perspectives of Indigenous women. This choice was to reflect the fact that Indigenous women at the community level – despite having borne the brunt of systemic racism within colonial justice for generations – are so often at the forefront of healing people and families, challenging colonial practices, bringing vision and energy to the work of self-determination, and keeping culture, language and knowledge of traditional approaches alive.

The agenda and speakers reflected this focus, and the Symposium's dialogue then built on this platform. There were robust and moving discussions of the centrality and transformative power of culture and ceremony in the journey towards community and individual wellness; of the challenge of dismantling systemic racism; and of Indigenous self-determination in justice. In all of these discussions there was acknowledgement of the need not simply for allies along this path but for *accomplices* amongst non-Indigenous leaders and subject-matter experts.

The Symposium's discussions are summarized in the next section.

Symposium sessions: Day One

Pipe ceremony

To begin the Symposium in a good way, participants gathered at sunrise on Day One for a pipe ceremony led by Elder Bob Cardinal of Enoch Cree Nation. The Elders were joined by Grand Chief Wilton Littlechild. Following protocol, Elder Cardinal explained the significance of the pipe ceremony and together with Grand Chief Littlechild reflected on its connection to the discussions at the Symposium. The intent of the pipe ceremony was to pray that participants in the Symposium would arrive open to learning during the event, that the messages of the speakers would be heard and felt, and that good would come out of the Symposium. The pipes were passed four times around the circle.

Opening

The Symposium was opened by the Honourable Raymond Wyant, Chair of the organizing committee, who introduced Harold Tarbell as the facilitator. Participants then heard opening remarks from Grand Chief Littlechild and Elder Cardinal. Grand Chief Littlechild reflected on the importance of four key factors for the improvement of justice for Indigenous peoples: the spirituality of leaders, the prominence of women in justice work, the need to build on our strengths, and the need for unity. He suggested three areas of focus for the discussions to come: implementation of the UN Declaration on the Rights of Indigenous Peoples and the calls

to action of the Truth and Reconciliation Commission, respect for treaties and sacred agreements, and the need to act, or as he termed it, 'reconcili-action'.

Session 1: Healing, wellness, and justice: bridging the cultural divide

Participants heard two presentations by Marian Jacko and Tony Delaney on finding balance in the relationship between justice, healing, and wellness. Both speakers considered connections between the ideas of justice, healing and wellness in Indigenous approaches to wrongdoing and community response and discussed both community and provincial level approaches to bring Indigenous approaches to the centre. A second panel, comprised of Robyn Scott, Rupert Arcand, and the Honourable Melissa Gillespie, discussed the practical changes needed in the mainstream criminal system in order to have healing and wellness become more central, both to the court process and to court outcomes.

Following these presentations, participants in small, diverse groups considered the following questions:

1. What are some important ways in which Indigenous concepts of justice differ from common-law or civil-law approaches?
2. What do we mean when we talk about healing and wellness in the context of justice? How do/can/should these paths work together?
3. "Restoring balance" has been a call since the RCAP report and before. What is the imbalance in the current system?

Session 2: Systemic racism and exclusion

The first afternoon session addressed the *systemic* aspect of systemic racism and exclusion, considering what is required to overcome systemic racism in criminal justice, and whether meaningful change is a possibility within the colonial system. Participants heard presentations on these issues from Dr. Beverly Jacobs and from Eleanore Sunchild, then in small groups considered these same issues using a set of questions as an organizing framework:

1. Can you share an example of systemic racism that you see in action in your own work environment or that you are otherwise able to observe?
2. Sometimes systemic issues are difficult to see. Can you identify a source of systemic racism which may not be commonly understood or recognized?
3. What is an example of a behaviour, structure or process which if altered might serve to reduce racism within justice systems? How could this change be made?

Session 3: Culture as a catalyst

Day One concluded with a session exploring the role culture can play in reorienting and re-grounding someone's life, and the ways in which the power of culture can be applied in self-determined and colonial legal settings. Participants heard remarks from Russell Crowe, Kelly Bird-Naytowhow and Elder Wil Campbell, each of whom was generous with his own story of the transformative power of culture. This was a powerful and emotional discussion, and smudging was available for all participants during this session.

Reception

At an evening reception on Day One, participants heard remarks from Senator Patti LaBoucane-Benson on 'Healing, Wellness and Restoring Balance.'

Symposium sessions: Day Two

Day Two began with participants attending a second pipe ceremony.

Following the ceremony, a summary of the previous day's discussion was provided to participants for their reference. As reproduced from that document, the themes raised repeatedly in plenary on Day One were as follows:

- **Community wellbeing and consensus is central to many Indigenous conceptions of justice, while colonial or European justice traditions tend towards individual and adversarial frameworks.**

The traditions diverge over the role of community members in justice outcomes. In Indigenous traditions the community is commonly central to the justice process, with the community directly involved in justice outcomes as part of the restoration of the relationship between the person and the community. In the colonial system the community is often more peripheral to decisions: individual consequences and accountability take precedence over relationships and reintegration.

- **The imbalance in the system shows up in the lack of resources for healing, cultural connection and reintegration, and the lack of openness to such approaches.**

The criminal justice system falls short in applying resources to holistic supports and cultural reconnection. The system has many gatekeepers who guard their mandates carefully, when a two-way learning process is actually required. Indigenous responses are kept at arm's length or otherwise overpowered, and in the case of Gladue principles are normally delayed in their application until late in the process, after conviction.

- **Systemic racism appears in many different forms, including but not limited to rules, standard procedures, language and symbols, geography and buildings, and funding.** Rules commonly discriminate against Indigenous defendants, such as fixed address or sureties bail requirements where these apply. Standard procedures commonly fail to

account for the circumstances of Indigenous people. The cultural features and structures of justice buildings and professions may be alienating for Indigenous people. The failure to provide adequate funding may limit or undermine the exercise of rights, such as the resource-driven delegation of Gladue reporting to probation officers who are also given authority over risk assessment.

- **Systemic racism often goes unrecognized in policy and operations.**

The use of public community spaces for justice purposes can transform a positive space into a setting associated with punishment and incarceration. Separating out “Indigenous issues” in government communications may marginalize those issues by not including them as core business. Inherited training and legal education content may reinforce colonial narratives and historical accounts, marginalizing or erasing Indigenous experience. An emphasis on blind justice may ignore the different starting points brought about through colonialism and may also be based on resistance to recognizing racism as an ongoing contemporary issue.

- **Education to combat systemic racism and promote understanding and empathy must be redesigned.**

Individual online courses are ineffective compared to in-person training. Training should include challenges to colonial history and myths and be aimed at greater understanding of Indigenous communities and Indigenous justice traditions, in particular the importance of restorative justice. The terms, meaning, historical importance and current application of treaties should feature in justice education. Training and conference curricula should be of Indigenous design and leadership.

[Session 4: Roundtable on ‘self-determination vs reinventing criminal justice’](#)

This session featured a roundtable ‘fireside chat’ in which panelists considered how self-determination and reform of the colonial system might co-exist in practice as programs of work. Participants heard comments on this topic from Paula Marshall, Chief Justice Derek Redman, Boyd Peters and Len Busch. Following the roundtable, a question period allowed participants to engage with ideas raised by the panel.

[Session 5: Recommendations for action](#)

In the final session, the small groups gathered once more to consider the recommendations they felt should be brought forward, based on the discussion over the past two days and assisted by the overnight summary document.

[Symposium recommendations](#)

The following recommendations are drawn from participants’ discussion of recommendations at the conclusion of the Fifteenth Symposium and throughout the two days of dialogue. Each recommendation reflects commonly expressed ideas on a particular theme. As no voting system was used with participants, we cannot claim unanimity in favour of each

recommendation. However, all participants have had the opportunity to review these recommendations in draft, and request edits for accuracy, prior to the publication of this report.

Recommendations regarding healing, wellness and justice

1. Canadian federal, provincial and territorial justice systems should consider and embrace a shift of approach towards healing and wellness outcomes.

The mainstream justice system remains culturally distant from Indigenous concepts of justice. Healing and wellness (as objectives, and as methods) remain undervalued and under-resourced objectives within Canadian criminal justice processes and institutions. Where approaches such as healing lodges do exist, they are few in number, come with many barriers to access and often require a guilty plea. Reform of the Canadian criminal justice system should prioritize healing, wellness and community accountability over punishment, question Western assumptions about justice, and learn from the Indigenous focus on balance.

Where Indigenous societies may reward a person's honesty and acceptance of accountability for wrongdoing before the community, the colonial system incentivizes silence, delay and denial as strategies to avoid punishment. The formal, document-heavy, procedural and individualistic world of Canadian justice meshes poorly with the power of circles, stories, ceremony and community engagement in Indigenous tradition. In this light, a thorough and critical examination of the purpose, principles, objectives and foundational assumptions of Canada's criminal justice system is long overdue, with one goal of this re-examination being to determine the proper place of healing and wellness in the principles, approaches and processes of justice, whenever and wherever Indigenous people are before the courts.

2. Canadian federal, provincial and territorial justice systems should support and resource the introduction of Indigenous healing and wellness-focused approaches far earlier in criminal process.

Recognizing the need to develop a healing and wellness focus at the centre of justice institutions, Canada and the provinces should reach well-funded agreements with Indigenous communities creating robust community institutions with engagement taking place far earlier in the criminal justice process and to facilitate diversion of Indigenous persons wherever possible.

A generation after sentencing reforms intended to reduce Indigenous overincarceration, Indigenous people continue to be jailed at a rate nine times that of their proportion of the general population. A profound commitment to diversion is required, with processes and resources aligned to achieve success. This may include community justice committees to involve the community at the time of arrest and identify the possibility of diversion before charges are laid; cultural interventions at an early stage to bring clarity and stability; liaison

positions within policing to learn of arrests within the community in a timely manner; establishment of the right to have the support of an Elder as well as the right to counsel; and the provision of support throughout the criminal justice process, not simply upon pleading guilty.

While there are shared Indigenous justice traditions, it cannot be forgotten that Indigenous communities are not homogenous in nature. Any reforms should reflect this rich diversity in order to meet the unique needs of Indigenous communities.

Recommendations regarding Indigenous self-determination in justice

3. [Canada and the provinces should fund and empower Indigenous-led justice models over paternalistic colonial structures wherever there is an opportunity to do so](#)
Where sought and where opportunities arise, Indigenous-led initiatives in justice self-determination, redevelopment and renewal should be prioritized over models which see community-level funding channeled and controlled through colonial ministry mandates and programming, with funding redirected to support this shift.

Indigenous nations are best placed to bring about the restoration and assertion of their own laws and legal forms, best placed to assess the priorities and sequence of the work to be done and have the inherent right to determine how the work should be done. The place of 'justice' within more holistic Indigenous concepts of society contrasts with segmented mandates of colonial departments and ministries. Empowerment of Indigenous community justice systems is more likely to endure when those systems are genuinely Indigenous-led.

Similarly, in recognition of the significant urban Indigenous population much of which has been created through colonial displacement and damage to Indigenous communities, it is important to ensure that Indigenous-led justice approaches in larger communities are both supported and empowered to effect change. Many people in the urban population are removed or distanced from community and culture and are unlikely to benefit directly from nation-to-nation agreements. There is an obligation on the part of Canada and the provinces to support and empower Indigenous-led capacity to support, heal and represent this urban population, including reconnection with community if wished. Fulfilling this obligation is a vital parallel step to nation-to-nation efforts.

4. [Canada and the provinces should stabilize long-term funding for self-determined justice models and set these approaches up to succeed](#)
Canada and the provinces, through strategies developed in partnership with Indigenous nations, urban communities and leadership, should ensure that appropriate and on-going resources are available to facilitate Indigenous nations' and communities' capacity to deliver justice and related social programming, and to develop, restore and renew self-determined justice forms and justice strategies. Undoing the impacts of colonialism and

developing robust community-based and culturally-sound approaches to justice require sustained, stable funding. The responsibility to enable and support self-determination includes a requirement to ensure that such efforts are funded to a level sufficient to achieve their objectives. Short-term, pilot or time-limited programs too often require repeated applications, provide little of the additional infrastructure needed to scale up gains in one area, and are often constrained by the preferences and assumptions of ministry staff and mandates.

Beyond individual programs, *capacity* to develop or restore Indigenous approaches to justice independent of colonial government priorities, and to speak with a collective voice, is required. Sustained funding should also allow the development of increased Indigenous infrastructure to underpin autonomy and change management, such as human resources capacity, strategy and performance functions, and the capacity to engage with funders on a variety of levels of subject matter expertise.

Similarly, the place of healing, wellness and holism in Indigenous approaches to justice requires a broad rather than narrow definition of what constitutes ‘justice’ funding. The social determinants of crime – such as the connections between children in care, parental incarceration, and poverty with subsequent justice involvement – are well-known. A coherent Indigenous justice strategy on the part of any level of government or as provided on a nation-to-nation basis must include funding for social supports and upstream investments in healthy, non-traumatised and culturally sound childhood. Finally, the importance of culture, and the support of Elders as the keepers of culture and language, cannot be overstated and must be meaningfully resourced.

Recommendations regarding reform of the colonial justice system

5. Canadian federal, provincial and territorial justice systems should honour international commitments and inquiry recommendations in full

Canada, the provinces and territories should honour existing international and nation-to-nation rights and responsibilities applicable to criminal justice and should implement outstanding recommendations of previous commissions of inquiry and other relevant reports.

Many of the actions which would improve Indigenous peoples’ experience of justice have been recommended (or agreed to) multiple times over several decades. Many participants noted the incomplete implementation of Canada’s obligations under international instruments such as UNDRIP and under nation-to-nation treaties. The slow pace of implementation of recommendations of the Truth and Reconciliation Commission (TRC), the Commission of Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG), the *Justice on Trial* inquiry and report in Alberta, the Manitoba Aboriginal Justice Inquiry (AJI), and the Royal Commission on Aboriginal Peoples (RCAP) as they relate to the Canadian system of justice was a commonly expressed source of frustration. The restoration of

balance sought by many speakers was a key theme of RCAP's recommendations a generation ago. While the remainder of the recommendations of the Symposium are highly applicable today, there is much to be done which has already been identified.

6. Canadian federal, provincial and territorial justice systems should work to dismantle systemic racism by placing clear, formal expectations on justice institutions

Systemic racism within the Canadian criminal justice system, including provincial and territorial systems, should be explicitly recognized and combated by the leadership of all independent components of the system with an assertive strategy, one which acknowledges the power and effect of institutions as opposed to individual actions and recognizes and rewards institutional reorientation towards ally-ship.

Systemic racism is commonly (and wrongly) interpreted as meaning individual acts of racism on the part of individuals working within that system, contributing to leaders' reluctance to acknowledge its existence for fear of alienating staff. In fact, systemic racism refers to system structures which serve to reproduce racist and/or colonial outcomes, in many cases *despite* the efforts of individuals within the system. Canadian justice institutions can replicate colonial assumptions and suppress Indigenous approaches and culture in ways which are often difficult for non-Indigenous officeholders to see. Indigenous approaches to justice are commonly marginalized by placing them as secondary approaches which require a plea or finding of guilt within the colonial construct to be activated, and thus paradoxically serving to increase overrepresentation.

While it remains important to support efforts to address systemic racism through clear and unambiguous statements on the part of leadership, and through commitment to recruit and advance Indigenous candidates for positions of leadership and influence, a focus on the actions of individuals is insufficient. Dismantling systemic racism requires formal expectations of demonstrated ally-ship in institutional principles and behaviour, and of organizational transparency and cooperation in identifying and addressing system-generated racist outcomes. Moreover, in addressing existing inequities in the criminal justice system we must recognize these are a function of broader systemic anti-Indigenous racism; this requires holistic consideration of the social determinants leading to Indigenous people's engagement within the criminal justice system in the first instance.

7. Canadian federal, provincial and territorial justice systems should use unambiguous language to educate on the truth of the criminal justice system's colonial role, and the system's obligations regarding reconciliation and self-determination

Education on the justice system's historical and current role in perpetuating systemic racism must be a central pillar of efforts at decolonization, truth and reconciliation within the Canadian justice system and within communities still feeling the traumatic effects of colonization.

The central role of the justice system in either enabling or failing to limit many impacts of colonialism on Indigenous peoples – such as cultural suppression, cultural genocide, racial abuse, overincarceration, dispossession and dislocation, child removal, alienation from community, denial of human rights, or physical and sexual violence – too often remains unacknowledged or presented in a solely historical context. This gap impedes efforts at genuine reconciliation on the part of Canadian justice institutions. The enduring trauma of these events can also impede Indigenous efforts to engage assertively in self-determination. Greater education and awareness in consultation with Indigenous communities is required to speed recognition of the extent of trauma and the frequency of re-traumatization, and to further empower, normalize and support self-determination as a restoration of balance.

Such education should also identify the varying ways key terms are employed in discussions of Indigenous justice, such as references to *truth and reconciliation*, *nation-to-nation*, and *inherent rights*, and should seek to create common understandings and definitions. Differences in usage and meaning within Indigenous and non-Indigenous dialogues creates gaps in understanding and implementation with respect to agreements, reforms, and transfers of authority and power.

Closing and talking circle

The Symposium was formally closed by The Honourable Raymond Wyant and with a prayer from Elder Campbell.

Many participants remained following the discussions for a talking circle over the early afternoon, led by Elder Campbell and by Elaina Myles. The talking circle gave an opportunity to all attending to discuss their feelings about the Symposium, to express appreciation for the companionship and wisdom of other attendees during the two days, to share what they had learned, and to ask questions of each other.

Future events

The Sixteenth Symposium will take place in January 2025. Communication regarding location and topic will follow in due course.

Appreciation

The organizers are grateful to Chief Cody Thomas of Enoch Cree Nation for extending the invitation for the Symposium to take place on Enoch Cree Nation lands, and to Dr. Allen Benson for facilitating the introduction to Chief Thomas and Council; to Cheri Jubinville-Greaney for cultural support and guidance; to Marlene Orr of Native Counselling Services of Alberta for her kind and generous work with the committee and for support of important cultural aspects of the program; to Grand Chief Wilton Littlechild, Elder Ben Cardinal, Elder Wil Campbell and Elaina Myles for their cultural guidance of participants and for ensuring the Symposium began and ended in a good way; to members of the advisory committee who were generous with their time and advice over two years; and to the Canadian Association of Chiefs of Police and the Department of Justice Canada for their generous ongoing support of the Symposium.

Appendix 1: Organizing and advisory committees

Advisory committee (2021/22 and 2022/23)

Professor Tracey Lindberg, University of Victoria
Professor Patricia Barkaskas, University of Victoria
Professor Val Napoleon, University of Victoria
Professor Aimée Craft, University of Ottawa
Professor Beverley Jacobs, University of Windsor
Eleanore Sunchild, Sunchild Law
Professor Naiomi Metallic, Dalhousie University
Karen Green, Department of Justice Canada
Marlene Orr, Native Counselling Services of Alberta
Cedric Gray-Lehoux, First Nations of Québec-Labrador Youth Network
Deputy Chief Honey Dwyer, Saint John Police Force
Jonathan Rudin, Aboriginal Legal Services
Danny Morton, Ontario Ministry of Attorney General
Honourable Chief Justice Derek Redman, Alberta Court of Justice
Brian Sarwer-Foner, Indigenous Services Canada
Harold Tarbell, Harold Tarbell Facilitation

Organizing committee

Honourable Raymond Wyant, Provincial Court of Manitoba (chair)
Honourable Chief Judge Melissa Gillespie, Provincial Court of British Columbia
Honourable Chief Justice Derek Redman, Alberta Court of Justice
Catherine Rudick, Department of Justice Canada
Michele Jules, Manitoba Prosecution Service
William Trudell, Simcoe Chambers
Jonathan Rudin, Aboriginal Legal Services
Howard Sapers
Susan Lightstone
Didier Deramond, Association des directeurs de police du Québec
Charlotte Fraser, Department of Justice Canada
Veronica Lahti, Canadian Association of Chiefs of Police
Danny Morton, Ontario Ministry of Attorney General
Taylor Piovesan, Canadian Association of Chiefs of Police
Brian Sarwer-Foner, Indigenous Services Canada
Kelly MacKay, Department of Justice Canada
Harold Tarbell, Harold Tarbell Facilitation
Allan Castle, International Centre for Criminal Law Reform and Criminal Justice Policy