



3RD ANNUAL BC FIRST NATIONS JUSTICE FORUM

# WHAT WE HEARD REPORT



BC FIRST NATIONS  
JUSTICE COUNCIL

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## Executive Summary

The inaugural BC First Nations Justice Forum was held by the BC First Nations Justice Council (BCFNJC or Council) and the Province in 2019 to inform the creation of the BC First Nations Justice Strategy (the Strategy). Since the Strategy's endorsement by First Nations leadership and the provincial government in 2020, BCFNJC has been working closely with BC First Nations to advance the Strategy's many distinct, yet interdependent strategies that impact all areas of the justice system. BCFNJC has made tremendous progress advancing this work and fulfilling its mandate to 200+ BC First Nations. However, with BCFNJC's large and expanding scope of work involving many justice partners, it is crucial that First Nations and Indigenous communities have a way of tracking and keeping updated on the Strategy's progress and areas where work has stalled or progressed significantly.

Strategy 16 of the Strategy provides the solution, requiring the establishment of formal mechanisms to track progress and share information on the Strategy's implementation, including its impact on the two tracks of change being advanced: Track 1, reforming the Justice system to be safer and more responsive to Indigenous peoples, and Track 2, restoration of Indigenous justice systems, legal traditions and structures. Strategy 16, Line of Action A, specifically mandated Council, in partnership with the Province, to establish an annual Justice Summit dedicated to Indigenous justice issues, inclusive of a broad cross-section of First Nations leadership, with a focus on evaluating and assessing progress on the Strategy.

The annual BC First Nations Justice Forum (Forum) is intended to update First Nations on the implementation progress of the Strategy, while additionally providing space for Rightsholders and justice partners to caucus and provide guidance and direction to the BCFNJC on how best to advance and respond to the many timely initiatives Council is undertaking in accordance with its mandate. Fulfilling Strategy 16A, the Forum is a space to share knowledge, gather insights, and make connections that support the continued implementation of the Strategy.

The 3rd Annual Forum was held April 8, 9, and 10, 2024, in the unceded territories of the Musqueam, Squamish and Tsleil-Waututh Nations (Vancouver, British Columbia). Representative leadership from each of the 204 BC First Nation communities were invited to attend, along with justice partners, collaborators, and representatives working with Indigenous people, and in policing and correctional services. The theme of the Forum was "collaboration", which showcased BCFNJC's focus on working with accomplices to move the work forward.

Integral to the theme of collaboration was creating a supportive environment, grounded in traditions, culture and healing, where everyone could contribute to the work of justice and reconciliation. All Forum participants had access to Wellness Rooms where they could be enveloped in the support and care of Elders and receive smudging and cedar brushing.

BCFNJC Chief Executive Officer (CEO) Amanda Carling, the MC of the three-day forum, opened the event, Carleen Thomas, Elder and Knowledge Keeper offered a prayer, and Councillor Sxwixwtn Wilson Williams, Squamish Nation, welcomed participants to the unceded territories of the Squamish, Musqueam, and Tsleil-Waututh peoples. This was followed by opening remarks from BCFNJC members Kory Wilson (Puglid), Chair, Boyd Peters (Xoyet thet), Vice-Chair, and Directors Clifford White (Nees Ma'Outa), Andrea Hilland (Asits'amniyaak), Lydia Hwitsum (Xtli'li'ye), and Dr. Judith Sayers (Cloy-e-iis). Members of the First Nations Leadership Council Hugh Braker, Chief Don Tom, Regional Chief Terry Teegee, and Grand Chief Stewart Phillip provided opening remarks. Throughout the Forum, keynote and panel presentations were provided, followed by breakout circles focused on the same topic to encourage dialogue and sharing. Day 1 focused on the Strategy's Track 1 work, while Day 2 was dedicated on Track 2 work. The Forum included a mix of plenary and facilitated break-out dialogue circles and workshops on topics integral to the Strategy, including the Indigenous Women's Justice Plan; policing, diversion and legal services delivery; the Strategy 2 Guidebook; revitalizing Indigenous law; corrections and moving forward on Strategy 13 and 14; First Nations courts and Strategy 12; data for sustainability and Strategy 16B; and First Nations law in child protection.

The facilitated break-out sessions were dialogue-based, posed key questions for discussions, and utilized small-group formats. Key themes that emerged from the Forum, along with others identified during the breakout sessions,

inform key aspects of BCFNJC's work and support the advancement and implementation of the Strategy.



# Day One – April 8, 2024

## TERRITORY WELCOME AND OPENING PRAYER

### **Carleen Thomas, Elder and Knowledge Keeper, Tsleil-Waututh Nation**

Amanda Carling, Forum MC, welcomed Elder and Knowledge Keeper Carleen Thomas to open the 3rd Annual BC First Nations Justice Forum (Forum) in a good way.

Carleen Thomas shared her family background and provided an Opening Prayer, asking Creator for peace and for a blanket of protection for the vulnerable and those who were struggling.





### **Councillor Sxwixwtn Wilson Williams, Squamish Nation**

Councillor Williams welcomed all in attendance to the territory of the Squamish, Musqueam, and Tsleil-Waututh peoples, noting it was an honour to be witness to the work being done and to be amongst the dialogue and the collaborative discussions over the coming days.

The Coast Salish people referred to Stanley Park as “skwtsa7s” or “Dead Man’s Island”. Much sacred work occurred there; people were laid to rest in the park’s trees in a traditional burial practice. BC First Nations were in a time of revitalization and empowerment with knowing who they are and where they came from, all of which would determine where they would go.

The statistics are grim; Indigenous adults account for 28% of those incarcerated in BC; Indigenous women make up more than half of the federal prison population and represent 70% of placements in maximum security institutions. During the past decade, the representation of incarcerated Indigenous women increased by as much as 90%. Indigenous women represent the fastest growing population of incarcerated individuals despite Indigenous people making up just 4.1% of the population. This must change.

The power to change the over-representation of Indigenous people in the criminal justice system is within all First Nations; together, they can transform the justice system in BC to one that is equitable to all. The BCFNJC, the leaders, the warriors, and the ground-level workers have the ability to make the change. Let’s make this collaboration over the next few days meaningful. Change is occurring in BC, and it is time for all First Nations voices to be united and echo loud enough for future generations to come.

# WELCOME AND FORUM OVERVIEW

## **Amanda Carling, Forum MC**

Amanda introduced Michelle Buchholz, Visual Practitioner, Cassyex Consulting, who was present to serve as a witness and to visually capture the discussions and events of the Forum using an anti-racist and trauma-informed approach. The visual images would be shared with participants at the end of each day.

Amanda acknowledged the Law Foundation of BC, funders of the Forum, the PACE Group, BCFNJC staff, and the many others who supported the development of the Forum, both behind the scenes and on-site. Participants were made aware of the healing and traditional supports in the Wellness Room available throughout the three-day Forum.

The first BCFNJC Forum was held in 2019 and helped inform the finalization of the BC First Nation Justice Strategy. During the 2023 Forum, BCFNJC Chair Kory Wilson called for accomplices rather than allies. Accomplices are those who roll up their sleeves and work alongside First Nations and Indigenous communities.

The theme of the 3rd Annual Forum was “collaboration.” We are deepening the understanding that while more funding is needed to implement the Strategy, no amount of funding would enable staff to do all the work required – collaborators are needed.

The BCFNJC has seen significant growth in recent years, with staff increasing from 30 to 130 in two years, along with the establishment of the BCFNJC Elders and Knowledge Keepers Council, whose five members held their first meeting the previous day. Where once the BCFNJC had only a small head office, there are now nine Indigenous Justice Centres (IJC's) and a significantly larger head office on Westbank First Nation land. Our 130 staff bring their wisdom, passion, intelligence, and drive to the work each day.

Amanda introduced the two newest members of the Council, Andrea Hilland and Clifford White. The members of the Elders and Knowledge Keepers Council, as well as the BCFNJC Steering Committees, would be honored at a ceremony on the evening of Day 2 of the Forum. The Strategy cannot be implemented to its full extent without collaboration. By their mere presence, the 467 individuals in attendance at the Forum were accomplices and collaborators.

In reference to the Forum Agenda, Amanda informed participants that Day 1 would focus on Track 1 of the Strategy, fixing the current colonial system and making the experience of Indigenous people less painful and racist while they move through it. Day 2 would focus on Track 2, and the revitalization of Indigenous laws and justice systems. The Forum would close on Day 3 with workshops. The agenda was structured to begin with a plenary session to allow for a general update on the progress of the BC First Nations Justice Strategy, with focused breakout sessions scheduled later in the day to allow smaller groups to engage in fulsome discussions and provide feedback on identified themes.

Referring to the startling statistics Councillor Williams shared, Indigenous people know the people who formed these statistics, and the Council's goal is to address those statistics and the crisis Indigenous face within the colonial justice system. Indigenous people did not create the system, but they are the ones who can change it, taking their good intentions and turning them into actions. Every community member can take their power and use it to make change. This requires acknowledging the status quo, removing excuses, pushing harder, and making the Ancestors proud.





## OPENING REMARKS AND STRATEGY OVERVIEW

### **Kory Wilson (Puglid), Chair, BCFNJC**

Kory Wilson was grateful to see the large turnout. Over 60% of participants were from community, and this was key, as making impactful change requires everyone to be involved.

The BCFNJC was established from the vision of First Nations leadership in BC to address the gross overrepresentation of Indigenous people in the criminal justice system. The Council's mandate was provided by the 200+ First Nations in BC. The Justice Strategy, passed March 6, 2020, includes 25 strategies and 43 lines of action. The intention of the Strategy is to make systemic changes to the criminal justice system and revitalize Indigenous laws, ways of knowing, and dispute settlement.

To successfully implement the Strategy fully and completely, collaboration would be imperative. Each and every person in the room would be needed to

make the places and spaces they occupy better for First Nations people. When implemented, it would mean more First Nations people would be on the path to self-determination, making Nations stronger.

The Forum was an opportunity for Council to hear directly from community and First Nations leadership; their ideas and input are invaluable. Due to the incredible diversity of First Nations in BC, a "one size fits all" approach would not work, and collaboration would be necessary amongst organizations, governments, and Nations. Ideas and actions must be bold and courageous.

### **Boyd Peters (Xoyet thet), Vice-Chair, BCFNJC**

Boyd Peters was pleased to see the wealth of expertise and experience in the room; it would be needed to change the current system that must be improved.

Some would say the system is broken when in actuality,



it is not; it is doing what it was meant to do: to cause harm to Indigenous people, to keep them imprisoned, to take their children away, and to re-traumatize them.

BC First Nations must give themselves permission to dream beyond the current punitive system. Communities often resort to the colonial ways of being tough on crime, giving people sentences, banishing them, and stigmatizing them. The system should be there for the offenders and the victims, to listen to them and help them; that is what community strategies must strive for. Strategies must be developed by communities, Elders, and First Nations people.

BCFNJC has carried out the rapid expansion of IJCs in the province. There are now IJCs in Prince George, Prince Rupert, Chilliwack, Vancouver, Victoria, Merritt, Surrey, Kelowna, Victoria, Nanaimo, and one virtual IJC. IJCs provide culturally appropriate information, advice, and legal services directly to BC First Nations. They are warm and welcoming places in community for clients to access justice services and get connected to supports that will help them with employment, addiction treatment, and mental health issues. IJCs were not designed to replace current services provided by First Nations and local communities, but to work with them to provide a continuum of care.

Prevention is key in keeping those most vulnerable or at risk out of the system, and no cookie-cutter template would be effective. The work to keep people out of prisons and children out of care must be done at the

ground level in community.

### **Clifford White (Nees Ma'Outa), Director and Treasurer, BCFNJC**

Clifford White remarked that the governments of BC and Canada shared in the outlawing of First Nations governance systems, the incarceration of First Nations people for celebrating their culture, the establishment of Indian Residential Schools (IRS), and the "scraping of the Indian from the child". All these actions have impacted First Nations people; the government systems "did their job". Many of those caught up in the residential and day school systems, did not come home. These colonial systems and institutions are directly connected to the overrepresentation of Indigenous men and women in prison, the high percentage of children in care, the many Missing and Murdered Indigenous Women and Girls (MMIWG2S+), and the Highway of Tears.

In a 10-year period before BC joined Confederation, 93% of executions in BC were of Indigenous people. In 1885, Louis Riel was granted a lawyer, but the others with him were not; they were executed. For many years, Indigenous people were not eligible for legal aid and were prohibited from fundraising to take the government to court. The Law Society stated that only those who were eligible to vote in government elections could become lawyers, and Indigenous people did not have the right to vote provincially until 1949 and federally in 1960.

Legal aid was offered to Indigenous peoples in 1952,

and in 1955 it expanded to include a defence lawyer for status Indians charged with capital murder, and in 1962, to include capital and non-capital murder. In 1967, the over-incarceration of Indigenous people in prisons warranted a section in and of itself in the Indian Affairs Branch. A system is needed where First Nations people are in charge, and things must be done differently in the system as a whole.

**Andrea Hilland, (Asits'amniyaak), Kings Counsel (K.C.), Director, BCFNJC**

In reference to the Gladue Steering Committee, Andrea Hilland commented it was a strong example of what could be achieved. The BCFNJC took over Gladue Services in 2021, and the quality and quantity of the services and reports have improved exponentially. Internal BCFNJC staff prepare the reports and with the use of a streamlined database, staff have information readily available. For 2022/23, the Gladue Services Department completed 465 Reports, receiving approximately 42 requests were received each month. This is significantly more than what Legal Aid BC was able to accomplish and was done in a more culturally sensitive and appropriate manner.

**Lydia Hwitsum, (Xtli'li'ye), Director and Secretary, BCFNJC**

Lydia Hwitsum reported on work on the Indigenous Women's Justice Plan (IWJP) and development of the Youth Justice Plan, work that is being supported by BCFNJC Steering Committees. The completed IWJP Guiding Draft was presented to communities during Fall 2023 engagement, and community input informed revisions to the Final Draft, which included the development of built-in oversight and mechanisms to measure advancement. The IWJP would be a focus of work during the Forum to further develop the Final Draft.

Indigenous people continue to experience high rates of involvement in the criminal justice system, and there are more Indigenous children in care. Engagement with the youth in BC took place during 2023, and this, too, would help to inform and develop a Youth Justice Plan, with the intention to release the plan when its complete.

Attendees' participation and input into these strategies were encouraged.

**Dr. Judith Sayers (Cloy-e-iis), Director, BCFNJC**

Dr. Sayers referred to three police shootings in the last two years involving the deaths of First Nations people. These incidents continue to take place and they emphasize the need for reforms to policing. As part of these reform efforts, the BCFNJC is putting in place a new Police Accountability Unit to seek justice for Indigenous people. It is unacceptable that it should take years for police to be charged for crimes they committed, as was the case involving the Royal Canadian Mounted Police (RCMP) in Prince George, in which justice was finally being paid through the findings from an independent office investigation.

There is inspiring work taking place in communities, and the BCFNJC is open to learning more from communities on their innovations, ideas, and strategies for community safety.



## OPENING REMARKS FROM THE FIRST NATIONS LEADERSHIP COUNCIL (FNLC)

### **Hugh Braker, K.C., Political Executive, First Nations Summit (FNS)**

Hugh Braker offered congratulations to the BCFNJC for hosting the Forum and acknowledged the incredible turnout in attendance.

In reference to the Gladue Decision of 1999, the Supreme Court of Canada confirmed “there is widespread bias against Aboriginal people within Canada, and “[t]here is evidence that this widespread racism has translated into systemic discrimination in the criminal justice system”.

The Supreme Court of Canada also noted “...the tragic history of the treatment of Aboriginal people in the Canadian criminal justice system” and the “problem of over-incarceration and its devastating impact on Canadian Aboriginal people”.

These were strong words coming from the highest court in Canada, acknowledging and admitting failure, racism, and the resulting suffering of Aboriginal peoples. The Royal Commission of Aboriginal Peoples, Canadian academia, and top judges, all agreed the justice system has failed the Indigenous Peoples of Canada, yet since the Gladue Decision of 1999, very little has changed.

The daily average of Indigenous youth in custody facing remand and sentencing in BC is 53%. The daily rate of Indigenous youth in custody for remand and pre-trial is 61%. Approximately 68% of children taken into care are Indigenous. These statistics do not support the Solicitor General’s claim that the numbers are lowering for Indigenous people.

As a practicing lawyer, Hugh Braker recalled an incident where his clients, who were from a remote boat access-only community, were unable to travel to attend a court session due to a storm and rough seas. The judge presiding over the case said that storms “never stop them from coming in for their drink”. There was a similar racist incident when a non-Indigenous lawyer who was representing an Indigenous woman who had been charged with theft said to the presiding judge, “My Lord, as is so often the problem with her people, she was drunk at the time”.

Hugh Braker shared another example of overt racism and supposition in the court system when a young Indigenous man was hit by a car and was badly injured. When the man sued for damages and for the cost of his future care for the injuries he sustained, the defence lawyer representing the Insurance Corporation of British Columbia (ICBC) said, “Indians live shorter lives than white people, so they should get less money for the cost of future care”.

The statistics do not support that there has been change, nor do the facts. It is up to BC First Nations to change the system themselves, and it was up to all in attendance to join the BCFNJC and ensure that there is change. Racism has no place in the courts.

### **Chief Don Tom, Vice President, Union of BC Indian Chiefs (UBCIC)**

Chief Don Tom commented that the Forum was a critical platform for dialogue, action, and advancement of justice in communities, and a place to celebrate the release of the IWJP and share in dialogue on the best steps forward for its full implementation. Chief Tom raised his hands to community members and Elders for sharing their knowledge and experience in pursuit of ending gender-based violence and sexism in communities.

Throughout First Nations history, justice has never been on their side; laws have not been on their side and at every turn, First Nations must prove who they are as a people in the courts. This has been the case since the arrival of Western settlers. Settlers assumed their jurisdiction and that their ways were superior to First Nations ways. Settlers have taken First Nations children away from their families and communities and placed them in residential schools in an effort to assimilate Indigenous children into settlement culture. The Ancestors did their best to retain the culture.

First Nations people are not the “lawless Indians” that Canada claimed them to be. In reality, First Nations are a most civil and beautiful people who look after and nurture one another. Justice work has been denied to First Nations, and systemic racism is part of the colonial hierarchy that settlers want desperately to maintain. However, the Province of BC has demonstrated they

are willing partners to develop and implement First Nations justice strategies, and BC First Nations know they can develop a system that is superior to the current system being provided to them. As governments change frequently, time was not necessarily on the side of BC First Nations.

### **Chief Terry Teegee, Regional Chief, BC Assembly of First Nations (BCAFN)**

In reference to the eclipse happening that day, Regional Chief Terry Teegee commented that the last eclipse took place 45 years ago, and how there was no justice for First Nations back then, and although even now justice for First Nations is not applied equally, there had been significant strides made.

Part of Regional Chief Teegee's portfolio is his work in Justice and Policing, and his current work is to change the system, including transitioning policing from program funding to essential services funding. Like the underfunded child welfare system, the federal government sought to draw down policing jurisdiction to the provinces and territories and to create a national Indigenous policing strategy that was driven primarily by the federal government. Government indicated it wanted this strategy to be completed by March 2024; however, the Regional Chief said that more time was required to consider the strategy, and its completion date was pushed to Fall 2024.

In Prince George, a court judge ruled there would be a stay of proceedings for the two officers charged with manslaughter over the death of Dale Culver, an Indigenous father of three. Again, the question is raised as to where the justice is and who keeps the police accountable.

The work being done in the justice area is to bring accountability to the system, and input is needed from other regions. BC is arguably the most productive region and, in many respects, is driving the policing strategy ahead. Constable Paul St. Marie, one of the two police officers charged in Dale Culver's death, was in court in Vancouver that day on assault charges regarding another case. The expectation is that he will plead guilty, but if not for the actions of Constable St. Marie, and the five police officers involved, Dale Culver would still be a father, and that is the sad reality.

When speaking about systemic change, it must happen now and must align with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) so that

Indigenous people can assert their sovereignty and their self-determination and change the horrifying statistic that Indigenous people are 10 times more likely to die or be injured while in police custody.



### **Grand Chief Stewart Phillip, President, UBCIC**

Grand Chief Phillip was touched to see so many assembled at the Forum with the shared purpose of seeking the justice that has been denied to First Nations people for too long. The Grand Chief congratulated the BCFNJC for the work they had accomplished and recalled his work many years ago with the Native Courtworker and Counselling Association of BC (NCCABC) as a Program Development Evaluation Officer. He was proud of that job and was grateful to the iconic leaders of the past who organized the court workers and conducted amazing work through that organization; its presence was felt in communities with people struggling with the law. The NCCABC provided the foundation for the BCFNJC.

The world has changed since his time with the NCCABC, and Grand Chief Phillip noted that conditions have become more adverse, with homelessness, the opioid crisis, rogue behaviour of policing agencies, and the killing of Indigenous people with no consequence. It is the responsibility of First Nations leaders and those fighting for justice to ensure that through their utmost efforts, they will make a difference. It was important to never forget that responsibility, nor shrink away from the awkward work of fighting for Indigenous rights. Grand Chief Phillip recalled being thrown in jail multiple times; he had no regrets and would do it again if that was what it took.

Through UNDRIP, there is an opportunity to continue the work started back in the day and to build First Nation sovereign jurisdiction over their lands, territories, and communities. This was a duty all in attendance shared, and to do this, all must support the hard, tedious work. First Nations live in the shadow of colonial fear, and they must embrace the responsibility of taking control of their lives. The strong turnout at the Forum provided hope for a better future.

# SESSION ONE: CELEBRATING THE INDIGENOUS WOMEN'S JUSTICE PLAN (IWJP)

## Kory Wilson, Chair, BCFNJC

Kory Wilson shared of the work on the IWJP and how BCFNJC, during the process, took the time to “use two ears and one mouth” to listen and speak with Indigenous women, girls, two spirit people (2S+), and communities. Kristi Den Admirant and Tina Miller supported the development and drafting of the IWJP. Kristi, a member of Blueberry River First Nation, was in attendance with her young daughter Charlee. Tina, a member of the Nisga'a Nation, shared the following poem that she wrote,

### **“She’s Someone”:**

***“She was born, She grew, She learned, She loved,  
She laughed, She cried, She smiled, She danced,  
She forgave, She shared, She was light, She was  
silent, She was strong, She was resilient, She was  
Indigenous, She was someone.***

***She’s someone who was loved and valued but  
her life, love, and value was taken when she was  
murdered or went missing and that is not okay. We  
will not forget her worth, her value, or her life.***

***She lives through us and we speak with and for her.  
We are her.”***

Kory Wilson added that it had been an incredible experience to hear from so many women in the province; they spoke from the heart and told their stories with honour, even when it was incredibly hard to do so. They spoke so that little ones like Charlee would have a different life. Kory Wilson expressed gratitude to everyone who participated in the process of drafting the IWJP.

View the full Indigenous Women's Justice Plan: Final Draft online at [bcfnjc.com](https://bcfnjc.com).

(<https://bcfnjc.com/reports-publications/>)



## Darla Rasmussen, Justice Coordinator, Sts'ailes, and BCFNJC Steering Committee Member

*Note: The stories shared in this session involve discussions of the harmful impacts of colonization, including topics related to trauma, violence, and suicide. Please read with care for your spirit and honour your needs – if you would like to refrain from these stories, skip to the heading “Breakout Session” section.*

Darla Rasmussen opened with a gratitude song and thanked the Creator for the day.

Darla, also known as “Wild Rose”, acknowledged her loving family and her children, of whom some ‘grew in her heart, not in her belly’, adding it was a blessing to witness their journeys. The skirt Darla was wearing had been made by one of her boys’ older sisters, Sabrina, and it included denim seams to honour Two Spirit+ (2S+) individuals who may not wear skirts, and the white leather represents the spiritual journey after death. Sabrina has lived experience and has had a tough life. Her parents attended IRS, but in recent years, Sabrina has thrived through her culture, dancing, and bead work. The skirt honours Sabrina’s journey.

Darla asked all in attendance to think of a woman in their life as she shared some startling statistics provided at a recent Trauma and Justice Conference, a Policing Conference, and a 2023 Correctional Investigators Report:

- » Indigenous people make up 5% of the national population
- » Almost 54% of children in care in Canada are Indigenous:
  - › 71.5% of these children are placed into foster care due to poverty



- » Suicide rates have consistently been shown to be higher among Indigenous people than the rate among non-Indigenous people in every province
  - › Rates are high as federal programs are under funded and parents must give their children up
- » 51.8% of Indigenous youth do not graduate from high school
- » 82% of female youth aged 12-16 experience sex assault, violence, abuse, and rape
- » Indigenous youth in BC are 13 times more likely to die from overdose
- » In 2022, First Nations people accounted for 16.4% of overdose deaths in BC In 2022, First Nations women died from overdoses at 11.2 times the rate of other non-Indigenous women in BC
- » 62% of Indigenous women are not getting access to regular health care
- » Indigenous women, girls and 2S+ are 12 times more likely to go missing
- » Indigenous women are incarcerated at nine times the rate of the general population:
- » Indigenous female youth accounted for 60% of female admissions to correctional services, some are as young as 12 years old.

It is statistics like these that keep Darla passionate and motivated to do the work, and she shared some stories of her experiences.

*Editors Note: statistics shared during the event have been reviewed, researched and amended for accuracy where necessary.*

Darla was taken at three years old, and her younger sister, Rhonda, and brother, Ryan, grew up with her mother and father's alcoholism. Her father was a residential and day school survivor. When Rhonda and Ryan were teens, they lost their mother to alcoholism; Ryan found their mother frozen in the snow. Rhonda was devastated; she began to stray from family and got involved in gang life, which made her hard.

Rhonda adored and looked up to Darla, and Darla was proud to be Rhonda's big sister; they would often have

"heart to hearts". Rhonda realized that gang life was not the life she wanted to lead; she had four children and decided to get out of the gang. However, she discovered that leaving the gang would endanger the lives of her children, so she stayed, and this created a mental health crisis. Rhonda made attempts on her life, and they grew in severity, and she ended up in a psychiatric center, disconnected from her children. Rhonda's father and family did not know how to support her; there was no transitional plan for Rhonda to return to community. Many of her family members were struggling with their own mental health, and support services were not extended to her community.

The night that Rhonda took her life, she had spoken with Darla about coming to BC, and they reminisced. Darla had no idea that hours later, she would receive a call that her brother found their sister hanging in the basement.

It was devastating to watch how the medical system treated Darla's family. The staff at the funeral home, where they were preparing Rhonda's body, were cold and insensitive and did not handle Rhonda's body with care. It was horrifying.

Since Rhonda's passing, her father and brother's alcoholism sky-rocketed, and her father passed away.

Rhonda did not have a chance; she could have if there had been services and if those services had been extended to just an extra 10 minutes down the road. This would have enabled Rhonda to receive help and to keep her connected to a counsellor. Those services could have supported her family with her reintegration back home.



Darla's daughter, Jade, came to Darla when she was 16 years old after her mother had suffered a drug overdose. Jade hated the world and did not want to live; she was in addiction and had tried multiple suicide attempts. Jade had a few diagnoses, but her social worker did not listen





and would often not take the family seriously when they called for help. Jade ended up in a psychiatric center with no release plan and was, in fact, released without her family being notified. Jade passed away by overdose two days after she had been released. She slipped through the gap in services. No one had cared about her.

Darla shared of an opportunity she had to go to the Prince George Regional Corrections Center to do training and to work with the staff. While there, Darla was able to speak with 28 male offenders, many of whom had high rates of domestic violence against women. Darla shared her story with them, and by the end of the circle, as the feather went around, they all had tears. They recognized their own accountability, and they validated the harm Darla received. Darla felt honoured.

Darla then spoke to a group of incarcerated women and had been warned that the women were a difficult group, and the expectation for their participation was not high. Darla asked the staff to distribute crayons and blankets to the women. Darla shared her story and spoke about the National Inquiry's MMIWG Report, reconciliation, and statistics. Before long, the women were on the floor colouring, they were engaged in the teachings, and during the Closing Circle, the women said that they wished every day could be like that. Darla and the women talked about the medicine wheel, sacred rights, and drumming. One of the women brought Darla a picture, as she did not have tobacco to give.

It is these stories that demand collaboration and for people to stop hoarding their work and instead enhance each other's services – to show up, be vulnerable, and take the time to ask people what they need, if they are hungry, if they feel safe. The work must come from the heart, and people's stories must be listened to so others can understand and have empathy and compassion.

Justice does not need to be rigid, and although the new ways of working will be hard and stressful, they will also create healing, connection, and collaboration, and will create a safer place for Indigenous women, girls, and 2S+ people.

Kory Wilson thanked Darla for the powerful words and for sharing her experiences; they were all too familiar to First Nations people.

Many reports and documents were used to inform the IWJP, including the MMIWG Inquiry's Calls for Justice, the recommendations from the Highway of Tears Symposium, along with BCFNJC-led engagements throughout the province. Feedback received emphasized the need for the IWJP to be digestible and understandable, and an accessible version and proposed action plan was prepared. The IWJP is an evolving and living document, designed to be responsive and adaptive to the unique needs of communities.

Charlee, from Blueberry River First Nation, performed the Women's Warrior Song, leading the group on stage, and eventually the whole room in song, to close out the session.



*Charlee's Drum: Kristi Den Admirant, from Blueberry River First Nation, share's the powerful story of her daughter Charlee's drum and what empowered her to take on the work of the IWJP.*

## BREAKOUT SESSION

### *Implementing the Indigenous Women's Justice Plan*

The meeting participants convened in Breakout Rooms.

The objectives of the session were to gain insights from grassroots and frontline workers, as well as allies, who are actively engaged in combatting violence against Indigenous women, girls, and 2S+ individuals, and gather feedback on ways the BCFNJC, through the Strategy's Track 2 work, can support the restoration and implementation of First Nations justice systems and structures to combat violence against Indigenous women, girls, and 2S+.

Strategy 11 (Improving Justice Outcomes for Indigenous Women, Girls and 2 Spirit (2S+) People) is focused on ending colonial patterns of violence and discrimination in the criminal justice system that negatively and disproportionately impact Indigenous women, girls, and 2S+. Through Strategy 11, BCFNJC is empowered to work directly with Indigenous women, girls, 2S+, First Nations, and Indigenous groups across BC to develop and implement an Indigenous Women's Justice Plan (IWJP) that will support better outcomes for Indigenous women, girls, 2S+ people, across all areas of the justice system

In 2023, BCFNJC assembled a dedicated team of Indigenous women to coordinate and execute all activities and approaches related to the IWJP. The Indigenous Women's team onboarded ahead of the 2023 Justice Forum, where it was presented that the development of the IWJP would be advanced in one year, with the plan being ready for release at the 2024 Justice Forum.

At the 2023 Justice Forum we heard loud and clear "enough research, we need action!" Understanding that the IWJP must be a pathway to bring about meaningful, timely action around demands for justice that have sat with little to no action for too many years, the Indigenous Women's team focused on drafting a plan that incorporated the various recommendations within the Calls for Justice, Red Women Rising and the Highway of Tears Symposium reports. By prioritizing and acting on these recommendations, while being led by the guidance and voices of Indigenous women, girls, and 2S+ across the province, the IWJP can work towards reducing violence against our Indigenous women, girls,

and 2S+ and ending the MMIWG2S+ genocide.

The Indigenous Women's Team released the IWJP: Final Draft (Final Draft) at the 2024 Justice Forum and held breakout sessions to hear feedback from Rightsholders on the Final Draft and actionable steps that should be taken to move the work forward in a good way.

The key themes captured from Rightsholders on the implementation of the IWJP: Final Draft and how to "best reflect and best support" it includes:

#### **Inclusivity and Community Engagement**

Rightsholders emphasized the importance of including Indigenous women, girls, and 2S+ in the discussions and decision-making processes. They should have leadership roles and advisory roles and lead the implementation work, to not only elevate their voices but also ensure their voices are heard and respected.

Additionally, Rightsholders shared that Indigenous women with lived experience within corrections and community supervision need to be at the table, their voices and perspectives are significant to the implementation of much needed action to address the lack of support within corrections and the justice system. Rightsholders also reminded us of the importance of prioritizing the input of Matriarchs in creating effective solutions. We also heard Rightsholders share the importance of inclusive community involvement and direction with justice initiatives to center self-determination as a key principle for addressing issues at the family, community, and Nation levels. Rightsholders also shared the need to take direction from communities on implementation strategies to ensure initiatives are culturally appropriate and responsive to local perspectives and not using a pan-Indigenous approach.

#### **Cultural Connection and Healing**

Rightsholders highlighted the importance of embedding culture, ceremony, storytelling and transformational stories, and traditional practices into not only the IWJP implementation, but also justice initiatives. Other Rightsholders shared that addressing historical trauma and its root causes (e.g.: abuse, residential schools,



colonization, mental health, addictions, disconnection to community, the Indian Act, intergenerational trauma and the impact these have had and continues to have on our relatives) and promoting land-based healing programs is essential to providing a culturally relevant and holistic approach to healing for those who have experienced historical trauma.

Additionally, Rightsholders shared the important role of Elders and Knowledge Keepers; their guidance is important to elevate, share, and hold people accountable, advance problem solving to find solutions, and to progress healing. Further, Rightsholders added the importance of respecting protocols and requests when engaging with Elders and Knowledge Keepers to ensure that cultural practices are honored and upheld and that our Elders and Knowledge Keepers are cared for and respected.

### **Systemic Racism and Discrimination**

Rightsholders reiterated that addressing systemic racism, inequality, and discrimination within the justice system, advocating for anti-racism measures in legislation and assessing their effectiveness in addressing systemic inequality, and promoting fairness and accountability are significant in removing barriers and improving access to justice for Indigenous women,

girls, 2S+ and all Indigenous people in B.C.

Rightsholders added that historical roots of systemic racism within the justice system and its ongoing impact on Indigenous women, girls, and 2S+ and Indigenous people must be examined and acknowledged to ensure much needed change can occur. This change will include combatting racial bias by the colonial justice system, the justice system actors, and those in power who oversee the operations of the various sectors in the justice system. Rightsholders shared the lived reality of racism and discrimination particularly from police, Ministry of Children and Family Development (MCFD) and corrections. Further, the racial bias embedded within processes and policies of the police, MCFD and corrections need to be addressed appropriately. One example of this is healing lodges and using them properly for Indigenous women and 2S+. Rightsholders suggested having frontline community workers speak with police and MCFD about racism and discrimination directed toward Indigenous people, women, girls, and 2S+ to gain an understanding of the impact of their actions. MCFD must hold themselves accountable and understand the harm they cause due to their involvement in the removal of children rather than supporting Indigenous women in keeping the family together. Rightsholders shared the importance of holding those in power accountable for perpetuating discrimination

and racism, especially with the high sentencing and incarcerations rates of Indigenous women and 2S+. Rightsholders want to see BCFNJC advocate for meaningful reform to promote fairness and equity in the justice system.

### **Gender Diversity and Two-Spirit Issues**

Rightsholders mentioned that recognizing the distinct needs and the challenges experienced by 2S+ individuals are best brought forward by 2S+ individuals. They spoke about the need to have a gathering specifically for 2S+ that is a safe place for them to discuss their lived experiences that differ from Indigenous women and girls.

Further, Rightsholders shared the intersectionality of identities within the 2S+ community and how the 2S+ experience discrimination, hate, and not being able to access resources in a safe way, especially trans women or those who are transitioning. Rightsholders emphasized how our 2S+ relatives need mental health support and support systems, including safe housing to ensure a holistic approach in addressing the challenges they face. Rightsholders also shared how important it is for education and awareness of the historical and cultural perspectives on 2S+, including their traditional roles and how 2S+ have been affected by colonization. Rightsholders shared the 2S+ youth perspective of not understanding why there must be labels such as 2S+; the youth have said they are individuals, and the label of 2S+ make the youth question “why do I have to be different?”

### **Urban Indigenous Populations**

Rightsholders shared suggestions on how to address the challenges faced by urban Indigenous populations, such as loss of connection to their communities, intergenerational trauma, and the need to preserve cultural knowledge and practices to bring urban Indigenous people together and connected to culture. Rightsholders communicated that one way to keep the urban Indigenous population connected to culture and cultural revitalization in urban settings would be to have a collaboration with Friendship Centres and Elders and Knowledge Keepers.

There are challenges faced by Indigenous women, girls, and 2S+ in urban settings including trauma, violence, abuse, lack of care and attention, and involvement in the foster care system – these are a direct result of historical factors such as colonization, residential schools, forced relocation. The lasting impact those factors have on urban Indigenous people, women, girls, and 2S+ indicates the need for action and implementation of

healing practices and safe spaces for them to connect with. Rightsholders also reminded us that there are also thriving urban Indigenous people, women, girls, and 2S+.

### **Empowerment and Education**

Rightsholders shared the importance of empowering and educating our relatives, including Indigenous women, girls, and 2S+, through community initiatives that involve working with Elders and holding ceremonies to preserve cultural knowledge, practices, and language. In doing so, Rightsholders shared our relatives and Indigenous women, girls, and 2S+ would find their voice, building self-esteem in themselves, and creating positive mentorship opportunities to be shared. Rightsholders also shared that community initiatives and connection will encourage Indigenous women, girls, and 2S+ to have self-confidence, continue to revitalize cultural practices, and determine their own solutions at family, community, and national levels. Further, Rightsholders shared the need for Indigenous women to be part of academia, encouraged to write about and teach these issues.



### **Healing and Trauma**

Throughout the sessions, Rightsholders brought forth the significant need to allow healing for our Indigenous people, women, girls, and 2S+. First, the healing process can begin with Matriarchs, 2S+ and Elders who can



share their voices and visions for the communities, with an emphasis on communication and collaboration across all spectrums. Not only is land-based healing recommended, but also adequate resources to support healing initiatives that reconnect Indigenous people, women, girls, and 2S+ to culture, family, and community. Connected to healing is getting to the root cause of the intergenerational trauma and the impact that colonialism and racism has on our relatives, especially within the justice system. To have positive mentorships and role models, particularly for our youth, will help break cycles of abuse and incarceration.

Rightsholders reminded us of the role that storytelling and transformational stories have in our understanding, empathy, and healing within our communities. We must ensure our stories continue to guide us in our transformation of the colonial justice system and our holistic approach to healing with cultural revitalization, traditional practices, and land-based programs to address the root causes of trauma and addiction. Our storytelling and transformation stories demonstrate our resilience, empowerment, and positive change despite systemic challenges. Rightsholders also highlighted the need for collaboration between Indigenous communities, mental health professionals, policymakers, and researchers to create effective strategies for addressing the root causes of trauma such as abuse, colonization,

mental health issues, addictions, and disconnection from community.

### Accountability and Funding

Loud and clear Rightsholders voiced the significance of holding those who do wrong accountable. Indigenous people, women, girls, and 2S+ should not have to fight for this accountability, alongside respect and fairness. Rightsholders stressed the importance of holding governments accountable for addressing the flaws and racism in the justice system and other sectors, advocating for proper funding for Indigenous communities, increasing support in corrections, and addressing flaws in sentencing. It is also important to improve access to mental health diagnoses and treatment, establish prevention programs, and collaborate with organizations like Friendship Centres.

Rightsholders also acknowledged the impact of the systemic racism in the justice system and the need for reforms to ensure fairness and equity for Indigenous people, women, girls, and 2S+. Rightsholders repeated the challenges that Indigenous communities and Nations face due to lack of adequate ongoing funding and resources, indicating that more advocacy is needed to address these issues.

# SESSION TWO: POLICING, DIVERSION, AND LEGAL SERVICES DELIVERY

## Community Safety, Policing, and Oversight – Dr. Judith Sayers

As President of the Nuu-Chah-Nulth Tribal Council and with the recent police shootings in their territory, Dr. Sayers emphasized the critical importance of addressing why it is that police members shoot to kill instead of shooting to disarm. There must be change to that policy, and other police policies, including the implementation of trauma-informed policing practices.

The BCFNJC often refers to two paths or tracks that they follow as Council. Track 1 is to improve the current colonial system, as First Nations have never had input into any government policies or acts, and only recently have they been able to express their needs through documents such as the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA) and the Declaration on the Rights of Indigenous Peoples Act (DRIPA). Track 2 is the restoration of First Nation legal traditions and structures.

There are several key strategies within the BC First Nations Justice Strategy relating to transformed, Indigenous led policing policies, including:

- » **Strategy 3** ensures that BCFNJC can support the development of a unique process for First Nations complaints about policing services.
- » **Strategy 7** speaks to oversight reform, including the creation of independent oversight and accountability function to address the challenges and concerns regarding Indigenous peoples and the justice system, and the placement of an Indigenous civilian monitor as part of the Independent Investigative Office (IIO) Team
- » **Strategy 22** relates to the development of new models and structures for relationships between First Nations and police forces that can support

policy and community level reform and the expansion of community-based First Nations police forces.

Dr. Sayers had the opportunity to sit on a Canadian Human Rights Tribunal (CHRT) hearing in which it was proposed that an Indigenous Investigative Force be established to seek justice for those who were wronged in the Indian Residential School (IRS) system. The investigative team would be comprised of many different aspects and could make a significant difference for those who have suffered the traumatic impacts of residential school. The outcomes of the hearing would be shared as it progressed.

Reforming policing means working with the federal and provincial governments and amending laws and policies, and for BC First Nations to have input into the required government actions and action plans. A Tripartite Memorandum of Understanding (MOU) for implementation of the Justice Strategy would be another way to ensure government works with BC First Nations to increase cultural safety and address systemic racism and discrimination in policy, family law, and the justice system.

There have been some shifts in the policing landscape and in some of their process. Notably, the RCMP is open to educating its force, and lines of communication have been opened through monthly meetings with the Attorney General, and bi-monthly meetings with the Assistant Deputy Attorney General. The BCFNJC will continue to push for more communication.

Modernizing policing in BC is a long-term project, and the Council is working to ensure the work is done in a manner consistent with the UNDA and in parallel to the creation of First Nations community police forces, which would require long-term sustainable funding.

First Nations are over-represented in cases of police





wrongdoings, and the current system is deeply flawed, with significant gaps in accountability and a lack of accountability mechanisms for when Indigenous people are harmed. When police are accused of sexual assault they are investigated through an internal process, not an external one, and the process re-traumatizes victims. Police investigating police is unacceptable, and the BCFNJC seeks to put an end to this.

The Strategy provides a road map for a future vision of policing, and with numerous options for community safety policing and oversight that reflect the unique communities, cultures, and needs. Interim solutions must be found to move forward and enact change. The BCFNJC will not tell First Nations what policing looks like for them but will support communities to live out their vision for community safety. The BCFNJC would like to report back on these success stories at the 2025 Justice Forum.

### **Presumption of Diversion Community Justice Panel - Boyd Peters, BCFNJC**

Boyd Peters shared that diversion was the cornerstone of the Strategy. First Nations people have experienced hurtful things: removal of their lands and culture, separation from families, and children being taken away. Communities and Nations all have songs of sorrow that speak to the crying that Indigenous people all have done. It is important to acknowledge that, to face those fears, and express them in sacred ways.

When it comes to addressing pain, First Nations do that through song and ceremony. However, they also carry

happy songs, and it is important for children to hear the happy songs, not only the songs of sorrow. Children need to feel free to sing, to dance, and to practice culture. Restorative justice is about breaking the cycles and healing as individuals and as communities. This can be done through sacred practices and traditional ceremonies, and the IJCs can coordinate these types of restorative justice supports.

There is a stigma that First Nations people always find themselves in trouble; this is essentially discrimination. When a police officer sees an Indigenous person who is homeless or addicted, their usual response is to lock them up. What their response should be, is to consider how this person could be helped, to better understand their story, and how they found themselves in their current situation. Some police officers have demonstrated empathy and sought to do things differently, but they, too, have been discriminated against for “using taxpayers’ money” on untraditional policing methods. It takes institutional courage for people to demonstrate empathy, to show they care, to listen to the stories, and to help get people in need the resources and supports. This is what is needed in communities. First Nations justice programs must be recognized; they are according to Indigenous laws and strive for people to be curious and not judgmental. Diversion is about healing, and not about punishment.

In partnership with the Government of BC (Province), the Community-Based Justice Fund, part of Strategies 15 and 24 of the Strategy, will ensure that every community has the opportunity to be supported by a justice plan and programming. \$42,000 is available for each of the 204



Nations in the province, and Nations can also consider applying together and grouping their funds together.

Two streams of available funding:

- » **Stream 1** – community or Nation-based justice plans with focus on diversion:
  - › Bringing the Strategy to life with First Nation communities
  - › Presumption of diversion and self-determination in justice is foundational in developing a network of Nation-based diversion and justice programming
  - › Council will support the development of justice plans (including planning toolkits), dedicated planning staff, and community engagement as budget allows
- » **Stream 2** – funding to support First Nation justice programming:
  - › An opportunity to support existing or new justice programming
  - › Low barrier application will outline goals for the program and how to advance diversion locally
  - › Supporting Nations in advancing self-determination and justice goals.

Details on how to access funding will be made available on the BCFNJC website (<https://bcfnjc.com/community-based-justice-fund-application/>) and by email

### **Joanne Jefferson, Stó:lō Nation Justice Program**

Joanne Jefferson commented that First Nations people are often reluctant to come to events such as the Forum and with the strong attendance, many showed their courage and intention. The Council had brought in the appropriate people for BC First Nations to share their difficult stories with; often, their stories have gone unheard. Supports are needed for individuals to heal and for their underlying issues to be addressed. Those issues do not define First Nations, they can move through that with the support of their people and in their own ways.

### **Alisia Adams, Director, Policy and Justice Issues, BC Prosecution Service (BCPS)**

Alisia Adams was humbled by the opportunity to learn from the collective wisdom in the room. As Director of Policy and Justice, Alisia's role involved the implementation of the BCPS Indigenous Justice Framework and the review and revision of Crown Counsel policies to better address the realities of the failings of the system for Indigenous peoples. Policy and guidance for Crown Counsel must ensure that all decisions regarding Indigenous people are informed by the reality of their over-representation in the system as a consequence of colonialism, displacement, racism, and systemic discrimination. Within the BCPS Indigenous Justice Framework, guidance has been provided on a number of different points of exit from the mainstream colonial justice system for BCPS prosecutors to consider, including not pursuing charges if reasonable options are available, seeking community-based sentences where appropriate, alternative measures, or a referral to a community based or Indigenous justice program. An individual could enter into an agreement to address harm they caused and seek some form of rehabilitation without resulting in a criminal record.

### **Corporal Jaden Courtney, Acting Non-Commission Officer (NCO), Indigenous Policing Services Team, Upper Fraser Valley Regional Detachment, RCMP**

Jaden Courtney, a member of Tla'amin Nation, and of the RCMP's Supervisor for the Urban Indigenous Liaison Team, based in Chilliwack, advised that the team works with 23 communities and urban peoples and programs.



## Discussion

*Several questions were posed to Panel members, and their responses are reflected below:*

### **How can the presumption of diversion support the reduction in the over-representation of Indigenous people in the justice system?**

**(Joanne Jefferson):** It helps stop the revolving door of interactions in the system and returns the process back to the family system, where families support the individuals who are going through difficulties and prevent them from going further down the road of the court system. The partnership with Crown Counsel has taken a significant amount of time. We are seeing a larger audience of professionals deciding that it is time to trust First Nations and to let them do their process. Many people do not understand the justice system, so they often find themselves in breach. If they are supported through the process, they can be helped to avoid continually going back into the system.

**(Alisia Adams):** Every file addressed through those programs is one that does not come into the justice system and is an opportunity for the healing of the accused person, and also the victim. It gives the accused person an opportunity to move forward on a more positive path where future crimes are prevented. It helps in both the short and the long term.

**(Jaden Courtney):** We must work together to break the cycle, and to work on prevention so that the cycle never begins. Healing will not happen in a jail cell or prison. The connection to culture and to each other can only be led by community, and we are here to support that.

### **What factors hinder or enhance the use of diversion at the local level?**

**(Joanne Jefferson):** Turnover of Crown Counsel is an issue, they often move every one to two years, and this requires educating new Crown Counsel. I feel that is not my job to educate them. Crown Counsel should reach out and ask us, but it does not always happen that way. We must continually ask why Indigenous cases are not coming in and where the hold-up is, and it is often simply

that no one shared with them that we exist (Stó:lō Nation Justice Program). Even judges and lawyers do not share that we exist. We do not understand why they do not include us in part of their orientation book. Our book ensures that new people learn about our land, our Elders, and our people. Often, their worlds are moving too fast for our systems; they want to spend their time behind the desk and in the courthouse, and our people want to slow down, to look and reflect, and spend time seeking to understand each other. That is what is missing.

**(Jaden Courtney):** It is all about relationships. Our team has brought in local police, and that is enhancing the work we are doing. In terms of diversion, we began monthly meetings, and we are sharing the successes of the work, understanding the work, and taking that back to my colleagues. We are seeing an increase in those referrals.

**(Joanne Jefferson):** Building the relationship is essential. We have documents on RCMP and Crown Counsel protocols for working together, but if they do not look at it, we are forgotten. We do not have hundreds of lawyers and outreach workers, I am lucky as I have 10, but some only have one person trying to do multiple jobs. Yet we are expected to educate Crown Counsel, Duty Counsel, or judges, but how do we do that when we are trying to stop someone's tears?

**(Boyd Peters):** We need to consider how to build those relationships and have those teachings available to all levels.

### **The principle of diversion is highlighted in Crown Attorney policy manuals and the RCMP are trained to consider diversion when appropriate. It is not used to a frequency that could truly move the dial, so what steps are needed to increase the use of diversion?**

**(Alisia Adams):** Historically, diversion, both police-based and alternate measures, have focused on relatively minor offences, and the reality is those people



committing minor crimes are not the ones ending up in federal institutions. We will not see a real shift in the over-representation of Indigenous people in the system until we see these sorts of processes used for more serious offences. This requires courage and for an accused person and the victim to trust the process and trust that it will be safe for them.

With a violent offence, it takes faith and trust in the process and that Crown Counsel will make the right decision by ensuring they are educated to know that alternative measures for diversion are not “an easy way out”. Diversion can be a challenging, transformative process that could address the nature of the harm. The BCPS is looking at removing barriers to the policy for those referrals to take place, but we need to know the capacity of the individual programs: what sorts of offences do your people have the resources, training, skill, and capacity to take on?

**(Jaden Courtney):** There is a change in culture at the RCMP. I acknowledge my mentor who had asked me to work with a community on getting an individual to turn themselves in to minimize the impact on community. Back then, it was hard for me to wrap my head around what he was asking of me as we had been wired to just go and grab people and throw them in jail so they could go to court. We are changing that.

There is no reason why a justice worker could not help with that in minor cases, such as motor vehicle accidents or driving offences. There would be no need to arrest someone at 2:00 a.m. and bring them into jail; that could just start the cycle of trauma. Those individuals could be helped, they do not need to go to jail, but there must be workers who have built that trust. We do a lot of work in the background to get our members to think differently, and we are working on that.

## BCFNJC's Journey to Service Delivery (Legal Services/IJCs/Gladue)

**Amanda Carling, Cedar Dodd, Provincial Director of Indigenous Justice Centres, BCFNJC, and Courtney Daws, Provincial Director of Legal Aid Services, BCFNJC**

The panel shared of the development of a new innovative legal aid model for Indigenous people that would transition to the BCFNJC.

A short video was shared depicting the many achievements and accomplishments of the BCFNJC and partners, including the increased quality of Gladue reporting, the opening of five regional IJCs, the expansion of the BCFNJC, and community engagement on legal aid, women's justice and the IWJP, and the development of a youth justice plan. Julian Anton, Manager of Digital and Creative, and Tyler McLeod, filmmaker and visual storyteller at [Kotawân Media](#), were acknowledged for their work on the video.

In reference to the breakout sessions, the following was noted for consideration:

- » By the end of 2024, 15 physical and virtual IJCs will be in place, and creative consideration must be paid to satellite offices, the use of technology, and ideas of how services could be provided to communities without lawyers or legal services
- » IJCs provide many legal services, and the transition of legal aid will take the work further; how will the

impact of this new approach be measured

- » With the continued provision of legal services, how will Indigenous experiences change in 5-10 years
- » Collection and summary of legal aid engagements and seven themes from over 800 pieces of data
- » Through fall engagement, input led to identification of recommendations to guide development of the legal aid model; what activities should be the highest priorities?

Amanda referred to a resolution passed by the First Nations Leadership Council (UBCIC, FNS, and the BCAFN) for the BCFNJC to work on identifying the next IJC sites on the basis of business cases developed collaboratively with Nations. Nations interested in having an IJC on their territory were invited to respond. The BCFNJC received proposals from several communities and after analysis and research, six new IJC locations were identified in Fort St. John, Burns Lake, Hazelton, Williams Lake, Cranbrook and Port Hardy. Representatives from any of those locations were encouraged to attend the related breakout session.

Amanda further directed any participants interested in the funding available through the partnership with the Attorney General to visit the Forum Registration for more information.



## CONCURRENT BREAKOUT SESSIONS

*The meeting participants chose to participate in one of three Breakout Sessions to discuss the following:*

### **Padding Together – Feedback on Service Delivery**

The purpose of the session was to gather participant feedback on potential new legal services (or gaps in services) that would benefit Indigenous peoples. This information will assist in planning for the expansion of legal services delivered, facilitated, or coordinated through IJCs.

Two breakout sessions were held on this subject simultaneously. Four questions were asked in each breakout session. The questions and summaries of rightsholders' input are set out below:

#### **1. What ideas do you have about how we can provide services in communities where there are no lawyers or other legal services?**

Rightsholders noted that Indigenous Justice Centres will not be accessible to all First Nations communities, but they came up with creative ways to address this issue. A combination of options will be needed to improve access to services for communities.

Before taking action with any of these options, Rightsholders recommended that the BCFNJC reach out to Chiefs and Councils to discuss that particular community's needs. That way, Chief and Council can assist in identifying justice and health workers with whom the BCFNJC can collaborate. Also, the BCFNJC should hire local First Nations people to work in their respective communities and provide services that align with their experience. For instance, although the local employee may not be a lawyer, they could fill an Auntie role and provide wraparound services. The BCFNJC should utilize each community's own Knowledge Keepers, Elders and youth.

One way that the BCFNJC can provide services in First Nations communities where there are no lawyers or other legal services is to run mobile services and outreach. For instance, BCFNJC staff can travel in a "law bus" and visit communities. Where community

members need to travel for legal/wraparound services or to court, transportation options should be provided such as rides or gas cards. It is also important to meet people where they are at, and to do outreach at places where people already feel comfortable. For example, the BCFNJC could partner with Friendship Centres, community centres, schools, and health organizations to offer services at these locations. People who struggle with homelessness cannot be forgotten, so providing services at or near places that offer them showers, clothes and other basic needs would be helpful.

Rightsholders noted that organizations such as Atira's Women Society and Rise Women's Legal Centre have offered online services for years, so it is possible to offer services even if the BCFNJC does not have access to a physical location. However, it is preferable to attend communities in person and deliver services in person. Also, some First Nations have unstable internet connections and not every community member has their own computer or device. Therefore, the BCFNJC should invest in technological infrastructure for communities and training on using technology and/or should partner with places such as the community's library or educational institutions to facilitate access to technology in a safe and private space for community members to engage with the BCFNJC online or via an app developed by the BCFNJC. Rightsholders cautioned that band offices would not be appropriate locations as they would not provide sufficient privacy.

Rightsholders also raised the fact that other organizations, especially grassroots organizations focused on restorative justice, have been offering services in First Nations communities for decades. Several Rightsholders raised concerns that the BCFNJC wishes to take what little funding the existing programs have or that the BCFNJC thinks that the existing programs are inadequate. They requested assurance that the BCFNJC is not trying to replace their existing programs and that the BCFNJC is merely working to collaborate with and bolster funding for existing programs. They wanted recognition for the work that they are already doing. Better communication

is needed between the BCFNJC and existing programs. It is integral to listen to Rightsholders in each community to assist in their unique area's needs in order to help fill gaps in services rather than duplicate existing services.

**2. How will we demonstrate the impact of this new approach to legal services for Indigenous peoples? How will we know if we are doing well?**

Rightsholders expressed that it is important to track outcomes with metrics assessing things such as:

- » Whether community members are aware of IJC services;
- » How many individuals are provided with a lawyer;
- » Whether clients are being connected to Gladue Aftercare Supports and services post-release from institutions;
- » What wraparound services are being offered and which are being accessed by community members;
- » How many clients began receiving services but discontinued their involvement and why;
- » How the BCFNJC's wraparound services benefit clients. For instance, their employment status post-wraparound services;
- » Colonial institutions' actions and policies post-introduction of BCFNJC services. For instance, looking at whether Crown Counsel increase use of alternative measures and diversion;
- » Faster resolution of criminal and child protection matters;
- » Reduction in the number of Indigenous people who are incarcerated;
- » Reduction in the number of children in MCFD care and removals of children from the community; and
- » Reduced interaction in the justice system overall.

Rightsholders also expressed concerns around privacy in data collection. Some wished to know what data is being used for. They recognized that it is imperative for the BCFNJC to build trust with community members and suggested Elders and Aunties assist in relationship-building.

Some Rightsholders were confident that if Indigenous law, traditions, and spirituality are the foundations of services provided by the BCFNJC and if individuals are empowered to lead their Nations, then we should see success.

Rightsholders suggested that there be evaluation by way of collecting feedback from community members. People can give feedback anonymously if desired and there should be a satisfaction survey option. In the future, the evaluation should be completed by a body independent from the BCFNJC.

**3. As we continue to provide legal and wraparound services and move forward on transitioning legal aid services for Indigenous peoples, how will the experience of the justice system have changed for Indigenous peoples in five years? In 10 years?**

Rightsholders' hopes for how the experience of the justice system will change for Indigenous peoples in the future include:

- » A First Nations justice system will include and work with First Nations actors (lawyers; support staff; et cetera);
- » The First Nations justice system will be grounded in healing, especially land-based healing;
- » The First Nations justice system will be funded by First Nations' own tax base (promoting sovereignty);
- » The First Nations justice system will be transformed from court-based to community-based;
- » Lawyers will fully understand First Nations cultures and will defend First Nations clients rigorously;
- » First Nations laws and legal principles will be employed in all aspects of the justice system;
- » Gladue principles, restorative justice, and diversion measures will be employed at a higher rate than they are currently;
- » Each First Nation will decide what services should be the priority in their community;
- » There will be more lawyers and more paralegals working in the IJCs;

- » Alternatively, there will be less of a need for lawyers altogether because First Nations' involvement in the justice system will have decreased and also because we will return more to traditional Indigenous ways which did not require lawyers in pre-colonial times.
- » Outreach workers will travel to remote communities;
- » There will be one phone line to call for services;
- » There will be strong communication and collaboration with existing programs;
- » Services will be well-advertised and accessible to everyone, including those living off-reserve;
- » Clients who received services will come to work for the BCFNJC and improve services for others;
- » Supports will be developed from within each community; and
- » IJCs will have assisted reintegration of people who have been involved in the justice system back into community (where appropriate/where the community desires);

#### **4. As we implement these recommendations and expand our legal and wraparound services, what activities and/or services do you feel should be our highest priority?**

Rightsholders noted that each First Nations community may have different priorities. It is integral to listen to communities regarding their needs and the approach each community wishes to take. Rightsholders warned that they want to advance what is of interest to their own communities rather than have people from elsewhere impose their values on their communities.

Most Rightsholders emphasized wraparound services as being the highest priority. They mentioned counselling and services to support families such as parenting programs. Services promoting connections within families and communities should be prioritized to break negative cycles.

#### **Towards Self-Determination Over Safety – Coordinating a Provincial Approach to First Nations Policing in BC**

The objective of this session was to hear directly from

communities about their work around community safety and their vision for applying traditional practices, customs, and laws to shape and inform new approaches to community safety, policing, and oversight. Participant feedback was obtained regarding ways the BCFNJC could more effectively support First Nations to reduce and mitigate the harms of the current colonial system of policing and public safety, revitalize and restore traditional approaches to community safety, and reclaim their jurisdiction and self-determination over policing, oversight, and community safety.

#### **Relationship-building**

Rightsholders discussed the importance of relationship-building between law enforcement and First Nations as a means of establishing trusting and collaborative community procedures. Both challenges and successes in relationship-building are woven into this summary.

A Rightsholder recently retired from their job as an RCMP officer in Indigenous policing. In their 20-year career, they have worked with 33 First Nations communities, building strong relationships with locals. The key to successful policing is building trust by forming lasting friendships and prioritizing community needs. This involves speaking with Elders and youth to understand their concerns and needs. It took them two years to establish a good rapport with the last community, but the effort was worth it. They even had a street named after them and were presented with an eagle feather and blanket for their work. As someone who has been on both sides of this issue, they ensured that the RCMP and other agencies are comfortable building relationships with the community.

Work has been underway in a Rightsholder's community for over 20 years to improve the relationship between the community and the police. The goal was to ensure the police understood and respected the community's needs and concerns. However, this task is difficult, and progress can be slow and inconsistent.

The relationship between the community and the police is crucial, but it is not enough to ensure trust. Legislation, oversight, governance, and training are equally important to ensure that the police treat people fairly and respectfully. The community should have a say in how the police are run and what rules they must follow. Building relationships is more important than formal agreements since the lack of community trust in police is an issue. Rightsholders shared that no follow up from RCMP or progress report on actual files has eroded community trust in the police.

It is important for policing organizations to acknowledge Indigenous people when they come into communities. Indigenous people are human beings who deserve the same values of respect and understanding. Unfortunately, there has been a long-standing issue of some in the police force viewing Indigenous people as less than human. This mindset must change before any meaningful relationship can be built. Establishing trust by seeing ourselves reflected in the people we interact with is important.

On a positive note, the RCMP and a community in Port McNeil have a Memorandum of Understanding (MOU). This is a step in the right direction, even though it requires a long travel time to reach the community. Unfortunately, there are still issues with how detachment commanders fully implement the MOU, and the Nation hopes these will be resolved so that the relationship-building can continue.

A Rightsholder who has worked 14 years as a Native Court Worker and 12 years as a Justice Coordinator shared that their relationship with the RCMP has never been worse.

Some RCMP members refuse to acknowledge that they are on First Nations territory. They do not take Rightsholders' words seriously and think they are joking. It is not just about the relationship; some members are unwilling to listen to First Nations members. There is a need to rebuild that trust and relationship between our members and community. We need a change from the top-down to fix this issue.

There is a lack of communication and connection between the detachment commanders and the community service providers. It is important to have a good relationship between these two groups to address issues effectively. However, building this relationship can be challenging.

Establishing a better connection between detachment commanders and service providers would make it easier to address community issues. Relationships with detachment commanders are needed as they issue the directives.

In the Yukon, a committee meets to discuss any issues related to the police. The committee includes representatives from First Nations who voice their concerns. The police must respect boundaries and follow the rules set by our community. The committee also regularly meets with the police to inform them about their governance system. They hold the RCMP

accountable if they overstep their boundaries.

A Rightsholder has a committee in their community that works with the police and security officers to ensure safety. However, there is a history of tension between the community and the police, creating a lack of trust and understanding. To address this, the community works to provide services and education to everyone, intending to promote a better understanding between the police and the community. While progress has been made, work must be done to improve the relationship between the police and the community.

Many Canadians are ignorant about the history of Indigenous people in Canada, which has led to harmful stereotypes and racism. When people get to know Indigenous communities and individuals, they often see the beauty and value in their culture, and the racist ideas begin to fade away. While progress may be slow, we have seen positive changes and are committed to unlearning harmful stereotypes and building strong relationships with Indigenous communities.

Highlight positive examples of strong relationships between Indigenous communities and law enforcement – we can inspire other communities to do the same.

### **Police procedures and interactions with First Nations**

Rightsholders reflected on how police procedures on First Nations territories and how individual police officers interact with First Nation members contribute to the successes and challenges of implementing a provincial approach to First Nations policing.

A Rightsholder was part of a support group that helped the Culver family deal with the tragedy. It increased the tension between the First Nations people and the police in Prince George. The most challenging part to accept was that the Crown determined there was insufficient evidence to prove what caused his death, which meant that the family did not get to share their side of the story. The police officers charged with obstruction made things seem even more suspicious. It is hard to understand why they were not even put on trial. All of this has left the family feeling hurt and upset.

An incident occurred in a Rightsholder's community where a person was attempting suicide. When the police arrived, they came in with force, causing harm to the person's wife and three young children who were present. The experience left them all traumatized. As a community, they decided to act. They formed a



Social Development Committee and trained 12 people in emergency response. They also worked with the police to develop a system where they would call the community's emergency response team members if they had any calls from the community. This helped to reduce the trauma caused by the police intervention.

Under the current system, First Nations have little control over how the police operate. The municipal police and the RCMP make most of the decisions, and the community has no say. We must change this to ensure the police understand and represent the community's needs and concerns.

We must believe that whoever responds to an emergency will act appropriately and responsibly. We need to work together to ensure that the police are held accountable for their actions and that the community has a voice in their operations. RCMP must be accompanied by community members.

A Rightsholder tried communicating with the RCMP about things like accompanying MCFD (Ministry of Children and Family Development) to apprehend children. They have explained that it feels like we are coming full circle, and they are retaking children. They have asked them to find a different solution but have not received any answers or feedback.

The Musqueam security program was initiated in 2010. Constable Hanuse was involved in community activities and had a vested interest in the community (8.5-year tenure) and understanding and respect for cultural protocols, resulting in an improved relationship with the Vancouver Police Department (VPD) and RCMP. This led to the establishment of a Memorandum of Understanding (MOU) with Musqueam and E-Comm 911. There is a need for invested individuals from VPD or RCMP, including an extension of tenure from 2 to 5 years minimum, focus on better service delivery and data gathering through the RCMP, and the development of a Nation-based ticketing system for bylaw enforcement.

Another Rightsholder shared their concern about police officers who engage in criminal behaviour. Even though the law requires police officers to hold themselves to a higher standard, they sometimes commit serious crimes. For example, if a police officer kills someone intentionally, that is considered first-degree murder, and it is a severe crime. However, there are many cases where police officers have broken the law and never faced prosecution. It is unfair that some officers get away with things others would go to jail for. This makes it hard for people to trust the police and believe they are

there to protect them. We must believe that whoever responds to an emergency will act appropriately and responsibly. We need to work together to ensure that the police are held accountable for their actions and that the community has a voice in their operations.

A Rightsholder leads a civilian group to try to hold the police force accountable in their city. What is the role of Indigenous law in communities, and who should be responsible for repairing the damage caused by the police force? Repairing harm is impossible unless the RCMP is willing to do it. People have seen how good police officers get treated or moved when they try to do the right thing.

A Rightsholder used to believe in police reform, but now thinks the police force should be defunded. The country's system was built on genocide, and it is not possible to repair the damage. Discussing these issues is important, but why is it the First Nations' responsibility to initiate that discussion?

One area has two types of police – the Skatin Tribal Police and the RCMP from Pemberton. They have different roles and responsibilities based on their jurisdiction. The tribal police officers in the area undergo training to learn the Nation's language and understand cultural traditions. They are actively involved in the community and attend gatherings. The community feels more comfortable with them because they can speak our language and participate in cultural activities. They serve 11 communities and travel through various areas to provide services. TA Rightsholder's community is considering getting their own tribal police service in their area and are gathering more information about it.

Police officers may still be needed to keep the public safe or carry out their duties, but community patrols can help take some of the load off their plate. While some police services have good relationships with community patrols, others may see them as getting in the way. However, there is a lot of potential for patrols to work with police and make their communities safer. In BC, some communities have already realized this potential and implemented patrols.

Some challenges exist, such as the frequent change of detachment commanders over the years. Despite this, some positive changes have been made, such as integrating First Nations into the police program. This program is a model that the rest of Canada should know about, but unfortunately, it is not being shared as a best practice.

Rightsolders identified trust-building challenges: flawed and broken oversight and no accountability; lack of confidence in RCMP; RCMP accompanying MCFD to take children; prosecution service “giving police a free pass” when police abuse “elevated authority;” RCMP do not understand First Nations social histories and need to learn more; and leaders must act and set an example for their subordinates to enact change.

Rightsolders also shared ideas on how to improve police service delivery. An “early warning system” for family violence to identify a crisis (i.e., circumstances such as job loss, relapse, etc.). However, if community members can identify early signs of crisis, such as job loss or substance abuse, they can take steps early to prevent family violence from happening. The provincial Police Act requires amendments because there are concerns about increased provincial control over self-administered communities. There is the potential for a top-down colonial approach; instead, there needs to be emphasis on police reform and community-driven safety initiatives. Maintaining agreements and consistency from provincial and federal police forces is vital, as is rebuilding First Nations values and justice to move away from power and control to healing and rebuilding Nations and families’ strengths. It is important to include Justice Workers in police interactions because there are problems with current arrest procedures and a lack of transparency. There is a need for the RCMP to respect and use community Justice Workers.

The role of BCFNJC is to support communities in holding the RCMP and other police service agencies accountable. Many delegates expressed disappointment over potential non-renewal of agreements by RCMP. The RCMP needs to be encouraged to explore alternatives and not fear change as there is a place for the RCMP in addition to community officers and other positions



*A Justice Caretaker: Ellie Sellars is from the Secwépemc Nation and a Native Courtworker. Hear Ellie reflect on her past experiences, using her insights to emphasize the need for community care and cultural understanding in the justice system.*

within First Nations.

### **Community safety training and cultural safety training**

Rightsolders in attendance shared the importance of establishing safety training protocols and promoting cultural safety programs for police officers in developing a provincial approach to First Nations policing. Both challenges and successes in community safety training and cultural safety training are woven into this summary.

The current social welfare system has some flaws, especially in terms of serving Indigenous communities. The regulations, rules, and training are designed for mainstream, individualistic family systems, but Indigenous communities are communal and operate differently. This makes it harder for the system to work for our people. Cultural sensitivity training is a good start, but it should be done by local Indigenous people who understand the values and principles of the area. The system also needs to be more transparent and open to feedback from the communities it serves. This way, changes can be made to policies and procedures that are more inclusive and better reflect the needs and values of Indigenous communities.

To make our society safer and more just, we must involve First Nations and their traditional values and principles in the conversation. Instead of always relying on the government or the police to solve problems, First Nations should take control of their own lives and start the healing process. This can help us get rid of the negative baggage that we are carrying. Communities should create their internal systems to keep themselves safe without the involvement of the police force. It is important to understand that accountability and responsibility are fundamental values in First Nations communities, and we can learn a lot from them. We can create a more inclusive and respectful society by incorporating language, songs, and traditions.

We need to be involved in drafting laws related to policing in Canada, specifically for First Nations. The idea is to make the law fairer and just for everyone. BCFNJC is considering possibly creating legislation like they did in the Yukon. The Province of British Columbia is working to reform the Police Act to create a safer community. They want to involve different Nations in this reform process and co-develop legislation. They are open to discussing various options for improving community safety. The government is trying to create a better governance structure that is well-funded, respected, and offers different services. They are working towards

having more options, such as an administrator policy, to provide better community services.

Recently, there was a community safety summit in Whitehorse where they learned about community safety officer programs. These programs are empowering communities to take charge of their safety. Some communities have officers who work like police officers, while others have patrol and security officers who keep an eye on things. These programs are helping to reform legislation.

To improve community safety, it is essential to address family violence. This type of violence is often perpetrated against women and happens repeatedly in relationships. To prevent it from happening, communities can create an early warning system to identify families in crisis.

Many communities do not have Community Safety Agreements (CSA). There is a fear of the unknown at the federal and provincial levels when it comes to self-determination, yet there has been grassroots development of agreements by local communities.

### **Community-led safety initiatives**

Rightsholders also shared examples of community-led safety initiatives in either their home community or other communities. Both challenges and successes in community-led safety initiatives are woven into this summary.

The Hub model tries to bring all these professionals together in one room to discuss the issues and find a way to help the person in need. It is a way to help people going through a difficult time by bringing together different professionals who can work together to find a solution. For example, a police officer knows about criminal behaviour, a social worker has skills to help with personal issues, and a teacher knows about the student's life in school—they all work in different fields but can come together and collaborate under the Hub model. The goal is not to punish or arrest the person but to find a way to help them get back on track more productively. Although this model can raise some privacy concerns, it is a good way to help people who need support. However, a Rightsholder is unsure how much this model is used in First Nations communities in BC. To what extent is the hub model or intervention table utilized in BC?

Another Rightsholder shared that the well-being of the people in their care has been neglected, with inadequate care causing them harm. They are trying to change

this by delivering cultural sensitivity and safety training to staff, educating through reading books and online resources, and engaging in discussions within the community.

A Nation hired their community safety officers to ensure safety in their community. Two of them work for the First Nation and are funded by the federal government. They are working on a big construction project to rebuild the longest bridge on the Alaska Highway. Their community works hard to keep each other safe and hold people accountable. That is how they run things in their community. Community patrols are a great way for First Nations communities to look for safety. These patrols comprise community members who watch for problems and try to solve them before they escalate. They also do things like cleaning up needles and giving out clothing when the weather is harsh.

Sometimes, people from outside our community come in and cause trouble. When this happens, we have no choice but to remove them to protect our people. During the COVID-19 pandemic, some communities closed their gates to keep drug dealers out. This helped to reduce crime rates because the dealers could not come in. Communities have the right to gate their community and keep drug dealers out because they own the land, not the federal government, which holds it in trust.

Where is the role of Indigenous law in community safety? A community has traditional laws and a law enforcement team that works hard to keep them safe. They patrol the area constantly and are always ready to help when needed. They have helped to reduce crime by keeping young people engaged in our culture and traditions. The law enforcement team who patrols a community are not police officers, but they still do a great job keeping members safe. They attend community meetings and make suggestions to help community members stay safe. Other communities could also have a law enforcement team. The Yukon has its own land enforcement and plans to set up camps in the bush to reconnect people with the land. Time is essential because the Elders with valuable knowledge are passing away quickly. If more communities had teams like these, there would be less need for police officers to come onto their land.

In the Yukon, a committee to ensure police accountability with First Nation representatives sits two times monthly. Furthermore, the Yukon has Community Safety Officers (Teslin Tlingit) who are active in communities. Sts'ailes has a CCG (Community Consultation Group) through a CTA (Community Tripartite Agreement) to promote

community safety. The Westbank First Nation Law Enforcement Officers (LEOs) have teams on the ground who also attend community meetings – their presence makes people feel safer. The LEOs also attended breakfast programs and daycare and they understand cultural protocol. Communities must have a say in governance.

## Youth

Rightsholders mentioned how First Nations community-based initiatives support youth safety and justice. Young people may engage in criminal activities like breaking into houses. To prevent this, some communities have built recreational facilities like swimming pools to keep young people engaged in different activities. By focusing on young people and providing them with cultural and recreational opportunities, communities can reduce crime rates and improve safety. An example of this is from Port Simpson, where a swimming pool that hosted recreational events and provided youth with extracurricular activities led to a decrease in suicide attempts.



*A Youth Story: Hear smukaqen Marchand, from the Okanagan Indian Band, share a personal story that highlights the urgency of justice reform rooted in mental health and community healing.*

## Other challenges

Rightsholders also identified challenges not directly related to the themes discussed here but related to broader systemic issues that impede a provincial approach to First Nations policing.

Many incidents have caused trauma in communities, like the RCMP recently shooting a dog that had bitten a child. This only created more harm and distrust. Another Rightsholder is facing some problems related to their community's confidence in the RCMP. One of the officers who attends their community meetings and has a social work background has built good relationships with

them. However, the other RCMP officers make fun of him for this and the Rightsholder suggests a change in institutional cultures in law enforcement. Another Rightsholder believes in bringing diverse perspectives together to discuss important issues, including police oversight and accountability from a First Nations point of view, based on their own laws. However, this can create a challenge when enforcing those laws, especially if federal prosecutors do not recognize them. It is like building a framework or structure, but many gaps and challenges remain. Another problem in communities is family violence. Often, by the time the victim, usually a mother and her children, goes to court seeking an order against an abusive partner, the crisis has been going on for some time.

## BCFNJC's Diversion Workplan

The session aimed to explore what factors enhance or hinder diversion efforts and to share information and experience amongst First Nations and justice partners. Key themes discussed included the following:

### Gladue

Rightsholders discussed how Gladue would apply to diversion. Though Gladue Reports has existed for over 25 years, lawyers may not know about Gladue Reports. The idea that Gladue Reports would lead to Alternative Measures post-incarceration does not work when there are no Alternative Measures to have as a service delivery. The legitimacy of Gladue Reports needs to be addressed as well since Gladue opponents are not Indigenous. Students at the University of Victoria (UVic) have identified that Gladue Reports are not working, and the rising rates of incarceration are proof. The Gladue Reports should be treated as a pre-sentence report, like psychiatric and psychological reports. They need to be equated to those and registered in the court registry. This is where Gladue Reports really help as you can see family history.

### Corrections and probation

Rightsholders reflected on how corrections and probation would figure into diversion measures. Probation officers are not privy to the Gladue Reports. In lieu of regular probation, a community has a roster role of people who come and check in. Seventeen of those on the roster are unhoused, and they receive a check mark so that they are not in breach of their probation. Many of the statistics around breaches of probation are not significant breaches but are a result of traumas and addictions. Service delivery needs to be connected

to a probation officer and other organizations close by. Police can also be responsible for changing the way they deal with warrants.

## Police

Rightsholders considered the police's role in diversion. Focusing on discretion again is helpful to understand why diversion is not taking place, why people are not referred to at a police or Crown level, as there are questions of accountability. A community has a letter of expectation with the RCMP and the courts, which means expectations are laid out in terms of what each jurisdiction is responsible for, and they follow that. The letter of expectation ensures accountability. A community used to teach new RCMP about the agreement, but they are bringing in more special constables. They are a small town, and they are rebuilding after a fire, and they only have RCMP presence from 7:00 a.m. to 4:00 p.m. Having a Memorandum of Understanding (MOU) or a similar agreement with local RCMP is important to ensure that new officers are learning to make turnover much easier. There is interest to know if other communities have agreements to that level because there are few.

RCMP coming into a community need to learn about the local culture and the nuances of working in a small community. Outside powers and activities do not always apply. We are all family, and the RCMP need to know about that and other cultural aspects. There should be cultural sensitivity training, as Indigenous culture is not the only culture in Canada. Police need to learn how to handle cultural differences. It is key to put cultural training in MOUs, so that in communities, the local RCMP officers receive an orientation to learn about the surrounding communities and territory. One participant gave their employees six months to do this; if RCMP officers are unwilling to learn, they need to be stationed somewhere



*Policing Perspectives: Mike Sallis, from Lyackson First Nations, is a recently retired RCMP member. Listen to Mike share his unique perspective on the justice system, grounded in his experiences from both law enforcement and community advocacy.*

else. It could be worth considering whether a veto of police who are unwilling to learn could be added to an MOU. One community is a huge territory spanning from Kwantlen to Hope, and police detachments are spread out. Their boundaries do not match up with theirs. Another community has a good relationship with the Crown and with RCMP because they are remote. They have a team that comes in every three months for court. One participant does workshops on racism with the RCMP, and the RCMP did not know they had indicators of racism until they were informed. Gentle talks on racism can be extremely effective. There was an example of an Elder in a community who was acting disorderly, and their family held them accountable, but the RCMP were not aware. With the RCMP, a participant has someone from their Nation on the hiring panel for their local detachment.

A recommendation to having some kind of cultural training with tribal police was made. A Nation has younger Indigenous men who, after being raised by those inflicted by colonial abuse, have brought that abuse back into the community and are oppressing their own community. We have these young men in tribal police who do not know the history of residential schools, and they treat the community the same without knowing they cannot treat Elders in this way.

## Crown, judges, and courts

Rightsholders deliberated on the role the Crown, judges, and the courts would play in diversion. A community has an Indigenous Court that builds better relationships with the Crown and judges. Building those relationships really helps, and we are trying to expand that. Some crimes must go further than a healing plan. Some courts still need to sentence people to correctional centres, but a Nation can look at what they can provide instead of waiting until later. There are always healing plans to look at, and a Rightsholder with five First Nations surrounding their community is working on moving this into the rest of the court system.

Indigenous Court in a Nation started in September and allows for a healing plan to be put in place. This is different from probation because they can assess an offender and whether they are ready for treatment, and this includes assessment of mental readiness. Part of the challenge in prosecution services is that many Crown retire and many new people with appetite enter the role, but the first step to making connections needs more effort.

Not all Crown Counsel are created equal. Based on personal discretion, courthouses can be reluctant and policies loose – this needs to be standardized. Education

for Crown, community correction, and probation is needed. Courts see “culture” as a location they often do not understand. Crown often does not know the diversion options available at a local level.

### **Physical space, training, information sharing, funding, and relationships**

Since a diversion program requires a physical space to host programs, training for program staff and partners (e.g., Crown, police), funding revenues, information sharing between Nations, and building relationships inside and outside the criminal legal system, Rightsholders considered how all those would factor in developing or enhancing diversion.

We need to share research, knowledge, how it is done, and best practices. It would be helpful to have one place to go, a list of resources available, and a way to connect with them. There could be a role for BCFNJC to be the one-stop-shop, to provide training and ensure continuity over time.

Better relationships with RCMP, municipal police services, judges, Crown, and probation workers are needed. Suggestions from Rightsholders include funding for a homecoming pilgrimage, support for staff through mental wellness, especially in rural and remote communities, Elder support (no taxing of honorariums), and an all-Nations gathering place that offers traditional activities such as hunting, fishing, community cooking, talking circles, healing, and community services. Funding is a major barrier since burnout is very real, especially if someone wears many hats in their role. Sometimes Nations can work with the churches. Political interference from Band council on Reserve can be an issue. Better and more sustainable funding for First Nations courts is needed. If Nations are going to work with current pieces of the justice system, they need funding and support to ensure safety. Training is key, if you don't have the training, you don't even know what diversion is.

It would help if BCFNJC had information on their website on the training opportunities for those providing services, as there are cases where staff are trained and willing, but they do not know how to proceed when encountering tough situations. The Justice Council does have funding to allocate to First Nations. It could be worthwhile for the BCFNJC to provide wraparound counselling, referrals, and nursing at the different sites.

### **Processes, procedures, and policies**

Rightsholders examined how a diversion workplan would

inform the development of actual procedural policies. When a Nation talks about processes, not everyone is going to be on board. It is a challenge when organizations are project-based, writing 25-50 proposals per year. As a manager, one participant is constantly writing reports. A Nation has been in schools over the last four years, and they see fewer files. Much of the work being done is prevention and seeing where they can do the work with youth. Sometimes it is hard to make parallels and identify successes. Connecting people back to their Nation will take time and it is a hard question to ask them what their successes are when successes are not the same. The Aboriginal Coalition to End Housing (ACEH) has one apartment building for those with a criminal history, with counselling, nursing, and a registration program on-site, as well as Elders in residence, and it is working.

More supports and connections are needed for urban Indigenous people who cannot access their Band, Nation, and homelands due to on-reserve/off-reserve politics. Presumption of diversion calls for presumption of innocence, and we have to be careful not to use language and terms that are colonial. We catch Indigenous persons at the wrong end; education about our history means that children are being made aware.

More “serious” crimes rarely get the referral for diversion. There are different levels of diversion based on jurisdiction. Many policies are currently prohibitive. Let Nations define and guide the answers and solutions to the questions: What intervention would be effective? What would be meaningful? What is the referral pathway?

Diversion shouldn't necessitate a criminal charge. Development of a manual is important in developing referral processes, particularly for sensitive issues like sexual assault. The referral pathway should be need-based and dependent on individual circumstance. The Elders should lead the way and compiling a directory of Elders, by Nation, would be an asset –BCFNJC can assist with this. Measurable outcomes need to be developed for diversion programs.

Nations should continue to learn their own laws around child welfare. Often a Native Court Worker is the only person supporting our youth in court.

### **Healing plans and healing programs**

Rightsholders discussed integrating healing factors into a diversion workplan and shared their experience working in programs that center healing. In a Rightsholder's department, every individual who walks through the door is treated with the utmost respect, and

almost 100% of the time, these people, mostly men, will sit there with lots of emotion, talking about their pain. That is the point they will begin their journey. People experience very intense transformations from the isolation, learning about their family trees, and getting the teachings – all of this is based on Indigenous law. If you have a thermometer on where someone is at with their healing, there is awareness.

There is an assessment where there is a requirement to communicate what is available for that individual. Options include land-based healing, volunteer programs, and canoe journeys. People go on canoe journeys, return sober, and stay sober for the long term from the healing they found on the water. When a Rightsholder goes by water, their granddaughters get excited, and it is healing their lives. Every individual has a different plan, and all these court systems do not seem to have focus. If one participant has an individual in their office, they have a holistic circle in front of them.

Suggestions for healing ways and activities include land-based programs, name-giving ceremonies that allow someone to connect with community through their traditional name, making victims feel safe and giving them a voice (especially important in small communities), planting and harvesting traditional medicines, learning how to process animals (e.g. beaver), and peace-making circle training. In addition, giving people opportunities to revisit previous roles and skills and responsibilities is important: they can revisit hunting, fishing (making nets), dry meat (smoke meat), and sewing cloths and moccasins.

## JUSTICE

Rightsholders discussed how diversion would meet a Nation's justice needs and how to transform the criminal legal system to reduce First Nations overrepresentation.



*Hope for the Future: Chief Don Tom from Tsartlip First Nation share's his vision for reclaiming justice for Indigenous Peoples and the need to honour our Ancestors and breath hope into the future.*

The whole justice system needs to be Indigenous. Our systems are so different. Theirs is oppressive, while ours is healing; we cannot fold into a system that is not ours. We run parallel with the system, so their successes often do not reflect our successes. They need to understand what their definition of success is, and then ours, which is connecting back to your family and to your culture. If you do not know these things, then you will behave in a way that reflects what is going on now. There is a presumption from the colonial system that their system is "better"; they are assuming that we would not want to keep our own people safe when the accused is our relative.

Forgiveness is better than shame. When a crime is committed, an apology and forgiveness feast can take place. Understanding is essential to get to the root of the issue, rather than colonial justice. Having Alternative Measures is a challenge that is recognized in the court system. The point of the Strategy is that with more diversion, the more you can bring back, the sooner and the better. When there is more jail time, there is more traumatization, and people are removed further from their connections.

## Community, culture, and Nation-based programs

A diversion workplan must be tailored to meet the needs of individual First Nations and how communities can achieve justice through culturally appropriate Nation-based programs. Rightsholders discussed how this will be accomplished by reflecting on their own experiences.

Not every client is going to be from your community, especially in larger communities and territories, and we cannot just impose our traditions on them. We need to find their Elders and make connections for them too. One Nation is in a small community, and they need to learn what works in an open system and what works in a closed system. A Nation is placing its focus on personal wellness, as they have been through so much in their history. There could be a wellness standard for anyone coming to work in First Nations communities.

Every First Nation has been touched by history and trauma, and if someone does not heal their own trauma, they will be guiding others with that trauma.

Young people are starting to learn the importance of Indigenous medicine and having healing tools, and this is an opportunity to start to work differently. Working from their Nation-based authority, members can guide training and empower Chiefs and Matriarchs to take back their authority.

In another community, someone had committed a serious crime, and they gave them terms to re-integrate, including answer to their family before re-integration. We cannot heal a whole community at once, but we do it one person at a time, focusing on their individual wellness plan and ensuring they are comfortable with it. Another Nation has never had to do re-integration, but mostly has handled treatment with addiction. People are falling back into addiction because there is no support in place. One Nation is looking at building a safe community, a place with no drugs and alcohol. It is in that Nation's strategic plan to build safe communities. There are currently 28 homes being built in a new subdivision, and they are exploring different approaches to safety.

Since the wildfires, a Nation has had more crimes, including more serious crimes. They know that when offenders from their Nation are done their time in prison, some are going to want to come home. They need to look at how to keep the community safe, while also helping those re-integrating feel at home and helping them to move forward to a more normal life. There is a facility that offers counselling and safe homes near Sts'ailes, and they also have a minimum-security corrections center that provides cultural programming and is a healing center. The Kwikwèxwelhup Healing Village has positive cultural programming. However, the cultural implementation can be damaging when those incarcerated there are sent back to more secure facilities. The Law Foundation has funding for programs based on Indigenous law, and they are changing their process to be less burdensome.

Nations want to handle these things and they have the directive, but they do not have the bodies or the time. It is a challenge working with different divisions across different regions. One community tries to keep it simple by looking at how they can make meaningful bridges and connections to ensure action happens. Every community is at different levels, and there is no one-size-fits-all approach.

In Victoria, they want to know what to do with unhoused Indigenous people, as currently it is not always clear. In one Nation they have a model where they are the probation contact; they confirm that people are attending their counselling sessions, validate that the client visits the facility, and keep track of their own clients.

There is one healing lodge for Indigenous women in Canada, and there needs to be more. There is a fantastic program at Heiltsuk, where if someone is arrested, they can choose between pre-trial or a land-based healing process where they are secluded on their ancestral land to do teachings and survival. It is so remote in some of

the areas that they can take people with serious crimes, and they can be there for many months with very positive results. There are Indigenous-run halfway houses and regular supportive housing, but there needs to be buy-in from mental health services to provide wrap-around services.

In answering the question whether non-Indigenous people should have access to Nation-based diversion, the replies were mixed. Some said yes to proving access – they are community members and/or respect what Nations do. There needs to be an appreciation of cultural nuances (culture, language, and explaining what “diversion” means), especially in small communities where services are provided to everyone (“golden bridge”). However, Rightsholders also asked how helpful would they be for non-Indigenous people who do not identify with cultural components? Another Nation is at capacity and non-Indigenous people do not have the connection with their culture and teachings.



*The Heart's Experience: Listen to Tina Miller, a member of the Nisga'a Nation, explain her approach to the IWJP, which is powerfully rooted in her lived experiences and commitment to supporting the efforts of the collective.*





**VISUAL SUMMARIES OF DAY ONE**

Michelle Buchholz, Visual Practitioner, shared the visual images captured during Day 1 of the Forum.

# Day Two – April 9, 2024

## OPENING AND OVERVIEW OF DAY TWO

### **Amanda Carling, Forum MC**

Amanda advised that the theme of the day was advancing Indigenous self-determination and sovereignty over law, Track 2 work of the Justice Strategy... Strategy 2 mandates the BCFNJC to create a guidebook to support communities with their efforts pertaining to justice. As an organization, the BCFNJC does not have the expertise to do this on their own, but the members of the panel could support the work. During breakout sessions, the hope is that participants share how the Council can support communities in this work.

Kory Wilson informed participants that the IWJP had received good media attention the previous day, and that members of the BCFNJC had spoken with the press.

The Forum registration was confirmed at 509 registrants, and Kory Wilson said it had been a pleasure to witness the work conducted on Day 1, including through the breakout sessions, dialogue, networking, and shared laughter and positivity. The BCFNJC members were profoundly grateful to each and every participant for their courage in having bold conversations and expressing their concerns with honesty and respect. Bold conversations are needed, whether they are positive or negative, in order to address any fears. Fear is a natural reaction when building something new, and it was entirely understandable that there would be fear, particularly when Indigenous people have faced tremendous challenges and horrors in the criminal justice system.

When the BCFNJC formed in 2015, it was intended to be reflective of all 204 First Nations, which is why it is important for Nation representatives to tell the Council what they think and feel, particularly as the Council and its work evolves over time. The Council will not take away jobs, money, or jurisdiction from Nations or from existing programs; they want to work together. It was safe to say that no Nation has sufficient funds to complete all that it wants for its people, nor the human resources or time. The Council has committed people who operate in many different places and spaces in the province, and who understand and prioritize diversity, as so often innovation comes from diversity. BC is the most diverse Indigenous province in Canada, and the BCFNJC does not want to reinvent the wheel or duplicate services already in existence but seeks to leverage them and maximize available resources.

Funders want data and the BCFNJC's tracking tool, Tracking Justice, will assist with tracking data and with telling the stories of our Nations and communities in a way that fulfills their needs and in a way that funders will understand. Council needs Nations to work with them, which is why collaboration was the theme of the Forum – everyone is in the work together. Colonialism tried to divide and conquer Indigenous people, but they have come back together stronger and must do the work together and support each other.



# SESSION THREE: FIRST NATIONS LAW IN SCHOOLS AND COMMUNITY

## *Revitalizing Indigenous Law*

### **Professor Andrea Hilland, Kings Counsel (K.C.), Director, BCFNJC**

Professor Andrea Hilland explained that Track 2 was meant to stand up Indigenous laws, rebuild what was broken by colonialism, and for BC First Nations to live in a better way under their own laws. First Nations must not reinvent the colonial system; they need to turn away from that system as there are “no red faces in a white system”.

The colonial strategy was to keep Indigenous communities in a continued state of panic and disorientation with the high incarceration rates of their people and with child apprehensions. Under their own laws, First Nations people did not have those types of problems, and they want to revert back to their laws, the ones that were developed a millennia ago. Traditional laws did not allow for the kind of suffering that is seen today on the streets, and First Nations must build back their relationships with their relatives and their land, for it is there that they are most strong and healthy.

### **Professor Johnny Mack, Assistant Professor, Peter A. Allard School of Law**

Professor Johnny Mack provided family history and added that his kin in the Barkley Sound carried him forward in the work he does as a law professor, and in the work on the resurgence of Indigenous law.

The Forum’s theme of collaboration signals collaborative action across or between distinct legal traditions with a long-documented history of interaction with one another. It is a history that is coloured with racism and colonialism, a history First Nations have yet to eclipse.

Coloniality remains, waxing and waning, and has developed new and particularly dangerous strategies

that work effectively in advancing the erasure of Indigeneity and legitimate claim to law.

As Canada transitioned from a colony with illegitimate claims over Indigenous territories, it did so in a peculiar manner. It did not return the lands but instead passed them to Europeans that settled, and as a result, Indigenous people had to negotiate with these new forms of colonial power before being allowed to emerge through institutional recognition as lawful entities.

With a lack of economic, political, or military might to be taken seriously by imperial power, Indigenous pleas for justice have taken on a normative dimension and entered into human rights discourse.

Replacing a violent regime with a more egalitarian one is not how First Nations imagined their utopia to be. The avenue in which they envision their utopia is through rights, a small compromise the nation-state makes to secure the legitimacy of its claims to sovereignty. Rights are the stuff of legal argumentation and doctrine and are designed to test the validity of rights claims and balance them against more entrenched interests of the state. The “warriors” in the new world are lawyers, legislators, and judges.

Professor Mack posed whether Indigenous rights move Indigenous people toward a defensible idea. Do they represent an opportunity to unwind the relations associated with imperialism and colonial entities? Does the rights discourse allow the story of dominance and subordination to continue with reduced friction, or towards its conclusion?

The Professor’s opinion was that Indigenous people face an urgent imperative to think beyond rights. Citizenship is plural, with citizens having a diverse set of allegiances





and commitments, and distinct forms of authority, with local or national dimensions which source their legitimacy in distinct historical and normative locations. These authorities come to be because of citizens and shared histories and aspirations, and give shape to collective obligation, which is where laws are grounded in fields of lived experience.

Colonial settlers sought to eliminate the multiplicity of sovereigns that preceded European arrival. Within the legal centralist framework, law is, and should be, the law of the state, applied uniformly for all citizens of the state and administered neutrally by state institutions. Within the ideological frame of legal centralist's, the legitimate existence of the settler state demands the elimination of competing Indigenous legal authorities. Therefore, Indigenous law would pre-empt the settler state's claim to Indigenous lands and people. Absent of an agreement or conquest, state law would have no force or effect on Indigenous peoples and their territories.

In Canada, the diminishment of Indigenous law has been achieved with reference to a terra nullius logic that presumed Indigenous lands to be vacant. The Western state moved to topple Indigenous sovereigns with a universal history narrative that assigned Indigenous to be at a lower human development scale and imposed abstract, contractual conceptions of law and justice that presumed Indigenous peoples to be citizens of the nation-state.

The state isolated and contained Indigenous peoples to diminish their institutions of governance and social order, but the state's use of violence, paternalism, and

forced isolation worked to generate a counter imperative of Indigenous survival and their shared commitment to recall their land, stories, and histories.

The contemporary Indigenous rights framework and negotiated treaties have generated a new platform to support the logic of elimination. Indigenous rights are working effectively to draw Indigenous practices into the colonial framework of authority, and this is seen in the context of the BC Treaty Commission and other forms of rights recognition in Canada.

While a student in law school, Professor Mack's own Nation's treaty negotiations became a major focus for him, and he considered Indigenous freedoms and unpacked the meaning of section 35 of the Constitution Act, and where Indigenous rights lay.

The way courts define Indigenous rights is a narrow test and does not involve giving land back. A doctrinal framework was created that balances Indigenous rights against the economic interests of the state. Treaties are claimed to be comprehensive agreements with rights contained that are like quasi-municipal powers. The terms are a domesticated form of law-making power and do not enable or encourage the ability to look back at Indigenous histories and define what lawful conduct should be. In these complex agreements, the experts to interpret Indigenous law-making powers are not the Elders of the land, but lawyers. Nations must turn to recover their laws; it is who they are and where they come from in pre-colonial contexts.

### **Sarah Morales, Associate Professor, University of Victoria, Faculty of Law**

Professor Sarah Morales shared a presentation titled “Revitalizing Indigenous Law: Method for Community Engaged Practice” and reported on the methodology for the work, what was utilized in the Cowichan Tribes Child and Family Wellness legislation, and how to move forward.

Standing up Indigenous laws must be done in a good way, one that promotes and generates change within communities and demonstrates how Indigenous laws and processes can positively benefit all Canadians.

Professor Sarah Morales referred to a current period of Indigenous resurgence, and the recognition of Indigenous laws. The Supreme Court of Canada, the highest court of law in the country, was now turning its mind to the nature of Indigenous laws and their place within Canada’s legal fabric.

This work will be significant on how to revitalize and stand-up Indigenous law, determine inter-societal relationships, address the colonialism and racism that continue to exist in the current legal landscape, and acknowledge the impacts of the colonial legacy on First Nations communities, oral histories, languages, governance, legal institutions, and severance of connection to land. Nations will be challenged to stand up their laws, articulate and implement their laws and legal processes, and revitalize their legal institutions because of the past and the continuing harm to communities.

Professor Sarah Morales teaches a joint law program including trans systemic torts, Coast Salish law and languages, legal research, and writing and field schools. Within those courses, different methodologies lend themselves more easily to course objectives.

#### Teaching Methods through Legal Education:

- » Trans systemic courses:
  - › Story-Based Learning Method
  - › Single-case/Story Analysis Method
  - › Multi-case/Story Analysis and Legal Theory Method
  - › Narrative Analysis/Legal Analysis and Synthesis in Conversation Method

- › Wisdom/Teaching Gathering Method
- » Coast Salish law and languages:
  - › Linguistic Method
  - › Interviewing Elders
- » Field Schools:
  - › Community embedded
  - › Land-Based Learning
  - › Art, beading, and shawls
  - › Spiritual ceremonies, sweat lodges, vision questions, and dreams.

When determining which method would be best to engage with on laws, it was important to consider which aligns best with current capacities, which are more appropriate and practicable in the short-term, long-term, or lifelong work, and which will achieve the client’s needs and wants most effectively.

#### The method must address:

- » The objectives, given the resources available
- » Challenges of intelligibility, accessibility, equality, applicability, and legitimacy
- » Issues of relevance and utility
- » Issue of negative and positive stereotypes.
- » A narrative analysis of Snuw’uy’ulhtst tu Quw’utsun Mustimuhw u’tu Shhw’a’luqwa’a’i’Smun’eem was provided as an example:
  - › Nuts’a’maat shqwaluwun (Working Together with One Mind, One Heart, One Spirit:
    - › Snuw’uy’ulh teaches that working together to make a decision is as important as the decision itself
    - › A process of collaboration helps to build sustainable outcomes and relationships
    - › Collaboration processes build connections and develop the strength of families and communities

- › Collaboration processes enable all individuals to participate and help participants to work through divisive conflicts and rebuild their connections and commitments to each other
- › Collaboration processes must be considered in decision-making under this law.

### **Michelle Joy Carmichael, Revitalizing Indigenous Law for Land, Air, and Water (RELAW) Coordinator, West Coast Environmental Law (WCEL)**

Michelle Joy Carmichael spoke of balancing Indigenous rights versus those who rely on resources for their own benefit. RELAW focuses on embracing community self-identity and works for First Nations business development associations to support them.

WCEL has worked with First Nations for many years. In 2016, the RELAW program was established in response to the growing demand for Indigenous-led legal solutions to modern challenges. RELAW stands as WCEL's largest initiative, in which they partner with Indigenous communities to research, apply, and enforce Indigenous law.

RELAW projects are collaborations with Indigenous-led partnership agreements through the provision of complimentary legal supports to implement law-based strategies, and its co-learning program fosters a communal learning environment through a yearlong strategy of retreats including Indigenous Law in Story, Indigenous Law in Dialogue, and Indigenous Law in Action. During these retreats, insights, experiences, and supports are shared, and deeper connections are fostered in order to navigate collective challenges.

Program principles were designed to ensure a safe, inclusive, and respectful environment for all participants and the understanding that the journey of learning and unlearning is a perpetual process.

A notable shift has been seen in the perception of Indigenous laws, which are crucial in the stewardship of lands and waters. First Nations are demonstrating their powers in a way that government and corporations cannot overlook, using place-based approaches with benefits to all. Indigenous laws and world views are indispensable tools in addressing climate diversity and climate crises.

### **Navjot Jassar, Staff Lawyer, WCEL**

Navjot Jassar shared of RELAW's projects, Cohorts 1 to 5, from 2016-2023, and their commitment to learning Indigenous legal orders through three pillars: research, application, and enforcement, all conducted through a cyclical fashion.

Learning from stories and knowledge holders is key in conducting research, along with engaging in community deliberations, supporting dialogue between decision-makers, and enhancing capacity through the eco-learning program. Application involves strategizing with decision-makers on a course of action and drafting written expressions of Indigenous laws. A diverse set of strategies would be used for the enforcement of laws. The work is supported by an agreement with the Indigenous Law Research Unit.

During the research phase, RELAW works primarily with stories; they are accessible and bring people into conversations. The focus is on deliberative law, which comes from dialogue and discussion, and ensuring the right people are in the room to interpret the stories. WCEL staff are not experts in Indigenous laws; they walk in both worlds and use their expertise to support First Nations in reclaiming decision-making and asserting jurisdiction over their lands and waters.

As relationships are developed over time and legal orders are understood more deeply, the RELAW Roots framework is used to draw out the Indigenous legal principles. This was applied to the Lower Fraser Fisheries Alliance (LFFA) RELAW project in which research was compiled into written form, and legal principles are now being applied.

Contemporary Indigenous law instruments include declaration and order/written acts, impact assessments, and legislation and agreements. Indigenous Protected and Conserved Areas (IPCA) are a way for Nations to assert their own laws and jurisdiction over their territory. The IPCA is a way to enforce Indigenous law and self-determination. Policy concerns include re-establishing governance, food sovereignty, developing healing spaces, bringing communities back to the land, and strengthening First Nation economies through eco-tourism and guardians.

Examples include:

- » Ashnola Watershed IPCA:
  - › Enforcement strategy involved writing to





the current settlers living on their lands and urging them to reach out to government to start a dialogue, which proved to be successful

- » Tsleil-Waututh and the Trans Mountain Pipeline (TMX):
  - › A Tsleil-Waututh Nation impact assessment rejected the proposed TMX project as a matter of their own laws and used a variety of strategies to enforce their objection
- » Gitdisdzu Lugyek (Kitasu Bay) Marine Protected Area (MPA):
  - › Kitasoo Xai'xais Nation declared the bay as a protected area under their laws, and it is now being protected by Guardians
  - › The Guardians have been successful in protecting the area through education and dialogue.

Indigenous law shapes and drives the work at RELAW, the heart of which is legal pluralism. The work always comes up against Canadian law, and pluralism must be strengthened. The UNDRIP is key in bridging that

work and pushing those boundaries, led and framed by Indigenous people. Collaboration requires a willingness from the Crown to learn, listen, and invest heavily in Indigenous laws and to support Indigenous law in theory and in practice.

Amanda added that the methodology was related to land and waters and could be applied to justice issues as well. Indigenous worldviews do not separate justice issues from land issues.

Amanda informed participants that in BC there was now a degree program that teaches students this type of work and an opportunity for both Indigenous students and accomplices to do this important work. Participants were directed to the Forum evaluation forms and to the Fraser Room where Elders were available to provide cedar brushings, other teachings, and care onsite for participants. Guest speaker gifts included a print seen on the cover of the IWJP, created by Marika Echachis Swan, an artist from Nuuchahnulth. The artwork speaks to "truth is love" and honours the medicine of listening for the true wellbeing of those most vulnerable. The Red Dress pins in the meeting packages were designed by Julian Anton, Manager of Digital Communications and Creative, BCFNJC.

## BREAKOUT SESSION

### Strategy 2 Guidebook

The intention of the session was to discuss and understand community needs and receive instructions on how to ensure the Strategy 2 Guidebook that is meant to support First Nations working to restore their justice systems and institutions makes the most impact and is most useful for communities.

Advancing and supporting First Nations in their pursuit of self-determination of their own systems of justice and institutions is a core part of the Justice Strategy and is encapsulated by Strategy 2. Strategy 2 aims to replace the historical practice of denying First Nations justice systems, laws, and legal orders, while simultaneously upholding the value of their recognition and implementation of the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation.

Without this shift in values, where self-determination and self-government are supported and upheld, achieving the transformation of the justice system cannot occur. Strategy 2 is about affirming this value in multiple ways throughout the justice system and making sure it helps inform the work in all sectors.

The following is a non-exhaustive list of recurring general themes we heard from Rightsholders regarding Strategy 2 and its Line of Action.

### Enforcement and Jurisdiction

Rightsholders identified an immediate concern of enforcement and jurisdiction over laws. Enforcement of laws made by the Nation and community themselves is important but is difficult, especially enforcement of criminal laws without the cooperation of the Royal Canadian Mounted Police (“RCMP”). Coupled with the lack of desire to implement ‘colonial’ laws, there is also failure to make community-made laws due to specific traditions within certain communities. If laws, policies, bylaws, and other instruments were put in writing, and were more in line with human rights as formulated by the Canadian Charter of Rights and Freedoms, the RCMP would be more likely to enforce these laws. Rightsholders also noted that communities need answers as to why the policing organizations currently do not enforce laws created by Nations. Additionally, laws must be drafted in a way that ensures enforceability is not dependent

upon who is in power.

Jurisdiction is a key challenge identified by rightsholders. Enforcement by Chief and Council should be avoided as it turns things political and makes it more emotional. Bylaws made by Indian Act bands under the Indian Act lack jurisdiction over matters such as the criminal law and are therefore not enforceable by entities such as the RCMP or other police or enforcement organizations; Rightsholders note that Nations do not have their own police forces to enforce laws. Rightsholders also noted that the Treaty processes in British Columbia, coupled with agreements with the provincial government, are creating jurisdictional opportunities to create law and enable enforcement. In Nations and communities that have the ability and opportunity to write and draft laws, limitations around prosecution and enforcement still exist.

More work is needed in ensuring that Nations and communities are aware that they can exercise jurisdiction in key areas, such as child protection and welfare.

### Community and Collaboration

Community and collaboration have been successful in sharing stories that reveal history, underlying values, and principles, which are critical for ensuring that the laws and justice systems that First Nations create are ones that are meaningful and have the power to transform the Nation and community. First Nations must be able to come together and respect everyone’s unique voice; everyone deserves to be heard.

Power must be returned to the people and tools are needed to ensure collaboration on a broader level between First Nations and other stakeholders. Many First Nations have been siloed and do not share information or resources between each other. Relationship building between First Nations must return and must be the norm once more. Everyone brings a strength and a different perspective; First Nations need to focus on spaces and collaborations and not silos. Forums on dedicated issues, such as the Justice Forum, are helpful for having productive and personal conversations.

In addition to working collaboratively between Nations and in community, rightsholders have called on Indigenous leadership to work with non-Indigenous governments to create unique justice systems

within communities. This could involve working with organizations like the RCMP and the Government of British Columbia to fix the jurisdictional and enforcements issues that surround the topic of First Nations justice systems and institutions.

The BCFNJC could assist in this process by developing a framework that First Nations in British Columbia could follow to collaborate, share oral histories, and develop laws. In ensuring there is no pan-Indigenous approach to this kind of work, it is important to note that some Rightsholders might be reluctant to collaborate with non-Indigenous governments on issues like child protection, where, ideally, the provincial government would vacate the filed and funding is being provided to the Nation to fill the vacuum left by the province.

## Laws

Laws, policies, bylaws, and other instruments need to be specific and have a delineated process for the next steps that leaves no room for interpretation. Laws drafted by a Nation or community need to be healing focused, and not punitive. Indigenous laws teach us how to restore balance in people; it is not punishment focused.

Regarding the codification of laws, a framework or template for Nations to use would be helpful to assist them in the drafting process. Some Rightsholders noted that Nations and communities do not have to re-write Canadian law; First Nations have their own customs and laws and practice them daily, even if they do not realize they are doing so.

Some Rightsholders warn that First Nations must include a process for resolving or interpreting disputes internally. In this way, the First Nation community interprets and enforces the laws rather than them needing to seek redress before a colonial court and being undermined by it. This would help ensure that the community's laws are not subjected to common law tests or other legal standards that could weaken them.

Laws must have an emphasis on education; education is one of the most transformative, accessible, and easily developed tools that can empower First Nations. When we think about it, at its core, laws are about regulating behavior and laws are not always written law, and that is where education comes into play. Laws come from a multitude of mediums; natural laws come from Mother Nature, and a prime example of sources of law being diverse is stories. A Rightsholder mentioned that when developing laws regarding child protection and welfare,

the laws were based on the stories told while traveling throughout the Nation.

In developing laws, Nations and communities can apply an Indigenous lens to a counterpart of the non-Indigenous statute, "marrying" the Indigenous law and values with what is conventional and Western to develop a code of systems.

Some Rightsholders caution against the work of codifying their laws. They believe that there is something that is lost when a Nation or community take oral laws and write them down. They view this as an act of repackaging Indigenous law in a way that common law would find digestible, and it means playing a game with the legal system that is currently overpowering them. Another concern is that it is unknown what colonial governments will do when they see written and codified Indigenous laws.

Rightsholders note the difference between colonial and Indigenous laws is the collective nature; decision-making is a collective exercise, typically done by a Council, a circle, or more than one person, rather than by one lone judge. Indigenous lawmaking is a disconnected process from the colonial process as the Indigenous understanding of justice is a dynamic and collective process where opposing views are shared.

It is important to be aware that sometimes, laws are designed to benefit entire Nations and they do not consider the unique needs of specific communities. This can make the laws ineffective or unfair.

## Elders and Knowledge Keepers

Rightsholders have clearly identified Elders and Knowledge Keepers as being a critical part of the Track 2 and Strategy 2 work. Accessing Elders and Knowledge Keepers is a paramount concern; this work is about getting back to creating principles and laws based on traditional knowledge. Accessing different types of knowledge through various Elders and Knowledge Keepers is important, and they need to be present in this process and at the table.

The well-being of future generations depends on remembering what the Elders and Knowledge Keepers have taught. It is important for children and future generations to be taught the principles that live within the Elders and Knowledge Keepers; they are the future leaders. This presents as a motivator for First Nations and their communities to start codifying the knowledge.

There are communities that are small and remote that are losing their Elders and Knowledge Keepers; communities have an urgent need to document that knowledge and wisdom before it is lost.



*Our Elders: Hear from Patrick Lulua, from the Tshilqot'in Nation, on the importance of moving away from colonial systems and reintroducing community-based justice practices rooted in the teachings.*

## Funding

In developing and restoring First Nations systems and institutions of justice, a core concern identified by Rightsholders is funding. Funding issues limit opportunities for First Nations and their communities to work effectively. Repeated concerns surround colonial governments taking responsibility and providing funding for First Nations to develop their own laws. Core funding is focused on service delivery, so the development of policies and laws get sidelined; there needs to be a shift from a focus on funding for programs and services to legislative drafting.

Multiple Rightsholders recognize the gap in funds; this gap needs to be closed in order to progress further down Track 2 and Strategy 2. Rightsholders do not want to be “another brown and red face in a white system”, rather First Nations need their own systems that work for them.

## Gladue Services

Concerns surrounding the Gladue Services the BCFNJC provides stem primarily from funding and capacity related issues.

Rightsholders identify the triage policy of the BCFNJC as a roadblock to accessing Gladue services. They state that the policy makes it challenging to get a Gladue report due to high demand coupled with limited resources. They assert that the BCFNJC provides Gladue letters for those with a sentence range of 6 to 24 months but

encounter a waiting period of months to get a full report. Rightsholders say this is an issue as any Indigenous person being incarcerated and/or obtaining a criminal record is a problem. Rightsholders identify the current “triage” policy employed by the BCFNJC to prioritize the most severe cases due to increased requests and limited funding as a prime issue.

An issue that is not necessarily related to funding with respect to Gladue services is that some non-Indigenous people are writing Gladue reports and are charging money to Indigenous peoples for their Gladue services; Gladue writers “dive deep” into an Indigenous person’s history and trauma and non-Indigenous peoples are profiting from vulnerable Indigenous peoples and those who are incarcerated.

## BCFNJC

There is some concern by Rightsholders regarding the BCFNJC taking over services provided by legal aid without properly consulting with the Indigenous community. These concerns manifest in a feeling that the BCFNJC is not showing any effort to understand the unique needs and context of Indigenous Peoples; specifically, that policies are being sent out without proper consultation with the community, and some actions have been taken without the community’s knowledge.

# SESSION FOUR: FIRST NATIONS LAWS IN CHILD PROTECTION

## **Lydia Hwitsum, (Xtli'li'ye), Director and Secretary, BCFNJC**

Lydia Hwitsum commented that since contact, the colonial government has horrifically harmed and interfered with how First Nations care for their children; the government intentionally ripped families apart and destroyed First Nations culture and communities. The impacts are still felt today, and Indigenous children are grossly over-represented in Child and Family Service (CFS) systems and account for 70% of children in care despite being only 10% of the population. Indigenous children have been subject to horrific conditions and have a sense of disconnection from their families, lands, and way of being.

The BCFNJC has been mandated by over 200 First Nations in BC, to transform the justice system for the better. Council is undertaking that work and creating space for each Nation to have jurisdiction and capacity of their CFS in a way that reflects a fair and just process based on who First Nations are as peoples.

The intention of Strategy 10 is to develop an Indigenous Youth Justice Plan to support the wellbeing and welfare of Indigenous youth, especially those caught in the CFS system.

## **Boyd Peters, Vice - Chair, BCFNJC**

The laws, policies, and genocidal ways of government that have harmed Indigenous people for generations must be stopped. Track 2 provides the pathway to self-governance and jurisdiction to take back control of child welfare. Children are not removed from families because there is something wrong with the family, but because of what the family needs. Every child and family can heal and change what happens in community. Apprehending children is legalized trauma, a legal genocide, and part of the colonial government's mandate to get rid of Indigenous people.

First Nations must bring services back to community to deconstruct provincial services and keep families together. Bill C-92, An Act respecting First Nations, Inuit, and Métis children, youth, and families, creates the legal pathway for First Nation child and family laws.



## **Kirsten Barnes, Policy Lawyer, BCFNJC**

Kirsten Barnes was raised by a strong and resilient Gitksan mother and father; her mother and her sibling were orphaned, and all but two of them ended up in foster care. They were denied access to family, tradition, and culture, but because of the strength and resilience of her mother and her determination to come home to her community, Kirsten was able to grow up knowing her land and culture; others have not made it home and are lost to the system forever.

Many children left community and would sometimes come back for short periods, they were foster children. Kirsten's parents took in many of these children and raised Kirsten and her siblings to think they were all family. Some of the children were not part of the system but came from a request from their families to keep them out of the system. Gitksan law is based on the idea of reciprocity, and the Gitksan people take care of one another for the benefit of the whole.

Prior to her passing, Kirsten's mother said, "Gitxsan child welfare is not a program, it is a way of life", and those words resonated deeply with Kirsten. Raising strong, healthy, First Nations children cannot be accomplished through a program. Kirsten's journey is a continuation of her mother's legacy, and to work toward bridging the gaps between colonial legal systems and First Nations laws and traditions to dismantle barriers for children to grow up with their culture and traditions.

Track 2 is the understanding that communities know what is best for their children; they have the solutions. Council's role is to listen, learn, and support communities to do the work to keep their children home. In recent decades, BC has seen a substantial number of Indigenous children in the system, a reflection of the ongoing challenges in First Nations communities, impacting tens of thousands of First Nations. Behind those numbers are individual stories of historical injustices which cannot be captured by statistics alone. The statistics do not reveal the true narrative of those lives, the struggles faced by the families, the efforts to preserve connections to family and community, and the impact of the separation on a child's identity or sense of belonging. The statistics do not shed light on the impact on the child after leaving the system and navigating adulthood without meaningful guidance. A child's story cannot be completed without a meaningful connection to their family, home, community,

language, and culture.

A holistic approach to child welfare is the goal, and collaboration among First Nations and the colonial government to create meaningful solutions to these challenges is key. All efforts must be made to bring all Indigenous children home, to reclaim traditions and values in a modern context, and for a more equitable and supportive response to child welfare that uplifts families. Children are the heart of First Nations communities, and they must be kept safe, loved, and raised to have a strong sense of self and pride in who they are. Through collaboration and cultural reclamation, a brighter future can be created for all First Nations children, and First Nations can reclaim what was taken.

Lydia Hwitsum emphasized that Council sought to hear from Nations on how best they could support them in this area of work.

**Robert Morales, Chief Negotiator,  
Cowichan Tribes Child Welfare**

Robert Morales shared of his family background, including his mother, who was taken at five years old and attended Coqualeetza Residential School, and his father, who was from Mexico and had no formal education. It was important to appreciate the efforts made by parents



and grandparents who lived through very difficult times. When in law school, Robert Morales recalled reading case law to his daughter Sarah when she was just a young child, which demonstrated the power of influence that parents have over their children, considering Sarah also grew up to become a lawyer.

As an elected council person for the Cowichan Tribes, Robert Morales helped negotiate Cowichan Tribe's first delegated agreement and pushed for Cowichan's self-determination. Words from Cowichan Tribes Councillor and Elder, Dora Wilson that, "We do not want our children to be in the system, we want our children to be taken care of by their family, not unknown people", became Cowichan's mandate.

Cowichan's path to jurisdiction over their children began in the 1970s with a single Cowichan Tribe social worker, and in 2024, Cowichan now has a fully delegated agency. Cowichan Council never let up in their determination for jurisdiction; a delegated agency was always an interim step. Cowichan, after already having developed a plan for the jurisdiction of their CFS, eagerly signed a Letter of Understanding (LOU) with Canada and BC in 2019 when the opportunity arose. With the passing of Bill C-92, Cowichan Tribes was prepared to recognize their inherent jurisdiction of Indigenous people, and to recognize their authorities and passing of their laws.

A 2010 project proposal, *Lalum'utul' Smun'eem* (LS), was submitted to the government to begin the planning and development of a piece of Nation-based legislation. Community consultations, focus groups, and meetings on how to move the work forward took place involving close to 1,500 band members, including Elders. Themes derived from that consultation included the importance of culture, family, teachings, and governance. Elders are social workers and decision-makers, and there are no boundaries in jurisdiction.

Findings identified by staff include that the concept of child removal was foreign to Indigenous people, parents were the primary caregivers, time limits for temporary custody were too short and did not allow families enough time to do the work, and the guiding principle of "in the best interest of the child" was individualistic.

There were challenges in writing the Cowichan Tribe CFS laws and blending Cowichan legal principles with Western law. Elders and community were consulted, and their input emphasized the importance of incorporating traditional language and closely considering the Charter and other legal rights while breathing life into Cowichan



legal principles and what they stood for.

First Nations people do not live in a lawless society; they have their own laws, and the challenge is to blend those laws within a Western legal system. After presenting an early draft of the proposed child and family laws, community members expressed concern that the legislation looked too much like provincial law. After further consultation with Elders and community, language was incorporated toward a more cultural match that would give First Nations law legitimacy. When presented for ratification, 80% voted in favour of the *Snuw'uy'ulhtst tu Quw'utsun Mustimuhw u' tu Shhw'a'lukwa'a' l' Smun'eem*, the laws of the Cowichan people for families and children.

The Cowichan Act defines "snuw'uy'ulh, as "a set of teachings including the traditional beliefs and practices and laws for Cowichan". Language is the foundation, and there is immense gratitude for the Elders who have retained it.

The law is to be interpreted and administered in accordance with the principles of *snuw'uy'ulh*, including knowing where you originate from, ensuring familial relationships are strong and resilient and that family is the heart of life, and loving, respecting, and helping one another. Each of the principles underpin the cultural part of Cowichan law. Cowichan is relying on the provincial court to consider this law, to begin to understand the legal principles, and to use them in their decision-making process. The law is written for Cowichan people but also for courts and lawyers to begin to implement and



understand what it really means and to decolonize lawyers and judges so that the system is a reflection of First Nations as a culture and as a people.

The goal is for Cowichan people to be primarily responsible for doing the work, and non-Indigenous people must come to an understanding of what Cowichan is trying to accomplish and live up to their principles. Working with one heart, one mind, and one spirit, will be an important aspect of collaboration. Within the laws, many opportunities for collaboration have been built in, including with Elders, families, education, and human resources, acknowledging that when a family is in crisis, it is often the result of many different issues.

Part of Cowichan's dispute resolution process is to practice traditional ways of resolving disputes, using speakers and witnesses, bringing in Si'em and the Elders, and blanketing. Much of First Nations ways of being are centred around protection, including the protection of children, and the approach of the provincial child welfare system is not consistent with the way First Nations would culturally protect their children and families.

Collaborative decision-making mechanisms include the use of a trusted speaker, opportunities for family meetings, an Elders Advisory Body, a child blanketing committee, and an Elders Harmony Restoring Advisory to work with courts. The courts are the last resort, and written court rules ensure mandatory case conferences where cultural teachings are put into practice and Elders work with families. When cases do end up in court, there is a process to deal with that with written administrative review provisions and a process for a review of how children are being cared for. Cowichan is displacing the provincial system with Cowichan law and will proclaim their child and family law into effect on August 1, 2024, at which time Cowichan children and families will no longer be under provincial law.

### **Grand Chief Willie Charlie, Sts'ailes**

Boyd Peters, a member of Sts'ailes, shared that Sts'ailes was well on their way to self-governance, and their membership voted and passed their Constitution and Citizenship Code. The Sts'ailes administration was growing with over 400 employees, and their 1,200 band



members, of which 700-800 live on reserve, were active. Sts'ailes was building a community health centre, a gym, a treatment centre, and a youth centre, they were not slowing down.

As a negotiator for Sts'ailes, Grand Chief Willie Charlie is at tables with Canada and the Province, fighting for Sts'ailes Title and Rights Holders for their jurisdiction and self-governance. Sts'ailes Chief and Council and Elders speak of the children as being the most precious resource, and they have an inherent right to know where they come from and who they belong to. That inheritance comes from the land, and those teachings go back thousands of years. First Nations have their own laws and practices yet recognize they must work with the settlers as colonial governments are not going away.

Sts'ailes has had contracts with the Ministry of Children and Family Development (MCFD) since 1974, and they began co-developing and delivering culturally appropriate services in 2011. They entered the process for jurisdiction over their children and families in 2020, and this included translating Sts'ailes laws in a manner which could be understood by Western systems. After a year-long negotiation process, Sts'ailes was still waiting to assume full jurisdiction three years later.

Government was told to stop apprehending children and to return the children; they could not deliver adequately funded and culturally appropriate services, and their systems have not worked for First Nations people. Children are taken and lost, and Sts'ailes felt they could no longer be dragged down by colonial systems. Sts'ailes passed their own child and family laws and brought them into force in April 2023. Canada continually promised to sign a Coordination Agreement for Sts'ailes jurisdiction, and even on an agreed-upon date of January 1, 2024, the agreement was not prepared. A planned ceremony with invited dignitaries had been arranged for that date. A determined and strong Sts'ailes Chief and Council proceeded without Canada and carried on with the ceremony and the signing of the established Sts'ailes Child and Family laws. Eventually, BC agreed to a bilateral agreement with Sts'ailes, and that agreement is to be signed in one week's time.

In regard to colonial family court, there is often a "winner" and a "loser", families are divided, and a judge presides over and has the ability to make decisions for the child and the families that could impact them for the rest of their lives. First Nations would instead sit in a circle with the Elders, using culture and traditions to bring families together to identify the help needed and then

support them, rather than taking the child and cutting that connection.

Grand Chief Charlie recalled a situation in 2018, with a child who had been in care for five years. The child's family, including their biological father and stepfather, gathered in the long house in ceremony with the intention of keeping the child at the centre. MCFD staff and legal representatives were also in attendance. There were arguments, but the Elder would refocus the family back on the child, and eventually, a care plan was agreed upon and has since been followed by the family. Since that intervention, and with supports, the mother is back with her four children and the fathers are working together to support the child.

Following the meeting, the Ministry and legal staff in attendance were asked about what they witnessed during the intervention, and whether that was a process they could buy into.

Grand Chief Charlie encouraged all Nations to use their family courts, traditions, and ways to ensure that their children do not spend even one day away in care. So many children have been lost to the system, and while First Nations have not escaped the impacts of residential school and colonial systems, the answers are in community, in the culture, and with the Elders.

Sts'ailes negotiators asked the government to provide a dollar figure of how much money, people, and resources were applied to look after a First Nations child in care, including psychologists, therapists, caregivers, respite workers etc. Government would not divulge an amount. Nations want those same dollars to be given to them, for them to do things their way. In order to provide culturally appropriate services, adequate funding is needed, and the funding "plumbing system" from governments in Victoria or Ottawa perpetually leaks to all the professionals and by the time it reaches communities, it is a relatively insignificant amount. First Nations must be involved in the development of that plumbing system and however much money is being paid to ministry representatives and others to look after First Nations children, Nations want the same dollar amount.

Nations have experts in community, including Elders and Traditional Knowledge Keepers, yet these experts do not get paid the same as consultants. Sts'ailes utilizes their internal experts to support program and service development and pays them accordingly. Sts'ailes hopes to have a Sts'ailes lawyer, someone who understands Sts'ailes laws and government.

## BREAKOUT SESSION

### Child Protection

The intention of the session was to gather participant feedback regarding ways the BCFNJC can support First Nations to be active participants and decision-makers in the current child welfare system (Track 1); and reclaim their inherent Aboriginal Right to self-government in child and family services (Track 2).

### Collaboration and Coordination

We heard from Rightsholders that there is a paramount need to ensure there is a coordinated effort with all interested parties in child welfare matters. Child welfare is a substantial issue that requires the BCFNJC to collaborate with Nations in supporting and advocating for this kind of work. Various communities share challenges regarding reclaiming jurisdiction, undertrained staff, conflicts with colonial legal structures, and the need for greater collaboration with government agencies. Rightsholders shared that there is also a need for collaboration between Nations themselves. Different communities and Nations need to support and mentor each other because they are stronger when they work together. There are also concerns regarding conflicting jurisdictions between Nations themselves. A dedicated forum or portal that Nations could use to come together and share knowledge has been identified as a need and could help resolve this problem. We heard that organizations have an important role in collaboration and coordination. Rightsholders have told us that organizations must collaborate and share information to best serve Indigenous communities.

Rightsholders voiced their concern about uncertainty regarding the Indigenous Justice Centres (IJC) and how they can provide support to communities. Rightsholders noted that the IJC need to be more proactive and vocal in what types of services they can offer and how people can access them. Supports that the BCFNJC and the IJC can offer, as identified by Rightsholders, could include providing engagement and educational opportunities for Nations regarding the C-92 process, creating templates that Nations can use for funding applications, and providing general support to families and extended families to keep children out of the child welfare system.

### Smaller Nations and Capacity

Capacity issues are a major roadblock for Nations who wish to regain jurisdiction over child welfare matters. Rightsholders have indicated it is crucial to build communities' capacity, especially at the agency level. This capacity building would enhance the knowledge about available resources. Rightsholders told us that there is a deep gap between the smaller and bigger Nations regarding the capacity to regain and exercise jurisdiction over child and welfare matters. To this end, Rightsholders identified the unique role the BCFNJC needs to play in supporting smaller Nations and those who struggle with capacity issues.

Rightsholders proposed that the BCFNJC conduct an analysis to identify where support is needed, keeping in mind that some Nations are just in the beginning stages of this work while other Nations are implementing solutions, and others have not yet begun. There needs to be an understanding of who the Nations are, and an evaluation of the status of which programs are implemented or are in progress.

### Funding

Funding has been identified by Rightsholders as a key issue. The Assembly of First Nations demonstrates that governments must fund Nations in an equitable way, and that the BCFNJC can assist by reviewing the fiscal agreements.

Rightsholders have told us that some Nations are taking money out of their budgets to fund legal counsel, and this contributes to an overall capacity issue. They suggest that the BCFNJC lobby governments for sources of funding to create legal representation for First Nations and their communities; this is extremely important as First Nations deserve representation and counsel. Nations play a unique role in keeping families together and we need to have Nations coming to the table.

We have also heard concerns surrounding insurance and liability. Rightsholders have told us that they need support in that area to ensure that their governments cannot be sued.

Rightsholders identified a concern regarding varying funding models between different Nations. They have told us that the needs-based funding requests "spook"



those in Ottawa since they cannot predict the costs. Rightsholders have suggested working together with government to come up with a steady formula, in mathematical way, similar to how education is funded in British Columbia. This new approach would help with navigation, as it is more difficult to predict the budget required with varying Nation-by-Nation funding. Under this new model, Rightsholders have told us that First Nations would get funding decisions faster if there is consistency and a formula in the requests. Ensuring funding continuity and consistency is a high-priority need identified by Rightsholders.

### **Band Designated Representatives and Education**

Rightsholders have identified a need for training for Band Designated Representatives (BDR). BDRs need to have a voice to share their community's concerns with a court or a judge. Without this voice some Rightsholders feel that they will lose the battle. Having adequately trained BDRs is imperative.

Training needs to be provided in the form of the procedures of the Ministry of Child and Family Development (MCFD). Rightsholders have told us that BDRs often lack the knowledge of MCFD procedures and feel powerless to stop the apprehension of children. Proper training of and support for BDRs should come from associations. Rightsholders told us that currently BDRs work in isolation and that communities do not necessarily understand the role and importance of BDRs; it is essential to provide training to help BDRs understand their role and do their job more effectively. Education and training must also be provided to members of the community regarding the child welfare system and how communities members can utilize the powers they already possess. Additionally, advocacy programs and training are needed to help communities in the geographic area.

In instances where BDRs may not be available, stand-in agents could assist Nations and their communities by representing their position in child welfare matters. Rightsholders told us that these stand-in representatives must be aware of alternative dispute resolution methods, such as mediation, and must also be aware and alive to the cultural practices of the community they are assisting.

### **Reclaiming Jurisdiction**

Rightsholders have told us that one of the biggest challenges they face as they reclaim jurisdiction over child welfare is exhaustion and burnout. They tell us that when burnout occurs, it can lead to more significant problems such as substance abuse, violence, housing issues, and poverty. It is important that exhaustion and burnout are fully mitigated, and that proper support is in place to facilitate this, to ensure that Nations and their communities are safe places for children to remain and thrive in.

### **Space for Indigenous Men**

Ensuring that both parents have the right to visit their children is crucial. Rightsholders have told us that they have noticed men in various healing programs cannot visit their children. They have told us that when men have asked for help from an organization that works with Indigenous children, the organization told them that they could not help because the children are with their mothers, and fathers do not have any right to see their children. This results in fathers not being able to connect with their children, even though it is safe to do so and would be beneficial for the children. Having lawyers available who can help Nations and communities while they work on making more significant changes for the future is needed.

## **SUMMARY OF DAY TWO**

Dr. Sayers was grateful for the Forum; it was a place to expand one's mind and heart and to reflect on BC First Nations' journey toward justice and how the Council could best serve communities. As people living on Mother Earth, there were laws to take care of her so her bounty could be shared. There were laws for caring for Indigenous people, and that is what all in attendance have been expanding their minds to do. Tremendous sharing had taken place during the Forum, and attendees could bring these new ideas back to their communities.

Clifford White appreciated the informative discussions on how to transform the judicial system while incorporating traditional practices, ways of being, and legal concepts, including translating the importance and meaning of the potlaches and feasting, so that courts and the judicial system understand. First Nation laws exist, and they must be communicated to teach government and citizens.

The colonial judicial system uses prescriptive ways of handling offences; it is an adversarial system. Lines were placed between territories by government, and First Nations battled over these lines in order to enter into treaty. That is not the First Nations way. First Nations are sharing and open, they care for their communities and their children.

Appreciation was extended to all in attendance for their commitment to the process. The Council was there to learn what is missing in the process and to work with respective communities and better understand how they can support them and strengthen First Nations communities in BC.

Amanda asked those being honoured at the ceremony that evening to convene in the Seymour Room at 5:00 p.m. All other participants were welcomed to the Ballroom at 5:30 p.m.



**VISUAL SUMMARIES OF DAY TWO**

Michelle Buchholz, Visual Practitioner, shared the visual images captured during Day 2 of the Forum.

# Day Three – April 10, 2024

## OPENING AND OVERVIEW OF DAY THREE

### **Amanda Carling, Forum MC**

Amanda Carling invited Spiritual Advisor David Peters, along with Dominic Greene and Darcy Paul, to start the day off in a good way.

Days 1 and 2 of the Forum focused on Track 1 and 2 of the Strategy, and Day 3 would entail bringing government partners into the fold.



## STRATEGY 16B: TRACKING JUSTICE

A BCFNJC Strategy tracking tool, Tracking Justice, was developed to increase the Council's transparency to the 200+ BC First Nations, shine a light on the work First Nations are leading and government are supporting, and identify areas where improvement is needed, along with areas where tremendous progress has been made.

### **Natalie Martin, Director of Communications, BCFNJC**

Natalie Martin shared that the work of the BCFNJC Communications Team is to bridge the work of the Council to the Nations and communities who want to know more about what Council is doing and who need to know about BCFNJC's services. The subject matter is often complex, and the team must communicate it in a way that is accessible to all. The work is justice transformation and is about a renewed sense of accountability to the commitments made in 2020 with the signing of the Strategy. The work is relentless and must be continually updated, and to facilitate this, our website, Tracking Justice, has been developed and launched as public accountability and progress tracking tool.

### **Julian Anton, Manager of Digital Communications and Creative, BCFNJC**

Julian Anton introduced the Tracking Justice tool as a new resource that was developed and launched in collaboration with Metalab, an award-winning design agency that provided their services pro-bono to BCFNJC.

Tracking Justice is massive in scope, and a crucial means to track progress and stay informed on the work of the BCFNJC and the Strategy, across all 25 strategies and 43 lines of action. Tracking Justice creates a space for storytelling and is open for all to navigate as part of the Council's commitment to transparency.

Tracking Justice is a central hub of information related to the Strategy, organizing the content of each strategy into the "challenge" and the "solution." Each line of action under a strategy also has its own section in which to view detailed progress actions and updates on the status of the work. Under each strategy, a timeline of events also provides historical context of how elements of work have taken place.

The Tracking Justice tool will have a positive impact on transparency and accountability, making progress information readily available to all, highlighting successes, and emphasizing areas where new partnerships and collaborations are required.

The site will remain flexible and responsive as the work progresses. More information could be found at <https://trackingjustice.bcfnjc.com>.

Natalie Martin advised that the tool was now live and could be updated in real time. The Communications Team will be relentless in updating the tool with the stories that will be housed on the site. A Memory Keeper and Storyteller had been brought onto the Team to support this work. The Ministry of the Attorney General and Indigenous Justice Secretariat would additionally help update the tracker so that the work of government could be communicated. Information is power and with the tool, information would be at the fingertips of Nations. Feedback on the tool could be directed to: [communications@bcfnjc.com](mailto:communications@bcfnjc.com).

### **Video Presentation**

A short video was shared that provided an overview of the BCFNJC's Tracking Justice tool, including how to navigate and optimize the website's functions.



# SESSION FIVE: TRIPARTITE COLLABORATION

## *Ministers Panel – BCFNJC’s Tripartite Relationship and Commitment to Collaboration*

### **Curtis Bedwell, Director of Policy, BCFNJC**

Curtis Bedwell introduced the panel and referenced the Forum’s theme of collaboration. In 2023, a Tripartite MOU was signed between the BCFNJC, the Province of BC’s Ministry of the Attorney General and Public Safety, and the Solicitor General and Public Safety Canada; the MOU was the first of its kind in Canada. With the IWJP, more ministries will be asked to join in this work, as all but one ministry is implicated in the plan. The Honourable Minister Niki Sharma, Attorney General, continues to show her sincere commitment to the work, and her attendance and participation at events speak volumes; she is a strong example of what a true accomplice looks like.

Strategy 17 reflects the need expressed by BC First Nations to see all levels of government support the transition away from colonial justice systems to the full recognition of Indigenous systems, guided by and in alignment with the BC Declaration on the Rights of Indigenous Peoples Act (DRIPA) and Canada’s United Nations Declaration Act (UNDA), and in adherence to free, prior, and informed consent (FPIC). The workshops are designed to provide opportunities for partners in their action for justice and advancing self-determination.

### **Colleen Spier, K.C., Assistant Deputy Minister, Indigenous Justice Secretariat, Attorney General**

Reflecting on the first Forum in 2019, Colleen Spier was overwhelmed with how the 2024 Forum had grown in attendance and with the notable increase in accomplices.

The Ministry implemented the Indigenous Justice Secretariat to fulfill the commitment of Strategy 9, which

requires the Secretariat to lead the transformative work and implementation of the Strategy with governments at both federal and provincial levels and operationalize the identified priorities within. This work would include supporting relations between First Nations, the Province, and Canada to advance priorities, funding, and partnership opportunities where the Strategy aligns with government’s mandate.

The Secretariat is additionally responsible for supporting the advancement of jointly identified priorities within the MOU and those set annually at the Tripartite Meetings. The panel will share some of the priority initiatives underway and of the collaboration. It is through collaborative relationships that BC First Nations and government can walk together to advance the Strategy.

### **Honourable Niki Sharma, K.C., Attorney General**

Niki Sharma remarked that the journey on this work has been a highlight of her career, to see the team grow within such a short amount of time, and the pride, commitment, and support that was evident.

The Attorney General reflected on “collaboration through decolonization” and shared that the journey had been gratifying due to the leadership in BC and the First Nations leaders, who showed up fighting for reclamation of governance and jurisdiction, which has propelled the conversations that BC is leading in the world. The great leadership is holding government continually to account and solving the complicated issue of decolonization.

Niki Sharma was proud of the investment from government in opening the IJCs to lessen the negative impacts that the justice system has had on Indigenous peoples. With collaboration, there is a commitment to stay in the relationship and understand where mistakes







are being made, where to adjust, and what systems need to change. These issues involve many difficult conversations, but they have to begin with honest conversations, which government has had with the BCFNJC.

When it is felt that government systems may be getting in the way of progress, it is the job of the Attorney General to ensure the resources and tools are available for all to do the work together. The Attorney General closed by saying it had been a true honour to be in attendance at the Forum and to witness the work being done every day.

### **Doug Scott, Deputy Solicitor General, Ministry of Public Safety and Solicitor General**

On behalf of the Honourable Mike Farnworth, Minister of Public Safety and Solicitor General, Province of BC, Deputy Minister Doug Scott, Ministry of Public Safety and Solicitor General, shared regrets of the Solicitor General for the last-minute change in his schedule.

In relation to the work of the BC government in partnership with the BCFNJC, Deputy Minister Scott highlighted the following:

- » Acknowledged the MMIWG and Gender-Based Violence Action Plan, a key priority, to address the disproportionate levels of violence Indigenous women, girls, and 2S+ people experience
- » The draft IWJP includes numerous

recommendations, and the Ministry is looking forward to engaging on this work

- » The creation of the Indigenous-led Path Forward Community Fund in 2021 and the Province's commitment of just over \$10 million and support for 51 Indigenous-led projects
- » Restorative justice initiatives
- » Safer Communities Action Plan, part of government's effort to improve safety within BC communities:
  - › Repeat Violent Offending Intervention Initiative (ReVOII) unites police, prosecutions, and probation, to address repeated and extreme violence in communities:
  - › Recognizing that many who engage in violence do so for reasons largely beyond their control
  - › Enabling connections to community supports to help those coming into contact with the justice system break the cycle
- » The critical Tripartite MOU with Canada, the Province, and BC First Nations (represented by the BCFNJC) and the commitment by all parties to make a difference.

### **The Honourable Arif Virani, Minister of Justice and Attorney General of Canada**



**(Video)**

Through a pre-recorded video message, the Honourable Arif Virani emphasized that collaboration was at the core of reconciliation work, and this included the implementation of the UNDA Action Plan, which is guided by the principles of consultation, cooperation, and co-development. Minister Virani looked forward to continuing the work with BC First Nations and the BCFNJC in this critical process, which underpinned the Tripartite MOU between Canada, the BC government, and the BCFNJC.

Justice Canada is proud to be an active partner in advancing Indigenous justice issues aligned with the Strategy alongside the Federal Indigenous Justice Strategy. Justice Canada has committed close to \$9 million for IJCs until 2026, and Minister Virani highlighted his recent visit to the Vancouver IJC in January and extended congratulations on the progress of opening several more IJCs across the province.

Justice Canada continues to fund Gladue training and education of justice professionals, and it is these types of efforts that will help address the systemic discrimination and the over-representation of Indigenous people in the justice system. These efforts complement the work to develop a Federal Indigenous Justice Strategy, which was being developed with Indigenous partners, provinces and territories. Engagement was held in the fall and winter of 2023 with Indigenous people across Canada both in person and virtually, and the Council and 37 other Indigenous government bodies, communities, and organizations, were funded to hold their own engagement sessions on the federal strategy. The sessions shared a common message on the importance of capturing the lived experiences of those involved in the justice system.

Minister Virani extended his gratitude to all those who participated; the feedback highlighted the importance of addressing issues from prevention to integration. The collaborative approach through the Tripartite MOU was a model for success, and the future federal justice strategy should be implemented in a similar manner, one that fosters collaborations with jurisdictions and recognizes the priorities, history, and cultures of Indigenous peoples.

### **The Honourable Dominic Leblanc, Minister of Public Safety, Public Safety Canada**



**(Video)**

Dominic Leblanc thanked the BCFNJC for their efforts on behalf of First Nations communities in BC to address the decades-long trend of over-representation of First Nations people in Canada's criminal justice system. The Government of Canada is committed to doing the work with the Council to advance the implementation of the Strategy, reduce the likelihood that First Nations end up in the criminal justice system, and restore First Nations-driven justice systems.

Canada's governance partnership with the Province will bring changes in line with their commitment to reconciliation at every level of the system. Canada has been working on reforming the way police services are funded and delivered in First Nation communities, including the introduction of legislation that recognizes First Nations police services as essential services. The goal is to give access to stable, ongoing funding and facilitate cooperation between First Nations police services and the communities they serve.

Over the coming months, Canada will work with the Council, Indigenous communities, and provincial and territorial governments to make this a reality and to advance the impacts of the Strategy through culturally appropriate, Indigenous-led, and community-based justice services.

### **Colleen Spier, K.C., ADM, IJS, AG.**

Colleen Spier was humbled to be working in the justice space and to be appointed as the ADM. The Strategy's work achieved to date is a demonstration of the commitment of government and the success of the teamwork and collaboration with BC First Nations; it was inspiring to hear of the many amazing success stories.

The Tripartite MOU and the development of the Strategy represent a shift in BC and in Canada and the emerging realization that fundamental to reconciliation is the recognition and implementation of First Nations Title and Rights and the human rights standards for their survival, dignity, and the wellbeing affirmed in the UNDRIP. Central is the work of rebuilding First Nation governments, justice systems and institutions, in a manner that is consistent with the right of self-determination and the inherent rights of self-government. This requires true partnership and working together, with the knowledge and lived experience and solutions of First Nations leading the way.

## CONCURRENT BREAKOUT SESSIONS

The meeting participants chose to participate in one of five Breakout Sessions to discuss the following:

- 1. Corrections: Moving forward on Strategies 13 & 14**
- 2. First Nations Courts: Moving forward on Strategy 12**
- 3. Public Legal Education: Exploring First Nations Needs**
- 4. Data for Sustainability: Moving forward on Strategy 16B**
- 5. Indigenous Law Revitalization: Keeping Women, Girls & 2S+ Safe**

### **1. Corrections: Moving Forward on Strategies 13 and 14**

Participants heard from two panels on advancing Strategies 13 and 14 within Provincial and Federal Corrections, including the current status and challenges of implementing Strategy 13 and expanding culturally based programs throughout Corrections and fully realizing Strategy 14.

### **Segregation and Solitary Confinement**

Rightsholders discussed the issues around the use of segregation and solitary confinement and how it impacts Indigenous people. When it comes to segregation, often what happens in a unit is that someone is picked up for a small infraction, then an “alpha” person within the unit will threaten them into engaging in violent behaviour against other inmates. The person is then moved to segregation because their life is at risk, and they will be kept there until there is no longer a risk, or there is another unit they can be moved to safely. Those who are harming people in correctional centres are also moved into segregation from time to time and it becomes complicated and complex. It is an important tool to use for people at risk but that does not mean it can't be harmful. Segregation can re-traumatize people who went into the residential school system where children were locked in a room as a disciplinary measure. A Rightsholder does not believe in segregation and instead believes that the mental health of our people started way back in time, and we should be putting funding towards the mental wellness of our

people, weaving that into our strategy of people moving forward.

### **Section 81 and 84 of the Corrections and Conditional Release Act**

The Rightsholders deliberated on how Section 81 and 84 is implemented in Nations. A Rightsholder works with Section 84, a model they use for case conferences and getting people back to their communities. The challenge that a Rightsholder sees with Section 84, is that this was implemented in 1992 to reduce the mass incarceration that was happening then, and there was supposed to be a limit based on security level. Most Indigenous people get classified as high-security and do not qualify.

Another Rightsholder has funding for Section 84, does a community-assisted parole hearing, and they are in the talks of having their own Section 81 CRF. The funding for this is about \$150 to \$300 per day, depending on the day, and this is very low for a Nation to take on. Regarding Section 81, for sexual offences, there is not a lot of programming for this, and it is a big issue considering the shame attached to it.

### **Communities' role**

Rightsholders reflected on a community's role in healing and re-integration. When a Rightsholder thinks about what is being shared by those who are incarcerated, there needs to be trust-building at the community level. There needs to be bridging across communities as well. Corrections funding community-based options cost less than keeping someone in prison. A bill before the Senate will provide more community-based corrections options. For what it costs to have one person incarcerated, a Nation could build a house and provide community-based programming. Support and community connection is mostly done at the end of a sentence, and it needs to happen sooner.

### **Sharing Successes**

Many Rightsholders shared success stories from their experiences working with Indigenous people in the criminal legal system. A stakeholder has a lot of men who are going in for pre-trial, through a good relationship and MOU with North Fraser. North Fraser has been good at maintaining a working relationship, professional visits are allowed, and regular contact with clients can be

maintained.

There is an agency that does mental health diagnoses, particularly for Fetal Alcohol Spectrum Disorders (FASD), for \$6,000, but Fraser Regional Correctional Centre and Alouette do them for free. Anyone who has mental health concerns should be able to access a diagnosis pre-custody, in custody, or post-custody from Corrections.

The Aboriginal Coalition to End Homelessness (ACEH) recently opened a building that houses 45 people, with managed alcohol programming and other services. This has been transformational for people coming off the street, with nurses on site, Elders in residence, and other community pieces being built. Everyone in the ACEH facility has been involved in the criminal justice system, and since the program began, none have had any criminal involvement.

A Rightsholder has 17 people, who are unhoused, come to their office across from a probation office and check in with them. They relay this information to their probation officers, who respect this and do not charge them for a warrant. This relationship building took about a year.

If Nations are moving forward, we can talk about collaboration. The First Nations Health Authority (FNHA), the Aboriginal Housing Management Association (AHMA) and the First Nations Justice Council need to be in conversation. AHMA can provide housing, while FNHA provides support services, and there is potential for a very impactful model to be developed.

A Nation has a lot of experience in working with Correctional Service Canada (CSC), and they do not make money in this area. In 2000, they started to expand services, looking outside the system to do land-based healing and take brothers out to potlatch.

A lot of healing happens in land-based healing. Working with brothers through their trauma, allows them to let the trauma go and many go home crying. A Rightsholder has learned a lot, they provide a lot of additional support, and they also have a store where inmates can sell their artwork. Real change happens in the community with those who work with our people, but we see the limitations in making progress.

### **Transitional planning**

Rightsholders were critical of transitional planning in correctional centres. There is not enough transitional

planning taking place. Part of the role of the community is to pick them up at the gate and be there to transition, but we are not getting the funding to properly support these individuals. Many offenders are unhoused, all these other issues are so important, but we are failing to give people the necessities of life, while different ministries are being siloed.

### **Parole breaches**

Rightsholders were also critical of how parole breaches are used against Indigenous people. We need to stop ridiculous charges. There was a case with a father who was marked as non-compliant with their parole for receiving a t-shirt from a friend he had made in prison. The reason that 18% of parents who breach their parole are sent back to correctional facilities is due to anxiety, lack of healthcare when transitioning, and lack of access to medications. We are continuing the wheel of criminalizing trauma, and this is a crisis of humanity. We are punishing people for not receiving adequate support and services.

### **Correctional staff**

Rightsholders shared that current staff in correctional facilities are trained in authoritative and forceful frameworks, with no compassion and understanding of mental health or trauma. They need to be coming in with trauma-informed practices.

### **Institutional history**

Rightsholders expressed concern that someone's institutional history in correctional centres would be a barrier to accessing Nation or community services. At Kwikwèxwelhp, when offenders do go back, they are judged on their institutional history, and this becomes a barrier to accessing support. An incident took place with a man who received a federal sentence, and it was recommended that he go to Kwikwèxwelhp. However, he never made it because of his institutional history and the length of his sentence.

### **Physical and mental health**

Rightsholders identified connections between physical and mental health and incarceration. From a health context, they have had a lot of similar challenges. Health systems are good at protecting information, and our circle of care is expanding beyond doctors and nurses to Indigenous organizations and the greater community. If someone is in the hospital, that health file

is not just shared for all the information, but enough is shared to ensure follow-up with healthcare services in communities, to understand what a patient requires when they return home. While it is challenging, the COVID-19 pandemic and implementation of a rural and remote framework created the information sharing around members diagnosed with COVID.

One thing we have problems with is the increase in mental health issues and sharing that information with BC Corrections is difficult when it comes to privacy. For example, one young man had a mental health crisis and ended up back in a correctional facility when he should have gone to a mental health facility.

## **2. First Nations Courts: Moving Forward on Strategy 12**

A panel of three Provincial Court Judges, a First Nations Court Elder, and a First Nations Court Graduate, spoke to the current state and future vision of First Nations Courts in BC. Participant input was sought on how the BCFNJC should prioritize and implement Strategy 12.

In advancing Strategy 12, Rightsholders identified a need for Indigenous offenders to have an initial assessment prior to entering First Nations Courts. Elders have told us that they face challenges because they do not have an idea of what level of engagement an Indigenous offender is capable of. Having an assessment done prior to entering the First Nations Court process would be assist the Elders of Court by providing a starting point to determine what level to engage.

## **3. Public Legal Education: Exploring First Nations Needs**

The workshop presented information on current and future Public Legal Education (PLE) initiatives for First Nations in BC. Participants were asked to share their perspectives on PLE for First Nations in BC, and which PLE projects the BCFNJC should prioritize.

Though PLE is not specified in the BC First Nations Justice Strategy explicitly, PLE touches on and is informed by the entirety of the Justice Strategy. On April 10, 2024, a breakout session titled, “Public Legal Education: Exploring First Nations’ Needs” was held during the 3rd Annual BC First Nations Justice Forum.

During the breakout session, BCFNJC facilitators reviewed what PLE is and why it is important. They

presented PLE initiatives which have already been created for Indigenous people in BC and what the BCFNJC heard from First Nations about PLE initiatives through the BCFNJC’s fall 2023 engagement sessions. Then, Rightsholders were asked a variety of questions, such as their thoughts on describing PLE with a First Nations lens; about intentions, goals and values that should be emphasized in PLE; what subjects they would like to learn about; what mediums they would like PLE initiatives to be delivered in; and what the best and most innovative ways to gather feedback from Rightsholders are.

During the session, Rightsholders emphasized the importance of a First Nations lens and Indigenous values and goals in PLE and the need to focus on developing resources on legal topics of importance to Indigenous communities. Rightsholders provided direction that Aboriginal Rights and Title must be recognized in PLE materials; that language must be precise (for instance, clarifying the difference between “Indigenous” and “First Nations”); and that the BCFNJC should collaborate with government entities, First Nations communities, and other organizations to fill educational gaps and avoid duplicating efforts.

### **I. Examples of PLE Topics**

A list of PLE topics for consideration were provided to Rightsholders in the Justice Forum binder and was reviewed by facilitators. Rightsholders indicated their interest for each topic as follows:

High/majority interest

- » Aboriginal rights: hunting and fishing
- » Family law
- » Gender equality rights
- » Child welfare/MCFD
- » United Nations Declaration on the Rights of Indigenous People (UNDRIP)
- » Criminal Law
- » Wills and Estates
- » Tax Law
- » Mediation/Negotiating Skills

- » How to support people in the legal system

#### Medium/average interest

- » Labour and Employment
- » How legislation and bylaws are drafted
- » Prison Law
- » Canadian Constitutional Law
- » Real Estate
- » Aboriginal Law
- » How to navigate visiting people incarcerated

#### Minimal interest

- » Housing
- » Right to protest and gather
- » Environmental and Energy Law
- » Elder Law
- » Corporate Law
- » Personal Injury
- » Indigenous Legal Traditions
- » Trusts
- » Governance
- » How health interacts with the law

Rightsholders were advised that this was not an exhaustive list and were asked what other topics the BCFNJC should focus on. The main topic emphasized by Rightsholders was a request as to PLE initiatives that can help ensure that the rights of Indigenous children and families are protected in the child welfare system, including Indigenous men's rights in child custody cases. Rightsholders shared personal stories of how they or individuals close to them could have benefited had they had they been educated about their legal rights.

## **II. Mediums for PLE Delivery**

Rightsholders were consulted as to what mediums

they would like PLE initiatives to be delivered in. They expressed enthusiasm for the following:

- » The best way to educate people is in person (i.e. hold town halls/fireside chats)
- » People now prefer to get legal information from websites and forums like Reddit rather than from print materials. This does not mean that print materials should not also be available, but online resources will likely be more popular.
- » Podcasts would be a good medium for PLE
- » Webinars
- » Videos (for instance, YouTube, TikTok)
- » Aboriginal Peoples Television Network (APTN)
- » CBC Radio especially for people in more rural/remote communities.
- » Apps

Rightsholders noted that some First Nations communities have challenges with internet connectivity. The situation has been improving in some areas of the province, but it is important to provide PLE content via different mediums to reach those who do not have internet access or other means of connectivity.

## **III. Gathering Feedback**

Some Rightsholders suggested sending out surveys to community members to gather feedback, but noted that a deadline for responses should be set and an incentive to encourage people to participate should be offered. Others suggested collecting feedback in person or through a website or app created by the BCFNJC. Rightsholders noted that however information is collected, it should be utilized to set clear goals and specific timelines to assist First Nations focus on their long-term objectives.

## **IV. Miscellaneous PLE Objectives**

Other highlights from Rightsholders' discussion on PLE include:

- » The provincial government can create changes to the K-12 curriculum quickly if there is a strong political will (an example of this is the recent

decision to implement Holocaust education). We should encourage BC to integrate Indigenous justice and rights education for primary and secondary students. If people, especially First Nations people, know about their rights and the law from a young age, they will be better prepared if they ever encounter the criminal justice system. For instance, if a high school student learns that they do not need to talk to the police if apprehended, they will be less likely to make a statement against their interests.

- » It is important that legal information is accessible to everyone, including those who speak First Nations languages. This can be challenging, as many First Nations communities are working to revitalize their languages and may not have legal information translated into their First Nations languages yet. Efforts to connect the revitalization of language and legal information in these communities can help bridge this gap. Many communities have language programs in place, and by embedding education and connecting it to language, we can further promote justice and rights for all.
- » It is also important that a pan-Indigenous approach not be taken. PLE should be tailored to each First Nation because they each have differences in traditional laws and languages.

Stemming from Rightsholders' valuable input during this breakout session, the BCFNJC has begun to set goals for its PLE initiatives and will continue this important work.

#### **4. Data for Sustainability: Moving Forward on Strategy 16B**

Participants provided feedback on the proposed research project to identify measures of fiscal responsibility and financial efficiency of implementation of the Strategy, including on project method, opportunities to align the work with similar projects, risks for consideration, and advice on accessing data and engaging with key informants.

Tracking the progress and impact of the BC First Nations Justice Strategy is an important task. The Justice Strategy contains many different strategies that impact various areas of the justice system. Strategy 16B mandates the BC First Nations Justice Council to develop and establish a process and standard for data collection to report on the implementation and effectiveness of the Justice Strategy.

The following is a non-exhaustive list of recurring general themes we heard from Rightsholders regarding Strategy 16 and Line of Action B.

#### **Important Data Sources and Relevant Studies**

Rightsholders have identified key data sources and relevant studies that the BCFNJC can utilize in completing Line of Action B for Strategy 16. In evaluating the effectiveness of the Justice Strategy as a whole, Rightsholders told us that we need to look to, among other metrics:

- » The number of people who are not in jail;
- » The number of children who are not in care;
- » The cost of healthcare when someone is in, or repeatedly in and out, of custody;
- » The cost of children in the foster care system versus the cost of keeping children in community; and
- » Youth court diversion statistics.

Rightsholders also identified various data sources the BCFNJC should listen to, these include repeat offenders, at-risk individuals, sex-workers, youth, and Elder generations. The justice system is set up as an incarceration pipeline where an adult goes to prison, their child(ren) then interact with the child welfare system, and then the child(ren) eventually end up in the carceral system as well.

#### **Ensuring a Relational Approach**

Rightsholders have told us that in collecting data in line with this Strategy, we need to be cognizant of and place importance on the stories we hear as being relational and grounded in family, extended family, and community. We have heard from Rightsholders that when we are collecting data to evaluate the success of the Justice Strategy, it is important to remember that these are people we are dealing with, and not to get lost in a "numbers game"; we need to braid the data with the stories.

#### **Reporting Data**

In reporting data, Rightsholders have told us that we need to identify the audience, their informational needs, and what they need to be able to communicate to the people they are accountable to, this includes Indigenous



and non-Indigenous peoples. Additionally, quantitative data is important and relevant, but qualitative information is also very impactful for decision-makers.

### **5. Indigenous Law Revitalization: Keeping Women, Girls, and 2S+ Safe**

The purpose of the workshop was to bring together Indigenous women, girls, 2S+, and their allies, to discuss how the BCFNJC could support communities to end violence against Indigenous women, girls, and 2S+ individuals.

#### **Shelter, Housing, and Space**

Rightsholders have identified the need for safe places, housing, and shelter as a necessity for keeping women, girls, and two-spirit+ individuals safe. Keeping affected individuals in their own homes decreases the amount of trauma they face when dealing with adverse issues. Rightsholders have suggested having a centralized location where victims and their families can access supports and services. Outreach workers, women, girls, children, and two-spirit+, and other individuals do not always have their own spaces when supporting families in public spaces and when they need to access supports themselves; having a dedicated space to support families and individuals would make a big difference.

#### **Accessibility**

When affected individuals or support people access the supports that are available, Rightsholders have pointed out that accessibility is a major concern. Rightsholders note that having 24-hour support is integral as the first 72 hours after a traumatic event is the most critical time for victims and their families to access support. Various Rightsholders have identified the need for 24-hour access to supports and services as critical to keeping women, girls, children, and two-spirit+ individuals safe.

#### **Community and Relationships**

Rightsholders have told us that a focus on community and relationship building is crucial. Included in this relationship are lawyers. Rightsholders indicated that being connected with lawyers and other “influential” people would be beneficial. Additionally, having support teams made up of women, girls, two-spirit+ people, and potentially men, to offer support could be beneficial. Often, the supports of one person or an agency can only do so much, and getting back to community roots is needed.

#### **Funding**

A lack of funding severely inhibits the ability for support organizations to offer their services and for those who need those services to access them. Providing and accessing more funding will increase the amount of supports and services available.

#### **Sex Work Legislation**

Rightsholders look to other provinces like Manitoba and Ontario to provide guidance and expertise on this subject matter. Overwhelmingly, what they have told us is that the current state of sex work in Canada exploits and victimizes Indigenous women, girls, and two-spirit+ people. Rightsholders identify a strong overarching theme of colonial control. There needs to be a shift towards decriminalization and unionization; not necessarily institutionalization and in this shift, Rightsholders also told us that sex workers and two-spirit+ people need to have their voices centered.

# CLOSING COMMENTS FROM THE BC FIRST NATIONS JUSTICE COUNCIL (BCFNJC) AND FIRST NATIONS LEADERSHIP COUNCIL (FNLC)

## **Kory Wilson (Puglid), Chair, BCFNJC**

Kory Wilson highlighted the networking and collaboration that has taken place and the sharing of knowledge; the experience and input have been invaluable. Communities are encouraged to reach out to the Council at any stage and let Council know how they can support them.

The common goal is to uphold Indigenous laws for Indigenous children to have a better life than their parents, and this will only happen with fully inclusive partnerships of Indigenous people in every aspect of Canadian society, including justice, education, health, and child welfare. 70% of the children in care are First Nations, not Indigenous, so the work must be targeted, and opportunities leveraged in all places and spaces in this work. Together, First Nations are stronger and can move this forward in an unprecedented way and reimagine something better and greater for their people.

## **Dr. Judith Sayers (Cloy-e-iis), Director, BCFNJC**

Dr. Sayer commented that work was being done on achieving justice, but they were not there yet. Those in the room, the BCFNJC team, leadership, communities, and the committee members, were all part of the big machine, and it will take time. Every positive change will bring First Nations closer to justice. The Council members will continue to engage with communities and invite input and feedback all year round.

## **Clifford White (Nees Ma'Outa), Director and Treasurer, BCFNJC**

Clifford White appreciated the lessons shared during the breakout sessions. Major systemic changes were needed in the justice system, and it was important to go back to traditional ways, build long houses again, and involve traditional hereditary leaders and Chiefs and Councils.

The BCFNJC wants to engage with communities and work with them to make systemic changes in the system to keep Indigenous people out of incarceration and childcare.

## **Andrea Hilland, Kings Counsel (K.C.), Director, BCFNJC**

Andrea Hilland reflected on the highlights of the Forum, including, the presentation from Kirsten Barnes, which was a reminder of how justice issues affect First Nations, and many in attendance have lived experience and care deeply about changing the system. Andrea Hilland emphasized the importance of Nations providing feedback to the Council; they are dedicated and, in a position, to help.

## **Boyd Peters (Xoyet thet), Vice-Chair, BCFNJC**

Boyd Peters paid thanks to the Chair and to the staff for their hard work and to his fellow Council members for the work they do. The Forum event began days earlier with the inaugural Elders and Knowledge Keepers Council meeting, where members shared stories and teachings on how to ensure the work is done in a good way. The young dancers at the previous night's ceremony brought joy, and the work for justice was being done for them; the young and the most vulnerable were front of mind and heart.

Boyd Peters shared a story of a hummingbird who, during a forest fire, was taking water from a creek and dropping it on the fire. The fleeing animals asked the hummingbird "why?", to which the bird replied, "I am trying to make a difference". This was an analogy for what everyone fighting for First Nations justice was doing. The system is presently doing nothing for First Nations, so First Nations must empower themselves to do it, and collaboration must now lead to action.



### **Lydia Hwitsum, (Xtli'li'ye), Director and Secretary, BCFNJC**

Lydia Hwitsum offered thanks to all in attendance, from the youngest to the oldest, for their helping hearts and hands. With every drop, they are contributing and making a difference, and when millions of drops work together, they will make a larger impact.

### **Chief Don Tom, Vice-President, UBCIC**

Chief Don Tom noted it had been a privilege to be in attendance. The work is necessary and was bolstered by the opportunities available in BC to work together, to uplift the laws that First Nations have been denied, and to hold them – they are not inferior to federal or provincial laws. Traditional laws keep First Nations safe; they are used in ceremony, and in every part of who First Nations people are. They are beautiful.

“Great moments are born from great opportunities”, and BC First Nations have an opportunity to reclaim their laws and bring life into them again so they can benefit the people. Hard work in community will be required, and communities are encouraged to be ferocious and fearless in their advocacy; it is what is needed in today’s justice system. First Nations laws, systems, and ways of being are respectful, not punitive, and they are intended to uplift and help. BC First Nations are on the right track to make history together; they will uplift their laws, live them, and have reclamation through the Forum work and the input that was provided.

In the coming years, a great change will be seen in BC, including First Nations occupying their jurisdictional space. Young people will flourish, and children will be with their parents with no interference from the state. Chief Tom closed with a quote from previous President Barack Obama, “Change will not come if we wait for some other person or some other time, we are the ones we have been waiting for, we are the change that we seek.”

### **Robert Phillips, Political Executive, First Nations Summit and FNLC**

Robert Phillips shared of his work in corrections and in justice work with Stó:lō Nation, including with Grand Chief Steven Point. It was important to remember who First Nations leadership serve: the children, those in trouble, and those in conflict with the law, often at no fault of their own. In attendance were many champions and people who have dedicated their lives to fighting for justice.

During final remarks, Kory Wilson thanked everyone for their honesty, it was everyone’s lived experience, and although the work was challenging, if everyone brought a drop of water to the work, it would be easier.

Amanda emphasized that “just because it is law, does not mean it is right”, and the 509 people who registered for the Forum knew that too.

## CONCLUSION

The 3rd Annual BC First Nations Justice Forum held April 8-10, 2024, concluded on April 10, 2024, at 12:18 p.m. with a Journey Song shared by Latash and Delia Nahanee, dedicated to those that make Indigenous lives better.



Planning is underway for the 4th Annual BC First Nations Justice Forum that is set for Fall 2025, and BCFNJC will continue advancing key programs, services, and strategies discussed at this year's forum.



### VISUAL SUMMARY OF DAY THREE

Michelle Buchholz, Visual Practitioner, shared the visual image captured during Day 3 of the Forum.

## Appendix A – Acronym List

The following acronyms are used in these proceedings:

BCAFN	BC Assembly of First Nations
CEO	Chief Executive Officer
CFS	Child and Family Services
DRIPA	Declaration on the Rights of Indigenous Peoples Act
BCFNJC	BC First Nations Justice Council
FNJS	First Nations Justice Strategy
FNLC	First Nations Leadership Council
FNS	First Nations Summit
FPIC	Free, Prior, Informed Consent
IJC	Indigenous Justice Centres
IWJP	Indigenous Women Justice Plan
MOU	Memorandum of Understanding
MCFD	Ministry of Children and Family Development
MMIWG	Missing and Murdered Indigenous Women and Girls
NIJS	National Indigenous Justice Strategy
PLE	Public Legal Education
RCMP	Royal Canadian Mounted Police
TRC	Truth and Reconciliation Commission
UBCIC	Union of BC Indian Chiefs
UNDA	United Nations Declaration on the Rights of Indigenous Peoples Act
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples



The BC First Nations Justice Council expresses its gratitude to the Law Foundation of BC (the Foundation) for continuing to support and empower the implementation of the BC First Nations Justice Strategy and the advancement of Indigenous justice across BC.

We thank the Foundation for being the primary funder of the 3rd Annual Justice Forum and recognize their commitment to establishing a safer, responsive justice system for Indigenous people.

