



Feathers of Hope

JUSTICE & JURIES

A FIRST NATIONS YOUTH ACTION PLAN FOR JUSTICE

JUSTICE & JURIES

A NOTE ABOUT THE ARTWORK

Each Feathers of Hope report tells a story in both the text and the artwork. *Feathers of Hope: Justice and Juries* — *A First Nations Youth Action Plan for Justice* tells the story of young Aboriginal people uncovering the colonial roots of the systemic discrimination their communities face in Canada’s justice system. Using the hand drum as a metaphor for community, artist Nyle Johnston and designer Una Lee worked collaboratively with the Feathers of Hope Justice & Juries Youth Advisory to tell the story of how the young people who participated in the forum found healing and reconnection in learning about what justice meant to them.

The central image in this book is based on a hand drum that was created in a workshop in the Justice and Juries Youth Forum. On the cover, we see the back of the drum, where the sinews that hold the hide onto the frame are tied tightly. The sinews in this image represent the connections between the members of a community. Just as a drum that has not been strung tightly has a weak sound, a community without strong relationships will give rise to disconnection and injustice.

The drum is the heartbeat of Our First Mother of Creation. When the drum plays, it brings community together, back to that heartbeat. On the drum, community members stand facing the north, east, south, and west. They are unified by the sinews, and each one holds a drum and a drum stick, ready to sound the songs they have learned.

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Feathers of Hope: Justice and Juries — A First Nations Youth Action Plan for Justice
Office of the Provincial Advocate for Children and Youth ©2016

978-1-987815-23-8	Feathers of Hope: Justice and Juries — A First Nations Youth Action Plan for Justice	Digital
978-1-987815-22-1	Feathers of Hope: Justice and Juries — A First Nations Youth Action Plan for Justice	Book
978-1-987815-25-2	Les Plumes de l’espoir La justice et les jurys : Le plan d’action en matière de justice des jeunes Autochtones	Numérique
978-1-987815-24-5	Les Plumes de l’espoir La justice et les jurys : Le plan d’action en matière de justice des jeunes Autochtones	Livre imprimé

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MESSAGE FROM IRWIN ELMAN

THE PROVINCIAL ADVOCATE FOR CHILDREN AND YOUTH



IRWIN ELMAN

A lot has happened since the release of *Feathers of Hope: A First Nations Youth Action Plan*. In 2014, my Office was honoured when the Truth and Reconciliation Commission of Canada (TRC) invited the Feathers of Hope team to be part of a panel and offer a statement of Reconciliation at the National Event in Edmonton, Alberta. At the event, the Action Plan was added to the Bentwood Box and will become part of the permanent record at the National Centre for Truth and Reconciliation.

Since that time we have hosted a TRC Education day for over 2000 students here in Ontario and travelled across the country and internationally to speak about the work Feathers of Hope (FOH) does to mobilize change and where possible create the conditions needed for young people to claim their voices and use them to advocate for change in their communities and for the generation of young people coming up behind them. This past June we were once again honoured to be part of the work of the TRC as we were invited to be part of the final release of the Executive Summary of the Commission's final report. The Feathers of Hope Youth Amplifiers hosted two workshops that were attended by more than 1500 students and teachers in Ottawa.

While all this was happening, the Feathers of Hope team continued the most important part of their work; connecting with young people. They travelled to northern communities to host mini FOH forums. They worked with government ministries to push for ways to bring young people into the work of creating healthy communities, where the possibilities of hope are tied to creating opportunities for employ-

ment, education in communities that are safe and healthy and able to care for its children and youth. Even as this report is being released we are already working on our 3rd report tied to the Feathers of Hope forum on child welfare held in May 2015.

The timing of our report aligns with the recent decision of the Canadian Human Rights Tribunal with respect to the funding of child welfare services in Canada. The Advocate's Office has been a witness to the work of the First Nations Child and Family Caring Society from the beginning of its work to bring to light the inequities faced by Aboriginal children in care. It is clear to me that we are in a time of change, a time where young people are saying they want to be part of, and at times lead, that change.

In the pages that follow you will read about policing, the courts, juries and the implications of a Supreme Court of Canada decision commonly referred to as "Gladue." As we learned through the Justice and Juries forum process, young people do not feel the issue of jury representation is a standalone issue. They believe that the failure of the justice system to meet the needs of Aboriginal people plays a significant role in why Aboriginal people chose not to participate in the jury process. The thoughtfulness and focus that they bring to the report is reflective of the seriousness of the conversations that were part of the forum. It also highlights

that young people are seeking a new kind of relationship with the justice system; one that begins with building trust. They see a lot of work ahead and are willing to pull up their sleeves and get to work but they want assurances that they will have committed partners to work with in the systems and institutions involved in the delivery of justice. There are centuries of pain that need to be addressed. Their hope is that in moving forward there will be a commitment to work together on the part of government, Aboriginal leadership and their communities to create a justice system that is reflective of Aboriginal peoples' values and beliefs and committed to change and the hard work of healing.

I hope you enjoy the report and that you read it, share it, take it into your classrooms. Most importantly, I hope it allows you to see that young people have a voice and that they need to be part of the work and the action that is needed. They need to be part of creating their own future, a future tied to a model of justice that is supportive, welcoming and reflective of their culture and belief systems.

A handwritten signature in black ink, appearing to read 'I. Elman', written in a cursive style.

IRWIN ELMAN

PROVINCIAL ADVOCATE FOR CHILDREN AND YOUTH

LETTER FROM THE YOUTH AMPLIFIERS



SAMANTHA



SAVANNA



SARAH



TALON



RYAN



KARLA

Feathers of Hope began its journey back in 2010. The Provincial Advocate's Office, working with the Chiefs of Ontario and a number of Nishnawbe Aski Nation communities, hosted two small gatherings with Aboriginal youth. The first took place in Toronto in October 2010 and the second in July 2011 in Thunder Bay. The Office then hired the first Youth Amplifiers and in partnership with the Inter-Governmental Network and Nishnawbe Aski Nation planned the first of what has now been three Feathers of Hope youth forums in Thunder Bay since March 2013. Since then things have moved so quickly. In November 2014 we hosted and planned the Justice and Juries youth forum and have been working hard to create the report that is now in front of you.

This Feathers of Hope forum and report is unique as it was born out of recommendation seven of the First Nations Representation on Ontario Juries report. We hosted this forum focused on Justice and Juries because we recognized how important it is for Aboriginal young people to add their voices and perspectives on how a lack of representation of Aboriginal people on juries, and in the overall justice system, negatively affects them and their communities. Feathers of Hope has instilled the drive for change in young people not just here in Ontario but across Canada, giving us recognition and showing us that "we're going in the right direction." We believe that our work tied

to Feathers of Hope has allowed us to build some powerful relationships with allies who like us believe that now is the time for change.

We are Youth Amplifiers and each of us represents Aboriginal people from Northern Ontario. Our communities, our roots are in Treaty #3, Nishnawbe Aski Nation and Robinson-Superior. Each of us has different talents, goals and hopes for the future, but we all come together to support and advocate for Aboriginal youth and to amplify their voices. We are committed to ensuring young people have a platform through which to come together and to share and learn. We do this work because the issues involved affect our friends, family, community members and the lives of so many people around us.

Young people are the heart of this process. We would like to express our appreciation to every young person who participated in forums we have organized, the many communities we have visited, the people we have met through workshops, conferences and outreach, as well as all the young people who have been a part of our Youth Advisory Committees. The advisory for this report has been a source of knowledge and memory that we needed to create this report and ensure it reflects the voices of the 150 young people who were part of the forum process. They are a reminder of the voices and the strength that came together and shared and they are a reminder that the inclusion of youth and young people must be the first step towards real change.

We would like to acknowledge the work that young people have put forth in the Feathers of Hope process. We want to make sure we emphasize how much we value the courage and the work that the forum participants put in. It is unbelievably inspiring how they are willing to share their own experiences because it demonstrates their true commitment to change. We also appreciate all the encouragement we get from our leaders and champions that helped the youth along the way from getting to the forums to being a part of the positive change that youth are hoping to achieve. Without the commitment from the young people, as well as our fellow staff at the Office of the Provincial Advocate for Children and Youth, the Debwewin Implementation Committee¹, the Ministry of the Attorney General and the

1. The mandate of the Debwewin Committee is to oversee the implementation of recommendations made by the Justice Iacobucci in his 2013 report First Nations Representation on Ontario Juries

the Ministry of Children and Youth Services, our community leaders and the ongoing support of our champions, including Johnathan Rudin who came in and met with us and answer our many questions about Gladue, Feathers of Hope wouldn't be what it is today.

Feathers of Hope has become a movement tied to the voices of Aboriginal young people and we want youth to know that it is their words and knowledge that created this report. Youth that attended the forum came with the intention of creating change. They see Feathers of Hope has an impact, it makes a difference, it is young people making change. They knew coming to the Justice and Juries forum that they would have an impact. Youth are ready to work together with systems, levels of government, Aboriginal leadership and each other to heal the roots of Canada's failed justice system. As part of the Feathers of Hope team, we remain committed to a vision of young people mobilizing to create and maintain stronger healthier communities. Our goal is to continue to hold these powerful forums and difficult discussions. Young people know what the issues are because they live and witness the injustices, failures and legacies of the justice system every day. They believe that if there is a need for more and better representation of Aboriginal people in the jury process then young people must be part of the change process. But first Ontario must look with humility at the reasons why Aboriginal people do not want to be part of a jury process that has never seen us as peers.

Sincerely,

YOUTH AMPLIFIERS
OFFICE OF THE PROVINCIAL ADVOCATE
FOR CHILDREN & YOUTH

with a goal to increase the representation of Aboriginal people on jury rolls throughout the province. Debwewin is comprised of 11 members consisting of First Nations and Métis representatives as well as representatives from the Ontario government and the judiciary. Debwewin uses both Indigenous and Western tools and approaches in determining how to move forward with its work.

EXECUTIVE SUMMARY

In June 2012, Justice Frank Iacobucci, author of the report *First Nations Representation on Ontario Juries*, met with the Advocate's Office to talk about his role as the government appointed independent reviewer of juries in Ontario. We shared the Justice's concern about the lack of representation of Aboriginal¹ people on juries. Our interest stemmed from the fact that the Advocate's Office had applied for standing at an inquest into the deaths of seven Aboriginal youth in Thunder Bay² and that this population of children and youth falls within our service mandate. Sadly, the inquest's early proceedings had to be halted because the Coroner's office was unable to form a jury of peers that included representation from local Aboriginal communities. At the time of the writing of this report and, after a three-year delay, the inquest has finally started.

1. In the report we will use the term Aboriginal rather than First Nations as the term Aboriginal is inclusive of FN, Metis, Inuit peoples.

2. On Monday October 5, 2015, an inquest began into the deaths of seven Aboriginal youth, one female and six males, who lost their lives while attending high school in Thunder Bay. The 7 youth — Reggie Bushie, 15, Jethro Anderson, 15, Jordan Wabasse, 15, Kyle Morrisseau, 17, Robyn Harper, 18, Curran Strang, 18, and Paul Panacheese, 21, — had left their remote northern communities, families and support systems behind to further their education. The inquest is being presided over by Dr. David Eden and is expected to last 6 months. It will be the largest ever held in Ontario and involve up to 200 witnesses. The Advocate's Office has official standing at the inquest.

We learned from the delay of the proceedings that the under-representation of Aboriginal people on jury rolls in northern Ontario is, in part, a reflection of the relationship that exists between the justice system and Aboriginal communities. The system is failing Aboriginal people and having a devastating impact on community members who come into contact with the law both on- and off-reserve. Through our advocacy work with Aboriginal young people we see that this failure applies to virtually all parts of the system.

After our conversations with Justice Iacobucci, we made a submission to the review process. In our submission we emphasized the need for Aboriginal young people to be active in the process of seeking solutions to improve representation on juries. We also stressed that there was need for the system to understand the views Aboriginal young people held about the relationship between Aboriginal peoples and the justice and jury process. We offered to host a gathering of Aboriginal youth from across the province and facilitate a dialogue about jury representation, the impact the delivery of justice has on Aboriginal people and the role this impact plays in terms of low levels of representation on juries.

When the report of the Independent Review was released in February 2013, we were pleased to see that our recommendations were accepted. We were struck by the fact that the need to include young people's voices was contained in Recommendation #7 of the Justice's report. The number seven has great meaning for many Aboriginal people where traditional teachings encourage the current generation to be forward thinking and consider the impact of their deci-

sions over the course of the next seven generations. We are not sure if the Justice was aware of the cultural meaning of the number seven, but its significance in being tied to this recommendation was felt strongly by the Feathers of Hope team and staff of our Office. Recommendation #7 states:

"With respect to First Nations youth, in addition to having a youth member on the Implementation Committee, the Implementation Committee should request that the Provincial Advocate for Children and Youth facilitate a conference of representative youth members from First Nations reserves to focus on specific issues in the relationship between youth, juries and the justice system, addressed in this report. The Provincial Advocate for Children and Youth should prepare a report on that conference; prior to submitting the report to the Implementation Committee the Provincial Advocate for Children and Youth should consult with PTOs³ and other First Nations Associations."

The timing and importance of this discussion for Aboriginal young people became obvious to us when more than 285 young people attempted to register for the 100 spots available at the Feathers of Hope: Justice and Juries forum. Ultimately, we found a way to bring together 150 Aboriginal youth from on- and off-reserve, remote and fly-in communities in the north and reserves in the south to Thunder Bay for this important discussion. The young people participated in group discussions that focused on:

- Understanding Ontario's Justice System
- Creating a Vision for a Jury Process
- Community Approaches to Justice
- Discrimination in the Justice System
- Relationship with the Justice System

3. Aboriginal communities are organized into what are called Provincial Territorial Organizations (PTOs). In Ontario, there are four PTOs. A PTO represents their member communities in dealings with government or private sector industry on matters pertaining to regional lands, resources or treaty-related issues. In Ontario there are four PTOs: Nishnawbe Aski Nation representing 49 First Nations in Treaty areas #5 and #9; Grand Council Treaty #3 representing 30 First Nation communities in the Treaty #3 area; the Union of Ontario Indians or Anishinabek Nation representing 43 First Nations in the Robinson-Superior and Robinson-Huron treaty areas; and the Association of Iroquois and Allied Indians.

What became clear from the very beginning was that young people wanted to talk and were open about the limited knowledge they had about Ontario's justice and jury process. They asked questions about how the justice system worked, their rights and what they needed to know if they came into contact with the law. Perhaps more revealing was the power in the unity of their voices describing experiences with the justice system that left them feeling disconnected and on the receiving end of a system that felt far from being just. Over the course of the forum young people spoke about the problems with the current system and made many suggestions for improvement more in line with the values, beliefs and needs of their communities/nations. Many saw the current structure of justice as an imposed system tied to punishment instead of healing. They spoke a great deal about the roles of people who worked in the justice system at the community level or in the court system and what needed to be improved. Forum participants want a justice system focused on establishing relationships and restoring balance in their communities by helping community members be part of promoting healing, a word that is not often heard in the mainstream justice system. With healing in mind, this report has been written in a way that focuses on building connections between young people, Elders, chiefs and band councils and those who are part of the justice system and government, specifically:

- Police – Aboriginal and non-Aboriginal policing (municipal/city, Ontario Provincial Police and Royal Canadian Mounted Police)
- Lawyers – through legal representation
- Judges
- Juries

Unlike the process for preparing the first Feathers of Hope report, the lead for writing the Justice and Juries report shifted and this time the Youth Amplifiers and an advisory group of First Nations youth who attended the forum gave guidance and support to Laura Arndt and Dr. Fred Mathews who co-led the writing of this report. Remaining true to the vision of Feathers of Hope, young people played a central role in reviewing and editing every draft of the report to ensure it accurately reflected what was said in discussions at the forum. They also worked closely with the report's design team to ensure the look and feel of the report remained true to the vision of Feathers of Hope. The Amplifiers are also currently working with the Ontario

Justice Education Network (OJEN)⁴ to develop educational tools for Aboriginal communities and to ensure that young people play an active role in creating the change they want to see in the justice system.

As the report reveals, young people had a lot to say at the forum; they also asked a lot of questions. To support their learning, our Office ensured participants had access to information about the justice system and about their rights, responsibilities and entitlements under the law. We accomplished this by bringing to the forum a small group of ‘champions’⁵ from across Ontario. The champions are Aboriginal adults who work in the justice system and include Cynthia Rietberger, LL.B, (Nishnawbe-Aski Legal Services), Mandy Wesley, LL.B, (Truth and Reconciliation Commission of Canada and Aboriginal Legal Services of Toronto) and Jocelyn Formsma (law student, University of Ottawa). The Advisory and Amplifiers also met with Johnathan Rudin from Aboriginal Legal Services after the forum to ask questions about the Gladue courts and the Gladue decision.

Having these conversations with champions in the room gave young people a sense of safety and hope. Through the champions forum participants were able to observe a willingness on the part of leaders from their communities, and

4. The Ontario Justice Education Network (OJEN) is a non-profit organization that offers educational programs designed to teach the public about Ontario’s justice system. Programs help explain how the justice system works and the roles of judges, justices of the peace, lawyers, attorneys, juries and police. Thousands of students and others participate in OJEN’s justice education programs each year. Programs are provided by hundreds of volunteers including judges, lawyers, court staff, and teachers and help create a dialogue between justice system representatives and members of the public.

5. The ‘champions’ sat with young people in the workshop sessions and spoke about their personal commitment to work to create change, healing and transformation within a system that continues to harm Aboriginal people. The young people saw the champions as pushing back and creating change from within the justice system. They were invaluable in promoting conversations about healing and transformation for young people at the forum. Champions are important in the work of Feathers of Hope because they provide Aboriginal youth with role models, mentors and sources of hope and inspiration as they work together and with their communities, Elders and leadership to create change.

who worked within the system, to be present, to listen and to be open to hearing their ideas and answering their questions.

The significance of the topics discussed at the forum was evident in the overwhelming level of interest young people showed in their discussions with each other and the champions. The level of comfort and ease with which workshop participants and champions engaged was a reflection of why a champions model in the dialogue session is critical. The young people were eager to share their experiences about the realities of how justice is served in their communities. They spoke repeatedly about the need for their communities to have educational programs about the justice system and to have this information readily available in schools or through band office supported training. Another desire was for justice education programs to be more in line with community needs and values and to be tied to a view of justice that was based on restoring or healing breaks in community and individual relationships. There was a call for the justice system to develop and support restorative justice programs in Aboriginal communities that felt they were needed.

Young people spoke openly about their fears and disappointment with respect to policing. It was widely believed that police targeted Aboriginal people and that they were over-policed. Some young people spoke positively about the relationship that existed between police and their communities and did not see the level of over-policing mentioned by others. In broader discussions about police response to calls for assistance there was again the view that police often responded poorly or ignored the call leaving the youth and their family with the feeling that the justice system had failed them completely.

Concerns were raised about the limited knowledge many lawyers have about Aboriginal people and the sense that some lawyers provided poor quality representation. Young people shared personal stories of lawyers coming into communities and pressuring young people or their family members to plead guilty to lesser charges, even if innocent, in order to avoid spending more time in detention. Forum participants reported feeling intimidated at the prospect of being in a courtroom, in front of a judge and jury, and being “judged” and “punished” by strangers. They had little confidence in a system that, even after centuries, still has limited to no knowledge of their background and history or how this history continues to harm Aboriginal people

rather than fostering a sense of hope and healing. There was frustration that the justice system still fails to embrace that many Aboriginal people have traditions tied to community justice that have much to offer to the process of resolving wrongdoing.

Strong opinion was expressed by youth that judges did not understand the reality of life in northern communities or the ongoing impact of colonization, displacement, the 60s scoop⁶ or the residential schools on the lives of Aboriginal people. Nor did they believe that the court system really understood the stereotypes and biases that judges and jurors bring with them to court proceedings involving Aboriginal people. There was a belief shared by many of the young people that the impact of this thinking can result in Aboriginal people being less likely to receive bail, being more likely to go to jail, being denied early parole and being more likely to serve their full sentences than non-Aboriginal people. There was heated discussion about the ‘Gladue principles’ (Gladue) and a need to expand their application to all aspects of the justice system. This carried over into talk about how the bail process fuels colonization, bias, inequality, ‘net-widening’⁷ and the increasing rates of incarceration of Aboriginal people.

6. The term ‘60s scoop’ refers to the adoption of Aboriginal children in Canada between the years of 1960 and the mid 1980 s, with most occurring in the 1960s. Statistics from the Department of Indian Affairs (now Indigenous Affairs and Northern Development Canada) show that a total of 11,132 Aboriginal children were adopted over this period of time, primarily by non-Aboriginal families. The term “scoop” is used because many children were literally “scooped” or taken from their homes and communities without the knowledge or consent of families or bands. The social workers who removed the children from their communities acted under a racist assumption that Aboriginal peoples were culturally inferior and thus unable to adequately care for their children. The impact of this forced removal/adoption process continues to have a traumatic effect on the children who were removed and on their families and communities.

7. Net-widening refers to the process by which a person charged with an offence ends up receiving more intrusive consequences or legal sanctions as a result of biased processes in the legal system. For example, in a case where a person receives bail with unrealistic bail conditions, they could end up having to pay a fine or end up spending time in jail for violating any of the conditions. Once in jail, they may be targeted for simply being Aboriginal and could receive new charges if they retaliate or simply act to defend themselves.

In the end, this report honours Justice Iacobucci’s call to gather together Aboriginal young people and obtain their thoughts regarding the under-representation of Aboriginal people on juries. It reflects the feedback of young people who were clear in their belief that in order to address the problem of under-representation you first need to address the issues that make it more likely for an Aboriginal person to be in front of a judge than to sit on a jury.

STRUCTURE OF THE JUSTICE AND JURIES REPORT

The first three chapters of this special edition Feathers of Hope report tied to justice and juries provides an overview of young people’s concerns and ideas for change regarding policing, the courts and the jury process. The content of these sections was taken from written notes and transcribed recordings of discussions at the forum where young people shared their personal experiences with the justice system along with those of their friends, family or community members. Their voices and views were combined with knowledge and information provided by the Aboriginal ‘champions’ in attendance at the forum and in workshop sessions.

In the fourth and final chapter of the report, young peoples’ voices, experiences and ideas for change are drawn together with information provided to them about the case of Jamie Tanis Gladue (Gladue), section 718.2(e) of the *Criminal Code of Canada* (CCC) and principles introduced into the CCC that are supposed to reduce the over-representation of Aboriginal people in the provincial and federal jail/prison system. This information was provided by the champions. Chapter four also includes a brief description of the current context and need to transform the relationship First Nations people have with the justice system and is intended to highlight the urgency with which change and transformation is needed.

The Feathers of Hope Justice and Juries report provides a focused and powerful account of young people’s, families’ and community members’ interactions with the justice system and those who work within the justice system on- and off-reserve. The recommendations made by the young people are directed to all levels of government, Aboriginal leadership and the Debwewin Committee that has been given the responsibility to implement the recommendations contained in Justice Iacobucci’s final report.

TURNING TO THE YOUNGEST IN OUR COMMUNITIES: THE KNOWLEDGE SEEKERS

It is important to reclaim the sacred place young people hold in Aboriginal cultures. In bringing them together to talk about improving the justice system we saw they were filled with hope and could imagine the possibility of something better for their peoples. Young people recognize there are problems in the system but are able to imagine a new path for justice, one focused on individual and community healing and restoring relationships, even in situations involving serious crimes. Participants at the forum expressed a need to reclaim their culture and identity in part by seeking out the justice traditions used by their peoples in the past as a way of anchoring new traditions and practices their communities can use to deal with individuals who violate community laws or commit wrongdoing. They believed strongly that models of justice informed by traditional approaches could be created and be not just restorative within their communities but restorative of their communities.

The summary of recommendations demonstrates the commitment young people bring to renewing the justice system and creating the conditions necessary for Aboriginal people to feel their culture, views and values are represented within it. Perhaps when they see these changes reflected in the mainstream justice system First Nations peoples will finally participate on a jury of peers.

The Advocate's Office wants to thank the Feathers of Hope Youth Amplifiers, the Justice and Juries Youth Advisory group and the 150 young people whose voices are at the heart of this report. As Canada begins its journey towards healing and reconciliation the nature of the journey must be anchored in the roots of healing and justice.

SUMMARY OF RECOMMENDATIONS POLICING

1. **Aboriginal Police Services⁸ must be improved and strengthened** by having their investigative powers and resources, training, and systems of accountability brought in line with those of non-Aboriginal police services.
2. **All Aboriginal and Non-Aboriginal police working on- or off-reserve and in northern and remote fly-in communities must receive mandatory police college level training** specific to the history of Aboriginal people and the legacy issues that increase their risk of coming into contact with the law.
3. **Police officers, as part of their duties, must focus on building positive working relationships with all community members.** The ability of officers to establish these relationships should be

8. The term "Aboriginal Police Service" and the abbreviation "APS" is used in the report to refer to on-reserve aboriginal police services in Ontario. Aboriginal police officers are appointed by the Commissioner of the Ontario Provincial Police and have the powers of a police officer within Ontario. Aboriginal police services referred to in the report could include: Six Nations Police, Wikwemikong Tribal Police, Nishnawbe-Aski Police Service, Treaty #3 Police Service, Anishinabek Police Service, Tyendinaga Mohawk Police, Akwesasne Mohawk Police, Walpole Island Police Service, Rama Police Service or Hiawatha Police Service.

regularly assessed as part of their employment evaluation/performance reviews. A key sign of having this skill is the officer's participation in community functions or in community life, where possible, out of uniform. Community members should be involved in this evaluation process and know their feedback about the degree to which they feel an officer is interested and engaged in the life of the community is part of an officer's evaluation. This role could possibly be taken on by a community policing council.

4. **Government must work with Aboriginal leadership, band councils and educators to develop legal rights education courses for Aboriginal youth** at the primary, intermediate and senior high school levels. This need is critical given the over-representation of Aboriginal youth in the justice system.
5. **Legal rights education related to policing, and related print materials, must be made available to young people** through band councils, community forums, police services, schools, or organizations such as Legal Aid Ontario, Ontario Justice Education Network, legal aid clinics/organizations like Nishnawbe Aski Legal Services, and the Aboriginal Legal Services of Toronto.
6. **The powers of the Office of the Independent Police Services Review Board (OIPSRB)⁹ must be expanded** to include Aboriginal police services and the policing of Aboriginal people so individuals on-reserve will have access to an independent complaint and appeals mechanism.
7. **Policing is a difficult and demanding job. Government must provide Aboriginal and non-Aboriginal police officers with the resources they need to do their jobs, including self-care training and support services.** Providing supports and care to police officers will help them better care for the communities they serve.

9. The Office of the Independent Police Review Director (OIPRD) receives, manages and oversees all complaints about police in Ontario. It is an independent civilian oversight agency that ensures all public complaints against the police are dealt with in a manner that is transparent, effective and fair.

SUMMARY OF RECOMMENDATIONS

COURTS

- 1. Ontario’s justice system must change so that it better meets the needs of Aboriginal peoples. This change must begin with an acceptance on the part of government that Canada’s justice system, in its present form, continues to harm to Aboriginal peoples.** As Ontario moves forward with the work of implementing Justice Iacobucci’s report, there is a need for real conversations about the courts and broader justice system that include the full participation of Aboriginal communities and those from within the community who have been involved with the justice system. If jury representation is important, then steps must also be taken to address the crisis tied to the over-incarceration of Aboriginal people. Juries cannot solve the issue of incarceration alone; they need to know the courts are doing more to ensure culturally biased justice practices rooted in racism, discrimination and stereotypes that negatively affect Aboriginal peoples and leave them at increased risk to receive unnecessarily harsh legal sentences. This will ensure Aboriginal people see that real change is happening in the justice system.
- 2. In line with the Truth and Reconciliation Commission’s Call to Action number twenty-seven (27), we call upon the Federation of Law Societies of Canada to ensure that lawyers receive cultural competency training,** which must include the history and legacy of the Indian Residential Schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal Rights, Indigenous law and Aboriginal-Crown relations. This will require skills based training in inter-cultural competence, conflict resolution, human rights and anti-racism.
- 3. A renewed justice system must begin with increased accessibility.** Courts must sit regularly in northern communities and be staffed with lawyers, court reporters, judges, support workers and other system personnel who have specialized training and knowledge about remote and fly-in communities.
- 4. When an Aboriginal accused person is flown out of a community for trial or holding, processes must be put in place to ensure she or he does not become lost or disconnected from their communities and the traditions and cultural practices that give them support, hope and connections to home.** This can be addressed by providing supports to fly families in, using technology to support web and video conference visits and requiring that Elder and community access be available at all times and provided to all Aboriginal people in all detention centres, jails and prisons in Ontario.
- 5. The Ministry of the Attorney General (MAG) must work with Aboriginal legal service organizations, chiefs, band councils and communities to create ways for community members to provide feedback to the justice system.** These sessions, when developed, must be culturally anchored, include the participation of young people and adult community members and be offered with translators in place and educational materials written in the language of the community. This work should be done by an agency or body that is not part of MAG so that Aboriginal people can be sure the evaluation reflects their views before it is delivered to the government.
- 6. The Ministry of the Attorney General must provide funding to ensure there are specially trained court support workers** to meet the needs of Aboriginal individuals before the courts.
- 7. The Ministry of the Attorney General must conduct research into the problem of “net-widening”** and determine how often, and in what manner, additional charges against Aboriginal persons are a result of conditions tied to bail or community sentencing.
- 8. The Ministry of the Attorney General must work in partnership with the Ministry of Community Safety and Correctional Services to ensure safe and fully functional detention facilities** are provided in northern communities in cities like Thunder Bay, Fort Francis, Sioux Lookout or Timmins and that these facilities meet the same operating standards as facilities in the south.
- 9. The Ministry of the Attorney General must work with Aboriginal legal service organizations, chiefs, band councils and communities to help develop an education process where Aboriginal youth can learn about the local justice traditions of their communities that existed prior to contact with European settlers.** By helping young people obtain this knowledge they can become informed partners and work with their leadership and community knowledge keepers to help create new approaches to justice that meet the needs of their communities.
- 10. The government must revisit what is happening with bail hearings.** Bail hearings have become more like punishment for many Aboriginal people. Bail conditions for Aboriginal people can include things like attending addiction treatment programs or counseling. The problem is bail is supposed to be about ensuring attendance at court not about forcing a person to meet conditions usually tied to a sentence after a trial has taken place and a finding of guilt has been established. These unfair bail conditions can set Aboriginal people up for failure and possibly new charges before they’ve even been tried.

SUMMARY OF RECOMMENDATIONS

JURY PROCESS

1. **The jury process is not separate from the broader justice system.** Trying to solve the problem of jury under-representation without addressing the way justice is delivered to Aboriginal people in Ontario will not accomplish much. Change will only be meaningful if Aboriginal people see their involvement on juries as contributing to a form of justice that works for them and their communities. Aboriginal people must be able to connect their participation on juries to improving the justice system and making it more inclusive. This change must include removing the sense of intimidation and exclusion many Aboriginal people feel in the delivery of justice on- or off-reserve.
2. **A support system must be put in place for Aboriginal people coming from remote and fly in communities who agree to be part of a jury process.** As participation in the jury process can be very overwhelming, mechanisms must be created that allow a family member to travel with an Aboriginal juror or ensure that technological resources are in place to permit the juror who is away from their family and community to have regular contact with home while they sit on the jury. These supports should also be extended to those who testify at trials or inquests regardless if their testimony is provided in-person or through video conferencing.
3. **Mental health supports, i.e., Elders and counselors, must be made available to Aboriginal people who are part of trial and inquest juries.** These supports must also be provided to Aboriginal witnesses who sit in the courtroom and those who video-conference in. These supports should ideally be coordinated in advance and be provided by a victim witness program and have training in line with that provided to Indian Residential School mental health providers who were part of the work of the Truth and Reconciliation Commission of Canada.
4. **Aboriginal people may come to a jury with a different way of thinking about the process than non-Aboriginal people.** They may not speak up or ask questions of their fellow jurors, a judge or the coroner leading an inquest. They may worry their questions may not be understood or people may judge them for the type of question they ask. They may require a different kind of support to participate meaningfully. Lawyers and judges in trials and inquests must also have a better understanding of how the culture and background of Aboriginal people impact their participation on a jury. This may require training for those on a jury and for lawyers, judges and coroners
5. **Government must work with chiefs and band councils to create the changes necessary to ensure juries include more Aboriginal jurors.** This is not work that can sit with one side or the other. The more community members see their leadership encouraging jury participation and pushing for better supports for members of the community who are willing to be part of a jury, the more likely it is members will be willing to be part of a jury process.

6. **Government must change the jury selection process to ensure jury duty is voluntary and not forced on Aboriginal peoples.** Chiefs of Ontario and Independent First Nations must work within their ranks to establish a process to guide communities in ensuring Jury Lists are seen as important and are shared with the Ministry of the Attorney General. The Ministry of the Attorney General must commit to working with Aboriginal leadership to find better ways to create lists of people in each community who would be willing to be a juror at a criminal trial or inquest.
7. **Aboriginal jurors must be compensated/paid by government for the true cost of their participation on a jury including travel, accommodation, meals, child or Elder care or lost workplace compensation.** Many of these costs are covered for lawyers, court staff and judges who fly into their communities for court. That this is available to employees of the justice system but not those who are being asked to participate in the delivery of justice is unfair.
8. **Government must provide translation services to Aboriginal jurors or witnesses** at trials or inquests whose first language is not French or English.

BROADER LEGAL EDUCATION ISSUES TO SUPPORT AND ENCOURAGE PARTICIPATION ON JURIES

9. **Government must work with the education system to develop education tools and classroom lesson plans that are age-appropriate and make learning about the justice system fun for Aboriginal youth.** Education about the law should begin in grade six. Learning about the role and function of juries should form part of the curriculum and include mock trials and role playing. Legal education addressing a range of justice system issues should be supplemented with participation in conferences and forums such as Feathers of Hope where young people can gather, share experiences and learn from one another and Aboriginal professionals working in the system.
10. **The Ministry of the Attorney General (MAG) must work with Aboriginal legal service organizations, the Ontario Justice Education Network, the Equity Advisory Group at the Law Society of Upper Canada, and chiefs and band councils to ensure that education about all aspects of the justice system is available in all Aboriginal communities.** It is especially important that this information be provided to community members who come into contact with the justice system, so that they know their rights, responsibilities and options. These materials must be culturally-anchored, include the input of young people, be translated into the languages of Ontario's Aboriginal people and be available online.

11. **Legal education curriculum must include knowledge about the roles of people involved in the justice system** so young people and community members will be able to determine if people are doing their job the right way and what to do if they don't feel they are. It should also focus on rights, what you can ask of a lawyer, what to expect when being asked to go to court and information about the supports that are available in the justice system and how to access them.
12. **Government must take steps to increase the number of Aboriginal people working in the justice system**, including judges, lawyers, police officers, probation officers, court workers or corrections staff. Government must also encourage and fund opportunities for Aboriginal young people to pursue careers in a renewed justice system.
13. **Comprehensive training about the history of Canada's relationship with Aboriginal people must be mandatory for all staff working in the justice system.** This training must include knowledge about community/nation based approaches to justice and detailed information about the legacy issues impacting Aboriginal people that stem from the Indian Residential Schools, the 60s scoop, resettlement on reserves, colonization and oppression. Young people must be involved in the development of this training curriculum for justice system staff as it relates to the realities of Aboriginal young people in the justice system. As part of developing this training wherever possible the Truth and Reconciliation Commission's Calls to Action (see pages 26–27) must be addressed with specific focus on those tied to Justice (numbered 25–41)ⁱ and those tied to the legal system (numbered 50–52)ⁱⁱ.
14. **The Ministry of the Education must amend the curriculum in grades K-12 to include age-appropriate materials to support the study of R v Gladue and the historic and ongoing impact of racism and discrimination on Aboriginal people.** This recommendation is in line with the Truth and Reconciliation Commission's Calls to Action (numbered 62 and 63)ⁱⁱⁱ tied to Education and Reconciliation (see page 27).

SUMMARY OF RECOMMENDATIONS

GLADUE

1. **The Ministry of the Attorney General must ensure that Gladue courts are available in courthouses across Ontario, that all Gladue courts are called Gladue courts, and that individuals who identify as Aboriginal who are charged with an offence have access to a Gladue court if they wish. It is important that all persons charged with an offence be told about Gladue court as many Aboriginal people do not self-identify and even fewer know what Gladue courts do.**
2. **The Ministry of the Attorney General must ensure that Aboriginal Diversion Programs are available in all communities as a way of ensuring there are real alterna-**

tive options to incarceration in place for Aboriginal people. The absence of Aboriginal Diversion Programs result in accused Aboriginal persons going to jail for offences that had they been committed in a city like Toronto, where diversion programs are in place, could have been diverted and dealt with by a community council.

3. **The Ministry of the Attorney General must ensure that all fly-in courts in remote communities are the first to benefit from the addition of new resources tied to addressing the lack of training specific to judges, lawyers, crowns, court personnel and diversion programs.**
4. **The Ministry of the Attorney General must ensure that the Gladue decision, case law and principles, along with the process and content for establishing and operating Gladue courts, must be required training for all sitting judges and court personnel. The Ministry must require more rigorous training and requirements for criminal lawyers to represent Aboriginal people and hold law societies and Legal Aid responsible for ensuring mandatory training for all lawyers who have Aboriginal clients.**
5. **R v Gladue and the related principles and case law must be mandatory training for all judges and court personnel including even those not working within the Gladue courts, as Aboriginal people will appear in non-Gladue courts.** Many crowns sitting in Gladue courts are not aware of the principles. This training should at a minimum be either over two half-days or one full day session.
6. **The Ministry of the Attorney General must conduct a full evaluation of existing Gladue Courts** to ensure the principles and all promising practices are consistently applied and that steps are taken to ensure these courts continue to grow and benefit from ongoing evaluation. This review must move beyond the number of Aboriginal people convicted of crimes/prosecution records and must address the factors bringing Aboriginal people before the courts and the vision, goals and outcomes of the Gladue courts. A first step should include seeking insight and guidance from those who were part of creating the first Gladue court.
7. **The government of Ontario must begin applying the Gladue court model of practice to child welfare matters** and create individualized reports, like the Gladue reports, considering the historic trauma and history of Aboriginal peoples before making decisions tied to bringing children into a care system that will take them away from their families and communities.
8. **The government of Ontario must expand the number of Aboriginal Legal Service organizations** and support the creation of legal clinics across the province for Aboriginal people involved in the criminal justice system or matters pertaining to child welfare, family law, poverty or human rights. Many people who are working part time, minimum wage jobs make too much to qualify for legal aid, but not enough to afford to hire a lawyer. In many cases these are the people who plead guilty instead of going to trial. This adds to the increasing rates of incarceration of Aboriginal people.

ENDNOTES

TRUTH AND RECONCILIATION COMMISSION CALLS TO ACTION

i. CALLS TO ACTION 25-41 JUSTICE

25. We call upon the federal government to establish a written policy that reaffirms the independence of the Royal Canadian Mounted Police to investigate crimes in which the government has its own interest as a potential or real party in civil litigation.

26. We call upon the federal, provincial, and territorial governments to review and amend their respective statutes of limitations to ensure that they conform to the principle that governments and other entities cannot rely on limitation defences to defend legal actions of historical abuse brought by Aboriginal people.

27. We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

28. We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and antiracism.

29. We call upon the parties and, in particular, the federal government, to work collaboratively with plaintiffs not included in the Indian Residential Schools Settlement Agreement to have disputed legal issues determined expeditiously on an agreed set of facts.

30. We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so.

31. We call upon the federal, provincial, and territorial governments to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending.

32. We call upon the federal government to amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.

33. We call upon the federal, provincial, and territorial governments to recognize as a high priority the need to address and prevent Fetal Alcohol Spectrum Disorder (FASD), and to develop, in collaboration with Aboriginal people, FASD preventive programs that can be delivered in a culturally appropriate manner.

34. We call upon the governments of Canada, the provinces, and territories to undertake reforms to the criminal justice system to better address the needs of offenders with Fetal Alcohol Spectrum Disorder (FASD), including:

- i. Providing increased community resources and powers for courts to ensure that FASD is properly diagnosed, and that appropriate community supports are in place for those with FASD.
- ii. Enacting statutory exemptions from mandatory minimum sentences of imprisonment for offenders affected by FASD.
- iii. Providing community, correctional, and parole resources to maximize the ability of people with FASD to live in the community.
- iv. Adopting appropriate evaluation mechanisms to measure the effectiveness of such programs and ensure community safety.

35. We call upon the federal government to eliminate barriers to the creation of additional Aboriginal healing lodges within the federal correctional system.

36. We call upon the federal, provincial, and territorial governments to work with Aboriginal communities to provide culturally relevant services to inmates on issues

such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused.

37. We call upon the federal government to provide more supports for Aboriginal programming in halfway houses and parole services.

38. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to eliminating the overrepresentation of Aboriginal youth in custody over the next decade.

39. We call upon the federal government to develop a national plan to collect and publish data on the criminal victimization of Aboriginal people, including data related to homicide and family violence victimization.

40. We call on all levels of government, in collaboration with Aboriginal people, to create adequately funded and accessible Aboriginal-specific victim programs and services with appropriate evaluation mechanisms.

41. We call upon the federal government, in consultation with Aboriginal organizations, to appoint a public inquiry into the causes of, and remedies for, the disproportionate victimization of Aboriginal women and girls. The inquiry's mandate would include:

- i. Investigation into missing and murdered Aboriginal women and girls.
- ii. Links to the intergenerational legacy of residential schools.

ii. CALLS TO ACTION 50-52 EQUITY FOR ABORIGINAL PEOPLE IN THE LEGAL SYSTEM

50. In keeping with the United Nations Declaration on the Rights of Indigenous Peoples, we call upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the development, use, and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada.

51. We call upon the Government of Canada, as an obligation of its fiduciary responsibility, to develop a policy of transparency by publishing legal opinions it develops and upon which it acts or intends to act, in

regard to the scope and extent of Aboriginal and Treaty rights.

52. We call upon the Government of Canada, provincial and territorial governments, and the courts to adopt the following legal principles:

- i. Aboriginal title claims are accepted once the Aboriginal claimant has established occupation over a particular territory at a particular point in time.
- ii. Once Aboriginal title has been established, the burden of proving any limitation on any rights arising from the existence of that title shifts to the party asserting such a limitation.

iii. CALLS TO ACTION 62-63 EDUCATION FOR RECONCILIATION

62. We call upon the federal, provincial, and territorial governments, in consultation and collaboration with Survivors, Aboriginal peoples, and educators, to:

- i. Make age-appropriate curriculum on residential schools, Treaties, and Aboriginal peoples' historical and contemporary contributions to Canada a mandatory education requirement for Kindergarten to Grade Twelve students.
- ii. Provide the necessary funding to post-secondary institutions to educate teachers on how to integrate Indigenous knowledge and teaching methods into classrooms.
- iii. Provide the necessary funding to Aboriginal schools to utilize Indigenous knowledge and teaching methods in classrooms.
- iv. Establish senior-level positions in government at the assistant deputy minister level or higher dedicated to Aboriginal content in education.

63. We call upon the Council of Ministers of Education, Canada to maintain an annual commitment to Aboriginal education issues, including:

- i. Developing and implementing Kindergarten to Grade Twelve curriculum and learning resources on Aboriginal peoples in Canadian history, and the history and legacy of residential schools.
- ii. Sharing information and best practices on teaching curriculum related to residential schools and Aboriginal history.
- iii. Building student capacity for intercultural understanding, empathy, and mutual respect.
- iv. Identifying teacher-training needs relating to the above.

KEY TERMS AND CONCEPTS

Regardless of the commonly accepted western definitions used to describe the original peoples of Canada, the Youth Amplifiers and youth advisory group who helped prepare this report are clear that the peoples who existed on these lands pre-European contact were Nations not ‘First Nations’, ‘Aboriginal’, ‘Indigenous’, ‘Natives’ or ‘Indians’. They were distinct and unique peoples with their own cultures, traditions and systems of justice, most still in practice today.

Following are definitions of key terms and concepts that will help youth and adult readers obtain a better understanding of issues raised at the Feathers of Hope Justice and Juries forum and discussed in the report. Some are explored in greater detail in the four chapters of the document. We have provided definitions that are simple to understand and, where needed, used stories to give context to more complex terms.

ABORIGINAL A term used by many people to describe First Nations, Inuit and Métis peoples in Canada. In this report the term Aboriginal will be used as it is a term that that is intended to embrace all our nations.

ABORIGINAL POLICE SERVICE A 1990 Task Force Report, the *Indian Policing Policy Review*, found that Aboriginal communities did not have access to the same police service models as non-Aboriginal communities and that access to police services across communities was unequal. The First Nations Policing Program FNPP was established in 1991 as a response to the Task Force Report and to address pressing public safety issues in First Nations and Inuit communities.¹

1. <http://www.publicsafety.gc.ca/cnt/cntrng-crm/plcng/brgnl-plcng/index-eng.aspx>.

Since 1991, 55 Aboriginal communities have negotiated and implemented a total of seven self-policing arrangements. These arrangements include the Anishinabek, Nishnawbe-Aski, United Chiefs and Council of Manitoulin regional police services and police services in Akwesasne, Lac Seul, Six Nations and Wikwemikong.

COLONIZATION For many Aboriginal people the term ‘colonization’ is used to describe the gradual loss of Aboriginal peoples’ power to European settlers who began playing a greater role in the community, social, political and family life of Aboriginal peoples. Through the process of colonization, Aboriginal peoples have been removed from their traditional lands and forced to abandon cultural practices and traditions by Europeans who imposed their own laws, rules and customs. Aboriginal peoples who did not take on the ways or cultural practices of the Europeans were punished.

CULTURE When considered from an Aboriginal perspective ‘culture’ is a reflection of many things—history, oral stories, songs, language, spiritual practices, traditions and roles in the community. Aboriginal culture(s) define(s) one’s place on North America or Turtle Island as it is known to the land’s original peoples.

DISCRIMINATION means treating someone unfairly by either placing an added responsibility on them, or not allowing them something enjoyed by others, simply because of their race, citizenship, family status, disability, sex or other personal characteristics. Many believe discrimination does not occur if someone is unaware they are discriminating against another person. The simple fact is that discrimination can take place even when the person who is doing it does not plan to do harm. Discrimination

takes many forms and may be direct or indirect. It can be based on perceived or real characteristics of individuals. Harassment is one type of direct discrimination that many can recognize. Profiling based on race or other grounds is another type of direct discrimination, whether intentional or not.

SYSTEMIC DISCRIMINATION happens when rules, standards, practices or requirements appear to be the same for everyone, but actually have a discriminatory impact on some people. Systemic discrimination is buried deep in the roots of rules, regulations, policies or legislation of an organization or society. It’s found in rules and laws that have been in place a long time and people are often unaware of how these rules and laws negatively impact others.²

FIRST NATIONS A term used to refer to the first peoples of Canada. It excludes Inuit and Métis peoples and is recognized under the federal Indian Act. It is considered to be a more respectful alternative to the terms ‘Indian’ or ‘Native.’ Use of the term First Nations came into common usage as a result of political advocacy for the rights of Aboriginal peoples in Canada.

R. V. GLADUE Jamie “Tanis” Gladue was a 19-year-old mother of one, and pregnant with her second child. She was living in Nanaimo, British Columbia when she was charged with second-degree murder in the stabbing death of her partner Rueben Beaver. At the end of her

2. The definitions for discrimination and systemic discrimination were developed using the plain language text of the Ontario Human Rights Commission — <http://www.ohrc.on.ca/en/human-rights-and-policing-creating-and-sustaining-organizational-change/4-human-rights-organizational-change-key-terms>.

trial she was convicted of manslaughter and sentenced to custody. What is important about Tanis Gladue’s trial is that it brought attention to an important section of the *Criminal Code of Canada* – section (718.2(e)). This was the first time the Supreme Court of Canada clarified how section 718.2(e) was to be applied. This section of the *Criminal Code* requires judges to consider background and systemic factors that may have played a role in bringing a person before the courts, with particular attention being paid to Aboriginal offenders when determining sentencing and to look for alternatives to custody (see Gladue Principles below). It is important to note that this section of the *Criminal Code of Canada* applies to all offenders, not just Aboriginal peoples. The judge at Ms. Gladue’s original trial decided that because Tanis or her partner Rueben did not live in an Aboriginal community, and the murder did not happen on-reserve, section 718.2(e) did not apply to her case.

The trial judge’s decision implied that only Aboriginal people living on-reserve or in their communities had access to an alternate sentencing option. It also suggested that an Aboriginal person living off-reserve was not entitled to the same rights as an Aboriginal person living on-reserve. The decision of the judge was challenged all the way to the Supreme Court.

By that time Tanis had already served her whole sentence. What did happen was that the Supreme Court of Canada recognized that colonization has negatively affected Aboriginal people and that sentencing judges have a duty to consider the history, circumstances and factors of offenders and impose alternatives to imprisonment as a way to address the issue of over incarceration of Aboriginal people in Canadian prisons.

GLADUE PRINCIPLES Because of the Supreme Court of Canada decision (R. v. Gladue, 1999) a lot changed in how the courts use 718.2(e) of the *Criminal Code of Canada*. According to section 718.2(e), judges must apply these two key principles before sentencing Aboriginal people:

1. The history of how Canada has treated Aboriginal people, also called systemic history, the background and conditions of the family and community, and any past involvement with the justice system, all things that can bring an Aboriginal person into conflict with the law.
2. That when appropriate, alternatives to incarceration (going to jail/prison) be put in place for Aboriginal person being sentenced.

These two principles help the court understand how the history, treatment and life circumstances of Aboriginal people puts them at higher risk of coming into contact with the law compared to non-Aboriginal peoples. When applied to a case involving an Aboriginal person, they help the judge better understand the background and reality of the life and history of the person that stands before them and make fair decisions keeping the person out of the jail /prison system.

GLADUE COURT The first Gladue court was established in Toronto in November 2001. While the original Gladue court was under the Ontario Court of Justice and available to adults, in 2012 a youth Gladue court began operating in Toronto. The goal was that these courts would have specially trained judges, lawyers, court workers, case workers and report writers who are able to apply the principles of section 718.2(e) of the *Criminal Code of Canada* to the bail and sentencing stages of the court process and who possess knowledge about the services and resources available to support a sentence that is an alternative to going to jail. Some Gladue courts employ Aboriginal staff that help provide a more supportive justice experience for the accused or convicted person.

GLADUE REPORT Gladue reports were established to address the Supreme Court of Canada's requirement that all sentencing judges take into account systemic and background factors of an Aboriginal offender and that whenever possible alternatives to prison are considered. Gladue Reports are prepared for the court to assist at sentencing. The report can be ordered by the crown or defense

counsel or a judge. The report is based on information provided by the offender, their family, their community supports and pre-existing documents about the offender. Unlike a pre-sentence report prepared by a probation officer the Gladue Report does not make conclusions, this is left to the judge.

Individuals seeking bail who have had a Gladue Report prepared on their behalf in the past may admit the Gladue Report at a bail hearing. The law requires that the Gladue Principles be applied at the bail stage and so judges and justices of the peace must take the information included in the Gladue Report into consideration when considering bail.

HEALING CIRCLES Are a restorative justice process offered in some communities. Members of the circle typically include the offender, Elders, community members, victims, when safe or appropriate, or family members. Circle members discuss the wrongdoing, search for the causes behind the behaviour, and determine how the offender's behaviour has affected the victim, the community and the relationship between the victim and the offender. The circle discusses the matter until a consensus is reached about what is necessary to restore balance among all relationships and obtain support or assistance for the victim's or offender's needs. Healing circles are one of the tools available to Aboriginal people through the justice system.

HEALING LODGES Offer an individualized approach for supporting incarcerated Aboriginal offenders that incorporates traditional healing practices, Aboriginal culture and ceremony. They were developed in response to the over-representation of Aboriginal peoples in the prison system in Canada and to address the fact that existing mainstream programs to rehabilitate prison inmates are not very effective for Aboriginal peoples. The lodges are residential and based in custody facilities. There are at present eight healing lodges in Canada, some of which are operated by Aboriginal communities under contract to Corrections Canada.

HISTORIC TRAUMA Refers to the way in which individuals, cultures and whole communities of Aboriginal peoples have been affected and harmed by the Indian Residential School System (IRS). Those affected by historic trauma include the descendants, children, grandchildren, nieces and nephews of those who attended the

schools. Like the families left behind, the children, grandchildren and great grandchildren of residential school survivors may continue to feel the impact on family members, aunties, uncles, grandparents or parents who attended one of the more than 90 residential schools across Canada. Some victims of historic trauma come from families where many generations had to go to one of the residential schools. Historic trauma can take the form of emotional, mental and physical pain, distrust and feelings of not being good enough, ongoing intergenerational physical, emotional, sexual abuse or a need to hide your identity and cultural background from outsiders to your community or from people in general when you live outside your community, being ashamed or afraid that if people know who you are they will judge you or treat you differently. The trauma gets passed on from generation to generation in ways that Aboriginal peoples may not even be aware of or able to talk about. It can be carried and passed along from one generation of Aboriginal people to the next through unspoken and unaddressed struggles that take the form of loss of hope in communities and silences tied to the pain of a living history still playing out in family relationships. This is why for some survivors of this historic trauma it is hard to build relationships or trust people while for others it results in a feeling of deep sadness that makes it hard for people to feel hopeful about the future.³

IDENTITY The term identity is used by some Aboriginal people to refer to the sense of belonging, connection and awareness they have of their place in their families, clans, communities and nation/people. Aboriginal young people can develop a positive sense of self and identity when they have a strong connection to their traditions, community and culture.

INTERGENERATIONAL SURVIVOR For many Aboriginal people this term refers to any individual whose life has been affected by the ongoing inter-generational trauma, emotional pain or legacy issues connected to the Indian Residential School system. While these people may not have personally attended a residential school, one or more of their family, extended family or community members may have. The impact of generations of children being taken away has an impact on the entire community and the families who live in that

3. Robertson, Lloyd Hawkeye (2006). "The Residential School Experience: Syndrome or Historic Trauma." Pimatisiwin, 4.1.

community. This can include the presence of a widespread deep sadness that no one talks about, unexplained bursts of anger or acts of violence that seem to happen for no reason. Even though the schools no longer exist, the hurt and harm they caused has not gone away and now instead of the schools causing pain and harm, family or community members are hurting each other, and for reasons they don't understand. The roots of this pain are deep and go back a long way. After generations of being taught to be afraid, sad or ashamed of yourself, you begin to believe it's true and think that's all you and your community are. This makes you an intergenerational survivor. While you may not have gone to a residential school you are 'surviving' by struggling to cope with the harm caused by the residential school system. The size of the problem is enormous when you realize that in the early 1990s, an estimated 287,350 intergenerational survivors were living across Canada, both on- and off-reserve.⁴

INUIT For more than four thousand years, the Inuit — a founding people of what is now Canada — have occupied the Arctic lands and waters from the Mackenzie Delta in the west, to the Labrador coast in the east and from the Hudson's Bay coast, to the islands of the high Arctic. The Thule are the ancestors of today's Canadian Inuit. They lived much as the Sivullirmiut did, in the same areas, following the migratory patterns of land and sea mammals.⁵

JUSTICE SYSTEM In Ontario, the justice system is a term used to describe the formal system in place to ensure order, peace and good government. Ontario's justice system is anchored in the bigger Canadian Justice system, and based on the *Criminal Code of Canada*.

The central parts of Ontario's justice system sit with the Ministry of the Attorney General and the Ministry of the Solicitor General and include policing, holding cells, courts, judges, juries, crown attorneys, defense lawyers, probation and parole officers and the programs delivered through the court system. The second part of Ontario's justice system is tied to the Ministry of Community Safety and Correctional Services that has the responsibility for detention centres, provincial jails and probation and parole services. Prisons are part of the bigger federal government system of justice.

4. http://wherearethekids.ca/watc_blackboard/intergenerational-survivors/

5. <https://www.itk.ca/about-inuit>

When young people under 18 commit a crime, are convicted or are charged with a crime or have to go into custody, they fall under the care of the Ministry of Children and Youth Services — Youth Justice Services Division.

LEGACY ISSUES The closing of the Indian residential schools did not bring the residential school story to an end; their legacy continues to this day. The lingering impact can be seen in lower levels of education, higher levels of poverty, lower quality of life, shorter life spans and overall poorer physical, mental and psychological health for Aboriginal people compared to non-Aboriginal people in Canada. These legacy issues also play out in the over-representation of Aboriginal people in the child welfare system and justice systems, in ongoing and ineffective policies of government tied to the *Indian Act*, and unresolved treaty negotiations and land claims.

Legacy issues are not just issues tied to the history of the residential schools. They are tied to Aboriginal policies of the federal government over the last 150 years. Residential school-based education sought to remake each new generation of Aboriginal children and were born out of policies made by government. These policies continue to shape the programs, services and thinking of government and the majority of people living in Ontario and Canada. The beliefs and attitudes that were used to justify the creation of residential schools are not things of the past: they continue in official Aboriginal policy today. Reconciliation will require more than apologies for what was done by governments and peoples of the past. It requires us to understand the ways in which the legacy of residential schools continues to play out in the lives of Aboriginal people and then take the steps needed to change policies and approaches that allow the legacy of hurt and pain to continue.⁶

MARGINALIZATION The process by which individuals or groups are pushed to the edges of society. While on the margins people are often excluded from access to opportunities and resources that are readily available to others in society. People who are marginalized see many of their rights denied to them and experience discrimination, bias and inequity (not getting what they need) and are

6. <http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Principles%20of%20Truth%20and%20Reconciliation.pdf> (pg 103-104)

treated unfairly. They are treated differently by government, social support services, the education system, police and the court system. This social marginalization leaves individuals or groups at risk and open to being blamed for their life circumstances simply because of who they are. Marginalization can be seen in the history and everyday experiences of Aboriginal peoples in Ontario. It has its roots in cultural difference, colonialism and the supposed failure of Aboriginal people to assimilate and become a part of mainstream Canadian society, leaving them feeling powerless or invisible to the rest of society.

MÉTIS The Métis Nation is comprised of descendants of people born of relations between Indian women and European men. The children of these relations were of mixed ancestry. The Métis people resulted from these marriages of Aboriginal women and European men.⁷

NET-WIDENING A term that refers to the process in which offenders, usually low risk offenders, serving community based sentences end up receiving tougher legal sanctions/conditions compared to a sentence of incarceration/jail tied to their original charge. This increasing level of control the courts have over enforcement places the person at increased risk for not being able to meet the conditions of the community sentence. Not meeting the sanctions/conditions of the community sentence order can result in the person going to jail for a longer period of time than if he or she had never been subject to a conditional sentence order in the first place.⁸

OVER-REPRESENTATION Is a term that is used to compare a proportion of groups of people in specific situations to their actual number in the general population. For example, while Aboriginal people represent only 4% of the population of Canada, they represent over 23% of the prison population. That means Aboriginal people are ‘over-represented’ in the prison system. Aboriginal youth are over-represented in Ontario correctional facilities at a higher rate than Aboriginal adults.⁹

7. <http://www.metisnation.org/culture--heritage/who-are-the-metis>

8. http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/op00_3-po00_3/p3.html

9. http://www.archives.gov.on.ca/en/e_records/ipperwash/policy_part/research/pdf/Rudin.pdf

RACISM is often based on a belief that people belong to ‘races’ with common characteristics and that one’s own race is superior to another’s based on those beliefs. Racism can also be used as the basis of law or the policy of government. For example, by considering Aboriginal people inferior to Europeans, racist laws, policies and practices were developed by the British Crown — and later by the government of Canada — giving the newly arriving settlers the right to claim Aboriginal people’s lands and force Aboriginal people to submit to the rule of the laws and rules of the British, and European customs, traditions and religious practices.

Racism can be openly displayed in racial jokes and slurs or hate crimes but it can also be more deeply rooted in attitudes, values and stereotypical beliefs. In some cases, these beliefs are unconsciously held and end up informing the practices of formal systems and institutions of society over time.

The Ontario Human Rights Commission notes there is no fixed definition of racial discrimination. However, it has been described as any distinction, conduct or action, whether intentional or not, that is based on a person’s race and which has the effect of imposing burdens on an individual or group, is not imposed upon others or which withholds or limits access to benefits available to other members of society.

RESERVE (RESERVATION) An area of land set aside or reserved by the ‘Crown’ for the exclusive use of an Aboriginal community. Reserves were established through treaties and the *Indian Act*. Under the *Indian Act*, Canada was given increased control over reserves. ‘Rez’ is a slang term for reserve.

RESIDENTIAL SCHOOLS also known as Indian Residential Schools, were institutions where for over 150 years Aboriginal children from across Canada were provided with a European-based education. These children were taken from their families sometimes forcibly, sometimes under the threat of going to jail if parents did not hand over their children, and almost always under the lie that what was being done was in their best interests. This forced removal of children from their families and communities is acknowledged as being Canada’s great shame.¹⁰

10. http://www.trc.ca/websites/trcinstitution/File/pdfs/senate%20speech_handout_copy_E_Final.pdf (pg2)

Most people think residential schools only began operating in Canada in 1828. However, there are records of boarding schools in existence for ‘Indians’ that go back as far as the 1620’s. These schools were run by the Recollets, a French religious order in New France, and the Jesuits and the Ursulines.

The first of the more recent residential schools on record was the Mohawk Institute, also known as the “Mush Hole”, in Ontario.¹¹ Eventually, other residential schools were opened across Canada and by the 1930’s there were more than 80 in operation; 44 Catholic, 21 Church of England (Anglican), 13 United Church and 2 Presbyterian, providing limited education to more than 17,000 Indian children. The last federally run residential school, the Gordon Residential School, closed in 1996 and the last band run school closed in 1998. The legacy of the residential schools system is one where children were taken from their families, communities and culture and moved sometimes hundreds of miles away, so that they could be ‘civilized’ and ‘educated’ by a settler government whose primary objective was to ‘kill the Indian in the child’ and impose assimilation. The impact of the schools has been devastating. The core meaning of family and community was lost as generation after generation of children were torn from their families and taught that everything about their people and culture was bad or wrong. In 2008, as part of a class action lawsuit tied to the residential schools, Canada was required, as part of the settlement, to make common experience payments. At the request of residential school survivors there was a call for the formation of a Truth and Reconciliation Commission to look into the history of these schools and their impact on Aboriginal people.

RESIDENTIAL SCHOOL SURVIVOR

A person who attended one of the more than 130 Indian Residential Schools across Canada that were funded by the federal government and operated primarily by the main churches (Catholic, Anglican, United and Presbyterian). The survivors of the schools, their communities and families are said to share a ‘collective soul wound’ that resulted from generations of children being forcibly removed from

11. United Church of Canada Archives. (Undated). The Children Remembered. Retrieved from <http://thechildrenremembered.ca/schools-history/mount-elgin/>

their families, communities and cultural roots. Those who attended the schools often suffered emotional, physical, sexual and psychological pain and abuse.

RESTORATIVE JUSTICE is a model of justice that focuses on repairing the harm done by wrongdoing and gives the person who committed the harm and their victim(s) an opportunity to heal. One goal of restorative justice is to come together as a community to deal with the crime, determine what is needed to heal and then move forward. Another is to work with the person who has caused any harm so that they don't repeat their actions in the future. This means that the form restorative justice takes will be specific to the offender and their victim(s) and will focus on helping the offender to address the issues that got them into trouble with the community or the law in the first place. It may also mean that the form justice takes will be anchored in the justice seeking traditions of the community. In the end the offender still has to take responsibility for their actions and the harm/crime committed.

STEREOTYPE in its simplest definition, a stereotype is a way of thinking that is based on beliefs we have about others, beliefs that can influence the way we act towards them. Stereotypes create pictures in our minds about groups or individuals without even knowing them. In the case of Aboriginal people stereotypes play out in the courts and the jury process every day. When judges, juries or lawyers hold certain beliefs about Aboriginal peoples there is a risk these thoughts will influence the way they see the person or the decisions they make about that person's future. Sometimes people are unaware they are even using stereotypes and believe they are good people who know the truth about or understand the lives and experiences of Aboriginal peoples. Some may not question their assumptions to see if they are even true while others may be completely unaware that stereotypes are influencing their thinking.

SYSTEMIC DISCRIMINATION Systemic discrimination can be described as patterns of behaviour, policies or practices that are part of the structures of an organization, and which create or reinforce disadvantage for racialized peoples.¹² Referring to the justice system, dis-

12. <http://www.ohrc.on.ca/en/racism-and-racial-discrimination-systemic-discrimination-fact-sheet>

crimination can result from the behaviour of an individual representing a particular part of the system or rules, laws or regulations that guide the delivery of justice in the province. Systemic discrimination can sometimes be deliberate, as can be seen in government policies and practices that are then applied to groups of people. At other times systemic discrimination can be unintended and result from the influence of cultural bias or stereotypes. Regardless of their origins or intentions, policies, laws or practices that are part of the justice system, if not identified and changed, can harm or reinforce stereotypes about Aboriginal people and continue their marginalization and over-representation in the prison system.

TALKING CIRCLES Are the traditional and primary method of how many Aboriginal communities discussed matters of importance, sought solutions to problems or made decisions. Circles have their origins in gatherings of community leaders or councils and provided a way for everyone to share their opinions in a respectful way without interruption. Circles are now used more widely and can include more members of the community.

TRADITIONAL JUSTICE MODELS

Aboriginal people had their own systems for seeking justice long before settlers from Europe arrived in North America. These systems continue to exist in many communities. Unlike European approaches to justice that focus on judgment, blame, guilt and punishment, traditional Aboriginal justice models focus on restoring the balance, peace and stability of the community that existed before the wrongdoing was committed. Examples of Aboriginal justice approaches include restorative justice, healing circles, healing lodges and talking circles.

TREATIES Agreements made to establish how Aboriginal people and settlers — in what eventually came to be known as Canada — would co-exist. The treaties were negotiated between the Aboriginal people of Canada and the British Crown and granted rights and permission to the settlers. They were negotiated on the basis of mutual respect and the principles of peace and friendship. The treaties determined how lands and resources were to be shared and outlined responsibilities in areas such as education and health.

The spirit and intent of the treaties refers to the original oral agreements made between Aboriginal people and the British Crown, agreements that were altered when written in English. All Canadians and many, but not all, Aboriginal people are party to the treaties.

Treaties are living, international agreements that remain valid today and continue to affirm sovereign relationships between Canada and Aboriginal people. In Ontario, treaties have been made between the British Crown or Canada and the Anishinaabek, Mushkegowuk, Onkwehonwe and Lenape peoples that make up 14 Nations: the Mushkegowuk (Cree), Mohawk, Tuscarora, Seneca, Cayuga, Oneida, Onondaga (the Haudenosaunee — Onkwehonwe Peoples), Delaware, Mississauga, Chippewa, Pottawotami, Algonquin, Odawa and Anishinabe (the Anishinaabek Peoples). These original Nations have not given up or surrendered title to their lands, rights, language, culture, or governance through treaties with the British Crown or the successor state of Canada.¹³

13. <http://www.chiefs-of-ontario.org/faq>

INTRODUCTION

Like *Feathers of Hope: A First Nations Youth Action Plan*, we worked with the Youth Amplifiers who played a central role in planning and delivering the forum and a Youth Advisory made up of youth who attended the forum. Samantha Crowe, Uko Abara, Ryan Giles-Hunter, Karla Kakagamic, Savanna Boucher and Talon Bird, the Youth Amplifiers, worked with rest of the Feathers of Hope project team to create a safe space where young people could share openly their thoughts, experiences, concerns and hopes for a justice system and jury process that works for Aboriginal people.

KARLA brings a background in youth leadership to the work of Feathers of Hope and believes strongly in the power of dialogue and working together to create positive change for Aboriginal youth.

RYAN wants other young people to know they are not alone on the path to healing, that there is indeed hope for true reconciliation and sees every young person he meets as a valuable teacher.

SARAH wants to see Aboriginal communities with the resources they need to be able to make their young people's dreams come true and believes that Feathers of Hope can be that bridge to that hopeful future.

SAVANNA believes that Feathers of Hope has the potential to combine balanced and shared leadership and youth-informed and led strategies that can create positive outcomes for Aboriginal youth.

TALON is proud to be a Feathers of Hope Amplifier and to stand beside the young people on whose behalf he advocates, seeing them as the current and future leaders of their communities.

SAMANTHA is a member of Lake Helen First Nations, an active role model to young people at every Feathers of Hope forum event of which she was a part and committed to helping improve the lives of Aboriginal youth in Ontario through creating safe, healthy and happy communities.

UKO is a student, active member of the community and ally who has worked tirelessly with his Aboriginal peers to better understand the issues and ideas for change in northern communities.

During the forum workshops the only adults in the room were Aboriginal 'champions' who worked in the justice system and contributed to discussions by answering questions and talking a bit about their decision to work in the system. This was a hard line to take, but we made a commitment to the young people in attendance that these discussions were for them and, as such, honoured their request for privacy.

After the forum concluded we asked youth who attended the forum to help us in writing the report. These young people, along with the Youth Amplifiers spent the last year working with Dr. Fred Mathews and I in writing, *Justice and Juries: A First Nations Youth Action Plan for Justice*. Our Advisory members are:

CAITLYN from Noatkamegwaning First Nation (Whitefish Bay) joined the Feathers of Hope Advisory committee to learn from and work with her peers to implement positive change. She wants to look back on the work of the FOH group and be able to say with confidence "this was part of the change that happened."

JEREMIAH from Ft. Albany, was introduced to his community's traditional ceremonies and ways at age seven and from that day on became inspired to become a leader of youth for his community.

JEREMY from Brunswick House First Nation. I dream of more young people coming forward to take initiative in ensuring their voices are heard to not only create – but to be the change they want to see for themselves and future generations to come.

SHANE from Beausoleil First Nation is a proud member of the Anishinaabek Nation who feels everything he was, is and will be he owes to his unbreakable trust in himself and his culture.

TRISTEN from Shawanaga First Nation is a post-secondary student who was inspired by the kindness and generosity of her grandparents to want to be part of a movement of change so that future generations of young people can live the dreams of their ancestors.

MARILYN from Eabametoong First Nation, found her voice by attending the first Feathers of Hope forum and decided to get involved in helping create positive change in Aboriginal communities.

REINA from Lac Seul First Nation is a youth chief who found inspiration in listening to her peers share their stories, thoughts and experiences through Feathers of Hope and decided to join in with other young people to help make a difference in the justice system.

Every element of the report, from the selection of a font that was more serious and less playful (thank you Tristen) to the use of language that would make the report, young people's stories and events at the forum clear to readers was the focus of every member of the advisory and the youth Amplifiers. We thank you all for hanging in there with us. Most importantly, the Youth Amplifiers and the Advisory Group were clear that Aboriginal young people at the forum want to be part of creating a justice system that works for their communities and is reflective of their belief systems and values. You all took time away from your families and communities and studies to spend many weekends with us in Thunder Bay, reviewing and editing each version of the report, working with our designer Una Lee and Anishinabe artist Nyle Johnston, to bring together the story of Justice and Juries, with powerful imagery, that links our cultural roots and our focus on the journey to healing and reconciliation with the difficult conversations that played out at the forum.

We also want to thank Nicole Richmond and Promise Holmes Skinner for taking on the work of providing their legal opinions and wisdom in the final review and editing of the report. Trying to write a report that can be read by young people and community members while not losing the legal importance of court decisions was difficult. Thank you both for being fearless in your feedback.

Consistent with the vision and values of Feathers of Hope, we sought out 'champions', Aboriginal professionals who work in the justice system to stand with and support the young people at the forum. One of these champions did not even know he played a part in our work. We want to note that Justice Harry LeForme wrote a powerful piece on Section 35¹ Canadian Constitution Act, 1982. We were so

moved by the poetry and power of his story-telling that his use of the term 'constitutional roots' formed the premise that anchors this report. On behalf of the entire Feathers of Hope team, thank you for demonstrating that Aboriginal oral traditions can play out in the written word, that you can remember your roots, keep them close to your heart and still walk in multiple worlds. Young people need to dream big dreams and this includes the possibility that they can be part of nurturing new roots, healthy roots.

We want to thank Justice Sinclair, Chief Wilton Littlechild, Dr. Marie Wilson and the Truth and Reconciliation Commission of Canada for their commitment to truth telling, healing and reconciliation. We hope that the messages shared through this report are seen by Ontario and hopefully the rest of the country as part of the ongoing need for truth telling, healing and reconciliation. We want to see steps taken to restore balance so that Aboriginal people will want to be part of the justice and jury process because it is a justice system that works for them. The Truth and Reconciliation Commission's 94 Calls to Action have been directly spoken to in our recommendations as we believe the Calls to Action must become a touch stone in all work tied to healing the original relationship between Canada and its Aboriginal people. As the work of Feathers of Hope moves forward we are committed to keeping them alive and in our work.

We hope you watch the video before you read the report as it provides a picture of the landscape, faces and voices of those who were and are the conversation we are reflecting through the report. Hopefully it will allow you to begin to listen through the ears and heart of a champion with a good and open mind that the young people spoke with when they shared their stories at the forum. They know the justice system is broken, they also know they want it to work. They have ideas, they want to share and they want to share them from a place of partnership.

Thank you for being part of the ongoing journey of Feathers of Hope.

LAURA ARNDT AND DR. FRED MATHEWS

1. Justice Harry Laforme, Section 25 of the Charter; Section 35 of the Constitution Act, 1982: Aboriginal and Treaty Rights; 30 Years

of Recognition and Affirmation in the Canadian Charter of Rights and Freedoms, 5th Edition.

POLICING

The story begins at a time when there is a disconnect within the communities. The line on the ground is split and the smaller inner figures have a feeling of helplessness, of almost giving up. But the larger outer figures show youth who are looking for something, reaching for something with determination. It is the drum these young people had to go back to and seek out. Through the drum, the teachings will again bring the community together.





POLICING

"Police feel superior to everyone, they think that they can dominate and that their badge gives them power."

- FORUM PARTICIPANT

POLICING FAILS ABORIGINAL COMMUNITIES

In the view of many forum participants, policing was seen as the most immediate and visible sign of the failure of Ontario's justice system to serve their communities. They felt that many non-Aboriginal officers coming into their communities were unaware of the history of Aboriginal people or had limited knowledge about the hardships Aboriginal people face on a daily basis. Whenever these officers arrived in their communities they felt targeted and that police ended up only making their lives harder. There was a shared view that the approach to law enforcement used by police was intimidating, created a sense of fear instead of safety and left young people feeling unprotected and unsafe.

INEQUALITY IN THE DELIVERY OF POLICE SERVICES

Differences were noticed between the approach to policing taken by the Ontario Provincial Police (OPP) and Aboriginal Police Services (APS). Specific mention was made about a difference in the power and authority exercised by OPP officers compared to those who worked for Aboriginal Police Services.

According to forum participants, policing services in Aboriginal communities are not provided at the same level as they are in non-Aboriginal communities. Young people reported that, because of the limited number of officers serving multiple communities, it can sometimes take hours for Aboriginal police to show up in a community. Once they arrived, investigations sometimes were not done or completed thoroughly due to a lack of proper training or resources. Stories were shared about having to call the OPP because the

"The OPP have the right to come in, but a lot of the time OPP officers will discriminate, and they'll actually come in without the APS and just think they can control and take on the investigation."

- FORUM PARTICIPANT

APS was not responsive to requests for assistance. Young people felt their communities needed to know they can rely on the police to help keep the peace and respond to serious incidents in a timely manner. The way police responded had a big impact on how victims and families coped when their lives were disrupted by crime or violence.

Questions were raised about why the OPP needed to be called in when serious crime happened in a community instead of the local Aboriginal police service and why APS officers lacked the same training, power and authority to respond themselves? On the other hand, some youth felt that in small communities it may be better to have a non-Aboriginal police service respond, providing they were trained and knowledgeable about the community and its traditional approaches to justice. It was also thought to be a better arrangement in cases where a serious crime involved an Aboriginal police officer's family members. In the end, there was agreement that the two police services needed to work together in a way that was mutually respectful and informed by Aboriginal views and approaches of justice.

Forum participants felt that Aboriginal police services were stretched too thin because they had to provide support to too many communities at once.



While expressing concern about the lack of training and resources available to local Aboriginal police services, young people also felt that Aboriginal police officers at least "got it", meaning they had more understanding about what daily life was like in Aboriginal communities. However, they felt that different types of training were needed by local police so that, wherever possible, they would be able to use more traditional ways to help individuals and communities heal from wrongdoing.

Youth at the forum felt that Aboriginal officers would be more effective because they have a better understanding of the issues that can bring Aboriginal persons into conflict with the law and leave them vulnerable in the justice system. However, they also felt that a non-Aboriginal person could be an effective police officer too, as long as they received the proper screening, training and support and

were more involved in community life. It was felt that police officers should not see their job as just being about 'earning a pay cheque' because police can have an enormous impact on the life of an Aboriginal youth. They felt that police officers needed training that would give them the skills needed to work with and have a positive impact on young people. Also, the more knowledge police officers had about the ongoing impact of 'legacy' issues such as the residential schools, colonization, systemic racism and the economic realities of life on-reserve, the better they would be in creating the conditions that would promote safety and community health. By working with the police service and community members to create a method of policing reflective of the cultural values of the community Aboriginal young people felt police would begin to be seen as a source of support rather than an outside resource many do not trust.

"The police are supposed to be there to serve and protect, right? But when we call them, when we reach out for help, they're not there. So it's a lengthy history of mistrust."

- FORUM PARTICIPANT

"Like we trust them, but we don't trust them. The OPP is not so much trusted in reservations as APS."

- FORUM PARTICIPANT

THE RELATIONSHIP BETWEEN POLICE AND YOUTH

There was a great deal of discussion in workshop sessions about the relationship between Aboriginal young people and police. Much criticism was expressed about the police but there was also discussion about how to improve policing services to create better police-youth and police-community relationships.

On- and off-reserve, police officers were seen as being the first point of contact many youth have with the justice system. Stories shared at the forum revealed that the actions of individual non-Aboriginal police officers often gave Aboriginal peoples a bad impression of Ontario's justice system. Stories of racism and stereotyping experienced at the hands of non-Aboriginal police officers raised the question of whether justice could even be obtained for Aboriginal people in the existing system.

When a police officer first comes to their communities, the officer might not have any connections to local youth, adults and Elders. These officers may not understand local issues or traditions. There may be tension and a bit of fear felt by the new officer as they step into their duties. As a result, young people believed that these officers may be insecure and feel a need to prove themselves. Maybe their inexperience makes these officers become too focused on following rules when actually the best thing they could do is get to know community members and offer their help to solve problems in the community.

Young people said they wanted to feel comfortable when they interacted with police and trust that officers were there to help and protect them and their communities. Forum participants reported wanting to see police officers as caring adults in the community who were interested in their safety and well-being. These same youth wanted all police, both Aboriginal and non-Aboriginal officers, to be more approachable when stopping to speak with them, to get out of their cars and uniforms and be more involved in the life of their communities. If police got to know them as members of the community and not just as potential crime suspects or being up to no good, young people would, in turn, have an opportunity to shed their own negative perceptions of police.

Young people felt that it was hard to have a positive relationship with police officers because they often felt afraid of

"The corruption in our justice system, within our own communities, makes it harder for members, especially youth, to have trust and feel protected by our officers."

- FORUM PARTICIPANT

them. Their fear sometimes led to mutual misunderstanding and even outright hostility when police stopped them for questioning for no apparent reason. However, if officers took the time to explain what they were doing and why and focused on working with youth to understand their rights, it might help address some of the mistrust young people feel.

When talking about creating better police-youth relationships, it was noted that respect needed to go both ways. Young people felt there was an expectation that they must automatically respect a police officer when stopped but that police did not start from a place of respecting youth. Encounters can be tense if officers are demanding and challenging and young people have no understanding of their rights in the situation. Many reported feeling intimidated and angry after being stopped and questioned.

Young people recognized police have a stressful and difficult job to do and that officers could become overwhelmed in many ways by the work they do. It was felt that this stress could get in the way of police officers being able to form healthy relationships with community members. Many youth reported having family members who worked for an Aboriginal police service and saw firsthand how tough the

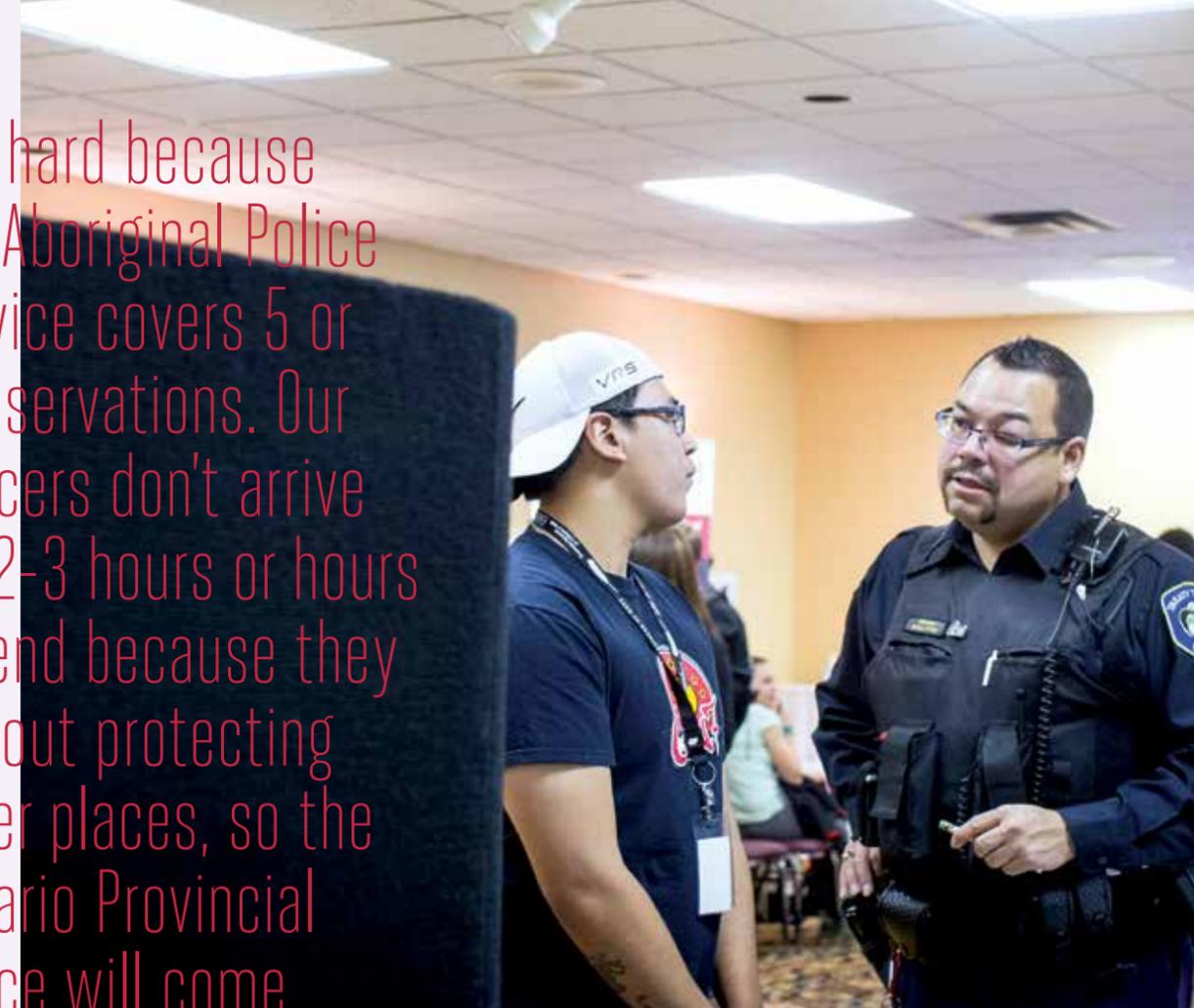
"It's hard because our Aboriginal Police Service covers 5 or 6 reservations. Our officers don't arrive for 2-3 hours or hours on end because they are out protecting other places, so the Ontario Provincial Police will come in and deal with the situation."

- FORUM PARTICIPANT

job can be. They felt that anyone who takes on the important role of policing needs to be supported to stay physically, emotionally and mentally healthy. However, at the same time, they were clear that police have a responsibility to listen to youth and understand how the relationship between officer and youth affects young people and members of the communities they serve.

GIVING POLICE OFFICERS ALTERNATIVES TO USING THE JUSTICE SYSTEM

Because police are often young peoples' first point of contact with the justice system, forum participants felt that officers must consider all alternatives before arresting



"On my reserve the local police aren't really active. And if you call, they might not even respond, so we have to call the OPP. They can take hours to get to the community."

- FORUM PARTICIPANT

"If I see a Native cop approaching me I'm cool with that because he knows who I am. But if it's a white cop approaching me and asking a bunch of question, then I answer the best I can. He's just trying to shake me up. And it's like they're not even trying to discern the facts of the situation. They're just trying to get you to say something that's going to incriminate you."

- FORUM PARTICIPANT

"When you see a police officer pull up, you don't feel that they are there to serve and protect. You feel as though you did something wrong even though you might not have."

- FORUM PARTICIPANT

and charging a young person with a crime. They felt that police should work closely with Elders, chiefs, band and youth councils and bodies like Aboriginal Legal Services in the south and Nishnawbe Aski Legal Services in the north to learn about what options are available. It must become routine practice for police to work with communities and seek alternatives to jail, especially in cases involving young people who are struggling with unmet needs that are affecting their behaviour. Forum participants believed that police should build positive and proactive working relationships with child welfare services, local mental health services, schools, addictions treatment services and recreation programs to help connect young people and their families to supports and services that could address the issues or unmet needs that are bringing young people into conflict with the law. In this way police become part of the social safety net many communities need. It also falls in line with the need to increase the range of options available to police officers other than charging people with an offence/crime.

Young people also understood that police officers needed good role models too. They offered an observation that they only hear stories about the actions of police who break the



rules or law. They felt the media needed to tell the stories of officers who have created good working relationships with young people and their communities. They believed the media could help give youth a different view of how police can play a helpful role in creating healthy and safe communities and be a valuable resource that was not only tied to law enforcement.

Participants at the forum talked about the elimination of the Royal Canadian Mounted Police (RCMP) community outreach position specific to remote and fly-in Aboriginal communities. This position is being centralized in the south and the youth noted the positive role this position has played in their communities and in Thunder Bay. They saw this position as a positive investment that helped build and maintain positive working partnerships between police and communities. What remains is one RCMP officer to cover

"I understand that bridging that gap between police and youth is important, but it's really hard especially the way police culture lets them get away with everything. They're arrogant and they just buy into it. It's like a brotherhood. It's like a family. Police come first."

- FORUM PARTICIPANT

"From what I've seen in my community, we have lost children whose lives have only just begun. Their cases were never properly investigated and it has left the victims' families without closure. Seeing this breaks my heart, as I have had a similar experience. A major issue we face is the lack of proper investigations. We don't get proper justice." From my experience, when cops usually approach me, they have that racial vibe to them you know. That's why I get chills when they approach me. It gets me mad."

- FORUM PARTICIPANT

"Consequences for police officers' actions are unfair. If they abuse their authority they usually just get a suspension, they're not fired."

- FORUM PARTICIPANT

all of northern Ontario and in a role focused on investigating matters pertaining to the illegal tobacco and drug trade. Gone is the relationship building focus and in its place is a practice that entrenches the view of policing as being only about crime and punishment.

MORE ACCOUNTABILITY NEEDED

Young people felt that police needed to be held more accountable for their actions with respect to Aboriginal people. By 'accountability' they weren't referring simply to situations where things go wrong. Accountability also meant that police needed to respect and reach out to the community and use more traditional and community based approaches to problem solving in their law enforcement work.

Repeated mention was made at the forum about the need for sensitivity training and education to address what they viewed as tension in relations between youth and police in many communities. There was a desire for more direct dialogue and communication with police. Young people wanted this dialogue to take place outside of work hours with police out of uniform and participating like members of the community rather than officers with just one role in the community. Some young people felt that officers from off-reserve did not care about their communities and did their police work on the basis of racist stereotypes and biased perceptions of Aboriginal people instead of learning about the history and needs of the community.

There was a shared belief that police officers felt free and empowered to abuse their authority, which left many youth believing that corruption was a part of policing. There was

"When I think of the word 'justice', the first thing I associate with it is protection, either before, during or after an incident happens. But it's a whole different story when I think about the justice system."

- FORUM PARTICIPANT

call for a formal complaint process, independent from the chief and council, where an independent body could ensure police officers were held accountable for any mistreatment of community members.

Concern was expressed in workshop sessions about racial profiling by police and its impact on young people. They felt they did not have a formal way to address this concern. The only exception to this belief was noted when a young person spoke about a specific Aboriginal police service.

Young people mentioned that a police officer would automatically assume that an Aboriginal person they saw stumbling was drunk or under the influence of a drug or other substance and would not even consider the fact that they may be ill or injured. Instead of focusing on getting the person help or making sure they got home safely, they believed

"Not only do First Nations people need support, so do on-reserve police. They have to deal with serious cases. It can be very traumatizing and they may feel they have no one to talk to. We all have friends or family members who are police officers and we have all seen them struggle with their own trauma and things they've seen. If they had support, they would be able to speak about what bothers them and not hold it in."

- FORUM PARTICIPANT

it would be more likely police would charge the person and put them in jail. There was agreement that stereotyping played a big role in this kind of interaction with police and that Aboriginal people were seen and treated differently, to a lower standard, than non-Aboriginal people when they showed this type of behaviour in public or the community.

YOUTH RIGHTS AND POLICING

It was noted that incidents of aggression by police towards Aboriginal youth could be prevented if more youth knew their rights regarding being stopped by police. Young people felt it was important that their peers know they have the right to ask for an officer's badge number and that, unless they are being arrested, the officer has to ask for their permission to search them. They wanted everyone to know that police officers can't just walk up to a person and start



asking them questions without explaining the reason. Also, if they're being charged with a crime, they don't have to answer any questions without having a lawyer present.

In further discussions on this topic, participants shared that they wanted others to know they have a right to use their cell phones to photograph, audio record or video record incidents of police coming on to their reserve and interacting with community members in a way that seems wrong or aggressive. Police can't ask them to erase their recordings or ask them for their phones so they can delete it themselves. They want all young people to be able to tell police officers that they have the right to take pictures or videos and, if they are charged, that they will be giving the phone to their lawyer as evidence.

FINAL REFLECTIONS

Forum participants were clear that police are not meeting the justice needs of Aboriginal people and communities. They want to see equity in terms of the resources and training available to Aboriginal police services so their officers can conduct thorough investigations and provide services equal to those received by communities in the south. Young people want better relations with police based on respect for their rights and mutually respectful interpersonal interactions. They are prepared and willing to work alongside community members, leadership and police services to help change the way police services are delivered on- and off-reserve to Aboriginal people. They want to be included in the development of accountability processes and training for officers that will help them support communities to be safer and healthy and see their role expand beyond just being about the rule of law or the administration of justice.

"We just want police to make an effort to get to know everybody, to get to know the youth as human beings, not just some animal to be thrown in a cage. We are not animals."

- FORUM PARTICIPANT

"One night my friend was intoxicated and on his way home. The police picked him up and asked him where he was going. He said, "home", but they didn't believe him and took him in. He was getting mad about why he was picked up. The police pulled into an alley and they punched and kicked him. They also threw him on the ground. When he got to the station he asked for their badge number and ID. They just brushed him off. They didn't take it seriously."

- FORUM PARTICIPANT

"The more approachable police officers seem to live on-reserve and in communities."

- FORUM PARTICIPANT

SUMMARY OF RECOMMENDATIONS

POLICING

1. **Aboriginal Police Services¹ must be improved and strengthened** by having their investigative powers and resources, training, and systems of accountability brought in line with those of non-Aboriginal police services.
2. **All Aboriginal and Non-Aboriginal police working on- or off-reserve and in northern and remote fly-in communities must receive mandatory police college level training** specific to the history of Aboriginal people and the legacy issues that increase their risk of coming into contact with the law.
3. **Police officers, as part of their duties, must focus on building positive working relationships with all community members.** The ability of officers to establish these relationships should be regularly assessed as part of their employment evaluation/performance reviews. A key sign of having this skill is the officer's participation in community functions or in community life, where possible, out of uniform. Community members should be involved in this evaluation process and know their feedback about the degree to which they feel an officer is interested and engaged in the life of the community is part of an officer's evaluation. This role could possibly be taken on by a community policing council.
4. **Government must work with Aboriginal leadership, band councils and educators to develop legal rights education courses for Aboriginal youth** at the primary, intermediate and senior high school levels. This need is critical given the over-representation of Aboriginal youth in the justice system.
5. **Legal rights education related to policing, and related print materials, must be made available to young people** through band councils, community forums, police services, schools, or organizations such as Legal Aid Ontario, Ontario Justice Education Network, legal aid clinics/organizations like Nishnawbe Aski Legal Services, and the Aboriginal Legal Services of Toronto.
6. **The powers of the Office of the Independent Police Services Review Board (OIPSRB)² must be expanded** to include Aboriginal police services and the

1. The term "Aboriginal Police Service" and the abbreviation "APS" is used in the report to refer to on-reserve aboriginal police services in Ontario. Aboriginal police officers are appointed by the Commissioner of the Ontario Provincial Police and have the powers of a police officer within Ontario. Aboriginal police services referred to in the report could include: Six Nations Police, Wikwemikong Tribal Police, Nishnawbe-Aski Police Service, Treaty #3 Police Service, Anishinabek Police Service, Tyendinaga Mohawk Police, Akwesasne Mohawk Police, Walpole Island Police Service, Rama Police Service or Hiawatha Police Service.

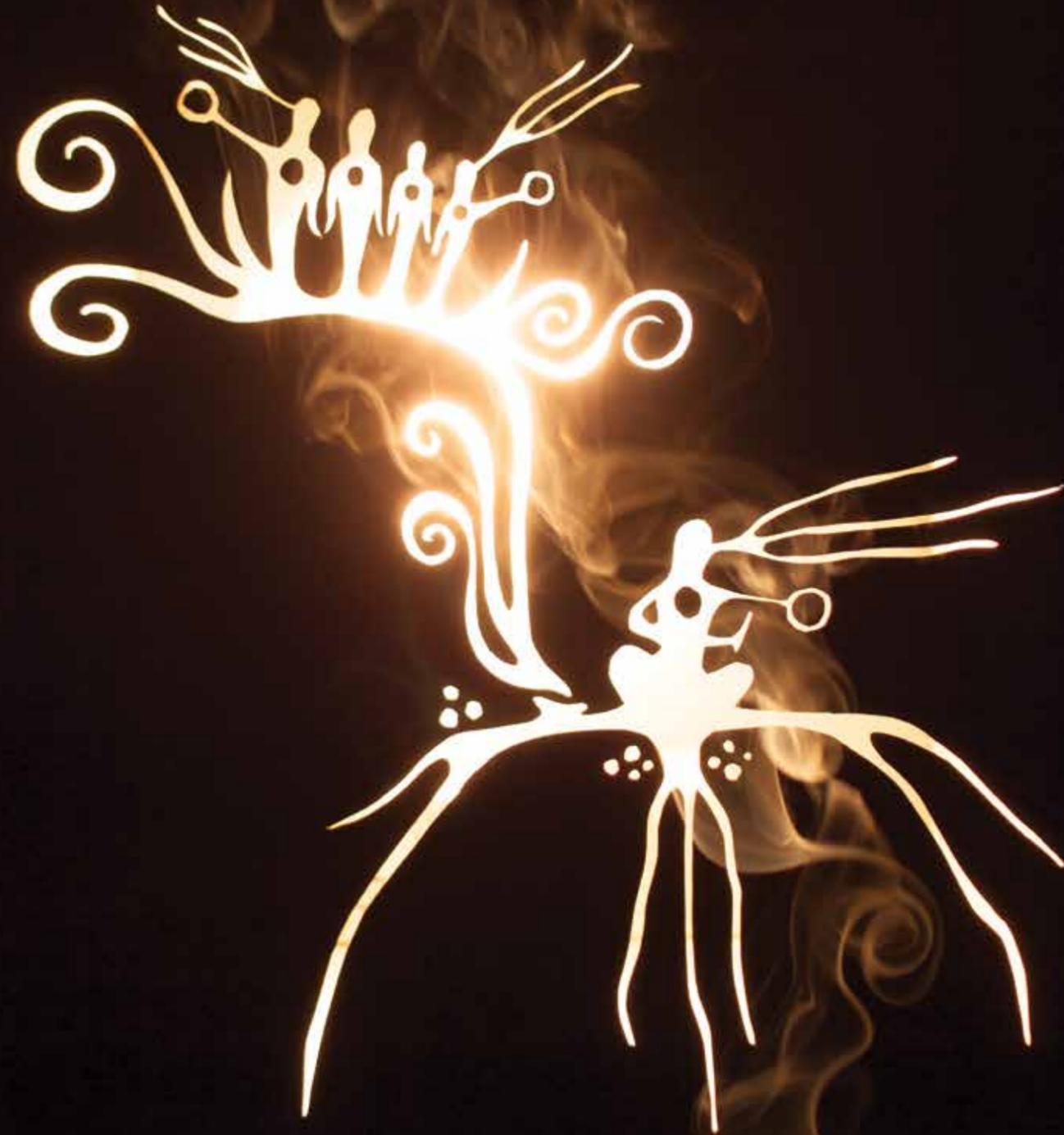
2. The Office of the Independent Police Review Director (OIPRD) receives, manages and oversees all complaints about police



policing of Aboriginal people so individuals on-reserve will have access to an independent complaint and appeals mechanism.

7. **Policing is a difficult and demanding job. Government must provide Aboriginal and non-Aboriginal police officers with the resources they need to do their jobs, including self-care training and support services.** Providing supports and care to police officers will help them better care for the communities they serve.

in Ontario. It is an independent civilian oversight agency that ensures all public complaints against the police are dealt with in a manner that is transparent, effective and fair.



COURTS

When a young person smudges, they are reconnected to belief in medicine and they communicate with the ancestors, who appear here in the canoe above. The ancestors provide guidance, teaching us how to use the drum and how the songs sound. Through this learning, the young person is reconnected to the earth by the roots, and plants themselves within Creation. This is how the drum and our stories are reclaimed.

COURTS

"You can't fix the system without mending the relationship, because it's relationships that make the system."

– FORUM PARTICIPANT

The word 'relationship' provides a key to understanding how young people feel about the justice system and the ideas they shared to help make it work better for Aboriginal people. They used the term repeatedly to express a need to feel more "comfortable" in justice system settings and around system personnel from police to judges, lawyers and court officials.

There was acknowledgement that discussions in workshop sessions would not generate all the solutions necessary to fix the justice system for Aboriginal people. However, it was clear that any plan to renew the system would have to put at its centre practices that helped people and communities heal, turn lives around and restore the balance in relationships that existed before the wrongdoing happened. And, for solutions to be responsive to the needs of the community, young people had to be involved in helping to transform the justice system broadly, and the courts specifically.

Young people spoke about their experiences in the justice system and their ideas for making it better. They spoke from varying points of view and different starting points. What was common in their stories and reflections was the experience of feeling "outside" of the system and "outside of their own lives" when they came into contact with the justice system. Part of this was due to the fact that they saw little of their communities' traditional practices, values or beliefs reflected in the system and that it felt "strange" or "foreign" to them.

Even if they had never experienced any direct contact with the justice system they carried with them stories about friends, family or community members whose experiences in the system were negative and unfair. Many people they knew did not receive proper legal representation. Combined with these stories were personal accounts of daily experiences of racism, being stereotyped and of receiving poor



"I think there is like an unhealthy relationship because of a lack of knowledge that the people in the justice system have when it comes to Aboriginal issues and the history of Aboriginal people."

– FORUM PARTICIPANT

treatment from government services and institutions. Few participants reported having had positive experiences with government or support services of any kind. In fact, it was often noted that the failure to receive adequate or any assistance to meet ongoing urgent needs brought some young people or community members into contact with, or deeper involvement in, the justice system. The impact of having limited or no access to social service supports at the community level is rarely mentioned as playing a significant role in cases involving Aboriginal people before the courts. If the accused person had access to needed services and resources would things have been different and could they have avoided coming into conflict with the law in the first place? If lawyers don't take the time to dig deeper into the backgrounds of their clients to see the effects of these systemic failures, how can they provide a proper defense?

Young people felt powerless to do anything about their daily negative experiences and disappointment with government services. Frustration was also expressed over the fact that, due to their young age, their opinions about obtaining, creating or changing programs or services of any kind, including ones in their own communities, were ignored or dismissed by government, chiefs, band councils, Elders and Aboriginal leadership.

Observing how poorly Aboriginal people were treated by the law made it difficult for participants to trust or feel confidence in the justice system. Young people felt that legal language was difficult to understand and that the process involved in preparing their case for court was intimidating.

Also expressed was a feeling of being at the mercy of legal professionals and that they had no choice but to follow the direction and advice given to them by a Legal Aid lawyer. This belief was rooted in the limited awareness of their rights and the justice system in general. An overriding view expressed by participants in the workshop sessions was that the justice system, "does not look like us; we are not it."

COURT PERSONNEL DO NOT UNDERSTAND ABORIGINAL PEOPLE

Young people felt that the court system was far removed from the experience of local communities and the people actually involved in a crime or disagreement. The system created a sense of fear and feelings of being unsafe and unprotected. There were too many rules, too many 'professionals' with competing interests or agendas and too many ways to interpret laws that Aboriginal people often didn't understand in the first place. In their view, this made it virtually impossible to get to the truth of the matter and determine the steps needed to restore balance or, where possible, the relationship between the people involved in the court case. Many youth felt that professionals in the justice system saw their job as a way to obtain social status, make money or punish others, instead of helping people and communities work out how to address the wrong or harm that has been committed.

Young people felt that the information allowed to be discussed at trials was controlled by strict rules and as a result



provided a narrow and limited understanding of the individual before the court. Unless judges and juries had enough information to obtain a real understanding of the accused person, the court would not be able to find solutions to help meet the person's needs that were at the source of their behaviour. As it is, the justice system and its rules did little more than isolate Aboriginal people, cause them more problems and ignore the contributions communities can make towards understanding and rehabilitating the individual.

There was a common perception among forum participants that the system was less concerned with justice and more preoccupied with getting things done quickly. They felt that the unequal and limited resources available to operate the justice system in northern, remote and fly-in communities affected the ability of the justice system to provide proper and equitable service.

"In the past, First Nations people went to the chief and council, as well as Elders, about their struggles, addictions and wrongdoings. We should do that before allowing a government to take charge."

– FORUM PARTICIPANT

CONNECTING CRIME WITH A NEED TO SURVIVE

A connection between involvement in crime and a person's need to survive was not considered by the courts in the opinion of many youth. They observed the social and economic conditions in their communities and how these conditions left many community members vulnerable and at risk of coming into contact with the law. A lack of health and mental health supports and services combined with the ongoing impact of legacy issues tied to the residential schools, colonization and resettlement all were seen as increasing the risk. Substance abuse, theft and violence in communities were viewed as means to self-medicate, obtain alcohol or drugs and numb the emotional pain that far too many carry.

A CASE FOR A ABORIGINAL JUSTICE SYSTEM

A shortage of Aboriginal lawyers and judges in the justice system was of great concern and expressed numerous times at the forum. Prior to attending the event, most young people had never met an Aboriginal lawyer or judge. Many talked about how this lack of Aboriginal representation in the system could affect the handling of cases, the interpretation of court testimony and maintain a stereotype that Aboriginal people sit and wait for justice to be delivered rather than be a part of creating it. With greater representation of Aboriginal people comes an increased capacity for the system to address stereotypical thinking about an individual and eliminate the bias that can affect decision-making at so many points in the legal process. Although better training for all justice system personnel could help make improvements in these areas, it is only a partial solution. No amount of training will ever be able to match the insight and understanding that comes from lived experience.

Young people who had been in contact with the law spoke about faking understanding about what was happening to them in the system. Whenever they could not understand what a lawyer or judge was saying they just pretended they understood. They did so from a place of feeling isolated and alone as there was no one with them they trusted to properly explain things to them or help keep them from thinking that they were not smart enough to know what was going on. It just seemed easier and less intimidating for

"As Aboriginal people we have more negative experiences with the justice system than positive experiences."

- FORUM PARTICIPANT

"Youth have always been ignored. I've been ignored all my life. No one ever listened to me. I was always alone and I realize that's how our society is nowadays. No one takes the time to listen."

- FORUM PARTICIPANT

"When I think of the justice system I just think of injustice and how impersonal and removed from the community it has become."

- FORUM PARTICIPANT



"My understanding of justice is not about 'right' vs 'wrong'. It's not my place to judge what is right or wrong. Justice, the way I see it, means working together and loving each other and showing respect. That's what justice is because that's how our people worked to create justice together, not to say this person deserves this punishment. It's about working together like what we're doing right now in this circle."

- FORUM PARTICIPANT

"Lawyers really need to put the story of the accused into context and take it away from the crown attorney and build the connection that people on the jury can relate to."

- FORUM PARTICIPANT

them to go along with whatever was being said. However, going along just left them feeling vulnerable as they didn't know how to get their lawyers to work for them in a way that helped them make informed decisions. Concern was expressed that their lawyers may not always have their best interests and rights at heart and just rush them into making decisions.

DISCRIMINATION IN THE JUSTICE SYSTEM

In the workshops, the negative impact of stereotypes, racism and inequality in the justice system was continually mentioned by young people, along with experiences of discrimination they faced at the hands of justices of the peace, judges, lawyers and jury members. They noted that unless these stereotypes and discriminatory beliefs were changed through training and education, they would continue to undermine the delivery of justice to Aboriginal people.

Repeated mention was made by young people about the court system having an "us vs. them" feel to it, with "them" representing mainstream social values and beliefs and "us" being Aboriginal people's values and beliefs. Many felt that the justice system only wanted to punish Aboriginal people, a practice in direct conflict the traditional values of many communities.

The poverty and geographic isolation in which many Aboriginal communities live is not visible to most people in Ontario. This lack of visibility helps fuel the stereotypes non-Aboriginal individuals have about Aboriginal people and communities. The same stereotypes are present in the justice system. The social conditions that leave Aboriginal people vulnerable to involvement with the law do not hide in the shadows of life in northern, remote or other reserve communities, or in the past; they are the present every day lived reality of Aboriginal youth and members of their communities.

Young people felt that racism and discrimination were a part of the court system because they could be found everywhere in mainstream Canadian society. Of the 150 youth who attended the forum, almost all had faced or witnessed acts of racism directed at them personally or at their family members. Young people spoke about feeling nervous when dealing with services or systems that were not Aboriginal

"As colonized people we become like foreign countries, so that people don't give so easily anymore and that's why there's homelessness. People commit crime just to survive. Before we were colonized, Aboriginal people were always really giving and we shared with our community and with our Elders."

- FORUM PARTICIPANT





"They don't really know who we are. People are taught to discriminate they are not born with it. Stereotypes play a role in how people view you and learn about history."

- FORUM PARTICIPANT

"The system has always been racist, trying to get rid of Aboriginal ways, we have never been thought of as equals."

- FORUM PARTICIPANT

operated. They felt they were not accepted or wanted in urban centres and talked about being followed by police and security whenever they gathered in a shopping mall in an urban setting. They had to deal every day with racial comments and judgment from others and carried with them a constant fear of being harassed or harmed.

On a positive note, while forum participants felt the justice system did not work for them, their communities or Aboriginal people in general, they spoke with compassion about the people who worked in the justice system. They felt many court system personnel did not know enough about the realities of life in isolated or remote northern communities and the daily hardships people living there faced. They felt that if discrimination was a learned behaviour then the court system could be changed if those who worked in it were better prepared for their roles. It was agreed that the Ontario government needed to take a more proactive role in ensuring that all justice system personnel were better trained and prepared to carry out their duties when working with Aboriginal people.

Young people at the forum also used the language of reconciliation and healing repeatedly. During a powerful dialogue session many spoke about the need to break down barriers between Aboriginal and non-Aboriginal people.

"I don't want to feel out of place or outnumbered in the courts."

- FORUM PARTICIPANT

"If you've ever been in a courtroom it's very overwhelming. And the individual that's before the court, they don't usually have a voice. The victims don't have a voice. Everybody's always talking for you."

- FORUM PARTICIPANT

"I don't think it should be called a justice system because I don't see the justice."

- FORUM PARTICIPANT

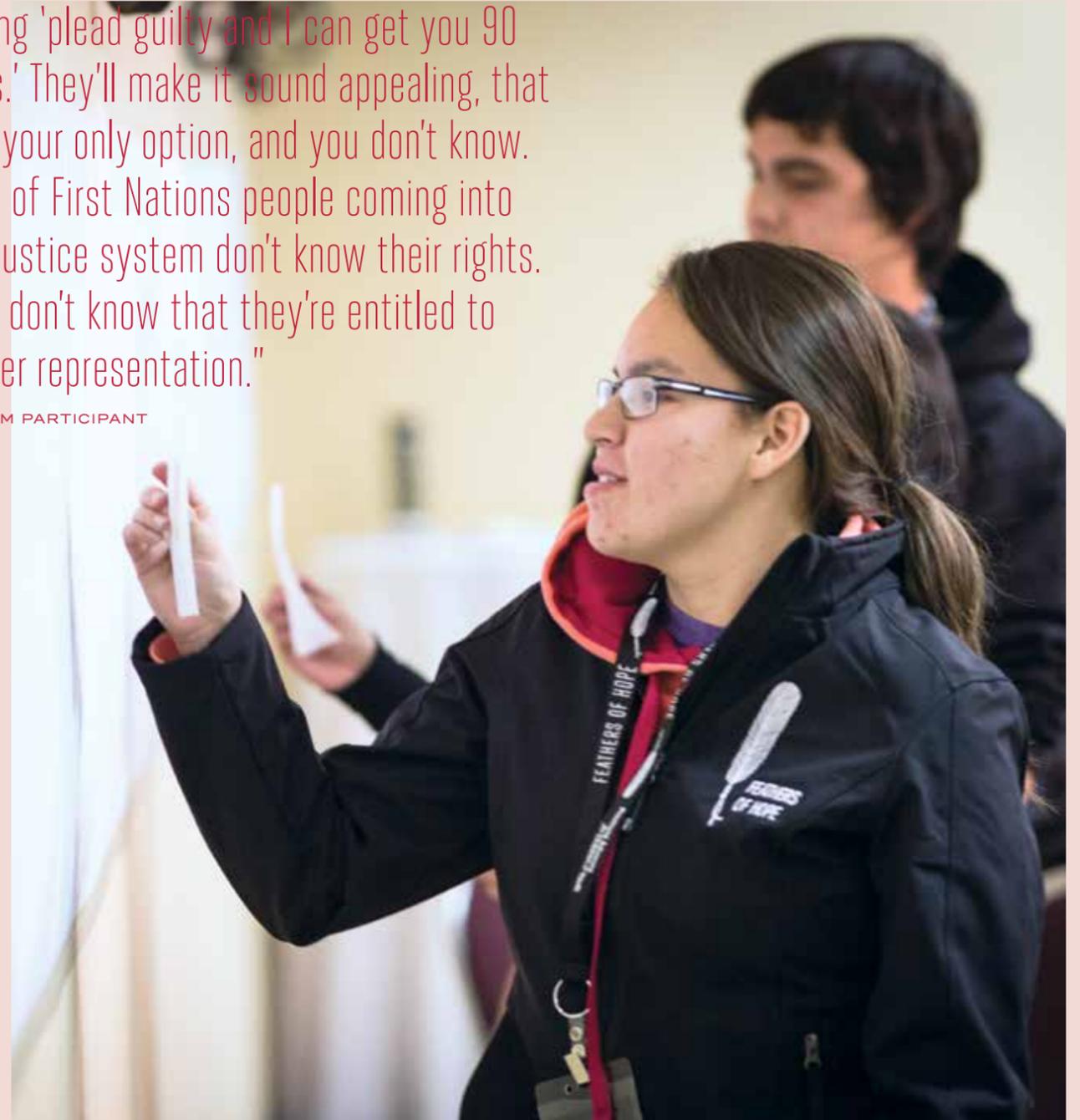
HOW LAWYERS FAIL ABORIGINAL PEOPLE

Living with feelings of fear and mistrust was the daily experience for youth with past involvement in the justice system, from arrest, to being in a holding cell, in court, at sentencing and in jail. They reported that even their lawyers failed to provide them with any sense that they were being cared for in a respectful and professional way. Other young people felt lawyers were more interested in their legal fees than in the needs of their client or the needs of people in their communities whom they represented. A clear difference in the quality of legal representation was noted depending on whether a lawyer was provided through Legal Aid or paid for by the person themselves. Young people talked about lawyers flying into communities and spending only five-minutes with an accused person. In many cases there was no real privacy to speak because meetings with their lawyer could only occur in an improvised or inadequate meeting space. There were many comments about feeling pressured to accept whatever their lawyer said because they didn't understand the system, its rules, their rights or were just plain afraid to ask someone to explain things to them. Few knew that their lawyers could request a 'Gladue report' prior to sentencing to explain to the judge the historical and contextual background influencing their actions/ crime. Many just followed their lawyer's advice to accept a plea-bargained sentence in order to avoid spending more time in jail.

There was a feeling expressed that the court process was more about hurrying to get things done rather than obtaining deeper understanding of the circumstances surrounding what happened in a case of wrongdoing. While they felt that there were positives tied to having Gladue as part of the law, there was equal concern that the lack of equal resources in the north and across the province, would affect the ability of all Aboriginal people to have the same level of access to good legal support, including access to a Gladue report writer.

"Sometimes lawyers just want to plead their clients out. The Legal Aid lawyer will work out a deal with the crown attorney saying 'plead guilty and I can get you 90 days.' They'll make it sound appealing, that it is your only option, and you don't know. A lot of First Nations people coming into the justice system don't know their rights. They don't know that they're entitled to proper representation."

- FORUM PARTICIPANT





"Aboriginal offenders tend to get more harsh bail conditions, they get denied bail more often and they get harsher sentences. There is something going on called 'net widening'. Conditional Sentencing Orders being put in place that would never have happened in the past. It gives a sentence to be served in the community and if you breach you immediately go to jail to serve the full sentence. Community Service Order sentences tend to be longer than jail time, so you end up serving a longer sentence than you would have if you just went to jail in the first place."

— FORUM PARTICIPANT

THE FAILURE OF JUDGES TO DELIVER JUSTICE

There was discussion in workshop sessions that judges may be giving longer sentences to Aboriginal offenders than non-Aboriginal offenders and, like lawyers who visit remote communities, they just rush through cases involving Aboriginal people. Though pleased to discover that the courts have moved forward by offering alternative forms of sentencing to Aboriginal persons, young people expressed concern about the problem of net-widening when it came to judges' use of community sentences. Their concern was that alternative community sentences could actually increase the time a person spent in the system, particularly in custody. For example, community sentences tend to be longer than jail sentences, so if a person broke the conditions of their community sentence they could then be sent to jail to serve what remained of the community sentence time.

Young people expressed concern that because judges generally do not understand the conditions of reserve life and the impact of these conditions on the lives of Aboriginal people, their decisions can set many individuals up for failure. For example, a bail condition that said the accused couldn't drink alcohol or be around alcohol might be impossible to maintain if they had no access to substance abuse counseling or if their drinking had no role to play in the crime they were accused of committing. Living together in communities where there is not enough housing, would expose the person to others who drink thereby increasing the risk they might violate their community sentence or bail conditions and end up in deeper trouble with the law.

FINAL REFLECTIONS

"Put at its baldest, there is an equation of being drunk, 'Indian' and in prison. Like many stereotypes, this one has a dark underside. It reflects a view of native people as uncivilized and without a coherent social or moral order. This stereotype prevents us from seeing native people as equals."¹

It has been 17 years since the above statement was made in a case known as the 'Williams decision'.² A generation of children born after this decision was made continue to echo observations made by the Supreme Court; youth at the forum felt that discrimination and racism continue to deny Aboriginal people access to justice simply because they are Aboriginal.

1. Rudin, J. (2014). *The Criminal Justice System: Addressing Aboriginal Overrepresentation: Journey to Healing: Aboriginal People with Addiction and Mental Health Issues*, edited by Menzies, P., Lavallee, L.F., Centres for Addiction and Mental Health. Toronto, ON., citing J. Rudin in, R. v. Williams [1998;358] S.C.R 1128.

2. Rudin, J., citing R. v. Williams [1998;358] S.C.R 1128, in Menzies, P., Lavallee, L.F. (Eds.). *The Criminal Justice System: Addressing Aboriginal Overrepresentation: Journey to Healing Aboriginal People with Addiction and Mental Health Issues*. Toronto, ON: Centre for Addiction and Mental Health (2014). R. v. Williams focused on the biases held by potential jurors about Native people – that it limited their ability to be impartial and that their biases (racist, discriminatory views) might make them favour the crown not the accused.



It was clear that forum participants felt strongly that the history and context of Aboriginal lives must be central in discussions about how to transform the courts so that they serve the needs of Aboriginal people. The belief that Ontario's existing justice system has been imposed, is failing their communities and cannot deliver justice was widespread. With this said, they struggled to speak with authority about how to fix the system, given that little of the history of justice seeking in their own communities still existed, isn't being taught in their education system or wasn't available to them through the teachings of the Elders in their local communities. Many of these traditions centre on beliefs tied to the importance of balancing the needs of all community members in decision-making tied to justice. The young people stated repeatedly that they wanted their Elders and community knowledge keepers to come forward and teach them and the justice system about their traditional justice models.

Young people felt that if change was to happen in the court system, it must begin by creating the opportunity for them to learn about their traditions so that they can understand what has changed, what needs to be restored and, given the passage of time, what needs to be added to create a system that embraces their people's and community's values as they exist today. They believed a true system of justice had to be built on values of compassion and empathy not on the desire to blame, shame and punish. And, they wanted to ensure that any new model or vision of justice instilled hope in Aboriginal people and communities. They wanted to get rid of a justice system that made it more likely that an Aboriginal young person would graduate into the correctional system than graduate from high school or receive a post-secondary education.

Any changes to the present court system must help make it less reactive and allow for more communication between



"It can be difficult to travel to court dates due to poverty and distance. It is problematic that more youth are being tried as adults, and that the language of the court system makes it difficult for people to navigate the system and defend themselves."

- FORUM PARTICIPANT



everyone involved in a case. Young people wanted to see a system that was more restorative in nature and focused on helping people heal, not one that was about labeling people as criminals and focused only on punishing them. They also wanted to see supportive approaches that focused on prevention as much as addressing problems after the fact.

From listening to their discussions, it was clear the realness of discrimination was deeply rooted in their lives and that they were nervous and afraid of Ontario's justice system. However, respect was shown for the importance and seriousness of the discussions at hand because they lived and breathed the harsh realities of a failed system of justice. Forum participants understood that unless the system was challenged and changed, this fear and discrimination would remain a part of their lived experience as they grew into adults and their children would be raised to see justice as not applying to their lives or the lives of Aboriginal people in their communities.

"So she says, watch you don't lose the way you talk. You keep that well, and the Creator, the Holy Spirit gave you that and the last word was you keep that well. That lady, my mom, must have known that we were being assimilated she must have known that and she was giving me some good advice saying you should hang on to that because that was given...that is yours."

- DEBWEWIN ELDER BARNEY BATISE SPEAKING TO YOUTH PARTICIPANTS

"It's about finding a way to go back to traditions, but still live in this day and age. It's so beautiful to see that it works, that people have set an example for you and that you can grab hold of your traditions and live life in a good way."

- FORUM PARTICIPANT



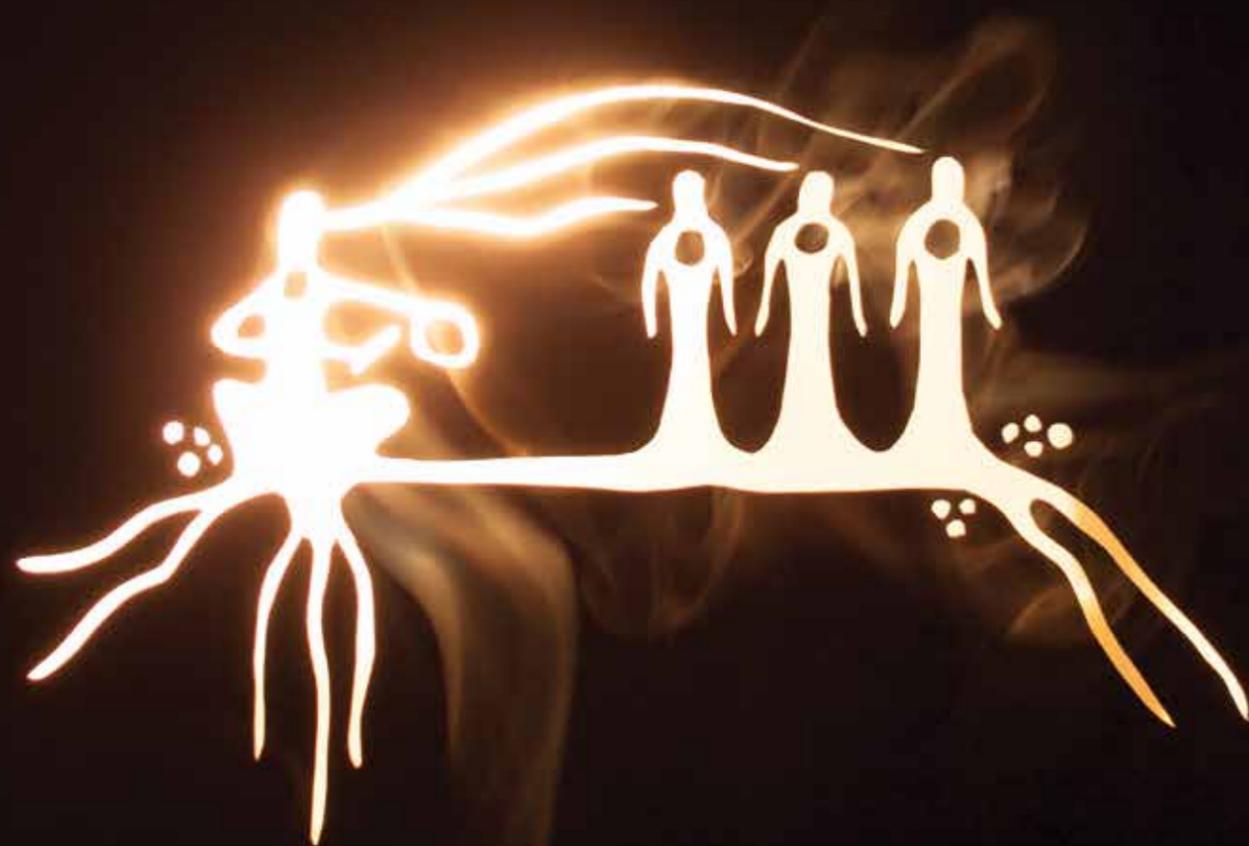
SUMMARY OF RECOMMENDATIONS

COURTS

- 1. Ontario's justice system must change so that it better meets the needs of Aboriginal peoples. This change must begin with an acceptance on the part of government that Canada's justice system, in its present form, continues to harm to Aboriginal peoples.** As Ontario moves forward with the work of implementing Justice Iacobucci's report, there is a need for real conversations about the courts and broader justice system that include the full participation of Aboriginal communities and those from within the community who have been involved with the justice system. If jury representation is important, then steps must also be taken to address the crisis tied to the over-incarceration of Aboriginal people. Juries cannot solve the issue of incarceration alone; they need to know the courts are doing more to ensure culturally biased justice practices rooted in racism, discrimination and stereotypes that negatively affect Aboriginal peoples and leave them at increased risk to receive unnecessarily harsh legal sentences. This will ensure Aboriginal people see that real change is happening in the justice system.
- 2. In line with the Truth and Reconciliation Commission's Call to Action number twenty-seven (27), we call upon the Federation of Law Societies of Canada to ensure that lawyers receive cultural competency training,** which must include the history and legacy of the Indian Residential Schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal Rights, Indigenous law and Aboriginal-Crown relations. This will require skills based training in inter-cultural competence, conflict resolution, human rights and anti-racism.
- 3. A renewed justice system must begin with increased accessibility.** Courts must sit regularly in northern communities and be staffed with lawyers, court reporters, judges, support workers and other system personnel who have specialized training and knowledge about remote and fly-in communities.
- 4. When an Aboriginal accused person is flown out of a community for trial or holding, processes must be put in place to ensure she or he does not become lost or disconnected from their communities and the traditions and cultural practices that give them support, hope and connections to home.** This can be addressed by providing supports to fly families in, using technology to support web and video conference visits and requiring that Elder and community access be available at all times and provided to all Aboriginal people in all detention centres, jails and prisons in Ontario.
- 5. The Ministry of the Attorney General (MAG) must work with Aboriginal legal service organizations, chiefs, band councils and communities to create ways for community members to provide feedback to the justice system.** These sessions, when developed, must be culturally anchored, include the participation of young people and adult community members and be offered with translators in place and educational materials

written in the language of the community. This work should be done by an agency or body that is not part of MAG so that Aboriginal people can be sure the evaluation reflects their views before it is delivered to the government.

- 6. The Ministry of the Attorney General must provide funding to ensure there are specially trained court support workers** to meet the needs of Aboriginal individuals before the courts.
- 7. The Ministry of the Attorney General must conduct research into the problem of "net-widening"** and determine how often, and in what manner, additional charges against Aboriginal persons are a result of conditions tied to bail or community sentencing.
- 8. The Ministry of the Attorney General must work in partnership with the Ministry of Community Safety and Correctional Services to ensure safe and fully functional detention facilities** are provided in northern communities in cities like Thunder Bay, Fort Francis, Sioux Lookout or Timmins and that these facilities meet the same operating standards as facilities in the south.
- 9. The Ministry of the Attorney General must work with Aboriginal legal service organizations, chiefs, band councils and communities to help develop an education process where Aboriginal youth can learn about the local justice traditions of their communities that existed prior to contact with European settlers.** By helping young people obtain this knowledge they can become informed partners and work with their leadership and community knowledge keepers to help create new approaches to justice that meet the needs of their communities.
- 10. The government must revisit what is happening with bail hearings.** Bail hearings have become more like punishment for many Aboriginal people. Bail conditions for Aboriginal people can include things like attending addiction treatment programs or counseling. The problem is bail is supposed to be about ensuring attendance at court not about forcing a person to meet conditions usually tied to a sentence after a trial has taken place and a finding of guilt has been established. These unfair bail conditions can set Aboriginal people up for failure and possibly new charges before they've even been tried.



JURY PROCESS

As with many of our stories, it is a young person who goes to find tools for healing and brings them back to the community. The young person is tired of not walking in balance, and goes in search of reconnection to share with others.

With the ancestors' teachings, healing has begun. The young person returns to the community, and sits down, humbled within Creation. Re-rooted, the young person uses the drum and shares the song. The song spreads to other community members who learn it as well and reconnect with Creation.

JURY PROCESS

"For Aboriginal people justice is not about judging people, so it's very hard to get behind a system where you have to sit in judgment of someone. For us it's more about saying, ok, what has happened; now how do we move forward? We're not about saying "you're a bad person, you're going to jail."

— FORUM PARTICIPANT

Discussions about how to improve the jury process continually returned to the fact that government can't fix just one part of the justice system, in this case, jury representation, and leave the rest broken, as nothing would really change about the justice system. It was also expressed that all components of the justice system needed to work together to create a system young people and their communities could trust. Within the court system, they saw the jury process as a reflection of how invisible Aboriginal people remain in the delivery of justice. The point was raised repeatedly about how it would be impossible to feel like a peer of people who serve on juries, when these people are part of a process that harms Aboriginal people.

Forum participants felt that the realities of discrimination, racism and stereotypes about Aboriginal people are a part of the jury process because they are buried deep in the beliefs and unconscious thinking of mainstream Canadian society. This makes it challenging to transform the jury process to serve the needs of Aboriginal people. Also, because of these deeply held beliefs, being an Aboriginal member of a jury is not unlike being in front of a judge. Like many judges, most jurors have little or any idea of what daily life is like for many Aboriginal people. This places the Aboriginal juror in the difficult position of either having to stand isolated,

intimidated and alone and educate their fellow jurors about traditional views of justice – if they are even known to them – and the reality of day to day life as an Aboriginal person, or go along with justice system rules and procedures that clash with their cultural values and they believe are wrong.

Struggling with the challenge of how to improve Aboriginal representation on juries raised separate questions about how Aboriginal people came to be seen as being primarily on the punishment side of the justice system in the first place. Participants felt that the roots of this situation lie in the history of colonization and the gradual shift away from the original relationship of equals to a situation where Aboriginal people must be assimilated, controlled and policed so that the process of settlement can be advanced. They expressed awareness of the fact that the treaties and their rights have been ignored and disrespected for generations by all levels of government and that forms of justice that had existed in their own communities for centuries have largely disappeared, been wiped out or talked about as if they never existed. All of this feeds a racist belief that Aboriginal people need to be 'civilized. Young people felt that this ongoing imposition of laws on their communities was a continuation of the colonization and assimilation process.



"Just being an Aboriginal person and being on trial, right away jurors make assumptions or judgments about you."

- FORUM PARTICIPANT

Many young people at the forum were surprised to learn there were any Aboriginal lawyers, crown attorneys, judges, court workers and caseworkers working in Ontario's justice system. However, it was felt that their presence alone would not be enough to encourage more Aboriginal people to want to serve on a jury at a trial or inquest. In fact forum participants noted in dialogue sessions that the low number of Aboriginal lawyers, crown attorneys, judges, court workers and case workers working in the justice system might actually discourage Aboriginal people from wanting to be part of juries for trials and inquests. At the root of their belief was the feeling that the mainstream view of Aboriginal people will never change in the justice system in its present form. Aboriginal jurors would also never feel confident that the justice process would represent traditional values or that these values would ever find their way into decisions made by the courts or juries. The current system is based on principles of guilt, blame and punishment which is in direct conflict with traditional values of healing and restoring balance in the community. Finding solutions to the problem of under-representation was not just about finding ways to increase numbers, it must also deal with the intimidating nature of the system and the long painful history Aboriginal people have with the system.

While young people may have had limited understanding of all the rules and processes of the justice system, they shared a strong understanding of the impact of the justice system on Aboriginal people who came into contact with it.

They were clear that the lack of representation of Aboriginal people on juries was not just a question of getting people to sit on juries. Their larger point was that the entire system is failing Aboriginal people and as a result, they asked, "Why would an Aboriginal person sit on a jury in a system that continues to punish Aboriginal people?"

THE ROLE AND FUNCTION OF JURIES

When young people talked about their knowledge and understanding of what juries were, what juries did and how someone became a member of a jury, a number of impressions emerged:

- A jury is a group of people.
- Juries make decisions.
- Juries are supposed to be people who are your peers.
- Jurors are randomly chosen.
- A juror can have no personal relationship to you.
- You must be a Canadian citizen.
- You must speak English or French.
- You can't have a criminal record.
- You must be at least 19 years old.
- You can't be a judge, police officer, or justice of the peace or someone who works within the justice system.
- You get mailed a letter saying you have to be on a jury.
- You get fined and punished if you do not respond to the letter.



"One of the biggest problems right now is that the members of the jury are not Aboriginal people, so it's like when an Aboriginal person is on trial, there's nobody on the jury that can relate to them."

- FORUM PARTICIPANT

Discussions focused on some of the reasons why youth reported feeling left outside or disconnected from juries and the justice system. For example, young people felt they would never have a jury of peers because jurors would always be older. Also, given the low number of available Aboriginal jurors there would be few, if any, members of a randomly selected jury who would understand the history of Aboriginal people, the realities of daily life in their communities, the importance of traditions or the forms of justice practiced by Aboriginal people. Missing in the process would be any awareness that healing and restoring balance in communities is valued over punishment and isolating a person from their support systems and putting them in a jail/prison. Young people discussed that Aboriginal people often live their lives in communities where life is very different from the daily experiences of non-Aboriginal jury members. As a result, juries who lack this understanding end up applying social customs, values or rules of justice to their decision-making that often do not exist in communities where they live.

Concerns were raised by young people about the process of creating jury lists and selecting jurors. For example, not all Elders and community members from fly-in and remote communities or reserves speak or read English or French as a first language or have a real understanding of the justice system or the function of juries. Sending someone a letter when they may not be able to read it or understand its contents only adds to the sense of exclusion that many Aboriginal people feel from the system. When a letter arrives telling them they have to participate on a jury, some community members may not understand what the letter means other than they have to respond in some way or that they might have to pay a fine if they don't. Young people also raised a point that using the mail system doesn't work for all people who live on-reserve and move back and forth between their community and cities or towns for employment, to care for relatives, attend school, seek a job or spend long periods of time out on the land.

Another point raised by young people was that not all Aboriginal peoples considered themselves "Canadian" and may identify as being Aboriginal or belonging to their community or a larger cultural group (e.g., Cree, Ojibway, Métis or Mohawk, etc.). Those who didn't identify as being Canadian, or who rejected the values of punishment and blame that

"We didn't have a choice in becoming a Canadian citizen, so I don't think we should be obligated to be on a jury."

- FORUM PARTICIPANT

form the foundation of the justice system, might not feel an obligation to serve as a juror.

Prior to coming to the forum, many youth didn't know that jury duty was mandatory. Being mandatory would make serving on a jury feel awkward for many Aboriginal people and put them in the position of having to go against cultural traditions to not judge others. If a trial involved someone from their community, many forum participants felt they might have great difficulty having to judge that person.





It's all the same people who have lived the same lives and all that stuff. There's no real diversity on juries. Everyone thinks the same and has the same opinion so it doesn't really give Aboriginal people a fair chance."

- FORUM PARTICIPANT

"The jury process could be modified in a way that our community members can be part of the jury, and it doesn't even have to be people from your own community, just some First Nations people from somewhere who care. That's something that we don't have confidence in. It's like we go back to that judgment, you know. You judge me, so I'm, going to judge you for judging me and then I'm not going to trust the system that's supposed to decide what is right, because all you're doing is judging each other."

- FORUM PARTICIPANT

Young people expressed a preference for working together as a community – youth, adults, Elders and leadership — to actively heal and strengthen relationships between the generations as a way to restore balance to the community. They felt it was important to use these stronger ties to develop traditional approaches to justice that could be monitored by the community as a whole and ensure the person who committed the wrongdoing follows through on community direction to address/heal whatever harm had been done.

Mention was made about the great distances many Aboriginal people would have to travel to serve as jurors and the fact that this would leave them isolated and cut off from the support of family, community and culture. Young people saw the need for cultural supports, translators and resources to be put in place for Aboriginal people sitting on juries. They noted that if an Aboriginal person on trial felt isolated, alone and intimidated, why would it be any different for an Aboriginal person sitting on a jury? They felt jurors needed cultural and language supports just as much as the accused person because many of the barriers faced by the Aboriginal person on trial were faced by the Aboriginal juror, e.g., literacy issues, discrimination, racism, abuse and violence. While sharing common experience with the accused would help them understand the issues of the person on trial it could also make the decision to be on a jury a difficult one. Finally, for selected jurors with child or Elder care responsibilities, a legal requirement to leave their community and attend court would make it impossible for them to meet their caregiver responsibilities as many people are the sole source of support for their family members.

TRIAL JURIES

In discussions about juries for criminal trials, some young people expressed interest in participating while others rejected the idea. Those who rejected the idea felt that:

- It was a lot of pressure to have to make a decision about the case.
- No one had the right to judge another person.
- No one wanted to be blamed if they knew the person on trial and they ended up getting a harsh punishment or jail time.
- It might put their own lives in danger because the person would remember their face and want revenge when they got out of the system.
- They didn't have enough knowledge about the justice system.
- It could last months meaning they would have to be away from their family or community for too long.
- It could be nerve wracking.
- It would be overwhelming if the case was about murder or someone harming children or babies.

Those who were interested in participating in a jury for a criminal trial wanted to because it would:

- Provide an opportunity to learn more about the law.
- Be interesting to try and help solve something like a serious crime.
- Give them insight into how the justice system worked.
- Just be an interesting experience.

"We need to share our experiences so we can have our voices heard and become better educated about the justice system. We need to stand together. One stick may easily snap but a bundle of sticks will stay strong together."

— FORUM PARTICIPANT

INQUEST JURIES

When discussions in the forum workshops turned to inquests, and whether or not they would have an interest in participating on an inquest jury, young people continued to express hesitation. Their hesitation came from feeling forced to participate or that the issues raised at the inquest could reflect a young person's own life experience and be too close to home emotionally. For individuals supporting children or families, the limited monies paid to jurors and the time spent away from higher income employment could cause undue hardship.

Concern was also expressed about inquest juries being made up of people who were selected randomly. For example, if the issues being explored at the inquest involved Aboriginal people, and no Aboriginal jurors were selected, jurors might not have any knowledge about the history of



Aboriginal peoples and the impacts of the legacy issues tied to colonization, displacement and the residential schools. These issues could play a major role in the circumstances surrounding the death of an Aboriginal person and would need to be identified specifically and addressed in the process of preventing similar deaths in the future. A jury that has only non-Aboriginal jurors could miss these points completely.

Young people shared that their interest in participating on an inquest jury came from the fact that inquests were not about blaming and punishing people but rather about working together to determine the cause of a problem and helping ensure it didn't happen again. Working cooperatively together to find solutions to a problem was viewed as being a more familiar and culturally anchored choice for an Aboriginal person, especially if membership on a jury was voluntary. There was shared opinion that Aboriginal people would volunteer to serve on juries for inquests as opposed to those for criminal trials. Participating on an inquest jury was also viewed as providing an opportunity to be part of something bigger than you and that working with others to solve a serious or major societal problem would be a life changing experience.

IMPROVING KNOWLEDGE ABOUT JUSTICE AND JURIES

The topic of legal education came up repeatedly in workshop discussions about how to improve the jury process. Young people felt that the first step was to provide opportunities for youth to learn more about the justice system in general. Once they understood the system, they would know which parts needed to be changed to make it serve the needs of Aboriginal people. Legal education should begin early and be offered through their schools. They thought chiefs and band councils should ensure that there are resources in the community to help all members understand how Ontario's justice and jury system works and that these resources be in the form of a court support worker or a dedicated council position. This information should also be combined with opportunities to learn about local traditional ways of seeking justice.

"It's about finding a way to go back to traditions, but still live in this day and age. It's so beautiful to see that it works, that people have set an example for you and that you can grab hold of your traditions and live life in a good way."

- FORUM PARTICIPANT

FINAL REFLECTIONS

As they listened and learned from each other forum participants started to see how and why the present justice and jury process fails Aboriginal people and can make their lives worse. Also, parts of the jury process actually keep the legacy issues that harm Aboriginal people going because they are based on values and beliefs foreign to traditional ways of life. The current system made young people feel disconnected from their lives and the values of their communities. This was based on the fact that the system is more concerned with rules and laws instead of helping wrongdoers regain the trust of the community and make amends to anyone they harmed or, in the case of inquests, to help prevent harm from reoccurring.

Opinion varied about whether to keep the existing justice and jury process and just change the parts that don't work for Aboriginal people or create an entirely new system. However, there was agreement that the justice system cannot continue in its present form.

Young people's ideas about improving the justice system involved more than just changing the way juries worked. They felt that any effort to alter the jury process that did not, at the same time, address the causes of what brought young people or other members of their community before the justice system, or include processes to restore balance and promote healing at the individual and community level, would not lead to any real or lasting change.

An added complication to the process of changing the jury process was seen in the use and meaning of the word 'peer'. In the young people's opinion being a peer did not simply mean a person who looks the same or is from the same geographic area. A peer is someone who possesses the knowledge, awareness and understanding of the lived reality of Aboriginal peoples in Canada, a reality that is still strongly tied to discrimination, racism, stereotypes and misinformation.

SUMMARY OF RECOMMENDATIONS

JURY PROCESS

- 1. The jury process is not separate from the broader justice system.** Trying to solve the problem of jury under-representation without addressing the way justice is delivered to Aboriginal people in Ontario will not accomplish much. Change will only be meaningful if Aboriginal people see their involvement on juries as contributing to a form of justice that works for them and their communities. Aboriginal people must be able to connect their participation on juries to improving the justice system and making it more inclusive. This change must include removing the sense of intimidation and exclusion many Aboriginal people feel in the delivery of justice on- or off-reserve.
- 2. A support system must be put in place for Aboriginal people coming from remote and fly in communities who agree to be part of a jury process.** As participation in the jury process can be very overwhelming, mechanisms must be created that allow a family member to travel with an Aboriginal juror or ensure that technological resources are in place to permit the juror who is away from their family and community to have regular contact with home while they sit on the jury. These supports should also be extended to those who testify at trials or inquests regardless if their testimony is provided in-person or through video conferencing.
- 3. Mental health supports, i.e., Elders and counselors, must be made available to Aboriginal people who are part of trial and inquest juries.** These supports must also be provided to Aboriginal witnesses who sit in the courtroom and those who video-conference in. These supports should ideally be coordinated in advance and be provided by a victim witness program and have training in line with that provided to Indian Residential School mental health providers who were part of the work of the Truth and Reconciliation Commission of Canada.
- 4. Aboriginal people may come to a jury with a different way of thinking about the process than non-Aboriginal people.** They may not speak up or ask questions of their fellow jurors, a judge or the coroner leading an inquest. They may worry their questions may not be understood or people may judge them for the type of question they ask. They may require a different kind of support to participate meaningfully. Lawyers and judges in trials and inquests must also have a better understanding of how the culture and background of Aboriginal people impact their participation on a jury. This may require training for those on a jury and for lawyers, judges and coroners.

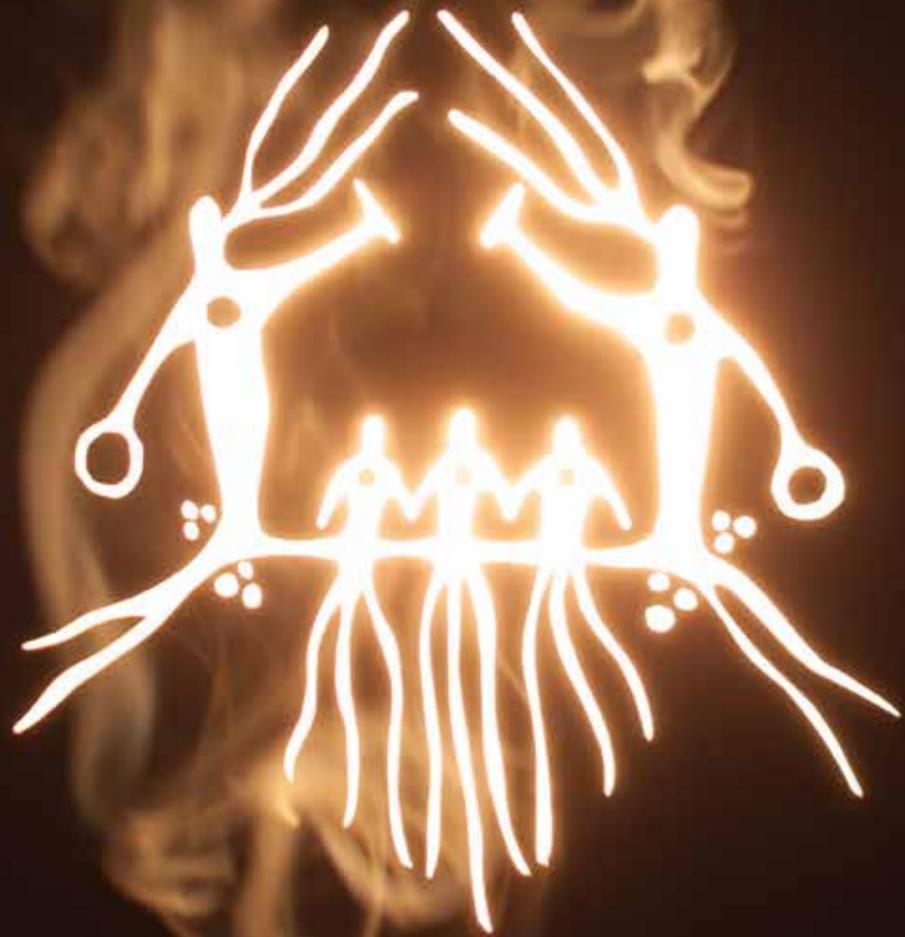
5. **Government must work with chiefs and band councils to create the changes necessary to ensure juries include more Aboriginal jurors.** This is not work that can sit with one side or the other. The more community members see their leadership encouraging jury participation and pushing for better supports for members of the community who are willing to be part of a jury, the more likely it is members will be willing to be part of a jury process.
6. **Government must change the jury selection process to ensure jury duty is voluntary and not forced on Aboriginal peoples.** Chiefs of Ontario and Independent First Nations must work within their ranks to establish a process to guide communities in ensuring Jury Lists are seen as important and are shared with the Ministry of the Attorney General. The Ministry of the Attorney General must commit to working with Aboriginal leadership to find better ways to create lists of people in each community who would be willing to be a juror at a criminal trial or inquest.
7. **Aboriginal jurors must be compensated/paid by government for the true cost of their participation on a jury including travel, accommodation, meals, child or Elder care or lost workplace compensation.** Many of these costs are covered for lawyers, court staff and judges who fly into their communities for court. That this is available to employees of the justice system but not those who are being asked to participate in the delivery of justice is unfair.
8. **Government must provide translation services to Aboriginal jurors or witnesses** at trials or inquests whose first language is not French or English.

BROADER LEGAL EDUCATION ISSUES TO SUPPORT AND ENCOURAGE PARTICIPATION ON JURIES

9. **Government must work with the education system to develop education tools and classroom lesson plans that are age-appropriate and make learning about the justice system fun for Aboriginal youth.** Education about the law should begin in grade six. Learning about the role and function of juries should form part of the curriculum and include mock trials and role playing. Legal education addressing a range of justice system issues should be supplemented with participation in conferences and forums such as Feathers of Hope where young people can gather, share experiences and learn from one another and Aboriginal professionals working in the system.
10. **The Ministry of the Attorney General (MAG) must work with Aboriginal legal service organizations, the Ontario Justice Education Network, the Equity Advisory Group at the Law Society of Upper Canada, and chiefs and band councils to ensure that edu-**

cation about all aspects of the justice system is available in all Aboriginal communities. It is especially important that this information be provided to community members who come into contact with the justice system, so that they know their rights, responsibilities and options. These materials must be culturally-anchored, include the input of young people, be translated into the languages of Ontario's Aboriginal people and be available online.

11. **Legal education curriculum must include knowledge about the roles of people involved in the justice system** so young people and community members will be able to determine if people are doing their job the right way and what to do if they don't feel they are. It should also focus on rights, what you can ask of a lawyer, what to expect when being asked to go to court and information about the supports that are available in the justice system and how to access them.
12. **Government must take steps to increase the number of Aboriginal people working in the justice system,** including judges, lawyers, police officers, probation officers, court workers or corrections staff. Government must also encourage and fund opportunities for Aboriginal young people to pursue careers in a renewed justice system.
13. **Comprehensive training about the history of Canada's relationship with Aboriginal people must be mandatory for all staff working in the justice system.** This training must include knowledge about community/nation based approaches to justice and detailed information about the legacy issues impacting Aboriginal people that stem from the Indian Residential Schools, the 60s scoop, resettlement on reserves, colonization and oppression. Young people must be involved in the development of this training curriculum for justice system staff as it relates to the realities of Aboriginal young people in the justice system. As part of developing this training wherever possible the Truth and Reconciliation Commission's Calls to Action (see pages 26-27) must be addressed with specific focus on those tied to Justice (numbered 25-41)ⁱ and those tied to the legal system (numbered 50-52)ⁱⁱ.
14. **The Ministry of the Education must amend the curriculum in grades K-12 to include age-appropriate materials to support the study of R v Gladue and the historic and ongoing impact of racism and discrimination on Aboriginal people.** This recommendation is in line with the Truth and Reconciliation Commission's Calls to Action (numbered 62 and 63)ⁱⁱⁱ tied to Education and Reconciliation (see page 27).



GLADUE

Carrying a drum means treating it like a spirit, like it is a family member. The story ends with the entire community taking ownership of their drums. The people, shown holding hands, are rerooted in Creation and reconnected to each other. They now have the understanding of Our First Mother of Creation, of their ancestors, and of the traditions. The community, connecting to the drum together, has been on a healing journey.

The sinews of the drum keep the heartbeat of Our First Mother in tune. It is a tool of healing and a symbol of how we are connected to each other, and that to have justice, we need to take care of these connections.

GLADUE

ROOTS OF INJUSTICE

Many of the young people who attended the Justice and Juries forum believed that Aboriginal peoples are treated differently than non-Aboriginal peoples by Ontario's justice system. This discrimination is 'systemic' because it can be observed everywhere in the justice system from initial contact with police, to treatment in holding cells, to how courts operate, the decisions of judges and ultimately in the treatment of Aboriginal people in prison/jails.

They felt the courts have a significant impact on community and family life on- and off-reserve. For many it begins early in life in family court — as a result of the involvement of child welfare and policing. The court plays a powerful role in decisions where Aboriginal children are removed from their families and communities, often for reasons beyond their control. In fact, the combination of the child welfare and justice systems was viewed as a modern version of the

THE ORIGINS OF GLADUE



1991 REPORT OF THE ABORIGINAL JUSTICE INQUIRY OF MANITOBA (AJIC)

The Aboriginal Justice Inquiry (1991) co-chaired by Justice Sinclair documented Aboriginal people's experiences with the Justice System (discrimination over-representation, lack of access to justice etc.).

- The Inquiry was created in response to two incidents:
- The November 1987 trial of two men for the 1971 murder of Helen Betty Osborne in The Pas led to allegations the identity of four people present at the killing was known widely in the community but not investigated.
 - The death in March 1988 of J.J. Harper, executive director of the Island Lake Tribal Council, following an encounter with a Winnipeg police officer that left many questions unanswered by the police service's internal investigation.



1991 BRIDGING THE CULTURAL DIVIDE: THE ROYAL COMMISSION ON ABORIGINAL PEOPLES (RCAP)

Arising out of the Oka standoff in 1991, former Assembly of First Nations National Chief George Erasmus and Justice Rene Dussault led the Royal Commission on Aboriginal Peoples. They conducted hearings across Canada and were asked to offer recommendations on how to improve Canada's relationship with Aboriginal people.

The Commission's report covered areas pertaining to: renewed relationships, treaties, governance, lands and resources, economic development, family, health and healing, housing, education, arts and heritage.



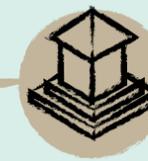
1996 CHANGES TO THE CRIMINAL CODE OF CANADA

Changes tied to sentencing for Aboriginal offenders in the Criminal Code of Canada in 1996 through provisions tied to section 718.2(e). Under section 718.2(e), judges are required to take into account all reasonable alternatives to incarceration and the unique circumstances facing Aboriginal people.



2000 A COURT FOR ABORIGINAL PEOPLE

Justice Patrick Sheppard at Old City Hall Court approached Aboriginal Legal Services of Toronto (ALST) (Jonathan Rudin and Kim Murray) about starting a court for Aboriginal people. He also met with three other judges, Professor Kent Roach and court workers to collaborate and determine what could be done. The guiding vision behind the project was that if judges, lawyers, court staff and support workers with insight about Aboriginal peoples and understanding of the Gladue principles could be brought together in one place, then the process of seeking justice could be transformed for the benefit of Aboriginal people.



2001 THE FIRST GLADUE COURT

One year later, in November 2001, the first Gladue court opened at Old City Hall (OCH).



2012 R. V. IPEELEE

This Supreme Court of Canada ruling made it mandatory for courts, in sentencing, to consider how colonization, the Indian Residential Schools and displacement from traditional lands and territories continue to translate into the dismal realities of Aboriginal peoples on- and off-reserve and consider these influences in their sentencing decisions¹.

THE CASE OF JAMIE 'TANIS' GLADUE

Jamie 'Tanis' Gladue was a Cree woman from Alberta who was living off-reserve. She had eight siblings, was a 19 year old mother of one and pregnant at the time of being charged. She had no prior criminal history. Her common law partner, Reuben Beaver, had been convicted previously of assaulting Tanis.

Tanis was charged with the murder of Reuben Beaver, the event having occurred after a party. According to the court record, Tanis thought Reuben was having an affair with her sister. They argued and Reuben was verbally abusive towards Tanis. In the heat of the moment she stabbed him.

Tanis was granted bail, and over the 17 months leading up to her trial and sentencing, she entered into counseling for substance abuse, upgraded her education and supported her family. At sentencing the judge noted that because Tanis did not live on-reserve, there were no special circumstances tied to her Aboriginal history that needed to be considered. However, under section 718.2(e) of the *Criminal Code of Canada* (CCC), her Aboriginal history should have been considered in sentencing. It is here that Tanis' case began its journey to the Supreme Court of Canada.

In 1999, *R. v. Gladue* became the Supreme Court of Canada's first test of section 718.2(e). The Supreme Court's decision reinforced the need and importance of applying this section of the CCC as a way of addressing the over use of incarceration in Canada and the over-representation of Aboriginal people in the Canadian prison system. Under section 718.2(e), judges are required to take into account all reasonable alternatives to incarceration for all offenders and the unique circumstances facing Aboriginal peoples.

Strengthening what was meant by the addition of this section to the *Criminal Code of Canada*, the Supreme Court of Canada noted in its original ruling in *R. v. Gladue* (1999), and later reinforced in *R. v. Ipeelee* (2012),¹ that Courts must, in sentencing, consider how colonization, the Indian Residential Schools and displacement from traditional lands and territories continue to translate into the dismal realities of Aboriginal peoples on- and off-reserve and consider these influences in their sentencing decisions.²

1. *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433, the Supreme Court of Canada.
2. The Supreme Court of Canada, originally in *R. v. Gladue* (1999) and reaffirmed in *R. v. Ipeelee* (2012): "To be clear, courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples."
—Justice LeBel writing for the majority in *R. v. Ipeelee* 2012.



residential school system keeping alive a fear in the minds of many young people and their parents and communities that they are always at risk of being “taken away.”

The same can be said of young people’s feelings about the connection between the justice and education systems. The link between these two systems arises when on-reserve youth — who have no choice but to leave their communities at the ages of 12-14 to attend high school in urban centres in the north — become overwhelmed and vulnerable by the separation from their support systems. In both situations Aboriginal young people are, for no other reason than being Aboriginal, placed in situations that increase their risk for coming into contact with the law.

Forum participants spoke about the lack of supports and services in their local communities and how this contributed to the living conditions that put community members at risk for involvement with the justice and child welfare systems. Given their stories about on-reserve poverty, food insecurity, poor quality of education, a lack of safe housing, few employment opportunities and geographic isolation, it’s easy to understand why they see the courts and the child welfare system as being little more than ‘nets’ that catch

children, families and community members who become harmed and left vulnerable by these impoverished living conditions.

Stories shared by young people about daily life on-reserve painted a vivid picture of why so many people from their communities end up before the courts accused of committing crimes or of being unable to parent their children. They spoke of how difficult life is on-reserve. They also identified ways systemic discrimination harms members of their communities and how stereotypes about Aboriginal peoples contribute to justice system processes that devalue Aboriginal traditions and culture. They felt there continues to play out the historic legacy of trying to ‘kill the Indian in the child’. Their thoughts are also reflected in the present day in the *Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (TRC) that uses the term ‘cultural genocide’ to describe this process:

“Cultural genocide is the destruction of a group’s reproductive capacity...the destruction of those structures and practices that allow the group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group. Land is seized

INCARCERATION OF ABORIGINAL PEOPLE

DISPROPORTIONATE RATES OF INCARCERATION

ABORIGINAL PEOPLE MAKE UP
4% OF THE CANADIAN POPULATION

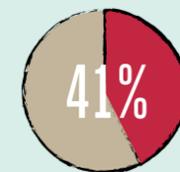


BUT 23.2% OF THE
FEDERAL INMATE POPULATION¹

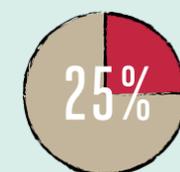


GENDER COMPARISON

IN 2010/2011,

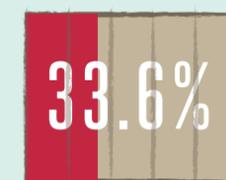


OF ALL FEMALES SENTENCED TO CUSTODY WERE ABORIGINAL



OF ALL MALES SENTENCED TO CUSTODY WERE ABORIGINAL²

ABORIGINAL
WOMEN
ARE MORE OVER-
REPRESENTED THAN
ABORIGINAL MEN
IN THE FEDERAL
CORRECTIONAL SYSTEM



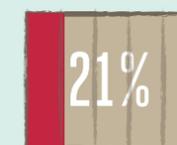
OF ALL
FEDERALLY
SENTENCED
WOMEN³

OVERALL

THE INCARCERATION RATE IS

HIGHER FOR
ABORIGINAL PEOPLE **10x** THAN NON-ABORIGINAL
PEOPLE⁴

ABORIGINAL PEOPLE ACCOUNT FOR



OF ADMISSIONS
TO REMAND

AND



OF ADMISSIONS TO
SENTENCED CUSTODY⁵

1. <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022info-eng.aspx?texthighlight=incarceration+rates+of+Aboriginal+peoples>
2. Ibid.
3. Ibid.
4. Ibid.
5. www.statcan.gc.ca/pub/85-002-x/2011001/article/11440-eng.htm#n10

THE STORY OF GLADUE THE ROOTS OF INJUSTICE

Like a plant placed in soil that does not feed and strengthen it, its roots grow weaker, wither and decay. Canada's Justice system is like that soil, it has a mix of colonization, racism, residential schooling, and violence. Aboriginal people represent the plant in the soil and the conditions of the justice system are strangling communities rather than strengthening them through the imposition of harsher sentences, lower rates of bail, lower rates of parole, over-incarceration and over-policing.



and populations are forcibly transferred and their movement is restricted. Languages are banned. Spiritual leaders are persecuted, spiritual practices are forbidden and objects of spiritual value are confiscated and destroyed. And, most significantly to the issue at hand, families are disrupted to prevent the transmission of cultural values and identity from one generation to the next. In its dealing with Aboriginal people, Canada did all of these things.”¹

WHERE IS THE CHANGE THAT IS NEEDED?

The slow moving pace of change in systems that claim to serve Aboriginal peoples in Canada frustrated young people. They see a lot of talk and little action taken by the ‘adults’ — Aboriginal leadership and government — to transform these systems. Young people want to see action taken to address the issues that contribute to the under-representation of Aboriginal peoples on jury, the over-policing and over-incarceration of Aboriginal peoples and the lack of policing support when Aboriginal peoples are the victims of crime.

The issue of over-representation is not new; it was addressed in the 1996 *Final Report of the Royal Commission on Aboriginal People* (RCAP)² and changes tied to sentencing for Aboriginal offenders in the *Criminal Code of Canada* in 1996 through provisions tied to section 718.2(e). Yet 20 years later, we are still talking about over-policing, growing rates of incarceration and the failure of the justice system to support and protect Aboriginal victims of crime.

1. Truth and Reconciliation Commission of Canada. (2015). *Honouring the Truth, Reconciling for the Future — Summary of the Final Report of the Truth and Reconciliation Commission of Canada*

2. Arising out of the Oka standoff in 1991, former Assembly of First Nations National Chief George Erasmus and Justice Rene Dussault led the Royal Commission on Aboriginal Peoples. They conducted hearings across Canada and were asked to offer recommendations on how to improve Canada's relationship with Aboriginal original peoples. The final RCAP report was released in five volumes in 1996 and contained more than 400 recommendations organized under the following headings: renewed relationships, treaties, governance, lands and resources, economic development, family, health and healing, housing, education, arts heritage.

This continuing over-representation was also highlighted in the Executive Summary of the Truth and Reconciliation Commission (TRC) report, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*.³ The TRC spoke to this crisis and the need for transformation, healing and reconciliation that fosters a new relationship between Aboriginal peoples and the justice system.

“Establishing respectful relationships also requires the revitalization of Indigenous law and legal traditions. It is important that all Canadians understand how traditional approaches to resolving conflict, repairing harm and restoring relationships can inform the reconciliation process.”⁴

3. Truth and Reconciliation Commission of Canada. (2015). *Honouring the Truth, Reconciling for the Future — Summary of the Final Report of the Truth and Reconciliation Commission of Canada*

4. Ibid.

THE NEED FOR GLADUE

Conversations at the forum returned repeatedly to young people's sense that contact with the justice system felt like an "us vs. them" struggle. Many believed that the justice system, including police, lawyers, judges, juries and correctional facilities targeted and punished Aboriginal people and treated them differently than non-Aboriginal peoples. They also felt that the reality of Aboriginal people's day-to-day struggle with poverty

"Despite the ravages of colonialism, every Indigenous nation across the country, each with its own distinctive culture and language, has kept its legal traditions and peacemaking practices alive in its communities."⁵

5. Ibid.



and social isolation gets distorted and turned into stereotypes about who Aboriginal people actually are. These stereotypes in turn feed into widely held beliefs that Aboriginal people are solely responsible for the living conditions in their communities and the circumstances of their lives, beliefs that are constantly "in their face." Young people spoke with sadness about seeing law-breaking as "survival crime", as acts of desperation that helped people cope with a level of poverty and living conditions that were described as "disgraceful." They felt most people in Canada would never survive the conditions of life on-reserve and yet this is what they face daily, as have their parents and generations of Aboriginal families in far too many communities for far too long. It is these living conditions filled with sadness, despair and lack of options that kill hope in communities and ends with high numbers of Aboriginal people before the courts.

Prior to attending the Feathers of Hope Justice and Juries forum, few participants were aware of the Gladue principles or section 718.2(e) of the *Criminal Code of Canada*. The more young people heard Gladue spoken about in workshop sessions, the better they were able to understand the links between the living conditions of Aboriginal people and the discrimination and poor treatment they received by police



and the courts. They felt that Gladue provided an approach to justice more respectful of Aboriginal traditions and culture.

Forum participants learned that limited resources, geographic distances and other conditions have a serious and negative impact on the delivery of justice system services in the north. Because it can take much longer to obtain a bail hearing or other court services in the north, an accused Aboriginal person might become so tired or frustrated from being locked up, or so afraid for their safety, that they plead "guilty" just to get out of detention. If they get into trouble while stuck in detention awaiting bail or trial, they could end up with more charges and a criminal record even if they were innocent of any wrongdoing in the first place or were able to win their original case. Sometimes their lawyer will advise them to plead guilty so they can get a lighter sentence and avoid jail. A desperate or scared accused person may unquestioningly go along with the advice or direction of a lawyer and 'plea out' rather than spend months in pre-trial custody waiting for bail or a surety the court will approve.

"We can't disentangle poverty, housing, education, addiction and employment from the law. If downstream improvement is to happen it needs to begin with building community capacity with these drivers."

6. www.cpac.ca/en/digital-archives/?search=Marie-France+Kingsley%2C+Director+of+Investigations+with+the+Office+of+the+Correctional+Investigator+of+Canada%2C+discusses+the+findings+and+recommendations+of+a+Special+Report+tabled+in+Parliament+entitled+%22Spirit+Matters%3A+Aboriginal+People+and+the+e+Corrections+and+Conditional+Release+Act.%22

BIRTH OF GLADUE

Justice Patrick Sheppard at Old City Hall Court approached Aboriginal Legal Services of Toronto (ALST) (Jonathan Rudin and Kim Murray) about starting a court for Aboriginal people. He met with three other judges, Jonathan Rudin, Professor Kent Roach and court workers to talk about what could be done. One year later, in November 2001, the first Gladue court opened at Old City Hall (OCH).

The guiding vision behind the project was that if judges, lawyers, court staff and support workers with insight about Aboriginal peoples and understanding of the Gladue principles could be brought together in one place, then the process of seeking justice could be transformed for the benefit of Aboriginal people.

In addition to bringing in court workers from ALST, there was a focus on ensuring that judges were well-informed about every Aboriginal accused person that was before the court. A central guiding principle was that judges needed to have the right kind of information in front of them to make culturally appropriate and well-informed bail or sentencing decisions, so a decision was made to hire someone to write reports that could be given to the judge at the time of sentencing. These documents came to be known as Gladue Reports. The first Gladue writer hired for OCH was Mandy Wesley (nee Eason).

When it first opened the Gladue Court at OCH operated two afternoons per week; it continues to operate two days per week. Five additional Gladue Courts have now been added. A court sits for two days per week at College Park and one day per week at two other courts in Toronto. There is also a one day per week youth Gladue Court held at 311 Jarvis street. Gladue Courts also operate in Brantford and London and a program in Sarnia, though currently closed, may soon restart. There is a need for Gladue courts in Thunder Bay and Ottawa.

An accused cannot just ask to have their case held in a Gladue Court. Charges must be tried in the jurisdiction in which they happened. Consequently, there are many communities across Ontario where Aboriginal people cannot access a Gladue Court. So, while all Aboriginal people in Ontario are entitled to have the Gladue principles applied to their case, not all have equal access to the service. There is a high need to expand on and resource Gladue Courts so Aboriginal people across the Ontario have access to them.

THE PROMISE OF GLADUE

Learning about Gladue gave many forum participants hope that change was possible and that a dialogue had started between Aboriginal people and the justice system. If the Supreme Court of Canada could recognize the historic inequities and the harm caused to Aboriginal people by colonization, the Indian Residential Schools and displacement from traditional lands and territories then there was potential for the Gladue principles and courts to be fully applied in Ontario, and across all of Canada, as a first step in transforming Ontario's and Canada's justice system and its relationship with Aboriginal people.

The Supreme Court's directive to apply the Gladue principles in sentencing, combined with what has become a powerfully influential Ontario driven approach to applying the principles through designated Gladue courts, has created a model/method for delivering justice to Aboriginal people. With assistance from the champions in workshop sessions, the young people at the forum were able to obtain a deeper understanding of the workings of the court system and where Gladue fit in. They were pleased to learn that judges have tools available to offer them information about the Aboriginal person they are about to send to jail/prison. This tool, a Gladue Report, digs deep into the history of the person, their family and their people and focuses on how racism, discrimination, colonization and the Indian Residential School system, has over time impacted their community, their family and finally the person being sentenced.

As noted in *Feathers of Hope: A First Nations Youth Action Plan*⁷, for lasting and meaningful change to take root in the justice system, government must involve support services at the local community level. It must also ensure that the system and related support services are anchored in a language of healing using traditional approaches to justice that are known to actually work for Aboriginal people and their communities. In Ontario, the application of Gladue looks promising, at least on the surface.

Participants also learned that the Gladue decision provided a basis to inform the legal education and training of lawyers and court system staff and helped them recognize that there are cultural assumptions and beliefs embedded in the justice system that place Aboriginal people at risk of harm. This culturally informed approach to legal training and education creates awareness of the fact that being an Aboriginal person in Canada often means living a life of poverty, abuse, limited education and employment opportunities, addiction and inequitable levels of support services. The Gladue principles provide justice system staff with tools to move beyond over-simplified ideas of assigning fault and blame to Aboriginal offenders and see how government policies

7. Office of the Provincial Advocate for Children and Youth. (2013). *Feathers of Hope: A First Nations Youth Action Plan*. Toronto, ON. OPACY.

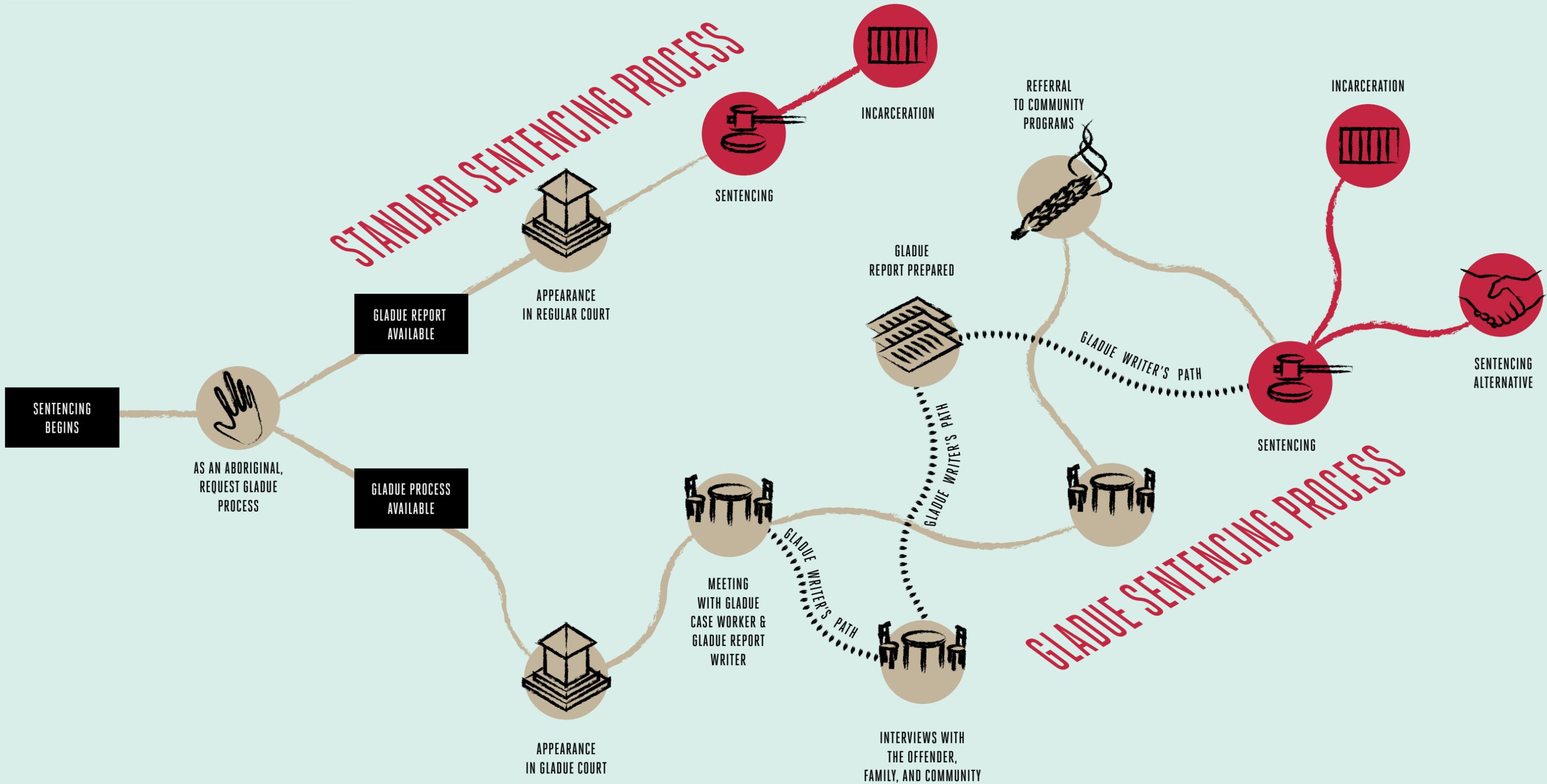
THE STORY OF GLADUE THE PROMISE OF GLADUE

The case of *R. v. Gladue* offered the promise of addressing unequal treatment by the justice system through a set of processes that would reduce incarceration. The case started a journey toward healing for Aboriginal people. In the case of the flower, this is reflected as nurturing the soil as a first step to strengthening the roots.

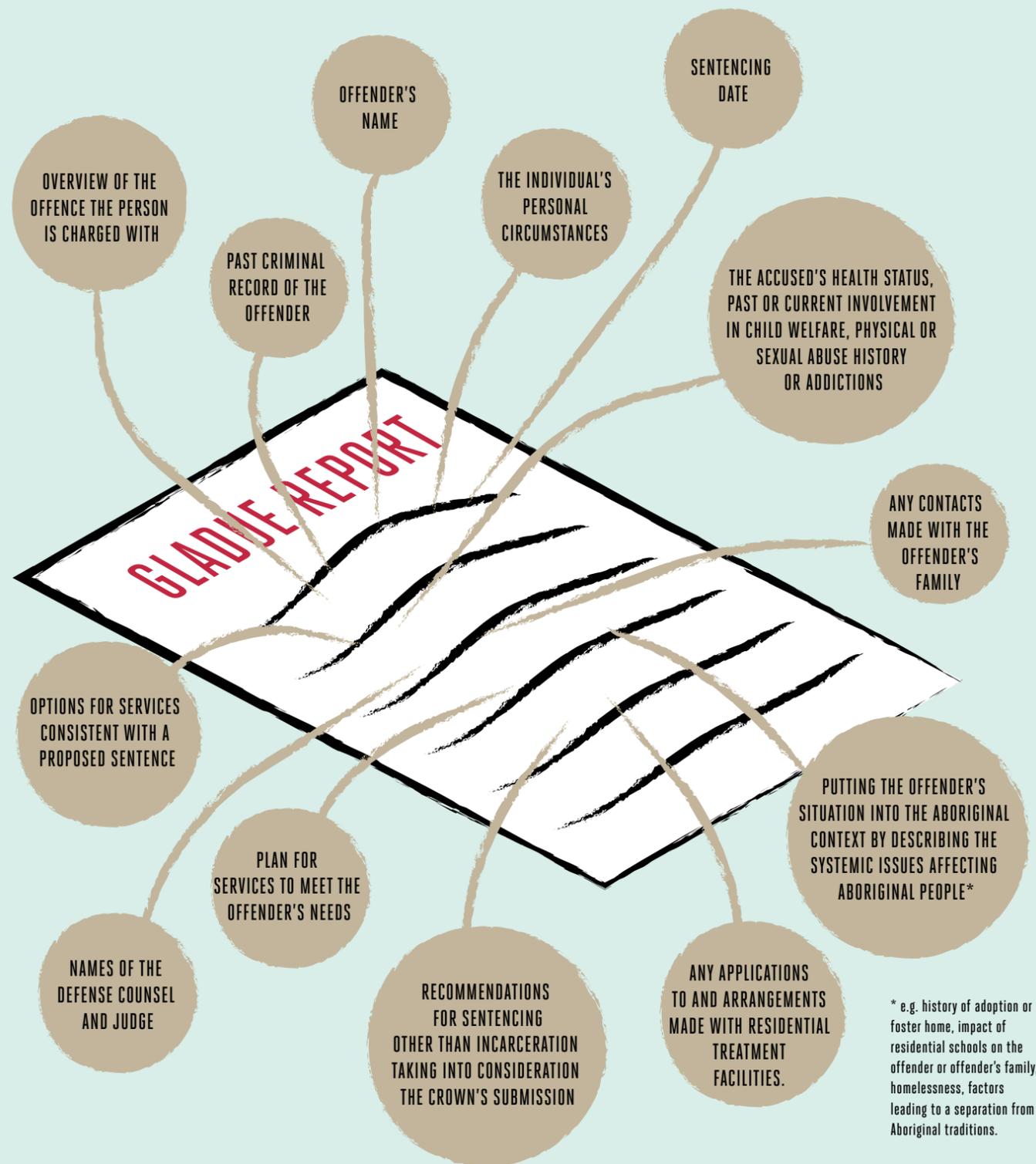


SENTENCING PROCESS

STANDARD SENTENCING PROCESS



CONTENTS OF A GLADUE REPORT



"In most remote communities there is no fairness in the judicial system. We do not have proper court proceedings, court houses, nor are we given time and enough days to deal with our trials. A one day visit from the judge and legal team is not enough time for a fair process. It leaves us with many delays which causes more problems."

- FORUM PARTICIPANT

"I've heard stories of some lawyers pushing their clients to plead guilty because [the lawyer] gets paid out faster and it's less work for them."

- FORUM PARTICIPANT

have created social conditions that place Aboriginal peoples at greater risk for coming into contact with the law. In turn, awareness of these policy created social conditions becomes a way to challenge the stereotypes in society that make people believe Aboriginal people are alone responsible for these conditions. As these stereotypes fall away, their ability to negatively affect the thinking of jury members at a trial or at an inquest diminishes.

The Gladue principles advance a way to create a court system and an approach to justice that is tied more directly to Aboriginal culture and traditions. Forum participants felt that a court where Gladue principles were at the centre of the justice and jury process would be seen as less intimidating and less overwhelming by local Aboriginal communities. The vision for a provincial and national justice and jury system approach tied to the Gladue principles and court system is seen as one of the most powerful ways to begin the transformation of the justice system and increase the numbers of Aboriginal people willing to sit on juries.

SUPPORT TO IMPLEMENT GLADUE

Young people at the forum learned that Gladue applies to the *Youth Criminal Justice Act* (YCJA). They also talked about the need for judges to respect cultural and language differences among Aboriginal peoples and to respond "with particular attention to the circumstances of Aboriginal young persons [and consider] all available sanctions other than custody."⁸ The community conferencing provisions of the YCJA note that those administering the Act must "prevent crime by addressing the circumstances underlying a young person's offending behaviour."⁹ Community conferencing provisions must ensure that a thorough understanding of these underlying circumstances are applied to sentencing and release options the courts put in place, specifically extrajudicial measures, conditions for judicial interim release, sentences, the review of sentences and any reintegration plans.

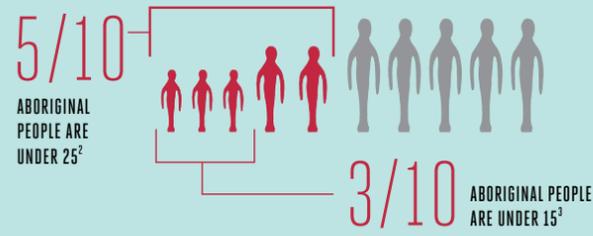
8. *Youth Criminal Justice Act*, (s. 38(2))(d).

9. *Ibid.* (s.3(1)(a)(i)).

ABORIGINAL YOUTH STATISTICS

Population projections released by Statistics Canada in 2005 show that Aboriginal people will account for a growing share of the young adult population over the next decade. If living conditions on-reserve remain the same, there will potentially be even larger numbers of Aboriginal people forced onto the margins of Canadian society.

GROWING NUMBERS



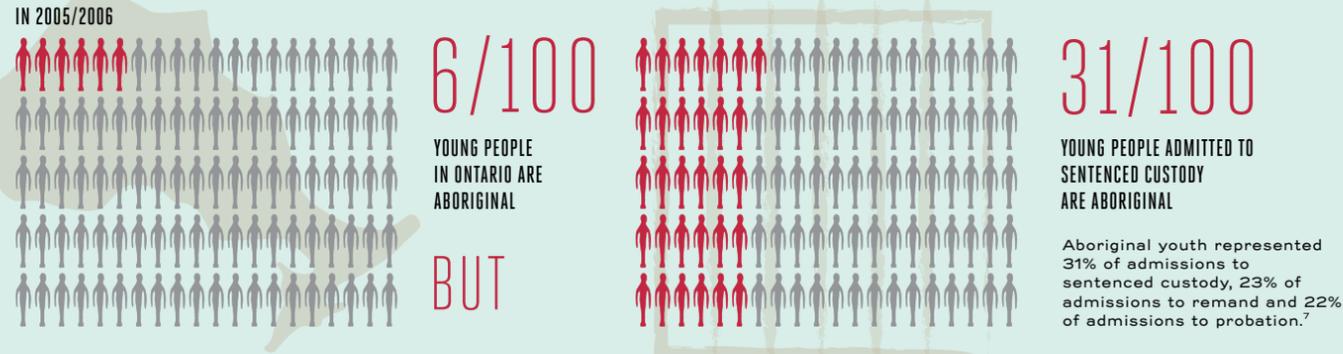
Young people under the age of 25 are the fastest growing segment of the Aboriginal population in Canada.¹

OVERREPRESENTATION IN JAILS

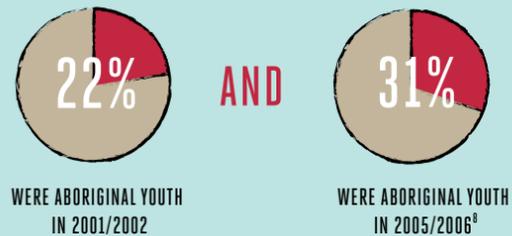


INCREASE IN SENTENCING OF ABORIGINAL YOUTH

Under the YCJA: *Youth Criminal Justice Act* (YCJA), the number of youth sentenced to custody has decreased since 2003. An examination of selected years of data for 11 jurisdictions shows that proportionally, Aboriginal youth admissions to custody have been increasing since 2001/2002.⁶



INCARCERATED YOUTH ADMITTED TO CUSTODY



Attention also needs to be paid to the bail system with respect to Aboriginal young people, particularly females. Statistics relating to the over-incarceration of Aboriginal youth to remand are alarming and there is evidence to demonstrate that these young people are being discriminated against by the bail system.⁹



1. Statistics Canada. (2008). *Aboriginal Peoples in Canada in 2006: Inuit, Métis and First Nations, 2006 Census*. Ottawa, ON: Statistics Canada.
 2. Ibid.
 3. <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022info-eng.aspx>
 4. www.thestar.com/news/insight/2013/03/01/unequal_justice_aboriginal_and_black_inmates_disproportionately_fill_ontario_jails.html
 5. Ibid.
 6. <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022info-eng.aspx>
 7. Ibid.
 8. Ibid.
 9. Statistics Canada. (2008) "Youth custody and community services in Canada, 2005/2006.", *Juristat*. Vol. 28, no. 8. Statistics Canada - Catalogue no. 85-002-X. Ottawa.

THE STORY OF GLADUE THE REALITY OF GLADUE

The reality of applying the Gladue principles is that it is limited and only addresses the symptoms of the problem rather than healing its roots. The ancestors are reaching out to help, but communities are still suffering, and in some ways suffering more, because Gladue does not address the roots of injustice.





THE LIMITS OF GLADUE

According to the champions at the forum, even though the Gladue principles have been available for the courts to apply for 20 years, they are not being used consistently. Young people also heard that there is concern that Legal Aid lawyers are not being given enough hours to prepare thorough Gladue submissions. Sentencing submissions made by lawyers are not Gladue reports.

If judges are to make appropriate and reasonable decisions tied to sentencing, they need to hear sentencing submissions from counsel. This means lawyers need to know what options and resources are available as alternatives to incarceration. It also means lawyers need more than the 5 hours approved through legal aid to prepare these submissions. And, even though Aboriginal people share a history of

colonization, the Indian Residential Schools and displacement from traditional lands, it doesn't mean every person is affected in the same way. That is why Gladue report writers have a specific skill set and they are able to link the historic and present issues faced by Aboriginal people with the impacts these have had on the Aboriginal person before the court. An Aboriginal person has to be seen as an individual, someone with a unique story and life circumstances that the court needs to understand in order to make meaningful sentencing decisions.

A point was raised in discussions at the forum that probation officers shouldn't be responsible for preparing Gladue reports because it would put them in a position of having a conflict of interest. The conflict stems from the fact that you can't be involved in making sentencing recommendations to the court if it is your job to supervise the convicted

person's compliance with those recommendations in the community. It makes more sense to use Aboriginal Gladue writers who are specially trained, who can write well and who have nothing to do personally with the case to prepare the report.

While they recognized how the Gladue principles could help the justice system meet some of the needs of Aboriginal individuals, forum participants understood that problems such as racism and bias that are deeply rooted in the system and in wider society would persist. Discrimination would also continue to entrench Aboriginal people on the margins of society and leave them at risk of coming into contact with the law. They realized that the root causes of Aboriginal people's marginalization were multiple and many and Gladue, though helpful, still kept the focus of interventions on the individual.

Mention was made of the desire to see more effort and resources directed toward addressing the links between being placed in child welfare care and later involvement with the justice system. Participants also wanted more action taken to address the legacy issues and impoverished living conditions in communities and urban settings that contributed to Aboriginal people coming into contact with the law in the first place. Implementing Gladue on its own would not help change these conditions.

GLADUE AND BAIL

Forum participants heard that Aboriginal people accused of a crime are more likely to be denied bail and are overrepresented in the number of people in remand custody.¹⁰ This same finding was noted in the Aboriginal Justice Inquiry of Manitoba conducted more than 20 years ago.¹¹

They learned that bail, also known as “judicial interim release”, means being released from custody while awaiting

10. *R vs. Summers*, 2014 SCC at paragraph 67, as cited in, Rogin, J. (2016). *The Application of Gladue to Bail: Problems, Challenges and Potential*. Unpublished Master's thesis. Graduate Program in Law, York University, Toronto, Canada

11. Aboriginal Justice Implementation Committee. (2001). *Final Report of the Aboriginal Justice Inquiry of Manitoba*. Winnipeg, MB. AJIC.

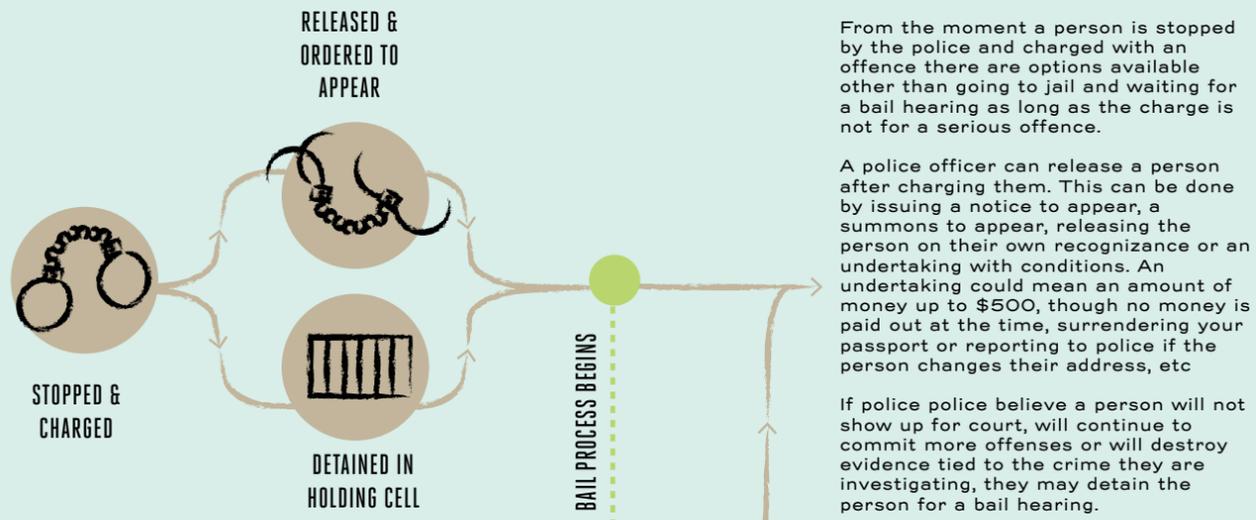
trial or sentencing. The granting of bail is tied to what the justice system refers to as the “presumption of innocence” and is only denied when the court has serious concerns that a person charged with an offense will not show up for court or appears to be a serious risk to others, the community or public safety. What is not widely understood is that, at the community level, police play a big role in the bail process through the use of ‘orders to appear’ or a ‘summons’. Essentially, police have the power to release a person charged with an offence other than a crime noted under section 496 of the *Criminal Code of Canada*. This section deals with offences like murder, treason and piracy.¹²

Forum participants were informed that the granting of bail must begin with a ‘presumption of innocence’ because at this early stage of the legal process a person has only been charged with — but not found guilty of — a crime. They also heard that while the Gladue principles were designed specifically for purposes of sentencing, their focus on understanding the background or ‘context’ of peoples’ behaviour should be more broadly applied, especially to police-determined releases and bail hearings.

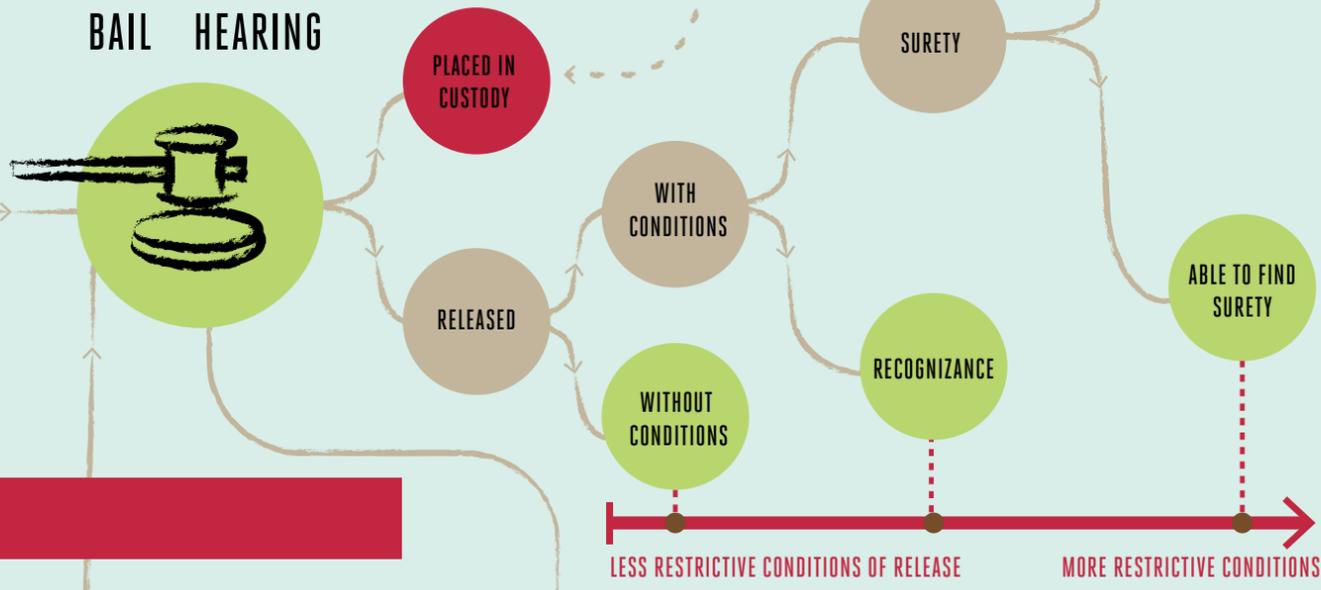
Opinion was expressed at the forum that the meaning of bail has become distorted and is now less about the presumption of innocence and more about ensuring a ‘surety’ is in place for the accused. Basically, the role of a surety is to monitor the bail conditions imposed by a judge. These conditions can include getting counseling or other treatment in addition to ensuring the person attends court. Unfortunately, the conditions of bail can also lead to increased risk for acquiring new charges or being incarcerated if they stretch beyond the context or circumstances of the alleged crime. Harsh or unrealistic bail conditions, or even any conditions, connected to receiving bail can create the impression that an Aboriginal person is guilty and needs close watching or monitoring in the community. In fact, imposing harsh or unrealistic conditions creates the impression that bail is about punishing and criminalizing the Aboriginal person

12. The actual language of Section 496 of the CCC states: Where, by virtue of subsection 495(2), a peace officer does not arrest a person, he may issue an appearance notice to the person if the offence is (a) an indictable offence mentioned in section 553; (b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction; or (c) an offence punishable on summary conviction.

PRE-BAIL PROCESS: THE THEORY



BAIL HEARING OUTCOMES

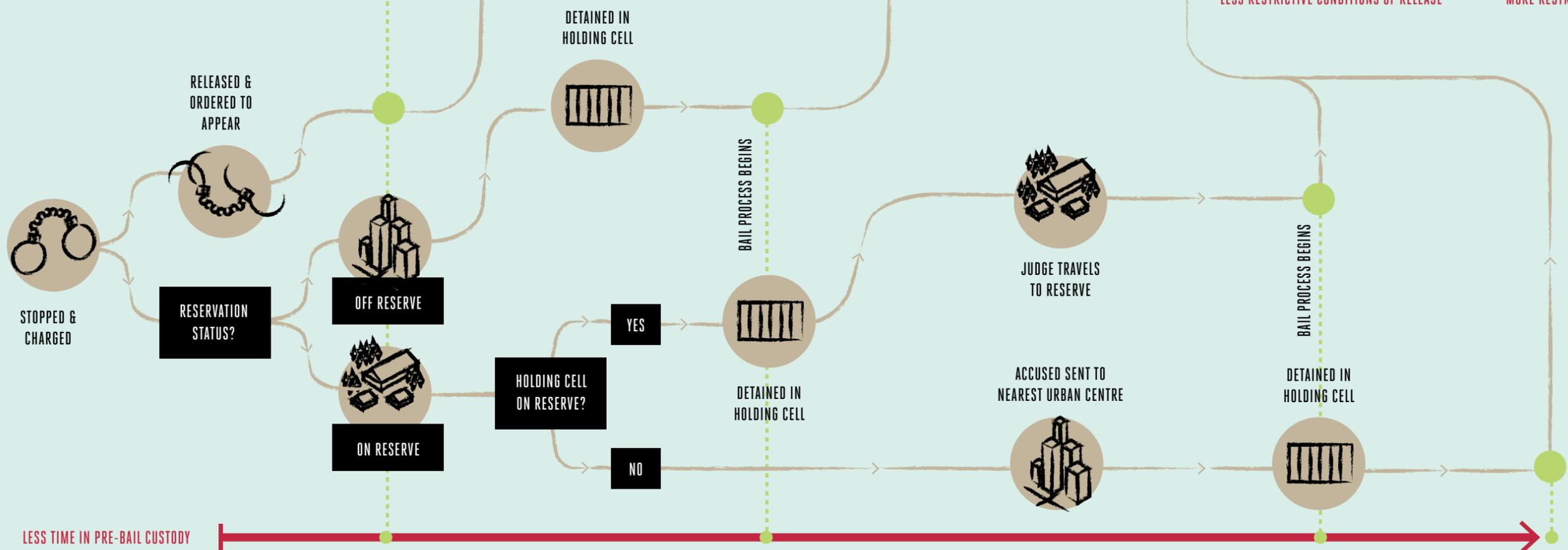


If the police take the person into custody, the person has to have a bail hearing before a justice or judge within 24 hours or as soon as possible.

At the bail hearing there are a number of things that can happen. Judges have a number of options available to them. They can release the person with conditions that may include a curfew, not being with others involved in the offence. With surety meaning someone agrees to be responsible for the person charged with the offence, this can also involve the surety having a money amount tied to the release.

At the heart of this decision making is that the person appears at court and that only in the most serious of offences will someone not be released on bail.

PRE-BAIL PROCESS: THE REALITY FOR ABORIGINAL PEOPLE



Key Terminology

SURETY
A **surety** is someone who agrees to take responsibility for a person accused of a crime. In some cases the surety assumes responsibility for the supervision of the person once they are released by the court. In some cases the surety may be asked to provide a money amount, on paper, that assures the court the person will appear at court.

RECOGNIZANCE
A **recognizance** is a promise that an accused person makes to abide by the conditions that are made by a police officer or justice or judge.

rather than presuming their innocence and ensuring their attendance at court for their trial.

Examples of harsh or punishing bail conditions have been observed frequently by forum champions with experience working in the justice system; for example, setting the amount of bail so high that the person or their family can't afford to pay it. The amount doesn't even have to be that high given the widespread prevalence of poverty that exists in Aboriginal communities. In other cases the choice of surety is unrealistic because the person may be unable to get help with family responsibilities so they can attend court. In some cases family or friends can't afford to travel to court to sign the surety. In cases like these, the accused could be stuck in detention until the date of their trial, doing something that is referred to in the system as 'dead time'. In dead time the person doesn't get any support or assistance with the problems that may have brought them into contact with the law in the first place. Also, sitting idle in detention they might get into conflicts with other detained persons or be assaulted or picked on because they are Aboriginal. If they fight back they can be charged with assault and receive more charges.

GLADUE AND 'NET-WIDENING'

Forum participants heard that for all the good intentions behind applying Gladue principles in the justice system, there are times when they can inadvertently lead to unexpected and harmful consequences for an accused Aboriginal person. For example, once sentenced or incarcerated, the unique factors of an Aboriginal person's life used in determining an alternative sentence (and contained in their Gladue Report) can sometimes be used to deny them parole or remission.¹³

For an Aboriginal person with a conditional or community sentence, unique circumstances of their life identified in their Gladue Report can also contribute to 'net-widening'.¹⁴

13. <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022in-fo-eng.aspx>

14. Pelletier, Renee. (2001). The Nullification of Section 718.2(e): Aggravating Aboriginal Representation in Canadian Prisons. *Osgoode Hall Law Journal*, Volume 39, Number 2/3 (Summer/ Fall 2001) Mandatory Minimum sentencing in Canada (pg. 470-489)-



Net-widening happens when an accused person receives more charges or other legal sanctions than they started with. For example, under section 742.1 of the *Criminal Code of Canada*, a conditional sentence to be served in the community can be imposed by the court but end up being longer than one that would be served if the person was incarcerated. This happens when conditions of the sentence are not realistic or so restrictive that they set an Aboriginal person up for failure. For example, a violation or breach of conditions like "cannot be in possession of alcohol or intoxicating substances" or "cannot be in possession of fire arms" may be unrealistic if the person has no access to addictions treatment or lives in a community/home where firearms like a rifle is a survival resource and needed for hunting or survival when on the land. When a breach of a conditional sentence happens, the court can make the person serve the

Pelletier highlights the application issues tied to 718.2(e) and the use of 742.1 Community/ Conditional sentencing) and the resulting impacts tied to over incarceration of Aboriginal people.

remainder of their sentence in prison. These 'breaches' can increase the length of a sentence or lead to more charges.

Once an individual is incarcerated, either as part of an original sentence or the result of a breach of a conditional sentence, the Gladue principles can become the basis for administering punishment, thereby defeating their purpose as a culturally meaningful sanction.¹⁵ The risk factors presented in court through the preparation of their Gladue report can then be used by correctional services to develop a rationale for denying them early release and parole. This happens because the issues of inequity that the Gladue process is meant to address highlight life circumstances that corrections staff feel increase the person's risk of re-offending. Consequently, Aboriginal inmates become less likely to benefit from early release and parole and more likely to serve their full sentences.

15. Harry LaForme. Osgoode Hall Symposium. Panel Discussion: *Aboriginal Justice: Post Gladue*. April 11, 2015.

FINAL REFLECTIONS

Interest in the Gladue principles among forum participants was high. Young people felt that applying them system-wide was a good start to help transform the system and would help create a more culturally meaningful and relevant process for Aboriginal people seeking justice. However, disappointment was expressed that Gladue was not being more widely used along with acknowledgement that the principles focused on Aboriginal culture but did nothing to alter structures or processes in the administration of justice that continue to contribute to the over-representation of Aboriginal peoples in the system. Of further concern was the fact that the focus of Gladue was on the individual and did nothing to change the larger social, systemic and legacy issues Aboriginal people have to confront in their daily lives. There was strong opinion that Aboriginal people continue to be on the receiving end of a model of justice that punishes "Indians" for not being like everyone else.

SUMMARY OF RECOMMENDATIONS

GLADUE

- 1. The Ministry of the Attorney General must ensure that Gladue courts are available in courthouses across Ontario, that all Gladue courts are called Gladue courts, and that individuals who identify as Aboriginal who are charged with an offence have access to a Gladue court if they wish. It is important that all persons charged with an offence be told about Gladue court as many Aboriginal people do not self-identify and even fewer know what Gladue courts do.**
- 2. The Ministry of the Attorney General must ensure that Aboriginal Diversion Programs are available in all communities as a way of ensuring there are real alternative options to incarceration in place for Aboriginal people.** The absence of Aboriginal Diversion Programs result in accused Aboriginal persons going to jail for offences that had they been committed in a city like Toronto, where diversion programs are in place, could have been diverted and dealt with by a community council.
- 3. The Ministry of the Attorney General must ensure that all fly-in courts in remote communities are the first to benefit from the addition of new resources tied to addressing the lack of training specific to judges, lawyers, crowns, court personnel and diversion programs.**
- 4. The Ministry of the Attorney General must ensure that the Gladue decision, case law and principles, along with the process and content for establishing and operating Gladue courts, must be required training for all sitting judges and court personnel. The Ministry must require more rigorous training and requirements for criminal lawyers to represent Aboriginal people and hold law societies and Legal Aid responsible for ensuring mandatory training for all lawyers who have Aboriginal clients.**
- 5. R v Gladue and the related principles and case law must be mandatory training for all judges and court personnel including even those not working within the Gladue courts, as Aboriginal people will appear in non-Gladue courts.** Many crowns sitting in Gladue courts are not aware of the principles. This training should at a minimum be either over two half-days or one full day session.
- 6. The Ministry of the Attorney General must conduct a full evaluation of existing Gladue Courts** to ensure the principles and all promising practices are consistently applied and that steps are taken to ensure



these courts continue to grow and benefit from ongoing evaluation. This review must move beyond the number of Aboriginal people convicted of crimes/prosecution records and must address the factors bringing Aboriginal people before the courts and the vision, goals and outcomes of the Gladue courts. A first step should include seeking insight and guidance from those who were part of creating the first Gladue court.

- 7. The government of Ontario must begin applying the Gladue court model of practice to child welfare matters** and create individualized reports, like the Gladue reports, considering the historic trauma and history of Aboriginal peoples before making decisions tied to bringing children into a care system that will take them away from their families and communities.
- 8. The government of Ontario must expand the number of Aboriginal Legal Service organizations** and support the creation of legal clinics across the province for Aboriginal people involved in the criminal justice system or matters pertaining to child welfare, family law, poverty or human rights. Many people who are working part time, minimum wage jobs make too much to qualify for legal aid, but not enough to afford to hire a lawyer. In many cases these are the people who plead guilty instead of going to trial. This adds to the increasing rates of incarceration of Aboriginal people.



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OF HOPE





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YOUTH MOVEMENT



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