

**Summary Report
Indigenous Courtwork Program
Dialogue Sessions on the Criminal Justice Findings of the
National Inquiry into
Missing and Murdered Indigenous Women and Girls
held on December 4 and 11, 2020**

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The Native Courtworker and Counselling Association of British Columbia hosted two community dialogue sessions with Indigenous Courtworkers, one on December 4 and one on December 11, 2020, as part of a national process initiated by the Department of Justice Canada and carried out by a Métis contractor, Celeste McKay Consulting Inc. The process is designed to hear the perspectives of Indigenous community justice workers about the findings and Calls for Justice of the National Inquiry on Missing and Murdered Indigenous Women and Girls.

The sessions hosted by the Native Courtworker and Counselling Association of British Columbia brought together Indigenous courtworkers and other justice workers from across Canada. There were 21 participants in the December 4 session and 26 participants in the December 11 session. In addition, Celeste McKay conducted two one-on-one phone interviews with courtworkers from Nunavut. Two of the participants also provided detailed responses to an online survey.

The agenda was co-developed by Native Courtworker and Counselling Association and Celeste McKay Consulting Inc. During the session, Celeste McKay presented a brief summary of the history of the Inquiry, its overall approach to addressing issues of gender violence and missing and murdered Indigenous women and girls, and some of the Inquiry's key findings and Calls for Justice. The following themes were discussed as a group:

- The Impacts of COVID-19;
- The Experience of Participating in the National Inquiry
- Victim and Survivor Supports and Services;
- Policing and Community Accountability;
- Courts, Indigenous Justice and Restorative Justice; and
- Sentencing.

The Impacts of COVID-19

Participants shared their experience that the COVID-19 pandemic has caused an increase in mental health and addiction issues, domestic violence, homelessness, and child apprehension. COVID-19 has also had a large impact on access to services. For example, with more and more courts working remotely, Indigenous people have less access to face-to-face supports. One participant noted that Canadian Emergency Response Benefit (CERB) payments have increased the tax levels of some clients such that they do not qualify for Legal Aid anymore. This has led to increased self-representation, with some defendants placing greater dependence on the services of courtworkers as they try to negotiate the court system without a lawyer.

Several participants said that further increases in already high workloads means that some courtworkers are burning out. There was an effort to recognize Native courtworkers as essential workers during COVID-19 given the important service they continue to provide in British Columbia (B.C.). However, this did not take place.

Experiences with the National Inquiry

Participants acknowledged the importance and necessity of the National Inquiry but also expressed concern and frustration about how it was carried out. A number of participants said that they have relatives who testified. One participant provided video testimony of their own. These experiences varied. For some, it was a very positive experience, where they appreciated the opportunity to be heard. For others, it was a traumatizing experience. Travelling to participate in the Inquiry was very expensive. Participants in the dialogue session said there was a lack of planning, capacity, and support. One person experienced having to extend their time away from home, away from their traditional lifestyle, because the schedule for them to provide testimony was changed. There was also insufficient preparation to help people with the fallout from the Inquiry. Participants said there were witnesses who relapsed; that there was an increase in addiction and suicidal tendencies. While the Inquiry produced a lot of needed information, it also caused some damage. The Inquiry had good intentions, but it also caused harm.

One participant felt that the Inquiry never satisfactorily answered the question of the factors that led to the deaths of Indigenous women and the mishandling of the police investigations. The report focused primarily on what should happen moving forward. Another participant noted that a shortcoming of the Inquiry was that it did not look into the violence perpetrated by police officers.

The Native Courtworker and Counselling Association of British Columbia has produced a publication called “A Woman’s Right to Be Safe,” published in honour of murdered and missing Indigenous women. A staff person made a personal presentation to the Inquiry, at which time they presented this publication. It sets out measures to improve the safety of Indigenous women in B.C. Discussing the Inquiry, one of the participants said that while the events of the past cannot be changed, it is important to create positive change so that the same things do not continue to happen to vulnerable women. Unfortunately, as many of the participants noted, the recommendations often go unimplemented.

Victim and Survivor Supports and Services

Participants expressed their frustrations with supports available through Victim Services. One participant stated that victims and survivors should have access to supports that are culturally-safe and tailored to their needs. The current system simply matches victims to any support worker available without necessarily considering how well that support will meet their needs. For example, one client was paired with an older man in his 60s. The client was uncomfortable with the pairing because of her past experience, and so she did not return to continue the process. Participants said this is a common experience.

Participants said Victim Support processes should take a decolonized approach in which the needs of victims are understood from the perspective of Indigenous culture, law and traditions. For example, victims should be able to bring anyone with them who they consider family rather than being limited to choosing someone from their immediate biological family. This would be more in keeping with Indigenous kinship systems and more respectful of the circumstances of Indigenous victims of crime (i.e., they may not have as close a relationship with members of

their immediate biological family due to the impact of historical influences, such as residential schools and the 60s Scoop).

Another participant stated that there are not enough First Nations, or more generally, Indigenous Victim Services workers. This is of particular concern because non-Indigenous workers often have no training in cultural sensitivity, and they are disconnected from the realities of First Nations communities. One participant noted that many of the people working in Victim Services are from an older generation who have not had much education about Indigenous peoples and do not know a lot about crucial issues like the Residential School System.

One participant, who used to work in Victim Services with the Royal Canadian Mounted Police (RCMP), stated that there was nothing in the training specific to Indigenous peoples. This participant also said it would be beneficial to have specially-trained support workers available to assist Indigenous women throughout the whole court process.

A number of participants emphasized the need for both greater education at the community level about how the Canadian justice system works, as well as supports for revitalizing and restoring the systems of law and community safety within Indigenous communities. Some described how Indigenous youth, in particular, are caught between a foreign system of law and order represented by the police and courts and the erosion of Indigenous laws as a result of colonialism.

Victims should always have access to services in their own language. It can be very intimidating to seek help if English or French are not your first language. Victims cannot be appropriately supported if their language, who they are, and where they come from is not understood.

While it is important for Elders to be involved in supports for victims, one participant noted that parenting roles and skills have changed over the years. The younger generation tends to be more aggressive, and some grandparents are scared of their own children and grandchildren. This can be an important factor in whether Elders are able to provide the support that victims need.

Participants emphasized the importance of Indigenous-led services for victims. One participant gave an example of a victim who was inhumanely shackled while testifying against her offender. Further, she received no support while testifying. The criminal justice system is more focused on the offender and the trial than on the victim as a person.

One participant pointed out that there is a lack of access to counselling for victims after trials have concluded. Victims might be re-living their trauma, especially since defence lawyers may bring irrelevant information during trials that re-victimizes the victims. Victims should be supported at every stage of the process, including the beginning. Supporting victims at the end is not sufficient. One participant wondered if the Family Information Liaison Units might be best placed to play such a role.

Another participant mentioned the high rates of suicide in their community; there have been 13 suicides in the last year. The combination of suicides and alcohol use leads to a lot of deaths and murders. A large number of Indigenous youth who grow up under the care of the Minister of

Children and Family Services, without family or community, end up on the streets or involved with the criminal justice system. Participants also talked about the impact of discrimination against 2SLGBTQQIA youth. One participant stated that although members of the 2SLGBTQQIA community were initially not accepted, there has been greater acceptance in the past 10 years. Participants also said there should be more support in remote communities in building relationships between the youth and Elders.

In Northern communities, another problem is the lack of cell phone towers. It can be dangerous when travelling on remote isolated highways without cell service, especially for women. The internet service is also inadequate and prevents access to online services and resources.

Participants also raised concerns about the presence of large work camps near many Northern communities and the impact they can have on community safety. For example, workers coming in to work on pipelines leads to increased male presence. One participant said that they have noted the increased vulnerability of women in this situation because the men tempt the women with money, and it usually ends badly for the women and girls. The RCMP does not seem able to deal with that specific issue effectively.

One participant said that the criminal justice system can be too slow, and sometimes people give up, which can lead to death, suicide, or murder. This is especially relevant in cases of violence against women and domestic violence. There should be public education programs about how the law works and how people can get help when they need it.

A participant stated that there is a big disconnect in the quality and availability of victim services between rural and urban centres. Rural and remote communities barely have any victim services. They may not have any courtworkers or police available in the immediate vicinity, and it is pointless when the police are three hours away. Getting appropriate referrals in rural centres is a challenge. More generally, it was noted that advocacy on behalf of victims can only be successful if there is cooperation and sharing of data. Unfortunately, authorities do not readily share data.

Participants commented on the on-going problem of funding insecurity. Programs end up in a cycle where they start and stop again because the funding programming has been cancelled. One participant said, “We put a lot of effort into applying for government funding; we put a lot of effort into making sure our programs work; but the government programming is always short-term.” They said that people just start to become aware of a service, just start to trust in the service, “and then they [the government] take it away.” One participant raised concerns that there has been an increase of non-Indigenous people claiming to be Indigenous, thereby further depriving Indigenous peoples of appropriate resources.

Participants discussed the growing gaps in services in some urban areas. For example, one participant talked about the growing homeless population in Montreal and the lack of services and resources to meet the needs of urban Indigenous clients. One client who does not have arms and legs has remained in the streets because none of the shelters are accessible. Indigenous people still face significant hurdles and discrimination in renting. Some landlords will not rent directly to Indigenous people, which means that in order to rent, they must go through an

organization that is willing and able to take responsibility. A client who is blind tried to rent an apartment, but when she met the landlord, the landlord told her the apartment was already rented. She had someone else call later that day, and the landlord said that the apartment was still available. This type of overt discrimination must be addressed.

Participants took note of some of the specific challenges around homelessness and provision of emergency shelter in small and rural communities. They gave the example of victims going to shelters where friends or family of their abusers are also staying.

Participants agreed that frontline workers need more support and resources. Frontline workers are burning out because of the extreme stress they are under. Some participants said that they experience disrespect and discrimination in their jobs. One participant said that when they go to work, they have to wait for the Sheriffs to let them in, no matter the weather conditions. One morning, a client walked up and told them, “they treat you like they treat us.” They said that in the justice system, clients are sometimes not treated as humans, and courtworkers are also sometimes not treated as humans or equals.

A number of positive developments and initiatives were discussed. For example, there is a new program called *Youth around Prince George (YAP)* for LGBTQ youth. The program includes counselling and parenting programs specifically for Two-Spirit people.

Participants raised examples of how Indigenous communities are trying to assume greater control over community safety. One participant mentioned that First Nations communities in the Brandon, Manitoba, area are trying to develop community-based emergency response plans geared towards women, girls, and domestic violence. One example of the safety plans under consideration is reporting suspicious vehicles in the community.

Policing and Community Accountability

Participants discussed the police killing of Chantel Moore. They said her death shows how people who need mental health services and who reach out to the police in the hope of support are sometimes treated like criminals and end up being killed by the police. Situations like these set back the relationship between the Indigenous community and police by years.

Some participants said that Indigenous communities should be empowered to deal with more issues themselves instead of relying on the police. The Elders should be consulted for answers before going to the criminal justice system. They gave an example of an Indigenous woman who went missing three years ago. The community came together, and through their efforts, they found her in New Mexico.

Indigenous people are the least likely to call the police, even if they are in need. One participant said that they knew of incidences where Indigenous women and girls refused to reach out to the police for wellness checks or help. Related to this, courtworkers get frequent calls from women saying they have been abused or sexually assaulted by police.

One participant stated that there are also good police officers, but they work in a structure created by the government – and if they do not follow orders, they risk losing their jobs. There is also the problem that even officers with good intentions may not know much about the Indigenous communities they serve. Thus, they are ill-equipped to provide the services the community needs.

One participant said that in their region there is an Aboriginal Liaison Worker within the RCMP. However, they said that ideally, every area should have a person chosen by the community to assist the RCMP with responding to mental health calls or assault calls. This person would ensure that the victim feels supported and heard when dealing with the RCMP. The funding for such a position could come from the RCMP.

Participants said RCMP officers should receive more intensive cultural competency training beyond the two-hour sensitivity training they currently receive. Participants said cultural competency training has become a check box without any real meaning. Non-Indigenous people get a false sense of security after taking cultural competency training. They say, “I’ve done the training; I have the knowledge,” or “I’ve read one report on Residential Schools, and there’s nothing else I need to know.” However, entrenched racism can only be countered through long-term action. There must be continuous, intensive training.

One way to train police officers is by engaging Elders to work with them. This may help the police gain respect and acceptability in Indigenous communities. Elders should be paid for this work.

Consistent with concerns raised in the findings of the National Inquiry, participants raised specific concerns about the quality of policing in remote and northern communities. Participants said RCMP officers only take remote postings so that they can move on to another job down South. Because the officers are only there for a short time, communities have to constantly adjust to “the presence of new faces.” The constant change does not help in building trust and relationships. They said that the Staff Sergeant in these remote detachments should be playing a greater leadership role in teaching new officers about their responsibilities to the communities they serve.

Many of the communities operate with skeleton detachments of police officers, and it is typically reactive policing, not community policing. Many non-Indigenous officers do not understand community and family dynamics. There are no addresses in some communities, which makes it difficult or impossible, logistically, for police who are not familiar with the community to respond to calls in a timely manner. When someone calls police, they may end up speaking with a dispatch centre that is far away, rather than the local detachment. One participant said that when people from Kanestake, which is primarily English-speaking, call the police, they get a dispatch centre in Montreal where the dispatchers may insist on speaking French. Clients may end up hanging up out of frustration when they cannot make themselves understood.

Overall, participants said police need to do more to build positive relationships with Indigenous communities. This includes taking more time to explain the role of the police and how they will work with the community to keep them safe. It was recommended, for example, that police go

into the schools to meet with Indigenous youth. Police officers should also attend community gatherings so that they can be seen as more than just police officers, in order to build trust and relationships with community members.

Participants also expressed support for the Inquiry's Calls for Justice related to police accountability. They said all allegations against police officers should be adequately investigated.

Participants noted that the police do not devote the same attention and resources to Indigenous victims as non-Indigenous victims. This is consistent with wider public attitudes towards Indigenous peoples reflected in media coverage, which tends to be overwhelmingly negative. In one situation, it took the police nine months before declaring that a victim had been murdered, even though there were obvious indications that foul play was involved. This treatment is a disservice to the victim and to the family of the victim. The police need to change the way they approach the families of victims.

More Indigenous officers should be recruited because they understand the "dynamics and are able to embody a more effective policing strategy." One participant said that there used to be a provincial recruitment strategy in Saskatchewan that focused on recruiting Indigenous police officers but that strategy has been suspended. Participants also said that there should be more Indigenous women in the RCMP and recommended the creation of programs to recruit and retain Indigenous women police officers. It was also noted that First Nations policing does not receive the same support that other police forces receive.

A number of concerns were raised over how police respond to domestic violence. Some participants related incidents where police refused to intervene. For example, in one instance, a man had smashed the windows and doors of the woman's house, creating a dangerous and threatening environment that could potentially escalate further. The RCMP told the victim, "You live common law: he has every right to be here." After experiences like that, victims stop calling the police.

Women who call the police to report domestic violence are sometimes charged. Some of these women are simply trying to protect themselves but end up getting criminal charges levelled against them. Child and Family Services (CFS) eventually gets involved, and then these women have to struggle to keep their children as well. Participants noted with concern that CFS does a lot of harm to Indigenous children. Children are often placed in care outside of their communities.

Some participants suggested that Indigenous police officers would be more likely to respond in an appropriate manner, including limiting the incidents of overcharging Indigenous women. There should also be culturally-sensitive foster homes in each community.

Courts, Indigenous Justice and Restorative Justice

Participants agreed on the need for alternatives to the Western court system so that victims and accused are better understood, are not subjected to further traumatization, and have a stronger

sense of justice being served. One participant noted with concern that one Northern circuit courthouse is located in an old Residential School, and some Elders are re-victimized every time they go to court. Another participant highlighted a positive example, stating that the Indigenous peoples' courts in Southern Ontario function well and should be available in all court systems across Canada.

A participant described a satellite Indigenous community court they had attended. The seats were placed in a circle and there were only a few lanes of chairs. The displays were all Indigenous art. They said the only problem with the court was that the judge was not Indigenous. This is an example that can be replicated in other communities, but with an Indigenous judge. Even though non-Indigenous judges may try to incorporate the culture, "unless you've lived it, you will never understand it."

One participant described a model of having a panel of Elders in the courtroom as a very helpful part of the Indigenous court model. The Elders have their own table, and sit directly in front of the Judge, with the Crown on one side and the defence on the other. The client sits directly in front of them. It helps because the Elders are familiar with the client, the issues, the family, and the community. The government should provide resources for this model to be replicated in other communities.

Participants said that the Western court system is typically too focused on crime and punishment, and this is not helpful for Indigenous clients. One participant said that the justice system is focused on efficiency and not compassion. Indigenous people are only a number in the system.

Incarceration of Indigenous people has continued to go up even while it has gone down for non-Indigenous people. Participants were particularly concerned that the rate of federally-sentenced Indigenous women has dramatically increased. Most of these women have children. Community support and diversion programs are imperative to reverse the current trend of increasing violence and family breakdown.

Participants welcomed an increasing focus on restorative justice processes where the sentences are less harsh, and there are greater opportunities for community service. One participant emphasized the importance of traditional knowledge systems and knowledge keepers in restorative justice. If the purpose is to prevent re-offenders, the perpetrators also need the opportunity to heal, and the best way to do this is to get them back on the land where they can converse with the Elders. They also said that Elders need to be supported to play this role.

Along with the concern noted above about courts being too punitive toward Indigenous offenders, participants also expressed concern that courts do not take crimes against Indigenous victims seriously enough. One participant gave an example of a woman who was put in a coma by her boyfriend. Despite the seriousness of the crime, the boyfriend was released on bail. Then, when he was re-arrested for a violation, he was released on bail a second time. The participant said that Crown and the judge would likely have handled the case differently if the woman was non-Indigenous.

Participants raised numerous concerns about the lack of support for defendants when they are released on bail. Youth, for example, often have nowhere to go in this situation. They have to choose between remaining in jail or being released into homelessness. In Prince George, for example, youth who are released on bail often have no means of transportation back to their communities.

It was noted that Indigenous people have very little power in the legal system as a whole. One participant said that courtworkers work 24 hours a day for their clients and their clients trust them. As consequence, they said, Indigenous courtworkers “should have more control over how they provide support and programs.”

Participants also expressed concern about cultural competency measures that are poorly implemented or half-hearted – such measures often end up working against cultural safety. One participant gave the example of the requirement that every courthouse in Alberta have an eagle feather. They said that the feather is in the control of court personnel who often do not even know where to find it.

Participants said it is important to recruit more Indigenous people for all roles in the court process. Indigenous lawyers, courtworkers, and prosecutors will “be more willing to consider the issues that are happening and approach them with a better perspective.” One participant said that the role of courtworkers should be extended to include family issues, because it is usually the Indigenous parent who is unrepresented. They also noted that there have been a lot of “copycat” services popping up to fill the gaps in client needs, but it is important to ensure that clients are getting qualified and accredited services.

Educating people in the court system does make a difference. Education can help in understanding the history of Indigenous peoples, instituting restorative measures, and issuing effective Gladue reports. Courtworkers can play a huge role in education.

Courtworkers need more funding and support. In Ontario, courtworkers are overworked and overstretched; they are involved in child welfare issues as well as criminal matters. Court workers do not always have access to their clients, which is frustrating and a disservice to their clients. Courtworkers spend a lot of time trying to get information about their clients.

A participant stated that there should be more emphasis on trauma-based services and trauma-based therapies. There should be cultural and traditional types of therapy, as well as new therapies, such as neurofeedback. It is important to interrupt the cycle of trauma in as many helpful ways as possible.

Sentencing

Participants distinguished between defendants getting a more lenient sentence, which does not necessarily help anyone, versus defendants getting an appropriate sentence, which can provide them with the supports needed to prevent re-offending. One participant gave the example of perpetrators being sent to jails in the South, who come back to the North more violent than before their incarceration. They said that healing and counselling should be used more often in

lieu of prisons. For example, for small offences, people can be sent to spend time in communities, learning the culture, language, chopping ice, and learning from the Elders about the land and animals. This will be very beneficial for people who may not have had family or parents growing up.

Ideally, Gladue reports should help secure appropriate sentences. Participants raised concerns, however, that Gladue reports are often written by individuals with limited understanding of Indigenous cultures. One participant stated that “the Gladue reports here are becoming more of a pre-sentencing report, rather than the cultural consideration it was intended to be.” Another said their clients are told, “It’ll take a long time, why wait for a Gladue report? Just plead guilty and move the process along.” At the same time, it was said that the courts have come to rely heavily on Gladue reports because courts recognize the gaps in their knowledge and understanding about Indigenous communities and have no other way to fill this gap.

Participants expressed concern that even where a Gladue report leads to a recommendation for appropriate alternative sentencing, these options might not be realistically available. Participants said a report may recommend the person take anger management, get a high school degree, or go to a sweat lodge, but the person never gets any support to meet these conditions.

A participant who has been a Gladue writer for a number of years stated that the reports can be very healing for people. Questions about their family’s history help the clients to know more about themselves. It is difficult for clients to talk about their past experiences, but the report-writing process can be a healing tool. The participant provided an example of a client who felt like she had burned every bridge in her family and alienated everybody. The client felt alone. The client’s aunt was interviewed for the Gladue report and said that she understood what the client had gone through, and the client was always welcome. When the client read the report, she was overwhelmed with emotion and was grateful that she still had the support of her aunt.

The Gladue writer and other participants emphasized the importance of Indigenous writers for Gladue reports. Clients may not be comfortable or willing to be candid when dealing with non-Indigenous Gladue writers. Indigenous writers are also better placed to help clients understand the importance of the report and how it can help them. Letting clients choose their report writers fosters an environment of safety and comfort. The report writing process can feel intrusive, so it is helpful to have Indigenous writers who understand the realities of the clients.

It was also said that Gladue reports should be sealed and confidential because they can be used against clients if they are not kept securely.

Participants also expressed concerns about the impacts of incarceration on Indigenous parents. One participant said that many incarcerated Indigenous women with children cut off contact with them because they feel that their children would be ashamed to have a parent in jail. They developed a program that helps reconnection between children and an incarcerated parent. It would be very beneficial if the program evolved to support youths with incarcerated parents and encouraged reconnection with their parents as well.

It has been noticed that women are less likely to be repeat offenders if they develop a relationship with their children before their release. If family connection is secure, the rate of incarceration is reduced. For example, one incarcerated young woman who was helped to maintain contact with her child developed a different perspective, which kept her out of a criminal lifestyle.

There should be more long-term funding for programs and for writing Gladue reports. Courtworkers and support workers need to speak up and be actively involved in pushing for change. Some judges acknowledge the presence of courtworkers, and some do not.

Next Steps

Participants emphasized that Indigenous people know best what is needed in their communities, but too often the government is unwilling to negotiate with Indigenous communities as equals. In discussing the National Inquiry, participants expressed disappointment at the fact that so much effort goes into proposing solutions that do not go anywhere. Examples mentioned included the recommendations of the provincial *Special Advisor on First Nations Child Welfare* and the recommendations of the *Highway of Tears Symposium*. One participant said the government knows what it has to do but instead of taking action, makes excuses. The lack of implementation of these recommendations makes it feel like input from Indigenous peoples falls on deaf ears. This continues the trend of distrust for the authorities. Indigenous peoples are tired of recommendations and want real action.