

**HONORABLE BEVERLEY
BROWNE - WÎYASÔW
ISKWEÊW – RESTORATIVE
JUSTICE COMMITTEE**



PILOT PROJECT

JUSTICE LOPARCO – COURT OF KING’S BENCH

INTRODUCTION

- Welcome
- Why did this project start?
 - To redefine what justice means for some participants
 - To extend the benefits learned from the youth criminal justice RJ program (s. 19 conferences)
 - To increase referrals to RJ agencies for criminal matters and recognizing a specialized approach
 - To respond to the TRC Calls to Action

PILOT PROJECT

- Launched March 2022 during a Symposium in the Calgary Courts Centre
- Applies to King's Bench and Alberta Court of Justice province-wide for all criminal matters, subject to conditions in the Referral Guidelines
- Public website lists roster agencies and more details about project:
<https://rjalbertacourts.ca/>

WHAT IS RESTORATIVE JUSTICE?

RJ has existed for decades and even centuries in various Indigenous communities such as Bigstone, Siksika, Kainai and Elizabeth Metis Settlement.

RJ was used informally, without any court involvement or provincial strategy– there was a real need for training and legitimacy as a process.

Funding was inconsistent, creating uncertainty for existing programs despite their proven results.

Calls from the community to include traditional healing practices.

In order to prosper, RJ required coordination, consistency, predictability of referrals to ensure access throughout the province.

Grass-roots calls for increase in use of RJ in criminal matters given heavy work load with little satisfaction from traditional system.

5 KEY KEY PRINCIPLES:

The accused must provide a written acknowledgement of responsibility, a guilty plea, or an agreed statement of facts, depending on the case, and commit to repairing the harm

All parties must provide voluntary, free, and informed consent to participate in RJ. They must have a clear understanding of process, outcomes. They may withdraw at any time. Victims will receive information in advance about the RJ process through their the prosecutors, victims' rights groups, and RJ service providers

Must take into account the physical and psychological safety of all participants. Power imbalances due to age, maturity, cultural background, gender, religious or spiritual views, intellectual capacity, position in the community, and sexual orientation must be considered.

RJ processes must balance the needs of all participants and give equal consideration to their dignity while respecting their experiences as victims, offenders, and community members.

Any agreements reached between victims, offenders, and communities must be made voluntarily by participants. Participants must decide that the agreement is reasonable, attainable, and that it meets their needs. Not all RJ processes lead to agreements.

WHEN WILL RJ BE USED?

- RJ **can occur any point in the justice system**, to *divert* offenders from being charged or tried (a decision made by the police or prosecutor)
- For more serious offences, RJ can be run in tandem with the traditional justice system, resulting in a joint sentencing recommendation
- Benefits include understanding of the root causes of crime, reducing recidivism, increase compliance with conditions, tailored sentencing that is culturally sensitive to community needs, better outcomes for offenders, victims and communities

MYTHS

- **Myth: Restorative Justice = Indigenous Courts**
- **Myth: Restorative Justice is soft on punishment**
- **Myth: Restorative justice is a “get out of jail free card”**
- **Myth: Restorative justice requires the victim to forgive the offender**
- **Myth: Restorative justice is only appropriate for minor offences**
- **Myth: Restorative Justice is social work, not a justice system matter**

REFERRAL FRAMEWORK

- Principled/flexible decision making framework
- Goals:
 - Consistency
 - Transparency
- 2 distinct referral streams
 - Pre-Plea/Diversion
 - Post-Plea/Pre-Sentence

REFERRAL FRAMEWORK

Pre-Plea/Diversion

- Consistent with protection of society and in the public interest
- Considerations
 - Separation of offender necessary
 - Long-term supervision/treatment/no-contact
 - Ancillary orders (DNA, SOIRA, etc...)
 - Specialized courts
 - Importance of recording of a conviction
 - Power imbalance/meaningful victim participation



REFERRAL FRAMEWORK

Pre-Plea/Diversion

- Certain offences require exceptional circumstances/Chief Prosecutor approval

REFERRAL FRAMEWORK

Pre-Plea/Diversion Exceptions

- Offences involving:
 - Death
 - Violence resulting in bodily harm
 - Impact on sexual integrity of victim
 - Serious impact (physical, psychological or financial)
 - Violence against child by caregiver
 - IPV offences
 - Infliction of pain, suffering or injury to animal
 - Vulnerable victims (children, the elderly, etc...)
 - Sophisticated planning
 - CC driving offences
 - MMPs



REFERRAL FRAMEWORK

Pre-Plea/Diversion

- Exceptional circumstances
 - Indigenous identity of accused or victim
 - Personal circumstances of accused
 - Personal circumstances of victim
 - Victim's desired to engage in RJ process
 - Degree of harm done
 - Circumstances of offending behaviour
 - Suitable RJ process
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REFERRAL FRAMEWORK

Post-Plea/Pre-Sentence

- Wide range of cases
 - May be suggested by any party
 - Requires informed consent of all participants
 - Generally following entry of GP or finding of guilt
 - May proceed prior to GP if clear understanding reached between counsel as to pleas expected following RJ process
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- If RJ is successful
 - Withdrawal (Diversionary)
 - Sentencing (Pre-sentence)

OUTCOMES

- Pre-sentence referrals
 - Report from RJ agency
- A sentencing judge is not bound by any RJ recommendations
- Report may be useful to determining an appropriate sentence

- If the RJ process is unsuccessful, the case will be returned to court to be dealt with in the usual manner

OUTCOMES

- If the RJ process does not terminate with an agreement, any discussions or information exchanged during the process remain privileged and/or confidential and cannot be mentioned at any future court proceeding

REFERRAL FRAMEWORK

- Caution with some types of files
 - Sexual violence
 - Gender based violence
 - Intimate partner violence
- Require specialty training
- Referrals must be carefully considered

USE OF RJ IN ALBERTA COURTS

- Prior to the pilot launch, while it had been used at various times, it certainly was not the norm
- RJ had been used in our Indigenous Courts (CIC; Tsuut'ina) as well as by certain Judges/Justices more familiar with the practice.
- Very few published decisions.
- R v Lariviere 2021 ABQB 432.

R V LARIVIERE

- Facts: July, 1977 victim (18 yrs old) attended a ball tournament in Cold Lake, Ab.
- Her plans for where she would stay for the night fell through-Mr. L offered to have the victim and her friend stay in his tent along with some teammates.
- The victim viewed Mr L (32 yrs old) as an 'uncle' and felt safe with him so agreed.
- She shared a sleeping bag with Mr. L-fell asleep immediately and did not wake up until morning.
- When she awoke she felt something was off-her clothes were twisted and her vaginal area was very sore.

R V LARIVIERE CONT'D

- Upon returning to her home, the victim discovered over the following weeks that she was pregnant.
- She gave birth to a son. She suffered from suicide ideation, worthlessness, shame. She lived in fear that others would discover she had been raped and the child born as a result of that.
- Only after her parents had both died did she tell her sister and have the courage to go to the RCMP.
- DNA testing confirmed the now adult son was indeed Mr. Lariviere's son.

R V LARIVIERE

- At the time of trial, Mr. Lariviere was 75 years old. He suffered from diabetes and a heart condition.
- The Gladue report provided the trial judge with significant information about Mr. Lariviere including his attendance and that of his parents at residential school.
- He had been employed most of his adult life. He stopped drinking in 1988. He helps others struggling with addiction. He was viewed as an advisor, mentor, role model and elder within his community.
- Actively involved in the community-also a pipe carrier and participated in many Indigenous ceremonies.

R V LARIVIERE

- He was unaware of the charge or the fact he had another child until 2015.
- He did not deny his role in the offence although did not plead guilty either. The victim was required to testify.
- Mr. Lariviere was convicted following the trial.
- Defence counsel requested an opportunity to explore restorative justice- the victim agreed.
- Covid created some obstacles but in the end 2 impartial Circle Keepers were found to assist and presented a report to the sentencing justice.

R V LARIVIERE

- Sentencing for a major sexual assault with facts such as this would generally require a penitentiary sentence starting around 3 years. Denunciation and deterrence generally most important factors
- Consideration was given to: Mr. Lariviere's age, poor health, the offence was 40 years prior to conviction; he was heavily impaired by alcohol at the time; "dramatic and sustained effort at rehabilitation"; now a role model in the community; genuine remorse; disgraced by the prosecution including loss of employment, loss of respect within the community and trauma to his family.
- Victim felt justice served by the conviction and did not want Mr. Lariviere to go to prison.

R V LARIVIERE

- Both the victim and Mr. Lariviere fully participated in the process of RJ.
- Respected elders, circle keepers, family of Mr. Lariviere and the victim, community members involved with the justice system and addiction issues plus the facilitators participated.
- The recommendation that resulted from the RJ process and that was accepted by the QB Justice was for a suspended sentence and probation for a period of 3 years.

R V LARIVIERE

- Justice Burns:
- *“There is no point to have a sentencing circle if its input is not carefully considered, and to the greatest extent possible, implemented. Acceptance of the recommendations from a sentencing circle is done in an effort to further the perspective of aboriginal justice and foster rehabilitation, restoration, reconciliation and restitution.”*

R V LARIVIERE

- *“It is important to remember that a restorative justice process is not only about the offender, but also about helping the complainant obtain justice. For me to unilaterally dismiss the restorative justice process’ recommendations and determine what is best for the community of Canoe Lake Cree First Nation would display an intolerable degree of presumptuousness. It would render nugatory the commitment and efforts of all participants and it would undermine the Circle Keepers’ goals of having the complainant and Mr. Lariviere continue to work on healing their relationship and act as guides for community members about appropriate behaviour and help other victims in the community heal.”*

RJ AND SPECIALIZED COURTS

- RJ has been utilized in our specialized courts in Alberta for quite sometime
- Peacemaking is a component of our Indigenous Courts
- RJ pilot allows this process to be available for those charged with a criminal offence who are not participants in the specialized courts.

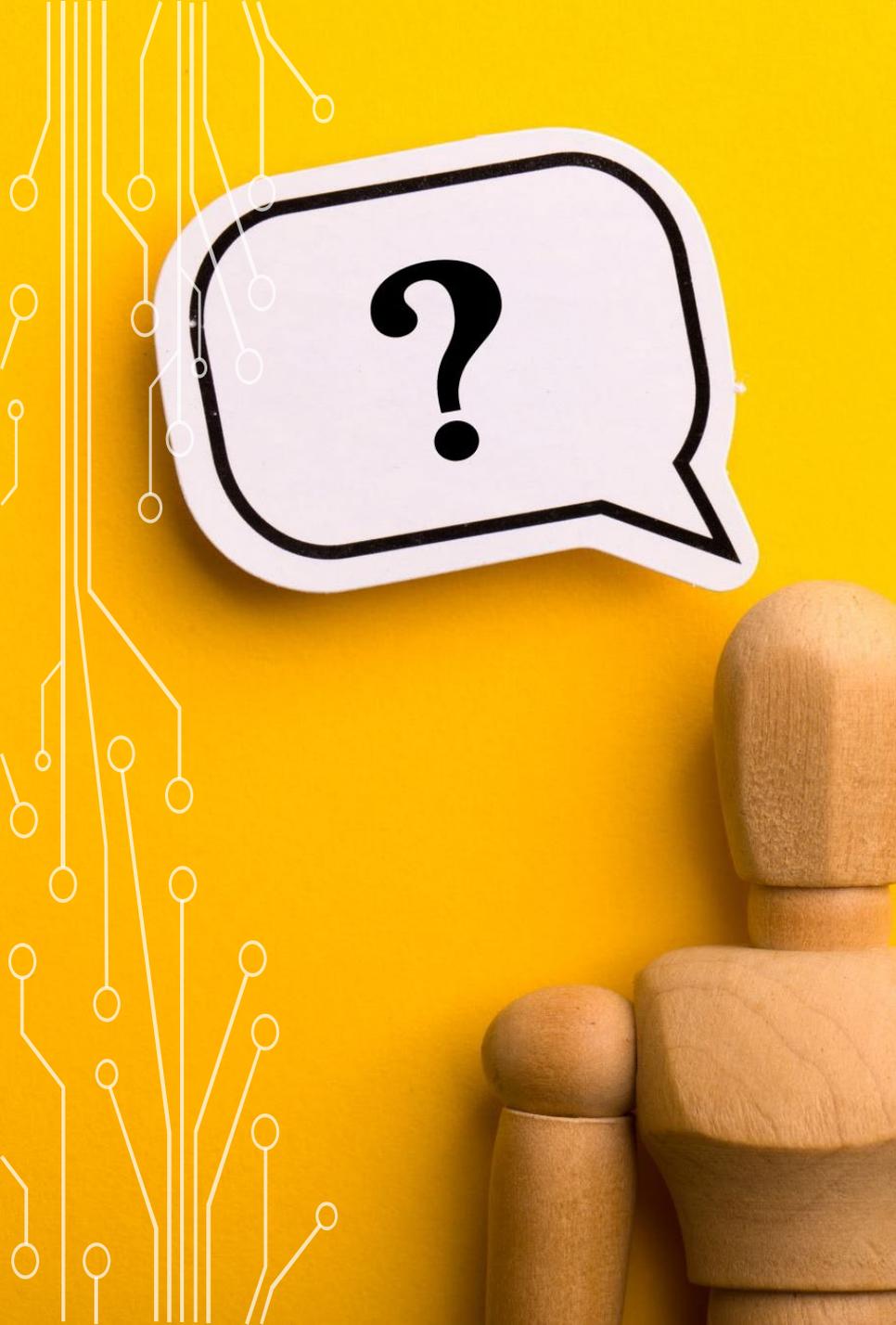
THE FUTURE IN ALBERTA

- Continue to provide education and mentoring to community organizations interested in becoming involved in RJ.
- Expansion into areas of Family and Civil law.
- Continue to grow the roster so all justice participants are aware of RJ organizations in the province and what services they can provide.
- While the pilot involves post-charge referrals, police Chiefs in the province are very interested in roster referrals for matters pre-charge as well.

CONCLUDING WORDS FROM FORMER CHIEF JUSTICE MCLACHLIN

- The move to people-centred justice will also mean a broadening of what we define as justice. The new definition of justice will not merely be whether courts are independent or whether the judge gets it right in this case or that — important as these may be — but whether we are achieving just outcomes, defined in terms of whether the system has helped people resolve their complex and overlapping issues in a positive way. Restorative justice — justice that heals and restores — will be a large part of the new thinking on justice.

- And an update is overdue. For too long we have been using 19th and 20th century models to deliver justice. The result has been a justice system that is inaccessible to many, spawning the access to justice movement and inspiring the work of groups like the national Action Committee on Access to Justice. (published in The Lawyer's Daily, Access to Justice: When life gives you lemons. May 19, 2021)



QUESTIONS

Thank you!