Justice for Aboriginal Communities: Sharing the Ways

Mary-Ellen TURPEL-LAFOND*

* Judge Turpel-Lafond is a member of the Provincial Court of Saskatchewan and is on leave having accepted the appointment as Representative for Children and Youth, Province of British Columbia in 2006. An earlier version of this article was presented at the Canadian Institute for the Administration of Justice, "Doing Justice: Dispute Resolution in the Courts and Beyond," Halifax, Nova Scotia, 12 October 2007. Judge Turpel-Lafond would like to thank Karen Ameyaw (LL.B. 2009) for her assistance with preparation of the final manuscript.

I would like to recognize and acknowledge the Mi'kmaq people, on whose territory we are meeting to discuss dispute resolution and new approaches to settling conflicts. We look to the wisdom of elders and generations of First Nations communities who have shared traditional ways to inform the new ways of resolving disputes.

I propose to share some of my experiences with respect to the area of restorative justice. These can be organized around three broad themes that have informed some of the specific developments and practices at a community level around restorative justice and in Aboriginal communities: (1) the issue of access to justice, (2) the principle and concept of reconciliation, and (3) the issue of diversity within legal frameworks.

Finally, I will consider the legal, political, and social implications of restorative justice in Aboriginal communities, looking to the future.

I. ACCESS TO JUSTICE

There are barriers which exist in Canada to make formal dispute resolution mechanisms only remotely available to parties experiencing conflict. For Aboriginal individuals, the justice system has been available to them in principle more than in practice. Given the prohibitions which existed until the 1950s, they were not able to sue for civil redress in many instances. For many, lawyers would not take their cases and those who did made enormous sacrifices in their practice to support a just resolution of a dispute.[1]

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[1] For example, Thomas Berger's work as plaintiff's counsel in *R. v. White and Bob* (1964), 50 D.L.R. (2d) 613 (B.C.C.A.), aff'd (1965), 52 D.L.R. (2d) 481 (S.C.C.); and *Calder v. Attorney-General of British Columbia*, [1973] S.C.R. 313.

There has been a significant movement in Canada to identify and address, including within mainstream civil and criminal courts, issues of access to justice. Access to justice is a good starting point to ground our discussion of restorative justice. What access do Aboriginal individuals or groups have to the formal dispute resolution mechanisms of the courts? Evidence suggests that they do not rely heavily on those institutions for the settlement of disputes, especially for family and civil law matters. How this impacts the social order and peace in their communities and families is an open question. What should be of critical importance to all of us is why these mechanisms are not being engaged. Access barriers may help us understand why this is occurring.

Aboriginal people face barriers in accessing justice because of cultural differences, geographical remoteness (at times) and their experience of socio-economic disadvantage. Obstacles around geographical accessibility, cultural safety, and rule formalism have been some of the major and fundamental problems around access to justice with a few limited exceptions. Aboriginal people are included in a group of Canadians, such as women, children, people living with disabilities, members of racialized minorities, the elderly and refugees, facing access to justice barriers in addition to disadvantages of other kinds.[2]

Remoteness and lack of geographical access to courts has affected the ability for peaceful resolution of disputes. This is particularly the case for Aboriginal communities, at least, historically, before the massive urban mobility of Aboriginal people. Civil and family courts were not accessible from reserve locations and even less so for Inuit communities. Criminal courts do serve more communities, although they too can be distant and pose challenges. Unmindful of their colonial role, they can be viewed as settler mechanisms to bring "law and order" to indigenous peoples. In recent years the criminal justice system has been more willing to come out to provide the administration of justice closer to Aboriginal communities.[3]

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[2] Canadian Bar Association, *Canada's Crisis in Access to Justice* (*April 2006)*, online: Office of the United Nations High Commissioner for Human Rights <http://huachen.org/english/bodies/cescr/docs/info-ngos/canadianbarassociation.pdf>.

[3] For example, The Department of Justice *Aboriginal Justice Strategy* supported a range of community-based justice initiatives such as diversion programs, community participation in the sentencing of offenders, and mediation and arbitration

Cultural "safety" continues to be a relevant issue and continues to affect Aboriginal communities today even after laws, such as the prohibition of Aboriginal communities from hiring lawyers are no longer in effect.[4] Cultural safety is the deep anxiety within Aboriginal communities that recognition and acknowledgement of their system of resolving disputes, cultural and spiritual practices, family structures, and unique characteristics within Aboriginal communities would not be recognized and accepted in the mainstream courts.

Removals of children from Aboriginal communities over the years have heightened anxiety over cultural safety. Residential school policies and other state efforts to intervene in communities have caused many nations to turn inward to preserve and protect their families from Canadian dispute resolution institutions. In child protection, cultural safety concerns surface when courts determine the "best interests of the child" factor. Concerns revolve around whether the courts sufficiently understand Aboriginal kinship structures and traditional practices to ensure child safety and whether these systems devalue kinship placement. Geographic limitations to family courts where "best interests" determinations are made, is illustrative of the layers of barriers that impede access to justice.

Cultural safety concerns are reflected in the numerous inquires and reviews of the criminal justice system detailing its failures involving Aboriginal people. Added to this list is the issue of matrimonial real property for Aboriginal women in Canada. Aboriginal women still do not have any rights to matrimonial real property and, as a result, have never really been able to obtain any real access to equality.[5] This is in contrast to other women who have successfully used the vehicle of the courts to achieve common law equitable remedies.[6] Cultural safety concerns are considerable obstacles to overcome to address access to justice issues to foster confidence in the Canadian justice system.

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mechanisms for civil disputes. See online: Aboriginal Justice Strategy, Summative Evaluation <http://section15.gc.ca/eng/pi/eval/rep-rap/07/ajs-sja/toc-tdm.html>.

4 *Indian Act*, R.S. 1927, c. 98, s. 141.

5 *Derrickson v. Derrickson*, [1986] 1 S.C.R. 285; *Paul v. Paul*, [1985] 1 S.C.R. 306. See Mary Ellen Turpel, "Home/Land" (1991) 17 Can. J. Fam. L. 10.

6 *Pettkus v. Becker*, [1980] 2 S.C.R. 834; *Peter v. Beblow*, [1993] 1 S.C.R. 980; *Sorochan v. Sorochan*, [1986] 2 S.C.R. 38.

Rule formalism has played a role in reinforcing the inaccessibility of the courts by the use of complicated concepts, protocols and processes. In some instances, rules of procedure in the civil courts have been overly formalistic and have not promoted ready access to justice for people who have been historically excluded from the legal system in Canada, or for whom English or French is not a first language. While there have been developments with respect to simplified rules of practice and procedure on the civil side,[7] they remain fairly cumbersome for those from historically disadvantaged groups, and remain a concern even for the bar.

Thus the backdrop of any consideration of restorative justice is the challenge faced in Canada in providing access to impartial and meaningful resolution of disputes to everyone without distinction or barrier. Restorative justice initiatives may be the sole experience an Aboriginal person has with the formal justice system. Thus, it serves as a significant opportunity to build confidence and learn about those barriers so that they can be overcome.

II. RECONCILIATION

Reconciliation is a significant Canadian endeavor to address historic injustices against Aboriginal peoples. It aims to strengthen the sense of inclusion in Canadian society. It is a process of understanding, but also devising mutually legitimate and acceptable strategies to resolve practical disputes. While this process has been ongoing, particularly since 1982, it has intensified in recent years, to the great benefit of the Canadian legal system.

Reconciliation is the basis of a number of initiatives and processes including treaty making, treaty renewal processes, and broad scale self-government initiatives such power-sharing initiatives, land claim and self-government settlements. These reflect efforts to extend reconciliation from being solely a legal principle to a political principle of reconciling pre-existing Aboriginal societies, cultures, and territories with the colonial society.

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[7] See for example, in British Columbia, the Civil Justice Reform Working Group, online: <http://www.bcjusticereview.org/working_groups/civil_justice/civil_justice.asp>; and in Ontario, the Civil Justice Reform Project, online: <http://www.civiljusticereform.jus.gov.on.ca/english/default.asp>.

The project of reconciliation within the criminal justice system has resulted in a number of significant studies and inquiries that have looked at experiences and impacts of the system on Aboriginal peoples. In Nova Scotia, the wrongful prosecution of Donald Marshall, Jr. resulted in a finding that the criminal justice system failed him "at virtually every turn from his arrest and conviction … and even beyond."[8] A further finding stated that "the fact that Marshall was a Native was a factor in his wrongful conviction and imprisonment."[9] Subsequent reports include the Aboriginal Justice Inquiry in Manitoba,[10] the Royal Commission on Aboriginal People,[11] the Law Reform Commission of Canada and the Law Commission of Canada (both iterations), in Ontario the Ipperwash inquiry[12] and in my home province of Saskatchewan, the Stonechild inquiry.[13] These represent major public initiatives of reconciliation addressing some very fundamental concerns about the criminal justice system and Aboriginal people.

These inquiries and commissions have often found "two solitudes"[14] or fundamental differences in the concept of justice and degree of access to justice for Aboriginal and non-Aboriginal citizens. Recommendations are abundant and change has been identified as a major priority to build legitimacy in the system and to reduce the harsh impact of the criminal justice system on vulnerable people. The courts are often represented as having played an ambivalent role and at times, sadly, an inaccessible role in resolving both historic injustices and ongoing challenges. Thus, the courts become "unwitting instruments of division

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8 Nova Scotia, Royal Commission on the Donald Marshall, Jr. Prosecution, *Volume 1: Findings and Recommendations* (Halifax: The Province of Nova Scotia, 1989) at 15.

9 See *ibid.*

10 Manitoba, Public Inquiry into the Administration of Justice and Aboriginal People, *Report of the Aboriginal Justice Inquiry of Manitoba*, vol. 1 (Winnipeg: Public Inquiry into the Administration of Justice and Aboriginal People, 1991).

11 Canada, Royal Commission on Aboriginal Peoples, *Report*, 5 vols. (Ottawa: Supply and Services Canada, 1996).

12 Ontario, Ipperwash Inquiry, *Report*, 4 vols. (Toronto: Queen's Printer for Ontario, 2007).

13 Saskatchewan, Commission of Inquiry into Matters Relating to the Death of Neil Stonechild, *Report* (Saskatchewan: Department of Justice, 2004).

14 See *ibid.* at 208.

rather than instruments of reconciliation."[15] While that may not be the goal today, sadly it is a reality we cannot ignore.

III. DIVERSITY

How do we engage in dispute resolution in a multi-cultural and multi-ethnic society in a manner that promotes social peace, cohesion and inclusion? Although certain legal diversities exist around the civil and common law, the greater challenge is to find a greater expression for Aboriginal traditional law such as restorative justice practices. This is what Professor John Borrows has called the regime for resolving "inter-societal law."[16] The Supreme Court of Canada increasingly tells us to look to Aboriginal legal traditions as well as civil and common legal traditions to find resolution of disputes. This recognition, itself an important tool of reconciliation, remains at a very high level of abstraction; the practice of using Aboriginal traditions to resolve civil disputes, criminal disputes or family disputes is rare. Greater development in the future may occur but virtually no investment has been made in these mechanisms to make them available and effective now.

Efforts for greater expressions of Aboriginal law to address issues of accommodation, participation and access to the justice system meets resistance when it conflicts with ingrained notions of an exclusive iteration of justice. Restorative justice practices are often attacked for lacking a bedrock theory that grounds it, while restorative justice theorists debate whether these practices require one. This demarcation of theory and practice reflects a desire to conceptualize restorative justice to resemble European law for it to gain acceptance. But this may be unnecessary. James Youngblood Henderson, director of research at the Native Law Centre and prolific theorist of Aboriginal rights and jurisprudence, summarizes an Aboriginal conception of justice as follows.

> In articulating justice as a form of healing, Aboriginal peoples are not seeking to construct an abstract or universal theory of justice on the Euro-Centric traditions. We are not obsessed with

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[15] See Canada, Royal Commission on Aboriginal Peoples, *supra* note 11 at "Opening the Door."

[16] John Borrows, "Indian Agency: Forming First Nations Law in Canada" (2001) 24 Pol. & Legal Anthropology Rev. 16.

> constructing any universal normative theory of justice. We are attempting to grasp the wisdom of our elders to define ourselves and to articulate a certain way of healing and apply it to our traumatic experiences.[17]

This definition provides a pragmatic concept of how to engage with indigenous legal traditions and cultural spiritual practices to attempt to address a set of largely traumatic experiences such as cultural dislocation and poverty. From my own experiences in engaging communities in dispute resolution, pragmatism seems to be the guiding principle. Where can partnerships be developed to recognize those traditions, and what community social capital can be identified and supported to engage in dispute resolution and peace-making? Clearly, much more work *can* and *should* be done.

The common law itself is grounded in a loose theory of pragmatism that espoused the notion of going out and settling disputes using common sense and practical justice. During the reigns of King Henry I and Henry II, independent courts were established and judges sent out to deal with the people and solve justice in their communities.[18] From a restorative justice perspective, both the pragmatic settlement of disputes with respect to local traditions and experiences, and looking at the settlement of disputes as non legal problems to be resolved, can coexist.

Restorative justice builds on pragmatism, at least in my experience, where it has been developing in Canada. In addition to this, it also expresses a desire for reconciliation, and deference to local traditions, laws and knowledge.

IV. RESTORATIVE JUSTICE AND THE COURTS

With access to justice, reconciliation and issues around diversity framing this discussion, restorative justice and its relationship with the

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[17] James (Sákéj) Youngblood Henderson, "Exploring Justice as Healing" in Wanda D. McCaslin, ed., *Justice as Healing: Indigenous Ways. Writings on Community Peacemaking and Restorative Justice from the Native Law Centre* (St. Paul: Living Justice Press, 2005) at 5.

[18] Graham Mayeda, "Uncommonly Common: The Nature of Common Law Judgment" (2006) 19 Can. J.L. & Jur. 107.

courts is another important consideration. In Canada, there has been a substantial amount of activity around restorative justice within Aboriginal communities. I recall in 1992, working as a lawyer for First Nations in Saskatchewan, developing and executing a process of setting up Aboriginal justice committees in 74 First Nations communities.[19] Extremely disempowered communities, ruled essentially in a very colonial regime by the *Indian Act* system of government, were invited to engage with the development of social order in their community, drawing upon their kinship and traditions. Although many communities had been engaged in similar processes internally, this was a terrific opportunity to engage others in discussions about dispute resolution. This participatory process involved listening to their perspectives about justice and how they wanted to see disputes settled in their communities. The process involved women, youth, police, lawyers, judges, social workers, community leaders and many others united in their desire for social stability and a willingness to address traumatic experiences to strengthen families and communities. While a small investment was made in capacity, it was greeted warmly by First Nations eager for renewal.

A fundamental challenge for courts, following such processes, is collaborating on justice innovation. Because the nature of the judicial role requires independence, the ensuing distance makes it difficult for judges to engage in community outreach. Allowing the Attorneys General for the Provinces to lead these reforms on behalf of the administration of justice however can result in judges being outside of a process when they are stakeholders and have a key role to play. It is up to the judges to decide how to coordinate community dispute resolution and understand the operational implications of the introduction of different values and traditions. Being removed from the process results in lost opportunities for collaboration. We need to think more carefully about intersocietal law and our place as judges.

The outstanding work of the judges in the Northern regions of Canada is a testament to the value of a collaborative judicial mindset. Coupled with respectful understanding of community life and cultural difference, they have acted as catalysts for access to justice and reconciliation. Much good has come from their hard work and it deserves to be celebrated and shared, as these new ways are making a difference.

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[19] Saskatchewan, Indian Justice Review Committee, *Report* (Regina: Saskatchewan Justice, 1992).

It is unfortunate that the good work that happens in these regions is in locations where justice officials are not very likely to be promoting their achievements, or to have them noticed by political decision makers. The affected communities, however, do value the effort.

V. RESTORATIVE JUSTICE IN PRACTICE - CIRCLE SENTENCING

Circle sentencing is just one example of restorative justice. To a degree it has been incorporated in the Canadian legal system through the careful work between those responsible for the administration of justice and Aboriginal community leaders. It has not been practiced widely because it requires a tremendous commitment of time and resources. In regions that provide the greatest opportunities for positive results, efforts for expansion are weakened by heavy caseloads, but opportunity remains.

I can speak with authority about the dynamics of the workload of extremely burdened trial judges. These judges are engaged in criminal justice processes, managing numerous appearances, and crowded dockets while trying to find the opportunities to do circle sentencing "off the side of their desk." From my perspective, judges, prosecutors and others do want to engage in these processes. Finding the time, support and opportunity to do so is a challenge we have yet to resolve but we must continue to try.

In Saskatoon, we opened the first circle court in Canada that reflects the symbols and practices of the prairie First Nations peoples. Circles have different principles and processes associated with it, and it is the judges that determine whether it is judge facilitated or not. There have been expressions of flexibility from the system as there have been instances where circles occurred outside the courthouse and within communities. Generally circles in the courthouse were considered by the Elders to be essential to the reconciliation process. It was seen to be something that should not happen at the edges of the justice system, but from within it, at its centre.

Judges, court staff, lawyers and others serving in the system became comfortable with First Nations protocols around oaths, blessings, values and spirituality. These measures are important to preserve the identity of First Nations, and they translate into the inter-societal aspect of restorative justice—it is not just community outreach, but considering other traditions and practices of justice. While a modest start, so much more is needed for the reconciliation process and access to justice.

Good restorative justice processes, to the extent that they are funded and adequately supported, generally have a sentencing component if they are criminal law related. The best restorative justice processes have a post-sentencing healing circle component that is part of the ongoing reconciliation process beyond the dispute.

While there has been resistance in some corners to circle sentencing, it has been very successful. Members of the judiciary who participate in these processes adapt to taking off their robes, sitting in a circle and changing the relationship and the structure of the courtroom. Many judges that have participated in these processes feel a high degree of satisfaction at the end of these processes, largely because they have an opportunity to explore the problems that underlie the offending criminal behaviour in the criminal justice context. It is an opportunity for victim-offender reconciliation to occur before your eyes with often better interpersonal outcomes for all involved. It need not always happen with judicial participation, and community restorative processes can operate without judges' involvement. Yet, it seems that some of it must happen within the mainstream system for it to be supported and understood.

VI. INDIGENOUS LANGUAGE COURTS

Indigenous language courts are another example of reconciliation and opening the door to First Nations traditions and practices in Canada. While they have been criticized as not being consistent with restorative practices, anyone who has served in those courts has witnessed values, traditions and culture coming alive in the expression of language and that is central to dispute resolution. In Saskatchewan, the development of two Cree language circuit courts serving the central and northern regions of the Province has been a major advance for the administration of justice and a big start in the reconciliation process.

Cree is a vibrant language in the central and northern communities in the Prairie Provinces and it makes sense to have dispute resolution available in this indigenous language. The availability of translation services and other supports are still being worked out for the Court to be fully bilingual. Nevertheless, the court was a step in the direction of reconciliation that has done much to build public confidence and inclusion.

The use of an indigenous language with a distinct concept of justice embedded in it, allows for a coexistence of justice systems. The

social support, understanding of sanctions for wrongdoing and the informal nature of the court sitting in remote locations such as Pelican Narrows or Deschambault, results in people feeling more comfortable to stand up and speak in the process. Other examples across the country include the well established Tsuu T'ina Peacemaker Court in Alberta, recently extended to the Siksika First Nation in Alberta. The success of these processes is due to the extensive community collaboration and the strong support from the Attorney General for Alberta, the Alberta Provincial Court and the Government of Canada. Aboriginal Judges have been dynamic leaders as well in this reconciliation of intersocietal approaches.

These initiatives, while limited to criminal proceedings, hold immense promise should they be expanded to the areas of family law, child protection and civil justice where they are much needed. It is in these areas where access to justice has been limited for many years, while the community call for dispute resolution has been immense. Communities continue to sort out the intergenerational trauma from residential schools and cultural displacement. Access to dispute resolution that is community based, respectful and understanding of culture and language, can be a major force for social stability and cohesion.

VII. OTHER RESTORATIVE JUSTICE INITIATIVES

Other restorative justice initiatives across Canada have also been contributing to public confidence in the administration of justice. These include:

- **Victim-offender reconciliation**: When done outside the court process, victim-offender reconciliation is a very important part of restorative justice and borrows heavily from notions of healing and restoring relationships.
- **Problem solving courts**: Problem solving courts, such as mental health and domestic violence courts, are opportunities for therapeutic or restorative justice approaches that will allow for broader systemic issues to be addressed.
- **Parole-reintegration circles**: The National Parole Board embraced restorative justice practices and in many

> instances will have reintegration circles before offenders are released, particularly if they have very strong attachments to community. It has happened in a number of cases including some difficult ones such as when a sex offender is being returned to a community.

Restorative justice initiatives around child protection and mediation are developing. In British Columbia, funding has been provided to expand the use of alternative dispute resolution processes in the area of child protection law, particularly for Aboriginal children.[20] The Child Protection Mediation Practicum project has a total 48 mediators and 33 of these practicum students are identified as Aboriginal.[21] In Saskatchewan, there are efforts to include some healing circles as part of the child protection process outside of the court. These developments are few in number, but are indications that we are heading towards reconciliation and understanding. I believe these are good signs for an inclusive and stronger justice system.

VIII. YOUTH JUSTICE AND RESTORATIVE JUSTICE: EXAMPLE

Youth justice provides an example of how different policy frameworks relating to restorative justice principles result in variances amongst different jurisdictions. In 1994, the Federal Provincial Justice Ministers resolved to engage with restorative justice in a meaningful way through the recognition of systemic barriers within the criminal justice system. This commitment is reflected in the "Policy for Canada with respect to young persons" contained in the *Youth Criminal Justice Act*.[22]

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[20] Law Foundation of British Columbia, "Child Welfare Initiative," online: Law Foundation of BC <http://www.lawfoundationbc.org/itoolkit.asp?pg=Child_Welfare>.

[21] British Columbia Government, online: Ministry of the Attorney General, Dispute Resolution Office <http://www.ag.gov.bc.ca/dro/>.

[22] *Youth Criminal Justice Act*, S.C. 2002, c. 1, in particular s. 3(1)(c) "Policy for Canada with respect to young persons":

> 3. (1) The following principles apply in this Act:
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> (*c*) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should
>
> (i) reinforce respect for societal values,
>
> (ii) encourage the repair of harm done to victims and the community,

Some provinces worked hard to create policy frameworks to support their commitment but other provinces lost the opportunity to implement a strategy and deferred the policy development to a later date. My experiences in two jurisdictions, as a judge in Saskatchewan and as the Representative for Children and Youth in British Columbia, demonstrated that youth justice legislation is open to variation in its implementation.

Statistics present a picture of youth in custody and probation that differs greatly in British Columbia and Saskatchewan. All jurisdictions have issues with respect to the over-representation of Aboriginal people in their youth justice system. Aboriginal youth made up one-quarter of all sentenced custody admissions in 2004/2005, yet they represent approximately 5% of the total youth population in Canada.[23]

Comparing youth in custody in both provinces, in Saskatchewan, per 10,000 young persons, 23.04 youth are in custody.[24] In British Columbia, per 10,000 young persons, 4.13 youth are in custody.[25] Comparing youth on probation in both provinces, in Saskatchewan, per 10,000 young persons, 147.60 youths are on probation.[26] In British Columbia, per 10,000 young persons, 30.39 youth are on probation.[27]

One reason that accounts for these vast differences is the emphasis on an *adult* development policy framework in Saskatchewan, whereas in British Columbia, there was a profound commitment at different levels influenced by a strong anxiety about *children* being behind bars. British

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(iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and

(iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements.

[23] Canada, Statistics Canada, "Youth custody and community services in Canada, 2004/2005," online: Statistics Canada <http://www.statcan.ca/english/freepub/85-002-XIE/85-002-XIE2007002.pdf>.

[24] Canada, Statistics Canada, "Youth correctional services, average counts of young persons in provincial and territorial correctional services 2005," online: Statistics Canada <http://www40.statcan.ca/l01/cst01/legal41c.htm>.

[25] See *ibid.*

[26] See *ibid.*

[27] See *ibid.*

Columbia is also a good example of policy frameworks that were developed right down to the community level and extensive re-sourcing of diversion. Youth restorative justice principles could be supported because of the fundamental policy choices that encouraged rehabilitative and therapeutic approaches to youth.

Working in Saskatchewan, I appreciated the impact on culture resulting from diversion and therapeutic approaches. Without it, youth were on a collision course with the justice system and exposure to more offending behaviors. The impact of the harsh incarceration of youth affects their outcomes in significant ways. The well-being of children, including their educational attainment, health, longevity, participation in society, is clearly very negatively impacted by exposure to the criminal justice system in adolescence, and especially early incarceration.

Saskatchewan lacked a strong policy foundation to foresee the positive results of a restorative justice direction that emphasized restorative rehabilitative and therapeutic approaches to youth—considerations that would have allowed for public resources to be redirected to supporting vulnerable kids and promoting the type of social stability and support that will increasingly see the youth justice numbers drop. The opportunity is still there but it must be developed.

IX. CONCLUSION: SHARING THE WAYS

We share a common objective to have all citizens feel empowered and confident in the justice system and the processes that exist to deal with disputes and achieve justice. It has been to the benefit of the entire justice system that the knowledge and practices of First Nations communities have been shared to re-imagine and expand the ways that we resolve disputes. It has helped to shift the persistent "one size fits all" mindset that has resulted in an inordinate number of Aboriginal people being excluded, victimized, incarcerated and traumatized. As we have moved towards reconciliation by allowing our shared knowledge to meaningfully impact how we envision and deliver justice, I wanted to share some of the lessons I have learned.

- Restorative justice creates an obligation for collaboration and involvement. It requires a change in mindset and a willingness to build relationships to work collectively to achieve mutual goals.

- Restorative justice initiatives need to be supported with an appropriate level of resources and reasonable amount of time to develop, implement and assess.
- The judiciary has a key role to play advancing innovations to make justice work for those who have felt like outsiders to the legal system.
- Restorative justice and conflict resolution skills need to be taught to the young. By teaching about circles, roots of empathy, and engaging some of these principles around conflict resolution early, we would equip children with skills that may prevent them from having to resolve disputes formally.
- Aboriginal people and communities have unique cultures, histories and traditions. Practices that work in one community will not automatically work in another. It is important to develop practices that reflect and meet the needs of each community.
- Restorative justice initiatives are difficult initiatives to evaluate but we need to learn about what is working. Perhaps when the practices extend beyond pilot projects, we can accumulate the administrative and longitudinal data to be able share widely the successes and improve where we must to make them better.
- Restorative justice creates a path to resolving disputes that can be very positive. It important that the processes do not subject participants to other forms of injustice or create unintended harms.

There is a lot of work to be done in the reconciliation process with Aboriginal communities and restorative justice is worth the effort. The strength of restorative justice initiatives is that they teach both ways: about how we can accommodate and celebrate difference and also solve problems along the way. It is a result of Aboriginal knowledge being shared at time when we are able to listen as we look for common ground and we are receptive to addressing prevalent issues with our justice system that we cannot solve in isolation. It has helped me enormously as a judge and a person.