

# **HONORABLE BEVERLY BROWNE - WÎYASÔW ISKWEÊW – RESTORATIVE JUSTICE COMMITTEE**



## **PILOT PROJECT**

**JUSTICE LOPARCO – CO-CHAIR**

# 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

# PROJET PILOTE

- Launched March 2022 during a Symposium in the Calgary Court Centre
- Applies to QB and PC province-wide for all criminal matters, subject to conditions in the Crown 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.

## 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

# 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.

# OUTCOMES

- If the RJ process is successful, the case will be returned to court, either for the withdrawal of charges or to set a sentencing date
- If the RJ process follows a finding of guilt or a guilty plea is entered, the agency shall send the lawyers a final report with its sentencing recommendations
- A sentencing judge is not required to accept the RJ recommendations, but it may consider it 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
- 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



# SENTENCING OPTIONS

- S. 718(2) CC expands sentencing options to include RJ practices based on the special circumstances of Indigenous offenders.
- Allows judges to consider sanctions other than imprisonment, including community-based sentences such as conditional sentences, sentencing circles, healing circles, victim-offender mediation, based on Gladue factors.
- The community has control over whether or not they accept the referral, based on their individual program design and capacity.



# 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**

# WHAT WOULD CHANGE?

- More referrals = better informed outcomes
- Court-annexed process provides partnership with Indigenous communities=greater access and buy-in
- Tracking of referrals and outcomes may lead to more stable funding in the future
- Opportunity to lead on RJ Initiative in Canada
- Educating justice system participants on a different way to define justice
- Progressive prosecution policy including all serious crimes is a first in Canada and was achieved because of the Indigenous Foundations Subcommittee's involvement
- Informs sentencing decisions to allow for better results
- Specialized approach and acknowledgement of Indigenous Justice

# WHAT WOULD STAY THE SAME?

- Must work within the existing boundaries of the law
- Involvement of prosecution service
- Determination over charges laid- ultimate result will depend on the process outcome
- Does not always lead to diversion, dismissal of charges, or a reduced sentence
- Judge independence to determine sentence
- Criminal Code requirements and other governing rules and legislation
- RJ Service providers continue to practice as they have historically, and retain the ability to decline any particular referral.

# USE OF RJ IN ALBERTA COURTS

- Has been used in various forms- e.g., sentencing circles in some provincial courts but it is inconsistently used
- RJ is a part of many healing plans that come out of Indigenous Courts
- Judge Ladouceur, Justice Mandamin, and a number of Prosecutors have experience in using RJ
- Not many published decisions and no uniform acceptance of process in all courts
- Some judges do not want to be involved, others will
- Scepticism remains because of myths and confusion
- The pilot aims to help improve understanding of how to incorporate diverse practices in achieving justice
- Recent Published QB Case: R v Lariviere, 2021 ABQB 432

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# RECENT QB REFERRAL

- QB referral – dangerous driving causing death
- Motorcycle accident. 20 year old passenger riding on back of motorcycle was killed
- Family is from Ontario.
- Justice Browne raised RJ as possibility at PTC

# PROCESS

- Victim's family and offender dialogue
- The girl's mom spoke. She described how she was so angry for a long time she could not see how Accused had suffered. She described how she spent her whole life protecting her children. She showed Accused a slide show of the girl's life.
- Mom had severe PTSD for 19 months after the girl's death.

# OUTCOME

Joint submission for sentence.

Pleaded guilty to careless driving and received 60 days intermittent, 8 month driving prohibition (12 months for motorcycles).

Offender asked to speak at events about motorcycle safety

Mom thanked offender for being there, asked him to stay in touch

Offender acknowledged that this process was harder on him than prison time

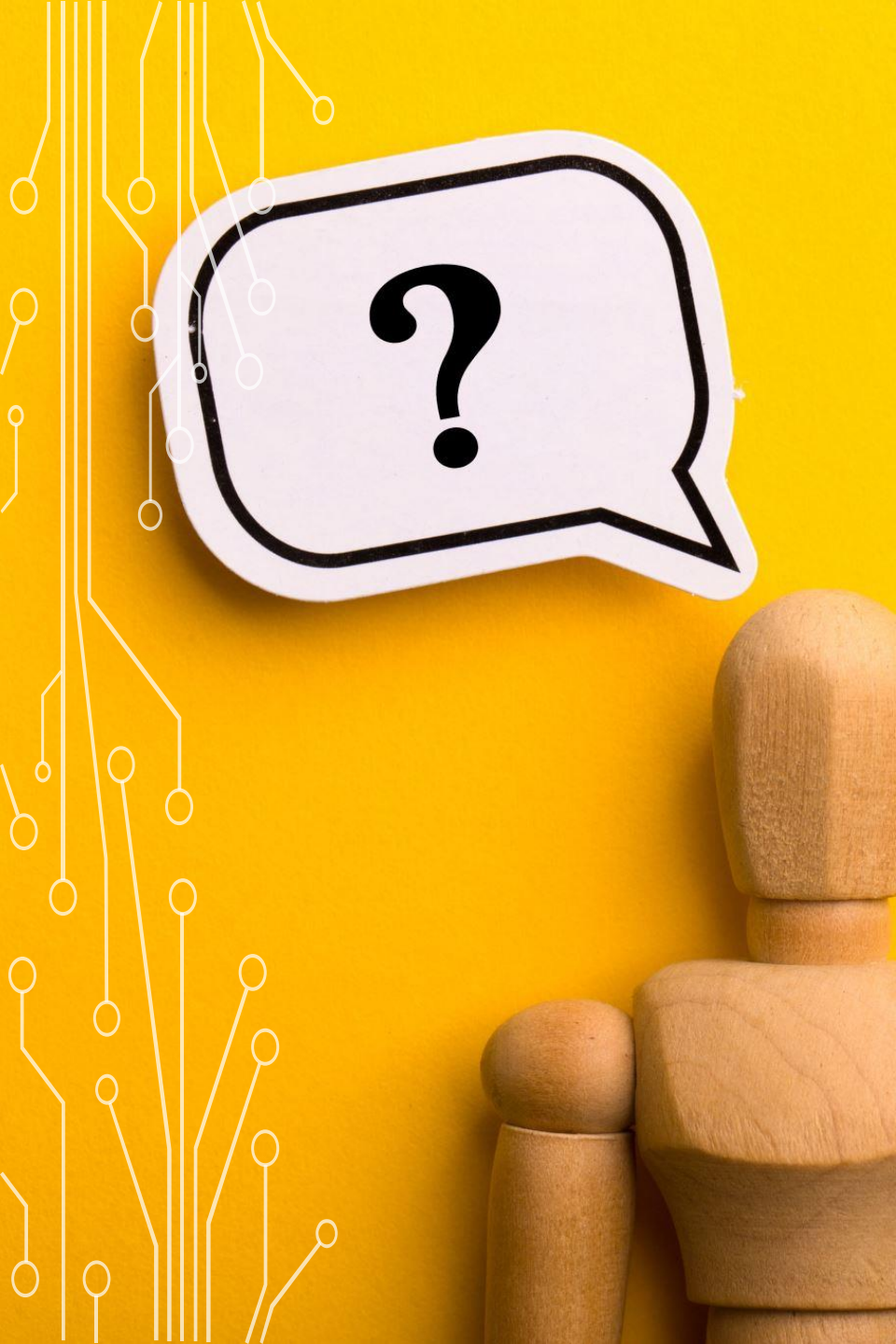
Grandma thanked him and expressed she hoped her own son would someday want to contact him. She said you can never have too many people who love you.



# 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