



Podcast: Voices from the Field 33 – Decarceration and health – Part 3: the wîyasôw iskweêw restorative justice project

Description

Decarceration and health: Breaking down bars for systemic change is a mini-series within Voices from the Field. It explores the realities and impact of community-based justice alternatives, their connection to health, and what is needed to affect and inspire change and address the current injustices reflected in the over-incarceration of First Nations people, Inuit, and Métis people across the country.

Decarceration and health: Breaking down bars for systemic change – Part 3: the wîyasôw iskweêw restorative justice project. In this episode, we speak with Justice Anna Loparco of the King's Bench of Alberta, Deputy Chief Justice Joanne Durant and Justice Michelle Christopher of the Alberta Court of Justice, and our co-host Andrea Menard about the development of the wîyasôw iskweêw court-annexed restorative justice program. We learn about the program's vast connections to empowering offenders and victims' health, well-being, and healing, as well as aspirations for the program's future and what is needed to spark change and uplift Indigenous laws and legal practices in the criminal legal system.

Bios

Honourable Justice Anna Loparco



Justice Anna Loparco is a distinguished member of the Court of King's Bench of Alberta (appointed March 8, 2019). Justice Loparco attended the University of Alberta's School of Business, earning a Bachelor of Commerce degree in 1995. She then worked for CN Rail for five years prior to pursuing her legal studies at McGill Law School in the bilingual and bijural program, earning degrees in Common Law and Civil Law in 2002, and her MBA in 2003. She was admitted to the Quebec, New York, and Alberta Bars.

As a lawyer, Justice Loparco worked at Fraser Milner Casgrain LLP (later Dentons LLP), eventually becoming a partner, practicing in a broad range of areas of law including intellectual property, constitutional, family, estate, education, administrative, professional liability, corporate commercial, insurance, and privacy. She has appeared before every level of court including the Supreme Court of Canada, and authored various publications, notably on the topics of the role of expert witnesses and the role of child's counsel. She served as counsel to the Office of the Child and Youth Advocate in Alberta for over 15 years and was pivotal in establishing a new framework for child representation, ensuring children's rights to participate in proceedings that affect them. She represented children in sexual and physical abuse



cases, acted as a liaison to the courts in the province, provided advice on investigations of deaths and serious injuries of children in care, and recommended changes to improve children's services in Alberta.

Justice Loparco is the co-founder and co-chair of The Beverley Browne - wiyasow iskweew – Restorative Justice Committee project, involving justices from the Court of King's Bench and Alberta Court of Justice, crown prosecutors, defense counsel, Indigenous groups, victims' rights groups, restorative justice practitioners, policing agencies, and many other stakeholders in the community. While currently focused on criminal matters, the project aims to expand restorative practices to family and civil contexts in the future.

Justice Loparco volunteered extensively in the community and took on many pro bono files representing children in sexual abuse claims as well as individuals with mental illnesses. She regularly volunteered as Pro Bono Alberta duty counsel and amicus counsel. Justice Loparco has chaired the French Language and Interpretation Steering Committee of the Court of King's Bench since 2020 and regularly presides over French matters, including jury trials.

Honourable Deputy Chief Justice Joanne Durant



Deputy Chief Justice Joanne Durant was born and raised in Ottawa, Ontario. She obtained her undergraduate degree from York University and attended Osgoode Hall Law School. After two years as a defence counsel in Toronto, she joined the Crown Prosecution Service. After moving to Calgary, she joined the Alberta Prosecution Service where she remained as an Assistant Chief Crown Prosecutor until her appointment to the bench in 2011. She has been a sessional instructor at Mount Royal University, the University of Lethbridge, and the University of Calgary law school. She was appointed as an Assistant Chief of the Calgary and Region Criminal Division in 2017 and Deputy Chief Justice of the Alberta Court of Justice in 2021.

Deputy Chief Durant has oversight of all specialized and Indigenous Courts for the Court of Justice. She is the mentoring justice in the Drug Treatment Court and presides there frequently. She is also Chair of the Court's Education and Criminal Caseload committees.

Deputy Chief Durant is also a proud mother to five children and a weekly volunteer at a local Humane Society.



Honourable Justice Michelle Christopher KC



Prior to being appointed in 2018 as the first woman judge of the Provincial Court in Medicine Hat, Alberta, the Honourable Justice Michelle Christopher KC was a law professor, mediator and pro bono law clinic director with a background in the practice of family and criminal law. She was the 2016 recipient of the Canadian Bar Association/Law Society of Alberta's Distinguished Service Award for Service to the Community and was appointed Queen's Counsel in 2018. She now sits as a Justice of the Criminal Division of the Alberta Court of Justice in Calgary, Alberta. Justice Christopher is passionate about access to justice and her work to bring awareness of restorative justice to justice system participants in Alberta and across the country. She also devotes much time and energy to judicial

education initiatives with her Court and through volunteer board work with the Alberta Provincial Justices Association, the Canadian Association of Provincial Court Judges, and the Canadian Chapter of the International Association of Women Judges.

Andrea Menard



I am a Métis individual associated with the Otipemisiwak Métis Government and work on Treaty 6 lands in amiskwaciwâskahikan (Edmonton). Originally, my family hailed from the now-dissolved Red River Settlement within Treaty 1 territory. Our Métis lineage bears the surnames Bruneau, Carrière, and Larocque.

I am humbled to have been recognized as one of the Top 5 Most Influential Lawyers of 2023 by CIO Times and as one of the Top 25 Most Influential Lawyers of 2022 by Canadian Lawyer Magazine. These accolades reflect my deep commitment to partnering with Indigenous nations across Treaties 4, 6, 7, 8, and 10, including collaborations with the Otipemisiwak Métis

Government.

My personal journey as a Métis individual informs my ambition to reform academic and legal workplace policies through the inclusion of Indigenous laws, enriched by my PhD studies in Social Dominance Theory and Legal Pluralism at Royal Roads University in the Doctor of Social Sciences program.

As a sessional law instructor at the University of Calgary's Faculty of Law and at Osgoode Hall Law School, I develop and teach innovative courses such as "Reconciliation and Lawyers" (LAW 693) and "In Search of Reconciliation Through Dispute Resolution" (ALDR 6305). In addition, I serve as the



Lead Educational Developer for Indigenizing Curricula and Pedagogies at the Centre for Teaching and Learning at the University of Alberta.

Denise Webb



Denise Webb is a Research Associate with the National Collaborating Centre for Indigenous Health. Denise holds a Master of Science in Health Services Research, with an emphasis in health policy and specialization in Indigenous health, from the Institute of Health Policy, Management, & Evaluation at the University of Toronto. Her research focuses on the intersection and relation between health policy and First Nations, Inuit, Métis public health. Denise is of Irish and Scottish settler ancestry and is an aspiring ally, working toward informing the decolonization of health systems and policy research.

Transcript

Denise Webb: Welcome to Voices from the Field, a podcast series produced by the National Collaborating Centre for Indigenous Health. The NCCIH focuses on innovative research and community-based initiatives promoting the health and well-being of First Nations people, Inuit, and Métis people across Canada.

-Music-

Denise Webb: Hello and welcome to *Decarceration and Health: Breaking Down Bars for Systemic Change*, a mini-series within Voices from the Field. My name is Denise Webb. I'm of Irish and Scottish settler ancestry and live as a guest on the unceded traditional territory of the Lheidli T'enneh here in northern British Columbia, and work as a Research Associate with the National Collaborating Centre for Indigenous Health. I'll be co-hosting this mini-series alongside Andrea Menard.

Andrea Menard: Hello, tânsi, bonjour, everyone. And thank you, Denise. I am a Métis, anticolonial legal scholar originally hailing from the Red River Settlement, where my families last names are Bruneau, Carrière, and Larocque. I am also a card-carrying member of the Otipemisiwak Métis government, or the government of the Métis Nation within Alberta, and I currently reside on the unceded lands of Treaty 6 and Métis Nation Homeland Region lands.

I have over two decades of experience working in law, government, legal non-profit, legal academia, and legal regulatory sectors, and I have built relationships across what is now known as Canada with



Indigenous nations, organizations, and individuals, as well as with non-Indigenous professionals and academic partners, where we collaborate on a number of decolonizing and reconciliation programs and initiatives.

Denise Webb: Thank you, Andrea. *Decarceration and Health: Breaking Down Bars for Systemic Change* builds off a report I completed that was published by the National Collaborating Centre for Indigenous Health in 2024, titled *Barred: Over-incarceration of Indigenous People in Canada's criminal legal system, the health implications, and opportunities for decarceration*. The report was intended to help inform the public health crisis pertaining to the over-incarceration of First Nations, Inuit and Métis people in Canada's criminal legal system. It also explores avenues to decarceration through community-based justice alternatives, including diversion programs, Indigenous courts, and Indigenous-lead healing lodges.

Over incarceration has both immediate and far-reaching negative health impacts, and is a determinant of health. This podcast mini-series is an opportunity to listen and learn from experts in the field and those with lived experiences working in the criminal legal system, about what changes are needed, and how Indigenous laws and legal principles can be respected and upheld to support Indigenous-led and distinct justice systems.

I am incredibly thankful to Andrea, who graciously agreed to support the NCCIH by leading and guiding this mini-series; for sharing her knowledge, legal expertise, and passion for this topic. It is an honour to have you here, Andrea.

Andrea Menard: No problem, Denise. It's a pleasure to be here co-hosting with you as we both interview some fantastic people involved in breaking down systemic barriers, and leading transformative changes within the criminal legal spheres that are not well understood or known of right now.

So, I appreciate the space that the NCCIH has given to this important podcast. My aim is to build momentum through learning what others are doing, and moving things forward in a good way.

-Music-

Denise Webb: Today's episode is about the wiyasow iskwew Restorative Justice Pilot Project in Alberta. To get some insight, we spoke with the Honourable Justice Anna Loparco of the King's Bench of Alberta, as well as Deputy Chief Justice the Honourable Joanne Durant, and the Honourable Justice Michelle Christopher of the Alberta Court of Justice.

This episode comes with an additional content warning. This podcast episode may be triggering or cause distress for some listeners. It discusses cases of sexual violence and substance use. For support,



please reach out to the Hope for Wellness Helpline at www.hopeforwellness.ca or call 1-855-242-3310. The 24-hour Residential School Crisis Line is also available at 1-866-925-4419. Please take care while listening.

-Music-

Denise Webb: Thank you all so much for joining us and taking the time to join us today. The Honorable Justice Anna Loparco, Deputy Chief Justice the Honourable Joanne Durant, and the Honourable Justice Michelle Christopher. We will also be hearing from our co-host, Andrea Menard on this episode, as Andrea had a lead role in guiding this work, and creating and co-chairing the Indigenous Foundation Sub-Committee on the wiyasôw iskwêw Restorative Justice Pilot Project.

It is all so exciting to have you all here today. Perhaps you can first, for the Justices on our call, first introduce yourselves to the listeners and provide a bit of background and the types of cases that you hear, for the listeners who may not be familiar with the different courts.

Justice Anna Loparco: Thank you, and thank you for the introduction and also for the invitation to be here today. It's an honour to share with you the project that we're involved in, the wiyasôw iskwêw Restorative Justice Project.

So, I'm Justice Anna Loparco and I sit in Edmonton on the Court of Kings Bench. I sit on all types of matters; that would be civil, family, and criminal matters. Both criminal matters with judge alone, or also with jury at times.

Just a little bit about my background. I come from a large firm in the Edmonton area. I also worked in Montreal and went to school in Montreal, so I was a member of both Alberta and Quebec Bars. Before I came to the bench, I practiced in a wide variety of areas, including child protection, and a variety of constitutional issues, school issues, and also corporate law. So it really covered the waterfront. But on my free time – which as you can imagine, was probably not a lot at the time – but I worked in the community with a restorative justice agency that provided services mostly to youth, and also had an adult component. But I was so moved and inspired by the results with youth involved in the criminal justice system that I said that if ever I were to be appointed, I would try to make this a project of mine to have restorative justice expanded as part of a court project.

And that's exactly what we did, and I became the co-chair of the Restorative Justice Project. It was once a pilot project, now we're happy to say [it's] a permanent project.

Denise Webb: Thank you. Deputy Chief Justice Joanne Durant?



Deputy Chief Justice Joanne Durant: Thank you, and thank you also for having us here today. We really appreciate the opportunity to talk about this project.

Prior to being appointed to the bench, I had a lengthy career in the Crown Prosecution Service, and I was originally appointed in the Criminal Division of the Court of Justice in 2011. I sit in Calgary. I became the Assistant Chief Justice of the Calgary and Regional Divisions in 2017, and then the Deputy Chief Justice of the Court in 2021. As the Deputy Chief Justice of the Court, I have – amongst a number of other things – I have oversight of all of our Indigenous and therapeutic courts, specialized courts in the province.

What led me to this project really was seeing that there is quite a bit a court can do, but there's quite a bit a court can't do, and a lot of work needs to happen outside of the court process. And restorative justice is just a huge piece of that.

Denise Webb: Thank you. And Justice Michelle Christopher?

Justice Michelle Christopher: Good morning. I'm really pleased to be here. I of course come from a background in law, but more from the academic side. I had a practice in family and criminal law, and ended up teaching at the University of Calgary doing work in the access to justice field through student legal clinics and pro-bono work.

My interest in restorative justice stemmed from my days as a mediator. So I primarily sit in Calgary in the Criminal Division, but I also work in the regional courts around Calgary and there are 11 circuit points that we service through Calgary, where we also hear family and civil cases. And in working in various court-annexed programs to establish mediation in the Alberta courts, and working with youth, I realized that there was great potential for restorative justice as a way for the court system to respond to people on a level that spoke directly to the reasons that brought them into conflict with the law and/or into court.

So, thank you very much for including me in this important work. I look forward to what comes next as we continue our initiatives in restorative justice.

Andrea Menard: I'm wondering if you can tell us what is the wîyasôw iskweêw Restorative Justice Project. Justice Anna Loparco?

Justice Anna Loparco: Well, it's a project that we started over five years ago now, but I'm going to break that question down into two parts because I want to first explain what restorative justice is, and then how we came to this project called the wîyasôw iskweêw Restorative Justice Project.



So, the restorative justice process is really a borrowed term. It's been used since time immemorial in Indigenous communities, and while it's been used for decades in Canada in both Indigenous and non-Indigenous matters, I want to say, first of all, that we want to continue to honour the Indigenous origins, and ensure that any RJ [restorative justice] approach is culturally sensitive and appropriate for the participants in each case.

So, as you'll hear later in developing this project – and Andrea as you have been intimately involved with – we sought to respond to the TRC Calls to Action and specifically seek the Indigenous Foundation Sub-Committee's advice on how to move forward so that we approached it not from a pan-Indigenous lens, but rather in developing policies to ensure that the process respected the unique traditions of the communities involved.

So just back to the concept of restorative justice; what it seeks to do is bring together the victim, the offender, and community members who are supported and voluntarily participating in a discussion, in a dialogue, about what's happening. As everyone knows, in the criminal justice system, that doesn't happen. In fact, the contrary happens: often when people have lawyers, the defense gets involved. It is in the best interest of the accused to remain silent so that they have the presumption of innocence and the right to silence, and often that doesn't get to the root of the problem. Often the victims want an explanation, but they never get it. They have the opportunity, of course, to give their evidence and the Victim Impact Statement, but at the end of it all, whether there's a conviction or an acquittal, people are left feeling empty and answers are not responded to, they just simply don't know what happened. Families can be broken apart. Communities are left trying to figure out how to move forward, and there's no dialogue that happens. So, what this does with an impartial facilitator or a keeper, is engage the stakeholders, identify the harm, discuss the impact, and recommend what needs to be done to amend, to rectify, and to rehabilitate the parties on their path to healing and to wellness. So, the key principles, of course, are to acknowledge the harm, that there be voluntary participation, and safety concerns are dealt with, and of course, that parties have reasonable expectations of outcomes.

So that's restorative justice in a nutshell. And as I mentioned earlier, because of my background dealing with youth and restorative justice, it was my desire to expand it. And I had the good fortune of meeting Justice Beverley Browne, who has since passed away. But in 2019, shortly after my appointment, like literally a month after I met her, we just had this shared passion for restorative justice. And anyone who knows her, she was the first Chief in Nunavut, and a huge advocate for Indigenous rights and rights of minorities generally before the courts. And so, we spoke about how restorative justice could be a part of the court process in criminal matters. And the committee was then started in 2019, and we just started connecting the dots and bringing people together. I think, Andrea, you were one of the first at the table. Before we launched the project, we had a committee of 100 people of community members, and I believe Michelle will talk a little bit more about that, so I won't go in depth into that, but we did broad consultation.



So, we officially launched the pilot project in 2022, and it was during COVID, and it was from the Indigenous Court in Calgary, starting with a smudge. And we had both Ministers of Justice, federal and provincial, attended and spoke, and we had a number of Indigenous communities involved and participated in speaking about their experience with restorative justice. It was really quite a powerful event. And that was the official launch.

We named the committee the wîyasôw iskweêw Restorative Justice Project after Beverley Browne passed away. And what it translates to roughly is ‘woman standing with the law.’ And we had a Cree spirit naming ceremony for her before she passed, and we thought it was appropriate to name the committee after her.

So, I'll stop there because there's so much more to say, and I don't want to take up all of the time and I'll pass it back to you, Andrea.

Andrea Menard: Deputy Chief Justice Joanne Durant, let's hear from you.

Deputy Chief Justice Joanne Durant: Thanks very much, Andrea. I think Justice Loparco has summed up the project in an excellent manner. I don't have a lot to add, other than to simply echo her comments that, as I said earlier, that there's many things the court can do and many things that it can't. And certainly Victim Impact Statements will be heard. If in fact there's a conviction, which, for a variety of reasons doesn't always happen, Community Impact Statements are also permitted in certain cases as well, but again, that allows the court to hear about the impact an offender's actions have had, but it really doesn't provide a space for any kind of healing for the parties involved, and that work really needs to be done outside of the court system. I think many of us involved in the criminal matters before the court realized long ago that we move on to the next case, but the impact of an offender's behaviour is still there for those who were involved in the incident. And this project really allows them to meet with the facilitator and to talk about the impact of the offender's actions, but also talk about what brought the offender to that point in their lives as well.

So, like many of our therapeutic or Healing to Wellness Courts, this process really gets to the root cause of what led to the crime occurring in the first place. And the hope is that with that understanding, not only can the healing occur, but also that recidivism can ultimately be reduced if we're getting to the root cause of what brought a person to that point in their lives as well.

Denise Webb: Thank you both for explaining that. I really appreciate hearing about how the restorative justice project and process kind of leads to that path of healing and wellness for offender, for community, and for victims.

My next question is for Justice Anna Loparco. I know you've already given us a history of the project and how it came to be through the work of the Committee. I'm wondering if you can also touch on



maybe a broad overview of how the project works, and some of those intersecting principles within the project?

Justice Anna Loparco: Yes, I certainly will do that. Just broadly speaking, there are two streams; one is diversionary for more minor crimes and the other one is pre-sentence. And the reason this is important is because we all know too well the tragic over-incarceration problem we face daily in our court system, in our justice system, and into our prison system. We are required to take an individualized approach in sentencing, and restorative justice allows us to do that because what happens is we are better informed before sentencing someone, and that allows us to find solutions that ultimately resolve the underlying issues when we better understand the root cause of the crime.

Secondly, we need to recognize that not all victims of crime want to go to court. What this allows is for a multi-door court system where we can divert some matters, where suitable, to alternative dispute forums. And I use as an example; we've heard loud and clear from victims of sexual assault in particular. As you may know, the statistics are dismal. Only 5% report, and of that 5% that do go to court, there is a very low rate of conviction and ultimately no one leaves satisfied. So, what this allows is for where responsibility is accepted, we can move to improve justice for participants in a way that's meaningful to them by allowing them to get the services they need to stop the cycle of crime and trauma, and to try to resolve the underlying emotional issues involved in the crime.

Thirdly, I just want to say briefly that the Federal-Provincial-Territorial Working Group has committed all governments to increase the use of restorative justice in criminal matters. So, as I said earlier, in addition to responding to the calls to action, we are also responding to their mandate. There are over 240 agencies across Canada that deliver services and about 15 in Alberta that are on our specific roster. So, when we are in court and we have a request for referral to restorative justice either for diversionary purposes or for pre-sentence, they can consult that roster and then we will just simply adjourn the matter over. And then what this allows us broadly to do is to explore contextually-informed resolution of matters involving the broader community and the individuals involved, and try to reduce the rates of recidivism and cost-savings ultimately to the judicial system.

Denise Webb: Perfect. Thank you, Justice Loparco. I would like to hand it over to Andrea just to talk a little bit more about the committee process. So I'm wondering, what was it like as Co-Chair of the Indigenous Foundation Sub-Committee of the project, what was the consultation process like? Who did you gather together and what did this entail?

Andrea Menard: Thanks, Denise. Yeah, it was an honour to co-chair the Indigenous Foundation Sub-Committee. And Anna and Michelle, who were co-chairing the restorative justice, at that time, pilot project, they allowed us lots of leeway. As Indigenous people, we know intimately what happens with our communities when we interact with the colonial justice system. And so they gave us a lot of leverage, or a lot of way – a lot of open space to do what we do best. And that is we're Indigenous



peoples, we would like to assist Indigenous peoples, and we would like to have the Indigenous voice in, because a lot of the time Indigenous voices are not there. So, it was just an honour and a privilege to co-chair this Foundations Sub-Committee on the restorative justice project.

So what happened was I decided to co-chair with a Métis Alberta Crown Prosecutor. And her and I would co-chair the meetings together. And what is important is we bring all Indigenous peoples together, and that is really hard, you know, because there's many Indigenous nations here. There's also Métis settlements, the Métis Nation of Alberta. And there's also urban Indigenous peoples here. There's also Indigenous lawyers and Indigenous justices. So, who are we going to bring together?

So, I have a bit of a history and knowledge working with the restorative justice in the courts when I worked for Legal Aid Alberta as the manager of Indigenous Relations. I would go across Alberta, I would see how the courts were functioning in 2018 to 2020, and I kind of knew the lay of the land and I was meeting a lot of the Indigenous restorative justice committees along my way. So, what was really important is getting Indigenous lawyers on the Sub-Committee as well as Elders and nation members involved in restorative justice. So that was really important. It was really important to get Indigenous urban community members in, as well as people in the system and hearing their voices of what they would like to see. So, it was an amazing process. It's still going on, we're still trying to strengthen it as we move forward in this restorative justice era that we're in. And as Anna was saying beforehand, restorative justice – its roots are Indigenous. So, since time immemorial on these lands, Indigenous peoples have been practicing in this way. So it only makes sense that the restorative justice project, wiyasôw iskweêw, starts with an Indigenous lens and gets to the root of the matter.

So the consultation process: it was wide, it was varied. It happened within the Sub-Committee group, and it also happened within the larger group of 100 people that were there attending and planning out the strategies of how far we would go in this project. So, at the launch as Anna was explaining earlier in 2022, we had Saddle Lake Restorative Justice, we had Kee Tas Kee Now Tribal Council there as well, and their restorative justice program. We had Elder John Bigstone there from the Bigstone Cree Nation Justice Program, and we had Elders inviting us in and doing things in a good way, starting with a smudge. And of course, we had a phenomenal launch program, I'm very proud of what we've done so far.

Denise Webb: Incredible. Thank you. Thank you for explaining that to us.

Our next question – I'm wondering if we could hand it over to Deputy Chief Justice Joanne Durant: if you can tell us about what this new crown policy is for the program, and how the program works in the courts?



Deputy Chief Justice Joanne Durant: Thank you, I'm happy to do that. The creation of the crown policy by the Prosecution Services, both the Provincial Crown Prosecution Service, as well as the Federal Prosecution Service, was really fundamental to the creation of the project.

It's important to ensure that there was a framework in place that allowed for consistency and transparency across the province as well. So, I'll begin by saying that all criminal matters are eligible to be referred to restorative justice. There are some additional steps that need to be considered for some matters – I'll address that briefly in just a moment. Certainly charges must have been laid before they become eligible to participate in this project. So, while restorative justice is certainly available pre-charge, should policing services or offenders and victims want to proceed in that fashion versus having charges actually laid, this process is initiated post charge.

So there's two different referral streams: one occurs very early on, before any substantive steps have been taken in the matter, and you heard Justice Loparco reference that. We call that the diversion stream. The second stream of referral will happen after someone has either been found guilty or entered a guilty plea, but prior to them being sentenced. So I'll speak briefly about them both. So for all matters that are being referred to restorative justice, there are three conditions, and Justice Loparco referenced those too: there needs to be an acknowledgement of responsibility by the offender, there needs to be an acceptance of the facts that are going to be shared with the facilitator, and finally, there needs to be the consent of all parties to participate.

So I'll discuss the diversion stream first. These are generally the less serious matters in the *Criminal Code* that will be referred. They can be quite serious, so they could involve a sexual assault or even a homicide, but that would be in quite exceptional circumstances. The discretion to refer a matter in this stream lies solely with the prosecution. The court isn't really involved at all, other than perhaps to inquire as to whether the Crown has considered diverting the matter to restorative justice. The end result of these matters that are diverted, if successful, would actually be a withdrawal of the charges.

So, for the second stream, you'll recall that the referral will happen after somebody's been convicted after trial of a criminal offence, or has pled guilty to a criminal offense. Again, all *Criminal Code* charges are eligible, even the very, very serious ones, at this point. These include, as I said, the most serious in the *Criminal Code*. So, homicides, very serious sexual assaults, aggravated assaults. They're all eligible at this point. Caution is absolutely exercised if the referral is made, particularly when the offenses involve gender-based or intimate, partner-based, or sexual violence. In these cases, the approval of the presiding justice is going to be required, and this is the justice who's going to be sentencing the offender, because [if we] recall, the justice is either just heard the facts of a guilty plea and found the person guilty, or alternatively they've just presided over a trial and the offender has been found guilty.

The matter would be adjourned if the justice agrees for the restorative justice to take place. If successful, a report will be generated actually by the restorative justice facilitator, and these have been



very helpful in the past for those that have been prepared for the sentencing justices in our court. It may well make a suggestion as to what the sentence the parties would like to see imposed in that report. If it does, that's certainly informative and helpful for the justice, but it doesn't bind the justice in the justice's sentencing. Judicial independence must be such that the justice can take the recommendation into account. They don't have to. If the restorative justice process is unsuccessful, then the matter just continues in the usual course in the court system. If that happens, nothing that is said – so no discussions or any information shared during the restorative justice process – can be used in the court hearing. It is considered privileged and confidential information.

And finally, although I mentioned earlier about caution being exercised with certain types of offenses when referring them to restorative justice agencies, and specifically those involving sexual violence, or gender-based violence, or intimate partner violence, the restorative justice agencies that do take these types of offenses require specialized training to deal with them. But very importantly, the restorative justice agencies are also free to decline to take these certain matters should they not wish to take them. They certainly aren't required to.

So that, in a nutshell, is how it works for both the diversion stream and for the pre-sentencing stream.

Andrea Menard: That's amazing. Thank you, Deputy Chief Justice Joanne Durant for that overview.

Next question is: what is the significance of community-based restorative justice work and its place in the criminal legal system? Justice Michelle Christopher, what do you think?

Justice Michelle Christopher: Well, to me it's a measure of how the justice system responds to the diversity of participants coming into conflict with the law and into the courts.

Approaches to cultural differences and diversity have evolved over time and are much more nuanced and responsive today than, for example, even 10 years ago. So, where in the academic context we used to talk about developing cultural competency, or even cultural fluency, we now realize that those are really flawed concepts. And all we can really hope for is cultural awareness, which embraces respect and diversity for the people that we come in contact with who are from a different place, from places of diversity, whether that's racialized or in terms of their experience in life, or other factors that affect diversity as far as personal identification, sexual orientation, all those things. So, we realized that while this conversation around cultural awareness and respect for – the dignity of other ways of being and doing is important. We also put that in context in the judicial system with a realization that settlement rates for trials are somewhere in the 96-97% rate, which tells us that many things that start in the judicial system don't really need a judicial response or intervention, because they can be resolved outside of the formal court system, or as it were, on the steps of the courthouse.



So the courts, through various programs, are returning conflict resolution to the participants. And we see this when we look across the dispute resolution continuum with mediation programs that are now court-annexed, [...] programs, arbitration programs, and more recently, the development of specialized courts and court processes. So we have processes in Alberta, for example, to recognize mental health diversion initiatives, domestic violence courts, drug treatment courts, Indigenous courts, and other specialized processes that wrap around or coordinate with formal court processes. And this, to me, is where restorative justice comes in. So, it legitimizes and facilitates the use of traditional or customary legal principles or customary law – for example, Indigenous law – that reflect and recognize cultural differences and what is important to those communities. And so we try to meet them on their terms. And in some way, I think that the systems that we have are becoming more complementary. So, we'd like to, with restorative justice programs as it were, meet those diverse participants where they are rather than having them come to us and participate in something that isn't really meaningful. And I think the lack of meaning in the processes of what I would call sort of mainstream criminal justice, for example, for Indigenous offenders, mean that they often reoffend because the responses of the mainstream program don't really meet the needs that they have. [The mainstream programs] don't help them heal, don't connect them with community, don't allow them to repair harm to victims or community in a way that's meaningful to them, that's culturally appropriate, and that meets the needs of their traditional Indigenous justice system.

So what we're trying to do is meet community participants in community to some degree, and legitimize the use of their legal orders within our existing system. That's sort of where we are at the moment.

Denise Webb: Incredible. Thank you. That really helps to paint the need and the place for restorative justice within the courts clearly.

So my next question is again for you, Justice Christopher, as well as Justice Loparco, and I'm wondering: in your introductions you both share some experiences that you have outside of this project that's with restorative justice and restorative justice with youth and working in community, and I'm wondering if you can draw on this experience in addition to your expertise with this project, and help us to understand the connections between this work and restorative justice broadly to the health, well-being, and healing of both offenders and victims? Perhaps we can start with Justice Christopher?

Justice Michelle Christopher: I think this is a really great question because it really speaks to how important connections are between the actors in the justice system and the participants in the justice system who come to us. We realize that people coming into the justice system often present to us with underlying issues, and those are the things that lead them to be in conflict with the law. Through experience, we know that if we address the root causes of offending behaviour, we often find those people do not return to the justice system and do not reoffend.



So the focus of restorative justice is, of course, as Justice Loparco and Deputy Chief Justice Durant have said, to address harm done to individuals in the community by providing opportunities for offenders to take responsibility and be accountable for their actions, often through healing plans and programs that address those specific issues which bring them to court. Whether that's mental health, whether that's trauma or intergenerational trauma, addictions, family dysfunction, what have you. So, it is particularly important, for example, with Indigenous offenders, to acknowledge Indigenous justice systems where the focus is on mistakes, not criminality or criminal behaviour. That's not a concept which is embedded in Indigenous justice or customary law. It embraces healing plans to reconcile the behaviour that is considered to be wrong, or a mistake with the offender and their victim and the community.

And in that context, it involves working with the community to address those harms and takes various formats for resolution. In the Indigenous context, this could be a sentencing circle, which is used in some communities. It could be Elder support. For example, Siksika has an Elder support program where people in conflict with the law work with Elders in a program called Aiskapimohkiiks to resolve and heal from the mistakes that were made and the harm that was caused. There are various peacemaker programs, for example Kainai or Tsuut'ina. But another way we see these principles applied is in the development of medical legal partnerships where we realized, particularly working with marginalized and vulnerable members of the community, that if we address the issues that they have with poverty, with lack of education, with substance abuse, addressing the legal issue follows quite closely to addressing the medical problems that they experience. So, for example, you might have someone who has health issues related to substance abuse and then they offend to feed their addictions; if we address their legal problems in combination with their medical problems, then it seems that on both sides, their overall health and wellness and well-being can improve by not having legal issues that compound the medical or health related problems that they have. It is something that is really interconnected with legal problems; the health and well-being of offenders often resolves once their legal problems are resolved.

So, I think this is just another example of the benefit of broad-based consultation with community members to find the right solution, and that's sort of underpins what we call the “multi-door approach” to resolving legal problems today.

Denise Webb: Thank you for that. Justice Anna Loparco, do you have anything to add on this connection between this work and health and well-being for victims and offenders?

Justice Anna Loparco: Well, if you don't mind, I'd love to take you through two real life examples that have happened in our courts, in the Court of King's Bench. They're both published decisions, and I think they're important and they'll resonate, because the fact will help explain why restorative justice ultimately led to better outcomes for the individuals involved. And when I say better, I mean also restorative outcomes.



So, the first case – and there are lengthy cases, they're published, so you can go and read them. The first one is *R. v. Lariviere* and briefly, the facts are it's a historical major sexual assault that happened in 1977. The victim was 18 years old at the time, was attending a ball tournament in Cold Lake, Alberta. Her plans fell through with respect to where she would stay till the night, so Mr. Lariviere, who was very well known to her and who she considered an uncle – not biological, but just through family relations – offered for her to stay with him in his tent. He was 32 at the time and had a history of addictions. She shared a sleeping bag with him and awoke to not feeling right, something – her clothes were twisted, and she was very sore. Upon returning home she discovered over the weeks that she was pregnant. She gave birth to a son, but over the years suffered from suicide ideation, worthlessness, and shame. She kept the secret to herself. She lived in fear that others would discover that she had been raped and that a child was born as a result of that. It was only after her parents died, she had the courage to come forward and tell her sister and then go to the RCMP. The DNA testing confirmed that the adult son was Lariviere's. At the time of trial though, he was 75 years old and had suffered from a number of medical conditions.

The Gladue report provided to the trial judge had significant information regarding his own attendance at residential schools and the attendance of his parents, and the intergenerational trauma that had resulted. He had been employed most of his life. He had stopped drinking in '88 and helped others deal with addiction, and he was viewed as a mentor and an advisor in the community. He was unaware of the charge at the time and the fact that he had a child until trial. He didn't deny his role, but he just had no memory of it, so he did not plead guilty. So, this is one of those pre-sentence examples where he was convicted and then the parties decided to go to restorative justice before he was sentenced.

So ultimately the important thing about this was that it was victim-driven. It was the victim who insisted on restorative justice. She wanted to have an explanation for what happened, an acknowledgement of the harm, and more importantly, she wanted him to be an educator in the community to young people, so that they would understand what consent means in sexual relations, and she felt that he was in a good position to do that. So they were referred to restorative justice. It was actually in Saskatchewan, because that's the community they came from, and they used Saddle Lake, which has enormous respect for their reputation in performing restorative justice services. So they had the restorative justice dialogue, they both had parties from the community involved, and consideration was given, of course, to Mr. Lariviere's age and his poor health. But importantly, she did not want him to go to prison. She felt that there was a better path forward, that he had already been on the path of healing, and that for her purposes justice was served because of the conviction and the acknowledgement of the harm.

By way of background, in Alberta, sentences for major sexual assault such as this one, particularly with a sleeping or unconscious victim as a result of intoxication resulting in pregnancy – I mean the factors add up that would certainly attract a penitentiary sentence. But as I said, there were a number of factors



that were considered when the report ultimately went back to the sentencing justice, and most noteworthy was the fact that the victim felt justice had been served and didn't want him to go to prison, and that he was willing to participate in the circle and to use it as a tool to unlearn bad behaviour and show respect for women and to educate the next generation. So as I said, respected Elders and community members were involved; involved healing not just individuals but the community. And in the end, the recommendation that resulted from the process was that he should receive a suspended sentence and probation of three years, which was proposed by defense council. Crown still sought a penitentiary sentence of two years, given the aggravating factors. Ultimately, the justice decided on the suspended sentence and probation of three years. And Justice Burns in that case made some very important comments. In particular, she said, “there is no point in having a sentencing circle if its input is not carefully considered [and] implemented,” and went on to talk about the need for rehabilitation, restoration, and reconciliation.

I want to also just very briefly talk about a second case that's more recent and it's *R. v. Rabbit*. And that one was out of our Red Deer Kings Bench Court. In this case, Mr. Rabbit is a young person who often stayed at the home of an Elder – not Elder, but an older man, because he was couch surfing and trying to figure out his life. So, this gentleman would offer his home and he stayed on numerous occasions. They would drink and ultimately the young person was sexually assaulted but carried on, did not report. And then on one evening, in the evening in question, when the owner of the home went into his room, imposing himself in a sexual way, Mr. Rabbit freaked out and attacked him, ultimately killing him. It was not his intention to do so, but, you know, having been traumatized from the past events, this was sort of an instinctual response for him. He pled guilty. He had no problem in doing so. He was incredibly remorseful to the family for the death of the victim and wanted to go to restorative justice. And in that case, the judges involved in that case, both on the judicial interim release on bail and in the actual sentencing of the matter, both recognized something quite special in Mr. Rabbit, and that is that he wanted to do whatever he could to make amends and to educate the public and improve the path for future generations.

This was an Indigenous matter as well that was referred to restorative justice. The victim's family agreed. The victim's sister attended the circle. It was actually done by the justice, the sentencing justice, in the courtroom itself. She cleared out the courtroom and she put chairs in a circle, and they held, with the help of an Elder, a sentencing circle. And it was quite powerful. In fact, when I speak to her now, tears come to her eyes because it was just such a moving experience for everyone involved. When Mr. Rabbit explained what happened and how remorseful he was, it was very clear that justice would not be served by sending him to prison. Instead, he received also a suspended sentence with probationary terms that were very specific. He continues to write to the justice involved, on a I believe, every two months, to explain his progress to ensure that there are wrap around services involved in healing both the victim's family, but also helping the individual involved, Mr. Rabbit, improve his life so that he can participate meaningfully in the future without any recidivism. And as the justice says to me, Justice Gillian Marriott says to me, “This is a man who will change the world.” And so again, this



is a perfect example of using restorative justice for specialized sentencing in particular cases that, you know, scream out for a better approach than our traditional system.

Denise Webb: Thank you, Justice Loparco, for sharing that. It just really does speak loudly to how holistic and needs-based restorative justice is as a process for both victims and for offenders. It's incredible.

But the next question is actually for everyone here. So for others, whether that be communities, organizations, other actors in the court system, I'm wondering what advice you would give these people who are interested in engaging in this work or developing their own restorative justice program within the court system?

Andrea Menard: Thanks, Denise. Well, I'm a big fan of legal pluralism. So Indigenous nations, we have our own Indigenous laws. Michelle was alluding to that. We have customary laws, we also have deliberative law. Our social interactions are law, we do have positivist law. Relationality is law; the sacredness of life and our relationships with one another and the earth, the land, the air, is also law. So, this is a great headway into a discussion, hopefully in the future, with justices about legal pluralism. How are we going to implement Indigenous law into the current systems today? We're already in Alberta doing a good job now at the restorative justice project, let's take it a step further.

The other thing I have to say is it is really important to have a trauma-informed approach. Justice Michelle Christopher was talking about [how] it's not about cultural competency, and I agree with her. It's about knowing what Indigenous laws are, knowing that we're not pan-Indigenous, and knowing for everybody that shows up in court, not just Indigenous people, about being trauma informed. And this is new, and it's key, and I think it's going to also get us places when we come from this sort of approach.

Denise Webb: Thank you, Andrea. Justice Anna Loparco: did you have any advice for others?

Justice Anna Loparco: Certainly. We are already seeing very good numbers coming out of this project. We've referred, collectively both from the Alberta Court of Justice and King's Bench, about 300 matters to restorative justice agencies. We're waiting for ultimately better statistics, qualitatively and quantitatively, so that we can report on the ultimate outcomes of those, but what we hope is that we have enough agencies to respond to the need, and we hope that need will grow in the future.

And so, we are encouraging community agencies to get together to create programs, Indigenous and non-Indigenous, and the Alberta government – it's important to state this – after the launch of our project in 2022, announced that it would be putting together a Restorative Justice Strategy, which would include an expansion of funding for agencies and also, you know, hoping for some rules, maybe some legislation around that as well. So it's important for those who are interested to contact the



government and put in an application for funding, and there are individuals involved who can guide them through that process as well.

Denise Webb: Deputy Chief Justice Joanne Durant: did you have any advice for others?

Deputy Chief Justice Joanne Durant: I think in addition to what's been said, I would encourage anyone who's looking at setting up this kind of a system within their area or province, certainly to have broad-based consultation and collaboration. Andrea referred to it earlier, and it truly is so important that the system that's ultimately developed works for the communities that they'll be serving. So, I would certainly encourage that process to take place.

Denise Webb: Last but not least, Justice Michelle Christopher: do you have any thoughts or advice for listeners who are interested in this work?

Justice Michelle Christopher: Well, I guess I would say based on our experience, the first thing to note is that this work takes time. And it also reflects the diverse concepts of time and relationships that we find when we engage with all the stakeholders who are interested in developing these kinds of programs. I agree with others who've spoken today that an essential part of this is the need to have broad-based stakeholder consultations. So, you have to be prepared to think outside the box, keep an open mind, engage widely with stakeholders, and cast that net really widely at the start and develop the relationships with those stakeholders.

And it really depends on where you're coming from. If you're within the court system, I think it's really important to realize that you can't always expect other participants to come to you. You should probably think about going to meet them where they are. So, for example, we have gone out to communities, we have met on First Nations, we have participated in Treaty Days. We are developing relationships with stakeholders on their terms, not just on our terms as actors in the justice system or in the court system, because I think that shows respect for the diversity of participants and really, in many contexts, particularly with Indigenous offenders and communities, it's really important to be open to their way of seeing and doing rather than just always expecting that they will respond to the formal court system that in many ways is a relic of colonialism in their eyes.

I would say be patient, realize it takes time. Look for mentors, people who have established programs, learn from their experiences – the good and the bad – and realize also that this takes a lot of education of all the different stakeholders and those programs are not all the same. So, education in our pilot project for Crown prosecutors was different than for lawyers, which was again different for judges, so you need to meet participants where they are, wherever they are, and encourage opportunities for them to educate themselves about whatever their part is in the system.



Denise Webb: Thank you so much for that. It's such an intuitive and important process and meaningful process.

So the last question is again for all of you: I'm wondering if we can leave off with what you would like to see for the future of the wiyasow iskwew Restorative Justice Pilot Project: Justice Anna Loparco?

Justice Anna Loparco: Well, we hope to continue to expand the project. We're currently focused on the criminal project of course, and gathering statistics. Now we're more in the phase of education and evaluation of the project, in that will include what we're doing today with this podcast. So again, thank you for this wonderful opportunity. It also includes encouraging community members to come forward to create new agencies, because as I said, we want to have the province covered geographically so that access to restorative justice is available province-wide, so we're working on that. We'd like to have more roster agencies join and partner with us in this project. We have talked about expanding it to include perhaps family matters, child protection matters, and other civil matters of the state. There's certainly application for restorative practices in all different areas, but we're taking it one step at a time and just seeing how it goes.

Denise Webb: Thank you. And next over to Deputy Chief Justice Joanne Durant?

Deputy Chief Justice Joanne Durant: Thanks. I think in addition to all that Anna has said, the only thing I would add is that ideally we'd really like it to become routine for council and/or for the court to at least turn their minds to the appropriateness of restorative justice in certainly all criminal matters. And then, if it expands elsewhere into those areas as well, so that it isn't the unusual request, it is something that is considered early on. I think I'd like to see that in the future. And again, I just speak for myself, not for the court but ideally, it would just be normal for us to think about that rather than an exception.

Denise Webb: And Justice Michelle Christopher, if you have any final reflections on what you would like to see for the future?

Justice Michelle Christopher: Well, I don't want to have the final word, but I guess I would say speaking for myself, not for my court or not even as a judge, my blue sky thinking is I'd like to see Alberta follow the example of other jurisdictions which embrace restorative justice through legislation. And so jurisdictions like Manitoba, Jamaica, New Zealand have enacted legislation to mandate or facilitate the use of restorative justice programs in the courts. Manitoba in particular has established a Restorative Justice Advisory Council and has a *Restorative Justice Act*, which addresses unlawful conduct outside the traditional criminal prosecution process by, of course, providing opportunities for offenders and victims to participate in a restorative justice process and also to require offenders to obtain treatment or counseling to address underlying mental health conditions, addictions, or other behavioural offenses. And so, in Manitoba, the legislation is such that restorative justice programs may



be used before or after persons are charged with an offense, and where they participate in a program which is authorized by the legislation. They sort of mark all the hallmarks of what we understand restorative justice to be today, including apologies to victims or other affected members of the community, participating in mediation or reconciliation, paying restitution, engaging in community service work, or participating in counseling, education, or treatment programs.

So, it requires the Department of Justice to develop policies respecting the use of restorative justice programs, so it's a must in the legislation. If I could wish for one thing, it would be that Alberta would be as progressive as that and legislate this into being. And then I think that would meet some of the comments made by Deputy Chief Justice Joanne Durant, where this is routine, it's the default. We start there rather than view it as an exception, or as Justice Loparco says, it's widely used not only in the criminal justice system, but in family and civil context to resolve disputes.

So, I think we're just sort of catching up to the way conflicts have been resolved for millennia, not only in the Indigenous context, but in other situations where the default wasn't, "Let's just go to court, let's have a trial. Let's have a judge decide everything. Let's put people in jail because we don't know how to address the offending behaviour." I think we're catching up to the reality of what's actually been happening in communities for, as I said, millennia.

Anyway, thank you very much for this opportunity to speak about restorative justice and the work we've been doing.

Denise Webb: Wow, thank you for that. I have to echo, it would be wonderful for restorative justice to be the reality, accepted norm, as Justice Joanne Durant has mentioned and as you echoed Justice Christopher, and the legislation piece. That would be amazing.

Andrea, do you have any visions that you'd like to see for the future of this project?

Andrea Menard: Well, we're on a good track right now here in Alberta with the Justices. What I'd really like to see is permanent funding for the communities who have to apply for these grants all the time, and what I'd like to see here in Alberta is an urban restorative justice for Indigenous nations. Sometimes we fall off the radar being in an urban area as an Indigenous individual. It's complex. So, who are we going to get into the circles? Who's going to chair the circle? And I'm sure we can figure it out. But we need urban restorative justice for Indigenous peoples and non-Indigenous peoples, and as well, permanent funding – like we're still asking for grants and sometimes not getting them. So those are my last thoughts. So thanks Denise.

Denise Webb: Thank you. And Andrea, I am wondering if you wanted to close this off with any kind of final reflections or comments on today's discussion, and what we've learned about the significance of restorative justice and this program?



Andrea Menard: Well, I am based on Treaty 6 here in Alberta, and I really love this team of Justices and what they've done. Again casting a wide net, adhering to the Truth and Reconciliation Commission Calls to Action. Again, what I'm going to say is legal pluralism; Where are the Indigenous laws in there? Let's start to turn our minds to that and interweave Indigenous laws into current colonial legal systems, legal decisions, the way things are done. Yes, Manitoba does have some great legislation there. That's another avenue to take if we can't just drop everything and incorporate Indigenous law. And also, let's turn our attention to the BC First Nations Justice Council and what they've been doing.

So again, it's going to take all of us to turn the corner, and I just can't wait for the possibilities that are coming up because we have a really strong team here and I really have faith that we're going to get there.

Denise Webb: Thank you, Andrea, and thank you for ending us on that sincere optimism. So, thank you all so much for taking the time and sharing your thoughts and experiences with us today. I'm sure the listeners will really appreciate hearing and learning from you just as I have. It's all so inspiring and meaningful. Thank you.

-Music-

Denise Webb: To hear more podcasts in this series, head to *Voices from the Field* on the National Collaborating Centre for Indigenous Health's website nccih.ca. Music on this podcast is by Blue Dot Sessions. It appears under a Creative Commons license. Learn more at sessions.blue.

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