AN INDIGENOUS COURT IN S'ÓLH TÉMÉXW: A TRANSFERABILITY ASSESSMENT

by

Alisha Tushingham[1]

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[1] Tèlí tsel kw'e Sqwà qas ta Pelólhxw qas ta Stó:lō S'ólh Téméxw. I am from Skwah First Nation and Pilalt Tribe in Stó:lō Territory.

Approval

Name: Alisha Tushingham
Degree: Master of Arts (Criminal Justice) Degree
Title: An Indigenous Court in S'ÓLH TÉMÉXW: A Transferability Assessment

Examining Committee

Amanda McCormick, Ph.D.
GPC Chair
Director, School of Criminology and Criminal Justice

_____

Yvon Dandurand
Senior Supervisor
Professor Emeritus, School of Criminology and Criminal Justice

_____

Irwin Cohen, Ph.D.
Second Reader
Associate Professor, School of Criminology and Criminal Justice

_____

Date Defended/Approved: May 4th, 2020

ABSTRACT

There have been several Indigenous initiatives established in response to the overrepresentation of Indigenous people in the justice system and to deliver culturally appropriate services (Government of Canada, 2016, para. 7). Although there are two Indigenous initiatives in Chilliwack, including the Native Courtworker and Counselling Association of BC and Qwí:qwelstóm Wellness, there are still gaps in connecting Indigenous people involved in the court system to community-based justice and wellness services. In 2018, Qwí:qwelstóm Wellness hosted a meeting and invited former Chief Judge Thomas Crabtree to present on the purpose of an Indigenous court and the feasibility of establishing a court in Chilliwack. When the proposed initiative was presented to the Stó:lō political leadership, they requested additional information, including the potential risks of having an Indigenous court in Chilliwack and assessing the transferability of existing models and practices to the proposed court in Chilliwack. A transferability assessment was undertaken to determine the extent to which practices from Indigenous court models found in British Columbia could be transferred to a proposed Indigenous court in Chilliwack. Qualitative research for this Major Paper was completed through interviews with the participants who have roles within Stó:lō Nation and some existing Indigenous courts. There are six common aspects of Indigenous courts that are believed to be essential to their success, including the inclusion of local Indigenous culture, the Elders' role, the victim's role, the strengthening of relationships between the court and the Indigenous community, the clients' greater and easier access to community resources, and the consideration of Gladue principles. This major paper presents a transferability analysis and offers suggestions for consideration during the establishment of an Indigenous court in S'ólh Téméxw.

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DEDICATION

My brother Travis (Junior) Combes January 24, 1994 – March 14, 2018

My aunt Marion Bennet (Prest) June 16, 1952 – January 23, 2019

My sister Chauntelle (Tilly) Fillardeau May 7, 1987 – August 8, 2019

My cousin Stelómethet (Ethel Gardner) September 3, 1948 – January 23, 2020

TABLE OF CONTENTS

LIST OF FIGURES

ACRONYMS

2SLGBTQQIA: Two-spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual

AJLC: Aboriginal Justice Liaison Committee

BC: British Columbia

BCFNJC: BC First Nations Justice Council

BCJPSC: BC Justice and Public Safety Council

DOJC: Department of Justice Canada

DRIPA: Declaration on the Rights of Indigenous Peoples Act

IJP: Indigenous community-based justice program

MMIWG: National Inquiry into Missing and Murdered Indigenous Women and Girls

NCCABC: Native Courtworker and Counselling Association of BC

PCBC: Provincial Court of British Columbia

PSR: Pre-sentence report

SCC: Supreme Court of Canada

SSA: Stó:lō Service Agency

TRC: Truth and Reconciliation Commission of Canada

UFV: University of the Fraser Valley

UNDRIP: United Nations Declaration on the Rights of Indigenous Peoples

HALQ'EMÉYLEM WORDS

Chíchelh Siyá:m: The Creator, Great First or Great Spirit

Halq’eméylem: The upriver dialect of Halkomelem, Stó:lō people’s language

Lat’s’umexw: Different people, people from another territory, people who had no connection to the land, history, or people

Sísele: Grandmother

S’í:wes te Siyolexwálh: Teachings, training, upbringing from our ancestors

Siyá:m (singular) or Sí:yá:m (plural): Highly respected Stó:lō leader(s)

S’ólh Téméxw: Stó:lō territory and translates to ‘our land, our world’ in Halq’eméylem

Sqwélqwel: True news, biographies, personal histories

Stó:lō: River

Stó:lō people: People of the river

Swôqw'elh: Woven goat wool blanket

Ts’elxwéyeqw: One of the Stó:lō tribes (translates to “Chilliwack” in English)

T’xwelátse: A shaman turned to stone, Herb Joe caries the Xwélmexw name

Xexá:ls: Transformers, who were three sons and one daughter of black bear and red-headed woodpecker

Xá:ls: Transformer, the term is used when talking about one of the four siblings

Xwélmexw: People connected to the land, territory, people, and ancestors

Xwelítem: Hungry or starving person, settlers, or a person who is not Indigenous

Qwí:qwelstóm: Restoring balance and harmony, Wenona Victor carries the Xwélmexw name

INTRODUCTION

A recent review of existing Indigenous courts in British Columbia (BC) confirmed that there is not a single model for all Indigenous courts (Dandurand & Vogt, 2017). However, the Indigenous court's focus is on offering a holistic approach that recognizes the unique circumstances of Indigenous offenders within the framework of existing laws [2]. This approach is consistent with the BC First Nations Justice Action Plan's (2007) objectives to ensure that there is an emphasis on healing with Indigenous justice and that the criminal justice process reflects an understanding of Indigenous cultures, traditions, and aspirations. For some, Indigenous courts are part of a broader movement towards an Indigenous therapeutic jurisprudence and process that recognizes the traditional role of Elders at the centre of Indigenous peace-making processes (Johnson, 2014).

According to a recent review of Indigenous courts in BC (Dandurand & Vogt, 2017), the purpose of Indigenous courts, broadly speaking, is to offer a holistic and restorative approach to sentencing Indigenous persons. They are essentially a disposition or sentencing court; however, they can also deal with offenders at other stages of court proceedings, including bail hearings, while on remand, and for monitoring any community-based portion of the sentence. Crown counsel and defence counsel maintain their traditional advocacy roles and are not required to enter a joint submission. So long as the sentence imposed involves some aspect of a community-based disposition, the offender may remain in the Indigenous court. If the offender is sentenced to a period of incarceration, he or she may be permitted to return to the Indigenous court in the future; each case is determined on its own merits (Dandurand & Vogt, 2017).

[2] For the purposes of this paper, the terms Indigenous and Aboriginal collectively refers to First Nations, Inuit, and Métis persons, or persons who self-identify as belonging to one of these groups.

The participation of Elders is a key feature of most Indigenous justice initiatives, including Indigenous courts. Elders contribute to the restorative justice process and advise the court as to the appropriate sentence and healing plan from the Indigenous community's perspective. Elders also offer advice and support to the offender throughout the process. The term "healing plan" refers essentially to the terms and conditions of the sentence imposed on the offender, even if it may also contain elements not explicitly included in the sentence. Compliance with court orders and success in following the healing plans are supported through judicial review of progress and acknowledgement of success, reducing, or relaxing the conditions imposed, and for appropriate cases, early termination of the healing plan (court order).

In 2018, the tenth and eleventh BC Justice Summits were hosted by Musqueam Nation, which was the first time Indigenous people were included in the event planning for the Justice Summits (BC Justice and Public Safety Council [BCJPSC], 2019). The focus of these Summits was to address the overrepresentation of Indigenous people in the criminal justice system and include holistic approaches to healing that will benefit Indigenous people (BCJPSC, 2019). The two Justice Summits resulted in four key recommendations: (1) increase awareness and use of the Gladue principles in court hearings; (2) increase funding and human resources to better support the use of the Gladue principles; (3) increase community-based Indigenous programming capacity with a focus on preventative measures, healing, and alternatives to incarceration; and (4) hold the criminal justice system and public safety sector more accountable for systemic racism (BC Justice Reform, 2018).

In order to fulfil the recommendations provided at the BC Justice Summits, the criminal justice system must become more inclusive and incorporate Indigenous practices and culture (BC First Nations Justice Council [BCFNJC], 2020). The provincial government must also support

Indigenous people as they continue healing and revitalizing their culture, language, and self-determination (BCFNJC, 2020). The newly created BC First Nations Justice Council (BCFNJC) proposed a *First Nations Justice Strategy* in which building Indigenous community-based justice capacity was determined to be key to decreasing the overrepresentation of Indigenous people in the criminal justice system (BCFNJC, 2020). In that context, an Indigenous court is a contemporary basket weaved together with what is theoretically good from the existing court with Indigenous culture and justice practices. The Indigenous court becomes a unifying and shared responsibility. "We can merge together what they're doing on the Provincial side with what we're doing on the traditional side. It'll be a good way to create partnerships and collaborations and continue doing the good work" (Qwí:qwelstóm worker, Th'etsimeltel (D. Paul), personal communications, March 13, 2020).

In 2018, Grant Morley, a student at the University of the Fraser Valley (UFV), completed an Indigenous court needs assessment based on interviews with the Stó:lō Service Agency's (SSA) Elders' Panel. This assessment led to an increased interest in pursuing an Indigenous court in S'ólh Téméxw[3]. The SSA has an Indigenous justice program, Qwí:qwelstóm wellness, with an established foundation and mandate congruent with the purpose of an Indigenous court. For example, the Qwí:qwelstóm has an Elders' Panel, restorative justice process, self-referral support for mental health, addictions, employment, education, children, and family advocacy, as well as a working partnership with criminal justice agencies of the Chilliwack region.

At that time, there was some uncertainty about the feasibility of having an Indigenous court in S'ólh Téméxw for four main reasons. First, in comparison to other nations in BC, S'ólh Téméxw is unique because there are 24 to 32 Stó:lō communities depending on the resource of

[3] S'ólh Téméxw means Stó:lō territory in Halq'eméylem, which is Stó:lō people's language.

information (McMullen, 1998; Palys & Victor, 2005; Fraser Valley Regional District, n.d.). The Stó:lō communities in the Chilliwack jurisdiction belong to seven traditional tribes and two political nations in the Chilliwack jurisdiction. The complexity of S'ólh Téméxw has made it difficult to consult with Stó:lō members to determine if there is Stó:lō community support to have an Indigenous court in S'ólh Téméxw. However, with appropriate community engagement, it may be feasible to build a consensus around how the Indigenous court should be designed and implemented. The community engagement may gain the Stó:lō people's confidence in an Indigenous court and encourage the concept of an Indigenous court to be effectively transferred or replicated in S'ólh Téméxw.

Second, there are no formal evaluations on the effectiveness of existing Indigenous court models in BC. Each model is designed differently to meet the unique needs of the Indigenous people and their culture, and there are variances in the characteristics of each community that make it difficult to determine what factors influence the success of these courts.[4] Third, funding and resources tend to be lacking in Indigenous justice initiatives. There needs to be sufficient and consistent funding from the Province to ensure the Indigenous justice initiatives, including an Indigenous court, can meet its objectives and appropriately provide services to the community members. Fourth, there is a concern that the Crown will direct Indigenous people through the

[4] Measuring the success of these courts is itself a complex undertaking. For example, in Australia, where many of the Indigenous courts' evaluations have relied on quantitative analyses of reoffending, it appeared that the courts had little or no effect on recidivism. It was suggested that methodological approaches often used to study Indigenous courts may not properly capture their Indigenous-focused and community-building goals (Marchetti, 2017). Marchetti (2017) completed a meta-review of five qualitative evaluation and impact studies of Indigenous Courts in Australia with a greater focus on their courts' community-building goals. In her summary of the findings, Marchetti concluded that offenders thought the Indigenous sentencing courts were fairer, the presence of Elders increased confidence and respect for the sentencing process, the courts strengthened the relationship between Indigenous communities and the criminal justice system, community engagement in the sentencing process encouraged respect for Elders and a sense of community empowerment, and the process was culturally sensitive engendering more suitable sentencing options (Marchetti, 2017).

Indigenous court process instead of using the Qwí:qwelstóm process causing a net-widening effect. It is important to ensure the Indigenous court in S'ólh Téméxw is successful while avoiding the erosion of Qwí:qwelstóm's diversion efforts. The Tsleil Waututh justice worker Andrew Van Eden noted that the only real or perceived risk of the Indigenous court process is that the offender will plead guilty to go through the Indigenous court process (personal communication, February 26, 2020). For example, "the lawyer may say, 'if you plead guilty, you can get sentenced through the Indigenous court, and you're probably going to get a better sentence,' and that's not fair" (A. Van Eden, personal communication, February 26, 2020). For this major paper, a transferability assessment was completed to determine the extent to which practices from Indigenous court models found in BC could be transferred to a proposed Indigenous court in Chilliwack. In addition, the Indigenous court proposal was developed to address the four main uncertainties previously mentioned along with the participant eligibility, the programs, roles, and resources required, funding requirements, evidence of community stakeholder support, and evaluation and monitoring to improve the process.

Project Methodology

A transferability assessment was undertaken to determine the extent to which practices from the urban and community-driven Indigenous court models found in BC could be transferred to a proposed Indigenous court in S'ólh Téméxw. Qualitative research was completed through interviews with participants who have roles within Stó:lō Nation and the Indigenous courts. The three Indigenous courts observed were the Duncan First Nations Court, the Chet wa nexwniw ta S7ekw'i7tel or North Vancouver First Nations Court, and New Westminster Healing Court[5].

[5] Chet wa nexwniw ta S7ekw'i7tel means, 'we are giving family good advice' in Squamish Nation Language, according to an Elder.

Although there were three courts observed, only participants from the Duncan and the Chet wa nexwniw ta S7ekw'i7tel were interviewed to provide insight on the various program options and to assess their transferability to a proposed Indigenous court S'ólh Téméxw. Unfortunately, the New Westminister court officials and Elders were unavailable for interviews within the research time frame.

Between September 2019 and March 2020, there were 12 stakeholders from Cowichan Tribes, Tsleil Waututh, and Squamish interviewed, including judges, Elders, Native courtworkers, justice workers, as well as Stó:lō members with leadership roles in S'ólh Téméxw. All interview participants were selected using the purposive sampling strategy and snowball sampling. In other words, the potential interview participants were contacted through emails, phone calls, and approached in person during the Indigenous court hearing breaks. These contacts provided my contact information to other court officials and Elders who could also be potential interview participants. Indigenous offenders and Indigenous people that were not Stó:lō and did not have court-related job duties were excluded from the research. Unfortunately, the focus group session with the Stó:lō Elders was cancelled due to the COVID-19 virus crisis to ensure the Elders remained healthy and safe during the outbreak. Therefore, the information gathered by Grant Morley's focus group with the Stó:lō Elder Panel will be used in part for this transferability assessment.

The B.C. Ministry of Justice Specialized Courts Strategy (2016) emphasized the importance of collecting data and evaluating the outcomes and processes to improve the overall functioning of the Indigenous courts. The Strategy noted that "given the variation in specialized court models, research into the variables that result in more effective outcomes will shed much-needed light on the question of what models and outcomes can and should be replicated"

(Ministry of Justice, 2016, p. 9). To date, existing Indigenous courts in BC have not been evaluated, and the variables related to their outcomes have not been systematically measured. The preliminary review of existing courts established that the data currently available on these courts are very limited, and there is very little systematically collected information on the cases referred to and dealt with by these courts or the outcomes and effect of these courts (Dandurand & Vogt, 2017). Unfortunately, this imposed some severe constraints on the ability to assess the transferability of existing models and practices to the proposed court in S'ólh Téméxw.

Dandurand and Vogt (2017) conducted a review on the nature and extent of the data currently being collected for the Indigenous courts in BC, taking into account the differences and variations among them. In the absence of a fully articulated theoretical model for existing Indigenous courts in BC, the authors noted that the general model behind these courts relied on eight separate but interrelated factors that can facilitate rehabilitation and successful reintegration of Indigenous offenders. First, the justice system and Indigenous community can deter criminal behaviour by holding the offenders accountable for their actions and imposing a sentence, along with follow-up sanctions for offenders who are noncompliant with their original court order. Second, the use of culturally relevant healing plans and community-based sentences that supports the offenders' treatment while addressing their underlying needs and risks that led to criminal behaviour is necessary. Third, the focus of any intervention must be on reconciliation, restoring harm caused by the offence, and reintegrating the offenders into the community. Fourth, it is necessary to offer enough resources, treatment, and support for the offenders' healing journey. Fifth, judicial supervision of the offenders' progress and compliance with their healing plan and sentence is required. Sixth, the Elders and community members are involved in the sentencing and supervision processes, when appropriate. Seventh, the offenders and sometimes

the victims engage in the development of the healing plan and sentencing process. Eighth, the offenders and community members gain confidence in the perceived legitimacy of the justice system (Dandurand & Vogt, 2017). In effect, the various elements of the Indigenous court are intended to help offenders desist from crime by encouraging them to comply with their healing plan or sentence, strengthening their ties to the community, and helping them address their criminogenic needs (Dandurand & Vogt, 2017). This implicit theory of change and logical framework developed by these researchers served as a basis for the present transferability assessment.

Data collection, storage, and destruction

The data collected for this study primarily came from interviews with Andrew Caldwell, Florence Elliot, Siyá:m Thʼetsimeltel (Darcy Paul), Irma Peter, Siyá:m Xwĕ lī qwĕl tĕl (Steven Point), Melvin Thomas, Andrew Van Eden, and five participants who wished to remain anonymous. All participants received a letter with information on the intent of the research and that they could withdraw from participating at any point. A consent form was attached to the letter with the options regarding their anonymity options and audio-recording options. The letter and consent form can be found in Appendix A. All notes that were taken during the verbal interactions were stored in a secure location. There was a list of questions used for the interviews that can be found in Appendix B. All data collected through email were saved in the SSA's secured email that was accessed through a password-protected personal computer. The audio recording devices were used with the informed consent of the participants. The data files were backed up to a password-protected computer. Any data that could be linked to individual participants who wished to remain anonymous have been removed from data files. In accordance with the research ethics policy of the UFV's Ethics Board, the study complied with UFV's

Research Ethics Policy. The research proposal and methodology were submitted and approved by UFV's Research Ethics Board. The UFV Certificate of Human Research Ethics Board Approval can be found in Appendix C.

FROM HARMONY TO CHAOS IN S'ÓLH TÉMÉXW

Stó:lō worldview

The Stó:lō people have transferred traditional knowledge, lessons, and values intergenerationally through oral narratives. The Stó:lō people have had two types of oral narratives, including sxwōxwiyám and sqwélqwel. Sxwōxwiyám is Halq'eméylem for myths, legends, or origin stories about a time before and at the time of the arrival of Xexá:ls (Galloway, 2009). Xexá:ls translates to transformers in Halq'eméylem, and the transformers were three sons and one daughter of the red-headed woodpecker and black bear (Galloway, 2009). According to Stó:lō cosmology, before Xexá:ls arrived, the world was quite chaotic (Carlson, 2010). Xexá:ls travelled through S'ólh Téméxw and began '*making things right'* and predictable (Carlson, 2001; Carlson 2010). Xexá:ls would transform people into landscapes and resources that would share valuable lessons on values and acceptable behaviour to future generations (Carlson, 1997). Sqwélqwel is Halq'eméylem for biographies, news, or stories based on recent true events or experiences (Carlson, 2001; Galloway, 2009). Both types of oral narratives are shared, usually by Elders, to pass on traditional knowledge and values to counsel someone on how to behave appropriately and make good choices in life.

Although the story of T'xwelátse becomes less fluid in writing, it will offer insight on the purpose of sxwōxwiyám. Xá:ls, one of the transformers, came across T'xwelátse, a shaman who was arguing with his wife on the riverbank (T'xwelátse, 2012). When Xá:ls asked them to stop

fighting, T'xwelátse challenged Xá:ls, but the transformer turned him to stone. Xá:ls told T'xwelátse's wife that she was responsible for taking care of stone T'xwelátse (T'xwelátse, 2012). The stone T'xwelátse was placed in front of the family's home to remind the family and others to live in harmony and respect all relations (T'xwelátse, 2012). The stone T'xwelátse is now located at the Coqualeetza grounds, and lessons are offered on T'xwelátse and the importance of having respectful relationships. The Sxwōxwiyám and Sqwélqwel continue to connect the ancestors' teachings from the past with the people in the present. The S'í:wes te Siyolexwálh is Halq'eméylem for the teachings, training, or upbringing from our ancestors or *'Elders past'* (Galloway, 2008, p. 587). The S'í:wes te Siyolexwálh that are still shared orally include the seven sacred laws of health, happiness, generations, generosity, humility, forgiveness, and understanding.

The Sí:yá:m or Stó:lō leaders earned and maintained their position based on what they did for their community (Carlson, 1997). The role of a Siyá:m was not about wielding power and controlling the people and resources; it was about making decisions that were in the best interests of the people (Victor, 2001). It could take several years for a Siyá:m to earn his role, but a Siyá:m could quickly lose their influence and role if they committed an offence (Carlson, 1997). The Siyá:m would resolve disputes or facilitate conversations until there was a consensus (Carlson, 1997). In some cases, it would take days for a family or community to come to an agreement (Carlson, 1997). If the issue were not resolved, the matter would be set aside and remain unresolved (Carlson, 1997). It was common for members of a community to move away or disconnect themselves from their leader or community if their interests were not met, and the conflict was left unresolved (Carlson, 1997). The individual, family, community, or inter-community disputes were commonly related to social relations, territory, and resources (Carlson,

2001). The Stó:lō people were egalitarian, so men and women had different but equally important roles (Victor, 2011). Stó:lō women were revered for their roles as the life-givers, carriers of culture, and the protectors of language, culture, and land (Qwul'sih'yah'maht (Thomas), 2011; Victor, 2011). The Sísele or grandmother would determine which family members would carry cultural property, including names, songs, and ceremonies (Galloway, 2009; Victor, 2001).

Although they had no word for "justice", the Stó:lō people believed in making things right through Qwí:qwelstóm or restoring balance and harmony (Carlson, 2010; Victor, 2011). The Stó:lō people would resolve unpredictable behaviour and make things right through isolation, abandonment, social pressures, banishment, and violent sanctions, including death (Miller, 2001; Carlson, 2010). Stó:lō justice was far from perfect, and some of the sanctions, including the death penalty, can not be used in Canada today. However, the values, norms, and rules from the Stó:lō ancestors can be passed down through Sxwōxwiyám and Sqwélqwel to the youth and future generations. Stó:lō people and other Indigenous people are dynamic and can adapt to a changing environment and social structure while maintaining their core values.

Introduction of British laws and colonization

Initially, the relationship Stó:lō people had with the settlers was mutual and respectable. The Stó:lō people referred to the new people as Xwelítem, which translates to "hungry or starving people" in Halq'eméylem because most newcomers came to S'ólh Téméxw in the state of famishment (Galloway, 2009 p. 925). Over time, the meaning for Xwelítem changed due to the settlers' hunger for land, resources, and Stó:lō children "as federal mandatory school legislation and subsequent provincial adoption policies through to the 1980s demonstrate" (Carlson, 2010, p. 161). During the fur trade and gold rush era, Xwelítem people introduced

alcohol to Stó:lō people. As Maté (2008) argued, Indigenous people did not suffer from addictions to alcohol and drugs before contact with Xwelítem people. Subsequently, the churches and government officials attempted to 'protect' Stó:lō people from alcoholism and newcomers taking over their land, and to 'civilize' the 'savages' or Indians through extensive policies and modes since the early 1800s (Monchalin, 2017, p. 107). Unfortunately, the paternalistic government developed Indigenous-specific policies without consulting with Indigenous people or the inclusion of Indigenous culture (Mitchell & MacLeod, 2014). Some of these policies and practices included the *Indian Act*, residential schools, the sixties scoop, and many others.

Indian Act

The government began the slow but effective process of defining Indigenous identity and controlling and limiting every aspect of Indigenous people's lives through legislation. The first step was to control Indigenous people's movements through reserve systems (Carlson, 2010). For example, Governor James Douglas' remediation to the conflicts related to the land and resource ownership was to "thaw Aboriginal social identity" by "freezing their physical movements" (Carlson, 2010, p. 169). The next step was to control their identity. After Confederation, the Canadian government advanced its attempts to assimilate Indigenous people through the *Gradual Enfranchisement Act* in 1869 (Monchalin, 2017). The Act instituted oppressive and sexist laws that affected the Stó:lō people's governance system and Stó:lō women in three ways. First, if women with Indian status married a man who did not have Indian status, she and her children would lose their Indian status (Monchalin, 2017). However, if a man with Indian status married a woman who did not have Indian status, she and her children would gain Indian status (Monchalin, 2017). Second, any children who had an Indigenous blood quantum less than one-quarter would be ineligible for any Indian status-related entitlements (Monchalin,

2017). Third, the Act introduced the Chief and Council election system, which was a foreign governance system for Indigenous people (Monchalin, 2017). The role of Siyá:m was replaced with a colonial governance structure that was incompatible with the Stó:lō people's way of life. Although the respected Stó:lō leaders could have been elected, they were no longer obligated to maintain their leadership role through respect and responsibility because their elected chief and council roles were guaranteed for three years. The colonial governance structure was a competition between men for power that resulted in disunity in Stó:lō communities that had more than one Siyá:m. There are 24 Stó:lō communities with the chief and council system, which makes it difficult for Stó:lō people to reach a consensus on political, economic, and social-related issues, meaning that justice-related initiatives have become an afterthought.

The colonial government consolidated the acts regarding Indigenous people into the *Indian Act* in 1876 (Carlson, 1997). The *Indian Act* had laws that infringed on the fundamental rights and liberties of Indigenous people, including the imprisonment of Indigenous people engaging in their cultural, political, and spiritual practices (Martel, Bassard, & Jaccoud, 2011; Muckle, 2014). In 1884, the anti-potlatch law made it illegal for Stó:lō people to attend Stl'éleq or ceremonial potlatches for funerals, marriages, naming and puberty ceremonies, and spirit dances (Carlson, 1997). The goal of the Potlatch ban was to promote the assimilation of Stó:lō people by subverting one of their essential socio-economic institutions (Carlson, 1997). The ban was in effect for 67 years (Carlson, 1997). In effect, the colonial government and churches have perceived the Stó:lō people's way of life as inferior, and women have been considered inferior to men.

Residential Schools and the Sixties Scoop

The Canadian residential schools began operating in 1831, with the last school closing in 1996 (Miller, 1996). The residential schools would use various forms of abuse to force Indigenous children to abandon their language, culture, and spirituality, and to adopt European Christian religions and culture (McCaslin, 2005; Monchalin, 2017). “That was the point of residential school; it was to take the Indian out of us so that we don’t know who we are. Now we’re all mixed up. We’re so lost” (Elder participant). The children and families endured sexual, physical, emotional, mental, social, spiritual, and economic trauma caused by the authorities at residential schools to achieve the objective of domination (Hyatt, 2013). The harm inflicted on children between the ages of 5 and 15 years old included lashes, needles pierced through their tongue, or forced confinement for speaking their language (Monchalin, 2017). Some of the school staff members were sexual predators, and the sexual violence inflicted on the Indigenous children reached epidemic levels (Monchalin, 2017).

Corrado and Cohen analyzed 127 residential school survivor case files and found that 100% of the students experienced sexual abuse, and 90% experienced physical abuse while attending residential school. The study also found that post-residential school, 78.8% of the survivors reported abusing alcohol, 51.6% were convicted for at least one sexual offence, and 55% were convicted for assault (Corrado & Cohen, 2003). Indigenous people continue to endure intergenerational trauma as a result of the abuse experienced at residential school systems (Mosby, 2017). An Elder shared that his mother, father, and aunties attended Kuper Island residential school. “They went through trauma, and then it builds up to the next generation and three generations after. They won’t talk to their youngsters” (Elder M. Thomas, personal

communication, November 27, 2019). The Elder shared that, in his view, there will be seven generations of intergenerational trauma caused by residential schools.

From the 1960s to the mid-1980s, Indigenous children were 'scooped' from their parents by the child welfare system and placed in either foster care or adopted out (Johnston, 1983; University of BC, n.d.). Many were newborns when they were removed and, in some cases, they were moved to another province, the United States, or overseas (Johnston, 1983). Indigenous children were extremely overrepresented in the child welfare system (Mackinnon, 2018). Approximately 70% of the Indigenous children were adopted to Xwelítem families (Bennett et al., 2005). Although the 'sixties scoop' was coined for the phase of many Indigenous children forcefully removed from their families, there is still an overrepresentation of Indigenous children in care under the authority of the Child and Family welfare system (MacKinnon, 2018; Rudin, 2019). For example, in 2016, Indigenous children only represented 7.7% of the total child population; however, they accounted for 52.2% of the children in foster care (Government of Canada, 2020). The residential schools and sixties scoop had a lasting effect by disrupting and dehumanizing Indigenous people. The Court official participant #1 shared their beliefs on the treatment of Indigenous people in Canada, "Treating Indigenous people as second-class citizens, savages, and their culture and language are treated as worthless. How do you learn to be a parent without your children? Being a parent is learned knowledge. You're not born knowing how to care for a child" (personal communication).

CRIMINAL CASE LAW AND REFORM

Since 1989, several reports and inquiries noted that overt and systemic discrimination throughout the criminal justice system, including policing, the courts, and within corrections, was and remained an issue (Rudin, 2019). For example, Indigenous people were more likely than

non-Indigenous people to be denied bail, sentenced to imprisonment, jailed at a younger age, over-represented in segregation, classified as higher risk offenders, and spend more time remanded in custody (Green, 2012; Hamilton & Sinclair, 1991; Parkes, 2012). In addition, non-compliance with court orders tends to be more problematic for Indigenous offenders who often breach these conditions with the frequent result of incarceration for an administrative offence (Dandurand & Vogt, 2017). A court official, Participant #1, stated, "I saw one kid who was not a criminal or behaving in a criminal fashion and had a record of 26 condition breaches. That's insane". In addition, Indigenous people were less likely than non-Indigenous people to have opportunities to communicate with their lawyers. Moreover, Indigenous people are granted parole less often and subsequently released later in their sentence (Green 2012; Hamilton & Sinclair, 1991; Parkes 2012). The high incarceration rates of Indigenous people continues to be used as a measure of the effectiveness of the criminal justice system. In 2016, although Indigenous people represented 4.1% of the adult population in BC, they represented 25% of the adult population in remand custody, 32% of the adult population in provincial custody centres, and 27% of the population under community supervision (Canadian Centre for Justice Statistics [CCJS], 2018; Statistics Canada, 2018).

As a provincial court judge, Siyá:m Xwĕ lī qwĕl tĕl or Steven Point, witnessed young offenders graduate to adult offenders. The offenders would ultimately be serving a lifetime sentence through "an instalment plan, as some judges would say" (Hon. Xwĕ lī qwĕl tĕl (S. Point), retired provincial judge, personal communications, February 21, 2020). "Once you're in the system, you get caught up in all the rules, the curfews, and authoritarian behaviours, and it's not workable for our people. We have a problem with authority, largely because of residential school" (Hon. Xwĕ lī qwĕl tĕl (S. Point), retired provincial judge, personal communications,

February 21, 2020). Over the years, justice and government officials have recognized the problem and reformed Indigenous-related legislation and policies to address the overrepresentation of incarcerated Indigenous people. The first major reform and codification of sentencing principles in Canadian criminal law were introduced under *Bill C-41* in 1995. The sentencing amendments, section *718.2(e)* of the *Criminal Code,* altered the guidelines used by judges and provided provisions meant to affect the sentencing of Indigenous offenders. According to Section *718.2 (e)* of the *Criminal Code,* "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders".

Gladue Principles

In 1999, the Supreme Court of Canada (SCC) acknowledged in the *R. v. Gladue* case that the overrepresentation of Indigenous people in the prison system was due to underlying systemic factors. The background and systemic factors include the legacy of colonialism, racism, and discrimination within the criminal justice system, along with socioeconomic disadvantages, such as "low incomes, high unemployment, lack of opportunities and options, lack of education, substance abuse, loneliness, and community fragmentation" (R. v. *Gladue,* 1999, para. 67).

The SCC noted that the prison environment was culturally inappropriate and discriminatory towards Indigenous people, the prison system had adverse effects, and was not rehabilitative for offenders (R. v. *Gladue,* 1999, para. 68). The SCC provided an interpretation of s. 718.2 (e) of the *Criminal Code* and stated that the intent was to reduce the overrepresentation of Indigenous people in the prison system and explore alternatives to incarceration, including restorative justice initiatives and Indigenous community-based justice initiatives when sentencing Indigenous offenders (R. v. *Gladue,* 1999, para. 48). The SCC directed judges to

consider the unique systemic and background factors of Indigenous offenders when determining an appropriate sentence (R. v. *Gladue*, 1999, para. 66). The systemic and background factors are now known as Gladue factors.

In R. v. *Wells* (2000), the SCC determined that there was no formal methodology for an assessment to be completed on the Gladue factors of Indigenous offenders; however, the pre-sentence report (PSR) provided adequate Gladue information (para. 54). In addition, any additional research outside of a PSR should be limited, practical, and initiated by the trial judge (R. v. *Wells*, 2000, para. 55). The SCC also insisted that the intent of the Gladue principles was to reduce the use of imprisonment and explore alternatives to incarceration for sentencing; however, these objectives should not override denunciation and deterrence (R. v. *Wells*, 2000, para. 39 - 40 & 44). Although the principles of deterrence and denunciation should be used for serious and violent charges, the circumstances of the Indigenous people and their underlying issues that influenced the criminal behaviour needs to be considered.

In R. v. *Ipeelee* (2012), the SCC elaborated on the Gladue principles to include the historical effects of colonization, residential schools, and displacement that placed Indigenous people at a social, cultural, economic, and mental disadvantage (R v *Ipeelee*, 2012, para. 60). In other words, the historical effects of colonization and residential schools must be considered, along with the current individual circumstances of the Indigenous offender when determining an appropriate sentence. The SCC indicated that the operation of s. 718.2 (e) does not require an Indigenous offender to prove there was a connection between the offender's background factors and the current offence(s) (R v *Ipeelee*, 2012, para. 81). In addition, the Gladue principles must be used in all cases involving an Indigenous offender, including cases with serious or violent

offences (R v *Ipeelee*, 2012, para. 84). The SCC referred to the assessment of the Gladue factors as a Gladue report (R v *Ipeelee*, 2012, para. 60).

Pre-Sentence Reports and Gladue Reports

A PSR is prepared by a probation officer to provide the court with a risk analysis of the offender (Legal Services Society, 2018). A PSR includes information about the offender's behaviour, criminal history, willingness to restore the harm they caused, the availability of relevant community resources, and a recommended sentence for the offender (Bonta et al., 2005). It helps the judge understand more about the offender to determine an appropriate sentence and potentially an alternative to incarceration (Legal Services Society, 2018). Gladue reports are similar but more comprehensive than PSRs (Legal Services Society, 2018). In BC, Gladue reports are prepared by Gladue writers hired by the Legal Services Society (LSS). According to a court official, Participant #2, in most cases, the Gladue report writer is trained to gather information through trauma-informed practices to make it easier for the offender to share their story.

A Gladue report typically includes the Indigenous offender's personal history, Gladue factors, and a tailored case-specific healing plan or sentencing alternative with an emphasis on restorative justice principles and culturally appropriate programs and services (Barkaskas et al., 2019). The intent of a Gladue report is to help the court assess the accused's moral culpability in light of the Gladue factors that brought them before the court (R v *Ipeelee*, 2012, para. 73). According to a court official, Participant #3, the risk of reoffending is ameliorated by getting the offender off drugs and alcohol and, sometimes, out of certain circumstances, including toxic relationships. A court official asked, "how can you take it into consideration when you don't

know the full story? If you don't have the Gladue report in front of you, how do you know?" (Participant #2).

PSRs with a Gladue component are also currently used to various extents across Canada. They are produced by probation officers who have received some level of training on how to assess and report to the court on relevant Gladue factors. These reports vary in quality and are generally a poor substitute for a Gladue report (Barkaskas et al., 2019). Probation officers are officers of the court who can become responsible for the supervision of the offender in the community and ensure his or her compliance with court orders. "It is understandably difficult for offenders to share their personal history with someone who stands in that position over them" (Court official Participant #2). The BCFNJC is pursuing the implementation of a "Gladue strategy supported by a dedicated First Nations controlled Gladue implementation agency" (BCFNJC 2020, p. 33). The Gladue strategy will include "increasing capacity and numbers of Gladue writers", developing "Gladue awareness and education programs", and standardizing the Gladue reporting process (BCFNJC 2020, pp. 33-34). The PSRs with Gladue components and Gladue reports are used in sentencing circles and Indigenous courts to provide the Elders, judges, and lawyers with information on the offender and their criminal offence(s) (Rudin, 2019).

Sentencing Circles

Sentencing circles were established between the late 1980s and the early 1990s (Monchalin, 2017). In 2012, the first sentencing circle in BC was held in Tk'emlups territory (Koopmans, 2012) [6]. Sentencing circles were designed to complement the current Canadian court system's sentencing process with Indigenous components (Monchalin, 2017). The offender must

[6] In Secwepemc, the Shuswap language, Tk'emlups translates to Kamloops in English (Koopmans, 2012)

plead guilty and accept responsibility for the harm caused to participate in the sentencing circle process (Spiteri, 2001). Typically, the judge will consider recommendations provided by all individuals who are associated with the case and willing to participate with the circle (Monchalin, 2017; Spiteri, 2001). Participants may include Elders, the victim and their support, the offender and his or her support, the Crown and Defence lawyers, and police officers (Monchalin, 2017). After all of the participants provide their insight and recommendations, the judge will make a final decision on an appropriate sentencing plan for the offender (Monchalin, 2017). In some cases, there may be multiple circles to support the healing process for the victim(s), the offender, and to monitor the offender's progress in their sentencing plans (Hughes & Mossman, 2001). There is no standard sentencing circle model; each of the models was designed to reflect the unique needs and culture of the Indigenous territory (Hughes & Mossman, 2001). Sentencing circles are mainly used for provincial or territorial court level and minor cases (Department of Justice Canada, 2016). It is difficult to determine how often and for what types of cases because the sentencing circles decisions are often not well reported in digests and sources, including CanLII (Rudin, 2019). As Rudin (2019) argued there were two challenges with sentencing circles, including the time it takes to conduct a circle and the issue of funding for Indigenous people who provide their expertise to the courts. In addition, there were two concerns relating to sentencing circles, including the treatment of the victims, especially victims of sexual and domestic violence, and the Indigenous community members' capacity to effectively participate in the circle that may negatively affect the outcome of the circle (Rudin, 2019). For example, the Indigenous community dynamics may cause some participants, such as victims, to be silenced, and the process may fail to meet the needs of all participants (Rudin, 2019; Vogt & Dandurand, 2018).

STEPS TOWARDS RECONCILIATION

As noted by Warry (2007), only when there is an honest understanding of Canadian history can we "remember our past; to be forgiven and to forgive ourselves; and, without forgetting, to use our history to move on to a shared future" with Indigenous people (p. 59). One of Canada's steps towards ending denial about the adverse effects of colonization and residential schools and beginning the healing through reconciliation began in 2008. The Truth and Reconciliation Commission of Canada (TRC) (2015) issued 94 calls to action, not just for the federal and provincial governments, but for churches, schools, professional institutions, and the general public. Included in the calls to action aimed at the justice system were three issues specifically related to the court system. First, the call to action 30 involved the federal and provincial governments committing to "eliminating the overrepresentation of Aboriginal people in custody over the next decade, issue detailed annual reports that monitor, and evaluate progress in doing so*"* (Truth and Reconciliation Commission of Canada [TRC], 2015, p. 324). Second, the call to action 31 was for the government to provide "sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending" (TRC, 2015, p. 324). Third, the call to action 32 was for the federal government to "amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences" (TRC, 2015, p. 324). Although the TRC calls to action 30, 31, and 31 do not specifically refer to Gladue principles, they support the intention of Gladue principles, and they should assist in reducing the number of the Indigenous people sentenced to prison.

National Inquiry into Missing and Murdered Indigenous Women and Girls

The awareness around the issue of Indigenous people, in particular women and children, being overrepresented as victims of crime has gained national and international attention (MacKinnon, 2018). According to the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG, 2019), victims and their families did not receive adequate support when seeking justice and found the court process to be unjust and retraumatizing. "Nobody will report their neighbours who are also their family members if they know that it will be a melee and the police will make arrests" (Court official Participant #1). A similar view was expressed by one of the participants in this study, "Indigenous people will report to the police if they prevent offences from occurring and deal with the situation safely" (Court official Participant #1).

The MMIWG report included six calls for justice relating to the courts; (1) increase access to culturally appropriate and meaningful practices within the court system by expanding on restorative justice programs and Indigenous courts, (2) increase Indigenous professional representation in all Canadian courts, (3) create national standards and a strengths-based approach for Gladue reports, ensure that Gladue reports are funded appropriately and that all criminal justice actors consider Gladue reports as a right, (4) provide Indigenous community-based alternatives for sentencing, (5) conduct thorough evaluations on the effectiveness of the "Gladue principles and section 718.2(e) of the Criminal Code on sentencing equity as it relates to violence against Indigenous women, girls, and 2SLGBTQQIA people" (MMIWG, 2019, p. 185), and (6) all courts must have an Indigenous courtroom liaison worker who is appropriately funded and resourced to make sure Indigenous people know their rights and their needs are met with appropriate services (MMIWG, 2019)[7]. If these six calls are considered and effectively

[7] 2SLGBTQQIA refers to people's sexuality - two-spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex, and asexual (Merrit, 2019).

implemented, they will strengthen the relationships between Indigenous communities and the court officials, improve the Indigenous court processes, and ensure there are sufficient resources needed for an Indigenous court. The first two calls will increase cultural awareness and appropriateness in the court system. Although the third and fourth calls are important to ensure the offender receives fair and just sentencing, it is important that these calls do not detract from the MMIWG's main intent to ensure victims and their families receive adequate support when seeking justice. The Indigenous courtroom liaison worker could also strive to ensure eligible Indigenous offenders are diverted to alternative measures.

Declaration on the Rights of Indigenous Peoples Act

In November 2019, the BC government adopted legislation to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP): The Declaration on the Rights of Indigenous Peoples Act (DRIPA) (SBC 2019, Ch. 44). DRIPA confirms that the Province of British Columbia officially subscribes to the Declaration and intends to ensure that the provincial laws are consistent with the UN Declaration. The purpose of the Act is: "(a) to affirm the application of the Declaration to the laws of British Columbia; (b) to contribute to the implementation of the Declaration; and (c) to support the affirmation of, and develop relationships with, Indigenous governing bodies" (SBC 2019, Ch. 44, art. 2). The UNDRIP is necessary to transform the relations between Indigenous peoples and the justice system, including meeting the standards of the UN Declaration and infusing Indigenous values in the justice sector. Notably, Article 34 of UNDRIP, with respect to Indigenous collective rights regarding the promotion of self-determination and self-governance, states that "Indigenous peoples have the right to promote, develop, and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices, and, in the cases where they

exist, juridical systems or customs, in accordance with international human rights standards". An Indigenous court in S'ólh Téméxw would be a step towards self-determination and self-governance, and the ultimate goal to have Indigenous-led justice systems that include Stó:lō specific traditions and S'í:wes te Siyolexwálh,

BC First Nations Justice Strategy

In 2020, the BCFNJC and the province of BC endorsed the BC First Nations Justice Strategy (the Strategy) to improve the relationship between Indigenous people and the criminal justice system (BCFNJC, 2020). The Justice Summits, DRIPA, and MMIWG reports, in addition to other sources, informed the creation of the Strategy. The Strategy intends to address the overrepresentation of Indigenous people involved in the criminal justice system, improve the treatment of Indigenous people involved with the justice system, and effectively respond to the violence against Indigenous people, specifically women and children (BCFNJC, 2020). The Strategy's two core values are the "presumption of diversion" and promoting Indigenous self-determination (BCFNJC, 2020, p. 5). The presumption of diversion means that the criminal justice actors must consider all reasonable alternatives that will have the least restrictive response to criminal behaviour, which is in line with the Gladue principles (BCFNJC, 2020) According to the Strategy, and consistent with UNDRIP, Indigenous self-determination can be achieved with the revitalization of Indigenous justice systems and institutions (BCFNJC, 2020).

One of the Strategy's lines of action is for BC and the BCFNJC to collaborate on a joint policy plan on the future of current and potential Indigenous provincial courts in BC (BCFNJC, 2020). The policy plan will consider how Indigenous provincial courts may support the transfer of roles and responsibilities to Indigenous-led justice courts and institutions (BCFNJC, 2020). Given that up to 90% of the Legal Services Society (LSS) clientele are Indigenous people, the

Strategy proposes the transfer of the responsibility of legal aid services and Gladue report related services from the LSS to Indigenous-led entities (BCFNJC, 2020). The Indigenous-led entities will provide training on the purpose of Gladue principles and standardize the Gladue report writing. Under the Strategy, the BCFNJC is responsible for the development and implementation of 15 Indigenous Justice Centres across the province operating within a provincial framework but reflecting the needs and approaches of First Nations in each region (BCFNJC, 2020). At this point, the Strategy is at the early implementation stage, and it is, therefore, difficult to predict how it will influence or change the current justice system or affect the development of an Indigenous court in S'ólh Téméxw. However, the Strategy does support the importance of considering the diversion of offenders to Qwí:qwelstóm Wellness at every opportunity, and implementing Indigenous courts with the intent of transitioning to Indigenous-led justice systems.

INDIGENOUS JUSTICE INITIATIVES IN S'ÓLH TÉMÉXW

There have been several Indigenous initiatives established in response to the overrepresentation of Indigenous people in the justice system and to deliver culturally appropriate services (Government of Canada, 2016, para. 7). The two initiatives in S'ólh Téméxw include the Native Courtworker and Counselling Association of BC (NCCABC) and Qwí:qwelstóm Wellness. Although the two initiatives share the central objective to address the overrepresentation of Indigenous people in the criminal justice system, they have different functions, governance, clientele, funding, and deliverables. For example, the Native Courtworker supports their clients through the court process, while Qwí:qwelstóm workers support their clients in the community. However, the Native Courtworker and Qwí:qwelstóm workers

collaborate effectively to support their clients through the justice system and facilitate their healing.

NCCABC

The NCCABC has one Native Courtworker who supports all Indigenous people involved with the Chilliwack or Abbotsford criminal court. Since its establishment over 45 years ago, the NCCABC's success has been rooted in the traditional Indigenous values that are common to all Indigenous nations (Native Courtworker and Counselling Association of British Columbia [NCCABC], n.d.). The Native Courtworkers' duties include advocating for their clients within the court system, helping their clients understand the court process, and ensuring their clients are referred to needed services to address their underlying issues, such as substance abuse (NCCABC, n.d). Native Courtworkers act as intermediaries between their clients and the criminal justice system to address the effect of cultural differences, communication barriers, and to reduce oppression and alienation of Indigenous people in the justice system (NCCABC, n.d). Native Courtworkers refer their clients to appropriate social, education, training, employment, health, and alternative justice services in S'ólh Téméxw to address underlying issues that may contribute to criminality (NCCABC, n.d). They also inform justice officials about the Indigenous worldview, Gladue principles, and other information related to the Indigenous people in S'ólh Téméxw (NCCABC, n.d).

Qwí:qwelstóm Wellness

Since Qwí:qwelstóm Wellness was established more than 25 years ago, it has had a working relationship with B.C.'s Prosecution Services through the Criminal Justice Branch of the Ministry of Justice, the RCMP, Department of Fisheries and Oceans, Gladue Writers Society

of British Columbia, NCCABC, Correctional Service Canada, and BC Corrections. “There’s no word for justice in Halq’eméylem, so the Elders came up with Qwí:qwelstóm and the best way to translate it is ‘bring harmony back to one’s life’” (Qwí:qwelstóm worker, Th’etsimeltel (D. Paul), personal communications, March 13, 2020). Initially, Qwí:qwelstóm was an Indigenous community-based justice program (IJP) and only received funding from the Province. However, the First Nations Health Authority has since been providing funding to Qwí:qwelstóm to complement the justice-related services with wellness-related services. Although each IJP incorporates local culture and traditions and is uniquely designed to meet the needs of its Indigenous clientele, the overarching goal is to address the overrepresentation of Indigenous people in the justice system (Department of Justice Canada, 2017).

The Qwí:qwelstóm Wellness program’s mandate with the Province has five main objectives: (1) to assist the criminal justice system improve its relevance and effectiveness with First Nations communities; (2) to encourage the revival and re-empowerment of traditional Indigenous justice practices relevant to the present-day Indigenous society; (3) to develop alternative programming to deal with deterrence and prevention, diversion, sentencing, rehabilitation, and incarceration; (4) to assist victims of crime within the traditional Indigenous culture; and (5) to encourage crime prevention through information, education, and community development programming with First Nations communities.

The Qwí:qwelstóm workers provide services to clients who self-identify as Indigenous, are involved with the justice system, and reside within S’ólh Téméxw (Sto:lo Service Agency, 2018). Qwí:qwelstóm wellness accepts referrals from four different sources; the RCMP, Crown Counsel, Provincial community corrections, Correctional Services Canada, and occasionally files from the Department of Fisheries and Oceans (Palys & Victor, 2005). Qwí:qwelstóm approves

the referrals based on the type of offence committed and the individual's willingness to take responsibility for the harm they caused and restore the harm caused to the victim and community (Legal Services Society, 2017; Ministry of Justice, 2016). According to the Department of Justice Canada's (DOJC) website (2019), IJPs, which would include Qwí:qwelstóm, have proven, in most cases, to help address cultural differences in the justice system and support clients to improve their lives. The review of the federal Aboriginal Justice Strategy's (AJS) (2017) indicated that people who participated in IJPs were 40% less likely to re-offend in the following eight years compared to those who were eligible to participate but were not referred[8] (Department of Justice Canada [DOJC], 2017).

Criminal justice officials have the decision-making authority on case referrals to Qwí:qwelstóm, thus limiting community control over justice administration. The main barrier for IJPs' success is the limited referrals they receive from criminal justice officials (DOJC, 2017). According to the DOJC (2017), 16% of Crown and 40% of police self-reported they 'almost never' refer cases to an IJP, and 25% of Crown and 33% of police said they refer less than half of the eligible cases (DOJC, 2017, p. 34). The four common reasons why police and Crown did not refer cases included the perception that the IJPs were not appropriate justice alternatives, ineligibility, the lack in community resources and services available for the clients, and the high IJP staff turnover rate (DOJC, 2017). Other reasons for low numbers of referrals included a lack of awareness about the IJPs and a lack of understanding of the need for IJPs, including the need for culturally relevant processes and services among Crown and police (DOJC, 2017, p. 35).

As previously mentioned, the relationship Indigenous people have with justice officials has suffered due to discrimination. Qwí:qwelstóm has quarterly meetings with their referral

[8] Eight years was the limit of the AJS analysis.

resources in S'ólh Téméxw with the intent to share best practices and updates on programs and services, build trusting relationships, and to increase the justice official's confidence in the Qwí:qwelstóm process. According to the IJP workers' perception, systemic discrimination continued to thrive in the justice system, there were gaps in resources and services for clients, and the high rates of crime and victimization in Indigenous communities continued (DOJC, 2017, p. 25). Unfortunately, the real or perceived discrimination continues to hinder the collaborative relationship Qwí:qwelstóm could have with justice representatives in S'ólh Téméxw. As a court official participant noted:

> I've heard from the dominant population, 'we've thrown a ton of money at First Nations people, what's the matter with them?'. There needs to be an understanding of how that trauma has perpetuated the social breakdown, the normalization of addictions, normalization of violence, normalization of sexual violence, just breeds more and more. The underemployment, lack of education, poverty, and family and social breakdown are all consequences of residential schools (Court official Participant #1).

In general, the high turnover rates of Indigenous justice employees and their inefficiencies are due to the limited or short-term funding and program mandates (DOJC, 2017). Indigenous justice employees have heavy workloads and must be knowledgeable about the justice system and legislation, and available resources and services for addictions, children and families, health and wellness, housing, employment, education (DOJC, 2017). There are also limited resources available for appropriate ongoing training for Indigenous justice employees (DOJC, 2017). Given that Indigenous justice employees have low-pay scales, employees tend to move on to higher-paying positions in the mainstream justice system (DOJC, 2017). Luckily, Qwí:qwelstóm's funding is supplemented by FNHA to offer effective justice and wellness services, have pay scales that are at par with justice agencies, and ensure their employees receive systematic and ongoing training.

In accordance with S'í:wes te Siyolexwálh, the Qwí:qwelstóm workers support people involved in the criminal justice system and people who need assistance with their journey towards a balance of emotional, spiritual, physical, and mental wellbeing (Stó:lō Service Agency [SSA], 2018). "Qwí:qwelstóm workers are not only looking at helping someone involved with justice but their whole life. We look at where they lost that connection to living in a harmonious or well life" (Qwí:qwelstóm worker, Th'etsimeltel (D. Paul), personal communication, March 13, 2020). The SSA offers wraparound services related to health and dental, education, training and employment, childcare, elderly care and housing, social development, mental health and counselling, high-risk youth and teen support, infant and child development, and a 2SLGBTQQIA support group. The Care Committees, two First Nations urban RCMP constables, and the Native Courtworker are also at the SSA site making it easier for clients to have access to wraparound services in one location[9]. In addition to connecting clients to services to address underlying problems and minimizing harm in response to criminal behaviour, Qwí:qwelstóm also offers addictions and domestic violence programs, a range of workshops, including coping with anxiety and anger management, and Sacred Tree[10]. Qwí:qwelstóm has also initiated a project on responding to sexual violence in S'ólh Téméxw. The project goals include building capacity through training and strengthening relationships and raising awareness within communities on sexual violence in a holistic way.

An Elders' panel guides the Qwí:qwelstóm program. There are 15 Elders on the panel that come from Stó:lō communities and other Indigenous communities outside of S'ólh Téméxw. The Elders are essential throughout all of the Qwí:qwelstóm wellness team's processes for many

[9] Care Committees advocate for Indigenous families with children in care under the authority of the Child and Family welfare system.
[10] Sacred Tree is a Stó:lō-led anonymous sobriety circle.

different reasons. The Elders essentially form an advisory panel for the Qwí:qwelstóm team by supporting the workers, guiding the program, and approving new initiatives. The Elders also have sessions with the clients, either one-to-one sessions or healing circles, and they can be forthright with the clients about their behaviour. The one-to-one sessions are informal and more of a conversation to build a rapport with the client. The Elders can offer clients a sense of connection to the Stó:lō territory and communities and mutual respect can develop between the Elders and the clients.

TRANSFERABILITY ASSESSMENT

Indigenous Courts

In 2006, a Cree First Nations Provincial Court judge opened the first Indigenous court in BC, referred to as the New Westminster's Healing Court (Johnson, 2014). There are now five other Indigenous courts in BC, including the Chet wa nexwniw ta S7ekw'i7tel, Cknúcwentn, Duncan First Nations Court, Nicola Valley Indigenous Court, and Prince George Indigenous Court (Provincial Court of British Columbia [PCBC], n.d). Like most Indigenous initiatives, there is no standard Indigenous court model, and the Indigenous courts operate within the current provincial criminal legal framework (Hughes & Mossman, 2001). There was a collaborative effort in the design of each Indigenous court model by the local provincial court officials, Indigenous community members, police, victim services, IJPs, NCCABC, and the Office of the Chief Judge (BCJPSC, 2019). Indigenous courts focus on healing and are not adversarial or retributive in nature (Dandurand & Vogt, 2017).

Indigenous courts utilize a holistic and cultural approach to restoring the harm caused by the offender (Legal Services Society, 2017). Two court officials shared their perceptions of the Indigenous court environment, which is much different than a typical courtroom. The judge, lawyers, Elders, client, and victim are sitting at a table together on the same level (Court official Participant #3). The Indigenous court is a relaxed, conversational atmosphere, and everyone is trying to help the client (Court official Participant #1). Anyone who self-identifies as Indigenous can participate in the Indigenous court (Dandurand & Vogt, 2017). Although the Indigenous courts are primarily sentencing courts, they also deal "with offenders at other stages of court proceedings, including bail hearings; while on remand; and, in monitoring any community-based portion of the sentence" (Dandurand & Vogt, 2017, p. 38).

Typically, the judge can consider recommendations provided by all individuals who are willing to participate (Monchalin, 2017). Participants may include Elders, the victim and their support, the client and his or her support, the Native Courtworker, IJP workers, the Crown and Defence lawyers, and police officers (Monchalin, 2017). In some cases, individuals from the public may offer advice to the client. For example, a client may be six months into their healing plan and have the courage to provide advice. "This is a client who would've never contemplated offering advice, but they realize, 'I've got something to offer to help this person'. That's how far they've come. That's how inclusive the court is that anyone can contribute" (Court official Participant #3). In some cases, the client's PSR is available and, in rare cases, Gladue reports are available for the judge and Elders to review (Dandurand & Vogt, 2017). After all the participants provide their insight and recommendations, the judge makes a final decision on an appropriate sentence or healing plan for the client (Monchalin, 2017). The Indigenous courts are intended to address the Indigenous clients' underlying issues that influence criminal behaviour through a

tailored healing plan or sentence (Dandurand & Vogt, 2017). The Indigenous courts offer culturally appropriate healing plans and bail hearings for Indigenous people who are remanded in custody or in the community (Dandurand & Vogt, 2017; Maurutto & Hannah-Moffat, 2017).

Once the clients complete their healing plan and sentence, there is a blanketing ceremony to honour the clients for successfully completing the process (Dandurand & Vogt, 2017). Blanketing ceremonies are done by nations across the Coast Salish territory. People are honoured and celebrated at blanketing ceremonies for several reasons, including weddings, graduation, puberty rights, funerals, and namings. The person is blanketed over their shoulders to wrap the person with positivity and to keep negativity out. "The blanket represents the love and kindness of everyone who helped that person through their process and by the ancestors who guide them" (Qwí:qwelstóm worker, Th'etsimeltel (D. Paul), personal communication, March 13, 2020). The blanket serves as a symbol of the person's growth and their support by the community to continue down their healing journey (Dandurand & Vogt, 2017). Th'etsimeltel (D. Paul) described the purpose of the blanket ceremony:

> Long ago before contact when blankets were tough to come by because the material used to make a swôqw'elh took lots of time to collect. When someone would get blanketed, it was a real honour because everyone knew the significance of the blanket. Today when we cover someone with a blanket, we have in our hearts and minds that same feeling our people had 200+ years ago. These folks who graduate from First Nations court will be hitting a milestone and a turning point in their lives (Qwí:qwelstóm worker, personal communication, March 13, 2020).

Duncan First Nations Court

In May 2013, the Duncan First Nations Court opened in the unceded Cowichan Tribes traditional territory (PCBC, n.d). Most of the clients, victims, Elders, and other community members are from the Cowichan Tribes in the Coast Salish Territory (Dandurand & Vogt, 2017). The size of the courtroom was quite small with a table that allowed for the judge, Crown

counsel, three to four Elders, the client, and as needed one other member that could be the defence counsel, probation officer, Native Courtworker, or victim. The public seating area was limited with enough room for the victim or client's supporters, public observers, lawyers, and police officers. The Native Courtworker has a vital role in the Duncan court with responsibilities that extend beyond the typical duties of a Native Courtworker position. For example, the Native Courtworker coordinates the court schedule and rotates 12 Elders to have up to four Elders participate in each of the Indigenous court hearings. Although Duncan does have an IJP justice worker, he does not have a role in the court process. According to a Cowichan Elder, the Duncan First Nations court has expanded to dedicate half a day each month to work with youth clients (I. Peter, personal communication, November 28, 2019).

Chet wa nexwniw ta S7ekw'i7tel

The Chet wa nexwniw ta S7ekw'i7tel opened in February 2012 and is located on the unceded traditional territory of the Squamish and Tsleil-Waututh Nations (Dandurand & Vogt, 2017). Judge Challenger initiated the development of the court with support from the Squamish and Tsleil-Waututh Nations, the RCMP and West Vancouver police, Community Corrections, and many other stakeholders (Dandurand & Vogt, 2017). The First Nations court is located in a large provincial courtroom, and there was plenty of room at the table for the judge, Crown, defence counsel, Elders, the accused, justice workers, Native Courtworker, and anyone else who is there to support the client or victim. The Squamish and Tsleil-Waututh Nation justice workers and Native Courtworker share the workload related to the court, and the cooperation has resulted in a seemingly efficient and streamlined process. The Native Courtworker and justice workers collaborate on supporting their clients and coordinating the Elders' attendance, lunches, and court schedule.

Conditions of Success

There are six common components of the Indigenous court that are believed to be responsible for their success, including the inclusion of local Indigenous culture, the Elders' role, the victim's role, the strengthening of relationships between the court and the Indigenous community, the clients' greater and easier access to community resources, and the careful consideration of Gladue principles. According to the Tsleil-Waututh justice worker, the clients receive teachings from Elders and they have a chance to go out into the community to work on themselves (A. Van Eden, personal communication, February 26, 2020). "We are not just sending Indigenous people by themselves into this foreign system and expecting a good outcome" (Justice worker, A. Van Eden, personal communication, February 26, 2020).

Inclusion of Indigenous Culture

The Indigenous court succeeds in bringing into the court process the unique and diverse cultures of the Indigenous peoples who are in the court's jurisdictions. The Indigenous people "bring in traditional knowledge, teachings, and ceremony into that court process because ultimately, it is going to have a better and more positive impact on the person before the court" (Justice worker, A. Van Eden, personal communication, February 26, 2020). Each of the Indigenous courts has cultural protocols, and there are cultural items in the courtroom, including "Indigenous artifacts, art and symbols. There are cedar boughs over the doorway in the Indigenous courtroom" (Court official Participant #1). These items are in the courtroom, regardless of whether it is an Indigenous court day or not. "I think that the visibility is important, there is a cultural connection that happens there" (Justice worker, A. Van Eden, personal communication, February 26, 2020). At the beginning of the Indigenous court hearing, the Elders offer an opening prayer in their traditional language or purify the room by smudging to start the

court process and healing in a good way (Dandurand & Vogt, 2017). Smudging or brushing off the room is done with one of the four sacred plants (cedar, sage, sweetgrass, or tobacco) depending on which resource is available in the nation's territory. Each nation has cultural protocols that must be strictly followed and learned through S'í:wes te Siyolexwálh. "Our upbringing is the basis of who we are, what we are, and where we come from. When a family member passes, we go tell others in person. You don't do it over the phone" (Elder F. Elliot, personal communication, November 29, 2019). The use of cultural practices and protocols offers a sense of comfort, belonging, and connection to the Elders and ancestors in the courtroom.

Although the clients are still required to follow the court's recommendations, such as meeting with their probation and attending counselling sessions, the Elders add some of their traditional work for the client to complete. The court conditions and Elder recommendations are not intended to overload the client, rather they complement each other. According to the Duncan Court Elder, the client may be required to complete community service hours (I. Peter, personal communication, November 28, 2019). If it is during the wintertime when the longhouses are open, the Elders may have the client volunteer at the longhouse chopping and stacking wood (Elder I. Peter, personal communication, November 28, 2019). The client can take pride in completing their community hours while helping their community. "We include our traditional teachings along with the conditions for every client to help them finish their healing plan. We explain to them that they need to follow their conditions but also abide by the traditional teachings" (Elder I. Peter, personal communication, November 28, 2019).

The blanketing ceremony is a very important process that empowers an individual to continue down their healing journey. According to Th'etsimeltel (D. Paul), a Skowkale member and Qwí:qwelstóm worker, (personal communication, March 13, 2020),

> Our Elders always say there are four periods in life when we can turn our life around and make change. Grieving a loss is one of those times. These folks in Indigenous courts will be grieving their past life and the harm they caused. Many of these folks will be at a point where they are still mentally like children and spiritually haven't grown until something like this happens. After being successful in this process, covering them will be crucial.

Three interview participants shared their experiences and understanding of the blanket ceremony. "The blanket or graduation ceremony is an emotional experience for everyone involved, especially for the client who is looking forward to it" (Court official Participant #3). According to a court official, Participant #3, the clients can invite their family members and friends to celebrate. The Elders share the purpose and symbolism of the blanket. These are the successes that everyone involved is working towards at the end of the sentence (Court official Participant #3). The court official, Participant #1, stated that the process is not pain-free and without any issues, but the clients are a lot better off than they were before, and they can use the tools they learned throughout the process. "When they graduate, they are wrapped in a blanket, and whenever they are feeling alone or struggling, they can wrap themselves in the blanket" (Elder Participant #1).

Elders

The Elders' role is vital to building awareness and understanding about the Indigenous worldview (Dandurand & Vogt, 2017). "They can teach the ones in trouble, and kind of bring them back to our ways" (Elder M. Thomas, personal communication, November 27, 2019). "The Duncan and North Vancouver court officials and Tsleil-Waututh justice worker, The Elders, are the go-betweens for the client and the court, and the community and the court" (Court official Participant #3). According to the Tsleil-Waututh justice worker, Elders have the ability to raise cultural awareness by including court personnel in cultural work. The Elders would bring the

court personnel in, acknowledge the work they do, offer them teachings, and blanket them (Justice worker, A. Van Eden, personal communication, February 26, 2020). The Elders are "doing what they can to help wrap them in understanding about our cultural ways. To help build an awareness of the jurisdiction's cultural worldview" (Justice worker, A. Van Eden, personal communication, February 26, 2020). In a sense, the Elders are providing informal training on Indigenous culture. "They are the ones that hold us accountable" (Court official Participant #3). "We are answerable not just to the amorphous idea of justice but to the Indigenous people in the community on an ongoing basis. The Elders are essential to the process" (Court official Participant # 1).

The Court official, Participant #3, shared how the Elders are able to connect with clients in cases where no progress is made for some time. "There is a breakthrough, and there is a whole different dynamic" (Court official Participant #3). "It's almost as if an epiphany takes place both emotionally and intellectually for the client. You never know which Elder or what that Elder says that somehow breaks through" (Court official Participant #3). "The Elders are one of the main reasons the Indigenous courts are successful" (Court official Participant #3). "The presence of the Elders lets the community know that the court is not a terrible entity that Indigenous people may have experienced in the past and lost trust in" (Court official Participant #3). The court official, Participant #3 continues to describe that the Elders are engaging with the client in the court, and it sends the message to all clients that the Indigenous court is a safe place to get help. "The Elders are open, inclusive, humble, and they acknowledge that their worldview is not the only way, and they make it comfortable for everyone" (Court official Participant #3).

"The Elders will ask the clients if they talk with their Elders or older ones in the community, and they usually do not have anyone" (Elder M. Thomas, personal communication,

November 27, 2019). The client may only have involvement with the Elders from the Indigenous court. “Sometimes, we are the only Elders they end up having in their lives” (Elder M. Thomas, personal communication, November 27, 2019). Although each Indigenous community has different culturally diverse and distinct, the Elders’ role is vital in all Indigenous communities. They are the carriers of traditional knowledge and cultural teachings, and everyone knows to respect and listen to the Elders.

Victim Involvement

Although Grand Chief Steven Point has retired, he shared his experience as a provincial court judge sentencing First Nations offenders. The criminal law sees the offence committed as a crime against the state, and judges need to consider the four principles of sentencing, namely denunciation, deterrence, reparation, and public safety when rendering a sentence (Hon. Xwĕ lī qwĕl tĕl (S. Point), retired provincial judge, personal communications, February 21, 2020). “The problem with that is at the end of the sentence, the offender goes back to their community, and the community members are still mad at them” (Xwĕ lī qwĕl tĕl (S. Point), personal communication, February 21, 2020). The Indigenous court provides the opportunity to create a solution to restore the harm caused that involves the Elders, victims, offenders, and community in a way that is not available in the provincial court. The victim has the opportunity to share how the offence affected them, and the offender must explain themselves to the victim, Elders, and community (Hon. S. Point, retired provincial judge, personal communications, February 21, 2020). Siyá:m Xwĕ lī qwĕl tĕl provides an ideal scenario of the victim involved in the process.

According to Steven Point, the Indigenous court provides a safe space and time for the victim to share how the crime has affected their lives (personal communication, February 21, 2020). The offender can then go back to their community without an uncomfortable or awkward

silence when they see the victim at a gathering. The person has gained their place back in the community by restoring the harm, which is not always the case in provincial court. The conflict is resolved and everyone can go back to normality and harmony. The Indigenous court is much more effective at changing behaviour, which is one of the objectives of criminal law (Xwĕ lī qwĕl tĕl (S. Point), personal communication, February 21, 2020). Including Indigenous communities and potentially relatives as participants, the Ts'elxwéyeqw court will introduce a different dynamic than the regular provincial court. The cases referred to the Ts'elxwéyeqw court will need to be carefully considered and screened, and the victim will need to decide if they would like to be involved in the process. The victims' safety and rights will need to be carefully protected and respected throughout the Ts'elxwéyeqw court process.

Strengthening Relationships

The Indigenous court process spawns interest and understanding and improves the relationship between the Indigenous communities and the court (Court official Participant #3). The Tsleil-Waututh justice worker shared that the Crown participated in a canoe journey with the youth. "It was a start, and it connected her with the nation's culture and built relationships with the community members and shifted her Crown or government mindset a bit. It takes courage on her end to put herself out there" (Justice worker, A. Van Eden, personal communication, February 26, 2020). The understanding and empathy help to improve the relationship between the court and Indigenous communities (Court official Participant #3). "I've been told in the court that the relations between the police and the community have improved. Part of it is because the police have a way better understanding of who they're dealing with; It's damaged people, not bad people" (Court official Participant #1). The judges have more freedom in an Indigenous court to build a rapport with their clients, and they have the ability to follow-up on the client's progress.

Whether it was counselling or attending a domestic violence program, the judge and Elders can evaluate how effective the program is for the client or offer them further support (Court official Participant #3).

"The British court does not have a personal relationship with the offenders" (Court official Participant #3). For example, the judge will sentence the offender to probation with a condition to remain abstinent from alcohol. The judge rarely sees the offender again, except if they have breached. Even then, the offender may not be brought before the same judge (Court official Participant #3). All the judge knows is that the offender consumed alcohol or drugs contrary to their conditions. The judge does not know about the offender's background or what happened during their probation period. Whereas at the Indigenous court, the most critical condition is that the client returns to the court for a review every month or two (Court official Participant #3). The better they are doing, the less the judge will need to see them. The judge's perspective changes a lot because they know the client's story. "They get to know the judge; they certainly get to know the Elders, and we're all moving forward together, and there's follow-up which we don't have in British court" (Court official participant #3).

From a community perspective, the progress the Indigenous court is having with the community is often overlooked (Court official Participant #3). The Indigenous court helps with building relationships, trust, and confidence, which requires a lot of work and reconciliation (Court official Participant #1). "All of these things contribute to the person feeling supported, worthy, and gives them a sense of hope that there is a path out of the vicious cycle that is a result of the assimilation policies" (Court official Participant #1). The court official Participant #2 shared that it can be a rewarding experience to help the clients and build relationships with the larger community. "I'm talking about ultimately Canada that we're building trust and faith in the

justice system within the Indigenous communities, which for perfectly understandable reasons, there has been a lack of trust" (Court official Participant #3).

Community Resources

The Indigenous court offers a sense of fairness and is a process where Indigenous people have a voice. The court recognizes the difficulties that a lot of Indigenous people have, and punishment is last on the list, instead of first (Court official Participant #1). "We are not focusing on shame, blame, and punishment, which is the Western approach to justice but incorporating Indigenous justice principles, which is healing, helping the offender, the victim, and the community by addressing reparation, rehabilitation" (Court official Participant #1). Indigenous courts offer "warm referrals" that link clients to resources, such as housing and addictions through a wrap-around approach, which is a gap in the mainstream justice system (Court official Participant #1). The clients would meet the community-based service representatives in the court as opposed to being told to seek out the recommended services before their next court date (Court official Participant #1). People do not like the unknown. It is much more convenient when the client can meet the service provider, and they are more likely to make their appointments when they have developed a face-to-face relationship. "When they meet the person and see that they are pleasant and are not going to shame them or are accusatory, they are far more likely to show up for their appointment" (Court official Participant #1). Dedicated community service representatives attend the court to help the clients, including an Indian Residential School Society representative, justice workers, addictions counsellors, child and family services, health services, and all other essential services (Court official Participant #1).

Gladue Principles

Occasionally, the conversation surrounding Gladue principles is raised in a natural way by the Elders or the judge through questions (A. Van Eden, personal communication, February 26, 2020). The Native Courtworkers and justice workers may sit with the client and gather Gladue information and can bring that information forward (A. Van Eden, personal communication, February 26, 2020). The Gladue principles come before the Indigenous court in several ways. The judge takes into account the Gladue factors and will consider community-based options for them. Indigenous courts tend to have better knowledge of what those options are and have the voice of the Elders right at the table, which is a more powerful experience (A. Van Eden, personal communication, February 26, 2020). The Indigenous court offers a safe environment for the clients to share their stories and be vulnerable. "Imagine what it's like to live in a community with high suicides, accidental deaths, missing people. What it's like to live in a community, even as a healthy person, with that much sadness and tragedy going on around you" (Court official Participant #1). The Indigenous court promotes patience and compassion for the Indigenous people's circumstances and helps build trust (Court official Participant #1).

Adjusting Healing Plans Rather than Non-Compliance

The Elders and court official interview participants shared their experiences with how the Indigenous courts respond to non-compliance to healing plans. There was consensus in the interviewees that most clients do comply and end their sentences with good results. "For the most part, we see the change. Not only just by what they tell you, but we see it in their appearance, their confidence, what they're doing, they're goals in life change dramatically" (Court official Participant #1). The Indigenous courts have the means at their disposal, with the community's assistance, to increase compliance (Court official Participant #2). If non-

compliance is due to the offender relapsing, the court will try to get the client back on track with their healing plan, and the justice workers make sure clients attend their appointments (Court official Participant #1). When the court observes chronic non-compliance, it is an alert that something else is going on (Court official Participant #3). “There is a big difference between ‘pound sand I am not going to comply’, and ‘I can’t comply, or ‘I don’t know how to comply,’ and the First Nations court can usually determine the difference” (Court official Participant #3). The court will receive a better response from clients if they feel their conditions are fair, and the court is striving for healing rather than punishment. If the client went through the provincial court process, the result would be the same or worst (Court official Participant #1).

The judge and the Elders recognize “when they are indifferent at best, if not contentious at worst, and just playing the system. Well, we’ve got better things to do than have someone play the system” (Court official Participant #3). The Indigenous court does not achieve compliance through punishment or force (Court official Participant #1). “If they don’t want to engage, we’ve got other people that do. In fact, our numbers are getting to the point where we’ve asked for more days. We have a lot of people coming in and needing our help” (Court official Participant #3). Non-compliance to healing plans are “dealt with in a manner that recognizes that desistance from crime is a process, not a single event, and relapse is recognized as a part of recovery” (Dandurand & Vogt, 2017, p. 5). Indigenous courts can potentially reduce the rates of Indigenous people being convicted for failing to follow their conditions and reduce the high rates of Indigenous people in remand custody (Boothroyd, 2019).

Points of Improvement to Consider

Based on the interviews and observations, there were three aspects of Indigenous court that could be improved. First and foremost, there needs to be consistent and sufficient funding to

pay the Elders for their time and contribution. The Tsleil-Waututh and Squamish Nations would pay for the lunches at the Chet wa nexwniw ta S7ekw'i7tel and Elders honorarium. "Ultimately, the main downside is funding. It's a negligible downside. The funds should be there. The justice system owes it to the Indigenous people to try and break out of the status quo system and try something new" (Court official Participant #3).

Second, recruiting, training, and keeping Elders was an issue for the Indigenous courts. For the Chet wa nexwniw ta S7ekw'i7tel, it was a challenge to get Elders into the courtroom. "There was no funding in place for the courts to respect the Elders' knowledge by giving them an honorarium. There was no opportunity for the Elders to get training to understand the legal language and court processes" (Justice workers, A. Van Eden, personal communication, February 26, 2020). The Indigenous court requires Elders who have the confidence to speak in the courtroom and the willingness to learn the court process. "The Elders need to have a voice and speak up when they don't agree with what is happening in court. Formal training will give them confidence in what they're doing" (Elder Participant). In addition, there are not enough Elders who still have S'í:wes te Siyolexwálh, and those who still have traditional teachings already have work too much for their communities. "Most of the Elders in the families are all gone now. Most of them were taken away due to residential schools, and when they came back, they couldn't find their teachings" (Elder M. Thomas, personal communication, November 27, 2019).

Third, the lack of community resources and services would depreciate the value and hinder the success of the Indigenous court process. The Tsleil-Waututh Nation health services agreed that the overrepresentation of Indigenous people in the justice system was a health issue because criminal conduct stems from addictions, trauma, mental health, and head injuries (A.

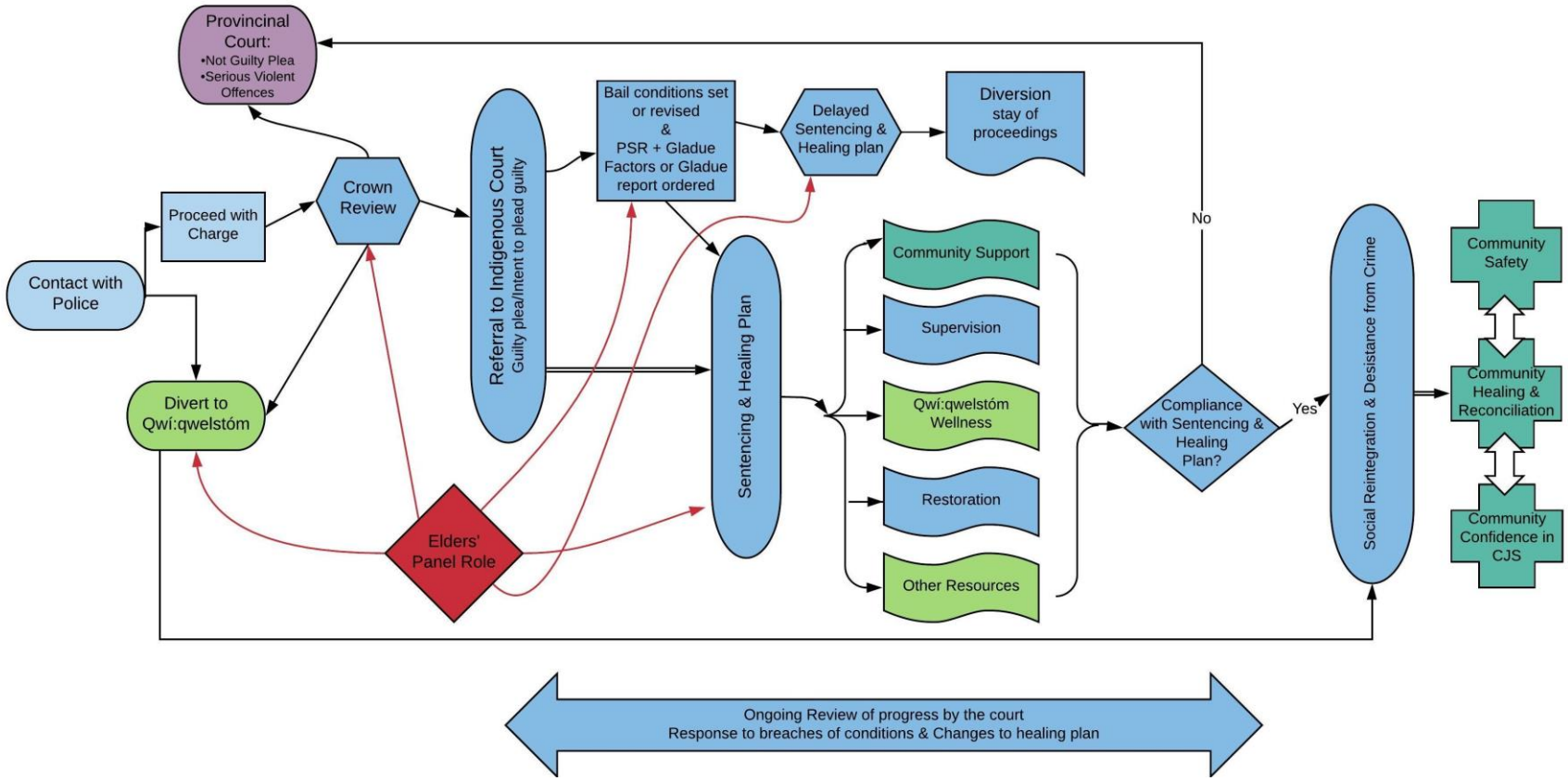
Van Eden, personal communication, February 26, 2020). “The only issue we had was finding resources and getting community-based services to attend court to act as warm referrals” (Court official Participant #1). The Indigenous court would benefit from a court navigator from the Indigenous communities to coordinate all the players, including the Elders, Crown, duty counsel, judge, health, and justice workers (Court official Participant #1). Also, the navigator would keep the support services interested in continuing to attend the Indigenous court dates because that is important for warm referrals. (Court official Participant #1). There would be a continuum of care, and the court could rely on them to come up with innovative short- and long-term solutions for alternative sentencing.

PROPOSED INDIGENOUS COURT IN S'ÓLH TÉMÉXW

Qwí:qwelstóm has been working towards establishing an Indigenous court in Chilliwack since 2017. If Qwí:qwelstóm is successful, the hope is that Stó:lō people can collaborate with the Province of BC to address the over-representation of Indigenous people incarcerated, including remand custody. In 2018, Qwí:qwelstóm hosted an AJLC meeting and invited former Chief Judge Thomas Crabtree to present on the purpose of an Indigenous court and the feasibility of having one established in S'ólh Téméxw. Qwí:qwelstóm also invited all the relevant stakeholders, including the RCMP, Crown, victim services, Provincial community corrections, Federal corrections, the City of Chilliwack, and the Native Courtworker. All the AJLC representatives were supportive of having an Indigenous court in Chilliwack. The following graphic was adapted from Dandurand and Vogt’s (2017) logic model for Indigenous courts in BC for an Indigenous court in S'ólh Téméxw (p. 13). The logic model illustrates how

Qwí:qwelstóm will be involved in the process as a diversion and dispute resolution program, and as a wellness program.

Figure i - Logic Model for Ts'elxwéyeqw Court in S'ólh Téméxw



The *Specialized Court Strategy* developed by the Ministry of Justice (2016) was used as a general outline for the proposed Indigenous court in S'ólh Téméxw. The proposed Indigenous court will be located in Chilliwack, which is the unceded Stó:lō traditional territory. There are seven federal correctional facilities and one provincial correctional facility in the Stó:lō territory, making the landscape and population characteristics quite unique (Government of Canada, 2014; Government of British Columbia, n.d.). According to Statistics Canada (2020), there are 8,470 Stó:lō people, with 4,382 Stó:lō people living off-reserve. In addition to Stó:lō people residing in S'ólh Téméxw, there are urban Lat'sumexw or people from another territory. In other words, the Indigenous population is diverse in S'ólh Téméxw as it is elsewhere. Although S'ólh Téméxw extends from Hope to Fort Langley on both sides of the river, the court will only serve Indigenous offenders in the Chilliwack court jurisdiction. For the purpose of this major paper, the Indigenous court will be referred to as the Ts'elxwéyeqw court.

Participant Eligibility

Similar to the other Indigenous courts and Qwí:qwelstóm Wellness, anyone who identifies as Indigenous can participate in the Indigenous court. To be an eligible participant, the clients will need to take responsibility for the harm they caused and remain accountable for their healing plan and sentence. Initially, the Ts'elxwéyeqw court will only take adult offenders until the relevant personnel working for the court are experienced enough and have the resources to take on young offenders. Siyá:m Xwĕ lī qwĕl tĕl suggested that the Ts'elxwéyeqw court start with driving offences, breaches or administrative charges, minor criminal offences, and then work their way to more serious offences as the court becomes more efficient and experienced (Xwĕ lī qwĕl tĕl (S. Point), personal communication, February 21, 2020).

Programs, Roles, and Resources

The court will determine what representatives it requires for general judicial administration, including the judge, Crown and defence counsel, sheriffs, clerks, and other relevant personnel. Representatives from the Indigenous community will include the Native Courtworker, the Qwí:qwelstóm workers and Elders panel, justice and wellness workers from the Stó:lō communities and Seabird Island Band, and SSA service provider representatives. There are some communities that have a wellness worker or justice worker who provides service to their community members. Seabird is a service provider similar to the SSA, and some of their services may be offered to other Stó:lō communities or the public through funding agreements. There should be a Ts'elxwéyeqw court committee establish with members from the judicial administration and Stó:lō community to collaborate on the Ts'elxwéyeqw court model.

NCCABC

The Native Courtworker's role will be vital for the Ts'elxwéyeqw court to succeed. The Native Courtworker for the Chilliwack and Abbotsford court has an office at SSA that makes it easier to connect their clients with SSA services, including Qwí:qwelstóm. The Native Courtworker's duties are predominantly in the courthouse, so she/he should be readily available for the Ts'elxwéyeqw court sitting dates. The Native Courtworker will have the ability to identify Indigenous people who could be diverted to Qwí:qwelstóm or go through the Ts'elxwéyeqw court process. In some locations, including the Duncan court, the Native Courtworker performs some of the functions that should be part of the probation officers or Indigenous justice worker's mandates and responsibilities. There is no definitive answer on how often this happens, but it does result in disagreements on roles and work-related stress (Department of Justice Canada, 2019). However, the Native Courtworker and Qwí:qwelstóm

have effectively coordinated their responsibilities, and a memorandum of understanding can be created to ensure the roles within the Ts'elxwéyeqw court are clearly defined.

Qwí:qwelstóm Wellness

The Qwí:qwelstóm wellness workers' role will support the clients outside of the Ts'elxwéyeqw court to address the harm done and begin reconciling the underlying social, cultural, emotional, mental, physical, and spiritual issues. These issues include addictions, mental health issues, education and employment issues, family and relationship problems, cognitive and physical health concerns, and housing and accommodation. Presently, Indigenous individuals are referred to services by the Native Courtworker, Crown, or they self-refer to Qwí:qwelstóm once they enter the court process. "Sometimes what they really need is just addictions counselling or a home, and I think that Qwí:qwelstóm ought to be involved in the court process and provide the support the offenders need" (Hon. S. Point, retired provincial judge, personal communications, February 21, 2020). Although the Qwí:qwelstóm workers will normally have minimal involvement within the Ts'elxwéyeqw court, they can support the clients' access to needed resources.

One of the initial community concerns mentioned above was that the Ts'elxwéyeqw court might erode Qwí:qwelstóm's efforts at diversion and its dispute resolution process. There are several potential ways to prevent the overreliance on the Ts'elxwéyeqw court as the gateway to community resources and services. The agreement Stó:lō people have with the Province can clearly detail the intent and roles of the Ts'elxwéyeqw court and Qwí:qwelstóm. The BCFNJC (2020) noted that the Strategy will implement a plan for Indigenous people to be diverted at every opportunity within the justice system. For example, Figure I demonstrated how there is an opportunity for offenders to be diverted by the police, and there is a second opportunity for an

offender to be diverted by the Crown. There will be instances where the police do not divert eligible cases. However, the Crown counsel and Native Courtworker are the gatekeepers of the court who can refer eligible cases to Qwí:qwelstóm. As previously mentioned, there are concerns about the lack of referrals from Crown to Qwí:qwelstóm. A Qwí:qwelstóm Elder or worker could collaborate with the Crown on strategies to increase referrals for diversion. The MMIWG and the Indigenous courtroom liaison worker could also ensure eligible Indigenous offenders are diverted to alternative measures. The Ts'elxwéyeqw court will strengthen the relationship Qwí:qwelstóm has with the court, which may also result in improved cooperation and collaboration that will reduce the silo effect. "The Indigenous court relies on community-based programs to meet the clients' needs. The Indigenous court is looking to the First Nations communities for client support" (Justice worker, A. Van Eden, personal communication, February 26, 2020).

Similar to the other Indigenous courts, the Ts'elxwéyeqw court will help strengthen the relationship Stó:lō people have with the court. The Ts'elxwéyeqw court will also increase awareness and confidence in Qwí:qwelstóm's role as a diversion program and as a wellness program. This will result in increased buy-in from the mainstream justice system referral sources at the local level, including RCMP, Crown, judges, and BC Corrections. Qwí:qwelstóm can offer a continuum of healing and restoring harmony beyond the Ts'elxwéyeqw court process. For example, in 2018, Qwí:qwelstóm, a Gladue report writer, and a provincial court judge coordinated a sentencing circle at the Chilliwack court for a client who had an assault offence. The judge implemented the recommendations from the Elders, Native Courtworker, and other participants into a healing plan, and the offender received a conditional discharge after successfully completing his sentence. As of 2020, the Qwí:qwelstóm worker continues to follow-

up and support their client as he continues his healing journey. Similar to the Chet wa nexwniw ta S7ekw'i7tel, the Qwí:qwelstóm worker can fulfil the 'warm referrals' role by greeting the client at the Ts'elxwéyeqw court. "When the Indigenous court is established here, it will include justice, but Qwí:qwelstóm will bring the wellness component and complement the process" (Qwí:qwelstóm worker, Th'etsimeltel (D. Paul), personal communications, March 13, 2020). The Qwí:qwelstóm worker will also guide the client through the many resources centralized at either Stó:lō Service Agency or Seabird (Stó:lō Tribal Council) depending on which community the client is from.

Elders Panel

Unlike most Indigenous courts that had to recruit and establish a consistent group of Elders, the Ts'elxwéyeqw court will already have access to the Qwí:qwelstóm Elders Panel. The Elders all come from a range of backgrounds, but many of them have had a role in the criminal justice system, including the court and corrections. The Elders already have a basic understanding of the criminal justice processes. The Elders help the clients and others understand the importance of healing through storytelling, and how the historical trauma and intergenerational effects play a role in the over-representation of Indigenous people in the criminal justice system. The Elders also understand that the disharmony or conflict evolves from the lack of teachings from Elders, the erosion of cultural values, and dysfunctional family and community structures. "I think having that vested interest of the community in the court and bringing the Qwí:qwelstóm Elders to court to help with training, teaching, and building an understanding in court will help" (Justice worker, A. Van Eden, personal communication, February 26, 2020). When an Elder speaks, everyone listens. "We hold our Elders up high because it is a part of who we are as Indigenous people. Tribal Elders hold rights to cultural

property; they hold history; they resolve conflicts; they are highly respected people" (Hon. S. Point, retired provincial judge, personal communications, February 21, 2020).

Funding

Although Qwí:qwelstóm offers honorariums to their Elders for their time and work, the funding will need to be supplemented by the Province if the Ts'elxwéyeqw court sitting dates go beyond one day per month. The Ts'elxwéyeqw court committee will need to determine if there will be a dedicated duty counsel and confirm funding is available from the Legal Services Society. According to the BCFNJC (2020), the Strategy will ensure there is dedicated funding and a duty counsel available for Indigenous people.

Evidence of Community Stakeholder Support

According to Grant Morley's study (2018), the Stó:lō Elders Panel unanimously supported the establishment of an Indigenous court in S'ólh Téméxw. The Elders felt that the Indigenous court would complement the Qwí:qwelstóm program. "I think we just need to open our doors, hang a shingle out and start doing the work" (Hon. Xwĕ lī qwĕl tĕl (S. Point), retired provincial judge, personal communications, February 21, 2020). The recommendation of having an Indigenous court in S'ólh Téméxw was presented to the Stó:lō Nation Chief Council and they requested a proposal with any potential risks of implementing an Indigenous court. There were two letters of support for the research from Chief David Jimmie and Grand Chief Steven Point. David Jimmie is the Chief of Squiala, president of Ts'elxwéyeqw tribe and president of SSA. Sí:yám Xwĕ lī qwĕl tĕl (Steven Point) is the former Lieutenant Governor of British Columbia and retired provincial court judge, and he is a Skowkale First Nation member. These two men are influential and well respected Sí:yá:m in S'ólh Téméxw. The intent of the transferability

assessment is to offer the Sí:yá:m or Stó:lō political leaders' insight on the conditions of success at other Indigenous courts and the Ts'elxwéyeqw court's potential negative and positive outcomes. The findings will be presented to the Sí:yá:m for support to move forward on the Ts'elxwéyeqw court initiative.

Evaluation and Monitoring

The way Indigenous people, specifically Qwí:qwelstóm, defines and measures success is different than the colonial or dominant society's way of evaluating success, which typically involves the use of recidivism rates. The focus on measuring recidivism rates may undermine other factors that contributed to program success or failure (Vogt & Dandurand, 2018). The Qwí:qwelstóm program has a cyclical and holistic method of measuring their effectiveness with mental wellness and justice-related clients. Success in Qwí:qwelstóm is measured differently than the province or even other Indigenous programs. The Qwí:qwelstóm workers are also community members. Qwí:qwelstóm employees work directly with their community members one way or another. Qwí:qwelstóm workers have a pretty good idea of what their clients' life circumstances are when they ask for help. "It's easy for us who have experienced a similar lifestyle to see the success in our participants because we know what it's like, we've lived that life before or we've witnessed people who were had that lifestyle" (Qwí:qwelstóm worker, Th'etsimeltel (D. Paul), personal communications, March 13, 2020). For example, if an Indigenous person is suffering from substance abuse and comes in for day treatment but does not attend all ten sessions, this may still be deemed a success because the client made an effort to begin their healing journey. "We don't look at them as a failure because they didn't finish the program. We're here to guide them through whatever it is they're working through. It's not just start and finish. There's no end date to Qwí:qwelstóm" (Qwí:qwelstóm worker, Th'etsimeltel (D.

Paul), personal communications, March 13, 2020). At times, this can be difficult for the government and other agencies to accept. The government tends to take a linear approach when evaluating programs that tends to be black and white or success and failure. Nonetheless, evaluations are important for determining what activities or components are contributing to the success of the program, and what components need to be adjusted or removed to improve the program performance.

Dandurand and Vogt (2017) included a preliminary evaluability assessment for the Indigenous courts that can be used as a guide for evaluating the performance of the Ts'elxwéyeqw court. The purposes and scope of the evaluation on Ts'elxwéyeqw court should involve the key stakeholders and Indigenous communities. The purposes may include assessing the indicators of success, identifying unintended positive and negative outcomes resulting from the Indigenous court and supporting programs, comparing the evaluation results with other Indigenous courts to determine best practices, comparing the positive outcomes achieved with other forms of interventions offered in S'ólh Téméxw for Indigenous offenders, such as diversion and the regular provincial sentencing process, assessing the cost-effectiveness of the Ts'elxwéyeqw court as compared to the other forms of intervention in S'ólh Téméxw, and providing further insight on a potential Indigenous court model in BC (Dandurand & Vogt, 2017, pp. 25-26).

Dandurand and Vogt (2017) provided five potential indicators of success; (1) the Ts'elxwéyeqw court contributes to public safety and reduce reoffending by offenders who participate in the process, (2) the Ts'elxwéyeqw court contributes to the decreasing incarceration rate of Indigenous offenders, (3) the Ts'elxwéyeqw court provides effective and culturally appropriate healing plans for their clients, (4) the Ts'elxwéyeqw court effectively connects their

clients to the support and resources they need to desist from crime and reintegrate into the community, and (5) the Ts'elxwéyeqw court offers meaningful opportunities for the Stó:lō and Indigenous urban communities to engage in and support the Ts'elxwéyeqw court clients with their healing journey. The second indicator of success had four sub-indicators; (1) reduce the number of defendants in remand custody, (2) reduce the length of time defendants spend in remand custody, (3) increase the number of defendants who can avoid formal convictions, and (4) reduce the number of offenders who are incarcerated due to administrative charges.

LIMITATIONS

This paper had two significant limitations. First, there were only nine interview participants that worked within the Duncan First Nations Court and the Chet wa nexwniw ta S7ekw'i7tel or North Vancouver First Nations Court that limited the findings of the transferability assessment. The hope was to have at least three different Indigenous courts that operate much differently to get a more comprehensive understanding of the aspects that led to the success of the Indigenous court and how they can be transferred to an Indigenous court in S'ólh Téméxw. Second, there is a lack of reliable quantitative data on the current Indigenous Court in BC. The authors Dandurand and Vogt (2017) conducted a preliminary review of existing courts established and found that the data currently available on these courts are very limited, and there is very little systematically collected information on the cases referred to and dealt with by these courts or the outcomes and effect of these courts. Unfortunately, this imposed some severe constraints on the ability to assess the transferability of existing models and practices to the proposed court in S'ólh Téméxw.

CONCLUSION

There have been several Indigenous initiatives established in response to the overrepresentation of Indigenous people in the justice system and to deliver culturally appropriate services (Government of Canada, 2016, para. 7). Although there are two Indigenous initiatives in Chilliwack, including the Native Courtworker and Counselling Association of BC and Qwí:qwelstóm Wellness, there are still gaps in connecting Indigenous people involved in the court system to community-based justice and wellness services. This major paper presents the transferability analysis and offers recommendations to consider when designing and implementing an Indigenous court in S'ólh Téméxw. If Qwí:qwelstóm is successful with gaining support from the Stó:lō community, the hope is that Stó:lō people can collaborate with the Province of British Columbia to design and implement the Ts'elxwéyeqw court.

The SSA already has the foundation, including the Elders panel, wellness workers, and resources available to support the Ts'elxwéyeqw Court. The Stó:lō people are exercising self-determination through the creation of culturally appropriate services. Stó:lō people can bring harmony back to the communities by countering deviant behaviour, addictions, and trauma through the revitalization of the Stó:lō values and ways of life. The Sxwōxwiyám and Sqwélqwel stories are our lessons, and we are responsible to our ancestors to abide by and maintain our values and teachings. We are responsible to our future generations to pass on our values and teachings.

Restoring the balance and healing is an effort that involves the relatives, communities, and teachings from our Elders and ancestors along with other elements, including the four medicines and eagle feathers. "What do we do for people who act like they have no relatives? We bring in our relatives!" (McCaslin, 2005, p. 86*).* Stó:lō people and other nations understand

that everyone takes the responsibility of the harm caused by an individual (Bressan & Coady, 2017). “Until Indigenous people have their own court to handle their matters, this court is the best thing we can get for now” (Justice worker, A. Van Eden, personal communication, February 26, 2020). The Ts’elxwéyeqw court and Qwí:qwelstóm Wellness initiatives are steps in the right direction towards a long journey of healing for Indigenous people in S'ólh Téméxw and away from the destructive effects of colonization and systemic discrimination.

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APPENDIX A

Criminology and Criminal Justice Department
University of the Fraser Valley
33844 King Road
Abbotsford, BC V2S 7M8
604-504-7441

September 24, 2019

Re: Indigenous Court in Chilliwack

Dear Participant,

My name is Alisha Tushingham, a Stó:lō Nation member and a criminal justice master's student at the University of Fraser Valley. The hope is to conduct a study with individuals involved in the Provincial criminal justice system to gain more insight into the best practices and lessons learned for Indigenous or First Nations courts. The study will assist with determining if practices from the urban and community-driven Indigenous Court models are transferable to S'ólh Téméxw.

Qualitative research using one-to-one interviews will be conducted with participants who have roles within the First Nations Courts, and the Provincial Court system. The interview process should take no longer than one hour but can go beyond that if the participant agrees. During the interview, you may choose to have your responses recorded on paper or using an audio-voice recorder. In order to capture and record your responses effectively, I hope to use an audio-voice recorder. Unfortunately, there are no monetary benefits for the participants involved in the research. However, the research may provide insight for those who are already involved with the Indigenous Court, as well as those who may be pursuing an Indigenous Court in their territory. There are no foreseeable risks for participants involved in this study.

The information obtained will be kept locked in a cabinet and two computers locked with a password. Once the research is completed the information collected will be provided to the Stó:lō Research and Resource Management Centre. If you chose to participate in a one-to-one

session, your participation is voluntary and you may withdraw at any time without consequences. You may also refuse to answer some questions but stay in the study. If you choose to withdraw, any data you have provided will be destroyed unless you indicate otherwise. In addition, your identity will remain confidential within the major paper submitted to UFV.

If you are interested in receiving a copy of the interview notes or results of the study, it can be sent to you through email or mail. You may contact me if you wish to be provided with the results of the study. If you have any concerns regarding your rights or welfare as a participant in this research study, please contact the Ethics Officer at 604-557-4011 or Research.Ethics@ufv.ca. The ethics of this research project have been reviewed and approved by the UFV Human Research Ethics Board Protocol # 1162C-19, on June 25, 2019.

Respectfully yours,

Alisha Tushingham
604-799-3772
alisha.tushingham@stolonation.bc.ca

Consent Form

By signing below, I agree to participate in this study, titled Transferability of an Indigenous Court in S'ólh Téméxw.

By completing the form, I agree to participate in this study, titled Transferability of an Indigenous Court in S'ólh Téméxw.

I have read the information presented in the letter of informed consent being conducted by Alisha Tushingham and the criminology and criminal justice department at the University of the Fraser Valley. I have had the opportunity to ask questions about my involvement in this study and to receive any additional details.

I understand that I have the right to withdraw from the study at any time and that confidentiality and/or anonymity of all results will be preserved. If I have any questions about the study, I should contact Yvon Dandurand at Yvon.Dandurand@ufv.ca or phone 604-504-7441, local 4309.

If I have any concerns regarding my rights or welfare as a participant in this research study, I can contact the UFV Ethics Officer at 604-557-4011 or Research.Ethics@ufv.ca.

- ☐ I agree to be audiotaped during the interview.
- ☐ I may not agree to be recorded but I would still like to be included as a participant.
- ☐ I agree with the use of quotes from my interview.
- ☐ I agree with the use of quotes from my interview, however, I wish to remain anonymous.
- ☐ I may not agree with the use of quotes from my interview, but I would still like to be included as a participant.

Name (please print) _____

Signature _____

Date _____

Once signed, you will receive a copy of this consent form.

APPENDIX B

Proposed qualitative research questions

Alisha Tushingham
300060652
Supervisor: Yvon Dandurand
Criminology and Criminal Justice Department
University of the Fraser Valley
33844 King Road
Abbotsford, BC V2S 7M8
604-504-7441

June 11, 2019

Questions for the Stó:lō Elders' Panel and Qwí:qwelstóm wellness worker participants for the one-to-one interviews and focus group sessions:

1. What would you want an Indigenous Court in S'ólh Téméxw to achieve?
2. How would you measure the success of an Indigenous Court?
3. What are the training needs for the Provincial Court workers working with Stó:lō communities and Indigenous community-based justice programs? Specifically, for Provincial Court authorities and staff who would be involved with the Indigenous Court in S'ólh Téméxw.
4. What are the training needs for the Elders' Panel and Qwí:qwelstóm wellness workers who may work within the Euro-Canadian Court system?
5. How could an Indigenous court reflect the Stó:lō values and worldview?
6. Is there anything else you would like to add?

Interview questions for the Indigenous Court and Indigenous community-based program representatives including Crown counsel, Judges, Native Courtworkers, Indigenous justice program staff members, probation officers:

1. What do you believe is the success of the Indigenous Court?
2. What aspects, components or activities of the Indigenous Court model were responsible for the success of the program?
3. What were the constraints or challenges that you encountered during the development and implementation stages of your Indigenous Court?
4. What aspects, components or activities do you think could be modified to improve the success of the Indigenous Court?
5. What organizational or other forms of obstacles can be expected when implementing an Indigenous Court?
6. Does the Indigenous Court model requiring offenders to plead guilty before being referred to that Court?
7. Is there a police-based or prosecutor-based diversion program in your community (adult or juvenile)? (How does it function? What kind of cases does it typically deal with?)
8. Was there ever a concern that there might be duplication of activities between the community-based diversion program and the Indigenous courts?
9. What kind of data are collected on the Indigenous Court? For example, the number of cases, gender and age of accused, the number of successful completions, and the type of offences, the participation of elders, etc..

10. What criteria are used by Crown counsel in agreeing to refer a case to the Indigenous Court? And, are these criteria consistently applied?
11. Is there anything else you would like to add?

Additional questions, if there is time:

12. Is the Indigenous Court utilizing the Gladue principles?
13. Does the Indigenous Court give offenders access to different or better services than they would otherwise have had accessed?
14. Are the offenders' underlying reasons for criminal behaviour being met within a community context?
15. Are the offenders' underlying reasons for criminal behaviour being met within the Indigenous Court system?
16. How is the Indigenous Court currently dealing with non-compliance with court orders (or the healing plan)?
17. How is the Indigenous court reflect Indigenous values, traditions and worldview?
18. What are the training needs for the Provincial Court associates working with Indigenous communities and Indigenous community-based justice programs?
19. What are the training needs for Indigenous community-based justice representatives working within the Euro-Canadian Court system?
20. How are the training needs currently being addressed? What are the training strengths and gaps?
21. Does the Indigenous Court include experts and professionals from a variety of (Indigenous and non-Indigenous) domains to produce assessments and inform decisions

throughout the process, including admission into the program, the healing plan, and responses to situations of offender non-compliance?

22. How can the relationship with experts and professionals from a variety of (Indigenous and non-Indigenous) domains be improved or strengthened?
23. How often are *Gladue* reports used in the Indigenous court? Are these reports helpful? Are they produced in a timely manner?
24. How often are pre-sentence reports with a Gladue component being used in the Indigenous court? Are these reports helpful? Are they produced in a timely manner?
25. What are the obstacles encountered by offenders sentenced by the Indigenous Court in accessing the treatment and resources they need in the community?
26. What are the lessons learned during the process of review in Indigenous Courts?
27. How can the supervision of the offender's progress with his or her healing plan be improved?
28. Does the court's review of the offenders' progress in achieving their healing plan contribute to the offender's success in completing the sentence and reintegrating the community?

APPENDIX C

UNIVERSITY OF THE FRASER VALLEY

Certificate of Human Research Ethics Board Approval

Master's Supervisor	Department	Protocol #
Yvon Dandurand	Criminology & Criminal Justice	1162C-19
Master's Student Alisha Tushingham		
Title of Project Transferability of an Indigenous Court in S'ólh Téméxw		
Sponsoring/Funding Agency None		
Institution(s) where research will be carried out. University of the Fraser Valley		
Review Date: 30-May-19	Approval Date: 25-Jun-19	Approval Term: 25-Jun-19 - 24-Jun-20

Certification:

The protocol describing the above named project has been reviewed by the UFV Human Research Ethics Board, and the procedures were found to be in compliance with accepted guidelines for ethical research.

Michael Gaetz, Chair, Human Research Ethics Board

NOTE: This Certificate of Approval is valid for the above-noted term provided there are no changes in the procedures or criteria given.

If the project will go beyond the approval term noted above, an extension of approval must be requested.

33844 King Rd., Abbotsford, BC V2S 7M8 • Tel: 604-504-7441 • Fax: 604-855-7614 • Toll-free (in Canada): 1-888-504-7441 • www.ufv.ca
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