

British Columbia
JUSTICE SUMMIT

ELEVENTH JUSTICE SUMMIT

Indigenous Justice II

Wall Centre Vancouver Airport Hotel

November 2-3, 2018

REPORT OF PROCEEDINGS



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Executive Summary

In 2018, the Tenth and Eleventh BC Justice Summits marked the first time that justice system leaders and Indigenous peoples have come together with the sole focus of considering the Indigenous experience of the justice system in British Columbia. These were also the first Summits in which Indigenous people played a central role in the design and planning of the events. The overall goal of the 2018 Justice Summits was to identify and accelerate real, transformative changes to the justice system in BC that will benefit Indigenous people.

On Day 1, the first subject directly considered by the Eleventh Summit was achieving greater compliance with the expectations of the Supreme Court of Canada in *R. v. Gladue*. In the afternoon session, participants considered community-based programming strategies which target the root causes of overrepresentation. Following each session, participants engaged in related breakout discussions. In the concluding session on Day 2, participants' attention turned to the relationship between justice and self-determination, and the need for capacity-building to bring about solutions designed and led by Indigenous peoples.

The Recommendations of the Eleventh Summit, as drawn from the Summit dialogue by the Steering Committee and validated by participant review prior to publication, are as follows:

- addressed the exercise of the *Gladue* rights of Indigenous persons appearing before the courts, including issues of awareness of rights, reporting capacity, and the establishment of appropriate structure to support the process;
- addressed the need to expand community-based programming in light of its importance to prevention, healing, and alternatives to custody, in a manner which is Indigenous-led, designed and delivered, and maximizes benefits from available partnerships and infrastructure; and
- addressed the need for specific accountability to Indigenous people on the part of the justice and public safety sector, including the need for regular, outcome-focused performance metrics and future gatherings to assess progress.

Introduction: Planning the Eleventh BC Justice Summit

In 2018, the holding of the Tenth and Eleventh BC Justice Summits marked the first time that justice system leaders and Indigenous peoples have come together with the sole focus of considering the Indigenous experience of the justice system in British Columbia – historically, today, and in the future. The Summits have opened an important dialogue between Indigenous and non-Indigenous peoples and are an opportunity to begin developing a new relationship and partnership in transforming the justice system.

Summit Location: Musqueam (x^wməθk^wəyəm) Territory

As with the Tenth Summit in the Spring, the Eleventh Justice Summit was held on the territory of the Musqueam people, who once again welcomed Indigenous and non-Indigenous participants from many nations to their traditional unceded lands. The organizers and all participants, as guests of Musqueam, are grateful for the welcome.

Background: The Tenth Justice Summit

From May 31st to June 2nd, the Tenth BC Justice Summit began the current dialogue on Indigenous Justice. The Summit began with one-day Caucus for Indigenous participants. Speakers focused on the need to disrupt the *status quo* particularly as it relates systemically to the over-representation of Indigenous people and called for implementation of key international, national and provincial recommendations. Common among the ideas shared was a desire for more holistic approaches inclusive of Indigenous communities and Indigenous approaches. The Caucus also allowed for an update on the work to date regarding the first jointly developed BC Indigenous Justice Strategy.

All participants attended the second and third days of the Summit. Key themes raised by participants included:

- The importance of resources (links between strengthened Indigenous capacity, reconciliation, and justice; effective funding formulae; and funding for immediate action).

- The importance of Indigenous culture, law, and history (a relationship of trust as a foundational requirement for change; the critical value of Indigenous knowledge, law and traditions; and the need to avoid confusing reconciliation with assimilation).
- The importance of education (empathy for the experiences of Indigenous people, enabled by many forms of education).
- The importance of community and healing (an inclusive justice dialogue; real change based on work at the community level; and a justice system focused on healing).

The report of the Tenth Summit can be found [here](#).

Developing the Eleventh Summit agenda

In the months following the discussions in May and June, the Steering Committee for the 2018 Summits worked with Summit participants, leaders, and subject matter experts to build an agenda for the Eleventh Summit in November, with support from a Working Circle. The Steering Committee membership, continuing from their work on the Tenth Summit, included:

The Honourable Steven Point
Douglas White III
Colleen Spier
Darlene Shackelly
Kurt Sandstrom, QC

Regional Chief Terry Teegee
Richard Fyfe, QC
Mark Sieben
Lissa Smith

The Steering Committee also included observers from the Court of Appeal for British Columbia, the Supreme Court of British Columbia, and the Provincial Court of British Columbia. The Committee was supported by a multi-disciplinary Working Circle with members representing the BC Assembly of First Nations (BCAFN), the First Nations Summit (FNS), the Union of BC Indian Chiefs (UBCIC), the BC Aboriginal Justice Council, Métis Nation BC, and a range of justice and public safety sector agencies. Full membership affiliations of Steering Committee and Working Circle members is provided below in Appendix III.

The Committee had three main considerations in mind in developing the agenda. First, it was important to ensure continuity with the themes emerging from the Tenth Summit, to build on those discussions and honour the contributions of participants. Second, the Committee sought to build an agenda which would allow participants to engage on more specific, practical, and technical issues. Finally, the Committee elected to focus on a small number of priority topics which could form the subject matter of Recommendations and, in doing so, leave sufficient time over two days to allow all participants to contribute to the discussions.

Topics selected by the Steering Committee for consideration of Recommendations at the Eleventh Summit included:

- Session 1: Implementing Good Practice on *Gladue* (Day 1)
- Session 2: Community Programming, Healing, and Access to Justice (Day 1)
- Session 3: Capacity Building and Self-Determination (Day 2)

On Day 1, each of the first two sessions featured presentations, followed by breakout sessions in five separate rooms. A summary of discussions from Day 1 was distributed to all participants on Day 2. On Day 2, the third session began with a panel discussion and was followed by open discussion in plenary.

As at prior Summits the report of proceedings was developed in draft form following the Summit under supervision of the Steering Committee, then shared with all participants for review and suggested editing for accuracy, before being approved by the Committee and delivered in final form to the Ministers, the Chief Justices and Chief Judge, the Aboriginal Justice Council, Métis Nation BC, and to all participants and the public.

Indigenous Culture and Tradition and the Summit Dialogue

As in June, the importance and emotional nature of the discussion led the organizing team to take a number of steps in dialogue with Musqueam to ensure a culturally safe and supportive environment throughout the event. The moderator and facilitator roles were again absorbed in the role of *shqwi'qwal*. The *shqwi'qwal*, as speaker, assists the community to find a new path, ensuring that all voices are heard. Reflecting the importance of Elders as

keepers of wisdom and history, and their role in keeping us grounded in culture and tradition, Elders were again in attendance in the plenary. Witnesses, both Indigenous and non-Indigenous, were called to offer their reflections on the discussion. Participants also enjoyed powerful performances by the Spakwus Slolem (Eagle Song) Dancers of Squamish Nation and by Madelaine McCallum performing traditional Métis dance.

The Role of Indigenous Organizations in Planning for the Justice Summits

To be effective in transforming the BC justice system, Indigenous people need to be meaningfully involved in the work to ensure improved outcomes for Indigenous peoples who come in contact with the various components of the justice system. Indigenous leaders and advocates in BC expect “nothing about us, without us.” The Eleventh Justice Summit on Indigenous Justice was planned with this commitment in mind.

The BC Aboriginal Justice Council

The BC Aboriginal Justice Council (BCAJC) was contacted in 2017 to partner with the province to design and deliver two Justice Summits on Indigenous Justice. The BCAJC has been involved with the design and planning of the 2018 Justice Summits from the beginning through participation in a Steering Committee and a Working Circle.

The BCAJC was established in 2014 by the UBCIC, FNS, BCAFN and the Native Courtworker and Counselling Association of BC (NCCABC) as a multi-agency leadership initiative mandated to challenge approaches that contribute to the growing overrepresentation of Indigenous people and to productively engage with the government to advance effective strategies that can achieve better outcomes. In 2017, the Attorney General and Minister of Public Safety and Solicitor General and the BCAJC signed a Memorandum of Understanding that committed the parties to jointly develop an Indigenous Justice Strategy.

Métis Nation BC

The Métis Nation British Columbia (MNBC) represents nearly 90,000 self-identified Métis people in British Columbia. Of that number, nearly 18,000 are provincially registered Métis

Citizens with MNBC. The Métis National Council and the Provincial Government of British Columbia, as well as the Federal Government of Canada, recognize the MNBC as the official governing Nation for Métis in BC.

MNBC represents thirty-eight Métis Chartered Communities in British Columbia and is mandated to develop and enhance opportunities for Métis communities by implementing culturally relevant social and economic programs and services. MNBC signed an original Métis Nation Relationship Accord in 2006, and in 2016 signed the Métis Nation Relationship Accord 2. MNBC is also currently working directly with the Government of Canada on a framework agreement to address the Section 35 constitutional rights of the Métis citizens of BC.

About the Justice Summit Process

The BC Justice Summit process was created in 2013 via the *Justice Reform and Transparency Act*. The Justice Summits provide a forum for frank discussion between justice and public safety sector leaders in BC, to facilitate innovation in and collaboration across the justice and public safety sector and to discuss how its performance can be improved. Participants invited by the Attorney General and Solicitor General include the Chief Justices of the Superior Courts and the Chief Judge of the Provincial Court of British Columbia, as well as any other individuals that the Ministers consider (based on the theme) to be qualified to assist in improving the performance of the justice and public safety sector.

The Evolution of the Justice Summits

Since the inaugural Justice Summit in 2013, the Summits and their reports have been developed by an independent steering committee representative of the interests present at the Summit and functioning at arm's-length from the Ministers. The following is a list of past Justice Summit themes:

- **The First and Second BC Justice Summits** (March 2013 and November 2013) focused on criminal justice;
- **The Third Summit** (May 2014) focused on the family justice system;

- **The Fourth Summit** (November 2014) focused on better responses to violence against women;
- **The Fifth Summit** (November 2015) focused on a “trauma-informed” justice system response to victims of violent crime, and on better coordination and information sharing where family justice, criminal justice, and child protection proceedings intersect;
- **The Sixth and Seventh Summits** (2016) focused on justice, mental health, and substance use; and
- **The Eighth and Ninth Summits** (2017) focused on justice and technology, calling for a digital information management strategy for the province and needed technological improvements in the courts.

Beginning in 2015, the Justice Summits moved to an annual cycle of themes and commenced issuing formal Recommendations. Since then, the approach has been for the Justice Summits to explore one different theme every year, with two events (Spring and Fall) on the same topic. The Spring Summit is an opportunity to hear many different voices on the topic, and to hear responses to those ideas. The Fall Summit brings forward Recommendations which are respectful of and reflect the ideas raised in the Spring.

Summit confidentiality and the principle of non-attribution

The Justice Summits are an opportunity for discussion from a wide range of perspectives between persons who come from or experience different parts of the justice system. To enable a safe environment for the open exchange of ideas, the Summits are planned based on the commitment of all participants to confidential discussion. Identities of those making formal presentations reflected on the agenda are included; however, comments or views subsequently expressed in dialogue at the Summit by any one individual are never attributed to any person or organization outside the Summit in the absence of that person’s consent.

About the Preparation of this Report

This Report of Proceedings was prepared by the Summit Steering Committee for the Attorney General of British Columbia; the Minister of Public Safety and Solicitor General of British Columbia; the Chief Justice of British Columbia; the Chief Justice of the Supreme Court of British Columbia; and the Chief Judge of the Provincial Court of British Columbia. Reflecting the co-organization of the Summit, this Report was also prepared for the Members of the British Columbia Aboriginal Justice Council in their mandated capacity to lead dialogue on justice with the Province on behalf of the First Nations Leadership Council; and for the Métis Nation of British Columbia.

The Report was made available in draft to all participants in the editing stages for review and comment, prior to being finalized, submitted, and subsequently released to the public.

Summit Proceedings

Opening Ceremony

The Summit shqwi'qwal (or speaker), Harold Tarbell, was introduced to all participants by the Honourable Steven Point, former Lieutenant Governor of British Columbia, and was given the traditional blanket symbolizing the role. The shqwi'qwal welcomed delegates to the Summit and invited Elder Shane Pointe to offer opening comments.

Elder Pointe recognized the significance of the work that brought people together in a manner that enabled his relatives to be healthy, strong, and well. Elder Pointe welcomed Summit participants to unceded traditional Musqueam territory, extended best wishes for successful discussions, and offered an opening prayer. In preparing for the Summit, he asked participants as “luminaries of the human firmament” to reflect on the importance of seeking what was theoretically just versus what was morally right or fair.

The Honourable Steven Point then called on witnesses for the Summit. Participants asked to be witnesses included Grand Chief Doug Kelly, Deputy Commissioner Brenda Butterworth-Carr, Elder Tom McCallum, and Assistant Deputy Attorney General Peter Juk.

Remarks of welcome were offered by the Chair of the BC Aboriginal Justice Council, Doug White; by the Vice President and Minister of Justice for Métis Nation British Columbia, Lissa Smith; and by Regional Chief Terry Teegee on behalf of the BC Assembly of First Nations. Each acknowledged that the discussion was occurring on unceded traditional territory.

Speakers and Witnesses in Coast Salish tradition

“A Speaker would conduct a meeting by speaking the truth as they heard it, without adding or subtracting anything, and without causing hurt feelings. Witnesses were to listen and report back about what they had heard, without embellishing it. If there was ever a dispute over what had occurred, witnesses were recalled to comment on what had happened.”

Xwě lī qwěł těl - The Hon. Steven Point

Mr. White stressed that the significant over-representation of Indigenous people in care and in the justice system, and the thousands of tragedies continuing to unfold in families and communities, cannot be ignored or normalized. The government, with examples as recent as 2012, has routinely excluded the interests of Indigenous people from considerations of system reform. Unsurprisingly, Indigenous people lack trust in the current system and in society. The Justice Summit as a meeting place and dialogue is critical for reforming the criminal justice system with respect to Indigenous issues. As the Shuswap, Okanagan, and Couteau Chiefs wrote to Wilfrid Laurier in 1910, “we must live as one family,” and “help each other to be great and good.” Mr. White commended Summit participants for playing their part in discussions towards creating a better future.

Vice President Smith recognized a number of challenges associated with implementing an Indigenous justice strategy in BC, and the difficulties in working with both the Provincial and Federal Governments separately. Métis people have the dual objectives of reconciliation with Canada, but also between the Métis Nation and the First Nations. There is much common ground, as the Métis Nation’s historical experiences in dealing with government have been similar to those of First Nations. These relationships will continue to strengthen, and no justice strategy in British Columbia will be complete if it is not inclusive of Métis and First Nations alike.

Regional Chief Teegee commended the earlier comments presented and noted that he regretted that by attending the Summit he would be unable to attend the ceremony being held that day to witness the exoneration of T̓silhqot'in Chiefs who courageously stood up to protect their people, an example of justice being done after many years. The losses that Indigenous people mourn are many – like Jessica Patrick, whose body was found in Smithers, BC in September; Dale Culver, who died in July in police custody; and Colten Boushie who was killed in August 2016. These are the issues the Summit should discuss. Changes are required to avoid the Summit coming back in the future to discuss the ongoing miscarriage of justice for Indigenous people. He added that change is also needed for Indigenous people in the child welfare system, which is directly related to the number of people in custody and women experiencing violence.

The full meeting of the Eleventh Summit was officially opened by the Honourable Mike Farnworth, Solicitor General of British Columbia. Minister Farnworth reminded participants that any progress would rest on strengthened relationships of trust and respect and on strengthened connections between people and their communities. The Minister wished participants well in their discussions, indicating that the provincial government looked forward to the Recommendations brought forward.

Session 1: Implementing good practice on *Gladue*

The first subject directly considered by the Eleventh Summit was achieving greater compliance with the expectations of the Supreme Court of Canada in *R. v. Gladue*.

Gladue reaffirmed the requirement under 718.2(e) of the Criminal Code for judges, when sentencing or setting bail, to consider all available sanctions other than imprisonment that are reasonable in the circumstances, with “particular attention to the circumstances of Aboriginal offenders.” The decision identified two main reasons Indigenous people are over-represented in prisons: (1) an institutional approach which was more likely to refuse bail/impose longer prison sentences, and (2) systemic factors including but not limited to poverty, lower education attainment, child welfare/foster care, substance misuse, fetal alcohol spectrum disorder, community breakdown from colonization, and high suicide rates.

Many of the key issues of *Gladue* revolve around the ways in which the courts – and potentially other decision makers in the justice system – should receive information on the circumstances of Indigenous accused and offenders. At the Tenth Justice Summit in June, it was commonly observed that there had been little progress in British Columbia since 1999, whether in terms of goal-setting, actual process, or available resources; and that there was an urgent need to improve in this area. Session 1 offered an opportunity for Summit participants to contribute their ideas to this process.

Panel presentations

To provide context for participants’ discussions, Session 1 began with a panel discussion of topical issues related to *Gladue* implementation and compliance in British Columbia.

In the first presentation, Rhaea Bailey and Renzo Caron of Legal Services Society (LSS) provided an overview of LSS activity in facilitating *Gladue* reports. A *Gladue* report is one way of providing the court with key information on the circumstances of Indigenous accused, which may include but is not limited to personal history and/or testimony from community and family members. Participants were provided with an update on the recent expansion of LSS support for *Gladue* reports. Ms. Bailey and Mr. Caron summarized the current criteria which trigger LSS support. There is capacity to support approximately 300 reports annually, though the potential need is far in excess of this figure. Not all capacity issues are economic, as there are also systemic shortfalls in the knowledge and skills required by professionals to deliver this service to Indigenous clients. LSS is attempting to bridge these gaps through a range of initiatives addressing skills training, awareness, and incentives. More broadly, however, the presenters encouraged participants to think of *Gladue* as requiring a “cultural intervention” mindset, from the first instance of contact with police through to sentencing.

Anisa White and Mitch Walker of the Gladue Writers’ Society delivered the panel’s second presentation. The central theme of their remarks concerned the importance of a needed transition in British Columbia, in which the justice system moves beyond discussion of the jurisprudence towards a practical focus on comprehensive implementation of *Gladue*. While a number of positive steps are currently being taken regarding training, funding and infrastructure, particularly by LSS, momentum will stall unless these are more firmly integrated with the broader network of communities and institutions needed to turn *Gladue* from a report into a systemic approach to working with Indigenous offenders and Indigenous accused.

Participant discussions

Following the presentations, participants were divided into four simultaneous facilitated breakout sessions to discuss the key issues associated to improved implementation of *Gladue* in British Columbia. Facilitators were asked to organize the discussion around three key questions:

1. *Beyond funding, what steps across the justice and public safety sector are required to ensure Gladue obligations are being met in BC? What does this look like from your position in the system?*
2. *How can the Gladue principles be applied in other areas of the justice and public safety sector beyond sentencing?*
3. *How should the system be accountable to Indigenous peoples in meeting Gladue obligations?*

Drawn from the record of discussion in each of four breakout sessions, key themes raised by participants were as follows.

Community program capacity

Meaningful alternatives to incarceration require strong community programming

Summary of participants' discussion: When problem-solving fails at the community level, issues default to the justice system. Viable alternatives to jail need to be offered, including funding and consistent support of restorative justice programs. It is vital to develop community-based resources to engage in preventative work at the "front end" and address the recommendations that come from *Gladue* reports at the "back end." In addition, well-grounded community programs are typically more culturally appropriate. Due to their importance to the community and to youth, Elders should be supported with resources particularly with respect to preventative work. Government funding should be channelled to community-based preventative work, and not to more correctional facilities.

Note to readers

The **key themes** summarized here are a synthesis of commonly-raised ideas occurring in multiple simultaneous discussions on the topic. Not all participants contributed to all discussions. No inference of consensus (or majority opinion) should be made by the reader on any individual point, as no specific mechanism was employed by facilitators to determine the breakdown of opinion.

Similarly, participants' ideas are represented here with the sole intent of providing an accurate account of the dialogue. No analysis was performed on the accuracy of any particular assertion of fact.

Program design must acknowledge that resources and infrastructure are spread unevenly

Summary of participants' discussion: Lack of resources is always an issue, but beyond this there are massive differences in what different communities can sustain. Factors related to money, weather, distance, and the degree of trauma suffered by different Indigenous communities mean that many rural and northern communities never get access to vital programming. Programs must be tailored to the needs of the individual communities, and there must be greater levels of partnership and compromise around alternatives, such as video conferencing, transportation, and transitions/aftercare. The justice system might partner more effectively with industry as well as with Health Canada or the First Nations Health Authority. In addition, there is parallel infrastructure in some communities that is not being utilized; an inventory of infrastructure, effective programming, and potential partnerships would be of great help.

A Nation-based approach to justice is stronger than a community-based one

Summary of participants' discussion: There is a huge disconnect around how Indigenous capacity is built. Justice programs cannot simply be introduced without context. Program capacity intersects with land and resources in material ways, and also intersects with history and belonging in emotional and spiritual ways. We must recognize the opportunity to support programming which connects people to their history, as *Gladue* is just a small part of a broader system that needs fixing to make it less of a legal system and more of a way for Nations to solve their own problems. The absence of a social contract for Indigenous people will always limit the effectiveness of community programming; with more jurisdictional control and revitalized traditional forms of justice, community programming can realize its full potential to prevent and heal.

Gladue writing capacity and skills

Current funding levels fall well short of what is required to meet *Gladue* obligations

Summary of participants' discussion: Current capacity allows for several hundred *Gladue* reports to be prepared annually. While there are currently no reliable data, participants regularly estimated the true annual need to be in the thousands, and very many Indigenous offenders have never had a report prepared. There is a significant gap in what can be

funded for Indigenous legal aid clients, let alone for Indigenous people in the justice system who are not clients of legal aid. Despite the fact that the information summarized in a *Gladue* report is not simply for the benefit of the client, but for all participants in the court process, the current funding model requires defence counsel to pay *Gladue* writers for their reports, and then be reimbursed. In addition, for *Gladue* writers themselves, the process of qualifying to be able to write the reports is itself expensive.

Gladue reports are offered/requested inconsistently

Summary of participants' discussion: Some participants perceived that *Gladue* reports were rarely offered to/requested for youth. Consequently, many Indigenous youth going through the justice system are not afforded culturally appropriate sentencing. Many individuals have been missed or have fallen through the cracks. There is a lack of consistency as in some settings, women and youth receive reporting prioritization.

A provincial structure is required for any *Gladue* program to succeed

Summary of participants' discussion: The current *Gladue* landscape is marked by real inconsistency. There are no current provincial standards around report writing. Each practitioner finds their own way to deliver this service, meaning that judges may receive many different kinds of submission characterized as *Gladue* reports. *Gladue* training and standards should be provided by a province-wide organization, which could also leverage local resources where feasible.

Education is urgently needed to increase awareness of *Gladue* obligations

Summary of participants' discussion: When a person self-identifies as Indigenous, other participants in the system need to know what to do. However, few justice professionals have specific training regarding *Gladue*, whether at the formative stage or in professional development. Education is required on a range of topics and depending on the actors in question – topics including but not limited to the *Gladue* principles, the meaning and rationale for these reports, their cultural significance, the importance of not re-traumatizing someone, how to do the submissions themselves, how and when to request/introduce the information, how to handle the information, and/or how to apply the contents of the report

at sentencing and other stages. Without this education, this right of Indigenous defendants will continue to be ignored due overwhelmingly to a lack of familiarity with the process.

Gladue and reconciliation

Full implementation of *Gladue* will begin to build trust in the system

Summary of participants' discussion: The Truth and Reconciliation Commission of Canada saw reconciliation as a change in the relationship between Indigenous people and Canadian society. For many participants, *Gladue* represents the first significant act of reconciliation in the justice system, but lack of trust is a major impediment to implementing reform. When Europeans came, they gave people whiskey, took the land, and banned Indigenous language. Now, Elders are expected to enter the prisons to teach, despite the fact that many of the offences committed by Indigenous people are administration-of-justice offences against the colonial justice system, not against the person. Trust will grow if this cycle can be halted.

Gladue implementation will assist in making reconciliation more real in the justice system

Summary of participants' discussion: Non-Indigenous voices cannot be silent in building a new respectful relationship. There are many ways for individual participants in the criminal justice system to make individual contributions to assist Indigenous clients. *Gladue* gives us the opportunity to take a fundamentally different approach to our relationship in a tangible way. It creates opportunity and space for Indigenous and non-Indigenous peoples learn from each other. We have good intentions and we want equity for Indigenous people in the justice system, but often we do not know where to start with reconciliation. *Gladue* is something meaningful and compelling for those who see it and are involved in it.

Capacity to address trauma

Therapeutic and supportive resources to address trauma are lacking

Summary of participants' discussion: A large percentage of Indigenous offenders suffer from overlapping traumas, and the *Gladue* process requires discussion of painful episodes and memories. As with residential school interviews, the stories are horrible and traumatizing. Indigenous people are being asked to expose the deepest, darkest parts of

their own stories. The reports are invasive, and it can be harmful when an outsider is seeking extremely intimate information. In supporting offenders, many communities lack the trauma therapists needed to help people move forward in a good way. Additionally, people who are exiting the system need trauma-informed practices, and there is no access through the First Nations Health Authority (FNHA) for much needed trauma-informed counselling. The probation and the court systems should be able to make referrals to trauma therapy, and a variety of Indigenous organizations should be able to conduct the training.

We should not minimize the potentially traumatizing effect of preparing *Gladue* reports

Summary of participants' discussion: *Gladue* reports routinely deal with severe, traumatic experiences in the personal histories of Indigenous accused. In addition to the very real danger of re-traumatizing the person through re-opening these past events, others acting in support or reading the material are at risk of vicarious trauma themselves, not dissimilar to that experienced by healthcare workers. We need to understand that the impact of vicarious trauma extends to the report writers and readers as well. We need to support everyone through the reporting process, from the individual to the writer and contributors. Self-wellness training and support should be provided to lawyers, court workers, and others as they deal with many issues and stories of trauma; this training should be mandatory and should be robust, particularly around after-care.

Support for the person

Gladue aftercare is an important part of successful transition

Summary of participants' discussion: In Ontario, case workers help clients carry out a court's *Gladue*-based recommendations, so clients are not on their own and are supported. More support for after-care and increase in after-care workers can help offenders navigate the entire system more successfully and reintegrate into the community. *Gladue* reporting and after-care may be part of a more holistic approach and an individualized healing plan. More than a report, it may be a process of helping the individual deal with the issues that brought them here, such that the *Gladue* report might "follow" the individual through the probation stage. We could have Indigenous liaisons working with custody centres and

external agencies, to provide continuum of care after the individual is released and to ensure people responsible for sentence management at custody centres are appropriately informed on *Gladue*. Offenders need to be supported and encouraged to achieve their potential, and a small change in the system can be significant change for the individual.

Elders are vital to support youth

Summary of participants' discussion: In the *Gladue* process, the connection between youth and Elders cannot be over-emphasised. Every young Indigenous person that is involved in the justice system needs support from their community, particularly in discussing and coming to terms with truly difficult events and harms from their past. At every stage, from court to community programs to custody centres, Elders who support youth can make a significant difference.

Reintegration is a great challenge where organized crime is involved

Summary of participants' discussion: Reintegration subsequent to a *Gladue*-informed process needs to be managed carefully in cases where the person has been involved with organized crime. In trying to reduce over-representation of Indigenous offenders, the community may reject these individuals when they return. In addition, the forces of gang behaviour may overwhelm the capacity of communities and Elders in putting the person on the right path.

The community's openness to Gladue

Lack of familiarity with *Gladue* is often mixed with resistance

Summary of participants' discussion: Talking about *Gladue* in the community will increase support for the idea, but it will take some time. We need to be talking now about *Gladue* at the community level, both as Indigenous and non-Indigenous leaders. The stigma for Indigenous people is real, and Indigenous people are seen as statistics and not as individuals. There is resistance in the community and in the system to engage in *Gladue*. There is little accountability for failing to meet *Gladue* obligations. At this time of strong attention to the needs of Indigenous people in the justice system, clearer messages from leadership about *Gladue* are required.

Myth-busting around *Gladue* is necessary

Summary of participants' discussion: The principles around *Gladue* were meant to address mitigating circumstances in the sentencing of Indigenous people. *Gladue* outlines aggravating factors and why these factors are in that person's life and offers solutions. There is a broad misconception that *Gladue* is about getting a lighter sentence, whereas the intent of *Gladue* is to include the victim and ensure that accountability, responsibility, restitution, and transformation are addressed. Support for *Gladue* is linked to empathy for victims. We need to ensure that victims do not feel re-victimized and must communicate the importance of victims to the *Gladue* process. The pervasive stereotype is that Indigenous people get too much from government and should be pushed off-reserve to become "real people." We need to shift the understanding of what Indigenous people are dealing with every day, to create more understanding.

Indigenous courts and Gladue

First Nations Courts embody many aspects of *Gladue*

Summary of participants' discussion: For Indigenous people there is stigma attached to the justice system. The offender, when asked if they wish to submit a *Gladue* report will often say "no," as they want to get the ordeal over with as quickly as possible. The system is large, and offenders have a hard time navigating it. In First Nations Court there is an opportunity for the individual to share their story and a way for the community to play an important role in providing context, support and help with transition. Many participants expressed support for expansion of this model, while noting that these Courts currently vary widely in their approaches.

Control of Gladue information

The client should be able to control this sensitive information

Summary of participants' discussion: The gathering of *Gladue* information, and the sharing of that information, are both potentially difficult circumstances for an accused person. The client must have the ability to control what information is contained in the report and request that Crown counsel or the judge not reveal some details. There needs to be control

and autonomy at the individual level. One possible approach is the Aboriginal Family Healing Court Conferences (AFHCC) pilot project in New Westminster Provincial Court. There the creation of a Healing Plan is used to share stories and connect Elders with the offenders and the justice process. The information within the Healing Plan is very sensitive and in order to protect it the information is shared orally as in Indigenous tradition.

We must guard against unintended consequences which bring harm to the person

Summary of participants' discussion: Clients and their counsel often have concerns with the intention of the *Gladue* reports and the exposure of information. Social history information gathered for *Gladue* reports has been used to the detriment of youth and their families. Indigenous women often feel unsafe in sharing information because of how it may be used by the Ministry of Children and Family Development (MCFD). This process requires both careful scrutiny and clear communication and direction around appropriate use.

Metrics and accountability

There is a lack of basic descriptive measures of *Gladue* demand

Summary of participants' discussion: We do not currently have data to describe the scope of need. Over 70,000 reports to Crown Counsel are filed every year, but we do not know how many involve self-identified Indigenous peoples as victims or accused persons. It is unclear how many Métis people are incarcerated in the province. No retrospective analyses of potential *Gladue* cases have been conducted. However, we can estimate that demand is very large. Approximately 30% of provincially incarcerated people in BC are Indigenous; 76% of children in care are Indigenous, and statistics support that a significant percentage of them will be incarcerated when they become adults.

Data on *Gladue* reports is a key accountability metric for BC's justice system

Summary of participants' discussion: The system needs to engage in public reporting on *Gladue* reports at least annually, to prompt conversations on change and shine a light on system performance. Yearly reporting should be the responsibility of the provincial government, beginning now with baseline metrics. The Justice Summit should be repeated with an Indigenous focus every five years for a review of progress. Within the justice

Ministries, an Indigenous Secretariat could collect data about Indigenous people in the justice system.

There is currently little or no system accountability regarding Indigenous people

Summary of participants' discussion: We need to rethink accountability models, and who is accountable for whom and for what. We require statements of accountability by leadership regarding *Gladue* specifically. Making public statements begins to create the culture change that is needed in the justice system, and from there, every agency can start asking themselves what they are doing to live up to the standard. Public acceptance of accountability will also increase awareness of those working within the system concerning *Gladue*. We should rely on Indigenous methods of accountability as well, with the use of witnesses, traditional protocols and ceremonies to ensure accountability and duty to report.

A range of measures can shine a light on *Gladue* dynamics

Summary of participants' discussion: Measures of accountability suggested for consideration include:

- a reduced rate of incarceration, shown also by gender and age;
- an increase in the number of cases in the First Nations Court system; and
- an increase in the number of cases that are referred to Indigenous programs rather than incarceration.

Sentencing results should be issued to the public on an annual-basis to allow observers to access and monitor the data and to identify key areas of improvement or decline.

Process suggestions

Include Elders as part of *Gladue* process

Summary of participants' discussion: Indigenous offenders will feel accountable to Elders, and the system can increase the cultural safety aspect of sentencing with Elder participation. In some settings an Elders' review is included as part of the report, and we can track changes. In others, community connection reports are prepared in conjunction with the offender's community members, Elders, cultural language department, families

and victims. The Aboriginal Family Healing Court Conferences in Provincial Court in New Westminster is proving to be successful.

Early determination as to whether the person wishes to self-identify as Indigenous

Summary of participants' discussion: This is a challenging issue. When people enter the court system, they may or may not want to indicate they are Indigenous or want to assert their *Gladue* rights. However, early self-identification is important to ensure the person understands their legal rights, so they are understood and respected and have the culturally-relevant services they need, and often the person is not asked at all. Some participants suggested that a process be implemented that requires judges to ask if the offender is Indigenous and subsequently to decide whether *Gladue* needs to be considered at the beginning of the court appearance.

Possible mandatory inquiry/application of *Gladue* reports

Summary of participants' discussion: *Gladue* is incorporated into the Criminal Code as Section 718.2(e). Some participants felt that there is a lack of clarity in terms of asking whether and when a *Gladue* report has been prepared. Current criminal justice processes do not clearly outline whether or at what stage judges are required to inquire about possible *Gladue* reports. Some judges ask, but it is not a matter of law. Similarly, in some First Nations Courts a *Gladue* report is waived in cases involving violent offences. Some participants suggested that the Prosecution Service has an obligation to acknowledge and ensure the court has the requisite information to consider the *Gladue* principles when sentencing and suggested that a legislated requirement or directives from the courts could remove ambiguity.

Use of *Gladue* through the whole criminal process, not just at sentencing

Summary of participants' discussion: It is important to consider how *Gladue* can be utilized throughout the entire process and can be critical in a release plan. It may be more helpful to discuss *Gladue approaches* rather than *Gladue reports*, as there is a difference between a *Gladue* report and a *Gladue* solution. It is not just a report for the court, it is a catalyst for change. The principles of *Gladue* could apply to any frontline work being done or to parole

release plans. At a first appearance the court could direct Indigenous clients to designated court workers right away in order to streamline the process.

The production process is too lengthy and acts as a disincentive

Summary of participants' discussion: The full reports take too long, and the process in filing *Gladue* reports needs to be simplified and expedited. Sometimes clients end up being in custody for long time frames because they are waiting for the report to be finalized. Often the client will not want to wait for the *Gladue* report and would rather go into court and take their sentence and be released sooner. *Gladue* reports are often provided on the day of the court appearance leaving little time for the report to be reviewed.

Cultural competence, Indigenization, and racism

Education and cultural competencies are critical

Summary of participants' discussion: Society needs to learn about Indigenous people, their histories, and how they live. There is a lack of training in cultural competency, and there is therefore much misunderstanding of the Indigenous circumstances that are at the core of *Gladue*. Cultural competency training should be provided to all public servants and should be mandatory for lawyers as well, with the caveat that online cultural and competency training is ineffective as it does not teach the unique aspects of different Indigenous cultures. There has to be an investment in place-based, nation-based, language-based competencies: cultural competency training must be community and/or regionally specific.

There should be greater representation of Indigenous people in the justice professions

Summary of participants' discussion: Systemic changes are needed from the ground upwards. We need more Indigenous people as Crown Counsel. We need a police force that reflects the community. We need to increase the number of Indigenous lawyers in BC.

Gladue will make the colonial system work better, but we must recover Indigenous laws

Summary of participants' discussion: There needs to be an effort to make the existing system work with Indigenous law, or else we will continue to use a colonial approach. Recovering and revitalizing Indigenous laws is central to this process, in which Indigenous

laws would eventually become part of legislation or inform the Canadian courts' decision-making.

Gladue should be part of a re-emergence of Indigenous ideas of justice

Summary of participants' discussion: The lack of grounding in Indigenous culture contributes to an individual choosing a criminal path. Indigenous peoples have their own creation stories and have their current stories, but the story of how they became who they are is often missing. The loss of traditional language and disconnection from the land may contribute to why so many Indigenous people are in the system. In addition, many offenders grew up with a lack of identity as they were placed in foster care or were adopted. The absence of the consideration of spirit in justice is a huge obstruction to healing for Indigenous people. The *Gladue* process should strive to connect people to what they have lost and should be part of a fundamental shift in public safety and policing, separating the criminal part of public safety from the social justice aspect; we do not put our people away but instead we help them to heal.

Legislation and policy

Policy changes in a number of areas could support *Gladue*

Summary of participants' discussion: Federal and Provincial Crown policies could be changed to consider *Gladue* within Crown discretion and to place stronger emphasis on Indigenous accused persons in the Crown Counsel's Human Resources policy manuals. In policing, there could be policy changes within the RCMP to take *Gladue* into consideration at the earliest stages. The development of an MOU with both federal and provincial corrections and the inclusion of *Gladue* observations within Policy for Crown Counsel and Public Safety should be amended to include *Gladue* principles. It is unclear to some participants if there is standard Crown policy on how to prosecute Indigenous offenders. Crown may wish to make a policy change so that there is a standard approach with respect to Indigenous clients.

Session 2: Community Programming, Healing and Access to Justice

In the second session of the Eleventh Summit, participants considered community-based strategies that target the root causes of overrepresentation. At the Tenth Summit in June, participants had returned repeatedly to the idea that real change in criminal justice from the perspective of Indigenous people has to happen at the community level. The issues at stake are not just questions of criminal justice, but relate to mental health and wellness, substance use, trauma and poverty. As participants noted in June, making progress on overrepresentation means thinking holistically about healing, culture, language, capacity building, and connectedness.

There are currently a variety of community-based justice programs in British Columbia engaged with Indigenous communities. In addition, there are a number of federal and provincial programs that support culturally-appropriate services and alternative measures for Indigenous people who come into contact with the criminal justice and corrections system in BC. The common thread of these programs is seeking to increase the involvement of Indigenous communities in the administration of justice, and in doing so to address the overrepresentation of Indigenous people in the criminal justice system. Key examples include:

- **Restorative Justice Programs.** As participants heard in June, restorative justice programs with strong connections to culture and community can support healing and provide realistic alternatives to incarceration. While these programs work in conjunction with the broader system, they provide opportunities to incorporate Indigenous teachings and traditions, create safe spaces that restore a sense of balance to the offender, victim and community, and contribute to community capacity building and healing.
- **Indigenous Justice Program.** There are 197 Indigenous Justice Programs across Canada, 34 of those within BC, which through federal-provincial partnership provide services from pre-charge to post-sentence offender supports. Indigenous Justice Programs involve Indigenous communities in the administration of justice, ensure Indigenous cultural values are reflected in the administration of justice,

and reduce recidivism, victimization and incarceration. The Indigenous Justice Programs provide culture-based and community-driven services in 34 locations across the province that range from court diversion, client support and supervision, community reintegration planning and support, and cognitive behavioural programs addressing addictions and domestic violence in a culturally appropriate manner.

- **Indigenous Courtworker Program.** Since 1978, the National Native Courtworker Program (now the Indigenous Courtworker Program) has provided funding to assist Indigenous people who appear before the court, by providing timely and accurate information throughout the criminal justice process. This includes information on the nature and consequences of charges, their rights, responsibilities, and options under the law, including alternative justice processes (if available), the philosophy and functioning of the criminal justice system, and of alternative justice processes (if available), and court procedures and the disposition or direction given by the court or community to the offender.

Session 2 provided Summit participants with an opportunity to consider “what is happening and what is possible” when Indigenous communities develop their own solutions and when criminal justice decision-making reflects strong grounding and connections with community.

Panel presentations

To set the stage for breakout discussions, participants heard first from a panel of front-line service providers with four separate perspectives on community-based programming.

Mabel Peter, a Courtworker with the Native Courtworker and Counselling Association of BC, described her work with seven First Nations from Malahat to Ladysmith in creating strong community linkages to support Indigenous accused appearing at the Duncan First Nations Court. The goal is to return clients to their duties and roles in the community. Of particular importance is the integration of Elders into the court process to support her clients, as the Elders are critical to the Court as wisdom keepers of these communities. Many clients were previously victims, and many prefer First Nations Court over the general court process. The Court arrives at a “healing plan”, which outlines next steps for clients. Charges may be

stayed for clients that successfully graduate from their healing plans. A blanket ceremony commemorates the completion of a client's healing plan.

Faith Tait, Access to Justice Manager with the Nisga'a Lisims Government, then described the philosophy and approach of her community's justice programming. The Nisga'a program name translates to "guide" or "counsel." People referred for restorative justice have three options: the traditional justice program with Chiefs and others (this option is preferred); restorative justice which involves the nuclear family; or victim remediation. In a domestic violence case, the individual who did wrong attends, as does the person who was wronged with their family. The person who has done wrong is reminded of their good attributes before the behaviour is addressed, and a house plan is subsequently developed. The focus is squarely on healing and to build long houses not court houses or jails. She also emphasized the importance of the wellness of people in these helping positions: "if the person helping has unresolved trauma on their soul, then it becomes trauma helping trauma". Wellness is important for the frontline workers.

The third presentation was provided by Constable Michael Grandia of the Delta Police Department. Residential schooling, urban development and displacement have caused lasting damage to the Tsawwassen culture and community, with police having played a significant role in those impacts. The approach to policing has been substantially changed. Interventions are now designed to be trauma-informed, prioritizing health and wellness and placing a particular focus on youth programming. The Youth Diversion Program has met with significant success, as no Tsawwassen First Nation youth has been charged with a criminal offense in over five years. In adult programming,¹ collaboration with Corrections staff and

¹ Through an Aboriginal Lens provides support to at-risk Aboriginal youth referred to the Asante Centre's Youth Justice FASD Program by youth probation officers. Fetal Alcohol Spectrum Disorder (FASD) is an umbrella term that describes the range of cognitive and behavioral disabilities that may affect a child if the child's birth mother drank alcohol while she was pregnant. Individuals with FASD are overrepresented in the criminal justice system due to concurrent cognitive, physiological and environmental risk factors. Through an Aboriginal Lens support is holistic in nature and rooted in an Aboriginal worldview, values and teachings.

the community is designed to prevent offenders from breaching. The past five years has seen a 50% reduction in police calls for service.

Darla Rasmussen of the Native Courtworker and Counselling Association of British Columbia then provided participants with an overview of the program called “Through an Aboriginal Lens.” Her work in particular has focused on bringing Indigenous-led experience and insight and a wellness perspective to the relationship between fetal alcohol spectrum disorder (FASD) and the criminal justice system. Through an Aboriginal Lens provides support to at-risk Indigenous youth referred to the Asante Centre’s Youth Justice FASD Program by youth probation officers. This is especially important given the importance of children at the centre of traditional Indigenous community. There are many facets to the work, including sensitivity to the intergenerational impacts of multiple traumas, creating a feeling of safety for children and families, and overcoming stigma applied by social workers and the health system. Education and prevention are central to increase the capacity of front-line workers to help and support FASD clients.

Participant discussions

Following the presentations, participants were divided into four simultaneous facilitated breakout sessions to identify and prioritize actions which could increase the availability and traction of genuinely community-based justice programming for Indigenous people. Facilitators were asked to organize the discussion around three key questions:

Note to readers

The **key themes** summarized here are a synthesis of commonly-raised ideas occurring in multiple simultaneous discussions on the topic. Not all participants contributed to all discussions. No inference of consensus (or majority opinion) should be made by the reader on any individual point, as no specific mechanism was employed by facilitators to determine the breakdown of opinion.

Similarly, participants’ ideas are represented here with the sole intent of providing an accurate account of the dialogue. No analysis was performed on the accuracy of any particular assertion of fact.

- 1) *What approaches at a community level work well, and how do we build upon these?*
- 2) *What changes can be made by federal and provincial leaders to make community-based programming more effective and increase access to justice?*
- 3) *How should the system be accountable to Indigenous people in supporting the emergence of strong community-based programming?*

Drawn from the record of discussion in each of four breakout sessions, key themes raised by participants were as follows.

Justice institutions must be more responsive to the needs of Indigenous communities

Greater use of restorative justice

Summary of participants' discussion: Restorative justice has a key role to play in keeping people out of the criminal system, but some communities do not have a restorative justice program (possibly due to the fact that Canada does not commonly observe communal rights) which causes frustration. Many participants felt there should be a presumption of restorative justice as the first option. A review of which communities are lacking this program would be useful. Indigenous communities should not leave this for government to decide who needs the funding.

Restorative justice is strongly based in Indigenous tradition but has some limitations of which we should be conscious. We have to be careful, despite the best of intentions, not to contribute to overrepresentation. As with *Gladue* reports, the inconvenient or embarrassing aspects of the process can lead some people to plead guilty rather than undergo the scrutiny of restorative justice. Some offenders are not going to want to face their grandparents in any Indigenous system and would rather get a fine or do community service.

Expansion of collaborative, healing-focused policing models

Summary of participants' discussion: Many participants were impressed by the results of the partnership between Tsawwassen First Nation (TFN) and the Delta Police Department. The commitment to reconciliation and healing could be incorporated in other settings, such

as the RCMP's Community Tripartite Agreements where those exist.² Participants suggested that the key to these partnerships is not what police and/or government bring to the table, it is about what the communities are going to say that they need from the police and government. It was noted that the Delta Police/TFN liaison is funded under the Indigenous Policing Service, through the federal and provincial governments, and was set up prior to treaty. There is a four-way agreement funded by TFN which includes the municipality and the provincial and federal governments.

Government's Indigenous programming and language should be inclusive

Summary of participants' discussion: The use of inclusive language is important; inclusion for Métis is needed, and we must remove the presumptions on who people are. Moving forward, we need to be conscious that the Métis are included in the programs and services. Government-to-government relationships and reconciliation between Indigenous nations are needed, as well as between Canada and Indigenous nations.

Justice institutions should provide and incentivize greater continuity of relationships

Summary of participants' discussion: A unique piece of policing is that sometimes champions come to Indigenous communities, do good things, and then leave. Many good relationships with RCMP officers develop over time, but by the time a community gets comfortable with a RCMP Liaison Officer, they get transferred. A model is required which lets good people shine and protects the system from falling apart if/when they leave. Similarly, bringing in different facilitators to a community does not work. Continuity is valued by Indigenous communities and must be recognized and incentivized as a key part of serving those communities.

² Community Tripartite Agreements (CTAs) are agreements between Public Safety Canada, the Province and individual First Nations. Policing is provided by the RCMP with the exception of the Stl'at'lx Tribal Police Service in Mt. Currie-Lillooet. Not all First Nations have CTAs. The intention is to provide community-involved, enhanced, culturally informed service in addition to core policing.

Summary of participants' discussion: In rural and northern areas, workers are very compassionate, and they work hard, but they are often alone and poorly paid relative to the hardships and remoteness that they face. People should be paid fairly for the work that they do, bumping up the wage to the current rate of pay for justice workers. The system cannot sustain itself when faced with continued turnover of staff; it must be more resilient to build in continuity and prepare for staff turnover. Communities often do not have enough funding to hire the right person, and programs drop off the table. There is a need to find ways to keep professionals longer than two-year terms.

Factors which make community-based programming successful

Programs should be designed and led by Indigenous communities

Summary of participants' discussion: If the community develops the process, there is more likelihood of it being successful. Government must listen to what communities wish to achieve, should support communities to embrace their own culture, protocols and practices, and should support their creation of processes that will work best for them. A community needs to have acknowledgement that they are being heard.

Local Indigenous leaders must play a leading role

Summary of participants' discussion: Unless the community's Chiefs and Elders are on board with the program, no program can succeed. Individuals (Elders or others) are needed to take leadership roles. As part of this, it was suggested that protocols be developed around how to work with leadership and how leaders are acknowledged. This has to be developed by First Nations and given to government.

Government should actively consider transfer of program authority

Summary of participants' discussion: Government must create space for Indigenous communities to develop programming as they see fit, or to assume control of existing programs. Research indicates that Indigenous interventions led by Indigenous peoples have a greater outcome than those led by non-Indigenous people, and community-based programs need more power to be effective. Government leaders should not be afraid to relinquish their power to community leaders and should have faith in those leaders to

implement their own measures, such as reintegration circles as part of treatment for the offender. To do so is to move closer to Nation-based governance where the mandates are from the people and to recognize that there were effective systems in place historically. Effective systems that created sustainable communities have been displaced and the best step toward moving toward reconciliation is recognizing the displacement.

Working holistically

Reimagining justice in terms of healing

Summary of participants' discussion: Social justice issues need to be distinguished from the criminal ones when working with offenders and need a safe place to be resolved. When working at the community level, if the community is small enough and people are informed you can discuss all-encompassing solutions. In Canadian society security trumps everything, and thus changing from a “security mentality” to a “healing mentality” and supporting wellness is critical. We must think beyond the criminal justice system, and address the issues of mental health, housing and social services. Providing housing in particular makes a big difference in people’s lives. Government and the justice system should be prepared to meet communities and individuals in their own healing journeys, and seek solutions based on existing strengths and leaders in the community.

Recognizing and acting on the importance of family

Summary of participants' discussion: Family is an offender’s key support. If the family are not doing the work they need to do, they are not prepared to welcome home their loved one when they return from being incarcerated. We need family at the forefront of this and they need work to support positive outcomes. An Indigenous Justice Program (IJP) project has started working with families to assist with the re-integration of offenders. It is like learning a language: if the offender has learned how to speak a new language, it only works if the family has also learned the same language.

Breaking down silos

Summary of participants' discussion: Colonialism has organized life in silos: everything brought to Indigenous people is delivered through the organizational channels of

government. Historically there has not been enough integration between service agencies such as police, mental health workers and education. The Nisga'a example focused on breaking down organizational barriers and has worked well. Collaboration and wrap-around approaches are key in being successful. For society in general, the right approach to criminal justice is a multi-disciplinary approach, and this will require a shift. We need to look at a holistic approach, particularly as working in silos will not allow for accountability.

Reinforce the Community Tripartite Agreement (CTA) and First Nations policing programs

Summary of participants' discussion: Policing is ineffective without First Nations policing and wrap-around services in the First Nations communities. Under the CTA program, the community is involved in the entire process of building a relationship with the RCMP so they can better understand the challenges faced. This arrangement brings good governance and we do not have that right now in too many places.

Learn from other models of integrated services

Summary of participants' discussion: There is an urban model used in the Tri-Cities and elsewhere across the province called an Interagency Case Assessment Team (ICAT). The intent is to increase victim safety in domestic violence cases. The program is administered by Ending Violence Association of BC in partnership with the RCMP. ICATs work with particular families involved in the courts. 10% of these families take up 90% of the police and family court time. ICATs provide intensive services to these families to help them stay out of court. This could be adopted in further communities. A strong community policing model is key, and this could be part of a strategic focus on how to address the issues without breaking down our community structures. There should not be services that are only accessible by going through a criminal justice process.

Focus on simplicity and continuity

Summary of participants' discussion: Effective partnerships can create impactful diversion programs. The justice system creates anxiety and can lead to breaches. A quick health and wellness-based process for community members, as in Tsawwassen First Nation, helps remove a lot of anxiety and supports successful long-term outcomes. Communities can also

seek to apply Jordan's Principle in the context of justice, focusing on the individual in crisis and not on the needs of bureaucracies.

Strengthening traditional law and culture

Connecting community justice programming to culture and tradition

Summary of participants' discussion: People need a sense of belonging and connection. Everything now is done online, and we have built barriers between ourselves. We are human, and we need a place to belong and be connected. The Nisga'a example relies on Nisga'a laws as the foundation of everything the program does. Challenges are only faced when individuals leave the Nation for more urban areas with alternate laws. Those communities that want to bring back traditional law need to take control of their systems and embrace the process of interacting with others to obtain buy-in. This process requires re-learning some of the traditions as they have been hidden for the last 150 years. There are good models and templates, but we have to grow them and make them acceptable to everyone. It is important to ensure that communities in other places are getting the same opportunity to deepen their connections to traditional law.

Supporting programming in small communities

Recognize disparity of circumstances

Summary of participants' discussion: Traditional alternative justice programs are inconsistent in rural communities. In BC a lot of First Nations are at different stages of development. Tsawwassen, Westbank, Squamish, Kamloops, and others have been strategically successful economically, but Upper Nicola is not the same as Tsawwassen. One size does not fit all, and programming should be appropriate to each community.

Make more use of technology and leverage parallel infrastructure

Summary of participants' discussion: Technology can be used to connect those in rural areas to eliminate the trek in to report or engage with counselling. While some communities would require upgrades to their infrastructure, others may be able to benefit from infrastructure developed by other parts of government or industry, through partnership.

The province is currently undertaking a push to try and reach those Indigenous communities that do not have great connectivity.

Stable funding is required for effective programming

Summary of participants' discussion: There is extensive need for long term program funding. People often reoffend because of a lack of resources in their community, and youth program funding is chronically lacking. Long term funding allows program managers to remain in place regardless of the government in place. If there were dollars in capacity for each nation to run their own Indigenous justice program, significant changes would be possible. In the north there is only one person to do the work, and there are limited finances to support them.

There needs to be a paradigm shift of funding models. BC should build upon and invest in existing programs rather than reinventing the wheel, invest the funding wisely, and put funding into programs that have proven to be successful. We should also be able to capture and reuse savings: if we reduce the rates of recidivism, we could use recouped provincial system money for funding. Grant programs have been announced by the federal government, but they have onerous applications and reporting processes. These programs are intended to achieve good outcomes, but the process is burdensome and time-consuming.

Strategies to address sexual violence and trauma

Sexual abuse in small communities may create serious obstacles

Summary of participants' discussion: Sexual abuse is a huge issue when it comes to community justice. Community members involved with justice programs may have assault histories with program clients; safe places are necessary but may be hard to establish. Sexual abuse permeates many First Nations communities and this needs to be addressed before people are encouraged to go home. Related to the recommendations of the Fifth Justice Summit on trauma-informed practice, a protocol to deal with sexual abuse needs to be developed which guards against retraumatizing victims, and it was suggested that this be managed by communities at the regional level. This should include educating people on

how to report sexual abuse or assault when they do not feel supported by the police or their community. Reference was made to the “Hollow Water” program in the 1980s, which worked on addressing sexual abuse in four communities with a near 100% success rate.

Session 3: Justice, Self-Determination and Capacity-Building

In the final session of the Eleventh Summit, participants’ attention turned to the relationship between justice and self-determination and the need for capacity-building to bring about solutions designed and led by Indigenous peoples. The context for the discussion was the recognition – in the UN Declaration of the Rights of Indigenous Peoples, the Truth and Reconciliation Commission Calls to Action, and the Ten Principles on the Relationship with Indigenous Peoples announced by the Governments of Canada and British Columbia – that Indigenous peoples have an inherent right to self-government and the right to their own laws, institutional forms, and traditions. Panel presentationsTo begin the discussion, the shqwi’qwal first turned to an expert panel and asked them each to reflect on the key issues associated with self-determination and justice. The panel included Jessica Wood, Assistant Deputy Minister of Reconciliation Transformation and Strategies with the Ministry of Indigenous Relations and Reconciliation; Chris Gall, Director of the Ministry of Natural Resources for the Métis Nation of BC; Chief Harvey McLeod of the Upper Nicola Band; the Honourable Steven Point, former Lieutenant Governor of British Columbia; and Satsan (Herb George), Senior Associate at the Centre for First Nations Governance. The questions considered by the panel included:

- 1. What should the future look like for the administration of justice? What is ideal and what is possible?*
- 2. What is required of both non-Indigenous and Indigenous people, when we think of self-determination in questions of justice?*
- 3. How do we build a roadmap to get to government-to-government discussion?*
- 4. What is the right role for the existing justice system (e.g. partnering, supporting, leaving space)?*

The participants each acknowledged the traditional unceded territory on which the discussion was taking place.

Jessica Wood provided an overview of how the provincial government, and particularly her Ministry, is working to create tangible impacts associated with the Ten Principles, the implementation of UNDRIP, and the TRC Calls to Action. True collaboration is precisely that, a mutual exercise involving both parties. Capacity building is central to that approach, as the province does not always have the Indigenous partners required to facilitate the true government-to-government relationships that would benefit all British Columbians. Innovation is important, but it is also necessary to question the foundation we are trying to “innovate away from.” Seeking equity in justice (and reconciliation in general) will only have success if we remember to see each other as human beings, working within our own realms of influence.

Chris Gall reflected on the journey of the Métis to be treated as a rights-bearing Nation, and the general lack of understanding regarding the Métis Nation’s rights as recognized in the Constitution. There is no hierarchy of Indigenous rights under Section 35. Métis have equal and unique Aboriginal rights, and reconciliation with all three Aboriginal peoples (First Nations, Inuit and Métis) is the objective of that section. The Métis Nation is not trying to diminish the rights and title of other Indigenous people, because reconciliation with and among Aboriginal peoples is a component of nation building. Métis people have been in BC since the beginning of the 1800s, many arriving in BC from across the country, but were caught in a jurisdictional vacuum which is only now being addressed. Sixties Scoop and residential school apologies have been extended for First Nations and Inuit people but not for the Métis, creating the impression of being “Indian enough to take away, but not Indian enough to make it right.” Reconciliation flows from constitutionally protected rights and must be grounded in practical actions.

Chief McLeod provided participants with insight into how building capacity and strength, and regaining control, can come from the most personal, family, and community-based journeys. In his own life as a young man he was distant from any spiritual life and hit rock bottom, before rededicating himself to his own people and community. The UN Declaration

helped him feel recognized as a human being, proud to no longer be a “number” and able to reach out. There is a lot of talk about reconciliation and in his experience the first layer of reconciliation begins at the individual level. The work in Upper Nicola has been to reclaim the sense of belonging and empower people. They have visited the Kamloops residential school to re-gather the spirits lost there and have brought them home. Another example has been the Upper Nicola Grandmother’s Declaration. This affirmed the grandmothers’ commitment to take back their traditional responsibility to stand up and take responsibility for the children, uphold teachings of the ancestors, teach respect and self-control, raise the children to be leaders, encourage children and families to reclaim their identity, and demonstrate a strong and healthy community.

The Honourable Steven Point implored participants not to make it hard for Indigenous people to get into the justice arena. The justice system has been imposed on Indigenous people during colonization, as part of a cataclysmic series of events where everything in the Indigenous world changed, and where in many cases most people died. It is hard to imagine such tremendous change if you have not directly lived through it. Now the system needs to make space for Indigenous thoughts and ideas – and this is not simply a question of rights interpreted by the courts. When embarking upon the process of self-determination and self-governance, we begin from a different place, with a different world view and perspective that exists in the minds of Indigenous peoples around the world. One example can be seen when white people asked to buy Musqueam land. The Musqueam could not imagine selling it, as the land was inseparable from the Elders who are buried there and from the trees that have grown from their bones. This perspective on life could help inform the justice system.

There is no word for “guilty” in Indigenous language, as the goal is to make things right or better. The Honourable Steven Point reflected on two past cases over which he had presided as judge. In the first, the defence counsel asked to move a child apprehension hearing to the mother’s village. The decision was made to move the hearing as requested, and after the family and community communicated, the lawyer announced that a resolution had been reached and the case was withdrawn. The solution was that the community members had committed to keep the woman and her children warm, fed and cared for. In the second case, he had agreed to the request by a young man’s Chief to have the young man discuss

his charge of mischief in the community, before sentencing. The Hereditary Chief asked the young man for an apology, and to repair the damage he had caused. He pronounced the sentence with a timeframe in which to conclude the projects, and the young man's family agreed to come up with the money to help him make things right. The young man stood up and apologized; his great-grandfather and the Hereditary Chief embraced each other, and his great-grandfather was moved to admit that he could finally look the Hereditary Chief in the eye again. This was an example of true reconciliation, and the Canadian justice system needs to provide the space to do that which has been done for thousands of years: allowing Indigenous nations to resolve conflicts in their own way.

Satsan's presentation addressed the theme of "completing Confederation." There are five pillars of the inherent right to self-government: the people, the land, the laws/jurisdiction, the government and the resources (which we may understand as people and land). To this day, First Nations people are born wards of the Crown with no legal capacity. The journey of the last few decades, as Indigenous governance has developed, has been one of confronting ignorance of history. People are shocked to learn about colonial policies prior to Confederation, efforts to exterminate Indigenous people, the loss of language and health, and other issues flowing from the *Indian Act* and colonial mentality. We have regained who we are as a people, and now need to work with Canada to realize it. Reconciliation needs to happen amongst us, to heal from the damage done, but it must be understood that reconciliation between Canada and Indigenous peoples must also be jurisdictional in nature. Under Section 35, there is clearly jurisdictional space for First Nations to develop laws and policies independently, to have a true nation-to-nation relationship. Only then can Confederation be completed. Satsan's presentation is included as an attachment to the distribution of the report.

Plenary discussion

The shqwi'qwal invited an open discussion in plenary on movement towards Indigenous self-determination in justice. Observations during the plenary discussion included the following:

There is no single path to self-determination

In speaking of the journey to self-determination, or how we will apply *Gladue*, it was observed that there is no single way to do this. There are 634 recognized First Nations and 60 languages in the country, and in BC there are 30 recognized languages. As such, it would be difficult to impose one concept, and it would make no sense to do so. There may be strongly independent paths, and there may be solutions which are mixed with elements of the colonial system.

Canadian laws may conflict with Indigenous traditions and ethics

The example of the *Freedom of Information and Protection of Privacy Act* (FOIPPA) was raised by one participant in discussion. In some communities, the expectation is that the community should know where all its members are without the need for prior individual consent, to determine (for instance) whether a particular person is incarcerated. The community cannot be accountable for its members when it does not know where they are, and Article 35 of UNDRIP states that Indigenous peoples have the right to determine the responsibilities of individuals to their communities. However, this idea is contrary to the philosophical commitment to privacy inherent in FOIPPA. Sometimes community members do not reveal they have been incarcerated, as they do not want their communities to know. By the same token, Article 46 stipulates that UNDRIP is subject to limitations in accordance with international human rights obligations.

Reclaiming the space to build capacity and achieve self-determination will take time

A number of participants reflected on the range of challenges which must be overcome, a process which will not occur overnight. Knowledge systems, people, homelands, and waters have been decimated, and this history has cumulative effects. Those who are here to engage in this discussion are here because they survived. People are trying to transfer small bits of tradition, culture and language to the generations to come. Indigenous people want to act in a way which respects traditional lands, beliefs, and relationships, and to ensure that traditional knowledge guides the way forward, but access to knowledge is part of the problem. After eight generations born under the *Indian Act*, resources are required to understand the scale and impact of what has been damaged or lost.

Some commenters observed that newer developments like UNDRIP and recent government commitments seem significant, but their implications can be challenging to work out or hard to trust. It was argued that the law has recognized the inherent right to self-government, but Indigenous nations need to bring their people together for dialogue on what this right to self-government means. One participant noted that “we need a clear strategic direction, but that is difficult to do because we have forgotten how to communicate.” Progress requires that Indigenous people no longer feel at the mercy of a government that has never even had a conversation with them. A new generation of youth and leadership is no longer afraid and is talking openly about decolonization, and more discussions are happening on the terms of Indigenous people, but there is much work to do. Some tangible results from discussions such as this Summit – changes which will endure through changes of government – would assist in building trust and momentum.

“Get out of the way”: self-determination means self-determination

It was observed that self-determination is a journey to wellness and requires focus on the body, mind, heart and spirit. Every nation must do this, in ways that are right for them, and on their own terms. When it comes to justice, a different approach is needed from the colonial system of locking people up for a long time. This, along with other aspects of self-governance, can follow the road map shown in Satsan’s chart, “The Constitutional Context” (attached as an appendix to this report), which indicates a path for First Nations’ jurisdictional ability to rebuild governance and achieve nation-to-nation relationships. The provincial government needs to step aside and allow Indigenous nations to follow their own path. “We have become used to disappointment, and comfortable with it, but the ball is in our court now.”

Reflections of the Summit Witnesses

Following the discussion, the shqwi’qwal invited the Summit Witnesses to offer their thoughts and guidance to participants based on the two days’ discussion.

Deputy Commissioner Brenda Butterworth-Carr extended appreciation for the opportunity to participate and comment on the Summit’s discussions. She added that the stories and

experiences shared at the Summit were overwhelming, but also said that she had heard many speakers graciously acknowledge efforts now being made to “right the wrongs,” and raising questions on where to begin. The Summit discussion has made clear that *Gladue* reports could be more consistently utilized, with sufficient resources to ensure this. Policing needs to continue to focus on prevention and on respectful interactions and must take steps to avoid traumatizing people any further. As an example, in discussions with Grand Chief Kelly, there is now agreement for the RCMP to work on some of these elements in Sto:lō Nation with Sto:lō guidance. We will honour and respect the shared stories we have experienced at the Summit.

Assistant Deputy Attorney General Peter Juk acknowledged the sincerity, commitment and willingness of participants to move forward in a respectful manner. He added that there is an ongoing need for appropriately directed resources, and that the community level must be the focus of those resources, consistent with Chief McLeod’s discussion of the importance of pursuing initial successes at the individual, family and community level. Government representatives for their part need to work across divisions, to identify solutions that are brought forward from the community, and to share resources towards the same objectives. We should identify discrete problems and focus on achieving small victories together, step by step. The comments by the Honourable Steven Point were inspirational: making space for Indigenous thoughts and perspectives is critical, to incorporate what First Nations have been doing for thousands of years. Government must make space for traditional learning, culture and traditions, getting out of the way to let communities take care of their priorities as they identify them. The ball is in the court of Indigenous peoples in that way, but the ball is in all of our courts when it comes to making positive changes and ensuring that justice is just.

Elder Tom McCallum extended appreciation for the opportunity to attend, and in introducing himself noted that his home community of Île-à-la-Crosse, Saskatchewan, was one of the oldest Métis communities in Canada. He highlighted some important contributions to the Summit, recalling that the Honourable Steven Point spoke about the justice system as being only part of the larger system in which we must find reconciliation and rebuilding. Doug White had reminded participants that Indigenous people, for many

painful and recent reasons, did not trust the system; but had also talked about the good feelings associated with this important work, and recognized the importance of the Elders joining the discussion. Lissa Smith had stressed the importance of Indigenous people (including Métis people) working together. Solicitor General Farnworth had noted the importance of considering issues through multiple lenses. Regional Chief Teegee had acknowledged the many missing and murdered Indigenous women and had questioned how reconciliation could begin, while people continued to suffer injustices. Legal Services Society representatives had talked about the *Gladue* Report and how it could be used effectively, and there was impressive work being done by Tsawwassen First Nation and Delta Police in partnership.

Grand Chief Doug Kelly began his remarks by recalling the Elder's reference to participants as "luminaries" with brilliant minds, and strong and caring hearts. It is up to participants after they leave to identify questions that need answers, bridge the gaps between the Indigenous and non-Indigenous worlds, and listen with their hearts. He reflected on the importance of matriarchs. It is important to re-create the institutions of the matriarchs, and achieve a relationship with the Ministry of Children and Family Development (MCFD) where social workers no longer make the most important decisions. The system makes promises that cannot be kept, and so the system needs to "get out of the way." A previous speaker had asked what people were going to do when they left to create a better place for the future generations. Grand Chief Kelly will work to create a road map that brings policing, family court, and MCFD to the same table with our leaders. We can change the systems in which we work, to achieve positive and constructive change from the status quo. We have work to do. We cannot leave here and just look forward to another meeting in six months' time; we have to take action, partner with others, plan with others, and tell the Ministers what they need to know. Grand Chief Kelly concluded by remarking on how the Summits have improved over time: "This Summit engaged our hearts, which woke up our minds and our spirits."

Closing remarks

To conclude the Summit, participants heard a number of closing addresses.

MNBC Vice President Lissa Smith extended thanks to the Province for including MNBC and the BC Aboriginal Justice Council as partners in planning the Summit, as it was an excellent opportunity to hear, listen, learn, and contribute to the work being done. She noted that it is clear that many citizens are not aware of their entitlement to *Gladue* reports, and that many Indigenous offenders have never had one done. Vice President Smith spoke to participants about the need to include the Métis people in all aspects of the work going forward. Reconciliation between Indigenous peoples is an important part of overall reconciliation. She expressed appreciation for Grand Chief Kelly's words on self-governance, particularly as the Métis Nation continues to negotiate with federal government, and for the self-governance presentation by Satsan which is very similar to the work the Métis Nation is undertaking. Through the Métis Nation Relationship Accord, renewed in 2016, Métis people are taking their rightful place in discussions and negotiations with the Province regarding Indigenous justice. The Minister of Indigenous Relations and Reconciliation has advised all Ministries to work with the Métis Nation, contrary to prior understandings that the Métis Nation did not need to be consulted. MNBC has been pleased to have participated in the planning and delivery of these Summits and looks forward to continuing to work toward BC's first Indigenous Justice Strategy.

Doug White, Chair of the BC Aboriginal Justice Council, extended thanks to participants for their work over the past two days and noted that this was an opportunity to identify and begin to address omissions in the Cowper report's initiatives. The Summit has learned from people at the community level about how the future should unfold and about the need to protect the younger generation from further trauma. We must be alive to this, as Senator Murray Sinclair has recently noted that the "monster of the residential school system" is alive and well today in the child welfare system. When it comes to the adult criminal justice system and the *Gladue* ruling, we can start to build on the good work of the different institutions in the province that are trying to create better outcomes, and we can begin to see what systemic change could look like. A presumption of diversion in the system is a transformative and powerful idea. Innovative and transformative ideas like those inherent in *Gladue* can flourish in strong community programs rooted in the self-determination of Indigenous people. For its part, the TRC helped us understand what happened, and enabled

us to structure a way forward. Now, it is critical for us to coordinate jurisdiction and to respect and recognize each other's authority. The Justice Council will continue to do its best to assist in partnerships with others, including with the MNBC. Mr. White expressed gratitude on behalf of the Justice Council for the work done at the Summit and extended thanks to all those who contributed to its planning and delivery.

The Honourable Robert Bauman, Chief Justice of British Columbia, addressed participants and extended appreciation for the opportunity to work with others from a variety of justice-related institutions. The Summit enables honest dialogue and shows a sincere commitment by participants to better understand each other as we work towards our common goal of justice for the province as a whole. Those people hurt by the system speak words of hope that non-Indigenous people are starting to acknowledge the hurts and historic wrongs. It would be understandable if people were to claim, "We want nothing to do with this system." The Chief Justice noted that while we are engaged in exposing truth and seeking reconciliation, we could add understanding to those goals. We must come to understand the truth being exposed. We cannot continue to ignore the rates of Indigenous children put into government's care, we cannot ignore the rates of Indigenous youth and adults in the corrections system, and we cannot ignore the rates of offenses against Indigenous women and girls. Historical laws and policies have brought us to this point, by supporting the residential school system, denying Indigenous people the right to vote or access legal representation and supporting alienation of Indigenous people from traditional lands and cultural, spiritual, and economic practices. We can look forward to seeing how far we can improve the current system with Indigenous principles. We must learn more about Indigenous laws, legal principles and traditions. We need progress towards healing the injuries of the past and present, and these Summits are at the beginning of the journey. We can help one another "to be great and good."

The final set of remarks was offered by the Honourable David Eby, QC, Attorney General of BC. Minister Eby recognized the Musqueam traditional territory on which the Summit was being held and noted that the Summit had underscored the need for government to listen to Indigenous communities on the form justice should take. The conversation recalled an earlier experience, in which he had visited northern BC and heard from two communities.

The first community was unhappy that a local police officer was directed to stop providing self-defence training for youth. The second community was unhappy that a police officer suspected of brutality had not been removed from the community. In both cases, justice system policies were at odds with the wishes of the community, as nothing further could be done about the latter officer, but the former officer was required to stop the training due to lack of qualifications. Since those days there have been commendable changes in policing, but across our justice system reconciliation is still needed to enable different perspectives to acknowledge each other. At this Summit, Indigenous people have asked for the space to do what they need to do, to move forward. We must consider how to reconcile and begin the long process of restoring justice to our justice system.

Minister Eby extended thanks to the BC Aboriginal Justice Council, the First Nations Leadership Council, and the Métis Nation of British Columbia for their contributions to the planning of the Summit, to the organizing team for their work, and to participants for their contributions to the discussion. He and other members of the public service are committed to doing their best to live up to the trust placed in them. Minister Eby then declared the Summit adjourned.

Summit Recommendations

To develop Recommendations, the Steering Committee completed a review of the complete record of proceedings, including all discussion in plenary and breakout sessions, drawing only from the most broadly-supported ideas and observations over the two days of the Summit. The draft Recommendations were then circulated to all participants for review in advance of publication, with participants asked to assess the report and Recommendations as fair reflections of the Summit dialogue.

Subsequent to this process, the following Recommendations are issued by the Eleventh Justice Summit:

1. Recognizing the overwhelming urgency of addressing Indigenous overrepresentation in custodial corrections in the province, and the right of Indigenous accused persons to have the principles articulated in *R. v. Gladue* applied at time of sentencing, the Eleventh Summit recommends that the British Columbia justice and public safety sector (as defined in the *Justice Reform and Transparency Act*)³ take steps:
 - a. to ensure that each Indigenous defendant and any other relevant participants in related criminal procedure are routinely made aware of that person's *Gladue* rights, including the right to submit a *Gladue* report and the means of doing so;

Note to readers

Recognizing the ongoing work on the part of the BCAJC, Métis Nation BC, and the provincial government in development of an Indigenous Justice Strategy at time of writing, the Steering Committee reminds all readers that these Recommendations are derived from dialogue amongst participants at the Eleventh Justice Summit and do not in themselves constitute government engagement with First Nations or the Métis Nation in the development of the Indigenous Justice Strategy.

³ For the purposes of the Act, the justice and public safety sector is defined in S.1 as “the justice system, including, without limitation, programs or services, funded in whole or in part by public money, that contribute to the administration of justice or public safety in British Columbia.” *Justice Reform and Transparency Act, SBC 2013*.

- b. to ensure that information sufficient to meet the expectations of the Supreme Court of Canada in *Gladue* is routinely made available to the court, and subsequently to other parties at the discretion and under the control of the client, in a timely manner and in ways which are respectful of the client, are culturally safe and trauma-informed, and do not otherwise cause harm to the client's interests; and
 - c. to ensure that appropriate standards, training, education and awareness, consistency of approach, and necessary structures for the process of *Gladue* reporting, are maintained and supported in such a way as to allow (a) and (b) to be realized.
 - 2. Recognizing the importance of community-led programming in prevention, healing, and creating sustainable alternatives to custodial sentences, and recognizing the importance of capacity-building in realizing the right of Indigenous peoples to self-determination, the Eleventh Summit recommends that the British Columbia justice and public safety sector take steps:
 - a. to support the significant expansion and local development of community-based programming, using community need over other considerations as a method of prioritizing resource allocation;
 - b. to ensure that the delivery of community-based programming, however funded, is Indigenous-led, designed, and delivered by default; and at times when the community indicates this is not possible in full, to ensure that the community's authority over further developments is consistently respected through ongoing consultation; and
 - c. to maximize partnerships with other Indigenous communities or nations, other Ministries and levels of government, and industry, to make the most of
-

existing programs, technology and infrastructure in facilitating the emergence of new community-based programming.

3. Recognizing the central importance of reconciliation with Indigenous peoples to the future of the province's justice and public safety sector, recognizing the importance of establishing a relationship of trust following a history in which Indigenous peoples have been treated poorly by the colonial justice system, and recognizing the need for the system to be accountable to Indigenous people in its efforts to transform, the Eleventh Summit recommends that the British Columbia justice and public safety sector take steps:
 - a. to affirm publicly and in a regular ongoing manner the sector's specific commitments, and those of its individual entities, to address Indigenous overrepresentation in criminal justice, including but not limited to actions recommended in Recommendations 1 and 2; and to do so in a manner which emphasizes measurable outcomes for Indigenous peoples as opposed to bureaucratic process; and to establish those commitments only following good faith dialogue with appropriate representatives of the Indigenous peoples in British Columbia;
 - b. in full and equal consultation with Indigenous peoples, to gather and publish data providing baseline empirical measures associated with the outcomes being addressed in (a), and to refresh those data at least annually; and where data is not readily available, take timely steps to prioritize the definition, identification and collection of appropriate new data-fields to allow for progress reporting; and
 - c. to reconvene a Summit (or similar venue) with Indigenous peoples at regular intervals to assess the progress made against the Recommendations made here and to consider the Indigenous experience of the province's justice and public safety sector more broadly.
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Appreciation

The Steering Committee would like to express its thanks to Elder Shane Pointe and all those who attended as Elders. The Committee would also like to express true appreciation to the people of Musqueam, for their generous hosting of the Justice Summit on traditional unceded territory, and the warm welcome given to those from all Nations who attended.

The Committee would like to thank the Honourable David Eby, QC, the Honourable Mike Farnworth, the Honourable Chief Justice Robert Bauman, the Honourable Steven Point, BCAJC Chair Douglas White III, MNBC Vice President Lissa Smith, and AFN Regional Chief Terry Teegee, for their remarks at the opening and conclusion of the Summit. The Committee also wishes to thank Harold Tarbell for his great work as shqwi'qwal in once again directing the conversation with warmth, humour, and respect.

The Committee would also like to extend its appreciation to Rhaea Bailey, Renzo Caron, Anisa White, Mitch Walker, Mabel Peter, Faith Tait, Constable Mike Grandia, Darla Rasmussen, Jessica Wood, Chris Gall, Chief Harvey McLeod, the Honourable Steven Point, and Satsan, for their contributions to the dialogue as panelists.

The Committee wishes to thank Madelaine McCallum and the drummers, singers and dancers of the Eagle Song Dancers for lifting spirits with their performances at the Summit.

Finally, the Steering Committee would like to thank all participants at the Eleventh British Columbia Justice Summit, whose willingness to speak openly and personally contributed so much to the event.

Summit Feedback

Comments on this *Report of Proceedings* and the Summit process are encouraged and may be emailed to the Justice and Public Safety Secretariat at justicereform@gov.bc.ca.

Appendix I: Summit Agenda

Summit Day 1: Friday, November 2nd

Summit Opening

7:30 – 8:30 am: Registration and Networking Breakfast

8:30 – 9:30 am: Opening Remarks

Presenters:

- Welcome to Coast Salish territory and opening prayer (Elder Shane Pointe)
- Coast Salish cultural protocol: covering the Speaker and the Shqwi'qwal / calling the Witnesses / acknowledging First Nation and Métis Elders
- Welcoming remarks and context-setting
 - Doug White, Chair, BC Aboriginal Justice Council
 - Lissa Smith, Vice-President and Minister of Justice, Métis Nation of BC
 - Regional Chief Terry Teegee, BC Assembly of First Nations
 - Honourable Mike Farnworth, Solicitor General of BC (officially opens Summit)
- Shqwi'qwal's remarks (Harold Tarbell)
 - Themes and objectives of the Eleventh Justice Summit; review of agenda structure and facilitation format for the two days of dialogue

9:30 – 9:45 am: Network Break

Session 1: Implementing Good Practice on *Gladue*

9:45 – 10:30 am: Panel in Plenary

Presenters:

- Rhaea Bailey and Renzo Caron, Legal Services Society
- Anisa White and Mitch Walker, Gladue Writers Society

These presentations are intended to recap the key issues associated to the Gladue ruling, and the opportunities and challenges of implementation. They will include a discussion of the recent Gladue Knowledge Gathering. It is not a comprehensive discussion but a means of sparking participants' ideas going into the breakouts.

10:30 am – 12:00 pm: Session 1 Breakouts

Objective: *The purpose of the breakout session is for participants to identify and prioritize actions which (together or separately) would improve British Columbia's compliance with the expectations of the Supreme Court regarding Indigenous offenders as expressed in R. v. Gladue, and which could form the basis of a Summit Recommendation.*

12:00 – 1:00 pm: Lunch

Session 2: Community Programming, Healing, and Access to Justice

1:00 – 2:00 pm: Panel in Plenary

Presenters:

- Mabel Peter, Native Courtworker and Counselling Association of BC, Duncan First Nations Court
- Faith Tait, Nisga'a First Nation
- Constable Mike Grandia, Delta Police Department

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- Darla Rasmussen, Native Courtworker and Counselling Association of BC, Through an Aboriginal Lens Program

These presentations are intended to provide examples of community-led programs from the continuum of services that support prevention, early intervention, education, healing and restorative justice as an alternative to incarceration, and which serve to reconnect Indigenous people with their community and their culture. The presentations as a whole should give participants a greater sense of what is happening, and what is possible, when Indigenous communities develop their own solutions – but also thinking systemically to consider how to generate the same energy in more places where it is needed.

2:00 – 2:45 pm Network Break and Transition to Breakouts

Eagle Song Dancers, Squamish Nation

(*note: Madelaine McCallum performed a traditional Métis dance the evening of November 1st)

2:15 – 3:45 pm: Session 2 Breakouts

Objective: *The purpose of the breakout session is for participants to identify and prioritize actions which (together or separately) would improve access to justice in the community for Indigenous people and ensure Indigenous communities are partners in the design, planning and delivery of justice services, at the community and system levels, and which could form the basis of a Summit Recommendation. Participants will be encouraged to identify key factors which enable) or impede the development of strong community-based justice programs, and suggest what their own part of the sector could do differently to contribute to the growth of community-based programming*

Wrap-up of Day 1

3:45 - 4:15 pm: Summary of Discussion and Next Steps

The shqwi'qwal offers his observations on the discussions he has been privy to. He will remind participants that today they have been focused on changes to the here-and-now, but that the next morning they will be asked to discuss what the future should look like – encourage them to think and talk about this between now and then.

Before concluding for the day, the floor will be open for general comments on the day's discussions.

Summit Day 2: Saturday, November 3rd

Day 2 Opening

8:00 – 8:30: Coffee

Coffee and light refreshments are served in the plenary room.

8:30 - 8:45 am: Opening Prayer

Session 3: Capacity-Building and Self-Determination

8:45 - 9:45 am: Panel Discussion in Plenary (Interview Style)

Panelists:

- Jessica Wood, Assistant Deputy Minister of Reconciliation Transformation and Strategies, Ministry of Indigenous Relations and Reconciliation
- Chris Gall, Director, Ministry of Natural Resources, Métis Nation of BC
- Chief Harvey McLeod, Upper Nicola Band
- The Honourable Steven Point
- Satsan (Herb George), Senior Associate at the Centre for First Nations Governance

The panelists respond to questions from the shqwi'qwal about the relationship between justice and self-determination, in light of the UNDRIP recognition that Indigenous peoples have an inherent right to self-government and the right to their own laws, institutional forms and traditions, the TRC Calls to Action, and the Ten Principles. What should the future look like? What is ideal and what is possible? What is required of both non-Indigenous and Indigenous people? Where do we start?

9:45 - 11:00 am: Plenary discussion

11:00-12:00 pm: Brunch

12:00 – 2:00 pm: Wrap-up, Next Steps and Closing

12:00 - 12:30 pm: Calling the Witnesses

The witnesses are called upon to offer closing remarks and reflections based on the discussions over the past two days.

1:15 - 2:00 pm (Closing remarks)

Presenters:

- Lissa Smith, Vice-President and Minister of Justice, Métis Nation of BC
- Doug White, Co-Chair, Aboriginal Justice Council of BC
- Honourable Robert Bauman, Chief Justice of the Court of Appeal for British Columbia
- Honourable David Eby, QC, Attorney General of British Columbia

In addition to his substantive remarks, Minister Eby will offer thanks to organizing team and officially close the event.

Appendix II: Summit Participants

Achampong	Bernard	Executive Director, Court Services Branch	Ministry of Attorney General
Anderson	Lisa	Assistant Deputy Minister, Community Safety and Crime Prevention Branch	Ministry of Public Safety and Solicitor General
Angel	Lenora	Executive Director	Ministry of Children and Family Development
Arend	Elenore	Assistant Deputy Minister, BC Corrections	Ministry of Public Safety and Solicitor General
Attfield	Dave	Chief Superintendent	RCMP "E" Division
Avison	Don	Chief Executive Officer	Law Society of British Columbia
Azam	Salman	Assistant Deputy Minister, Corporate Management Services Branch	Ministry of Attorney General/Ministry of Public Safety and Solicitor General
Bailey	Rhaea	Manager, Indigenous Services	Legal Services Society
Baptiste	Leona	Counsellor	Osoyoos Indian Band
Bauman	Honourable Robert	Chief Justice	Court of Appeal for British Columbia
Belak	Brenda	Legal Counsel	Supreme Court of British Columbia

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Bell	Kristy	Board Member	Native Courtworker and Counselling Association of BC
Bentley	Shannon	Lawyer	Native Courtworker and Counselling Association of BC
Berkhout	Juanita	Executive Director, Socio- Economic Partnerships	Ministry of Indigenous Relations and Reconciliation
Bond	Allison	Deputy Minister	Ministry of Children and Family Development
Boucher	Mavis	Director of Court Services	Native Courtworker and Counselling Association of BC
Boyes	Susan	Corporal	RCMP "E" Division
Braker	Hugh	Councillor	Tseshaht First Nations
Brown	Mary	Coordinator	Heiltsuk Gvi'ilas Community Justice Program
Butterworth- Carr	Brenda	Deputy Commissioner, Commanding Officer	RCMP "E" Division
Caouette	Jacob	Regional Board Member	Native Courtworker and Counselling Association of BC
Cardinal	Ben	Regional Board Member	Native Courtworker and Counselling Association of BC
Caron	Renzo	Vice President, Indigenous Services	Legal Services Society
Devenny	Denise	Director, Indigenous Engagement	Ministry of Children and Family Development

ELEVENTH JUSTICE SUMMIT REPORT OF PROCEEDINGS

Dobmeier	Teresa	Assistant Deputy Minister	Ministry of Children and Family Development
Downey	Tracy	Executive Director	Prince Rupert Aboriginal Community Services Society
Eby	Honourable David	Attorney General	Legislative Assembly of British Columbia
Farnworth	Honourable Mike	Solicitor General/Opposition Critic	Legislative Assembly of British Columbia
Fassina	Mark	Project Director, Justice Services Branch	Ministry of Attorney General
Fontaine	Leah	Crown Counsel	BC Prosecution Service
Forbes	Jenna	Executive Director	Vancouver Aboriginal Transformative Justice Services Society
Fyfe	Richard	Deputy Attorney General	Ministry of Attorney General
Gall	Chris	Director	Métis Nation BC
George	Gloria	Board Member	Native Courtworker and Counselling Association of BC
George	Herb (Satsan)	Senior Associate	Centre for First Nations Governance
Gerhart	Todd	Chief Federal Prosecutor	Public Prosecution Service of Canada
Gervais	Robyn	Lawyer	Gervais Law

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Gillespie	Honourable Melissa	Chief Judge	Provincial Court of British Columbia
Ginther	Fay	Councillor	Neskonlith Indian Band
Gladue	Betty	Elder	Métis Nation BC
Gladue	Phil	Elder	Métis Nation BC
Grandia	Mike	Station Constable	Tsawwassen First Nation
Hall	Roger	Aboriginal Liaison	Okanagan Correctional Centre
Hinkson	Honourable Christopher	Chief Justice	Supreme Court of British Columbia
Holmes	Rachel	Executive Lead, Office of the Deputy Solicitor General	Ministry of Public Safety and Solicitor General
Holmes	Honourable Heather	Associate Chief Justice	Supreme Court of British Columbia
Holmes	Brian	Councillor	Upper Nicola Band
Hungerford	George	Board Member	Canadian Bar Association, BC Branch, Aboriginal Lawyers Forum
Hunt	Genesis	Indigenous Justice Program Manager	Alert Bay Community Justice
Hunt	Corrine	Court Support Caseworker, Victim Services and Crime Prevention	Ministry of Public Safety and Solicitor General

ELEVENTH JUSTICE SUMMIT REPORT OF PROCEEDINGS

Hwitsum	Lydia	Board Member	Native Courtworker and Counselling Association of BC
Jefferson	Joanna	Qwiiqwelstom Manager	Sto:lō Nation
Juk	Peter	Director, Appeals and Special Prosecutions, Criminal Law Division	BC Prosecution Service
Kelly	Grand Chief Doug	Chair	First Nations Health Council
Kreviso	Miriam	QC, President	Law Society of British Columbia
Lee	Michael	Opposition Critic for Attorney General	Legislative Assembly of British Columbia
Leung	Karen	Legal Officer, Office of the Chief Judge	Provincial Court of British Columbia
Lever	Jackie	Director of Women	Métis Nation BC
Lindley	Shelby	Lawyer	Springfords
Lord	Lindsay	Chief Executive Officer	John Howard Society, Thompson Region
MacDonald	Ronald	Chief Civilian Director	Independent Investigations Office
MacLennan	Sherry	Vice President, Public Legal Information and Applications	Legal Services Society

ELEVENTH JUSTICE SUMMIT REPORT OF PROCEEDINGS

Manuel	Bruce	Corrections Liaison Worker	South Okanagan Restorative Justice Program
McBride	Heidi	Executive Director and Senior Counsel	Superior Courts Judiciary
Mccallum	Tom	Elder	Métis Nation BC
McCormick	John	Snuneymuxw RJ Program	John Howard Society
McLean	Kimberley	Provincial Director, Strategic Operations, BC Corrections	Ministry of Public Safety and Solicitor General
McLeod	Harvey	Chief	Upper Nicola Band
McPhee	Annita	Consultant and Past President	Tahltan Nation
Mereigh	Margaret	President	Canadian Bar Association, BC Branch
Miller	Mark	Chief Executive Officer	John Howard Society of the Lower Mainland
Morley	Jane	Strategic Coordinator	A2JBC
Morris	Honourable Mike	Solicitor General/Opposition Critic	Legislative Assembly of British Columbia
Nevin	Caroline	Executive Director	Canadian Bar Association, BC Branch
Nickel	Carol-Ann	Executive Assistant	Native Courtworker and Counselling Association of BC
O'Toole	Kaitlyn	Special Projects Associate	Tl'etinqox First Nation

ELEVENTH JUSTICE SUMMIT REPORT OF PROCEEDINGS

Parfitt	Clea	Legal Counsel	Union of BC Indian Chiefs
Paul	Darcy	Wellness Worker	Sto:lō Nation
Pecknold	Clayton	Assistant Deputy Minister, Police Services	Ministry of Public Safety and Solicitor General
Peter	Mabel	Courtworker	Native Courtworker and Counselling Association of BC
Peters	Alicia	Indigenous Justice Program	Sto:lō Nation
Peters	Boyd	Director, Rights and Title	Sts'ailes Band
Point	Honourable Steven	Former Lieutenant Governor of British Columbia; Judge (retired), Provincial Court of British Columbia	
Pointe	Shane	Elder	Musqueam Band
Pruden	Victoria	Provincial Women's Chair	Métis Nation BC
Ramsdale	Vanessa	Restorative Justice Coordinator	South Island Wellness Society
Rankin	Taya	Manager	St'at'imc Restorative Justice
Rasmussen	Darla	Director of Indigenous Care-through an Aboriginal Lens	Native Courtworker and Counselling Association of BC
Robertson	Wayne	Executive Director	Law Foundation of British Columbia

ELEVENTH JUSTICE SUMMIT REPORT OF PROCEEDINGS

Robins	Natalie	BC Regional Coordinator, Indigenous Justice Program	Justice Canada
Rudolf	Sally	Legal Counsel	Court of Appeal for British Columbia
Russell	Sean	Program Manager	Native Courtworker and Counselling Association of BC
Rutquist	Larissa	Manager, National Policy, Indigenous Justice Program	Justice Canada
Sam	Michele	Board Member	Native Courtworker and Counselling Association of BC
Sandstrom	Kurt	Assistant Deputy Attorney General, Legal Services Branch	Ministry of Attorney General
Shackelly	Darlene	Executive Director	Native Courtworker and Counselling Association of BC
Shackelly	Darryl	Provincial Trainer	Native Courtworker and Counselling Association of BC
Sieben	Mark	Deputy Solicitor General	Ministry of Public Safety and Solicitor General
Smith	Lissa	Vice President & Minister of Justice	Métis Nation BC
Smith	Honourable Garth	Judge	Provincial Court of British Columbia
Sparrow	Leona	Director, Treaty, Lands and Resources	Musqueam Indian Band

ELEVENTH JUSTICE SUMMIT REPORT OF PROCEEDINGS

Spicer	Valerie	Sergeant, Diversity & Indigenous Relations Unit	Vancouver Police Department
Spier	Colleen	Member	BC Aboriginal Justice Council
Spotted Eagle	Jon	Director	Native Courtworker and Counselling Association of BC
Stevens	Lori	Regional Crown Counsel	BC Prosecution Service
Stewart	Dee	Officer in-Charge, Indigenous Policing Services	RCMP "E" Division
Sumexheltza	Aaron	Chief	Lower Nicola Band
Swustus	Calvin	Restorative Justice Coordinator	Cowichan Tribes
Tait	Faith	Justice Department Manager	Nisga'a Lisims Government
Teegee	Terry	Regional Chief	BC Assembly of First Nations
Tennant	Donna	Director of Sustainable Development	Native Courtworker and Counselling Association of BC
Thomas	Daleen	Coordinator Justice Issues	Métis Nation BC
Tyler	Christopher	Community Justice Coordinator	Kwadacha Nation
Van Eden	Andrew	Community Safety Manager	Tsleil-Waututh Nation
Van Vugt	Barb	Acting Assistant Deputy Commissioner	Correctional Service Canada

ELEVENTH JUSTICE SUMMIT REPORT OF PROCEEDINGS

Veenstra	Bill	President	Canadian Bar Association, BC Branch
Walker	Mitch	Vice Chair	Gladue Writers Society of BC
Walsh	Taryn	Assistant Deputy Minister	Ministry of Mental Health and Addictions
Walters	Peter	Consultant	Ministry of Attorney General
White	Doug	Chair	BC Aboriginal Justice Council
White	Anisa	Chairperson	Gladue Writers Society of BC
Whonnock	Honourable Karen	Judge	Provincial Court of British Columbia
Wilson-Yazzie	Rosalie	Lawyer and Founder	Nesika Law Corporation
Wishart	Honourable Susan	Associate Chief Judge	Provincial Court of British Columbia
Wolf	Honourable Alexander	Judge	Provincial Court of British Columbia
Wood	Jessica	Assistant Deputy Minister	Ministry of Indigenous Relations and Reconciliation
Yee	Colleen	Inspector, Centralized Ops Support Section	Vancouver Police Department

Appendix III: Summit Organizing Team

Steering Committee (and *Observers)

Belak*, Brenda, Legal Counsel, Supreme Court of British Columbia

Spier, Colleen, Spier and Company Law, and member, BC Aboriginal Justice Council

Shackelly, Darlene, Executive Director, Native Courtworker and Counselling Association of British Columbia

White, Douglas III, Co-Chair Criminal Justice, BC Aboriginal Justice Council

McBride*, Heidi, Executive Director & Senior Counsel, Superior Courts Judiciary

Leung*, Karen, Legal Officer, Office of the Chief Judge, Provincial Court of British Columbia

Sandstrom, Kurt, QC, Assistant Deputy Minister, Ministry of Attorney General

Smith, Lissa, Vice President and Minister of Justice, Métis Nation BC

Sieben, Mark, Deputy Solicitor General, Ministry of Public Safety and Solicitor General

Teegee, Regional Chief Terry BC Assembly of First Nations

Fyfe, Richard QC, Deputy Attorney General, Ministry of Attorney General

Rudolf*, Sally, Legal Counsel, Court of Appeal for British Columbia

Point, The Honourable Steven, former Lieutenant Governor of British Columbia, and Judge (retired), Provincial Court of British Columbia

Ex officio

Castle, Allan, Coordinator, BC Justice Summits

Currie, Tami, Executive Director Strategic Planning and Performance, Justice Services Branch, Ministry of Attorney General

Melnyk, Alyssa, Vice President, Castlemain Group

Working Circle

Braker, Colin, Communications Director, First Nations Summit

Buchan, Maureen, Senior Policy Advisor, BC Assembly of First Nations

Castle, Allan, Coordinator, BC Justice Summits/BC Justice and Public Safety Council

Currie, Tami, Executive Director, Justice Services Branch

Davies, Jacqueline, Senior Program Manager, Policing and Security Branch

Daws, Courtney, Senior Analyst, Castlemain Group

de Boer, Richard, QC, Director, Policy and Justice Issues, British Columbia Prosecution Service

Glickman, Andrea, Policy Director, Union of BC Indian Chiefs

Kinch, Matthew, Director, Partnerships, Indigenous Engagements and Relations, Justice Services Branch

Knighton, James, Aboriginal Program and Relationship Analyst, BC Corrections

Melnyk, Alyssa, Vice President, Castlemain Group

Neil, Melanie, Executive Director, Court Services Branch

Parenteau, Rob, Director, Community and Social Innovation, Ministry of Indigenous Relations and Reconciliation

Pruce, Lori, Director, Aboriginal Programs and Relationships, BC Corrections

Salkus, Beverley, Executive Coordinator, Justice Services Branch

Scott, Karyn, Executive Director, Justice Services Branch

Shackelly, Darryl, Native Courtworker and Counselling Association of BC

Weselowski, Allan, Ministry of Indigenous Relations and Reconciliation