

# Access to Justice Forum



## Nokiiwin Tribal Council

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# Table of Contents

<b>Executive Summary</b>	<b>4</b>
<b>Introduction</b>	<b>5</b>
<b>Day 1</b>	
<b>The Residential School Legacy</b>	<b>6</b>
Kimberly Murray, Assistant Deputy Attorney General, MAG	
<b>Justice Panel</b>	
Daniel Mitchell, Crown Attorney for the District of Thunder Bay	8
Joy Wakefield, Legal Aid Ontario	9
Regional Grand Chief Pierre Pelletier	10
Key Themes	12
<b>Leadership Panel</b>	
Chief Wilfred King of Kiashke Zaaging Anishinaabek First Nation	13
Carol Rowland, Health and Social Director for Pic Mobert First Nation	13
Michele Solomon, Councillor from the Fort William First Nation	14
Key Themes	16
<b>1850 Robinson Superior Treaty</b>	<b>16</b>
Kim Alexander Fullerton	
<b>Day 2</b>	
<b>Aboriginal People’s Court</b>	<b>19</b>
Frances Wesley, Urban Judicial Partnership Capacity Builder/Trainer	
<b>Justice Programs of Ontario Native Women’s Association</b>	<b>21</b>
Kayla Moses, Aboriginal Victim and Family Liaison	
<b>Reconstituting an Anishnaabeg Justice System</b>	<b>22</b>
Marlene Pierre of the Fort William First Nation	
<b>Beendigen</b>	<b>23</b>
Julie Leblanc, Family Court Support Worker	
<b>Union of Ontario Indians Legal Services</b>	<b>24</b>
Linda Seamont, the Legal Administrative Coordinator	

<b>Feathers of Hope</b>	<b>25</b>
Talon Bird, Marilyn Boyce and Caitlin Bird	
<b>The Workshops</b>	<b>27</b>
Legal Information and Access	27
Youth and the Justice System	28
Child Welfare	28
Family Law	29
<b>Closing</b>	<b>30</b>



## Executive Summary

### “It is time for Change”

Frances Wesley, Thunder Bay Indian Friendship Centre

There is a crisis for Aboriginal people in the Justice system throughout the country and that situation is no different in the Robinson Superior Treaty area. Over two days, Nokiiwin Tribal Council brought together experts and community members to share their thoughts on how to move forward in addressing the issues of access to justice in the Robinson Superior Treaty area.

The speakers provided us with a number of key points that needed to be addressed:

- Aboriginal people are disproportionately represented in the justice system. For example, at times in Kenora, 100% of the women in jail are Aboriginal women.
- The justice system has imbedded racial biases that adversely affect Aboriginal people.
- The link between the child welfare system and the justice system cannot be ignored.
- The legal programs and services currently provided to the Aboriginal communities in the Robinson Superior Treaty area do not meet the needs of the community members.

Moving forward, the participants from the Forum are looking to see action in a number of areas:

- a) Support Aboriginal approaches to justice to be reflected in the justice system, including Gladue and Aboriginal Courts.
- b) Apply a community development approach to addressing justice issues so that we are not waiting until people are in the justice system but being proactive by building strong communities and supporting community members, especially youth in their development.
- c) Invest in community programs and services.
- d) Find practical and immediate ways to deal with people who are in the justice system now.

There was a call for Nokiiwin to continue to show leadership to bring the communities together to increase the level of services available and continue the dialogue to address this critical issue.



## Access to Justice Forum Nookiiwin Tribal Council

### A. INTRODUCTION

Nookiiwin Tribal Council held the **Access to Justice Forum** on March 29 and 30, 2016 in the Valhalla Inn, Thunder Bay. A series of expert resource people presented on a wide range of issues, and participants contributed through questions, comments and deliberations in small groups.

In 2012, the Nookiiwin Board of Directors, in consultation with leadership, identified enhanced legal advisory services as a strategic direction to move towards. Requests had been received from members of Nookiiwin communities to assist in accessing legal services as they were not able to access services that were specific to other treaty territories.

The justice system, as applied to First Nations people, is widely acknowledged to be in a crisis. Aboriginal people across the country experience disproportionate levels of conflict with the justice system and suffer from highly elevated rates of incarceration. Systemic discrimination, insufficient legal knowledge, and conflict between the Canadian justice system and indigenous values, laws and ideologies regarding traditional approaches to conflict resolution are only some of the factors believed to be underpinning this negative relationship.

In the summer of 2015, Nookiiwin secured an internship from the law school for a 13-week summer project fully funded by Lakehead University's Bora Laskin Faculty of Law and the Law Foundation of Ontario.

The project began to look at what legal services are currently available to members, identify general gaps in these services, and start to develop a broad strategic path that Nookiiwin can follow to support improved access to justice for community members. Three key areas/activities were identified, the first being a forum on **Access to Justice** for the Robinson Superior Treaty Territory leadership and members to discuss these important issues. The Access to Justice Forum was generously funded by the Ministry of the Attorney General.

The lead facilitators for the session were Joan Riggs and Lynne Tyler from Catalyst Research and Communications.

This report summarizes the highlights of the Forum.

## Day One: March 29, 2016

The Forum was opened by Elder Rita Fenton who acknowledged that we were on Fort William Territory.

On behalf of Fort William First Nation Chief and Council, participants were welcomed to the territory by Councillor Michele Solomon of the Fort William First Nation. Northern Superior Regional Grand Chief Pierre Pelletier also provided welcoming comments.

Ian Bannon of Fort William First Nation, representing the Board of Directors of Nookiwin Tribal Council, provided an overview of how the **Access to Justice** Forum came to reality. The intention of the Forum is to improve access to justice for community members by finding ways to better navigate the justice system and serve the needs of community members.

## B. THE RESIDENTIAL SCHOOL LEGACY

### **Speaker: Kimberly Murray**

Kimberly Murray, Assistant Deputy Attorney General from the Ministry of the Attorney General, provided an overview of two aspects of the relationship between Aboriginal people and the justice system: the residential school legacy, and the lack of jury representation of Aboriginal people in Ontario.

The Indian Residential Schools Settlement Agreement was the largest class action settlement in Canadian history. It included five components:



1. **Common Experience Payment (CEP):** A payment was made to all people who attended Residential Schools. The problem with the CEP was that the records were in the hand of government and the churches. It is difficult to get a complete list of everyone that had attended the schools and the length of each person's stay at the schools. Who controls the history?
2. **Individual assessment process (IAP):** This was a settlement fund for claims of sexual abuses, serious physical abuse and other wrongful acts. This was not a simple process as each person had to appear in front of adjudicators and share their story and then they would be assessed an amount based on the perceived severity of their story.
3. **Commemoration:** \$20 million was allocated for commemoration activities and memorials that can be found across the country.
4. **Healing Foundation:** The Commission recommended that Canada reinstate the Aboriginal Healing Foundation, which funded healing activities in communities across

Canada. Closing of the Foundation has created a significant gap in community healing services.

5. **Truth and Reconciliation Commission:** It was a \$60 million, five-year process (with a year extension) that was intended to get to the truth of what happened at residential schools. It was the Aboriginal organizations that fought for the TRC, so that the stories of survivors could be heard and Canadians could know the true history of what happened at the schools. By the end the Commission collected 7,000 statements from survivors. There were many challenges associated with the TRC. The gatherings were not formal hearings, and the Commission had no formal powers. In the end there was not enough time or money to complete the task of uncovering the truth and building reconciliation.

A multi-volume final report was released. One volume, *"Calls to Action"* listed 94 recommendations, which can be grouped under different themes including child welfare, education, language and culture, health, justice and reconciliation.

The Calls to Action related to justice included the following:

- eliminate the over-representation of Aboriginal people in custody over the next decade including youth,
- implement and evaluate community sanctions that provide alternatives to imprisonment,
- develop FAS prevention programs in collaboration with Aboriginal people,
- undertake reforms to the criminal justice system to better address the needs of offenders,
- collect and publish data on the criminal victimization of Aboriginal people,
- adequately fund accessible Aboriginal-specific victim services,
- undertake an inquiry into missing and murdered Aboriginal women and girls and the link to the intergenerational legacy of residential schools,
- release data on the deaths of Aboriginal children in residential schools,
- identify and protect cemeteries where children of residential schools are buried,
- commit to the recognition and implementation of Aboriginal justice systems,
- fully adopt and implement the UN Declaration on the Rights of Indigenous Peoples as the framework for reconciliation.

In Ontario, the Honourable Frank Iacobucci was asked to do a review of the jury system in Ontario. When he spoke to Aboriginal people they didn't just want to speak about the jury system, they said the entire justice system was in crisis. His final report, *"First Nations Representation on Ontario Juries,"* released in 2013, made 17 recommendations to address this crisis and highlighted the need for enhanced relationships between First Nations and the Ministry of the Attorney-General through government-to-government relationships. The first recommendation, to establish a committee to oversee the implementation of the report's recommendations, has been done. The Debwewin Jury Review Implementation Committee is in place and 5 of the 17 recommendations have been implemented.

The second recommendation from the Iacobucci report was to establish the Aboriginal Justice Advisory Group (AJAG) to advise on broader matters affecting First Nations and the justice system. The AJAG is part of the Ministry of the Attorney General and has a mission statement to "support reclamation of Indigenous legal traditions and strengthen justice for Indigenous

peoples within Ontario”. The vision statement is “a transformative and unified circle of justice rooted in sovereignty, self-determination, reciprocity and reconciliation.” The focus is not only about programming and Gladue, it is about supporting communities.

AJAG is part of a Joint Working Group on Ending Violence Against Aboriginal Women and Girls, and provides the provincial secretariat support on the National inquiry on Missing and Murdered Indigenous Women and Girls.

### ***Comments and Question:***

- Chief King of Gull Bay First Nation pointed out that many Aboriginal people in the criminal justice system are the product of the child welfare system, and referred to numbers that show there are more children in child welfare now than were in residential schools years ago. Fundamental change is needed – the doctrines are racist and the basic concepts need to change. Judges and lawyers need to be trained in Aboriginal law.

## **C. JUSTICE PANEL**

*“It is time to put humanity back into the system.”*

Regional Grand Chief Pierre Pelletier

A panel of three speakers addressed these questions:

- What developments have taken place in the criminal justice system in the last 20 years that have affected First Nations?
- What are some developments for the future for First Nations people?

### ***Speaker: Daniel Mitchell***

Daniel Mitchell, Crown Attorney for the District of Thunder Bay, explained his role as “in a way, everyone’s lawyer acting on behalf of the public interest in the implementation of the law”. It is a role that can have a large impact. As the Crown, he advises the police on whether there is sufficient evidence to proceed; when a case goes to court, he will work with the victim and the defence attorney to move the case along and seek a resolution; and ensure that the victim’s point of view is part of the deliberations.



Over the last 20 years, he has seen the justice system move from having little community involvement to a greater role for victims and community members in certain areas. In the 1990s, communities made it clear they wanted a bigger say, and there was an awakening in the justice system to respond. This change happened all across the country. In Thunder Bay, since 1997, the Friendship Centre has operated a diversion program.

When the Criminal Code was amended in response to Gladue, the response was very slow in Thunder Bay as it was difficult for courts to meet the demand for Gladue reports, with only one writer at the Friendship Centre. In reality, every court is a Gladue court as every court has the authority to consider the history of Aboriginal people and the systemic obstacles they face when deciding the outcome of a case and the sentencing.

It is a very difficult process to change mindsets in the justice system, and different approaches have been tried, with various degrees of success. We are at the point where a number of people believe that it makes sense to establish an Aboriginal People's Court that integrates Indigenous concepts of justice. Brantford has established an Aboriginal Peoples' Court and that model is being considered for Thunder Bay.

***Speaker: Joy Wakefield***

Joy Wakefield has worked as a staff lawyer in Legal Aid in Thunder Bay for less than a year. She described the situation of the justice system as being in crisis – it is currently not working for First Nations people. At the same time, there are many things happening, and we need to look at the situation as an opportunity to make change. Some of the encouraging developments include: change in the federal government, the possibility that we may see some Aboriginal appointments to justice positions, and some beginning steps to improve First Nations representation on juries.



One of the challenges with the jury system is how people can come from outlying communities. It is important that we begin to see First Nations people reflected throughout the justice system, as Crown Attorneys, in Legal Aid, in the various agencies associated with the court and justice system. It is also so important that media reflect First Nations people as lawyers and judges and in other key roles. We need to encourage young people to go to law school, because who goes to law school influences who becomes a lawyer or a judge.

She outlined a series of actions that could help improve access to justice:

1. An expansion of diversion programs, especially in the satellite regions. This could include diversion to mental health programs.
2. A legal information kit on what to expect when you go to court.
3. Greater support and presence for someone going to court. It is important for somebody to be there who can support the person, even just a representative from their community or a local agency.

4. More information and education about the legal system.
5. Transportation: This is a big issue for many people – if they cannot get to court, how can they address the charges and defend themselves?
6. Date reminder system to help people keep track of all the different steps in the court process, which can be spread out over a long time.
7. Plans for meeting the needs of children when their parents or caregivers are involved in the justice system.
8. Justice loans, in which people can get a loan at the start of the process to pay a lawyer and stay out of prison system.
9. More legal advice and information for victims.
10. Advocacy for overall improvements throughout the justice system.

***Speaker: Regional Grand Chief Pierre Pelletier***

Northern Superior Regional Grand Chief Pierre Pelletier shared some of the questions he gets asked by community members. How can we help our children? When our children have contact with the mainstream justice system they get lost. Once they are in the system they do not have enough supports to get out. So many families need support. We have community members who go to jail so they can stay warm instead of living on the street. Why are we not working together as systems to deal with the underlying issues?



The Chief noted the importance of education. We need to support children and youth to stay in the education system. We need to help the next generation to have information, support and programs to stay out of the justice system. There are some youth programs in Thunder Bay but many youth outside the city do not have access to them.

We also need to ensure there are good supports for people once they are in the system, whether that is from their family or community programs. We need to work with them so they do not go back into the criminal justice system. Every family and every community is different, and we need to learn how to use the system to benefit each person.

We are in a crisis – nothing has really progressed, or at least not much, in the last 20 years. Clearly, the system has to change and we need to advocate for those changes. Many ideas have been suggested but few have been acted on. This forum is excellent and provides an opportunity to meet together and push these issues further so we can start to see some

progress. We need to work together to make a system that works for the people of the Robinson Superior Treaty. It will become a “justice” system because we take the time to listen and provide good guidance. Then the community members will have a chance for justice.

### ***Discussion and Questions***

- Chief King from Kiashke Zaaging Anishinaabek First Nation commented that the most common experience for a First Nations person in the criminal justice system was to see a white police officer, white lawyer, white judge and jury, white prison guards and a white parole officer. The only other Aboriginal person they see is in the cell block beside them. Some people are wrongfully convicted for crimes they did not commit. Something is very wrong with this system – how can we address this in the future?
- All of the speakers acknowledged there is racism in the system. Daniel Mitchell noted some initiatives are bringing about change, including Aboriginal policies, Aboriginal Justices of the Peace, and various initiatives by treaty organizations. Joy Wakefield pointed out that the system has a life of its own, and every time you ask it to change, the automatic response is “no”, is to resist and undermine that attempt at change. Chief Pelletier noted that Aboriginal people need to be at the table to shape all aspects of the system.
- Chief Hardy of Biinjitiwaabik Zaaging Anishinaabek First Nation called for more training of officials in the various ministries about the legal rights of First Nations, including MNR. Cultural sensitivity training is needed, particularly for the enforcement officers, as well as training about treaty and other Aboriginal rights. Kimberly Murray confirmed that it is the intention to provide this training through a community-controlled approach. The training will be mandatory.
- Lee- Ann Chevrette, Coordinator from the Thunder Bay Crime Prevention Council described the different programs that they do to address risk factors and improve protective factors. They are using a multi-sectoral approach and invited the different leaders to become part of the work of the Council and involved in providing people with what they need to be healthy and be safe.
- A member of the audience from Red Rock First Nation who is a mental health counselor highlighted that many of the people she works with in the justice system had previously been in the child welfare system. The numbers of Indigenous children in care are astronomical. We need to address these issues much earlier in the lives of the children. Most of the resources in child welfare are focused on protection rather than prevention. Kinship, culture and tradition are key to addressing the issues. Changes need to be made in a big way, or we will keep seeing the same cycle repeat itself.

## Key Themes from the Justice Panel

1. **We are in a crisis.** Can we call this a justice system for indigenous people when it fails us at every stage of the process, and when it is not based on Indigenous concepts of law and justice?
2. **The entire system needs to be examined and changed:**
  - Court appointments,
  - Probation,
  - Jury representation,
  - Victim services,
  - Integrated courts are needed,
  - Establish Aboriginal peoples court,
  - Diversion programs,
  - Mental health programs,
  - Aboriginal justice system.
3. **Advocacy is required.** Nothing has improved unless First Nation people have been advocates for themselves.
4. **Certain things need to be in each community to support people who are in the justice system:**
  - Families need support
  - Community based education,
  - Support people when a person goes to court,
  - Transportation,
  - Community based approaches to support people at their court appointments,
  - Date reminder system,
  - Someone who can take care of their children.
5. **Need a Robinson Superior strategy.** The Regional Grand Chief has called on the Chiefs to come together to discuss this issue.



## D. LEADERSHIP PANEL

The leadership panel of three speakers addressed these questions:

- What are some of the main reasons, for accessing justice system?
- What has been the experience with the justice system? Are there specific things community members have asked for?
- What would you like to see Nookiwin Tribal Council do in this area?

### ***Speaker: Chief Wilfred King***

Chief Wilfred King of Kiashke Zaaging Anishinaabek First Nation raised a number of questions and concerns about how community members access the legal system. In particular, he highlighted how community members have asked for more access to Legal Aid, for more assistance in dealing with the legal system. People are sometimes refused depending on the charges they face or the legal issues they are dealing with, and the legal clinic is very limited in the cases it can take on. The hope is that Legal Aid or other legal services will assist community members with the full range of legal issues, including criminal law, family law and hunting and fishing infractions.



The justice system often fails to recognize the right of First Nations to self-government, the existence of Aboriginal title, the importance of the Robinson Superior Treaty and the Indigenous rights set out in the UN Declaration on the Rights of Indigenous People and Section 35 of the Canadian Constitution. It would be useful to hire an Aboriginal treaty rights lawyer to advocate for and defend these rights, to be updated on case law and recent Supreme Court decisions about Aboriginal rights. It is also critical for First Nations people to be well-informed and educated about what our rights are in all of these areas.

### ***Speaker: Carol Rowland***

Carol Rowland is Health and Social Director for Pic Moberg First Nation. She previously worked for Nishnawbe Aski Nation, and in that role had an overview of the system, looking at issues such as suicide and restorative justice. Working in community is very different, very real and complicated.

How do community members access the justice system? Quite often the first point of contact is through some police force including Aboriginal Policing Services, and community members then enter into the justice system. Aboriginal people are over-represented in the jails, and everyone

has a complex story that has led them there, which might include family violence, alcohol, drugs, historical sexual abuse, driving violations and poverty.

Many community members have a problem accessing Legal Aid, and some don't have any legal representation at all. People sometimes plead guilty to crimes they have not committed simply because the system wears them down and they feel they have little choice. There are also practical issues, such as transportation, finances and sometimes simple things like having access to a phone when you get to court and your case is delayed. The justice system has no idea how to engage with people who have mental health issues. We need to find a way to truly support people on their healing journey.

Some possible actions to improve the situation include: more access to legal support whether Legal Aid or in other ways, court workers, invest in restorative justice processes, engage Elders (in the past Elders dealt with these issues and now we rely on police and charging which does not solve the problem), break the cycle and find ways to address the real issues.

***Speaker: Councillor Michele Solomon***

Michele Solomon, Councillor from the Fort William First Nation, participated in the panel on behalf of Chief Peter Collins who was unable to attend. Michelle started with telling us a story about her work as a student and introducing concepts like the TRC to mainstream students. She realized that for people outside of our community, they will have a reaction to what we have normalized in our communities. We need to be careful when we connect with each other that we not judge our neighbours. We need to recognize how the interventions of the justice system can sometimes break the relations between us. The legal system takes the humanness out of the connection between us.



One of the difficulties is with access to drug and alcohol treatment. People are not able to get an assessment or access to treatment until the legal process has been settled, which makes for major delays. Conditions of probation or parole may include not using drugs and alcohol which is difficult for people without the proper treatment services and other supports.

The exclusivity of the Canadian legal system reflects a single worldview. Restorative justice is important, however the conversation is difficult because of the closeness of the community. Sometimes, we can be divided by the oppressive nature of the hierarchy and the non-Indigenous system forced on us. Nokiiwin could come into the communities and have the conversations that we need to have and to acknowledge each other. They could talk with Chief, Council members, police, mothers who have lost their children and families affected by the justice system.

Community justice workers are needed in the communities. People get put into the system and do not know where they are. There are no halfway houses for First Nations in Thunder Bay, or a process for people to come home in a good way. We need to move beyond the justice “hamster wheel”.

Community development is an important part of addressing these issues. We need to find ways to engage others, to restore our sense of responsibility and our sense of who we are. We need to be accountable for our own individual healing and create the conditions for everyone to heal. As part of all of this, it is essential to know our rights as Indigenous people, and this goes beyond our treaty rights.

### ***Discussion and Questions***

- A counsellor from BZA First Nation highlighted the importance of providing healing from the very earliest point in the process. Education is also key, so that First Nations people know our own history and the effects of the residential school system, so that people can connect that history to their own life story. There is no point going to jail and getting out and going back to the same situation.
- Chief King emphasized the importance of culture, and the recognition that First Nations had our own laws and social structures that worked well, before the Canadian justice system was imposed on us. More family treatment is needed, helping people stop destructive behaviour and dealing with the effects of children being addicted to opiates. We need to talk as a community from the ground up – every community has the answers.
- A participant mentioned that if a person does not have a criminal record, they can automatically get a Legal Aid certificate. It would be useful for Band office to get on the distribution list for pre-dockets so that they can support their community members.
- A participant from Long Lake First Nation commented that FAS is a large factor in some legal cases, and the court system needs to get better at recognizing this and providing supports for people. Culture can provide healing and support alternate ways to heal. We also need to get at the root causes of why people are taking drugs and alcohol.

- What happens to people who do not self-identify as First Nation? Perhaps they were adopted at a young age, and now want to come back. How can we support people to reclaim their culture?

### Key Themes from Leadership Panel

1. We need to use a community development approach to address the justice issues.
  - We need to help people get off the justice hamster wheel,
  - Restore love and respect for each other in our communities,
  - Bring back traditional roles for managing behavior.
2. Part of what restores our sense of responsibility is our knowledge of our rights as indigenous people, including the UN Declaration on the Rights of Indigenous Peoples and the Constitution.
3. Community services and systems need to examine our assumptions and underlying beliefs and not promote shame. For example, can people get services if they are not sober?
4. If community members end up in the system, we need to ensure that they have access to restorative justice approaches.

## E. THE 1850 ROBINSON SUPERIOR TREATY

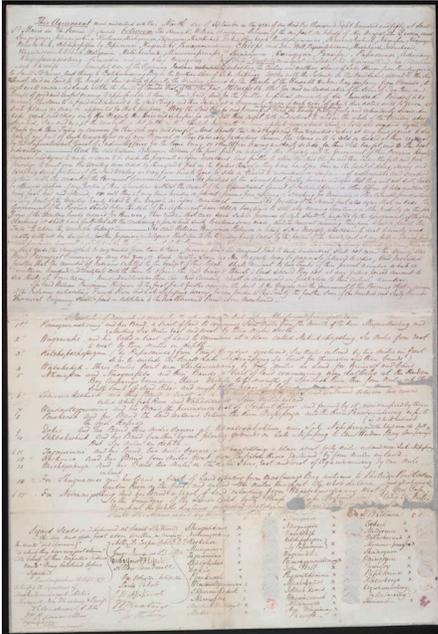
### *Speaker: Kim Alexander Fullerton*

Kim Alexander Fullerton, barrister and solicitor, gave a presentation on the 1850 Robinson Superior Treaty.

The problem with the justice system is that First Nations have been dispossessed of everything: land, governance, spirituality, community and social structures. Over time, the government has taken everything away and placed people into situations of poverty, racism and colonialism. It is not surprising that so many people end up in the criminal justice system. The justice system itself is broken. The whole approach is foreign to Indigenous culture – this is not how First Nations dealt with matters of justice.



The arrival of Europeans in this territory was the beginning of the end. Initially, there was a good profitable relationship with Europeans based on the fur trade. But as more and more people came over, things started to change. In 1849, there was an incident near Sault Ste. Marie and a mine was burnt down. The government sent out a commission to discuss whether First Nations were ready to enter into a treaty and on what terms. The answer was “maybe”, with a lot of mixed feelings. The biggest proponent of the treaties was the Hudson’s Bay Company.



The 1850 Robinson Superior Treaty is a one-page legal document between Her Majesty Queen Victoria and named Chiefs and principal men of the “Ojibwe” Indians inhabiting the Northern Shore of Lake Superior. The agreement was not between all of those residing on the north shore, only those named leaders. Only 3 recognizable names had signed the treaty, and yet there are 12 communities.

For the sum of two thousand pounds (about \$8,000) up front and five hundred pounds (about \$2,000) annually in perpetuity, the chiefs and principal men granted title in the whole of the territory except the reservations described in the treaty, which were set aside and not surrendered to the crown. Did they understand what that meant? Probably not. First Nations did not have the concept of land ownership that Europeans did.

The treaty did not say that their way of life was being given up, or their system of governance, or laws or anything else. The crown promised to allow the chiefs and their people “the full and free privilege” to hunt and fish over the territory ceded by them, and continue to practice their way of life. The exception to this was that some land could be sold or leased for extracting minerals. The chiefs certainly would not have agreed if they had understood it would mean their people could not feed themselves.

The government of Ontario is interpreting the treaty to mean First Nations can only hunt and fish within the treaty area, but the treaty does not say that. It grants the right to hunt and fish across the treaty territory, but it does not say you cannot hunt anywhere else. This interpretation has recently started to change, and now First Nations people can hunt and trap in other people’s territory with their permission.

Progress is being made and things are slowly getting better, but much more needs to be done. As First Nations get back control of their lives and self-government, more improvements will come. We are finally beginning to fulfill the wisdom of the ancestors. They made a good bargain, but the crown completely screwed up. Now changes are starting to get First Nations control of the land again.

## ***Discussion***

- Chief King referred to the Royal Proclamation of 1763, and the subsequent treaties in which Indigenous people sought to protect their way of life and did not agree to give up their sovereignty. In order to understand the treaties we need look not only at the written text but at the historical oral record.
- Our ancestors had no idea that so many people were coming, and that they would cut down trees, take the land, and so on. What is needed now, all across Canada, is to sit down with the First Nations and renegotiate the treaties. First Nations should be benefitting from what is happening in Canada. There needs to be a way that First Nations can be restored to power, govern themselves and manage the resources of the land.

The first day of the Access to Justice Forum was closed with a prayer by Elder Rita Fenton.





## Day Two: March 30, 2016

The second day was opened by Elder Victor Pelletier of Fort William First Nation.

### ***Speaker: His Worship Marcel Donio***

His Worship Marcel Donio, Senior Native Justice of the Peace, was unexpectedly able to be part of the sessions for part of the second day, and shared some observations prior to the scheduled presenters. He commented on some of the many challenges facing Aboriginal people in dealing with the justice system. One of the examples he gave concerned individuals who face fines of thousands of dollars for driving offences (e.g. driving without insurance) which could have been avoided if the person knew more about their rights and options, such as the importance of attending court and providing information that may reduce the fine. His Worship kindly offered to be available informally to participants throughout the morning, should anyone have questions for him about the judicial system.

## F. ABORIGINAL PEOPLE'S COURT

### ***Speaker: Frances Wesley***

Frances Wesley, Urban Judicial Partnership Capacity Builder/Trainer from the Thunder Bay Indian Friendship Centre, gave a presentation on the need for an Aboriginal People's Court in Thunder Bay, and the work to date. Aboriginal people are vastly over-represented in the justice system, and this proportion is growing. It is time for change.



The process for creating an Aboriginal court has been underway for several years. About five years ago, a Justice Circle was convened to explore setting up a Gladue court in Thunder Bay. Originally, the hope was to have it established by 2013 and although that did not happen, work continues and the concept has evolved over time. A few years ago, NAN Legal Services and the Friendship Centre met with officials from the justice system to discuss the idea of an Aboriginal People's Court. Thunder Bay is a logical location for such a court because it is a focal point for justice services for Aboriginal people across the region, including NAN and Treaty 3 communities.

The Friendship Centre obtained funding to go to communities in the region to hold workshops and discussions on legal issues. As part of this work, First Nations courts in BC were visited. In comparison to what is happening in Thunder Bay we are "behind the times." Canada generally has fewer options to jail compared to other jurisdictions and it is time to make changes.

What would an Aboriginal People's Court look like? It would be designed by Aboriginal people to provide a sensitive and non-threatening environment, and be aligned with First Nations cultures. For example, medicines would be available in the courtroom. Different agencies would work together to provide supports and services the individual might need to make change in their life. The focus would be on healing, rather than punishment.

The BC First Nations Courts feel comfortable and almost welcoming; Elders are present and participate in the proceedings. At the Gladue Courts in Toronto and Brampton, the judge sits in a circle with the crown attorney, the defence lawyer, the accused, and the family. The judge may or may not wear their robes.

To move ahead with establishing an Aboriginal People's Court in Thunder Bay, the cooperation of other agencies is essential. Also, a decision from the Chief Justice is needed to proceed with setting up such a court.

Potential barriers include misconceptions about this approach as a "free ticket out of jail", a lack of understanding of Aboriginal culture and why certain approaches are used, and the lack of a centralized list of community resources that the court can engage in order to support the individual.

A Working Group has been set up to continue moving forward on this initiative, and His Worship Marcel Donio has agreed to chair it.

## G. JUSTICE PROGRAMS OF ONTARIO NATIVE WOMEN'S ASSOCIATION

### *Speaker: Kayla Moses*

Kayla Moses, Aboriginal Victim and Family Liaison for the Ontario Native Women's Association (ONWA), presented some information on ONWA's Justice Program. ONWA was established in 1971 to empower and support Aboriginal women and their families throughout Ontario. There are offices across Ontario. For example, there is a Sexual Assault Worker based in Sioux Lookout and Victim and Family Liaisons in Kenora and Thunder Bay.



The objective of the Aboriginal Justice Program is to reduce the rates of victimization, crime and incarceration among Aboriginal women. The program also strives to assist the mainstream justice system to become more responsive and sensitive to Aboriginal needs and culture. The program includes the Ending Violence Against Aboriginal Women Project, and the Aboriginal Victim and Family Liaison Program.

As an Aboriginal Victim and Family Liaison, Kayla's job entails several different aspects. Her main role is to assist women through the justice system, including explaining the court process to them, helping them complete forms and so on.

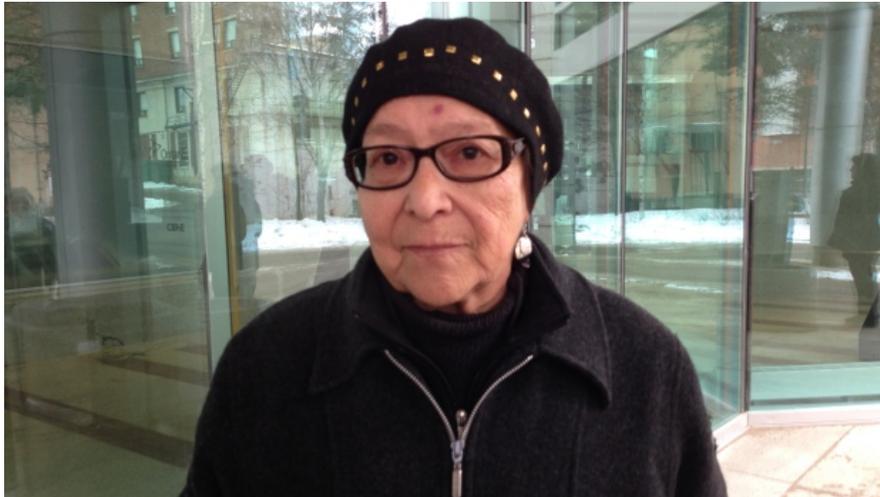
She also works with women on the street to provide safety tips, and helps connect women to different services they might need. ONWA has produced a Missing Persons Kit and safety alarms (this emits a loud noise to attract help when a woman feels unsafe), which Kayla distributes at workshops and gives to individual clients.

ONWA is also involved with a wide range of other services and programs, such as Housing First, which are closely related to providing safety and security for Aboriginal women. Partnerships with other agencies and services is key to the effectiveness of the ONWA programs, and this collaboration is an important part of the work of the Aboriginal Victim and Family Liaisons.

## H. RECONSTITUTING AN ANISHNAABEG JUSTICE SYSTEM

**Speaker: Marlene Pierre**

Marlene Pierre of the Fort William First Nation spoke about her family's experience with the legal system after her grandson died in the District Detention Centre eight years ago. After walking out of the first inquest, and the many delays since then, the family has been trying to have at least one Anishnawbe on the inquest jury but in the end there were none.



Out of this experience has come a document that sets out a series of recommendations that provide a framework of what could help First Nation people in the justice system. The document was completed in January 2016 and will be sent to all Chiefs in the Robinson Treaty and then to other First Nations organizations across Ontario and possibly elsewhere in Canada.

The justice system does not serve Aboriginal people and many people, such as Idle No More, have shown that it is time to dismantle a system based on colonialism and find within ourselves what would be our own Anishnaabeg legal system. It is time to set up an Anishnaabeg justice authority, Anishnaabeg courts. We need our knowledge-keepers to come together and build this system.

In a comment from the audience, Chief Peter Collins of the Fort William First Nation talked about the terrible “rat’s nest” that is the District jail. We do not need a new jail. Instead, it is time to create our own alternative, an approach that is based on healing and education, and that helps people get back to their life, their family and their community in a good way.

## I. BEENDIGEN

### ***Speaker: Julie Leblanc***

Beendigen is a crisis home for Aboriginal women, and Julie Leblanc, Family Court Support Worker, provided some background on the overall services and specifically the Family Court support services.

There is life beyond violence. Beendigen offers a full range of services that a woman needs when leaving domestic violence and starting her life over. In addition to the crisis home, other programs include prenatal supports, transitional housing support, NNADAP, and a 24-hour helpline for Aboriginal women, especially for women in the North who have no supports in their community. Services are offered in Ojibway, English and some Cree.



Along with other agencies, Beendigen noticed problems in the Family Court system. Women had no knowledge of the law, and were frightened and overwhelmed by the legal process. Coming from a life of violence, women were easily intimidated by authority, by lawyers and by the court system.

In response to this, Beendigen has a Family Court Support Worker to let women know what the process is, to help them prepare to meet with a lawyer, and to assist them with paperwork. As the Family Court Support Worker, Julie has worked to identify lawyers who work well with Aboriginal women leaving domestic violence situations, and is able to connect women with these lawyers.

Julie works with each woman to write down the history of abuse before meeting with the lawyer, because when they meet the lawyer they are often too emotional to remember all the details. Julie generally attends the meeting with the lawyer, to provide support and reassurance and to help remind the woman of some of the things she wanted to say to the lawyer. The woman may be too nervous to ask questions and Julie can help her. After the meeting, Julie will talk with her about what happened and go over any other questions she might have.

For women coming from the North, it is already a shock to come to Thunder Bay, and can be overwhelming to be in a strange place. Added on top of this is the stress of dealing with a court case and trying to start a new life.

Julie will often take the woman for a tour of the courthouse beforehand, so she can see how everything works, and also to be reassured that there will be security present. Many abusers use the time while they are waiting to go into court to intimidate their ex-partner. Julie develops

a safety plan with the woman before going to court, and will notify the court if she is at risk. Transportation is provided by Beendigen to and from court.

There is good coordination with many other agencies, such as the Family Law Information Centre, duty counsel and Legal Aid, because it is important to let women know what services they are entitled to. Julie also refers women to specialized services in the community, such as counseling or programs at the Friendship Centre.

Woman abuse is a crime and has a serious negative effect on the family, the children and the community. It has a particular impact on the children. Also, violence does not end with separation and can often escalate at that point, so an overall community response is important.

Julie closed by commending the Moose Hide campaign and the important role of men in making changes to end violence against women.

## J. UNION OF ONTARIO INDIANS LEGAL SERVICES



### **Speaker: Linda Seamont**

Linda Seamont, the Legal Administrative Coordinator at Union of Ontario Indians, gave an overview of the work of the Legal Department. The legal team includes a legal counsel who is also the director, the administrative coordinator, a paralegal worker and two law students, currently from Nipissing First Nation. The paralegal position can be very helpful to communities in developing or updating policies, e.g. housing policies.

Services include Aboriginal law, employment law, corporate law, human rights, restoration of jurisdiction, energy, mining and other areas. The legal department has no government funding, so services are offered on a fee-for-service basis. The intention is to work toward an Anishinabek Justice Centre, with a full range of legal services, but that has not yet been possible financially.

The legal department has been active in appeals and redress, training 24 Anishinabek members to do mediations. Unfortunately the funding was cut, but mediation services are still offered on a fee-for-service basis.

In matrimonial property law, the legal team develop a template for policies in this area for 39 First Nations.

Resource manuals have been developed for the Truth and Reconciliation process, and the legal department is collecting names and consent forms for a plaque on the Residential School Monument that was set up in 2012 in front of the UOI offices on Nipissing First Nation.

The legal department has also provided training on Aboriginal treaty rights, participated in a one-day consultation with the Law Society of Upper Canada on access to justice for Anishinabek First Nation members, and assisted with First Nation representation on juries, including providing advice and recommendations to the Iacobucci report.

For the future, the legal team plans to continue to participate in public advocacy opportunities (such as public inquiries, coroner inquests, Tribunal hearings, etc.), and in the Aboriginal Justice Initiative, including Native diversion programs. They will also continue to provide services to First Nations, including contract management services (RFP development, contract development, contract management) and development of by-laws for communities. The team will research and access funding support for the Missing and Murdered Indigenous Women inquiry, and work with the Ministry of Attorney General on jury recommendations.

Linda closed by reviewing the scope and limitations of legal work the department can undertake, and the approvals and appeals process for taking on work. For example, the department cannot undertake criminal or family law unless it advances arguments related to Aboriginal or treaty rights.

## K. FEATHERS OF HOPE

***Speakers: Talon Bird, Marilyn Boyce and Caitlin Bird***



Talon Bird, Marilyn Boyce and Caitlin Bird presented some information on the Feathers of Hope initiative and more specifically, the recent Justice and Juries gathering. The Provincial Advocate for Children and Youth ran two pilots in 2012 on the needs of youth, and out of that decided to focus their work on the North. In 2013, Feathers of Hope was born – a youth forum with 150 participants, 15 themes and 3 main recommendations: that all three levels of government and First Nations work as partners to address the issues, that youth be full partners, and that a five-year strategy be set out (which we now have).

The justice system greatly affects Aboriginal youth. Although only 4% of the population, Aboriginal youth are 23% of inmates. We know that many of the youth in the justice system were in the child welfare system.

The Iacabucci report on juries included a recommendation on youth, so it made sense to have Justice and Juries gathering as the next step. The gathering brought together 2 youth from each community in north west Ontario between the ages of 14-29, who met in Thunder Bay. There were 150 places and over 400 applicants.

The discussions started about juries, but became so much more. People cannot leave their families for 10 days to sit on a jury with no pay. Youth have our own voice and need to not be pushed aside. When nobody on your jury looks like you, or knows the protocols, or knows how you were raised, how is that a jury of your “peers”?

We must address the broader issues in the justice system because the whole system is failing us: police, courts, prisons, all of it. It is a foreign system that came here and was never meant to incorporate traditional Indigenous values.

The Aboriginal approach is restorative justice and healing, not punishment or revenge. Its about knowing right from wrong and being on a good path.

Police are often the first point of contact with the justice system for Aboriginal youth, and the relationship often fails. There is a responsibility to establish a trust relationship, but youth mostly fear them. There are stereotypes, fear and intimidation. Many youth do not know their rights, e.g. that police need permission to search a person. There is over policing of Aboriginal youth in urban settings, while there is under-policing in First Nations communities, with too few First Nations officers. Police need to understand the history and unique legacy of Aboriginal youth. Youth need education on their rights and how the law works.

Gladue courts: The Supreme Court of Canada requires courts to consider the harmful treatment of Aboriginal people (residential schools, the 60s scoop and other systemic issues), and gives the courts the options other than jail. Many Aboriginal youth do not know that Gladue exists, and better education is needed. All youth need to be informed of this option, as not everyone self-identifies as Aboriginal.

The youth representatives commented on how powerful an experience the Justice and Juries gathering was, and how the youth still stay in touch with each other through Facebook and other ways. Feathers of Hope is a living, breathing process that is constantly moving forward.

The audience thanked the youth for their courage and asked several questions. In response, the youth indicated that there will be other gatherings, and every five years and new five-year strategy will be developed. Whenever they can, the Feathers of Hope goes into a community where they are invited. When they come, they gift the process to the community – there is no cost. They are also working on a pilot project for younger youth, including a mentorship program for those in the child welfare system.

## L. GROUP DISCUSSIONS

In the afternoon, participants worked in small groups to identify legal issues and supports in the community, and services needed. Each group also suggested three actions for Nokiiwin Tribal Council in their area.

### Legal Information and Access

1. Current supports and services include:
  - Kinna-aweya Legal Clinic (limited in services)
  - Red Rock First Nation has two family support workers who attend court with clients.
  - In Pic Mobert First Nation, the Health Manager and Social Director takes on this responsibility of justice and will attend court and advocate when asked.
  - Geraldton has a court worker who covers the Long Lake/Geraldton area.
  - There is a NAN Community Legal Worker who deals mostly with criminal cases.
  
2. Legal issues and services needed:
  - a) Tool kits explaining estate planning, wills, power of attorney rights under Indian Act in layman's terms. This would include an understanding of AANDC responsibility for deaths/funeral expenses/estate settlements to people on and off reserve.
  - b) Knowledge and education about the rights of First Nations people, including MNR hunting and fishing, and criminal law.
  - c) Legal assistance in POA Court (Legal Aid does not provide help for people appearing in circuit POA courts).
  - d) A worker to train and educate people about Family Law and advocate on their behalf.
  - e) Courtworker services in Pic Mobert.
  - f) Transportation to and from courts.
  - g) Thunder Bay Indian Friendship Centre have a liaison person within the First Nation communities.
  - h) Childcare support for families that need to attend court.
  - i) A Native Inmate Liaison Worker (NILO)
  - j) Mandatory training for judiciary and lawyers about Aboriginal history and legacy, including local aspects.
  - k) Education about the history within our own communities.
  
3. Would like to see Nokiiwin Tribal Council:
  - a) Develop a regional network of who to call if a legal situation comes up in your community,
  - b) Advocate for funding for a Legal Justice Worker in each community, who would provide legal education and advocacy on a range of legal issues: family, criminal, MNR, etc.,
  - c) Annual workshops and follow-up to this workshop. Each year, look at what we have accomplished in the last year, and what needs to happen next.

## **Youth and the Justice System**

1. Legal issues and concerns youth are dealing with:
  - There is nothing to do – no resources, no activities, no mental health or other services, so problems arise: criminal activity, family violence, drinking, drugs, etc.
  - There is also a lack of communication, knowledge and inclusion of youth in the decision-making in the community.
  - The lack of cultural diversion programs also contributes to problems youth have with the legal system.
  
2. Supports and services needed:
  - a) sports and recreation activities,
  - b) cultural learning and programs – mentorships, sacred fires, activities in the community and in jails,
  - c) create realistic probation conditions that do not exclude the youth from the community,
  - d) education for lawyers, judges, court workers about Gladue; need Gladue available everywhere, including for youth.
  
- c) Would like to see Nookiwin Tribal Council:
  - a) Get involved with youth forums, youth councils, mentorships and other programs that allow youth to connect with one another,
  - b) Provide more cultural events and activities for youth, including youth in jail: sacred fires, drum making and other work; help youth reclaim their cultural identity.

## **Child Welfare**

1. Legal issues and concerns:
  - Not enough foster parents
  - domestic abuse/sexual abuse/physical abuse
  - families do not know their rights,
  - families not being treated fairly monetarily
  - protection of the children is the focus instead of prevention
  - assessment of the foster parents
  - screening process not being done consistently.
  
2. Current supports and services:
  - Dilico,
  - Family support workers
  - NNADAP
  - CAS
  - Child mental health worker
  - North of Superior Counselling Services.
  - Thunder Bay Indian Friendship Centre program (innovative program)

3. Supports and services needed:
  - a) Hold the court in the person's home community so they can have supports around them.
  - b) Families need to have a healing process, opportunity to participate in traditional healing (e.g. sharing circles).
  - c) Legal advocate on behalf of children and families in the child welfare system.
4. Would like to see Nokiiwin Tribal Council
  - a) Coordinate a wrap-around program/case conferences.
  - b) Bring all resources and information together so people can access it more easily.
  - c) Hire a worker to go to communities and the surrounding region to provide information and support.
  - d) Facilitate the sharing circles (i.e. Elders, teaching).

### **Family Law**

Family law includes: enforcement of support payments, divorce and separation, family and justice services, child custody and access, spousal support and child support, division/equalization of family property, matrimonial home, child protection and adoption.

1. Legal issues and concerns
  - Lack of knowledge about legal system and our rights,
  - Abusive police officers.
  - Custody issues.
  - Bringing children home.
  - Matrimonial law: if a First Nation couple separates after 25 years there is significant consequences and costs,
  - No lawyers/no court supports,
  - No Gladue workers.
2. Current supports and services:
  - Dilico (Not a good balance – Of the 21 staff members, 5 are native)
  - Robinson Superior Legal Services need to be advocates.
3. Supports and services needed;
  - Community forums or legal education,
  - More literature on your rights,
  - Legal support for Customary Care,
  - Restorative Justice Program/Diversion,
  - Taking back jurisdiction.
4. Would like to see Nokiiwin Tribal Council
  - a) Hire a Gladue worker.
  - b) Facilitate legal education outreach, e.g. have the Law School at Lakehead University come out to communities to share information.
  - c) Provide two Court Workers.

- d) Have a staff lawyer.
- e) Set up a 24/7 toll free helpline for advice and connection to services in communities.
- f) Advocate at the provincial and federal level.
- g) Increase access to Legal Aid.
- h) Hold more community forums such as this one.

## **M. CLOSING**

Ray Nobis, a member of the board of the Nokiiwin Tribal Council, thanked presenters and participants for the many important ideas and suggestions that had been shared. He acknowledged that there is a great deal of work to do, and also a commitment to move forward.

He also thanked the staff for their tremendous work in organizing the Access to Justice Forum. There were many last minute changes and the whole event went seamlessly.

Elder Victor Pelletier of Fort William First Nation provided the closing for the Forum.