

The Tsuu T'ina First  
Nation's Peacemaker  
Court throws out  
punitive justice and  
restores the ancient  
tradition of...talking

BY NORMA LARGE

# HEALING JUSTICE

**T**HE LAW CLERKS IN THIS COURTROOM WEAR typical judicial garb—official-looking, floor-length black robes with white collars. Mounds of paperwork are stacked on the polished desks in front of them. They are very busy this morning, sifting through piles of cases, getting ready to turn the wheels of justice on this, another day. But if you look very closely you'll see a feather design embroidered on the court tabs worn by the clerks.

Nothing here looks the same as courtrooms downtown. On the wall hang large pieces of aboriginal artwork; framed pictures of aboriginal leaders—chiefs, past and present—peer nobly at those sitting here. The faces of the people running the proceedings are largely aboriginal. Calling the room a “court” seems a bit of a stretch, yet justice is carried out here. It's just done, well, differently. Set in the tribal council chambers of the Tsuu T'ina First Nation, a community located just west of Calgary city limits, this is the Peacemaker Court.

The court is based on Tsuu T'ina laws. Its primary objective is to make peace between the victim, the wrongdoer and the community, using the traditional values and beliefs of the Tsuu T'ina people. Descendants of the Dene of the north and the Navajo of the south, these are a people rich in their traditions, as this court and its justice demonstrate.

At 10 a.m., court commences. A traditional smudging ceremony in this large, dome-like room marks the beginning of a new day. A braid of dried sweet grass and a bundle of sage are burned, and a waft of pungent smoke cleanses the air in preparation for the serious matters to follow. Oak desks are set out in a circle and there is room for the judge—though not a member of the Tsuu T'ina Nation, even he is aboriginal—the peacemaker officer, the Crown prosecutor, clerks, the accused and others from the community. Though just months have passed since its inception, on this day the public Peacemaker Court is filled to capacity. Some are here to make their plea, others come just to watch.



The Hon. Judge  
L.S. MANDAMBI



A YOUNG MAN SITS IN THE CORNER OF THE OBSERVER AREA. He is waiting for the court clerk to announce the first case on the docket. Glancing around, the teenager sees the woman whose home he broke into. She is here with her husband and other family members, and the teenager is visibly nervous. He looks downward, baseball cap in hand, shaking a little. He has never been to court before.

Unlike a regular, adversarial courtroom, there is no judge presiding from a dais raised above everyone else. There are lawyers, but they will only provide guidance on legal issues. Everything in the Peacemaker Court is done in a traditional circle setting. Across from the Crown prosecutor sits Ellery Starlight in an equal but different role as peacemaker officer. Together with the judge, they decide who should have their offences dealt with outside this public court set-

The over-representation of aboriginal people incarcerated in Alberta remains staggeringly high. Thirty-five per cent of all adult-sentenced admissions to Alberta provincial jails are aboriginal people and 56 per cent of all adult women sent into custody are of aboriginal heritage. Ellery Starlight knows this story well.

Tired of seeing his friends and other community members sent off to prison or fined heavily, Starlight welcomed the opportunity to be a part of the Peacemaker Court. He is not only peacemaker co-ordinator but also the court's administrator. In these roles, Starlight helps decide if an accused member of his community will be best suited to have justice meted out in a peacemaking talking circle or through the Canadian system with punishments of fines or jail time.



Photos by MIKE STURK

LEFT: Crown prosecutor Lauren Wuttunee and court administrator Ellery Starlight decide whether a case will be settled in the peacemaker talking circle. RIGHT: The judge, judicial clerks and crown prosecutor in the Peacemaker courtroom in the Tsuu T'ina administration building.

ting, in the traditional peacemaking talking circle—the private part of the process, in which only family and selected community members may participate.

As things proceed, it is agreed the young man will make an appointment to meet with the peacemaker officer to discuss whether the situation can find resolution through peacemaking, and in particular through a talking circle. After a brief whispered conversation, the young man scampers back to his seat, tips his head back and sighs with relief. Another young Tsuu T'ina member is called, and the process begins again.

PEACEMAKER COURT IS A PRECEDENT-SETTING ENDEAVOUR. And not just in the legal sense. The justice carried out here is a combination of Canadian law and Tsuu T'ina peacemaking values. A pilot project put together by the chief and council of the Tsuu T'ina Nation, and supported by the Alberta justice department, it is the only one of its kind in Canada, designed to directly address the high number of aboriginal offenders seen in Alberta courts, particularly Calgary and circuit courts throughout Southern Alberta.

Starlight is candid when speaking about the differences between Tsuu T'ina and Western justice. “They’ve always made their structure around punishment and try to be fair. So this way we make it fair, this is the way we see justice should be done.” Starlight stresses that the process of peacemaking is taken very seriously. “It’s not... going to be taken lightly, because we live here.” He adds, “We don’t want to be segregated, but at the same time we don’t want to be treated like this anymore.”

The treatment of aboriginal people in all facets of the Canadian justice system has been in the glare of media attention for the past several years. The issue became even more polarized by recent stories of aboriginal men being dropped off in sub-zero temperatures by RCMP officers miles outside of Regina’s city limits. One man froze to death. Aboriginal groups and organizations, including the Assembly of First Nations, have denounced the treatment of aboriginal people in the justice system, naming everyone from arresting officers to the largely non-aboriginal judges before whom many aboriginal men and women are forced to appear.

The 1993 Royal Commission on Aboriginal Peoples notes, “The current Canadian justice system, especially the criminal justice system, has failed the aboriginal people of Canada. The principal reason for this crushing failure is the fundamentally different world view between European Canadians and aboriginal peoples with respect to such elemental issues as the substantive content of justice and the process for achieving justice.”

CONTENT, PROCESS AND A “FUNDAMENTALLY DIFFERENT world view.” These define the separate shores of a wide gulf in need of bridging. Whereas the non-aboriginal justice mechanism regards crime as something to be punished, aboriginal peoples view deviant behaviour as something that requires healing—not only for the person committing the crime, but for everyone involved. For aboriginal peoples, that means healing the community as a whole. The idea is to forgo attaching blame and instead concentrate on the action and its consequences, with the primary goal of restoring the health of the community and re-establishing spiritual harmony. Aboriginal nations view everything as being connected in a cyclical way.

Canadian justice, in concentrating on the wrongdoing itself, misses the complexity of this relationship. In *Returning to the Teachings: Exploring Aboriginal Justice*, author Rupert Ross says the system “tends not to probe either deeply or wide enough. A jail sentence can sidestep rather than solve the problem.” The driving force in the Canadian justice system is punishment and retribution. It is built on the relationship of “superiors” over “inferiors,” which very directly characterizes the aboriginal relationship with Canada.

Aboriginal nations rely a great deal on distributive justice, the notion that people should share the responsibility of the health of the community. The potlatch and the traditional giveaway are ways in which aboriginal people look to their relatives for help when they have concerns or problems. Most traditional justice methods are based on talking things out to reach consensus.

Another distinction between Canadian and aboriginal traditional justice is the role of spirituality. In Canada, constitutional provisions that separate church and state make it difficult for western justice to rely on religion or spirituality as a source for dispute resolution. But for aboriginal nations and their traditional justice systems, spirituality is key to resolving conflict.

Canadian law also does not attempt to deal with psychological injuries resulting from wrongdoing. Traditional justice systems do, and that is the basis for healing. “Most

disputes are the product of bad attitudes, feelings or thinking,” writes L. Melchin Grohowski in an article entitled “Cognitive-Affective Model of Reconciliation.” “We use ‘head thinking’ about others, and traditional Indian process moves people to ‘heart thinking’ and ‘empathy with others.’” Injury which creates a dispute also manifests anger and pain. In trying to resolve the issue within the mind, excuses and justifications are produced in an effort to avoid the shame the injury has created. In aboriginal communities, this anger, pain and shame are addressed first and foremost.

The underlying philosophy in aboriginal society in dealing with crime, says the 1991 “Report of the Aboriginal Justice Inquiry of Manitoba” (vol. 1), was “the resolution of disputes, the healing of wounds and the restoration of social harmony. It might mean an expression of regret for the

injury done by the offender or by members of the offender’s clan. It might mean the presentation of gifts or payment of some kind. It might even mean the forfeiture of the offender’s life. But the matter was considered finished once the offence was recognized and dealt with by both the offender and the offended. Atonement and the restoration of harmony were the goals—not punishment.”

IN 1991, THE GOVERNMENT OF Alberta released its report, “Justice on Trial: Report of the Task Force on the Criminal Justice System and Its

Impact on the Indian and Métis People of Alberta.” “[T]he impact of the criminal justice system on aboriginal people,” it says, “can be measured by the disproportionate number of people in our correctional institutions. Aboriginal people are often on the receiving end of what appears to be a foreign system of justice, delivered, in large measure, by non-aboriginals.”

Indeed, this is a major reason the Alberta government has decided to work with aboriginal communities to try to address the high numbers of native men and women currently in prison. In the area of community corrections, Alberta Justice has entered into four agreements covering 11 aboriginal communities in the province, including the implementation of the Tsuu T’ina Nation Peacemaker Court.

The Peacemaker Court is supposed to be an amalgamation of Tsuu T’ina and Western justice. Therefore, Tsuu T’ina justice is not imposed; victims and offenders can choose where they would prefer to have their case heard. If someone decides against having their case heard in a peacemaking setting, then they will be directed through the regular system. The lawyers, clerks and the judge ensure the procedure of the court happens in accordance with Western law.

**Peacemaking is a time for talking about why the crime happened, why the person did the wrong. It is also a time to talk about what should happen to repair the damage.**

Judge L.S. 'Tony' Mandamin plays a huge role in this part of the peacemaker endeavour. A lawyer for 20 years, Mandamin, an Ojibway, specializes in the area of restorative justice in aboriginal communities. Mandamin was sworn in as a provincial court judge last spring, when he was designated to sit as judge at the Tsuu T'ina court, as well as in the regular court in Calgary.

Mandamin knows there will be challenges ahead for the Peacemaker Court but adds that it has been a remarkable feat by aboriginal communities even to get to this point: "Since the mid-1980s, aboriginal people have made progress in developing aboriginal restorative justice and demonstrating its worth in achieving justice. The challenge is to make it more broadly available where it is needed, and to develop long-term delivery."

"He's been a pretty good resource for me," says Starlight Jr. "He told me to look to our clan system [for guidance], and [that approach] is still apparent in the way things are done today. For instance, my uncle. Because of the amount of respect I have for him, I don't want him to...[be] disappointed in me. So you see, there is always someone in the family that everybody goes to."

Those are the people the Tsuu T'ina try to bring into the peacemaking process, says Starlight, adding that, at times, it has been difficult to attract them. But, he says, once they realize the importance of their participation for the whole community, many volunteer their time—and not only to protect their own family members. "Everybody is related to everybody here. The way the [non-aboriginal] court system works is that it is geared towards the individual, but on



Photos courtesy of the Tsuu T'ina Nation

LEFT: Tsuu T'ina Chief Roy Whitney listens to speakers during the ceremonial opening of the Peacemaker Court. RIGHT: Peacemakers Harley Crowchild and Rodney Big Crow.

Judge Mandamin is prickly at criticism the Tsuu T'ina endeavour will mete out justice overly lenient to aboriginal offenders. "Peacemaking involves an accused acknowledging responsibility to the community and the victim, should he or she choose to participate. Being accountable is not something one would regard as lenient."

If it is decided a dispute will be best handled in peacemaking, things are done the Tsuu T'ina way, says Ellery Starlight. "It's a talking circle, it's not a trial. For instance, we have elders here to basically look over what's happening in the circle. If they want to give their advice, then that's what they're there for. But if anything goes wrong in here, the elder says 'You don't do that, that is not allowed in this circle,' essentially saying, 'I don't want to hear that in here anymore.' You know, just kind of keeps people in line."

The role of elders is significant to Tsuu T'ina justice. Like most aboriginal communities, the elders are the ones who hold the knowledge of the past, including traditional justice practices. Only 30 years old, Ellery Starlight received his lessons in Tsuu T'ina values and laws at the hands of his father, respected Tsuu T'ina councillor Bruce Starlight Sr.

reserve, it's families, it's grandmas, it's grandpas. The families can be very protective because they don't want [the crime] to happen again."

BY AND LARGE A NEW CONCEPT IN THE LEGAL WORLD, restorative justice acknowledges that crime hurts people and communities, insists that justice repair those injuries and permits the parties involved to participate in the process. Victim, offender and affected members of the community become central to the criminal justice process, while government and legal professionals become mere facilitators. It is a system that aims at offender accountability, reparation to the victim and full participation by everyone.

Different from contemporary criminal justice in several ways, restorative justice, first, views criminal acts more comprehensively. Rather than defining crime as simply breaking the law, restorative justice recognizes that offenders harm victims, communities and even themselves. It treats peoples as human beings first and offenders second and recognizes that restoring peace to a community involves many responding parties, not just government and

the offender. Instead of calculating how much punishment is to be inflicted, it measures how many harms are needing to be repaired and sets personal goals for a wrongdoer so the crime does not happen again.

In a time of numerous re-offences, how does restorative justice profess to do this? In western legal terms, it happens through mediation. There is no word for mediation in the Tsuu T'ina language; they call the process a talking circle—a meeting where the victim, the offender and community members including elders sit together to essentially talk things out. From a justice perspective, these meetings are important ways to address the relational dimension of crime and justice. Restorative justice, or peacemaking, is characterized by three basic hallmarks: the offender admits responsibility for the crime; parties volunteer to participate; and an offender, taking responsibility for the harm resulting from her actions, comes away with a plan, based on the discussion, that addresses the wrongdoing.

Starlight says it is quite telling that most who've gone through victim/offender mediation like peacemaking are less likely to reoffend than if they had proceeded through a normal court. "There are a lot of benefits out of it, because finally people get to say their piece. You know, it is not tied up in the courts, adjourned for weeks, even years."

IF THIS METHOD OF RESTORING JUSTICE SOUNDS PROGRESSIVE, it is. Efforts to return to reparative and restorative means of justice are occurring all over the world. There are more than 300 victim/offender mediation programs in North America and more than 500 in Europe. Research on these programs has shown a higher satisfaction among victims and offenders who participated in mediation, less fear among victims, and a greater likelihood that the offender will complete a restitution obligation.

Manitoba has led the way for many years in turning around the number of aboriginal people in trouble with the law. An initiative of the Roseau River people in 1975 led to the establishment of a tribal justice committee, essentially a pre-charge diversion program dealing with youth referred by local police, probation services and community members. The committee makes recommendations in sentencing and supervises, through selected band members, regular court-administered community service. Farther north, the St. Theresa Point band, through its own youth court program, sentences young offenders to mandatory counselling by elders. Since the program's inception, the number of juvenile crimes perpetrated in St. Theresa Point has declined considerably.

Similarly, the Elders' Court established in 1990 at

Attawapiskat, Ontario, sees accused, referred to the court by the Crown attorney, admitting their guilt outright. Elders then make recommendations on sentencing and restitution, often community service work, curfews and other restrictions on social activity. (As with other aboriginal programs, the most serious cases, such as murder, are dealt with in the regular system.)

PEACEMAKING JUSTICE HAS ITS BASIS IN THE HISTORICAL traditions and values of the Tsuu T'ina, which aim at restoring the community to where it was before the wrongdoing occurred, a place of harmony. After decades of living under a western system of justice, this is not an easy feat for aboriginal communities. Starlight says some people in the community have even had to be reminded of the

old ways of restoring peace because, for many, those ways have been forgotten. In particular he is concerned about young people. "One of the problems is that maybe this person has not been taught, or they are searching for their identity, and those are the ones that need guidance." He says many young people need, even crave, this cultural intervention to help them appreciate their heritage instead of ignoring it.

Peacemaker Court began only last fall; at this early stage, its suc-

cess is too difficult to measure. Starlight says the Peacemaker Court will need the space and time to evolve naturally if it is to succeed the way everyone involved hopes it will. Other communities in Alberta are watching the Tsuu T'ina's progress, in preparation and planning for other, similar courts. The Siksika First Nation, east of Calgary, has set up a kind of circuit court in its tribal administration offices, where Judge Mandamin also presides several times a month.

IT HAS BEEN SEVERAL WEEKS SINCE THE YOUNG TSUU T'INA man appeared before the Peacemaker Court. After just one meeting with the family whose home he broke into, he has agreed to repaint the entire house exterior and is sweeping floors and doing general janitorial work voluntarily at the local high school. In this way, the young man has been asked to show his remorse to the victim and to the entire community. It is also hoped that by making him do the work in front of his high school peers, a period of humility will also deter him from crime in the future.

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