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REVITALIZING ROLES: THE INCLUSION OF INDIGENOUS ELDERS IN

CONTEMPORARY JUDICIAL CONTEXTS

BY

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INDIGENOUS ELDERS IN CONTEMPORARY JUSTICE

Approval of Thesis

The undersigned certify that they have read the thesis entitled

**“REVITALIZING ROLES: THE INCLUSION OF INDIGENOUS ELDERS IN
CONTEMPORARY JUDICIAL CONTEXTS”**

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Dedication

For Tirza and Noah

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Abstract

The emergent over-representation of Indigenous persons incarcerated within the Canadian criminal justice system highlights the ineffectiveness of Western methods of justice in addressing offending behaviour. Indigenous justice practices diverge dramatically from retributory measures, reflecting an Indigenous worldview fundamentally based in the relationship with and connectedness to all things. Elders are integral to these processes, maintaining a vital link of cultural identity, as well as offering support and guidance through the transmission of traditional teachings and experience. The goal of this study is to delve deeply into understanding the current role of Elders in contemporary justice practices with Indigenous offenders, in a collaborative and relationship based manner that honours the sacredness that defines Indigenous research.

Keywords: Indigenous Elders, Indigenous Knowledge, Indigenous legal principles, Indigenous research, restorative justice, therapeutic jurisprudence

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REVITALIZING ROLES: THE INCLUSION OF INDIGENOUS ELDERS IN CONTEMPORARY JUDICIAL CONTEXTS

Chapter 1 Introduction

The disproportionate rate of incarceration for Indigenous offenders is an alarming and international concern, expressed clearly and extensively throughout the literature from countries including Canada, the United States, New Zealand, and Australia (Gray & Lauderdale, 2007; Jeffries & Bond, 2013; Jeffries & Stenning, 2014; Lockwood, Hart, & Stewart, 2015). Despite widespread recognition of this significant over-representation, incarceration rates for Indigenous people are currently increasing, while an overall reduction is simultaneously occurring in the non-Indigenous population (Office of the Correctional Investigator, 2012). Statistical reporting further indicates that at present, Indigenous Canadians are incarcerated at a rate of 756 per 100,000, which is close to 10 times the non-Indigenous Canadian rate of 76 per 100,000 (Perreault, 2009). Although age, education, and unemployment are common factors cited in this overrepresentation, these factors alone neither sufficiently address nor accurately explain this disproportionate representation, and fail to take into account the historical role of colonization and oppression (Hyatt, 2013).

The broader context of Indigenous community trauma suffered as a result of historical victimization is vital in understanding the contributing factors to overrepresentation (Waldram, 2014). In situations of historical cultural genocide and group violence, the after-effects are far-reaching on multiple levels (Pearlman, 2013). Taking into account the individual, familial, community, and widespread societal impacts on Indigenous culture as a direct result of colonization, healing approaches

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focused on the individual level only remain fundamentally inadequate (Gone, 2009; Hyatt, 2013; Kirmayer et al., 2012; Waldram, 2014). Despite this, treatment programming for Indigenous offenders continues to remain individualized, as history is often considered a static, rather than dynamic, factor, thus inferring that historical trauma has no bearing on an offender's behaviour (Waldram, 2014).

Gladue

In the *R v Gladue* ruling, the Supreme Court of Canada determined that the over-incarceration of Indigenous persons in Canada resulted directly from: (a) systematic discrimination in the criminal justice system utilizing an institutional approach that was more likely to refuse bail and impose greater as well as longer prison sentences for Indigenous offenders, and (b) systemic contextual factors including poverty, lower educational attainment, substance abuse, and community breakdown as a result of colonization (*R. v. Gladue, 1999*). Furthering this decision, the Supreme Court of Canada underscored this perspective in *R v Ipeelee* saying that “the sentencing process is ... an appropriate forum for addressing Aboriginal overrepresentation in Canada's prisons” (*Ipeelee* at para 70), demonstrating the significant need to alter sentencing practices for Indigenous offenders from the ineffective yet ongoing retributive practices (Ross, 1994; *R. v. Ipeelee, 2012*; Rudin, 2012).

The existence of formidable responses to judicial sentencing, such as through the Gladue Courts in Ontario and First Nations Courts in British Columbia, answers these resolutions of the Supreme Court. However, many of these responses remain remarkably unacknowledged, particularly in terms of fiscal support for First Nations

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Courts and Gladue Report programs (Jeffries & Stenning, 2014; Joannou, 2015; Johnson, 2014; Makin, 2012).

Action Orientation

In light of the recent findings of the Truth and Reconciliation Commission of Canada with respect to Canada's participation in cultural genocide (Galloway & Curry, 2015) as committed against First Nations, Métis, and Inuit peoples, engagement in addressing the existing justice practices that lack cultural relevancy and resonance is essential (Johnson, 2014; McCaslin, 2005). Current movements in Indigenous justice indicate widespread and multi-level action, as these critical steps move Indigenous societies positively towards cultural reclamation, towards self-governance, and towards community healing (LaPrairie, 2005; Tait, 2007).

Listening to the voices of Indigenous peoples through their action validates identity, exposing the values and belief systems that despite various methods of delivery of justice, reveal the intricately woven connections that form the unique framework of a culture. In this collaborative study, I explored the integral role of Indigenous Elders in contemporary justice practices through an examination of foundational principles of Indigenous justice, as the revitalization of spirituality and the manner in which judicial sentencing practices are performed can transform justice into a healing experience for Indigenous offenders.

Research Questions

How have Elders participated in the articulation and application of the principles of Indigenous justice? What roles do Elders perform in the sentencing process? Why is

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it important for Elders to be restored to the role of knowledge keeper and transmitter, particularly in this contemporary context of justice practices?

Chapter 2 Literature Review

Part 1 Indigenous Justice

“Before the arrival of Europeans into the territories of the First Nations of North America, First Nations had their own laws and methods of social control” (Hanna, 1993, p. 1). The erroneous assumption articulately laid out in colonial discourse implied that Indigenous society existed without a legal system, painting Indigenous persons as uncivilized and without means of law, legal orders, and social control (Hanna, 1993; Napoleon, Cameron, Arcand, & 2007; Turpel, 1994; Vieille, 2012). At the 1886 trial of *Mis-ta-hah-mis-qua* (Big Bear) in Regina, Judge Richardson stated to the jury:

“True it is and it cannot be gainsaid that the Indian, as a rule, has not the amount of enlightened education and has not, perhaps, so much civilization as white men taken as a rule ... I have told you the law of the land already” (Turpel, 1994, p. 207).

The law Judge Richardson was referring to in this case was European law, as though unable to conceive any judicial standard other than this, particularly in the context of cultural superiority (Turpel, 1994).

Indigenous societies have continuously employed legal traditions and legal systems, traditions and systems that have persisted and are exercised in the present day, despite an intended cultural disempowerment (Dwyer, 2004; Hanna, 1993; Littlebear, 2000; Napoleon et al., 2007; Napoleon, 2007; Turpel, 1994). Melton (1995) describes the concept of Indigenous justice succinctly in saying, “Indigenous justice systems are based on a holistic philosophy. Law is a way of life, and justice is a part of the life process” (p. 126). North American Indigenous justice systems historically were directed

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through customary laws, traditions, and practices; learned and passed down from one generation to the next, through example as well as the oral teachings of the Elders (Melton, 1995). The holistic approach is characterized as a circle of justice, connecting all those involved with the problem or conflict, and circling around that main issue for the purpose of resolution to regain balance and harmony (Melton, 1995).

Fundamental principles of Indigenous justice include the restoration and reparation of relationships, as well as including concepts of healing and connectedness with nature and all beings (Gray & Lauderdale, 2007; Melton, 1995; Ross, 1996). Melton (1995) affirms, “It also involves deliberate acts by the offender to regain dignity and trust, and to return to a healthy physical, emotional, mental, and spiritual state” (p. 127). Interconnectedness magnifies from an individual to societal level, in that justice practices are not detached from other social dealings, but are rooted deeply and distinctly within belief systems. Littlebear (2000) underscores this relationship saying, “Aboriginal traditions, laws, and customs are the practical application of the philosophy and values of the group.” (p. 79). As indicated by the terms *restore* and *repair* linguistically, there is an essential component of action required on the part of the wrongdoer (Ross, 1996).

Indigenous Law

Indigenous law cannot be reduced in an overtly simplistic way as a set of guidelines or rules to be adhered to, but stems from an underlying belief system that conveys fuller meaning (Napoleon et al., 2007; Vieille, 2012). Legal processes are not delivered through a separate institution, rather they originate and are embedded within common social and relational interactions, traditions, lives, kinship, and place names

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(Napoleon et al., 2007). Indigenous customary law in Australia for example cannot be disentangled from Indigenous culture and way of life; it governs all aspects of the Indigenous people, establishing interpersonal rights and responsibilities, as well as those to the land and natural resources (Law Reform Commission of Western Australia, 2006). Māori society in New Zealand adheres to the *tikanga Māori*, an orally transmitted code of conduct and belief system embedded so deeply into the spiritual framework of Māori society, that historically it was said, “Māori people did not so much live under the law, as with it” (Jackson, 1988, p. 36; Vieille, 2012).

Napoleon (2007) notes the broad diversity between Indigenous societies within Canada, yet on a community level as well. A unique community context forms the social norms, beliefs, and behavioural outcomes, creating the local law that functions as a practical application of Indigenous laws and legal orders (Napoleon et al., 2007). These types of laws may be intrinsic, unspoken, and decentralized, yet become visible through traditions, practices, and customs (Napoleon, 2007; Napoleon et al., 2007). Napoleon (2007) describes an important function of Indigenous law as conflict resolution, saying, “All peoples have conflict. Conflict in and of itself is not a problem. The challenge is not preventing conflict, but managing it effectively so that it does not paralyze people” (p. 12). This speaks to the inherent meaning of Indigenous law as an integral element for healthy relationships within communities, as the law directly answers interpersonal needs (Gray & Lauderdale, 2007).

Many Indigenous nations within Canada describe their own methods of justice, and while commonalities exist between them, a key aspect also to consider is the decentralized approach where laws stem from worldviews and adapt to the unique

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contexts of the community (Dumont, 1996; Hanna, 1993; Napoleon, 2007; Napoleon et al., 2007). The Nlha7kapmx justice system for example, active in the Nlaka'pamux territory of the southern interior of British Columbia until the 1930's, was based on a system of social control where "authority figures were guardians of communal resources and ensured that people engaged in appropriate conduct" (p. 9), dealing with transgressors in a manner known as *xitl'ix* (Hanna, 1993). Government agents significantly diminished its continuance, resulting in the unilateral imposition of the Canadian justice system that has resulted in the over-incarceration of Nlaka'pamux people (Hanna, 1993). Historically, Indigenous methods of justice doing were, and continue to be, integral to the success of the community, as the incorporation and use has a direct impact on policing, community trials, and community work (Hanna, 1993).

A central worldview that ties in directly into Indigenous justice practices is the concept of universal connectedness, where the self is not divisible, relying instead on the innate connection between the mental, emotional, physical, and spiritual aspects of human existence (Hill, 2006; Lowe, 2002). Littlebear (2000) defines kinship as a "spider-web of relations" (p. 79) that provides balance through an interconnected ripple effect of circles extending to family and community, and then reaching beyond human relationships into relation with the natural world, an ecological view based on a continuous cycle of reciprocity and mutual respect (Gray & Lauderdale, 2007; Hill, 2006; Lowe, 2002).

Kinship relationships take on added dimension as they infer a distinct form of responsibility (Napoleon, 2007; Napoleon et al., 2007). When communal support, consideration, self-discipline and personal responsibility are enacted within our

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relationships, a level of character develops that can be cooperative while at the same time independent, and aware yet not intruding on the feelings of others (Carriere & Richardson, 2009; Poonwassie & Charter, 2001). Although the concept of social control from a Western perspective tends to correspond to a method of dominance requiring the forced dependency of others, an Indigenous worldview delineates it through a lens of intentionality, focusing on interrelatedness and interdependence as the means to community balance (Lowe, 2002).

Failure of a centralized approach to law may stem from the application of a justice system that has “evolved out of a context and history that is very different than the cultural and historical context of North American Aboriginal people” (Dumont, 1996, p. 42). Dumont (1996) describes traditional Anishinabe concepts of justice as centering on the re-establishment of balance and harmony in relationships, family, and community, governed through a process based on humility, integrity, and respect. Although the concept of retribution or punishment is present in Indigenous law, it can be determined through customary or natural laws, as opposed to posited (centralized) law (Dumont, 1996; Napoleon, 2007). The Anishinaabe justice system, for example, is one based on wisdom, restitution, reimbursement, rehabilitation, understanding, as opposed to correction, punishment, atonement, and isolation (Dumont, 1996). Again, the law distinctly reflects the worldview, as Dumont (1996) states:

As a people whose spirit and psyche revolve around a core of vision and wholeness that is governed by respect, it is natural that a system of justice evolved that, in desiring to effect and promote the right behaviour, not only

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attends to balance and reconciliation of the whole, but does so by honouring and respecting the inherent dignity of the individual. (p. 69)

Indigenous law grounds itself in the essential worldview of connection through respect, as the focus on the restoration of relationships re-engages the offender, rather than isolating and disconnecting through punitive methods (Dumont, 1996; Gray & Lauderdale, 2007; LaPrairie, 2005; Ross, 1996).

Restorative Justice

The central tenet of a restorative justice approach is the belief that justice practices are capable of repairing relationships between victims, offenders, and communities (Gray & Lauderdale, 2007; Ross, 1994). During the social movements of the 1960s and 1970s, restorative justice originated as a mainstream judicial response to improve ways of managing victims and offenders (Daly & Marchetti, 2012). The importance of communication between all parties involved is underscored, as space is created to include community members in a multi-layered dialogic process focused on conflict resolution (Daly & Marchetti, 2012).

Comparing approaches.

While Indigenous justice and restorative justice approaches have been considered as synonymous by some, they tend to converge in some areas while distinctly diverging in others (Marchetti & Daly, 2007). In Australia, Indigenous justice is considered as an important means of rebuilding Indigenous communities, repairing damage to Indigenous culture and social organization that has resulted from ongoing colonization and systematic violence (Daly & Marchetti, 2012; Dwyer, 2004). While some advocates of restorative justice may state that restorative justice is drawn from

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Indigenous peoples' justice practices, there is a caution that this “glosses over the histories and particularities of Indigenous social organization before and after colonial conquest” (Daly & Marchetti, 2012, p. 11).

Indigenous justice practices operate in reality as a transformative, culturally appropriate, and politically infused participatory jurisprudential manner, which extends far beyond the principles of restorative justice (Bond & Jeffries, 2012; Marchetti & Daly, 2007). Indigenous justice and restorative justice are similar in this: both recognized faults with the mainstream criminal justice system, in particular, the procedures in handling cases, an overuse of incarceration, and the stance of social exclusion towards offenders (Daly & Marchetti, 2012; Dwyer, 2004). Their differences, however, are reflected through their unique histories, the groups of people pursuing change, the various locations in which justice is carried out, the role and participation of victims, and their judicial foundation (Daly & Marchetti, 2012).

According to Daly and Marchetti (2012), similarities and differences between restorative justice (RJ) and Indigenous justice (IJ) may be broken down in this way:

Similarities.

- alternatives to mainstream criminal justice system;
- highlight improved communication between legal system, offender, victim, and community members;
- closer physical proximity between legal professionals and participants (i.e. circles, tables, locations outside of the courtroom);
- negotiating unconventional solutions for improved outcomes;

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- reduce victim fear/anger toward offender, such as through the offender making amends by sincere apology and reparation of harm;
- an emphasis on the process- respect, listening, equity.

Differences.

- RJ includes meetings or communication between offender and victim/victim's advocate;
- IJ focus more on offender than in other methods of justice;
- IJ goal on rebuilding Indigenous community, redressing Indigenous culture and social organization (political aspect).

Therapeutic Jurisprudence

A legal theory suggesting that law can be helpful, therapeutic, and even healing, the concept of therapeutic jurisprudence ties in closely with the restorative and Indigenous justice paradigms (Daly & Marchetti, 2012; Flies-Away & Garrow, 2013). According to Winick and Wexler (2003), therapeutic jurisprudence “focuses attention on the law’s impact on emotional life and psychological well-being” while proposing “to use the tools of the behavioural sciences to study the therapeutic and anti-therapeutic impact of the law” (p. 7). By practicing justice with the integration of psychological theory in an inter-disciplinary approach, the functioning of the law improves through decreasing anti-therapeutic outcomes and improving emotional well-being (Petrucci, Winick, & Wexler, 2003). The inter-disciplinary aspect is particularly interesting in that it can encompass a broad range of fields and professions including: mental health law, criminal law, problem-solving courts, children’s issues, legal education, health care, domestic relations, judging, social work, nursing, emotional

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responses within law, advocacy, ethics, legal practice, counselling and psychology, and policing (Auty, 2006; Daly & Marchetti, 2012; Petrucci, Winick, & Wexler, 2003).

Therapeutic Language

The sentencing process, in the context of therapeutic jurisprudence, becomes less personally and culturally damaging than mainstream justice practices (Auty, 2006). Although sentencing conversations remain difficult, Auty (2006) suggests a change in language that reflects Indigenous values, playing a significant role in creating a healing, culturally sensitive approach. In this case, therapeutic language includes words such as *ameliorative, dialogue, engagement, listening, respectful, attentive, gender balance, inclusive, inquisitive, cautious, quiet, poised, complexity, recognition, thematic, reconciliation, pausing, knowing, organic, fluid, and reflective* (Auty, 2006, p. 101). Non-therapeutic language on the other hand may be comprised of words such as *assumptions, hate, over-riding, stereotypes, ignoring, contempt, linear, mechanical, directory, medicalized, and myths* (although *myths* depending on the context can also be therapeutic) (Auty, 2006, p. 102). Changing the judicial discourse in this way conveys a therapeutic element focused on shame, communication, conversation, and the inclusion of Indigenous worldviews (Auty, 2006).

Problem-solving and Healing to Wellness Courts

Problem-solving courts generally attempt to address the underlying causes relating to legal issues utilizing an interdisciplinary approach, one that often includes the supervision of a judge as a comprehensive response for problems (King, 2010). In these types of courts, judging entails greater collaboration, based on the understanding that the court process itself can be a method of attending to underlying issues through a

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respectful, comprehensive, and humane approach (Flies-Away & Garrow, 2013; King, 2010). While the sentencing process can be more time consuming in this judicial context, Jeffries and Bond (2013) point out that decisions made under tight time constraints can “lead to a lack of comprehensive and reliable information on aspects of defendants’ circumstances being made to judicial officers” (p. 102). Embodying the principles of therapeutic jurisprudence, problem-solving courts take a collaborative approach to working with offenders, acknowledging the contextual and environmental factors that may influence offending behaviour, and addressing the capability of the judicial system to contend with these issues (Jeffries & Bond, 2013; Payne 2006).

The inclusion of spirituality holistically expands the approach of a problem-solving court into a healing to wellness court (Flies-Away & Garrow, 2013). Flies-Away and Garrow (2013) define this movement as a *spiritual revolution* (p.405) in therapeutic jurisprudence, a revitalization of connection, tying itself with human and Indigenous rights. This type of court also utilizes a team model, typically made up of a judge, coordinator, prosecutor, public defender, probation officer, substance abuse counsellor, and mental health counsellor, who work collaboratively to develop wellness plans (Flies-Away & Garrow, 2013). While wellness plans will contain general probation-like terms, they will also contain counselling programs, supplemental human service programs, life skills training, wellness activities, and most significantly, cultural activities designed to reconnect the offender with culture and a traditional way of life (Flies-Away & Garrow, 2013).

In the healing to wellness court paradigm, spirituality is referred to as the “plus” (+), which “works like an adhesive, helping stabilize form, frame, and foundation of not

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only principles and processes, but also persons” (Flies-Away & Garrow, 2013, p. 424). Flies-Away and Garrow (2013) describe spirituality as a manifestation of how a person perceives, accepts, locates, describes, and cultivates connection with others, both animate and inanimate. An increase in the self-esteem of offenders’ results directly by the inclusion of spirituality in wellness courts, facilitated through the blending of past understanding (Indigenous knowledge) with wisdom and strength (Flies-Away & Garrow, 2013).

Indigenous sentencing courts.

The Indigenous sentencing courts in Australia utilize Australian criminal laws and procedures for sentencing Indigenous offenders, while allowing Indigenous Elders and Respected Persons a shared role in the process (Luther, Mela, & Bae, 2013; Marchetti & Daly, 2007). According to King (2010), the promotion of a broad range of goals is central to these courts; aspects such as creating a more meaningful justice system experience for offenders, increasing engagement of members of the Indigenous community as participants and decision-makers, and addressing the underlying causes of offending behaviour are key areas of focus.

King (2010) outlines the following as the specific hallmarks of the Australian Indigenous sentencing courts:

- involve Indigenous people in the sentencing process;
- increase confidence of Indigenous people in the sentencing process;
- reduce barriers between the courts and Indigenous people;
- provide culturally appropriate and effective sentences;
- rehabilitate offenders and provide opportunities to recompense community;

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- provide support services to assist in overcoming offending behaviour;
- support victims of crime and enhance their right and place in sentencing process;
- increase accountability in the community, family, and the offender;
- decrease crime in the Indigenous community;
- reduce the re-offense rate;
- provide greater social context of the offender and offense for judicial officers;
- reduce the rate of incarceration for Indigenous offenders;
- reduce the number of deaths in custody;
- increase the rate of court attendance for Indigenous offenders;
- increase participation with community-based orders (p. 139).

First Nations Courts.

Four First Nations Courts currently operate in the province of British Columbia; they are open to First Nations, Inuit, and Métis offenders, and do not receive resources beyond a standard provincial court, despite a holistic approach utilizing a multi-disciplinary approach (Johnson, 2014; Whonnock, 2011). Unique characteristics of these courts involve the use of a long table, where a variety of persons may sit including: provincial Crown counsel, defense counsel, the Aboriginal advisor to the chief judge, members of the Elders council, social workers, alcohol and drug counsellors, mental health counsellors, native court workers, advocates, and families of the offender (Johnson, 2014; Whonnock, 2011). The Cknúcwentn First Nations Court, located in Kamloops, BC, is described as a problem-solving court, conveying the full meaning of Gladue principles through a restorative justice approach, including the

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collaborative involvement of the Aboriginal Community Justice Council, or Elders council as it is commonly referred to (Aboriginal Justice Council, 2013).

Johnson (2014) states that the inclusion of Elders in First Nations Courts moves Indigenous justice rights to a place of “Indigenous Therapeutic Jurisprudence +, the plus being the value their presence brings to the holistic intent of indigenous justice initiatives” (p. 1). The urgency of transforming Indigenous therapeutic jurisprudence in Canada from social, political, and economic standpoints is stressed, facilitated directly through the re-establishment, reclamation, and restoration of traditional Indigenous problem-solving methods for conflict resolution and wellness (Johnson, 2014). Currently, the mainstream justice system in Canada lacks cultural knowledge and awareness, as well as the ability to work with Indigenous peoples in an efficient manner, demonstrating the significant need for alternative judicial responses to offending behaviour (Whonnock, 2011).

Part 2 Indigenous Elders

Role in Society

The interpretation of the word “Elder” is culturally laden and linguistically located (Council on Aboriginal Initiatives, 2012). In English, it is a noun, and generally refers to a person of advanced age- a senior citizen. In contrast, in Indigenous languages, the word “Elder” is a verb, describing a role an older person has earned. This may include individual giftings such as wisdom and philosophy on life, cultural knowledge, and the ability to perform ceremonies- requiring a dedication to lifelong cultivation (Council on Aboriginal Initiatives, 2012). The word is based on the implicit inference that a certain amount of time is required in life to have gained the knowledge

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and life experiences necessary to achieve these gifts (Iseke, 2013). Indigenous Elders are acknowledged for their humour and capacity to know what is appropriate in a particular situation, and are integral to the community for guidance and sound advice (Aboriginal Healing Foundation, 2005; King, 2010; Tait, 2007).

The Aboriginal Healing Foundation (2005) identified some of the essential characteristics for Elders, including: (a) disciplined and committed to a lifetime of learning, (b) knowledge of traditional teachings and a commitment to helping people from within this paradigm; (c) physical, emotional, mental, and spiritual balance; (d) has an innate, or seeks, gift of healing from a traditional healer; (e) talk and actions match; (f) helps when able to; (g) integrates traditional values and ways of life with contemporary life in a practical manner; (h) treats family, other Elders, and community members with respect; (i) positive role model; (j) can teach and correct behaviour in a respectful way, without embarrassing the individual; (k) hopeful and able to see the positive in other people; (l) does not use drugs and alcohol or engage in destructive addictive behaviours; (m) does not charge a fee for healing services; (n) has knowledge of medicines and experience with ceremonies (p. 70-71).

The participation of Elders in any type of project is critical, their direct involvement guides the development and visioning through their wisdom, a role that must not be minimized (Tait, 2007). A solely academic or clinical approach will not maintain balance, thus requiring the enrichment and integrity that their inclusion offers. Tait (2007) stresses the importance of acknowledging the gifts shared by Elders, as they are vital not only to healing, but for strengthening individuals as well through the sharing of tradition.

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Elders in Justice Processes

“Elders are the embodiment of indigenous law.” (Johnson, 2014, p.1)

The knowledge of Elders is sourced in diverse and ancient effective conflict resolution processes (Johnson, 2014). By including Elders in justice processes, the holistic focus of the Indigenous justice paradigm is captured (Johnson, 2014). In the Indigenous courts of Australia, the authority of the judge is shared with Elders, particularly in regards to cultural concerns and matters of spirituality and wellness (Harris, 2006). For offenders participating in the Nowra Court, the Circle is a “deep, emotional, and spiritual experience”, due largely to the inclusion of Elders (Daly & Proietti-Scifoni, 2011, p. 8). The addition of Elders in the Koori Court of Australia is also impactful in that the most effective court experiences are where the judicial officer has shown an ability and desire to collaborate and share authority with the Elders, deferring to them in an obvious and public way in matters of culture (Harris, 2006). Harris (2006) states, “It is the participation of the Elders and Respected Persons that instil within the Koori Court proceedings the cultural and community element that is so important for the Court’s success” (p. 136).

In the Koori Court, comments made by Elders to offenders often stress interconnection through stating the value of that person to their family, extended family, and broader community (Harris, 2006; Marchetti & Daly, 2004). This connection is so crucial, in its ability to draw back individuals to their communities and ancestors, through informing them how they are connected and their responsibility to that connection (Harris, 2006). Elders create a more respectful and humorous environment in the Koori courtroom, connecting consistently with offenders due to cultural

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understanding and shared experiences (Marchetti & Daly, 2004). Restoring Elders to an authoritative role is also significant in that the importance of Indigenous culture and tradition is broadly acknowledged, particularly in regards to the active addition of Indigenous knowledge, skills, values, cultural values, practices, and beliefs in the justice system (Harris, 2006). The participation of Elders also increases accountability on the part of the offender, as well as influencing their behaviour and attitude (Marchetti, 2010; Morgan & Louis, 2010).

Spirituality and Justice

Elders carry the cultural knowledge, practices, and spiritual beliefs collectively held in Indigenous communities, passing this critical information on to subsequent generations (Iseke, 2013; Tait, 2007). Mohawk scholar Dr. Marlene Brant-Castellano (2000) explains that our outer and inner selves connect through our understanding of spirituality, creating a sense of belongingness to other people, as well as to the land. Health and healing are not restricted to the physical body; the spiritual self must be addressed to achieve balance, or wholeness. Healing is a profoundly spiritual journey; Elders share that “all healing is spiritual in the sense that honouring the spirit within each person, regardless of their circumstances, will naturally promote a movement towards healing and balance” (Aboriginal Healing Foundation, 2005, p. 72). This understanding is essential in addressing healing plans for Indigenous offenders (Daly & Proietti-Scifoni, 2011).

Elders are the hub of cultural programming in correctional institutions, offering spiritual guidance and cultural education, and significantly, an in-depth understanding of the reserve context, problems with alcohol, substance abuse, and with physical abuse

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(Waldram, 1994). Incorporating spirituality into healing programming necessitates a commitment to decolonizing practice in the judicial system, as Tuck and Yang (2009) aptly point out, “Decolonization is not a metaphor” (p. 5). An important step perhaps in the process of decolonization is the restoration of Elders, as their work re-establishes those crucial connections to self, the ancestors, spiritual practices, and the ways of Indigenous peoples and the land (Iseke, 2014).

Limitations

A lack of literature specifically addressing the role of Elders in justice practices as well as examining alternative court processes, such as the First Nations courts and other Indigenous courts in Canada is a significant issue at this time (Johnson, 2014). At present, the First Nations courts in BC do not receive funding outside of basic provincial court services (although they do receive minimal funding from the Legal Services Society of BC for duty counsel and Elders council honourariums), yet function as inter-disciplinary problem-solving or wellness courts. In this Indigenous justice approach, the engagement of community with the judicial process is fundamental for the success of the court participants. As there is no existing provincial funding, there is no data currently being gathered for statistical purposes, which would greatly assist in determining outcomes and measuring court progress. This type of data also may also generate and therefore increase research, resulting in a broader base of literature.

The devastating impacts of colonization have affected many Indigenous communities, particularly in regards to the freedom to practice justice and deal with offenders in a culturally and community relevant manner. The residential school system has also played a vast role in disrupting the intergenerational transmission of Indigenous

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laws, practices, values, and belief systems, removing Elders from their inherent role as administrators of justice and guides. As customary laws were generally transmitted orally or through modelling, the physical removal of multiple generations of Indigenous children resulted in losses of shared knowledge.

While these impacts are acute and have been devastating to Indigenous peoples, Napoleon (2007) reminds us that Indigenous laws and justice practices are dynamic and resilient, persisting in the present day not as a relic of the past, but transforming in a contemporary context to meet present day demands. It is the strength of the community that pushes the Indigenous justice movement forward; urged on by judges, lawyers, Elders, academics, counsellors, advocates, and the many other professionals who together believe: that justice *is* healing.

Summary

The disproportionate rate of incarceration for Indigenous offenders worldwide is a substantial concern, particularly in Canada as this rate continues to increase (Jeffries & Stenning, 2014; Office of the Correctional Investigator, 2012). The impacts of colonization, most significantly and visibly expressed through the recent findings of the Truth and Reconciliation Commission of Canada of cultural genocide, severed Indigenous people from justice systems and laws that while sharing broad principles, met unique community needs as key aspect of an efficient social system of conflict resolution (Hanna, 1993). The Supreme Court of Canada has acknowledged the failure of the criminal justice system in appropriately sentencing Indigenous offenders, and advocates for systemic transformation, both Indigenous and non-Indigenous alike, express the urgency in responsive and practical reform (Rudin, 2012).

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Indigenous justice systems are based on a holistic worldview, where the predominant beliefs of interconnectedness and kinship tightly intertwine an individual way of being with Indigenous law (Littlebear, 2000; Napoleon, 2007). Core values of respect, reciprocity, and relationship influence the ways in which justice is carried out, producing a focus on restoration, or rehabilitation, rather than punishment and isolation (Ross, 1996). The restoration of relationships that have been damaged through the offense- with the victim, community, and oneself, determines sentencing practices within an Indigenous judicial paradigm. While similar to restorative justice in many ways, Indigenous justice may have a greater focus on the offender. Significant attention in particular is placed on the political aspect and goals of rebuilding Indigenous communities, as well as redressing Indigenous culture and social organization (Daly & Marchetti, 2012).

Indigenous justice takes the theory of therapeutic jurisprudence a step further, making it a truly holistic approach, with the incorporation of spirituality (Flies-Away & Garrow, 2013). By utilizing therapeutic language and inter-disciplinary collaborative teams in a problem-solving or healing to wellness court model, justice can become a healing experience for offenders (Auty, 2006; Flies-Away & Garrow, 2013). The Indigenous courts of Australia, as well as the First Nations courts of BC, demonstrate the integral role that Elders play in sentencing processes for Indigenous offenders, incorporating crucial cultural and spiritual components (Daly & Proietti-Scifoni, 2011; Johnson, 2014). In this judicial context, Elders create a more respectful and humorous environment in the courtroom, create greater accountability, inform judicial officers on

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matters of culture and spirituality, and infusing the process with values, beliefs, skills, and knowledge (Harris, 2006; Marchetti & Daly, 2004).

The necessity of integrating spirituality and culture as foundational for judicial practices is integral for Indigenous offenders. Elders create a vital link for the transmission of knowledge and practices, as well as an integral connection to family, community, and the ancestors (Marchetti & Daly, 2004). A healing approach emphasizes a strong sense of belonging for individual wellness and balance, in a journey that honours the spirit in each individual (Aboriginal Healing Foundation, 2006; Brant-Castellano, 2000). The commitment required by the justice system therefore is one of decolonization in acknowledgement to and embrace of holistic Indigenous principles. Exploring the role of Indigenous Elders in contemporary justice, in respect to this commitment, is thus augmented through the application of an Indigenous methodology and Community-based Participatory Research paradigm.

Chapter 3 Theoretical Framework

Utilizing an Indigenous Methodology

The social issues Indigenous peoples face today are best addressed through methodologies that reflect Indigenous worldviews and belief systems (Offet-Gartner, 2005; Porsanger, 2004; Wilson, 2001). The predominant concern in research involving non-dominant cultures has related to issues of practicality, inaccuracy, and insensitivity towards the people participating in studies, a concern that continues to prevail (Offet-Gartner, 2005). Indigenous researcher Shawn Wilson (2008) underscores these issues stating, “Many studies in psychology, human services, and other social sciences conducted *on* Indigenous people- as opposed to those conducted *by* or *with* Indigenous people- focus on negative aspects of life, as identified by outside researchers” (p. 16).

As historically Indigenous people have been unable to participate in decision-making processes that directly affected their own health and welfare, applying an Indigenous methodology within an Indigenous research context is an ethical response. Porsanger (2004) emphasizes this point and states, “Research has been used as a tool of the colonization of Indigenous peoples and their territories” (p. 107). At the heart of decolonization in research methods is the centring of Indigenous concepts and worldviews, followed by the knowing and understanding of theory and research from Indigenous perspectives (Smith, 1999). Choosing an Indigenous methodology for my proposed study embraces a decolonizing approach from a social justice perspective. Recognizing that Cknúcwentn First Nations Court itself was born out of Indigenous activism, I am respecting the identity of the court as created specifically for Indigenous people and ensuring that Indigenous methods remain central.

Indigenous Framework

Worldviews

Worldviews contain the deeply embedded mental lenses we use to interpret the world, applying the cognitive, perceptual, and affective maps used to make sense of the social relationships that intertwine us with all life (Hart, 2010). Hart (2010) defines an Indigenous worldview as relational and strongly intergenerational, believing that people must come together and support one another through relationship, and emphasizing a sense of community and respect for all individuals and entities. The important of this relationship therefore generates relational responsibilities of reciprocity, interdependence, and interrelatedness (Hart, 2010; Lavalley, 2009; Pedersen, 1999).

Simpson (2000) describes seven principles that express an Indigenous worldview: (a) knowledge is holistic, recurring, and relationally dependent through connection to all other living and non-living beings; (b) personal experience determines one's understanding of truth; (c) all things are alive; (d) all things are equal; (e) the land is sacred; (f) a vital relationship exists between the land and people; and (g) human beings are the least significant in our world. The concept of *self-in-relation* then expands to one of *self-as-relation*, where the context of community and place grounds identity (Wilson, 2001). Without an understanding of these principles and concepts, research applied to healing through the restoration of traditional justice practices for Indigenous offenders severely lacks respect and validity, and rather maintains cultural disconnectedness.

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Knowledge

Within an Indigenous worldview lays a unique framework of knowledge, embodied through three major processes: empirical observation, traditional teachings, and revelation (Brant-Castellano, 2000). Empirical knowledge in this way does not relate to the controlled settings found in quantitative inquiry, but utilizes real-life situations and contexts, representing “converging perspectives from different vantage points over time” (Brant-Castellano, 2000 p. 24). Concepts such as “blood memory” identify knowledge based in revelation, such as through dreams, visions, and intuition, referred to as spirit knowledge and passed down through generations (Lavallee, 2009). As spirit knowledge is unobservable by physical means, it cannot be quantified and therefore rejected in Western research methodologies, and considered anti-intellectual (Dei, 2013; Lavallee, 2009). Spiritual belief systems, however, are deeply embedded within approaches to wellbeing and balance, relying greatly on the knowledge and understanding held by Elders for continuation. Wilson (2003) challenges the notion of empirical evidence as having greater soundness or meaning, such as the idea of oral tradition transcended through written text.

Ontology

Ontology asks us, “What is real?” and examines our beliefs about, and the categories encompassing, that reality. As many divergences and overlaps in views of reality may co-exist, differing concepts such as ownership and commodification within these various worldviews necessitate further exploration and understanding. From a standpoint of the existence of many truths, a concrete answer may not exist, requiring a researcher to create a set of beliefs and “take it on faith from there” (Wilson, 2008, p.

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33). This creates space for broader views of existence, such as acknowledging a relationship with the spiritual realm; the connection between the spiritual and physical then places human beings in a role in the preservation of natural processes (Hart, 2010; Lavalley, 2009; Wilson, 2001).

Reciprocity is also a key principle, as in a relational worldview all relationships must be honoured- it is a reciprocal relationship between myself as a researcher, and the Elders as co-researchers. The key principle of relationship defines this ontology; as worldview and knowledge cannot be separated, an Indigenous ontology as well is deeply linked with all other aspects of an Indigenous methodology.

Epistemology

Intertwined intensely within the worldview, concepts of knowledge, and ontology, an Indigenous epistemology is a “fluid way of knowing derived from teachings transmitted from generation to generation by storytelling, where each story is alive with the nuances of the storyteller” (Hart, 2010, p. 8). It is fluid, adjustable, nonlinear, and relationally based, emerging from traditional languages that accentuate the use of verbs (Hart, 2010; Kovach, 2005). The importance of dreams and visions is accentuated through the intuitive and introspective elements of subjective knowledge, linking deeply to the context of the self in relationship with the environment and events (Wilson, 2001). Again, the significance of restoring Elders to their traditional generational role is highlighted, as the use of storytelling and expression of dreams and visions as a means of moral teaching is crucial for teaching societal and behavioural expectations.

Indigenous Methodology

Based on the principle of interconnectedness as expressed through the ontology and epistemology, those who utilize an Indigenous methodology ensure that research on Indigenous issues is carried out in a “respectful, ethical, correct, sympathetic, useful, and beneficial fashion, seen from the point of view of Indigenous peoples” (Porsanger, 2004, p. 108). Porsanger (2004) underscores that it is not about solving “Indigenous problems” or finding answers about Indigenous peoples, for academic, political, economic, or professional gain, or the use of Indigenous land, natural resources, or Indigenous knowledge for profit.

Wilson (2001) comments on relational accountability in the context of profit as being a paramount, causing me to reflect on my own approach to research within Indigenous communities. My commitment to accountability can be demonstrated through embracing a worldview of relationship and recognizing the existing power differentials that have impeded Elders from their role in justice practices. Accepting this responsibility may be demonstrated through the commitment that any knowledge gained through my research will be used practically and for the direct benefit the Elders and First Nations Court.

Axiology

The ethical or moral guidelines that direct the exploration of knowledge are defined in an axiology. These guidelines are shaped through cultural and societal worldviews, forming the underlying direction of research and the purpose it serves. Wilson (2008) stresses the ethics of how knowledge is gained in Indigenous research and asks, “What is ethical to do in order to gain this knowledge, and what will this

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knowledge be used for?" (p. 34). Atkinson (2001) lays out principles for guidance that include:

- That Indigenous people themselves approve the research and methods;
- Knowledge and consideration of community and the diversity and unique nature that each individual brings to community;
- Ways of relating and acting within community with an understanding of the principles of reciprocity and respect, including respecting issues of confidentiality;
- Non-intrusive observation and deep listening and hearing with more than ears;
- Reflective non-judgmental consideration of what is being seen and heard;
- Purposeful plan to act with actions informed by learning, wisdom, and acquired knowledge;
- Responsibility to act with fidelity in relationship to others;
- An awareness and connection between logic of mind and the feelings of the heart;
- Acknowledgement that the researcher brings to the research his or her subjective self. (p. 10)

These axiological principles resonate deeply through the intense relationship of the Indigenous worldview, ways of knowing, methodology, ontology, and epistemology. Weaving the vibrant concepts of respect, relationship, and connection together in a holistic and dynamic way, the equality and value of spirituality, emotions,

and cognitions is evident. Once again, the importance of interconnectedness through relationship reveals itself.

Community-based Participatory Research.

Community-based Participatory Research (CBPR) harmonizes with an Indigenous paradigm as the basic principles and theoretical standpoints acknowledge the concerns and issues as stated above, and has been shown to reduce health disparities among minority groups, particularly in the Native American community (LaVeaux & Christopher, 2009; Wallerstein & Duran, 2006). Of particular importance in CBPR are the central tenets of respect, relevance, reciprocity, and responsibility; and a focus on building relationships based on trust, challenging Western research paradigms, creating opportunities for Indigenous peoples, communities, and organizations towards degrees of involvement within research, and creating stronger ethical guidelines (Castleden, Morgan, & Lamb, 2012). LaVeaux and Christopher (2009) recommend the following CBPR principles as having particular validity working in Native American communities: (a) the acknowledgement of community identity; (b) utilizing the strengths and resources of the community; (c) promoting collaborative partnerships; (d) combining knowledge and action to benefit all those participating; (e) encouraging co-learning and empowerment through paying attention to social inequalities; (f) a recurrent and iterative process, (g) attending to health in a holistic manner, and (h) sharing knowledge and findings with all participants (LaVeaux & Christopher, 2009). A CBPR methodology clearly supports the previously mentioned concept of relational accountability, which is so crucial in any form of cross-cultural research, but particularly so in situations where there has been historical cultural oppression. This

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embodies a feminist perspective as well, where the methodology of the research itself is focused on addressing unilateral concepts of knowledge and balancing relationships through holistic and empowering practices. The practical application of this methodology is laid out in the following chapter, as I learned to apply the principles of Indigenous research using the Community-based Participatory Research model for our study.

Chapter 4 Research Design

Pre-Study Preparation

Guided by the preceding principles and ethics of an Indigenous Research methodology, my own thesis research began long ago, before any research question development, formal proposal writing, decisions on specific methodologies, or focus on conducting a study. My pre-study tasks began with serving tea and listening. At the time that I was connected through relationship with the Cknúcwentn First Nations Court, I did not consciously realize that my own ceremony with research had been initiated. My ceremony began with a shared worldview and intuition- a sense that this was a place of meaning and belonging, which held deep connection for me.

My pre-study tasks continued as I progressed into my thesis research, and centered on this: to treat all members of the court with dignity and respect, to address power differentials through collaborative advocacy, and to take time to listen and hear with my heart (Atkinson, 2001). In a concrete sense, this includes activities such as overseeing and serving tea or lunches on court days, problem solving with the Elders Council on court files and providing professional development workshops, leading a funding subcommittee for the court to address financial inequalities, listening to storytelling, and attending sweats and participating in other spiritual practices.

Observing the principles of respect, relationship, and reciprocity, pre-study tasks as they related directly to my thesis question centered on: engaging in conversation with stakeholders involved (i.e. Elders council, Aboriginal Justice Council), asking for and incorporating feedback during proposal development, continuing in relationship

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building through tea and ceremony, and continuing to advocate for and support court processes.

Procedure

Participants

Participants in this knowledge gathering project consisted of members of the Aboriginal Community Justice Council (Elder's Council) currently presiding in the Cknúcwentn First Nations Court in Kamloops. Six Elder's Council members and five provincial court judges received an invitation and diligent explanation of the topic and proposed project, with the intention of engaging participants as co-researchers rather than research subjects. This relationship demonstrates the collaborative and equitable nature of an Indigenous methodology. Due to differences in my own relationship and protocol with these two groups, I invited participants in two separate ways.

For the Elders' Council, I read through and explained informed consent forms for the project to the Elders individually, providing paper copies for each of them, and followed up with a phone call one week later to gain oral consent. After gaining oral consent, I requested that they sign the informed consent if they were comfortable doing so. Of the six invited Elders, five chose to participate. In regards to the provincial court judges, I contacted the judicial case manager at the Kamloops Provincial Court via email, and attached a copy of the informed consent for the research project. This was forwarded to the respective judges by the judicial administrative assistant, and after consideration, the judges chose not to participate.

Two months after commencement of the research, a recruitment for new members of the Elder's Council provided two additional Elders. These Elders did not

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begin sitting in the court until after the first round of individual interviews, and as the research related directly to experiences in the Cknúcwentn First Nations Court, it was not appropriate to incorporate divergent information into the data. Due to the methodology however, as relationship-based, I felt it was necessary to find alternative ways of including all members, and so invited the new members to participate respectively as part of my thesis committee and through the Indigenous legal education video. One Elder chose to participate in the video, providing an introduction to the court and definition of the name, *Cknúcwentn*, a Secwempemc word. The intention in including all members was to encourage group cohesiveness and ensure that the research project itself did not contribute to any internal conflict, rather providing an avenue for collaborative group participation as a team building opportunity.

Participation at all times was voluntary, and Elders were provided with an honourarium for each interview attended and the final group video review, as well as a gas voucher when they had travelled from out of town. The funding for the honourariums was obtained through a research grant from Athabasca University.

Data Gathering

In theory, CBPR is based in the idea of a bi-directional knowledge exchange, a “two-way street with the researcher learning as much about the community as the community will learn from the researcher” (Castleden, Morgan, & Lamb, 2012, p. 169). This approach is consistent with ethnographical methods in research. Community dynamics and inter-personal relationships are complex, and must be considered in any data collection processes. For this thesis research focused on the impact of restoring Elders in justice practices, the data collection followed a CBPR methodology and

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included two individual interviews and one group circle for data sharing and feedback. In this study, all of the Elders except one belonged to the same nation (Secwepemc) and as the tradition of the local Indigenous culture is orally based (Billy, 2009), oral data gathering techniques were thought to be the more appropriate and comfortable. A storytelling approach that relies heavily on the use of metaphor is also consistent with traditions in the Indigenous community here in Kamloops, and fits well with a qualitative methodology. Issues of cultural homogeneity in justice practices are addressed through data collection by focusing research on local Elders and local traditional justice practices, rather than attempting to broaden findings to be generalizable to all Indigenous justice practices (Offet-Gartner, 2005).

Interviews

In the first round of individual interviews, the Elders were presented with a semi-structured interview format consisting of eight questions, in order to review prior to the start of the interview. They were given the option to answer as many or all, of the questions, or to revise any questions if they did not think they were appropriate. The questions covered the history of Elder's involvement in justice in their area, of the ethics relating to why Elders should be included in justice, and then practically how they participated in the Cknúcwentn First Nations Court. A semi-structured interview format allowed the Elders to tell stories, and to broaden questions by providing additional information that would have been lost in a rigidly structured format. These interviews were audio recorded and later transcribed, ranging in length from one to two hours. Once I completed the transcriptions, I provided a paper copy of each interview along with an audio cd to each Elders, so that they could review the data and make

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corrections as necessary. Of the six Elders, one Elder returned a hard copy with corrections, requesting edits where I had misspelled the names of places or people.

The second round of interviews was integral to this research and the methodology. First, it allowed the opportunity to discuss the data from the first round and debrief from that experience. Secondly, I provided a condensed list of three questions, as we collectively agreed on a thirty-minute interview length. Prior to the second interview, as I had been reworking the questions to glean more data, it appeared that we could go in two different directions with the second interview. One would have been a more general approach, asking a general historical, ethical, and practical question, which I felt would have provided an overview of the role of Elders in justice locally. The other route was to focus on the practical aspects of the function of the Elders within the Cknúcwentn First Nations Court itself, which includes processes such as sentencing, reviews, the blanket ceremony, and is defined uniquely by placing Indigenous Elders within a courtroom setting, and sharing a table with a provincial court judge in justice processes for Indigenous offenders. This route had a greater practical value, as it provided the Elders with an opportunity to articulate their role at the court. At the onset of interview two, when I was making phone calls to schedule interview times, I discussed these two options with each of the Elders and they all chose to go the practical route.

Going back to the CBPR methodology, it was important to create a concrete benefit through this research project, so in consultation with the Aboriginal Justice and Elder's Councils, we determined that a short Indigenous legal education video, focusing on the Elders, could be developed and used in presentations on First Nations Courts. As

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I did not feel that I had the technical skill level necessary to produce a video, I applied for and obtained a dissemination grant through Athabasca University, framing the video as an oral dissemination. Through this grant, I was able to contract the services of a local Metis film producer, who video recorded the second round of interviews with me. For these individual thirty-minute interviews, we suggested a location that we felt each of the Elders would be most comfortable in. They included: The Thompson Rivers University Horticulture Garden, next to the sweat lodge and river at one of the Elders' residences, in the pow wow arbour at Tk'emlúps te Secwepemc, in the courthouse library, and within the courtroom used for the Cknúcwentn First Nations Court sittings at the Kamloops Provincial Court. Video recording within the Kamloops Provincial Court required special permission from the Executive Director of Organizational Services and the Executive Director of Judicial Administration for the Provincial Court of British Columbia. After the second round of interviews was completed, I again transcribed the interview data and then began the data analysis.

Data Analysis

Indigenous methodologies interpret data within the cultural context, in the same tenet as ethnographic and feminist researchers (Creswell, 2013; LaVeaux & Christopher, 2009; Weber-Pillwax, 2001). These approaches to carrying out research involve the inclusion of community members in data analysis and interpretation, which may not be the norm in other methodologies and present challenges due to differing worldviews, belief systems, and ways of knowing. Interpretation nevertheless may be most culturally accurate when it utilizes the vital historical and social considerations, and language and local understandings that community members offer (Creswell, 2013;

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LaVeaux & Christopher, 2009). With a qualitative design in regards to my thesis research, it was integral that the data accurately interpreted and expressed the cultural experiences of the participants to the greatest degree possible- a process that required collaborative and ongoing reviews.

Audio and video-recorded data was transcribed and then coded using NVivo 11, taking large blocks of text and coding according to an ongoing developing thematic content, as opposed to a textual analysis using keywords from predefined categories. This followed a conventional content analysis format, as codes were developed during the analysis and created to describe the experience and self-perceived roles of the Elders (Hsieh & Shannon, 2005). By focusing on the content of blocks of text, rather than reducing it to minute units, the meaning of the speaker is preserved, ensuring the cultural and inherent validity of the discourse (Cashman et al., 2008; Thompson & Barrett, 1997; Welsh, 2002). Breaking down text blocks in a rigid method that discounts context could compromise the quality of the data, as Thompson and Barrett (1997, p.1) warn that “losing contextuality can undermine the true meaning of a research participant’s story as a whole”, as well as impacting thematic development in data analysis.

For example, the Elders tended to speak in a narrative style, stringing one sentence to the next using conjunctions (i.e. *and*, *because*), using a linguistic flow that did not have clear grammatical breaks separating sentences. As the interview questions were answered, the sentences relied on each other within the paragraphs to create complete meaning. Using NVivo11 to organize the data, twenty-four categories and six subcategories were organized into seven themes, with each Elder respectively

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demonstrating particular expertise within a specific area. For example, several of the Elders held a significant amount of knowledge regarding the history of justice practices in the Secwepemc territory, some Elders had a strong youth and family focus, while others had an in-depth understanding of the mainstream justice system and contemporary restorative justice practices.

The relevance of an Indigenous and CBPR methodology for this research was ongoing throughout the process, as it provided the time necessary for both a thorough interviewing and review process. The semi-structured interview format was also useful, as the Elders were able to have greater control in verbally directing the conversation during interviews. This created space for storytelling, which I found generally would connect back to the original interview question, or revisited at a later point in the interview. Utilizing a partnership relationship throughout the research, but particularly in regards to data analysis and process of reviews, ensured that the findings accurately expressed the experience of participants, and ensured that language and cultural worldview translations are accurate according to their expectations (Cashman et al., 2008). This approach is crucial for all researchers operating from a social constructionist perspective, following the ontology of multiple “truths” or the concept of “reality” as being culturally informed, as in this case, the knowledge shared related both directly to the Elders local cultural knowledge and traditions, as well as the unique cultural context of the Cknúcwentn First Nations Court. By providing audio, video, and written transcripts of the interviews, both self-review and collaborative review was accomplished. Any concerns or questions were directly addressed during these reviews,

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as well as continual explanation as to what was the purpose of the research and expected outcomes.

Knowledge Translation and Mobilization

It is crucial in CBPR that community members have power in saying what information may or may not be released, particularly in consideration of issues of sacredness and cultural protocols (LaVeaux & Christopher, 2009). The need for balance between analysis and action in CBPR are explicitly laid out by Cashman et al. (2008), who indicate that collaboration encourages a repetitive review process in analysis and findings, decreases analysis fatigue (lessening the chances of taking shortcuts), highlights complex relationships, and lengthens time for maximum community impact. Co-researchers may also gain opportunities to present and consult with other projects, and share findings in respect to academic publications (Castleden et al., 2012). Relating back to an Indigenous axiology, the CBPR method highlights the balance between heart and mind, and underscores communicating in a way that maintains the sacredness of relationship. This approach thus can create a strong connection between myself as a researcher and the Elders as co-researchers, not only in terms of outcomes, but also within the process of the research itself.

Members of the Aboriginal Justice Council and Elder's Council indicated that video dissemination, in particular the creation of a legal education video, would have a positive benefit for First Nations Courts in British Columbia. With the video, the opportunities for widespread sharing were apparent as we progressed with the video interviewing. In order to ensure that we were all in agreement in regards to how and with whom we could do the sharing, I hosted the Elders at the Kamloops courthouse

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library for lunch and an opportunity to review the final draft of the video. This was also part of the methodology, as it allowed the Elders a final opportunity to provide feedback and voice any concerns. They were given a comment sheet as well as a revised consent form, that articulated the various avenues for sharing and also some blank lines where they could present their own options.

The sharing options that I presented included (a) in Cknúcwentn First Nations Court presentations; (b) to Elder's Councils from other First Nations Courts; (c) social media such as YouTube and Facebook; (d) at conferences and through programs relating to Indigenous justice and First Nations Courts (Aboriginal Restorative Justice Programs, Native Courtworker and Counselling Association); (e) through members of the Aboriginal Community Justice Council; (f) through Legal Services Society of British Columbia; (g) and with the Office of the Chief Judge of British Columbia. In addition to these options, which were all approved, the Elders added sharing for RCMP and Community Corrections (adult and youth probation) presentations.

It was also important methodologically to combine the video as an oral dissertation with my own written dissertation, as the Elders only appeared in the video, sharing their knowledge. As an oral dissertation, this allowed for the results to be shared in their own words, which may have been compromised in the translation from oral interview to written word. Since the methodology had a collaborative focus, each participant was provided equal sharing time through the video, as the film producer and myself edited and compiled two hundred minutes of raw video footage into our thirteen-minute final video. Each Elder was given two minutes of footage, which required us to find a strong balance between aesthetic quality, content, and the equal sharing of time.

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Again, the Indigenous and CBPR methodology made this process not only imperative for the benefit of the group itself, but contributed to the success of the video overall in that each Elder demonstrated a passion or unique understanding in a specific area through the extended interview time and review process. The outcome was that we were able to follow the video structure that we had previously agreed on, the practical aspect of the role of Elders in the Cknúcwentn First Nations Court, which merged with the written thesis paper. Through the video, important visual and auditory aspects were maintained as well, conveying the strong emotional and environmental content that can be lost in written word.

Reflexivity

Wilson (2008) states, “Indigenous research *is* a life changing ceremony” (p. 61). Research becomes sacred when fundamentally and deeply rooted in the Indigenous principles of connection and relation (Dei, 2013). The meanings derived from research ideally reflect the worldviews of all those involved, and the context in which the research has taken place. In order for this to occur, the act of continual reflection takes place throughout the research process, from pre-study tasks to the study completion. Thus, I consider my own beliefs and values, as well as concepts of time and process. Self-reflection centers on how those considerations may impact me emotionally and cognitively throughout this research process, and how that may influence my relationships.

In engaging in an Indigenous methodology, I recognize the responsibility of relationship. My relationships with stakeholders, co-researchers, persons with less or more power, and significantly- my own relationship with myself, are integral. The

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principles of respect, relationship, and reciprocity connect the wellbeing of many to my hands. I, as a researcher, am “answering to *all my relations*” when I am conducting research (Wilson, 2001, p. 177).

An awareness of personal motives and agendas during all stages of the process ensures that I am acting out of good intent and ethical standards to the greatest degree possible. Methods of data gathering, analysis, and interpretation also hinge on collaboration and co-construction, recognizing an Indigenous epistemology of fluidity of knowledge gained through teaching. Simply put, I must be willing to be taught. As a guest in this community, I depend on the knowledge and preferences of my co-researchers in implementing any specific methodological techniques. Rigour in this way is addressed through the weaving of the unique strands of the Indigenous research process as with a finely woven basket: relationships, ethical practice, an orientation of social justice, collaborative data gathering, analysis and interpretation, an ongoing commitment to personal reflection, and a focus on outcomes that have a positive benefit to co-researchers and the community.

Throughout this research process, I kept a personal reflection journal chronicling my activities and experiences. Stepping into a new professional context, within the justice system, I often felt like I was stumbling in the dark and at times incompetent. There were new protocols that I had to learn, obtaining special permissions for interviewing within the courthouse, and the way I communicated to legal colleagues. There is a particular court lingo one has to learn, involving varying terms to denote offenses or their legal position. As well, there were academic protocols for obtaining funding, which was an integral part of the methodology in order to produce the oral

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dissertation. This also required learning a unique discourse and challenged me to summarize what was perhaps at times a fairly ambiguous or unconventional approach to research and dissertation.

However, when I was able to clearly articulate, through writing, discussing, reflecting, and rewriting in an ongoing cyclical process, the concept of what we were doing began to strongly take shape. For me, it felt as though many objects had been placed within a wide angle camera frame. As we frequently zoomed out and in, the lens finally began to focus on the bigger picture, maintaining the integrity of the individual elements while creating a cohesive picture of our collaboration together.

Ethical Considerations

Concerns prevail over the topic of research in the Indigenous community (Cochran et al., 2008; LaVeaux & Christopher, 2009; Offet-Gartner, 2005; Porsanger, 2005; Wilson, 2001). Smith (1999) clearly articulates these concerns through the integral questions:

Whose research is this? Who owns it? Whose interest does it serve? Who will benefit from it? Who has designed its questions and framed its scope? Who will carry it out? Who will write it up? How will the results be disseminated? (p. 10).

Considering these relationships and carrying out protocols can be time consuming, yet necessary in order to carry out socially just, ethical research that resonates with Indigenous communities in the context of historical oppression and ongoing cultural marginalization (Friedland, 2012). Researchers conducting studies in Indigenous communities must be cognizant of power relations, considering issues of accountability, initiation, benefits, legitimation, and representation (Porsanger, 2004).

Other Considerations

Differing cultural worldviews may become apparent during the research process, such as timeframes and communication protocols, which can lead misunderstandings resulting in relational breakdown. Potential biases of the researcher, if not identified clearly through the location of self within the research, can also arise, as well as conflicts in desired outcomes when multiple stakeholders are involved. Lavallee (2009) points out the necessity in self-identification of the researcher in order to build trust and express the “worldview from which they speak” (p. 26). A lack of relational trust, in the context of historical events between Indigenous and European peoples, can have a significant impact on any research processes.

Summary

An Indigenous methodology grounds itself in an Indigenous worldview. It is fundamentally interconnected through the principles of reciprocity, respect, and relationship. Carrying out research in the Indigenous community becomes so much more than a discrete study- as primary researcher, I accept and convey a commitment through my research to the ethical responsibility of the health, wellbeing and benefit of all beings and entities involved. Systemic issues such as the overrepresentation of Indigenous offenders in Canada in the criminal justice system relate directly to the impacts of colonization and historical trauma. The Indigenous principle of practical implementation of research outcomes therefore demands an ethic of socially just practice. This encompasses the willingness to address power differentials, advocacy, and addressing the self-expressed needs of the Indigenous community through action.

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The Community-based Participatory Research paradigm embodies an Indigenous worldview through naming outstanding racial concerns, depending on co-participation for data collection, analysis, and interpretation, and centering on broader issues such as repairing historical mistrust. As spiritual knowledge meaningfully intertwines within all aspects of an Indigenous worldview, effective research methodologies centered on healing must embrace this perspective. The ceremony of research begins with a worldview of relationship and connection; it begins with an understanding of myself as a cultural being, and an openness and acceptance towards the cultures of others.

Chapter 5 Results

The following section outlines the results from the two sets of interviews I conducted with six members of the Aboriginal Community Justice Council (Elders Council) from November 2015 through April 2016. In the first set of audio-recorded interviews, we discussed topics that included: 1) the historical role of Elders in justice within their respective communities; 2) the reasons that they had chosen to participate in the Cknúcwentn First Nations Court; 3) the types of information they shared with court participants during court proceedings; 4) the perceived impact their presence has on participants as well as other court professionals; and, 5) in what ways they assessed their role to be similar and different than that of the judge. The second set of video-recorded interviews included discussion on: 1) a review of the reasons they chose to participate in the Cknúcwentn First Nations Court; 2) their perceived role during the sentencing process; 3) a description of a review and their role in that process; 3) an explanation of the blanket ceremony and the impact on them personally of that ceremony, as well as for participants; and, 4) a description of the relationship between and Elder and a judge in First Nations Court.

Following the Indigenous and CBPR methodologies, all names and identifying information is public, which was explained, agreed on, and signed to give consent by each Elder, with the purpose of each co-researcher receiving equal benefit and acknowledgement for their contributions. The contribution extends much farther beyond a master's thesis, as each individual has contributed greatly in so many ways to their families and communities. This project, especially in regards to the Indigenous legal education video, thus became an avenue for broader sharing for the Elders, to gain

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exposure on a dynamic way that they are personally contributing to justice for Indigenous peoples in our community. I have also quoted the Elders in this section extensively, with their permission, for a two-fold purpose. One, to share this space with them as a presentation of our collaborative work together, and secondly, the quotes are verbatim to preserve the authenticity of their words and not create any bias through my own interpretation.

History

Our first set of interviews initiated with a brief discussion of local historical and current Indigenous justice practices, where I asked the Elders to recall times in their past when they had witnessed or been involved in justice. I was privileged to hear many narrative accounts from the Elders, of the ways they were brought up and their life experiences. Each story was unique yet collectively they wove together a vibrant account of the changes they have witnessed in the Kamloops area over the past seventy-odd years.

History of local justice practices.

Certain key elements of justice practices were described by the Elders, as in their early years they witnessed their leaders and Elders before them. Communities utilized a policing system, with community supervisors known as *Watchmen*, who maintained social control by dealing immediately with incidents. Elder Muriel Sasakamoose shared how this kept community members accountable, remembering, “*They never let anything go.*” At times, the Watchman would lock up people for a night in the community jail (which may have been a log cabin construction) and in extreme circumstances, banishment could occur via chief and council. Communication, sitting in

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circles, and talking openly were recalled by different Elders, as well as punishments that centred mainly on work service. Elder Russell Casimir talked about work service being community and family oriented, as a direct means of making amends to the victim(s):

Because a long time ago, when you committed a crime in community, say you stole from a family or you assaulted a family back in the old days, in the thirties or forties and fifties, you had to do community work. You had to go work for that person's family. That person could not, if you hurt him bad enough and he could not work, you had to go cut firewood for them, you had to go hunt for them, for that family to eat. That is how the old way was. You did service back to the family that you offended. In that way, it wasn't jail time but it was, you did time by helping that family. (Russell Casimir)

As the western justice system gradually took a greater hold in the local area, some historical processes such as circles remained, but included RCMP constables along with the chief, offender, victims, family members, and occasionally a doctor or priest. Elder Muriel Sasakamoose shared that she believes the community lost control of their own justice practices in the 1950s, recalling circle processes up until that time.

Personal histories of involvement in justice.

The Elders respectively had distinct experiences with justice, involving both the western and Indigenous systems. As a child, Elder Muriel Sasakamoose recalled having to clean and wash clothes for adults that she had been rude to or played tricks on. Even in one circumstance where she was only connected to the crime through association with the offender, Muriel was still required by her mother to make amends to the victim. Elder Russell Casimir remembered being punished by his Elders for misbehaviour as a youth and the efficacy it had for him personally:

My grandfather or my uncle would put up in the front of the house and say: you know what you did and they'd throw all the fence posts down that they figured I needed to mend the fence. I had to own that. I had to go and dig all the fencepost holes, all the posts I knocked down, replant them, stretch the wire, hung over or not you had to do it or apologize. And I think the worst part of it was doing the apology. It's actually scary.

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You know, I'd rather be beaten and drug underneath a horse than apologize because an apology is a tough thing to step up and do. (Russell Casimir)

Other Elders talked about the pain of seeing family members or friends be wrongfully accused, coerced into pleading guilty, and discriminated against in other ways. Elder Minnie Kenoras discussed her work advocating for fishing rights in the provincial court, as her community faced issues over land and rights to traditional territory and practices. Minnie talked about her challenges in educating the judiciary on Indigenous culture, and how the differing methods of justice, particularly the discourse of the western system, have motivated her towards advocacy:

If I see something that's written in words, and this is what I told the judge, I said to the judge, 'You took our laws, what we had, all of the things we had. You change it around into big words, which I don't understand anymore, people don't understand anymore. Then you give it back to us, and we don't even know what we're charged for. Because we don't understand it. And I said I'm sorry that I have to say this, but if I have to because I feel it's my justice to bring it out. (Minnie Kenoras)

Several of the Elders have taken prior training that pertains to mainstream justice work, including courses at the Justice Institute of British Columbia, court work training through the Elizabeth Fry Society, involvement with the BC Native Women's Association in advocating for Indigenous women's rights, as well as trainings offered to participate in peacekeeping and restorative justice circles.

Current community justice practices with Elders.

Current justice practices may occur informally in the community, as Sandra Seymour shared that often family members will handle behavioural issues or conflict, saying that people might be told to "Go see your granny!" Elders may also participate in more formal restorative justice circles that are directed to the community as alternative measures files, or in community healing events. While locally there are

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justice practices in occurrence, Elder involvement is “*very limited*”, one Elder remarked, believing that although there is a lot of talking, fear can be a barrier towards “*making a stand*” as an authoritative figure in community.

Elders’ Experience

Participation in First Nations Court.

The reasons that each Elder had chosen to participate in the First Nations Court varied according to their individual experiences, yet there was a strong ethical focus for each of them, particularly in light of the failures of the mainstream system. This related for some to their own personal contact, and that of family members, with the system and how it had been an ineffective experience, and the concern they felt for future generations. The topic of youth involvement with the justice system was especially painful for the Elders, expressing a high level of concern over the lack of guidance and support for youth in foster care.

Elders shared that on a community level, they noticed issues, believing that Indigenous rights were not being represented, and were concerned over the high rates of incarceration for Indigenous people. Being involved in the First Nations Court was an opportunity to have a voice in justice for their people. Regarding rights, Neskonlith Elder Minnie Kenoras stated:

I was there for justice in the court. I was there for the rights of my people and I’m sorry to say but really feel that we weren’t treated equally. We weren’t looked after and we were not listened to. People didn’t listen to us, no matter what we said.

(Minnie Kenoras)

Elders also linked these failures to a system of justice quite different from their own values and beliefs, saying that the mainstream system lacks an important level of community accountability. Without that accountability, offenders may lie or look for

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easy ways to get out of the system, which may hurt them in the long run. Simpcw Elder Rose Miller talked about the opportunity to engage with a process that deviates from the mainstream system and shared:

I don't have much faith in the regular system because of the black and white way of their court system, it's no justice and it doesn't help our people. And with this, at least we have input into it and to try to keep our people from going jail, because I don't think it solves the problem. (Rose Miller)

Participant assessment.

Body language.

The Elders noted forms of body language that indicated to them whether they felt the participants were lying or being honest, if they felt ashamed, and helped them to assess their level of engagement with the court. Tk'emlúps Elder Russell Casimir said:

You know when somebody's lying and know when somebody's being honest. When somebody's trying to shine you on, you can see those all in their body language, in their moods, and in the way they are. And, you can see it in their eyes and their actions. (Russell Casimir)

Not being able to look the Elders in the eye, or being unable to look up at all, answering too fast, not paying attention or listening, and participant anger and frustration were connected to a lack of engagement.

Interviewing.

As part of participant assessment, the Elders discussed their methods of interviewing, which at times were straightforward, “*What is something that you're going to do different? And by what date?*” (Rose Miller) and also tended to relate to identity and connection, “*Who's your parents? Who's your grandparents? Who's your great grandmother?*” (Russell Casimir). Russell shared that identity is so integral, saying:

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We're all touched by their presence because somebody is related to them.
(Russell Casimir)

Information sharing.

Practical resources for participants are commonly provided by the Elders for court participants, which include directing them to various community programs, counselling services, treatment centres, domestic violence education, life skills training, educational opportunities, attending ceremonies (i.e. sweat lodge) and cultural practices (i.e. fishing, hunting), engaging in community service, and alcohol and drug support. Educating participants on the history of colonization including the residential school system was stressed, particularly the intergenerational impacts on Indigenous families.

The opportunity to provide spiritual guidance was also integral for some of the Elders, which they believed the lack of, had a direct impact on identity and self-esteem. Encouraging participants to attend a sweat lodge, and pray and smudge connected to the ability of participants to let go of negative emotions and promotes self-love. Elder Diane Sandy shared how she talks to participants:

I say, you know, work on that spirit you have, you've found it, now work on it. Love yourself because you've already accepted your spirit back, work on that. Love yourself and be proud of who you are because you are someone, you know, you are someone, you're not just nobody. **(Diane Sandy)**

It was also noted that at times participants struggled with basic issues such as transportation and communication, requiring the Elders to prioritize these concerns over perhaps loftier goals of emotional healing, substance use treatment, or spirituality.

Tk'emlúps Elder Muriel Sasakamoose shared her approach in these situations, saying:

I think we got to deal with more basic things, in the beginning, and then after they get comfortable with who they are, then they can start walking those paths and that, because it's really hard to walk those paths. **(Muriel Sasakamoose)**

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All of the Elders talked about sharing encouragement with participants as part of the informative process, telling participants that “no one is perfect” (Minnie Kenoras) and that each person’s journey is unique. Elder Minnie Kenoras stated that she shares her strength with participants by reminding them to embrace their own story. She recalled:

I say always look at the picture. Look at the picture, what do you see? It might be bad, it might be whatever. But still, you can make it a better picture. (Minnie Kenoras)

Sharing personal experiences.

Most of the Elders felt that there was a benefit in being able to share their own personal experiences with participants, but also cautioned against sharing too much personal information, so as not to detract attention from the participant. As Russell said:

We can't keep telling them our life story, it's not about us. (Russell Casimir)

Having pre-existing knowledge about certain life experiences, however, such as prior involvement with the justice system, former substance use and experience in residential schools, as well as modelling the process of self-healing, was recognized as beneficial in collaborating on healing plans for participants, recognizing responses and attitudes, and cautioning participants as to potential outcomes (i.e. incarceration) for continued offending behaviour. The types of personal information shared vary depending on the participant, but tend to be grounded in the underlying principles of accountability, community, balance, and honesty. The purpose of the self-disclose must be for the direct benefit of the participant. Creating boundaries around how much information personal information is shared and how to address participants was also underscored, as at times a stern approach was required, while in others there was more humour in the story. Sandra Seymour, a Cree Metis woman who sits on the Elders

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Council, discussed the challenges in asking participants appropriate questions in regards to personal biases. She stated:

I really have to think about what I'm saying. Do I want to do this, do I want to say anything? If I want to say anything, is what I'm going to say, is it going to be relevant? Or is this going to be said for me or for the client. What's my motive here?

(Sandra Seymour)

An ability to leave behind any pre-conceived ideas about the participant's experience, negative thoughts or frustrations is integral for Diane Sandy, who shared:

*I can't say for myself been there, done that. You can't say that. Because like I say you leave everything, you hear that person. You try and listen to them openly and honestly and have something good to say to them after they've done their story and it might help them, it might not. It's all up to them, you know. **(Diane Sandy)***

Personal impact.

The impact the Cknúcwentn First Nations Court has on each of the Elders was evident in their length and breadth of responses. For some, it is a vehicle of change and they described a sense of deep responsibility towards the continuance of change in the ways Indigenous offenders are dealt with in the justice system. Some talked about seeing themselves in the participants seated at the end of the courtroom table, understanding that there were complex background factors at play and hoping to help each of them. Seeing clients breach their probationary conditions or having youth come into the court troubled the Elders, which they talked about internalizing as a failure on their part with regards to the advice they had given. At times struggling with over-sympathizing, the challenge in setting personal feelings aside when hearing the participant's personal history is often overwhelming. Elder Muriel Sasakamoose discussed the impact this has for her and said:

You know I look at some of them and I just ache because you know I'm not gonna reach some of them. It's very hard in that aspect. There's some parts of that you know, that

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just tears away at your humanness. When you see kids struggling like that. It's hard.
(Muriel Sasakamoose)

Muriel also talked about a mental numbing she can experience at the end of a long court day (sometimes up to eight hours) and the frustration she feels when dealing with participants who experience cognitive challenges such as FASD, not being able to provide the resources adequate to meet these needs. When participants do well, however, Muriel recalled her joy and sharing the participants' pride in their accomplishments. The professional demands of the Cknúcwentn First Nations Court have impacted also Muriel, as she stated:

I can be sort of black and white, but I'm finding that I'm more flexible now, I'm thinking more beyond the box. **(Muriel Sasakamoose)**

Other Elders expressed a sense of pride as well, experiencing a sense of belonging in the process and that their part was helpful. The Elders connected to their sense of pride on a heart level; that the caring, joy, excitement, and listening that they instill with their presence at the table has contributed to the achievements of participants.

Way of being.

The Elders each talked about specific characteristics they believed were important to convey in their role at the court. Elder Diane Sandy listed skills such as open listening, paying close attention to both the words and body language of participants, and being compassionate. Trying to make participants feel comfortable and worthy through being a non-judgmental and supportive ally for them, particularly in the sentencing process was also cited by Elder Muriel Sasakamoose, who also shared that she tries not to intimidate participants and is careful to use language that they will relate

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to. Elder Rose Miller highlighted the discourse of the mainstream judicial system, which opposes the way of being for her as an Elder, saying that she “does not like to order anything.” The importance of an attitude of non-judgment was further supported by Elder Minnie Kenoras, who stated:

I would like it to be known that our Elders, when they're coming into the courtroom, that our Elders are there to help them. Our Elders are there because we care. We're not judging them like you're a bad person you did this, you did that. We are there, looking above that. (Minnie Kenoras)

Participants

Youth.

The topic of youth involvement in the justice system was prevalent in our discussions, which related to a prior or current history of contact with the child welfare system, something the Elders expressed strong ideas towards. High rates of child apprehension among Indigenous families transmutes into early contact with law enforcement, as Indigenous children growing up in foster care lose contact with their community and family of origin, interrupting the transmission of culture and traditions. Elder Muriel Sasakamoose talked about the negative impacts of negative labels and the stigma Indigenous youth face, sharing:

You know, like, I don't want to be really rude here, but like 'all Indians are lazy', 'all Indians are dirty', you know, 'all Indians are uneducated' and all of the things that we get labelled with.

Kids have to know that there's a different way to live, a different way to think, a different way to look at things, and that they have to know to respect themselves and respect where they come from. And when they know where they come from and they know who they are, I think they start to respond, they don't feel so lost.

(Muriel Sasakamoose)

Early involvement with the justice system can lead to cyclical issues, Elder Rose Miller stated, and correlated the recurrence with broader complexities, such as violence

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and addictions in the greater family system, stemming from intergenerational trauma. Dealing with young offenders through a restorative justice process, such as a circle, was thought to be more effective in instilling change.

Offending behaviour.

Elder Minnie Kenoras finds that antisocial behaviour can be an expression of emotional hurt in participants, and approaches it through encouraging participants to be open to self-love and self-care. Elder Rose Miller noted the effects of intergenerational modelling, believing that these are learned behaviours, and that the roots of change lie in understanding the “whys” behind the offenses.

Participant impact through Elder involvement.

The Elders talked about addressing behaviour on an emotional, rather than cognitive level, as having a far greater impact on engaging the participant in the court’s restorative process. Tears are a common way of signifying an internal impact for the Elders and seen as a positive response, indicating a stronger level of vulnerability, as Elder Rose Miller shared:

And you see that if they break down crying and sometimes it’s all about them. And it’s not really about what they’ve done. You’ve got them, got them to pay attention, even if you break that barrier you know it’s really something because they have to face what they’ve done. It’s reality it’s not just a court. (Rose Miller)

Elder Russell Casimir believed that participants can feel overwhelmed at times, and also advised that while some participants are honest in their responses to the Elders, there are others who may use manipulation tactics. A crucial element of including Elders in the court process is the level of accountability it brings to justice, due to the extension of involvement reaching into the community. Facing in the Elders in the

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community, after being connected to them through the First Nations Court, affects participants on a moral level. Participants may appreciate this depth of accountability, responding positively, or they may close off to the advice of the Elders. Sandra Seymour acknowledged the courage of participants in choosing to be sentenced in the First Nations Court, saying:

To even come into that courtroom and throw yourself out there to be judged and to have all your dirty laundry put on the table for us to sort through, that takes a lot of guts. And really, I really commend the people who do that. It's hard. (Sandra Seymour)

The impact of the Elders presence on participants is also evident through their body language, as poor posture and no eye contact can shift into upright sitting and happier facial expressions, a stance that Elder Diane Sandy correlated with a greater sense of self and personal pride. Experiencing a sense of isolation in mainstream justice processes has a negative impact on offenders, and entering the First Nations Court, they have important opportunities to observe other participants, hearing similar stories to their own. Dispelling the isolation in turn can impact fear in participants, something Elder Rose Miller links to high amounts of breach charges, as offenders seek to avoid the mainstream justice process itself. This can lead to cyclical involvement, as Rose stated:

I know with participants probably would breach a lot more with the regular courts, because sometimes it becomes the normal, and they don't care, they have nobody to help them and nobody to support them. Some of them that come through the courts here, sometimes I'll ask them, "Is this your first time in a native court?" And they nod their heads and I say, "How is it different from the other courts?" And just like, sometimes there's tears, yeah because they've never really been listened to, really heard.

(Rose Miller)

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For participants who have experienced the mainstream system initially, there may be a sense of confusion as to why the Elders are situated at the table with them, and what their role is in the process.

Elders' Role in First Nations Court Processes

This section of my thesis is also disseminated orally through our collaborative thesis project, the Indigenous legal education video titled *Restoring Elders in Justice*. Through discussion following our initial interview, the Elders and myself collectively decided that their understanding and roles in the process in the Cknúcwentn First Nations Court itself was the most appropriate area of focus for the oral dissemination. It was highlighted by each Elder that they would appreciate the opportunity to share with their fellow community members, as well as the broader public, the practical aspects of what they do the first Friday of each month at the Kamloops Provincial Court. Having them perform an oral dissemination, revisiting and delving deeper into some of our initial interview questions, was a wonderful opportunity to understand why their presence in justice is so important. Their passion and motivation to be involved was clearly evident in the video, in ways that are non-transferrable via written word, and clearly connected to their discussions on the emotional impact they experience in this process.

Sentencing.

The Elders described the initial sentencing appearance in the Cknúcwentn First Nations Court as being a unique experience for participants to have a voice in their

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justice process. Using their way of being and interviewing skills, the Elders utilize this first appearance as an opportunity for the client to speak to their own matter, to outline the reasons they believe led them to the offense, and to provide a personal and family history. For offenders to have the chance to participate in their own justice matters is crucial for self-empowerment, as Elder Muriel Sasakamoose remarked:

I think they've probably never had too much of a say in all of their lives. And they don't know if they can trust themselves to say what they want to say. (Muriel Sasakamoose)

The length of time provided for the sentencing appearance is also important for the Elders, as they believe offenders are rushed through the mainstream system. This does not provide adequate time to assess the contextual, personal, familial, and historical background of the offender or the offense, and without these factors the Elders thought they would be unable to give advice. Elder Rose Miller stated that the lack of provision of background information connects to current rates of over-incarceration, believing that in many cases, redirection into community services would be more effective. She shared:

They don't even ask a lot of those questions in the mainstream court. They just are given a certain amount of time to do and with us, we can sometimes get enough information where we can get the whole sentence removed completely or partially. You know, what a relief to the families especially when the jails are so full, the jails are so full with our people. And going there, they don't get no help. So I think that they would get more help just being back in their community and making reconnections and the community helping them get better in some way with programs or with treatment.

(Rose Miller)

Reviews.

The Elders considered the review process to be the most important aspect of the Cknúcwentn First Nations Court, saying that it upholds the principles of consistency,

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accountability, support, encouragement and caring. In situations where participants have not completed terms of their probation (healing plans), the review is the opportunity to gain more information on the participant, adjust terms as necessary, provide feedback, and offer encouragement or lecture as necessary. Significantly, this is done from an attitude of non-judgement, as Elder Muriel Sasakamoose stated, “*We don’t condemn them, we encourage them to, you know, go on.*” The flexibility to make changes in healing plans supports participants in successfully completing community sentences and probationary periods. The ability to direct participants for regular check-ins (monthly, bimonthly, or every three to six months), depending on the opinion of the Elders and judge as to the capacity of the individual participant, assists in supporting and maintaining their plans.

The collaborative aspect of the court ensures that participants have had a say in their own matters, particularly in regards to the restorative actions they must carry out as part of their sentencing. For Elder Russell Casimir, the reviews provide the opportunity to follow up with participants to confirm that they are completing the goals that they had committed themselves to.

Accountability.

The reviews give the Elders the opportunity to question participants further when terms of the healing plan have not been carried out, or are not sufficiently progressing. By consistently providing feedback and guidance, a more comprehensive level of accountability is provided, particularly on a community level. The Elders talked about appreciating reviews where community professionals, such as alcohol and drug

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workers, accompany participants (who are their clients), to discuss the participant's progress and confirm attendance.

This depth of connection can create a strong support network for the participant, who then comes into contact with multiple resources who are aware of the First Nations Court process. Identifying shame as a common characteristic among offenders, Elder Rose Miller discussed the effectiveness of the review experience for the participant, who does not experience further shaming from the Elders for "failures" but is asked to look more objectively at their behaviours. Rose shared:

Their self-esteem is so low that they don't even want to admit that they've done something, but when they finally can admit it and be accountable, I think it really makes a big difference. That accountability. (Rose Miller)

By involving the community in justice, there is greater accountability in the review process through engaging a broader support network, something that may contribute to reducing antisocial behaviour. Elder Russell Casimir talked about the benefits of having community involved, as he related:

It makes them very accountable for what's happening around them because it's like I always say, "The eyes of Texas is upon you." Everybody sees you, everybody watches you. And you just can't, even the downtown, people talk, there is no such thing as silence. (Russell Casimir)

Elder Rose Miller further discussed the accountability process of the reviews, saying:

I think it's really important to see how they're doing, if they're following the healing plan, because if they're not, we can, I can really tell. If they're not being sincere about it, so then we'll challenge them again, ask them, "Ok what kept you from not doing this or following the healing plan?" (Rose Miller)

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Healing plan.

Along with standard probationary terms, Cknúcwentn First Nations Court participants, together with the other court and community professionals, create a healing plan that diverts them to services designed to address their unique needs. This can include residential alcohol and drug treatment, counselling, support groups, education, job training, housing, and cultural practices, among others. The importance of a full assessment during the sentencing is paramount, as understanding the background history of the client enables the healing plan to be written to best address these needs. By diverting participants in this way, it is hoped that the underlying factors that contributed to their involvement in the justice system will be resolved, and that these options will prove more effective than incarceration. As Elder Russell Casimir noted:

We tried the system of courts by sending us people into jails, and jails are filled with our people. And they get nothing out of it, there's nothing. (Russell Casimir)

Responsibility.

There is an integral link with the healing plan between the participant, the offense, and the community, as the healing plan options place the participant back in the community to address personal issues. Incarceration isolates offenders from the community and while public safety may be maintained, recompense for the offense itself is unaddressed. This divergence, between the mainstream system and Indigenous justice principles, is one of the reasons people continue to reoffend, as Elder Russell Casimir stated:

They got no responsibility, you don't have to own what you did. And to me it is important that that individual must own his crime, or whatever he's done, to the community. And to have the judge set there and recommend him these...a lot of people believe they would rather go to jail than have to face us, because they figure we're more harsher on them. (Russell Casimir)

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Spirituality.

Another holistic aspect of the healing plan is the inclusion of spiritual practices, which some of the Elders discussed in length as an integral part of health. They identified that many of their practices had been legally abolished through the Indian Act, and that spiritual revitalization and renewal is an important part of understanding one's identity. A connection to ancestors, culture, and language, was also identified as contributing to healing, with the intergenerational transmission interrupted through colonization. Elder Minnie Kenoras talked about the impacts of colonization on spirituality starting from the previous generations, relating:

These people were very spiritual. They believed in their ancestors, they believed in their culture. It was all taken away from them. It was like, people laughed about it, they didn't care about it. In some cases the younger people are asking about it, they want to know. So now they go in the sweat lodges, they want the language back.

(Minnie Kenoras)

Blanket ceremony.

The blanket ceremony is another unique element of the First Nations Court process, awarded to participants in celebration for successful completion of probation orders, thus concluding their matter(s). For some of the Elders, the blanket ceremony is a reminder of their own past community history, recalling times when there were more celebrations and a greater sense of closeness. The blanket ceremony is an act of honour and recognition, which for some participants may be the first time they have completed anything successfully in their life.

Elder Rose Miller pointed out a powerful aspect of the blanket ceremony- that it is a collaborative ceremony, where the judge, Elders, crown and defense counsel, community professionals, family members and supporters gather together, circling

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around the participant to honour them and share good words. The blanket is a powerful metaphor, as Rose shared:

The blanket itself is like a gift or an omen of “you’ve done well” honouring I guess a lot of times they don’t even have nothing, no family, no family systems, no parents sometimes because their parents have broke up. And to have someone to honour them like that is completely different for them.

I find it’s really, really a high. I guess a gift of, sense of belonging I guess. That they’re part of the native nation. That they belong somewhere, even though it’s a court system, but finally they maybe have had connections with their own families or their own community again or someone else, even if it’s just counselling that something they’ve done, to be rewarded. (Rose Miller)

Elders Minnie Kenoras and Russell Casimir elaborated further on the meaning of the blanket, saying that it is a reward and a reminder that the Elders will stand, and continue to, with the participant. They are also a reminder that the Elders have listened to them, understood the hardships they experienced during the First Nations Court process, and recognize the effort they have put into personal improvement. Elder Diane Sandy highlighted the personal elements that are transmitted through the giving of the blanket, as her prayers and thoughts and hopes for continued healing are conveyed through the blanket ceremony.

Relationships

A shared table between Indigenous Elders, provincial court judges, crown counsel, and defense or duty counsel in justice decisions is a first in Kamloops, an experience that has been a learning process but a positive aspect of the Cknúcwentn First Nations Court for the Elders. Recognizing that this is a new method for justice processes, the collaborative aspect in particular, the Elders value their role as professionals and anticipate further growth and learning.

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Impact of Elders on court professionals.

Elders discussed the effect their participation has on other court professionals, sharing that they believe they are providing an important cultural education, particularly as so many lawyers work with Indigenous clients. They talked about feeling depended on and respected, and having a strong sense of connection to the judges and lawyers, where at one time it would have been a frightening experience. Elder Diane Sandy shared that she believes the care and concern for participants the Elders have is conveyed to other court professionals, impacting them on a personal level. Providing cultural sensitivity training has been an important avenue for education court professionals on the impacts of colonization, something that Elder Rose Miller shared is often a first, being previously unaware of many of these issues. The presence of the Elders brings greater awareness of Indigenous issues and the reasons Indigenous people may have come into contact with the justice system, as Elder Russell Casimir stated:

I hope that our presence, open their eyes to the fact that a lot of this stuff that went on prior to us becoming part of that court was more of a smokescreen. And that's what I think our presence in that courtroom does. It's opened our eyes to the fact that a lot of this stuff they're not seeing, they're not hearing and they're allowing the lawyers to do the talking for him and they're not seeing the true person standing there, why they're there. And that's the part that's gotta be aware: Why they're there and where they come from. (Russell Casimir)

Differences and similarities between Elders and judges.

The Elders discussed their role in the Cknúcwentn First Nations Court in comparison to that of the judges, although some indicated that they did not generally like to “compare” themselves. One element that did come up consistently, however, was the discourse of the western justice system, in particular the words *judge* and *order*. This was an area where the Elders felt they diverged significantly, as they did not relate

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the characteristics of an Elder with either of those words (in the context of a verb especially). Elder Diane Sandy explained this further:

It's important that we both are on the same level of thinking of what we should guide this young person, putting them on the right path. I think that's why I wouldn't say 'judge', because you shouldn't judge people, that was always put in my head 'never judge people' ...but I think that if we could guide them on the right path the judge's way of thinking should be directed to that, especially for the young ones. (Diane Sandy)

Elder Rose Miller underscored the position of non-judgement as well, saying:

I don't judge the person. I just see what's wrong and how I can help try to help correct them so they don't do it again. The judge's point of view must be completely different because they're so used to the old court way. (Rose Miller)

The context of equality in the physical environment plays a large impact in reducing dissimilarities between the Elders and judges, as Sandra Seymour discussed the process of listening to participant's stories prior to sentencing. Greater time spent in listening and understanding is something that the collaborative table environment has contributed to, as Sandra stated:

We've opened the door where you've got the judge sitting on the same level as the Elders. You know, he's sitting right there on your level, looking at you eye to eye. And he's not ruling over you. Everybody sitting at the table is trying to work something out for you. So, really? This is an opportunity. (Sandra Seymour)

While the Elders do not pronounce the sentence for participants in court, their role may in actuality be larger, as they carry out the accountability of an order on a community level, coming into contact with participants. This can be a heavy responsibility, as participants are members of larger family systems who share in that accountability, a concept that may be missed within an isolated courtroom setting.

Sandra discussed this important aspect, saying:

Our role is bigger and it's more accountable because we have to come back to our communities and we have to face not only the people that were in the court

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but their families: all my relations. (Sandra Seymour)

Elders pointed out that other areas of contrast between themselves and the judges may include differences in education (with the judges having more formal), and that the judges may have less personal knowledge of social issues like poverty, abuse, violence, and addictions.

Relationship between Elder and judge.

The above mentioned differences were not described by the Elders as a barrier in their relationship with the judges, rather an area where they were able to provide education and support in sentencing decisions. Elder Muriel Sasakamoose stated that she feels their relationship is “*wonderful*”, as she has experienced a positive response to their work together. Muriel shared:

I make it a point to go and talk to them and stuff. And I think it is really a different way of doing justice. And I think they're open to it, I know I never ever thought I'd be sitting talking to a judge like a friend. (Muriel Sasakamoose)

Having prior professional experience with the justice system contributes to greater confidence in court relationships, yet even for Elders who have not had prior contact, or positive prior contact, they describe a positive relationship that has contributed to reconciliation. Having the judge listen to and acknowledge the advice of the Elders has been particularly important, as it indicates respect and greater equality. Elder Russell Casimir talked about the experience of sitting at the table with a provincial court judge:

They all treat me just like I'm a person. They don't treat me by the number, or what I did in my time, they just treat me as a human being, and that's, that's totally different than how I was raised.

It's awesome to set there and be recognized as an Elder and somebody important in

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your community, that's how it is to me. it's awesome to have them treat, treat all the Elders, every one of us come from a bad background. Somewhere along the line. And we all done something in our life, you know, but to be treated as human beings and understood and recognized, being asked to speak on the floor in the courtroom. Whereas before you were never allowed to, you know. (Russell Casimir)

Identity

Throughout our discussions on history, Indigenous justice principles, First Nations Court processes, roles, impact, and relationship, certainly throughout the entire research timeframe, the underlying themes of shame, equality, and voice continually presented themselves. These were key elements Elders emphasized, as these were the connections that when deliberately addressed (shame), through a process of collaboration and restoration (equality), participants experienced empowerment in choosing accountability, responsibility, and action in the process of resolution in their criminal matters (voice). Choosing to become something, or reclaim oneself, is a powerful affirmation of identity. The Elders recognized that positive identity for participants is so crucial, binding them to culture and community and instilling a sense of belonging.

Shame.

The Elders noted that they consistently observe feelings of shame in court participants, particularly in situations when participants have to face the victims of their offense, admit that they are unable to do something on their own, or when hearing the details of their offense read aloud before the court. High levels of shame can lead participants to avoid taking responsibility for their offense and keep them isolated from seeking out resources, including support from Elders. This connects as well with feelings of inferiority and low self-esteem. Elder Rose Miller indicated that participants

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often have also been victimized in their life and tend to blame themselves inappropriately. Rose shared, *“If they didn’t learn how to do something, if they were never taught, how could they do things differently?”* and stated that *“until you do your healing, you can’t do anything differently. Until you learn all of that stuff, then you learn how to get out of that shame.”*

Elder Russell Casimir talked about the intergenerational effects of shame incurred through colonization, as he personally experienced loss after having his language taken away from him during residential school. Russell recalled, *“After I left that school, I lost it. I was ashamed of it. And that’s what’s happening to the youth.”*

Elder Diane Sandy shared how she witnesses shame affecting participants during sentencing, particularly through their body language, saying:

For one girl, I did, like it was just sort of so sad to see her sitting there, and her head was down, not really communicating with you. You know, looking like head down like that, it’s like wow, you know the impact of what happened to her, the shame she’s going through and that’s sad to hear, I mean, to see something like that you know I mean, come on, you know, you’re a person, you’re beautiful, find that again. (Diane Sandy)

Equality.

The physical environment of the courtroom itself reduces the mainstream court’s hierarchical setting, with a rectangular table that seats all professional members of the court, as well as the participant. During each appearance, each person at that table is given the opportunity to participate in the conversation, providing updates, giving advice or encouragement, or problem solving. The Elders believe that this type of setting plays a large role in positive outcomes for participants, as for many, they have not had an opportunity to participate in their own justice matters before. This reflected for some Elders their memories of the ways justice practices were handled in their

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communities in the past. Elder Rose Miller explained the effect this has on participants, saying:

I think when you have a judge sitting way up high and then crown counsel and the lawyers and everybody, and you're standing back, I think it's just like a domineering effect. Coming down to you and you're the one being charged. It's not the same sitting at the table because everyone is equal, there's no one that's higher or lower no matter who we are. And I think they feel that. And I think they feel a lot better when they have their supporters there with them, even if it's just a lawyer or duty counsel. (Rose Miller)

Voice.

The opportunity to speak and be heard, especially within justice decisions, is important for participants as an avenue for confronting fear and telling the truth. Elders linked having a voice in court with increased pride and self-esteem, a chance to disclose the personal work that has been completed, as well as ask questions when there is confusion regarding following the directions of the court. Elder Minnie Kenoras shared that offenders often do not understand communication from lawyers or the sentencing process, saying:

When they don't understand, they don't have the voice to say anything. So they are more shunned and they just go with it, has to be done and it hurts because when you put them in the jails or you put them in the in the places where they have to be locked up. (Minnie Kenoras)

Being able to speak in court, to the extent that participants are given in the Cknúcwentn First Nations Court, is a first time for many, according to Elder Muriel Sasakamoose. Muriel discussed the fear that Indigenous people may face when they enter the mainstream court system, losing their voice and opportunity to be heard. She stated:

I think it gives them a sense of power. I think it gives them a sense of freedom. And I think it gives them a sense of self-worth because I'm finally able to tell my story, I'm finally able to tell the truth. I know,

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if I was sitting on there, I'd feel like that.
(Muriel Sasakamoose)

Challenges

Personal concerns.

Throughout our interviews, the Elders identified specific areas of concern, which over their three years serving as part of the Aboriginal Community Justice Council had impacted them in various ways. Seeing youth sentenced in the court, particularly the ones who had a long-term history of guardianship through the child welfare system, is emotionally difficult. Situations where the participant is a similar age as the Elders themselves, or where reparation had already been performed on a community level was also conflicting, as Elder Diane Sandy emphasized:

How do you judge an Elder when you're at that age? He's been through the residential school, he's done, you know, and this happened while they were drunk and he's known this person since residential school and things just got out of hand. They've been friends, so, it was really hard. The one he did it to, he already forgave him. So you can't put a sentence on something like a friendship there. Like I say, that was really, really a tough one. (Diane Sandy)

A lack of community support, lack of resources, knowledge, housing, and basic necessities is a challenge, as well as lacking training around understanding addictions and suicide, as well as cognitive disabilities that may impact participants, including FASD. Elder Muriel Sasakamoose shared:

I try to raise consciousness in the communities, try to address the issues that these kids are facing. I really, really try to help everybody that comes here. And sometimes I get really frustrated because there's no help, that's really hard when nobody has help. (Muriel Sasakamoose)

Community support.

Having the support and involvement of the chief and council of participant's respective communities, as well as family members and community professionals was

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important for Elders, particularly as a means of creating greater awareness on a community level as to the function and purpose of the Cknúcwentn First Nations Court. This level of support positively impacts participants, generating a sense of pride. Elder Diane Sandy talked about this effect, saying:

What we should be interested in or even push along is for the chief and council to be there to support them, or family. And when family is involved, that is even greater, you know, because they know, they're not alone in this. And they've got all that help behind them. That's so important. (Diane Sandy)

The involvement of community resource professionals sitting in the courtroom also assists participants in linking directly to their services, which in turn can facilitate engagement with healing plans. The Elders indicated the usefulness of professional development and educational workshops, as they often face with complex issues with participants, as Elder Muriel Sasakamoose said:

I find I have a hard time to deal with them because I want to help them too much. And how do you help them, like how do you help them. What facilities do we have to send them to to get help, you know? And we're having more and more people with mental health issues to deal with, and we haven't had too much training in that area, we've had a couple of workshops. And how, how do we motivate them? How do we get them to remember? What they can't. Like, I don't have the answer to that. (Muriel Sasakamoose)

Future directions.

The concurrence of youth involvement in both the criminal justice and child welfare systems raised for the Elders a need to expand the Cknúcwentn First Nations Court to hear not only criminal matters, but child welfare as well. Familial violence, addictions, and abuse was a common concern for Elders, who felt that they could play an integral role in dealing with these issues from a justice perspective. Elder Minnie Kenoras discussed her hopes for family matters to be brought into the First Nations Courts, as there is often concurrent involvement between family and criminal matters.

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Having all matters directed to the First Nations Courts would allow greater opportunity for families to receive guidance from Elders, who's knowledge and skill base is not limited to justice. Elder involvement in justice may in fact stem predominantly over concerns about family issues, of which criminal justice would be a facet under that umbrella. Elder Diane Sandy articulated this perspective, saying:

It goes back especially to our children, being apprehended, taken away into different homes and stuff like that. I want to see that big change. I want to see the mothers, the young mothers and people. (Diane Sandy)

Increasing contact between Elders and Indigenous persons involved in any justice related matters is important, as the Elders articulated the many ways their presence positively impacts the process. This included increasing community accountability, conveying a sense of caring, belonging and identity to Indigenous offenders, and acting as a vital conduit for the transmission of cultural knowledge. Many Elders expressed their desire to become more involved with justice and to expand on their role and the work they are currently doing.

Chapter 5 Discussion

The key findings of this thesis are discussed below, based on both the initial research questions that guided this process and the main points that the Elders brought out during our interviews. These findings include the important ways that Elders are contributing to the articulation and application of their own cultural principles of justice, their perceptions of the role of Elders in the different processes that structure the Cknúcwentn First Nations Court, and the significance of their presence in justice practices, from an individual aspect as well as the perceived effect on offenders and professional members of the justice system. Following the key findings, a discussion on the methodology and place it has in research will be examined. The limitations of this research will also be discussed, with suggestions on areas of improvement and potential directions for further research. A brief conclusion will summarize this research, as our time of collaboration draws to a close and we move into sharing the work that has been completed.

Elder Participation in Articulating and Applying Indigenous Justice Principles

Including Indigenous Elders in contemporary justice practices is an innovative approach to addressing the over-representation of Indigenous people in the mainstream criminal justice system and invoking culture as inseparable for effective justice practices (Jeffries & Stenning, 2014; Johnson, 2014; Luther, Mela, & Bae, 2013; Marchetti & Daly, 2007). It is a collaborative and creative process, challenging long-standing justice paradigms here in Canada. This approach is also multi-layered, as it engages professional and community, multiple generations, and Indigenous and non-Indigenous cultures in partnership with one another. The Elders who participated in this

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research project were all members of, or closely connected to, the Secwepemc Nation, and thus their knowledge and interpretation of Indigenous justice principles relate directly to their lives here on Secwepemc territory, particularly their historical recollections. In the literature review, the examination of Indigenous justice covered a broad geographical and multicultural range of practices. While certain principles and guiding beliefs were shown to be consistent among the Indigenous cultures discussed, there are also unique local sociohistorical and geographical aspects that contribute to the identity of each system and expression of practice, which warrants caution towards overgeneralizations. The Elders spoke of their own experiences and teachings, and how they apply those beliefs to their work in the Cknúcwentn First Nations Court, which is also a unique microcosm of justice: within Kamloops, within British Columbia, within Canada, and of course within justice practices throughout the world. This discussion thus takes that multi-layered perspective into consideration while focusing on one specific facet, which is not a limited way of viewing this topic but rather provides an opportunity for others to learn about what is happening at a grassroots level and perhaps apply relevant aspects to other contexts.

Elders as a Therapeutic Element in Justice

Way of being.

The Elders embody a way of being, or presence in the courtroom, that falls contrary to the conventional language of the mainstream justice system. The concepts of *judging* or *ordering* a person to do something, does not exist within the Elders' belief systems. For many, this relates back to community justice practices that historically were equitable and collaborative, as opposed to a strongly hierarchical, power-infused

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system. It is integral to approach Cknúcwentn First Nations Court participants, how offenders are identified in this context, from a non-judgmental approach based on acceptance and genuine caring. The connectedness that grounds Indigenous communities conveys to the Elders that the person now before them belongs to someone somewhere, perhaps even to them as a relation, and that it is their responsibility to assist that person to the best of their ability. Releasing negative emotions and biases, and focusing instead on building a rapport with the client, the Elders endeavor to create an atmosphere of respect through their own responses to the participant.

Language.

The language utilized within the sentencing process maximizes therapeutic effects for offenders (Auty, 2006). Therapeutic words such as dialogue, engagement, listening, respectful, curious, and complex, as identified by Auty (2006), reflect the Elders' approach with each court participant, as they focus on addressing deeper issues such as shame through positive communication, encouraging participants to use their voice, and relaying important cultural knowledge. The therapeutic element offered by the Elders is so impactful, that sentencing outcomes may be less relevant to success rates than the experience of the sentencing process itself, due to consistent reinforcement through the Elders' encouragement, cultural knowledge transmission and emphasis on connectedness to community and family (Harris, 2006).

Sharing cultural and community knowledge in sentencing Indigenous offenders in this way makes the Elders role equal to that of any other judicial or legal role, in the context of therapeutic jurisprudence (Harris, 2006). The opportunity to resolve justice matters in a collaborative, circular process is integral not only to client success, but also

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as a renewal of the position of Elders in decision-making for matters involving community members (Auty, 2006; Daly & Marchetti, 2012). These findings also mirror the Indigenous courts of Australia, as Morgan and Louis (2010) found, “There was considerable evidence collected through the consultation process that demonstrated that Elders perform a crucial role in the Murri Court across all five evaluation sites.” (p. 122).

Elders’ Roles in the Cknúcwentn First Nations Court

Participant assessment.

An important function of the role of Elders during the sentencing and review processes is a systematic assessment of court participants. Questioning participants thoroughly, judges, lawyers, Elders, and any additional community professionals gain a greater understanding of the personal, historical, and contextual factors that may have influenced participant contact with the justice system. During assessment, the Elders are not looking to lay blame on the part of the offender, which they perceive as increasing shame and counterproductive to personal growth, rather their goal is to search for the most effective recommendations that will meet the needs of the client and possibly victim(s). These findings reflected the principles of the Indigenous Elders and Respected Persons from Australia, as Marchetti (2010) noted through interview data, “...they did not think that the Elders should engage in too much of a ‘shame job’ in court because it was ‘shame enough’ for the offender to be in court and facing the Elders” (p. 24).

Participant assessment in the First Nations Court is absolutely a collaborative approach, between the Elders Council within themselves as well as between Elders,

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judges, and community professionals. The Elders strive to develop the trust of the participant through their own way of being and then once trust has been established, glean details from the participant that may include their own ideas and methods of healing and making recompense for the offense. Power imbalances between offenders, victims, and the members of the judicial system can negate the administration of justice (Marchetti, 2010), with the focus on building trust and mutual respect by the Elders reducing these impacts. In cases where participants are struggling to successfully complete the terms of probation or healing plans, an absence of trust may also be a factor in poor progress.

Teacher, advisor, encourager.

Elders hold a dynamic role within First Nations Court processes, applying their skills according to the needs of the participant as well as the particular stage in the participant's court proceedings. There are instances where the Elders assess that the participant is following through on the court's recommendations, and verbal affirmations are offered. At other times, participants may not be engaging with their probation order or healing plan, and here the Elders may work on problem solving skills with the participant, asking questions and giving suggestions for alternative options. In cases where the Elders assess that the participant is not fulfilling their obligations, they may be stern and admonish the participant, warning them of the pitfalls of not following through. This may be an opportunity to provide advice through sharing their own personal experiences, which has included past history of addictions, contact with the criminal justice system, personal healing, and teachings passed down from their Elders. The transmission of these experiences and teachings are crucial for participants, who

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through the interruption of cultural connection via colonization, may have not received this integral information (Lavallee & Poole, 2010).

This teaching, sharing, encouraging, problem-solving, and admonishing, is given by the Elders to participants with a spirit of kindness and caring, often with humour and hugs at the end of the participant's court appearance. The intrinsic level of caring and understanding, the Elders say, is what makes their role unique in the courtroom. Their empathic presence touches participants on a heart, rather than solely cognitive, level, and is so crucial in engaging the participant and building trust. This holistic focus, through an immediate connection on an emotional (heart) and spiritual level with participants right from the sentencing process, generates fuller meaning to justice for both the Elders and participants, as it embodies the principles of Indigenous law (Daly & Proietti-Scifoni, 2011; Melton, 1995).

Accountability.

With their presence at the courtroom table, the Elders significantly increase the level of accountability for participants through community connection. It may encourage the likelihood that the commitments that have been spoken aloud by participants will be carried through with action, and while attempts may not always be perfect, they are always appreciated. It is the lack of action itself that brings reprimands, yet again not from a position of condemnation but rather the need for greater understanding of the context of that person's life. There is an expectation that as the Elders approach each client with honesty, the same degree of honesty will be reciprocated by the client. Intuition and personal experience is helpful in situations where clients are suspect of not being forthright with the Elders, generally emphasized

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through a client's poor body language, particularly a lack of eye contact, and incongruence between self-report data and concrete evidence of engagement with healing plans. This increase in offender accountability is also noted through evaluation of the Murri Court, as offenders directly indicated that Elders increase accountability through urging them to take responsibility for their actions and highlighting the consequences of their behaviour and its impact on the community (Morgan & Louis, 2010).

Significance of Including Elders in Contemporary Justice

Without the incorporation of heart, spirit, and soulfulness to justice (Flies-Away & Garrow, 2013), for the Elders it remains incomplete. By providing the forum to address the issues that may have brought the participant into contact with the mainstream justice system, Elders transmit key aspects of Indigenous justice through their presence. In the First Nations Court, they fill crucial gaps left by the retributive system for Indigenous offenders, bridging themselves from community and culture to court participants. The vital connection to culture and community by the Elders from the Cknúcwentn First Nations Court corresponds with that of the Elders and Respected Persons from the Koori Courts (Harris, 2006; Marchetti & Daly, 2004).

Decolonization through connection.

For participants who are disconnected from their identity, a potential root source of offending behaviour for the Elders, the bridge of an Elder is a much needed source of guidance and strength. Disconnection can occur in many ways, including geographically, culturally, emotionally, and spiritually, and it is the knowledge of the Elders that can identify the types of disconnection, the sources, and determine effective

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courses of action. Inherent knowledge and teachings cannot be replicated through formal education and workplace training; it is the ancestral wisdom passed down through experience, stories, memory, and tradition that help guide the Elders and underscore the significance of their presence.

The reconnection to culture and community imparted by the Elders to Indigenous offenders is a significant process in decolonization, as it reconfirms relations to land, practices and traditions, within the context of identity and belonging (Iseke, 2013). Restoring Elder roles for intergenerational transmission of knowledge is integral for Indigenous peoples in any social context, yet particularly so when prevailing issues such as multi-systemic overrepresentation exist. Mohawk scholar Professor Taiaiake Alfred (2015) supports this through discussing the significance of land-based cultural apprenticeship programming as conduit for the resurgence of Indigenous knowledge and building cultural strength. Alfred (2015) states, “In real terms, it recreates a set of relationships that existed prior to the harm; prior to colonization in the way people have experienced it most recently” (p. 11).

Personal meaning.

The Elders of the Cknúcwentn First Nations Court take their role both in the courtroom and in community seriously. The ability to engage with Indigenous offenders in a judicial context is meaningful and relevant, and opportunity to impact the lives of their people. Seeing participants change their lives, succeed in completing education, obtaining sobriety, participating in cultural and spiritual practices, and perhaps most significantly, completing healing plans and the terms of probation without reoffending, is an emotional and personal experience for the Elders. It brings a sense of usefulness

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and belonging, as they share in the successes and internalize the failures of the participants. While the Elders receive a small honourarium for their work on court days, many remarked that they feel so passionately about their role in the Cknúcwentn First Nations Court that payment is inconsequential. They eagerly seek out opportunities to be involved in justice matters that affect their own community members as well as all other Indigenous nations represented in the First Nations Court.

Presence in the courtroom.

This research focused on the Elders from the Cknúcwentn First Nations Court and did not include other court professionals or court participants. The views on the impact of the Elders in this type of justice process is therefore the perspectives of the Elders themselves, which was based on comments they received from judges, lawyers, and the participants themselves. Elders integrate a unique element into mainstream court processes, a new inclusion into an old system. For many who have had long-term involvement with the mainstream system, it is unexpected and they can be apprehensive to the change. The Elders note that there is an air of curiosity at times, and non-Indigenous professionals may express uncertainty around them, wondering if there are certain protocols they need to follow. For example, Cknúcwentn First Nations Court days begin with smudging, which for many is a new experience and they can be unsure of how to conduct themselves. The Elders respond to all of this with good humour and occasionally some teasing, realizing that they are transmitting their culture and way of being not only with the Indigenous participants.

The environment of mutual collaboration and sharing is obvious in the Cknúcwentn First Nations Court in many ways. The deference provided to the Elders by

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the judges, sharing discursive space at the courtroom table for the Elders to ask questions, provide comments and offer feedback, is important for the Elders, an unexpected change for some who have had previous contact with the justice system. The opportunity not only for participants to be heard, but for the Elders to be heard and acknowledged, with their advice being written into healing plans for participants, carries a significant amount of weight. It is a sharing of power nonexistent in any mainstream judicial context. The Elders recognize this and use the opportunity to educate their colleagues on Secwepemc culture and Indigenous justice, something that they say is well received, encouraged, and reciprocated.

Many of the Cknúcwentn First Nations Court participants have spent time in the foster care and criminal justice systems. These experiences can leave devastating emotional impacts, particularly to their sense of identity. To have the involvement of Elders in their justice matters is certainly meaningful. Through the encouragement of Elders, participants are able to have a voice in their own matters, opening the door for accountability and opportunity to make amends, whether that is to themselves, the community, or victims of their offense. Having the consistent, genuinely caring, reliable presence of an Elder can create a safe space for an individual to honestly face the issues that has brought them to that courtroom. This is a starting point for many, and as the Elders say, their presence continues even after the blanket ceremony. While the Cknúcwentn First Nations Court process has ended for that individual, a new way of life is only just beginning.

Reflections on Methodology

In the context of a research topic that was fundamentally collaborative and relationship-based, an Indigenous methodology was, from ethical and practical perspectives, the most appropriate option for this thesis. The quality of any work undoubtedly correlates with a methodology that provides optimal research conditions. Yet, the methodological choice can extend beyond the construction of a research setting. This research project engaged a community and people that I am personally connected to and feel a deep sense of responsibility towards. I have been living as a guest on Secwepemc territory, and I sincerely want to be a good guest.

The reciprocal aspect of an Indigenous methodology was absolutely one of the most crucial aspects of my thesis. I anticipated, correctly it turned out, that through this research process, I would benefit from my time with the Elders, both individually and as a group. Not only through my thesis, but in any of my previous involvement with the Cknúcwentn First Nations Court, I have learned in ways that I would not have had the opportunity to elsewhere. Out of respect to the high value I place on the Elders' time and knowledge sharing, I needed to ensure that they would not leave this project feeling robbed or left empty handed. In addition to the Indigenous legal education video on the role of Elders in First Nations Court, I attempted to provide as much clarity and communication on the entire thesis as possible, via phone calls, mail, updates, and a group meeting. This was a collaborative process from start to finish and does not end with this thesis, rather it transforms as I continue to be connected to the Elders through our relationship and roles in community. I honour and respect them for that, and hope those values are continually demonstrated through my actions.

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There is nothing quick or simple about Community-based Participatory Research. It is time consuming and intricate, requiring patience, commitment, humour, and a genuinely caring attitude. At the risk of sounding cliché, there is no “me” in CBPR, only “we”, and all decisions must be made with the benefit of the group in mind. The challenges research entails thus challenge the CBPR researcher to consider many perspectives, appreciate that one’s own ideas are not necessarily the best course of action, uncover or create solutions when gaps appear, and keep sight of the end goal without rushing to get there. In the diverse constellation of traits that each human inhabits, some of these particular characteristics may be more helpful than others. The less helpful gifts at times must be graciously channeled towards other aspects of one’s life, while the best are applied without resentment or attachment to the others. Willingly deconstructing my own personality proved helpful as I learned to amplify skills I had, encourage new learning within myself in areas that I fell short, and abandon preconceived ideas of how anything “should” go. If I cannot examine my own approach as a researcher critically, searching for the “we” that is grounded in relationship, reciprocity, and respect, then I cannot expect my research to truly reflect the topic I am exploring.

Research Limitations

Currently, there are four First Nations Courts operating in the province of British Columbia. This research, focused on the role of Elders in contemporary judicial contexts, sampled the group of Elders from the Cknúcwentn First Nations Court located in Kamloops, BC. The views and experiences expressed are therefore limited to the unique context of this court, and are not necessarily reflective of the views of the Elders

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from other First Nations Courts. In addition to this, the interviews obtained were only from the Elders, and did not include data from provincial court judges presiding in Kamloops or any other Cknúcwentn First Nations Court professionals or participants. Obtaining additional interview data through other related professionals, may have extended the perspectives, providing additional lenses and overall a more comprehensive picture on the role of the Elders and impact of their presence in the courtroom.

Implications

The lack of existing literature on the topic of Indigenous Elder involvement in contemporary justice, in light of the confirmed benefit of their presence, suggests that this is an important area of judicial practices warranting further exploration and promotion. In the context of therapeutic jurisprudence, including Elders as professional collaborators in a team-based approach can infuse judicial processes with healing, spiritual, and connective elements, which are so integral for Indigenous offenders. Elders hold a crucial role in the social fabric of Indigenous communities as conduits of teaching and knowledge.

The promotion of their presence in justice matters thus can have far reaching effects into the Canadian criminal justice system, most significantly towards addressing the intensifying overrepresentation of Indigenous offenders. In addition to this, the mandates laid out by the Truth and Reconciliation Commission of Canada are best supported by meaningful acts of decolonization. Restoring Indigenous Elders, in this way, as decision-makers and cultural knowledge-transmitters in matters concerning Indigenous peoples, further expresses a commitment to reconciliation and restoration.

Future Directions

Further research on the inclusion of Elders in contemporary judicial contexts and the impact of First Nations Courts on Indigenous offenders, particularly in regards to incarceration and rates of recidivism would be valuable towards encouraging the growth of alternative approaches to justice. Quantitative research would also benefit these courts, for creating a statistical evidence base of their success and potentially increase the likelihood of fiscal support. Many of the Elders remarked that they would appreciate hearing the perspectives of provincial court judges on their involvement with justice, particularly in response to their own observations. This type of research could strengthen the collaborative aspect of the First Nations Court process, improving court processes for participants and the working relationship between Elders and judges.

Expanding the involvement of Elders into family law matters and well as increasing the number of regular criminal sentencing court sittings would increase exposure of the Elders to Indigenous persons involved in justice. An increase would allow for greater collaborative research, providing a larger number of research participants, which could be used in comparative analysis as well as increasing the qualitative interview data base gathered thus far. This kind of information could be beneficial towards understanding the ways Elders are adapting to a contemporary judicial setting, the impact their presence is having on the justice system and ways the system is adapting to them, as well as articulating their role in this context and how this approach effects judicial outcomes, such as recidivism, for Indigenous offenders.

Chapter 6 Conclusion

This research examined the role of Indigenous Elders in contemporary judicial contexts, in this case, the Cknúcwentn First Nations Court located in Kamloops, British Columbia, which is a sentencing court for Indigenous offenders. The goal of the study was to understand the unique aspects transmitted through the presence of the Elders in the courtroom, to court participants and professionals alike, as well as the personal impact experienced by the Elders through engaging in this cross-cultural and cross disciplinary collaboration. As the disproportionate rate of Indigenous people involved with the Canadian criminal justice system continually increases, exploring alternative approaches to justice is vital, in order to amplify the formidable and constructive responses that are happening in communities and changing justice practices.

Elders undoubtedly hold a unique, dynamic, and meaningful position in the Cknúcwentn First Nations Court. Their presence is emotional, genuine, spiritual, and supportive, conveying broader depth to sentencing and probationary processes for Indigenous offenders. Infusing judicial processes with culture, community, and connection, Elders are actively working to decolonize justice in Canada for Indigenous offenders. Revitalizing the role of Elders in justice processes for Indigenous offenders, through the contemporary context of the First Nations Courts, is a unique expression of therapeutic jurisprudence in Canada.

Vitality bridging themselves between generations, culture, and community, Elders are rebuilding the significant disparities incurred through colonization, in a truly collaborative approach emphasizing reconciliation and cultural reclamation. As Elder Russell Casimir stated, *“We’re trying to, more or less, bring it back I guess, put it back*

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on the floor where we are in charge of our people again. And that's where we got to go."

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APPENDIX A

November 18, 2015

Ms. Karen Lara
Faculty of Health Disciplines\Graduate Centre for Applied Psychology
Athabasca University
File No: 22013
Expiry Date: November 17, 2016

Dear Karen Lara,

The Faculty of Health Disciplines Departmental Ethics Review Committee, acting under authority of the Athabasca University Research Ethics Board to provide an expedited process of review for minimal risk student researcher projects, has reviewed your project, 'Revitalizing Roles: The Inclusion of Indigenous Elders in Contemporary Judicial Contexts'. An interesting and important study - very well presented.

Your application has been **Approved on ethical grounds** and this memorandum constitutes a **Certification of Ethics Approval**. You may begin the proposed research.

AUREB approval, dated November 18, 2015, is valid for one year less a day.

As you progress with the research, all requests for changes or modifications, ethics approval renewals and serious adverse event reports must be reported to the Athabasca University Research Ethics Board via the Research Portal.

To continue your proposed research beyond November 17, 2016, you must apply for renewal by completing and submitting an Ethics Renewal Request form. Failure to apply for **annual renewal** before the expiry date of the current certification of ethics approval may result in the discontinuation of the ethics approval and formal closure of the REB ethics file. Reactivation of the project will normally require a new Application for Ethical Approval and internal and external funding administrators in the Office of Research Services will be advised that ethical approval has expired and the REB file closed.

When your research is concluded, you must submit a Project Completion (Final) Report to close out REB approval monitoring efforts. Failure to submit the required final report may mean that a future application for ethical approval will not be reviewed by the Research Ethics Board until such time as the outstanding reporting has been submitted.

At any time, you can login to the Research Portal to monitor the workflow status of your application. If you encounter any issues when working in the Research Portal, please contact the system administrator at research_portal@athabascau.ca.

If you have any questions about the REB review & approval process, please contact the AUREB Office at [\(780\) 675-6718](tel:780-675-6718) or rebsec@athabascau.ca.

Sincerely,
Sherri Melrose

Chair, Faculty of Health Disciplines Departmental Ethics Review Committee
Athabasca University Research Ethics Board

APPENDIX B

LETTER OF INFORMATION / INFORMED CONSENT FORM

Project Lead:
Karen Lara
karen.lara00@gmail.com
250.299.1830

Supervisors:
Tracey Lindberg
traceyl@athabascau.ca
1.800.788.9041 (ext.5859)

Simon Nuttgens
simonn@athabascau.ca
1.866.916.9653

You are invited to take part in a knowledge gathering project entitled:

The Restoration of the Role of Elders in Judicial Sentencing

The information presented here will tell you **what this project is about** and **what your participation will involve, if you choose to participate**. It also describes your right to withdraw at any time. In order to decide whether you wish to participate, you should understand about the risks, benefits and what it requires of you to be able to make an informed decision. Take time to read this carefully as it is important that you understand the information given to you.

Please contact Karen Lara if you have any questions about the project or would like more information before you consent to participate.



My name is Karen Lara, I am from the West Kootenays of British Columbia and am of German and mixed ancestry. I am the youngest of three children, am a sister, auntie, and the mother of two children, who are of Mexican and Yaqui Native American descent. I am a trauma counsellor, Gladue Report Writer with the Legal Services Society of BC, and am currently completing thesis research for a Master's degree in Applied Psychology- Counselling. I hold a Bachelor of Arts Honours degree with a major in Psychology. I specialize in intergenerational and complex trauma, focusing particularly on the relationship between familial physical/emotional/sexual trauma, criminal behaviour, and healing.

Over the past 20 years, I have worked and volunteered in social justice and community development projects, both in Canada and internationally. I am currently employed as a trauma counsellor at the White Buffalo Aboriginal and Métis Health Society in Kamloops, BC. My other activities include volunteering with the Cknúcwentn First Nations Court, facilitating the Elder's Tea and leading a funding subcommittee, as well as sitting on the Aboriginal Justice Council representing my agency as a community stakeholder. In the past, I have also volunteered at the South Okanagan Victim Assistance Society, providing court support for victims of domestic violence.

I believe in a family-centered and community-based approach as a core value in my personal and professional life. All people fundamentally deserve to be treated with dignity and respect. I believe that each person is the expert in their own life and that healing is an experience unique to the individual, a

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journey rather than a destination. As a counsellor, I view myself as a collaborative team member. I believe in the profound ability of the human spirit to overcome suffering and challenges, and that this ability is deeply rooted in our connection to the world around us.

As a requirement to complete a Master's degree in Counseling Psychology, I am engaging in a collaborative knowledge gathering project about the restoration of the role of Elders in justice decisions for Indigenous offenders. I am especially interested in gathering knowledge on why it is important for Elders to be restored to this role, through understanding what is imparted through their presence in justice, and how this is applied in contemporary contexts such as a provincial courtroom. I am conducting this project under the supervision of:

Tracey Lindberg



Professor Lindberg is Cree and Metis from northern Alberta. A graduate of the University of Saskatchewan College of Law, she is the first Aboriginal woman in Canada to complete her graduate law degree at Harvard University. An award-winning scholar, Professor Lindberg writes and publishes in areas related to Indigenous law, Indigenous governance, Indigenous women and Indigenous education. Dr. Lindberg is an Associate Professor in the Centre for World Indigenous Knowledge and Research at Athabasca University, and is the Canada Research Chair in Indigenous Traditional Knowledge, Legal Orders and Laws.

Simon Nuttgens



For the majority of my career (since about 1996) I have provided counselling primary to children, adolescents, and families. In my formative years as a counsellor worked in residential youth treatment. Since 2007 I have been a faculty member with the Graduate Centre for Applied Psychology at Athabasca University. My areas of research interest include ethics, postmodern approaches to counselling, paternal absence, and First Nations mental health. My master's thesis research examined the bereavement experience following suicide. My doctoral dissertation examined the stories of Aboriginal children raised in non-Aboriginal families.

Why are you being asked to take part in this project?

This project has both a learning and action focus. It is connected directly to the Cknúcwentn First Nations Court, and to the community stakeholders and persons involved in the court. As a member of the Aboriginal Community Justice Council, you are an integral part of this project- your knowledge and experiences will guide the process as we collaboratively work together.

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What is the purpose of this knowledge gathering project?

The purpose of this project is to gather knowledge as a multi-purpose education tool- to understand the role and importance of the involvement of Elders in justice decisions for Indigenous offenders, and to use this information to educate the judiciary, legal professions, community stakeholders, and academic community.

As a final outcome of this project, a legal education video will be developed and distributed through the Aboriginal Justice Council and Legal Services Society of British Columbia that will share the knowledge we have gathered together about the role of Elders in justice practices. This video will be created for both educational and advocacy use, to further the position of Elders in judicial contexts in Canada.

What will you be asked to do?

For this project, you will be asked to:

1. **Attend 2 individual interviews:** *at the location of your choice, audio and video recorded, 1-2 hours, will occur between September and November 2015*
Interview 1: knowledge gathering
Interview 2: follow up interview to review information gathered
2. **Attend 1 talking circle (dialogue followed by a Q&A amongst Elders/information holders and participants):** *located at the Shuswap Nation Tribal Council office, audio and video recorded, 2-3 hours, will include lunch/tea, will occur between December 2015 and January 2016*
3. **Follow up review of legal education video:** *a draft copy of the video compiled using the knowledge gathered will be presented for you to review either individually or as a group (depending on availability), 2 hours, tea included if scheduled as a group*

What are the risks and benefits?

As appreciation for your participation in this knowledge gathering project, you will be provided with a \$50 honourarium for each interview you attend, as well as for the final circle and review (\$200 maximum). Out of town participants will also be provided with a \$25 gas card to reimburse travel expenses to the Shuswap Nation Tribal Council office for the final circle. At the final circle, lunch and tea will be served as we conclude the knowledge gathering portion of the project. A \$25 gas card will also be provided for out of town participants if the legal education video review is done as a group event.

Your participation in interviews and circles will also be video-recorded and professionally arranged into a legal education video. You will be consulted in the editing process of this video and will have control over what personal information you wish to be included and/or excluded. No personal information will be released without your consent and final approval.

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Risks associated with this project may include: **a)** discussing emotionally painful or traumatic material relating to the impacts of colonization and the loss of the role of Elders in justice practices, **b)** a time commitment in order to ensure that the knowledge gathered accurately reflects your personal knowledge and experiences, and **c)** travelling once to the Shuswap Nation Tribal Council during the winter months (in order to meet project timeframe deadlines). Referrals for counselling or other support services will be provided as requested.

Do you have to take part in this project?

Involvement in this project is entirely voluntary. At any time during an interview, you have the right to end the interview. Honourariums will be provided after each interview or circle has concluded- *you will not be required to return any honourariums already provided should you choose not to continue participating in the project.*

If you choose **not to include** any information you have provided in interviews (audio or video) for the final legal education video, Karen Lara must be notified *no later than February 15, 2016 at 12:00pmPST.*

How will your privacy and confidentiality be protected?

The information you share in this knowledge gathering project will be credited to you publicly both through the legal education video and final research paper. Any personal information that you do not wish to share can be discussed at any time prior to **February 15, 2016 at 12:00pmPST**, and removed according to your wishes. You will have the opportunity prior to this date to review a draft copy of both the legal education video and research paper, and request any changes.

How will the data collected be stored?

Knowledge gathered through interviews and circles will be video and/or audio-recorded, as well as transcribed. This information will be saved on a password protected USB drive stored in a secure location, as well as password protected computer at my home office.

You will also be provided with full copies of the transcripts, video, audio, or other information gathered that you will have the opportunity to approve prior to use and prior to publication, with the option to edit, delete and/or add to.

Who will receive the results of the research project?

The final results of this project will be shared with the Aboriginal Community Justice Council, Aboriginal Justice Council, and Legal Services Society of British Columbia. A written abstract will be posted online at the Athabasca University Library's Digital Thesis and Project Room and the final research paper will be publicly available.

Who can you contact for more information or to indicate your interest in participating in the research project?

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If you have any questions or concerns regarding this project, would like more information, or are interested in participating, you may contact Karen Lara by email: karen.lara00@gmail.com or by phone at 250.299.1830.

Any thoughts or concerns regarding this project may also be discussed with either of my supervisors by email: traceyl@athabasca.ca; simonn@athabasca.ca or by phone: Tracey Lindberg 1.800.788.9041 (ext.5859); Simon Nuttgens 1.866.916.9653

If you are ready to participate in this project, please complete and sign the attached Consent Form and return it to:

Karen Lara
862 Nicola St., Kamloops, BC, V2C 2R7
or
c/o White Buffalo Aboriginal and Metis Health Society
517A Tranquille Rd., Kamloops, BC, V2B 3H3

Kind regards,



This project has been reviewed by the Athabasca University Research Ethics Board. Should you have any comments or concerns regarding your treatment as a participant in this project, please contact the Research Ethics Office by e-mail at rebsec@athabasca.ca or by telephone at 1-800-788-9041, ext. 6718.

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Informed Consent:

Your signature on this form means that:

- You have read the information about the research project.
- You have been able to ask questions about this project.
- You are satisfied with the answers to any questions you may have had.
- You understand what the research project is about and what you will be asked to do.
- You understand that you are free to withdraw your participation in the research project without having to give a reason, and that doing so will not affect you now, or in the future
- You understand that if you choose to end your participation **during** data collection, any data collected from you up to that point will be retained by the knowledge gatherer, unless you indicate otherwise.
- You understand that if you choose to withdraw **after** data collection has ended, your data can be removed from the project at your request, up to **February 15, 2016 at 12:00pmPST**

	YES	NO
I agree to be audio-recorded	<input type="radio"/>	<input type="radio"/>
I agree to be video-recorded	<input type="radio"/>	<input type="radio"/>
I agree to be photographed	<input type="radio"/>	<input type="radio"/>
I agree to the use of direct quotations	<input type="radio"/>	<input type="radio"/>
I allow my name to be identified in any publications resulting from this project	<input type="radio"/>	<input type="radio"/>
I allow data collected from me to be archived in <i>The Restoration of Elders in Judicial Sentencing</i>	<input type="radio"/>	<input type="radio"/>
I am willing to participate in a follow up review to verify that the information I have provided is accurately reflected	<input type="radio"/>	<input type="radio"/>

Signature of Participant

Date

Project Lead's Signature:

I have explained this project to the best of my ability. I invited questions and responded to any that were asked. I believe that the participant fully understands what is involved in participating in the research project, any potential risks and that he or she has freely chosen to participate.

Signature of Project Lead

Date