



**CRIMINAL JUSTICE IN CANADA –
BEYOND ‘ONE SIZE FITS ALL’**

**Nova Scotia Criminal Justice Association
Friday June 9, 2017
Scotiabank Theatre, Saint Mary’s University
8:30am – 4:00pm**

Session Objectives

To provide a forum for participants to gain a greater understanding of:

- the rationale for creating specialized justice processes as an alternative to the traditional justice system;
- the ways in which these alternatives have been implemented in Nova Scotia;
- the strengths and weaknesses of the approaches; and
- the challenges and opportunities for improving their effectiveness

Welcome and opening remarks

Opening remarks were provided by Dr. Esther Enns, Vice-President, Academic and Research (Acting), Saint Mary’s University and Fred Honsberger, President, NS Criminal Justice Association. An opening prayer was offered by Mi’kmaq Elder Jane Abraham.

Keynote address

Provincial Court Innovation in the Criminal Justice System

The Honourable Pamela S. Williams, Chief Judge of the Provincial and Family Courts

The Chief Judge spoke about the development of specialized courts and processes as a means to address the revolving door for vulnerable individuals in the traditional criminal justice system. “Quite simply - the criminal justice system is inundated with matters whose root causes are linked to poverty, marginalization, and mental health and addiction issues - to name but a few – issues the system was never intended or designed to address. And we know that the traditional system is not always able to respond in meaningful ways which promote a just, peaceful, and safe society.”

Chief Judge Williams spoke about the evolution of specialization in the provincial court system. She noted that, although Criminal Code amendments (e.g., s.718.2(e)CCC) and the SCC *Gladue* decision have been helpful, over-representation of Aboriginal offenders in the justice system remains a great concern. She was optimistic about the potential of Wellness Courts to offer hope to Aboriginal communities by incorporating Aboriginal justice concepts into the court process. She expressed her pride that the Provincial Court has signed a Memorandum of Understanding with the First Nation communities of Wagmatcook and Waycobah and Victoria County to establish a full service Provincial Court in Wagmatcook which will include both a Wellness and Gladue Court.

The Chief Judge noted that we are beginning to see the need to better understand the effects that systemic racism has on offending behavior. By understanding the root causes of offending (which includes both social context and cultural impact) we then have the opportunity to consider responses which address accountability, reparation of harm, and rehabilitation.

She indicated that the concept of ‘Delayed Sentencing’ (s.720(2) CCC) and similar provisions of the *Controlled Drugs and Substances Act* paved the way for the creation of specialized courts and programs related to mental health and addiction and domestic violence. These permitted that Court to delay sentencing to enable offenders to attend a treatment program approved by the province under the supervision of the court.

She noted that efforts are underway to expand mental health/drug treatment/wellness programs throughout the province in collaboration with health and community services. Modest funding has permitted the establishment of a Court Monitored Drug Treatment Program in Kentville. A similar program has been created in Dartmouth under the umbrella of the NS Mental Health Court by partnering with the Opioid Treatment Program.

Chief Judge Williams stated that the ‘pro-prosecution’ and ‘zero tolerance’ policies of the 1990’s have not succeeded in reducing incidents of intimate partner violence and that domestic violence cases constitute a large part of the Provincial Court daily dockets. To deal more effectively with some of these cases, which Chief Judge Williams noted were often rooted in poverty, power imbalances, addiction, and mental health issues, the Province established a Domestic Violence Court in Sydney several years ago. The Chief Judge expressed her view that “there is a golden opportunity here to encourage and support both victim and community involvement and participation by using a restorative approach”.

Chief Judge Williams stated that there is a place for victims in each of these specialized court programs. She noted that the underpinnings of each specialized court program are accountability for offenders, rehabilitation, reparations of harm, and restoration of relationships with a view to contribute to a just, peaceful, and safe society.

The Chief Judge cautioned that specialized courts and processes do not work for everyone and that offenders who do not comply with program rules risk return to the traditional criminal justice system. In conclusion, she challenged conference participants to think of ways in which we can work together, share our resources, and provide an integrated and multi-disciplinary alternative approach in the criminal justice system.

Panel presentation

Domestic Violence Courts

Dr. Verona Singer, Halifax Regional Police Victim Services

Dr. Diane Crocker, Saint Mary’s University

Tod Augusta-Scott, Bridges Institute

Dr. Singer provided a review of the evolution of the pro-arrest, pro-charge, pro-prosecution policies of the 1990s. Women were concerned about increased state intervention and the unintended negative consequences. Women’s equality-seeking groups were also concerned about the potential use of RJ programs for cases of gendered violence. In her PhD research regarding the high risk of lethality protocol, Dr. Singer concluded that more needed to be done to address the issues underlying men’s violence toward women.

In monthly meetings over a two-year period, Dr. Singer, together with Pamela Harrison (formerly of the Transition House Association of Nova Scotia) and Tod Augusta-Scott (Bridges) discussed how restorative principles might be incorporated in a response to gendered violence. A Halifax committee was established, with broad representation from community partners and meetings have been held with the Minister and Deputy Minister of the Department of Justice to discuss how restorative approaches to gendered violence might be adopted. Dr. Singer noted that a working group has been established to guide the creation of a domestic violence court in Halifax.

Dr. Crocker provided a summary of the results of the evaluation she conducted for the NS Department of Justice of the Nova Scotia Domestic Violence Court Pilot Project. The court was launched in Sydney in 2012. Overall, the evaluation found that the program was successfully implemented; that it was supported by most stakeholders; that the designation of specific program staff was helpful; and that many individuals opted into the program and reported positive experiences. Unfortunately, the evaluation reported that few victims participated and that, despite the program’s best efforts, the pilot project had little effect on victims. Dr. Crocker indicated that this has been an issue experienced by other specialized courts in Canada.

For offenders, the project succeeded in completing many risk assessments and delivering more treatment programs. However, these were mainly provided to low-risk offenders, and although high-risk offenders were provided the opportunity to participate in the program, they typically did not. Although collaboration was identified as key to achieving the broad objectives of the Pilot Project, most stakeholders defined the government relationship with community agencies as ‘cooperative’ rather than collaborative.

Dr. Crocker indicated that it will be important for Nova Scotia to reflect on the theory of justice (i.e. retributive, therapeutic or restorative) underpinning the courts when they expand to other locations. She said that she would characterize the Sydney pilot not as a specialized court but as an ‘early intervention treatment court’. Dr. Crocker sensed that the program designers had something broader in mind - something that, at the very least, truly addressed victims’ needs in collaboration with community. A major shortcoming of the pilot, according to Dr. Crocker was the emphasis on offenders.

Tod Augusta-Scott indicated that, through a series of community conversations, it became apparent that women were not satisfied with the current criminal justice system, because important decisions were being taken from them. He indicated that he has been pleased to observe in recent meetings that the Department of Justice is very engaged and that there has been a shift in viewing community organizations as a partner instead of as merely a referral source.

In defining restorative principles, he noted that: 1) a principled approach to interventions must be taken- not a fixed/ one-size-fits-all model; 2) RP addresses harms and restores women’s respect and safety; does not necessarily mean restoring intimate relationships; 3)

RP is responsive to what individual women want to address the harms they have experienced as a result of abuse; 4) Men can be part of the solution of healing the harms they have created for the women they have hurt.

He outlined the six stages of the restorative process: 1) Assessment – Police – engage community workers for man and woman; 2) Establish Process – engage RJ community worker; 3) Develop Agreement – commitment to just outcomes; 4) Accountability processes – formal and informal; 5) Final Session – ensure just outcomes achieved; 6) Evaluation – Change processes on-going basis. He noted the importance of involving community workers from the outset.

Panel presentation *Culturally Appropriate Responses for Aboriginal Persons*
The Honourable Laurel J. Halfpenny-MacQuarrie, Judge of the Provincial Court
Cheryl Fritz, Court Services, Mi'kmaw Legal Support Network
Mona O'Brien, court worker, Mi'kmaw Legal Support Network

Judge Halfpenny-MacQuarrie described the evolution of the wellness court in Cape Breton and the initial concern about securing the necessary resources to establish a therapeutic problem-solving court in such a small area of the province. The genesis of the concept of the wellness court was the recognition that 'people are not bad, they just make bad decisions from time to time' and there is a need for a forum to consider the underlying causes of behaviour that lead to criminal offences. A team of lawyers, judges, probation officers and others was formed in Port Hawkesbury to develop a model for the court. Judge Halfpenny-MacQuarrie noted that 40-45% of the offenders appearing in her court are indigenous. A guilty plea is entered, with the accused agreeing to the facts, but sentence is not immediately imposed. A report is prepared by the probation officer, outlining all of the issues faced by the accused. A plan is developed, with the accused being required to seek out the necessary supports and services. The individual reports back to the court every month or two, outlining progress that has been made. This process continues until the individual has completed the plan – generally a minimum of eighteen months. Upon successful completion, the individual is sentenced to incarceration of one day, served by their presence in court.

After the closure of the Baddeck provincial court in 2015, representatives of the legal community, the two First Nations of Wagmatcook and Waycobah, the Mi'kmaw Legal Support Network, Municipality of Victoria County and provincial government met to plan a wellness court within the First Nations community of Wagmatcook. Resources have been provided by the two First Nations communities, provincial and federal governments. The new Court will be a full-service court with trials, Gladue hearings for bail and sentencing, and a Healing-to-Wellness court. It is scheduled to open in November and underscores the importance of bringing the court into the community.

Cheryl Fritz described the genesis of the Gladue Report, which emerged from the application of s.718.2(e) of the Criminal Code which requires the court to take into account all reasonable alternatives to incarceration "with particular attention to the circumstances of aboriginal offenders". The Gladue principle applies to all self-identified Aboriginal persons – status, non-status, Inuit, Metis.

In preparing a Gladue report, Ms. Fritz indicated that individual factors (e.g. developmental/health/addictions issues, family environment, child welfare removal) are explored as well as historical factors of oppression (e.g. colonialism, legacy of residential schools). She noted that a level of healing can occur during the intensive Gladue interview process. The writer of the report develops recommendations for a therapeutic, culturally appropriate court disposition. These exhaustive reports require 8-10 weeks to complete. A total of 110 reports were completed last year.

Mona O'Brien described her role as courtworker with the Mi'kmaw Legal Support Network. She indicated that she acts as a liaison between her clients and various components of the justice system by, for example, assisting with Legal Aid applications, explaining the conditions of various court orders and assisting clients to connect with support services, such as addictions treatment. She noted that the language of the court is a barrier for many of her clients and that the legal terminology is foreign. She noted that some Mi'kmaw accused plead guilty, just to have the court matter dealt with.

Panel presentation *Cultural Assessments for African Nova Scotian Offenders*
Lana MacLean, social justice advocate
Brendan Rolle, Nova Scotia Legal Aid
Maria Dugas, Schulich School of Law

Lana MacLean noted that cultural assessments (CAs) provide an opportunity to inform the courts about the psychological, sociological, cultural and other contextual factors to aid in sentencing. She indicated that she and Robert Wright are the only two individuals certified by the courts in Nova Scotia to provide CAs.

Based on her experiences preparing CAs, Ms. MacLean noted that they are generally based on a 4-6 hour clinical interview to ascertain how the individual identifies – both racially and culturally. The process of information-gathering (relevant to the individual's psychopathy, socialization, family dynamics, etc) requires 6-12 weeks (cost \$4000-\$9000). The contextual framework of

the report includes a consideration of the experience of African Nova Scotians in this province. The CA also contains information on possible resources to assist the client.

Ms. MacLean indicated that CAs can be used as a teaching tool to promote reasonable change in the justice system in its response to racialized individuals. She suggested that the reports might be useful at many stages of the criminal justice process, including bail hearings and at sentencing. She noted that it is too soon to determine the effectiveness of CAs as relatively few have been prepared to date.

Brandon Rolle noted that there is a general lack of information amongst the criminal defence bar regarding CAs and few have been requested. He acknowledged it is frequently difficult to embrace change in the criminal justice system and urged greater communication with justice players regarding the potential benefits of CAs.

He indicated that there are 48 vibrant African Nova Scotian (ANS) communities and that the CA allows differences to be highlighted. He said that ANS accused carry with them into the courtroom historical disadvantage/discrimination and the daily experience of micro-aggression and racism. He stated there are reasons for the over-representation of ANSs in the justice system and they must be identified.

He said that the NS Public Prosecution Service was initially opposed to CAs, but recently they have not expressed strong objections. Resources are a significant issue which must be addressed and Mr. Rolle was of the view that CAs should be funded by the courts (costs have been covered by NS Legal Aid to date). Mr. Rolle recommended that CAs should be requested in every case involving an ANS accused where incarceration is a possibility.

Maria Dugas, in describing the arrival of Blacks in Nova Scotia from a number of different countries, indicated that the majority arrived enslaved, either literally or in practical effect – thus creating a unique identity for these individuals. She stated that this should be recognized by the criminal justice system, as race is a key factor in many cases, although not generally identified. She stated that the Criminal Code (sections 718.1 and 718.2) provides legal justification for cultural assessments. She urged a broad interpretation of these sections, noting that systemic and cultural factors have contributed to Black individuals appearing before the courts. Ms. Dugas recommended that government fund an African Nova Scotia justice organization that would provide training and certification of individuals preparing cultural assessments for the courts. In closing she cautioned that cultural assessments were but one tool to be used and that these alone would not achieve justice for African Nova Scotians involved in the criminal justice system.

Presentation

Mental Health Courts

Kelly Rowlett, NS Legal Aid, Defence Counsel, Mental Health Court, Dartmouth

Kelly Rowlett provided an overview of the NS Mental Health Court – established in November 2009 in the Dartmouth Provincial Court, in recognition of the shortcomings in the traditional justice system to deal with mentally disordered persons. The mission of the MHC is to achieve wellness and safety by helping individuals; reconnecting them to community resources; and developing a rehabilitation plan to improve well-being and living situations and decrease the likelihood of re-offending.

All offences within the jurisdiction of the provincial court may be handled by the MHC. Participants must acknowledge responsibility for their offence; a guilty plea may be required for more serious offences. Eligibility requirements include: age 18 and over, major mental health disorder connected to the offending behaviour, motivation for change, manageable risk in the community, reside in and substantially connected to HRM for supports.

The focus of the MHC is problem-solving, in that it is non-adversarial; takes a team approach to court processes; broadens the court focus beyond application of the law solely to ‘doing the right thing; and is concerned with achieving just outcomes for the offender, victims and the community at large. The court is served by a dedicated multidisciplinary team. The team meets prior to court and a support plan is discussed. Clients of the MHC regularly report back to the court and are generally involved in the process for at least one year. Substance abuse testing is a pre-condition for some offences (80% of participants have co-occurring substance abuse disorders) and may be a condition of the release order. In developing a support plan, the team uses a risk-needs-responsivity model.

Over the past two years, there have been approximately 440 referrals to the MHC, with 36% of referrals being invited to participate and 67% of participants graduating. Ms. Rowlett noted that some veterans have been accepted into the program and that the MHC works with Veterans’ Affairs clinicians.

A Court Monitored Drug Treatment Program (with an addictions support worker attached) was established within the MHC in 2014. There have been 8 participants to date.

An independent evaluation of the MHC undertaken in 2015 found the Program to be a more sensitive and compassionate approach to offenders with mental disorders and that it is more responsive and attentive to their needs and strengths. The evaluation recommended that more criminogenic needs intervention resources be developed as well as a high-risk offender protocol.

LIST OF PRESENTORS

KEYNOTE ADDRESS – *Provincial Court Innovation in the Criminal Justice System*

The Honourable Pamela S. Williams is the Chief Judge of the Provincial and Family Courts.

Chief Judge Williams was appointed a judge of the Provincial and Family Courts of Nova Scotia in September 2003. She has presided over adult and youth criminal proceedings and occasional family court matters. Between October 2006 and August 2010, she was the primary Youth Court Judge in the Metro Youth Justice Court. Since then she has been the dedicated judge for the Nova Scotia Mental Health Court. She also presides in adult criminal court. She served as Associate Chief Judge of the Provincial and Family Court from April 26, 2011 until February 26, 2013, when she was appointed Chief Judge of the Provincial and Family Court for the Province of Nova Scotia. Prior to her appointment, she was a staff lawyer with Nova Scotia Legal Aid for nearly 20 years. During that time, she represented adults and youth in the areas of family law and criminal law. She was also a legal advocate for the mentally ill who appeared before the Criminal Code Review Board.

DOMESTIC VIOLENCE COURTS

Dr. Verona Singer is the Coordinator of Victim Services for the Halifax Regional Police Service. She has been a part-time professor of Victimology at Saint Mary's University for many years. Dr. Singer is currently Past President of the Canadian Criminal Justice Association. Her research includes the high risk case coordination protocol, gendered violence in HRM and restorative practices in gendered violence.

Dr. Diane Crocker holds a Ph.D. in Sociology from York University. She is currently a Professor in the Department of Sociology and Criminology at Saint Mary's University teaching courses in Criminology and is the Associate Dean, Student Affairs, Faculty of Graduate Studies and Research. Her research areas include restorative justice, rape culture, violence against women, criminal harassment and the use of law to address social problems, particularly those that disproportionately affect women. She co-authored an evaluation of the domestic violence court in Sydney.

Tod Augusta-Scott, MSW is known internationally for his work with domestic violence, restorative justice and narrative therapy. Since 1994, he has been the coordinator of Bridges. He has taught in the Social Work Department, Dalhousie University. He works with the Canadian Armed Forces. His most recent projects include publishing *Innovations in Interventions to Address Intimate Partner Violence* (Routledge, 2017) and participating in the documentary film *A Better Man*.

MENTAL HEALTH COURT

Kelly Rowlett is one of two lawyers in the Mental Health Legal Services Department of NS Legal Aid and has been Defence Counsel in the Nova Scotia Mental Health Court since its inception. She is also counsel for the Court Monitored Drug Treatment Program. Kelly has been practising for the last ten years exclusively in the area of Mental Health Law and has been involved in and consulted by a wide variety of organizations, committees and projects.

CULTURALLY APPROPRIATE RESPONSES FOR ABORIGINAL PERSONS

Judge Laurel J. Halfpenny-MacQuarrie is a provincial court judge, based in Port Hawkesbury. Judge Halfpenny-MacQuarrie played a key role in the establishment of the new specialized court which will serve Wagmatcook and Waycobah. She has been designated as the presiding judge.

Cheryl Fritz is the Coordinator of Court Services for the Mi'kmaw Legal Support Network. In this role, she oversees the Aboriginal Courtworker Program and administers the delivery of *Gladue* Reports. She spent 13 years as Program Supervisor for the Mi'kmaw Family Healing Centre in Millbrook and 11 years as Director for the Indian Child Welfare Act Program for the North American Indian Centre of Boston. Ms. Fritz is serving her 2nd term as municipal councillor and Deputy Mayor for the Town of Truro. She is the first Mi'kmaq to be elected in this capacity.

Mona O'Brien is a court worker with the Mi'kmaw Legal Support Network.

CULTURAL ASSESSMENTS FOR AFRICAN NOVA SCOTIA OFFENDERS

Lana MacLean has been a practising clinical social worker for over twenty years. She has worked in the field of addictions and mental health with adolescents and adults. Lana has a small private practice in HRM. She has presented at local and national conferences in the area of cultural competency in mental health and addictions, race and trauma-informed care. In 2017 Lana was qualified by the Nova Scotia Supreme Court as an expert witness in the area of race and cultural issues as they relate to the sentencing of African Nova Scotians.

Brandon Rolle has been a practising criminal lawyer since 2010. He joined Nova Scotia Legal Aid in 2013. As of May 2017 Brandon has taken over as Managing Lawyer of the Halifax Youth Office. Brandon is chair of the Equity and Racial Diversity Committee within Nova Scotia Legal Aid and is also a member of the Racial Equity Committee with the Nova Scotia Barristers' Society. He has worked on high-profile criminal law cases involving the use of cultural assessments.

Maria Dugas is an LL.M Candidate at the Schulich School of Law. Born and raised in Nova Scotia, she was admitted to the Schulich School of Law through the Indigenous Black and Mi'kmaq Initiative and earned her J.D. in 2015. Maria articulated with Nova Scotia Legal Aid in the Youth Criminal Justice Office before returning to Law School in 2016 to pursue her Masters of Law. She was called to the Nova Scotia Bar in 2016 and will begin Clerking at the Nova Scotia Court of Appeal in August.