Section 11:

The House of Justice: A Single Trial Court 2003

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1. Introduction

The purpose of this article is to outline for discussion purposes the concept of a *House of Justice*: a single one-stop court system where citizens can seek individual justice, dispute resolution, reconciliation and community healing in an efficient and accessible forum. A *House of Justice* would institutionally knit our country together by both implementing the vision of the judicature provisions at the time of Confederation[1] and strengthening the ability of the provinces and Aboriginal[2] communities to pursue justice according to their communal values. This concept does not envision a merger of the Provincial Court into the existing Superior Court model with downloading to a "lower" separate court.[3] It contemplates the creation of a strong unified court where judicial functions are clearly demarcated and judicial impartiality and independence are fully protected by judges exercising sole control over "those matters which bear directly and immediately on the exercise of the judicial function".[4]

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1. This is achieved through the appointment process, whereby the federal government appoints only from members of the bar where the court is located. Peter Russell has elaborated on this unique characteristic in various writings. See for example P.H. Russell, *The Judiciary in Canada: The Third Branch of Government* (Toronto: McGraw-Hill Ryerson, 1987), pp. 49-50:

   > Comparatively speaking, the Canadian judicial system ranks as one of the most integrated, or least federalized. The judicial provisions of the Canadian Constitution lean strongly in the direction of the judicial system of a unitary state . . . The only judicial arrangements specifically provided for in the Constitution are the very essence of an integrated federal provincial system: federally appointment judges of provincial superior and intermediate courts. No other federation has this element of judicial integration.

   Also see P.H. Russell, "Constitutional Reform of the Judicial Branch: Symbolic vs. Operational Consideration" (1984), 17 Canadian Journal of Political Science 225 at p. 246: "The key to this high degree of integration has been the provision in section 96 for federal government appointments of the judges of the higher provincial courts. In a quite unnoticed way, this constitutional provision has contributed to the building of a Canadian political community by removing any fears of parochial justice."

2. The federal/provincial constitutional integration outlined in footnote 1 conceptually could be extended to indigenous communities as their constitutional situation becomes more clarified. See infra, footnote 21 for two such examples: the Cree Court Party in Saskatchewan and the Tsuu T'ina First Nations Peacemaker Court in Alberta. There are various innovations in the Yukon and Northwest Territories utilizing the Justice of the Peace office to provide integration. Something less than a separate justice system might satisfy aboriginal self-government initiatives. See for example Alan C. Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: UBC Press, 2000), pp. 208-209. Cairns contrasts the *Report of the Royal Commission on Aboriginal Peoples* (RCAP), which is based on "arguments that stress self-government and minimize citizenship connection with the majority society", and the position of the Federation of Saskatchewan Indian Nations (FSIN). Cairns says the FSIN position in a published monograph

   > without explicitly saying so . . . argues a counter-position to the RCAP *Report* . . . Its focus is the common future of all the people in Saskatchewan. Explicit, enhanced positive participation in normal provincial politics is a goal. There is no suggestion of a two-row wampum of separate paths. The goal of Aboriginal peoples is "nothing less than to re-invent Saskatchewan". The then chief of the FSIN, Blaine C. Favel, refers to the "common futures" of Aboriginal and non-Aboriginal peoples . . . The FSIN report is not advocating assimilation, or rejecting self-government, or sacrificing Indianness on the altar of modernization . . . The explicit, guiding premise is that only by becoming fully involved in the Saskatchewan community will Aboriginal peoples become part of the province-wide "we" community and thus have the moral levers to engage the majority as fellow citizens in tackling poverty and social malaise. The premise is that a common citizenship is the source of empathy.

   See also John Borrows, "Landed Citizenship: Narratives of Aboriginal Political Participation" in Will Kymlicka, ed., *Citizenship in Diverse Societies* (Oxford: Oxford University Press, 2000).

3. We experienced that process 35 years ago, when the County and District Courts merged into the existing Superior Courts in each province. At the same time there was downloading to the then Magistrates' Courts, beginning a process that eventually transformed "local magistrate's courts, once the dispersed third level of trial courts often staffed by lay judges, into province-wide systems of trial courts with increasingly significant statutory jurisdiction". See C. Baar, *One Trial Court: Possibilities and Limitations* (Ottawa: Canadian Judicial Council, 1991), p. 5. The jurisdiction of the Provincial Court steadily increased to the point that the Provincial Court has "more extensive jurisdiction than any court of limited jurisdiction in the United States, the United Kingdom or Australia [and] handles an increasingly higher proportion of serious criminal matters". See C. Baar, "Judicial Independence and Judicial Administration: The Case of Provincial Court Judges" (1998), 9 Constitutional Forum 114 at p. 120. The result has been an unfortunate stress within the existing two-tiered court structure that is difficult to address, as J.S. Ziegel pointed out in "The Supreme Court Radicalizes Judicial Compensation" (1998), 9 Constitutional Forum 31 at p. 40: "Perhaps there is no effective answer because of the constitutional anomaly of provincially appointed judges carrying the bulk of the burden of enforcing federally enacted criminal laws while having to settle for provincially created and administered compensation packages." In our opinion, the concept of *The House of Justice* would avoid this "merger/downloading" cycle for the future.

4. In *Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Islan*d, [1997] 3 S.C.R. 3 at para. 258, 118 C.C.C. (3d) 193, 150 D.L.R. (4th) 577, *sub nom*. *Reference re: Provincial Court Act and Public Sector Pay Reduction Act (P.E.I.), s. 1*0, supp. reasons [1998] 1 S.C.R. 3, 121 C.C.C. (3d) 474, 155 D.L.R. (4th) 1, motion for directions refused July 9, 1998, motion to extend period of suspension granted [1998] 2 S.C.R. 443, Chief Justice Lamer reiterated and further developed those matters over which courts have administrative independence, identified previously in *R. v. Valente*, [1985] 2 S.C.R. 673, 23 C.C.C. (3d) 193, 49 C.R. (3d) 97. Issues that only judges can perform relate to "those matters which bear directly and immediately on the exercise of the judicial function". Examples of these matters include: "the assignment of judges, sittings of the court and court lists, the allocation of courtrooms, and the direction of administrative staff in carrying out these functions".

However, the concept of a *House of Justice* also envisions a system that would not be as insulated from the community, or as separated from other non-judicial justice functions as has traditionally been the case. For example, we believe that the office of the Justice of the Peace within a *House of Justice* could perform many essential non-judicial functions of the court and provide an important institutional link with the community. To accomplish these purposes it is vital that the function and office of the Justice of the Peace be closely associated with the judicial office of the court, so that both are fully integrated into the *House of Justic*e. Such integration would help avoid the redevelopment of a separate lower-level court, and thereby prevent the recreation of the current two-tiered structure. In addition, by integrating the office of the Justice of the Peace with the court, the *House of Justice* could be institutionally linked to the community in a meaningful way without jeopardizing the independence of the judges of the court. If political will and judicial co-operation exist,[5] then such a *House of Justice* is achievable within the existing constitutional framework.[6]

2. The Concept

In the *House of Justice* concept, there would be in each province one Court of Appeal[7] whose judges are federally appointed. In addition, there would be one trial court in each province[8] to replace the current fragmented court system.[9] Judges in the single trial court[10] would be federally appointed in co-operation[11] with

5. Previously, when a national political will did exist, judicial and Canadian Bar Association opposition stalled the process. See Baar, *One Trial Court*, *supra*, footnote 3, at p. 12: "After June 1990 . . . provincial attorneys general endorsed in principle complete unification of the trial courts . . . Complete unification . . .eliminating the two levels of trial courts and with them the distinction between federally-appointed and provincially-appointed judges." and Baar, "Judicial Independence" *supra*, footnote 3, at p. 114: "The proposal has been . . . opposed by section 96 judges, not only through their national association (the Canadian Judges Conference) but also by the Canadian Judicial Council (which has no representation from chief judges appointed by provincial governments) and the Canadian Bar Association." and p. 117: "Later, the [New Brunswick] government tried to unify criminal matters in the Court of Queen's Bench, and had the support of the Q.B. Chief Justice. Those efforts were derailed after then federal Justice Minister Alan Rock's unprecedented undertaking that federal authorization (by amending the *Judges Act*) would require superior court and provincial bar endorsement of the proposal."

6. See the Law Reform Commission of Canada, *Toward a Unified Criminal Court*, Working Paper No. 59 (Ottawa, 1989) at pp. 35-38 for a discussion about the constitutional issues surrounding the appointment process. We are not suggesting that there are not many complexities and considerations that would have to be addressed. However, if there were a will and a cooperative spirit, these legal, technical and practical issues could be resolved. This article is broad and conceptual, but others have explored some of these more concrete concerns. It is especially instructive to see the experience in other jurisdictions that are embracing unification, such as California, or seriously exploring the option, such as the United Kingdom. The enduring flexibility of the Canadian justice system is evident in such Provincial Court innovations as the Cree Court Party and the Tsuu T'ina First Nations Peacemaker Court. See *infra*, footnote 21.

7. The Court of Appeal would continue some of the important constitutional roles of the central courts of London, while others would remain with the trial court. See W.R. Lederman, "The Independence of the Judiciary" (1956), 34 Can. Bar Rev. 769 at pp. 1167-68, who located the definition of a Canadian superior court from within the history of the central courts of London. Some of the functions of the old central courts of London are now performed by the various Courts of Appeal 5 — 48 C.L.Q. (which did not exist in 1701) and not by the superior trial courts. It is necessary that those types of functions —for example, bringing consistency to disparate trial court rulings and to the law — remain with a collegial body that is relatively centralized and not diluted numerically. At this level there is a concern about "uploading". But with many of the other superior court functions that remain with the trial courts the concern is more about accessibility and less about decentralization or numerical dilution. At this level, numerical strength is necessary to ensure the caseload can be handled and to avoid "downloading".

8. Because of the appointment process, this would be a national court of the kind Russell argues was envisioned in the Constitution and which the present bifurcated system is not. See *infra*, footnote 25.

9. On the bifurcation between the federally appointed courts and the provincially appointed courts, as well as the danger of further fragmentation with the developing Justice of the Peace Courts, see: Gerald Seniuk and Noel Lyon, "The Supreme Court of Canada and the Provincial Court in Canada" (2000), 79 Can. Bar Rev. 77 (S.I.) at pp. 80-97.

10. The legislative template for such a court exists in Nunavut. There is some suggestion that a model that might work in a large territory with a small, dispersed population, such as Nunavut, is not applicable to other Canadian jurisdictions. However, the legislative template is a foundation to build upon. Other large urbanized jurisdictions, such as California, have unified structures.

11. See the Law Reform Commission of Canada, *Toward a Unified Criminal Court*, *supra*, footnote 6, at pp. 35-38 for a discussion about the constitutional issues surrounding the appointment process. But see *infra*, footnote 25 for Peter Russell's support for Bill Lederman's appointment process, and the national judiciary it would foster.

the province[12] or, where self-government applies, the Aboriginal community.[13] There would be specialized divisions within the Court.[14] Merger of fragmented court offices under one court structure would provide rural areas[15] with a fuller range of more easily accessible court administrative services. In addition, citizens would find within the court structure other justice-related resources, such as mediation/alternate dispute resolution, witness and victim services, public legal education resources, restorative justice and diversion processes. The integration of these services into an all-purpose *House of Justice* would not require the recreation of these programs, merely their coordination within one centralized body. Such a development would render court procedures and outcomes more transparent and comprehensible to the average citizen. It would further enhance access to justice by placing these services on a firmer institutional footing.[16] The creation of a *House of Justice* would rationalize and demystify the courts by establishing a one-stop location where citizens attend and choose from or are streamed within the panoply of services.[17] In short, users would find the court structure to be a more accessible, responsive and helpful place.

To facilitate the objective of enhancing accessibility, communities would be linked to the court structure through their community justice committees and the court's office of the Justice of the Peace (JP). At the same time, to ensure the integrity of the judicial office, judges of the court would be of equal status and would exclusively do the work of the *court*.[18] Other legal officers, such as Justices of the Peace, would be lay officials and not members of the bar.[19] They would generally be resident in their community, but integrated with the court structure in a close relationship. Within this framework there would be a variety of JP levels and functions,[20] but a key role for some would be as chair of their community's justice committee. This would ensure that local justice issues received appropriate attention from knowledgeable persons skilled in community dispute resolution. They would facilitate restorative initiatives, supervise diversion programs and develop appropriate local mechanisms for dialogue about community and court concerns. Since communities would generate their own ideas as they address these issues, it is not possible to specify how these court/community linkages would develop. However, existing examples reveal the effective-ness and creativity that can develop

12. The creation of a Provincial Court such as the Cour du Quebec, and the appointment of judges to it has been an important feature of province building. Although the unified court would be seen as a national court, it would be necessary to keep the provincial involvement in the appointment process as a result of this history. In this way, a joint appointment or a commission process (see *infr*a, footnote 25) would strengthen the national and provincial identity of the judicature. The court structure would be an important weld of the Canadian confederation.

13. As Treaty Federalism and the justice concepts in self-government are developing, it is not possible to say how these specific appointments would fit into the one-court structure. But the structure would allow for specialization, and these appointments may reflect this. See Sakej Henderson, "Empowering Treaty Federalism" (1997), 35 U. Alta. L. Rev.; James (sakej) Youngblood Henderson, "Implementing Treaty Order" in R. Gosse, J. Henderson and R. Carter, eds., *Continuing Poundmaker and Riel's Quest* (Saskatoon: Purich Publishing, 1994).

14. Examples of traditional specialties include Criminal, Civil and Family. Examples of new divisions may include Aboriginal, Treaty or Constitutional. Although judges would generally remain in their specialized division, the Chief Justice would have the authority, with perhaps some limitation of transfer into some specialized courts, to reassign judges in the interests of the administration of justice or the court.

15. See *supr*a, footnote 3 on the experience of the merger of the County and District Courts with the Superior Courts. One enduring aspect of the merger was to decentralize the Superior Court in some jurisdictions, and to provide more communities with local access to the Superior Court judge where before there had been a resident District Court Judge. The more accessible reach of the Provincial Court administration would now provide more citizen access to Superior Court services.

16. A *House of Justice* would place many community justice services on such a firmer footing. These services would gain greater legal credibility under judicial oversight and would enjoy enhanced efficiencies by reducing duplication and increasing productivity through their closer ties to the panoply of justice delivery services. They would also benefit from an increase in people's general knowledge of the services.

17. The analogy would be to someone going to a large urban hospital for medical aid, where the profession puts the patient in touch with the appropriate specialty treatment.

18. See *supra*, footnote 4 for the importance of the concept of an independent court.

19. One of the reasons for suggesting only lay Justices of the Peace is the desire to avoid downloading and recreation of the current two-tiered structure. See *supr*a, footnote 3.

20. Many of these functions would assist courts with their workload. Examples are dealing with appropriate summary offence matters and community bylaws. Some of these would begin the development of separate justice systems in Aboriginal communities, which, since the office would be fully integrated with the court, would be separate but integrated. In such cases, the Justice of the Peace appointment may require federal input.

when the justice system becomes responsive to community concerns.[21] Synergistically working together as one *House of Justice*, these resources would enhance citizen and community participation in the pursuit of justice and link the court to justice's communal roots.

All of the resources discussed above currently exist, but are fragmented and scattered within our communities, serving some-times to frustrate and confuse rather than to help and to heal. Bringing them together requires political will and judicial co-operation. Although consolidation of initiatives such as those outlined above is a means to improving the administration of justice, one would also expect efficiencies and cost savings to result. Thus, each addition to the court structure may result in reduced, not added, cost.

3. Discussion

At many levels, it should be unnecessary to argue for a single trial court. The onus is more properly upon those who would seek to restrain reform by maintaining the status quo with its bifurcated system. This is because the current approach is largely incompatible with the system of federalism adopted by Canada's founders.[22] As Peter Russell has pointed out, the Canadian constitution, unlike most other federal systems, was premised on the vision of an integrated judicial system.[23] This was done in order to tightly knit the country together through the harmonization of legal practice and principles at all levels.[24] As Russell points out, however, there has been a tragic incremental move away from an integrated system to a bifurcated system. As he observed:[25]

> "The tragedy is that the politicians who have operated the system have had neither the will nor the vision to work together to enable Canadians to realize the full benefits of this system . . . There has been no coherent or intelligent plan guiding the evolution of this trial court system . . . The dual system of trial courts that evolved in Canada has not been based on the logic of federalism."

An integrated judicial system is an important mechanism in shoring up national standards in a federal system.[26] It also strengthens the country by protecting provincial and local political units and enabling them to function within a context of the broader political community.[27] Russell questions the constitutionality of the status quo because it fails to live up to its potential. He notes that continuing such a dualistic system has "very bad

21. The Yukon and the Northwest Territories have a long history of integrating resident Justices of the Peace with the workings of the court. In addition, there are examples of innovations within the court itself to develop deeper connections. For example, in Saskatchewan the Cree Court Party, presided over by The Honourable Judge Gerald Morin of the Provincial Court of Saskatchewan, began its first sittings in October 2001. The court sits in Cree-speaking communities, and persons appearing before the court can conduct their matters in the Cree language. The judge, legal aid lawyer, prosecutor, clerk, probation officer and native court worker all speak Cree. Proceedings can be translated for those who are non-Cree speaking. The process is analogous to providing French-language trials in Saskatchewan. The court can also conduct its affairs in English.

    In Alberta, The Honourable Judge L.S. Mandamin of the Alberta Provincial Court presides over the Tsuu T'ina First Nations Peacemaker Court on the Tsuu T'ina Nation on the outskirts of southwest Calgary. The court, which began in October 2000, is integrated with the Provincial Court, and also with the community and its justice traditions. Judge Mandamin fulfilled the requirement of a judge who was "a highly qualified member of the First Nations Bar who ordinarily qualifies for the Bench and who has demonstrated an ability to bridge the cultural divide between the Euro-Canadian legal system and the First Nations Community". The court clerks are recruited from the community. Tsuu Sina/Stoney Corrections Society provides the court worker and probation services. In addition, two Peacemakers who are elders also sit in court as community witnesses to the proceedings. The Peacemaker coordinator calls on Peacemakers from the community who hold the trust and respect of the community. See *infra*, footnote 36 on the Peacemaker concept and role.

22. Peter Hogg, "Federalism and the Jurisdiction of Canadian Courts" (1981), 30 U.N.B. L.J. 9.

23. *Supra*, footnote 1, at pp. 49-53.

24. Peter Hogg, *Constitutional Law of Canada* (Scarborough: Carswell, 2000), p. 175.

25. Peter Russell, "Evolution of Canada's Trial Court System From Confederation to Today" (paper presented at the Trial Courts of the Future Symposium, Saskatoon, May 15-17, 2002), at pp. 1-2.

26. *R. v. Thomas Fuller Construction Co. (1958) Ltd.*, [1980] 1 S.C.R. 695, 106 D.L.R. (3d) 193, 12 C.P.C. 248; *Canada (Attorney General) v. Law Society of British Columbia*, [1982] 2 S.C.R. 307 at p. 327, 137 D.L.R. (3d) 1, [1982] 5 W.W.R. 289; *Ontario (Attorney General) v. Pembina Exploration Canada Ltd.*, [1989] 1 S.C.R. 206 at pp. 215 and 225-26, 57 D.L.R. (4th) 710, 33 O.A.C. 321 *sub nom. Siddall (William) & Sons Fisheries v. Pembina Exploration Canada Ltd.; Hunt v. T & N plc,* [1993] 4 S.C.R. 289, 109 D.L.R. (4th) 16, [1994] 1 W.W.R. 129.

27. *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077 at p. 1099, 76 D.L.R. (4th) 256, [1991] 2 W.W.R. 217.

practical implications for litigants and taxpayers [and] is a barrier to the efficient deployment of physical and human resources and to the coherent management of the trial court system''.[28]

Furthermore, Russell has suggested a new appointment process that would[29]

> make it possible for Canadians to have disputes about their legal rights and duties —disputes which they do not perceive as falling into purely federal or provincial categories —adjudicated at conveniently located centres by judges who, while they may be specialists in some particular area of law, are all highly skilled professionals and not segregated into groups of 'superior' federal appointees and 'inferior' provincial appointees.

This, he says, would comply with the likely intent behind Canadian federalism to have a national judiciary.[30]

As important as it is to properly address the possible constitutional deficiencies of the bifurcated system, we believe that a discussion of an integrated vision of the court system should not be limited to a discussion of unification of the federally and provincially appointed courts. If we instead conceptualize a *House of Justic*e, there would be room to consider the integration of other constitutionally recognized communities that extend beyond the federal/provincial/territorial restrictions. For example, we believe that the treaty nations of Saskatchewan could participate in a unified court structure that would be an all-purpose *House of Justice* within the province.[31] Within a unified *House of Justice* indigenous peoples could exercise their own inherent powers of adjudication within their communities, and could draw on existing resources through such an institution. They could apply indigenous and non-indigenous law in an inter-societal context, drawing upon the best of both legal worlds as they strive to create conditions facilitative of peace and order. In an urban setting this would be a welcome development because it would provide indigenous people with a forum that is more attentive to their concerns, as the *House of Justice* could have many different options available within it to pursue the resolution of disputes. There could be functions for peacekeepers, elders, mediation, adjudication and justices of the peace.

In a reserve setting a *House of Justic*e, as part of a unified court structure, could solely apply the laws of the treaty nation of which it was a part. Such courts could function akin to Tribal Courts in the United States, only the *Houses of Justice* proposed here would take their fiscal resources from the state and be part of a larger juridical structure. This could overcome a huge problem Tribal Courts in the United States face, in that they perpetually lack finances and respect from other levels of courts throughout the country. It would also ensure that these institutions functioned with the necessary independence from Band chiefs and councils. If a *House of Justice* Tribal Court Division was part of a larger unified court structure in the province that amalgamated

28. *Supr*a, footnote 25: ''To the layman it would seem obvious that jurisdiction to conduct trials for offences subject to life imprisonment is surely the responsibility of a 'superior court' if that phrase has any common sense meaning. If so, than at least a part of what provincial and territorial inferior courts are doing in Canada today is unconstitutional.''

29. Russell, ''Constitutional Reform'', *supr*a, footnote 1, at p. 251.

30. See Seniuk and Lyon, *supr*a, footnote 9, at p. 118. Referring to the writings of W. R. Lederman and P.W. Hogg, Russell argued that a nominating commission with members from both levels of government, from both opposition and government benches, and with lay members and members of the Bar, would ''produce a much more pluralistic basis for judicial recruitment and a check on unjustifiable patronage appointments''. If the judges were chosen from such a commission process, then Russell states that regardless of whether the federal or provincial governments made the appointment, ''This judiciary, a truly national judiciary, would be one which both levels of government could confidently entrust with the application of their laws and one which would command the respect of the citizenry which both levels of government serve.'' We agree, and suggest that this concept could be extended to appointments involving First Nations.

31. See *supr*a, footnote 2.

provincial and superior courts, diversified its functions and was attentive to indigenous justice issues, this could go some distance toward implementing the peace and order promises under the treaties.[32] In connection with concerns that Tribal Courts could be over-whelmed by non-indigenous law, there could be ways devised to shield some of the decisions in these Houses of Justice from culturally inappropriate judicial review, where people are still protected in their due process rights. There could be an appeal structure within such a *House of Justice* that tests decisions of Tribal Judges before a body of their peers, before review travels on up the line. Having Tribal Courts in Saskatchewan that function in furtherance of the treaty relationship would be a very significant development. The fact that they would flow from the treaties, and draw their sources from indigenous and non-indigenous legal principles, could be a source of great strength to these institutions.

But the value of the *House of Justice* in integrating community values is not limited to First Nations.[33] It applies to all communities. The reason such a *House of Justice* should be able to respond to any community's justice concerns is because it would be linked to the community. If the community's desire for security and fairness is the wellspring of justice, then the court must be rooted in the community or it will wither. And without healthy courts, communities cannot achieve justice. This proposed model aims at more closely integrating the court and the community with each other and better coordinating their joint efforts. A key to such a link is the resident Justice of the Peace.

Justice is holistic, and fragmentation at any level is contrary to the public interest and to the best administration of justice. We should not attempt to unify at the trial court level while further fragmenting and downloading at the local level. We should think of different levels of Justice of the Peace offices that would perform diverse functions. However, all of the offices of the Justice of the Peace should be integrated within a single trial court as an integral part of the *House of Justic*e. Through one level of the Justice of the Peace office, we should proactively explore our court/community relationships. Through the office of the Justice of the Peace, the *House of Justice* can remain rooted in the community and keep the court linked to the community while at the same time maintaining the necessary distance required for impartial and independent tribunals. Such projects should not require any new funding or legislation, but they would require that we work together differently so as to reflect the holistic and shared nature of justice.

The analogy between "health" and "justice" can provide a framework for discussion purposes. Community experiences of insecurity or unfairness may be viewed as symptoms of social ills in need of diagnosis and treatment. Disharmony and discord may be indicators of shared sicknesses requiring remedy and rehabilitation. What if we thought of courts as the "hospitals" of a justice system whose goal was to restore security and fairness in the community? What if we thought of them as being analogous to "healing lodges", whose objective is to re-establish peace and order with all our relations? Instead of searching through a fragmented system, people could enter through one door and find a variety of rooms and specialized services. Instead of stumbling from one institution to the next, people could confidently approach a single body for a range of ceremonies that lead to healing. Such a court system of the future would be integrated, accessible, flexible and efficient. It would be characterized by principles of peace, friendship and respect, consistent with a treaty relationship and

32. The peace and order clauses in the Saskatchewan treaties read as follows:

> The undersigned chiefs, on their behalf and on behalf of all other Indians inhabiting the tract within ceded do hereby solemnly promise and engage to strictly observe this treaty and also to conduct and behave themselves as good and loyal subjects of Her Majesty The Queen. They promise and engage that *they will in all respects obey and abide by the law; that they will maintain peace and order between each other, and also between themselves and other tribes of Indians or white*s, now inhabiting or hereafter to inhabit any part of the said tract, or that they will not molest a person or property of any inhabitants of such ceded tract or the property of Her Majesty The Queen, or interfere with or trouble any person passing or travelling through the said tract or any part thereof, and *that they will aid and assist the officers of Her Majesty in bringing to justice and punishment any Aboriginal offending against the stipulations of this treaty or infringe the laws in force in the country so ceded*.

For further commentary on Saskatchewan treaties see Harold Cardinal and Walter Hildebrandt, *Treaty Elders of Saskatchewan: Our Dream is that Our Peoples Will One Day Be Clearly Recognized as Nations* (Calgary: University of Calgary Press, 2000); Arthur Ray, J.R. Miller and Frank Tough, *Bounty and Benevolence: A History of Saskatchewan Treaties* Montreal: McGill-Queen's Press, 2000); Judge David Arnot, "Treaties as a Bridge to the Future" (2001), 50 U.N.B. L.J. 57 at p. 59.

33. Though there are constitutional considerations that suggest that, at a minimum, aboriginal peoples' community values should be integrated with the administration of justice.

in accordance with the highest principles underlying the rule of law.[34] A court is not only a building, but should also be a system of people working together in an integrated and helpful fashion. In such a system, there is no buck-passing. It is a one-stop place of assistance, referral and coordination.

The link between the court and the community should pivot around a Justice of the Peace or Peacemaker who is resident in the community. This person should either head or be part of a community justice committee, and should also have close working relationships with the local police and other local justice leaders. Simultaneously, the JP should be in close association with the judge presiding in that area. There should be a variety of levels of Justices of the Peace —some that are limited to administrative powers and may work under the direction of a judge, and others who perform judge-like functions and who may work independently under the assignment of the judge. But primarily these should be "good news" JPs,[35] ones who perform a role like the Peacemaker[36] and can coordinate diversion pre- or post-charge. The same administrative office would support the judge and the JP.

4. Conclusion

This proposal aims at integrating or coordinating all aspects of the justice system's resources and responses. Because the court is a place of transparency, accountability and public record, the court should be involved from the start to the finish to ensure justice is done, in process and substance. The court is not only the accessible and coordinated entry to services and resources, it is also the window through which the general community can observe the results achieved by these services and resources. It is here that the justice system is transparent and accountable. This should be the place of record for pre-charge diversion and post-sentence treatment where the community can see what was expected of the offender and what was achieved in the end. This place, the *House of Justic*e, is where the parties in conflict, the community, the court and the resource providers are held accountable to each other and to the public.

34. For a discussion of these principles see John Borrows, "Wampum at Niagara: First Nations Self-Government and the Royal Proclamation" in Michael Asch, ed., *Aboriginal and Treaty Rights in Canada: Essays in Law, Equality and Respect for Difference* (Vancouver, U.B.C. Press, 1997), p. 155.

35. This especially can be helpful in isolated communities whose residents typically travel long distances to the regular court locations.

    Judges intuitively understand the utility of having the functions of a Justice of the Peace integrated with the court and, in our experience, many judges are willing to work to develop such an integrated concept. The following is from a judge with the Provincial Court in Saskatchewan and is typical of the judicial response to this concept:

    > I could not agree more about the need to involve J.P.'s to provide the link between the court and the community. Especially in areas like ours where many of the people we deal with are located significant distances from where they live, this link could provide such communities with an opportunity to be closer to the court and justice system and a greater chance that they could feel involved in the system and develop some sense of ownership of it. To the extent that I can be of any assistance to developing the use of these J.P.'s and helping them to do their jobs, I would be happy to assist in any way that I can.

    Communities also recognize the utility of having this connection to the court. A reserve in Saskatchewan brought the following example to our attention. The court party, which for occupational health reasons is not required to travel when the winter temperatures dip below -30 degrees Celsius, did not travel to its scheduled circuit point. However, many of the reserve residents traveled over icy, hilly back roads, where lives had been lost in the past, to get to court. As the chair of the reserve's justice committee pointed out, all of that hardship could have been avoided had they a resident Justice of the Peace that was integrated with the court.

36. The Tsuu T'ina First Nations Peacemaker Court is a Provincial Court located on the Tsuu T'ina Nation on the outskirts of southwest Calgary, which handles regular Provincial Court matters as well as Tsuu T'ina bylaw charges. See *supr*a, footnote 20. This information is taken from Judge Mandamin's paper, "Tsuu T'ina Court and Peacemaking Initiative", which was prepared for the Alberta Provincial Judges Education Seminar, Red Deer, Alberta, May 17, 2001.

    > The peacemaker coordinator sits in court as a party and may address the Court when peacemaking is considered. Diversions to peacemaking may be initiated by Tsuu T'ina police, the Crown prosecutor, the peacemaker coordinator, the judge or community corrections workers. The individuals who chose peacemaking have their proceeding adjourned while they are in the peacemaking process. The peacemaker coordinator initiates the peacemaking process. He assesses each case to determine if peacemaking would be suitable. If it is, he accepts the matter into peacemaking and assigns a peacemaker or peacemakers to each case. The peacemakers are Tsuu T'ina members who hold the trust of the community. The Tsuu T'ina invited every household in the community to name those from their families and from the community generally who would be fair in peacemaking. From those nominated, approximately fifty individuals were identified. The first third of that group were given an orientation and training course in peacemaking . . . The successful peacekeeping outcomes may involve withdrawal of charges by the Crown or incorporation of the peacekeeping healing plan into sentencing.