



Action Committee on Modernizing Court Operations

INDIGENOUS PRACTICES IN THE COURTS

A Statement from the Action Committee

Our Committee supports Canada's courts in their modernization efforts. It provides guidance for addressing challenges, and highlights opportunities and innovative practices to modernize court operations and improve access to justice for court users.

This publication captures guiding considerations, lessons, and concrete examples from consultations with both Indigenous and non-Indigenous judges, court administrators, Indigenous Courtworkers, Indigenous justice organizations and other justice actors about incorporating Indigenous practices in the existing court system.

The guiding considerations and examples outlined include themes echoed in the Action Committee's companion publications, [Role of Indigenous Courtworkers in Criminal Proceedings](#) and [Working with Indigenous Courtworkers: Useful Tips](#).

1. BACKGROUND AND CONTEXT

As courts across the country continue to affirm their commitment to reconciliation, they are engaging in the complex work of ["coming to terms with events of the past in a manner that ... establishes a respectful and healthy relationship"](#) with Indigenous people moving forward. The reconciliation journey requires respectful listening, learning, humble relationship building, and action with outcomes on many fronts. While governments, Indigenous communities, and others work on the important initiatives to revitalize Indigenous justice systems and legal traditions, judges, and court administrators at all levels of courts are actively promoting necessary reforms within the existing court system. Incorporating Indigenous practices in the courts is one of many reforms pursued on this path.

Historically, Indigenous practices including customs and ceremonies have been suppressed in institutional settings. Added to this, the features of court buildings, professionals, and proceedings are often alienating for Indigenous people, impacting their ability and desire to access justice through the courts. By better understanding and incorporating Indigenous practices and trauma informed ways of working, judges and court administrators across the country can help to create a court system that is fair, just, equitable and culturally sensitive for Indigenous court users. Creating a space for Indigenous identity and dignity to be seen and honoured is one small step in addressing access to justice and systemic discrimination.

By contributing to different ways of knowing and seeing that can foster innovation and enrich modernization efforts, incorporating Indigenous practices can also be transformational. If entered into with humility, good faith, and respect, courts can collaboratively find ways to increase meaningful engagement and better outcomes for all by incorporating Indigenous knowledge and perspectives. Examples exist in criminal and family courts where shifts to holistic support and healing are creating pathways to better outcomes for individuals, families, communities, and the justice system as a whole.

2. GUIDING CONSIDERATIONS

Below are a number of guiding considerations that are important when working to incorporate Indigenous practices in the courts. These considerations are interconnected and should be implemented collectively and continuously. They form the backdrop against which the collective work of relationship-building, learning and understanding, and respectfully planning and acting



Action Committee on Modernizing Court Operations

to incorporate Indigenous practices can occur. Implementing only some of these considerations could have an adverse effect and cause offence to the Indigenous people involved.

2.1 Creating Space – Fostering an Inclusive Environment for Indigenous People to Lead

The role that courts play in incorporating Indigenous practices is to create *space*, while looking to Indigenous people to occupy and shape that space by entrusting them to define, lead, and administer these Indigenous practices.

Creating space should not, however, be seen as a passive role. Indigenous practices and identities have been so significantly marginalized within Canadian society that making space for them in the courts requires actively creating an environment that signals to Indigenous people that they, their practices, and identities are welcome.

Courts are undertaking this role in various ways. These include partnering and collaborating with the local and regional Indigenous communities, organizations, leaders, Elders and Knowledge Keepers to change or create:

- Court infrastructure that incorporates important Indigenous elements and responds to the needs of Indigenous people using those court spaces.
- Policies, procedures, and guidelines for the courts, informed by the lived experiences of Indigenous people and communities, and the needs they articulate.
- Programs and Indigenous-specific courts and proceedings that are informed by Indigenous ways of knowing and being.

Importantly, creating such space may also, in some circumstances, and more so as courts modernize, include an acknowledgement and support for Indigenous justice also occurring outside of the existing court context within Indigenous communities, structures and separate Indigenous legal orders.

2.2 Adopting an Orientation of Humility, Respect and Receptivity

Most justice actors do not have lived experience with, or expertise in, Indigenous practices. There is much that non-Indigenous judges, court administrators and counsel do not know, to the extent that people often “don’t know they don’t know.” As such, it is important to work to incorporate Indigenous practices in the courts with humility, respect, and receptivity to new Indigenous led ideas.

This lack of knowing can understandably be uncomfortable for experts in the law and in court administration. However, as articulated in the Action Committee’s publications on [Multi-Stakeholder Collaboration: Best Practices and Lessons Learned from the Pandemic](#) and on [Restoring Court Operations in Northern, Remote and Indigenous Communities](#), justice is a shared responsibility requiring the contributions of a wide range of non-Indigenous and Indigenous actors. Listening and building respectful relationships with local Indigenous communities are important elements of becoming better informed, more creative, and ultimately better able to support access to justice for all. By adopting an orientation of humility, respect and receptivity, courts, judges, and court administrators can engage meaningfully despite a level of uncertainty and discomfort. Mistakes may be made, and challenges encountered along the way, but this approach and orientation can help to remedy and overcome them and, ultimately, lead to significant learning and effective change. Building collaborative relationships with those who hold the expertise necessary to move forward creates an environment where questions can be asked safely and respectfully, while assumptions and missteps are avoided and addressed.



Action Committee on Modernizing Court Operations

2.3 Recognizing and Honouring Distinctions

Recognizing and honouring the rich diversity of Indigenous people's cultures, languages, histories, and traditions is crucial when engaging with Indigenous communities and working to incorporate Indigenous practices in the courts. At the most general level of distinction, Indigenous people in Canada belong to three broad groups: First Nations, Inuit, and Métis. Between and within each of these broad groups exists a wide variety of distinct Nations, cultures, communities, world views and practices. Even when considering one specific Nation, there may be variations in the customs and traditions amongst communities, as well as individual community members. There is no single Indigenous culture nor 'standard' or pan-Indigenous practices that a court can incorporate into its processes.

It is natural to be more informed about the communities that live close to the court. However, building understanding of other Nations, cultures, and practices across the country is also important, given the natural movement of people outside of their 'home' communities. This is particularly true in large urban centres that have a broad diversity of Indigenous people from across the country. Being informed can guard against assumptions and provide a respectful foundation from which to engage. A best practice is to ask a person who may identify as Indigenous:

- how they wish to identify;
- how they would like to be addressed;
- what Nation or community they identify with and what specific needs may stem from that identity.

Taking this approach facilitates access to Indigenous practices and respects the fact that not all Indigenous people identify with traditional values and practices nor wish to incorporate them into their experience with the courts. It's also important to remember that many Indigenous persons were removed from their communities and may have been raised outside of their traditional practices and values but are now reconnecting, presenting as another area of consideration when asking the questions listed above. Asking when uncertain can go a long way to honouring distinctions and creating a more welcoming environment for those distinctions.

2.4 Comprehending Cultural and Spiritual Significance

Understanding the cultural and spiritual significance behind Indigenous customs and practices is important when incorporating Indigenous practices in the courts. To do otherwise would render the honouring of, and/or participation in, these practices perfunctory and hollow. There is no requirement to share the belief, but there must be an openness to understand it. Making meaningful space for Indigenous practices requires respect and a receptivity to learn the significance of, and protocols around, these practices. Building this understanding is an ongoing process.

Keeping in mind that there is no *one* Indigenous culture, there exist common themes across the diversity of Indigenous worldviews and traditions. These include an understanding of interconnected, continuous, cyclical, fluid, and non-linear approaches (e.g. circle, spiral), and a reverence for the spiritual, physical, emotional, and mental aspects of individual, family, community, ancestors, and nature. Separating the physical and mental from the spiritual is largely a Western concept. As such, Indigenous practices that can be experienced physically (the smoke of smudge, the beat of a drum) are interconnected with the spiritual, mental, and emotional in a continuous and fluid manner. When undertaking Indigenous practices, demonstrating the requisite solemnity shows an important sign of respect. This solemnity is reflected in the significant protocols surrounding many Indigenous ceremonies, including the



Action Committee on Modernizing Court Operations

handling of sacred objects such as medicines, pipes, rattles, drums, eagle staffs, etc. To partake in, or incorporate, these practices without understanding such protocols and spiritual significance can cause great offence.

3. BUILDING RELATIONSHIPS AND THE ROLE OF LEADERSHIP

As courts work to incorporate Indigenous practices, action needs to occur at both the institutional and the individual level. As captured in important reports and recommendations, such as the [Royal Commission on the Donald Marshall, Jr., Prosecution](#) (see recommendation 33, Responsibility of Chief Justices and Chief Judges, in particular), Chief and Associate Chief Justices, Chief and Associate Chief Judges, and Chief and Senior Court Administrators play an important leadership role on behalf of the institution of the court. They are in positions of authority to effect systemic and cultural change and make commitments on behalf of the institution. Outwardly, their commitments signal an institutional openness to change the nature of the relationship with Indigenous people and are first steps towards increasing Indigenous People's confidence in the existing court system. Internally, they provide important guidance on how justice system actors can and should each be working towards reconciliation.

The necessary collaboration and reconciliation work to create space for Indigenous practices can only come through relationships. By building ongoing and sustained relationships with Indigenous Chiefs, Elders, and court actors, senior court leadership can both create an institutional relationship as well as facilitate relationships and understanding between individuals working in courts and members of Indigenous communities.

As many court leaders across the country have said, building these relationships and sustaining them takes time, commitment, and energy. The initial relationship building requires patience as parties learn how to communicate with one another, learn about each other's protocols, and begin to build trust with one another. Once relationships are established, work is ongoing to sustain them and continue to learn and collectively problem-solve. Collaborative structures such as advisory tables, steering committees, or working groups that bring together representatives from local Indigenous communities, Indigenous justice organizations, judges, court administration, and other court actors can be helpful mechanisms. These structures allow issues to be raised, problems to be solved, learning to continue to occur, and space to be created for questions that individuals may not wish to raise directly in the courts but can help educate judges and court staff. Depending on the context, meetings of these structures can vary anywhere from once or twice a year to every month or at every court sitting, for example in the case of specialized courts.

4. INCORPORATING INDIGENOUS PRACTICES

Many leaders in the courts have signalled to Indigenous communities in their jurisdictions a willingness to establish institutional relationships on behalf of the court. Many Indigenous leaders have accepted the invitation to enter relationships and determine whether and how to incorporate Indigenous practices into the existing court system in their area. There are various pathways through which this might occur, and as existing relationships continue to be nurtured and learning deepens, the space for incorporating different Indigenous practices will continue to evolve. The following sections outline both pathways to incorporating Indigenous practices as well as illustrations of Indigenous practices being incorporated.

4.1 Pathways to Incorporating Indigenous Practices in Specific Cases

Although court leadership will be at the forefront of creating relationships, individual judges and court administrators have important supporting roles at the institutional level. Significantly, they



Action Committee on Modernizing Court Operations

will encounter opportunities to incorporate Indigenous practices on a more everyday basis within specific proceedings and court operations. Creating a welcoming and accessible environment at the individual case level is equally important as the work happening at the more institutional level.

4.1.1 Pathways through Counsel and Other Court Actors

In many cases, requests to incorporate Indigenous practices will come from parties through their counsel, or through another court actor such as Victim Services, Indigenous Courtworkers, or Indigenous restorative justice workers. These requests would ideally come during case management sessions or pre-trial motions, but this is not always possible, especially during shorter hearings. In those cases, requests may come through a letter to the registrar or through a process outlined in a court policy.

Regardless of the route, there are several considerations to determine if the request can be accommodated, including:

1. Whether both parties are amenable to the request: Counsel can undertake conversations regarding the nature, details, and their positions to incorporate into their practice(s) and work out much of the issues ahead of the request being made to the court. In cases where there is no agreement, the matter may have to be argued.
2. Whether it is operationally feasible: Even when a request is agreed to by both parties, there may be operational and infrastructure challenges to accommodating the practice. One example is a court space not having the appropriate ventilation to allow for a smudge. Working collaboratively, courts have found satisfactory solutions in many instances, for example, finding another, well-ventilated space in the court facility, having court actors gather in a space outside the court facility, or momentarily disabling the fire alarm system. Despite best efforts, there are cases where requests simply might not be able to be accommodated.
3. Whether the individual wants to participate: Participation in the practice itself is an individual choice. Given the spiritual nature of many Indigenous practices, some individuals may, for a variety of reasons, prefer not to participate. This choice should be appropriately accommodated and respected.

4.1.2 Pathways Facilitated by Judges and Court Administrators

Counsel or justice actors may not always be aware that they can make requests for these practices to be incorporated. As such, it is important for courts, judges, and court administrators to take steps to ensure that parties feel welcome to make such requests. A few examples include:

- Judges asking if there are any Indigenous-specific issues that need to be addressed during case management or pre-trial motions where there are Indigenous parties, victims, or witnesses involved or Indigenous-specific issues being raised.
- Courts communicating through their websites and/or in subpoenas and summonses that such requests are permitted and the process for making them.
- Courts creating and clearly communicating policies, protocols, and directives regarding the incorporation of Indigenous practices.



Action Committee on Modernizing Court Operations

- Courts including accessibility and communication around the incorporation of Indigenous practices as a topic of discussion at ongoing Court/Indigenous community meetings and bench and bar meetings.

4.2 Illustrations of Indigenous Practices Being Incorporated

Below is an illustrative list of practices courts have worked with Indigenous communities to incorporate. Each practice will take on its own variation and expression depending on the specific Indigenous community or person practicing it. The practices outlined are not specific to any one party or Indigenous person in the court but can hold significance for Indigenous litigants, witnesses, victims, offenders, and Indigenous court actors.

4.2.1 Indigenous Ceremonies

Indigenous ceremonies are being incorporated into all aspects of courts, from the process of building relationships between courts and Indigenous communities; to educational and commemoration events involving courts; to before, during, and after cases involving Indigenous parties. As seen from the example of the Federal Court outlined below, some courts are creating guidelines that anticipate and make space for such ceremonies and medicines. Some examples include:

- Smudging (see for example the [Protocol – Indigenous Smudging Ceremony](#) from the Provincial Court of Saskatchewan)
- Blanketing (see for example the [Indigenous Criminal Sentencing Courts](#) in the Provincial Court of British Columbia)
- Sacred fire, sunrise ceremony, pipe ceremony, and sweat lodge (see for example the ceremonies that were observed as part of the planning and building process of the [Thunder Bay Courthouse](#))
- Cedar sweeping
- Prayer
- Drumming, singing and/or dancing

4.2.2 Sacred Objects and other Meaningful Symbols in the Courtroom

Sacred objects and other meaningful symbols in the courtroom, although perhaps more subtle than Indigenous ceremonies, can be equally powerful for those who resonate with these symbols. Some examples in Canadian courts or court proceedings include:

- Administering the Oath with an Eagle Feather
- Lighting of the qulliq (Inuit Lamp) in the courtroom to bring peace and comfort
- Seal skin vests or an amauti, as opposed to black robes, worn by judges, justices of the peace and other courtroom actors in Nunavut
- Braid of sweetgrass kept on the dais or witness box
- Métis sash
- Ribbon skirt
- Eagle staff
- Indigenous flags flown in the courtroom alongside federal, provincial, and territorial flags

Sacred objects have also been incorporated into many courts across the country for the specific use of affirmations. To date, the most common sacred object incorporated for affirmation by First Nations and Métis has been the eagle feather (see for example the Eagle Feather Initiative from the [Supreme Court of Prince Edward Island](#)), but others have also included an Indigenous pipe.



Action Committee on Modernizing Court Operations

As explained through the Manitoba example detailed below, important teachings accompany sacred objects, and critical protocol surrounding the care, handling, and use of the objects. Many ceremonies involve sacred objects that should not be touched or kept in the court's possession unless permission is given. If permission is granted, it comes with a responsibility to maintain the protocols under which these objects were provided. Because these sacred objects are often earned either through honour or rights of passage, it would be inappropriate to ask for, or procure these items for the courts. Instead, through relationships, trust and space created, Indigenous communities could choose to gift these items. Alternatively, there may be Indigenous people, such as Indigenous Courtworkers, Elders, or Knowledge Keepers, who are connected to the courts who can facilitate the use or acquire such objects when necessary and under the right conditions for Indigenous parties and witnesses without the courts retaining these items themselves.

4.2.3 Use of Circles

Use of circles, and their related teachings, are being incorporated in courts across the country, in collaboration with Indigenous court actors, justice organizations and communities. The most common circumstances are:

- In court proceedings, such as sentencing circles in the criminal context, and family group conferencing in the family context (see for example Ontario Court of Justice [Indigenous Peoples'/Gladue Courts](#), and the Provincial Court of British Columbia's [Indigenous Family Court – Aboriginal Family Healing Case Conferences](#))
- In collaborative work with Indigenous groups outside of court proceedings, such as when meeting with and continuing to build relationships with Indigenous communities and multi-partner collaboration meetings

4.2.4 Courtroom Location and Layout

Courtroom location and layout can be important elements of the larger shift of incorporating Indigenous ways of knowing and working. Circuit courts in the three Territories and the northern parts of provinces, have been bringing court to Indigenous communities since the 1950's or earlier depending on the location. As the relationship between the courts and Indigenous communities has shifted, some courts across the country have begun to work in collaboration with Indigenous court actors, justice organizations, and communities, to determine if and under what circumstances court proceedings are welcomed to take place in Indigenous communities. When courts have been welcomed into Indigenous communities, collaborative work has also taken place in some instances to consider the creation or change to infrastructure and particular layouts in the courtroom that reflect and support more Indigenous ways of working. However, location and layout in and of itself are not sufficient. The changes to location and layout are a means of accommodating Indigenous customs and supporting different power dynamics which makes space for different voices and approaches to communicating and problem-solving.

There are numerous examples across the country of:

- Regular court sittings being held in Indigenous communities, or segments of proceedings being invited to occur within Indigenous communities (see for example the BC Provincial [Indigenous Criminal Sentencing Courts](#) and the Federal Court Practice Guidelines for [Aboriginal Law Proceedings](#) outlined in detail below)
- Indigenous peoples' courts being constructed in Indigenous communities. While still applying Canadian law, they seek to incorporate local Indigenous values, approaches, symbols and design (see for example the [Wagmatcook Provincial Court](#) in Nova Scotia)



Action Committee on Modernizing Court Operations

4.2.5 Indigenous Justice and/or Healing Programs

Indigenous justice and/or healing programs have historically operated adjacent to the court system, but many courts are now incorporating these programs to ensure options are available at all levels of justice proceedings. Some examples include:

- Restorative justice (see for example the Alberta Court of Justice [Restorative Justice Pilot Project](#))
- Healing lodges
- On the land approaches

4.2.6 Role of Elders and Knowledge Keepers

The role of Elders and Knowledge Keepers within court proceedings has become very significant. Where the court system, its rules and significance can feel very foreign or distant for Indigenous people, Elders and Knowledge Keepers attract a trust, respect, and seriousness that has been earned in Indigenous communities. Their presence, teachings, and guidance can have profound impacts on parties within the courts. Some examples include Elders and/or Knowledge Keepers:

- Conducting ceremonies or offering prayers and teaching within and adjacent to court proceedings
- Sitting with the judges in the courtroom and given the opportunity to speak with the accused following sentencing submissions and prior to passing of sentence (see for example the [Nunavut Court of Justice](#))
- Forming part of the court team in Indigenous Peoples Court (see for example the BC Provincial [Indigenous Criminal Sentencing Courts](#) and [Indigenous Family Court](#))

5. WEAVING IT TOGETHER: GUIDING CONSIDERATIONS IN PRACTICE IN CANADIAN COURTS

A key lesson from the pandemic was to acknowledge that people, institutions, environments, and issues are interconnected. This is not a new lesson for many Indigenous people, whose culture and worldview are deeply relational and holistic. Working in non-siloed ways and weaving together relationships, issues and knowledge is an important innovation for courts, about which they can learn greatly from their Indigenous partners and colleagues. Below are some examples that illustrate how the guiding considerations articulated in this publication have been put into practice by Canadian courts.

5.1 Alberta Court of Justice

Acting upon a desire to respond to the Truth and Reconciliation Commission's Calls to Action and the Calls for Justice from the National Inquiry into Missing and Murdered Indigenous Women and Girls, the Alberta Court of Justice undertook to work to provide a culturally relevant, restorative, and holistic system of justice for Indigenous peoples as part of its 2020 strategic planning process. This work included building relationships with First Nations and Métis communities. These relationships ultimately allowed the court to develop an [Indigenous Justice Strategy](#) (IJS), an action document that is meant to grow and change as relationships and learning continue.

In preparing to develop the IJS, the Chief Justice at that time started by ensuring he was properly educated. Learning started with a review of the numerous studies and inquiries that



Action Committee on Modernizing Court Operations

have taken place over the decades, as well as consultation with Indigenous colleagues on the bench and the experiences and insights from the Indigenous Court in Calgary.

It was equally important that the process be undertaken with a particular orientation of humility, flexibility - including not being ruled by time or Canadian justice traditions - and inclusivity. This orientation was demonstrated in several different ways:

- The Court saw the process as a whole as a real opportunity for self-examination.
- Respect was offered by meeting with Indigenous leadership and organizations on their land, as opposed to holding these conversations in court offices.
- There was no set end time to the meetings held with Indigenous leadership: the Chief Justice simply noted that he would be available for however long was necessary.
- The process did not start with a pre-conceived notion of what an IJS should be. Instead, it was informed and developed through the conversations that took place. The only pre-set elements for the IJS were three fundamental questions:
 - 1) Should the Court develop an IJS?
 - 2) If yes, what elements should this strategy address, being mindful of the tension and concerns around the system co-opting Indigenous tradition and custom?
 - 3) Given your experience, how should each of these elements be addressed?

A Judicial Advisory Group was also formed, consisting primarily of the Court's Indigenous judges. These judges assisted in facilitating connections with Métis and First Nations communities, and initial meetings were held to allow people simply to get to know each other. Throughout the process, the conversations were not characterized as formal consultations, but simply the chance to sit and converse. Every conversation would organically create new connections to additional people and organizations, and new invitations extended for the Court to meet with them.

In addition to building relationships with Indigenous communities across the province, the Alberta Court of Justice's IJS development process created space to allow groups and networks who may not normally connect to think and discuss collaboratively. This not only allowed the Court to listen and learn but engaged all court actors in a web of relationships to learn and commit to change together.

All these conversations culminated in the drafting of the IJS by the Chief Justice, who had undertaken the conversations and relationship building. The IJS consisted of 20 Responses or concrete steps that the Court committed to taking. These responses ranged from education, to facilitating access, to an Indigenous hiring strategy, to incorporating Indigenous cultural practices into the courtroom where appropriate.

Comments and feedback on the draft IJS were sought from Chief and Council comprised of administrative judges across the province, the Judicial Advisory Group, and ultimately from all of the Court's justices. The opportunity for review and feedback was also provided to the Indigenous communities and other groups that had been part of the initial discussions. This approach created the foundation for court-wide understanding, and collaboration and movement of the IJS across the province.

The Court published an IJS Status Report in August 2023, one year after the IJS was initially released. This Status Report noted the steps taken and that the work has just begun. The Court is continuing to make it a priority to meet with interested leadership of First Nations, Métis,



Action Committee on Modernizing Court Operations

and other Indigenous groups to discuss the IJS and other matters of importance to those groups.

5.2 Manitoba Court of King's Bench – Trust, Reconciliation and Access to Justice Committee

In 2017, the Manitoba Court of King's Bench established the Trust, Reconciliation and Access to Justice Committee (TRAC). [Chief Justice Joyal's 2017 address at the Call to the Bar ceremony](#) announced the creation of TRAC to “address the unique obligations, opportunities and challenges that currently surround the court's relationship with Indigenous Manitobans in an era of reconciliation”. Five judges were appointed by the Chief Justice to this committee, with the foundation of TRAC's work grounded by four reference points:

- Building trust and understanding with Indigenous communities
- Judicial education to enhance awareness and understanding of the challenges and opportunities related to reconciliation
- Identifying specific reconciliation initiatives and processes for implementation
- Normalizing and incorporating new processes into the provision of judicial services in a way that ensures access to justice

TRAC's work to date has involved outreach to the Indigenous community both urban and rural, North and South. In 2022, the membership of TRAC was expanded to include five Indigenous community members, with a broad range of experience and expertise, who now sit as full members of this court committee.

Opportunities for King's Bench judges to connect with and learn from Indigenous communities have occurred in both community settings and a wide range of educational sessions. Since 2017, every semi-annual judicial education session delivered to Manitoba King's Bench judges by the National Judicial Institute has included lectures by Elders, Indigenous scholars, and Knowledge Keepers.

Steps towards the judiciary's contribution to reconciliation for the Manitoba Court of King's Bench have necessarily involved reviewing existing court procedures and case management practices. This has included consultation with and involvement of Indigenous Courtworkers, the Indigenous Bar, community members, and Elders. Early results of this work included the introduction of the sacred eagle feather as a form of oath.

The introduction in 2019 of the sacred eagle feather as a form of oath in all Manitoba Courts was a specific Indigenous-led reconciliation initiative that has become part of the everyday provision of judicial services at court counters and in courtrooms throughout Manitoba. The initiative, undertaken through a joint committee with the Provincial Court of Manitoba, has involved education on the proper care of the eagle feather for court staff, with both judges and court staff participating in an annual rededication ceremony performed by Elders and Knowledge Keepers.

Increasingly, requests are being made for smudging and ceremony in King's Bench courtrooms on matters touching the Indigenous community. Currently requests are being addressed by the



Action Committee on Modernizing Court Operations

Court as they arise, with planned work on the development of guidelines and protocols in the coming year.

The Court recognizes that the judiciary's contribution to reconciliation will not be realized by any one new process or reform. As such, the work of reconciliation remains part of the Court's daily judicial existence and responsibility. As important as changes are, it is equally important that the Court undertake and introduce reforms in the right way, mindful of its duty to maintain judicial independence, while concurrently providing an inclusive and informed judicial service.

5.3 Federal Court - Practice Guidelines for Aboriginal Law Proceedings

Since 2005, the Federal Court of Canada has operated the [Federal Court – Aboriginal Law Bar Liaison Committee](#), a “forum for dialogue, [to] review litigation practice and rules, and [to] make recommendations for improvement.” The Committee's meetings, symposiums and gatherings have led to important learning and changes in the Court. In particular, through the collaborative work of this Committee, the Federal Court has produced [Practice Guidelines for Aboriginal Law Proceedings](#). This document stands both as 1) an illustration of the incorporation of Indigenous ways of knowing and working into the creation of the guidelines, and 2) a vehicle through which Indigenous practices can be incorporated in proceedings within the Federal Court going forward. A perfect example of this is the Guidelines' section on Dispute Resolution Through Dialogue, which explains how the Court incorporated dispute resolution collaboratively into its court process:

In 2009, the Federal Court hosted a [Symposium on Oral History and the Role of Indigenous Elders](#), opening a dialogue with Elders from across Canada along with representatives of the public and private Bar. In turn, these same Elders hosted a historic [meeting](#) in 2010 at Turtle Lodge to promote a better understanding of the Indigenous perspective. This led to a judicial education seminar at Kitigan Zibi in late 2013, developed in collaboration with the Elders, on Indigenous dispute resolution. Throughout, the Elders who were consulted have shown their preference for dispute resolution through dialogue: talking things out to resolve disputes by agreement.

Dispute resolution through dialogue as opposed to solely through adjudication is now an option in Federal Court Aboriginal law proceedings. The parties still decide which route they wish to take, but the guidelines recognize that, if chosen, settlement by agreement is a form of reconciliation, as it helps to restore the relationship and trust between the parties.

The guidelines further provide guidance on:

- The appointment of a neutral advisor to the court regarding Indigenous law or traditions
- A pilot framework for parties to request a summary of a Court decision in an Indigenous language
- The considerations of trial venue, including options for holding proceedings (or parts of proceedings) in Indigenous communities
- The incorporation of special ceremonies
- A protocol for oral evidence from Elders, including venue, ceremony, court set-up and decorum considerations and adjustments that may be required

Other courts have also chosen to incorporate aspects of the Federal Court's Guidelines, as needed, in cases involving Aboriginal law. A recent case within the Superior Court of Ontario



Action Committee on Modernizing Court Operations

relied on the Guidelines to incorporate ceremony, hold portions of proceedings in several Indigenous communities, and guide the considerations and process around taking oral evidence from Elders.

5.4 Provincial Court of British Columbia – BC Indigenous Criminal Sentencing Courts

The Provincial Court of British Columbia has nine [Indigenous Criminal Sentencing Courts](#). Each was developed through extensive consultation, preparation, and collaboration with local First Nations, and was uniquely designed to meet the needs of the communities it serves. The Indigenous communities at large, Elders, Legal Aid BC, BC government, Crown and defence lawyers, Community Corrections, police, and groups like the Native Courtworker and Counselling Association of BC were also instrumental in their development.

These sentencing courts are open to people who identify as Indigenous, indicate an intention to plead guilty to a criminal offence, and depending on the specific court, have the prosecutor's agreement to participate. They incorporate an Indigenous approach to problem solving that looks holistically at the offender's mental, physical, spiritual, and emotional health, as well as the underlying causes of the offending behaviour. They usually result in a healing plan that seeks to restore balance to the offender, family, and community.

Although each court has developed procedures and identified participants, resources, and services to meet its communities' needs, BC's Indigenous Courts generally share these elements:

- Court may begin and end with a prayer. It may include a ceremony used by Indigenous groups to cleanse the spirit and bring forth good energy, such as smudging. These ceremonies serve to acknowledge traditional Indigenous practices, engage with Indigenous culture, and ground the day ahead.
- Offenders (referred to as clients) usually sit in a circle with the judge, Elders, lawyers, and others. The circle may include victims, family members, and support people. Local Indigenous communities are encouraged to contribute to the proceedings.
- Participants discuss the offending behaviour and its impact. Clients share their backgrounds and special circumstances. Together, they create a healing plan that may be incorporated in the judge's sentence.
- The healing plan is at the heart of BC's Indigenous Courts. It balances the legal requirements of the traditional court system with Indigenous ways and laws. A healing plan can include both traditional and therapeutic forms of sentencing. For example, a probation order might include attending sweat lodges, undergoing treatment for substance use disorder, and steps to reconnect with an Indigenous community.
- A client whose sentence includes a healing plan leaves court with two key responsibilities - to work with support and service providers and to report their progress to the Court, usually every few months. When they do this, they receive feedback from Elders and the judge.
- A client who successfully completes a healing plan graduates from the Indigenous Court and may have a blanket ceremony symbolizing a new beginning. The blanket represents strength against vulnerabilities and the unknown. When an Elder wraps someone in a ceremonial blanket, it symbolizes the client's acceptance of responsibility, support, protection, growth, and a welcoming back to the community.



Action Committee on Modernizing Court Operations

- In some cases, clients complete their healing plans while on bail and prosecutors do not proceed with their charges.



Action Committee on Modernizing Court Operations

ANNEX: RESOURCES AND REFERENCE GUIDES ON INDIGENOUS PRACTICES RELEVANT TO THE COURTS

Here is a non-exhaustive list of resources produced by Canadian courts, as well as reports by legal system, on the topic of Indigenous practices. The Action Committee shares these resources as information potentially relevant to the courts but does not necessarily endorse them. Individual courts and jurisdictions are encouraged to assess the relevance of these resources based on their particular context.

Related Publications by the Action Committee

- [Restoring Court Operations in Northern, Remote and Indigenous Communities](#)
- [Role of Indigenous Courtworkers in Criminal Proceedings](#)
- [Working with Indigenous Courtworkers: Useful Tips](#)

Resources from Canadian Courts

- Federal Court, [Practice Guidelines for Aboriginal Law Proceedings](#)
- Provincial Court of British Columbia, [Reconciliation in Action: Report on New Westminster First Nations Court](#)
- Alberta Court of Justice, [Indigenous Justice Strategy](#)
- Provincial Court of Saskatchewan, [Protocol Indigenous Smudging Ceremony](#)
- Nunavut Courts, [A Primer on Nunavut](#)

Resources from the Legal System

- A joint project of: The Advocates' Society, The Indigenous Bar Association, and The Canadian Bar Association, [Guide for Lawyers Working with Indigenous Peoples](#)
- A joint project of: The Advocates' Society, The Indigenous Bar Association, and The Canadian Bar Association, [First Supplement to the Guide for Lawyers Working with Indigenous Peoples](#)
- Aboriginal Legal Services, [Communicating Effectively with Indigenous Clients](#)
- Canadian Bar Association, [Engaging Elders and Cultural Protocols](#)



Action Committee on Modernizing Court Operations

- MCPEI Indigenous Justice Program, [Bringing balance to the Scales of Justice: Fulfilling Our Responsibility to Indigenous People Involved in the Justice System](#)
- ShchEma-mee.tkt Project (Nlaka'pamux Nation Tribal Council), [Wrapping our Ways Around Them: Aboriginal Communities and the Child, Family and Community Services Act \(CFCSA\) Guidebook](#)