



# Action Committee on Modernizing Court Operations

## WORKING WITH INDIGENOUS COURTWORKERS: USEFUL TIPS

### 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.*

### 1. BACKGROUND

Indigenous Courtworkers (ICWs) play a crucial role in helping judges and other justice actors understand the cultural history and social context of Indigenous people before the court. They support their Indigenous clients throughout the justice process by providing information, assistance in navigating the justice system, and connecting them to relevant legal and social resources. ICWs are bridges between Indigenous people and the Canadian justice system in both the criminal and family context. For a more comprehensive review of the ICW Program and the various roles and ways they can assist the court, please consult the companion publications, [Role of Indigenous Courtworkers in Criminal Proceedings](#) and [Role of Indigenous Courtworkers in Family Law and Child Welfare Law Proceedings](#). This tip sheet was originally published in March 2024. It has been updated to include additional information about ICWs in family and child welfare proceedings.

### 2. CONTEXT

This publication provides five ways to create an environment wherein ICWs can assist both their clients and the court by meaningfully conveying relevant information about their clients, Indigenous communities, cultural practices, customs, traditions, and the broader social context, within criminal, family, and child welfare proceedings.

The guidance is based on consultations and discussions with judges, ICWs, and lawyers from across the country with experience in criminal, family, or child welfare law. Included below are some examples of concrete practices implemented by judges across Canada to foster a collaborative and respectful environment amongst judges, ICWs, Crown, Defense, family and child welfare lawyers, and other actors within the court system to support the crucial role of ICWs. Judges are encouraged to adapt these strategies as required to suit the unique needs and requirements of their jurisdiction and of the ICWs involved.

As outlined below, judges, court administrators, and other justice actors are actively working with ICWs to create a more welcoming, inclusive, and accessible court environment for Indigenous people. Learning from and working collaboratively with ICWs, a range of strategies are being implemented to reflect cultural sensitivity, respect for traditions, and a commitment to understanding and addressing historical injustices. Judges are finding innovative solutions to modernize their court operations and improve access to justice while recognizing the potential for better outcomes through collaborative and culturally sensitive approaches.



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## 3. TOP 5 WAYS TO ENABLE ICWs TO WORK WITH THE COURT

### 3.1. Build Relationships with ICWs in Court

To effectively build relationships and enhance collaboration between judges and ICWs, it is crucial to know the ICWs in the courthouse and to understand the functions they perform in the jurisdiction, since their roles and activities vary somewhat across the country. Taking the proper time to build a strong rapport with ICWs is critical to this process. Ensuring that ICWs also understand the expectations and requirements of the judges with whom they work, as well as any barriers faced, will enable them to be responsive and assist in addressing these expectations and barriers effectively.

While taking into consideration privacy obligations, some practical approaches to fostering this relationship, adopted by judges across Canada, include:

- Arranging introductory or “get-to-know-you” meetings when a judge or an ICW is new to the court.
- Conducting regular check-ins to discuss concerns and explore new and existing support services, Indigenous-based programs, cultural events, and other relevant resources useful to the court.
- Proactively collaborating and coordinating to address broader concerns specific to Indigenous communities, such as:
  - Organizing case-specific meetings with ICWs-and counsel from both sides in cases where Indigenous people appear repeatedly in court (for example, in case conferences under section 19 of the *Youth Criminal Justice Act*).
  - Including ICWs when meeting with Crown and Defense counsel at all stages of criminal cases involving an Indigenous accused, including bail plan discussions, sentencing recommendations, *Gladue* reports and findings, and sentencing circles.
  - Holding pre-court case meetings or creating collaborative tables and Indigenous advisory groups that involve counsel from both sides, ICWs, and various other justice actors to coordinate efforts, problem-solve, and address specific issues affecting both the court and the Indigenous community.

#### **Challenges and limitations**

Frequent turnover of justice actors and ICWs presents a notable challenge since it can hinder relationship-building and the understanding of Indigenous culture, practices, and context. Efforts to mitigate turnover that are within the control of the courts (for example, with regard to court personnel) are encouraged. When mitigation is not possible, consider establishing ongoing mechanisms to develop relationships and cultural awareness, to help build a common understanding of the Indigenous context that enhances justice processes and, more broadly, the administration of justice.



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ICWs in family law and child welfare are not available in all provinces and territories, so ICWs in criminal matters often end up supporting family and child welfare litigants in addition to their responsibilities in the criminal sphere.

### 3.2 Become Informed about the Indigenous Social Context Specific to the Jurisdiction

ICWs can serve as invaluable resources in building judges' understanding of the social context and history of Indigenous people in their jurisdiction. As indicated in the Canadian Judicial Council's third principle of Diligence and Competence in the [Ethical Principles for Judges](#), judges, who may have little or no life experience with Indigenous communities in their jurisdiction, are encouraged to learn and understand the realities, history, heritage, and laws related to Indigenous people. ICWs may be able to suggest individuals, organizations, and resources in the community who possess the relevant knowledge or organize meetings with knowledge keepers.

To gain a better understanding of the social context of Indigenous communities and people, judges are encouraged to recognize the distinctions between First Nations, Inuit, and Metis communities, understand the diverse experiences of Indigenous people in both rural Indigenous communities and urban settings, and acknowledge variations within specific nations, communities, and groups. Moreover, they are encouraged to learn not only the general history of Indigenous people in Canada, but also the specific history, culture, practices, customs, and traditions of the Indigenous nations, communities, and groups within their jurisdiction. Ideally, judges will have an opportunity to meet in the community and learn directly from members themselves to understand Indigenous peoples' lived experience beyond what can be learned through written resources or second-hand knowledge.

Learning more about the community is beneficial for several reasons. Firstly, it enables judges in criminal proceedings to craft appropriate and responsive bail plans, sentences, probation orders, and conditions that support the rehabilitation of accused individuals while ensuring public safety and reducing the risk of recidivism. Furthermore, in both criminal matters and in family and child welfare matters, contextual knowledge aids in understanding absences and failures to appear, such as during hunting or harvesting season, when persons are out of the community for medical services, or when there are funerals. This in turn can help reduce the need for preventable bench warrants or contempt of court orders. Contextual knowledge is also vital for evaluating evidence and assessing credibility in a culturally appropriate manner. Moreover, this knowledge fosters a respectful and accessible court environment for all Indigenous individuals present, including Indigenous accused persons, victims, families, parents, witnesses, and ICWs.

Some noteworthy examples of how judges across the country are achieving this understanding include:

- Working through the relationships built with ICWs and other Indigenous organizations to find appropriate and respectful ways to visit local Indigenous communities, visiting key locations of significance, and exploring support services available to those appearing before the court.



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- Attending sentencing circles, restorative processes, and culturally sensitive family or child welfare proceedings, when possible. This provides insights into challenges, lived experiences, and teachings, and helps to build bridges between the court system and Indigenous ways of approaching justice.
- Working through the relationships built with ICWs and other Indigenous organizations to find appropriate and respectful ways to attend cultural events or ceremonies in the community, and actively seeking opportunities to learn from Elders, Knowledge Keepers, and other community members.
- Reviewing existing literature, including studies, inquiry reports, and works by Indigenous authors, and attending judicial education opportunities.

### 3.3 Facilitate Full Participation of ICWs in the Courtroom

Recognizing the crucial role of ICWs in providing information and support, it is important for judges, court administrators, and other justice actors to encourage their active participation in court proceedings, while acknowledging the limitations of ICWs in the courtroom.

To help ICWs support the court process, judges can adopt several strategies, such as:

- Supporting ICWs in obtaining timely access to court dockets, appearance dates and in-custody lists. Doing so enables ICWs to coordinate more effectively with their clients, support services, and other relevant resources, to provide appropriate support in advance and during court proceedings.
- Providing a physical space for ICWs in the courtroom, either before the bar or in the seats after the bar, can enhance their efficiency in carrying out their responsibilities. By asking ICWs what might work best for them, judges can create more welcoming and inclusive spaces.
- Identifying ICWs to accused persons and family or child welfare litigants, similarly to duty counsel. This has been reported to ease much anxiety felt by Indigenous people who come into contact with the courts.
- Supporting ICWs in having dedicated spaces in courthouses can help them connect with clients before hearings. This is especially important when Indigenous persons are in custody, where ICWs may not have access to them, or when ICWs have confidential conversations related to family or child welfare to discuss with their clients. Some courthouses have allocated office space for ICWs in the court facility to assist clients more effectively.
- Proactively asking counsel if they or their clients have consulted with the ICW, ensuring ICWs are welcome in the courtroom, being open to the ICWs speaking in court to offer information, and actively seeking their input throughout the docket. Depending on the context and legal framework outlining the ICWs' roles and responsibilities in a given jurisdiction, it may be possible to allow ICWs to speak without the need to be sworn in. This can make the process feel more inclusive and respectful of their role, ensuring they do not feel marginalized or placed at the end of the docket.



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- Proactively expressing support for collaboration with ICWs to counsel, encouraging them to work with ICWs and support them in their work, in the same way the judge is, to ensure accessible and culturally sensitive court proceedings that support all parties, thus discharging their responsibilities in an informed way.
- Calling upon and requesting ICWs to complete certain tasks within their mandate, thus leading by example to further encourage counsel and Indigenous litigants to fully employ ICWs as a resource when appropriate and draw as many benefits as possible from this relationship.

### ***Challenges and limitations***

ICWs cannot represent clients or offer legal advice, even in cases where there are no lawyers available to represent the accused or parents in family or child welfare matters. Access to ICWs is complementary to, not a substitute for, Indigenous litigants' right to legal representation. Lawyers do not always recommend that their family law or child welfare clients meet with an ICW. To clarify the role and legal authority of ICWs, judges should be aware of any order-in-council or other existing instrument that defines their responsibilities in their jurisdiction.

Since ICWs are not lawyers and have varying levels of experience within the court, communications with ICWs should be adapted to their knowledge and experience level. Taking stock of their experience when meeting the ICWs in your jurisdiction can improve communications.

ICWs in family law and child welfare cannot assist both parents in the same case in order to avoid conflicts of interest, so they should not be asked to meet with both parties.

Additionally, ICWs should not be asked to act as translators or interpreters, as this is not within their scope of practice. Nor should they be named in bail plans due to potential conflicts of interest, as their role is to support the client throughout the justice process, and having to report a breach could undermine that role.

### **3.4 Support Improved Access to Justice for Indigenous People**

Fostering a welcoming, inclusive, and accessible environment for ICWs and their clients can significantly improve access to justice for Indigenous people by ensuring that their unique cultural values, their experiences, and the challenges they have historically faced in accessing the Canadian justice system are properly taken into consideration throughout the justice process.

Judges across the country are taking various steps to achieve this goal, guided by listening and learning, to incorporate Indigenous cultural values in proceedings rather than imposing tradition-based rules. At the heart of these efforts lie understanding, respect and relationship building: these elements are central to Indigenous ways of working. Steps taken include:

- Supporting the creation of Indigenous-specific courts, which often incorporate key features aligned with Indigenous cultural values, such as:



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- Adopting a more collaborative and problem-solving approach, moving away from the traditional adversarial system, and focusing on healing through accountability and holistic support.
- Providing more space and voice for various support services - including ICWs, Elders, and Healing Programs – who either work in conjunction with or complement the work of the Crown, Defense, Victim Services, and Probation Services. Making space for Elders, who are highly respected persons within Indigenous communities, can be particularly impactful to an Indigenous person’s court experience and healing journey. Elders are a source of wisdom and trust and can foster a culturally sensitive, respectful, and reflective atmosphere, leading to more accessible court processes and successful outcomes.
- Integrating a physical layout, such as the use of a circle or round court where the judge, counsel, support persons, and Elders sit on the same level, to foster and reflect a shift in approach paired with respect for symbols and practices that are meaningful to Indigenous people.
- Creating space, with cultural humility, to incorporate Indigenous sensitive practices in the justice process and courtroom. This could include, for example, permitting the burning of sacred medicines when possible.
- Using plain language and ensuring appropriate interpreters for Indigenous parties who speak an Indigenous language to facilitate communication.
- Taking steps to learn several key words in a local Indigenous language, such as “thank you” and “do you understand” to create the desired environment.
- Acknowledging the presence of Elders in the court, and engaging them as appropriate, as it is a sign of respect and recognition of their role and position within their community and promotes a culturally respectful and inclusive atmosphere.
- Taking time to develop rapport and establish human connections with Indigenous parties, aiming to make them feel seen and heard.
- Critically examining traditions within the justice system that persist merely due to customs within Canadian legal institutions. These examinations might involve considering changes such as removing the dais, covering the coat of arms, including Indigenous flags, and being mindful of the symbols in the courtroom that may hold different, and sometimes painful, meanings for those who have experienced historical harm.



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## ***Challenges and limitations***

Judges who have worked to implement Indigenous-specific courts and ICWs who work in these courts have noted that changing the physical layout of the courtroom without developing a genuine understanding and respect for Indigenous ways and customs, by way of consultations with Indigenous communities, may result in an opposite outcome and not create the welcoming, inclusive, and accessible environment desired.

## **3.5 Build Bridges and Work in Collaboration with ICWs and other Justice Actors**

In many Indigenous cultures, the value of holistic and collaborative approaches is deeply ingrained. Working collaboratively with ICWs and other justice actors can help to identify and implement culturally adapted and durable solutions to address systemic issues and root causes that bring Indigenous individuals before the court. This in turn can improve on the overall efficiency of courtroom operations, and the public's and Indigenous people's faith and trust in the Canadian justice system. It can also improve the participation of accused individuals, fostering an environment where their voices are heard, and their perspectives are valued. Collaborative efforts can also help to reduce frequent turnover within the justice system: by working together, people feel more engaged, supported, and fulfilled in their roles.

Judges across the country are embracing this collaborative spirit in various ways, including:

- Emphasizing their readiness to learn from ICWs and other justice actors rather than attempting to serve Indigenous court users with incomplete information, especially in areas where they have little or no life experience.
- Learning about and incorporating Indigenous-based programs. ICWs can inform judges about Indigenous-based diversion programs, supports, and options available in their jurisdiction. Once they know about them, judges have been incorporating these resources into bail plans and sentencing orders, including probation orders to address the specific needs of Indigenous persons in a culturally sensitive manner.
- Promoting increased communication and information sharing among the court, ICWs, and other justice actors. This collaborative approach helps streamline processes, ensures a more comprehensive understanding of individual needs, and contributes to more effective solutions for those navigating the justice system.

## ***Challenges and limitations***

It should not be assumed that every Indigenous person observes traditions and wishes to incorporate them as part of the justice process. An ICW should only be involved in court processes if the Indigenous accused or litigant voluntarily consents to it. Similarly, relationships with Elders or participation in a ceremony should not be ordered unless the accused voluntarily consents.