

# THE CALGARY INDIGENOUS COURT



## A Call to Action

**A Guide to the Calgary Indigenous Court**

**Courtroom 1800**

**Calgary Courts Centre**

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# Introduction

The concept of creating an Indigenous court in the urban centre of Calgary began in the spring of 2018.

There was a recognition from the beginning that this would be a complex undertaking. The very nature of an urban centre is such that the Court will be serving people who have different cultural traditions and who come from different ancestral territories.

With the full support of Chief Judge Terry Matchett, consultation began in June of 2018 with invitations to prospective partners in the community and government to join together to share our vision. The response was robust and enthusiastic with a determination to establish the Calgary Indigenous Court.

A Steering Committee was struck and working groups created to assist with the overall concept and various key components of the Court. Their collective vision which consisted of many different and varied perspectives, has contributed immensely to the creation of this Court. We look forward to the continuing collaboration between Indigenous community members and organizations, Elders, Traditional Knowledge Keepers, government and non-government organizations and the Court.

The establishment of the Calgary Indigenous Court is a necessary and substantive step forward in implementing the recommendations from the Truth and Reconciliation Commission (TRC) as well as the Missing and Murdered Indigenous Women and Girls National Inquiry (MMIWG) report.

This will be the Indigenous Peoples' Court.

M.J.Durant  
Assistant Chief Judge  
Calgary Criminal and Regional Division.

# Vision Statement

The Calgary Indigenous Court will provide a culturally relevant, restorative, and holistic system of justice for Indigenous individuals, including offenders, victims and the community harmed by an offender's actions, that addresses the unique challenges and circumstances of the Indigenous People.



*A Note on the Buffalo: We borrowed the artistic rendering of a painted únníí that was originally provided by Káinaí Traditional Knowledge Keeper Wilton Good Striker during his work on the City of Calgary's Indigenous Policy Framework. The únníí (buffalo), as explained by the late Andy Black Water, Káinaí Traditional Knowledge Keeper, shows an arrow pointing downward towards two yellow dots. The dots depict the kidneys and represent human beings living a healthy balance in their cycle of life. Lifelines are symbolically and artistically painted on animals as the spirit of the animal is the protector of the people. Individuals will mostly see these animals drawn on lodges (típís) because they provide this protection through caring for and blessing the occupants of the lodge.*

# Mandate

The Calgary Indigenous Court (CIC) will address Judicial Interim Release Hearings and Sentencing Hearings for those offenders who are Indigenous and who self-identify as Indigenous.

While it is the mandate of all Judges of the Provincial Court of Alberta to apply these important principles, the specific focus of the CIC will be to:

1. Acknowledge harm done to the victim of a crime and the community as a whole by involving victims in the court process where appropriate;
2. Apply culturally informed Judicial Interim Release provisions of the Criminal Code to avoid unnecessary pre-trial or pre-sentence incarceration of Indigenous offenders where appropriate;
3. Reduce the likelihood of further administrative offences by ensuring only those conditions deemed necessary to properly address public safety are included in Judicial Interim Release orders;
4. Utilize effective alternatives to incarceration through culturally appropriate diversion where available and appropriate;
5. Apply Indigenous restorative justice principles as well as those principles enunciated in **R. v. Gladue** and **R. v. Ipeelee**, throughout all proceedings;
6. Encourage the preparation of Gladue Reports and/or Pre-Sentence Reports with a Gladue component to ensure Section 718.2(e) of the Criminal Code is given full effect and all decisions are fully informed;
7. Utilize identified Indigenous Community Support agencies to assist with reintegration of an offender into the community;
8. Encourage offenders throughout the court process to learn about and reconnect with their Indigenous heritage by using and applying Indigenous restorative justice principles.

# Protocol

1. The Calgary Indigenous Court (CIC) will sit once per week beginning on September 4, 2019 in Courtroom 1800 of the Calgary Courts Centre beginning at 9:00 am.
2. Courtroom 1800 is arranged in a circle structure to accommodate regular court sittings and restorative justice peacemaking, such that key participants in the proceedings can, when appropriate, sit in a circle with the offender.
3. Key participants in addition to the offender will include the Judge, the Crown Prosecutor, Defence Counsel, Victims, Restorative Justice Peacemakers, Traditional Knowledge Keepers, Indigenous court workers along with Indigenous community support agencies.
4. Indigenous Judges or those experienced in Indigenous Restorative Justice will sit in the CIC.
5. Any offender who is Indigenous and self identifies as Indigenous and wishes to have matters dealt with in the CIC can become a participant.
6. All *Criminal Code* and *CDSA* offences that occur within the City of Calgary with the exception of those offences found in Section 469 of the *Criminal Code* can be dealt with in the CIC.
7. Non-*Criminal Code* or *CDSA* offences (i.e., offences contrary to the *Traffic Safety Act* or City of Calgary By-law offences) will not be dealt with in the CIC except when they are related to substantive criminal offences. The City of Calgary has given consent to the Alberta Crown Prosecution Service (ACPS) and to the Public Prosecution Service of Canada (PPSC) to exercise all discretion in regards to the City of Calgary's municipal offences and will provide support and assistance to the ACPS and the PPSC as required.
8. Matters involving domestic conflict will be dealt with in the CIC.
9. Criminal offences from other jurisdictions involving Indigenous offenders from the City of Calgary may be waived into the CIC for the purpose of a bail revocation hearing at the request of the Crown or for the purpose of

a global resolution of all charges at the request of the offender and with the consent of the Crown.

10. Matters may be considered for restorative justice peacemaking with the consent of the Crown, victim and offender. When restorative justice peacemaking is successful, and with the consent of the Crown, in certain appropriate situations the charges may be withdrawn.
11. When sentenced to probation, a Healing Plan specific to the offender may be included in the probation order.
12. An offender will return to CIC for regular probation reviews before the sentencing Judge.
13. A ceremony may be held in the CIC to acknowledge the successful completion of a probation order and Healing Plan.

Per: Assistant Chief Judge M.J. Durant  
Calgary Criminal and Regional Division  
Dated: August, 2019

## Scheduling For Courtroom 1800

- The Calgary Indigenous Court (CIC) will sit every Wednesday in Courtroom 1800 located in the Calgary Courts Centre beginning September 4, 2019.
- The CIC will not be a continuous docket court but rather will have both a morning and afternoon session. The morning session will begin at 9:00 am. The afternoon session will begin at 2:00 pm. There will be a scheduled lunch break for one hour between the morning and afternoon sessions.
- The CIC will address scheduled Judicial Interim Release hearings, docket appearances which may include adjournments for various purposes, and scheduled sentencing hearings.
- Where possible, Judicial Interim Release hearings and docket matters will be scheduled during the morning session. Probation reviews will also be scheduled in the morning session.
- Once Judicial Interim Release has been addressed, docket appearances in the CIC will follow the same guidelines as set out in the Case Management Office Guideline document. CIC Participants or Indigenous persons appearing in the CIC will be permitted 4 appearances over a maximum period of time of 12 weeks. Once the timeline has expired, Participants will be required to determine whether the matter will be resolved in the CIC or if a preliminary inquiry/trial date will be set.
- Disposition hearings will be scheduled in the afternoon session. Graduation/blanket ceremonies will also occur in the afternoon session.
- All matters other than docket appearances will be booked through the Case Management Office. Each matter will be scheduled in 'minutes'. Initially there will be 200 minutes available in the morning session and 120 minutes available in the afternoon session. Times will be monitored and adjusted as required.
- CIC Participants who do not have their own counsel will be assisted in CIC by a designated Duty Counsel, legal counsel and/or a designated court Navigator.

## Set up and Protocol for the CIC

The CIC is modelled after a ceremonial teepee. The tables are in a circle shape where participants can sit at eye level and there is a granite hearth in the middle of the circle-patterned carpet. On the ceiling you will find teepee poles that radiate outward from the center round circle. The round circle houses a huge fan that ventilates smoke from the occasional ceremonial smudge in the courtroom. The court model allows for the Judge, Crown Prosecutor, defence lawyers, court personnel, security and, most importantly, the CIC Participant to sit at the table in a circle structure. The courtroom will also accommodate victims, Traditional Knowledge Keepers, Peacemakers, family members, and other support persons of both the CIC Participant and victim, as well as agencies who will play a part in the Healing Plan of the CIC Participant. There is an eagle feather located in the courtroom for the administering of oaths during court processes.



The CIC will be used for both Judicial Interim Release and sentencing hearings. For sentencing purposes, the CIC Participant, in this unique court setting, will be provided with ample time to share their background, special circumstances and other relevant information with the Court that will lead to a Healing Plan. This Healing Plan may include both traditional and developmental forms of sentencing, such as probation, attending Indigenous ceremonies, addiction treatment or reconnecting with community. The CIC Participant's key responsibility is to take the steps to fulfill the agreed upon conditions in their Healing Plan, including their work with identified support and service providers. The CIC Participant will report their progress towards the objectives of the Healing Plan to the Court on a regular basis, which will allow the Court and other support personnel to address any challenges the CIC Participant may be encountering in fulfilling their plan.

The Court will also be the venue for a blanket ceremony or the like to recognize certain CIC Participants who successfully fulfilled their Healing Plan with a view to embarking on a new life.

# Dedicated CIC Courtroom Resources

## **Judiciary**

The Provincial Court has committed to providing four Judges to the CIC on a rotating basis. Judge Eugene Creighton, Judge Karen Crowshoe, Judge George Gaschler and Judge Ken McLeod will be the dedicated presiding Judges for the CIC.

## **Prosecutor**

The Alberta Crown Prosecution Service has committed to providing an Indigenous Prosecutor.

## **Duty Counsel**

Justice Services Division has committed to providing Duty Counsel to be available to assist CIC Participants who are not represented by private counsel.

## **Clerk**

Resolution and Court Services has committed to providing a clerk for this Court. The opening of this Court will result in the closure of a 'feeder' Court that would otherwise have been utilized for a trial of a Criminal matter.

## **Probation Officer**

Correctional Services Division has committed to providing a probation officer for this Court. The probation officer will supervise CIC Participants who are bound by probation orders and report back to the Court upon request as to the progress of the CIC Participant. The probation officer will also monitor the Healing Plan progress for CIC Participants and be the 'point person' should any issues arise.

## **Navigator**

The Elizabeth Fry Society has committed to providing the services of an Indigenous navigator to assist CIC Participants through the Court process and represent them at the Case Management Table.

## **Indigenous Legal Counsel**

Calgary Legal Guidance has committed the services of legal counsel to assist CIC Participants who do not have private legal counsel, do not wish to proceed with Duty Counsel and who do not qualify for Legal Aid.

## **Homefront**

Homefront has committed the services of an Indigenous Case Manager who will be present in the Courtroom to provide support for victims of crime. The Case Manager will also be able to provide risk assessment information to the Court and other partners, as well as referrals to relevant community services.

## **Native Counselling Services of Alberta**

Native Counselling Services of Alberta has committed a full-time worker who will be able to explain to those interested in participating in the CIC how this Court will be able to serve CIC Participants in a more culturally informed manner. Native Counselling Services of Alberta has also committed to assisting in the creation of Judicial Interim Release plans for CIC Participants who are incarcerated and seeking release.

## **Calgary Police Service**

The Calgary Police Service (CPS) has committed to providing a Liaison Officer who will be present in the Courtroom to serve as a resource to the Court and its partners. The officer will also be present at the Case Management Table.

## Supports in the Community

The concept of a Case Management Table (CMT) initially began in 2016 when the Elizabeth Fry Society (E Fry) completed an overall review of its organization and attempted to meet the 'gaps' in service for members of the Indigenous community within the City of Calgary. After extensive consultation with members of the Indigenous community the idea of a collaborative CMT was created. Information regarding this initiative, called the Sohksipaitapiisin (Good Life) – Indigenous Justice Program is available on request.

With E Fry leading the way, positive relationships between several community agencies were developed during working group meetings to establish the CIC. Those agencies have now partnered together with E Fry to bring the CMT to the CIC.

The purpose of the CMT is assist in the development of a Healing Plan that addresses the CIC Participant's identified needs by connecting them with community supports. When appropriate the CIC Judge will refer the matter to the CMT prior to sentencing. The E Fry Navigator, along with representatives of many of the organizations that support the CIC (ie Sunrise Healing Lodge, Homefront, John Howard Society, Aboriginal Friendship Centre, Indigenous Mental Health etc) and the two Treaty 7 Elders will be present at the CMT. It is proposed that Navigators will present information about CIC Participants to those at the CMT such that a Judicial Interim Release and/or a comprehensive Healing Plan can be developed that will meet the needs of the CIC Participant and the community. Once the CIC has begun operation, it is anticipated that the Crown and either Duty Counsel or private Counsel will also have a seat at the CMT.

E Fry has secured funding from the City of Calgary for up to three years to support the CMT so that its existence is not dependent upon volunteer support. The funding that has been provided has also supported the hiring of an Indigenous Liaison (who will act as a Navigator to the CIC). E Fry has also facilitated the participation of two Treaty 7 Elders.

The CMT agencies will share information amongst themselves and, via the Navigator, with the Court and Probation Services. While there will be two Treaty 7 Elders at the CMT, a CIC Participant who is already connected to a

particular Elder or who has a more recent connection to another Elder through the CIC process may invite that Elder to be at the CMT to discuss their particular needs.

### **(a) Supports for Participants**

In addition to being a part of the CMT, the CIC partner organizations are able to provide the following support:

#### **Elizabeth Fry Society of Calgary**

As indicated above, E Fry has obtained a grant that has permitted the hiring of a Navigator for the CIC. The Navigator will be present throughout court proceedings and will assist CIC Participants with the overall court process. The Navigator will also act as a liaison between the Crown prosecutor, Duty Counsel, Probation Services and the CMT, as well as provide information to support the CIC Participant in the development of a Healing Plan.

E Fry is also able to provide the following supports to the CIC:

- a. assistance in locating housing for participants;
- b. an opportunity to participate in the Sage program, an emotional wellness and employment readiness program;
- c. one on one intensive case management support through the community outreach team; and
- d. Elder support which includes access to Indigenous cultural traditions and ceremonies.

#### **Calgary Legal Guidance**

Established forty-eight years ago, Calgary Legal Guidance (CLG) is a client centred organization that provides free legal assistance, information and advocacy to those individuals experiencing financial hardship who need legal services and representation. CLG is also in a position to assist those individuals who do not qualify for Legal Aid but who are facing cultural, social and financial barriers.

CLG is also able to provide the following supports to the CIC:

- a. the services of an Indigenous lawyer who has been hired to assist CIC Participants who do not have their own counsel, who do not wish to proceed with Duty Counsel but who also do not qualify for Legal Aid coverage. The lawyer will also provide 'back up' Duty Counsel assistance if the dedicated Duty Counsel is not available or needs additional assistance in court;
- b. articling students who can also assist CIC Participants in various capacities;
- c. Elder support which includes access to and involvement in Indigenous traditional ceremonies; and
- d. an identification clinic.

CLG is also seeking funding for a CIC Coordinator position.

### **Aboriginal Friendship Centre**

The Aboriginal Friendship Centre (AFC) is a non-profit organization with a mandate to provide social, cultural, educational and employment services to the Indigenous people within the Calgary area. It currently has two offices in the city-the first located in the downtown core (the Indigenous Hub) on 7th Avenue and the second office- 'litaohkanitsini'kotsiiyio'p (A place for Conversation)-located on 51 Ave SE.

In addition to being a partner in supporting the Peacemaking initiative for the CIC the AFC has also committed to providing the following services to the CIC Participants:

- a. there is an Elder on site at the AFC downtown office location at all times to provide Elder support. The AFC employs Elders from many different Indigenous groups which is very important for an urban based Indigenous court;
- b. the Elders at the AFC will provide access to many traditional cultural activities including arts and crafts and drumming as well as connection to many different ceremonies, smudges and sweats if desired by the CIC Participant. In addition, programs such as the Spring Cultural Camp and

the Outreach/Cultural Reconnection Program will be available to CIC Participants;

- c. traditional programs are available such as 'Honouring the Bonds' which respects traditional parenting practices and integrates Western approaches to early childhood development. Families have the opportunity to learn traditional teachings from a variety of Elders and learn with their children. The program encourages nurturing relationships, development and education. 'Honouring the Bonds' inspires families to increase their motivation to learn;
- d. mental health, addiction and crisis support programs are available for CIC Participants. The AFC provides funding applications for treatment along with application support and referral. Miyo Piikweewin (Good Talk) Sharing Circle is also available with Elder guidance. CIC Participants will also be supported in obtaining a mental health worker at the AFC. Groups such as the Eagle Spirit Survivors Group, the Men's Group, Community Members Support Services as well as connections to the Indigenous Mental Health team (see below) are all key aspects of support that will be offered to CIC Participants who need assistance in this area;
- e. employment support will also be available to CIC Participants. The AFC assists with one on one employment planning to identify career goals and remove barriers. Support to create and build a resume is also provided. The AFC will also provide tax services for CIC Participants and work with Indigenous Services Canada to make applications for status cards;
- f. the Aboriginal Homeless Initiative provides subsidized supportive, harm reduction off-site housing, for a maximum of 40 chronically homeless Indigenous people. Case managers handle the relationship with the landlord for the participants and provide wrap-around supports to encourage housing stability. Food bank referrals are also available.

Finally, the AFC has recently developed a Crime Prevention and Community Reintegration program based on the theory of Siim'ohksin:Wahktotiwinn for people within the Indigenous community who are at risk of becoming further involved in the justice system (pre-emptive secondary prevention). This program also assists those who are having trouble in reintegrating back into the community following probation or incarceration (reintegration or tertiary

prevention). It is a twenty-four week program with two sessions held per week (one evening and one Saturday) for a total of forty-eight sessions. Further information regarding the curriculum is available by request.

### **Sunrise Healing Lodge**

The Sunrise Healing Lodge Society (formerly Sunrise Treatment Centre) provides an abstinence based, 12 Step (Alcoholics Anonymous) treatment program for Indigenous clients. There is both an Inpatient and an Outpatient treatment program offered at Sunrise as well as a specialized treatment program which provides support for families. Application forms are available by request.

Sunrise Healing Lodge is also able to offer various funding options for the Participants of the CIC. Again, further information is available by request.

### **Indigenous Mental Health**

The Indigenous Mental Health Centre is located on the 7th floor of the Sheldon Chumir Centre in downtown Calgary. It is the only clinical publicly funded (Alberta Health Services) Indigenous mental health centre in the province. It has been in existence since 2006 and is able to provide the following support to CIC Participants:

- a. a psychiatrist;
- b. a nurse (intake occurs every Thursday from 9 am-12 pm);
- c. wellness workers who are able to provide basic needs until participants are therapy ready;
- d. assistance with applications for social assistance and other government forms;
- e. interim food and shelter;
- f. an Identification clinic;
- g. family counselors/therapists/psychologists who are able to assist with trauma-based counselling. These therapists will see CIC Participants in their home and provide other outreach services when needed; and

- h. traditional wellness counselling including ceremonial teaching as well as participation in actual ceremonies.

### **The John Howard Society**

The John Howard Society (JHS) serves up to 4000 clients per year, 20% of whom are Indigenous. Services provided by the JHS are available to both men and women who find themselves involved with the criminal justice system.

The JHS is able to provide the following programs and supports to CIC Participants:

- a. an Indigenous Cultural Liaison works full time with the JHS and will facilitate contact with Elders in the community should a CIC Participant specify such a need. In addition, JHS provides a mentorship program that meets weekly for Indigenous individuals up to the age of 24 years;
- b. the JHS employment program provides a 3-prong approach. Following initial intake, a CIC Participant will be able to participate in a three-week employment preparation program which will provide a successful CIC Participant with industry 'tickets'. CIC Participants will also be given assistance in preparing resumes. Additional one on one assistance is available when needed which will include having a JHS worker approach employers on behalf of the CIC Participant to assist with securing employment. JHS is in the process of hiring a financial coach who can also play the role of short-term financial administrator to assist those CIC Participants who are struggling with money management;
- c. JHS is able to provide a literacy program to CIC Participants who are without foundational learning up to a grade 9 level. The program will be directed to assisting CIC Participants in achieving their specific literacy goals;
- d. JHS provides scattered site housing assistance. While CIC Participants would still have to do an initial intake through the Coordinated Access and Assessment Table, JHS will be able to identify CIC Participants and advocate on their behalf to have them allocated to the JHS caseload. JHS will then provide assistance to the CIC Participant in finding and maintaining housing;

- e. JHS also provides a comprehensive Fetal Alcohol Spectrum Disorder program to address the special needs of those CIC Participants impacted by this disorder. In addition, JHS works with doctors at the Sheldon Chumir, Alex and CUPS to address the needs of Participants who may be impacted by Hepatitis C;
- f. JHS also has a robust Community Re-entry Support Services program. This program works with individuals who have been incarcerated and are being released into the community. JHS employs two workers whose mission it is to ensure a successful reintegration into the community. These workers are also available to attend at the Case Management Table on behalf of clients;
- g. JHS employs a trained mediator who runs a Restorative Justice program called Restorative Justice Solutions. This mediator is available to work with CIC participants (up to the age of 24 years) to mediate resolution between a victim and a CIC Participant;
- h. JHS has also made application for funding for a dedicated court worker who will be able to assist Participants of the CIC, but that remains a work in progress at this time.

### **Native Counselling Services of Alberta**

Native Counselling Services of Alberta (NCSA) was established in 1970 with the objective of providing court-worker assistance to Indigenous people in conflict with the law. Its mission is to promote the resilience of Indigenous individuals and families through programs and services that are grounded in reclaiming interconnectedness, reconciliation of relationships and determination.

NCSA is able to provide the following support to CIC Participants:

- a. NCSA is able to provide a worker inside the Calgary Remand Centre who can assist incarcerated CIC Participants with the creation of a comprehensive Judicial Interim Release plan and/or a Healing Plan;
- b. NCSA is able to provide a court worker for the CIC who will assist with the intake for interested CIC Participants;
- c. NCSA is able to provide training for Peacemakers for the CIC;

- d. NCSA is also interested in further consultation with the Steering Committee for the CIC regarding a trauma-based treatment program (The Warrior Program) currently being delivered through Federal Corrections.

## **(b) Supports for Victims and the Community**

### **Homefront**

Fundamental to the success of the Domestic Conflict Court in Calgary, Homefront is also a committed partner with the CIC. In recognition that Indigenous people are three times more likely to be victims of violent crime, Homefront employs an Indigenous Case Manager who will conduct a comprehensive risk assessment and also identify Indigenous supports for a victim in the community. This Case Manager will also bring the victim's voice to the Case Management Table and the Court process as a whole.

In addition to being an invaluable resource for other CIC stakeholders, Homefront can provide referrals and access to culturally sensitive services in the following areas:

- a. Elder connection and support;
- b. Mental health;
- c. Parenting;
- d. Substance Abuse;
- e. Domestic Violence counselling;
- f. Housing;
- g. Ceremonies and Cultural teachings;
- h. Employment;
- i. Education.

## **Calgary Police Service**

CPS has committed a member of its Victim Assistance Support Team (VAST) to the CIC. In conjunction with other victim support agencies, this support worker will be available to provide updates regarding court appearances and case progress to ensure the victim is fully informed of any developments. This worker will also be able to provide emotional support to victims as well as make referrals to appropriate support agencies within the community as needed to address more complex needs.

## **Integrated Threat and Risk Assessment Centre**

The Integrated Threat and Risk Assessment Centre (ITRAC) was established in 2007 with a mandate to enhance the safety of domestic violence victims by managing risk using an integrated and objective threat assessment approach. It is a joint force multidisciplinary threat and risk assessment program comprised of Government of Alberta employees and seconded sworn law enforcement members. ITRAC is able to support the CIC when requested by assisting in assessing the level of risk posed by an individual, providing case management strategies (including victim safety planning) as well as facilitating access to external agencies when needed.

## **Peacemaking Program**

The efforts to create and maintain a Peacemaking program for the CIC have been robust. The meetings are ongoing, productive and very encouraging. The reason this piece currently remains outstanding at this particular time is a matter of funding. Native Counselling Services of Alberta is continuing efforts to secure funding for this important initiative. Once in place Native Counselling Services of Alberta has expressed an interest in providing training to Peacemakers. Members of this working group are optimistic that the Peacemaking program will be in place in early 2020.