



Action Committee on Court Operations in Response to COVID-19

IMPACT OF THE COVID-19 PANDEMIC ON ACCESS TO SPECIALIZED COURT PROGRAMS

A Statement from the Action Committee

Our Committee exists to support Canada's courts as they work to protect the health and safety of all court users in the COVID-19 context while upholding the fundamental values of our justice system. These mutually sustaining commitments guide all of our efforts.

OVERVIEW

The ongoing COVID-19 pandemic has underscored, and in some respects compounded or even created, challenges to access to justice for many people in Canada. The impact of the pandemic on access to justice has affected certain segments of the population more than others, especially marginalized individuals.

Building on the Action Committee's overview document [Examining the Disproportionate Impact of the COVID-19 pandemic on Access to Justice for Marginalized Individuals](#), this document aims to examine 1) the impact of the pandemic on the operations of specialized court programs within the criminal justice system – including mental health, drug or alcohol treatment, domestic violence, Indigenous Peoples' (or *Gladue*), and wellness or community courts – whose programs are targeted to marginalized individuals or Indigenous Peoples, and 2) the resulting impact on access to justice for these individuals. To do so, this paper will:

- highlight the important role of specialized court programs in responding to the needs of Indigenous Peoples or marginalized individuals
- describe the impact of the pandemic on these programs and the resulting impacts on the individuals who participate in them
- examine practical solutions and promising practices that have emerged in some jurisdictions to ensure continued operations of specialized court programs throughout the pandemic.

This paper draws from interviews with judicial and justice officials, consultations with provincial and territorial drug treatment court (DTC) administrators from across Canada, a survey of federal prosecutors from several provinces, and information from others involved in the administration of Drug Treatment and Wellness Courts.

To provide additional context on the types of specialized courts that exist in Canada, how they operate, and where they are located, this paper also includes three annexes:

- I. Overview of specialized court programs in Canada
- II. Sample of specialized court programs in Canada
- III. Eligibility criteria and partners for specialized courts across Canada



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1. BACKGROUND

Provincial and territorial courts across the country—in collaboration with other partners—have created specialized programs that have more therapeutic and restorative justice orientations than the conventional methods of delivering justice in the courts. These programs focus on responding to some of the unique challenges faced by Indigenous and marginalized people, building upon specialized training and knowledge of program partners to best address related needs. While all courts have the discretion to use problem-solving approaches in decision-making, specialized courts take the approach whereby all judges should use problem-solving strategies to achieve more collaborative, effective and sustainable outcomes.

These specialized courts, known under various names¹, provide a large range of programs and support systems in order to hold accused persons and offenders accountable differently than in the conventional criminal justice system, while promoting rehabilitation and reparation of harm². Specialized courts include, but are not limited to, mental health courts, drug and alcohol treatment courts, domestic violence courts, wellness courts and Indigenous Peoples' courts, also called *Gladue* courts or First Nations courts. Some specialized courts, such as domestic violence courts, also incorporate specialized knowledge about victim safety and focus on minimizing the risk of re-traumatizing victims—a risk that is sometimes associated with the mainstream court process.

These specialized courts use collaborative, integrated and holistic approaches to reduce crime, improve public safety, and promote accountability of accused persons and offenders by providing them with integrated justice, health, and social services that help to address root causes of criminal behaviour and promote social reintegration.

The high level of cooperation seen of all partners in specialized court program processes speaks to a common recognition among justice and health professionals that a more holistic and therapeutic approach is needed to address the needs of certain participants in the criminal justice system, such as those with mental health and drug or alcohol abuse issues.

2. ISSUE

The COVID-19 pandemic has had a disproportionate impact on marginalized individuals, including accused persons and offenders who participate in specialized court programs. While the pandemic has exacerbated or highlighted pre-existing issues of access to justice for marginalized individuals in all aspects of the court system, it has created additional challenges for specialized courts due to the unique way in which they operate. In many jurisdictions, specialized courts have also been slower than conventional courts to resume their operations as pandemic restrictions have subsided.

This situation has had a devastating impact on many participants in specialized court programs who often experience multiple factors of marginalization, including mental health or addiction issues; historical, cultural or family trauma; poverty, unemployment, homelessness or

¹ Specialized courts are also sometimes referred to as therapeutic courts or problem solving courts.

² In some jurisdictions, specialized courts were also established to address certain family matters, though this paper concentrates on specialized court programs within the criminal justice system.



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precarious housing; and lack of access to, or understanding of technology. Almost overnight, these individuals have seen their usual access to courts, support services, and community outreach workers significantly reduced, altered, or suspended altogether, making it more difficult for them to sustain any progress made and further exacerbating the mental health, addiction, or other issues that may have contributed to criminal behaviour and led to court charges in the first place.

3. SPECIALIZED COURT PROGRAMS IN CANADA

The following section provides a brief overview of specialized court programs in Canada. A more fulsome description of the operations and different types of specialized courts is available in the Annexes.

3.1 A Person-Centred and Community-Driven Approach to Justice

The specialized court programs discussed in this document operate within the criminal justice process, usually at the pre-charge diversion or sentencing stages. They operate in parallel with conventional court processes, but often through more informal structures and partnerships. Their jurisdictional and cultural contexts may vary.

Specialized court programs are often the result of community groups, local officials, and courts identifying a gap in the conventional courts' ability to address the underlying root causes of crime. To help reintegrate offenders while promoting community safety, the programs bring together a multi-disciplinary team of health, social services, justice and community-based workers to develop a treatment or wellness plan that addresses the individual circumstances and needs of participants. The plans often include mental health or substance abuse treatment and supports to address the root causes of criminal behaviour, reparation of harm to promote accountability, and monitoring steps such as drug testing and supervision. These programs, which are entered into voluntarily by eligible participants, rely on regular court appearances to promote consistency and evaluate progress made by participants.

3.2 Key Characteristics of Specialized Court Programs

Many of the characteristics that make specialized courts successful also make them particularly vulnerable to disruption, especially in sustained states of emergencies such as the COVID-19 pandemic. The program characteristics most impacted by the pandemic have included:

- Frequent in-person contact: Frequent in-person contact, through regular court appearances and follow-up appointments (e.g. assessments, therapy), promotes stability and continuity for program participants.
- Relationships of trust: Frequent in-person contact also promotes important relationships between the participant, the court, and other service providers. These relationships are essential to participants' willing participation and engagement in treatment, healing and recovery.



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- Integration of social and medical support services: Many specialized court programs are based on a holistic approach that seeks to address intersecting social issues such as housing, employment or income assistance, and root causes of criminal behaviour such as mental health or alcohol or drug abuse.
- Monitoring systems: Participants are expected to complete program requirements tailored to their needs; their compliance with court orders and engagement in treatment is monitored closely by program workers (e.g. drug testing, therapy sessions).
- Positive and negative reinforcement: A system of rewards and sanctions is used to foster progress and compliance with program requirements. This promotes agency and accountability, namely taking charge of one's own progress and future by building coping skills, developing new abilities, and accepting accountability for one's actions.

4. IMPACT OF THE PANDEMIC

Specialized courts have been severely impacted by the COVID-19 pandemic due to pre-existing and new operational challenges, and to the vulnerabilities of the individuals they serve.

4.1 Pre-Existing Structural Challenges Highlighted by the Pandemic

Two major challenges affecting specialized court programs were highlighted by the pandemic: the lack of formal support structures, and the lack of formal integration of support services.

Lack of Formal Structures

Because some specialized court programs are created informally and operate locally, they often lack the formal structure (i.e. dedicated personnel, agreements governing roles and responsibilities of program partners, and funding) that would allow them to adapt quickly to a population-level crisis like a pandemic. The persons who are key to facilitating program success are invariably pulled towards resolving urgencies within their regular duties. As such, many direct client support services that are essential to the success of specialized court programs were disrupted or discontinued on short notice and for extended periods as a result of the pandemic, regardless of court resources and despite best efforts at continuity planning.

Lack of Integration with Support Services

In the same vein, the lack of integration of support services makes specialized court programs particularly vulnerable to any emergency situation. These programs are highly dependent not only on the participation of dedicated justice sector stakeholders – such as judges, prosecutors and defence counsel – but also on the availability and continuity of external support services, such as housing or counselling. These services are often provided by public servants whose efforts may be diverted to other priorities in a pandemic, and by civil society organizations whose programming capacity and continuity often relies on public or private resources (both funding and personnel) that may become unavailable in various types of crises.



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4.2 New Operational Challenges Arising from the Pandemic

The COVID-19 pandemic also created unanticipated challenges for specialized court programs, partners and participants. Major impacts resulted from restrictions on in-person attendance in court, the need to move to virtual processes, and reduced access to support services.

Restrictions on In-Person Attendance in Court

At the outset of the pandemic, all courts were required to significantly reduce or temporarily suspend in-person court appearances for all but the most urgent matters—a category that did not include routine appearances for participants in specialized court programs. As a result, many jurisdictions reported that participants went for several months without an appearance until courts were able to shift to virtual processes. Court support workers or program partners quickly transitioned to telephone, or in some cases in person check-ins with participants to maintain contact.

Restrictions on in-person attendance also required many jurisdictions to temporarily suspend or reduce the number of new participants admitted into specialized court programs.

In some cases, concerns over the spread of COVID-19 in institutional settings such as detention centres led to reduced jail sentences and an increase in sentences served entirely within the community. Given that reduced incarceration or non-custodial sentences can be an incentive for offenders to engage in drug treatment programs that take comparatively longer to complete, some jurisdictions noted that a number of potential participants chose not to involve themselves in drug treatment programs during the pandemic.

Shift to Virtual Processes

In order to continue their services, specialized courts eventually shifted to using virtual technology for both court appearances and partner meetings to coordinate efforts and share progress updates on program participants. In most jurisdictions, court appearances are now being conducted through videoconferencing or teleconference, with a gradual return to some in-person hearings.

This virtual shift created new challenges for many participants in accessing and using technology, leading to missed services appointments and court appearances. It also required court workers and program partners to find different ways of working to maintain relationships with, and keep monitoring, participants while facing professional and personal challenges related to the pandemic.

Reduced Access to Support Services

At the outset of the pandemic, usual ancillary support services were suspended or reduced due to public health measures or the need to reallocate resources to urgent, pandemic-related priorities. This made it difficult for existing participants to access the treatment needed to maintain their progress towards healing and recovery and to complete their program requirements. Many service providers were also unable to welcome new program participants due to restrictions. Impacted services included group counselling; residential treatment



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programs for alcohol and drug abuse disorders; housing; drug testing; and community work service programs.

Over the course of the pandemic, many of these services were able to reopen, or return to full capacity, through a combination of modified in-person and virtual methods—but not without challenges. Where support services were able to continue or resume, support workers were often required to work from home and through virtual platforms, making it more difficult to find ways to conduct uninterrupted, confidential meetings, such as therapy sessions with participants. The pandemic also reduced the pool of support workers in some jurisdictions as some personnel moved to fill urgent health care roles in support of the pandemic response. Support workers also felt the strain of the pandemic on their own wellbeing, leading some staff to take extended sick/mental health leave.

4.3. Resulting Impact on Program Participants

In affecting the continuity of specialized court programs and ancillary support services, the pandemic reduced access to justice for, and the wellbeing of, program participants in several ways.

Increased Vulnerability and Reduced Stability

In many cases, public health measures increased participants' personal vulnerability and anxiety due to job loss, isolation or compromised living situations (e.g. overcrowded shelters, evictions), increased risk of illness and overall uncertainty. Others received additional financial benefits, which, when paired with the factors above, led to difficulties in refraining from using drugs or alcohol. For example:

- Participants who were disconnected from usual channels of public communications (e.g. media, internet, TV, radio) may not have known exactly why in-person hearings or services were reduced or suspended and how to follow through with their program or appear in court.
- Support service workers had increased difficulty in locating clients experiencing homelessness or precarious housing.

Reduced or interrupted contact with, and treatment for, participants also jeopardized the continuity and stability needed for their progress and recovery. In some cases, this disruption caused relapses into substance use or mental health crises and disinterest in, difficulty coping with, or even dropping out of, the court program.

Reduced capacity to accept new participants in specialized court programs or to provide them with related support services meant that potential new participants remained within the conventional criminal justice process, lacking the formal support networks that specialized courts provide to support rehabilitation.

Reduced Ability of Participants to Meet Program Requirements

Reduced access to ancillary services prevented some participants from completing program requirements, such as drug testing or community service hours, or from complying with conditions of bail release. Illness due to COVID-19 may also have impeded program



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compliance, especially for participants living in congregate settings. Reduced reliance on incarceration to prevent transmission of COVID-19 in jails also resulted in courts having to find alternate sanctions to bail revocation for participants who did not comply with bail or program requirements.

Additional Barriers Related to Technology

Many participants in specialized court programs do not have access to, or are unfamiliar with technology such as computers, Wi-Fi, Smartphones or cellphones, and may fear stigma of needing to borrow a phone. Limited Internet access, bandwidth, and costs are also common barriers. In addition, participants may have difficulty accessing private spaces to make telephone or video calls. Some may also mistrust technology used by public officials for historic or cultural reasons. By switching to virtual hearings and service delivery models, specialized courts and ancillary services risked the further isolation of program participants unless they were able to provide them with access to technology and support for its use.

Court staff and service providers also faced challenges in engaging participants meaningfully. Virtual technology makes it more difficult to promote ongoing trust and effective reinforcement while seeking to monitor participants' demeanour and progress from a distance.

5. LESSONS LEARNED

There are several lessons learned from the experience of operating specialized courts programs during the COVID-19 pandemic. These include the need to develop structured partnerships, to be open to hybrid processes, to ensure access to new technologies, and to build and maintain strong relationships with participants.

5.1 Importance of Structured Partnerships

In jurisdictions where court programs were well integrated with the necessary support services, specialized court programs were able to pivot more effectively at the outset of the pandemic.

Integration and availability of services is a concern in many jurisdictions where, for example, a court is able to re-open but local services are not able to take on new specialized court participants or re-start services impacted by the pandemic. In some locations, the pandemic has strengthened the integration of, and relationships among the courts, service providers, shelters, food banks, and other partners. Understanding the needs and limitations of these service providers is key to maintaining operations of the specialized court programs, particularly in terms of obtaining diagnoses and providing follow-up treatment and support services.

Some Inspiring Examples

- The Nova Scotia Wellness Court Program Steering Committee, which includes representatives from the courts, public health, the department of justice, community services, and Indigenous and Black communities, has worked to create consistency among programs across the province and encourage buy-in for and sustainability of these programs. The experience of the Steering Committee and the Dartmouth Wellness Court are detailed in the [Case Study: Impact of the COVID-19 Pandemic on the Nova Scotia Wellness Courts](#).



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- Yukon developed a comprehensive report on the participant's progress that is distributed to the defence, prosecutor, and judge prior to every court appearance, increasing the amount of information available.
- Ontario recently announced their intention to allocate funding to both supportive housing units for individuals who are on diversion plans from mental health courts and wrap-around services, thereby integrating housing and justice services for these individuals.
- The Restorative Justice Hub in Manitoba is coordinated through the province's probation office and acts as a referral agent for domestic violence and other matters from police and prosecutors.

5.2 Benefits of Hybrid Models Combining In-Person and Remote Services

The necessity to shift to virtual programs has led to discoveries of new and hybrid models of working that would not have been discovered otherwise. The pandemic has demonstrated that increased use of technology can be beneficial in some contexts. For example, virtual court appearances have been beneficial for program participants who have transportation, childcare, or anxiety issues that make it difficult to attend court or public settings. Virtual meetings also facilitated assessments or progress updates from health professionals whose location or work obligations make it difficult for them to attend court, and enabled a higher number of stakeholders to attend regular preparatory or progress meetings.

One legacy of the pandemic may be increased access to virtual mental health and addiction services for participants in remote communities where access to in-person services is limited or nonexistent and virtual access was previously not available.

5.3 Facilitating Access to Technology

The switch to virtual technology can disproportionately impact those who do not have phones or computers, cannot afford phones, minutes or Wi-Fi, are not technologically savvy, or are more comfortable with in-person contact. To ensure continued success of programming, adequate access to both devices and services must be confirmed or else provided to participants in specialized court programs.

Some Inspiring Examples

- In Ontario, service providers were able to partner with a phone company to donate minutes to participants.
- In British Columbia, a phone company provided free older cell phones and basic service to participants.
- In Manitoba, participants currently report to the court using MS Teams. If they are unable to access the technology themselves, they can access a laptop in a boardroom in the drug treatment court office.
- In other jurisdictions, participants were able to use public libraries or support services' or lawyers' offices to appear virtually.



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5.4 Building and Maintaining Relationships

The strength of specialized court programs is their people and the relationships they build amongst themselves and with program participants. Flexibility and teamwork were the major tools used by program administrators to ensure continuity through the ups and downs of the COVID-19 pandemic. Communication within and between the treatment and court teams has generally improved through the pandemic, as has the interest in thinking creatively about how to serve participants' needs.

Regular contact, whether by phone, video, or in physically distanced meetings was identified by most jurisdictions as necessary to build and maintain relationship with participants. For most participants, in-person contact is usually best, but remote contact (e.g. through phone or videoconference) is better than no contact at all. Phones are often more readily available and easier to use for participants compared with videoconferencing platforms. However, phone appearances make it more difficult to properly assess the state of the participant (e.g. whether they appear to be doing well or struggling, or are under the influence of any substance) since their demeanour and non-verbal cues cannot be observed. It is also difficult to support privacy during treatment or counselling sessions as many clients call from non-secure or public spaces.

In some jurisdictions, in-person contact was maintained by meeting participants outside if it was safe to do so and confidentiality could be assured. Interestingly, some jurisdictions noted that the move to virtual meetings between service providers and participants allowed for *more* engagement, as participants were not required to physically come to the centres. Several jurisdictions found innovative ways to engage participants virtually, both with court and support workers and amongst themselves to strengthen their support network.

Some Inspiring Examples

- Service providers working with the Vancouver DTC were able to see clients outside for the most part, with staff wearing masks and personal protective equipment (PPE) and other measures in place to keep everyone safe.
- Similarly, the Calgary DTC recognized at the outset of the pandemic that participants were particularly vulnerable and disproportionately impacted by the loss of personal contact and connection. The Court made significant arrangements to enable its activities to resume, including moving the DTC into a very large courtroom that could accommodate physical distancing.
- In Toronto, the pandemic increased awareness of the acute needs of DTC participants including food security, safety, stable and supportive housing, healthcare, caring connections, overdose prevention, access to technology and basic services. With community service restrictions and increased overdoses, the staff made home well-being visits to participants, bringing groceries, basic needs and overdose prevention supplies. They also met clients into the evening as they were being released from jail, and provided cell phones and safe spaces for participants to meet with health care providers virtually. In the absence of in-person court sessions, staff provided space and technology for participants when the courts eventually opened virtually.



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- In Yukon, the move to virtual check-ins between participants and service providers was paired with an increase in frequency of check-in to help replace the loss of in-person contact.
- In various jurisdictions, prosecutors created challenges for program participants, such as a cooking challenge, to engage participants in meaningful team building and make up for the loss of in-person encouragement they usually receive from fellow participants when attending court.
- In Nova Scotia, restorative justice program personnel encouraged their clients to use virtual meeting reactions such as applause and thumbs up to build a rapport with others; this could equally apply to participants in specialized court programs to celebrate their progress and successes.



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ANNEX I: OVERVIEW OF SPECIALIZED COURT PROGRAMS IN CANADA

This annex describes the five most common types of specialized court programs that offer an alternative or adapted approach to the usual criminal justice process for persons charged with a criminal offence and highlights how these courts operate, with illustrative examples inspired by various jurisdictions.

1. SPECIALIZED COURT PROGRAMS ACROSS CANADA – AN INTRODUCTION

Through structured treatment and requirements, specialized court programs promote accused or offender accountability and reparation of harm as well as life skills to foster personal recovery and reduce the risk of reoffending, thereby promoting public safety and better access to justice for both accused persons or offenders, and victims of crime.

Participants in these court programs often suffer from a combination of risk factors that may lead to marginalization, such as mental health or substance abuse issues; lack of housing, employment and social supports; and historical, cultural or family trauma. All of these factors are addressed together to ensure better and more sustainable results.

Specialized court programs can vary in process and methods of operations based on the nature of the offences and the needs of participants involved, but they share a number of common features. These programs are often created at the initiative of local community and justice sector representatives to respond to distinct community needs.

While usually embedded within the structure of provincial or territorial courts, these specialized programs are often established informally and rely heavily on ancillary health and community-based services that operate independently from the court system. As such, to help standardize processes and guide their efforts, specialized courts and their partners have developed eligibility criteria and program requirements. In fact, each participant's progress is supported and monitored regularly by a program team that includes a variety of community-based support and expert personnel, whether it be community outreach workers, social workers, probation officers and police, health professionals, counsellors or community Elders and Knowledge Keepers. These partners work together with judges, defence counsel and prosecutors to achieve a common goal. Some courts have also found other ways to strengthen their operational structure and partnerships with other stakeholders: the [Case Study of the Nova Scotia Wellness Courts](#) provides a good example of a structured partnership.

Most specialized court programs require participants to follow an individualized support plan. Participants must willingly commit to program requirements that can be much more demanding and time-consuming than the usual court process. These can include frequent in-person appearances in court, assessments, individual and group counselling, and community service work, for example. However, at the end, successful participants can sometimes receive a more lenient sentence, in addition to having improved their personal situation and learned valuable coping and life skills.

Each specialized court program, depending on its nature and purpose, will have screening criteria of its own. For instance, eligibility usually requires a connection between the offence



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committed and the issue targeted by the specialized court program (e.g. mental health, substance abuse).

Most specialized court programs require participants to enter a guilty plea as acceptance of accountability and exclude those who have committed certain serious offences. However, some specialized courts such as the [Dartmouth Wellness Court](#) have instead opted for a case-by-case approach that assesses the respective risks and benefits of admitting a particular participant into the program, taking into account public safety and the public interest. This approach recognizes that some accused persons may have valid reasons for not pleading guilty while still needing health and social supports to address underlying issues that may cause future criminal behaviour. For example, in cases where an accused has no prior criminal history, a conviction may lead to disproportionate legal consequences or social stigma that can exacerbate rather than resolve root causes of crime, for example by creating barriers to obtaining housing or employment. In such cases, justice stakeholders and any other partners involved in the screening of potential participants will usually weigh considerations including the level of commitment of the participant to the program, the options available to promote accountability, the seriousness of the offence and any past criminal history, and the potential impacts on any victims of crime.

2. TYPES OF SPECIALIZED COURT PROGRAMS AND HOW THEY OPERATE

While specialized court programs come in a variety of shapes and sizes, there are five main types, each discussed below.

2.1 Mental Health Courts

Perhaps the most prevalent therapeutic court program, mental health courts across Canada deal with individuals who come into conflict with the law because of a mental illness or cognitive disability. These courts are supported by a multidisciplinary team that balances the goals of public safety with reduced criminalization of individuals with mental illness. Partners include prosecutors, duty counsel, legal aid representatives, probation officers, mental health workers, clinical counsellors and psychiatrists.

In order to qualify for this process, the accused or offender's criminal involvement must be related in some way to their mental illness or cognitive disability. Eligibility may require a formal diagnosis of mental disorder or cognitive disability, and may depend on the type of offence committed or the criminal history of the accused or offender. Similar to other programs, the [Saskatoon Mental Health Strategy](#) requires that participants be prepared to take accountability by accepting responsibility for some or all of their offences. As such, some jurisdictions require the accused to plead guilty to an offence.

Mental health courts often follow a similar process to that of conventional criminal courts. However, the offender agrees to delay sentencing so that justice and health professionals can help connect them with supports to overcome mental health issues that lead to criminal behaviour. Personal circumstances, engagement in programming and compliance with court processes may be taken into account as mitigating factors in sentencing.



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Certain courts may focus on supporting participants with specific types of mental health or cognitive issues. For example, the Provincial Court of Manitoba launched its [Fetal Alcohol Spectrum Disorder \(FASD\) Disposition Docket](#) in March 2019 in response to the high prevalence of FASD in the province's population. This initiative supports assessments of both adult and youth with FASD and helps to connect them with support services in the community.

2.2 Drug or Alcohol Treatment Courts

Drug treatment courts (DTC) are the most common type of specialized court program dealing with substance abuse. With the help of community partners, local police departments, expert health and social services, and legal aid clinics, these courts use problem-solving approaches to break the cycle of criminal behaviour by addressing the needs of individuals who commit offences caused or motivated by a dependence on illicit drugs such as cocaine, heroin or other opiates, or crystal methamphetamine.

Participants who successfully complete the program can expect a reduced or non-custodial sentence, and the court has the legal discretion not to impose mandatory minimum penalties that might otherwise apply³. Federal prosecutors are usually responsible for assessing participants' eligibility for drug treatment courts across the country, governed by clear [guidelines](#) that provide national consistency while allowing for local flexibility. In cases where offences of provincial jurisdiction are also involved, provincial prosecutors may also be involved in DTC screening, programs and operations. Programs are available for adult offenders only, and usually involve a structured outpatient program, including counselling, urine screening tests done at random and frequent court appearances. An offender may be deemed ineligible if their offence or criminal history puts public safety at risk: for example, offences involving serious violence or weapons, or drug-impaired driving.

Certain courts, such as the Alcohol Court Program in Nova Scotia's [Dartmouth Wellness Court](#), target abuse of substances other than illicit drugs. The court was launched in 2018 when the Dartmouth Wellness Court team noticed a gap in services and support for some individuals struggling with alcohol abuse who had come into conflict with the law. To qualify for this program, in addition to meeting the general criteria for the Dartmouth Wellness Court, the offence committed must be directly related to the individual's alcohol abuse.

2.3 Domestic or Family Violence Courts

Domestic violence courts and partner agencies—such as social services and specialized workers—offer treatment programs for the accused or offender and provide support to partners and children who have been harmed. These courts recognize the unique characteristics of intimate partner violence and their programs acknowledge the cultural differences and individual needs of program users. They focus on resolving cases more quickly, providing early intervention and better risk assessment, promoting accused or offender accountability through monitoring and counselling, and better supporting victims through referrals to community agencies and safety supports. The specific objectives and scope of domestic violence courts

³ See section 10(4) and 10(5) of the *Controlled Drugs and Substances Act*.



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can vary across Canada. While some are solely based on early intervention and have admissibility criteria, others are mandatory for all domestic violence cases and apply different approaches depending on the severity of the offence and the history of the accused or offender.

The programs include access to professional help should other underlying issues, such as substance abuse, trauma or mental illness, be present, and use a variety of ways to help participants recognize and change controlling/abusive behaviour. These offenders regularly participate in assessment processes with probation services to ensure they remain suitable to the program. Given the sensitive nature of this specialized court, eligibility criteria are often strict to ensure no person is put at risk by allowing the accused or offender to take part in the offered programs.

For example, the Yukon's [Domestic Violence Treatment Option \(DVTO\) Court](#) was developed as a response to a growing consensus that the conventional justice system was not providing effective responses to intimate partner violence. DVTO adapts conventional criminal court practice with innovative treatment programming aimed at providing an environment for rehabilitation and family healing. Judicial monitoring integrated with intensive treatment services and case management work to foster healing and reduce recidivism for participants of the program.

Further, Toronto's Integrated Domestic Violence Court, which began as a pilot project in 2011, provides a single judge to hear a family's criminal and family law cases (excluding divorce, family property and child protection cases) where the underlying issue is domestic violence. The goals are to support a more integrated and holistic approach for families experiencing domestic violence, increase consistency between family and criminal court orders, and promote speedier resolution of judicial proceedings.

2.4 Indigenous Peoples' Courts (*Gladue* Courts)

Indigenous Peoples' Courts, sometimes called *Gladue* Courts or First Nations Courts, are designed for Indigenous individuals charged with a crime. Unlike other specialized courts that base eligibility on the nature and cause of the offence committed, Indigenous Peoples' Courts focus on the identity of the accused or offender, to ensure a culturally appropriate approach to bail and sentencing, as contemplated in the *Criminal Code*.^{4 5}

While all courts must consider the unique circumstances and experiences of Indigenous accused persons and offenders (e.g. impacts of colonization such as residential schools and systemic racial or cultural biases) at bail and sentencing, known as the *Gladue* principles, dedicated Indigenous Peoples' Courts provide a more culturally relevant, restorative, and holistic option within the justice system for Indigenous individuals. These courts respond to the unique challenges and circumstances that Indigenous Peoples face and seek to address the needs of the accused or offender, victims, and the community harmed by the accused or offender's actions.

⁴ *Criminal Code*, RSC 1985 c C-46 ss. 718.2(e)

⁵ In Saskatchewan, the [Cree Court](#) operates as a circuit court that addresses the particular language and cultural needs of accused persons from the Cree community at all stages of the criminal court process.



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Indigenous Peoples' Courts often incorporate Indigenous cultural practices, conflict resolution methods and restorative processes, and place an emphasis on healing. This can include participation of Indigenous service providers, including Elders or Knowledge Keepers, who may open the process with a ceremony, song, or prayer, as well as participation in Healing Circles. Frequent assessments and check-ins with the accused or offender and those affected are part of these courts' processes and promote a higher potential for healing, rehabilitation and success against recidivism.

2.5 Community or Wellness Courts

While all specialized courts consider the multi-faceted needs and circumstances of their participants, some jurisdictions or localities have combined elements of the four previously described programs, or coordinate several targeted programs, in order to address multiple intersecting factors that can lead to criminal behaviour and impede the rehabilitation of offenders within the community. Intersecting factors addressed may include mental health or cognitive issues, alcohol or substance abuse, socio-economic issues such as homelessness or poverty, historical trauma, or other aspects affecting the wellness of accused persons or offenders.

Eligibility criteria may vary or be applied flexibly according to the specific needs and circumstances of participants, taking into account also public safety, the public interest, and the interests of any victims of crime.

Examples of such courts include [Vancouver's Downtown Community Court](#), [Victoria's](#) and [Kelowna's](#) Integrated Courts, the [Yukon Community Wellness Court](#), the [Dartmouth Wellness Court](#), and the [Northwest Territories Wellness Court](#).

3. DEMOGRAPHIC DISTRIBUTION OF SPECIALIZED COURT PROGRAMS

As useful as specialized court programs are in improving access to justice for Indigenous Peoples and marginalized populations, the programs themselves must be available to be of use. In most jurisdictions, programs are found almost exclusively in large cities and urban centers. This highlights an issue that has been raised in the Action Committee's paper [Restoring Court Operations in Northern, Remote and Indigenous Communities](#), namely that of barriers to access to justice and associated services for those living in many northern and remote communities.

Some jurisdictions, however, have made notable efforts to connect with smaller communities. For example, Ontario, being the most densely populated province in Canada, also accounts for the largest number of mental health court programs with 19 overall, including in some smaller communities. Accessibility to these programs is one of the impacts of the pandemic discussed in this paper.



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ANNEX II: ILLUSTRATIVE EXAMPLES OF SPECIALIZED COURT PROGRAMS ACROSS CANADA⁶

Specialized Court Program	Province/Territory	Location
Mental Health Court Programs	Alberta	Edmonton
	Manitoba	Winnipeg
	New Brunswick	Saint John
	Newfoundland & Labrador	St. John's
	Ontario	Barrie, Belleville/Hastings, Burlington, Kawartha Lakes, Kenora, London, Newmarket, Ottawa, Owen Sound, Oxford (Woodstock), Peel, Peterborough, Sault St. Marie, St. Catharines, Sudbury, Toronto, Walkerton (county of Bruce), Waterloo, Windsor
	Saskatchewan	Regina, Saskatoon
Drug or Alcohol Treatment Court Programs	Alberta	Calgary, Edmonton, Lethbridge, Medicine Hat ⁷
	British Columbia	Vancouver
	Manitoba	Winnipeg, Westman
	Newfoundland & Labrador	St. John's
	Ontario	Toronto, Ottawa, London, Waterloo, Kenora, Kingston, Guelph, Brampton, Durham, Hamilton, Niagara, Kitchener, Perth, Simcoe
	Quebec	Montreal, Puvirnituq
	Saskatchewan	Regina, Moose Jaw
Domestic Violence Court Programs	Alberta	Calgary, Edmonton, Lethbridge, Red Deer, Grande Prairie, Fort McMurray, Airdrie, Medicine Hat
	British Columbia	Duncan, Nanaimo, Kelowna, Penticton
	Saskatchewan	Regina, Saskatoon, North Battleford
	Manitoba	Winnipeg, Thompson
	New Brunswick	Moncton
	Newfoundland & Labrador	St. John's, Stephenville
	Northwest Territories	Yellowknife, Behchokò, Hay River
	Nova Scotia	Dartmouth, Port Hawkesbury, Kentville, Amherst, Wagmatcook, Bridgewater, Truro
	Nunavut	Rankin Inlet
	Ontario	Program is available throughout the province
Yukon	Whitehorse	
Indigenous Peoples' Courts or Gladue Courts	Alberta	Calgary
	British Columbia	New Westminster, North Vancouver, Kamloops, Duncan, Nicola Valley, Prince George, Williams Lake, Hazelton
	New Brunswick	Elsipogtog
	Ontario	Ottawa, Thunder Bay, Toronto, Sarnia, London
	Saskatchewan	Cree Court ⁸
	Nova Scotia	Wagmatcook

⁶ This list may not be exhaustive and is subject to change frequently as the landscape of specialized courts evolves. Please notify AC-secretariat-CA@fja-cmf.gc.ca of any missing locations.

⁷ Additional Drug Treatment Courts are planned to open in Red Deer and Grande Prairie in the fall of 2021.

⁸ The Saskatchewan [Cree Court](#) is not a typical Indigenous Peoples' Court; rather, it operates as a circuit court that addresses cultural needs of accused persons from the Cree community at all stages of the criminal court process.



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<i>Community and Wellness Courts⁹</i>	British Columbia	Vancouver, Victoria, Kelowna
	Nova Scotia	Dartmouth, Port Hawkesbury, Kentville, Amherst, Wagmatcook, Bridgewater, Truro
	Northwest Territories	Yellowknife
	Nunavut	Iqaluit, Cambridge Bay
	Ontario	Peterborough
	Yukon	Whitehorse

⁹ Community and Wellness Courts may include drug treatment court, mental health court, or other targeted programs.



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ANNEX III: ELIGIBILITY CRITERIA AND PARTNERS FOR SPECIALIZED COURT PROGRAMS ACROSS CANADA¹⁰

Specialized Court	General Eligibility Criteria	Specialized Services Offered	Court Partners
<i>Mental Health Court Programs</i>	<ul style="list-style-type: none"> • Persons diagnosed with a mental disorder or cognitive issues • Criminal record and risk to community safety assessment 	<ul style="list-style-type: none"> • Counselling • Medical support services 	<ul style="list-style-type: none"> • Legal, medical & mental health support staff • Local police departments • Health and social services • Community corrections service providers • Medical experts (e.g. psychiatrists/psychologists)
<i>Drug or Alcohol Treatment Court Programs</i>	<ul style="list-style-type: none"> • Drug or alcohol abuse motivated the offence • Adult offenders only • Certain offences or circumstances may lead to ineligibility • Participation in long-term rehabilitation program and drug testing required 	<ul style="list-style-type: none"> • Outpatient programs with extensive case management services • Counselling services • Court monitored drug treatment plans • Reintegration services (i.e. life skill workshops, employment training and job placements) 	<ul style="list-style-type: none"> • Local police departments • Health and social services • Community corrections service providers • Legal Aid Clinics • Medical experts • Provincial Justice, Public Safety, and Health and Community Services Departments • Federal and Provincial Prosecution Services
<i>Domestic or Family Violence Court Programs</i>	<ul style="list-style-type: none"> • Risk assessment of person charged (including an evaluation of the charge) • Usually reserved for adult accused or offenders 	<ul style="list-style-type: none"> • Domestic violence and (if applicable) drug/alcohol abuse rehabilitation programs • Victim/witness assistance programs • Monitoring and counselling services 	<ul style="list-style-type: none"> • Family law information centres • Partner assault response teams
<i>Indigenous Peoples' or Gladue Courts</i>	<ul style="list-style-type: none"> • Indigenous accused and offenders 	<ul style="list-style-type: none"> • Use of Indigenous cultural practices (e.g. smudging ceremony, songs and prayers, healing circles) • Alternative sentencing and bail options, as available and appropriate 	<ul style="list-style-type: none"> • Designated prosecutors • Duty counsel • Elders and Traditional Knowledge Keepers • Indigenous court workers • Community support agencies
<i>Community or Wellness Court Programs</i>	<ul style="list-style-type: none"> • Persons diagnosed with a mental disorder or cognitive issues • Persons with a drug or alcohol use disorder • Persons experiencing other socio-economic risk factors of crime 	<ul style="list-style-type: none"> • Counselling • Medical support services • Court monitored drug treatment plans • Reintegration services (i.e. life skill workshops, employment training and job placements) 	<ul style="list-style-type: none"> • Legal, medical and mental health support staff • Local police departments • Health and social services • Community corrections service providers • Medical experts

¹⁰ This chart provides a general overview of the most common criteria and partners; specific program requirements and partners may differ by jurisdiction or locality.