



Action Committee on Modernizing Court Operations

ROLE OF INDIGENOUS COURTWORKERS IN CRIMINAL PROCEEDINGS

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 AND CONTEXT

The Indigenous Courtworker (ICW) Program is a crucial program aimed at providing support and assistance to Indigenous individuals navigating the Canadian justice system. ICWs serve as bridges between Indigenous people and the Canadian justice system by providing their clients information and assistance throughout justice processes and connecting them to relevant legal and social resources, while also promoting the court's awareness and appreciation of the values, customs, languages, and socio-economic conditions of Indigenous people.

The purpose of this publication is to provide judges, court administrators, and other justice actors with a more comprehensive understanding of the role of ICWs and ways they can assist the courts, enabling them to optimize the utilization of ICW services. Judges and other justice actors are in key positions of leadership and authority to work collaboratively with Indigenous communities and ICWs and enable progressive innovations within courthouses. ICW roles may vary from one jurisdiction to another. Therefore, justice actors should familiarize themselves with the specific role and responsibilities of ICWs in their respective jurisdictions. While ICWs also work within the family court setting in some jurisdictions, this document exclusively focuses on the role of ICWs within the criminal court setting.

The companion publication to this piece, [Working with Indigenous Courtworkers](#), outlines ways to create an inclusive and accessible environment to better integrate ICWs in court proceedings. It also provides examples of concrete practices inspired by judges, counsel, and other justice actors across Canada who work to foster an environment that supports the crucial role of ICWs.

1.1 Objectives of the ICW Program

The ICW program has three primary objectives:

- 1) Empower Indigenous people to understand their right to speak on their own behalf or to request legal counsel, and to better understand the nature of the charges against them and the philosophy and functioning of the justice system.
- 2) Increase awareness and appreciation of Indigenous values, customs, languages, and socio-economic conditions among justice system administrators.
- 3) Address communication barriers that can arise between Indigenous people and justice system stakeholders.



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1.2 Importance of ICWs

ICWs play a key role in supporting Indigenous clients throughout the criminal justice process by providing culturally relevant information to assist them in navigating the justice system and referring them to culturally relevant services. ICWs:

- Ensure clients receive accurate information early in the process.
- Connect clients to appropriate legal and social resources, aiming to address underlying issues that may have brought them to court.
- Help judges, crown and defense discharge their statutory, legal, and ethical obligations regarding the treatment of Indigenous accused by providing information and building understanding of the social context of local Indigenous communities generally and of specific individuals before the court.
- Extend their assistance to Indigenous witnesses, family, and community members and play an important role in building understanding of the justice system for local Indigenous communities.

ICWs are not lawyers and cannot provide legal advice to their clients. Rather, they act as a bridge between Indigenous people and the justice system. Their contribution results in significant assistance and efficiencies for both Indigenous clients and the court. For example, a recent [evaluation](#) estimated cost savings to the criminal justice system from ICW services that prevent clients from avoidable arrests and unnecessary time in custody to be about \$73 million per year. ICWs advocate for their clients, ensure effective communication, and strive for culturally sensitive outcomes in court proceedings.

For ICWs to effectively aid the Court, it is important to recognize them as integral and valuable contributors in the courtroom, as they possess unique cultural expertise that can significantly benefit proceedings involving Indigenous people.

1.3 Origin and History

The history and context of the ICW Program are deeply intertwined with the legacy of systemic discrimination and injustices faced by Indigenous people in Canada. The program was established in the 1970s and its importance and value have been addressed in numerous inquiries over the years starting with the [Board of Review on Native People in the Administration of Justice in the Provincial Courts of Alberta](#) in 1978. In 1989, the [Royal Commission on the Donald Marshall Jr. Prosecution](#) made its recommendations underscoring the need for support services and tailored programs for Indigenous people navigating the criminal justice system, and specifically recommended the creation of a Courtworker program for Nova Scotia. And then in 1996, the [Report of the Royal Commission on Aboriginal Peoples](#) emphasized the importance of the Indigenous Courtworker Program to ensure fair treatment and representation for Indigenous individuals involved in the legal system.

These, as well as other Commissions of Inquiries, played a pivotal role in supporting and expanding the program, recognizing its significance in addressing the overrepresentation of Indigenous people in the criminal justice system. Today, the ICW Program continues to strive for a more just and equitable future, continuously evolving, and working to support Indigenous



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communities and individuals in their interactions with the legal system, while also promoting reconciliation and the recognition of Indigenous rights and perspectives in Canadian society.

1.4 Current Landscape

ICW Programs currently operate in every province and territory with the exception of Newfoundland and Labrador and New Brunswick. Nationally, over 230 full and part time Courtworkers provide services in over 450 communities each year. Their services are predominantly delivered by Indigenous service delivery agencies in many jurisdictions, although in the Northwest Territories, ICWs are government employees, while Nunavut relies on Legal Services clinics for these essential services.

2. ICW ROLES AND KEY WAYS THEY ASSIST THE COURT

2.1 Bridge and Navigator throughout the Justice Process

ICWs assume the crucial role of being bridges and navigators throughout the justice process, and this role becomes even more significant when individuals do not have access to Legal Aid or legal representation. In any case, their multifaceted support includes several essential components:

- ICWs, amongst other court actors, can assist in identifying Indigenous accused individuals within the court system, so that the court can fulfill legal and ethical obligations to consider their social context and lived reality.
- ICWs can enhance access to justice and increase meaningful participation of Indigenous accused by explaining the legal process, breaking down complex legal jargon and helping Indigenous accused understand the proceedings, their obligations, and what is expected of them, without providing legal advice. This support better prepares clients and can reduce adjournments, expediting the legal process. ICWs also assist the families of accused individuals by explaining the legal proceedings.
- ICWs assist clients in finding their voices and help reduce stress, increase comfort levels, and manage trauma responses that may arise in a court environment. By de-escalating situations, ICWs can have lasting positive effects on individuals.
- ICWs understand their communities and the unique circumstances of Indigenous community members. As such, in cases where accused individuals need assistance to attend court, ICWs may physically locate them, provide transportation, or offer explanations for their absence. This prevents the issuance of bench warrants and reduces the number of charges for failure to appear.
- ICWs can assist in supporting effective communication and understanding between lawyers and clients where necessary. This is especially important given the inherent power discrepancies, which can be further exacerbated in cases of language barriers. This support is crucial, as many Indigenous persons, given their experiences of systemic discrimination and historical harm, may be inclined to simply capitulate rather than exercise their legal rights. Clients who are supported by an ICW to find their voice in all



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aspects of their interaction with the justice system have an increased opportunity for meaningful participation and, ultimately, more equitable access to, and confidence in, the justice system. For more information on the impacts of language barriers on Indigenous litigants please consult the Action Committee's publication on [*The Impact of the COVID-19 Pandemic on Interpretation and Translation Needs of Court Users*](#).

- ICWs can provide support in filling various social or system gaps that can have impacts on options available to the court, such as assisting clients in obtaining identification that is required to participate in support programs or services or providing technological support where needed considering the increased digitization of court processes.
- ICWs serve as valuable resources by connecting individuals with available community resources and support systems. They also work to build knowledge in their communities by providing legal education, thus ensuring that community members understand how the justice process functions.
- In some jurisdictions, ICWs also offer in-depth support that prioritizes the well-being of the accused. This may involve slowing down the justice process to focus on the individual's overall well-being which ultimately promotes healing and reduces recidivism.

Although ICWs primarily serve accused individuals, they are expert navigators who are connected to surrounding Indigenous communities. They also assist victims when needed and appropriate, keeping in mind concerns regarding conflicts of interest, directing them to resources specifically designed to support them and ensuring a human response and a warm handover to relevant services. This comprehensive and culturally sensitive support system promotes the effective functioning of the justice system and the well-being of individuals, and the families involved.

2.2 Bail

ICWs also offer valuable assistance at specific points in the court process, including in bail proceedings. ICWs actively contribute to developing and implementing bail plans, which may include identifying or securing accommodations, sureties, and connecting the accused with essential support systems and programs. They also facilitate and support referrals to bail supervision programs that provide accused individuals with alternative custody options.

The involvement of ICWs in coordinating logistics is particularly vital in community locations with limited resources and transportation challenges. By acting as resource persons for the released accused, ICWs can facilitate their smoother reintegration into the community. Additionally, because of the support and coordinating work of ICWs, accused individuals may have increased access to referrals to bail supervision programs, further supporting the court's efforts to address each individual's specific needs.



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2.3 Legal Aid

ICWs often help clients who are seeking legal representation by facilitating adjournments that allow them sufficient time to obtain counsel. This is especially valuable in situations where immediate legal representation is not available. ICWs also reach out to duty counsel or Legal Aid services when needed to ensure their clients have access to legal support.

Moreover, ICWs play a pivotal role in assisting individuals to complete Legal Aid applications and appeals. This includes the often-time-consuming task of gathering supporting documentation. This support is particularly significant in remote communities where fly-in courts may only convene periodically. In these cases, adjournments can lead to lengthy delays, spanning months or even years. Planning for fly-in court dockets can occur up to a year in advance, making timely access to Legal Aid essential.

2.4 Diversion

ICWs also serve as instrumental access points to diversion programs, including Indigenous restorative justice initiatives. Additionally, many ICWs organizations either directly offer or maintain close connections with culturally based supports and programs within their communities, such as land-based healing programs. These culturally informed options can provide viable alternatives to continuing through the justice system and/or traditional custodial sentencing, aligning more with Indigenous values, and promoting meaningful rehabilitation within the Indigenous context.

2.5 Sentencing and Resolution

In the context of sentencing and case resolution, ICWs provide important information and socio-cultural context to the court. They contribute to a more holistic understanding of their Indigenous client, providing the social context factors relating either to the individual and their family and/or to the systemic issues that have impacted their community and that are relevant to the case. This allows judges and other court actors to view each individual before them and their history that led them there. This perspective aids in crafting sentences or resolutions tailored to the unique circumstances of the Indigenous person involved.

Practical assistance includes providing sentencing recommendations when requested by the court; acting as a bridge to *Gladue* report writers, where applicable; and helping their clients gather all necessary information and evidence to support sentencing arguments effectively.

Moreover, ICWs assist in coordinating and contributing to sentencing circles, a holistic and community-oriented practice aimed at achieving resolutions that align more with Indigenous traditions and values than a traditional sentencing hearing. They also navigate and coordinate the necessary services to create appropriate probation orders and support clients in adhering to these orders, which promotes successful rehabilitation and community reintegration.