

THE EDMONTON INDIGENOUS COURT

A Call to Action

A Guide to the Edmonton Indigenous Court

Courtroom 266

Edmonton Law Courts

Introduction

The concept of creating an Indigenous Court in the urban centre of Edmonton began in the fall of 2020.

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 Derek Redman, consultation began in late fall of 2020 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 Edmonton Indigenous Court.

A small working group was struck with court representatives and community service providers to assist in developing the overall concept and various key components of the Court. Consultation with Elders, community service providers, Defence Bar, Provincial Crown Prosecution, Federal Crown Prosecution, Legal Aid Alberta, Edmonton Police Service (EPS) and Community Corrections, occurred in the spring and summer of 2021. In the fall of 2021, the Court struck an implementation committee with membership from Justice stakeholders and Indigenous community representatives. On October 22, 2021, an Elder from Treaty 6 and an Elder from Native Counselling Services of Alberta conducted a pipe ceremony to bless the Eagle Staff, which will sit in the Indigenous Courtroom when it is in session. We look forward to continuing collaboration between Indigenous Community members, organizations, Elders, Traditional Knowledge Keepers, governmental and non-governmental organizations and the Court to continue the evolutionary process of the Edmonton Indigenous Court.

The establishment of the Edmonton 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.

R.K. Bodnarek
Assistant Chief Judge
Edmonton Criminal and Regional Division

Vision Statement

The Edmonton Indigenous Court (EIC) 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.



The tradition of the Eagle Staff has been passed down from generation to generation. In Aboriginal cultures, the Eagle Staff represents various meanings, spiritual entities, nations, clans, languages, medicines and healing. It is believed that eagles communicate directly with the Creator, making eagles themselves, their feathers and their images highly revered by First Peoples. From a non-Aboriginal perspective, the Staff can be compared to a national flag: it represents people, states, governments, regiments and battle honours. Thus, it is an honoured and sacred symbol.

Mandate

The EIC will address Judicial Interim Release Hearings and Sentencing Hearings for those participants 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 EIC will be to:

1. Acknowledge harm done to the victim of a crime and the community as a whole by including victims and the community in the court process where appropriate;
2. Apply Gladue principles/Judicial Interim Release provisions of the *Criminal Code of Canada* to avoid unnecessary pre-trial or pre-sentence incarceration of Indigenous participants 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 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 participants into the community;
8. Encourage participants throughout the court process to learn about and reconnect with their Indigenous heritage by using and applying Indigenous restorative justice principles.

Protocol

1. The EIC will sit once per week in Courtroom 266 of the Edmonton Law Courts, beginning at 9:00 a.m.
2. Courtroom 266, although a traditional courtroom, will be modified to have all participants sitting at the same level.
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 EIC.
5. Any offender who is Indigenous or self-identifies as Indigenous and wishes to have matters dealt with in the EIC can become a participant.
6. All *Criminal Code* and *Controlled Drugs and Substances Act (CDSA)* offences that occur within the City of Edmonton, with the exception of those offences found in Section 469 of the *Criminal Code* can be dealt with in the EIC.
7. Non-*Criminal Code* offences (i.e., offences contrary to the *Traffic Safety Act* or City of Edmonton Bylaw offences) will not be dealt with in the EIC except when they are related to substantive criminal offences. The City of Edmonton 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 Edmonton'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 EIC.
9. Criminal offences from other jurisdictions involving Indigenous offenders from the City of Edmonton may be waived into the EIC 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 provided that there are already active Edmonton files.

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 Crown may determine that some or all of the charges may be withdrawn.
11. When sentenced to probation, a Healing Plan specific to the participant may be included in the probation order.
12. A participant will return to EIC for regular probation reviews before the sentencing Judge.
13. A ceremony may be held in the EIC to acknowledge the successful completion of a probation order and Healing Plan.

Per: Assistant Chief Judge R.K. Bodnarek
Edmonton Criminal and Regional Division
Dated: February 2022

Scheduling for Courtroom 266

- The EIC will sit every Thursday in Courtroom 266 located in the Edmonton Law Courts.
- Court will begin with a prayer and a Smudging.
- The EIC 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 a.m. The afternoon session will begin at 1:30 p.m. There will be a scheduled lunch break for one hour between the morning and afternoon sessions.
- The EIC 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 EIC will follow the same guidelines as set out in the Case Management Office (CMO) Guideline document. EIC participants or Indigenous persons appearing in the EIC 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 EIC 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 150 minutes available in the afternoon session. Times will be monitored and adjusted as required.
- EIC participants who do not have their own counsel will be assisted in EIC by a designated Duty Counsel and/or a designated Indigenous Court Worker.

Setup and Protocol for the EIC



EIC will be held in Courtroom 266. Although a traditional courtroom, it has been redesigned so that all participants will be sitting at the table.

Each morning, the Eagle Staff will be brought into the courtroom where it will remain throughout the day. An opening prayer and a Smudge by the Elder shall be given at the start of the session. An Eagle Feather is located in the courtroom for administering the oaths.

EIC will be used for both Judicial Interim Release and sentencing hearings. For sentencing purposes, the EIC participant, in this court setting, will be provided with ample time to share their background, special circumstances and other relevant information with the Court that may lead to a Healing Plan. This Healing Plan may include both traditional and culturally informed sentencing, such as probation, attending Indigenous ceremonies, addiction treatment or reconnecting with community. The EIC 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 EIC 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 EIC participant may be encountering in fulfilling their plan.

The Court will also have a blanket ceremony to recognize EIC participants who have successfully fulfilled their Healing Plan with a view to embarking on a new life.

Dedicated EIC Courtroom Resources

Elder

Native Counselling Services of Alberta and Yellowhead Tribal Council have committed to have an Elder present in Court to assist EIC participants and provide Spiritual Guidance.

Judiciary

The Provincial Court has committed to providing five Judges to the EIC on a rotating basis. Judge Randy Brandt, Judge Karen Hewitt, Judge Danielle Dalton, Judge Renee Cochard and Assistant Chief Judge Bodnarek will be the dedicated presiding Judges for the EIC.

Prosecutor

The Alberta Crown Prosecution Service has committed to providing a Prosecutor.

Duty Counsel

Legal Aid Alberta has committed to providing a dedicated Duty Counsel to be available to assist EIC participants who are not represented by private counsel.

Clerk

Court and Justice Services (CJS) has committed to providing a dedicated clerk for this Court. The opening of this Court will result in the closure of a Summary Disposition Court that would otherwise have been utilized for other Criminal matters.

Probation Officer

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

Student Legal Services

Student Legal Services (SLS) has committed the services of legal counsel to assist EIC participants who do not have private legal counsel, do not wish to proceed with Duty Counsel and who do not qualify for Legal Aid.

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 EIC how this Court will be able to serve EIC participants in a more culturally informed manner.

Yellowhead Tribal Council

Yellowhead Tribal Council has also committed to assisting in the creation of Judicial Interim Release plans for EIC participants who are incarcerated and seeking release.

Edmonton Police Service

The Edmonton Police Service (EPS) has committed to providing a Liaison Officer to serve as a resource to the Court and its partners.

***Gladue* Aftercare Worker**

In addition, Native Counselling Services of Alberta will have a *Gladue* aftercare worker in support of the Court who will work with EIC participants after they have been granted a bail release or when they are serving a community supervision sentence. The aftercare worker will assist the Court Worker in developing the EIC participant's Healing Plan and will continue to work with the participant after they have been sentenced to complete their Healing Plan.

Supports in the Community

The EIC will be working with numerous Indigenous organizations who have agreed to provide service and assistances to participants.