INDIGENOUS JUSTICE STRATEGY

SEPTEMBER 2022

THE PROVINCIAL COURT OF ALBERTA

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Provincial Court Indigenous Justice Strategy

Introduction

The Provincial Court of Alberta (the Court) recently approved its 2021-2024 Strategic Plan. Strategic Priority 5 states in part that:

> *The Court will work to provide a culturally relevant, restorative, and holistic system of justice for Indigenous individuals including accused persons, offenders, victims, families, youth, and children as well as those Indigenous communities impacted by the actions of those who find themselves before the Court.*

The Strategic Plan also commits to the development of an Indigenous Justice Strategy to fulfil the intent and purpose of this priority. (See Appendix 1: Alberta Provincial Court 2021-2024 Strategic Plan, Strategic Priority 5 – Indigenous Initiatives at 5.4).

The development of the Indigenous Justice Strategy is a strategic priority for a number of reasons including the general lack of access Indigenous peoples have to the court system, the pervasive lack of confidence that Indigenous peoples have with the justice system, the overrepresentation of Indigenous peoples in pre- and post-trial custody and the overrepresentation of Indigenous children in care. These issues continue to persist notwithstanding efforts to address them via the findings and recommendations of various Commissions and Inquiries, newly enacted legislation and developments in jurisprudence.

In developing the Indigenous Justice Strategy, we acknowledge the significance of this cultural and legal context. Of particular significance are the findings and recommendations of the following Commissions and Inquiries:[1]

- the Truth and Reconciliation Commission of Canada (TRC) Calls to Action;
- the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) Calls for Justice;
- the 1991 Report of the Task Force on the Criminal Justice System and its Impact on the Indian and Métis People of Alberta (the Cawsey Report); and
- 113 Pathways to Justice: Recommendations of the Alberta Joint Working Group on Missing and Murdered Indigenous Women and Girls

[1] See Appendix 2 for a comprehensive list of previous Commissions and Inquiries

The following legislation was also noted, as it provides specific direction to the Court in addressing the needs of Indigenous peoples who come before it:

- Criminal Code, RSC 1985, c C-46 at s 493.2, s 717, s 718.2(e) and 718.201;
- *An Act for Strong Families Building Stronger Communities,* SA 2018, c 24;
- *An Act respecting First Nations, Inuit and Métis Children, Youth and Families*; SC 2019, c24; and
- *Youth Criminal Justice Act,* SC 2002, c 1 at s 38(2)(d).

The Supreme Court of Canada has also issued a number of seminal decisions that address Indigenous peoples and their involvement with the justice system. These include:

- *R v Gladue,* [1999] 1 SCR 688;
- *R v Ipeelee,* 2012 SCC 13; and
- *R v Barton,* 2019 SCC 33.

The Indigenous peoples who access the Court come from diverse communities, with distinct histories, needs and priorities. The Indigenous Justice Strategy is a broad recognition of the pervasive issues they face. It represents a commitment on the part of the Court to take concrete actions in response to those issues. However, the Indigenous Justice Strategy is a preliminary step. The Court recognizes its ongoing obligation to listen and engage in collaborative dialogue with Indigenous peoples and communities so as to better understand their distinct priorities. The Indigenous Justice Strategy is intended to be a living document that evolves as the Court continues to work towards achieving its priority of providing a culturally relevant, restorative, and holistic system of justice for the Indigenous peoples and communities it serves.

Background

Commissions and Inquiries

In the final report of the Truth and Reconciliation Commission of Canada (the TRC), the Commission made a number of Calls to Action in the area of justice.[2] While the Calls to Action are primarily directed to government, the issues raised are relevant to the Court and its relationship with the Indigenous peoples that appear before it. Relevant TRC Calls to Action include:

> 27. We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.
>
> …
>
> 30. We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so.
>
> 31. We call upon the federal, provincial, and territorial governments to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending.
>
> ….
>
> 35. We call upon the federal government to eliminate barriers to the creation of additional Aboriginal healing lodges within the federal correctional system.
>
> 36. We call upon the federal, provincial, and territorial governments to work with Aboriginal communities to provide culturally relevant services to inmates on issues such as substance abuse, family, and domestic violence, and overcoming the experience of having been sexually abused.

[2] *Truth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg: Truth and Reconciliation commission of Canada, 2015), online (pdf): <https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf>.

> 37. We call upon the federal government to provide more supports for Aboriginal programming in halfway houses and parole services.
>
> 38. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to eliminating the overrepresentation of Aboriginal youth in custody over the next decade.
>
> …
>
> 42. We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the Constitution Act, 1982, and the United Nations Declaration on the Rights of Indigenous Peoples, endorsed by Canada in November 2012.

One of the Calls to Action set out by the TRC was to appoint a public inquiry into the causes of and remedies for the disproportionate victimization of Indigenous women and girls.[3] This resulted in the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) which issued a final report in 2019.[4] The MMIWG examined this matter from a different perspective to that of the TRC but the conclusions were very similar: Indigenous peoples are not being served by the current system. In response to its findings, the MMIWG issued Calls for Justice. Of particular relevance to the Court are the following:

> 5.11 We call upon all governments to increase accessibility to meaningful and culturally appropriate justice practices by expanding restorative justice programs and Indigenous Peoples' courts.
>
> 5.12 We call upon federal, provincial, and territorial governments to increase Indigenous representation in all Canadian courts, including within the Supreme Court of Canada.
>
> …
>
> 5.15 We call upon federal, provincial, and territorial governments and all actors in the justice system to consider Gladue reports as a right and to resource them appropriately, and to create national standards for Gladue reports, including strength-based reporting.

[3] *Truth and Reconciliation Commission of Canada: Calls to Action,* Call to Action 41
[4] Canada, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol 1a and 1b (Vancouver: National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019), online (pdf): <Final Report | MMIWG (mmiwg-ffada.ca)>

> 5.16 We call upon federal, provincial, and territorial governments to provide community-based and Indigenous-specific options for sentencing.
>
> 5.17 We call upon federal, provincial, and territorial governments to thoroughly evaluate the impacts of Gladue principles and section 718.2(e) of the *Criminal Code* on sentencing equity as it relates to violence against Indigenous women, girls, and 2SLGBTQQIA people.

The findings of the TRC and the MMIWG are consistent with the findings of prior Alberta commissions and inquiries. In Alberta, significant challenges with respect to the Criminal Justice System and its relationship with Indigenous peoples were identified in the 1991 task force report *Justice on Trial: Report of the Task Force on the Criminal Justice System and its Impact on the Indian and Métis People of Alberta* (the Cawsey Report).[5] The introduction to the Cawsey Report stated:

> The Aboriginal people and all levels of Government have concerns about the level of justice provided by the current criminal justice system to Aboriginal people. Unless more balance can be created, justice will remain elusive, and discontent will continue. The impact of the criminal justice system on Aboriginal people can be measured by the disproportionate number of Aboriginals in our correctional institutions. Aboriginals are often at the receiving end of what appears to them to be a foreign system of justice delivered to a large extent by non-Aboriginals.

The Alberta First Nations Women's Economic Security Council subsequently made the following relevant recommendations in its 2016 Report:[6]

> **Recommendation Three:**
>
> (a) Work with existing community resources to support First Nations to formalize restorative justice processes based on local traditional values, customs, and practices.
>
> (b) Build relationships between Indigenous communities and justice professionals including judges and lawyers and encourage diversion from courts to traditional restorative justice processes for First Nations people living on and off reserve who are engaged in the justice system.

[5] Alberta, *Justice on Trial: Report of the Task Force on the Criminal Justice System and its Impact on the Indian and Métis People of Alberta*, Justice R.A. Cawsey, Chair (Alberta: Justice and Solicitor General, 1991), online: <https://open.alberta.ca/publications/1369434>.

[6] *First Nations Women's Council on Economic Security: 2016 report and recommendations and Government of Alberta Response* (Edmonton: Alberta Indigenous Relations, 2016), online: <https://open.alberta.ca/publications/first-nations-women-s-council-on-economic-security-report-recommendations-government-response>

(c) Expand and promote traditional peace-making processes based on Indigenous values, customs and practices to children and youth in other Alberta schools. Incorporate existing youth councils, trained in traditional restorative justice in the training program.

Recommendation Four:

(a) Provide mandatory cultural competency training for judges, lawyers, court workers, benchers, and law societies.

(b) Increase access to Indigenous students to attend law schools.

(c) Appoint more Indigenous Judges and Benchers.

…

In 2017, the Alberta Métis Women's Economic Security Council made a series of recommendations to the Alberta government.[7] These included recommendations aimed at decreasing discrimination against Indigenous children in the child protection system and supporting alternatives to reduce the incarceration of Indigenous women.

In 2022, the Alberta Joint Working Group issued 113 pathways to justice: recommendations of the Alberta Joint Working Group on Missing and Murdered Indigenous Women and Girls.[8] Recommendations relevant to the Court include:

Recommendation 13 (Anti-Racism) – Work with all provincial court services and court staff, including judges, to address racist actions, rules, and procedures in court rooms.

Recommendation 14 (Awareness & Training) – Design and implement significant, ongoing awareness and training initiatives…including, for all judges and other courtroom officials: the lived experiences of Indigenous women, girls and 2S+ people and cultural practices to improve safety in the courtroom.

…

Recommendation 51 (Corrections: Sentencing Diversion) – Ensure the opportunity to complete a Gladue Report is provided to every Indigenous

[7] *Métis Women's Council on Economic Security: 2017 Report and Recommendations and Government of Alberta Response* (Edmonton: Indigenous Relations, 2017), online: <https://open.alberta.ca/publications/mwces-2017-report-and-recommendations-government-response>

[8] *113 pathways to justice: recommendations of the Alberta Joint Working Group on Missing and Murdered Indigenous Women and Girls* (Edmonton: Indigenous Relations, 2022), online: <https://open.alberta.ca/publications/113-pathways-to-justice-recommendations-of-joint-working-group-on-mmiwg>

woman, girl and 2S+ person going through the provincial justice system in Alberta.

Recommendation 52 (Corrections: Sentencing Diversion) – Research options for sentencing diversion of Indigenous women, girls, and 2S+ people in Alberta and share the report outlining those options with judges, defence lawyers, the Law Society of Alberta and crown prosecutors.

Recommendation 53 (Court Services) **–** Incorporate Indigenous justice systems into Alberta court services. These recommendations include incorporating local Indigenous communities' expertise, cultural practices, and cultural protocols in court services, policies, and procedures.

Recommendation 54 (Court Services) – Support revitalization and implementation of Indigenous justice systems.

Legislation

Criminal Code Provisions

The *Criminal Code* requires that sentencing courts consider the circumstances of Indigenous offenders. Section 718.2(e) provides:

> **718.2** A court that imposes a sentence shall also take into consideration the following principles:
>
> **....**
>
> (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

The *Criminal Code* also requires sentencing courts dealing with an offence involving the abuse of an intimate partner consider the increased vulnerability of female victims and give particular attention to the circumstances of Indigenous female victims. Section 718.201 provides:

> **Additional consideration — increased vulnerability**
>
> **718.201** A court that imposes a sentence in respect of an offence that involved the abuse of an intimate partner shall consider the increased vulnerability of female persons who are victims, giving particular attention to the circumstances of Aboriginal female victims.

The *Criminal Code* also address alternative measures. Section 717(1) provides:

> **Alternative Measures**
>
> **When alternative measures may be used**
>
> **717 (1)** Alternative measures may be used to deal with a person alleged to have committed an offence only if it is not inconsistent with the protection of society and the following conditions are met:
>
> (a) the measures are part of a program of alternative measures authorized by the Attorney General or the Attorney General's delegate or authorized by a person, or a person within a class of persons, designated by the lieutenant governor in council of a province;
>
> (b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim;
>
> (c) the person, having been informed of the alternative measures, fully and freely consents to participate therein;
>
> (d) the person has, before consenting to participate in the alternative measures, been advised of the right to be represented by counsel;
>
> (e) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;
>
> (f) there is, in the opinion of the Attorney General or the Attorney General's agent, sufficient evidence to proceed with the prosecution of the offence; and
>
> (g) the prosecution of the offence is not in any way barred at law.

The bail provisions of the *Criminal Code* were amended in 2019 so as to require that particular attention be given to the circumstances of Indigenous offenders. Section 493.2 provides:

> **Aboriginal accused or vulnerable populations**
>
> 493.2 In making a decision under this Part, a peace officer, justice or judge shall give particular attention to the circumstances of:
>
> (a) Aboriginal accused; and
>
> (b) accused who belong to a vulnerable population that is overrepresented in the criminal justice system and that is disadvantaged in obtaining release under this Part.

Child Protection Legislation

Bill 22

On February 28, 2019**,** Bill 22, *An Act for Strong Families Building Stronger Communities,* SA 2018, c 24 came into force in Alberta. This Bill made a number of amendments to the *Child, Youth and Family Enhancement Act,* RSA 2000, c C-12 including changes to s 1 (Guiding Principles), s 2 (Matters to be Considered), s 52 (Private Guardianship) and s 53 (Notice). These changes reflect a greater emphasis on the preservation of Indigenous culture and cultural connections as well as facilitating the involvement of Indigenous peoples in child protection proceedings.

Bill C-92

Bill C-92 *An Act respecting First Nations, Inuit and Métis Children, Youth and Families,* SC 2019, c 24 (the *FNIM Act*) was enacted by the federal government on June 21, 2019 and came into force on January 1, 2020. Section 8 of the *FNIM Act* sets out its purpose as follows:

> **Section 8 -** The purpose of this Act is to:
>
> (a) affirm the inherent right of self-government, which includes jurisdiction in relation to child and family services;
>
> (b) set out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children; and
>
> (c) contribute to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

Youth Criminal Justice Act, SC 2002, c 1

The *Youth Criminal Justice Act* (*YCJA*) provides that the youth criminal justice system is intended to protect the public by holding youth accountable, promoting the rehabilitation and reintegration of youth that have committed offences back into society and preventing crime by referral to programs or agencies that address the underlying causes of youth criminal behaviour (see *YCJA* at s 3(1)(a)). The *YCJA* states that the criminal justice system for youth must be separate and based on the principle of diminished moral blameworthiness or culpability (at s 3(1)(b)).

The *YCJA* further provides at s 38(1) that "[t]he purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person

and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public."

The sentencing provisions of the *YCJA* go on to specifically reference the need for youth court judges to pay particular attention to the circumstances of Indigenous young persons. Section 38(2)(d) provides:

> (d) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons;

The Supreme Court of Canada

The Supreme Court of Canada has issued a number of seminal decisions which have recognized that the Court must take care in considering what (if any) conditions should be placed on Indigenous persons at the bail stage. The Supreme Court has also established principles that the Court is required to consider when sentencing Indigenous persons.

In the seminal decision *R v Gladue*, [1999] 1 SCR 688, the Supreme Court considered s 718.2(e) of the *Criminal Code* and held that in sentencing an Indigenous offender, the judge must consider (at para 93):

> (a) The unique systemic or background factors which may have played a part in bringing the particular Indigenous offender before the courts; and
>
> (b) The types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Indigenous heritage or connection.

To undertake these considerations, a sentencing judge requires information pertaining to the accused (at para 83). This is obtained from a pre-sentence report or what is now referred to as a *Gladue* report (see Appendix 3: *Gladue* at para 93 which provides a summary of the Supreme Court's findings).

In its subsequent decision in *R v Ipeelee*, 2012 SCC 13, the Supreme Court affirmed the two-part test set out in *Gladue* (at para 59), holding that the application of the *Gladue* principles is required in every case involving an Indigenous offender, and a failure to apply those principles would result in a sentence that is not fit and not consistent with the fundamental principle of proportionality. Such a failure would constitute an error justifying appellate intervention (at para 87).

The Supreme Court has also recognized the impact of the long history of colonialism suffered by Indigenous peoples, noting that the effects of this history continue to be felt.

In the decision *R v Barton,* 2019 SCC 33, the Supreme Court majority acknowledged the detrimental effects of widespread racism against Indigenous peoples within our criminal justice system (at para 199). Accordingly, the majority directed that "our criminal justice system and all participants within it should take reasonable steps to address systemic biases, prejudices, and stereotypes against Indigenous persons – and in particular Indigenous women and sex workers – head-on." (at para 200).

Statistics

The following statistics are of note:

(a) Alberta has the third largest Indigenous population in the country following Ontario and British Columbia.[9] In the 2016 census, 258,640 people in Alberta reported Indigenous ancestry, or 6.5% of Alberta's population.[10] Also in the 2016 census, 50,945 people resided on reserve, an increase of 21% from the previous census.[11]

(b) In Alberta, there are 45 First Nations in three treaty areas (Treaty 6, 7 and 8) and 140 reserves. These cover approximately 812,771 hectares of land. The most commonly spoken Indigenous languages in Alberta are Blackfoot, Cree, Chipewyan, Dene, Sarcee, and Stoney (Nakoda Sioux).[12]

(c) The overall percentage of federally incarcerated persons in all provinces and territories that are Indigenous is 32.7%.[13]

(d) Indigenous inmates make up 45% of all people in Alberta's federal prisons, and both federal prisons in Edmonton have a higher than 50% Indigenous population.[14]

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[9] Canada, Indigenous Services Canada, *Annual Report to Parliament 2020* (Canada: Indigenous Service Canada, 2020) at Page 10, Figure 1 < https://www.sac-isc.gc.ca/DAM/DAM-ISC-SAC/DAM-TRNSPRCY/STAGING/texte-text/annual-report-parliament-arp-report2020_1648059621383_eng.pdf>

[10] Alberta, Statistics Canada, *Focus on Geography Series, 2016 Census* (2017), online: <https://www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-PR-Eng.cfm?TOPIC=9&LANG=Eng&GK=PR&GC=48>

[11] Alberta, Statistics Canada, *2016 Census Aboriginal Community Portrait – Alberta* (January 14, 2020), online: <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/abpopprof/infogrph/infgrph.cfm?LANG=E&DGUID=2016A000248_OnR&PR=48>

[12] Canada, Aboriginal Affairs and Northern Development Canada, *First Nations in Alberta* (2013), online: <https://publications.gc.ca/collections/collection_2013/aadnc-aandc/R2-141-2013-eng.pdf>

[13] Patrick White, " 'Shocking and shameful': For the first time, Indigenous women make up half the female population in Canada's federal prisons", *The Globe and Mail* (May 5, 2022) online: <https://www.theglobeandmail.com/canada/article-half-of-all-women-inmates-are-indigenous/>

[14] Dylan Short, "Indigenous inmates make up 45 per cent of all people in Alberta's federal prisons", *The Globe and Mail* (January 26, 2020) online: https://edmontonjournal.com/news/crime/indigenous-inmates-make-up-45-per-cent-of-all-people-in-albertas-federal-prisons

(e) The overall percentage of Indigenous women in federal institutions in Canada is 50%.[15] In 2020, 65% of women at the Edmonton's Woman Institute were Indigenous.[16]

(f) The most recent Alberta provincial statistics (for 2017-2018) indicated that 40.3% of inmates in provincial institutions were Indigenous.[17]

(g) The proportion of Indigenous inmates in both provincial and federal institutions has increased over time. In 1999, when the Supreme Court of Canada declared that the overrepresentation of Indigenous people in custody "may fairly be termed a crisis in the Canadian criminal justice system" (*R v Gladue,* [1999] 1 SCR 688 at para 64), Indigenous peoples represented 12% of Canada's federal inmates, as opposed to 32.7% today.[18] In 2007-2008, the percentage of Indigenous inmates in Provincial institutions was 36% as compared to 40.3% in 2018 (the most recent available Provincial statistics).[19]

(h) In Canada, 52.2% of children in foster care aged 0-14 are Indigenous, with Indigenous children accounting for 7.7% of children in that age group overall.[20]

(i) In 2014, 28% of Indigenous people aged 15+ reported being victimized in the previous 12 months, compared to 18% of non-Indigenous Canadians. The rate of violent victimization among Indigenous people was more than double that of non-Indigenous people. Indigenous women had an overall rate of violent victimization that was double that of Indigenous men and close to triple that of non-Indigenous women.[21]

(j) In 2011-2012 in Alberta (the most recent date for which statistics are available), 47% of male youth admissions to sentenced custody and 74% of female youth admissions were Indigenous. At that time, 10% of youth in Alberta were Indigenous.[22]

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[15] Patrick White, "'Shocking and shameful': For the first time, Indigenous women make up half the female population in Canada's federal prisons", *The Globe and Mail* (May 5, 2022), *supra*
[16] Dylan Short, "Indigenous inmates make up 45 per cent of all people in Alberta's federal prisons", *The Globe and Mail* (January 26, 2020), *supra*
[17] James Wood, "Poverty cited as Indigenous population in Alberta jails reaches "tragic" levels," *The Globe and Mail* (July 16, 2018) online: https://calgaryherald.com/news/politics/indigenous-population-in-alberta-jails-remains-disproportionately-high
[18] Patrick White, "'Shocking and shameful': For the first time, Indigenous women make up half the female population in Canada's federal prisons", *The Globe and Mail* (May 5, 2022), *supra*
[19] James Wood, "Poverty cited as Indigenous population in Alberta jails reaches "tragic" levels," *The Globe and Mail* (July 16, 2018), *supra*
[20] Indigenous Services Canada, *Reducing the Number of Indigenous children in care* (Canada: Indigenous Services Canada, 2022), Online: https://www.sac-isc.gc.ca/eng/1541187352297/1541187392851
[21] Canada, Department of Justice, *JustFacts: Indigenous overrepresentation in the criminal justice system* (Ottawa: Department of Justice, 2019), online: <https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2019/may01.html>
[22] Canada, Department of Justice, *Youth Criminal Justice in Canada: A compendium of Statistics* (Ottawa: Department of Justice Canada, 2016), online: < J4-58-2016-eng.pdf (publications.gc.ca)> at pages 5 and 31

Process

The process that led to the development of this Strategy was led by Chief Judge Redman. He formed a judicial advisory group comprised of Judge Crowshoe, Judge Ladouceur, Judge Dalton and Judge Hancock. In addition, Chief Judge Redman reported to and sought input from the Indigenous Justice Committee of the Provincial Court and from Chief and Council which is composed of Chief Judge Redman, Deputy Chief Judge Durant and the nine Assistant Chief Judges from the various divisions and regions of the Court. Chief Judge Redman was assisted by former Executive Legal Counsel K. Palichuk and other legal counsel of the Court including Executive Legal Counsel C. Pearce and former Legal Counsel C-A. Downey.

In addition, Chief Judge Redman met with a variety of Indigenous leaders, representatives of Native Counseling Service of Alberta, members of the Bar and others to generally discuss the issues confronting Indigenous peoples who access or interact with the Court (see Appendix 4 – Meetings and Participants). Chief Judge Redman's goal is to meet with the leadership of all Indigenous groups in Alberta. Although he met with many during the past two years, his efforts to reach out and meet with all interested Indigenous groups was hampered by the COVID-19 restrictions. Chief Judge Redman's priority in the coming year is to continue meeting with interested leadership of First Nations and other Indigenous groups to discuss the Indigenous Justice Strategy and other matters of importance to those groups.

A draft of the Indigenous Justice Strategy was distributed to all Alberta Provincial Court judges and justices of the peace as well as to the Alberta Provincial Court Judges Association for review and comment.

The process also involved meeting with representatives of the Ministry of Justice and Solicitor General including Court and Justice Services, recognizing that a comprehensive Indigenous Justice Strategy would benefit from the expertise and support of all stakeholders.

The meetings that took place sought to determine whether the participants were of the opinion that the Court should develop an Indigenous Justice Strategy and, if so, what elements it should attempt to address.

In these meetings the following questions were raised:

1. Should the Provincial Court of Alberta develop an Indigenous Justice Strategy?
2. If yes, what elements should it address?
3. Given your experience how should each of these elements be addressed?

Many participants were also asked if they had developed strategies to address these matters within their organizations and were invited to share them. At some meetings participants were asked to provide written responses to these questions and many did.

All participants asked agreed that the Court should develop an Indigenous Justice Strategy.

Many potential elements of a strategy were addressed. Some of the proposed elements were outside the purview of the Provincial Court. For example, some suggestions involved amendments to existing legislation, requesting that the Court advocate for a particular position or program, or requesting that the Court intervene with the discretion exercised by policing agencies or crown prosecutors.

The Court concluded it was appropriate to focus its strategy on those elements that are closely aligned with its primary function of adjudication. Given that the TRC and the MMIWG Inquiry use the terms "Calls to Action" and "Calls for Justice", the Indigenous Justice Strategy uses the term Response in setting out the action items in this Strategy.

Elements

1. Education, Training and Enhanced Cultural Competency

Ongoing education and training for judges, justices of the peace and staff is central to the Court's responsibility. The Court offers educational opportunities to new judges in the area of Indigenous legal issues and all judges have the opportunity to avail themselves of materials published by the National Judicial Institute (NJI) and to participate in courses offered by NJI and other organizations. The internal Provincial Court judicial education page contains a dedicated Indigenous justice resources page which provides access to a variety of Indigenous justice resources, including Indigenous cultural competency resources, past federal and provincial inquiry reports, relevant statistics and Gladue materials. In addition, the Office of the Chief Judge has provided the opportunity for all judges and justices of the peace to take the online course called *The Path*, which is now required by the Law Society of Alberta to be taken by all lawyers. Judges and justices of the peace also have the option of taking the alternative online course "Indigenous Canada" developed by the Faculty of Native Studies at the University of Alberta.

On June 9, 2021, the Canadian Judicial Council (CJC) published new *Ethical Principles for Judges*. This document is intended to provide ethical guidance related to the principles of judicial independence, integrity and respect, diligence and competence, equality, and impartiality. Although strictly speaking this publication is directed to federally appointed judges it is also of significant guidance to provincially appointed judges. The *Ethical Principles for Judges* states at Section 3: Diligence and Competence that judges must perform their duties with diligence and competence (see Appendix 5: Section lll Diligence and Competence, Principle C). Section 3, Principle C provides:

> **C.** Judges maintain and enhance their knowledge, skills, sensitivity to social context and the personal qualities necessary to perform their judicial duties.

Commentary 3.C.2 comments on the ongoing obligation to maintain a knowledge of the law, noting that this extends not only to substantive and procedural law "but also to an understanding of the impact of the law on those it affects."

Commentary 3.C.4 addresses professional development and states:

> **3.C.4** Professional development describes formal and informal learning activities that include education, training, and private study. It also covers education on social context issues affecting the administration of justice. Social context encompasses knowledge and understanding of the realities of the lives of those who appear in court. This includes the history, heritage and laws related to Indigenous peoples, as well as matters of gender, race, ethnicity, religion,

culture, sexual orientation, gender identity or expression, differing mental or physical abilities, age, and socio-economic background.

To gain a deeper understanding of the history, heritage and laws related to Indigenous peoples and to increase judicial knowledge and understanding of the lives of the Indigenous peoples who appear in Provincial Court, it is necessary to thoughtfully reconsider how the Court can make available professional development opportunities. The Court's educational approach must recognize that Indigenous communities are diverse. It must also recognize that Indigenous peoples in Canada have suffered a long history of colonialism, the effects of which continue to be felt in ways that include hurtful biases, stereotypes, and assumptions.

Response 1: The Court will develop an approach to education which begins with an overview such as *The Path.* It will then build on this to align with the CJC *Ethical Principles* contained in Section 3: Diligence and Competence. Educational opportunities must include the specific history, heritage, and laws of local communities as well as an understanding of and, where appropriate, the participation in cultural activities.

2. Bench Books

The law regarding bail and sentencing is complex. The complexity increases when the person appearing before the Court is Indigenous. The jurisprudence in this area continues to evolve and it is important for judges and justices of the peace to have access to materials that are comprehensive and updated on a regular basis. These materials should include a framework for the application of current legal principles governing Indigenous bail applicants and the sentencing of Indigenous offenders.

There have also been significant legislative developments in Indigenous child protection with the recent passage of Bill 22, *An Act for Strong Families Building Stronger Communities,* SA 2018, c 24 and Bill C-92 *An Act respecting First Nations, Inuit and Métis Children, Youth and Families,* SC 2019, c 24. The jurisprudence resulting from the interpretation of this new legislation is in a state of rapid development.

Response 2: The Court will ensure that Bench Books on bail, sentencing and Indigenous child protection are prepared and kept up to date.

3. Relationship Building

The Provincial Court has a longstanding practice of meeting and consulting with justice participant stakeholders. This has been done in the context of informing stakeholders of the Court's evolving practices and seeking their input in formulating those practices. Justice participant stakeholders that have participated in past consultations include defence bar associations, senior crown prosecutors, and the Canadian Bar Association. The Court's practice of engaging in stakeholder consultation has intensified with the

onset of the COVID-19 pandemic as the Court developed its Pandemic Plan and responded to the various waves of the pandemic.

To more fully appreciate the challenges faced by the Indigenous peoples that the Court serves, it is incumbent on the leadership of the Court to meet with leadership of Indigenous communities in Alberta as well as with Indigenous service providers.

The history, challenges and issues that face Indigenous communities in Alberta vary from community to community. It is important that the Provincial Court leadership be available to Indigenous leaders and service providers and to ensure that stakeholder consultations include Indigenous perspectives.

Response 3: On at least an annual basis the leadership of the Court will meet with the following groups:

1. The Chief Judge and/or Deputy Chief Judge will meet with the leadership of Treaty 6, 7 and 8 and with the leadership of the Métis Settlements and the Métis Nation of Alberta.
2. The Chief Judge and/or the Deputy Chief Judge will meet with Indigenous organizations and service providers including the Indigenous Bar Association and the leadership of Native Counselling Services of Alberta.
3. The Regional Assistant Chief Judges will explore opportunities to meet with Indigenous leadership and service providers in their geographic region.

Response 4: When the Court engages in broad stakeholder consultation in response to an emerging issue (e.g.: the COVID-19 pandemic), it will ensure Indigenous leaders and organizations are considered as potential stakeholders.

4. Access

The mission of the Provincial Court is to provide a fair, accessible and timely system of justice for all Albertans. Without access there can be no justice. The Court acknowledges that many people living in Indigenous communities have difficulty in accessing court facilities and the services provided by the Court, as well as difficulty navigating the judicial system. Barriers to access may include geographical barriers (e.g.: distance to the nearest courthouse), technological barriers (e.g.: accessing and utilizing forms and online resources), language barriers, and resource barriers (difficulty or reluctance in accessing programs that assist individuals navigating the justice system).

Response 5: The Court will work to understand the structures, systems and processes that impede access and work with Indigenous communities and Court and Justice Services to reduce and overcome access issues.

5. Restorative Justice

The Court supports the use of restorative justice practices in all areas of its work. Broadly speaking, restorative justice focuses on restoring persons in conflict to balance. This may involve restoring a person who is out of balance with another person, a victim, or the community. It is remedial in nature. It is most often used in the criminal context, but restorative justice principles are also applicable in all areas of conflict including family, child protection and civil matters.

In the adult criminal context, s 717 of the *Criminal Code* provides for the diversion of matters from the traditional system to other processes in circumstances where "alternative measures" programs are available.

The Calgary Indigenous Court and the Edmonton Indigenous Court are specialty courts that apply Indigenous restorative justice principles in judicial interim release and sentencing hearings. Restorative justice opportunities exist in other courts as well. The Provincial Court is a partner with the Court of King's Bench in the Wiyasow Iskweew Restorative Justice Pilot Project. This project allows the diversion of adult criminal matters at any stage including post-conviction and is available through restorative justice agencies in many parts of the province. Many of the agencies have a specific mandate to provide services to Indigenous peoples.

Response 6: The Court will continue the Wiyasow Iskweew Restorative Justice pilot project. It will also continue to make efforts to identify and partner with additional Indigenous restorative justice programs. The Court will also incorporate restorative justice principles in its other alternative conflict resolution processes.

6. Indigenous Courts

The Court supports the development of Indigenous Courts to meet the needs of local Indigenous communities.

In 1999, the Tsuut'ina Nation and the Province of Alberta agreed to implement a comprehensive First Nation Justice and Peacemaker initiative. This Peacemaker initiative has operated since that time. Other Indigenous communities in Alberta have also initiated Peacemaker programs, all of which seek to incorporate Indigenous principles in court proceedings and to take a more holistic approach to the delivery of justice.

In 2019, the first urban Indigenous Court was established in the City of Calgary with the Edmonton Indigenous Court opening in 2022. Both Courts seek to 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. These Courts are a response to the unique challenges and circumstances of Indigenous peoples. They seek to address the issue of overrepresentation of Indigenous peoples in

the justice system and are a step forward in implementing recommendations from the Truth and Reconciliation Commission as well as the Missing and Murdered Indigenous Woman and Girls National Inquiry Report.

Indigenous Courts focus on applying a restorative justice approach to crime through peacemaking and connecting accused people to their cultures and communities. They deal primarily with bail and sentencing hearings and are open to any accused or offender who is Indigenous and chooses to have matters addressed in these Courts. When an offender is sentenced to probation, a Healing Plan specific to the offender may be included in the probation order. Healing Plans use identified Indigenous community support agencies to assist in reintegrating offenders into the community, and, where appropriate, also encourage offenders to learn about and reconnect with their Indigenous heritage. A ceremony may be held to acknowledge the successful completion of a probation order and the Healing Plan.

The Calgary and Edmonton Indigenous Courts utilize dedicated judges, crown prosecutors and duty counsel who are either Indigenous or experienced in Indigenous restorative justice. The Court also makes use of Restorative Justice Peacemakers, Traditional Knowledge Keepers, Indigenous court workers, and community support agencies. Agencies involved with these Courts include the Elizabeth Fry Society, Calgary Legal Guidance, the Aboriginal Friendship Centre, the Sunrise Healing Lodge, Indigenous Mental Health, Native Counselling Services of Alberta, HomeFront, the John Howard Society, and local police services as well as several other support agencies.

The Court is presently in discussions with other Indigenous communities regarding the establishment of Indigenous courts to meet the unique needs in their communities.

The further establishment of Indigenous courts must be in response to the needs of local Indigenous communities. The local community should initiate the establishment of such a court and all necessary stakeholders should be involved at the initial stages of development. The Court will assist by facilitating and hosting discussions and dialogue.

The Court also operates six Drug Treatment Courts (DTCs) in the following locations: Calgary, Edmonton, Grande Prairie, Lethbridge, Medicine Hat and Red Deer, with an additional DTC expected to be operating in Fort McMurray in early 2023. These courts also apply restorative justice principles and collaborate with stakeholders. There is an opportunity to combine some of the principles of the DTCs and other therapeutic courts with the cultural components of the Indigenous Courts.

An additional opportunity to be explored is the expansion of the use of Indigenous courts and the implementation of Indigenous principles in the family law and child protection context. Depending on the needs of the Indigenous community, this may involve the use of a dedicated family court judge who is familiar with the needs and circumstances of that community.

Response 7: The Court will respond to requests from Indigenous communities to include Indigenous principles in courts that serve those communities. This may involve criminal, family and child protection matters.

Response 8: The Court will continue to work collaboratively with the Indigenous leadership and stakeholders in Indigenous Communities towards the goal of the establishment or expansion of Indigenous Courts that serve those communities.

7. Incorporation of Indigenous cultural components

Eagle feathers

All courts in Alberta, including the Provincial Court of Alberta, have acquired and placed eagle feathers in all courthouses in the province to be used in place of or in addition to affirming or swearing an oath on the bible or other holy book.

Response 9: The Court will ensure that there continues to be available eagle feathers to be used in Court and that judges, justices of the peace, and court staff are informed as to their proper handling, storage, and use.

Translation Services and use of plain language

It is imperative that Indigenous peoples who appear in court be given the opportunity to express themselves and to understand proceedings in their own language. Failure to do so could interfere with the rights guaranteed by s 14 of the *Canadian Charter of Rights and Freedoms*.

There are also circumstances in which Indigenous peoples appearing in Court may not require the assistance of a translator but may nonetheless face challenges in fully understanding the proceedings and their implications. In these circumstances, it is imperative that the Court take steps to facilitate such understanding by explaining legal processes and terminology in plain language.

Response 10: The Court will engage with local Indigenous communities and work with Court and Justice Services to assist in establishing a list of interpreters who can provide interpretation in Indigenous languages.

Response 11: The Court will develop a manual to assist judges and justices of the peace to explain legal processes and terminology in plain language.

Land Acknowledgements

Land acknowledgements are now being used throughout the province to recognize Indigenous peoples' relationship with their ancestral land. Questions have arisen

regarding when and if land acknowledgements should be made in courthouses and, if so, when and by whom.

The Court supports land acknowledgements being given during ceremonial occasions and in connection with the activities of Indigenous Courts. It is understood that these acknowledgements do not create legal rights but rather recognize a deep spiritual connection that Indigenous peoples have with their ancestral land.

On such ceremonial occasions, it may be appropriate to acknowledge the specific First Nations on whose ancestral lands the ceremony is taking place. In circumstances where a number of First Nations have historically occupied the territory or where the ceremony is directed towards a broader audience, it may be appropriate to offer a more general land acknowledgment.

The Court also recognizes that its courthouses are located on the traditional territories of Indigenous peoples. Given that land acknowledgements are not used during routine court proceedings, a plaque placed in courthouse foyers would offer the Court an opportunity to acknowledge this.

Response 12: The Court will create a resource for judges containing both basic and extended sample land acknowledgements for Treaty 6, 7 and 8 as well as for Alberta as a whole.

Response 13: The Court will work with Court and Justice Services, the Court of King's Bench, and the Alberta Court of Appeal to develop appropriate land acknowledgement plaques to be placed in courthouse foyers. These plaques would not recognize a particular nation or tribe but would recognize that all courthouses are located on Indigenous ancestral lands. The plaques and wording would be developed after consultation with Indigenous communities.

A possible draft form of the acknowledgement is:

> "The courthouses of Alberta are located on the traditional and ancestral lands of the First Nations, Inuit, Métis and all First Peoples of Canada who had and continue to have a deep connection with the land and all that it provides."

Smudging

Smudging is a practice of Indigenous peoples. Its purpose is to cleanse the body, the spirit, or a particular place. The Court acknowledges that smudging is a very personal experience for Indigenous peoples and is usually completed in their personal space at a time that is appropriate in their individual circumstances.

The Court supports the use of smudging for ceremonial events, such as a dedication, swearing-in, or bar call ceremony. The Court also supports the use of Indigenous smudging ceremonies in connection with Indigenous Courts. In addition, the Court recognizes there might be other occasions where it is asked to facilitate smudging.

Response 14: The Court supports Indigenous smudging ceremonies on ceremonial occasions and in connection with Indigenous Courts. To facilitate smudging on these and other occasions, the Court will update its Provincial Court Indigenous Smudging Ceremony Protocol and make available a portable air filtration unit (see Appendix 6: Provincial Court Draft Indigenous Smudging Ceremony Protocol).

Art

From time to time the Court has been approached regarding the placement of Indigenous art in public locations within Courthouses. The Court recognizes that art can be both healing and controversial and further acknowledges that the Court must remain both neutral and accessible to all.

Response 15: In Provincial Court locations where Indigenous Courts are operating, the Court will strive to foster a space that recognizes the various Nations it serves. It will consult with local Indigenous communities to select culturally significant art or artifacts for display.

8. Staffing

In addition to the Provincial Court's complement of judges and justices of the peace, approximately 60 individuals work for the Court, primarily in Calgary and in Edmonton, but also in various other locations throughout the province. The Provincial Court recognizes the importance of Indigenous representation in all aspects of the justice system.

Response 16: The Court will develop a strategy to attract Indigenous peoples to apply for vacant court positions and to retain persons with Indigenous backgrounds who are currently employed by the Provincial Court.

9. Mentoring

Strong mentorship is essential to ensuring the success of legal professionals and students. Mentorship provides an opportunity for lawyers and students to connect with senior members of the judiciary and to gain not only practical wisdom but also to broaden professional aspirations and build a sense of community.

Response 17: The Court will develop an Indigenous lawyer and law student mentorship opportunity. It will provide an opportunity for Indigenous lawyers and law students to

meet with and shadow members of the Court for a one-week period in order to become familiar with the day-to-day responsibilities of judicial officers.

10. Gladue Principles

In the decision *R v Gladue,* [1999] 1 SCR 688, the Supreme Court noted at para 69 that "[i]n cases where [systemic] factors have played a significant role [in bringing the offender before the courts], it is incumbent upon the sentencing judge to consider these factors in evaluating whether imprisonment would actually serve to deter, or to denounce crime in a sense that would be meaningful to the community of which the offender is a member. In many instances, more restorative sentencing principles will gain primary relevance precisely because the prevention of crime as well as individual and social healing cannot occur through other means."

The Court is required to take Gladue principles into account in both sentencing (pursuant to s 718.2(e) of the *Criminal Code*) and in bail proceedings (pursuant to s 493.2(a) of the *Criminal Code*). Gladue principles may be presented to the Court by way of a formal Gladue report, or via counsel submissions.

The Tri-Court Gladue Committee has worked to ensure that the directions of the Supreme Court in *R v Gladue* are implemented in the justice system. One of the major areas of focus for the Gladue Committee is the quality and timeliness of Gladue Reports. Gladue writers have advised that the lack of current or adequate contact information for the Indigenous person and collateral contacts is the most significant cause of delay. In order to address this concern and to increase accessibility of the Gladue Report request form for Defence counsel, the Provincial Court in Edmonton is currently involved in a pilot project that allows Defence counsel to submit online Gladue Report Request forms after a Gladue Report has been ordered. The aim of this project is to facilitate more efficient obtaining of Gladue Reports.

The Gladue Committee also organizes an annual Indigenous Students' Legal Career Day in Edmonton so as to encourage Indigenous high school students to consider a career in the justice system.

Response 18**:** The Court will provide educational opportunities and materials for judges and justices of the peace addressing the consideration of Gladue principles in criminal proceedings, including: what the Gladue factors are; how Gladue factors can be presented to the Court in a particular case (eg: Gladue reports or Gladue submissions); the structure of a Gladue report; how to evaluate a Gladue report; Counsel's obligations with respect to the Gladue factors; and the role of the Court in ensuring the Gladue factors are appropriately presented and considered.

Response 19**:** The Court will continue to support the work of the Tri-Court Gladue Committee.

11. September 30 National Day for Truth and Reconciliation

On September 29, 2020, the Government of Canada passed legislation that designated September 30 the National Day for Truth and Reconciliation and made it a statutory holiday. This is a response to Call to Action 80 of the TRC Report, which calls "upon the federal government, in collaboration with Aboriginal peoples, to establish, as a statutory holiday, a National Day for Truth and Reconciliation to honour Survivors, their families, and communities, and ensure that public commemoration of the history and legacy of residential schools remains a vital component of the reconciliation process."

Observation of the National Day for Truth and Reconciliation is a response to the Truth and Reconciliation Commission's Calls to Action and is consistent with the obligation of the Court to offer ongoing training and education to its judges, justices of the peace and staff.

Response 20: The Court will observe the September 30 National Day for Truth and Reconciliation by limiting court operations to only essential services (e.g.: in-custody and return bail and limited family duty court). Each Assistant Chief Judge will search out local activities or ceremonies being offered on September 30. This information will be provided to the judges in their division for potential inclusion in what is encouraged to be a day of education and reflection. A virtual education program will be offered to staff for a portion of the day, and they will be encouraged to attend local events for the balance of the day.

The Provincial Court of Alberta's Responses Summarized

Response 1: The Court will develop an approach to education which begins with an overview such as *The Path.* It will then build on this to align with the CJC *Ethical Principles* contained in Section 3: Diligence and Competence. Educational opportunities must include the specific history, heritage, and laws of local communities as well as an understanding of and, where appropriate, the participation in cultural activities.

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1. The Chief Judge and/or Deputy Chief Judge will meet with the leadership of Treaty 6, 7 and 8 and with the leadership of the Métis Settlement and the Métis Nation of Alberta.
2. The Chief Judge and/or the Deputy Chief Judge will meet with Indigenous organizations and service providers including the Indigenous Bar Association and the leadership of Native Counselling Services of Alberta.
3. The Regional Assistant Chief Judges will explore opportunities to meet with Indigenous leadership and service providers in their geographic region.

Response 4: When the Court engages in broad stakeholder consultation in response to an emerging issue (e.g.: the COVID-19 pandemic), it will ensure Indigenous leaders and organizations are considered as potential stakeholders.

Response 5: The Court will work to understand the structures, systems and processes that impede access and work with Indigenous communities and Court and Justice Services to reduce and overcome access issues.

Response 6: The Court will continue the Wiyasow Iskweew Restorative Justice pilot project. It will also continue to make efforts to identify and partner with additional Indigenous restorative justice programs. The Court will also incorporate restorative justice principles in its other alternative conflict resolution processes.

Response 7: The Court will respond to requests from Indigenous communities to include Indigenous principles in courts that serve those communities. This may involve criminal, family and child protection matters.

Response 8: The Court will continue to work collaboratively with the Indigenous leadership and stakeholders in Indigenous Communities towards the goal of the establishment or expansion of Indigenous Courts that serve those communities.

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A possible draft form of the acknowledgement is:

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Response 19**:** The Court will continue to support the work of the Tri-Court Gladue Committee.

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Appendix 1: Alberta Provincial Court 2021-2024 Strategic Plan, Strategic Priority 5 – Indigenous Initiatives

The Court will work to provide a culturally relevant, restorative, and holistic system of justice for Indigenous individuals including accused persons, offenders, victims, families, youth, and children as well as those Indigenous communities impacted by the actions of those who find themselves before the Court.

5.1 Support the ongoing work and mandate of the Indigenous Justice Committee of Chief and Council;

5.2 Continue to engage local Indigenous communities to gather input into the establishment of restorative and holistic systems of justice that are unique to particular communities, including the feasibility of establishing and implementing additional Indigenous Courts for Criminal as well as Family and Child Protection matters;

5.3 Engage with Traditional Knowledge Keepers and Elders to assist the Court in understanding the unique cultural background and social circumstances of Indigenous individuals and communities to fulfill the sentencing principle in *s. 718.2* of the *Criminal Code* and the Supreme Court of Canada direction in *R. v. Gladue* & *R. v. Ipeelee*;

5.4 Work collaboratively with Alberta Justice and Solicitor General to develop an Indigenous Justice Strategy;

5.5 Identify strategies to improve the effectiveness of available services to Indigenous participants including, but not limited to, those who are experiencing Fetal Alcohol Spectrum Disorder;

5.6 Engage local Indigenous communities to assist in establishing a list of interpreters who can provide interpretation in Indigenous languages.

Appendix 2: List of Commissions and Inquiries

Federal

2022 – Evaluation of the First Nations and Inuit Policing Program
2021 – Miscarriages of Justice Commission (proposed)
2016 – 2019 National Inquiry into Missing and Murdered Indigenous Women and Girls
2014 – 2016 Evaluation of the Fist Nations Policing Program
2008 – 2015 Truth and Reconciliation Commission of Canada
2009 – 2010 Evaluation of the Fist Nations Policing Program
1991 – 1996 Royal Commission on Aboriginal Peoples
1991 – Law Reform Commission of Canada: Aboriginal Peoples and Justice
1990 – Task Force on Police Services on Indian Reserves in Canada
1989 – 1990 Task Force on Federally Sentenced Women

Provincial/Territorial

2022 – 113 Pathways to Justice: Recommendations of the Alberta Joint Working Group on Missing and Murdered Indigenous Women and Girls
2016 – 2019 Val-d'Or Inquiry
2016 – 2018 Independent Police Review of Indigenous People and the Thunder Bay Police Service
2017 – 2018 Thunder Bay Police Services Board Investigation
2016 – 2017 Independent Police Oversight Review
2017 – Independent Review of Ontario Corrections
2016 – Coroner's Inquest into the Deaths of Seven First Nations Youths
2013 – The Iacobucci Review
2010 – 2012 Missing Women Commission of Inquiry
2007 – 2011 The Davies Commission: Inquiry into the Death of Frank Paul
2007 – 2010 Qikiatani Truth Commission
2010 – Review of Yukon's Police Force
2008 – Task Force on Justice in Aboriginal Communities
2007 – Northern Policing Review (Pan-Territorial)
2003 – 2007 Ipperwash Inquiry
2003 – 2004 Commission of Inquiry into the Death of Neal Stonechild
2001 – 2004 Commission on First Nations and Métis Peoples and Justice Reform
1999 – 2001 Aboriginal Justice Implementation Commission
1999 – 2000 Tsuut'ina First Nation Inquiry
1998 – 1999 Task Force on Aboriginal Issues
1995 – Advisory Committee on the Administration of Justice in Aboriginal Communities
1995 – Commission on Systemic Racism in the Ontario Justice System
1992 – 1993 Caribou-Chicoltin Justice Inquiry
1992 – Indian Justice Review Committee & Métis Justice Review Committee
1990 – 1991 Task Force on the Criminal Justice System and Its Impact on the Indian and Métis People of Alberta (Cawsey Report)
1989 – 1991 Policing in Relation to the Blood Tribe: Public Inquiry
1988 – 1991 Public Inquiry into the Administration of Justice and Aboriginal People (Aboriginal Justice Inquiry)
1990 – Osnaburgh/Windigo Tribal Council Justice Review Committee
1986 – 1989 Marshall Inquiry: Royal Commission on the Donald Marshall, Jr., Prosecution

Appendix 3: *R v Gladue*, [1999] 1 SCR 688 at para 93

In the Supreme Court of Canada decision *R v Gladue*, the Supreme Court provided a general summary of its reasons at para 93:

> VI. Summary
>
> 93 Let us see if a general summary can be made of what has been discussed in these reasons.
>
> 1. Part XXIII of the *Criminal Code* codifies the fundamental purpose and principles of sentencing and the factors that should be considered by a judge in striving to determine a sentence that is fit for the offender and the offence.
>
> 2. Section 718.2(*e*) mandatorily requires sentencing judges to consider all available sanctions other than imprisonment and to pay particular attention to the circumstances of aboriginal offenders.
>
> 3. Section 718.2(*e*) is not simply a codification of existing jurisprudence. It is remedial in nature. Its purpose is to ameliorate the serious problem of overrepresentation of aboriginal people in prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing. There is a judicial duty to give the provision's remedial purpose real force.
>
> 4. Section 718.2(*e*) must be read and considered in the context of the rest of the factors referred to in that section and in light of all of Part XXIII. All principles and factors set out in Part XXIII must be taken into consideration in determining the fit sentence. Attention should be paid to the fact that Part XXIII, through ss. 718, 718.2(*e*), and 742.1, among other provisions, has placed a new emphasis upon decreasing the use of incarceration.
>
> 5. Sentencing is an individual process and in each case the consideration must continue to be what is a fit sentence for this accused for this offence in this community. However, the effect of s. 718.2(*e*) is to alter the method of analysis which sentencing judges must use in determining a fit sentence for aboriginal offenders.
>
> 6. Section 718.2(*e*) directs sentencing judges to undertake the sentencing of aboriginal offenders individually, but also differently, because the circumstances of aboriginal people are unique. In sentencing an aboriginal offender, the judge must consider:

(A) The unique systemic or background factors which may have played a part in bringing the particular aboriginal offender before the courts; and

(B) The types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection.

7. In order to undertake these considerations the trial judge will require information pertaining to the accused. Judges may take judicial notice of the broad systemic and background factors affecting aboriginal people, and of the priority given in aboriginal cultures to a restorative approach to sentencing. In the usual course of events, additional case-specific information will come from counsel and from a pre-sentence report which takes into account the factors set out in #6, which in turn may come from representations of the relevant aboriginal community which will usually be that of the offender. The offender may waive the gathering of that information.

8. If there is no alternative to incarceration the length of the term must be carefully considered.

9. Section 718.2(*e*) is not to be taken as a means of automatically reducing the prison sentence of aboriginal offenders; nor should it be assumed that an offender is receiving a more lenient sentence simply because incarceration is not imposed.

10. The absence of alternative sentencing programs specific to an aboriginal community does not eliminate the ability of a sentencing judge to impose a sanction that takes into account principles of restorative justice and the needs of the parties involved.

11. Section 718.2(*e*) applies to all aboriginal persons wherever they reside, whether on- or off-reserve, in a large city or a rural area. In defining the relevant aboriginal community for the purpose of achieving an effective sentence, the term "community" must be defined broadly so as to include any network of support and interaction that might be available, including in an urban center. At the same time, the residence of the aboriginal offender in an urban center that lacks any network of support does not relieve the sentencing judge of the obligation to try to find an alternative to imprisonment.

12. Based on the foregoing, the jail term for an aboriginal offender may in some circumstances be less than the term imposed on a non-aboriginal offender for the same offence.

13. It is unreasonable to assume that aboriginal peoples do not believe in the importance of traditional sentencing goals such as deterrence, denunciation, and separation, where warranted. In this context, generally, the more serious and violent the crime, the more likely it will be as a practical matter that the terms of imprisonment will be the same for similar offences and offenders, whether the offender is aboriginal or non-aboriginal.

Appendix 4: List of Meetings and Participants

In connection with the development of the Strategy, Chief Judge Redman met with the following:

Métis Nation of Alberta (President Audrey Poitras and others); Confederacy of Treaty Six First Nations (Grand Chief Greg Desjarlais and others); Treaty 8 First Nations of Alberta (Grand Chief Arthur Noskey), Bigstone Cree Nation (Chief Silas Yellowknee and others); Blackfoot Confederacy Tribal Council (Jack Royal, CEO); Siksika Nation Chief & Council (Chief Ouray Crowfoot and other Council members); Louis Bull Tribe Council meeting (Chief Irvin Bull and others); Representatives of Treaty 6 First Nations including Saddlelake, Frog Lake, Cold Lake, Onion Lake and Fishing Lake Métis Settlement; Wilton Littlechild (Canadian lawyer and Cree Chief); Métis Settlements of Alberta Association (President Herb Lehr); Senator Patti Laboucane-Benson; Indigenous Bar Association (President Drew Lafond and others); Native Counselling Services of Alberta (President Marlene Orr, Director of Operations Robyn Scott); Faculty of Native Studies, University of Alberta (Justice Tony Mandamin); Indigenous Relations and Supports, Norquest College (Tibetha Kemble-Stonechild); Restorative Justice Alberta (Jan Moran); Chief Commissioner for the National Inquiry into Missing and Murdered Indigenous Women and Girls (University of Victoria, Chancellor, Judge Marion Buller); BC First Nations Justice Council (Douglas S. White III); Royal Canadian Mounted Police (Deputy Commissioner Curtis Zablocki); Edmonton Police Service (Chief of Police Dale McFee); Calgary Police Service (Chief Constable Mark Neufeld, Deputy Chief Paul Cook, Deputy Chief Chad Tawfik, Deputy Chief Katie McLellan and others); Representatives from the Canadian Bar Association, Law Society of Alberta, Indigenous Bar Association, Legal Aid of Alberta, Edmonton Bar Association, Calgary Bar Association, Lethbridge Bar Association, Medicine Hat Bar Association, Red Deer Bar Association, Grande Prairie Bar Association, and Fort McMurray Bar Association; various representatives from the Ministry of Justice & Solicitor General including Deputy Minister Bosscha, and Assistant Deputy Ministers; Representatives from Alberta Crown Prosecution Service, The Criminal Trial Lawyers Association, and The Criminal Defence Lawyers Association.

Chief Judge Redman's goal is to meet with the leadership of all Indigenous groups in Alberta. Although he met with many during the past two years, his efforts to reach out and meet with all interested Indigenous groups was hampered by the COVID-19 restrictions. Chief Judge Redman's priority in the coming year is to continue meeting with interested leadership of First Nations and other Indigenous groups to discuss the Indigenous Justice Strategy and other matters of importance to those groups.

Appendix 5: CJC Ethical Principles for Judges, Principle III: Diligence and Competence

Principles

III. Diligence and Competence

Statement

Judges perform their duties with diligence and competence.

Principles

A. Judges devote themselves to their judicial duties, broadly defined, which include presiding in court and making decisions, as well as those duties essential to court operations and to the administration of justice. Judges do not engage in activities incompatible with the diligent discharge of judicial duties.

B. Judges perform all judicial duties, including the delivery of reserved judgments, with punctuality and reasonable promptness, having due regard to the urgency of the matter and other special circumstances.

C. Judges maintain and enhance their knowledge, skills, sensitivity to social context and the personal qualities necessary to perform their judicial duties.

D. Judges strive to maintain their wellness to optimize the performance of judicial duties.

Commentary

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Professional Development

3.C.1 A well-educated and informed judiciary that adheres to high standards of competence is essential to preserving public confidence.

3.C.2 Judges should have and maintain knowledge of the law. Knowledge extends not only to substantive and procedural law but also to an under-standing of the impact of the law on those it affects.

3. C.3 Judges are responsible for maintaining and enhancing their knowledge, skills, and personal qualities necessary for effective judging. This important element of judicial diligence and competence involves participation in continuing professional development.

3.C.4 Professional development describes formal and informal learning activities that include education, training, and private study. It also covers education on social context issues affecting the administration of justice. Social context encompasses knowledge and understanding of the realities of the lives of those who appear in court. This

includes the history, heritage and laws related to Indigenous peoples, as well as matters of gender, race, ethnicity, religion, culture, sexual orientation, gender identity or expression, differing mental or physical abilities, age, and socio-economic background.

3.C.5 Judges should develop and maintain proficiency with technology relevant to the nature and performance of their judicial duties.

3.C.6 As part of a judge's commitment to continuing professional development, judges should engage in self-assessment and self-development, taking responsibility for their standard of knowledge, skill and the development of personal qualities related to judicial duties.

3.C.7 To support judges' commitments to their continuing professional development, the CJC and National Judicial Institute, as well as other organizations, have developed relevant, comprehensive, quality educational programs. Judges should participate in these programs in their continuing commitment to acquire, maintain and strengthen their judicial knowledge and skills.

3.C.8 Consistent with their judicial duties, judges are encouraged to take advantage of opportunities to engage with and learn from the wider public, including communities with which the judge has little or no life experience.

Appendix 6: Draft Indigenous Smudging Ceremony Protocol

Purpose

Smudging is a practice of Indigenous peoples. Its purpose is to cleanse the body, the spirit, or a particular place. The Court acknowledges that smudging is a very personal experience for Indigenous peoples and is usually completed in their personal space at a time that is appropriate in their individual circumstances.

The Court supports the use of smudging for ceremonial events, such as a dedication, swearing-in, or bar call ceremony. The Court also supports the use of Indigenous smudging ceremonies in connection with Indigenous Courts. In addition, the Court recognizes there might be other occasions where it is asked to facilitate smudging.

The Indigenous smudging ceremony protocol has been established to authorize and facilitate Indigenous smudging ceremonies on these occasions.

Request and Authorization

An application to conduct an Indigenous smudging ceremony ("smudging ceremony") in or adjacent to a courthouse located in their jurisdiction may be made to the appropriate Assistant Chief Judge or designated judge.

In considering whether to facilitate the smudging, the Assistant Chief Judge or designated judge will consider all relevant factors, including:

1. The reason for the request;
2. Whether proper infrastructure exists to facilitate the smudging ceremony;
3. If there is no such area within the courthouse, whether it would be appropriate to conduct the ceremony outdoors, adjacent to the courthouse; and
4. Whether the smudging ceremony can be facilitated in harmony with court proceedings.

Upon approval of the application, the Court Operations Manager, Court Security, and the requesting party will be notified of the Assistant Chief Judge or designated judge's decision.

Facilitating the Smudging

The Assistant Chief Judge or designated judge will contact the Court Operations Manager to determine if a courtroom or other location in or adjacent to the courthouse is available for a smudging ceremony. The Court Operations Manager shall, if a courtroom is designated for such purposes, assign a courtroom for the smudging ceremony to occur. If no area within the Courthouse is designated for smudging ceremonies, the Court

Operations Manager may designate another area in or adjacent to the courthouse for the smudging ceremony.

The Court Operations Manager will be responsible for notifying Court Operations staff that a smudging ceremony will take place at the Court site.

The party requesting the smudging ceremony will be responsible for providing the articles required to conduct the smudging ceremony.

The Court Operations Manager will also ensure that matters are scheduled so that members of the judiciary and Court Operations staff are aware of the smudging ceremony.

The Court Operations Manager will ensure receptacles for disposing of the match and the ashes are in place. Once the ceremony is completed, the Court Operations Manager will conduct any necessary clean-up.