

# Indigenous Peoples Court Review

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For the Thunder Bay Indigenous Friendship Centre



Prepared by:



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## **Review of the Indigenous Peoples' Court**

### ***INTENT of the Indigenous Peoples' Court:***

- ***Healing;***
- ***Recognition of unique circumstances of Indigenous people within the framework of existing laws;***
- ***Provision of support access to healing that assist in the participant's rehabilitation;***
- ***Reduce recidivism;***
- ***Seek to acknowledge and repair harm to victims and community; and***
- ***Reconnect and bridge the gap between offenders and their Indigenous community, culture, including service providers and the justice system.***

*"It was also the intent to open the doors for mainstream to develop that relationship with us, to partner with us, to help us make a difference in the lives of Indigenous people...both walking down a path or rowing side by side down the river; that's what the vision was about."*

*Charlene Baglien, Executive Director*

This court is a response to R. vs Gladue and R. vs. Ipeelee decision that section 718.2 (e) asks the court to take into consideration the history and experiences of an Indigenous offender so as to address the overrepresentation of Indigenous people in the criminal justice system.

The IPC process further responds directly to the recommendations from the "Calls to Action" outlined in the "Truth and Reconciliation Commission" (TRC) recommendations:

***#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.", and***

***#33 "We call upon the federal, provincial and territorial governments to recognize as a high priority the need to address and prevent Fetal Alcohol Spectrum Disorder (FASD), and to develop, in collaboration with Aboriginal people, FASD preventive programs that can be delivered in a culturally appropriate manner.***

Through healing recommendations and casework, IPC service delivery addresses additional TRC recommendations which is unique for each offender.

## **Preamble:**

The review of the *Indigenous Peoples' Court* (IPC) was initiated by the *Thunder Bay Indigenous Friendship Centre* (TBIFC) with funding from the *Indigenous Justice Division* at the *Ministry of the Attorney General*. This review is to determine what is working, what is not working, identify challenges, and training needs, review process of recruiting *Elders and Knowledge Keepers*, identify short-and-long term goals, and provide recommendations/suggestions.

Interviews are to be conducted with those directly involved and those who have participated in IPC. A draft will be presented with those who participated in the review to ensure the review captures the responses accurately. Once finalized, the report will be shared publicly with other Indigenous and non-Indigenous organizations and/or interested parties.

It is acknowledged that with any new initiative, here is a need for a review to ensure that the initiative is doing what it was intended to do. Since inception, there have been some significant changes that have impacted IPC operations and the intent of this court, including the ongoing pandemic.

## **Background:**

The *Indigenous Peoples' Court* has been in operation for over 5 years with the first court heard in March 2017. Court sits on average of one to two times monthly with an average of 19 courts per year. The IPC Caseworker has seen 62 Indigenous adults and 8 youth with approximately 75 court sittings. Two *Elders and Knowledge Keepers* have appeared in each of these courts with the exception of one *Elder* appearing in five of the 75 IPCs.

In the past five years, IPC has seen six different *Judges*, nineteen *Crown Attorneys* and ten *IPC Caseworkers*.

The pandemic caused delays in services for accused to follow through with healing plans. There was a 12-month gap in IPC with the last court sitting on February 11, 2020. During the closure of IPC, accused appeared in mainstream court. To help with the delay and in moving forward with clients, during October to December 2020, the *IPC Caseworker* advocated with the court and began facilitating court circles (10) at a local hotel that included the *Crown Attorney* and *Defence Counsel*. On March 23, 2021, IPC began hosting court via "Zoom." This posed a challenge for *Elders* as some did not have access to technology and were not comfortable using technology. Those *Elders* without technology and those not comfortable with it were supported by setting them up with access to IPC at the TBIFC justice office. In-person services resumed in August of 2021.

This court recognizes and acknowledges the unique circumstances of Indigenous accused, and in doing so, provides opportunities for healing and ongoing support that will assist an accused in following through with a healing plan. Indigenous accused who participate in this court do so with the

understanding that they are prepared to acknowledge responsibility for their behavior and actions that gave rise to their charge(s) before the court. They are expected, at minimum, to enter a guilty plea in order to be considered for IPC.

Victims are contacted by the *TBIFC Victim Advocate Caseworker* and are informed that the Indigenous accused is applying for participation in the IPC and given an explanation of what this will mean for them, what their thoughts are, and identify any concerns they may have. This information is then shared with the Crown Attorney. Victims are encouraged to attend and participate in IPC. Safety of victims is at the forefront during the whole process of this court.

The *Elders and Knowledge Keepers* play a fundamental role as they lead in the ceremonies that help participants feel welcome and included in an environment that is intimidating. *Elders and Knowledge Keepers* speak directly to the accused and provide support, direction, guidance, community connections, and build a foundation for self-determination. They make recommendations for consideration to the presiding judge for healing opportunities and sentencing outcomes for the accused based on the accused's history and in the sharing of their story.

Recommendations for the accused have generally consisted of participation in programming and services such as the *Domestic Violence Intervention Program*, anger management, grief and loss / counselling, addictions treatment, harm reduction, clinical assessments and cultural programming / activities. Too many tasks in the healing plan given all at once causes the accused to become overwhelmed. This is often combined with other bail conditions (i.e. access to home and family members) that can leave the accused homeless and places them at a higher risk to re-offend. Further, the inconsistency court appearances of *Judges* and *Elders/Knowledge Keepers* has often resulted in additional tasks being added to the initial healing plan. This again, leaves the accused overwhelmed because they have more to do and this creates confusion because there is no end in site. Healing plans are amended when changes are recommended, and this becomes harder for the accused to experience a sense of completion and/or accomplishment.

## **Review:**

Many meetings were held with the consultant and TBIFC to develop the framework for this review. Interviews were held with *Elders and Knowledge Keepers, Crown Attorneys and Defence Counsel, TBIFC Staff and Board members*, and the Indigenous accused. *Judges* were included in the list of interviewees, however; they declined to participate in this review.

Six (6) stakeholder questionnaires were developed with an average of twenty-three (23) questions that were the same or similar for each target group. The review was intended to highlight the successes, identify challenges and formulate recommendations.

The review was conducted over the course of a six (6) month period, beginning March, 2022. A total of twenty-three (23) stakeholder interviews were conducted.

All interviews were held in confidence and not shared within this report individually but are shared collectively. Each interview was reviewed with each stakeholder to confirm accuracy in the information provided. Initially it was anticipated that only 2 hours would be needed per interview; however in reality, they took 3 - 4 hours. Interviews were completed in person, through Zoom and/or by phone. Some interviews posed a challenge for the consultant due to conflicting schedules and the ongoing pandemic. Some did not participate as a result.

The responses from the review were generally positive along with areas that have been identified as requiring further development and/or change.

### **Highlights of What Works Well in IPC:**

Engaging in culturally specific processes that are more meaningful for all those participating within mainstream court such as ceremonies.

The incorporation of restorative justice practices with a considerable focus on healing/rehabilitation that ultimately impacts the accused, family, and the community.

That the process takes into consideration the impact of historical trauma and current situations affecting the accused, family and the community.

That there are some *Elders and Knowledge Keepers* that appear regularly in IPC.

Ability to directly communicate with some *Crown Attorneys* and *Judges*.

A desire to work together to create change.

IPC has changed the lives of the participants for the better.

One accused stated: ***“It reinforced what I already believed in; it brought me back to what my parents taught me, and it made me reflect...those values, those practices, our lifestyle. These are things I lived by, and I enjoyed it. It depends on where you’re from geographically; because different practices; it gave me a chance to go back to my teachings. It’s my guidance for as long as I live. It reinforced my beliefs. I’ve had a positive experience and every person played a role in my healing, including the Elders, prosecutor, Judge, crown, everyone. It made me see the big picture.”***

## **Highlights for Development:**

Each Judge has their own style of presiding in court (smudging, prayer, introductions, how a healing circle is conducted, breaking to discuss recommendations, ensuring everyone has been heard, etc.) creating inconsistency and confusion.

Not all participants understand court terms or legal terminology used.

Minimal flexibility in court attire, formal court processes (I.e., “All stand” when Judge enters / leaves the courtroom).

Lack of knowledge of local cultural practices.

Lack of training i.e. Mental Health First Aid, First Nations Training, Applied Suicide Intervention Skills, harm reduction.

The application process - length of time between application and approval.

Accused not fully understanding IPC.

Recording of *Healing Circles* – some feel that this is inappropriate / not in keeping with our cultural practices.

Who’s responsible for the care of IPC sacred items?

Limits in the types of cases being heard in IPC.

Regular meetings to review and discuss best practices, challenges, cultural teachings, etc.

Inconsistency of Judges, Crown Attorneys, Elders & Knowledge Keeper, and IPC staff appearing in court.

Inclusion of other Indigenous agencies?

Lack of participation by Defence Counsel due to LAO certificate restrictions.

Confusion regarding the *Blanket Ceremony* (who should receive it, when, and how its delivered.)

No formal orientation, training or manual.

## **Response to Interview Questions:**

Following are the collective responses to questions in the review:

### **1. What is your understanding of the intent of IPC with respect to Indigenous or Alternative Justice?**

- IPC is a “Healing Court” that incorporates traditional practices that include input from Elders and Knowledge Keepers;
- It services Indigenous individuals who reside in Thunder Bay;
- It offers Indigenous individuals an opportunity to engage in culturally specific processes that is meaningful and provides opportunities for healing and restorative justice practices;
- Those who work within IPC take into consideration the impacts of historical trauma of all participants;
- IPC responds to the *Truth and Reconciliation Commission Report* recommendations #30, 31 and 33; and
- It is an opportunity for courts to actively participate in making change as to how justice is being administered for Indigenous people.

### **2. Have you been involved with IPC? If so, in what capacity have you been involved? Are there any barriers with respect to your involvement?**

**Those interviewed were involved with IPC in a wide range of capacities.**

- From the beginning, investigating other IPC’s from across the country, writing proposals, planning and IPC implementation;
- Elders and Knowledge Keepers participate in IPC;
- Caseworkers such as Gladue Writers, Court Workers, etc.;
- Crown Attorneys and Defense Counsel participate in IPC regularly; and
- TBIFC Board members have not participated in IPC but have been provided updates.

#### **Barriers:**

- Stakeholders identified initial challenges in the development of IPC such as having to submit a proposal; security at the courthouse; the intent and responsibility of the eagle staff; communication; process and protocol barriers;
- Crown is the only decision-maker to approve accused for IPC;
- General lack of Defence Counsel participation;
- Types of charges accepted in IPC;
- Lack of Elders;
- Lack of male Elders;
- Honorarium inadequate;



- Honorariums are taxable after \$500 as per Revenue Canada policy;
- Lack of collaboration between the different parties i.e., Elders/KK, Elders/KK and TBIFC staff, Elders/KK, TBIFC staff and court personnel etc.

**3. What is the role of the Elder/Knowledge Keeper and what knowledge or skills do you think an Elder or Knowledge Keeper should have to participate in IPC? How can we recruit?**

**Roles of the Elder/Knowledge Keeper:**

- A support person for the participant;
- An advisor to the Judge and court personnel with an Indigenous perspective; and
- Provides ceremony, cultural teachings, advice and guidance in IPC.

**Knowledge/Skills Needed to Participate in IPC:**

- Must be reputable, accepted by, and /or recommended by a community and /or Indigenous organizations in the region;;
- Must have knowledge and understanding of the historical traumas and the impact it has had on Indigenous peoples I.e. residential school, sixties scoop, colonization etc.;
- Must practice living the good life / be on a good path;
- Have lived experience and practice Indigenous spirituality;
- Have unique cultural teachings, understand the importance of ceremony, speak the language, and live the *Seven Grandfather Teachings*;
- Be compassionate, empathetic, and have a strong desire to help and make change; and
- Must reside in the City of Thunder Bay.

**How to Recruit Elders/Knowledge Keepers:**

- Reach out to communities and organizations for potential candidates;
- Utilize mainstream media (Facebook, websites, handing out or presenting educational information about IPC at different organizations and events such as conferences, forums and word of mouth); and
- Secure funding for a person to promote, educate and recruit.

**4. If you have been involved with IPC, what training have you received? Would you recommend other training?**

- Initially, orientation and mentorship were provided to Elders on IPC processes;
- Some indicated that they have obtained more education, taken training, read books, obtained other teachings; and

- Attended different events and ceremonies to learn more on their own.

### **Recommended Training:**

- Regular orientation;
- Hands on training (observing the court and court house, sitting in court proceedings to understand the processes, and mentorship and ability to ask questions);
- Cultural awareness training;
- Mental Health First Aid, First Nations Training (specific Mental Health Training if working with First Nations);
- Legal terminology training;
- FASD training;
- Cultural teachings & cultural protocols (ensuring they are Elder lead, ensuring they are consistent, it was suggested having a head Elder);
- Bimickaway Training (as recommended by an Elder and was designed by Indigenous Peoples Justice Staff);
- Organization and resources available in community (training, resource fair and lunch & learns), housing, how to secure ID, available treatment programs, cultural programs, etc.;
- Formal training, experiential learning and presentations on IPC for Crowns, court personnel, law students and new recruits (Elders/Knowledge Keepers);
- Cultural appropriation;
- Domestic violence;
- Visiting other IPC's;
- Harm reduction;
- Client focused care;
- Trauma informed care;
- Traumatic brain injury;
- Gladue training;
- Restorative justice training;
- Cultural retreats & workshops;
- Legal training (alternative sentencing options);
- Motivational interviewing;
- Narrative therapy (as recommended by TBIFC Staff);
- Impacts of violence; and
- How to develop a healing plan.

- 5. This court is meant to be delivered incorporating Indigenous culture (smudging in the court, use of medicines, use of the feather, breakout into a healing circle, ceremonies). Is there anything you would change or add?**

- Ensure it is a circle environment;
- There should not be a table between us in the court room;
- Elder and Judges should not breakout during court to discuss a particular case; this is not considered community decision making;
- Participants need to be invested in their healing, need to have a voice, and need to be a part of developing their healing plan;
- There is an inconsistency in judges, all may not be comfortable in the cultural/ceremonial processes, and do not always understand how to incorporate the use of these processes;
- Encourage other services providers, family and supports to participate as they are important to the process;
- Elders to provide teachings (explanation) on what the circle is, why we are smudging, what the tobacco ties are used for;
- Consistency of cultural teachings i.e. blanket ceremony (when and why it is used, who is responsible for delivering it, and what is the intent of the ceremony);
- Currently Elders open and close the court/ not to be confused with individual smudging;
- Offer accused an opportunity to smudge regardless of when they enter IPC;
- Removal of black robes worn by Judges and court staff as this has “triggered” trauma to Elders, Knowledge Keepers, Indigenous workers, and participants as it has a direct correlation to colonialism and residential school experiences;
- There was a period of time when the presiding judges in IPC were not wearing their robes;
- There is a beautiful beaded collar that was introduced to the court for the judges and sashes for the Elders, but were unable to be worn. The preferred change would be to no longer wear the robes;
- The requirement to stand to address the court in IPC has been eliminated, as it wasn’t consistent with the teaching of the circle. The “all rise” command from the court clerk at the beginning of court requirement should likewise be eliminated, for the same reason – it elevates some over others, and we are all to be equal in the circle;
- IPC court should be expanded to include additional IPC courts in order for more Indigenous people to have access to this specialized court, considering 80% of people in jail are Indigenous, if not more; and
- Need to have Indigenous Judges and court personnel.

**6. What are your thoughts about healing circles being recorded? i.e., those participating may not be as honest knowing they are being recorded?**

- Circles should not be recorded;
- It is noted that some portions must be recorded such as the plea, facts of the charge, and the finding of guilt, as well as the sentence imposed;

- The sharing portion can be done with the recording turned off, and the judge can then summarize any portions required for legal purposes;
- Need to move to the inner-circle to remove the physical barrier of the desks as this creates an intimate environment and can put participants at ease; and
- Moving to the inner circle represents restorative justice practices.

**7. With respect to decolonizing the court process, what are your thoughts about the wearing of traditional attire in IPC (ribbon skirts/vests/sashes)? Are you in support of this?**

- There is overwhelming support for those who wish to wear Indigenous traditional attire;
- Concern was noted of cultural appropriation by non-Indigenous persons wearing Indigenous traditional attire; it was further noted that if wearing traditional attire is done respectfully then there should be no concerns;
- There were mixed responses for Judge's wearing their black robes as Judges have earned the right to wear them; and
- It was stated that the Judges' robes were intimidating.

**8. IPC has its own bundle. What are your thoughts about the responsibility for feasting/caring for these items? Whose responsibility should this fall upon? Would you be interested in participating in feasting these items?**

- TBIFC IPC Caseworker's responsibility with the guidance and support of Elders;
- TBIFC IPC Caseworker to take care of the items and obtain ceremonial medicines, food, etc. to feast;
- Elder to perform ceremony; and
- All interviewees expressed interest in participating in the feasting of these items.

**9. Court room 101 (the room used for IPC) has its own eagle staff that was made by an Elder from Marten Falls. Have you participated or been invited in the feasting of the eagle staff?**

- Most interviewees were not invited;
- A few were invited, and a few were not invited, but attended;
- Several women felt disrespected because of the lack of water present at the ceremony; and
- Other Indigenous persons were not asked to assist with the ceremony.

**10. What is your understanding of what makes *Healing Plans* different from mainstream court?**

- Mainstream court is punitive and is not restorative;
- Healing plans are intended to address the accused's trauma, challenges, behaviours etc.;
- Healing plans are unique and geared to the accused;
- Accused participate in develop thing their own healing plan;
- Healing plans are intended to help reduce recidivism; and
- Healing plans are worked on and/or completed in advance of sentencing.

**11. Applicants come into IPC with various types of charges such as assault, DV charges, robbery, etc. What would your thoughts be if IPC were to specialize or focus on specific types of cases/charges such as family/domestic violence?**

- IPC has been seen to be effective for individuals dealing with domestic violence;
- There is an expressed desire to specialize in family/domestic violence;
- There are Indigenous programs that support domestic violence offences;
- Family violence should be included;
- Expand to include other serious offences;
- Interviewees identified a need for training; and
- Interviewees identified a need for additional supportive staffing.

**12. Currently, the pre-requisite to access IPC is that an individual is required to enter a guilty plea to a charge. What are your thoughts about this? Should this continue to access IPC?**

- A guilty plea should not be required in order to access IPC;
- Should the person want to participate in IPC, it should be understood that this person is taking responsibility for their actions and behaviour;
- Pleas aren't entered until the end, but each case is unique as it relates to sentencing; and
- Consideration for plea/sentencing is based on accused's motivation, the circumstances of the offence, and the victim's input.

**13. Currently the Crown Attorneys' office reviews and approves IPC participants. What are your thoughts about also having the IPC Caseworker interview participants to determine applicant's motivation for participation? In many cases participants are not fully aware upfront as to what IPC is about. How would you see this benefiting participants?**

- Approval of IPC participants should be done in collaboration with the Crown and the IPC Caseworker;

- Currently there are discussions occurring around this issue, but no final decisions have been made; and
- It is noted that victims have been consulted during the application process.

**14. What are your thoughts about the number of times IPC is being offered? 1-2 times per month. Do you feel this is sufficient?**

- Offering IPC 1-2 time per month is sufficient given current and available resources;
- Should IPC significantly increase its caseload, IPC court would need to be held more often; and
- Should the number of IPC sittings increase, additional staffing will be needed to meet the increased caseload.

**15. What are your thoughts on the length of time participants (accused) are given to complete their healing plans?**

- Participants are welcome to take as much time as they need as long as they are actively working on their healing plans;
- Factors affecting the length of time required to complete healing plans include homelessness, do not have phones, lack of family support, access to programming...not offered when needed, programs are full, wait times are lengthy for treatment, access to Gladue writers, etc.; and
- Defense Counsel tend to rush the process and impact healing plans; however, this is perceived as being done due to limits in legal aid certificates.

**16. When an individual is participating in IPC, they are required to complete several Healing & Wellness tasks (all at once) as part of their healing plan i.e. counselling, substance abuse treatment, anger management, etc.**

- a) Do you believe these tasks should be more specific or measurable in order to determine completion/compliance? In what way could we measure completion or compliance?**
- b) Do you believe these tasks should be given one at a time and have the participant appear more often with providing updates...to prevent the client from becoming overwhelmed?**

**Completion/Compliance:**

- Ensuring the task is measurable i.e., completing programs, number of sessions attended for counselling, copies of certificates of completion, etc.;
- Success is taking that first step and learning from it...it could be that one thing that get participants back on the right path;

- Updates are provided to Elders/Knowledge Keepers prior to IPC days on those appearing in IPC; and
- Updates are provided to Crown Attorney on those appearing in IPC.

**Tasks:**

- Participants are unique and plans are unique and should be developed and modified based on the individual's ability to follow through.

**17. What is your understanding of “eligibility” for an individual applying to participate in IPC?**

- The individual has to identify as being Indigenous;
- Be a resident of Thunder Bay;
- Prepared to enter a guilty plea to one or more of their charges;
- Take responsibility which gave rise to their charge(s);
- Be prepared to work on their issues; and
- Be prepared to repair harm/make amends.

**18. What is your understanding of when a blanket ceremony should occur for the participant?**

- When the participant has accomplished what was set out with respect to their healing plan;
- When the participant has made significant changes in their life i.e.. going back to school, graduating, securing a job, getting their children back from child welfare, clean and sober for 6-12 months etc.; and
- There is a need for clarity of what a blanket ceremony is.

**19. When you were participating in IPC, do you feel you were given enough opportunity to speak?**

- All felt they were given the opportunity to speak; and
- Two had stated they had to make their voice heard, at times.

**If you speak your language, have you been given that opportunity to speak it?**

- All felt they were given the opportunity; and
- Some indicated they do not speak the language.

**Do you struggle to understand some of the legal terminology spoken in IPC? If you did not understand, did you seek clarity? If not, why?**

- Some did struggle with understanding the legal terminology;
- Some felt comfortable to ask for clarification...some did not.

**Do you feel you are being heard by those present? If no, please give me an example of when you felt you weren't heard.**

- All felt they were being heard by those present.

**Do you feel your directions/recommendations/suggestions and advice given were taken seriously or feel there was hesitancy when developing healing plans for a participant?**

- Most felt their directions/recommendations/suggestions and advice were taken seriously; and
- Others felt they were not always acknowledged, and what they had to say...was not taken into consideration.

**20. Have you been able to follow a participant from beginning to end through IPC? If not, what prevented you?**

- IPC Caseworker & Defense Counsel were able to follow participants;
- Crown and Elders were not always able to follow participants all the way through; and
- All have stated that they would prefer to follow the participants from beginning to end.

**Challenges that prevented those from following a participant from beginning to end were identified as:**

- Scheduling conflicts;
- Participants having to repeat their story;
- Healing plans are modified or amended...this leads to frustration and confusion for the participant;
- Inconsistency in court personnel (Judges, Crowns); and
- Inconsistency in Elders/Knowledge Keepers.

**21. What do you think works well in IPC? What do you think does not work well in IPC?**

**What Works Well:**

- Elders and Knowledge Keepers participation in IPC providing input, guidance, recommendations, culture and ceremony;
- Elders/Knowledge Keepers felt meeting with Judge prior to the start of court worked well;



- Having a Caseworker that provides access to services;
- Participants indicated feeling less intimidated as opposed to mainstream court; and
- Participants felt they were heard...could share their story and appreciated being able to access culture and ceremony.

### **What Does Not Work Well:**

- Lack of LAO compensation for Defense Counsel to participate and access IPC;
- Prior to start of IPC, Elder should communicate to Judge expectations of opening and closing / smudging of each participant because each Elder is different and have their own teachings;
- The impact of colonial attire (black robes);
- Offering a smudge to participants who weren't present for the opening;
- Noise of the fan in court room is an issue for some...disabilities;
- Plexiglass removal;
- Changes in Judges & Elders appearing in IPC (affects the process for participants);
- There is no process/procedural manual;
- Inconsistency of Elders/Knowledge Keepers;
- Inconsistency and turn over in IPC caseworkers poses challenges for counsel and participants;
- Lack of training for non-Indigenous (Judges, Crowns, Defense Counsel, law students) on cultural awareness, historical impacts, culture & ceremony; and
- Lack of training for Elders/Knowledge Keepers and caseworkers.

### **22. Does the Indigenous People's Court need a new name instead of IPC? What would your suggestions be as to how we go about doing this?**

- IPC is already known and clearly indicates what the court is;
- Have a naming contest with the Elders/Knowledge Keepers, caseworker, participants and community about potential secondary Indigenous name;
- The Indigenous People's Court is known and most felt that it should remain as is; and
- Others felt that if there is a need to change the name, it should be a secondary name, and done by way of a contest.

### **23. Are there any recommendations/suggestions/thoughts that you would like to share that I have not asked in this review?**

- Most felt everything was covered in the questions asked;
- Most stated that it was an amazing program and that other charges should be considered through IPC;
- It is noted that breaches of confidentiality could potentially occur during the sharing of information;

- Greater supports for clients for transportation and childcare to access programming are needed;
- Administration and implementation are an issue...IPC is not performing the way it was intended...all parties should be working collaboratively;
- Include other restorative justice programs i.e., NAN and Nokiiwin;
- Procedural aspects need to be developed; and
- Greater conversations on how we can partner...important to look at this.

### **Training & Capacity Building Resources**

Please see 2.0, question 4 for a detailed list of training that was identified by those interviewed.



## **Final Recommendations**

### **Recommendation 1 – To strike an IPC Working Committee immediately to address the IPC Review.**

Notes:

- The IPC Working Committee should consist of a small group of people who can make decisions to move the recommendations forward. Special invites can be extended as needed.
- IPC Working Committee to include the following – Judge, Crown Attorney, Defence Counsel, representatives from TBIFC, NALS as they had the original vision, and Elder/Knowledge Keepers.
- The IPC Working Committee should consider securing a person to do the work developing a manual.

### **Recommendation 2 – That an Orientation or Operations Manual be developed.**

Notes:

- A review of the original proposal dated December 2016 could assist with these recommendations.
- Manual to include the following areas: Introduction, Background, Objectives of IPC, General Description of IPC, Role and Responsibilities of those regularly involved (Judges, Elders/Knowledge Keepers, support staff, etc.), processes and procedures, application process, training, etc.
- Essential training be identified for Elders/Knowledge Keepers, justice personnel, and TBIFC staff, or others who have expressed interest in participating in IPC.

### **Recommendation 3 - That court personnel no longer wear “black robes” in IPC and that consideration be given to wearing Indigenous attire.**

Notes:

- Wearing of “Black Robes” can be triggering for Indigenous people (Residential School and Indian Day Schools).
- Initially Indigenous attire was worn in IPC. A traditional yoke for the Judge and sashes for Elders/Knowledge Keepers has been made to be worn in IPC. Ribbon Skirts and Vests are also available to be worn.
- Wearing Indigenous attire would improve the relationship between the Indigenous community and the courts and be seen as reconciliatory.

### **Recommendation 4 – That the recording of inner “Sharing Circles” be discontinued.**

Notes:

- It has been observed that other Indigenous Courts have not recorded circles held in court such as Brantford Aboriginal Peoples court, and it is believed on occasion this was done in IPC.
- Culturally it is inappropriate to record healing circles. The inner “Sharing Circle” in IPC is believed to be a healing circle and is considered a ceremony. This is a time when the accused is

asked to share their experiences that have caused them and/or others harm. This can be a difficult time for an accused. Removal of the recording would build trust and increase the comfort of those involved. It creates a safe space; it creates space for healing.

**Recommendation 5 – That consideration be given to add to the number of IPC courts in order to provide opportunity for more Indigenous accused to access IPC, provided adequate financial and human resources are sought to support the expansion.**

Notes:

- There has been a demand from other Indigenous organizations such as Nishanawbe Aski Legal Services and Nokiiwin Tribal Council to access IPC. As this demand increases, so will the need for additional courts.
- This court has facilitated approximately 2 to 4 circles in the morning with each circle averaging about 1 to 1.5 hours. Circles can be time consuming and consideration should be given to reduce the number of circles to 2 to 3. This will limit the number of Indigenous people that can participate in IPC. Having IPC courts sit once or twice a month may not be enough to accommodate other Indigenous accused wishing to access this court.
- Part of the day can be set aside for progress updates for those Indigenous accused who have been working on their Healing Plan.

**Recommendation 6 – That the criteria of Indigenous accused to have to enter a guilty plea in order to access IPC be removed.**

Notes:

- As long as an Indigenous accused has the willingness and desire to heal, they should have access to IPC.

**Recommendation 7 – That IPC expand the types of charges to be heard in IPC.**

Notes:

- The initial proposal dated December 2016 notes that “IPC start with less serious criminal charges and will not prohibit the expansion to deal with more serious charges.”
- IPC has been in operation for more than 5 years and it is time that additional charges be added to its criteria, including charges of personal harm to victims, such as domestic and family violence, all types of assaults, robbery, historical sexual assault, and charges where victims are initiating participation and who are supportive of the process and healing.
- IPC is delivered on the concept of Restorative Justice and the repairing of harm. This provides opportunity for those harmed to participate in a process that promotes healing and forgiveness.

**Recommendation 8 – That criterion be developed for the participation and recruiting of Elders and Knowledge Keepers in IPC.**

Notes:

- In 2016 individuals that were recognized as respected Elders were approached and recruited to participate in IPC.
- As IPC is developing, so does the need for a clear process that will assist in promoting and recruiting of *Elders and Knowledge Keepers*.

**Recommendation 9 – To recruit regularly for additional Elders/Knowledge Keepers.**

Notes:

- Initially recruiting was done by word of mouth. As times are changing and the use of technology is increasing, this can provide additional opportunity to recruit.
- Take advantage of opportunities in the community for recruiting such as National Indigenous Day, local career and health fairs or other gatherings.

**Recommendation 10 – To develop a formal process that will outline the procedures to be followed in IPC such as the opening and closing of court, introductions, round table discussions, moving to inner Sharing Circles, organization of morning and afternoon sessions, Blanket ceremony, etc.**

Notes:

- It has been acknowledged that each Judge has their own way and process for presiding in IPC. This creates confusion for others who may not be familiar with court processes.
- It is also acknowledged that not all Elders and Knowledge Keepers have the same processes for conducting ceremonies, but it is the role of Elders and Knowledge to ensure this occurs in court.
- This will help in orientation/training of new Judges who might wish to preside in this court, including others such as Crown Attorneys, court staff, new recruits of Elders/Knowledge Keepers, Duty Counsel, Defence Counsel and Indigenous Caseworkers as well as maintaining consistency and momentum.
- This information will form part of the Orientation/Operations Manual.

**Recommendation 11 – That Judges and Elders/Knowledge Keepers not meet outside of the court particularly to determine Healing Plans for an accused.**

Notes:

- Healing plans are meant to address certain issues affecting an accused. These are things that can be discussed/recommended based on what was shared by the accused. These could be drafted in the inner Sharing Circles or openly in IPC.
- Suggestions to address certain issues should be directed to the accused as this is the person who needs to follow through. This gives the accused an opportunity to consider what is being suggested/recommended and possibly to determine if the task is something that they can successfully complete.
- The accused needs to be a part of the development of their Healing Plan in order to succeed. They need to have a say.

**Recommendation 12 – That Healing Plans for accused be given in smaller segments.**

## Notes:

- Too many tasks to complete at any one time becomes overwhelming for an accused and can lead to frustration and cause the accused to give up. Tasks should be directed to the accused based on ability and readiness to follow through and complete.
- Tasks should be achievable helping the accused in succeeding and building on their sense of accomplishment and self esteem. It will lead to a willingness to continue their healing path.
- Short remands can help the accused to stay on track and keep the court updated on activities. It is also an opportunity to address any challenges the accused is facing and determine or alter next steps.

**Recommendation 13 – That the practice of “All Rise” by the Judge when entering the IPC be discontinued.**

## Notes:

- It is understood that IPC is a formal court, but it is felt that there can be room for change that would help in creating an atmosphere that is inviting for Indigenous people.

**Recommendation 14 – That the care of IPC’s sacred items be the responsibility of the TBIFC IPC Program’s Caseworker.**

## Notes:

- The IPC Caseworker has had this responsibility since the beginning of the IPC, and this includes the care of program’s Eagle Staff that was presented to the program by Elder Helen Cromarty.
- The Eagle Staff in the Conference Settlement Suite is the sole responsibly of the local court.

**Recommendation 15 – That a “Blanket Ceremony” occur for an accused once they have successfully completed tasks as set out in their Healing Plan.**

## Notes:

- The “Blanket Ceremony” is a process that was witnessed in the Indigenous Court in New Westminster, BC. It is symbolic and it acknowledges and honours the successes of the accused.
- Decisions for “Blanket Ceremony” be decided mutually by the Elders/Knowledge Keepers in consultation with the IPC Caseworker.
- The “Blanket Ceremony” process be included in the Orientation/Operations Manual.

**Recommendation 16 – That Judges consistently appear in IPC to be able to oversee the same Indigenous accused throughout their process in IPC. This includes Crown Attorneys and Elders/Knowledge Keepers.**

## Notes:

- Consistency is very important in IPC as it keeps everyone on the same page as it relates to the participation of an accused and their situation. It benefits all those involved as it builds trust, mutual respect and develops relationships.

- Judges participating in IPC be constantly assigned court dates throughout the year. For example: 3 Judges preside in every third court. Indigenous accused be assigned to the same Judges court they have started with.
- This would be the same for Crown Attorneys and Elders/Knowledge Keepers.
- This allows everyone to know and learn from each other.

**Recommendation 17 – Develop a clear process as it relates to the “*Inner Sharing Circle*.”**

Notes:

- “*Inner Sharing Circles*” are considered sacred and ceremonial as this is when an accused begins their healing. Acknowledgment and acceptance of what brought the accused to this place. The “*Inner Sharing Circle*” is considered a safe place where stories are told and healing begins.
- This is when recommendations can be given to address issues that brought the accused before the courts.
- The “*Inner Sharing Circles*” be facilitated by an Elder/Knowledge Keeper or the IPC Caseworker.

**Recommendation 18 – That prior to the Crown Attorney reviewing Indigenous accused applications for IPC, the accused meet with the IPC Caseworker for the purposes of:**

Notes:

- The accused to learn about IPC, what to expect, and confirm their continued participation in IPC.
- For the IPC Caseworker to develop a working relationship and begin identifying steps toward addressing personal issues.
- To provide a brief update to the Crown Attorney.

**Recommendations 19 – That a list of legal terminology be developed and shared with Elders/Knowledge Keepers.**

- It is noted that not everyone understands legal terminology used in court.

**Recommendation 20 – That a request be submitted to the Regional Area Director of Ontario Legal Aid by the IPC Working Committee to request the participation of Duty Counsel in IPC.**

Notes:

- To represent Indigenous accused who do not have legal representation in IPC.

**Recommendation 21 – That the IPC Working Committee consider submitting a letter of request to the Regional Area Director of Ontario Legal Aid to extend legal aid certificates to Defence Council who represent Indigenous accused in IPC.**

Notes:

- Defence Council often do not participate in IPC because of the length of time it takes to resolve criminal matters because IPC address cases through an Indigenous restorative justice lens.

**Recommendation 22 – That Operational meetings re-convene and consistently occur regularly following the completion of the IPC Review.**

- Operational meetings were included in the original IPC proposal (dated December 2016) and a few meetings did occur.
- Having regular Operational meetings provides opportunity to review how things are going and address any issues or concerns that can occur.

**Recommendation 23 – That the IPC Working Committee begin discussions about how other Indigenous organizations can support or participate in IPC.**

- Nokiiwin and NAN Restorative Justice have expressed interest in participation.
- NAN RJ has recently provided funds to Elders in IPC.

**This is an opportunity for courts to play a role and make change in how justice is being administered for Indigenous people.**