



# Action Committee on Modernizing Court Operations

## ROLE OF INDIGENOUS COURTWORKERS IN FAMILY LAW OR CHILD WELFARE PROCEEDINGS

### A Statement from the Action Committee

*Our Committee supports Canada's courts in their modernization efforts. It provides guidance for addressing challenges, and highlights opportunities and innovative practices to modernize court operations and improve access to justice for court users.*

### 1. BACKGROUND AND HISTORY

The purpose of this publication is to provide judges, court administrators and other justice actors with a more comprehensive understanding of the role of Indigenous Courtworkers (ICWs) in family law and child welfare matters and the ways that ICWs can assist the courts. While this publication focuses on the role of ICWs in family law and child welfare, the tips it contains may be equally relevant to the participation of Elders or other community members who are supporting an Indigenous person through their family or child welfare matter. This publication focuses on the work of Indigenous Courtworkers in the Canadian court system and not on processes established following the passage of Bill C-92, which provides Indigenous peoples with effective control over their children's welfare.

The companion publication to this paper, [Working with Indigenous Courtworkers](#), outlines ways to create an inclusive and accessible environment to better integrate ICWs in court proceedings. It provides examples of concrete practices inspired by judges, lawyers and other justice actors from across Canada who work to foster an environment that supports the important role of ICWs in both criminal and family law and child welfare matters. For a more comprehensive review of ICWs in criminal proceedings, their various roles, and how they can assist the courts, please refer to the related publication, [Role of Indigenous Courtworkers in Criminal Proceedings](#).

#### 1.1 Objectives of the ICW program

Indigenous organizations began to offer ICW programs for family law and child welfare litigants in the 1990s. ICWs for criminal proceedings, which began in the 1970s, are available in almost every jurisdiction, however, ICW programs for family law and child welfare matters are only currently offered in Ontario, Quebec, Saskatchewan, Alberta, and in some areas of British Columbia. Additional provinces and territories are currently exploring the possibility of funding ICWs in family law and child welfare, and, in many jurisdictions without family law or child welfare programs, ICWs from criminal programs may accompany Indigenous families throughout the family or child welfare justice process. For these reasons, it is useful for justice actors to understand the ways that ICWs can support Indigenous people in family or child welfare court.

ICW programs generally have three main objectives:

- 1) Empower Indigenous people to understand their rights and request legal counsel, accompany them through each step of the family justice or child welfare system, and refer them to services that will help their case move forward.



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- 2) Increase awareness among justice system participants about Indigenous values, customs, languages and socio-economic conditions to inform the determination of the best interests of the child.
- 3) Address communication barriers to facilitate interaction between Indigenous people and family justice or child welfare system participants.

Where they are available, family law and child welfare ICWs play a key role in providing critical support and information to Indigenous people navigating the Canadian justice system. While ICWs are not lawyers and cannot provide legal advice to their clients, they act as a bridge between Indigenous peoples and the family justice or child welfare system, referring clients to appropriate legal and social resources while raising awareness in the justice system of the values, customs, languages and socio-economic realities of Indigenous peoples.

## **1.2 Importance of ICWs in Family Law and Child Welfare**

Indigenous children are over-represented in foster care and child welfare proceedings in Canada, and legal proceedings involving Indigenous families may be more complex than other proceedings because of the continued impacts of colonial history, including the removal of Indigenous children from their homes and communities by child welfare agencies, family violence, or substance abuse disorder. Despite ongoing efforts, including the passage of Bill C-92, more work needs to be done, and many Indigenous families and communities still lack trust in the family justice and child welfare systems. As a result, Indigenous individuals involved in these systems may either experience extreme stress or become discouraged to the point where they do not seek the support necessary to advance their rights in court proceedings.

ICWs understand the unique circumstances of the Indigenous communities they serve, and can best assist the courts if they are recognized as essential and valuable intermediaries and contributors with cultural expertise. ICWs can play a key role in supporting Indigenous clients throughout the court process by:

- Providing them with relevant information to navigate the justice system and by helping them understand their rights and obligations in court. To avoid conflicts of interest, ICWs only represent one party in a family law proceeding.
- Ensuring they receive accurate information and understand their rights from the beginning of the process.
- Helping Indigenous families understand the justice system, including court procedures, their rights and responsibilities, and how to complete required forms or request community services or programs, when relevant.
- Helping them better understand the court process and justice system more generally.
- Assisting Indigenous families by referring them to resources, family justice services or community-based support programs such as family mediation, domestic violence support services, or child support enforcement services, including services to address underlying issues that may have brought them to court.
- Attending Children's Services meetings at all stages of the process.



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ICWs act as intermediaries with courts during family law and child welfare matters by:

- Helping a family court better understand the unique dynamics and needs of Indigenous families by explaining their social context and lived experiences. This information can ensure the court has all the facts necessary to determine the best interests of the child.
- Providing the court with information about people and community resources, services, and programs that can help families.
- Helping the court to understand the concept of "family" for Indigenous communities. In family and children law, this concept is generally defined in terms of immediate family but, from an Indigenous perspective, the family is defined in a broader way that includes the extended family as well as the community. One important aspect of this is *custom adoption*, a practice in which children are cared for and raised by relatives or community members without formal legal adoption. In Indigenous families, it is not uncommon for grandparents to be involved in family law or child welfare cases. This knowledge can support the identification of alternative options that Children's Services may not have been aware of.
- Either explaining their client's absence to the court or ensuring they are present in court when required by physically locating them and providing them with transportation.

The involvement of ICWs can contribute to reducing the number of incidents of removal of Indigenous children from their homes and communities by child welfare agencies, support existing family structures and ensure community and cultural reunification.

## 2. WAYS THE JUDICIARY CAN FACILITATE THE ROLE OF ICWs IN FAMILY LAW AND CHILD WELFARE MATTERS

Given their leadership and concern for issues including social context, judges play a pivotal role in creating an environment that can maximize collaboration between the court and Indigenous communities. In jurisdictions where family and child welfare ICWs are available, and in jurisdictions where ICWs from criminal programs accompany Indigenous families throughout the family or child welfare justice process, judges can encourage innovation to foster the role of ICWs by:

- Encouraging Indigenous parties in family law or child welfare cases to meet with an ICW.
- Ensuring ICWs are welcome in the courtroom. While a judge must be mindful of the confidential nature of family law and child welfare cases, ICWs are best placed to both reassure their client and provide the court with a better understanding of the context and unique needs of the client and their family if they are present during legal proceedings.
- Increasing their own knowledge about Indigenous communities and the availability of ICWs for family law or child welfare matters in their jurisdiction.
- Scheduling family cases so that, to the extent possible, Indigenous families' matters are heard on the same day. This can help ensure that ICWs are available to support Indigenous litigants.