



# Action Committee on Modernizing Court Operations

## STRUCTURED RECONCILIATION IN THE COURTS

### 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. CONTEXT

For several decades now, the concept of reconciliation has been central to discussions about the relationship between Indigenous Peoples and other Canadians. As recognized by the Truth and Reconciliation Commission (TRC) that examined the history and legacy of residential schools in this country, reconciliation is an ongoing process requiring awareness of the past, acknowledgment of the harm inflicted, atonement for the causes, and action to change behaviour.

The TRC and numerous other reports have clearly documented the historic and systemic barriers that Indigenous people face in accessing the justice system. Accordingly, courts across the country are increasingly recognizing the need to take a holistic approach to advance reconciliation by addressing the ongoing effects of colonialization on Indigenous people. As explored in the Action Committee's previous guidance on [Indigenous Practices in the Courts](#), this could include, for example, becoming more welcoming by integrating Indigenous approaches into sentencing decisions or adapting processes and procedures to respectfully hear Elder testimony. In addition to these unconnected efforts, as well as participation in broader justice sector reconciliation initiatives, some courts are also beginning to take a more structured approach to their own reconciliation efforts, adopting frameworks for action and collaboration like Reconciliation Committees and Indigenous Justice Strategies. Examining these projects can support other courts in adopting a similar approach.

### 2. JUDICIAL INDEPENDENCE AND RECONCILIATION

Judicial efforts to advance reconciliation can support both the perception of judicial independence and independence in fact. From a perception perspective, the population will only see the courts as impartial and fair if every person who appears before them can trust they will be treated fairly. However, many Indigenous people do not believe the system will be just. Repairing the harm that the justice system, including the courts, has caused Indigenous people and communities is necessary to build this trust. Beyond perception, a judge is more able to be truly impartial, and therefore independent, when they understand the lives of the people who come before them. Engagement with the communities these people come from supports this understanding.

Further, as outlined in the Action Committee's recent guidance on meeting the [Diverse Needs of Court Users](#), taking active steps to improve the court experience for historically marginalized people, including Indigenous people, aligns with many of the values espoused in the [Canadian Judicial Council \(CJC\) Ethical Principles](#), including: treating everyone fairly, carrying out duties without discrimination or prejudice, avoiding the influence of attitudes based on stereotypes or



# Action Committee on Modernizing Court Operations

myths, recognizing that unnecessary isolation from the community does not promote wise or just judgements, and engaging with communities with which one has little or no life experience.

## 3. ROADMAP OF KEY STEPS

When approached with a spirit of humility and collaboration, every step a court takes towards reconciliation can increase trust in the justice system, support more equitable outcomes, and ultimately help to repair relationships with Indigenous Peoples. Undertaking these activities within an organized and structured framework may augment their ultimate impact. As outlined in the Action Committee's previous guidance on [Multi-Stakeholder Collaboration](#), the benefits of structuring relationships can include more sustainable initiatives and better expectation management.

### 3.1 Understand the context

The first step towards developing any strategic activity is to understand the context in which it will unfold. Court leadership will not start the reconciliation journey with all the answers, and it is essential to humbly listen to Indigenous people about their concerns and needs. Some of these conversations may be uncomfortable, as they could reveal areas where the court continues to cause harm, even if unintentional. This initial step can take time since it may be necessary to establish relationships before meaningful conversations can take place.

While it is important to hear directly from local Indigenous people about their issues and priorities, court leaders should do their homework before embarking on these discussions. Reading available literature will help build an understanding about the history of local Indigenous communities, as well as more general knowledge about Indigenous people's experiences in Canada, and especially in the justice sector. This step will help to reduce consultation fatigue and unnecessary exposure to trauma triggers by avoiding questions whose answers are well documented.

### 3.2 Develop a clear plan

Once the initial groundwork is complete, it is possible to develop a plan for how the court will approach reconciliation. The first step is to decide whether it should focus its efforts on court-led initiatives or alternately lend support to broader justice system projects being led by others. If the court decides that it would like to develop its own initiative, it might choose a range of approaches, such as establishing a committee to guide this work or adopting a framework that will implicate various actors throughout the court – or the justice system more broadly. Regardless of the approach chosen, it is important to clearly articulate the initiative's goals and where they fit into the court's larger strategic planning. One way to ensure this integration is by including reconciliation in the court's overall planning cycle. The involvement of an administrative judge – either the Chief Justice or an Associate Chief Justice – can support alignment while also ensuring the reconciliation strategy takes account of practical realities like available resources.

Focusing on concrete actions will help to develop a plan that leads to sustainable change. A strategy that contains grand statements but ultimately doesn't improve how Indigenous people



# Action Committee on Modernizing Court Operations

experience the courts runs a high risk of not only failing to contribute to reconciliation, but actually increasing the mistrust and alienation felt by Indigenous people in the community.

### 3.3 Bring the right people to the table

The likelihood of success for any initiative will increase if the people involved are passionate about its goals. Finding champions among the judiciary, court staff, and the broader justice system will help to both sustain the plan from conception through to implementation and create the momentum to encourage others to come on board. Indigenous individuals can bring important knowledge and perspectives to the table, but they should not be expected to carry the burden of change, and their involvement cannot be used as an excuse for non-Indigenous participants to skip self-education.

In addition to securing widespread participation within the court, consider what other voices should be at the table. This may include other key players in the justice system, including both the private and public Bar, police and corrections, and community services that support Indigenous court users. And finally, the initiative's beneficiaries should have ongoing input. As examined in the Action Committee's previous publication on this topic, there are many ways to [Gather User Perspectives](#) to support improved court operations. Feedback mechanisms such as surveys or townhalls may be appropriate for different stages of the project, but courts should remain conscious of the importance in many Indigenous cultures of relationships and direct communication when deciding which approach to use.

### 3.4 Communicate progress

Transformational change is never quick, and it is easy to get frustrated by the length of time it can take. Being clear about both what is possible and progress towards the initiative's goals are essential steps to managing this frustration. For that reason, a project plan should address communication within the court, with affected Indigenous communities and justice sector actors, and with the public more broadly. Spending time during the project design phase to think about how progress will be measured and reported on will set the team up for effective communication once it is underway.

## 4. EXAMPLES

Some Canadian courts have already established structured approaches to reconciliation. Their experiences are offered as inspiration for other courts that are interested in undertaking a similar project.

### 4.1 Alberta Court of Justice: Indigenous Justice Strategy

As featured in the Action Committee's previous guidance on [Indigenous Practices in the Courts](#), Alberta's Court of Justice identified the need to improve justice for Indigenous people as a priority in its 2020 strategic plan. Until this round of strategic planning, Indigenous matters had been captured in the court's planning processes under broader headings like "access to justice", but recognizing it as a stand-alone priority signalled the Court's intention to increase focus on



## Action Committee on Modernizing Court Operations

ensuring it met the needs of Indigenous people. The fruit of this strategic priority was an [Indigenous Justice Strategy](#) (IJS), first published in September 2022.

As the first court in the country to develop a strategy of this type, the Court had to proceed without the benefit of any precedent. Starting by seeking advice from Indigenous colleagues in the Court, the Chief Justice was advised to first educate himself and then speak to Indigenous people in the province to understand their needs and priorities, as well as whether a court-led Indigenous Justice Strategy would be welcome. The initial desk review process revealed two themes that guided the subsequent consultations and eventual development of the IJS: 1) the system isn't working for Indigenous people; and 2) finding appropriate solutions requires collaboration. The Court then took the time necessary for extensive consultation. Getting to a point where Indigenous communities were willing to collaborate on the strategy involved building relationships and listening to their concerns, even if they were not all within the Court's power to address.

The IJS that was eventually developed centres around several action items, and the Court reports on progress each year. Different strategies have been adopted to implement various items. For example, an Access to Justice through an Indigenous Lens Committee was formed through an open call to Indigenous groups and organizations and others who work in the Justice system. This Committee developed its own report with more detailed action items and has held two symposiums to explore issues related to its mandate. An Indigenous shadowing program is another example of a discrete action item that has provided broad opportunities for involvement in reaching the Court's reconciliation goals. This program has so far provided the opportunity for almost 50 students and lawyers to shadow a judge for two to five days. Justices who participated in the program have noted that it has been mutually beneficial, providing learning opportunities for both the justice and student. The Court continues to consult with community and, since the adoption of the IJS, has opened Indigenous courts in four locations. In addition, the Court has revised its education program with greater emphasis on Indigenous matters.

### 4.2 British Columbia Court of Appeal: Reconciliation Framework and Action Plan

Adopted in 2024, the British Columbia Court of Appeal's [Reconciliation Framework and Action Plan](#) is the product of years of engaged learning, respectful listening, and committed work. As a living document, the Court does not consider this Framework as the end of the reconciliation journey but instead as a step to sustain this work in an appropriate way. The Framework and Action Plan highlight relationship-building, education for judges and court staff, and access to justice as key, ongoing activities.

Developing the Framework took several years. First, reconciliation was added as a standing item on the Court's Planning and Access to Justice Committee agenda. Subsequently, a dedicated working group composed of the Chief Justice, two other judges, and Court legal counsel was established in 2022 and expanded in 2023. The initial study period provided a strong foundation for developing the Framework, which also drew on consultations with Indigenous representatives, communities, and groups. The Framework is designed to be evergreen, and the public nature of the Court's statements and commitments on reconciliation, as well as its related outreach activities, are intended to encourage ongoing feedback.



## Action Committee on Modernizing Court Operations

A key element of development and implementation was inviting input from Indigenous communities and individuals. This input helped ensure, firstly, that the “truth” component of “truth and reconciliation” was better understood by the Court and, secondly, that the Court wasn’t acting in isolation but rather making sincere efforts to understand and respond to Indigenous experiences with the justice system. Moreover, these activities supported the Court on its journey to developing positive relationships with Indigenous organizations and people. The focus on relationships supports the Court’s approach to the work as a “forever project”, not a box to be checked. A critical component of the Court’s outreach was being clear and honest about the limits of the Court’s role, always with a view to both protecting the Court’s impartiality and avoiding setting up hopes or expectations beyond the Court’s capabilities.

Now that it has been completed, the Court has ensured that all judicial and administrative staff are aware of the Framework. It is included in the orientation package for new judges and court staff and was redistributed as part of the Court’s steps to recognize the National Day for Truth and Reconciliation. The Court will work to realize the goals of the Framework through ongoing internal education opportunities, and through regular examination of the Action Plan to identify and pursue new areas for progress. The Court will publicly report on its progress in its Annual Reports.

Finally, the Court has recognized that funding and time constraints mean it is not possible to achieve everything as quickly as it may wish. Strategies to ensure the project continues to move forward in the face of this reality include:

- Prioritizing work and recognizing that it may need to be completed in phases
- Identifying both internal and external champions
- Learning from things that did not work
- Understanding that reconciliation is an active practice, and that it will take years to address the harms of Canada’s colonial legacy

### 4.3 Provincial Court of British Columbia: Reconciliation Framework

The Provincial Court of British Columbia’s [Reconciliation Framework](#) begins with a statement of purpose, indicating that it is “a commitment by the Court to learn from and better serve Indigenous peoples involved with the justice system.” The Framework adopts the Court of Appeal’s commitment to advance truth and reconciliation, before establishing high-level priorities to do this work, grouped under the same headings as those identified by the Court of Appeal: relationship building, education and understanding, and access to justice.

The Framework is intended to align with the province’s pre-existing Indigenous Justice Strategy (IJS), which was developed in cooperation between the provincial government and the BC First Nations Justice Council (BCFNJC). This alignment is key to ensure the Court complements, rather than duplicates, work already underway pursuant to the IJS, and will be maintained through regular communication with the BCFNJC, which is leading the implementation of the IJS.



## Action Committee on Modernizing Court Operations

Since the Framework is drafted at a high level, a Reconciliation Action Committee will be tasked with identifying the specific action items necessary to operationalize it. While many members of the group that developed the Framework will continue to be involved, other judges and court staff were invited to join as well. This committee will be chaired by an Associate Chief Judge and will be responsible for determining the timeframe for different actions to meet the goals of the strategy, as well as which activities will require funding.

Many of the activities envisioned under the Framework will support individual judges and court staff in their own reconciliation journeys, including:

- Establishing an education program that will be available to every new member or employee of the court
- Providing guidance to support individual judges in balancing judicial independence with opportunities to build relationships, such as invitations to local community events or ceremonies
- Considering how aspects of Indigenous justice can be brought into more court proceedings

Addressing these topics through the Reconciliation Action Committee will ensure that judges across the province have the same information and allow a level of standardization that is not possible when relationships between the Court and Indigenous communities are developed on an *ad hoc* basis by individual judges. This will help build longer-lasting relationships with Indigenous Peoples.

Another key element of the Framework is the Court's commitment to report on its progress both on its website and in its annual report. As the Court develops individual projects to implement the Framework, it also plans to integrate ongoing feedback mechanisms.



# Action Committee on Modernizing Court Operations

## ANNEX

### RESOURCES FOR FURTHER READING

The following non-exhaustive list of resources provide an introduction to both the systemic challenges that Indigenous people have faced, and continue to face, in the Canadian justice system, as well as current reconciliation efforts of relevance to the courts.

#### Caselaw

[R. v. Sparrow](#), [1990] 1 SCR 1075

[R. v. Van der Peet](#), [1996] 2 SCR 507

[Delgamuukw v. British Columbia](#), [1997] 3 SCR 1010

[R v Gladue](#), [1999] 1 SCR 688

[Haida Nation v. British Columbia \(Minister of Forests\)](#), 2004 SCC 73

[Taku River Tlingit First Nation v. British Columbia \(Project Assessment Director\)](#), 2004 SCC 74

#### Commissions and Inquiries

[Royal Commission on Donald Marshall Jr. Prosecution](#) (1989)

[Report on Aboriginal Peoples and Criminal Justice](#) (1991)

[Royal Commission on Aboriginal Peoples](#) (1996)

[Manitoba Aboriginal Justice Implementation Commission](#) (2015)

Truth and Reconciliation Commission [Report](#) and [Calls to Action](#) (2015)

#### Other Resources

[United Nations Declaration on the Rights of Indigenous Peoples Act](#) (2021)

British Columbia First Nations Justice Council, [BC First Nations Justice Strategy](#) (2024)

Métis Nation, British Columbia, [Metis Justice Strategy](#) (2024)

Government of Canada, [Indigenous Justice Strategy](#) (2025)