

A Métis Judiciary Designed with Métis People



PREPARED FOR THE MÉTIS NATION—SASKATCHEWAN
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**MÉTIS
KWAYASKASTASOWIN
JUDICIARY**

The Challenge

An Introduction to the Design of a Métis Adjudication Body

DESIGN A JUDICIARY FOR THE MÉTIS NATION—SASKATCHEWAN (MN-S)

There is a long standing request for MN-S to have its own court. There have been requests from citizens, resolutions, court decisions and a United Nations Declaration supporting this. Now there are Self-government agreements with the government of Canada establishing its necessity. There are also discussions of a treaty being negotiated anticipating the MN-S' capacity to resolve its own issues and apply its own laws.

Our Design Team was tasked with drafting the blueprints for a Métis judiciary, or adjudicative body, to enable MN-S to deal with matters surrounding their laws, regulations, policies and rules. A Métis Judiciary is an idea whose time has come. Many visions of what a Métis judiciary could look like have been created by many people: at kitchen tables, in community by citizens, by academics, past politicians and many others who were active in pushing for the building of our own internal systems in many, many ways.

Canada's adjudicative bodies, its courts and tribunals, are not built on our Métis values, traditions, or languages. Canada's adjudicative bodies do very little to repair broken relations or address root causes of personal or business relationships gone awry. A Métis adjudicative body can be so much more, which is why the model we are proposing has moved away from the words "court" and "tribunal".

THE DESIGN TEAM STARTED THE PROJECT WITH THE FOLLOWING INTENTIONS:

- To examine, through the widest possible lens, what is possible for the design of a Métis adjudicative body;
- To narrow the focus based on research and feedback and then design a potential model;
- To create and test out prototypes early, and;
- To ultimately present a workable design for a restorative forum that meets the needs of the Métis people within the Métis Nation—Saskatchewan.



The Design

Kwayaskastasowin: Designing a Judiciary that Works for Métis people to set things back on a good path forward, the **Kwayaskastasowin Judiciary**

The design task was to consider how to improve on existing non-Métis courts and tribunals which were not built on Métis values, traditions, or languages. As the Design Team met with communities and gathered research on developing a Métis Judiciary to work for Métis people, it

was apparent that every potential case was different and unique. Moving further into the design phase, we shifted our focus to consider how to build a judiciary in a way that was authentic and grounded in Métis culture.

SOME OF THE EARLY DESIGN QUESTIONS CONSIDERED INCLUDED:

- What jurisdiction, authority, and laws already exist to empower it? What missing legal pieces need to be created to enable it to meet all our needs?
- How will it work in practice, and what are the principles and processes behind its operation?
- How will cases come before it?
- Is it supporting a justice model that is adversarial, punitive and protective? Is it restorative, transparent and accountable? Is it reactive or responsive? Is it inclusive? How will people access it?
- Who enforces its decisions? Who reviews appeals of its decisions?
- How much will it cost? Who will pay for it?
- What is the cultural impact of it? How can we do better than what is available to us now?
- How is it separate from the political process?
- Can it be designed to rebuild broken relationships?
- What makes this a **Métis** adjudicative body that is unique from Canadian systems?
- How do we ensure it is adaptable and flexible enough to address the questions and cases that nobody has thought of?

Refocusing “justice” for the Métis

The Design Team for the Métis Judiciary was committed to research, discuss, listen, borrow, adapt and adopt, stretch and challenge—and ultimately—to design a Métis process for justice. Ultimately, we came to a place where we clearly saw that there must be a movement away from typical colonial, patriarchal models of justice, founded on punishment and retribution. We concluded that justice for Métis must be reimagined. Community members have experienced the old colonial system as part of the destructive machinery that contributes to the loss of voice, culture and rights of Métis people, loss of family.

In order to truly move away from the courts we see every day in this country, a shift in how people see themselves within justice has to occur. People must be a part of the decision-making process and be seen to be an integral part of justice—through meaningful participation. For this to occur for the Métis, the judiciary, to be trusted, must be grounded in Métis values first and foremost. Building a judiciary that reflects the identities and sovereignty of Métis people, the people who own themselves, **otipemisiwak**, means that community is involved in the design of justice and the distribution of it as well. Justice is not lorded over people, and it is not separate from them. Justice is the people.

The Design Team is calling the new approach, the **Kwayaskastasowin Judiciary**, which means to work towards setting, or re-establishing the situation, the people, and their relationships, on a good path. Everything the Métis judiciary will do revolves around a holistic concept of **kwayaskastasowin**. This is the label we have assigned based on much conversation, it may change if and when a language forum is held to look at the labeling of Métis governance overall and fluent speakers reassign the name. For now we call it the **Kwayaskastasowin Judiciary**.

Relying on traditional knowledge and using language to examine relationship breakdown, kinship and connective terms surface. Using a lens of **wâhkôhtowin**, we are all connected to each other and everything around us, will cause a fundamental shift in the way issues that arise are reviewed, the time it takes to resolve those issues, and the goals to be achieved by the review of difficult relationship issues. Introducing **sâkihitowin**, love, back into a review process becomes an important feature when you ask a community member how they want their family to be treated within a Judiciary. When examined through that lens, no one baulks at the word **sâkihitowin**.

We also know after much research that the skill relied on most often for a restorative, responsible way to resolve relationship issues MUST be founded on the basic traditional knowledge identified above and must build trust through **nihtohta**, a deep and profound listening. Listening so well that your speaker knows they have been heard; heard by members of the community who know who they are and where they come from. Knowing this and seeing the responsibilities tied to the place held within a community, ties can be found to commitments within those communities.

GOVERNMENT LAWS ARE NARROW AND EXTRACTION BASED, they are not heart based. Law is also narrow.

Our laws are based on an entire belief system where all beings and nature are recognized. In our law we cannot practice on behalf of another. Everyone practises their own law!

Creation stories tell us there is harmony in the world and when you break that, well then you have to find your way back to what our harmony was meant to be. When you use our laws, we belong. Our law has place, belonging and responsibilities.

~Indigenous academic



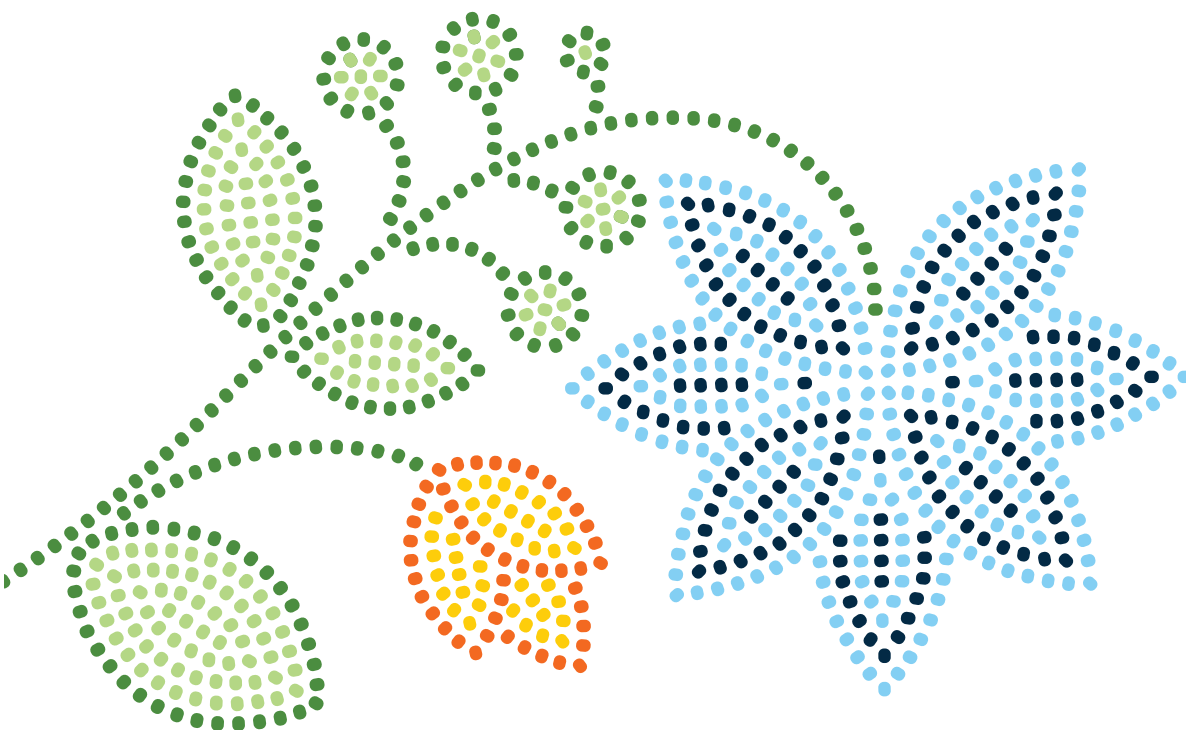


Once the parties are seen as responsible and able to contribute back to the community, once they are held accountable, then re-establishing relationships, situations and people on a better path will be the goal. Through this deep listening, **nihtohta**, and even through **kisay watson**, being kind, generous, and wise, we are able to come to **kwayaskastasowin**, a mending or restoring or looking after of the situation.

Because the Design Team approached the challenge of designing a Métis Judiciary through building and growing this process together with, and inviting participation and contribution from, the community, it becomes clear that we all have something to lose or gain in how the challenge is resolved. This again only reinforces **wâhkôhtowin**, we are all related and it is worth our effort to set things right. The **Kwayaskastasowin Judiciary** is where we landed and this is what we are calling our model going forward.

Design Thinking as a Methodology

When we were asked to design a judiciary for the MN-S, we knew that we wanted Design Thinking to lead the way. Design Thinking is a fancy way to say—include the people you are designing for, here it is Métis people. The Métis are traditionally relational, or community-oriented people, so a judiciary designed by and for Métis people in Saskatchewan needed to be inclusive of those people and to prioritize their perspectives at each opportunity. This means that the principle of **kiyokêwin**, to spend meaningful time with others, was used to meet with people and to invite them to us what it needs to look like—all done to understand each other and how to work out a way forward together that is good for everyone.



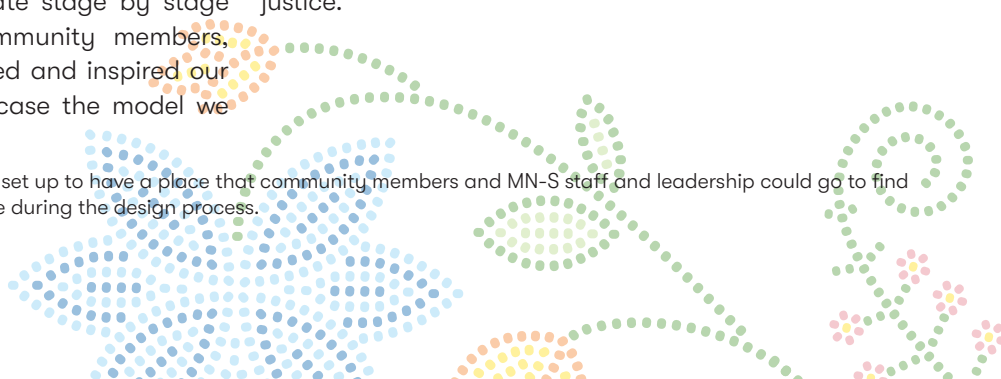
A TYPICAL DESIGN THINKING PROCESS HAS FOUR STAGES WITH OBJECTIVES AND ACTIVITIES TIED TO EACH. OURS LOOKED LIKE THIS:

DESIGN THINKING STAGE	STAGE OBJECTIVE	KEY ACTIVITIES	DESIGN QUESTION
WHAT IS	Examine the design challenge in order to develop empathy from the people who will use what you design. Understand what has existed/exists to date.	<ul style="list-style-type: none"> Research Insights Develop Design Criteria 	What is... the current state of Indigenous courts in Canada and internationally, and what is the current justice process relied on by the Métis?
	Brainstorm ideas using the insights learned from the What is stage to go deeper into an array of concepts. No idea is a bad idea.	<ul style="list-style-type: none"> Brainstorm Ideas Develop Concepts of a new model of Court Sketch out ideas of new models with Métis people 	What if... we start by asking the people who will use a Métis Judiciary what they really want?
	Challenge all the assumptions of what might be possible. Develop prototypes that focus on solutions that stand out from what is and address the problems of what is.	<ul style="list-style-type: none"> Identify key assumptions about what a court is Develop Prototypes for a new model from an ideal perspective 	What wows... people when they imagine making their own judicial body?
	Test and critique solutions to strengthen understanding of concepts of justice and overall design of a new judicial body.	<ul style="list-style-type: none"> Get feedback from community and courts Co-create solutions Showcase our design Prepare for piloting our new model 	What works... for Métis people to address justice for themselves as a nation?

The design of the **Kwayaskastasowin Judiciary**, that we will present in this Report, reflects two years of reaching into your communities and out to the global examples of Indigenous justice models through our Design Thinking methodology. This Report will illustrate stage by stage the rigorous inclusion of Métis community members, and detail key insights that challenged and inspired our thinking along the way.¹ It will showcase the model we

believe meets the needs of **otipemisiwak** in Saskatchewan who are self-governing and who want to own a process for resolving issues that arise in community, with government and a process for independently paving a way of Métis justice.

¹ A website (<https://www.mnsjustice.ca/>) was set up to have a place that community members and MN-S staff and leadership could go to find the research and follow the work being done during the design process.





CHAPTER 1

A 360 Review of What Exists for Métis Justice

What is the current state of Indigenous courts in Canada and internationally, and what is the current justice process relied on by Métis?

WHAT IS

Examine the design challenge in order to develop empathy from the people who will use what you design. Understand what has existed/exists to date.

- Research
- Insights
- Develop Design Criteria

What is... *the current state of Indigenous courts in Canada and internationally, and what is the current justice process relied on by the Métis?*

Summary

The purpose of this chapter is to detail the approach used for preliminary research in asking the question *how might we build a Métis court?* Briefly summarized, we touch on the MN-S history around justice and laws and courts, the demand for a Métis Court, legislative authorities that support it. We also look at the current governance structure of MN-S.

A review of other relevant comparators was also necessary, and we looked regionally, nationally, and internationally for Indigenous court examples. We also kept our focus on healthy models of justice, on restorative justice models, and on court models that were particularly reliant on Indigenous laws. We *did not* limit our discussion to strictly a role in criminal law. We looked at justice from the perspective of a government who uses laws and courts and legal processes for settling and guiding all aspects of governing people. This allowed for a review of justice work that was more than creating a workforce of Gladue writers for colonial courts; it allowed for the design of a justice process that takes responsibility for setting up people in relationships to speak for themselves and to set those relations back on a healthy path, via the **Kwayaskastasowin Judiciary**.

TO BEGIN TO ANSWER THE QUESTION OF **WHAT IS...** THE DESIGN TEAM GATHERED **WHAT IS** IN EXISTENCE, ALL THE DATA WE COULD LOCATE, ON:

- What was Métis justice traditionally and how did it evolve over time?
- Métis culture that could be a solid foundation for the judicial body
- Historic laws or dispute models (that could be replicated or adapted for this judiciary)
- The legal history of the MN-S
- Existing Métis justice work or tribunals
- Existing Indigenous tribunals/courts and alternative models, both nationally and internationally



To do this the Design Team conducted a literature review, commissioned specific research, and reviewed numerous studies. We explored many Indigenous justice topics including pre-colonial Métis identity, the history of Métis governance, and the principles of Métis law emerging from the Laws of Buffalo Hunt and Laws of St Laurent. We looked at other justice systems and strategies within Métis and other Indigenous communities across Canada, as well as international models of Indigenous justice. A detailed analysis was conducted on the existing authorities and jurisdictions for establishing a Métis Nation—Saskatchewan court/tribunal including elections, citizenship, and harvesting laws, and federal acts such

as child and family services and criminal justice. We compounded this learning with review of human rights reports, GLADUE, and complexity theory to help us ground our learning in response to systems issues.

In the midst of all of this research, our team continually engaged with Métis community members. We relied on participation of community members, legal professionals, and MNS leadership to make sense of what we were reading and to remain grounded in who will use this judiciary, what laws it will follow, how it will solve legal problems without going to an external court, understanding Indigenous laws in context, and more.

TIMELINE

1930

In about the early 1930s, Métis people in southern Saskatchewan began organizing around the lack of recognition of their rights, forming the “Half-Breeds of Saskatchewan”, which later evolved into the Saskatchewan Métis Society.

By 1939, the Society had developed its first Constitution and started advocating for over 20 Métis Locals. The 1960s saw the emergence of two Métis organizations, which later amalgamated under the Métis Society of Saskatchewan. In 1975, it renamed itself to focus on Métis and Non-Status First Nations, as the Association of Métis and Non-Status Indians of Saskatchewan (AMNSIS).

1939

1975

AMNSIS focussed on improving social, educational, and economic conditions, opening membership to individuals of Indian ancestry not recognized by the Indian Act. The organization sought to issue life-time identification cards to all Métis and non-status Indians, adopting a selfdeclaration basis for membership without a definitive definition of Métis or non-status Indian.

By the 1980s, discussions around the definition of Métis identity intensified, considering factors like blood quantum and lifestyle, without reaching a consensus.

1980

Métis Culture, History, and Language

THE EVOLUTION OF THE MÉTIS NATION—SASKATCHEWAN

The evolution of Métis organizational identity and growth to reclaim self-governance since the Resistance in 1885, and the numerous factors influencing its development, have all contributed to the demand for the Métis Nation—Saskatchewan to have its own adjudication body. As nationhood grows and more legislation is developed and more areas of jurisdiction are reclaimed, the need to also redevelop internal decision making is apparent.



1988

In 1988, significant changes unfolded as AMNSIS reverted back to the Métis Society of Saskatchewan (MSS), and focussed exclusively on supporting Métis people. This shift aligned with broader legislative and constitutional recognitions of Métis as Aboriginal people. MSS refined its membership criteria to include those of Aboriginal ancestry recognized by the Métis community or self-identifying as Métis. Membership disputes were to be handled locally, with appeals processes being established up to the General Assembly.

The 1990s marked a period of transition, focusing on a self-governing Métis Nation. The Métis Nation—Saskatchewan (MN-S) emerged, incorporating the Métis Nation Legislative Assembly (MNLA) and adjusting membership criteria to emphasize Métis ancestry and community acceptance. The organization considered membership versus citizenship, and contemplated establishing a National Registry with uniform citizenship rules.

1990

1999

The Métis Nation Citizenship Act of 1999 introduced provincial standards for citizenship, and required applicants to prove Métis ancestry and community acceptance through historical, genealogical, and oral evidence. This period reflected a continuous evolution of Métis organizational identity and membership criteria, and emphasized selfidentification, community acceptance, and the need for a documented ancestry to strengthen governance and recognition within the broader Métis community.

HISTORICAL LAWS AND DOCUMENTS

Five overarching principles are at the core of Métis law. These principles are freedom, kinship, democracy, the rule of law, and provisionality. Freedom and kinship, however, are of primary importance, but they begin to disintegrate if approached narrowly, prescriptively, in isolation, or as abstractions. Janique Dubois and Kelly Saunders write that freedom has interconnected individual and collective dimensions. Both of these dimensions are rooted in kinship because the individual freedom necessary to live a good life depends on powerful kinship networks. As a result, democracy and the rule of law are not ends themselves but are valuable only as far as they support freedom and kinship. Provisionality similarly follows from freedom because law no longer required by the community's specific situation is an unnecessary constraint. These core principles resist straightforward application. To remain meaningful, they must be considered as fundamentally dynamic, constantly shifting and interacting to respond to specific community and political needs.²

Métis laws and Courts are not new to the Métis people, they have existed for 150 years. They include the laws for the colony of St. Laurent, the laws of the Buffalo Hunt, the Manitoba Act proposed by the Riel Provisional Government, and bylaws and constitutions for Métis representative organizations in Saskatchewan.

In December 1873, the people of St. Laurent held a public assembly to draw up laws and regulations for the peace and order of their community. The Chief and community Council were empowered to judge all cases that were brought before them. For matters of high consequence, the Chief, on advice of the Council, convened the General Assembly to gain the opinion of the majority before passing orders. The laws covered duties related to public office and calling meetings, payment for witnesses, payments of debt, contracts, dishonouring a young girl and refusing to marry her, defaming others, harm to livestock, public taxation, fines and other punishments, and the treatment of women. Affairs decided by the Council of St. Laurent could not be appealed to any Canadian courts.

² Kelly Saunders and Janique Dubois, *Métis Politics and Governance in Canada* (Vancouver, BC: UBC Press, 2019).

The ancestral Rules of the Buffalo Hunt implemented across the Métis Homeland described in detail the Métis strict control of the buffalo hunt, including punishments.³

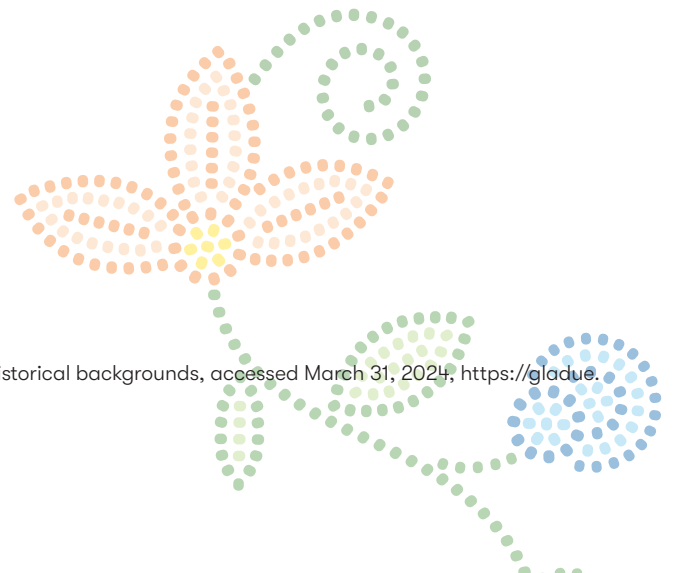
THE RULES OF THE BUFFALO HUNT:

- 1 No buffalo to be run on the Sabbath Day.
- 2 No party to fork off, lag behind, or go before, without permission.
- 3 No person or party to run buffalo before the general order.
- 4 Every captain with his men, in turn, to patrol the camp, and keep guard.
- 5 For the first trespass against these laws, the offender to have his saddle and bridle cut up.
- 6 For the second offense, the coat to be taken off the offender's back, and be cut up.
- 7 For the third offense, the offender to be flogged.
- 8 Any person convicted of theft, even to the value of a sinew, to be brought to the middle of the camp, and the crier to call out his or her name three times, adding the word "Thief" at each time.

The Buffalo Hunt and St. Laurent laws are internal codes that safeguard the Métis conception of freedom, a fundamental principle that is still today one held close and dearly by Métis people. The following principles are among those underlying both sets of laws:

- Ensured access of every community member to core political and social activities
- Strict rules governing conduct of those in leadership roles (especially rotating responsibilities)
- Regular reassertions of trust and commitment from positions of radical equality, between those in governed and governing roles
- Punishments that reflected current community values and realities
- When appropriate, the method of punishment was directly connected to the kind of offense

3 "Métis Laws," Summaries and Videos on important Social Context pieces and Historical backgrounds, accessed March 31, 2024, https://gladue.usask.ca/metis_democratic_laws.



As outlined in an article titled “The Origins of Métis Customary Law with a Discussion of Métis Legal Traditions,” the Métis Nation had long established laws for maintaining social control when they entered Confederation with Canada. According to this source, prior to 1835 “the Red River Settlement had developed without any of the accompaniments of British legal tradition...”⁴ Following the judicial system established in 1835, settlements continued to operate under a “smoothing system” where there was little justice required as “The people would discuss their grievances prior to court and reach a resolution, to avoid the expenses of court and any bad feelings that might arise... they worked it out through discussion and community mediation. The Métis had a highly effective system for settling differences among each other, by themselves.”⁵

“Métis Legal Systems and the Laws which emerged from democratic principles of justice are foundational to Canada’s constitutional formation.”⁶

Métis established Laws for the Buffalo Hunt in 1840 to ensure the economic and social well-being for the Métis community. As noted by Professor Borrows, “The buffalo hunt involved hundreds of men, women, and children, together with their Red River carts, horses and tools for processing and preserving the meat and hides. The complex activity was ordered through laws that identified appropriate behaviour during a potentially difficult and dangerous pursuit. The Captain of the Hunt could impose penalties if these laws were broken.”⁷

In 1873, a similar set of laws were established which built upon the laws of the Buffalo Hunt. The Laws of St. Laurent were established to determine civil rules that were to be followed by the Métis communities to ensure social organization as well as “Laws for the Prairie and Hunting, which consisted of twenty-five articles regulating all aspects of the hunt.”⁸

In 1875 the Laws of St. Laurent were disregarded, and power and authority of the Métis council was undermined when an HBC employee, Peter Ballantine, violated the rules by initiating a hunt without the main party. When Gabriel Dumont levied a fine on behalf of the St. Laurent Council, Ballantine turned to HBC officer Lawrence Clark to intervene resulting in an expedition of NWMP being sent to pressure the Métis. As cited in the Gladue Rights Research Database, “This conflict led to a complete dissolution of the St. Laurent Council’s power over key economic activities... [and] ended the Métis regulation of the bison hunt.”⁹

⁴ Lawrence J. Barkwell, Anne Carrière Acco, and Amanda Rozyk, “The Origins of Métis Customary Law with a Discussion Of...,” Métis Law, accessed March 31, 2024, <https://www.metismuseum.ca/media/document.php/07232.Metis%20law%20feb%2007.pdf>

⁵ Lawrence J. Barkwell, Anne Carrière Acco, and Amanda Rozyk, “The Origins of Métis Customary Law with a Discussion Of...,” 9.

⁶ “Métis Laws,” Summaries and Videos on important Social Context pieces and Historical backgrounds, accessed March 31, 2024, https://gladue.usask.ca/metis_democratic_laws#_ftn1.

⁷ John Borrows, “Indigenous Legal Traditions in Canada,” Washington University Journal of Law & Policy, 2005.

⁸ Don McLean, “1885 Métis Rebellion or Government Conspiracy?,” Chapter 3 Part II, 1985, [https://www.metismuseum.ca/media/document.php/12452.Chapter 3 Part II.pdf](https://www.metismuseum.ca/media/document.php/12452.Chapter%203%20Part%20II.pdf).

⁹ “Métis St. Laurent Council,” Summaries and Videos on important Social Context pieces and Historical backgrounds, accessed March 31, 2024, <https://gladue.usask.ca/node/2517>.

Establishing an MN-S Judiciary has the capacity to restore traditional justice within Métis communities by allowing Métis to hold their own people accountable. As noted by Barkwell et al., “Métis traditional justice is based on communal living and dependence upon the natural resource base... Elders have a role as advisors and mediators. [and] Judicial decisions must be made in the context of a relationship of trust and respect.”¹⁰ Including Métis Elders, Youth and Experts allows for a return to this communal experience where Métis communities can once again support each other through a means of traditional governance.

In addition to holding their own laws, the Métis in Canada have historically used petitions as a key legal tool in advocating for their rights and securing land, recognition, and resources from colonial and later Canadian governments. This practice dates back to the 19th century and has roots in the broader context of colonial North America, where Indigenous and mixed-ancestry communities often engaged with colonial powers through written petitions. For the Métis, petitions were not only a means to communicate grievances and demands but also a way to assert their collective identity and rights as a distinct Indigenous people. They used petitions to articulate their requests for land, to seek redress for grievances, and to assert their rights in the face of expanding colonial settlement and government policies that threatened their way of life.

Back to 1869, the Métis provisional government negotiated the Red River Settlement’s entry into Canada via the creation of the *Manitoba Act, 1870*. Sections 31 and 32 were included as a condition upon which Manitoba would enter confederation. Section 32 promised the Métis and other settlers title to land that they already farmed, and section 31 promised the Métis 1.4 million acres for the children of the Métis—another basic Métis tenet: **look after the children**. The Métis viewed these promises as treaties, but the promises were broken. As of today, the Métis have not fully received what was promised to them under the adopted Manitoba Act which is now part of the Constitution of Canada. A Supreme Court of Canada decision found the government responsible to live up to its honour in settling long outstanding constitutional issues.¹¹

All self-governing people, nations, have a means of resolving disputes and enforcing community standards and laws. This is what it means to be self-governing. That doesn’t mean a nation might not cooperate on justice issues in certain areas with other nations, governments. An example is in the European court of justice where multiple countries rely on this body to ensure laws are applied consistently across countries. However, that is a voluntary submission of jurisdiction. It is a choice not to self-regulate, not a colonial imposition of jurisdiction over another. The inherent right to self-government is the center point of the work to design a MN-S judiciary.

10 Lawrence J. Barkwell, Anne Carrière Acco, and Amanda Rozyk, “The Origins of Métis Customary Law with a Discussion Of...”

11 Manitoba Métis Federation Inc. v. Canada (Attorney General) (<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/12888/index.do> March 8, 2013).



WHAT IS MÉTIS ABOUT JUSTICE?

Speaking of justice today we all imagine discussions of independent systems for justice, for health and for education and so on. However, justice traditionally was not a separate and distant part of how people conducted themselves and how members of a community were responsible to the larger group.

When we had dances and feasts, kiyokêwin was the reason we were drawn together. There was celebration, eating together, dancing and laughter and there was time for serious discussion too. No matter what was being discussed, people would see the bigger picture and they would see how we are all working towards the same thing. Often, disputes did not last too long. Dancing, culture, music, etc. first, then tuning in. Politics, past debts, marriages and so forth. All of it was there, parenting and crafting, hunting and fun.

Métis Elder

Like education and employment and health care—these were all part of the communal governance, all people had roles and each component was reliant on how well other parts of the community were being looked after.

Not only were children at the center of the circle of protection and seen as the life community was responsible to, the role of women and elders was strong and as important as that of the men. Matrilineal communities as pointed out by McDougals research.

“The Legislative Assembly of Assiniboia reconvened on 26 April and sat to 9 May. It opened with a reading, in English and French, of a joint report of the special committees to revise and codify the laws. The committees had apparently combined their findings during the recess. It was the joint Law Committee that codified the position of women within the settlement most clearly, stating in their report, ‘Every enactment shall be interpreted without regard to the distinction of Gender.’”¹²

¹² Norma Hall Ph.D., with Clifford P. Hall and Erin Verrier, in “A History of the Legislative Assembly of Assiniboia/le Conseil du Gouvernement Provisoire” Indian and Northern Affairs Canada 2010, page 17

Visiting is connecting. It is intentional, to create nationhood, and is thus community to community. It is intentional. It is the work. The discussion about laws of the Métis recorded are laws that were recognizable because they looked like laws of the colony. Indigenous laws that were brought into the families through the First Nation mothers and the families that supported them are also laws. Even the Catholic religious practices of faith and conformity that formed much of the rules of a community are not written about. This is why language is so critical for the development of a Métis judiciary. When youth learn about **kiyokêywin**, they will find laws embedded in those connecting times with family and community. That simple act was to ensure constant collective gathering to share, to learn and to pass on information at every level. Political information, spiritual information, genetic information, social news and so on.

Natural law, laws within nature that guided how people lived with the land, with each other and with nature herself, were as important as any other laws. Natural law is also being rediscovered in the modern environmental crises faced with species extinction, weather catastrophes, resource disasters and more. Natural law will become more and more important and the **Kwayaskastasowin Judiciary** is one space to provide avenues to rekindle those laws in community.

At the May 2023 UNDRIP Conference in Saskatoon, attendees discussed establishing a Métis Court system and asked “What should be “Métis” about a Métis Court or legal institution?” Responses within this summary document highlighted themes that surfaced in many other components of the research. These themes persist:

- “A Métis Court system should require a Métis governance structure based on traditions and principles”
- “Métis culture must be reflected in a Métis-specific and Métis-driven court process (e.g., an Elder must be present, provide access to smudging, include Michif translators, etc.)”
- “Provide supports for anyone involved in the Métis judicial system (and their families)”
- “A Métis Court should seek to fairly provide restitution, support rehabilitation, and address the “root of the problem”, rather than applying temporary fixes”
- “A Métis Court should have a familiar and welcoming space that reflects Métis culture
- “Involve qualified non-political Métis lawyers, judges, and juries; require record checks and advance training on Métis history, culture, community, and family structure”
- Decisions of the court must be support-based, restorative, and could involve consultation with Elders, matriarch circles, Youth, the accused, and others; follow-up services are critical to achieving success.

KIYOKÊWIN WAS THE TRADITIONAL WAY WE ALWAYS PUT THE OLD AND THE YOUNG TOGETHER; the providers and the protectors, the hunters and the caregivers. Meaningful visiting. This was the way information was shared, people found their relatives and skills were taught. It also contained an unspoken practice to allow for the exchange of energy between babies, newly arrived and Elders, on their path to the next world, with each other and among those present. It was not seen as cheap visiting to gossip with neighbours. It was the way you went into relationship with no expectations but to enjoy another’s company and then left with a lesson you did not anticipate.

THE ROLE OF LANGUAGE

Language revitalization is a popular movement right now. It is even supported through federal and provincial programs, and the development of new offices and officers. Even though that is true, the impetus for that movement is clearly coming from community. So although you will find many ways to talk about language when designing new institutions, there is no stronger push for it than from community. We mention it here to give a nod to the government support but it will become prominent due to the pressure from community to have it front and center.

MÉTIS IDENTITY AND CITIZENSHIP

Although there are multiple ways to discuss the fact that a **Kwayaskastasowin Judiciary** can be created, there are larger questions over whom it will have jurisdiction. This chapter wraps up on those points.

"Who does this court look after? Do I have to be a citizen to be there? Is it mandatory? I don't know what is happening with all of this. Now I am being told if I am Métis or not! We are all going to be just like First Nations people who have a class system for status or non-status and Bill C-31. Who has authority to make me go to court and who will tell me I cannot. What will the other courts tell me? We used to be Ojépmisowak, not any more. Is the Métis court looking after us or after the elected people?"

A Métis Elder

Otipemisiwak: Who does MN-S have jurisdiction over?

Otipemisiwak, the people who own themselves, is the fundamental principle of Métis identity, and has deep historical roots. The Crown historically distinguished treaty participants to manage land titles and fulfil treaty obligations, including land, finances, and supplies. This process affected families of mixed heritage, with some included in treaties and others not. Mobility and identity markers, like flags, played a role in the lives of these mixed families, especially in the context of settlement and the fur trade. Contemporary recognition arises from various factors, including constitutional recognition, fraudulent identity claims, environmental concerns, the impact of residential schools, and the search for cultural, social, and spiritual connections. This search for identity is a human need, intensified for Indigenous peoples by systemic disruptions to family structures. Today, many individuals of mixed heritage are reconnecting with their roots, increasingly identifying with specific language groups, such as Michif.

The *Métis Nation Citizenship Act* of 1999 introduced provincial standards for citizenship, and required applicants to prove Métis ancestry and community acceptance through historical, genealogical, and oral evidence. This period reflected a continuous evolution of Métis organizational identity and membership criteria, and emphasized self-identification, community acceptance, and the need for a documented ancestry to strengthen governance and recognition within the broader Métis community.

“Having an Indian ancestor does not make one Métis; rather, Métis people emerged in and descended from communities of dual heritage with common interests and goals.”¹³

¹³ BRENDA MACDOUGAL, CAROLYN PODRUCHNY, and NICOLE ST-ONGE, “Introduction: Cultural Mobility and the Contours of Difference,” University of Oklahoma Press, 2012.



The Opportunity for a *Kwayaskastasowin* Judiciary in Saskatchewan

SUPPORTING AUTHORITIES



There is ample authority to create and to run a Métis judiciary. The authority for this are an inherent right for all peoples and also found in the United Nations Declaration on the Rights of Indigenous Peoples, the Métis Nation within Saskatchewan Self-Government Recognition and Implementation Agreement between Métis Nation—Saskatchewan and His Majesty the King in Right of Canada, dated February 23, 2023, the Métis Government Recognition and Self-Government Agreement between Métis Nation—Saskatchewan and Canada dated June 27, 2019, as well as under existing inherent rights of the Métis.

Further, once Bill C-53, *An Act Respecting the Recognition of Certain Métis Governments in Alberta, Ontario and Saskatchewan, to Give effect to Treaties with those Governments and to make Consequential Amendments to Other Acts*, is made law, it will provide additional authority to create a Métis adjudicative body. It is also clear that there are opportunities for this body to perhaps work in the field of diversion and to eventually to create criminal type laws.

The UN Declaration on the Rights of Indigenous People as well as the *United Nations Declaration on the Rights of Indigenous People Act* (UNDRIPA) in Canada also offer an avenue to negotiation with the federal Cabinet via the Minister of Justice who is responsible for UNDRIPA. This could help facilitate expanding Métis adjudicative body jurisdiction through amendments to existing Self Government Agreements or supplementary Self Government Agreements.

CHART OF AUTHORITIES TO CREATE A MÉTIS ADJUDICATIVE BODY

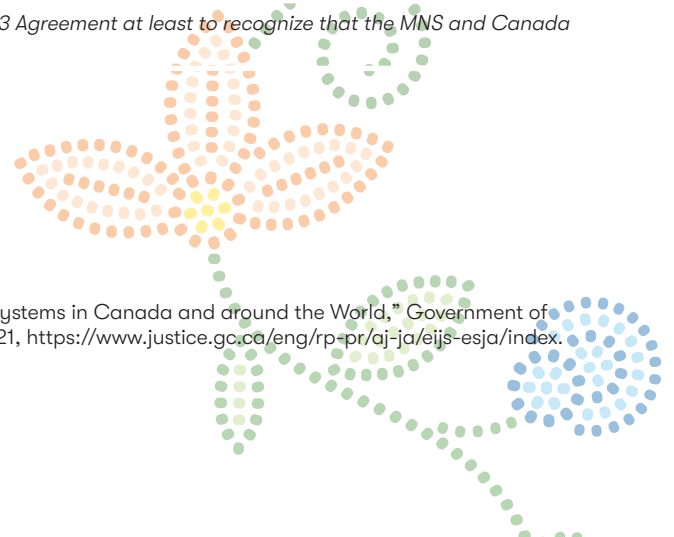
The Chart of Authorities sets out the authorities that support the creation a Métis Nation—Saskatchewan adjudicative body. Supreme court of Canada jurisprudence, United Nations legislation and nation to nation conversations are all pointing in the direction of respect for not only the creation of Indigenous courts or adjudication bodies but for the recognition of Indigenous laws.¹⁴

The following chart sets out authorities that can be used to support creating a Métis Nation—Saskatchewan adjudicative body. These authorities are found in: the United Nations Declaration on the Rights of Indigenous Peoples; the Métis Nation within Saskatchewan Self-Government Recognition and Implementation Agreement between Métis Nation—Saskatchewan and Her

Majesty the King in Right of Canada, dated February 23, 2023; the Métis Government Recognition and Self-Government Agreement between Métis Nation—Saskatchewan and Canada dated June 27, 2019. It also underlines reliance on inherent rights of the Métis. Past legislation from Métis government has also been included as examples and to witness inherent rights.

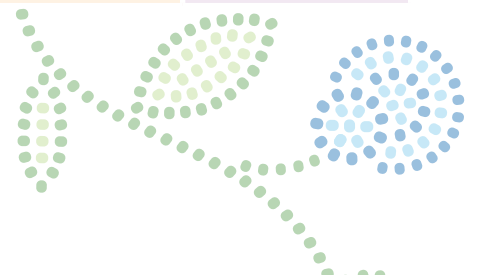
AUTHORITIES ISSUE	UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES	INHERENT RIGHTS OF MÉTIS NATION	EXISTING CANADIAN LAWS	MÉTIS NATION— SASKATCHEWAN SELF-GOVERNMENT RECOGNITION AND IMPLEMENTATION AGREEMENT 2023	MÉTIS GOVERNMENT RECOGNITION AND SELF-GOVERNMENT AGREEMENT 2019
<i>The MNS is self-governing and has been since the 1800s. It has the right to govern its own affairs. This is not contingent upon Canada recognizing this.</i>	Articles 3 and 4	Métis had provisional government; Laws of the Prairie (Code Fondamentale); Laws of the Buffalo Hunt	Manitoba Act, 1870 sections 31 and 32; Constitution Act, 1982, (Enacted as Schedule B to the Canada Act 1982, 1982, c. 11 (U.K.)), section 35	Preamble E, F, G, K Sections 5.02(b); and 5.04.	Preamble Section 2.01
NOTE: 2019 Agreement section 3.02 – Canada’s recognition of MNS right of self government only in accordance with Agreement.					
<i>The Métis Nation had existing legal systems since the 1800s</i>		Laws of the Prairie (Code Fondamentale); laws of the Buffalo Hunt		Preamble G – MNS has developed adopted and enforced its own laws, policies and decisions that are grounded in its pre-existing legal orders, customs and practices	
<i>MNS jurisdiction is not limited to what is set out in Agreements</i>				Section and 5.05 (b), 5.04(b) and 6.04	3.02 Canada’s recognition only in accordance with Agreement
NOTE: Canada’s recognition of rights expanded in 2023 Agreement at least to recognize that the MNS and Canada agree to disagree					

¹⁴ Department of Justice Government of Canada, “Exploring Indigenous Justice Systems in Canada and around the World,” Government of Canada, Department of Justice, Electronic Communications, November 30, 2021, <https://www.justice.gc.ca/eng/rp-pr/aj-ja/eijs-esja/index.html>.



AUTHORITIES ISSUE	UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES	INHERENT RIGHTS OF MÉTIS NATION	EXISTING CANADIAN LAWS	MÉTIS NATION— SASKATCHEWAN SELF-GOVERNMENT RECOGNITION AND IMPLEMENTATION AGREEMENT 2023	MÉTIS GOVERNMENT RECOGNITION AND SELF-GOVERNMENT AGREEMENT 2019
The MNS has authority to create a Métis adjudicative body	Articles 5, and 34 and possibly 18	Would be in essence “re-creating” adjudicative body, since Métis legal systems existed since the 1800s.	Bill C-53, section 9	Section 6.13(a), 6.17	Sections 6.03(f), (h) and 15.02
NOTE: 15.02 provides that jurisdiction includes the ability to provide for the establishment of administrative bodies to administer Métis laws					
Métis laws will apply to Métis citizens, the Métis Government, Métis Governance structures and institutions				Section 6.15	Section 31.01
Métis laws would be posted on a Métis Government Law Register so that the public could find them and follow them.				Section 6.24	Sections 13.07 and 13.08
Laws will be published in English and may be published in Michif and Cree			Indigenous Languages Act S.C. 2019, c.23 could be used to support use of Michif or Cree in Métis adjudicative body	Section 6.24	Section 13.07
NOTE: Given that jurisdiction includes the ability to provide for the establishment of admin bodies to administer Métis laws, Métis adjudicative bodies may be able to hear matters in Michif or Cree.					
The Federal government has constitutional authority to make laws affecting the Métis			Ss 91(24) Constitution Act, 1867 and R v. Daniels, 2016 SCC 12		
Federal laws will continue to apply except as set out in Agreements				Sections 6.21 (Canadian Charter of Rights will apply to the Métis adjudicative body with due regard to section 25 of the Canadian Charter of Rights and Freedoms; 6.22; 6.23 (Treaty will speak more to relationship of laws and conflict rules.)	Section 17.01
Federal laws related to matters of overriding national importance will prevail over a Métis Government law to the extent of the conflict.					Section 17.04 (a) preservation of peace order and good government in Canada; (b) criminal law and procedure; and (c) human rights; 17.10 and 17.11

AUTHORITIES ISSUE	UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES	INHERENT RIGHTS OF MÉTIS NATION	EXISTING CANADIAN LAWS	MÉTIS NATION— SASKATCHEWAN SELF-GOVERNMENT RECOGNITION AND IMPLEMENTATION AGREEMENT 2023	MÉTIS GOVERNMENT RECOGNITION AND SELF-GOVERNMENT AGREEMENT 2019
<i>Federal laws will prevail when certain Métis laws have an incidental impact and there is a conflict with a federal law</i>					Section 17.06
<i>Federal laws will prevail when certain Métis laws have a double aspect and there is a conflict with a federal law</i>					Section 17.07
<i>Provincial laws will continue to apply</i>					Section 17.08
<i>The Métis adjudicative body could decide on matters related to MNS citizenship</i>	Article 33			Sections 6.03–6.11	Sections 9.01, 9.02, 9.03, 9.04, 9.05, 9.06 and 9.10
	NOTE: 9.10 provides that subject to 9.07–9.09, if there is a conflict between a Métis law made pursuant to 9.01, the Métis law will prevail to the extent of the conflict. Note also, that Canadian citizenship matters fall under the jurisdiction of Canada, not the MNS.				
<i>The Métis adjudicative body could decide on matters respecting selection of Métis government representatives and representatives of its institutions</i>	Article 18			Section 6.12	Sections 10.01, 10.02, 10.03 and 10.04
	Note that 10.04 provides that a Métis law made under 10.01 prevails in the event of a conflict with a federal law.				
<i>The Métis adjudicative body could decide on matters of Métis government accountability to its citizens.</i>				Section 6.15	
<i>The Métis adjudicative body could decide on the voluntary settlement of disputes between citizens.</i>				Section 6.16	15.01
	Note that 6.16 also includes providing restorative justice or mediation services. Also, the voluntary settlement of disputes between citizens could be very broad				
<i>The Métis adjudicative body could decide on collecting and disclosing certain information</i>		Access to Information Act, RSC. 1985, c. A-1 and Privacy Act, RSC. 1985, c. P-21		Sections 6.25–6.32	Sections 6.03(I) and chapter 16
<i>The Métis adjudicative body could hear matters respecting MNS child and family services</i>	Articles 20, 21 and 22	An Act respecting First Nations, Inuit and Métis children, youth and families, S.C. 2019, c.24 (in particular section 18)		6.18, 6.19	



AUTHORITIES ISSUE	UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES	INHERENT RIGHTS OF MÉTIS NATION	EXISTING CANADIAN LAWS	MÉTIS NATION— SASKATCHEWAN SELF-GOVERNMENT RECOGNITION AND IMPLEMENTATION AGREEMENT 2023	MÉTIS GOVERNMENT RECOGNITION AND SELF-GOVERNMENT AGREEMENT 2019
<i>The Métis adjudicative body may make laws re: personal immunity from civil liability of employees, officers, elected officials, governance structures and Institutions.</i>	Article 31 Indigenous Peoples have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.			Section 17.02(e) no power to make laws in relation to intellectual property	
	NOTE: Article 31 conflicts with section 17.02(e)				
<i>The Métis adjudicative body is restricted from deciding on criminal matters</i>					Section 17.02, 17.04(b)
	NOTE: 17.02 says no power to make laws in relation to criminal law or procedure, but 17.04 says that federal laws would prevail if such laws were made.				
<i>The Métis adjudicative body may not decide on these matters because MNS jurisdiction does not include the power to make laws in these areas.</i>	Labour – Article 17		Section 6.14 the MNS will rely on and operate in accordance with Saskatchewan labour laws		Citizenship and Immigration (section 9.09) labour relations (section 17.02(b)); shipping, navigation and aeronautics (17.02(c)); protection of health and safety and matters of national importance to all Canadians (section 17.02 (d)); intellectual property (section 17.02(e)); banking, insurance, bankruptcy, insolvency, incorporation of companies and competition (section 17.02(f)); international and interprovincial trade and commerce (section 17.02(g)); and national defence and security (section 17.02(h)).
	NOTE: Re: intellectual property, see note above.				

REPORTS AND PUBLIC REQUESTS IN SUPPORT OF AN MN-S JUDICIARY

Reports, community actions and legislation reviews have been conducted for the Métis Nation—Saskatchewan and through Métis citizens in the past on the issues of Tribunals, ombudsmen and a Métis court. John Melanchuck has been an activist for the creation of an Indigenous ombudsman for more than two decades.¹⁵ Together with his mother, John lobbied for the creation of a body to take citizen concerns to. Marilyn Poitras also contributed to this conversation writing about Métis Nation Forum Building in 2011 to prevent or decide disputes within the nation.¹⁶ And in 2020 Mike Nolan undertook a review of creating a Métis Justice Tribunal Act and sketching out what that body might look like for the MN-S.¹⁷

QUEEN'S BENCH COURT DECISIONS IN SUPPORT

The creation of a body of some variety to adjudicate Métis law as and issues that arise in the communities has been supported for some time since the creation of the Saskatchewan governing body.

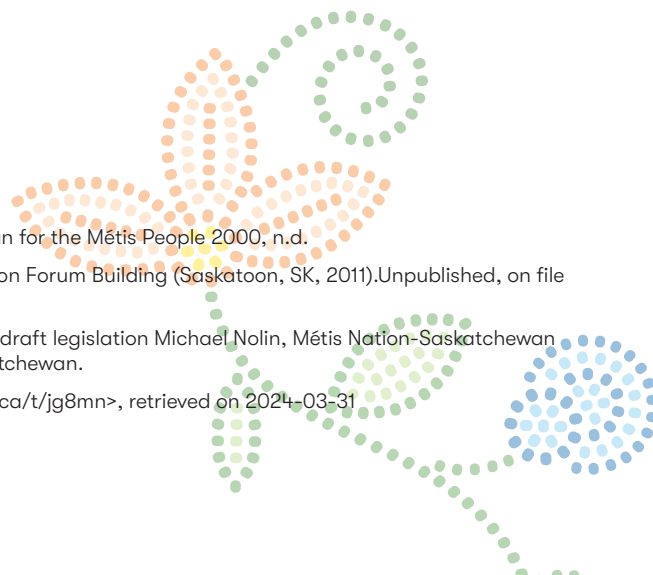
*In reviewing the material filed for this application, the Court notes that the preamble of the respondent's Constitution includes the expectation that it will establish "a competent, independent and impartial tribunal". Presumably, such a tribunal would be given the power to address disputes that otherwise come before this Court, and to do so in a fair and transparent manner. At present, and **despite the passage of 27 years since the respondent adopted its Constitution, no such tribunal has been established. The respondent's counsel advises that it remains a work in progress. In the Court's view, and for the sake of Métis people in this province, such a tribunal cannot be created soon enough.**"¹⁸*

¹⁵ John Melanchuck, rep., Organization of the Métis Buffalo Hunt: The Ombudsman for the Métis People 2000, n.d.

¹⁶ Marilyn Poitras, rep., A Report to the Métis Nation—Saskatchewan on Métis Nation Forum Building (Saskatoon, SK, 2011). Unpublished, on file with the Métis nation-Saskatchewan.

¹⁷ Michael Nolin, rep., "Métis Nation Justice Tribunal, Why Now?", 2021. along with draft legislation Michael Nolin, Métis Nation-Saskatchewan Tribunal Act, n.d.. Documents, unpublished, on file with the Métis -Nation Saskatchewan.

¹⁸ Chartier v Métis Nation—Saskatchewan, 2021 SKQB 142 (CanLII), <<https://canlii.ca/t/jg8mn>>, retrieved on 2024-03-31



QUEEN'S BENCH DECISIONS INVOLVING THE MÉTIS NATION—SASKATCHEWAN

In our research of the Métis Nation—Saskatchewan court cases over the past 20 years our team was able to review decisions and summaries to provide extra context to the origins of the court cases and assess the origins of some of the fallout of the conflicts which led to the court cases.¹⁹ The case law history illustrates the types of internal civil (noncriminal) disputes involving the MN-S which found their way to court.

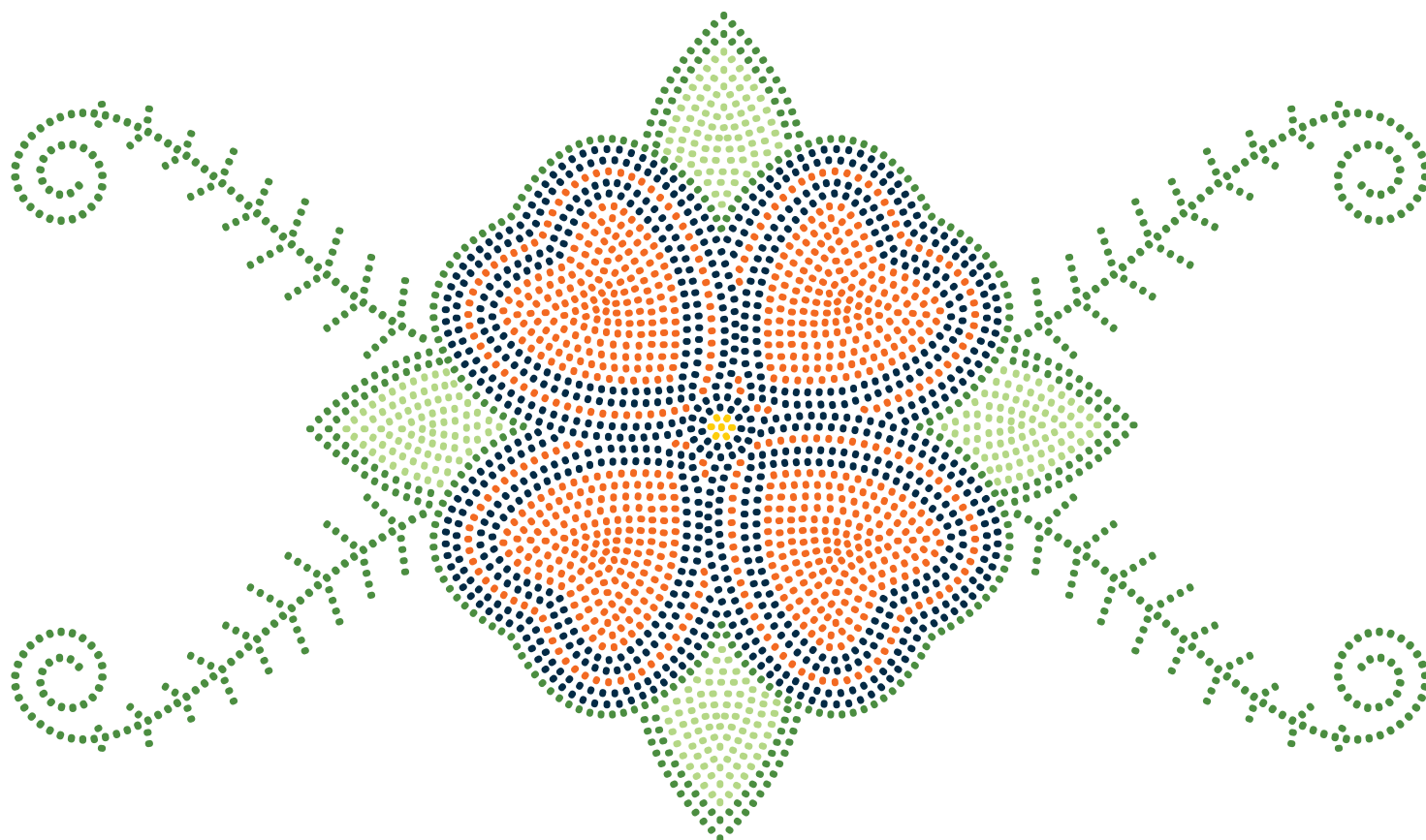
Knowing the types of disputes that have arisen in the past, helps to build confidence in the new Métis Judicial Body, which will provide processes for de-escalation and

resolution of disputes—before they escalate and result in costly outside court processes. “Costly” not only in financial terms but also costly due to emotional and relationship damage.

A review of the cases shows support for the decision of MN-S pushing forward to build this Métis owned and operated judicial process—and promoting the strengthening of a Métis internal dispute resolution process and accountability—building credibility and trust among Métis people in Saskatchewan. The volume of the cases—much of which was due to internal political conflict being fought out in the colonial

“adversarial” court process—helps to justify the cost and strongly supports the creation of an internal dispute resolution process and a Métis Judiciary.

Community feedback has repeatedly echoed the theme of accountability and that everyone, including MN-S, needs to be held to the same high standards. The strong leadership on the part of the MN-S to take this innovative initiative to create the new Métis Judiciary demonstrates good faith on the part of MN-S, as well as trust in creating its own Métis Judiciary and its own accountability to its citizens and one another.



¹⁹ These cases are all available on CanLII <https://www.canlii.org/en/>.

MÉTIS CASE LAW THROUGHOUT CANADA: AN OVERVIEW

Searching the word “Métis” and looking at “courts Métis and tribunals” in each of the searches below, and then split out the court decisions from the quasi-judicial decision making tribunals. The numbers of cases will change as new cases are published on the public site, CanLII (Canadian legal information institute). The searches below do provide a quick overview of how many cases there are in each province reviewed, and federally. It is also very interesting to see that the bulk of most of the cases (particularly in the Provinces) take place in the last 20 years with fewer cases in the 1980’s or 1990’s.

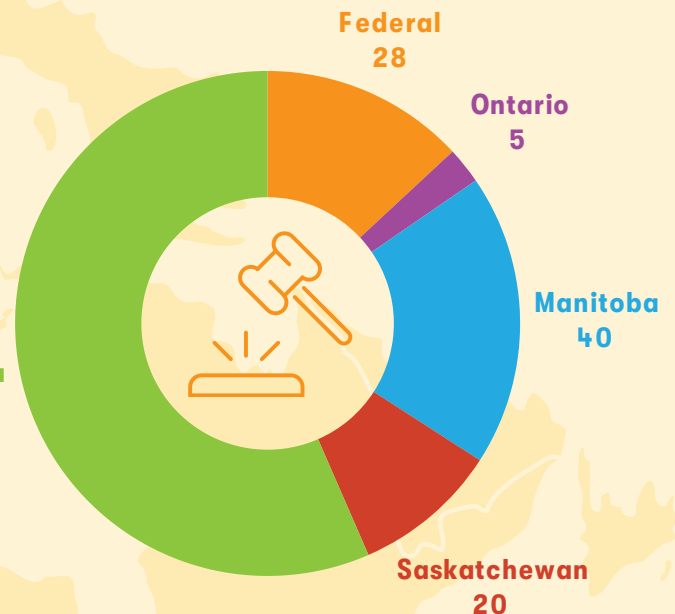
28 Cases



All 28 are Court decisions

Federal court and SCC cases

Alberta
121



ONTARIO

30 Cases

5 Court  **25 tribunal** 

Note that the bulk of the 27 cases involve Métis Nation (and Métis associations) in disputes with individuals while acting as a landlord or as an employer. There are two citizenship appeals and one child and family services case.

MANITOBA

41 Cases

40 Court  **1 tribunal** 

The bulk of the 39 cases are litigation with the Government, child and family services and elections matters, with fewer debtor creditor or landlord/tenant disputes.

Saskatchewan

39 Cases

19 Court  **20 tribunal** 

Approximately 12 of the 30 cases are landlord/tenant, employment law or debtor/creditor cases with the rest being elections and more significant issues.

Alberta

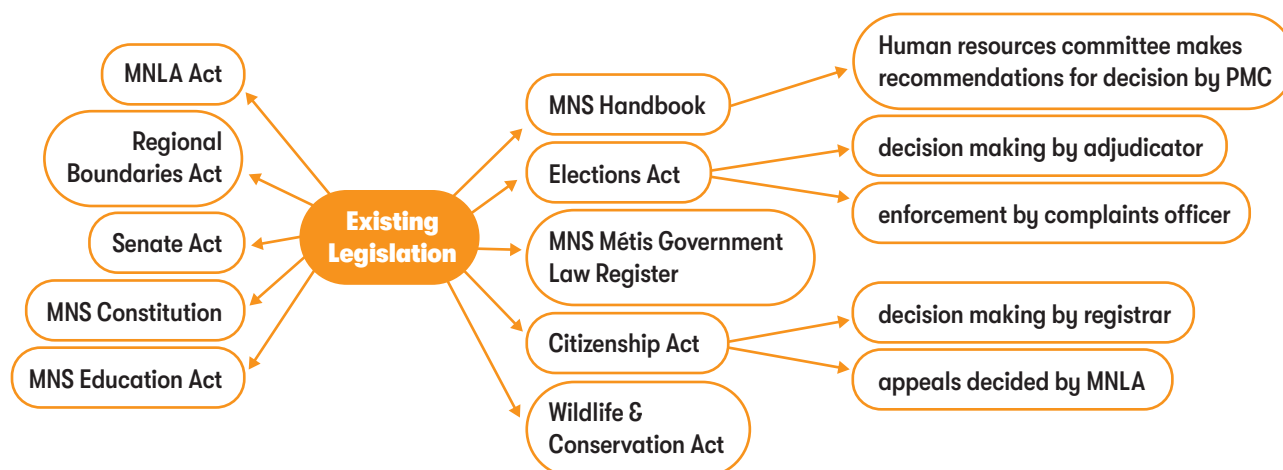
134 Cases

121 Court  **13 tribunal** 

There are many different Alberta Métis groups involved in litigation (vs one Métis Nation-Sask. litigant) and I noted more resources/environmental cases which I assume is simply part of the Alta oil and gas economy.

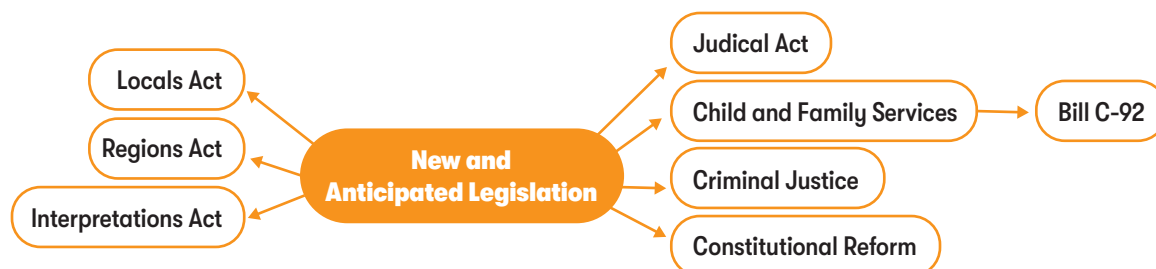
Contemporary MN-S Laws and Supporting Documents

EXISTING MN-S LEGISLATION²⁰



A Métis Judiciary will be guided by Métis laws. Those laws are ones passed by Métis people in a General Assembly, and will by necessity include agreements between the federal government and the MN-S. The following are laws of the Métis Nation—Saskatchewan. As laws enacted by the MN-S, they would be laws the Judiciary would review.

NEW AND ANTICIPATED MN-S LEGISLATION²¹



With the self—government agreements being negotiated with the federal government, and significant work being done to relocate the care and services for children and families back to the Indigenous communities, governance over the fundamental aspects of what law is must be re-examined. The Design team did NOT start our review with an examination of how the Métis Nation—Saskatchewan might support its membership within the criminal law as Gladue Report writers. Rather, we looked at what laws exist, what laws are being considered and ultimately, how nations govern and render decisions.

²⁰ See Appendix for a list of this legislation.

²¹ See Appendix for a List of this legislation

With the creation of multiple orders of Indigenous courts and tribunals over child and family services, a new model HAD to be considered. Under a non-Indigenous, colonial model of justice, Métis children and Métis women are not, and have not ever been, at the center of law making or decision making. Family values and Métis supports are also not on any priority list for courts deciding over Métis legal issues. Wâhkôhtowin, our connectedness, in fact, has had no real place in law making outside of Métis people. Yet, the new government agreements, the new laws being considered, are shining a light on the question of how might we design a Métis judiciary that holds the relationships we have as central to the way in which legal cases are processed?

New legislation was asking how we organize, how we live and vote; who our leadership are; how are we bringing our harvesting practices into the 21st century? Finally and most importantly, how will we look after our children together, not rip families apart, and find the balance of law and love of people for nation building?

CURRENT DECISION-MAKING BODIES WITHIN MN-S

Decisions are being made constantly within the MN-S throughout various bodies. Consistency and transparency, as well as timeliness were recurring themes concerning Métis people throughout the research. The **Kwayaskastasowin Judiciary** would add a higher level of clarity to all of the concerns identified. Appended is a list of sections of MN-S laws that have positions or bodies who are currently responsible for decision making. These are examples where appeals would naturally go to the **Kwayaskastasowin Judiciary**.

FEDERAL CRIMINAL LAW AND THE KWAYASKASTASOWIN JUDICIARY

It is not merely that the justice system has failed Aboriginal people; justice has also been denied to them. For more than a century the rights of Aboriginal people have been ignored and eroded

Aboriginal Justice Inquiry of Manitoba,

1991/22

22 "Report of the Aboriginal Justice Inquiry of Manitoba," The inquiry and the issues, accessed March 31, 2024, <http://www.ajic.mb.ca/volume1/chapter1.html>.



Criminal law was not the initial focus of the Design Team. The history of the Métis written laws were not to focus on criminal activities of people, but rather to focus on the practicalities of good governance and the care of the community members, specifically children and women. Elders were naturally part of the governance process and so special mention of their valued role was not necessary. In that same light, youth already had responsibilities to solidify their roles in community, so again, it was not necessary to identify roles for them—they were naturally mentored. Louis Riel himself sent off to join the priesthood at 14 and was responsible for his mother by the time he was in his late 20s. The same would have been true for midwives and other leadership roles.

With the impact of colonization on First Nations, the Métis and the Inuit, displacing them from lands and resources, marginalizing people became a common practice. This meant forcing people on and off of lands, it meant abducting children to kill the culture and ultimately it meant criminalizing any version of Traditional law and governance, religion, or ritual in order to make sure Indigenous people conformed. Today when non-Indigenous governments discuss justice with Indigenous governments, they discuss criminal law exclusively. To complicate this negotiation, they reinforce that the federal government has exclusive jurisdiction over criminal law.

This very narrow focus is important because it significantly reduces the discussion of justice to a space where Indigenous people become the gatekeepers for our own family members within the criminal justice system. It leaves Métis to work with those who plead guilty, who are in need of specialized reports of why the family has extenuating circumstances to be treated in a special way due the alcoholism, the family dynamics and lack of employment. It does not leave space for Métis governments doing better, looking after all aspects of people's lives, running the governance of a nation, This does not look at all like the full discussion of justice as it applies to the provincial or federal governments. This lens reduces justice for Indigenous people to care for our people in jail or on the way there—even though it is due to the history of colonization in Canada.

So, although this Report does not focus on criminal law and the creation of Gladue Report writers as the focus of a Métis court or judiciary, it is also important to include it as an aspect of justice, just as it is for all governments. There is a clear opportunity to develop a robust process to deal with all aspects of justice, again, as all self-governing nations do.

In order to redress the legacy of residential schools and advance the process of Canadian reconciliation, the Truth and Reconciliation Commission identified 94 calls to action. Call to Action #30 indicates:

“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.”

This recommendation calls into action how legal practitioners and law enforcers alike can work together and be held responsible for treating Indigenous peoples the same as their White counterparts. This includes opening opportunities to them they have been denied thus far; like providing offenders with equal amounts of time consulting with lawyers, an opportunity to make bail, and challenging incarceration laws that have disrupted racial representation in prisons. As a society that values justice and equality, we must address the systematic racism ingrained in legal procedures and ensure these goals are met.

The overrepresentation of Indigenous peoples in federal/provincial prisons under custody, in Manitoba alone where Indigenous peoples make up only about a tenth of the population, over half of the prisoner population is made up of peoples with native heritage. This is thought to be due to a mutually influential cycle of Indigenous people growing up under intense social discrimination making them more likely to commit crimes and act out, as well as an inherently discriminatory legal justice system.

In a society protected under Canadian federal law that seeks to unite populations of Canada, it is inherently discriminatory to ignore the respective cultural and social problems faced by Aboriginal peoples. As the oppression endured by Indigenous peoples has caused a predisposition for them to commit and be charged with breaking the law, it is only suitable that the federal government and Indigenous populations assimilate to aid this significant problem of inequality.²³

*Diversion programs are best understood as alternatives to the judicial process. In general, a person must accept responsibility for the offence with which he or she is charged before having access to the program. Diversion programs do not determine guilt or innocence. In some jurisdictions in Canada matters are diverted before a charge is laid; in others, diversion occurs after the charge but before a plea is entered. Where a matter is diverted from the courts, the offender has no criminal record for the particular offence, since the court has made no finding of guilt.*²⁴

One of the first, if not the first, Aboriginal adult criminal diversion programs was located in Attawapiskat—a Cree community on the western shore of Hudson Bay. The diversion program was developed in response to a request from the community to the Ontario ministry of the attorney general for more control over justice issues. The project, funded by the attorney general, saw the appointment of a panel of Elders to hear cases involving residents of the reserve that had been diverted from the non-Aboriginal court system. When it was active, the Elders Court sat monthly to hear cases. Since the court held its hearings after matters were diverted from the non-Aboriginal justice system, proceedings could be carried out totally in Cree. Sittings of the court attracted many community members.²⁵

GLADUE PRINCIPLES AND MÉTIS LAWS IN THE MÉTIS NATION

Research commissioned by the Design Team^{26,27} for a Métis designed justice process had a two pronged approach. One was to study the impact of laws created by the community and the likely adherence to them, and the other was to look at Gladue principles from a reverse lens—what happens when individuals are given supports and community structure before they end up locked into conflict with the justice system. In other words, where is the prevention and where is the solution? A **Kwayaskastasowin Judiciary**, along with other MN-S government services, supports, programs, and interventions could have a further reach—a healthy reach—if the systems engaged did not wait until people were in crisis in order to act.

Complexity theory, the idea that a system can be greater than the sum of its parts due to emergent interactions between its basic components, says when people react to law and institutional control it is not just a story about guilty and innocent parties and agents of justice. It is much more complex and multifaceted than that. It's about understanding the complex web of factors that contribute to crime and finding ways to address them. Instead of just focusing on laws and on punishment, we should consider the bigger picture and how different parts of society interact to affect law and impact the appearance and effects of crime.

Complexity thinking is about an understanding of things that are connected, changing, and hard to predict, like ecosystems and social systems. It's about looking at a system taken altogether, not just the individual pieces arbitrarily taken out of context.

23 "Call to Action #30," TRCtalk, accessed March 31, 2024, <http://courseware.acadiau.ca/trctalk/call-to-action-30/>.

24 Public Services and Procurement Canada Government of Canada, "Bridging the Cultural Divide : A Report on Aboriginal People and Criminal Justice in Canada.: Z1-1991/1-41-8E-Pdf—Government of Canada Publications—Canada.ca," Bridging the cultural divide : a report on Aboriginal people and criminal justice in Canada.: Z1-1991/1-41-8E-PDF—Government of Canada Publications—Canada.ca, April 3, 2013, <https://publications.gc.ca/site/eng/9.829182/publication.html>.

25 Public Services and Procurement Canada Government of Canada, "Bridging the Cultural Divide : A Report on Aboriginal People and Criminal Justice in Canada.: Z1-1991/1-41-8E-Pdf—Government of Canada Publications—Canada.ca,"

26 Benjamin Ralston, rep., Tailoring Crime Prevention to the Unique Circumstances of Indigenous Peoples: A Call for Complexity Thinking in Response to Systemic Issues (Saskatoon, SK, 2023).

27 Benjamin Ralston, rep., DESIGNING A TRIBUNAL WITH COMPLEXITY IN MIND: A PRIMER ON COMPLEXITY THEORY (Saskatoon, SK, 2023).



Problems that are quite difficult to solve, like crime among Indigenous people, cannot be viewed through only a single lens, nor rely on a single solution to repair the situation. Some solutions that appear to work or work in theory, may actually not work well in practice or in fact may make things worse. Further, some solutions that do work are often specific to certain situations and cannot be applied on a wider scale.

These complex problems involve many factors, as well as many people with differing opinions. Instead of finding one perfect solution, different approaches and adaptation are needed as you go. Complexity thinking tells us to examine how things are connected, how they change over time, and how they react to what we do. The research suggests that for problems like crime prevention, we should be open to change, learning from different perspectives, and finding ways to adapt to the unpredictable nature of the issue.

Crime prevention involves a web of relationships and interactions between various social systems

such as families, workplaces, communities, and environmental factors. Successful crime prevention strategies take into account these multiple factors and interactions, rather than solely relying on punitive measures.

The second area of research is Gladue principles. The Gladue principles are a set of ideas and practices that have developed through discussions among academics, courts, lawmakers, and legal professionals. They focus on making sure that the justice system considers the particular challenges Indigenous people go through and tries to counteract discrimination by making changes from within the system. These principles are especially relevant when it comes to the sentences that are given to Indigenous people. They aim to use a different approach apart from just sending people to prison and to consider an array of alternatives taking into account the unique circumstances of Indigenous individuals, including their cultural background and community, when deciding on the right punishment.

This means that judges are encouraged to think about how prison might affect Indigenous people uniquely and what kind of approach in sentencing would be more effective in rehabilitating them.

The actual application of the Gladue principles is mainly about the sentencing and bail conditions decided by the courts. However, the principles are only part of the overall efforts required to prevent crime. Other measures like community-based programs, police practices, and educational initiatives are also important to address the root causes of crime in Indigenous communities. A system-oriented approach is needed to address the interdependencies between victimization, criminalization, and social breakdown in Indigenous communities. Existing crime prevention interventions often lack effectiveness due to their disconnection from Indigenous perspectives and needs.

CRIME PREVENTION STRATEGIES CAN BE CLASSIFIED INTO THREE TIERS:²⁸

- **Primary prevention**, which focuses on reducing conditions that lead to crime;
- **Secondary prevention**, which intervenes early with potential offenders; and
- **Tertiary prevention**, which addresses actual offenders through interventions like rehabilitation.

²⁸ Benjamin Ralston, rep., Tailoring Crime Prevention to the Unique Circumstances of Indigenous Peoples: A Call for Complexity Thinking in Response to Systemic Issues.

These interventions can be victim-oriented, community-oriented, or offender-oriented and may target different scales, from individuals to society as a whole. While some crime prevention interventions have shown success, there's no universal solution due to the complex nature of crime. The effectiveness of interventions can vary based on different contexts and on the individual themselves.

Discriminatory treatment happens in different parts of the justice system: police checks, sentencing, treatment while in jail, all due to multiple parts of the system working together that keep some people at a disadvantage.²⁹

1 **Statistical Disparities:**

Indigenous individuals in Canada are more likely to be negatively impacted by the criminal justice system. They are more frequently arrested, charged, convicted, and imprisoned, while also facing under-policing and lack of protection when victimized by crimes.

2 **Systemic Discrimination:**

Disparities are not simply about racial demographics, but rather a result of systemic discrimination deeply embedded in the criminal justice system. This discrimination can manifest as direct or indirect impact, where laws, policies, and practices have disproportionate adverse effects on Indigenous groups.

3 **Interconnected Barriers:**

Various factors contribute to systemic discrimination. These include economic disadvantages, limited education opportunities, cultural differences, and under-representation in decision-making roles within the justice system.

4 **Interactions with Other**

Systems: Discrimination isn't limited to the justice system; Indigenous peoples face discrimination and marginalization in other areas like education, healthcare, and housing. These cumulative disadvantages can lead to further entrenchment of systemic discrimination.

Addressing the issue of crime prevention among Indigenous populations by adopting a community-based, participatory approach is the direction factors are pointing for successfully creating a path which can restore an individual life. This approach involves designing interventions that involve families and communities, focusing on the unique circumstances of Indigenous peoples, and working towards an incremental and adaptive strategy for crime prevention.

Crime prevention measures are specific to each Indigenous community. The success of community-based justice programs are measurable. These programs aim to incorporate Indigenous values into the justice system, facilitate restorative justice, and reduce victimization and crime. They are showing promising results in terms of reducing recidivism and even contributing to transformational change for participants and communities. However, effective crime prevention for Indigenous peoples should be tailored to each community's unique context and needs; in particular, a bottom-up approach that respects local culture and engages the community has more success.

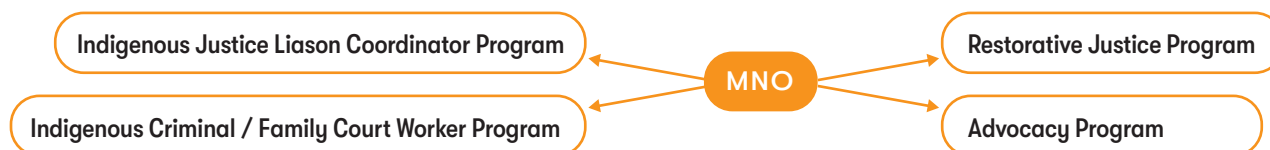
29 Benjamin Ralston, rep., DESIGNING A TRIBUNAL WITH COMPLEXITY IN MIND: A PRIMER ON COMPLEXITY THEORY



Contemporary Justice for Other Métis Governments³⁰

Métis Nations in Ontario, Manitoba, Alberta, and British Columbia are advancing the conversation about justice in interesting ways. The following is a summary:

MÉTIS NATION ONTARIO³¹



MNO ADVOCACY PROGRAM

The Métis Nation of Ontario (MNO) Community Wellbeing Branch offers a variety of services through the MNO Advocacy Program. The MNO Advocacy Program is a comprehensive and culturally responsive program designed to address the needs of Métis citizens and communities through a restorative justice approach. Grounded in the principles of healing, accountability, and community engagement, this program aims to foster reconciliation, restore relationships, and promote holistic well-being within Métis communities.

Restorative justice, as implemented in the Métis context, is a philosophy that recognizes the unique history, culture, and needs of the Métis people. It acknowledges the deep interconnections between individuals, families, and communities, and seeks to repair the harm caused by criminal behaviour or conflicts through inclusive and meaningful processes.

INDIGENOUS JUSTICE LIAISON COORDINATOR PROGRAM

This program strives to strengthen the ability of MNO citizens and communities to engage in informed decision making, protect their interests and promote access to justice. It offers MNO citizens the following free of charge:

- Access to alternatives to the criminal justice system through restorative justice programs;
- Access to legal information, referrals and education to gain a fulsome understanding of various areas of legal inquiry;
- Access to an Indigenous Court Worker for individuals in Region 8;
- Access to justice aftercare programming for individuals recently or currently involved in the criminal justice system.

³⁰ Links to all self government agreements are in the Appendix

³¹ "Advocacy Programs," Advocacy Programs—Métis Nation of Ontario, April 16, 2024, https://www.metisnation.org/programs-and-services/community-wellbeing/advocacy-programs/?doing_wp_cron=1713983633.0347359180450439453125#:~:text=The%20M%C3%A9tis%20Nation%20of%20Ontario%E2%80%99s%20Restorative%20Justice%20Program,an%20alternative%20to%20the%20traditional%20criminal%20justice%20system

It also helps MNO citizens and self-identifying Indigenous people who are seeking legal assistance or experiencing a legal issue in any area of law. It is first point of contact and follows up to provide:

- Legal education, information and resources in the area of legal inquiry
- Assistance with applications for Legal Aid Ontario or other avenues for legal advice
- Referrals to internal MNO Advocacy programs and internal MNO programming
- Referrals to qualified and trusted external agencies or organizations

INDIGENOUS CRIMINAL/FAMILY COURT WORKER PROGRAM

Clients in particular regions are provided information about charges, rights and options, attend court in supportive capacity, create bail release plans, and have someone act as their advocate without providing legal advice.

RESTORATIVE JUSTICE PROGRAM

“The Métis Nation of Ontario’s Restorative Justice Program is an initiative aimed at promoting healing, reconciliation, and community well-being within Ontario Métis communities. The program is designed to address the harms caused by criminal offences and to provide an alternative to the traditional criminal justice system.

Restorative justice focuses on repairing the harm done to individuals, families, and communities by addressing the underlying causes of criminal behaviour and facilitating dialogue between the offender, victim, and community. The Métis Nation of Ontario’s program adopts a culturally responsive approach to restorative justice, incorporating Métis traditions, values, and customs.”³²

According to the Métis Nation Ontario’s (MNO) Registry Policy (as amended by the MNO General Assembly, August 19, 2023), there is no appeal process for citizenship applications that are incomplete. For application rejections based on other reasons, the applicants may seek to appeal the decision of the Registrar in a two-stage appeal process. The MNO Registry Policy states the process as follows:

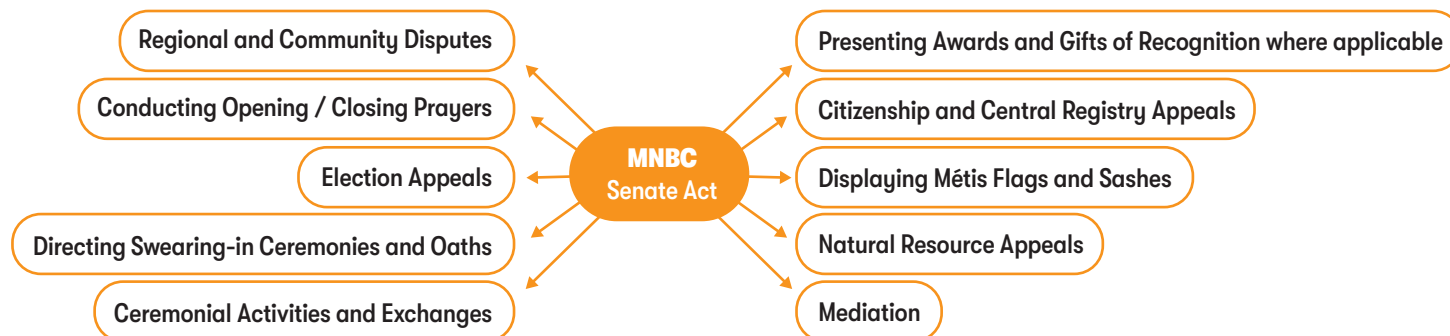
“Stage one: A reconsideration of the application by the Registrar. This is a prerequisite for stage two. Stage two: An applicant may appeal the reconsideration decision of the Registrar. That appeal application will be reviewed by an independent genealogist with experience in Métis genealogy. The decision of the appeal genealogist will be final and binding on MNO and the applicant.”

The MNO has the authority to charge fees for reconsiderations and appeals. If the MNO government funding to support the Registry is not available, the appeal process might be streamlined or terminated. Currently, the MNO has a Citizenship Registry and a separate Harvesters Registry.

32 “Advocacy Programs,” Advocacy Programs—Métis Nation of Ontario



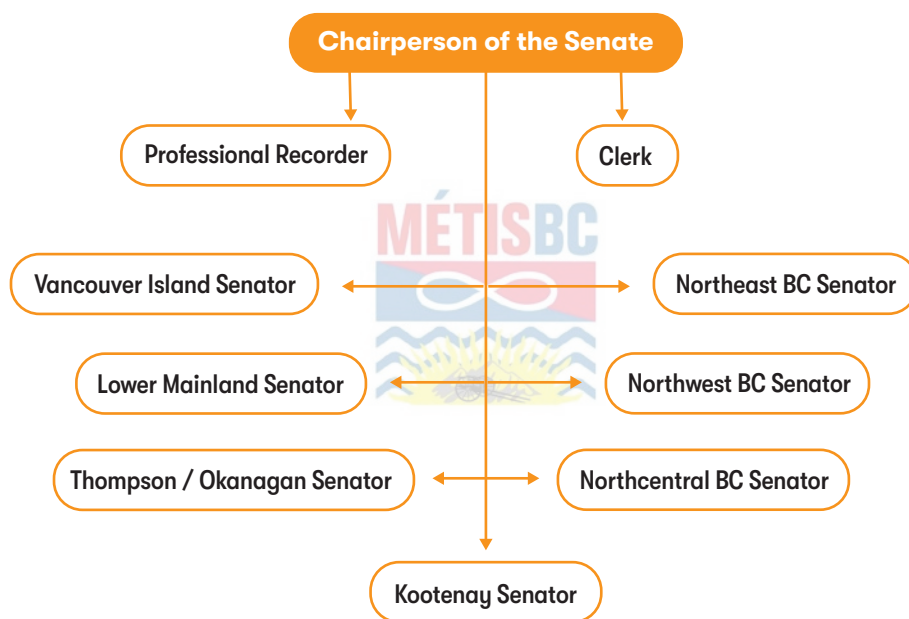
MÉTIS NATION BRITISH COLUMBIA³³



MNBC JUDICIAL PRACTICES:

For MNBC, the Senate acts as the judicial arm as set out in the MNBC *Constitution*. MNBC established the Senate Act in 2005, and in 2007 the Senate became the judicial arm of MNBC.

As shared on the MNBC website (2024), the structure of the MNBC Senate is as follows:



³³ MÉTIS NATION SENATE ACT (Métis Nation British Columbia, 2023) <https://www.mnbc.ca/senate>

The *Métis Nation British Columbia Senate Act* as ratified at the September 2023 MNBC AGM describes the mandate and powers of the Senate noting the inclusion of seven Senators, one per region, as appointed by the Regional Governance Council, for a term of four years (MNBC, 2023).

As described on page 5 within the MNBC Senate Act (2023), The Senate is responsible for carrying out duties in the following areas:

- Mediation;
- Citizenship and Central Registry Appeals;
- Election Appeals;
- Regional and Community Disputes;
- Ceremonial Activities and Exchanges;
- Conducting Opening / Closing Prayers;
- Directing Swearing-in Ceremonies and Oaths;
- Presenting Awards and Gifts of Recognition where applicable;
- Displaying Métis Flags and Sashes; and
- Natural Resource Appeals

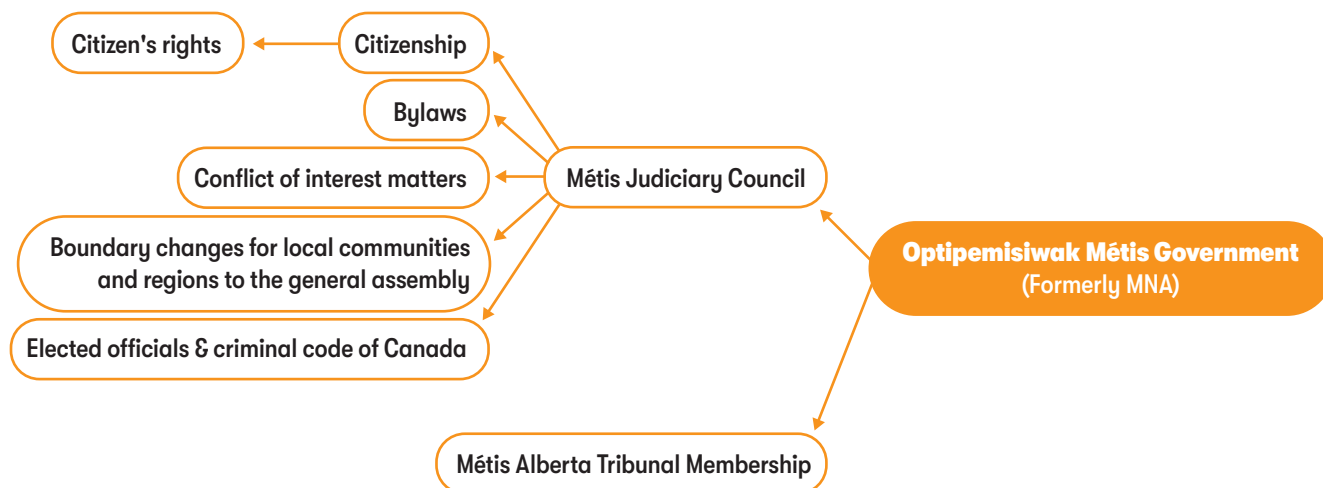
Decisions made by the Senate committees must be provided in writing to the affected parties as well as to MNBC for review and to determine necessary action (MNBC, 2023).

The Clerk of the Senate is an independent party but is paid by MNBC. The *MNBC Senate Act* also states that the Clerk “Shall hold no other seat as MNGA/AGM Clerk or administrator/staff personnel within MNBC”.

Decisions are accessible, transparent, posted on the MNBC Senate website. The majority are complaints related to denied citizenship, with a few relating to elections irregularities, and conflict of interest.



OTIPEMISIWAK MÉTIS GOVERNMENT (FORMERLY THE MÉTIS NATION OF ALBERTA)



Métis Nation Alberta provides judicial oversight through the Métis Judiciary Council (MJC), established in 1996 and reconvened in 2019 after a break. The MJC is made up of six members serving for a four-year term. Each of the six MNA Regions selects one representative to serve for a four-year term. The MJC offers an alternative dispute resolution mechanism for MNA citizens, and the MJC mandate is set out within articles of the MNA Bylaws. Areas of authority for the MJC include: Disputes related to citizenship; Disputes related to MNA Bylaws; Disputes related Métis citizen's rights; Conflict of interest matters; Recommend boundary changes for Local Communities and Regions to the General Assembly; Oversight of decisions related to elected officials in the event of conviction of an indictable offence under the Criminal Code of Canada; Providing a written response to matters put to the MJC by Provincial, Regional and Local Councils, or Métis citizens; Establishment of the initial rules and procedures for the MJC; Undertake reviews upon request from Provincial, Regional or Local council.

MNA provides information on the process to submit a complaint on their judicial body website. The MJC mandate is determined through consideration of various articles within the MNA Bylaws.³⁴

- Article 29—sets out information and criteria for MJC membership
- Article 30—establishes powers of the MJC
- Article 31—states the rights of the parties before the MJC
- Article 32, 55, and 74—Procedure on topics on conflict of interest of processes within MNA.

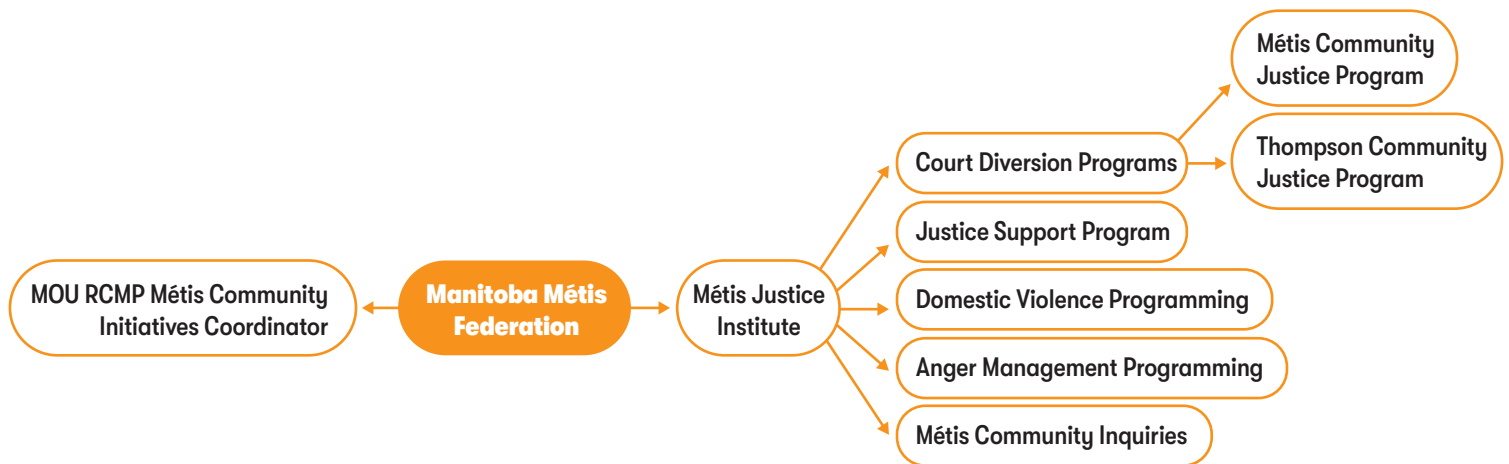
³⁴ Note: OMG (MNA) does not represent all Métis within Alberta. On March 28, 2024, the courts found in favour of the plaintiffs, Fort McKay Métis Nation Associate, and the Métis Settlements General Council in the case related to determining who is the representative of the Métis in Alberta. The courts found that Canada had not consulted with these two Métis groups prior to signing Self-Government documents with MNA.

MÉTIS ALBERTA SETTLEMENTS TRIBUNAL MEMBERSHIP

Alberta is the only province where the government has recognized a land base as belonging to the Métis people as a settlement. With the recognition of that land came a need to determine who the members of the community were to ensure rights were honoured for the appropriate people. It became important for both the government and the Métis communities to clearly define and determine who had the right to live in the Settlements, as well as who had the power to determine membership. The Alberta government's approach to membership in the Settlements from the beginning and maintained that role for a significant period of time was one of oversight. After

many disputes, negotiations and political pressure, the Métis Settlement Association became the first "legislated regime that recognizes and gives effect to Métis land and local governance."³⁵ This provided them governmental support to develop their own Métis Settlement Appeals Tribunal (MSAT) to handle local disputes within the settlements. Today, MSAT approaches justice with a Métis worldview and has authority over who is admitted into the membership through their own Constitution and membership legislation.

MANITOBA MÉTIS FEDERATION



The Manitoba Métis Federation (MMF) has mandated the creation of three Tribunals. The first relates to citizenship appeals, where "any applicant whose application for Citizenship is rejected has a right to appeal that decision to the Citizenship Appeal Tribunal... within 60 days from the date of reception of rejection."³⁶ The second and third Tribunals relate to harvesting under the Métis Harvesting

Initiative. The MMF Constitution mandates the creation of the Métis Harvesting Judicial Tribunal and the Métis Harvesting Appeal Tribunal, which deals with all breaches of the Métis Laws of the Harvest by Métis Harvesters and appeals to decisions made by the Métis Harvesting Judicial Tribunal respectively.³⁷

35 Jean Tiellet, "Métis Law in Canada," Metis-Law-in-Canada-2013-1.pdf, 2005, <https://albertametis.com/app/uploads/2014/04/Metis-Law-in-Canada-2013-1.pdf>.

36 "MANITOBA MÉTIS FEDERATION AND THE MANITOBA MÉTIS FEDERATION INC. CONSTITUTION," mmf_constitution_2024_web_20240326155022.pdf, 2023, https://www.mmf.mb.ca/wcm-docs/freetext/mmf_constitution_2024_web_20240326155022.pdf

37 "MANITOBA MÉTIS FEDERATION AND THE MANITOBA MÉTIS FEDERATION INC. CONSTITUTION," mmf_constitution_2024_web_20240326155022.pdf

The current Justice Minister has been mandated to develop a Red River Métis Justice Strategy that feeds into Canada's Indigenous Justice Strategy.³⁸ As of 2022, Justice Canada is providing \$250,000 over three years to support the development of the Red River Métis Justice Strategy, which aims to contribute to the broader Indigenous Justice Strategy. The initiative aims to address systemic discrimination and the overrepresentation of Indigenous people within the Canadian justice system.³⁹

MMF's Justice programming is largely delivered under the Métis Justice Institute (MJl). MJl was formed in 2003 with a mandate to "develop and maintain a full range of justice services and programs that meet the expectations of the Métis community in Manitoba."⁴⁰

Under the MJl umbrella, there are six key programs. Of those six, two are court diversion programs, which are the Métis Community Justice Program (MCJP) and the Thompson Community Justice Program (TCJP). The MCJP operates in the MMF Northwest, The Pas, and the Interlake Regions, offering culturally sensitive supports and community-based alternatives from the mainstream justice system. Under the MCJP, the MMF will establish Métis Mediation Services to "support individuals with all family-related issues, including separation and the development of custody agreements."⁴¹

Similarly, the TCJP provides similar supports with a particular focus on community relationship reparation and is administered through the Thompson Regional Office. Justice Canada has committed to provide \$469,227 over five years in funding for supports and services under the MCJP, and \$483,377 to support the TCJP.⁴²

The Justice Support Program (JSP) concentrates on the reintegration of Métis individuals in conflict with the justice system, assisting with access to basic necessities and enhancing life skills for employment or education readiness. Additionally, the fourth Justice Programming consists of two sub-programs, which are the Domestic Violence Programming and the Anger Management Programming. The MJl also provides for the Métis Community Inquiries, offering assistance with justice issues. In collaboration with the RCMP, the MMF has also signed a Memorandum of Understanding that establishes the role of a RCMP Métis Community Initiatives Coordinator to enhance the Métis community's relationship with the police, facilitating program partnerships, funding applications, and community policing initiatives.

The MMF Justice portfolio also includes the continued development of *Pey Key Way Ta Hin* (Bring Me Home) program.⁴³ This family-driven program provides \$10,000 rewards for any information provided that leads to locating missing individuals.⁴⁴

38 "MMF Justice Mandate Letter," Mandate Letter—Minister Lagimodiere, 2022, https://www.mmf.mb.ca/wcm-docs/docs/caucus_cabinet/2022_10_12_mandate_letter_acarrier.pdf.

39 "Addressing the Overrepresentation of Red River Métis People in the Justice System in Manitoba," Canada.ca, October 11, 2022, <https://www.canada.ca/en/departement-justice/news/2022/10/addressing-the-overrepresentation-of-red-river-metis-people-in-the-justice-system-in-manitoba0.html>.

40 "Métis Justice Institute," Manitoba Métis Federation, accessed March 31, 2024, <https://www.mmf.mb.ca/metis-justice-institute>.

41 "Addressing the Overrepresentation of Red River Métis People in the Justice System in Manitoba," Canada.ca

42 "Addressing the Overrepresentation of Red River Métis People in the Justice System in Manitoba,"

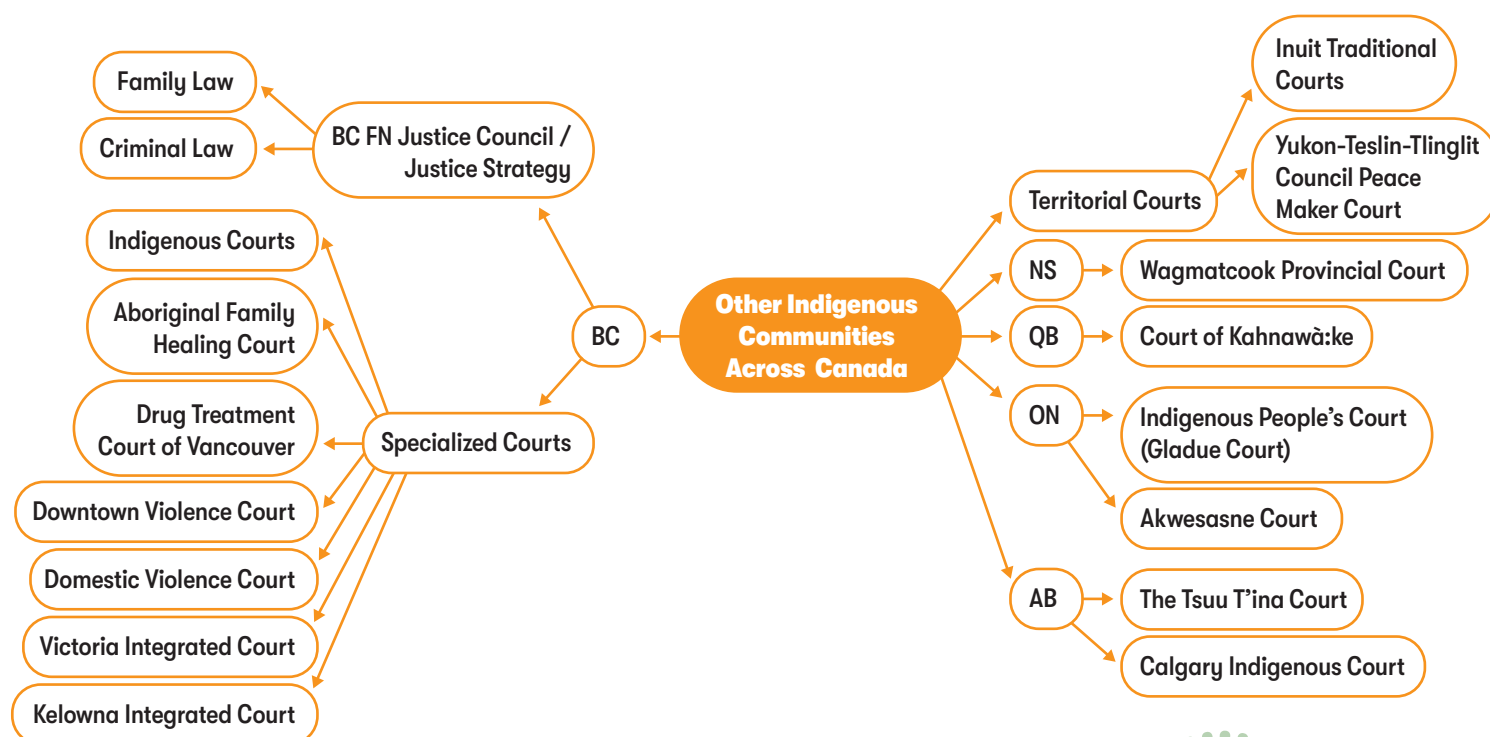
43 "MMF Justice Mandate Letter," Mandate Letter—Minister Lagimodiere

44 "Pey Key Way Ta Hin/Bring Me Home: MMF Announces \$1 Million Dollar Program to Give Lost Loved Ones Their Voices Back," MMF, 2021, <https://www.mmf.mb.ca/news/pey-key-way-ta-hin-bring-me-home-mmf-announces-1-million-dollar-program-to-give-lost-loved-ones-their-voices-back>.

National Examples: Canada and Indigenous Courts⁴⁵

The [federal] IJP [Indigenous Justice Policy] supports Indigenous community-based justice programs that offer alternatives to mainstream justice processes in appropriate circumstances. The program has three main objectives:

(i) to assist Indigenous people in assuming greater responsibility for the administration of justice in their communities; (ii) to reflect and include Indigenous values within the justice system; and, (iii) to contribute to a decrease in the rate of victimization, crime and incarceration among Indigenous people in communities with community-based justice programs funded by the IJP.⁴⁶



⁴⁵ See Appendix for materials outlining these examples

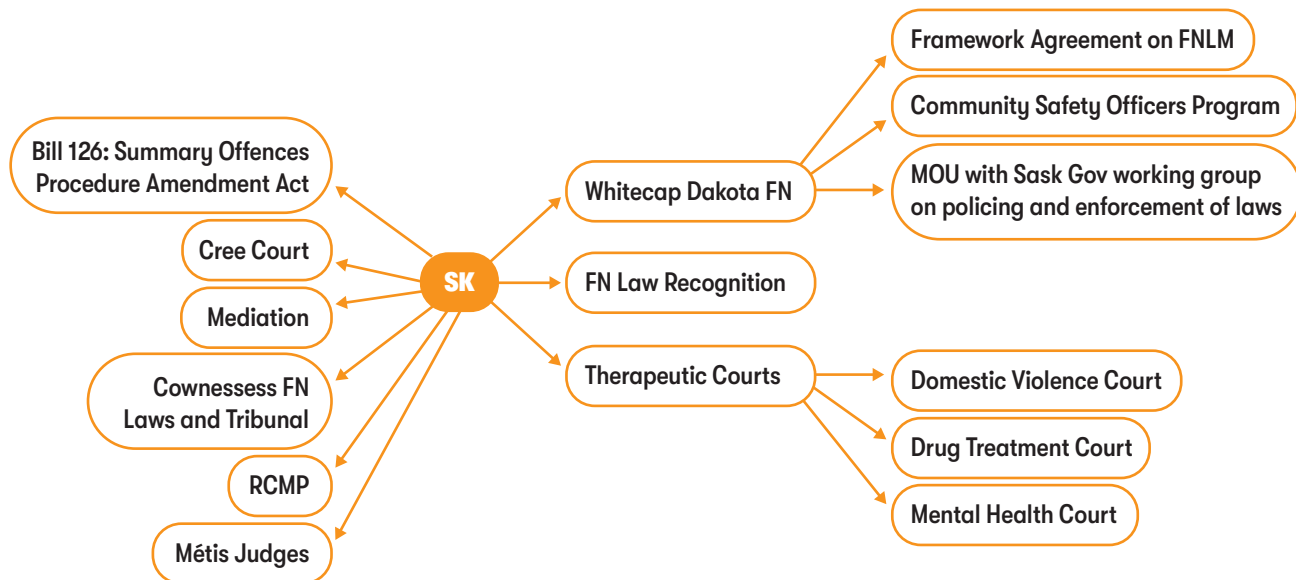
⁴⁶ Department of Justice Government of Canada, "Overrepresentation of Indigenous People in the Canadian Criminal Justice System: Causes and Responses," Conclusion—Research and Statistics Division, January 20, 2023, <https://www.justice.gc.ca/eng/rp-pr/jr/cjp-cjs/p6.html>.

Looking around at Indigenous Courts in Canada the predominant theme is one of criminal law in regard to sentencing and diversion once a person charged pleads guilty. As Child and Family services programming expands Indigenous jurisdiction will flow into that area as well. This means there are more services and programs and court models around ‘offenders’ run by Indigenous people than in the past. A look across the nation shows a few examples of this.

SASKATCHEWAN⁴⁷

Because Métis Nation—Saskatchewan is located within the borders of the province of Saskatchewan, and because all matters have historically been taken to provincial judicial bodies, a review was taken of how Indigenous matters are completed and where Indigenous voices are

taken into consideration, and finally, what alternatives to typical colonial court models or alternative dispute resolution process are available already in Saskatchewan (additional details on the image are provided in Appendix ch 1).

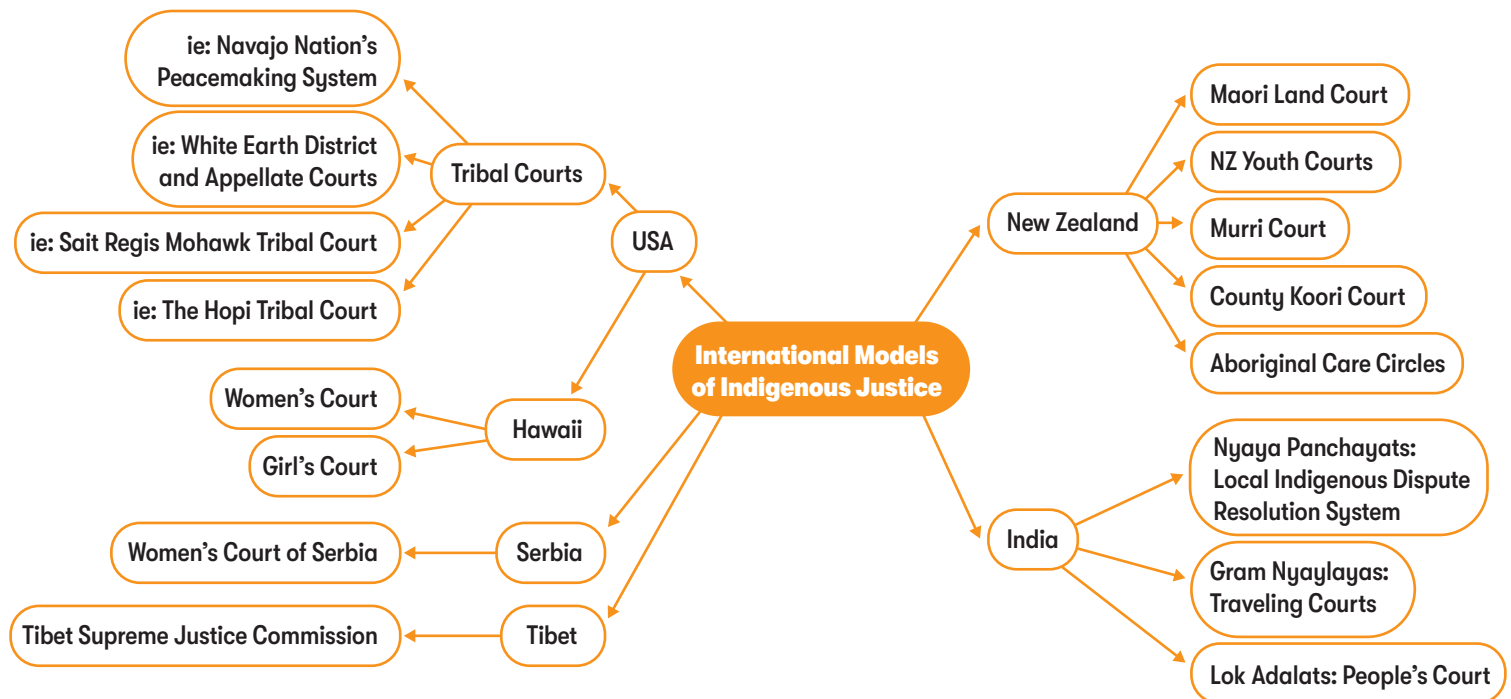


⁴⁷ See Appendix for a list of examples.

International Indigenous Justice Practice Examples⁴⁸

A number of different international models of Indigenous justice were reviewed in order to broaden our understanding of how others have approached the issue of justice with an Indigenous lens. Overall, we found natural law embedded throughout many of the models, and a few that focused specifically on women and youth. Many were mobile, travelling into rural areas, and some featured decision-making structures where local Elders participated in the dispute resolution. Many, particularly in North America, also have a criminal law focus.

The image below provides a snapshot of our investigation, and further details are provided in Appendix ch 1.



⁴⁸ See Appendix for International examples

Justice through Alternative Dispute Resolution Processes⁴⁹

NIHTOHTA MAKÂYA, THEY LISTEN TO UNDERSTAND

The research was clear, the more people are involved in the resolution of a problem, the more they take responsibility, the more likely the outcome is satisfactory, the healing begins and the less likely the recurrence of harm. There are many names for this, restorative justice, alternative dispute resolution, justice as healing, trauma-informed justice, human centered justice, and more. Nihtohta, was the centerpiece of this work, not only how people were heard or listened to, but also who was doing the listening.

A dispute resolution model (such as mediation, discussed below) is seen as an “alternative” to the adversarial “right-wrong” “winner-loser” “good-bad” colonial court process. Métis and other Indigenous peoples have always understood, as demonstrated in the traditions, that this “right-wrong” focus is too narrow, it is not the way to resolve disputes in community—and between human beings generally. It is also not restorative to relationships nor in getting to the root of the dispute and healing the rifts between people and among community.

“When Should You Consider Dispute Resolution? The sooner, the better.

As time goes by, it may become harder to agree on a solution that satisfies everyone. Each side will become convinced they are “right” and the other side is “wrong.”⁵⁰

Human nature is such that most people involved in conflict take the conflict very personally. It is no longer about the facts and the issues underlying the conflict, rather it becomes connected to that person’s sense of self and pride.

“Most people take the conflict personally and the outcome of the mediation as a reflection of who they are.”⁵¹

People in general, wish to be seen as “good”, and not to feel “wrong” or “blamed”. In an effort to avoid those feelings they can get hyper focussed on “blaming” the other party. The person may not be able to look logically at any of the issues in the conflict as it becomes about being right and blaming the other person and feeling that the other person is “the problem”. The traditional colonial court process provides a natural habitat for this mindset, as parties set out their own stories separately to a third party judge, whom they hope will provide a decision that one of them is “right” and “wins”. People in conflict with another party or agency may become very defensive and behave in ways they normally would not because they want to “protect themselves” and they want to be right. It can make dispute resolution between parties very difficult.

⁴⁹ The Design Team completed a national and international scan for restorative justice examples.

⁵⁰ Department of Justice Government of Canada, “Resolving Disputes—Think about Your Options,” Government of Canada, Department of Justice, Electronic Communications, August 25, 2022, <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/dr-rd/index.html>.

⁵¹ Elizabeth E. Bader (Author) and Ana Mghvdeladze (Translator), “The Psychology of Mediation: Issues of Self and Identity and the IDR Cycle,” *Alternative Dispute Resolution Yearbook* 12, no. 2 (December 30, 2023), <https://doi.org/10.60131/adr.2.2023.7716>.

In the last 20 years, even the traditional, adversarial, court system has seen the benefits of dispute resolution. An early mediation process is now mandatory in litigation and the court itself conducts “pretrial settlement conferences” with parties prior to trial—to provide parties the opportunity to create a settlement of their own dispute together without going to trial.

If a party to a matter is too emotionally invested in being “right” or “winning” they cannot see the other side’s position nor have empathy for the other person. They may not be able to feel and show respect to the other person or even listen to the other person’s side of the story. When a party is emotionally heightened and they feel defensive and their pride is wounded, they may, for example, refuse even the most reasonable or generous settlement offer out of spite.

Parties in conflict, working with a trained, skilled, neutral mediator may be able to de-escalate their own emotions and defensiveness such that they can listen to the other party with curiosity, empathy and respect. Dispute resolution requires parties to be open to resolution with the other party, open to seeing the big picture of “putting things right” and open to demonstrating healthy ego and strength of self.

*What led me talking
to a RAP worker, that
communication led to
connection. So then I
really got to know that
worker and that worker
really got to know me.
And I really felt like
getting to know each
other, like, well, he,
when he got to know
me, I really felt like,
in a way, like he even
said himself that he got
to know who I truly
was and not just the
situation as well as got
to know my potential.*

Métis youth

Dispute resolution facilitators, like mediators, must also maintain healthy ego strength and not become overly invested in outcomes and remain neutral—to see both the negative and the positive in all people. The person facilitating an open inclusive conversation is in a position to be a role model in dispute resolution. They must be curious, and above all, show empathy and respect for everyone. This is achieved through active deep listening. The goal is for parties working with a trained, skilled, neutral facilitator to begin to feel safe and calm enough to listen to the other party’s story with curiosity, empathy and respect. If a mediator is involved the right questions may be asked, which can deepen and open parties to discover a new perspective. People helped to listen respectfully will be able to see a bigger picture, in which restoring relationships between individuals, members of organizations, and maintaining positive community connections is the most important outcome.





MEDIATION

Mediation is a type of dispute resolution process which is facilitated by an impartial third party person who is called a mediator.

It is a process in which an impartial third party assists people in conflict to identify and resolve their issues. As an impartial third party, the mediator's role is to help the parties have a discussion and make decisions about their case. The mediator does not take sides or make decisions for the parties. Instead, the mediator helps the parties make their own decisions. No decisions are made in mediation unless all parties agree. During mediation, the mediator works with the parties to:

- Define the issues
- Clarify concerns
- Develop, understand and evaluate solutions
- If possible, reach practical and mutually beneficial agreements"

"Of course, the process works only if the parties have a good faith commitment to exploring their respective interests and patience to work through the process. In such cases, mediation can be amazingly successful. Regardless of whether the underlying dispute is over domestic relations, employment, or other legal disputes, mediation has certain universal advantages. For purposes of alliteration, we'll label these advantages as "The Six Cs:" 1) choices; 2) control, 3) confidentiality, 4) cost, 5) calendar time, and 6) closure."⁵²

Common complaints of participants involved in a narrower, more formal, "adversarial" adjudicative/court process are that the process is costly, time consuming, and that they have little input into or control over the outcome—a decision made by a judge. The above list of the advantages of mediation as an alternative process for dispute resolution 1) choices; 2) control, 3) confidentiality, 4) cost, 5) calendar time, and 6) closure, directly addresses some of the dissatisfaction with the traditional, formal, "colonial" court system. The process of mediation with a trained mediator/facilitator, provides an opportunity

for the parties to work together on crafting their own resolution and reach "closure".

Participants are more likely to find closure, preserve relationships and to honour the agreement they made themselves. The mediation process provides a more informal process which allows for flexibility and creativity and empowers participants. The mediation process is easily adapted to involve community members, family, advisors, elders, support persons and other parties, and is a process that is more parallel to the values inherent in community based and "circle" models traditionally used in many Indigenous and Métis cultures.

The mediation process is generally confidential. This provides participants with a safe space in which to discuss issues, express feelings and perspectives, and to offer concessions or admissions which they would not offer if it could be used to their detriment in a later adjudicative process.

In a mediation, parties are provided the neutral space, a process or framework and a trained facilitator, and the opportunity to try to work together toward a resolution in a confidential process. Ideally, the parties are active participants, working toward creating their own tailored solution rather than having an outside third party Judge decide their dispute. The mediation process may also be used within the adjudicative process by the Judge(s) either before, (like a pretrial settlement conference) or during a hearing process—if and when an opportunity appears which lends itself to the parties working out a resolution with the assistance of the Judge(s).

⁵² Fisher Phillips and D. Albert Brannen, "Why Mediation Is a Preferred Method of Resolving Disputes," Lexology, March 1, 2012, <https://www.lexology.com/library/detail.aspx?g=e06c1f8e-4611-4db5-9328-5f7dd3f2dc0f>.

RESTORATIVE JUSTICE

Restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behaviour. It operates on the principle that crime causes harm to people, relationships, and the community, and therefore efforts should be made to repair that harm. Here's an overview, including where it is used, by whom, its effectiveness, and examples.

Restorative justice focuses on the needs of the victims, the offenders, and the involved community rather than an individual, alone facing punishments and retribution, or punishing the offender, or providing retribution, as is often the case in regular Western style criminal justice. Victims take an active role in the process, while offenders are encouraged to take responsibility for their actions. Restorative justice seeks to heal and put right the wrongs.

Restorative justice is used in several contexts, including:

- **Schools:** To address bullying, vandalism, and classroom disruptions.
- **Criminal Justice Systems:** For minor to serious crimes, including violent offenses, to reduce recidivism rates and support victim healing.
- **Community Disputes:** Such as neighbourhood conflicts.
- **Family and Domestic Cases:** To resolve issues within family or domestic relationships.

It is primarily implemented by:

- **Educational Institutions:** Teachers and school administrators.
- **Law Enforcement Agencies:** Police departments offering restorative justice programs as an alternative to traditional criminal justice processes.
- **Judicial Systems:** Courts that refer cases to restorative justice programs.
- **Non-Governmental Organizations (NGOs):** That specialize in conflict resolution and restorative practices.

Research suggests that restorative justice can be highly effective in certain contexts. Key findings include:

- **Reduction in Recidivism:** Studies have shown that restorative justice programs can lead to lower rates of reoffending compared to traditional criminal justice interventions.
- **Victim Satisfaction:** Victims participating in restorative justice processes report higher levels of satisfaction, feeling that their needs and voices are heard and valued.
- **Offender Accountability:** Offenders are more likely to understand the impact of their actions and engage in positive behaviour change.
- **New Zealand, for example, uses restorative justice in its juvenile justice system.** Young offenders often participate in family group conferences, which include the victim, the offender, their families, and other community members, to discuss the impact of the crime and agree on a plan to repair the harm.

Canada has integrated restorative justice practices within both its youth and adult criminal justice systems, focusing on community-based healing circles and mediation programs. In the United States Schools across the country have adopted restorative justice practices to address disciplinary issues, aiming to reduce suspensions and expulsions and improve school climate.

Restorative justice represents a shift towards a more holistic and inclusive approach to dealing with crime and conflict. By focusing on healing, accountability, and the needs of all parties involved, it offers an alternative to the Western punitive methods we're used to. Evidence suggests that, when implemented effectively, restorative justice can contribute to reduced recidivism, greater victim satisfaction, and stronger communities. However, its success depends on the commitment of all participants and the availability of resources to support these programs.



Conclusion

OUR EARLY QUESTIONS TO BEGIN OUR 360 REVIEW LOOKED LIKE THIS:

- 1 How might we make a Court with the Métis Nation Saskatchewan?
- 2 How might we create a body that is restorative instead of punitive so that it supports the community to be proactive in identifying where support might be needed before challenges escalate?
- 3 How might we build a strong Métis cultural foundation into the experience of the judiciary?
- 4 How might the judiciary become a relevant community presence for the Métis community, regardless of how they participate in it (in celebration, witnessing, or to support them in conflict)—how is it inclusive of the Métis community?
- 5 How might we build a court in the spirit of **otipemisiwak**, owning yourself, being responsible for yourself, where the goal is to connect community and restore relationships?
- 6 How might we build a Métis Court that is grounded in being inclusive and citizen-centered, trustworthy, transparent, and in the spirit of **otipemisiwak**.

As we continued our research we began to move further and further into a Métis mindset to create a Judiciary for the people, reflective of values and community pride. We were reminded that alternatives to typical colonial justice is a welcome idea in every country and that restoring relationships should be key. We build that into the model going forward. Most critically, our findings were that language must be a driver in the creation of a Métis judiciary. We were also reminded that language is where traditional values and laws are found and adapting to those will be what carries the weight of building the judiciary as an institution for the Métis people that is trusted, respected and relied on.

We offer some of the main words that kept appearing in conversation with language speakers. This Report did not encompass a review of the multiple Métis languages but our community work indicates there will be a clear need for that in order for implementation to occur with this body as the **Kwayaskastasowin Judiciary**. We started the conversation and place high value on these terms, but fluent language speakers—Métis Experts, will know exactly how to do this part of this work.

YOU WILL FIND THESE TERMS THROUGHOUT THE REPORT:

- **Otipemisiwak:** we are the people who own themselves—this speaks right to the heart of autonomy, self-determination and self governing
- **Wâhkôhtowin:** Kinship, and the interconnected nature of relationships, communities, and natural systems
- **Kiyokêwin:** Visiting, learning is developed in relationship, and in its own time. Spending meaningful time connecting
- **Kwayaskastasowin:** restore relationships, its main goal is to reset order, to set things right.
- **Nihitohta:** Listening so well that the person speaking knows they are heard
- **Sâkihitowin:** love and kindness for oneself, family, and community

As we move forward in the design of **Kwayaskastasowin Judiciary**, we explore ideas and opportunities that show promise to be successful with community members. We learned with the community about what might be possible for a healthy, alternative model for a Métis Judiciary, a **Kwayaskastasowin Judiciary**.

OUR WORK IN COMMUNITY WAS FRAMED IN LIGHT OF THE FOLLOWING DESIGN CRITERIA:

- 1 **A strong Métis cultural foundation**—create opportunities for decolonizing the experience of justice by embedding our culture at the core of this judiciary
- 2 **Be relevant to and inclusive of the Métis community**—continuous involvement of community members in the judiciary will build relationships, ensure its activities and decisions are representative of our community values, and provide opportunities for continuous improvement and alignment of the operations of the court.
- 3 **Be proactive and restorative**—focus on encouraging connection, engagement, conversation, deep listening, and creating cycles of repair and re-investment within our community.
- 4 **Build trust with the government and the community**—commitment to conditions that build ethical space and positive experiences of the judiciary's intentional staffing, thoughtful structuring, including its independence, and deep care for the processes of **kwayaskastasowin**. It will build shared responsibility and mutual respect over time.



CHAPTER 2

Listening to Métis Voices

What if... we listened in community and gathered input from Métis people about a Métis Judiciary!??

WHAT IF

Brainstorm ideas using the insights learned from the What is stage to go deeper into an array of concepts. No idea is a bad idea.

- Brainstorm Ideas
- Develop Concepts of a new model of Court
- Sketch out ideas of new models with Métis people

What if... we start by asking the people who will use a Métis Judiciary what they really want?

Summary

This chapter explores the idea of creating a judiciary that is designed by and for Métis people. It focuses on key themes from the data and insights shared by Métis community members including young people and Elders, experts, advisors, and MN-S leadership to learn and understand what's most important to them. The goal is to create a judiciary that Métis people can trust and see as part of their own decision-making process.

STEW: SAFE SPACE, HONESTY, CREATIVITY, FUN, GENEROSITY, RESPECT, BEING HEARD, CLARITY, CURIOSITY, SINGING, STRONG, FAIR, COMPASSION, EMPATHY, SPIRITUAL, LIBERATION.

Community responses when invited to consider ideas related to training, intake and trust for a new judiciary and asked, “If you were creating a judiciary system like a ‘stew’ for you and your family, what ingredients would you include?”



Nihtohta

Listening with your ears is only part of listening. Real listening asks for you to use your eyes. To witness, listening to show you heard what another has said, includes using your mouth and even your nose. There are times when the hair on your body will react to a teaching that you really truly hear. Listening is central to every single relationship you have, especially if you are working to resolve long-standing issues that may be hiding in current disagreements. Listening is better understood as a deeply spiritual act. **Nihtohta** is just such an act, it means to listen with all of your ability.

"Listening properly encourages others to speak openly."

Community member

I was a junior lawyer who had to respond to complaints for a justice ministry and try to refer them on or resolve the matter if at all possible. Junior and nervous, I took a lot of notes and asked questions to make sure I really understood what the problem was. On one occasion a woman came into the office with a concern about police and them relocating her daughter, again. The 16 year old girl kept running off from mom to dad. I listened to her concerns and asked a few questions. Was the girl safe with the dad? Was the girl coming home at all? Was she

attending school? Did mom have her friends' contact info if she did not end up at dad's? Was she complaining that the police were not forcing her daughter into the police car to return her home on every occasion?

Once I understood her issues, I asked the mother what she really wanted for her situation. She wanted her daughter where she knew she was ok. Then asked if the police were the place to get it and if that was healthy for her daughter. Honest question. She actually cried softly for a bit then said no. She thanked me then

and left and seemed content with our conversation.

After the mother left, a support staff came in to see me. She commented that the woman had been coming there for a year to complain and she has never, ever left content. She asked what had I done? I had not done anything. Nothing. I just listened. It was the biggest education I had in all of my legal education. People just want to be heard.

Métis lawyer

TO ANSWER A NEED TO LISTEN TO WHAT THE MÉTIS PEOPLE WANTED IN A JUDICIARY, THE DESIGN TEAM ENGAGED WITH COMMUNITY MEMBERS, DIVERSE SUBJECT MATTER EXPERTS, AND MN-S LEADERSHIP REPRESENTATIVES TO HEAR DIRECTLY FROM INDIVIDUALS ABOUT:

- What feels important to know or consider as we start the design process?
- What advice do they have to offer for this new body if they have to rely on it?
- What experiences had they had with the Canadian justice system?
- What kind of service this body could provide for them?
- How will we know or measure if the justice body is successful?
- What role might community have in a judiciary?

Reaching out to communities took two years and happened in a variety of ways. We invited people to talk with us in small and large groups. We visited communities to share our ideas and gathered their reactions, questions, feedback, and worries. We listened, *nihtohta*, and spent time, *kiyokêwin*, with anyone who was open to talking about a Métis judiciary:

Visiting Communities: We've talked with over 500 MN-S community members, and held large meetings and private discussions, both in person and online, in several communities, including:

- La Loche, Northern Region 2
- Buffalo Narrows, Northern Region 2
- Porcupine Plain, Eastern Region 2
- Melfort, Eastern Region 2
- Saskatoon, Western Region 2A
- Lloydminster, Western Region 1A
- North Battleford, Western Region 1A
- La Ronge, Northern Region 1
- Île-à-la-Crosse, Northern Region 3
- Pinehouse, Northern Region 3
- Prince Albert, Western Region 2
- Saskatoon, Western Region 2A
- Meadow Lake, Western Region 1
- Saskatoon, Western Region 2A
- Prince Albert, Western Region 2
- Big River, Western Region 2
- Indian Head, Eastern Region 3
- Yorkton, Eastern Region 2A
- Swift Current, Western Region 3
- Regina, Western Region 3

Meeting with Advisors: Discussions were held with Métis, Indigenous, and non-Indigenous advisors, including Elders, Knowledge Keepers, Youth, those with legal or other subject matter expertise as a form of data gathering, and also as mechanisms for testing the team's current thinking.

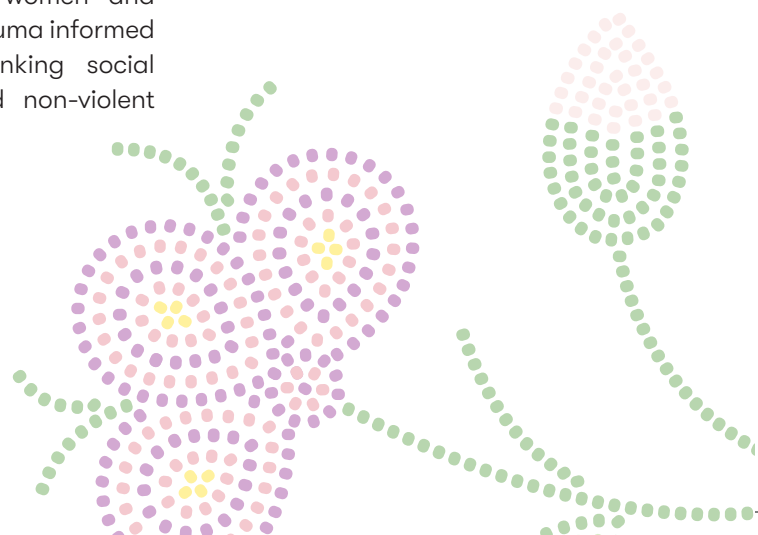
Conducting Interviews: One-on-one and pair interviews were held with community members, legal professionals, Métis leaders, subject matter experts—anyone who was interested in sharing their experiences and perspectives to inform the design process.

Design Team meetings: Our Design Team met regularly. We constantly outreached to community members and experts and looked at other court ideas and models. We then came together to review and assess our findings in order to move the design forward.

Attending Conferences and Workshops: We learned about Indigenous courts, laws, UNDRIP, and issues affecting women and families, mediation, trauma informed processes, design thinking social justice processes, and non-violent communication.

MN-S Dialogue Forum Presentations: Discussions were held during the MN-S Dialogue Forums in 2022 and 2023.

The Design Team reached out to young people and relied on *kiyokêwin* with Elders to learn how to do our work well, and understand what's most important in this project. We were curious about what kind of a judiciary people thought should manage issues and disputes in the community. Interestingly, rather than discussing the structure of the body, most people focused on a process they would feel safe in and stressed the need for everyone to be recognized, treated fairly, respected, and included no matter how the judiciary looked. Over 2000 data points were logged.



The following word cloud gives a sense of the feedback we received overall:



INSIGHTS FROM COMMUNITY MEMBERS

Some key ideas surfaced and were repeated during many of our conversations with community members throughout this process. Those ideas became key criteria for the Design Team to consider and weave into each component of the judiciary. For example, we heard a variety of perspectives expressed that indicated what the pillars of the design should be: a design built upon a strong Métis cultural foundation; working within jurisdiction for which MN-S had laws already or was currently developing legislation for; was restorative process and also that it be proactive so that trust with individuals and families, community, and government leaders could be established; maintain and strengthen over time to become part of the lives of people; and an institution that lasted over time, in other words, is sustainable.

The following table provides detail of the themes that arose and the appendix provided is a summary of quotes received directly from community members that have informed these insights.

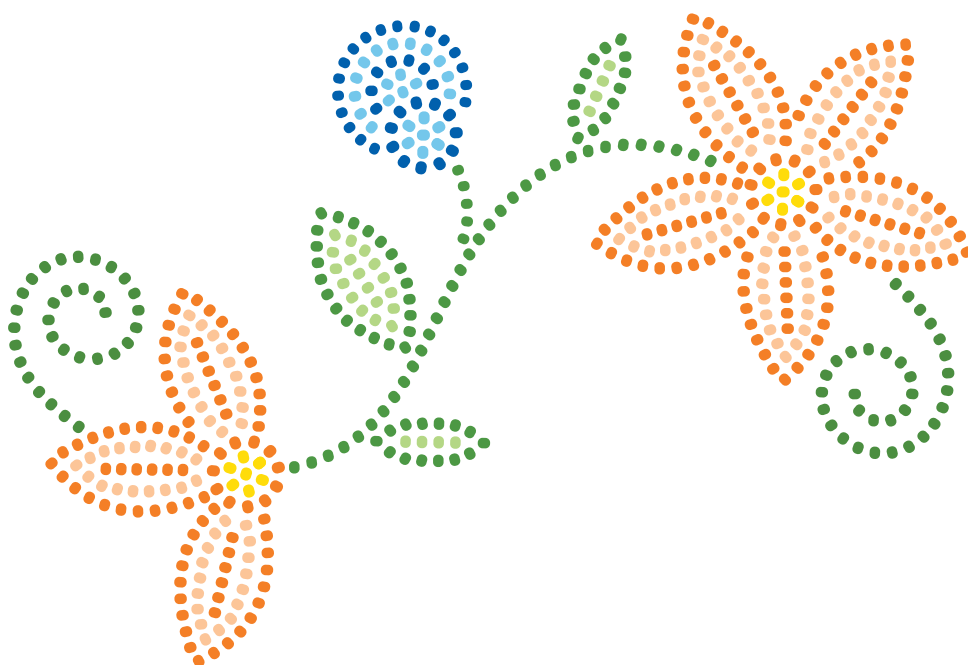
INSIGHTS FROM CONVERSATIONS WITH COMMUNITY MEMBERS	DESIGN THEMES IDENTIFIED
<p>This body must be <u>reliable, consistent, and trustworthy</u> to become a system that is considered valuable by Métis people</p> <p><u>Transparency</u> is linked closely to trust and needs to be explored thoroughly.</p> <p>Operating <u>independent</u> from the government would support trust building at many levels (individual, community, political)</p> <p>Colonial courts are seen as inaccessible, between legal language, how decisions are made, <u>even the look and feel of the physical spaces</u>, contribute to an experience of “power over”</p>	<p>Trust: <i>What if this judiciary could show through its actions that it has the best interest of the people at heart?</i></p>
<p>This body <u>must be inclusive of community (including Elders, young people, women, two-spirit...)</u> in key positions throughout the judiciary structure and process.</p> <p>There is an expressed preference for a dispute resolution system where a group of <u>people from the community helped make decisions</u>.</p> <p><u>Natural law</u> looked after things too, we forget that.</p> <p><u>Traditional language, Métis culture, and protocols</u> must be part of the fabric of this body.</p> <p>The <u>physical environment needs to be carefully considered</u> because environmental elements are important to Métis people (i.e.: tend to the air, plants, grass, garden, courtyard, outdoor spaces for proceedings)</p>	<p>Métis Cultural Foundations: <i>What if the experience of this judiciary connected the people to language and culture?</i></p>
<p>There is a need to create a space for Métis people to <u>reclaim a model of justice that is restorative</u>.</p> <p>With a focus on restorative practices this body could have impact beyond the Judiciary resolution and have ongoing repair and healing</p> <p><u>Decisions</u> of the court must be <u>support-based and could involve consultation</u> with Elders, matriarch circles, Youth, the accused, and others. <u>Follow up services</u> will be critical.</p> <p>Regular, <u>proactive community connections</u> increase awareness of Métis people that <u>this system encourages and supports</u> them to stand on their own two feet.</p>	<p>(Restorative and Proactive): <i>What if this judiciary had the potential to listen so well it could revitalize relationships within community, through an approach of love, compassion, and kindness rather than being punitive in nature?</i></p>
<p>We want this to <u>be a healthy place to go to rebuild relationships and rebuild trust</u>—who do we have jurisdiction over?</p> <p><u>Current jurisdiction has to be proposed</u> in accordance with MN-S laws and legislation that exist now, like Citizenship, Elections, and Harvesting. In the <u>future, jurisdiction could expand</u> into the areas of Child and Family Services matters, Criminal matters, sentencing, disposition, etc.</p>	<p>Jurisdiction: <i>What if this judiciary treated issues within its jurisdiction as actually connected and used a relational systems perspective? In other words, decisions are built on children at the center, women are respected, Elders and youth are influencers.</i></p>

In parallel to the development of this judiciary design, the MN-S Policy and Research Department was visiting 18 communities in all 12 regions as part of the Voice of the People Constitutional Reform process. Three virtual sessions were also held, with two of those sessions focused on youth. More than 500 participants attended the sessions. This work afforded the Design Team the opportunity to hear directly from Métis across Saskatchewan about current justice processes relied on by the Métis (what is) and what is necessary to support the development of a MN-S judicial body (what if).

It was clear to the Design Team how connected these two initiatives, constitutional reform and the judiciary, are given that the proposed amendments to the Constitution will have implications for what's possible within a judiciary. A common concern expressed repeatedly during the consultations was a lack of trust. Some individuals indicated a lack of trust in the government and requested that rules be established with the enforcement mechanisms to ensure accountability of elected officials to their duties. This included a request for the ability to have a non-confidence vote if necessary. In step with trust was another recurring theme, that was one of a request for assurances that the judiciary be independent from the MN-S. It was also noted that legislation should guard against and filter out frivolous and vexatious claims to ensure a balance between accountability and to prevent unwarranted accusations.

The community sessions served to validate the themes that arose from the community conversations facilitated by the Design Team. Particularly the role of an independent judiciary in establishing trust between the people and the government, that reflects a culturally informed, Métis-style dispute resolution process was the request. A judiciary that includes Elders, Youth, and cultural Experts (like trappers, harvesters, etc.), and seeks to heal and restore, not just punish people. The need to be very clear about who the court serves and state what matters the judiciary can decide also commonly came up.

In addition to echoing our previous learning we also heard about accessibility needs, such as mobile units and virtual access, the use of technology to facilitate the process, language translation and literacy support. These groups stressed that there are differences between regions across the province and that there needs to be some agency and flexibility in the process, as the same approach won't work everywhere.



INSIGHTS FROM LEGAL AND CONFLICT EXPERTS

Intergenerational trauma can only be healed by an intergenerational response, so our judiciary must strive to be a healing process.

We talked with Métis, Indigenous and non-Indigenous Legal Experts, and people who work in courts now or in the past (as lawyers, judges, mediators, social workers, law students, etc.). Many with legal expertise articulated how difficult it is to unsee and even more difficult to undo the colonial approach because the ways in which the colonial justice system works is so entrenched in our lives. They encouraged the Design Team to be bold and imaginative and to keep a relational systems perspective, restorative justice, health in justice, community in justice, and to avoid being stuck in ‘the snapback’ when the system naturally resists change.

Our conversations with experts reflected similar themes that came up during our conversations with community members. The experts explored the themes through a nuanced understanding of the colonial system and their experience of navigating it. With their insights, we began to see how our design themes are truly interconnected.

Transforming Law and Legal Practice:

Change starts with the land.

Conquest and colonization were the seeds of how this started—

We have elders and resolution available to us—we have to remember our own way

Start with what we have in our traditions and knowledges—not with what does not work

BIPOC Trauma Informed Lawyer



NEW INSIGHTS FROM LEGAL EXPERTS

DESIGN THEMES

There is a history of abuse of power and process. The idea of justice is synonymous with lack of trust. This new judiciary will be as trustworthy as the ability of those within it to call out colonialism as it arises and actively practice doing things differently.

Arms length from government in process, budget and practice.

Trust is built as organizations and parties meet. Framing the body for the community and getting support from different groups, (both in the community and the government), will be critical in building trust.

Trust: *What if this judiciary could show through its actions that it has the best interest of the people at heart?*

Language, feasts, healers, and teaching traditions, customs, laws, and community values are all opportunities to restore relationships. We must be intentional about the names, labels, processes, and the language we use as they will impact interactions with people and inform decision-making.

Inviting a panel of a diverse group of people (across ages, genders, abilities and other social locations, language, geography, professions, etc.) will bring cultural aspects and shape healthy outcomes by virtue of their inclusion.

Métis Cultural Foundations: *What if the experience of this judiciary connected the people to language and culture?*

Intergenerational trauma can only be healed by an intergenerational response, so our judiciary must strive to be a healing process.

Access to different kinds of supports (psychological, social, physical, spiritual) will be required throughout the process.

Checking in or staying connected following the conclusion of a process will help to build good relationships and make it easier for people to come back when they are not in trouble or before situations escalate.

A Métis Court should seek to fairly provide restitution, support rehabilitation, and address the “root of the problem”, rather than applying temporary fixes.

The idea of visiting for the sake of connection and community education/ participation will create opportunities for continued listening in context and become a catalyst for inclusion and improvement.

(Restorative and Proactive): *What if this judiciary had the potential to revitalize relationships within community, through an approach of love, compassion, and kindness rather than being punitive in nature?*

There is a lot of pre-work required by the MN-S before implementation will even begin (legislation drafting, clear interpretation of laws, training, hiring, data-related decisions, etc.) to help prevent delays in decision-making once the judiciary moves into a piloting phase.

Identity will be a significant issue to contend with—both in terms of access and decisions, as well as consequences.

Jurisdiction: *What if this judiciary treated issues within its jurisdiction as inherently connected, with a relational systems perspective?*

Métis people, communities, and regions are not one large homogenous group. This was a province wide theme, and one that arose in each of the groups interviewed. Lawyers and legal professionals we spoke to underscored the importance of agency, or the ability to speak for oneself and of adding opportunities for flexibility in different approaches and practices as meaningful ways to address different needs of individuals and communities. One Métis lawyer explained it this way:

Métis are different. We are a collection of communities, like for example, Ile La Lacrosse. As Indigenous people we have chronic issues—IRS, displacement, MMIWG and 2S; resource scarcity issues that create our infighting—e.g. local presidents are not paid, MMF political pressure, language divergences that people do not realize, to name a few. Many people will want this adjudication body to be political, to use it to fight; it is what we know. It has become part of our culture not to trust. The question to ask at this point is: is this a political process or is it to be about healing? You cannot have justice, true justice, and we can find our own language for this, without healing.

A Métis Lawyer

To ensure the Métis judicial system has the necessary legal foundation, research commissioned on the administrative law aspects of a new Métis judiciary commented as follows:

- The Métis Nation—Saskatchewan must build capacity to create its own laws for setting up this judicial system, and officially recognize the judiciary in the MN-S Constitution.
- Laws must reflect both the inherent rights of self-determination and the autonomy that the Métis Nation—Saskatchewan has over their own laws while also including the necessary checks and balances on MN-S leadership to promote citizens' trust in their government.
- Clear legislation preambles would assist the judiciary in the interpretation of the laws being written and imposed on people's lives.
- Make it clear to non-Métis courts that they must respect the MN-S' expertise in interpreting and applying their own laws.



The variety of advice gathered during this phase of collecting expert perspectives offered some helpful insights for consideration in terms of implementing the judiciary design, such as:

- “Be ready and open for criminal courts to work with you to help handle a backlog of cases in their courts differently. You’ll do a great job because you really care about the people and their families you’re making decisions for. You’ll be able to understand the real problem that brought the issue up in the first place and see beyond just the wrong actions.”
- “Designate one person to be in charge and responsible for the entire model—like a head Judge that holds all staff accountable.”
- “Decisions should be written down to make the laws clear and to create a history of how cases are handled so they are easy to follow.”

One young man in criminal court was being asked to check in regularly with the court. During one call he was required to make he was suicidal and we talked him into getting assistance before he did something drastic—those days are good days to be sure we check on people and let them know we care. People need to know that when we are judging them we still care about them.

Indigenous Judge

INSIGHTS FROM MÉTIS LEADERSHIP

The Design Team met with the Provincial Métis Council (PMC) on a couple of occasions and attended three Dialogue Forums over the past two years. During one in camera session with the PMC we asked three questions about what the court system needed to include, so everyone would trust and use it:

- *How will the court be seen as successful and sustainable?*
- *How will leaders know they can trust the new court?*
- *How will the new court include our culture?*

One of the predominant questions the PMC had was how leaders would be involved in the judiciary and how the judiciary would work with leadership. They supported the idea that the community had to be included and that the judiciary would be a trusted body if the community was actively involved in creating it. The PMC members felt being part of the process as Métis themselves, would encourage them to trust the judiciary. The underlying sentiment across this group was that a **Kwayaskastasowin Judiciary** would prove to be successful when people use it! When prompted a little further, the PMC thought that people would use it if it takes into account not only facts and technical details, but also feelings. Insecurity can cause anger, fear can cause avoidance, etc. A fully supportive judicial system made sense in this light and was seen as a model that would fit with the development of all the MN-S departments as they are evolving.



In response to our questions variations on the same themes identified by the community members were heard in the feedback from MN-S Leadership:

INSIGHTS FROM LEADERSHIP	DESIGN THEMES
<ul style="list-style-type: none"> • Be open and transparent about how it works and show progress so people can decide to trust it. • It's adaptable and open, but consistently responsive so people can trust the process. • Can report to the MNLA if it is independent from the politics • Be inclusive of, and dependable for the Métis community—a place where people don't feel judged. • Ensure that trustworthy, reliable, and knowledgeable (Experts) people are part of the judiciary. • And hold people accountable. • Trust in the Métis political body will be a signal for trust in the court. 	<p>Trust: <i>What if this judiciary could show through its actions that it has the best interest of the people at heart?</i></p>
<ul style="list-style-type: none"> • Elders and Legal Experts should be included in decision-making—Métis people on this court, sharing our teachings, will ensure it reflects Métis culture. • What about Youth—they can have a role in this, and should. • Important Métis beliefs, cultural teachings and values must be reflected in decisions—and the overall experience. • Develop understanding of the needs of different regions and create ways to solve disputes locally or regionally. • Leaders—and the community need to see that the court is really listening. • We have natural law too, we can rely on that too. • The judiciary must take care of the people and the land—kinship means we are connected. 	<p>Métis Cultural Foundations: <i>What if the experience of this judiciary connected the people to language and culture?</i></p>
<ul style="list-style-type: none"> • It should have a positive vision for the future—so people can believe in it! • It's helpful and caring and brings people together; it aims to support people to take responsibility and fix problems without punishing people or hurting families. • Focus should be on being able to share the whole story, not just legal aspects. • Study the old laws (including the Laws of the Buffalo Hunt) and alternative ways of making decisions and solving problems, with consequences and support. 	<p>(Restorative and Proactive): <i>What if this judiciary had the potential to revitalize relationships within community through an approach of love, compassion, and kindness rather than being punitive in nature?</i></p>
<ul style="list-style-type: none"> • Make sure decisions are clear and final. • Remember our identity, I recall a time when we were not being called “Métis”. • Decisions are in service of learning and preserving our ways, and ensuring our children have somewhere to go. 	<p>Jurisdiction: <i>What if this judiciary treated issues within its jurisdiction as inherently connected, with a relational systems perspective?</i></p>

Several people in leadership commented on Métis rights within child and family service areas and how they had struggled to really be supported as grandparents and extended family looking after children. They hoped the new laws would be different. There was agreement that a Métis Judiciary deciding on such matters would have a better understanding about why that was appropriate, how people should not have to demand to be included as grandparents. What a Métis court or judiciary meant seemed clear to most people as a holistic place where the entire picture would be seen, reviewed, and understood.

*"We've always governed ourselves;
we can do this!"*

PMC leader

DURING THE 2021, 2022 AND 2023 MNS DIALOGUE FORUMS ON THE JUDICIAL PROCESS, PARTICIPANTS OFFERED THE FOLLOWING SUGGESTIONS:

- Set up a special court (Judicial Tribunal) to handle arguments and solve problems
- Study the old laws (including the Laws of the Buffalo Hunt) and alternate ways of making decisions and solving problems
- People want a restorative justice model—not a copy of a colonial model
- Include Elders and legal experts—Métis lawyers—in decision-making
- Provide access to technology to enable people to participate; some remote communities do not have access to the internet
- Create ways to solve arguments in local and regional groups
- Create rules to hold leaders accountable
- Use MN-S rules to remove leaders who aren't doing their jobs, and allow citizens to vote out any leaders they no longer trust
- Education MUST be part of the Judiciary
- Make sure decisions are clear, final, and binding so no one keeps arguing
- Keep personal feelings out of official decisions
- Support local leaders and make sure the Judicial Tribunal is fair and understands the needs of different regions
- The Judicial Tribunal should be able to issue consequences



The [Pinehouse] leadership has established an organic process to encourage residents to take ownership of the issues and to provide feedback and support. Since 1999, weekly meetings involving the various Pinehouse organizations (interagency committee) have been held as forums to share information about the community's social issues. As well, monthly meetings are held to identify needs and issues and to assess existing programs and services. Elders are integral to the decision-making process along with contributing to the education, growth, and strength of the community. Funding for these meetings aligns with the provincial government's First Nation and Métis Consultation Policy Framework, Duty to Consult First Nation and Métis Communities. The associated expenses are documented for accountability and transparency. Sharing meals, learning opportunities, and bringing in speakers have contributed to the high turnout rate and engagement." [footnotes excluded]

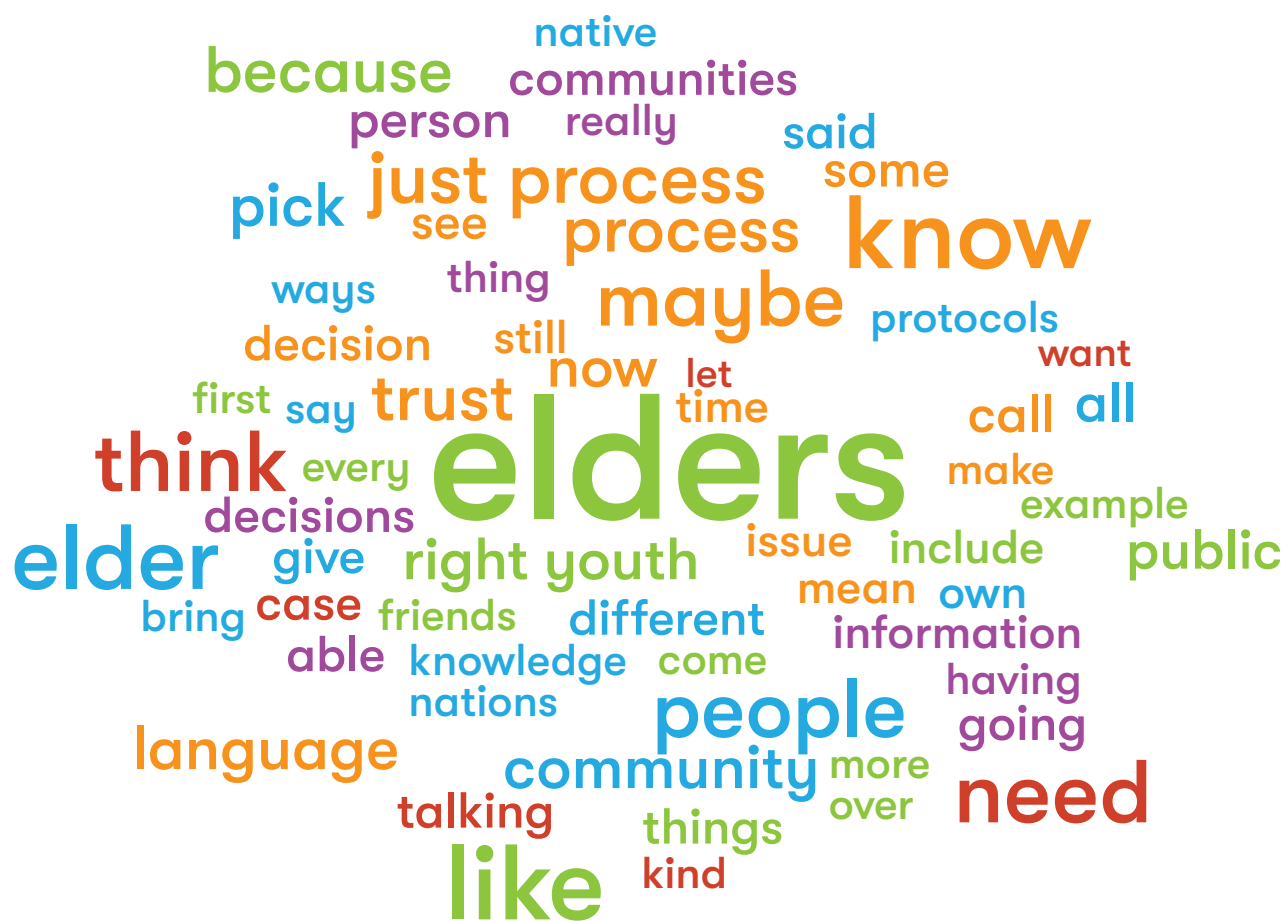
Indigenous Leadership Governance and
Development Project Pinehouse Case Study

MNLA Dialogue Forums University of Saskatchewan 2022

There were four themes that were consistent across all of the community engagement processes that factored into the next steps of the design process. These became the anchors that guided our process in the development

of this judiciary—at each step you will see these four themes factor into the model and our recommendations for implementation.

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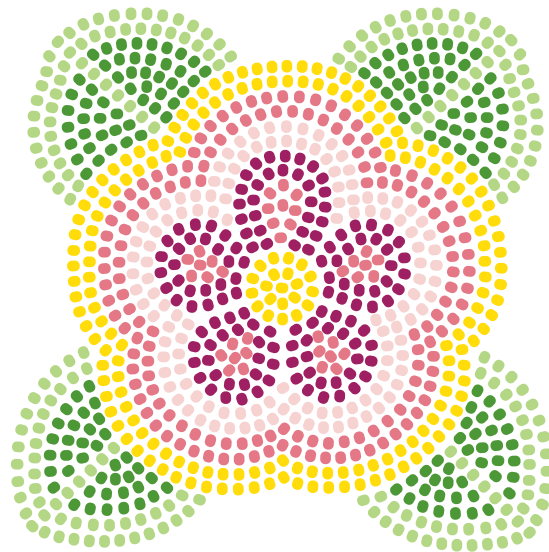


How the judiciary is established, runs, and builds trust will shape how the Métis people of Saskatchewan value it and want to be part of it. This includes being clear and open, being thoughtfully reliable in its process, and making sure laws are easy to find and understand. Trust building will be critical as the judicial body is implemented and piloted—and levels of trust will be an important measure of success over time.

If the work of the judiciary is to set things back on a healthy track, to do what is best given the entire situation, and to also hold people accountable for their responsibilities then we will have met the needs expressed by many stakeholders. This means the Métis Judiciary would also meet the traditional standards for **kwayaskastasowin**. We will know our design works when:

- Individuals trust it (personal): indicators that individuals trust the body include that people feel listened to and heard (they experience **nihtohta**), that they feel cared for (**sâkhitowin**), that they understand the outcomes of their journey through the process, and that they refer, recommend, or promote the judicial body to other community members based on their experience (**kwayaskastasowin**).
- Community trusts it (social): indicators that trust is being built at the community level include diverse and growing participation in community gatherings (**kiyokêwin**), engagement with the body when times are good (marriage, adoptions) and when they are challenging (disputes), leadership is held accountable.
- Leadership trusts it (political): indicators of this level of trust include ongoing support of the independence of the body, respect and appreciation for the decisions that come out of dispute resolution, and higher uptake of citizenship. Reliance on it for official purposes like swearing in ceremonies will also show mutual respect.

Trust is not easy to build. The goal is to build from trustful interactions and to learn from interactions where trust is eroded. This is a tight rope because positive interactions with a new judiciary will add a sense of security and build trust. Each time people feel vulnerable or are exposed for their problematic and harmful activities, however, there may be a sense of trust being breached and some faith lost.



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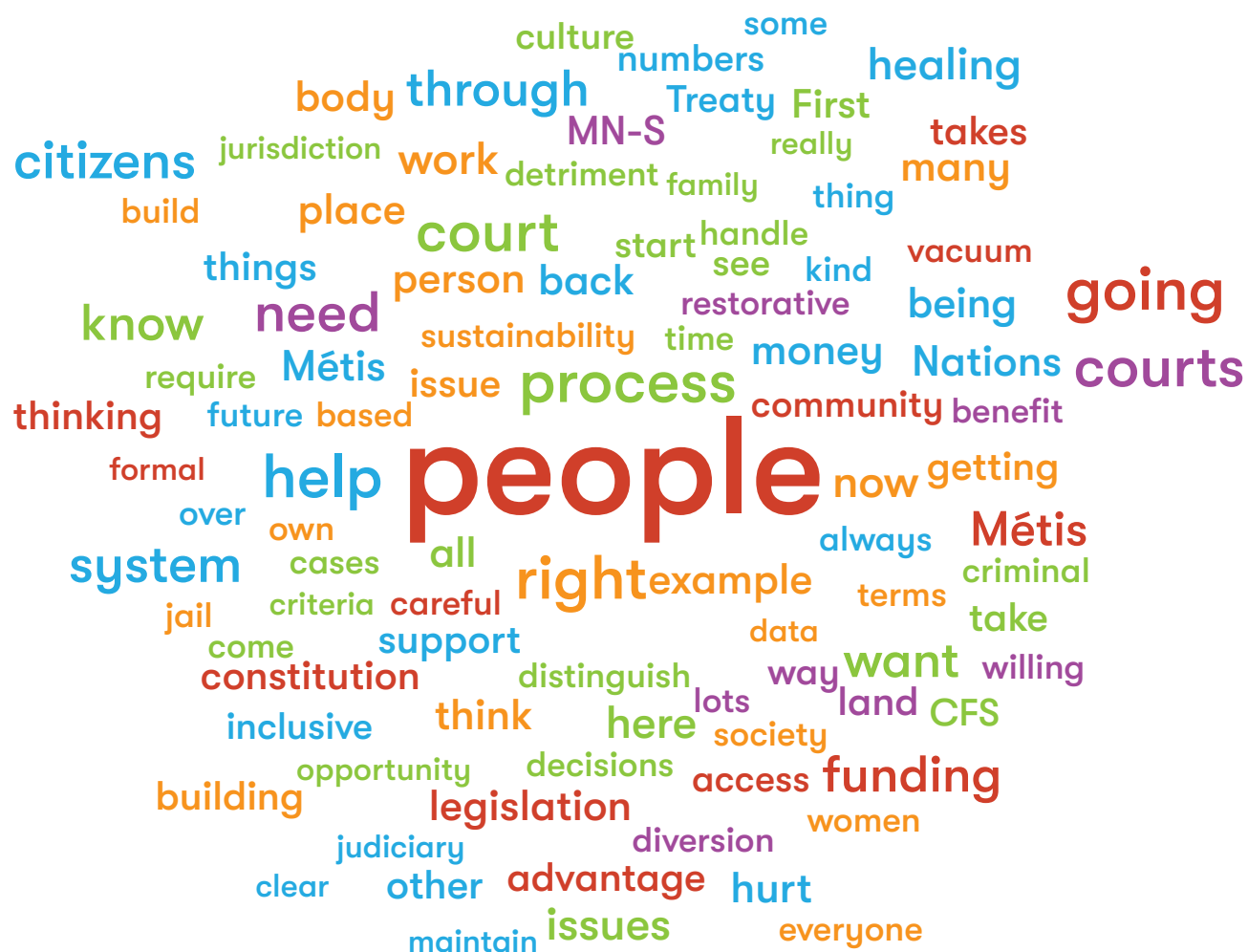
- Language—early on in the process we were reminded that we need to design in Michif/Cree if we are hoping to build a culturally relevant judiciary.
- Culture—***Kiyokêwin***, artifacts and symbols (red river cart, crocus, buffalo, sash, fiddle music, flags...), being kinship based, and taking care to protect the children (carts around encampments) must be front and center.
- Traditional protocols are to be observed and teachings respected: community engagement, inclusive of Elders, Knowledge Keepers, Young Ones, and Natural law.

3. RESTORATIVE AND PROACTIVE



Working towards building a justice system that people can rely on is the goal. A judiciary that can change as needed and come up with solutions that build and make relationships stronger, will be an indicator of its success.

- Repair relationships—the judiciary supports people and families as they support their loved ones, neighbours, community members.
- Community connection strengthens—recognition of issues/challenges earlier due to *kiyokêwin* (formal and informal through the judiciary).
- Healing over time—language revitalization, children thriving, intergenerational healing.
- Puts pressure on other systems to change as positive impacts become more and more widespread—we can imagine that recidivism decreases which would impact prisons and incarceration numbers, change social services reliance, create need for new training, alternative supports, spaces, etc.



Understanding the power of this body and how it connects with other judicial decision makers, Métis, provincial, and federal, is going to be important going forward. The **Kwayaskastasowin Judiciary** needs to be able to look outside of its practices for ideas and creative solutions if it is to be a supportive rebuilding process. It should offer examples and it should learn from other decision making bodies as well.

Who it makes decisions over and which laws are reviewable are the basis of the jurisdiction of the **Kwayaskastasowin Judiciary**.

- Who can access the court and who it has jurisdiction over, are fundamentally questions about identity. Who the Métis in Saskatchewan are will be an issue that arises early for this judiciary.
- Current MN-S laws will be reviewable and must be updated so they act as one body of laws. There can be no inconsistencies between them.
- The Constitution will also be a guiding authority for the Judiciary.
- Federal agreements and other non-Métis laws will need to be within the sights of the **Kwayaskastasowin Judiciary** because the MN-S laws will be read together with any other laws that also touch upon the matters before the court. Legal boundaries between provincial and federal laws bump up against each other from time to time. This will happen with MN-S laws as well.

Identity will be a significant issue to contend with—both in terms of access and decisions, as well as consequences.

The task of the Judiciary is primarily to listen, to witness Métis people taking responsibility for their legal matters. Whether the Judiciary is serving to witness during celebratory milestones like marriage, adoption, swearing in ceremonies OR to provide intervention when required to support community members in repair during and after conflict. The Métis Judiciary can only hear matters of which Métis laws/legislation exist (citizenship, elections, harvesting). However, since everything is interconnected (**wâhkôhtowin**), the Judiciary will have to see its own potential to expand judicial support as MN-S legislation grows, including child and family matters, criminal matters.

Ensuring the judiciary's independence is the first step the MN-S can take to show the community that seeds of trust have been planted.

"I go to the court every time it is in our community. You can see which families need help, which youth need supports. Why can't we try to see that and work together on that?"

Rose Tinker

THE ROLE OF THE KWAYASKASTASOWIN JUDICIARY IN REVIEW OF CRIMINAL AND FAMILY LAW MATTERS?

Even though Criminal law is under the exclusive jurisdiction of the federal government—don't overlook the need for use to become involved for our own people—that system is not working and is breaking down—be the diversion space to look after people better"

Indigenous Judge

Alternative / Diversion / Prevention / Advocacy are good priorities, but the current model all depends on your income for you to be properly represented.

A concern about cost and whether or not people have to pay for lawyers to rely on this judiciary is a live issue.

There are areas of law that the federal government controls, which we might overlook in the design of a Métis system, including provincial Indigenous courts. There are many examples of diversion programs, which help people avoid traditional court trials, that are working well. Therefore, it is a good idea for Métis people to continue to have a role in the colonial legal system. When we talked about criminal courts in community, here's what we heard:

- Putting people in jail doesn't lead to positive outcomes. Indigenous courts have found success by using community experts to offer support, help keep people safe, and lower the chances of people committing crimes again.

- Prison isn't a good way to enforce laws. We should think about a Métis-specific approach that starts helping early, has support networks, and refers people to the help they need.
- Sentencing Circles used in Saskatchewan were proven effective in preventing jail time in many cases.
- Many people need help with addictions, which is a key reason why crimes happen and why people end up in jail again.
- The reason some Métis people end up in jail has a lot to do with their social and economic situations. MN-S needs to find ways to help its citizens stay out of poverty.
- Gangs are becoming a problem in small towns in Saskatchewan, and they're taking away our young people.
- We should look to a restorative approach, so we can focus on fixing things and making things right instead of just punishing people.
- It's important to make our people feel proud of who they are.
- Help should be available to all Métis, and it shouldn't matter how much money they have.
- We need to speak up and support our people in every part of the justice system.

Working towards goals like using restorative justice to focus on healing rather than punishment, lowering the number of people who commit crimes again, dealing with addiction problems, and fixing relationships within families are all positive steps for individuals and the family and community. Most Indigenous justice programs and services focus exclusively on supports for their citizens or members in the criminal justice system.

In the future, because of new federal law, *An Act respecting First Nations, Inuit and Métis children, Youth and Families*, the MN-S will be taking on a large role respecting child and family services. A Métis Judiciary designed to resolve disputes in a restorative way and will be well suited to hear these matters and help families find their own resolutions through its **Kwayaskastasowin Judiciary**. There will be opportunities from the outset for all members of a family to speak and be heard from intake all the way to a hearing if that is required. The current Domestic Violence Court, however, focuses on dealing with the offenders but doesn't offer help for the victims or ways for the family to heal and rebuild.

A Métis Judicial Act will need to be forward-thinking and written in a way that it can deal with issues, like Child and Family Services matters, that aren't currently covered in MN-S laws. This means that when the MN-S creates its own laws for children, youth, and families, the Judiciary would already be set up to handle these issues. Ideally, this could happen without needing to change any existing Métis Judicial laws as jurisdiction expands.

To use a **kwayaskastasowin** approach for all matters that come before a Métis judiciary would be a fundamental shift for what justice means to Métis people. It would:

- Require a reach out into community BEFORE relationships break down,
- Ask for supports throughout a court matter,
- Empower people to speak for themselves and participate fully in the judiciary to design an outcome everyone can contribute to,
- Include community before the issues begin, throughout the entire process, and beyond decisions being rendered.

If this is done well and done right, the use of **kwayaskastasowin**, could very well put pressure on the other systems to ensure families are looked after, children are at the center, women are included, and systems interact in the direction of relationship repair. Justice in this line of thinking is not about retribution or punishment first, it is about those things last—after all else has been tried. This kind of justice is to repair, regrow and reimagine.

Conclusion

What if we change our approach to focus less on what people are *fighting about*, and more on what they're *fighting for*? Through this new judiciary, Métis people, the MN-S leadership are fighting for a Métis Judiciary that reflects Métis values. Some of the values that we have included throughout this Report include:

Nihtohta: To listen is the goal and the gift of a highly functioning justice system, no matter where you find it in the world. Métis in Saskatchewan need to be listened to and heard throughout their interactions with the judiciary because context and stories matter and should be factors when determining healthy outcomes.

Kwayaskastasowin: To recognize challenges arise and to settle them with Métis values and process will restore the person, the family, and the communities. To put disputes back into a space that people can mend is important. The Justice model must support individuals, families, and our community to take responsibility. Métis people want a restorative and proactive model of justice.

Sâhketowin: To be seen and treated as family who is cared for could be a goal for this judiciary. Métis in Saskatchewan need a judicial system that is welcoming, understanding, and knows how and when to make hard decisions. They will trust the system if it is encouraging of their participation and focuses on Métis culture and identity because they will belong in and be a part of the system. Healing and repair are long, relational processes that they are ready to invest in for future generations.

Wâhkôhtowin: To connect and see our connections is how paths are created to build relations. Métis people need the judiciary to represent them, to include them, and to be strong enough to make difficult decisions in difficult cases. They also need it to be independent from the government and to hold the government accountable.

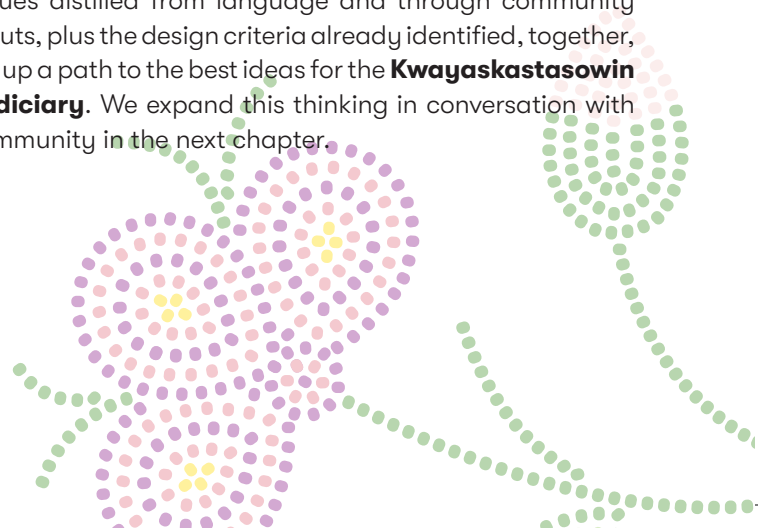
Otipemisiwak: Métis people own themselves, govern themselves. The Métis Nation—Saskatchewan needs to establish a Métis judiciary because we want to exercise self-determination by making decisions based on our own laws. Experience with a Métis court will build confidence to expand into looking after Métis people in criminal matters and through our own Child and Family legislation.

To recap our 360 review: our work in community was framed in light of the following design criteria:

- 1 **A strong Métis cultural foundation**—create opportunities for decolonizing the experience of justice by embedding our culture at the core of this judiciary
- 2 **Be relevant to and inclusive of the Métis community**—continuous involvement of community members in the judiciary will build relationships, ensure its activities and decisions are representative of our community values, and provide opportunities for continuous improvement and alignment of the operations of the court.
- 3 **Be proactive and restorative**—focus on encouraging connection, engagement, conversation, deep listening, and creating cycles of repair and re-investment within our community.

- 4 **Build trust with the government and the community**—commitment to conditions that build ethical space and positive experiences of the judiciary's intentional staffing, thoughtful structuring of its independence and its staffing, and deep care for the processes of **kwayaskastasowin**. It will build shared responsibility and mutual respect over time.

Values distilled from language and through community inputs, plus the design criteria already identified, together, set up a path to the best ideas for the **Kwayaskastasowin Judiciary**. We expand this thinking in conversation with community in the next chapter.





CHAPTER 3

Ideas With The Potential to Transform Justice

What wows... Métis people when they imagine making their own judicial body?

WHAT WOWS

Challenge all the assumptions of what might be possible for the design of a Métis judiciary. Develop prototypes that focus on solutions that stand out from what is and address the problems from what if.

- Identify key assumptions about what a court is
- Develop Prototypes for a new model from an **ideal** perspective

What wows... Métis people when they imagine making their own judicial body?

STORY

In a community meeting, as we discussed the pros and cons of courts and how we might build a Métis Court differently, one community member pushed back on each idea that was presented. His responses were emotional and passionate about doing what is right for people who have to deal with law. We responded to each concern or comment he offered with a simple question: how might we do it better—because we can?

Eventually he stopped responding to us, although he crossed his arms to listen, putting his doubts aside while he heard what we were saying. Then again he raised his hand: are you trying to tell me you are actually thinking about building this court on love? Is that what you are saying?

As the presenter I was now quiet. It was my intention to do just that, but I had hoped to do it subliminally, in an under the radar kind of way. Now the word love was out there in the wide open for everyone to see.

‘Yes’ I responded ‘I wasn’t going to talk about it like that but now that you have asked, yes it is my intention’. No expression on his face he stayed and listened. We finished up the meeting.

After the meeting was over, the man approached the presenters. ‘IF’, he said slowly and carefully, ‘IF, if, a court was really, truly, working from the place you are hoping to do, maybe just maybe I would still have my son today... good luck with your work.’



Wow...

Our next task was to use our widest possible lens in exploring what might be possible in the design of a judiciary. We needed to capture the hopes, dreams, the anticipation, that speaks directly to the hearts and minds of the Métis people. Radical, juicy, resonant, exciting and wild ideas for a process to look after important issues where people feel—and are respected. Working in community with the idea they would create a space they and their families would feel safe in brought people to life.

Summary

After putting together all of the data collected during the **nihtohta** phase, we were able to pull out some key insights for how the judiciary might really resonate with Métis people. The task-at-hand for the Design Team then shifted to how those ideas might be mobilized within the model itself.

We continued to seek input from community members, subject matter experts (including language speakers) about how they would know the judiciary could be trusted, how it should reflect Métis culture and values, focus on building relationships, and expand with MNS' growing jurisdiction. We probed for more specific information to help us go deeper into the functional mechanisms, structures, processes, and roles that would need to be included in the design. We reviewed those findings to really understand what would *Wow* them so the **Kwayaskastasowin Judiciary** could have a positive role in people's lives.

This chapter reflects on the ideas with the most transformative potential that came forward from **nihtohta**. If the model could reflect these ideas the community members, leadership, and experts alike would be hopeful, engaged, and invested in the success of the judiciary. Dare we say, with **sâhketowin** finding its way into the processes of the **Kwayaskastasowin Judiciary**?

The necessity of integrating Métis language and cultural practices into the judiciary was seen as a high priority for the community who will rely on this body. Their desire is for a judiciary that is not only linguistically accessible, but where language is front and center. A judiciary for them is one that reflects Métis cultural values and practices in every aspect. Communities spoke at length about the need for openness, trust, proactivity, restoration, and inclusiveness.

People said that the Judiciary should not be influenced by politics and should ensure elected officials were also subject to it when they breach a law. They also talked about making sure everyone could use the system and that it represents all the different Métis in Saskatchewan, citizens are just a small part of that right now. They hoped for a Judiciary to look for ways to fix problems and help people, instead of just punishing them. They recommended that the judiciary should think about special considerations, like the Gladue factors, before problems arise, not after a person is in trouble. Lastly, the judiciary must be uniquely Métis.

Rethinking Justice

The root of term justice is not as straightforward as one might presume. There are roots for the understanding of this word in English that reach into Latin, Greek, Sanskrit and Proto-Indo-European. Words associated with the word justice, and often judge, are akin to control, what is right, binding obligation, and fight. Menacing, command, fear, violence, and restriction are all connected to this.⁵³ Justice is imposed from the outside upon a person who

is bound to it or by it. It is also something to fear. Once understood in this light of the language used to describe a position, it becomes clear that the philosophy of justice is something to fear, to bring in control and to be imposed upon a person. Seeing these roles, of a justice and a judge as external control mechanisms, is consistent with the treatment of Indigenous people in Canadian courts.

THERE IS NO WORD IN CREE, ONE OF THE MAIN ROOT LANGUAGES OF MÉTIS PEOPLE, FOR JUSTICE. THERE ARE CREE TERMS AROUND LAW AND JUSTICE AND JUDGES AND TRUTH PEOPLE ASSERT:

- **Wiyasiwewin**—Law
- **Tapwewin**—Truth
- **Kihci**—Is the highest
- **Kicitwewin**—A promise or oath
- **Kihci owiyasiwew**—Head Judge

Let's move away from a view of justice as simply punitive. Let's move towards justice for Métis people as a very complex and sophisticated system to have accountability within community.⁵⁴ Let's advance a model of justice where people are encouraged to do the right thing, where society shifts to uphold standards for everyone to meet and, importantly, where people are properly supported. This is a tall order. It is one people were uncomfortable with when discussing justice in the abstract, however, once asked to imagine a person in the family in a Métis justice system, the conversation quickly turned to one of compassion, high standards, and responsibilities for safety in the family and the community. Ideas flowed about how people might be supported to do this well and long term.

Kwayaskastasowin teaching: ie: it is not just about fixing what's broken, it's about holding the community in good times and bad and knowing both are a part of all our lives.

⁵³ Jason Boatright, "The History, Meaning, and Use of the Words Justice and Judge," St. Mary's Law Journal, 2017, 49, no. 4 (August 2018): 727–48.

⁵⁴ Several law students wrote papers and researched for this project to widen our thinking and to ensure we were looking at administrative law together with a new idea of a Métis judiciary.



When we went to the community to ask for their input, as the people who would have to live under this system, we did not impose our own ideas. We asked them to give us their experiences with the system they were used to, let us know what wasn't working, and to dream big. We tried to capture all their creative ideas about how to build a justice system, if each person had their own way, their own say in what it could look and feel like.

It was very easy to dream into the idea of a Métis judiciary as a space people would respect, once the community was turned loose on what their hopes and expectations were. We certainly found elements of 'What Wows' in every conversation we had. Everyone wanted to expand the concepts of justice and law within the design of a Métis judiciary.

It became clear in our **kiyokêwin**, meaningful time with all the people we met, that a Métis judiciary, one designed for **otipemisiwak** (the people who own themselves) should be a process of **kwayaskastasowin**, of setting things right. It should restore the foundation of **wâhkôhtowin**, belonging and connectedness, in

community and being. Further, if this new body was seeded with principles of **sâhketowin**, love, and all the staff were experts at **nihtohtamak**, being deep listeners, we might have a new model for deciding important matters, difficult relationships, and challenges. This model could be proactive in community, have justice

The judiciary will be trusted if and when it is Objective, Transparent, Accessible as well as 'Métis run,' so based on Métis traditions, and gives the Community members a voice.

owned by the people, and a goal to ultimately restore relationships. In short, a system for nation building, rather than a force that erodes the ability of people to decide among themselves. We were being told that self-government would take on a multifaceted lens if justice was holistic.

This chapter outlines the ideas shared with us to move Métis justice out of colonialism and into a Métis space with a Métis process. As themes emerged around concerns, process, and around outcomes, we captured them and asked more questions. We heard:

The Judiciary Needs to Be Trustworthy:

Although many people in the community want their own judicial body, they struggled with how to trust it. They commented on not trusting the current justice system—or governments in general. This mistrust highlighted problems that needed to be addressed in order for a Métis judicial system to succeed. Cases in Saskatchewan involving disputes within the MN-S community often showed it was ongoing mistrust that led to conflicts. To rebuild trust amongst Métis people and their communities, and with all levels of government within the MN-S, we will need to build trust in the Métis judiciary. This means focusing on key themes like accountability, independence, transparency, consistency, and fairness. This process must include the ability to see past and through surface issues to allow for a holistic review of each case.

The judiciary's ability to build trust was therefore seen as essential. People are worried about bias, and whether decisions made by the Judiciary will be accepted. Key principles came out from community discussions, emphasizing that the judiciary must be objective, transparent, accessible, and reflective of Métis heritage. Independence was also emphasized as so important—a body free from political control, where the Métis community has a voice. The feedback also strongly urged that the judiciary process be educational, informing Métis people about their rights, incorporating land-based learning experiences, and offering lessons on laws.

INDEPENDENCE

- Independence is a cornerstone for the Métis judiciary. It should be free of ownership or control by politicians. It holds authority over all of us, including leadership and their actions.
- Independence from external control is essential to maintain trust. Oversight mechanisms are needed to ensure decisions are just and appropriate, with external review by colonial courts only when necessary.
- The general sentiment is that Métis people are able to make decisions for ourselves—and this judiciary should support that. **Otipemisiwak**, governing ourselves, is the goal.
- This body could be accessible to all Métis people in SK. If this works well, people want the judiciary to be able to review legal issues where current law exists, and to have space to grow as the MN-S does, and as the laws that MN-S has grows with additional areas of jurisdiction. If it does not, if there is outside control, we will all be back in the colonial courts. That trust is critical.
- The Métis judiciary has the final say: If the final say on our ways in our disputes stays with the Métis judiciary, someone needs to be sure those decisions are right. Colonial courts can judicially review the Métis court to look at the decision and make sure they did what they are supposed to.
- The Judiciary is recognized in the *Constitution* and there are laws to make it independent. The laws are all set out before the judiciary starts to sit.
- Someone (a body outside the Provincial Métis Council) needs to be the boss of the Judiciary to ensure no one is messing with it.



ACCESSIBLE

This body has to be something we understand. It needs to be reliable. It needs to be supportive, based on relationship building. It has to be transparent, knowable in how it works, what it does, and how to engage with it.

Modern technology should be used to keep us included, facilitate access, and to keep the data it collects safe.

The body should not have one central location—it should have regional hubs, be accessible remotely, and should have a travelling component to facilitate building connection and sharing learning.

Information about us must be collected with our free, informed and prior consent, and should be collected to tell meaningful strengths-based stories that show support and opportunities so we can see what works, and not be just about magnifying our dysfunctional experiences, and what does not work.

PARTICIPATORY

For people to trust it, it should include community members early and often.

Understanding the big picture of the individual and the family context behind the issue involved in review of legal matters.

There are positive roles for this body, not just a place for punishment. If it is done right people are inspired to participate, even support its work.

EDUCATION AND TRAINING

Training is for everyone, all the people who work there should know the way it works and how to work with our people, especially in a situation that will be stressful for many.

Education is part of the job of this body. Many of our people have a need for education on basic rights and processes as well as access to Justice. We asked “can this body educate as well as administer justice”—this education should be fair and include land based experiences and lessons.

EVALUATION

The judiciary’s success will be measurable by the increased willingness among community members to engage and participate, even if White people wanted to come through there!

The Judiciary Needs to Be Métis

The community's vision for the judiciary is unequivocally, culturally Métis; It calls for an institution run by Métis, for Métis, with a profound respect for Elders and the active, meaningful involvement of youth. It should embrace Métis languages and be designed as a welcoming space that invites collaboration and understanding instead of perpetuating shame. Our children are held at the center if we build this body with a focus on repairing conflict in relationships at its core. **Sâkihitowin**, love, is not what is ever experienced in a colonial court system.

One thing became clear from the community, Métis people know best what is needed within their own community to ensure processes for holding their own people accountable. Recommendations from the 2022 consultations noted that Métis Elders, Youth, and Experts should be included as panel members to support the MN-S Judicial Body. Transparency and independence from MN-S was prioritized, and suggestions were made to “Create a system that is uniquely Michif, not a western style court system.”⁵⁵

The Métis judiciary should be seen as a space for decolonization by integrating traditional Métis practices where appropriate and creating a cultural experience that fosters respect, identity, belonging and community.

Why can't this be Métis run with Métis values? We need to have Elders throughout this process if it is to build relationships and our community. We need our youth fully engaged too, it is their system to care for too. Putting children in the center of decision making means you think about them in the decisions that you make, about their future, and their children's futures.



⁵⁵ “Constitutional Reform Consultation Sessions Summary Report,” metisnationsk, 2022, <https://metisnationsk.com/wp-content/uploads/2022/11/2022-MN-S-Constitutional-Reform-Summary-Report-final.pdf>.



DECOLONIZING

- This body should encourage **kiyokêwin**, bringing people together to celebrate, discuss relevant and important topics (unrelated to the body or any cases before it).
- It's going to take time to **nihtohta**, listen deeply and carefully, to the stories of those who come to the body (and therefore, we're not on hard chairs). Don't leave people sitting in their shame.
- Language is key to making this Métis. Words matter, we need to use our languages as much as possible, even in the laws.
- This system should look to Métis symbols, traditions, and ways of solving problems, all based on Métis laws and customs.
- The body needs to understand and be inclusive about the role of food and music in bringing our community together.
- This space has to be decolonizing. Bring in the old ways where possible and useful so we see ourselves in it. Ensure it is a cultural experience. That means things like, not one person making a decision on another person. It means it is creative and community driven and showcases our own experts. We are capable of doing this within our communities. We have experts and people want Métis experts to be relied upon as determiners of the outcomes.
- People should not feel intimidated going in there, they should feel respected. It should be comfortable there so you feel invited to share and work things out.
- This body should involve those who know a lot about traditional activities like hunting, trapping, fishing, and gathering.

SPACE AND PLACE

The community members we spoke with had many ideas about how to create an impactful look and feel of the physical space of the judiciary, including:

- First and foremost—that the space be welcoming and comfortable.
- Ensuring spaces had natural light
- Have plants and or water features (like a fountain), representation of Métis artists, cultural or faith-based symbolism (like flags, sashes, sweetgrass—or bibles, crosses), and other artifacts, etc.
- comfortable chairs, and
- People delighted in the possibility that judiciary activities could even take place in powerful outdoor settings, out on the land.
- There shouldn't be just one physical space for the judiciary—as travel to one location would make participation inaccessible to those living at a distance from the location.
- The judiciary needs to travel to the regions and be virtually accessible.
- The idea of regional urban spaces were attractive, they could be a part of existing education centers, health centers, or community spaces—places where people already visit for other reasons, so the parking of a judiciary car outside wouldn't signal that you were in a punitive process.

“The idea of having the court in a place where everybody was coming and going already, means that you might not be thinking as you meet people ‘What did you do to end up here?’”

The Judiciary Needs to Build Relationship

A belief that relationship-building is fundamental to the proposed judiciary is following a traditional principle of **wâhkôhtowin**. Restorative justice is considered a goal, though skepticism remains about its widespread implementation. The hope that the judiciary is a holistic entity that relies on Elders, supports families and makes space for youth with children at the center is a reflection of Métis societal values. This can be done first and foremost in a proactive way. Prevention has to be a component of this judiciary.

ALTERNATIVE DISPUTE RESOLUTION PROCESSES

- In response to situations that do arise, despite best efforts, alternative dispute models have to be made available—either traditional or contemporary. What is available and works?
- This body should practice the principles of restorative justice throughout all of its processes to show it is possible.
- This body should endeavour to set things right, **kwayaskastasowin**, to bring relationships back into balance.

HOLISTIC

Holistic means this body actually helps Métis families, youth, and community people do this together. Hearings with a Judge involved would be the last resort because Métis people will be involved and supported in taking the responsibility to deal with the conflict and work it out together.

It should be connected to other work MN-S is doing for families and homes and children—this body could refer to other community support services as appropriate.

Beneficence—Do good.

Non malfeasance—do not harm—tread softly in the role of a court.

Autonomy—see the individual—see past the offender or the victim.

See unconscious bias—they are unconscious and need to be sought out.

Be virtuous—law tells us what we should do—ethics tells us what we ought to do; so bring your morals to court with you.

A Trauma Informed lawyer when asked what she would advise a new Judiciary 2024



PROACTIVE AND PREVENTATIVE

- The judiciary is involved in the lives of Métis people before, during and after they come before a Panel.
- It allows for preventative measures or keeping community members within the circle of well-being.
- Being proactive is critical for sustainability
- More proactive—is this not simply a body to hear election results, it is one to respond to all the laws of the MN-S, AND it builds in community and traditions as part of its work.

EDUCATION AND TRAINING

People want to build in ways and means to be part of the judiciary that are healthy as well, part of the proactive measure of bringing people together. Training offered to Métis by the judiciary, such as becoming commissioners for oaths or notaries, was asked for. There too was a suggestion of community members being able to become marriage commissioners with training on traditional Métis practices and values. The judiciary could, in fact, perform civil marriages with Métis culture infused.

Education was mentioned early, often, and throughout. Education on laws, on rights, and on how to navigate the Métis judiciary and the external courts in a way that brings people confidence was discussed and requested as a way to make this body different and useful to Métis people.

The Judiciary Needs Clear Jurisdiction and Authority

LAWS

Questions about the judiciary's scope, from the treatment of election cases to citizenship and eventually to criminal diversion and family law, were discussed with every audience. It was broadly agreed that the judiciary's reach should include reviewing existing laws and growing with MN-S's expanding jurisdiction. There was a call for accessible justice that doesn't depend on income and high paid lawyers for proper representation.

The legislation that MN-S has at this point was listed in the first part of this Report, as was the anticipated new legislation the government may create. MN-S will need to be clear within their legislation what the laws and rules are and what the range of penalties are for when the laws are not followed. Much of the current legislation, including the Constitution, is under review now for consistency, accuracy and clarity.

Laws for the **Kwayaskastasowin Judiciary** process are also being contemplated by MN-S, as well as laws on how to interpret those Métis laws. They are also reviewing rules about how the court will be held accountable and how laws, policies, and regulations are all able to be reviewed by this new body. The constitutional review underway is also about clarity and consistency.

IDENTITY

"Who does this court look after? Do I have to be a citizen to be there? Is it mandatory? I don't know what is happening with all of this. Now I am being told if I am Métis or not! Are we all going to be just like First Nations people who have a class system for status or non-status and Bill C-31? Who has authority to make me go to court and who will tell me I cannot. What will the other courts tell me? We used to be Ojépmisowak, not any more. Is the Métis court looking after us or after the elected people?"

Community Member

Who the judiciary looks after remains a concern. This is true on a number of levels. Citizens are there by choice. If the statistics from stats Canada are correct for the last census about 60000 people are claiming to be Métis, and MN-S has registered about 26000. The reasons people do not register are numerous. However, in order for the court to ascertain who it has jurisdiction over will require people to volunteer to participate, or for the parties to be registered citizens of the Métis Nation—Saskatchewan.

There may also be situations where a Métis and a non-Métis person are involved in a dispute, particularly when child and family service programs are included in the MN-S governance. Attornment, or agreeing to be under the jurisdiction of this body, is possible but must be contemplated in advance. This opens up a number of other issues to consider; like how can a Métis judiciary work with other Saskatchewan courts if there are discrepancies in jurisdiction.



The Judiciary Needs the Community Engaged

For people to trust it, it has to be inclusive of Elders and Youth and Knowledge Keepers and Experts and language speakers and representation from the LGBTQIA2+ community and representatives advocating for those with disabilities.

The community insists on participating, and that community members be involved in the process throughout. Combining this with restorative justice and *kiyokêwin*, visiting to connect, we can have the judiciary extended from community throughout Saskatchewan by having people go into the community to set up community spaces to share ideas and teachings. This would reconnect people to listen to each other again. This will be done through one Elders, Youth and Experts who work for the judiciary.

The following is an outline of the basic components of a Métis Judiciary as perceived by the people we spoke with.

COMMUNITY PANELS

Everyone wants Elders included; Why do we need lawyers; can't we just use our own experts?

If we created a roster of Elders, Youth and Experts to draw from for community panels, it would re-engage Elders, invite youth in and help us see how our experts are. They could go into each region and visit a few times a year in different places.

There would have to be criteria for selecting them and they have to be from all over our regions. Build a repository of names to rely on for Elders, Youth and Experts so there are more than one team available to go out.

I saw youth on justice panels work. They know kids and they know safe places and they know how real life works. We have to start taking youth responsibility seriously. They have value to add.

Métis Leader

FACILITATION PANELS

Design a Judicial to have parties involved in an issue that arises in community work it out themselves, with assistance to listen and what. Include Elders here too, and youth. Have professional mediators or facilitators come in to work this out so people can work things out without going into a hearing. They could even bring in an Expert if required so they have advice on particular areas that may require more specialized information.

The Elders, Youth and Expert advisors should be careful about conflicts of interests.

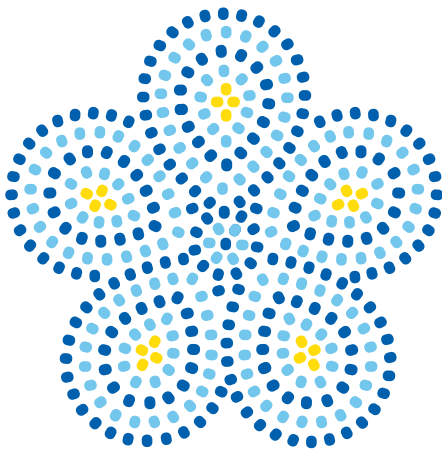
I would be a mediator! What if each region had one so that any issue could bring our own mediator in and we don't have to go to court?

HEARING PANELS

If people cannot resolve their own issues we will need a place to have decisions made for us. If it comes to this, we need to ensure a Judge is there to follow the laws, to write decisions. However, one Judge should not decide so there should be an Elder and a Youth here too. They should be decision makers too. They live in our communities, know what is reasonable, what will be followed and what will be ignored.

Experts could be brought in to support, as needed. A diverse panel of Youth, lawyers, Elders, and other Experts, could be established. A knowledgeable body would be developed over time. The Elders and Youth can report to the Judge and the decision should reflect the thinking of the entire panel.

It was clear that people want a healthy justice model, but it was also very clear they want a place to take grievances and that the people making the decisions are informed and capable of making good decisions.



“The Judiciary Needs to Include Joy” Métis youth

Ideas include utilizing the court for positive community events like marriages, educational programs, and supporting Métis self-representation. Community suggestions also focus on providing a welcoming atmosphere, personal choice in proceedings, and a culturally rich environment.

Using the court for swearing in ceremonies, marriages, education on the judicial process and even adoptions will make it an institution people remember building things

with. Courts are not looked at like that.

How might we ‘michifize’ marriage commissioner training and have small courses on becoming a commissioner or notary? This means civil marriages, perhaps customary adoptions and even swearing in of officials could happen in the judiciary. Witnessing was a very important part of traditional practices in most Indigenous cultures but in modern society it is lost, having all services and programs outside communities

and without a cultural basis.

We also need to have supports in the judiciary. How can we make sure people know what is going on and when it is their turn to speak? How do we stop waiting for recidivism to occur to deal with people’s life issues? There could be a call-line or justice support worker there for us? Education arose over and over, so we are restating here: the Judiciary can be an educator and should be a place to learn.

The Judiciary Needs to Offer Métis People Choices

this is about autonomy, sovereignty, and dealing with issues on our own. Otepmisowak, we own ourselves, so I want to choose the process, to have language if necessary, to have sweetgrass or the bible if i am christian. I want to speak to my matters. otherwise we will be lawyering up. When you go to a colonial court, you do not know what is happening, it is over your head, even when they adjourn matters, it is over your head. When do we get to say what the issue really is?

In dialogue with people, the suggestion that a Métis court model might not be a place to lawyer up and have legal fisticuffs was a foreign idea at first. But once people started relying on words like **otepimisowak**, the people who own themselves, they opened to conversations about how to present their own cases. In particular, when people could see that better long term results come from people being involved in the decision making process, they were open to even being coached to speak for themselves. Agency and **otepimisowak** are very related—the ability to control your own life, thoughts and behaviours—it is a very Métis phrase.

*"It's what we do.
We change what
doesn't work for us,
based on our unique
characteristics."*

Community Member

The diversity of Métis people comes in many ways across the regions of the MN-S. Language to be sure is not uniform. Cultural practices, harvesting traditions, and the development of regional and local governance varied. Everyone wanted assurance they were not going to be forced to do what others are doing and that they would have some freedom, again a commonly held value for Métis people, to operate in a way consistent with their own practices.

Each region can open space with a song / prayer / intention. As mentioned, this will look different depending on the region. I think having each region choose their standard protocol and then offering the opportunity for individuals to incorporate their own protocol at the beginning. For example, Saskatoon could not incorporate smudging, but an individual may choose to add it.

The Judiciary Needs Specialized Training and Ongoing Education

The training is necessary to ensure everyone is equipped to deal with the diverse needs of the Métis community when engaged with the **Kwayaskastasowin Judiciary**. People need to know how to handle emotions, diverse information, explaining process to everyone, conflict and what the law is in order to help in the judiciary. Comprehensive training for all judiciary staff is deemed essential.

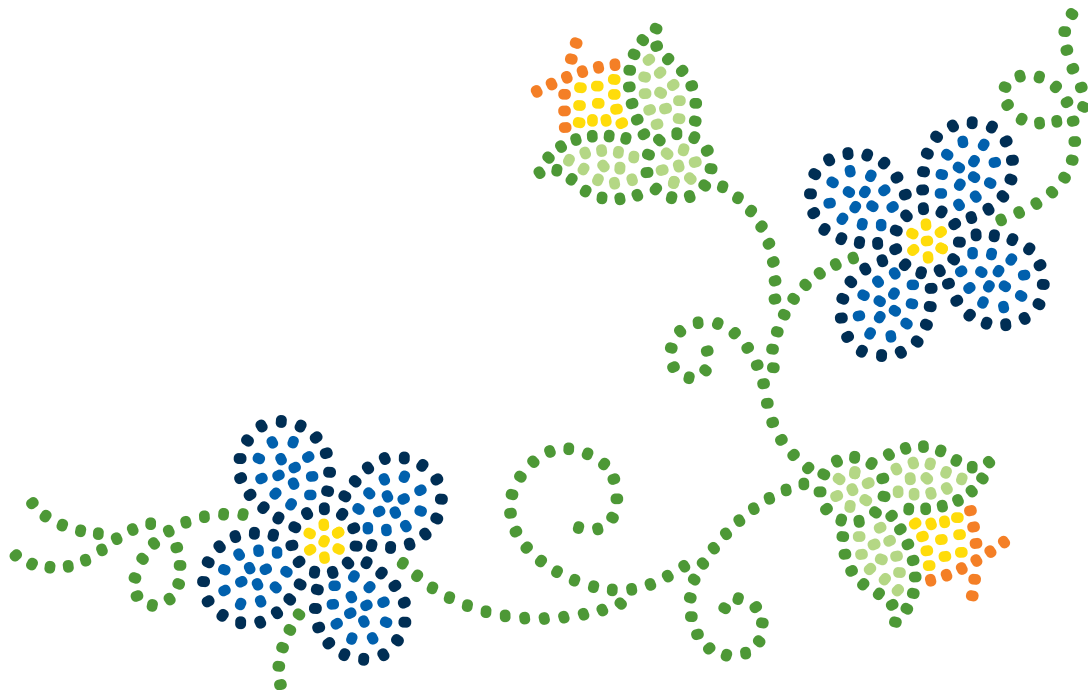
- Some training should be universal for all staff of the judiciary, including trauma-informed training, and how to actively, compassionately listen, **nihtohta**, and how to reflect back so the speaker is seen and is heard.
- Some roles will require additional specialized training such as mediation, arbitration, and legal and paralegal skill development.
- To support consistency in the way conflict resolution would be approached within the judiciary, it was suggested that one institution be tasked with designing a customized training program
- Training is essential to ensure that the Judiciary staff are ALL supported in their self-care on an ongoing basis while engaged with this work and in community. It's part of the job—you cannot pour from an empty cup.



The Judiciary Needs Continuous Evaluation

Good systems have continuous evaluation and assessment built in. Ongoing monitoring of the judiciary, grounded in inclusivity, citizen-centered, trustworthy, transparent, and in the spirit of **otipemisiwak**, should be established. This work to continually review the new judiciary is to make it stronger, more robust and responsive to the people it serves; therefore a learning mindset will be critical.

- The conversation with community members shouldn't stop when the original design consultation is over, evaluation should be embedded into the **Kwayaskastasowin Judiciary**.
- Continuing to include community input will build relational trust with the judiciary.
- Community context is essential to understand judiciary services as the piloting happens
- Feedback mechanisms need to be built in to inform the continuous improvement of judiciary processes and community member experience.
- As the judiciary hears cases meaningful metrics will emerge to tell strength-based stories of impact over time.
- A participatory and qualitative framework for evaluation will be inclusive of a variety of community voices and bring culturally safe grounding and methodology into the ongoing practice of evaluation
- As the judiciary scales activity over time, evaluation will ensure it continues to meet community needs and contributes to humility and an ongoing culture of learning.



Conclusion

This aspect of our design thinking of what would be an amazing judiciary, as far as Métis people are concerned concludes with the Métis community's clear directive:

Build a judiciary that is an authentic representation of Métis values, culture, and aspirations.

Such a body should prioritize relationships, community involvement, and the personal growth of those it serves, embracing Métis identity in all aspects of its operation.

Building a judiciary that reflects the identities and sovereignty of the **otopimsewak**, is based on **wâhkôhtowin**, kinship, and its success will be founded on principles of nihtohta or deep and profound listening. Through **kisaywahtsowin**, being kind, generous, and wise, a Métis judiciary would be able to come to an outcome that is **kwayaskastasowin**, setting things right, because we have approached the challenge through building and growing this process together. We rely on **sâhketowin**, love. Everyone contributes to a common outcome (reciprocity), where we invite participation, **kiyokêwin**, and contribution from the community because we all have something to lose or gain in how the challenge is resolved. This is what we hard people ask for.

The next chapter sets out the proposal for a model for a Métis Judiciary. We will suggest what we believe will work as a model of justice based on the needs of the Métis Nation—Saskatchewan and the hopes of the people this judiciary will make decisions with.





CHAPTER 4

A Proposal for a Kwayaskastasowin Judiciary

What works... for a judiciary model designed by Métis people?

WHAT WORKS		
Test and critique solutions to strengthen understanding of concepts of justice and overall design of a new judicial body.	<ul style="list-style-type: none">• Get feedback from community and courts• Co-create solutions• Showcase our design• Prepare for piloting new model	What works... for Métis people to address justice for themselves as a nation?

In our process to create a Métis Judiciary, we relied on design thinking. The four phases of design thinking are: What is—a 360 review; What if—opening the design to the Métis people, what wows—a look for the best possible solutions that light people up and what works. This is the outline of What works.

STORY

During the 2023 Dialogue Forum, the Design Team for the Judiciary project discussed the idea of addressing problems through our judicial system before they happened, using a process called “restorative justice”. We explored the value of checking in, and the impact it could have on our family and community relationships if done properly in an ongoing way.

Summary

After the 360 review, gathering the community and expert inputs, and then uncovering the amazing components Métis people want in their justice system, our findings led to the development of design guidelines and the creation of the **Kwayaskastasowin Judiciary** model design.

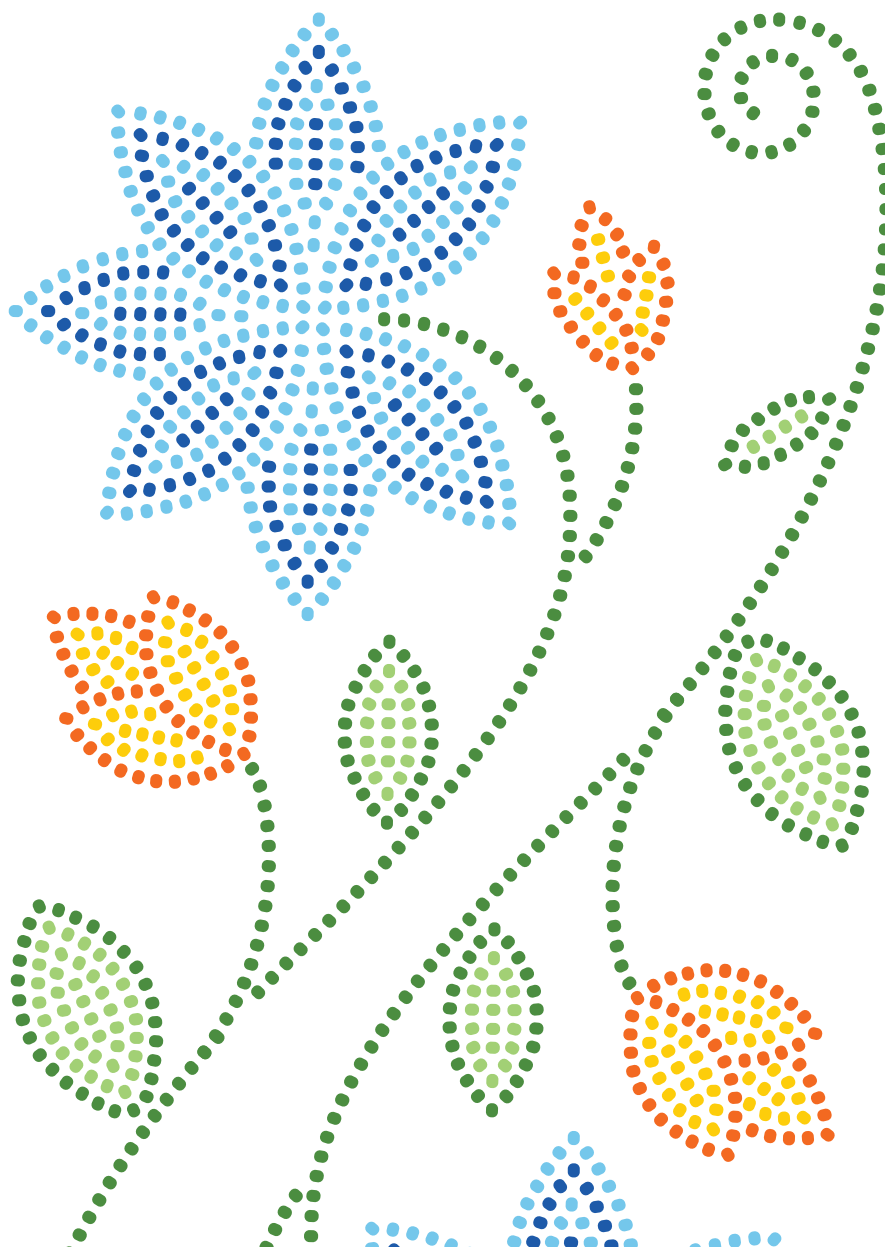
This chapter contains our best recommendations to support the MN-S to meet the needs of our community, to have a solid judiciary to rely on, and to actively reimagine justice through a Métis lens. All the important considerations and components needed to successfully build the **Kwayaskastasowin Judiciary** are introduced in this chapter. We begin with our highest-level design assumptions to help set the stage for the **Kwayaskastasowin Judiciary**. These are in response to the key questions community members brought forward throughout the design process. We also outline the design of the model itself.



The **Kwayaskastasowin Judiciary** model is designed to ensure the system is created by and for Métis people—and that it can actually be implemented in a way that invites the community to be engaged and connected in *a good way*. It is an independent system for the MN-S to rely on, trust and resource in an ongoing way in order to build it as an institution for future generations.

Doing things in ‘*a good way*’ means many things to many people. It can mean ceremony, it can mean heart-felt authentic approaches and understanding. A good way can mean having humility. Today, post IRS, MMIWG2S+, and Every Child Matters, and based on conversations we had in community, a good way certainly includes being trauma-informed, building ethical space—to work with morals and foresight, and creating conditions for repair and healing.

Working in a good way is consistent with calling the new body the **Kwayaskastasowin Judiciary**, which means to work towards setting or re-establishing the situation, the people, and their relationships, onto a good path. Everything the Métis judiciary will do revolves around a holistic concept of **kwayaskastasowin**.



Primary Considerations for the Model

Justice built by and with Métis people for their families and communities will naturally go in the direction of health. One lawyer interviewed suggested that all courts should give power back to the community and make sure people are responsible for their actions in ways that regular courts cannot do. This approach of building roles and responsibilities into the system of Métis justice would also help bring our families and communities together so they can oversee their own relationships. The creation of an ethical space means everyone comes to this space with the intention to build something together, to review issues and challenges and opportunities, together, respectfully, with room to respectfully disagree. Over time, communities will begin to notice positive relational patterns arising. This is a crucial indicator of success. A new **Kwayaskastasowin Judiciary** model should help build up communities, not divide them.



Consistent with trauma-informed principles, the Design Team held the following four design criteria as standards to put the pieces of this model together and draft recommendations:

- 1 The Kwayaskastasowin Judiciary will have a strong Métis cultural foundation**—create opportunities for decolonizing the experience of justice by embedding our culture at the core of this judiciary
- 2 The Kwayaskastasowin Judiciary will be relevant to and inclusive of the Métis community**—continuous involvement of community members in the judiciary will build relationships, ensure its activities and decisions are representative of our community values, and provide opportunities for continuous improvement and alignment of the operations of the court.
- 3 The Kwayaskastasowin Judiciary will be proactive and restorative**—This model is designed so people can speak for themselves—it is not designed to require lawyers to speak for them. It will focus on encouraging connection, engagement, conversation, deep listening, and creating cycles of repair and re-investment within our community.
- 4 The Kwayaskastasowin Judiciary will build trust with the government and the community**—commitment to conditions that build ethical space and positive experiences of the judiciary’s intentional staffing, thoughtful structuring, and deep care conducive to the processes of *kwayaskastasowin* to build shared responsibility and mutual respect over time. This is an independent body—to hold its own budget and hiring and review processes.

These criteria are interconnected. That is to say, that work being done in service of one will inform how the work advances towards achieving all the standards. Community dialogue was a centerpiece of all of our information gathering, and community members have participated in responding to our work-in-progress.

56 “Infographic: 6 Guiding Principles to a Trauma-Informed Approach,” cdc.gov, September 17, 2020, https://www.cdc.gov/orr/infographics/6_principles_trauma_info.htm.

LANGUAGE MATTERS

Community feedback constantly stressed the significance of using Michif language in shaping the Judiciary and its processes.

The identity of language now, even when we're speaking Dene or Michif, or Cree or whatever, the language we're using is reminiscent and is reminding ourselves of our responsibilities to relationships. That's what I want to see and hear."

"We need to ensure that language is available in the courtroom. We need to ensure that we're using language to label and name and set these processes up."

The decolonization of existing and long-standing non-Indigenous institutions is very complex, larger than life work to take on. However, building Indigenous institutions can certainly start from a decolonized space. Arguably, step one is using Indigenous language wherever possible. The reasons for this are obvious at a time when there is so much focus on revitalizing Indigenous languages in Canada, using language keeps language alive. New institutions can incorporate traditional language that people will come to be familiar with over time, as the institution grows. Further, and equally important, use of Indigenous languages removes the tendency to be constantly comparing the new Métis model with other colonial models. This keeps new models out of the ruts of other processes and allows for creativity in the new system. The use of our languages shows true ownership of the process by the people involved.

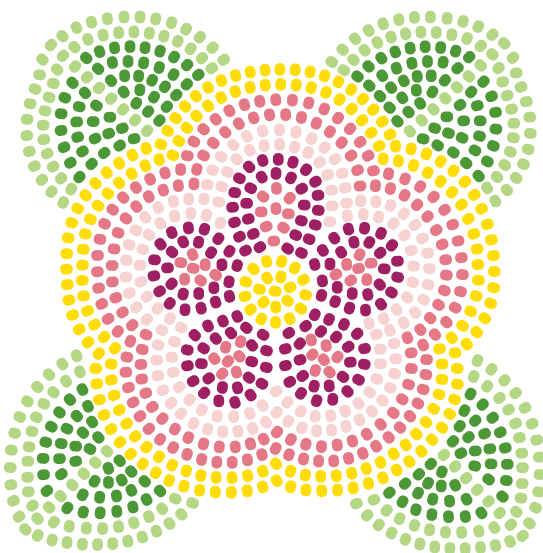
Language was raised throughout our research by speakers and non-speakers, as very important. This is a tricky issue in communities with a variety of languages. We are living through a proposed language revitalization period and young and old alike want to participate. This movement should be joined to the development of key institutions for all Indigenous governments, but it is particularly important for Métis who are losing language.

A few terms did arise as we worked out the model and have been relied on within the Report.

- **Kwayaskastasowin**—Setting things upright or back when they come off the path
- **Otipemisiwak**—The people who own themselves
- **Wâhkôhtowin**—We are all related/connected—Kinship
- **Waahkoomiwayhk**—Kinship
- **Kiyokêwin**—To spend meaningful time together
- **Nihtohta**—Deep listening
- **Sâkihitowin**—Love
- **Shakihiwayhk**—Love one another
- **Wiyasowieyow**—Court house / room
- **Owiyasiwew**—Judge
- **Ooyashowewin**—Judgment or court place
- **La zhuschis**—Justice
- **Kwaayesh ka tootamkayhk**—Justice or doing it properly
- **Aashpayimoohk**—Trust

While these terms resonate with the Design Team, and are used throughout this Report, it is recommended that a language conference be held to actually give names to roles and processes of the new judiciary that include all of the languages of the Métis people. We have relied heavily on **kwayaskastasowin** here as it fits well within the idea of being Métis in culture, in process, and in outcomes. **We have highlighted through this section where it is obvious to rename these positions and process to Michif, Cree or Dene names with green highlight*.**

Natural law is the law that was based on living a good life as a member of the global world with an understanding that we are all here for a short time, all dependent and interdependent on each other. This applies to humans more than any other creature or plant, as the most dependent. The laws of how to live well according to the natural cycles of the earth, cycles of nature and the reality of the interconnectedness of all creatures, are safely embedded in nature. And were recorded in a way, in language. Simply going back to language wherever possible will bring life back to old laws, natural law. This Report has attempted to find ways to revert back to those teachings but more work must be done. We did not want to ask for this knowledge to be relied on by the **Kwayaskastasowin Judiciary**—without us producing it throughout the model we are proposing. Therefore, language is found throughout the model.



WHAT SHOULD WE CALL THIS BODY?

This entire project began with a discussion of building a Métis Court. Colonial governments have courts and tribunals and they are so long standing that their structure falls into very specific boxes for identifying what they do. Courts are seen as superior to tribunals—they have more authority, a broader scope. A tribunal, by comparison deals with “smaller” matters, often more efficiently because they specialize to look at issues through a specific lens. After some exploration about different terms, the Design Team originally adopted the term ‘Tribunal’ because we were attracted to the ability of the Tribunal to be a specialized body, that would be expressly for Métis people. This did not last long though as the term tribunal was seen as not as significant as a court. One professor commented that it might be more beneficial to avoid colonial labels unless they really worked. That we might better rely on language wherever possible since this was a new model for justice all together. It was not too long into our community work before we were encouraged by government leaders and by Elders to ensure that Indigenous languages spoken by Métis people (Michif, Cree, Dene, etc.) would be part of this new design.

“The language you design in matters—it affects how you think. When you design in English, the language of the colonial system, you are separating the law from the people.”—Métis Elder

In our discussions with Elders around using ‘tribunal,’ we became concerned that we may inadvertently reduce the, real or perceived, authority of the Métis judicial body, leading to assumptions that it could only handle smaller issues to “relieve the administrative burdens” of “real” courts. Colonial institutions have taken up so much space in our lives we rarely question the way the language we use influences our experience. Elders worked together in conversation to come up with words like **wiyasowieyow** for the court house or **owiyasiwew** for the Judge. One Elder was working to identify the exact word we wanted and turned the question around: she asked where does the word court or tribunal even come from? What does it mean literally? She wanted to define it so she could break the idea of it down into her language for comparison.

“Court” comes from the Latin “cortem” which means “enclosed yard”. It was associated with a palace or the residence of a sovereign, and from this meaning it got associated with the surroundings of a sovereign in their regal setting. Early gatherings for justice were personally overseen by the sovereign, so it came to mean “hall or chamber where justice is administered.”⁵⁷

57 Jason Boatright, “The History, Meaning, and Use of the Words Justice and Judge,”

“Tribunal” from the Old French “tribunal” meaning “justice seat or judgement seat”, and directly from the Latin word “tribunus” which in ancient Rome means “official in ancient Rome, magistrate” or the literal meaning “head of a tribe”. The Latin “tribus” which we associate with the word “tribe”, but in ancient Rome specifically meant “one of the three political/ethnic divisions of the original Roman state”. It then was later used to denote other group divisions, before settling on the meaning we now know of “tribe” in a more general sense.

We have highlighted through this section where it is obvious to rename these positions and process to Michif, Cree or Dene names with green highlight*.

“Judiciary” comes from the Latin root “judicium”, which means “judgement.” The role of the judiciary was to render judgements by interpreting the law and then applying it.

This way of looking at the meaning of words like court and tribunal is reminiscent of earlier discussions on the language around justice and judge. We heard, loud and clear, that none of this language—nor many colonial justice practices in general, reflect the history of Métis governance, shared leadership, the inclusion of women, or the care for children that we heard throughout our research, were central to Métis justice practices.

Referring to this body as the **Kwayaskastasowin Judiciary***, should imply culture is used throughout, that it will interpret Métis laws through Métis lenses of culture, process, and outcomes and then apply those laws to set things right. It implies that children are at the center of all decision making and that women are respected and are a strong voice within the process, as are 2SLGBTQQA+, disabled and the elderly. It implies **wâhkôhtowin**. This feels like a way to “do justice” in a good way. We are again, strongly proposing that a language conference occur to provide names in Michif languages for the positions and the processes of the **Kwayaskastasowin Judiciary**.



WHAT SHOULD THE ROLE OF COMMUNITY BE?

.....

"I can't emphasize enough how important it is to have citizens, including the elected officials, including old people and young ones participating with this process."

The **Kwayaskastasowin Judiciary** will be independent and staffed by as many Métis people as possible, including Elders, Youth, and Experts throughout each point of engagement. The Judiciary will be designed to be supportive, to rebuild relationships, and to be a leader for responsibility and reciprocity—just as the old laws showed Métis justice to be.

"Elders, the spiritual Knowledge Keepers; they have to have some knowledge of all the different aspects of our culture. We have harvesting elders, have the language keepers, you have your educational Elders, you've got your pre-elders, but you can't just pick your Elders. And I think the past trouble was because they said you can just pick your friends to be the Elders! You have to let the communities pick their Elders themselves. They know who their people are. They know who you can send safely, send them to give you traditional advice or the ways of the land or whatever..."

Why don't we ask our Elders when they come to us "Like, what do you guys know?" I mean, there's some Elders that are identified in my region that I wouldn't consider a leader, but someone else that is not pushed forward might be a good Elder. That may be a good suggestion or something to be considered. Maybe we should be talking to Elders and asking, what do you want to teach about?

"How do we incorporate care into the Elder relationship? You can have her over one day, pick the day and then, you know. So how do you incorporate care of the Elder?"

WHO SHOULD HAVE ACCESS TO THE JUDICIARY? FOR WHAT?

Who is included in the Métis community is a longstanding theme about who the Métis are. A Métis Judiciary must be for Métis people. But what does that mean when not all Métis people in Saskatchewan are citizens of the MN-S, when Métis people in Canada move around, when Métis people are in constant relationship with non-Métis people? To complicate this even further, the most recent fraudulent acts of people claiming Métis identity has unleashed a power dynamic over who gets hired and how, who gets services and when, who gets scholarships, and so forth.

We have highlighted through this section where it is obvious to rename these positions and process to Michif, Cree or Dene names with green highlight*.

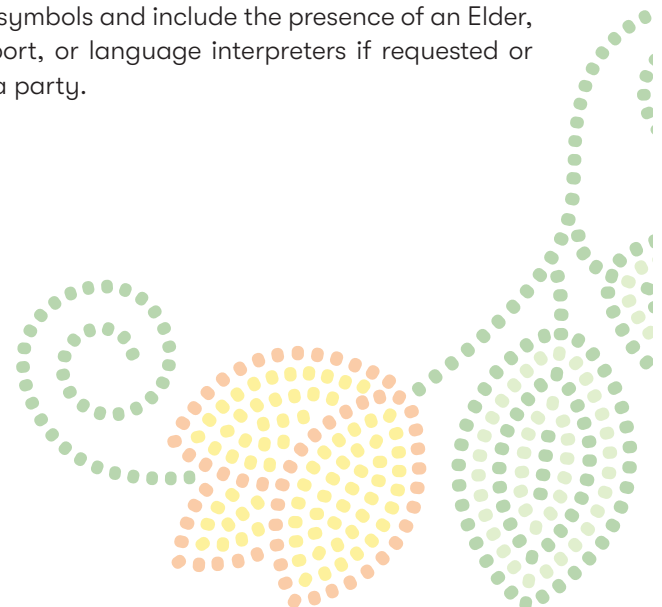
The Métis Nation—Saskatchewan holds authority over its laws, government practices, programming and services. Therefore, access to all of those aspects of MN-S governance should flow to the people who fall within the definition of citizens based on the Constitution. We are also recommending including pathways to access for Métis or those who are part of a Métis family through tools like attornment despite their citizenship status as a goal in the future. The feedback from the community centered around access being available for those who voluntarily choose to engage in this process. Therefore, we imagine that one day disputes involving non-Métis people could also be referred to the Judiciary, if they relate to issues of which MN-S has current legislation and jurisdiction.

WHERE SHOULD THE JUDICIARY BE LOCATED?

The value of having a single location for the Judiciary, of a bricks and mortar building or space, was not evident from community visits. Many people want this judiciary to be accessible and many want the activities, services, and institutions of MN-S distributed throughout the regions. This means options for the judiciary to convene in Saskatoon and Regina as larger centers, with Moose Jaw and Prince Albert being the next city locations. Renting and owning space will depend on financial forecasting and capacity. The idea of housing the **Kwayaskastasowin Judiciary** within established community spaces resonated with many community members and is an interesting way to think about building a non-punitive feel—just because your car is out front, doesn't mean you're in trouble!

The **Kwayaskastasowin Judiciary** team should travel through each area of the province to get into community for Facilitation and Hearing Panels, in addition to Community Panels. Going to people is a respectful way to hear the story behind the issue and to have people in their own spaces feel comfortable. If the parties are in different locations, a neutral spot for meeting may be one of the main offices of the Judiciary.

Regardless of where or how the physical locations of the **Kwayaskastasowin Judiciary** are established, they must feel welcoming and safe. It must be respectful of diverse cultural practices, including the potential use of Indigenous symbols and include the presence of an Elder, family support, or language interpreters if requested or desired by a party.



WHAT WOULD IT LOOK AND FEEL LIKE WITHIN THE PHYSICAL LOCATIONS OF THE JUDICIARY?

- Visual, auditory and olfactory impacts would be considered
- The space would be user-friendly—we get a clear understanding of the space, like where is the bathroom, here's the exits, these are the rules of engagement.
- Comfortable chairs, blankets, quiet spaces to talk
- Ceremony can be built into the space
- Feasting welcome—food, snacks, tea
- Representation of Métis artists
- Intergenerational presence and language in the courtroom.
- Natural light
- Light music or water sounds.
- Colours matter

The option of virtual judicial capacity is essential to support accessibility. It is absolutely on the request list of most Métis people and is widely used in most provincial jurisdictions today. People can call into courts for their appearances for many different reasons. Video conferencing is readily available. However, in order for this to be possible, the technology must be current and must be secure. The **Kwayaskastasowin Judiciary** will require technical capacity to be available in each region.

This process could be crafted in a multi step fashion. The initial most informal services could be a minimal traveling mediation team. A secondary support system can be mobile as well, with a larger team of support, as well as its own defined space within a community. The more formal components may require complex supplementary services and supports, so logistically may make more sense to occur at a centralized location (ie Saskatoon, PA, Laronge, etc.)"

Community Member

WHO SHOULD BE ACCOUNTABLE FOR THE JUDICIARY?

We have highlighted through this section where it is obvious to rename these positions and process to Michif, Cree or Dene names with green highlight*.

The new **Kwayaskastasowin Judiciary** is and *must be independent* from the MN-S government. It was clear from the earliest discussion that this would be key in order for people to be able to trust it. Independence must be established within the legislation, the housing, and the financing of the judiciary. In addition, arms length means that people who work for the **Kwayaskastasowin Judiciary** must not be employees of the MN-S, nor can they be politically engaged.

The more traditional roles like the CEO or **Chief Justice*** and head administrative staff, the **Registrar***. A stand alone Committee that is selected by the PMC and then the people that Committee selects for the **Kwayaskastasowin Judiciary** and then those selections by the Judiciary Committee will be officially appointed by the PMC. This falls in line with other governments' practice of orders in council and judicial selection in establishing courts and will work for the MN-S. The Judicial Committee can also investigate complaints made concerning the conduct or fitness of members of the MN-S Judicial Body.

Once the key staff are hired, they will be responsible for hiring the rest of the team (including human resource and financial oversight personnel, and a technical team) who will support them to establish the judiciary. The Chief Justice will be the person to whom all the staff report and who will make the decisions about various aspects that make up the judiciary. Using this model, Elders, Youth, Experts, and all hires, are accountable to someone, and that someone is also held accountable to a committee who oversees the bigger picture.

We recommend that the judiciary is much like provincial and federal courts in that they have agency over their own budgets to run the judiciary itself, and that they have a consistent and transparent annual reporting mechanism to the MN-S.

*"It certainly
can't be centralized
into one location—I think
a traveling tribunal
is necessary."
Community
Member*



WHAT SHOULD THE AUTHORITY OF THE JUDICIARY BE?

This body is a court of last resort. It should hear matters involving breaches of a MN-S Law, appeals from other decision-making authorities within the MN-S, and questions from the government related to the proper interpretation and application of the law.

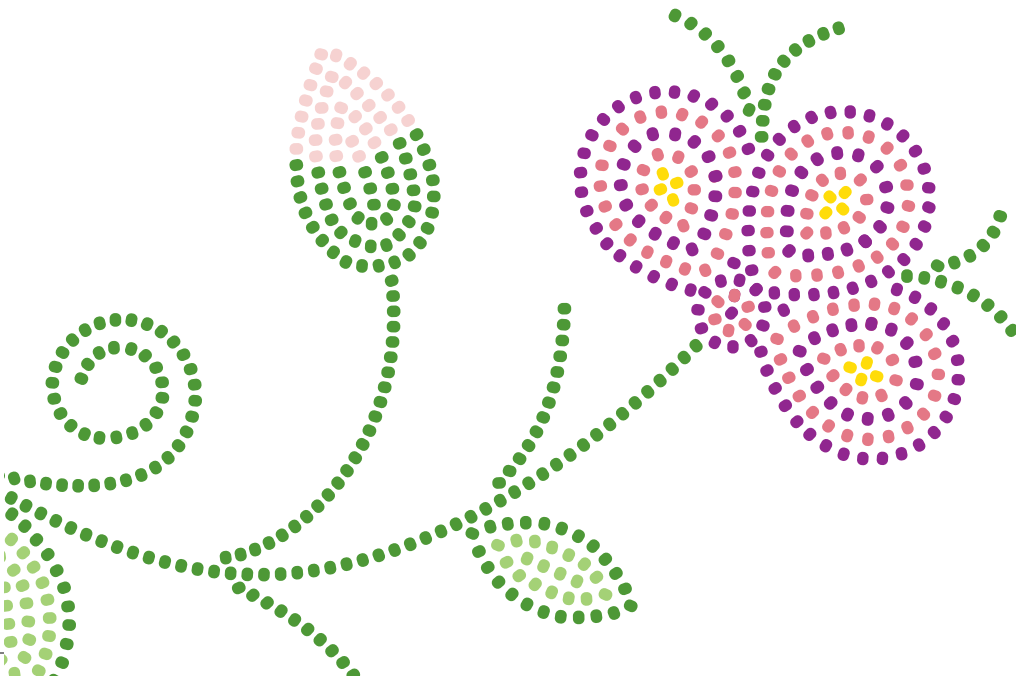
The Métis Judiciary will have jurisdiction over Métis Nation—Saskatchewan law, policy, regulations, and rules. Therefore, it will be important to review all of those laws to ensure they align with one another, they offer penalties for non-compliance, and that they are consistent with the MN-S Constitution. The decision is final and will only be reviewable by an external court or review body to determine if the decision-makers followed the law correctly.

The MN-S Elections act provides for the ability of the Chief Electoral Officer to make decisions during elections. Those decisions are reviewable by an independent body. The Elections Act will need to be amended to specify that the **Kwayaskastasowin Judiciary** will conduct these reviews.

The registry has an appeal mechanism currently for the review of denied applications through the MNLA. This process will be designated to the new Judiciary for independent oversight of that process, which is intended to remain independent from the MN-S. Amendment of the Citizenship Act is needed to facilitate the Judiciary's oversight of the registry.

It is highly likely that the Métis Judiciary will take on diversion matters once it has quality staffing and sound processes that are seen as reliable by other courts. Further, through the ongoing negotiation of child and family matters with the Métis Nation—Saskatchewan as well as other Métis governments, the services and care for children will fall within the jurisdiction of the Métis judiciary. The MN-S will need to pass legislation to govern child and family matters, which will include the **Kwayaskastasowin Judiciary's** function with respect to these matters.

This body will have the ability to review MN-S Laws, regulations, rules, and policies. The **Kwayaskastasowin Judiciary** will be the proper place to decide if an elected person is in breach of these laws, rules, etc.



What Makes This Judiciary Métis?

Embedding culture
at the core of the
**Kwayaskastasowin
Judiciary**

We have highlighted
through this section
where it is obvious to
rename these positions
and process to Michif,
Cree or Dene names
with **green highlight***.

The feedback from community called for a justice system that is inclusive, respected Métis traditions, and ensured community involvement and expert input. The Design Team kept the question—*What makes this Métis?*—at the top of our minds during each and every conversation, and people were happy to contribute to what the answer to this question might mean in their community.

THE JUDICIARY CORE CULTURAL PRINCIPLES

The following words have been used throughout this Report and have become principles that drive the design team as we have made choices in service of our recommendations for the **Kwayaskastasowin Judiciary** model. If the Métis Nation—Saskatchewan holds a language conference they may not be the words that the community feels are best for this new system, but we offer them as an example of what has inspired us.

Otipemisiwak—we are the people who own themselves—this speaks right to the heart of autonomy, of self-governing. It is so closely related to agency, and the ability to look after oneself that it took over much space in the thinking of a Métis judiciary.

Kwayaskastasowin—Restoring relationships, resetting order, and setting things right when they come off of a good path.

*What Métis value a lot
is family. Especially
their grandmothers
and grandpas—they're
especially close, like
those are the keepers of
the family.*



Wâhkôhtowin—our kinship is at the core of how we gather, how we protect, how we reach out and who we reach out with. This includes keeping communities within processes that determine their futures. Responsibilities to families and to communities and the reciprocity that falls within those relationships comes when people are held accountable through community driven processes.

Kiyokêwin—to spend time, to learn and teach together quickly became a Michif tool for restoring relationships that everyone understood and one that people had stories to contribute. Kiyokêwin was a way to bring a court-like body into a healthy space for its own good as well as for the good of the people it was presiding over.

Sâkîhitowin—this is love. A theme that was arguably used multiple times during the international negotiation of the United Nations Declaration on the Rights of Indigenous Peoples, but not one that made it through to the editing process. It is fundamental to systems that look after people and people's relationships.

Nihtohtha—the only real way to work with anyone who is in a relationship breakdown is to listen, to deeply listen, to listen so well that the person speaking knows they are heard. This is a skill that will be exercised throughout the Métis judiciary, its training, and its outcomes. People who are heard engage willingly in process and in outcomes. People who are heard get over the issues they are working on or through. Listening is the most important relationship skill.

THE JUDICIARY CELEBRATES OF MÉTIS CULTURE AND COMMUNITY

The **Kwayaskastasowin Judiciary** will hold our children at its core by focusing on keeping relationships healthy and creating opportunities for repair and healing within families and community, instead of perpetuating shame. It will be a place that witnesses the good times, like marriages and adoptions, and encourages people to take responsibility (through swearing in ceremonies, and dispute resolution processes). It will embrace Métis languages and customs, welcome the different ways there are of “being Métis”, show up for people and will provide choices, invite celebration, collaboration, and understanding.

Establishing a justice system that only looks down upon people is one of the most colonial ways to assess and address issues within a community. It sets out the good guys and bad guys model that is perpetuated in Canada for most Indigenous people. Youth in particular wanted a good reason to go to seek out services within a “court”. The **Kwayaskastasowin Judiciary** can have more than just judging services, and with the Métis educators insisting there be education within this body, we looked for ways to incorporate those potentials.

THE JUDICIARY HONOURS CHOICE AND CONSENT

As stated early in the Report, freedom or choice are foundational and key values for Métis people. After Freedom, is kinship. Métis people are born fighters. Métis fought with the French, with the English, with the Hudson Bay Company, with the North West company and with the federal crown. We have fought for land, for children, for women, for the imprisoned, and for identity. Métis are fighters. Métis resist control and marginalization. Métis seek freedom and individualism. If freedom and kinship are embraced and are built into the systems of governance of justice, people are much less likely to

fight against the systems. In other words, freedom and kinship will build trust. The intergenerational effect of the Métis judiciary can be positive if the judiciary is set up to fight for freedom and kinship. If Métis resist, give them something to resist—destruction of kinship is the strongest outcome to fight for.

THE JUDICIARY RECLAIMS JUSTICE FOR MÉTIS COMMUNITY

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Looking around at other governments that are building courts and justice processes showed us that Indigenous governments are on the same page about reclaiming justice for our communities. We feel confident in borrowing from the themes and thinking we found in other Indigenous-led justice initiatives.

THE IMPLEMENTATION OF THE BRITISH COLUMBIA JUSTICE STRATEGY IMAGES A FUTURE WHERE:

- First Nations people trust and believe in a justice system that is fair and culturally safe.
- First Nations laws and legal traditions are restored, and First Nations people exercise authority in the administration of justice for the safety and security of their citizens and communities.
- Less emphasis is placed upon the “punishing” of offenders and instead the focus is on “making it right” through prevention, diversion, and rehabilitation—all while making sure to hold offenders to account for their actions.
- Indigenous people have access to high-quality legal and social support services.
- Knowledge keepers’ roles are recognized, restored and privileged.
- Colonialism is seen as an ongoing and toxic force that results in discriminatory treatment of Indigenous peoples.
- All people with authority in the justice system understand and share ownership of the destructive effects of colonialism when administering justice.



FROM OUR RESEARCH OF INTERNATIONAL INDIAN EXAMPLES, WE FOUND A NUMBER OF PRINCIPLES THAT, IF APPLIED TO A MÉTIS JUDICIARY, CAN BE USED TO ASSESS WHETHER THE JUDICIARY REFLECTS MÉTIS VALUES:

- The emphasis on conciliatory dispute resolution grounded in spiritual understandings offers an approach to pursuing justice that is accessible and restorative.
- A system of justice that is sensitive to the individual and their culture requires awareness and flexibility. Further, a system that aims to heal communities requires a certain amount of buy-in from its members.
- A system that strongly emphasizes conciliation and encourages a collaborative rather than adversarial dynamic may be more conducive to developing trust in that system.
- Amicable dispute resolution provides the opportunity for the parties to be active participants in resolving their conflict. It creates an environment that is more conducive to mutual benefit and constructive problem-solving than adversarial-style court systems.
- The relaxed rules are intended to remove barriers to justice and efficient resolutions. This flexibility also allows the resolution process to be approached with sensitivity to local customs, values, and situational context.
- The foundational importance of spirituality and responsibility to the divine. Hindu law recognizes a spiritual, higher order that is infused with all aspects of life, providing a strong example for us to follow. Humans relate to this order but cannot grasp the entirety of this higher order although, can learn about it through stories and poems. Incorporating these beliefs into the fabric of the new adjudicative body is consistent with Traditional Knowledge because it recognizes the primary source of law and natural justice.

THE JUDICIARY PROVIDES FULL-CYCLE SUPPORT

Supports are the cornerstone of a healthy system. Supportive and well-trained people who look after their own health are the staff to be sought by the **Kwayaskastasowin Judiciary**. However, moral, emotional, and psychological injury can be caused in healthy justice processes when we fail to prevent harm or when we witness harm and do nothing to respond. The goal of the **Kwayaskastasowin Judiciary** is to **do no harm**. This is what sets it apart from other justice systems. The ethos, or mantra, of ‘do no harm’ must be

embedded into the training, into the processes, and into the policies and rules of this new judiciary. Métis people know this issue and they raise it often. Institutions and processes that are not attuned to their potential to cause or perpetuate harm are not culturally grounded and do not fit with **wâhkôhtowin** or **sâkihitowin**. It is not **kwayaskastasowin**. This is not to be a system where people are figuring out how to manipulate it for services. A Métis justice system must be built as one where people are heard, taken seriously, respected, seen, and supported.

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The Kwayaskastasowin Judiciary

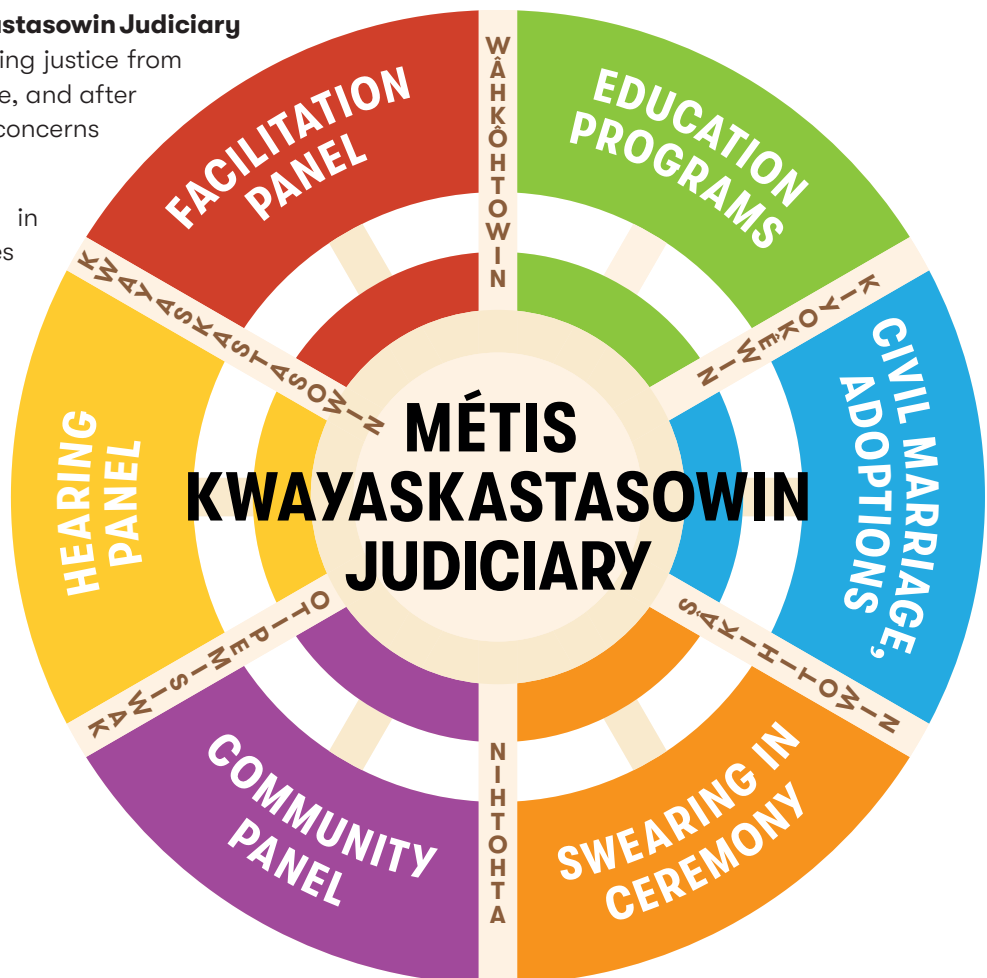
This section explains the **Kwayaskastasowin Judiciary** model we designed after researching justice from every perspective we could imagine, and after listening to feedback, interests, concerns and hopes of Métis people.

The restorative model described in this chapter reflects the values and feedback of the Métis community, and is designed to resolve disputes, in a relationship rebuilding way. The goal will be to restore the person and/or community where possible even though there are penalties.

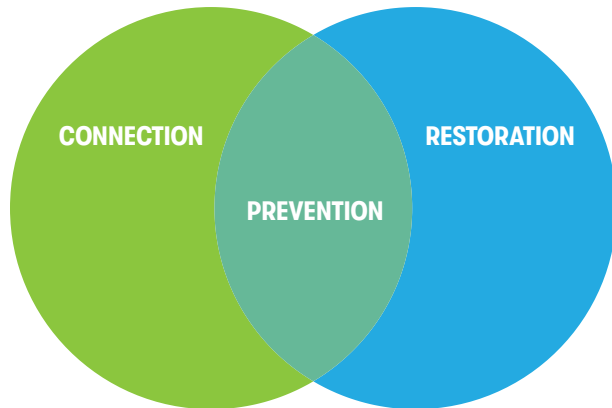
The **Kwayaskastasowin Judiciary** works to set things right because of **wâhkôhtowin**, our connectedness, and through **sâkihitowin**, love and care for others.

"Everything starts with a need"

Josie Searson



In a nutshell, there are three parts of this process:



As you review the model as outlined—keep these three components in mind. They are interconnected and interdependent.

WHAT WORKS

The **Prevention*** Process:
Kiyokêwin

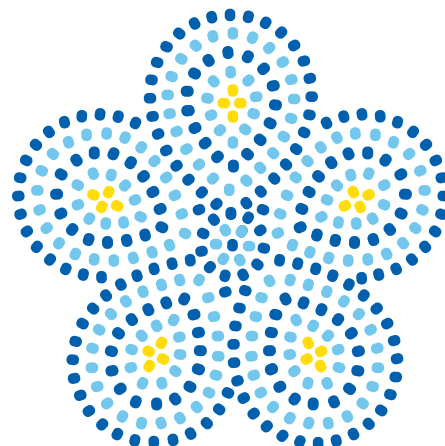
- **Community Panels** spend time in community, listening, learning, sharing, and building relationships

The **Restoration*** Process:
Nihtohta

- **Facilitated Panels** support parties to decide outcomes for themselves
- **Hearing Panels** decide outcomes for the parties

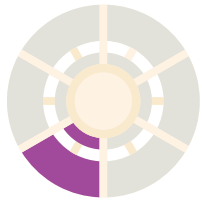
The **Connection*** Process:
Wâhkôhtowin

- **Educate** by offering courses and supports for Métis people who want to develop specific judiciary related skills
- **Celebrate** graduations, civil marriages, adoptions,
- **Officiate** swearing in ceremonies, civil marriages, custom adoptions



THE PREVENTION* PROCESS:

A process for the court to be proactive with community in building relationships

**COMMUNITY PANEL**

“Métis people who traveled by horseback to different communities brought news and spent meaningful time with neighbouring communities to discuss events, news, and political issues ideas, new and old. They discussed potential threats or problems while also maintaining kinship and community ties and uniting political strength. We are and have always been traveling, visiting people”

Métis Elder

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COMMUNITY PANEL

The Community Panel is about **kiyokêwin**, connecting in community by spending time talking, learning, and sharing stories and memories. Community Panels of Elders, Youth, and Experts trained members from the rosters will travel to Métis communities across the province to provide traditional knowledge education, build connections, and revive the tradition of **kiyokêwin**. They’ll also gather input and ideas from the community for future visits. These traveling Judiciary staff do not deal with political issues or matters to be dealt with by the **Kwayaskastasowin Judiciary**.

THE RESTORATION* PROCESS

Nihtohta—to bring about repair and healing

There is a lot of support for restorative and community justice within this model but concrete, ongoing, and adaptable practices are harder to locate in existing examples. In addition, much of the programming around restorative justice is underfunded, resulting in small pilots and access provided to very few. Putting community connections as a primary aspect of justice makes those connections a priority for the judiciary, and will be a significant component to learn from over time. What systems and processes need to be in place and how they are stewarded in order to rehabilitate community members, repair harm caused by the infractions, and prevent recidivism or future law breaking in the first place.

Upon identification of an issue that requires dispute resolution, the **Kwayaskastasowin Judiciary** team will guide the parties through the process to Facilitation Panels (that work with community members to resolving their issues on their own) and/or Hearing Panels (where the panel ultimately decides the outcomes of the dispute). While facilitation and hearing panels will be explained in more detail later in this chapter, this section outlines how engagement with the judiciary process will proceed:

1. INTAKE*: COMMENCEMENT OF A NEW MATTER THROUGH LISTENING (NIHTOHTA)

Information on how to bring a matter forward will be available online and in other convenient ways. Trained staff members will speak with the parties and listen to their stories to *determine if the matter is within the Judicial Body's jurisdiction*. If the matter is not within the Judicial Body's jurisdiction, they may assist in finding and referring parties to other resources that may be able to offer assistance.

2. GATHERING FACTS*: REVIEWING AND EXPLORING THE MATTER

Specially trained staff will listen carefully and collect all the details. They'll write a summary of what happened and *determine if there's enough information for the case to proceed*. If not, they may need more details, or they may refer to another body or service for assistance. If it is determined that there isn't a case, the matter may be dismissed.

3. APPOINTMENT OF JUSTICE SUPPORTS*:

Specifically trained staff will offer support and assistance to the parties as they navigate the judiciary process through the facilitation and or hearing panels. After the process has concluded, staff will check-in with the person at predetermined intervals to follow up on how those involved feel the matter was resolved, continue to be impacted by the process, and how the repair is going.

Justice Support will also follow up on their cases, through community visits, with all parties involved in a case after the Judicial process has concluded. This provides an opportunity to connect and gather feedback from the participants on the Facilitation and Hearing Panels—outside the structured process, in peoples communities, or by calling people at home.

Justice Supports will be seen as educators, supporters, and references. This role should not be undervalued. If it is built in to work as health supports in institutions where follow up occurs, the Métis Judiciary may very well have the same results—compliance with what is prescribed by the courts, disputes resolved and health restored more quickly with long lasting results.

4. FACILITATION* PANELS

If everyone agrees, a Facilitation Panel will be assigned to the matter. This will have a trained third-party, like a mediator, supported by a Youth and an Elder to meet with those involved to help resolve their dispute. Experts will be added when necessary, dependent on the subject of the issue at hand. This meeting will be confidential, and it won't have negative impacts if they decide to proceed to a hearing. If the meeting reaches a solution, a resolution agreement will be written and signed at the end of the meeting.

5. HEARING* PANELS

There will be a **Chief Justice*** to head the Judiciary and rosters of trained Elders, Youth, and Legal Experts, appointed by the Chief Justice. When a case proceeds to a hearing, it will be heard by a panel of three people, one from each of these rosters (a Legal Expert appointed as a **Judge***, a Youth, and an Elder). There will also be a roster of subject matter Experts (with specific knowledge of hunting or harvesting, family relationships, traditional ways, etc.) which hearing panels could consult for assistance, as needed.

The Hearing Panel will do its best to reach a decision by consensus. If, however, consensus is not reached, the majority will carry the decision and the dissenting opinion will be included as part of the written decision.

To be clear, as mentioned earlier, the independence of the **Kwayaskastasowin Judiciary**, the Chief Justice and all the trained legal and other Experts, Youth, and Elders appointed by the Chief Justice, will be separate from the political side of the MN-S.

THE CONNECTION* PROCESS

Outreach to Educate,
Celebrate, Officiate

While connection activities will be explained in more detail later in this chapter, this section outlines the key components of this part of the process.

1. EDUCATE*

*Where is the education in this system?
We are constantly forcing process with
no idea of what is happening. We need
education as a part of everything.*

The **Kwayaskastasowin Judiciary** could also work with the province to provide other services to support the community. These services might include offering courses and supports for Métis people who want to become notaries, commissioners for oaths, or marriage commissioners.

Marriage commissioners may be trained in traditional ceremony so that a Métis Marriage Commissioner can include tradition into their services.

The staff may also collect education materials to have available for people in disputes to learn anger management, how this **Kwayaskastasowin Judiciary** process works, how to present their matter, and more.

2. OFFICIATE*

Including the Métis Judiciary in the officiating or swearing in of political office is also a function that is important to community, is public facing, and raises the bar on commitments to office.

We have highlighted through this section where it is obvious to rename these positions and process to Michif, Cree or Dene names with green highlight*.

3. CELEBRATE*

The role of a Marriage Commissioner might be hosted within the **Kwayaskastasowin Judiciary**. Hosting weddings in the community moves the Judiciary into a positive space for families and creates services within the Métis Nation to unite families.

When legal and customary adoption is done within communities, this may also be celebrated in a more official way within the **Kwayaskastasowin Judiciary** process, again making space for the celebration of family.

We also imagine that the **Kwayaskastasowin Judiciary** could play a role in celebrating graduations of community members in credentials related to law or community.

*"Systems-thinking individuals
are key to this process to ensure
autonomy and reduce the influence of
colonial pedagogy/ paradigm."*

Community Member

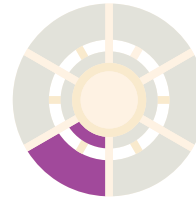


Navigating the Kwayaskastasowin Process: A Deeper Look

THE PREVENTION* PROCESS: THE ROLE OF A COMMUNITY PANEL

Every Métis should be able to know their history and all of that, like, have access to that. And I feel that's important for our young children because I feel it's not taught enough at an early age

Métis Youth



COMMUNITY PANEL

COMMUNITY PANELS

“Kiyokêwin” or visiting, was acknowledged as a way to build and maintain ongoing connections within communities.

We heard repeatedly how important it is to involve Elders and youth in meaningful ways. We also heard that Métis people can resolve their own issues and want to rebuild connections within their communities. For these reasons, we have included community elements throughout this model. As we focused on making the **Kwayaskastasowin Judiciary** about restoring trust, we underscored the importance of developing a practice of **nihtohta**, where everyone in the community can participate and be involved.

Youth are our future—so let's start treating them like the valuable people they are. We can include them in the court. They have good ideas and insights about the community, from a perspective that we do not have.

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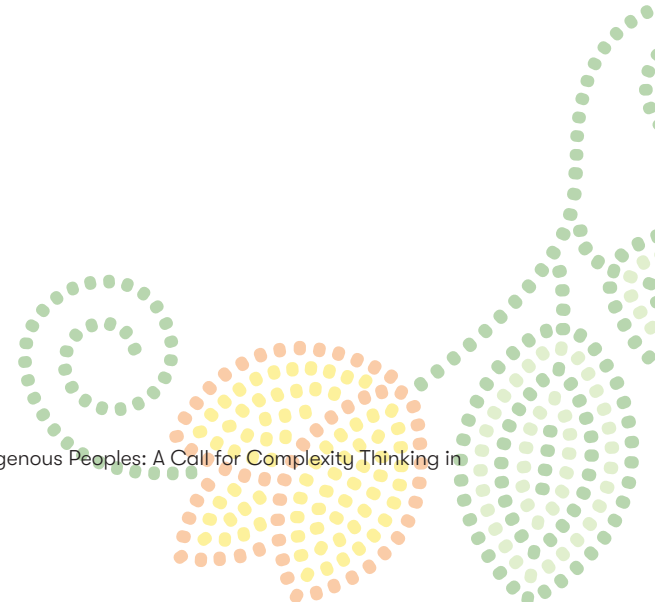
...when crime prevention interventions succeed, this seems to be the consequence of interactions between multiple social systems and environmental factors. For example, the deterrence of crime has been found to be most effective when it comes from the more informal normative influences of families, workplaces, and communities, either instead of or in support of the formal interventions of the criminal justice system like arrest and sentencing.⁵⁸

Several Community Panels will be hosted by **Kwayaskastasowin Judiciary** staff every year, across the various regions of the MN-S. These gatherings focus specifically on non-judiciary related topics, like language, storytelling, traditional practices, etc. and will serve to bring community together in relationship. It is in this connection that the community begins to build awareness and shared context of community issues, and develop understanding of what caring for each other looks and feels like. The idea is that this activity in turn supports the community to find places where there should be celebration and/or spot challenges as they arise and then find connection to support, reinforce, resolve, or repair before things escalate to judicial intervention. An Elder urged that when events like this happen in community, the impact creates belonging and pride, and so these community panels would be yet another mechanism to support community building efforts.

Criteria for the hiring of Métis Elders, Youth, and Experts as staff who facilitate community panels needs to be set out clearly in legislation. Where they live, what their expertise is, their good reputation and potential as a leader for youth are all considerations.

As mentioned above, Community Panels are an integral part of the Métis Judiciary. Community Panels are designed with an Elder, a Youth, and an Expert as the leaders. Every year, each Region will host a Community Panel to talk about community events and ideas. Again, this is for prevention, for connection, and for the Métis Judiciary to be more than a place for issues to be brought. This is a way to reassert **kiyokêwin** into law, into community and into practice.

58 Benjamin Ralston, rep., Tailoring Crime Prevention to the Unique Circumstances of Indigenous Peoples: A Call for Complexity Thinking in Response to Systemic Issues



SUGGESTED TOPICS FOR THIS KIYOKÊWIN, INCLUDE:

- Talking about traditional laws and practices
- Sharing hunting, fishing, trapping, and gathering practices
- Sharing family history
- Discussing parenting practices
- Talking about how technology is used in the community
- Sharing safety tips for the community
- Holding language sessions
- Discussing environmental practices
- Sharing activities and ideas from each region.

The Community Panel will decide what topics to talk about before they meet, so they can prepare and choose an Expert to join the discussion. Over time, the topics will come from the community and can be shared among all the Métis communities. More than one Community Panel may be created to visit different communities throughout the year in order to reach out to every Region.

Hosting a Community Panel is important work to involve people, maintain clarity, and connect communities. It is meant as a teaching revival, a **kiyokêwin** revival. Community Panels are not meant for, and are, in fact, prohibited from, discussing court cases or politics. Elders and Youth are not legal advisors, they are the resource of the community to be put back into the center of our focus as a society, and they should be there together. This is how they thrive and we thrive, it is a practice of **wâhkôhtowin**. As Community Panel members they educate, mentor, and guide; they also apprentice and learn. It is possible for the Community Panel to serve as a space to have role models for others in the community.

The Community Panel will support and teach by sharing forgotten teachings, revitalizing language, and connecting families and cultural practices. The Elder and Youth will learn and teach together, and Experts will be invited to talk about topics of interest in each region. Community Panels are an opportunity for Elders to provide advice, before problems arise. Young people could be promoted as young Knowledge Keepers and naturally become part of the movement of **kiyokêwin**. Experts will be showcased and relied on for expertise and this body of expertise will build over time as the Community Panels take root.

“I wasn’t raised with language and all of that so I don’t feel like I should go to Métis things or events. What would I say there?”

Métis Youth

“I felt pretty hopeful until I went into the meeting—but then I was made to feel I did not belong in that space. I shut down and sat back and removed myself emotionally from the conversation. I thought youth perspectives mattered, but when we participate we are actually excluded. It is why we don’t come back.”

Métis Youth

THE RESTORATION* PROCESS:

When an issue arises in the community that is in breach of a law of the MN-S, the parties involved will proceed through the **Restoration*** processes of the **Kwayaskastasowin Judiciary**. This section delves deeper into **Intake***, **Facilitation Panels***, and **Hearing Panels***.

We have highlighted through this section where it is obvious to rename these positions and process to Michif, Cree or Dene names with **green highlight***.

“Whenever there is a call for youth to participate, I know many of us feel like we aren’t Métis enough, like culturally, to contribute meaningfully, so we don’t sign up.”

Métis Youth

1. INTAKE*

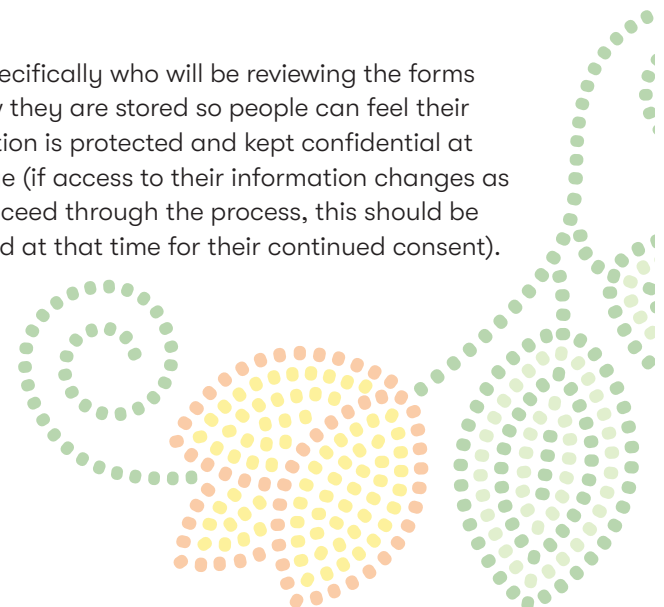
A person who believes that a law has been broken will bring their matter, complaint, grievance, dispute, concern, issue, or case to Intake staff. The Intake services office will be available online, over the phone, and in-person. “**Intake** or **omusineye kay sees***” (a clerk who pays close attention to the story) will be the first contact for anyone bringing a matter to the Judicial Body. An intake form (completed separately or in conversation with a trained staff person) will initiate the matter through the restoration process. The role of the Intake staff is key, as they provide the first impression for the entire **Kwayaskastasowin Judiciary** process. The Intake person’s responsibilities include:

- Assessing jurisdiction (checking if the matter is a breach of a Métis law or policy)
- Investigating the matter and gathering information from all sides of the issue at hand
- Taking opportunities to de-escalate conflicts
- Finding other resources outside of the Judicial Process, for support or referral if needed
- Ensuring the matter, concern or complaint has merit to proceed to the Judicial Body
- Writing a summary of the matter, including the facts and issues.

This is the first place that **nihtohta**, deep intentional listening, will be relied on. This is where next steps are figured out, where matters may be referred, and where the supporting documents for each matter are sorted and submitted.

Conversation about the structure and experience of the intake phase was initiated based on the prototyping of a first-draft intake form created by the design team. Key insights from community members engaged in this prototyping exercise included:

- Intake forms do not replace the connection with an intake person—they initiate the conversation and the data required within the form should include only what is necessary to get a glimpse into the issue. At this stage the parties may not be committed to going through the process and don’t want to disclose “too much information.”
- Intake should gather preliminary information in stages based on consent and engagement. Emotional and physical labour of providing details should be commensurate with commitment to the process.
- State specifically who will be reviewing the forms and how they are stored so people can feel their information is protected and kept confidential at this stage (if access to their information changes as they proceed through the process, this should be explained at that time for their continued consent).



A list of feedback related to the intake process conversation and the draft form itself is included in the appendix. It is this community member feedback that guides our recommendations that:

Information is easy to access online, or by calling the intake office

Individuals should be able to submit matters to the intake process by email or fillable form, using guiding information available online. A toll-free number should be available for those who prefer speaking directly with the intake office. This ensures that everyone can receive assistance, regardless of their preferred method of communication.

Frequently asked questions (FAQs) and further information about the restoration process will be made available through the **Kwayaskastasowin Judiciary**, including how the judicial process works, the steps involved, and who it applies to. Additionally, examples are provided on how to present a case, listen, ask for support and what information is needed.

A complaints form will be provided to gather all the important details. If preferred, the intake office can assist in filling out the complaint form. A third party consent form option will allow someone to submit a complaint on behalf of another person.

A list of other resources will be created for claims, complaints, or concerns that are outside the authority of the Judiciary. The list could include who to contact for help with matters that require health or social services support. Other resources could include where to send complaints about the RCMP, police, provincial government agencies, or how to obtain legal advice.

Confidentiality and Professionalism

People who decide to file a complaint through the intake process are generally upset, and want someone to help with their problem. The intake team will be trained to understand and help people who have been through difficult times. They will know how to listen, calm arguments, understand what people really want, help people have difficult conversations, and work towards solving problems. The intake person will listen carefully to what the person is concerned about, ask them about what happened to gather facts, and determine what they hope to happen next.

This approach to intake will help people know someone is listening and hearing their story, which will help importantly reduce their stress and upset. The intake person also helps by providing information, options, and choices on what to do next. The first step in the intake process is to check if the complaint is something the **Kwayaskastasowin Judiciary** can help with. If not, intake staff will try to find other resources the person can access for help.

Review, Fact Finding, Exploration, Investigation

An Intake staff person will investigate each matter in an attempt to gather the perspectives of both sides and to try to determine the “truth” of a matter—or the “facts”—and to identify the positions and perspectives of all the parties. The investigator will need to provide a neutral and safe space to “interview”—to have an informal conversation with the parties individually. They must also prepare an outline or information document about the matter in order to ask relevant questions. They will also need to be open and listening carefully, *nihtohta*, as the matter may take a turn in a different direction based on what the parties have to say.

The word “investigation” can have a negative connotation and makes people think about criminal investigations designed to investigate a breach of the criminal code or “crime”. However, investigation, intake, or fact gathering is highly necessary in a non-criminal judicial process and may ultimately be a very positive process for the parties involved.

After talking to everyone involved, including any witnesses, the intake/ investigation person who is gathering the information, puts together all the stories to see the “big picture”. They try to figure out what the real problem is, where the stories don’t match up, and where additional information is needed. They consider the best way to move forward—this could include facilitating a conversation with those involved to talk through the problem, and it may mean deciding when the parties need to go to a Hearing Panel to resolve the problem.

Being able to listen deeply, *nihtohta*, is a critical part of this process. Sometimes, what someone is really upset about isn’t the first thing they say or bring to the Intake person. It might be about feeling disrespected or hurt in some way, perhaps even over an unrelated issue. A good investigation will help people understand what’s really bothering them, which can help solve the problem.

Investigators and intake staff need to stay neutral and calm. They can’t take sides or react emotionally. They need to be kind, but also keep an open mind so they can understand the entire situation. Even when people are upset, the investigator listens carefully because everyone’s feelings and problems are important and deserve to be heard.

Justice Support Staff

A trained staff person will be available to support the party bringing a matter forward or the party (parties) may bring their own support person.

Checking in or staying connected following the conclusion of a process will help to build good relationships and make it easier for people to come back when they are not in trouble or before situations escalate.

We have highlighted through this section where it is obvious to rename these positions and process to Michif, Cree or Dene names with green highlight*.

2. FACILITATION* PANEL

Nihtohta
makâya—listen to understand

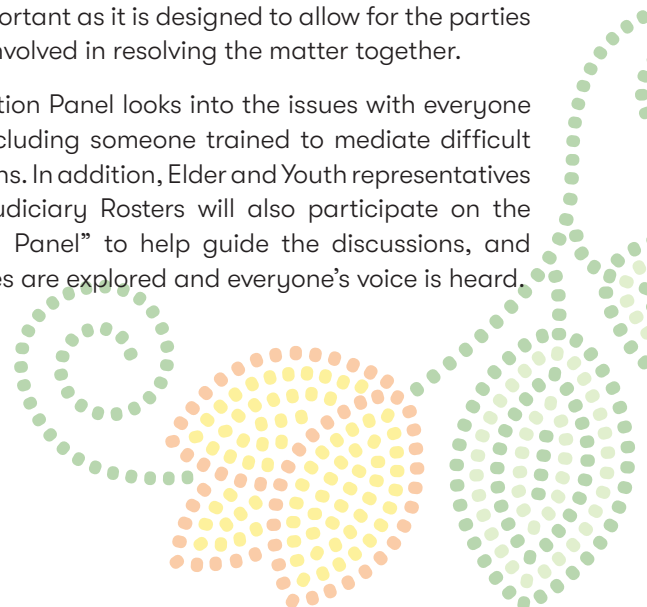


FACILITATION PANEL

Court is social negotiation with you when you struggle to make healthy social choices yourself. It should not replace social independence. It should be a process to embrace your ability to self advocate, to speak up!

When Intake staff determine that a problem or complaint is within the jurisdiction of the Restoration process, the first step is to gather all the information and evidence, and write a summary of the matter in order to begin to create a body of **Kwayaskastasowin Judiciary** decisions and leave precedence for the future. Then, if it fits, the Intake staff, **omusineye kay**, will move the matter forward to the Facilitation Panel—the first stage towards resolution. This stage is important as it is designed to allow for the parties to be very involved in resolving the matter together.

The Facilitation Panel looks into the issues with everyone involved, including someone trained to mediate difficult conversations. In addition, Elder and Youth representatives from the Judiciary Rosters will also participate on the “Facilitation Panel” to help guide the discussions, and ensure issues are explored and everyone’s voice is heard.



This Panel brings everyone involved together, to talk things through. The Elder and Youth can offer creative solutions, guide the conversation, ask questions, and suggest ideas for solving the problem. The Facilitation Panel can also access Justice Supports, or any of the Experts included on the Judicial Rosters, when required.

The goal is to get everyone engaged and to agree on a solution after talking and listening to each other.

Good communication skills are:

A communication skill is being open minded because if you just only speak and have the decision or, or just think upon your own opinion, then you're never going to truly understand the others. And that's why being open minded really not only helps you truly listen, it helps you learn a lot from others.

Métis youth

Once they agree, the solution created by the parties is written down, and signed by everyone to show they've committed to doing what they promised. This way of solving problems lets the people involved, determine their own solutions. Compared to letting someone else make decisions, solutions that everyone agrees on are more likely to be followed and to be long-lasting.

I think another communication skill would be keeping a calm head, like being calm and not getting angry, because when you get angry, you might say something you might not mean or it might shut off the conversation completely. And so if you keep a calm head and like, communicate, you can actually understand and work on things that you need to work on.

Métis Youth

You also need to listen to what the other person's saying and not just focus on yourself, but you need to know what they're doing and why they did this.

We have highlighted through this section where it is obvious to rename these positions and process to Michif, Cree or Dene names with green highlight*.

Métis Youth

The Role of **Justice Supports*** in the Facilitation and Hearing Panels

Justice Supports will be available to help throughout the Facilitation and Hearing Panels. Similar to supports in the health care system, Justice Supports can help explain things and offer other options as needed. Their main role will be to listen to concerns and questions and ensure everyone understands what's going on and what they need to do. They will be trained in various health and social work backgrounds to insert a supportive mental health aspect to the judicial process. They may also check in with the parties involved after the matter has been resolved. Again, this is to avoid people falling between cracks and to find ways to put folks in relationships in the community again.

Justice Supports will stay in contact with the Judiciary, and ensure continuity so that everyone knows the next steps, which will keep things running smoothly. Just as it has proven to show success in health care, a quick check-in call can help people feel better and remind them to take care of themselves. The Justice Support's role will be reflective of Métis values and will encourage

positive outcomes and satisfaction with the Judiciary. Justice Supports are modelled after Health supports and victim services workers whose roles ease the stress on people who have to testify in court. Further, they may follow up after the case has concluded so that people are not left without any supports. This follow up is critical in healthcare and should become a very valuable part of the work of a healthy justice process as well.

Justice Support workers will be trained to work the parties for each case and to understand there will be a variety of dynamics and needs within each case. They will also work to identify supports in the community for their clients. Their role is to ensure the parties know where to get help when necessary. They will also prepare reports when required, inspired by Gladue Reports but enriched with plans for supports, input of the person's own dreams, and of their future potential. These reports will be created through visits to the community and the person's home, and with the supports the person will require.

The Design Team was inspired by the story of Pinehouse Elder Rose Tinker's passion for justice and commitment to know her community, and to understand what the underlying issues were for people going to court. The Métis Judiciary Reports could be akin to "Tinker Reports", written with a healthy outcome as a goal, written with supports as contributors and written with the parties involved. Developmental and social prevention, community intervention and situational measures are reviewed extensively in Rawlston's research. It is highly recommended that implementation include a review of this research and the design of reporting and connectivity with other services available for individuals through MN-S and within Saskatchewan for a fuller supportive and effective measure to deal with both prevention of relationship breakdown and restoration of relationships in families and communities.⁵⁹

⁵⁹ Benjamin Ralston, rep., Tailoring Crime Prevention to the Unique Circumstances of Indigenous Peoples: A Call for Complexity Thinking in Response to Systemic Issues

3. HEARING* PANEL



HEARING PANEL

Judges Heino Lilies and Barry Stuart in the Yukon looked to the communities themselves for alternative ways of dispensing justice. Discussions with community leaders and elders led to a decision to return, in a fashion, to the way justice was done before the arrival of the non-Aboriginal legal system. The return to more traditional approaches led to an opening up of the sentencing process to greater community input. The precise manner in which each community would provide this input was chosen by the community.

If a matter cannot be solved by the parties with the help of the Facilitation Panel (which includes a professional mediator, an Elder, Youth, and an Expert, if needed), a Hearing Panel will make the decision **for** the parties involved.

The structure of the Hearing Panel was designed based on feedback from communities, that they did not want a single judge to make all the decisions. The Hearing Panel will have three participating members selected by the Chief Judge: a legal expert who is a Judge, an Elder, and a Youth. Again, when needed, the Hearing Panel can also ask for advice from an Expert from any of the Judicial Rosters.

I think a responsible decision maker is someone who has to make a decision either for themselves or for others or for both. So that, and like, within that decision, it has to either please or make others feel safe within peace or comfortable. And I also feel like that's a big thing, and it's also a big thing to do within yourself because I feel like if that person has the opportunity to do that, I feel like it's filling their own joy in their soul, because although when you have responsible decision makings, sometimes you have the choice to do it, and sometimes you don't, you know, sometimes you do it for others, and sometimes you do it for yourself.

Métis Youth

Before or during a Hearing, the Hearing Panel may try to facilitate a resolution if it appears the parties involved can resolve their problem without the Hearing Panel having to decide for them. The Hearing Panel members will work together to arrive at a decision, and then write it down.

Whenever possible, decisions should be made through consensus. If the panel cannot achieve consensus, the matter will be decided by a majority, requiring agreement from two out of the three panel members. If consensus is not achieved, the majority decision of two and the minority opinion of one, will be provided in their written decision. It is possible that the Elder and the Youth could be the majority and the Judge the minority.

By writing their decisions, the Hearing Panel will begin developing a list of decisions (legal precedence) they can refer to during future cases. All Hearing Panel members will receive special training on how to hold hearings, how to make decisions as a team, and how to clearly document their decisions.

Justice Support Staff

Justice Support Staff—As with Facilitation Panels, trained staff persons will be also available to support the party bringing a matter forward to a Hearing Panel. Alternatively, the party (parties) may bring their own support person—external to the Justice Support staff of the Judiciary.

We have highlighted through this section where it is obvious to rename these positions and process to Michif, Cree or Dene names with green highlight*.

FUNCTIONS OF THE HEARING PANEL

Hearing matters in the first instance

The Métis Judiciary can hear matters that are in breach of MN-S laws. Although the list of existing laws has already been created, new laws will be added as the government enacts new laws as their jurisdiction expands. Those laws will set out what responsibilities are within each area and what the range of penalties are for a breach of that law.

Matters may come from MN-S government offices for breaches of their departmental laws, policies, rules, and regulations. They may also come from people who bring complaints that a law has been broken by a Métis person or by the MN-S.

Appeals

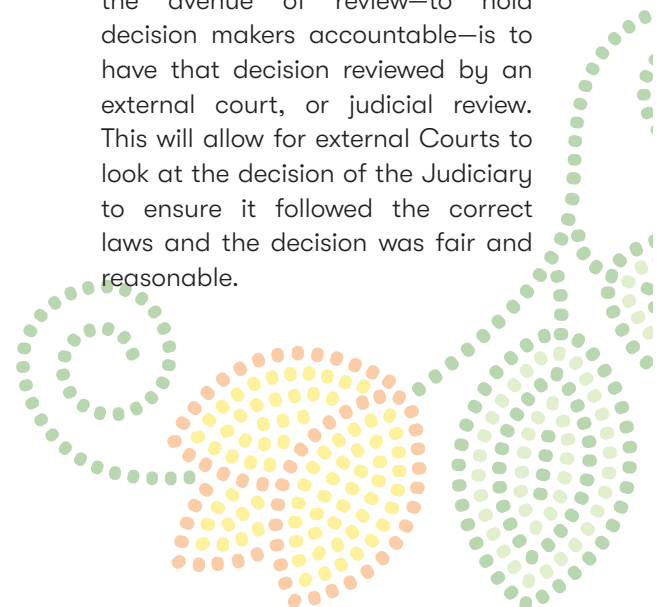
Matters decided by departments internal to MN-S, like Elections or the MNLA or Registry, will be appealable to the Judiciary. The decision-making bodies that currently exist have been outlined earlier in this Report. These may change over time, however, it remains that those decisions need to be reviewable. In fact, review of internal MN-S decisions is largely why Métis people have gone to outside courts in the past. Appeals are a mechanism to make the decisions transparent and decision-makers accountable.

References

References, questions on matters of clarity and interpretation of a point of law or on MN-S legislation, will likely be brought forward to the Judiciary by the PMC. Individuals can also bring questions of interpretation before the Judiciary.

Court of last say

The Métis Judiciary will be the last body for review of any matters before it. Once a decision is reached the avenue of review—to hold decision makers accountable—is to have that decision reviewed by an external court, or judicial review. This will allow for external Courts to look at the decision of the Judiciary to ensure it followed the correct laws and the decision was fair and reasonable.



Diverted Matters

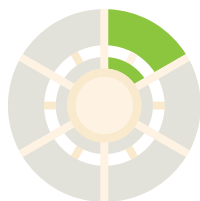
In the case where a matter is diverted from a criminal court to the Métis Judiciary, the matter will be reviewed according to policies and practices of the Métis Judiciary. This will be dependent on the services available within the MN-S to support a diverted matter. It will require resources for report writing, for employment or education support, for addictions and mental health.

The same standards apply for people who will be involved with child and family issues. For example, grief aftercare support for parents who have had parental rights terminated as a restorative response. But more importantly, we were told that education on the rights of family, including grandparents, is needed to help guide people through a legal process with their most valuable resource, their children. This Métis Judiciary has potential to do it better in so many ways.

THE CONNECTION* PROCESS

Another important aspect of the **Kwayaskastasowin Judiciary** is that it is also a positive point of interaction in community. Traditionally, people come to court when things are broken down, so making the judiciary a place to celebrate, educate, and officiate right off the bat will look and feel different. The Judiciary will offer a space to not only resolve disputes, but to reinforce relationships and celebrate them.

EDUCATE*



EDUCATION PROGRAMS

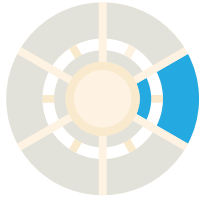
Further, it is proposed that **Kwayaskastasowin Judiciary** will offer seminars for people to take training. This can grow and expand, but include, public speaking, anger management, workshops in becoming Marriage Commissioners, Commissioners for Oaths, and Notaries. There will need to be some work with the Government of Saskatchewan to coordinate this as the credentials are available online, but the ability to 'michifize' the training will be available, and Elders can bring the added education of traditional wedding commitments.

The Judiciary will provide opportunities to access Métis paralegals and mediators. Training a number of mediators and facilitators for positions within the Métis judiciary will create more Métis paralegals. Once there is an institution selected for the training modules for the Judicial staff, we anticipate that an education service provider could offer regular programming. Since the Judiciary works with rosters, this list can grow and shift with new names on it. Further, the skills we anticipate are needed are versatile and apply to multiple other professions, the training therefore is transferable. If regular programs are offered it will create a cache of paraprofessionals to Métis people and communities outside of the judicial process. It would mean that mediators, commissioners, and notaries can be located in each region. It also would provide employment opportunities for Métis people in their communities and in their larger provincial sectors.

Mediation and investigation is a growing field. Creating a Métis workforce in this area will not only increase employment opportunities, but the lessons and habits learned from that training will impact the trainee, their family and their work colleagues. This is another way to do preventative and supportive community work through the field of justice.

Finally, simply by being engaged in this process, people involved will receive education throughout each procedure.

OFFICIATE*



CIVIL MARRIAGE, ADOPTIONS

We have highlighted through this section where it is obvious to rename these positions and process to Michif, Cree or Dene names with **green highlight***.

It is anticipated that this space will build and officiate relationships by opening to civil weddings with Métis Marriage Commissioners, and building in capacity for Métis customary adoption. Traditional laws and recognition of meritorious leadership can become very central to the work of the **Kwayaskastasowin Judiciary**. Other official work of the Judiciary can be swearing in of MN-S Officials in the Executive, the PMC and locally.

CELEBRATE*



SWEARING IN CEREMONY

Celebrating was raised as a feature of Métis institutions. With the **Kwayaskastasowin Judiciary** educating, officiating, there will be much to celebrate and the space and the people involved will be able to see the positive impacts of a judiciary run well. People coming to this body in joy will change the nature of the work and will create a safe space to deal with relationship break down. Marriages, adoptions, graduations and swearing-ins will all be cause for celebration.



Operationalizing the Judiciary

INDEPENDENCE

The citizens need to see that the government can and will be held accountable."

Community Member

It was a request from day one that this body be (a) independent and (b) that all citizens are subject to its review, including the elected officials. Independence can be many things to many people and within this body, similar to other courts, independence will have to include protection from political interference, data security so that people's information is safe, control over its own budget, accountability for human resource selection, and be subject to committee review. It also means MN-S will have legislation developed to set out its process and requirements that clearly states the independence of the Judiciary.

The independence of the **Kwayaskastasowin Judiciary** will not only impact how Métis people see it, it will impact how other Courts see it, rely on it and if they are willing to interact with it. Diversion from other courts is a very likely component of the Métis Judiciary. The Métis Judiciary will have to have indicators of professionalism, transparency, and accountability to build the bridges to the other courts within Saskatchewan.

ESTABLISHMENT OF A JUDICIAL COMMITTEE

Being responsible for decisions means taking in both sides of perspectives, like not being biased, of course, because you just can't choose like one side because they have better opinions than the other. You just gotta be, like, more, I guess, open minded in short terms, I guess being more open minded does help that a lot.

Métis Youth

A Judicial Committee, appointed by the PMC as an independent body removed from the political process and NOT connected to the MN-S, will create the selection criteria for the Chief Justice and for the people to be on the Elder, Youth, and Expert rosters outlined above. Once selected, they will be appointed by the PMC. The Judicial Committee is also responsible for investigation of complaints of the Judiciary.

PANEL EXPERTS

Experts will come from various backgrounds as there are many people with knowledge and skills that can assist with different issues. The Judiciary will create a list of Experts (or roster) to rely on. As they do more work, the list will grow and change. For example, there might be Experts in the community on topics like elections, diabetes, or something scientific like astronomy. These Experts will represent the community and also reports to the Chief Justice. The list of possible Experts is too long to cover completely, but it might include:

- Nurses
- Social workers
- Hunters, trappers, fishers, gatherers
- Cooks
- Search and rescue workers
- Accountants
- Artists
- Gardeners
- Construction workers
- Computer programmers
- Midwives
- Doctors

The purpose of creating a list (or roster) of Experts is to showcase our Métis people and also welcome non-Métis Experts to share their knowledge and skills when communities or regions need help on certain issues. For example, a community might want to learn about nuclear energy or hear from Experts on polar bears and black bears. There are countless topics to explore, and discussions can take place indoors or outdoors, depending on what and when it's most suitable. When Experts serve on a Community Panel, they'll be invited to visit communities to share their expertise.

We have highlighted through this section where it is obvious to rename these positions and process to Michif, Cree or Dene names with green highlight*.

SELECTION OF PANEL MEMBERS

Every time a Facilitation or Hearing Panel is required, a Panel will be arranged through the **Kwayaskastasowin Judiciary** Chief Justice's office. Each Panel will include

Elders and Youth from their respective rosters. The Facilitation Panel will have a facilitator or 3rd party who is trained in conflict resolution or management designed for healthy outcomes. There will be a roster to choose from for the facilitators.

The Hearing Panels will have either the Chief Justice on it or a Judge appointed to it from a roster of Métis lawyers. These will be contracted roles within the judiciary. All positions report to the Chief Justice.

CONFLICTS OF INTEREST

All Panels will be arranged to ensure that justice is handled without any judicial staff being in a position that they are too close or have a vested interest in any given case. Conflicts of interest rules will be created by the Métis Judiciary to ensure processes are in place to ensure that each case is handled professionally. Although there may be good reasons to have family members within the process, good practice will ensure they will not be a staff of the Facilitation nor Hearing Panels. Instead, family members can be part of the support system for the people involved.



VARIED SERVICES AND OUTCOMES

Different communities have different needs and they can be very unique. So we're all related, we're all cousins. It takes us a few minutes to figure out our common ancestor. But even though we do have relatives all over, all over our nation, we also have unique needs.

Community Member

Each community we visited and each person we heard expressed hesitation about a one size fits all approach. This occurred whether we were discussing language, Elders, cultural practices, religious and spiritual beliefs, physical location design, or harvesting.

"If it is individualised, if it is community driven, if it is relationship building, we are actually going to trust it."

Community Member

These variants will impact what kind of interpreters are present, the use of bibles, sweetgrass or oaths for truth telling. Reliance on Elders, and the engagement of youth and outside experts will also require particular care and attention. Métis people are not one large homogenous nation, not in Saskatchewan and not in Canada. The varied culture, practices, and traditions are a source of pride. Allowing for the individualization of the process is also the way to allow for agency or choice for people as they participate in the Métis Judiciary.

"I feel worse after my time in a courtroom than I did before I got justice! I had no say, I was cross examined by everyone, I was separated off from everyone and talked to like I was stupid. I don't use a bible, at least I had some say about that."

We want to reiterate here, the **Kwayaskastasowin Judiciary** is designed to be a respectful process, inclusive and healthy, not adversarial or punitive in focus. This intention starts with the staff, flows through the space used to meet, the way the meeting goes, who is included, and how decisions are made. It wraps up with follow-up so people are not falling through cracks in the system. It takes responsibility and reciprocity seriously to engage people. Noticing the various ways people can and might engage and allowing for that will help people trust the process. Métis people need to see they have a say and are trusted by the Judiciary as well.

MÉTIS JUDICIARY STAFF

There will be a number of required staff for the **Kwayaskastasowin Judiciary**. A **Registrar*** or head clerk (again positions that may be renamed to fit within a Métis cultural framework for justice that is a healthy supportive institution will be welcomed). This person is usually legally trained to know legal processes and the handling of legal documents and forms. This position will be critical during the early days of implementation.

To be truly independent, the Judiciary will require its own budget. To ensure accountability, the Judiciary will have to be transparent with their expenditures and provide regular reports to the public through the PMC. This will require that there are financial personnel to manage all of the financial aspects.

Support staff will not only ensure the administrative work is cared for, but when Facilitation and Hearing Panels travel, support staff will ensure all the Regional work and potential court hearings are organized and set up in advance.

Other positions that are anticipated include Human Resources officers and communication personnel, research, evaluation, data, and information technology experts, legal counsel as required by the Judiciary. There will be a need for an education training coordinator because of the internal training needs as well as the external proposed training that the Judiciary can offer. A form of security, such as the Dumont Scouts, will also be required. This is not an exhaustive list and the needs will shift and evolve as the Judiciary itself grows and routines are established.

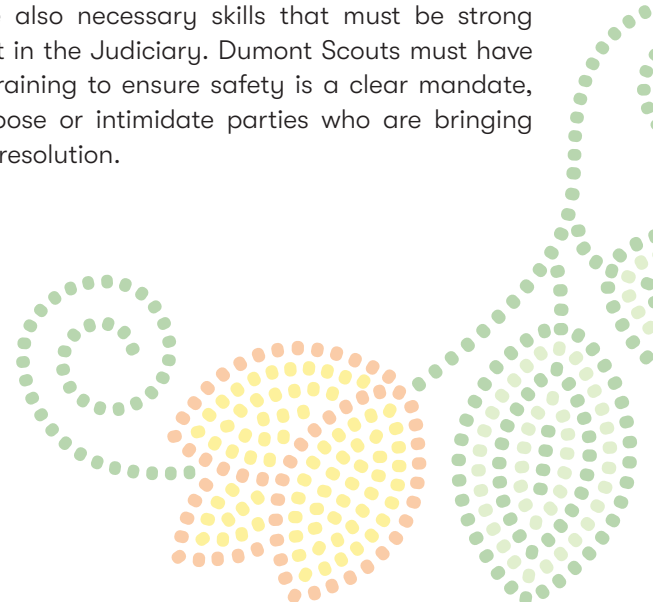
We have highlighted through this section where it is obvious to rename these positions and process to Michif, Cree or Dene names with green highlight*.

TRAINING

The need for skilled intake workers and justice support workers is a concern. They must be equipped to understand trauma and work past that, with training and mediation skills. They need these skills to support a justice system that embodies Métis values of choice and community-based decision-making.

Training has been high on the list of priority requirements for the Design Team since the start of the project in 2022. All staff or roles representing the **Kwayaskastasowin Judiciary** will need to be trained to appropriately interact with community members during potentially high-stress relationship breakdowns, because when different people will need to be supported during the process is unpredictable. Trauma-informed training is a part of this skill set, though other conflict-related communication tools, mediation approaches, and facilitation training to hold ethical space should be included for all staff as well.

Training will also be specific for the work that is to be handled by this body. Specialization in reading and understanding laws will be necessary for staff handling legal matters. Training in report writing and decision-making are also necessary skills that must be strong and present in the Judiciary. Dumont Scouts must have adequate training to ensure safety is a clear mandate, yet not impose or intimidate parties who are bringing matters for resolution.



The Community Panel members will need to have skills to handle all kinds of *kiyokêwin* professionally. They will need the *nihtohta* we have referred to throughout this Report—active listening is a skill that can be developed. In order to handle disputes, their listening skills will be sharp to hear what is being said and what might be left out so questions can be asked.

The goal is to have an entire body of paraprofessionals as mediators, conciliators, commissioners, marriage commissioners, and notaries, and an identified body of Experts in multiple fields in each region that can be relied on for the court and outside the court.

The positions identified within each component of the judiciary will be filled by people who have appropriate training. Initial training will likely need to come from professional institutions that already do this kind of training. However, it should be planned for Métis institutions, like the Gabriel Dumont Institute, to take over this training to ensure it fits exactly what the Métis Judiciary needs.

There is a method to this madness, that through the use of rosters and through rigorous training for employment, multiple people will develop great skills applicable to not only the Judiciary process but to all relationships people hold. Good listening and communication skills, relationships skills are also directly transferable to multiple jobs. Once the training is developed into a package for initial training of the Judiciary, it can not only be relied upon to upgrade and maintain skills, but could be offered to leadership and to citizens in general. These skills reduce relationship breakdown and increase relationships rebuilding.

DIGITAL ENVIRONMENT AND DATA GOVERNANCE

The Design Team proposes the **Kwayaskastasowin Judiciary** work with specialized consultants before making decisions about the technical requirements of the judiciary. The security of data is of utmost importance and requires customized information technology solutions and software applications that are current at the time of implementation. Technical needs at present include a digital service that is public facing, has capacity to support the public to locate information and fill out forms, but must also integrate with and include a data management platform that holds the confidential information collected by the **Kwayaskastasowin Judiciary** and control access to the data internally. The internal levels of access to information is going to be multifaceted because it will not be appropriate for all staff to have access to all the files and data collected. This plays hand in hand with independence, with privacy and with accountability for this new body.

It is recommended that, in addition to dedicated support for data management and security, data sovereignty legislation is developed by MNS and a data advisory council be established to guide the judiciary in decisions related to data governance. Data sovereignty for Indigenous peoples has become a widespread priority. For a long time, deficit data collection has been the norm when it comes to Indigenous people and communities—“fixing what is wrong” has been the number one way to get funding for programming. But only collecting deficit based data comes at a cost—it only tells part of the story. There are a number of ways and reasons to prioritize, track, collect, and share information. Reliable and relevant strengths-based data collection is an asset that will help MNS tell meaningful stories—about the healthy trajectories of court decisions and the parties involved. Asserting the First Nations Principles of OCAP, for example, or adopting other meaningful data governance principles will help ensure that the **Kwayaskastasowin Judiciary** builds a meaningful legacy that speaks to Métis people generations into the future.

EVALUATION AS A CRITICAL PART OF THE IMPLEMENTATION AND PILOTING

We have highlighted through this section where it is obvious to rename these positions and process to Michif, Cree or Dene names with green highlight*.

When it came to designing the **Kwayaskastasowin Judiciary** in the context of the MN-S' needs and what courts typically do, the Design Team knew that the path ahead would be winding and full of complexity. Developing this body was not about replicating a model that exists; it wasn't about adapting the colonial court system for a Métis audience. The opportunity was there to build something truly unique and unprecedented. When we started talking to community members, their questions showed us what was really important and reflected their wildest hopes and dreams for the future. We could see that if MN-S could create the **Kwayaskastasowin Judiciary**, there would be real potential for broader system-level impact—even if it feels out of reach, an insurmountable task, in the early days. Healthy systems bring health to other systems.

The Design Team relied on a developmental evaluation approach during design, because the primary purpose of the evaluation was to support the designers themselves in seeking out relevant data and ensuring that they informed the design as it evolved. This project was new, challenging and innovative. The ideas, research, and community input were a state of continuous development and the Judiciary design unfolded because it was constantly changing and even unpredictable at times.

Evaluation and assessment needs will continue to emerge as the implementation and piloting phases progress. The evaluation strategy must be focused on learning—how to implement by the principles this model was built under. This includes how the Judiciary services and staff live into those principles, and how it responds to the feedback of Métis people relying on it. Over time development evaluation tracks what is being learned and that reveals what are the meaningful metrics of success. Because this is brand new, the staff won't always get it right on the first go. Expecting perfection is unrealistic, and taking on a learning mindset will be critical for trust building and success. Expecting setbacks will prepare the Staff to learn from any issues that arise and move forward in a better way—just as the **kwayaskastasowin** process is designed to do—look at setbacks and set things back on track.

As MN-S contemplates the implementation phase of the **Kwayaskastasowin Judiciary**, developmental evaluation will similarly support the implementation team, helping to guide them to make decisions towards piloting that are grounded in the principles introduced in this Report that were born from the community members themselves.

Once piloting is underway the type of evaluation may shift. Structured and culturally appropriate formative approaches to evaluation will support and prioritize the continuous improvement of the delivery of processes within the **Kwayaskastasowin Judiciary**, refining execution of the judiciary's activities and supports over time. Without the care and attention to continuous improvement, the Judiciary's activities will eventually fail to produce the desired experiences, benefits, and outcomes for the Métis community, and have a negative effect on the overall utility, trust, and success of the judiciary itself. Like the people it supports—this institution also needs support and feedback.



Conclusion

Independence is one step toward trust but not the only one. In line with community wishes, concerns and aspirations, trust also needs to be established through the practices of the **Kwayaskastasowin Judiciary**—people need to experience trustworthiness when they interact with it. As part of this, the Judiciary must be transparent with the community in its proceedings in order to build trust—it will need to be clear about why decisions are made by issuing written decisions at the Hearing Panel level.

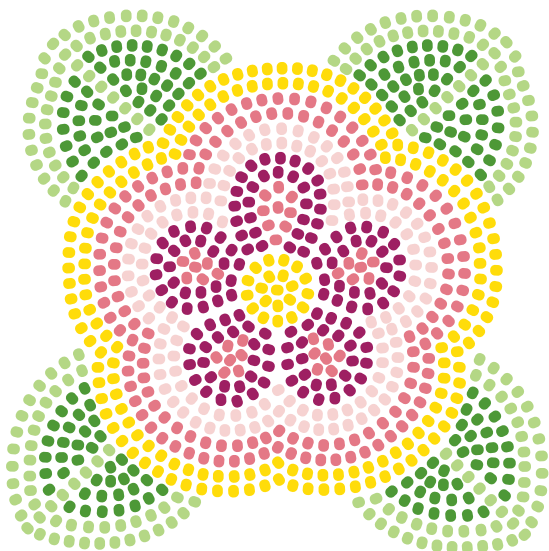
"You can't expect people to trust it automatically, you have to build trust."

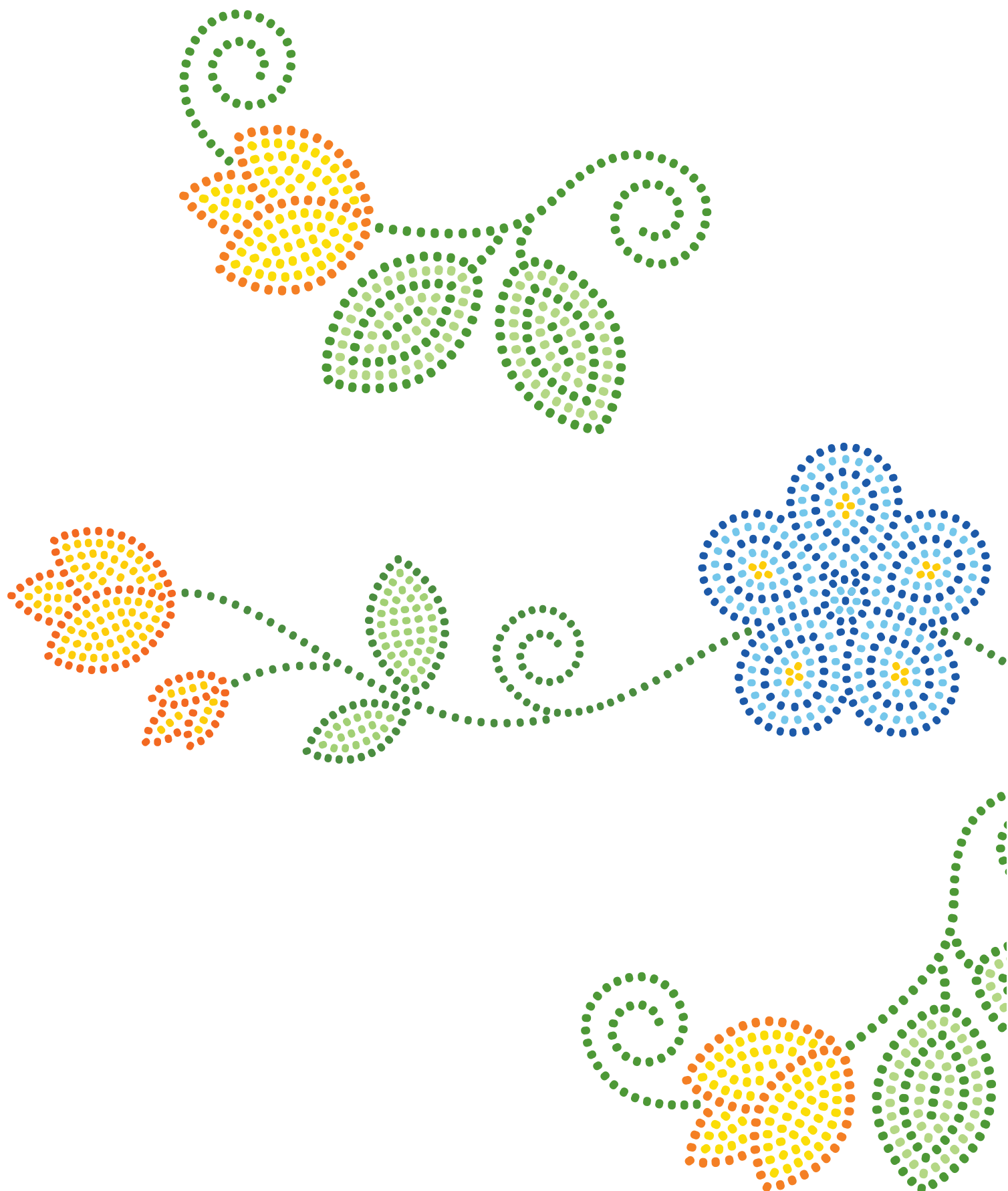
Community Member

The **Kwayaskastasowin Judiciary** is a community institution. Its implementation represents a significant step forward in our pursuit of justice and fairness. It is designed to restore, rebalance and support relationships through community work and engagement. It will be accomplished through the application of traditional values reflected within language, culture and practices. Through meticulous planning, collaboration, and dedication to upholding the principles of Traditional Law, transparency, impartiality, and language we have laid the groundwork for a more effective and equitable legal framework within and for our community. Finally, and clearly, it will be successful if it is truly independent.

As we embark on this new form of justice, it is essential to acknowledge that the journey toward a truly just society is ongoing. While the implementation of this system marks a crucial milestone, there is still much work to be done. Continued evaluation, refinement, and adaptation will be necessary to address emerging challenges and ensure that our judiciary system remains responsive to the needs of the community.

Ultimately, the success of this endeavour will be measured not only by its efficiency but also by its ability to uphold the fundamental principles of **kwayaskastasowin** and **wâhkôhtowin** for **otepimisowak**, and to protect the rights of all individuals. By remaining committed to these ideals and embracing a spirit of continuous improvement and community betterment, we can build a judiciary that truly serves our own Métis interests and values.







CHAPTER 5

Towards Implementation

Next Steps for Judiciary Implementation Planning

Implementation for the **Kwayaskastasowin Judiciary** will take time and be like building any good home—the blueprints are reviewed carefully and experts are brought in to oversee the actual construction. MN-S has the blueprints, now the team of people with expertise in multiple fields will need to be brought in to assist in a proficient management and construction of the implementation. There will be up front costs, ongoing costs, costs to maintain and costs to upgrade. There will be constant assessment and steep learning curves.

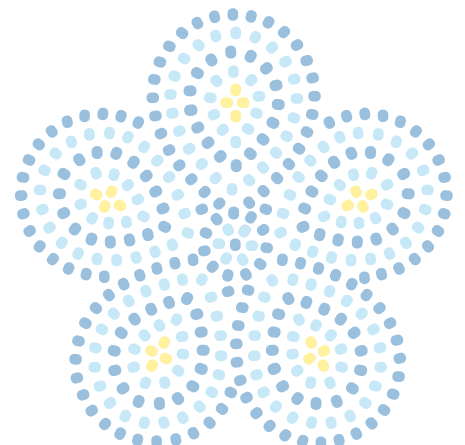
As the Design Team worked through ideas, untangled issues and built concepts for the **Kwayaskastasowin Judiciary**, an MN-S Senior Team was updated regularly about ideas and new concepts for it. Also, over the past two years, the Design Team was included in the community consultations on constitutional reform, invited to discuss the latest plans at Dialogue Forums and present live and virtually at PMC meetings. We also had MN-S staff assist the Design at every stage to ensure we had access to the most up-to-date information, laws and reforms, as well as had a reporting mechanism. This is part of any design thinking approach so that the host, MN-S, can be in the loop. All this work to connect has paid off.

MN-S has been working alongside the design of this Judiciary to ensure legislation was being reviewed, and reform is being suggested for over a year now. Existing laws are being reviewed and amended as well and new legislation is being written. This is important as the Judiciary will have to rely on those laws and laws are the way a government states its values, its wishes and its guidelines. If the laws are not consistent, everything around those laws can come to a standstill while they are later reviewed. This work has started and will continue as the Judiciary is implemented.

EMBRACING CHANGE

The growth of the Métis judicial body hinges on its flexibility and ability to scale. Flexibility involves shifting from traditional colonial justice models, towards a new model that is unique and genuinely Métis. Scalability is crucial to accommodate new laws, clients, and a growing range of cases.

Successfully launching a new system and demonstrating trust in a process shaped by the community, will be reflected in the first appointments. Initial hires will form a robust and energetic base, from which the court can naturally grow and evolve to better serve the Métis people in Saskatchewan.

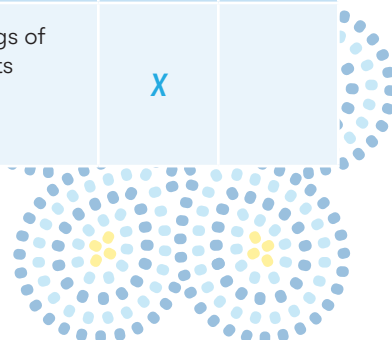


Implementation At-a-Glance

The following table outlines the work to be done as part of the implementation planning phase. The columns on the far right indicate those aspects that are the accountability of the MN-S and those that rest with the early hires of the **Kwayaskastasowin Judiciary (KJ)** during the execution of the implementation phase.

		MN-S	KJ
LEGISLATION	Review and amend existing legislation <u>started</u>	X	
	Constitutional reform <u>started</u>	X	
	Creation of new legislation <u>started</u>	X	
LANGUAGE	Consider hosting a language conference for terms for the Judiciary <u>pre-implementation planning phase</u>	X	
	Confirm traditional language use within Judiciary <u>ongoing</u>		
FINANCIAL RESOURCES	Cost out budget <u>started</u>	X	
	Acquire funds from the federal government	X	
PHYSICAL INFRASTRUCTURE	Identify physical facilities (buildings/brick and mortar) for regional judiciary activity—Who selects space? Where? <ul style="list-style-type: none"> • Lease • Acquire • New builds/development • *where to rent or use space in various regions is a question to contemplate 	X	
IT INFRASTRUCTURE	Hardware (equipment) i.e.: including: <ul style="list-style-type: none"> • Computers • Telephones • Recording devices • Video conferencing equipment 		X
	Software (applications) i.e.: including: <ul style="list-style-type: none"> • Data management (Legal Case Management) • Remote hearings • Virtual engagement • Scheduling • Data insights 		X
	Networks (connectivity with other courts/databases)	X	X
	Data storage and security (i.e.: data centers or the cloud)		

		MN-S	KJ
BUSINESS INFRASTRUCTURE	Organizational Design <ul style="list-style-type: none"> • Departmentation (functional areas) • Work specialization (job descriptions) • Reporting structure (organizational chart) • Decision Making / Governance (centralization/decentralization) • Formalization (norms, rules, procedures, forms) 	X	
HUMAN RESOURCES	Compensation Structure—Fixed Tier? Early hires <ul style="list-style-type: none"> • Create a Judicial Committee • Job Descriptions • Links from MNS to KJ Training Programs <ul style="list-style-type: none"> • Judiciary Staff • Public programs for Métis people fr KJ Office supplies and tech needs Workspace layouts		
BUSINESS PROCESSES	<ul style="list-style-type: none"> • Process design • Process execution • Evaluation • Continuous Improvement (process optimization) • Compliance/governance 		X
BUSINESS TOOLS	Tools we use to do the daily work <ul style="list-style-type: none"> • Planning tools • Decision-making tools • Storage of hard copies and physical evidence • Office policies 		X
ENFORCEMENT	<ul style="list-style-type: none"> • Negotiate with local police 	X	
	<ul style="list-style-type: none"> • Build a police unit 	X	
INTERGOVERNMENTAL RELATIONS	<ul style="list-style-type: none"> • Work with judges and government officials to build up understandings of how the Kwayaskastasowin Judiciary can work with existing courts • Work with policing within Saskatchewan to create agreements when necessary for enforcement. 	X	



LEGISLATION

Comprehensive legislation before the court starts its actual work is a must.”

Kahnawā:ke Commissioner of Justice

The MN-S has been enacting laws for many years, and has had a *Constitution* in place since 1993. The MNS has also had the authority to review, create, and take action on law violations of their own laws. In the past, violations often went to Saskatchewan courts for decisions.

To prepare for the **Kwayaskastasowin Judiciary**, the MN-S will need to draft some new laws and update existing laws, so they are consistent and do not conflict with the *Constitution*. They will also need to revise the *Constitution*, and laws including the *MNLA Act*, *Citizenship Act* and *Elections Act*, to avoid conflicts between the laws they have. New laws to help support the Judiciary that are underway include an Interpretation Act, Judicial Body Act.

Do not rush in. Building your own adjudication body can have false starts if you are anxious to get it up and running. Make sure your laws are in place, your people are trained, there are clear processes, programs, and services, and that processing is all established before you open the doors. Undoing what you could have avoided takes much longer than starting when you are ready.

MN-S staff and Legal Experts have been consulting with the community on revisions intended to support establishing the Judiciary as an independent entity. Revisions proposed to the *Constitution* and other laws are crucial for reinforcing the Judiciary’s ability to address complaints. This is vital for gaining the MNLA’s endorsement and clarifying the Judiciary’s responsibilities as well as its independence.

With the MNLA’s passage of foundational legislation for the Judiciary, procedural aspects will be developed by the Judiciary through regulations, policies, and rules, to enable flexibility and adaptability as the framework for the Judiciary develops.

The detailed ways the **Kwayaskastasowin Judiciary** will work are going to be outlined in rules and policies developed by the Judiciary once they are appointed. This includes how the Community Panel, the Facilitated Panel, and the Hearing Panel will operate. Some important issues that need to be considered separately from the legislation, include:

- The role and authority of the Chief Justice or Chair (such as administrative functions).
- The financial and administrative processes responsible for managing the budget and funding for the Judiciary
- Whether intake persons and/or the Chief Judge can hire independent experts (such as legal, accounting, etc.)
- Training is required for all staff working in the Judiciary, including the intake process. Everyone, from the staff who first meet people coming in, to Elders, Youth, Facilitators and Justice Supports to the Judges, need to understand the histories and sensitivities people might have. They will have training to learn the best ways to listen and to respond, how to solve problems peacefully, and how to include Métis cultural and community practices.

LANGUAGE

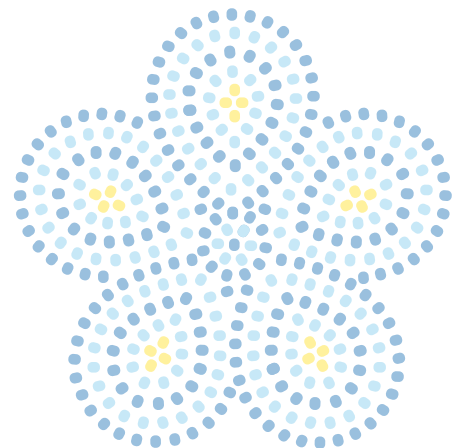
Every visit and all the advice led to a talk about language. Language about revitalization, Language that holds natural laws, language that holds kinship and value, language for Youth, language from Elders. It is an absolute need to have a language conference to get concepts, words, phrases and insights overall from the language speakers. Not only will this showcase language holders, it will attract learners. It will bring the community together and will allow for some deep thinking about all the names and labels and titles in government. Language must be a foundation for the Judiciary. A conference will assist in that.

The Design Team added language in a very preliminary way to this Report, language experts will give depth and proper context for the implementation phase.

FINANCIAL RESOURCES

Financial Resource requirements must be reviewed, forecasted and a budget amount solidified to ensure that the MN-S can provide the necessary financial resources required to the Judiciary to commence the **Kwayaskastasowin Judiciary**. It is contemplated that the Federal government will be supportive in light of the Self-government Agreements, the Truth and Reconciliation Commission recommendations and the work they have been doing to transfer other legal matters to Indigenous governments (Child and Family Service programs for example). While predicting the exact costs for a new Judicial body is challenging, efforts have been made to estimate what's needed to initiate this innovative project. The positions and costs will have to be reviewed by the implementation team and with a final budget in mind to determine the scale and the size and speed of implementation.

The Judiciary will require skilled financial professionals focused on responsibility, accountability, and efficiency to manage its finances effectively. There's also a need for careful budget planning for the upcoming year, covering all aspects of the **kwayaskastasowin** process. That planning includes the preparation of a detailed budget report, for approval by the MN-S, to ensure the Judicial process will be well-supported and run efficiently. Through diligent and independent financial management, the Judiciary will be able to demonstrate its independence, reliability, and accountability to the community.



PHYSICAL INFRASTRUCTURE AND RESOURCES

The Finance and Administration section will work closely with the Chief Justice and other judiciary departments to organize and secure the initial resources and setup needed for the Judicial Body. They will also determine what kind of spaces and technological support are required. Each year, they'll refine the budget to support the Judiciary as it grows and changes. Important questions to consider include:

- Will there be a permanent courthouse, or will places be rented sometimes for hearings? If the dispute resolution works well, will fewer formal hearings be needed? How much room will the judicial staff need? What about space for educational and training sessions and meetings?
- Are in-person and community-based hearings planned? What is the budget for travel, accommodation, and venues for these hearings?
- Is there a dedicated toll-free number? Will there be a website and online communications? Is online dispute resolution an option?
- How often will there be community outreach trips, travelling courts, or attendance at national educational conferences, either in person or online? What are the expected costs for travel and accommodations?
- What office supplies and equipment are needed for the Chief Justice and all staff, including paper, pens, desks, chairs, and computers? What resources are necessary for the rosters and the Judicial Committee?

INFORMATION TECHNOLOGY (IT) INFRASTRUCTURE

Initially, IT should involve hiring external service providers to develop and establish a confidential and secure, modern IT system. While there may be plans to develop an internal IT services department eventually, it is typical for organizations to hire specialized external IT experts to set up, maintain, and upgrade their Information Technology systems continuously.

Key issues such as what data is collected, how it is collected, confidentiality, and data sovereignty are critical and must be thoroughly considered. Tools like OCAP® (First Nations principles of ownership, control, access, and possession), assert that First Nations have control over data collection processes, and that they own and control how this

information can be used. (More about OCAP can be found here: <https://fnigc.ca/ocap-training>.) Implementing robust information technology security is critical, within the organization and to help the community access online Judicial Body Services when necessary.

This initiative includes regular evaluations of how data is collected and how the process is working. It is important to track how the Judiciary is doing over time, and to spot any potential problems that might arise from the data. This will involve various areas of the Judicial body. For example, the Technology, Data, and Evaluation section might work with the Judiciary Intake Team to create surveys for participants, gather data, and check on important measures.

They could also work with the Communications Team and the Chief Justice to deal with new issues related to data control and to monitor how many people are participating, which helps with planning and keeping the community informed. If the data shows that changes or improvements are needed, they might also work with the Training and Education Team. Considerations include:

- Is there adequate online connectivity in all communities? If not, what support can be provided to ensure every community can participate?
- Will court hearings be conducted online? What technology is required for this?

BUSINESS INFRASTRUCTURE, PROCESSES AND TOOLS

There is a real opportunity to explore shared leadership models in building the organizational structure of the **Kwayaskastasowin Judiciary** where decision-making and governance structures don't follow typical (dusty) colonial Western-management approaches, but instead reflect the core values indicated throughout this Report. This care and attention to values-based organizational design will support the development of a strong organizational culture that understands what it means to put children in the center and development norms, policies, procedures, that allow the judiciary to walk-the-walk.

Many considerations have gone into the various roles required to begin planning for, and executing the implementation of the **Kwayaskastasowin Judiciary** (these are detailed below), though there aren't exact

job descriptions available to replicate. Crafting job descriptions for the Chief Justice and the Registrar should be done in consultation following the language conference, as the job descriptions should follow the guidance the design team received to "design in the languages we're working in"—due to the limitations of colonial English. The subsequent roles and structures should be co-created by the Registrar, Chief Justice, and the members of the implementation team (which should include Elders, Youth, and Experts).

The implementation team will also have the responsibility of establishing the required business processes (how the work happens, how performance is assessed, how structures and processes evolve in cycles of continuous improvement, etc.), and tools that are used to do the work on a day-to-day basis when the time comes.

Human Resources: Staffing the Judiciary

JUDICIAL COMMITTEE

The Judicial Committee will play a key role in the development and continued good work of the Métis Judicial Body. The Judicial Committee will include Métis people with a law background, an Elder and a Youth. They will bring valuable professional knowledge or real-life experience, and will be independent from the political side of the MN-S and the Métis Judicial Body. The Committee will be responsible for:

- Identifying a compensation structure to ensure pay equity for judiciary staff.
- Setting criteria for choosing the Chief Justice and deciding how members will be selected for the Judicial Roster.
- Establishing conduct standards for the Chief Justice and everyone on the Judicial Roster, and addressing any conduct issues related to these individuals, if they arise.

The Judicial Committee will play a valuable role in assisting the Chief Justice with strategic planning for the Judicial Body. Their collaboration will include establishing goals for the Chief Justice and the Judicial Body focussed on continuous improvement and expansion. To do this, the Committee and the Chief Justice will need to stay up-to-date with what's occurring in Indigenous and other court systems around the world which could affect or enhance their work. They'll review research and reports to gather this information. Also, hearing from people who are part of the Judicial Process and from Métis communities in Saskatchewan will be valuable. This feedback will help them understand what's working well and what might need to change.

All staff members within the judiciary will work under the Chief Justice, who acts as the Chief Executive Officer of the Judiciary. Having someone in charge is crucial for running an efficient process and ensuring the resources required for the **Kwayaskastasowin** process to achieve and maintain excellence.

CHIEF JUSTICE

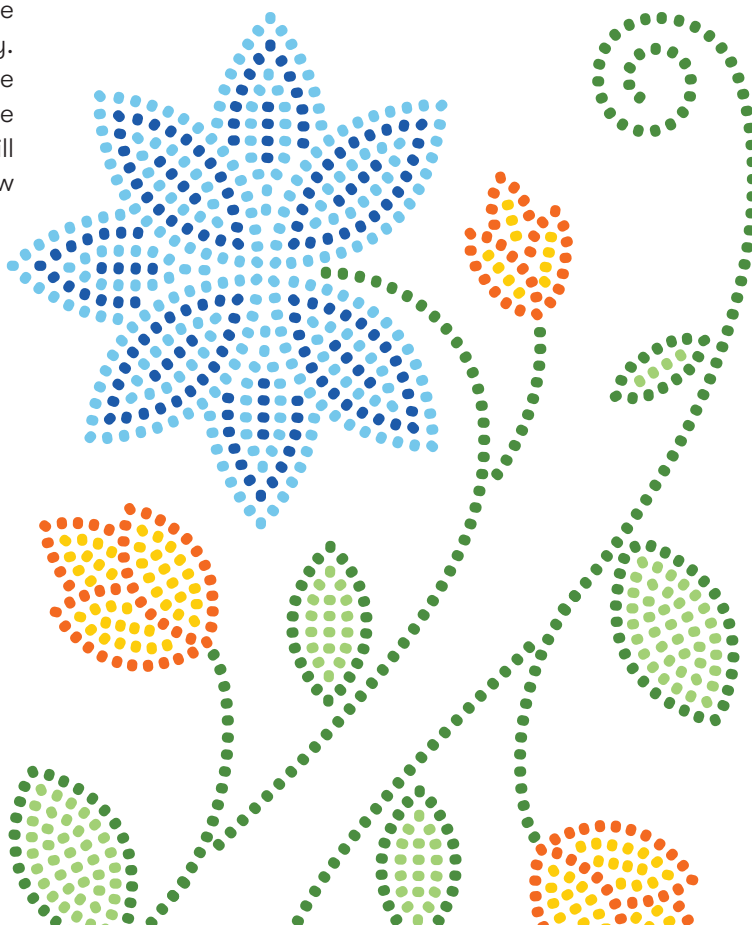
The Chief Justice plays a crucial role in the success of the Judiciary. This person is in charge of overseeing the entire Judiciary establishing procedures, and ensuring best practices are followed. For each case needing a Hearing Panel, the Chief Justice will select a three-member Hearing Panel and may also serve on one of these panels. The Chief Justice is the main contact for every department within the Judiciary and will work with the Judicial Committee to do strategic planning. This forecasting is to help keep the Judiciary updated on changes that could impact it and to set objectives to help it grow and improve.

The Chief Justice will act as a representative of Métis judicial principles, making sure that decisions reflect Métis laws and values. They will also focus on mentorship and training, and ensure the **kwayaskastasowin** process is well-managed by a capable team. An important part of their role is to incorporate language and tradition into the process and bring in new ideas from the Métis community and from courts around the world, to keep the Judicial process evolving and relevant. The Chief Justice will also collaborate with Communications staff to update the community on important issues and progress in the Judicial Process.

Choosing the first Chief Justice will influence the tone of the judiciary. A Judicial Oversight Committee will help the Chief Justice create judicial protocols and best practices that respect principles of Métis traditional governance, ensuring a respected person with a range of legal experience takes on this position.

FINANCE AND COURT ADMINISTRATIVE SERVICES

The Finance and Administrative Services team will manage finances efficiently and ensure fiscal responsibility. They will prepare and submit the annual budget to the MN-S before the fiscal deadlines, to maintain adequate resources for smooth operations. Additionally, they will collaborate with the heads of each department to review and gather their annual budget requirements.



COURT OPERATIONS AND ADMINISTRATION

A dedicated team will manage the daily operations of the court, ensuring that everyone relying on the judiciary's services, are respectfully supported.

PEOPLE OPERATIONS (HUMAN RESOURCES)

The People Operations team will focus on writing job descriptions, standardizing hiring processes, managing performance feedback, and setting up policies for a respectful workplace. Their duties will also include handling payroll, benefits, and leave policies. By fostering innovation and excellence, they will work towards making the Judicial Body a top employer both provincially and nationally. The team will oversee hiring for various roles.

JUDICIAL BODY—INTAKE (INCLUDING INITIAL INTAKE, DISPUTE RESOLUTION AND SUPPORT WORKERS)

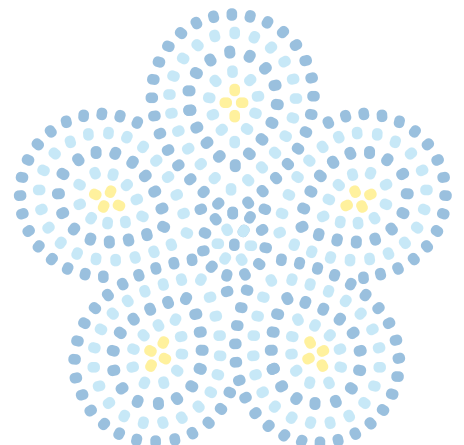
The initial intake process involves intake, investigation, fact-finding, mediation, and support from Justice Workers. These Judiciary staff are the first point of contact for individuals and communities presenting their issues. They will be thoroughly trained to ensure they are trauma-informed and skilled at communicating during intake, using neutral, empathetic listening and conflict de-escalation techniques. Additionally, they will be trained in dispute resolution and mediation. Justice Support Workers will also offer resources and information to participants and the broader community.

COMMUNICATIONS

This role involves working closely with the Chief Justice and all departments to stay informed about operations, innovations, and new ideas. The Communications Team will summarize and share important updates, both online and through other methods, to ensure that the community and internal departments are well-informed. Additionally, they may play a key role in community visits.

RESEARCH, LEGISLATION AND POLICY EVALUATION

This team will gather and analyze information nationally and internationally, including community feedback on improving the Judiciary. They will stay connected with community members and participants in the Judiciary process to identify key issues and trends. They will monitor developments related to Indigenous and other judicial processes worldwide that could influence or enhance the **Kwayaskastasowin Judiciary**. The staff will provide reports to the Chief Justice and the Judicial Committee and make policy recommendations, particularly in new areas like criminal sentencing and Child and Family Services that might be included in the Judiciary's jurisdiction. The staff will also advise on strategic planning, liaise with MN-S legislation and policy, and provide insights into treaty or self-governance agreements and necessary legislation.



TRAINING AND CONTINUING EDUCATION

Initial training cannot be undersold. There must be fully trained people capable of taking on a role within a body with a focus not only on responding to issues but to doing that well, in a healthy manner AND to being committed to ongoing community engagement and proactive work of relationship building. The training matters incredibly. Self care will be part of the training, and multiple skills to listen, respond, decide and nurture. Training will be ongoing. Supports will be built in for the staff of the Judiciary so they can pour from full cups.

The Judiciary education staff will initially handle arranging and accessing ongoing external training for Judges, roster members, and staff. They will stay updated on educational opportunities to provide annual refresher and advanced training. Additionally, they will collaborate internally and with other organization to develop training programs tailored to the Judiciary. These programs, designed in a Métis-centered way by Métis organizations, will eventually be available to all interested parties. Ideally, as an ongoing training package, the skills will be available to all people on rosters and beyond. It is helpful to imagine each Region with a staff with skill to deal with issues in the Region prior to relationship melt downs. It is even helpful to imagine a paraprofessional body of Métis facilitators being developed as independent business for supports and investigators and mediators in a number of areas—within and outside the MN-S.

CITIZEN SUPPORTS

To connect the judiciary with Métis citizens more effectively, a Director of Citizen Supports will manage Diversion Coordinators and Child and Family Services Support Workers. This role ensures a direct and accessible line to justice for the community.

DATA SERVICES AND TECHNOLOGY

These staff will manage Information Technology, including hiring external service providers to develop a confidential and secure IT system. They will oversee all aspects of data collection, including the type of data collected, confidentiality, data sovereignty, and security. This includes both internal operations and assisting the community with online access to Judiciary Services as needed. The team might collaborate with the Judiciary Intake process to create surveys for data collection and track important metrics.

Additionally, they will continuously evaluate the data collection and operational processes. This ongoing review is crucial to monitor and analyze the effectiveness of the Judiciary and to identify potential issues revealed by the data over time.

SELECTION OF STAFF

Choosing staff for the judiciary will involve looking for specific strengths in people. As job descriptions are prepared and interview process created things to consider for staffing a judiciary include:

- Leadership: Who can lead others well? What does this mean in the context of the judiciary?
- Handling challenges: Who is good at dealing with different personalities and difficult situations?
- Humour: Who can keep things light and contribute to a healthy organizational culture?
- Timing: Who knows the right time to take a break to avoid problems?

Knowledge areas should include:

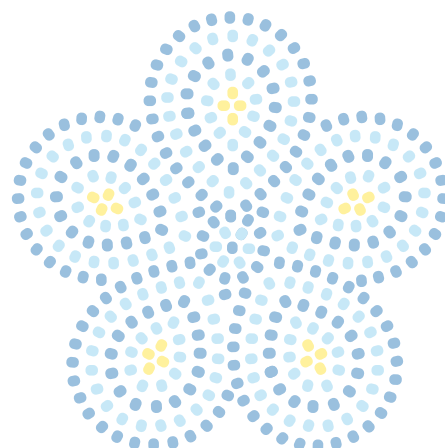
- Values and focusing on the individual's care needs.
- Promoting peace and using non-violent communications, especially during conflicts; this includes understanding others' needs and emotions and being a good listener.
- Understanding the effects of trauma, both immediate and long-term, including trauma passed down through generations.
- Identifying actions that can put people at risk.
- Understanding restorative justice and the idea of making amends.
- Recognizing power dynamics and following procedures to enhance safety.

Skills needed should include:

- **Empathy:** Understanding and sharing other people's feelings
- **Body language:** Knowing how to read what people's gestures and expressions mean
- **Bias awareness and management:** Recognizing and understanding hidden and obvious biases, and actively working to overcome them to better support and interact with others
- **Deep listening:** Listening carefully to others without thinking about how to respond
- **Presence:** Staying fully focused and involved in the moment
- **Facilitation:** Helping manage group activities and discussions smoothly
- **Mediation:** Assisting in resolving disagreements between people
- **Framing and reframing issues:** Looking at problems or situations in new ways
- **Emotional intelligence:** Remaining aware of and controlling emotions and understanding others' emotions
- **Coaching:** Learning to coach to help improve other people's skills

Abilities should include:

- **Self-awareness and self-regulation:** Understanding your own feelings and behaviours and managing them effectively
- **Building trust:** Creating trust step-by-step through actions that demonstrate reliability
- **Community-minded approach:** Thinking about what's best for the community and acting accordingly
- **De-escalating conflict:** Calming down tense situations
- **Systems thinking:** Understanding how different parts of a system affect each other
- **Grounding:** Staying calm and connected to the present moment
- **Supporting others:** Helping people deal with challenges (including from living in a society influenced by colonial history).





ENFORCEMENT

"Enforcement" is defined by Black's law as "the act of putting something such as a law into effect; the execution of a law; the carrying out of a mandate or command".

Black's Law Dictionary

A typical enforcement process might include the following:

- A law is made through proper channels based on having jurisdiction and authority to do so.
- A ticket or notice is given if the law is broken
- The matter goes to court, and a judge decides if it has been proven that a law was broken
- After the judge's decision on the matter is made, that decision is enforced by a different body.

ENFORCING FIRST NATIONS LAWS

Many Indigenous Peoples have their own systems for making and following laws, including their own courts. These laws often focus on land-based issues for First Nations and Métis Settlements.

These Indigenous justice systems operate within the larger framework set by non-Indigenous governments. Sometimes, their laws are based on permissions given by federal laws, like the Indian Act. Experts argue that for Indigenous laws to be fully recognized, there should be room for them to work independently from these outside influences. Yet, police and other enforcement groups often don't understand these systems or lack mechanisms to work within them.

First Nations in Canada mainly use a system of local bylaws. They create bylaws about community issues like trespassing, snowmobiling, alcohol use, protecting animals, and more. These laws might look similar to examples from non-Indigenous (or colonial) governments.

Enforcing these local laws can be challenging. External police forces sometimes don't enforce these laws. This issue became noticeable during COVID lockdowns when some communities felt ignored by police, who wouldn't enforce their health laws. Police were worried that these local laws weren't properly established or might conflict with the Canadian Charter of Rights and Freedoms. Unlike with federal or provincial laws, police hesitate to enforce Indigenous laws because of these concerns.

For laws to work, they must be enforceable. If they're not enforced, it undermines their purpose. Solutions include internal systems within Indigenous communities or partnerships with external agencies.

The RCMP in Saskatchewan recently agreed to enforce First Nation bylaws. The creation of **Kwayaskastasowin Judiciary** may be an opportunity for the MN-S to inform the RCMP about the new Judiciary to ensure its decisions are enforced. In 2023, the Summary Offences Procedure Act was updated to include a new definition of First Nation Law. This now enables First Nations to authorize people to prosecute their offences. Once Métis self-government legislation is passed, the MN-S could work with Saskatchewan Justice to be included in the *Summary Offences Procedure Act* amendment.

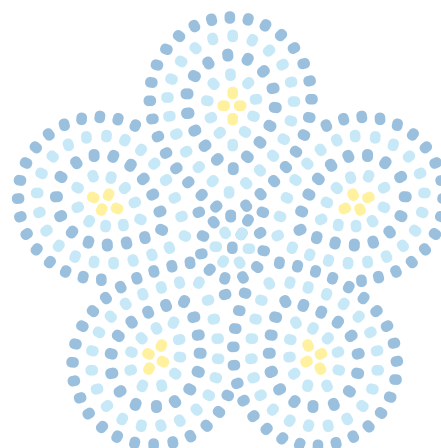
Conclusion

The next steps follow the steps MN-S is already taking. Legislation review continues. Not only does it continue for the MN-S, it goes right into the Judiciary as they create the new processes and rules of court and forms and systems. Setting up the staff once the Judicial Committee picks the first senior folks, will usher in the need for a lot of technology infrastructure and of course physical places to do this.

A solid budget that has more than a year duration will be essential. While long term financing is being negotiated there are other items that are doable. The language conference and exploring the creation of the Judicial committee are good places to start. Then the work of building the business infrastructure, processes, and creating the tools of the judiciary begin. MN-S will need an internal judiciary services type office, so hiring an internal staff member to look after that and possibly legislative services, like a Registrar or clerk, would be an asset in setting up the judiciary as well. Hiring a Registrar is going to have to happen early, once the Chief Justice is selected, and this will lead to the creation of a detailed implementation plan with a timeline. Once this plan is created both the MN-S offices and the judiciary will begin to take on their own specific roles for getting things moving.

MN-S will need to work with police to find ways to rely on local police in extreme cases, and in future look at its own services. However, a word of caution: world wide, the more police, the more crime; the more crime, the more jails; the more jails, the more broken families. This is not consistent with the tenants of prevention and restoration we are working to create. Even though there are extreme cases, they are rare if the community is healthy. Countries moving away from jail have safer communities—this is not a coincidence.

This chapter outlines the considerations that must go into the implementation planning phase. There are several key people who will need to be brought on board to create this plan. Experts will have to be contracted and other courts visited to learn from their mistakes, and to grow with their lessons learned. Next steps now are for the community to see this design, for MN-S to work out the implementation plan and for negotiations for resources to be confirmed.



COMPREHENSIVE APPENDIX

Chapter 1

Métis Self-Government Agreements & Related Documents

MÉTIS NATION—SASKATCHEWAN

- Self-Government Recognition and Implementation Agreement (SGRIA) (Feb. 24, 2023)
- Métis Government Recognition and Self-Government Agreement (MGRSA) (June 27, 2019)
- Framework Agreement for Advancing Reconciliation (July 20, 2018)
- MOU on Advancing Reconciliation (Feb. 22, 2018)

MÉTIS NATION ALBERTA

- Self-Government Recognition and Implementation Agreement (SGRIA) (Feb. 24, 2023)
- Métis Government Recognition and Self-Government Agreement (MGRSA) (June 27, 2019)

(note: Link/pdf of MNA's MGRSA isn't retrievable online at this time. Below is a link to MNA's MGRSA info, including a broken link where their MGRSA pdf should have been at)

- Otipemisiwak Métis Government Self-Government Act (Sept. 5, 2023)
- MNA-Alberta Framework Agreement (Feb. 1, 2017)

MÉTIS NATION ONTARIO

- Self-Government Recognition and Implementation Agreement (SGRIA) (Feb. 23, 2023)
- Métis Government Recognition and Self-Government Agreement (MGRSA) (June 17, 2019)
- MNO, Canada, Ontario Framework Agreement for Advancing Reconciliation (Dec. 11, 2017)
- MNO-Canada Agreement on Advancing Reconciliation with the Northwestern Ontario Métis Community (Dec. 11, 2017)
- MNO-Canada MOU on Advancing Reconciliation (Feb. 3, 2017)
- 2014-2019 MNO-Ontario Framework Agreement (April 17, 2014)

MÉTIS NATION BRITISH COLUMBIA

- Info on MNBC's Métis Rights and Self-Government Committee

MANITOBA MÉTIS FEDERATION

- Manitoba Métis Self-Government Recognition and Implementation Agreement (July 6, 2021)
- Three-part joint action plan to advance reconciliation (Sept. 22, 2018)—Unavailable
- Manitoba Métis Federation Inc. Interim Fiscal Financing Agreement (Dec. 5, 2018)—Unavailable
- Framework Agreement for Advancing Reconciliation (Nov. 15, 2016)

Contemporary MN-S Laws and Supporting Documents

EXISTING MN-S LEGISLATION

- *Métis Nation—Saskatchewan Constitution*
- *MN-S Métis Government Law Register*
- *Citizenship Act*
- *Elections Act*
- *MNLA Act*
- *Regional Boundaries Act*
- *Senate Act*
- *Wildlife & Conservation Act*
- *MN-S Handbook*

The Métis Act for the Government of Saskatchewan

***MN-S Education Act 1994 and 1997—may exist and was discussed by a number of people -however, it was not located at the writing of this Report*

NEW AND ANTICIPATED MN-S LEGISLATION

Here are examples of laws of the Métis Nation—Saskatchewan being considered today:

- The proposed Locals Act brings much of the detail around Locals, the size and governance of them, into legislation and outlines the roles, responsibilities, and requirements for Locals.
- The Regions Act shifts much of the detail regarding Regions currently found within the Constitution of the Métis Nation—Saskatchewan (the Constitution) into legislation and expands on the roles and

responsibilities of Regional Representatives and Regional Councils. Provisions establishing Regions as a core unit within the Métis Nation—Saskatchewan government remain entrenched in the Constitution. Maps detailing regional boundaries are proposed for removal from the Constitution and into the Regions Act as Schedule A.

- The Interpretations Act outlines definitions of keywords, concepts, and items included within the Constitution of the Métis Nation—Saskatchewan (the Constitution) and across MN-S legislation, ensuring alignment of concepts and providing clarity on the legal and technical aspects of legislation enactment. The language and technical provisions contained within this Act provide consistency in legal interpretation, understanding, and application.
- The Judicial Act—in drafting stage at the present time.

It is worth noting that there is a very strong likelihood of the need for laws on harvesting when the provincial negotiation is complete as well as laws on child and family services once the national review is complete. As seen below a number of First Nations are already acting on this, and all Métis governments are engaged in a review of what this might look like nationally and within their own regions.⁶⁰

⁶⁰ See Bill c 92 *An Act Respecting First Nation, Inuit, Métis Children Youth and Families*

Current decision-making bodies within MN-S

Decisions are being made constantly within the MN-S throughout various bodies. Consistency and transparency, timeliness was a recurring theme concerning Métis people throughout the research. The **Kwayaskastasowin Judiciary** would add a higher level

of clarity to all of the concerns identified. Below is a list of sections of MN-S laws that have positions or bodies who are currently responsible for decision making. These are examples where appeals would naturally go to the **Kwayaskastasowin Judiciary**.

ELECTIONS

As described in the *Saskatchewan Métis Elections Act 2007 (Elections Act)*, “Adjudicator” means the person appointed under section 120 of the Elections Act to hear complaints. “Complaints Officer” means the person appointed under section 116 of the Elections Act to enforce compliance with the Act.

Within the Elections Act, requirements are specified regarding when reports are due from the Chief Electoral Officer (CEO) including content of the reports that must be included. As part of the report, **Section 100.2** notes that the report shall include:

- a summary of any matter that, in the opinion of the Chief Electoral Officer, should be brought to the attention of the Legislative Assembly;
- summary of any complaints made in respect of the election and their disposition;
- a report on any instance where the Chief Electoral Officer exercised the power to adapt this Act during an election period or extended the voting period

Part VI—Enforcement of the Elections Act includes a section on Complaints and Investigation, which requires the MNLA to appoint an independent Complaints Officer to enforce compliance with the Elections Act.

Part VI section 117 (1)—States, “(1) Any person who believes that an offence under this Act has been, is being or may be committed may make a complaint to the Complaints Officer,” and limits this to no more than 90 days following an election.

Section 118. (1)—Notes that any person can request an investigation by the Complaints Officer if they perceive an offence was committed under the Act. 118 (2) requires that the Complaints Officer investigate complaints “to the extent that he or she considers warranted in the circumstances.”

Section 118. (3)—Speaks to if the complaint is justified, providing authority for the Complaints Officer to refer complaints to an Adjudicator, if they deem the complaint as justified.

Section 118. (4)—Allows for the Complaints Officer to engage services of legal “counsel, investigators, experts or other persons.”

The Complaints Officer has authority to order a Métis citizen to “cease an activity,” or “take action” as required by the Act. A hearing is not required if the Officer determined it is of an urgent nature and the length of time for a hearing would be problematic.

Section 120. (1)—Notes that the independent Adjudicator shall be appointed by the MNLA, and shall hear and act fairly upon all complaints referred by the Complaints Officer. (2) provides power to the Adjudicator to make rules related to procedure and conduct for hearing complaints, conduct hearings, determine guilt of the accused, determine matters related to complaints, and “(e) make an order in the nature of an order described in subsection 119(1) and confirm, vary or reverse any order made by the Complaints Officer under section 119.”

CITIZENSHIP

According to the MN-S *Citizenship Act*, the Registrar makes a number of decisions about Métis Nation—Saskatchewan citizenship:

Section 8.1.7.—Shall accept and review applications for citizenship submitted and decide whether a person is entitled to be registered pursuant to this Act. (amended February 20, 2021)

Section 8.1.9.—Shall make decisions on the voluntary removal from the registry of individuals pursuant to this Act.

Appeals however on citizenship are to be decided by the MNLA:

Section 8.1.10.—Shall forward appeals to the Métis Nation Legislative Assembly.

Clerk of the MNLA

Section 6.7 In the case of Appeals to the Métis Nation Legislative Assembly, verify that the Appellant has met the legislative and regulatory requirements for Appeal, and if so, forward the Appeal to the Provincial Métis Council for their consideration as an addition to the Agenda.

The Senate will

Sections 7.3. 7.4. Be available to the Métis Nation Legislative Assembly for clarification on any recommendations. Be available to the Métis Nation Legislative Assembly for advice and direction as required.

MN-S HANDBOOK FOR EXECUTIVE, MINISTERS AND MEMBERS OF THE PROVINCIAL MÉTIS COUNCIL⁶¹

Human Resources Committee Authority

Section 7.2—Process Alleged breaches by PMC Member or Members shall be submitted to the PMC in a written complaint addressed to the PMC as a whole within three (3) months of the alleged breach. Upon receipt of a complaint, PMC will refer the matter for consideration to the Human Resources (HR) Committee. The HR Committee will conduct an investigation of the complaint in a manner that is fair, timely, and confidential. Upon completion of their investigation, the HR Committee will provide a written confidential report (the “Report”) of their findings, including findings as to whether there has been a breach to the non-affected PMC members (as applicable) and to the Complainant and the Respondent. The Report should provide recommendations as to the appropriate resolution of the complaint, which may include:

- Dismissal of the complaint; or
- Public censure of a PMC Member for misbehaviour or a breach;
- A requirement that a PMC Member apologize to any person adversely affected by a breach;
- Provide counseling of a PMC Member, and/or
- Such other recommendations are deemed appropriate.

The HR Committee may appoint an independent third-party facilitator, identified and agreed upon between the Complainant(s) and Respondent(s) as having the necessary professional skills, knowledge and experience to investigate the complaint (the “Third Party Investigator”).

⁶¹ The Handbook is currently under review by MN-S.

FAMILY LAW

Bill c 92 *An Act Respecting First Nation, Inuit, Métis Children Youth and Families*⁶²

Because of this law and the Self Gov agreement, the Métis Nation Saskatchewan will be taking on a large role in child and family services matters in the future. How this will play out will be largely determined by the scope of the agreement between the Government and the Métis Nation—Saskatchewan, the legislation that the Métis Nation—Saskatchewan creates around it, and the resources available to this area.

National Examples: Canada and Indigenous Courts

BRITISH COLUMBIA

BC FIRST NATIONS JUSTICE COUNCIL / BC FIRST NATIONS JUSTICE STRATEGY⁶³

In British Columbia the First Nations are using a joint approach to center resources and energy around justice. This model is developing rapidly and will expand past criminal and family law quickly. As experience grows, jurisdiction and authority will too.

The 2019-2020 annual report of the BC First Nations Justice Council acknowledges the “BC First Nations Justice Strategy”⁶⁴, which was endorsed by BC First Nations leadership through resolutions of the Union of BC Indian Chiefs, First Nations Summit, and BC Assembly of First Nations. They agreed to develop justice centres throughout the province, 5 to start with and 5 more within the next few years.

The Indigenous Justice Centres are to provide services in the following areas:

- Child protection a criminal justice help, providing culturally appropriate legal representation, support and advocacy to Indigenous peoples in child protection and criminal matters
- Support in family court matters, delivering culturally safe, essential services to families involved in family court; and to individual youth, men and women facing criminal charges
- Wrap around services for clients, supporting Indigenous people engaged with the justice system access legal, social, housing, transportation, and health and wellness supports
- Inter-agency coordination, with other services providers as necessary and available to better network and align services and to fill service gaps

62 Legislative Services Branch, “Consolidated Federal Laws of Canada, an Act Respecting First Nations, Inuit and Métis Children, Youth and Families,” Justice Laws of Canada, April 25, 2024, <https://laws.justice.gc.ca/eng/acts/F-11.73/index.html>.

63 “BC FNJC—Providing Legal Support for Indigenous Peoples of BC,” BC First Nations Justice Council, April 10, 2024, <https://bcfnjc.com/>.

64 “BC FIRST NATIONS JUSTICE STRATEGY,” February 2020, accessed March 31, 2024, https://bcfnjc.com/wp-content/uploads/2020/10/First_Nations_Justice_Strategy_Feb_2020.pdf.

- Nation-based support and services, connecting with communities to engage their support for their members who are before the courts
- Diverting matters away from the courts, identifying and implementing options for the diversion of Indigenous clients' legal matters from the formal court system to less intrusive measures, such as First Nations Courts, Indigenous intervention or justice processes, alternative dispute resolution processes, and mediation and restorative justice processes
- Reigniting First Nations Justice systems, supporting surrounding Nations to reignite their own justice systems.

ALBERTA

THE TSUU T'INA COURT

The Tsuu T'ina Court works with the Alberta Court of Justice and their own Peacemaker; Alexis Nakota Sioux Nation, is a restorative court promoting community involvement in the court process; the Siksika Nation, the provincial Court sits on the reserve. These courts are predominantly for working with the criminal justice system.

CALGARY INDIGENOUS COURT⁶⁶

The Calgary Indigenous Court (CIC) was established in 2019 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. The CIC is a response to the unique challenges and circumstances of the Indigenous people. It deals primarily with bail and sentencing hearings, and is open to any offender who is Indigenous and chooses to have matters addressed in the CIC. When an offender is sentenced to probation, a Healing Plan

BRITISH COLUMBIA SPECIALIZED COURTS⁶⁵

Include many of the same models being employed in other jurisdiction in Canada, including Saskatchewan:

- Give basic descriptions like we did for Alberta below
- Indigenous Courts
- Aboriginal Family Healing Court
- Drug Treatment Court of Vancouver
- Downtown Community Courts
- Domestic Violence Courts
- Victoria Integrated Court
- Kelowna Integrated Court

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 in the CIC to acknowledge the successful completion of a probation order and the Healing Plan.

The CIC sits every Wednesday beginning at 9:00 a.m. in Courtroom 1800 of the Calgary Courts Centre. Courtroom 1800 is a specialized courtroom which was specifically designed to support an Indigenous approach to law. It is modeled after a teepee and allows participants to sit in a circle at the same level. Courtroom 1800 has an eagle feather for taking oaths (which is available in all Alberta Courts) as well as special ventilation to allow for smudging during traditional ceremonies.

⁶⁵ "Specialized Courts," Specialized Courts, accessed March 31, 2024, <https://www.provincialcourt.bc.ca/about-the-court/specialized-courts>.

⁶⁶ "Calgary Indigenous Court," Areas of Law, accessed March 31, 2024, <https://albertacourts.ca/cj/areas-of-law/criminal/calgary-Indigenous-court>.

ONTARIO

The Indigenous Peoples Court, or Gladue Court, has undoubtedly been the most notable attempt in Canada at reimagining ways to see Indigenous offenders, highlighting the past they have lived through. Its process in a specialized court has been a modified appearance of a courtroom, including a circular table, screens concealing the dais and coat of arms, and Indigenous artwork on permanent display. Indigenous traditions are incorporated, including opening with a smudge, and smudging as needed during the proceedings, focussed on restorative and healing processes. Many courts across the country and in Ontario have replicated this in some way. The Thunder Bay Indigenous Peoples court and Brantford's Indigenous Person's Court are examples.

AKWESASNE COURT⁶⁷

Before colonization by the English and French Crowns, the Mohawks of Akwesasne had a complex governance system which included rich traditions of conflict resolution and community peace-keeping. The Akwesasne Court is a move toward revitalizing these traditional customs.

The community that exists today is uncomfortably located between three different legal jurisdictions, including two provincial systems with conflicting principles and an international border. A community-based justice system has existed in Akwesasne since the 1970s, and in 2000, the Mohawk Council of Akwesasne began the formal process of asserting their inherent rights to establish an formal and independent legal system that would replace the three competing jurisdictions within the territory. The Akwesasne Court Law Number 2016-01 was passed under Mohawk Council Resolution 2015-2016—#322 on February 12th, 2016, and entered into force in August of the same year.

At present, the Akwesasne Court has limited criminal jurisdiction, but it is recognized by the federal government in the Family Homes on Reserve and Matrimonial Interests or Rights Act as empowered to enforce Akwesasne law. A mechanism for the recognition of Akwesasne Court orders in Ontario and Quebec is currently being negotiated.

The justices appointed to the Court are selected by an independent review commission for their good character, credibility and reputation in their community. They then receive ten weeks of extensive training from the Canadian Institute for the Administration of Justice on criminal court and civil procedures, ethics, due process and judicial fairness before they are sworn in.

The Court proceedings themselves are framed by Mohawk values and principles in the administration of justice. The judges, prosecutors, and advocates prioritize the healing of the community and all involved parties when considering how to remedy an offence. Rather than using punishment and penalties as a tool of justice, the Court seeks to guide the offender to use their gifts and talents to heal the harms they have caused and by this path return balance to their community.

In this way, the Akwesasne Court upholds the contemporary requirements for judicial forums in Canada while centering the language, culture and values of traditional Mohawk legal frameworks: the principles of Sken:nen (peace), Kasatstensera (strength); and Kanikonri:io (a good mind), and values of Respect for life, Respect for the person/being; and Respect for property.

Services offered:

- *Adjudication of Akwesasne Laws*
- *Traffic Offenses*
- *Acceptance of traffic payments*
- *Skennen Orders (Peace Bonds)*
- *Small Claims*
- *Appeals*
- *Appeals for Administrative Tribunals*
- *Court Mediation Services (Policy)*
- *Commissioner of Oaths (ON)*
- *Notary Public (NYS)*
- *Community Service (in lieu of fine)*

⁶⁷ "Kwesasne Court: Court Without Borders," Akwesasne Justice Department, accessed March 31, 2024, <http://www.akwesasne.ca/justice/akwesasne-court/>.

- *Early Resolution*
- *Prosecutorial Services*
- *Defense Counsel Services*

In addition there is also an Akwesasne Mohawk Police service offering a wide range of services including: General Uniformed patrol, Community policing, investigation, emergency dispatch and response services, traffic law, marine patrol, Anti-drug and anti-smuggling, victim assistance.

QUEBEC

The Court of Kahnawà:ke⁶⁸ also focuses on criminal law matters but also has a traffic safety branch and performs civil marriage services.

NOVA SCOTIA

The Wagmatcook Provincial Court⁶⁹ is located on Wagmatcook and serves We'koqma'q First Nation. This is a provincial court that began as a court sitting

occasionally but then was expanded to its one building on reserve through consultation with Chief, Council Elders and the service providers.

TERRITORIAL COURTS

INUIT TRADITIONAL COURTS^{70,71,72}

Traditional Inuit laws were the Inuit Qaujimajatuqangit Katimajit. It shares similarities to other Indigenous law, i.e. oral tradition, informal, oral, and strong ties to the land. There are governance processes which build in this traditional concept of laws with the contemporary Inuit government. Contemporarily, they seem to be more incorporated into governance than their own system of laws or review of community laws.

68 "Mohawk Council of Kahnawà:ke," MCK Court of Kahnawà:ke, accessed March 31, 2024, <http://www.kahnawake.com/org/court>.

69 "Wagmatcook Provincial Court: The Courts of Nova Scotia," Wagmatcook Provincial Court, accessed March 31, 2024, <https://www.courts.ns.ca/Courts/Provincial-Court/Wellness-Court-Programs/Wagmatcook-Provincial-Court>.

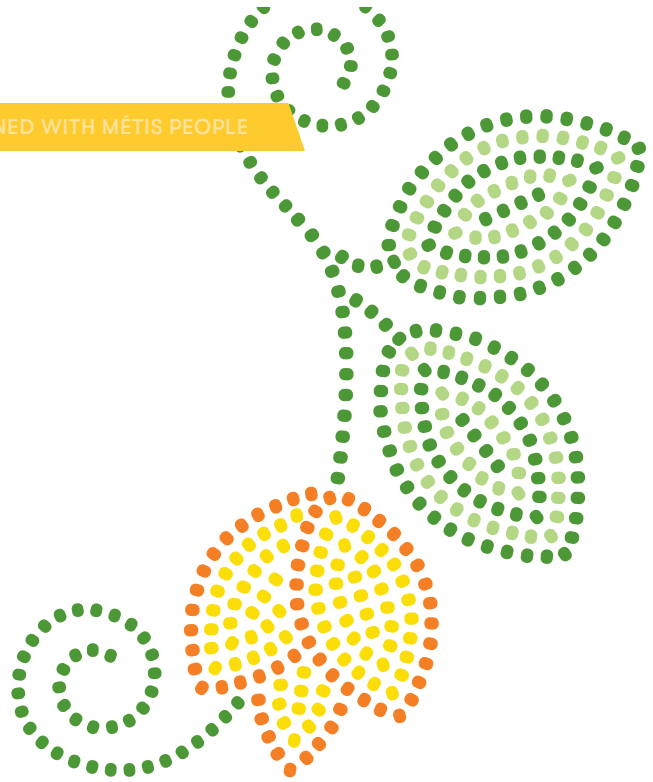
70 Natalia Loukacheva, "Indigenous Inuit Law, 'Western' Law and Northern Issues," View of indigenous Inuit law, "western" law and northern issues, accessed March 31, 2024, <https://arcticreview.no/index.php/arctic/article/view/33/33>.

71 Department of Justice Government of Canada, "Inuit Women and the Nunavut Justice System," Appendix 2 (continued), November 30, 2021, https://www.justice.gc.ca/eng/rp-pr/aj-ja/rr00_8/a2_9.html?wbdisable=true.

72 "Nunavut Government Gets New Traditional Knowledge Advisers," Nunatsiaq News, March 4, 2021, <https://nunatsiaq.com/stories/article/nunavut-government-gets-new-traditional-knowledge-advisers/>.

YUKON-TESLIN TLINGLIT COUNCIL PEACEMAKER COURT⁷³

- The Peacemaker Court operates in accordance with principles of judicial independence, impartiality and fairness. The Peacemaker Court provides two types of court services based on a staged approach.
- Stage One—court services provides consent-based dispute resolution court services.
- Stage Two—court services will provide adjudication and appeal court services. Stage Two is suspended as the Peacemaker Court becomes established.
- During this period, the Yukon Territorial Court will handle any Teslin Tlingit law violations. This period will allow for Teslin Tlingit Peacemakers to acquire the necessary development to assume and exercise
- Stage Two court responsibilities. Both stages will operate concurrently thereafter.



SASKATCHEWAN

MÉTIS JUDGES

The vast majority of Saskatchewan's judges are White. There are two known Métis judges in Saskatchewan: Justice Natasha Crooks of the Court of King's Bench, and Judge Mary McAuley, of the Provincial Court.

Side bar: Judge Mary McAuley, speaks Cree. She says that the judiciary must reflect the community it serves. "Many marginalized people have lost faith in the courts because of Canada's colonial history, so having a diverse judiciary can make a big difference. "(Saskatchewan's judiciary is 91% white; judge says diversity builds trust | Globalnews.ca) Speaking Cree also helps. The minute that happens, dialogue opens up and people start speaking freely.

CREE COURT

The Cree Court is a Saskatchewan Provincial Court circuit court which conducts hearings in Criminal law matters, wholly or partially in the Cree language. It is based in Prince Albert and travels to circuit points in north-eastern Saskatchewan, including Pelican Narrows, Sandy Bay, Whitefish First Nation, and Ahtahkakoop First Nation up to five times monthly. The Cree Court was the first court of its kind in Canada.

The Judge, clerks and court workers are Cree speakers. Accused persons may have access to Cree speaking Legal Aid lawyers, and a Cree speaking prosecutor, if available. The accused may address the court in English or Cree. The Judge may speak to traditional Cree values regarding respect for family and community in addition to the sentencing principles in the Criminal Code or Youth Criminal Justice Act.

⁷³ "Yáx At Juwustéeyi," Peacemaker Court, accessed March 31, 2024, <https://www.ttc-teslin.com/government/departments/overview/peacemaker-court#:~:text=The%20Peacemaker%20Court%20operates%20in,based%20dispute%20re.>

Judge Gerald M. Morin was appointed as a Provincial Court Judge in 2001 and was tasked with designing the Cree Court for Northern Saskatchewan. Judge Morin successfully expanded the Cree Court over his 18 year judicial career.

Judge Morin incorporated Indigenous values, language and culture and encouraged the participation of community leaders in the justice system and their role in supporting both victims and the accused. “(Judge Morin) continues to express his belief in the mediation approach, believing the premise that peacekeeping between individual community members has a better chance of success as opposed to a Court sanction process. In this regard, he believes the mediation process should be encouraged and enhanced while maintaining respect for the rule of law and incorporating Indigenous values.”^{74,75,76,77}

COWESSESS FIRST NATION LAWS AND TRIBUNAL⁷⁸

Cowessess First Nation has created the Eagle Woman Tribunal to make decisions on child welfare concerns, including custody disputes. Indigenous children are staggeringly overrepresented in Saskatchewan’s child welfare system, so protecting Cowessess children is key. Eagle Woman Tribunal will help community members in child welfare disputes find their own resolution. Tribunal members will facilitate talking and healing circles with the help of mediations. It gives voice to children, parents and grandparents so that they can say what they want. Tribunal members are receiving training on mediation, evidence and decision making. Jurisdiction comes from Cowessess’ child welfare legislation and decisions will be final and binding.

A stated purpose of the *Cowessess First Nation Miyo Pimatisowin Act*⁷⁹, the first signed coordination agreement⁸⁰, is to liaise with other peoples, including the Métis, to improve programs and outcomes⁸¹: the transfer of child and family services to Indigenous jurisdictions offers a significant opportunity for collaboration between Indigenous peoples, because supporting and caring for children and families cuts across political differences.⁸²

74 “Cree Court,” Saskatchewan Courts, March 11, 2024, <https://sasklawcourts.ca/provincial-court/cree-court/>.

75 Bonnie Allen, “Saskatchewan’s First Cree-Speaking Judge Reflects on Legacy of Cree Court as He Retires,” CBCnews, February 24, 2019, <https://www.cbc.ca/news/canada/saskatchewan/cree-judge-gerald-morin-retirement-1.5029792>.

76 “Research Guides: Access to Justice: Courts, Tribunals, Agencies,” Courts, Tribunals, Agencies—Access to Justice—Research Guides at University of Saskatchewan, accessed March 31, 2024, <https://libguides.usask.ca/c.php?g=16485&p=91237>.

77 Kimberly Skakun, “Northern Cree Court Initiative,” Northern Cree Court Initiative—Indigenous Saskatchewan Encyclopedia, accessed March 31, 2024, https://teaching.usask.ca/indigenoussk/import/northern_cree_court_initiative.php.

78 Globalanna, “Cowessess First Nation Launches Independent Child Welfare Tribunal,” Global News, March 24, 2021, <https://globalnews.ca/news/7714099/cowessess-first-nation-child-welfare-eagle-woman-tribunal/>.

79 “Cowessess First Nation Miyo Pimatisowin Act,” Miyo-Pimatisowin-Act, 2020, <https://redbearlodge.ca/wp-content/uploads/2021/05/Miyo-Pimatisowin-Act.pdf>.

80 “New Support for Child and Family Services in Cowessess First Nation,” Prime Minister of Canada, accessed March 31, 2024, <https://www.pm.gc.ca/en/news/news-releases/2021/07/06/new-support-child-and-family-services-cowessess-first-nation>.

81 “Reference Re an Act Respecting First Nations, Inuit and Métis Children, Youth and Families—SCC Cases,” Supreme Court Decisions, accessed March 31, 2024, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/20264/index.do>.

82 Apart from Cowessess First Nation, the MMF and the Muskeg Lake Cree Nation are the only other peoples to request tripartite negotiations with Saskatchewan and Canada to enter a coordination agreement. See Government of Canada; Indigenous Services Canada, “Notices and Requests Related to an Act Respecting First Nations, Inuit and Métis Children, Youth and Families,” Indigenous Services Canada, April 15, 2024, <https://www.sac-isc.gc.ca/eng/1608565826510/1608565862367>.

MEDIATION

In Saskatchewan, third party negotiation/mediation has commonly been used in union/management labour disputes to reach settlement. Mediation processes were used in the 1940's as a method of resolving agricultural credit disputes and became mandatory in the 1980's. By 1994 the court of Queen's Bench (now King's Bench) launched pilot projects to make mediation a mandatory step that parties in litigation would take prior to engaging in the court process. This process was initially met with resistance from the legal community and the parties in litigation. The pilot project was a success and mandatory mediation has been a preliminary step in commencing litigation in the Court of King's Bench for 30 years.

The mediation process has more recently been accepted as a more cost effective and humane process to resolve family law disputes than litigation and a mediation or "collaborative law" approach is taken by lawyers in an attempt to resolve many family matters outside of the court process. As of July 2022, all courts in Saskatchewan have mediation called "early family dispute resolution" as a mandatory preliminary step for participants wishing to proceed to court in all family law disputes.^{83,84}

Mediation is commonly available as a potential dispute resolution process in many public complaint processes such as professional regulation complaints, complaints to the Human Rights Commission, and the office of the Ombudsman.

THERAPEUTIC COURTS

Therapeutic Courts are sometimes referred to as "specialized" or "problem solving" Courts. Saskatchewan Provincial Court has three different types of Therapeutic Courts⁸⁵ as follows^{86,87}:

DOMESTIC VIOLENCE COURT (DVC)

Three Domestic Violence Courts in Saskatchewan (Regina, North Battleford and Saskatoon) address criminal matters involving domestic violence. Persons accused of an offence involving domestic violence who: take responsibility for their actions, elect to plead guilty, and could receive a sentence that does not include jail time, may be offered the Domestic Violence Court Treatment Option, a counselling program for domestic violence, as well as the opportunity to address any substance abuse issues they may have.

83 "Family Mediation," Government of Saskatchewan, accessed March 31, 2024, <https://www.saskatchewan.ca/residents/births-deaths-marriages-and-divorces/separation-or-divorce/early-family-dispute-resolution/family-mediation#:~:text=In%20all%20Saskatchewan%20court%20jurisdictions,with%20any%20further%20court%20proceedings>.

84 "Directed Mediation," Saskatchewan Human Rights Commission, September 9, 2022, <https://saskatchewanhumanrights.ca/road-to-resolution-the-complaint-process/directed-mediation/>.

85 Information about Saskatchewan Therapeutic Courts:

"Therapeutic Courts," Saskatchewan Courts, March 11, 2024, <https://sasklawcourts.ca/provincial-court/therapeutic-courts/>.

"THERAPEUTIC COURTS IN CANADA: A JURISDICTIONAL SCAN OF MENTAL HEALTH AND DRUG TREATMENT COURTS," Therapeutic Courts in Canada, September 8, 2021, <https://icclr.org/wp-content/uploads/2022/04/Therapeutic-Courts-in-Canada-Justice-Efficiencies-and-Access-to-the-Criminal-Justice-System-Eng.pdf>.

Greg Basky, "Saskatchewan's First Mental Health Court Reduces Recidivism, USASK Evaluation Finds," News, December 8, 2020, <https://news.usask.ca/articles/colleges/2020/saskatchewans-first-mental-health-court-reduces-recidivism,-usask-evaluation-finds.php>.

86 "Therapeutic Courts," Saskatchewan Courts

87 Information about Canadian Therapeutic Courts

"Problem-Solving in Canadian Courtrooms," A Guide to Therapeutic Justice, 2005, <https://www.nji-inm.ca/index.cfm/publications/problem-solving-in-canada-s-courtrooms-a-guide-to-therapeutic-justice-2nd-edition/?langSwitch=en>.

"Action Committee on Covid-19," Office of the Commissioner for Federal Judicial Affairs Canada, November 29, 2016, <https://www.fja.gc.ca/COVID-19/Impacts-of-the-Pandemic-on-Specialized-Courts-Incidence-de-COVID-19-tribunaux-specialises-eng.html>.

DRUG TREATMENT COURT (DTC)

There are two Drug Treatment Courts: Regina (2006) and Moose Jaw (2009). An accused who has a substance abuse problem that played a role in their offence, who meets the eligibility criteria, successfully completed a one-month assessment, and elects to plead guilty to certain offences, may enter the drug treatment court program. The treatment program takes approximately one year and upon successful completion of the program, individuals will receive a reduced sentence.

The overarching goal of Drug Treatment Courts is to assist offenders in finding sustained sobriety and address other factors to break the cycle of their involvement in the justice system. To that end, a collaborative team of a dedicated Judge, Crown prosecutor, Legal Aid duty counsel, DTC Manager, addictions counsellor, nurse and probation officer meet to discuss each participant's progress and the best ways to encourage participants to succeed.

MENTAL HEALTH COURT (MHC)

There are two Mental Health Courts: (Saskatoon 2013 and Regina 2013). Mental health courts are designed to improve the response of the justice system and improve access to services for offenders who commit crime in part because of their mental health and cognitive conditions.

The goal of Mental Health Courts is to assist in stabilizing the individual in the community and to prevent the individual from reoffending. The accused individuals are connected with appropriate health care providers and other supports in the community prior to being sentenced.

Mental Health Courts take a team approach which includes a judge, Crown prosecutor, Legal Aid duty counsel and other defence counsel work who work with the accused individual, health care workers, community and mental health agencies. Information is gathered regarding the individual's underlying condition and a "Participant Plan" is developed to assist in stabilizing the individual in the community. Such Plans consider community safety needs and the accountability of individuals with mental illness and/or cognitive deficits who are charged with criminal or provincial offences. The Team meets regarding the individual's progress and successes, prior to sentencing taking place.

FIRST NATION LAW RECOGNITION

Saskatchewan is making progress when it comes to recognizing at least some First Nation laws. This section highlights discussions with members of the RCMP, the Whitecap Dakota First Nation example, as well as Bill 126 which redefines "First Nation law" in the *Summary Offences Procedure Act*⁸⁸.

RCMP

The major problem of enforcing First Nation bylaws for RCMP is who would prosecute them. There was no agreement with the Crown Prosecutor's office, so a decision was made within the RCMP not to enforce First Nation laws when the charges would not be prosecuted. Another reason that First Nation laws were not enforced was because those laws applied on the reserve.

Recently however, the RCMP are working to enforce First Nation Bylaws in Saskatchewan. Detachments will have to familiarize themselves with the bylaws.

88 "An Act to Amend The Summary Offences Procedure Act, 1990," CanLii, accessed March 31, 2024, <https://www.canlii.org/en/sk/laws/astat/ss-2023-c-42/latest/ss-2023-c-42.html>.

WHITECAP DAKOTA FIRST NATION

The Whitecap Dakota First Nation (“Whitecap”)⁸⁹ developed and enforces its own laws under the Framework Agreement on FNLM⁹⁰. Whitecap’s laws are land based and include *Indian Act* bylaws, land laws, and taxation laws. Land laws cover matrimonial property.

Whitecap also has a community safety officers program in which community safety officers can enforce provincial laws, bylaws and First Nation laws. They work together with the RCMP who deal with 911 calls, criminal code offences, and crimes in progress.⁹¹ The Community Safety Officers provide a uniformed presence and patrol in Whitecap. They may work with prevention-based programs offered through schools or community groups.

In 2019 Whitecap (and Muskoday) signed Memorandums of Understanding with the Government of Saskatchewan to create a joint working group on policing and enforcement of laws that included: investigation and policing; laying of charges; prosecution, if necessary; adjudication of First Nation laws; and enforcing those decisions. The province of Saskatchewan recognizes these First Nation laws made on First Nation lands and that they create summary conviction offences as per the Criminal Code.

BILL 126

Bill 126, the *Summary Offences Procedure Amendment Act* received royal assent on May 17, 2023. It sets out a new definition of a First Nation Law. Not only can a First Nation law be an *Indian Act* bylaw, or an FNMLA law, it can also be a law made under a self-government agreement:

iii) a law made by a First Nation prescribed in the regulations under the authority of a self-government agreement that it has entered into with the Government of Canada, which has been given effect by a federal Act, that makes the proceedings pursuant to this Act applicable to that law”;

The amendment enables First Nations to authorize people to prosecute their offences. The First Nation infractions can be prosecuted in Court and avoids potential jurisdictional issues.

In this case, Saskatchewan now starts with the premise that the First Nation has the jurisdiction to make the law. It provides a certified copy of the law to the Court with no one approving or disapproving the law. Saskatchewan is contemplating the idea of developing template laws across the province.



⁸⁹ Muskoday is part of this as well

⁹⁰ “Laws and Bylaws,” Whitecap Dakota First Nation, accessed March 31, 2024, https://www.whitecapdakota.com/en/our-government/laws-and-bylaws.aspx?_mid_=22085.

⁹¹ “WDFN Community Safety Officer Program,” Whitecap Dakota First Nation, June 24, 2022, <https://www.whitecapdakota.com/en/news/wdfn-community-safety-officer-program.aspx>.

International Indigenous Justice Practice Examples

AUSTRALIA

MURRI COURT⁹²

Australia's Murri Court is a specialized court system created to assist Aboriginal and Torres Strait Islander people who have committed offenses. It emphasizes cultural understanding and community involvement to address the underlying reasons for the offense. Family and community members are often involved, working together with the court to support the individual. The goal is to help offenders learn from their mistakes while respecting their cultural heritage and traditions.

COUNTY KOORI COURT⁹³

The County Koori Court in Australia is a unique legal institution designed to assist Aboriginal and Torres Strait Islander individuals who have broken the law. It places a strong emphasis on cultural sensitivity and community engagement to address the underlying causes of the offense. Family and community members often play an active role in the proceedings, collaborating with the court to provide support and guidance. The primary objective is to facilitate offenders' understanding of their actions while honouring their cultural identity and traditions.

ABORIGINAL CARE CIRCLES⁹⁴

Aboriginal Care Circles are a culturally sensitive approach to addressing the needs of Aboriginal and Torres Strait Islander individuals who have encountered the justice system. These circles bring together the individual, their family, community members, and justice professionals to discuss the offense and its impacts. The emphasis is on understanding the root causes of the behaviour and finding constructive ways to support the individual's rehabilitation and reintegration into the community. The process is guided by Aboriginal cultural values and traditions, aiming to promote healing and prevent further involvement in the justice system.

⁹⁴there are also numerous Aboriginal sentencing courts in Australia and New Zealand

⁹² "About Murri Court," Queensland Courts, September 29, 2020, <https://www.courts.qld.gov.au/courts/murri-court/about-murri-court>.

⁹³ County Court of Victoria, accessed March 31, 2024, <https://www.countycourt.vic.gov.au/learn-about-court/court-divisions/county-koori-court>.

⁹⁴ County Court of Victoria



NEW ZEALAND⁹⁵

MAORI LAND COURT

The Māori Land Court⁹⁶ is a specialist court of record in New Zealand that hears matters relating to Māori land. It was established in 1865 as the Native Land Court of New Zealand under the Native Lands Act, 1865.

Originally, the Court was established to convert customary Māori land into titles which could be acquired, initially by the colonial government and later by individual settlers. Since then, under the Te Ture Whenua Maori Act 1993⁹⁷, the Court's role is to promote the retention of Māori lands in the hands of its owners; to facilitate the occupation, development and use of Maori land; and to ensure that decisions made about Maori land are fair and balanced taking account the needs of all the owners and their beneficiaries.

The Maori Land Court is a Court of Record. It is made up of a Chief Judge with judges appointed for each district. The Court has an electronic court record which can be searched online⁹⁸. It includes Maori land data and judgements. The Court also offers services such as “trustee training” so that trustees can better understand their duties and legal obligations and how to run trusts successfully. The Court's legislation, Rules, Regulations and Practice notes are all published on its website⁹⁹. In the future, one will be able to search for documents, including Minutes and Orders.

The Maori Land Court is one of the oldest courts in New Zealand—over 150 years old. The work it does is central to the fabric of the Maori community, and the Maori economy. The Court's role is unique in the common law world, and in New Zealand's constitutional arrangements¹⁰⁰.

NEW ZEALAND YOUTH COURTS¹⁰¹

In New Zealand, Youth Courts are tailored to address the legal issues of individuals under 17 who have engaged in unlawful activities. These courts prioritize understanding the root causes behind the offense and strategizing ways to prevent its recurrence. They typically involve the participation of the young person's family and other supportive figures. The overarching aim is to guide young offenders towards recognizing their errors and fostering positive decision-making skills moving forward.

95 “Waitangi Tribunal Te Rōpū Whakamana i Te Tiriti o Waitangi,” Waitangi Tribunal | Waitangi Tribunal, accessed March 31, 2024, <https://waitangitribunal.govt.nz/>.

96 “Māori Land,” Māori Land Court, accessed March 31, 2024, <https://www.xn--morilandcourt-wqb.govt.nz/en/maori-land/>.

97 “Te Ture Whenua Māori Act 1993,” Who We Are, accessed March 31, 2024, <https://www.māorilandcourt.govt.nz/en/who-we-are/our-rules-and-legislation/#e768>.

98 “Access the Physical Record,” Māori Land Court, accessed March 31, 2024, <https://www.xn--morilandcourt-wqb.govt.nz/en/the-court-record/access-the-physical-record/>.

99 Supra 17

100 “Chief Justice Welcomes the Appointment of New Chief Māori Land Court Judge,” Media Statement, accessed March 31, 2024, <https://www.courtsofnz.govt.nz/assets/7-Publications/Announcements/23-07-20-Media-Statement-Chief-Maori-Land-Court-Judge-appointment.pdf>.

101 “Youth Court of New Zealand Te Kōti Taiohi o Aotearoa,” Rangatahi Courts & Pasifika Courts | Youth Court of New Zealand, accessed March 31, 2024, <https://www.youthcourt.govt.nz/about-youth-court/rangatahi-courts-and-pasifika-courts/>.

TIBET

TIBETAN SUPREME JUSTICE COMMISSION (TSJC)¹⁰²

The TSJC's formal procedures are modeled on Indian and other common law systems, though the dispute resolution mechanisms employed by the TSJC and by other CTA entities also reflect customary Tibetan laws and traditions. The TSJC has promulgated a Code of Civil Procedure, an Evidence Code and a Law on the Judiciary; at present, these codes have not been translated into English and are only available in Tibetan. Likewise, proceedings before the TSJC are conducted in Tibetan. The TSJC does, however, commonly refer to Indian laws, codes and case

law as points of reference for its work. A disproportionate number of the cases brought to the TSJC (approximately 25 percent) involve electoral disputes. Issues have involved candidate eligibility and disqualification, the composition of local election commissions, the legal validity and application of local election rules, the proper procedures for pursuing election complaints, and the legal role and responsibilities of the Central Election Commission (CEC). In general, the assessment team found that the legal needs of the Tibetan community are underserved. There are few Tibetans with legal education, and legal resources are not readily accessible to those who need them.

INDIA

TRADITIONAL COURTS IN INDIA

India offered an interesting and cultural example for an Indigenous justice model that was community based and included Elders in decision making. There are three common systems of village-level dispute resolution:

NYAYA PANCHAYATS

The Indigenous dispute resolution system which has operated continuously in India since “pre-historic times.” Deeply rooted institutions that enjoy widespread societal support. Their sensitivity to local culture and situational context helps maintain their relevancy across diverse regions of India over thousands of years. “Panchas” serving on Nyaya Panchayats are individuals from the village who are likely to be familiar with the nuances of situations being addressed. They may have knowledge of the personal histories and interpersonal dynamics of the parties and the subject at the heart of the dispute. Living in the village they serve may give the Panchas helpful insight and discernment. This type of intimate awareness of their constituents is also consistent with teachings from ancient spiritual texts.

GRAM NYAYALAYAS

Gram Nyayalayas were created by the state and legislated in 2008 to fill a gap and provide a court for villagers who do not have access to common law courts nor village-level courts. Gram Nyayalayas are traveling courts that blend the features of both common law courts and Nyaya Panchayats. Conciliation efforts are encouraged throughout a case before the Gram Nyayalaya, failing conciliation, the Gram Nyayalaya will issue a judgement.

¹⁰² Staff Reporter, “Judiciary,” Central Tibetan Administration, August 5, 2023, <https://tibet.net/about-cta/judiciary/>.

LOK ADALATS

Lok Adalats or “People’s Court” are the most popular form of dispute resolution in India, which have resolved hundreds of thousands of disputes a year—and millions in 2021. Individuals voluntarily participate in a process of reconciliation outside of a formal court system. Lok Adalats do not adjudicate cases; it only provides a forum for dispute resolution mediation process for the parties to air their grievances and to develop a plan for moving forward. Lok Adalats are usually comprised of three members, often active or retired judicial officers, social workers, subject-matter experts, and lawyers, though others can serve on a Lok Adalat as well. The state court system may refer matters to Lok Adalats, and may return to the court system if a settlement is not reached. If a settlement is reached it is not appealable as it was consented to by the parties.

NATURAL LAW AND SPIRITUAL LAW

Nyaya Panchayats, Gram Nyayalayas, and Lok Adalats are guided by ancient Vedic and classical Hindu law texts. These texts call on leaders to strive to cultivate and maintain harmony within the community, which is reflected in the three models.

Hindu law was very fluid, and sensitive to local customs and circumstances. Each case has a unique set of circumstances that must be considered under the principles of “dharma”, a very important concept in Hindu law. Dharma is said to nourish people and society, and it encompasses personal virtues, principles of non-violence, ethics, and responsibility. The three models rely on “natural justice”, which refers to spiritual obligations and the spiritual principles of “dharma”.

Like the Métis world view, Hindus recognize a larger, cosmic order which is the ultimate truth and higher than any human decision-making, always present and infused in every aspect of life.

Nyaya Panchayats have little interactions with the state courts. Gram Nyayalayas are instruments of the state court, but are adapted to ease access and flexibility. Lok Adalats fill a gap between the Indigenous system and the common law system where they seek to resolve disputes before a state court through amicable agreement. Each of these models strives to resolve disputes amicably and will adjudicate only as a last resort, if they adjudicate a dispute at all.



UNITED STATES¹⁰³

The United States government officially recognizes 574 Native American tribes and 400 tribal justice systems. Tribal Courts are administered by American Indian tribes, especially on reservations that have jurisdiction over certain cases involving tribal members, non-members and trust assets. Tribal courts can be based on written tribal laws or unwritten customary laws, traditions, and values. Tribal Courts aim to deliver justice and restore harmony in tribal communities.

A Tribal Court can be created in provision of its constitution or by Tribal Council. Such Courts are independent of other branches of tribal government. The Courts look to the laws of a tribe, ordinances, and codes. If a tribal law is absent then one can look outside to State law, federal law or to laws of other tribes.

Tribes are sovereign. This means that they have the right to make laws and be governed by them, but they are limited in scope. The laws can cover tribal land and members whether they live on or off reserve. Usually, the laws will not cover non-members. But, if a non-member comes onto the reservation, they are consenting to jurisdiction of tribe and tribal court. In addition, a non-member spouse can make application for guardianship.

Tribal courts are recognized as legitimate courts with robust rules and procedures, and their operations often resemble those of Western courts. However, cultural competence is emphasized, given that tribal traditions differ from Western culture, focusing on resolution, remediation, and restorative justice. The primary objective is to repair damaged relationships and achieve mutual understanding.

In such cases, courts may turn to tribal elders, although their availability may be limited due to factors such as the COVID-19 pandemic. Additionally, academic experts and input from the involved parties can be sought to maintain customs and traditions. It's noted that the presiding judge is not necessarily a member of the tribes they serve.

One example, the most commonly referenced, is the Navajo Nation's Peacemaking system. This is a form of restorative justice that incorporates traditional Navajo values and customs. It focuses on healing relationships and restoring harmony rather than assigning blame. It was not their choice to make a court—the Navajo made a court because other courts did not want to deal with them.”

There are, however, multiple others; the White Earth District and Appellate Courts, Saint Regis Mohawk Tribal Court, The Hopi Tribal Court and more.

¹⁰³ “Tribal Courts,” Justice Systems of Indian Nations, accessed March 31, 2024, <https://www.tribal-institute.org/lists/justice.htm>.



Examples of International Women's Courts

HAWAI'I

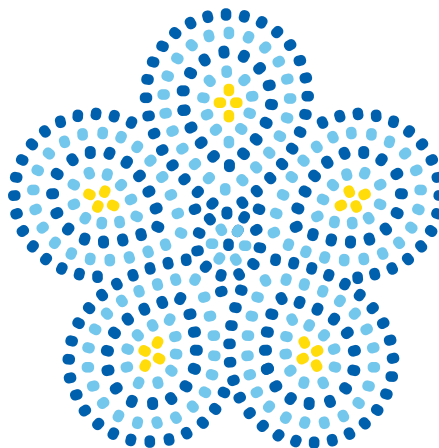
Hawai'i has both a special Women's Court and a Girls Court. The Women's Court is a pilot project designed to help women who have been in trouble with the law¹⁰⁴. It focuses on understanding and meeting the specific needs of women, aiming to prevent them from getting into more trouble in the future and making communities safer¹⁰⁵.

Girls Court targets female juvenile offenders. The court and its all-female staff seeks to build on the strength of girls and address the challenges they face.

... empowering and building on our girls' strengths now will also stop them from becoming involved in the criminal justice system as adult women, appearing as victims in domestic abuse cases and restraining order proceedings, or as mothers in child protective services later in their lives. (About | Hawai'i Girls Court¹⁰⁶).

SERBIA

Women's Courts also exist outside of North America. The Women's Court in Serbia is a space for women's voices and testimonies about the daily injustices suffered during the war and now, in peace.¹⁰⁷ It encourages the creation of different-feminist concepts of responsibility, care and security, in order to build a just peace. (Women's Court (zenskisud.org)).



¹⁰⁴ "Hawaii JC17," TrackBill, accessed March 31, 2024, <https://trackbill.com/bill/hawaii-judiciary-committee-17-rpt-report-on-the-womens-court-pilot-program/2308909/>.

¹⁰⁵ "Hawaii JC17," TrackBil

¹⁰⁶ "Home," Hawai'i Girls Court, August 2019, <https://www.girlscourthawaii.org/>.

¹⁰⁷ "About the Women's Court," Women's Court, accessed March 31, 2024, <https://www.zenskisud.org/en/o-zenskom-sudu.html>.

Chapter 2

The Design Team heard from many different people over the course of our work. We have divided them into three basic groups here to share specifically what we heard from community, legal experts, and leadership. The key insights, concerns and ideas from each group are summarized below.

Insights from Community Members

We heard that this body must be reliable, consistent, and trustworthy to become a system that is considered valuable by Métis people.

- *“This is a system being built because the existing colonial system doesn’t serve Métis people.”*
- *“Can’t expect people to trust automatically, you have to build trust.”*
- *“You need broader efficiency and a process that is reliable and consistent that you can trust.”*
- *“Trust is transactional: Small acts build trust overtime.”*
- *“When giving options to people throughout the system, ensure that the system and staff can truly handle it. Don’t make promises we can’t keep. This builds trust.”*

We heard that transparency is linked closely to trust and needs to be explored thoroughly.

- *“There needs to be enough transparency, so people feel their needs are being met.”*
- *“Could there be a recording and parts be redacted now or at any time? Would this option be open as they go through the process so they can change their mind?”*
- *“Transparency looks different at different stages. For example, mediation could be closed because it is more personal, or interested parties could be informed if deemed necessary, or if it is a hearing, could it be open?”*
- *“Individual issue—a choice; MN-S issue —public; A minor or a criminal issue—Degrees of transparency.”*
- *“Information about the space, the process, policies, criteria of staff selection should be publicly available.”*
- *“If I were a person in a court situation, I would want to know how it all works, who makes the decisions, what kind of person are they and so forth -otherwise I have lost all my power and I am giving that up to this other someone who will make those decision FOR ME or ABOUT me.”*
- *“Judges/advisors deliberate openly? Or ensure they write judgements to show their thought process.”*

We heard that operating independent from the government would support trust building at many levels (individual, community, political)

- “Acknowledge examples within jurisdiction of this body (harvesting, governance practices, embezzlement) where there is baggage—name why we hear the language of resistance.”
- “The citizens need to see that the government can and will be held accountable.”
- “I am very happy to see that the Métis Justice Adjudicative Body will be independent from the political arm of MN-S.”
- “I want to be hopeful, but if we give it to the MN-S, at the end of the day I don’t trust them to do it.”
- “Financial compensation is seen as negating trustworthiness—especially if payments is beholden to the whims of MN-S political leaders”
- “MN-S cannot be able to interfere with the affairs of the body in any manner.”

We heard that with a focus on restorative practices and proactive community connection, this body could have impact beyond repair in times of conflict.

- “This is about restoring humanity and kinship.”
- “If we hire people who are attuned and compassionate, in that small act we’ll have a different justice system.”
- “More restorative mechanisms are needed to connect people to community and culture. It would require more inclusive processes to accomplish meaningful social rehabilitation if it is to be premised on Métis culture, constitution, and its guiding documents.”
- “Remedies should avoid jail and prison terms, and preferably look for relationship healing.”
- “More satisfaction in decisions despite outcome. Being heard is often the real underlying interest. Outcome is nice but does not offer emotional satisfaction. When people are satisfied, they behave well. It could change the way we deal with each other for the better.”

- “A part of restorative justice could be “community service”. Being in service to the Métis community. It brings them closer to the community rather than excommunicating them, and also encourages those wronged (“victims”) to practice and exhibit—publicly—forgiveness and tolerance.”
- “This process must not be punitive but restorative.”
- “It’s all a deficit model based on us being broken and the funding that has to go into that. And the only way this court is funded is if there’s a whole bunch of bad guys. We’ve got to process them. The more bad guys, the more money we’re going to get. That is going to be problematic. So we’re shifting paradigms in every possible way.”
- “How can we help people develop some skills and tools going into this that they are going to use in lots of other places.”
- “To resolve we do not want to focus on retribution but on repair. So, success is that ‘issues’ show up early to stop escalation.”
- “If we put this culture into this space and say lessons come from being outside and come from feasting and we have information, there’s education available.”

We heard that this body must be inclusive of community throughout.

- “Need to bring people in with lived experience (i.e.: Elders, young people who have been in the system).”
- “Will Elders be involved? Elders are our experts, and should be included as advisors on each panel.”
- “How will children and youth be engaged?”
- “Why aren’t youth considered to be an important part of a court, just like Elders? They have insights and understandings we do not?”
- “Because we do talk about elders all the time, and then we say we’re going to include youth, but do we really include youth in meaningful ways?”
- “Make sure we have Elders and Youth and Knowledge Keepers and Experts and language speakers and representation from LGBTQ2SIA+ community and representatives to speak to disabilities.”

- “We need to hire people who have the capacity to step into it (people with support systems, people who have been broken or been in the system and are coming through the other side).”

We heard that traditional language, Métis culture, and protocols must be part of the fabric of this body.

- “So we know that we care about our people. How can we make sure that we keep that within our system? We know that communities look after each other.”
- “The language you design in matters—it affects how you think.”
- “Intergenerational presence and language in the courtroom.”
- “She couldn’t speak English. She was going through withdrawal. It was horrible. She was in such an awful place. And they expected her to sit there and respond in meaningful ways and answer tough questions. And yes, she spoke English, but it clearly wasn’t her first language. And the judge suddenly started speaking to her in Cree. And it changed everything.”
- “When we stopped using our languages, we stopped talking about obligations and responsibilities to each other. The language we use should be reminiscent and remind ourselves of our responsibilities.”
- “What we call things in this process and the labeling matters, and that’s why we need language speakers.”
- “Legal language stems from talking about property, humanizing language—we need this to be based in love, compassion, Métis language.”
- “Food as a commitment to being in relationship: when we eat, we can listen.”
- “We are going to know we can repair/resolve when we can break bread together.”
- “A fire to speak from your heart, teachings about why, symbolic use like lessons from feasting from being outside, how does this become an educational space?”
- “What are the protocols of engagement with people, with the land, what are our responsibilities to the land?”
- “In terms of a cultural reality, could we have a mutual agreement before we even go into there about how we’re going to use that space?”

- “I am a Catholic native person. And I’ve had many people say I’m a traditionalist. I go by the teachings of my great grandmother. And so making a space that it’s okay to be all of.”
- “If I was going into this system, you wouldn’t make me smudge, would you?”
- “A code of conduct based on Métis values needs to apply to everyone.”
- “Métis people believe in pluriversality (more than one truth)”
- “It certainly can’t be centralized—I think a traveling tribunal is necessary.”

We heard that the physical environment needs to be carefully considered because environmental elements are important to Métis people (i.e.: tend to the air, plants, grass, garden, courtyard, outdoor spaces for proceedings)

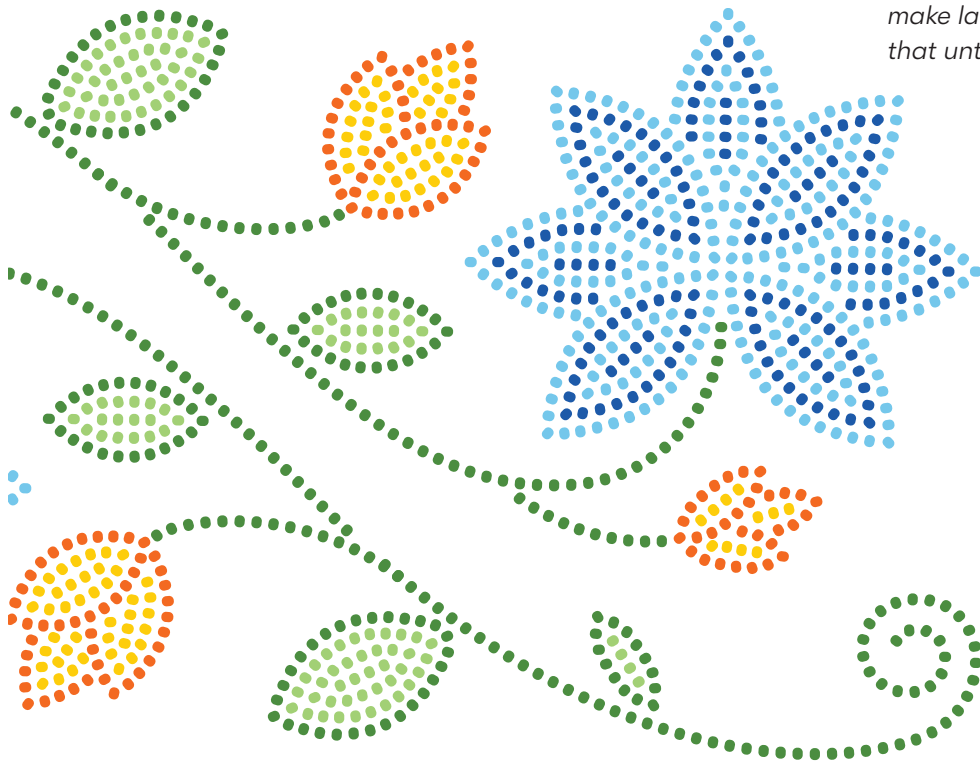
- “Physical spaces should be places that support relationship building (conflict resolution is a part of that), community gatherings, and access to resources.”
- “A physical space where you can see my car and don’t assume I’ve been busted.”
- “Métis have been dispossessed from the land, and need to get back to it.”
- “Birds in the buildings—not just feathers.”
- “Relational images and symbology set the tone of repair, care, and community (as opposed to adversarial undertones).”
- “Not just the power animals, but the warm ones too—foxes in dens, squirrels cuddling, too.”
- “We get a clear orientation to space, like where is the bathroom, here’s a way out, these are the rules of engagement.”
- “If I’m like a designated space, even if I’m at the memorial wall in Indian Head, you can go downstairs at any time. We need to have an appropriate space available for you to go to collect your thoughts and get it together.”

We heard that colonial courts are seen as inaccessible, between legal language, how decisions are made, even the look and feel of the physical spaces, contribute to an experience of “power over”.

- “Provide interpreters: both for spoken language, but also to assist those with reading/ hearing/ cognitive limitations.”
- “We need simple and accessible language—trauma is real, and we all know what it is.”
- “Translated documents (Michif, Cree, Dene).”
- “Establish a resource for Métis citizens to search for precedent/ ideas/ solutions for the issues they are currently facing that the Judiciary helped facilitate before.”
- “The visual and auditory space affects people on the autism scale in different ways.”
- “If I were an accused, I would want options—could I attend virtually or in person...”
- “Online is fine for my generation, but many Elders struggle with anything online or web related.”

We heard that current jurisdiction has to be proposed in accordance with MN-S laws and legislation that exist now, like Citizenship, Elections, and Harvesting. In the future, jurisdiction could expand into the areas of Child and Family Services matters, Criminal matters/sentencing/disposition, etc.

- “Scenarios could span areas—for example, covers, CFS, criminal, harvesting—so we should anticipate that jurisdictions will be interconnected in cases.”
- “Contemplate how this body can help with diversion on issues outside the adjudicating body’s jurisdiction.”
- “In the future, jurisdiction could expand beyond the current legislation.”
- “We don’t exist in a vacuum—I would be willing to participate in the healing process with non-Métis person who hurt me as a part of healing the society that surrounds us.”
- “The women didn’t distinguish, are you First Nations Non-Status Treaty? They just supported each other.”
- “As a person within our community, I’m always going to encourage us to be inclusive.”
- “The Constitution gives the MN-S the authority to make laws/legislation—I did not fully comprehend that until that Constitutional reform.”



Insights from Constitutional Reform Consultations

DURING DISCUSSIONS ON CREATING A JUDICIAL SYSTEM, THE FOLLOWING IDEAS WERE RAISED FREQUENTLY:

- Keep the judicial system separate from the MN-S:
 - Make sure that politics cannot interfere
 - Select people for the judicial system carefully, so they are not swayed or paid by government
- Include Elders and other experts (like harvesters and trappers) in the judicial system
- Create a system that reflects Michif, not a western style court system
- Use methods that fix problems and follow traditional ways (like restorative justice):
 - The judicial process should heal and restore, not just punish people
 - Use different kinds of judicial processes to solve issues, like sentencing circles
- The judicial process should be easy to access:
 - Use technology
 - Make the judicial process mobile, so it can travel around the province to deal with issues
- Hold Elected Officials accountable for their duties; there needs to be a way to vote to replace them, if citizens lose trust in them
- Create rules to stop pointless complaints against elected leaders
- Clearly state what the court can and cannot deal with (for example, matters under the criminal code)
- Support rights related to hunting and taking care of children and families
- Understand that the same approach won't work everywhere; there are differences across the province.

Insights from Legal Experts

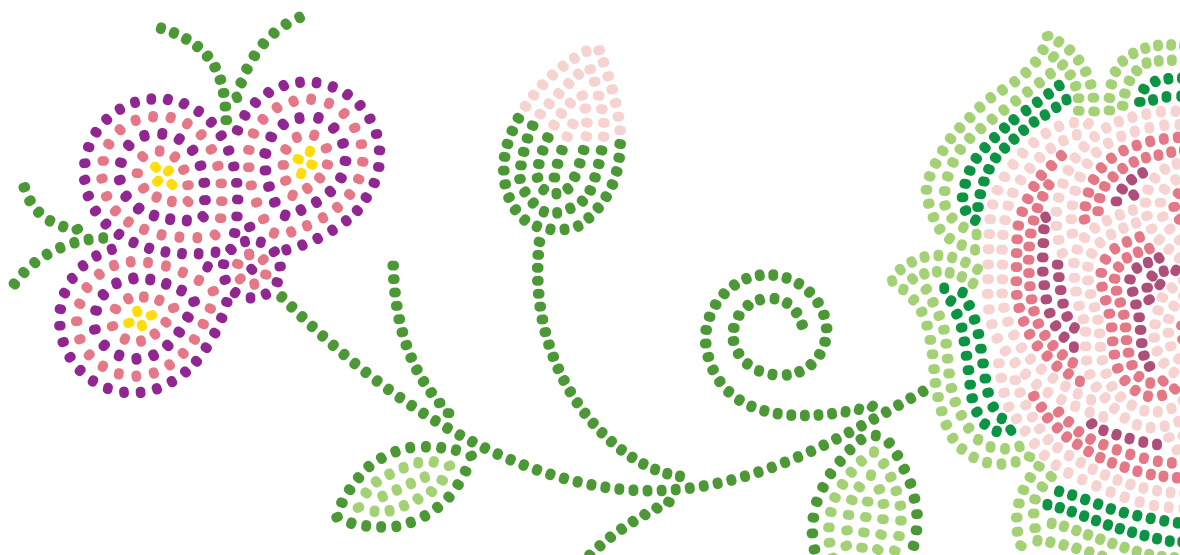
WE HEARD BUILDING TRUST WOULD BE CRITICAL TO THE SUCCESS OF THE JUDICIARY

- Getting support from different groups, both in the community and the government, will be critical in creating a Métis court system.
- If this judicial system is not separate from MN-S, it will contain a high risk for a security breach of highly confidential documents.
- Politics generally is a tool for division—need to be sure it is separate from politics.
- Love the idea of the visitors and then them being the court advisors also.
- Builds capacity, trust, expertise, culture, and trust!
- Always frame this into the community voice—you have to have community trust or it will not fly.
- Justice comes rife with lack of trust and tons of history of abuse or power and process
- Trust is only built as organizations and parties meet
- Law is called a practice because it is practicing each day to follow a legal system—this is true for all of the community too.
- **shaapoonakwun** (“transparency”).
- “A three-person panel is preferred as it provides the necessary checks and balances on the decision-makers.”
- You can call out colonialism and should.
- Always discuss process so no one is blindsided.
- People trust therefore there is meaningful engagement.
- “I am most concerned with attaining the Tribunal’s necessary independence from the Métis Nation of Saskatchewan’s governance system. Moreover, achieving independence is a particularly important goal for the community as it has been a concern expressed by members in the MN-S constitutional consultation sessions.”



WE HEARD MÉTIS LANGUAGE, CULTURE, AND PROTOCOLS SHOULD BE EMBEDDED IN THE JUDICIARY

- People want an honest approach based on our own values. Culture + healing + shared community values restore relations: it requires language, feasts, healers.
- Community courts are the way to go—must get community to take responsibility. A community building tool.
- Good advice for healthy outcomes could come from anyone; the court should be open to listening to all kinds of people.
- Include Elders and Youth in the process, both in the community and in the court model.
- The names and labels and language we use and the process of the judiciary and its interactions with people are important and must be carefully considered if we want the judiciary to make good decisions for MN-S.
- Métis people will want to be more involved.
- A format that offers more inclusion, cultural aspects, and flexible decision making is very possible to create.
- Establishing a panel to support and participate in decision-making and to give advice in areas of specialization. For example, in a case about hunting or trapping, they could ask for help from trapping experts; they could set up a group of advisors ready to help with different cases.
- An Elder and a young person could be selected as a permanent part of the judiciary or could be selected as advisors. The idea is to get advice from a diverse group of people of all ages, genders, locations, languages and professions and abilities.
- Women also need key positions, potentially leadership roles, which would re-establish the pivotal role women had in the leadership of traditional Métis governance.
- “How would love hold up as a legal principle?”
- You have to be positive.
- Be bold and imaginative or you will be stuck.
- Māori Land Court and Waitangi Tribunal Court ensures claimants have access to experts and resources.
- Indigenous laws are within language.
- Emphasize responsibility, process, context.
- Parties discuss—good relations, bad relations and hoped for outcomes with justification.
- Teach our traditions and customs and language and laws.
- Outside community—teach the employers and government people about our processes.
- The entire process has to be really seen through a colonial lens—“Diversity is a reality—Inclusion is a Choice.”



WE HEARD JUSTICE MUST BE RESTORATIVE AND PROACTIVE IN THE JUDICIARY

- We are living through an intergenerational traumatic past and it will take an intergenerational response to make things better.
- Our justice process could be healing. We don't drop people; we support individual and community, so we need a healing process.
- Provide supports to our membership in court processes at various/ multiple stages. Psychological, Social, Physical, and spiritual supports.
- Check in on people and make it easier for them to come back when they're not upset or in trouble. This helps create a good relationship with the court system, and ensures justice is done right and keeps people healthy (Some drug courts have been successful with this approach).
- Include mediators right in Métis communities to help solve problems early, before they escalate.
- All courts should be centered around health—this then stops courts and police from using criminal justice for all social issues.
- I love the idea of follow up! Justice support workers—yes!
- ***kiihtwaam ki pimatishiihkoon*** (“make live again”)
- “Listen to community input, they know best the people, the context, and the future issues and the potential for success.”

WE HEARD THAT THE JURISDICTION AND AUTHORITY OF THE JUDICIARY MUST BE VERY CLEAR

- Be ready and open for criminal courts to come asking you to handle a backlog of cases in their courts differently. You'll do a great job because you really care about the people and their families you're making decisions for. You'll be able to understand the real problem that brought the issue up in the first place and see beyond just the wrong actions.
- Identity will play a significant role in decisions and consequences.
- Sort out all the laws before setting up the court to prevent delays in decision-making caused by unclear or confusing laws.
- The Métis Nation—Saskatchewan build capacity to create its own laws for setting up this judicial system, and officially recognize the judiciary in the MN-S Constitution.
- Laws must reflect both the inherent rights of self-determination and autonomy that the Métis Nation of Saskatchewan has over their own laws while also including the necessary checks and balances on MN-S leadership to promote citizens' trust in their government.
- Clear legislation preambles would assist the Judiciary in the interpretation of the laws being written and imposed on people's lives.
- Make it clear to non-Métis courts that they must respect the MN-S' expertise in interpreting and applying their own laws.
- Get decisions certified so they can be enforced by province.

Insights from Administrative Law Research

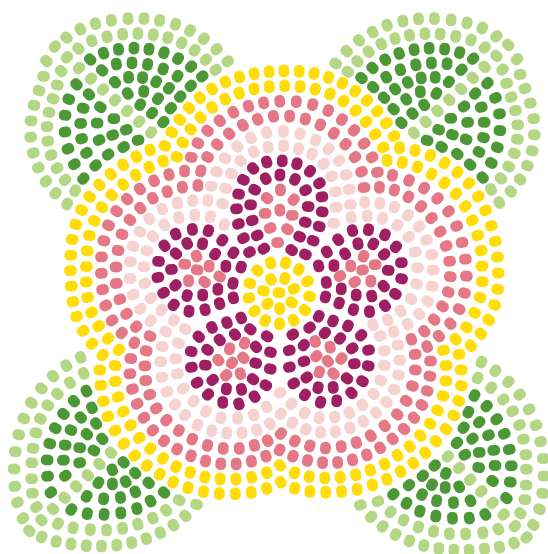
The Design Team hired researchers to review Canadian administrative law to better understand how to create a Métis judicial system with natural law in mind. The report highlighted a few important ideas to consider, including:

- The names and labels and language we use and the process of the judiciary and its interactions with people are important and must be carefully considered if we want the judiciary to make good decisions for MN-S.
- When considering a judiciary that fits the Métis communities, it would be wise to look at other Indigenous judicial systems. A review of the Red River Quarterly General Courts shows that even then people preferred to talk things through and solving problems as a community.
- Métis people will want to be more involved, if we avoid using the old court system.
- A format that offers more inclusion, cultural aspects, and flexible decision-making is very possible to create.

The researchers recognize that creating a Métis court system in Saskatchewan can help strengthen Métis ways of justice and maintain care and supports for its own rules/laws and processes. The report also explained the importance of involving groups of people, like Elders and Youth, in the system and suggested:

- Establishing a panel to support and participate in decision-making and to give advice in areas of specialization. For example, in a case about hunting or trapping, they could ask for help from trapping experts; they could set up a group of advisors ready to help with different cases.
- An Elder and a young person could be selected as a permanent part of the judiciary or could be selected as advisors. The idea is to get advice from a diverse group of people of all ages, genders, locations, languages and professions and abilities.
- Women also need key positions, potentially leadership roles, which would re-establish the pivotal role women had in the leadership of traditional Métis governance.

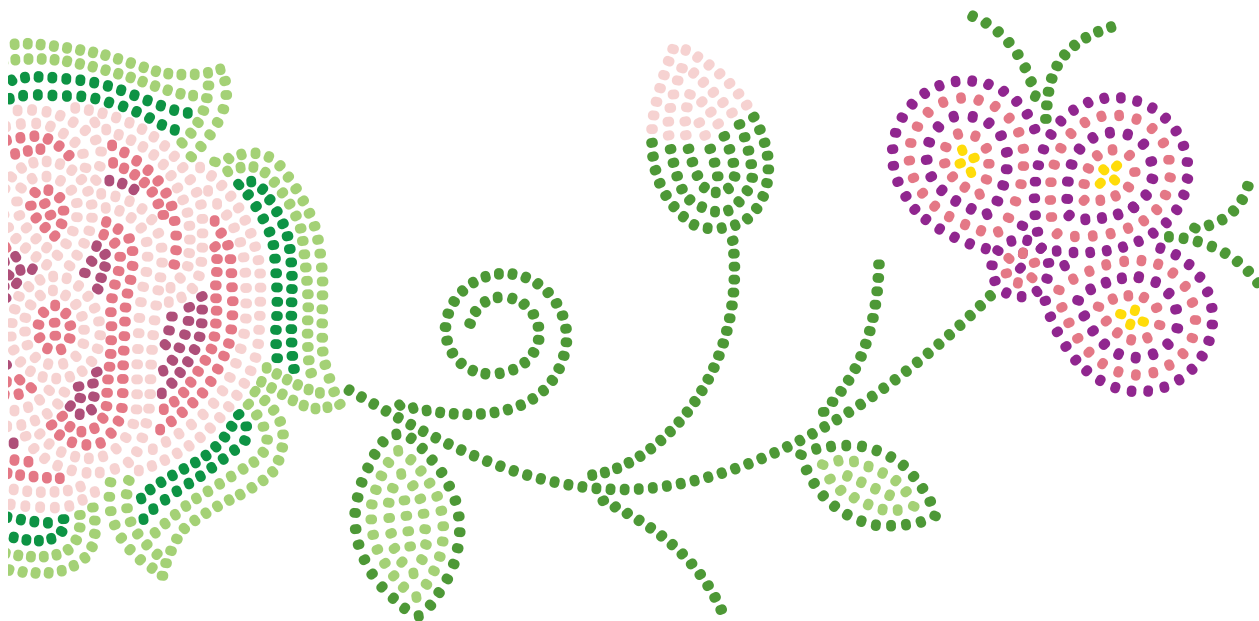
The report offered advice on assisting community members in bringing forward cases for consideration. It suggested hiring a helper to assist community members who have raised concerns. Sometimes, people find it hard to explain their concerns. As such, the helper could make things smoother for everyone, to apply the principles of access to justice and help identify less serious complaints. The report also talked about the court system needing to be independent and separate from the rest of the Métis Nation—Saskatchewan government. The Métis Nation—Saskatchewan could review existing legal tests to ensure the courts remained independent.



Insights from UNDRIP Conference Participants

During the May 5-6, 2023, MN-S “Métis Rights Conference on UNDRIP”, attendees considered options for “Designing a Dispute Resolution System” and establishing a Métis Court system. In separate discussion groups, they provided responses to the question: “What should be “Métis” about a Métis Court or legal institution?”, including:

- A Métis Court system should require a Métis governance structure based on traditions and principles.
- Métis culture must be reflected in a Métis-specific and Métis-driven court process (e.g., an Elder must be present, provide access to smudging, include Michif translators, etc.).
- Provide supports for anyone involved in the Métis judicial system (and their families).
- A Métis Court should have a familiar and welcoming space that reflects Métis culture.
- Involve qualified non-political Métis lawyers, judges, and juries; require record checks and advance training on Métis history, culture, community, and family structure.
- Decisions of the court must be support-based, restorative, and could involve consultation with Elders, matriarch circles, Youth, the accused, and others; follow-up services are critical to achieving success.



Insights from PMC Leadership

The following insights were offered by the PMC in response to these three questions:

- 1 How will the court be seen as successful and sustainable?
- 2 How will leaders know they can trust the new court?
- 3 How will the new court include our culture?

HOW WILL THE COURT BE SEEN AS SUCCESSFUL AND SUSTAINABLE?

- A place where everyone can talk without being judged.
- Trustworthy and reliable people are part of the court.
- They really care about doing good work.
- Our important beliefs and values are reflected, like how grandparents have rights.
- The court focuses on fixing things, not punishing people.
- It's helpful and caring.
- It supports us with important people in our lives.
- Experts are chosen for their knowledge.
- Sharing circles help share the whole story, not just legal aspects.
- It helps bring people together.
- When you know how it works, you'll trust it more.
- It's open about how it works.
- Remembering our connections and teachings, like those from Jim Brady (Apitowcousin).
- Remembering our identity, and recall not being called "Métis".
- Only experts should run it.
- No need for outside services like social services.
- Our court will understand and support us raising our grandchildren.
- Questioning why the court makes the final decisions.
- Trusting ourselves to use our court.
- Trust in the Métis political body means trust in the court.
- Feeling included means success.
- "If you build it, they will come".
- Showing progress will draw people in.
- Believing in ourselves and finding the positive.
- We've always governed ourselves; we can do this.
- Being dependable and true to our community.
- It's adaptable, open, and consistent.
- Taking care of the land.

HOW WILL LEADERS KNOW THEY CAN TRUST THE NEW COURT?

- It's open about how it works and makes decisions on its own.
- Leaders can see that the court is listening.
- The court uses facts, feelings, and technical details.
- We just know the system feels right.
- Feeling insecure can make us angry—let's solve that.
- If leaders believe in it, others will too.
- The court understands and shares feelings.
- Are we, the leaders, involved in it?
- How does it work with us?
- It shows good intentions to our community, making us all work together.
- We use, depend on, and trust the court!
- We have to trust it because we're the ones making it.
- Feeling like we're part of it makes us trust it more.
- If we're all working together towards the same goal, we'll trust it.
- To make it work, we need to keep supporting it.
- It should show that our community can make its own decisions.

HOW WILL THE NEW COURT INCLUDE OUR CULTURE?

- It's based in our community and includes our culture and identity from the start.
- We get to share our own stories.
- We understand that not everyone in Saskatchewan is the same, so the approach can't be the same everywhere.
- We want to include witnesses and even have a youth jury (like a story we heard from the north).
- Starting with a Métis fiddle song, making space for families to be part of the process, rebuilding structures within the MN-S, and restoring our communities with local people having roles and voices.
- We're all family here and that feels familiar.
- This will feel like a system made by Métis, for Métis.
- It's all about kinship—we're all connected.
- Everyone can speak up and be heard.
- It aims to fix problems without harming people or families.
- A Registry that recognizes who is Métis.
- We need to be able to stand strong on our own.
- Speaking for ourselves is part of our tradition.
- Remembering our old ways, our lands, and our rules that grew from our community's respect.
- Taking responsibility is a big part of this.
- Including our cultural identity, language, and Métis distinctions.
- This system is built on our values, like hunting laws, with both consequences and support.
- It reflects Métis culture.
- We change what doesn't work for us, based on our unique characteristics.
- We're dedicated to learning and preserving our ways, and ensuring kids have access.
- Métis people on this court, sharing our teachings, will ensure it reflects Métis culture.
- Expect stories, flags, and music—we always bring that.
- Elders and Knowledge Keepers will be involved.
- It will be unique in how we treat one another.
- It will involve women and experts.

Insights from MN-S Dialogue Forums

2022 MN-S DIALOGUE FORUMS ON THE JUDICIAL PROCESS

Participants offered the following suggestions:

- Set up a special court (Judicial Tribunal) to handle arguments and solve problems.
- Study the old laws (including the Laws of the Buffalo Hunt) and alternate ways of making decisions and solving problems.
- Include Elders and Legal Experts in decision-making.
- Create ways to solve arguments in local and regional groups.
- Create rules to hold leaders accountable.
- Use MN-S rules to remove leaders who aren't doing their jobs and allow citizens to vote out any leaders they no longer trust.
- Make sure decisions are clear and final, so no one keeps arguing.
- Keep personal feelings out of official decisions.
- Support local leaders and make sure the Judicial Tribunal is fair and understands the needs of different regions.

2023 11 24 FALL MNLA DIALOGUE FORUM

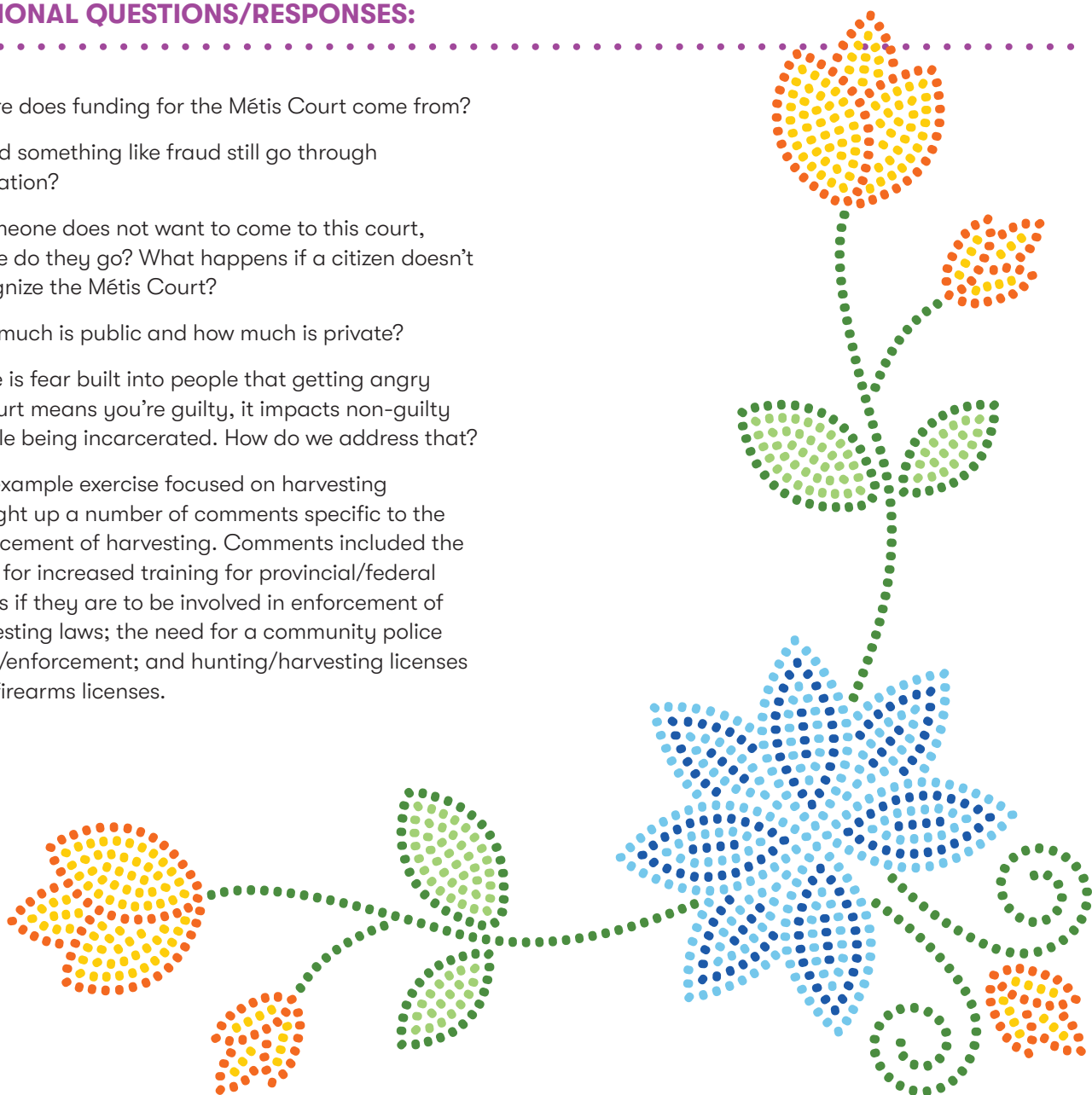
Primary Themes/Responses from Delegates:

- What the Métis Court will have jurisdiction over was a regular theme in each session. Many comments and questions focused on criminal proceedings and provincial/federal laws and clarification was needed for all sessions about what laws the Métis Court would apply to.
- A number of questions came up regarding where the laws being enforced by the Court would come from and who had input into those laws.
- How enforcement would occur was brought up in all four sessions. While it was noted that enforcement/ investigation would occur outside the Court, it was a regular theme in the discussions.
- Sentencing circles and the potential for application within the Métis Court were brought up in all four sessions.
- Space for a voice and input from the person being charged was discussed in each session, with delegates highlighting that the person must have space to tell their story and to have input on who would be named to their Panel/Council (Youth, Elder, Expert).
- Potential conflict of interest between the people involved in a case and the Panel/Council/other Métis Court workers needs to be considered, as does who the people involved in the case or the person being charged want to have involved on their behalf.
- Multiple delegates stated that the decision or ruling within the Métis Court should not come from the Judge or reside with 1 person. The whole Panel/ Council should be involved in the decision. Some questioned including a Judge within the structure at all. Some suggested the Judge should make a recommendation but the Panel/Council should make the decision.
- Most delegates noted the Judge and Panel/Council should only include Métis but one session noted non-Métis could also be involved.
- There was general agreement that Panel/Council should consist of community members and have knowledge of the specific community involved in the case. It was also noted that the community must be involved in identifying the Youth, Elders and Knowledge Keepers/Experts named to the Panel/ Council.

- To make this system restorative, there needs to be a link to also change and amend laws and legislation where needed—if the law is wrong or impacting people in an unexpected way, it has to be amended so that it doesn't just keep happening.
- Intake was highlighted as something that should always happen in person and should not have limitations applied to it—intake meetings should take as long as they need to for the people involved.
- It was noted that the Panel/Council should be connected to or involved in the mediation stage of the process, so that their knowledge and input can be applied there too.
- The need for advocacy and wrap-around supports for people after something has gone through this court were also noted.

ADDITIONAL QUESTIONS/RESPONSES:

- Where does funding for the Métis Court come from?
- Would something like fraud still go through mediation?
- If someone does not want to come to this court, where do they go? What happens if a citizen doesn't recognize the Métis Court?
- How much is public and how much is private?
- There is fear built into people that getting angry in court means you're guilty, it impacts non-guilty people being incarcerated. How do we address that?
- The example exercise focused on harvesting brought up a number of comments specific to the enforcement of harvesting. Comments included the need for increased training for provincial/federal forces if they are to be involved in enforcement of harvesting laws; the need for a community police force/enforcement; and hunting/harvesting licenses and firearms licenses.



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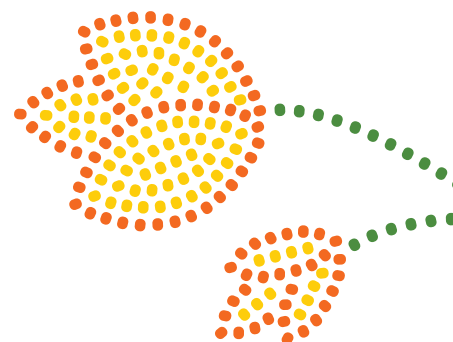
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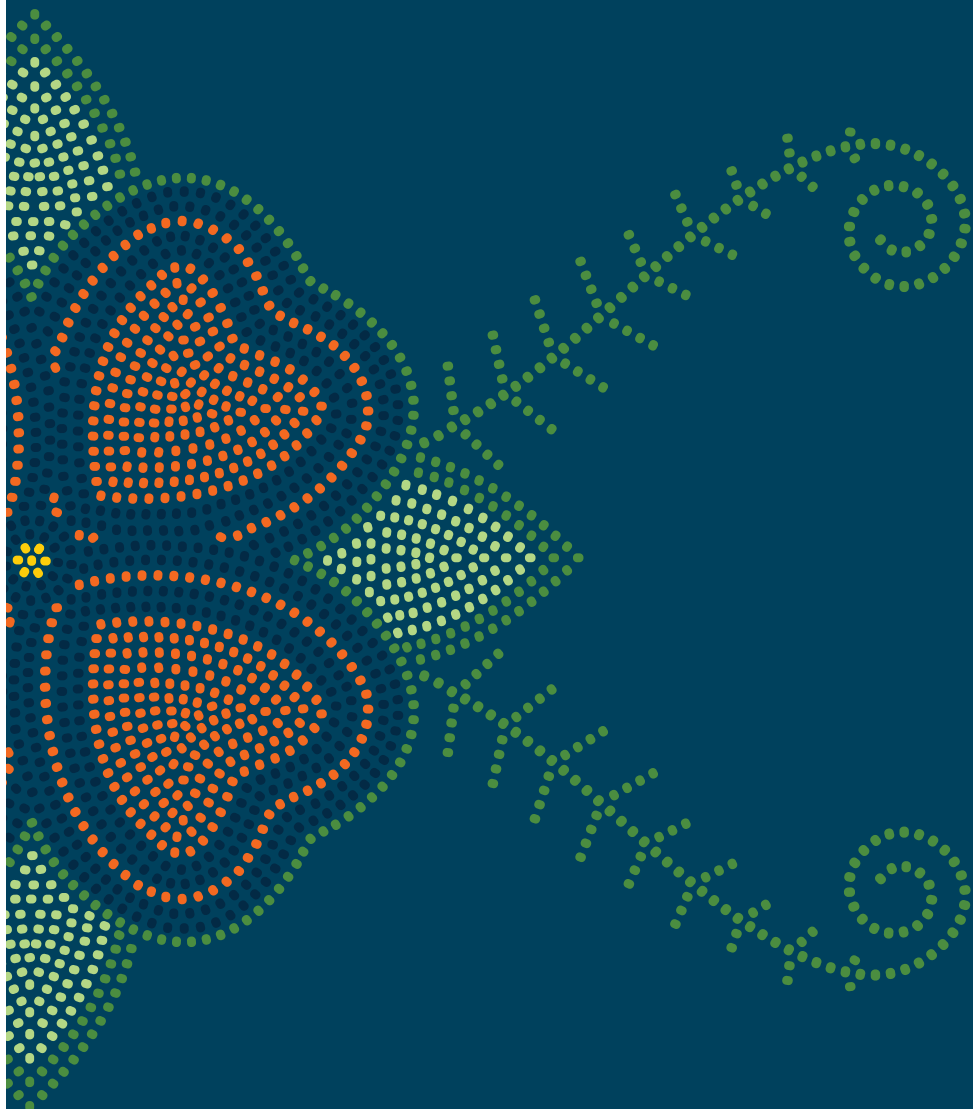
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