



BC FIRST NATIONS
JUSTICE COUNCIL

LEGAL AID SERVICES TRANSITION



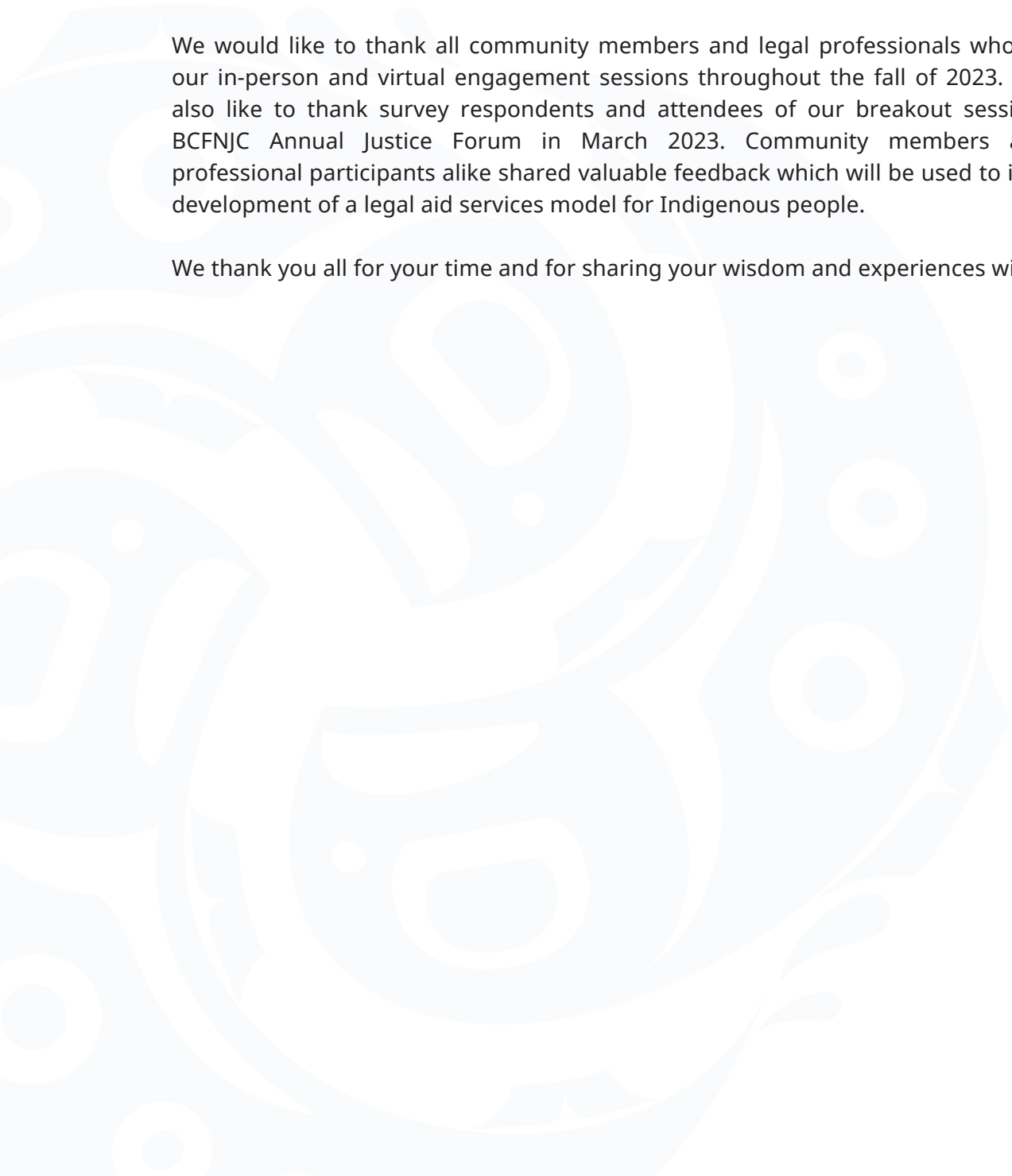
COMMUNITY ENGAGEMENT SUMMARY

Acknowledgements

BC First Nations Justice Council (BCFNJC) would like to acknowledge and express our sincere gratitude to the Elders who attended our Fall 2023 legal aid transition engagement sessions. Many who joined our sessions opened and closed for us in a good way. Your teachings and guidance help us carry out this important work and we raise our hands to you.

We would like to thank all community members and legal professionals who attended our in-person and virtual engagement sessions throughout the fall of 2023. We would also like to thank survey respondents and attendees of our breakout session at the BCFNJC Annual Justice Forum in March 2023. Community members and legal professional participants alike shared valuable feedback which will be used to inform the development of a legal aid services model for Indigenous people.

We thank you all for your time and for sharing your wisdom and experiences with us.



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Executive Summary



BC FIRST NATIONS
JUSTICE COUNCIL

The BC First Nations Justice Council (BCFNJC) is a province-wide Indigenous organization and non-profit society created by First Nation leaders in BC in 2016. BCFNJC's mandate is to reform the current justice system and to also work towards restoring traditional laws, structures, and healing, advancing self-determination over justice for Indigenous people. In March 2020, BCFNJC, together with the Province of BC, released the [BC First Nations Justice Strategy](#) (the "Strategy"), which was co-developed based on extensive engagement with BC First Nations, legal system professionals and the Province of BC. Guided by Strategies 3 and 5 of the Strategy, BCFNJC is working in partnership with the Province of BC and Legal Aid BC (LABC) to transition legal aid¹ services for Indigenous people from LABC to BCFNJC, with services delivered through BCFNJC's Indigenous Justice Centres (IJs).

BCFNJC is in the process of developing an innovative and holistic model of legal aid services that reflects the need for better, more effective, more culturally informed legal aid services for Indigenous people. This new model is being created through fulsome engagement across BC, to understand the current state, and to plan for the future state of legal aid services for Indigenous people in BC.

From September 19, 2023 to January 9, 2024, BCFNJC's Legal Aid Services team, in partnership with the Indigenous Justice Secretariat (IJS), travelled throughout the province to gather feedback from Indigenous people, justice service providers and legal professionals on the current and future state of legal aid services for Indigenous people. BCFNJC held 18 in-person community sessions, 17 in-person legal professional sessions, 3 virtual community sessions and one virtual lawyer session. Additional engagement was also held via an online survey and through breakout sessions facilitated during the 2023 BC First Nations Justice Forum held from March 6-8, 2023 in Vancouver, BC.

During engagement sessions, we asked participants to reflect on current barriers, issues and gaps in legal services for Indigenous people. We also asked participants what they believed was working well in the current model, and what an Indigenous-led model of legal aid services should look like.

The following report aims to present what we heard during engagement sessions and identify recommendations to guide the development of a legal aid services delivery model for Indigenous people. The feedback we gathered can be summarized into 7 key themes and 16 additional themes.

The 7 key themes we heard included:

- Accessibility
- Eligibility Criteria
- Limitations of the Current Model
- Holistic and Wrap-around Supports
- Community Collaboration and Relationship Building
- Cultural Competency and Trauma-Informed Services
- Expanding Legal Services

From these themes, Community and Legal Professional participants offered 44 Recommendations. A full recommendations list can be found in Appendix B.



About BC First Nations Justice Council

The BC First Nations Justice Council (BCFNJC) is a province-wide leadership body and non-profit organization established in 2016 by the BC First Nations Leadership Council (comprised of the political executives of the BC Assembly of First Nations, First Nations Summit and the Union of BC Indian Chiefs). BCFNJC receives its mandate from the Chiefs of British Columbia and represents First Nations in BC on justice-related issues to bring about transformative change to the legal system. This work includes improving access to justice for Indigenous people, repairing the damages of the imposed colonial system and supporting Nations to advance self-determination and the revitalization of Indigenous legal orders, traditions and systems of justice. At the direction of First Nations communities, BCFNJC works to overcome the historical and ongoing impacts of colonialism, and build a responsive, empowered justice system that can serve First Nations peoples for generations to come.

BCFNJC is led by six directors appointed by the First Nations Leadership Council and currently has a staff complement of over 100 people who are working hard to implement the BC First Nations Justice Strategy (the “Strategy”) across BC. The Strategy includes 25 strategies and 43 lines of action aimed to reduce the number of First Nations people who become involved with the criminal justice system, improve the experience of those who do, increase the number of First Nations people working within the justice system¹ and support First Nations to restore their justice systems and structures. To read the full text of the Strategy, please visit: <https://bcfnjc.com/why-a-bc-first-nations-justice-strategy/>.

Specifically, Strategies 3 and 5, as reproduced below, and their corresponding lines of action aim to improve Indigenous access to justice by addressing gaps in services under the current provincial legal aid system.

[1] Throughout this report, we use the term “justice system” to refer to the colonial legal system imposed upon and utilized against Indigenous peoples as a tool of colonialism in Canada. When we refer to the “justice system” we are often referring to the criminal justice system, child protection system and family legal system simultaneously. BCFNJC recognizes that for many Indigenous peoples, the Canadian justice system is not “just” and does not represent Indigenous values, governance traditions or legal orders.



Strategy 3: First Nations Justice Capacity and Legal Services.

First Nations in BC have provided a clear mandate to the BCFNJC to advocate to:

- Challenge approaches that contribute to the growing overrepresentation of First Nations children and youth in the care of government, and First Nations men and women in incarceration; and,
- Productively engage with the government to advance effective strategies that can achieve better outcomes for our people in the justice system.

Strategy 5: Establish First Nations Legal Services.

Ensuring increased and more effective access to justice, and in particular defense counsel, for Indigenous accused. Strategy 5 calls for BCFNJC to develop a workplan to transition legal aid services for Indigenous people in BC from the Legal Services Society² to an Indigenous controlled entity.

BCFNJC is supported in this work by the Indigenous Justice Secretariat (IJS). The IJS, established in March 2023, fulfills the commitment made by the Province of BC in Strategy 9 of the Justice Strategy:

Strategy 9: Establish a Cross-Ministry Indigenous Justice Secretariat under the leadership of the Ministry of Attorney General to lead the transformative work within government as identified within this Strategy.

[2] Also known as Legal Aid BC (LABC).

The IJS is housed within the Ministry of Attorney General. Under the leadership of an Indigenous Assistant Deputy Minister, the IJS provides cross-government leadership through a coordinated approach to taking actions to reduce overrepresentation of Indigenous people in justice systems and support the restoration of traditional Indigenous justice systems.



Legal Aid Services Transition for Indigenous People

Current State

Legal Aid BC (LABC), a provincial Crown Corporation created by the Legal Services Society Act, provides legal aid services, including information, advice and representation, to all people (who qualify) in British Columbia. LABC's priority is to serve the interests of people experiencing barriers to accessing the legal system. LABC is funded by the Province of BC, with additional support from the federal government, the Law Foundation of BC and the Notary Foundation of BC. LABC is accountable to the public and is independent of government.

Under section 9 of the Legal Services Society Act, LABC's mandate is to help people to solve their legal problems and to facilitate their access to justice, establish and administer an effective and efficient system for providing legal aid to people in BC and provide advice to the Attorney General about legal aid and access to justice for people in BC. Section 9 also states that LABC is to:

- Give priority to identifying and assessing the legal needs of people with low incomes in BC,
- Consider the perspectives of both justice system services providers and the general public,
- Coordinate legal aid with other aspects of the justice system and community services and
- Be flexible and innovative in carrying out its mandate.

Indigenous people make up approximately 30% of all Legal Aid clients in British Columbia. In some rural regions, up to 90% of Legal Aid clients are Indigenous. There remain broad and systemic concerns about the availability of counsel for Indigenous peoples, and the current status quo of legal aid services is a contributing factor to the overrepresentation of Indigenous men, women and youth in the criminal justice system and the increased apprehension of Indigenous children into the child welfare system. For many years, First Nations have been advocating for the transformation of the legal aid system in BC. Part of this advocacy has included calls for First Nations control over legal aid funding for Indigenous peoples.

There are a number of specific concerns with the current legal aid system that have been identified through BCFNJC research and engagement to date, including:

- Issues with access to legal counsel including barriers to eligibility.
- Issues with lack of cultural competency of many legal counsel.
- Lack of consistency with ensuring that Gladue principles apply at every stage of the process.
- Lawyers on the current tariff model are not adequately compensated for the amount of time that it takes to provide better legal services to Indigenous clients, leading to an insufficient amount of time spent with Indigenous clients.
- Legal Aid coverage begins too late in the process and should start before charges so that there is an opportunity for early diversion.
- Lack of consistency using diversion options and programs.

Transition Plan

In February 2022, BCFNJC signed a Memorandum of Understanding (MOU) with LABC to establish a collaborative relationship to develop a plan to transfer responsibility for the delivery of legal aid services for Indigenous peoples to BCFNJC. BCFNJC is working in partnership with LABC and the province of BC to implement the transfer of legal aid services for Indigenous people. BCFNJC is in the process of developing an innovative and holistic model of legal aid services that reflects the need for better, more effective, more culturally informed legal counsel and legal aid services for Indigenous peoples. This new model is being created through fulsome engagement with individuals and organizations across the province, to understand the current state, and plan the future state, of legal aid services for Indigenous peoples.

When BCFNJC takes over responsibility for the administration of legal aid for Indigenous people in British Columbia, it will be through this new model and delivered primarily through BCFNJC's IJCs.

IJCs are legal clinics that offer culturally appropriate justice services to support Indigenous people in their interactions in the colonial legal system. These IJCs operate with a mission to:

- Keep Indigenous peoples safe by reducing incarceration.
- Divert Indigenous peoples to a healthy path away from justice involvement.
- Make the justice system experience more Indigenous.
- Make it easier for Indigenous people to navigate the justice system and obtain support.

BCFNJC currently has nine IJCs located throughout the province, in the cities of: Prince Rupert, Prince George, Merritt, Chilliwack, Vancouver, Victoria, Nanaimo, Kelowna and Surrey. There is also a Virtual IJC. An additional six IJCs will open in 2024/2025 for a total of 15 IJCs and one Virtual IJC.

In July 2023, BCFNJC developed a plan to carry out the work required to transition legal aid services for Indigenous people from LABC to BCFNJC. The plan sets out a phased approach as follows:

- Phase 1: Research, Pre-Engagement and Team Development
- Phase 2: Province-wide Engagement
- Phase 3: Model Development and Further Engagement
- Phase 4: Finalize Model, Pilot Components of the Model, Further Engagement and Develop Implementation Plan
- Phase 5: Implementation of Model

Phases 1 and 2 are complete, and the following report outlines the province-wide engagement methodology, feedback and recommendations and next steps for the transition of legal aid services to BCFNJC.

Engagement Methods

BCFNJC, in partnership with IJS, conducted engagement sessions across the province with Indigenous peoples, community service providers, partnering organizations and legal professionals to gather feedback on the current and future state of legal aid services for Indigenous peoples. Engagement opportunities were provided at the BCFNJC Annual Justice Forum, in-person, virtually and through an online survey to reach a broad audience.

BCFNJC Annual Justice Forum

The BC First Nations Annual Justice Forum was held March 6-8, 2023, and offered the first opportunity for feedback on the current and future state of legal aid services for Indigenous peoples. A breakout session, Legal Aid, Indigenous Justice Centres and Gladue, was held on March 7, 2023. The feedback and recommendations from this and other breakout sessions can be found in the [BC First Nations Annual Justice Forum: What We Heard Report](#).

In-person and Virtual Engagement

BCFNJC, with the support of IJS team members, visited 18 locations across the province and held 18 in-person community engagement sessions and 17 legal professional engagement sessions from September to November 2023 and held 4 virtual engagement sessions in November 2023 and January 2024. See Appendix D for the engagement schedule.

Locations for in-person engagement sessions were selected based on proximity to the greatest number of First Nations, Métis Chartered Communities, IJCs, First Nations Court, Circuit Courts, Parents Legal Centers and other community service providers. Other considerations were taken into account as well, such as ensuring geographic diversity (e.g., visiting the North and Southeast where there are fewer services but a definite need), and current Legal Aid client location statistics.

Once locations were selected, invitation lists were created based on the location of First Nations, Métis Chartered Communities and justice service providers. For community sessions, invitations were sent to Chiefs and Councils, and the current justice contact for each First Nation (who were then invited to distribute amongst their members), Métis Nation BC Ministry of Justice staff (who distributed to Métis Chartered Communities) and justice service providers. For legal professional sessions, invitations were distributed through LABC and the Association of Legal Aid Lawyers. Invitations were sent out two weeks in advance of the sessions³. However, the sessions were open to anyone to attend. BCFNJC also published an engagement calendar on their website and sent out invitations and communications broadly through various channels, including social media.

The community sessions were 2.5 hours in length and the legal professional sessions were 1 hour in length (to accommodate courthouse lunch breaks). When more time was needed for discussion and questions, sessions were extended. Elders were present at almost all sessions and opened and closed the sessions in a good way, as well as provided knowledge and feedback. Following the Elder's opening, all participants introduced themselves. Participants offered information at their discretion. Although most (if not all) participants offered information about their Indigenous ancestry and/or affiliation, this information was not used for the purposes of analyzing feedback. Comprehensive notes were taken during the sessions. One session was recorded due to lack of note-taking resources. Participants were informed that BCFNJC would be

[3] Unfortunately, due to capacity limitations and the volume of engagement in 2023, invitations did not go out as early as we would have liked. We recognize that this is not best practice and we will strive to give more notice for future engagements.

compiling feedback into a report for distribution but were assured that feedback would be anonymous.

The questions for the community and legal professional sessions are provided in Appendix E.

Online Survey

An online survey was available on BCFNJC's website and was provided in printed form at the engagement sessions. The survey included open-ended questions. Participants were also asked about their ancestral and geographic backgrounds, and their experience with legal aid. Surveys completed during engagement sessions were incorporated into the comprehensive notes.

The online survey questions are provided in Appendix F.

Feedback and Recommendations

The themes that emerged from the engagements and surveys were then compared, consolidated and summarized. The following sections outline the key themes and additional themes from all engagements and centre around barriers and gaps in the current legal aid model, and the most important features of an Indigenous-led legal aid services model⁴. From this feedback emerged 44 recommendations that are discussed in this report.

In compiling and analyzing the feedback from the engagement sessions, the following key themes emerged:

- Accessibility
- Eligibility Criteria
- Limitations of the Current Model
- Holistic and Wrap-around Supports
- Community Collaboration and Relationship Building
- Cultural Competency and Trauma-Informed Services
- Expanding Legal Services

[4] During the engagements, BCFNJC received feedback about BCFNJC services that related to the work of other departments. This feedback was forwarded directly to those team leaders. For example, feedback about Gladue services were forwarded to the Gladue Services team. Comments regarding police conduct were forwarded to BCFNJC's Policing, Oversight and Accountability team, and so on.

Barriers and Gaps in the Current Legal Aid Model

We asked both Community and Legal Professional participants what issues, barriers and gaps exist with current legal aid services for Indigenous peoples. Engagement participants reflected on challenges such as accessibility, eligibility criteria and the need for transformation of the legal aid model. Many participants offered suggestions to reduce or eliminate barriers for Indigenous peoples in BCFNJC's legal aid service delivery model.

Key Themes

In compiling and analyzing the feedback from the engagement sessions, the following key themes related to Barriers and Gaps in the Current Legal Aid Model emerged:

- Accessibility
- Eligibility Criteria
- Limitations of the Current Model

The following section explains these key themes in more detail and identifies recommendations that have emerged from each of these themes.

Accessibility

- **Recommendation 1:** Partner with community organizations to assist in providing access to resources (e.g., internet, phone, computer, printer, etc.) to access legal services.
- **Recommendation 2:** Consider providing legal services in Indigenous communities and on reserves via outreach programs or satellite offices.
- **Recommendation 3:** Provide in-person legal services via a brick-and-mortar model.
- **Recommendation 4:** Provide virtual legal services in tandem with in-person legal services.
- **Recommendation 5:** Expand legal service hours and ensure services are provided in a timely fashion (e.g., after-hours, drop-in services, 24-hour response turnaround).

Indigenous peoples who find themselves in contact with the justice system often face barriers due to the ongoing impacts of the colonial legal system and unequal access to justice services. Both the Community and Legal Professional participants noted that accessibility to justice services is a prominent barrier in the current legal aid model. When discussing accessibility, participants referred to the lack of access to resources that are required to complete applications for legal aid services and to take part in the justice system (e.g., internet, phone, computer, printer, etc.). Participants in rural or remote areas, or smaller communities also referred to the lack of transportation available for clients to attend appointments with lawyers or to be present in court for legal

proceedings. Both Community and Legal Professional participants noted that Indigenous communities require both in-person and virtual service delivery models. Finally, participants noted that legal services are often unavailable (i.e., the Legal Aid office is only open a few days a week) with slow response times.

— “

In northern communities... In my view, we're not talking about gaps – we're talking about a total absence of accessibility for services. Not just Indigenous peoples, but everybody.

” —

Participants told us that BCFNJC should offer outreach services to bridge the gap between the legal system and Indigenous communities, bringing legal supports and services where they are needed most. These may take the form of legal clinics, one-on-one legal services or intake applications or holistic support services. Outreach services may be particularly useful for the provision of legal services in rural or remote communities, where transportation options may be limited. Some communities, it was acknowledged, already offer outreach and other legal services. While we heard the need to move forward with improving the availability of outreach legal services, we do not wish to duplicate the great work already being done in Indigenous communities. Rather, we seek to amplify what already exists and look to fill gaps where those services don't yet exist.

Eligibility Criteria

- **Recommendation 6:** Reduce the barriers to being eligible for legal aid services (e.g., financial verification requirements, client identification alternatives, Indigeneity policies, etc.).
- **Recommendation 7:** Eliminate or change the income eligibility requirement for legal aid services so that more Indigenous peoples are eligible to receive legal representation.
- **Recommendation 8:** Expand legal aid coverage to begin earlier in the legal proceedings (i.e. pre-charge).

Additional barriers to Indigenous peoples' access to justice are found in the eligibility criteria for current legal aid services. Community participants shared the challenges they have faced with the current eligibility requirements. These challenges included the difficulties of financial verification (i.e., high threshold, onerous process, requirement to complete tax returns, etc.), client identification (i.e., not all clients have a piece of approved identification, an address or a phone number) and Indigeneity verification (i.e., status cards, band memberships, self-identification, etc.). Both Community and Legal Professional participants mentioned often needing to manipulate legal aid applications in order for their clients to be eligible for legal aid through the current system.

In terms of financial eligibility requirements, participants told BCFNJC that the current financial thresholds make it difficult for many Indigenous people who need legal aid representation to receive it. Many individuals who work full-time, part-time or seasonally exceed the income threshold for legal representation. At the same time, these individuals do not earn nearly enough to be able to afford private legal representation and are either self-represented or take on an immense financial burden as a result.

In addition to income, LABC also takes a potential client's assets into consideration when determining eligibility. We heard that for individuals whose assets are essential to their livelihood, this impacts their future income opportunities. We heard during engagement sessions about fishermen, for example, who are forced to sell their fishing boats to either afford a lawyer or become eligible for legal aid services. Community participants told us that BCFNJC should consider applying eligibility criteria that is flexible and responsive to the needs of Indigenous individuals.

— “ —————
Everyone that goes to LABC needs to prove that they are poor enough to receive services, that's a real tough way to begin a relationship. If this could be done in a way where there isn't a financial requirement, or a risk that you are going to jail or losing your job, that would be great.

————— ” —
Both Community and Legal Professional participants told us that pre-charge legal services and information need to be made available to Indigenous clients. Indigenous peoples who are being investigated should be able to access legal supports, advice and information. Being able to speak to a legal aid lawyer as soon as they are arrested can help prevent charges and formal involvement in the justice system. We heard that providing services only when there is a charge is reactive and involves only the mitigation of further harm rather than the prevention of harm to begin with. We heard that delivering legal services in the pre-charge stage is essential to being proactive in the delivery of our legal services and to achieving our goal of reducing the overrepresentation of Indigenous peoples in the criminal justice system. Legal Professional participants told us that lawyers can more easily assist clients in the pre-charge stage than they can once charges have been laid.

— “ —————
Legal Aid- it's only available if you have an existing legal issue, right. So, it's gotta be triggered by a charge or Ministry [i.e. MCFD] involvement by that time the persons in the system. And it's almost and at that point I'll tell you most lawyers it's all mitigation at that point you know you're not healing them, you're just trying to offset the worst-case scenario. And so, you're always behind.

Limitations of the Current Model

- **Recommendation 9:** Leverage the advantages of the clinical or staff model and tariff model when developing a new model of legal services delivery.
- **Recommendation 10:** When developing a new model of legal services delivery, prioritize the following features:
 - Allocating sufficient time for lawyers to provide quality legal services to Indigenous clients, compared to what is available under the current model.
 - Ensure the new model does not include features that incentivize lawyers to encourage their clients to plead guilty and avoid a lengthy trial.
 - Provide legal services for criminal charges even when incarceration is not imminent.
 - Allow for more time on family and child protection matters to reflect the complexity of these matters for Indigenous peoples.

The tariff model is BC's current legal aid services delivery model⁵. The tariff model is otherwise known as a contract model in which private bar lawyers are contracted to provide legal aid services. An alternative model to delivering legal aid services is a clinical model, also known as a staff model. The clinical or staff model hires staff lawyers to provide full-time legal services to their clients. Participants discussed the advantages and disadvantages of both models. BCFNJC will use the feedback we received, as set out in more detail in the following paragraphs, to explore how best to provide its legal services to Indigenous clients.

Tariff Model

Both Community and Legal Professional participants were openly critical of the current tariff model. One of the most common criticisms was how the current tariff model does not allocate sufficient hours to address legal matters meaningfully and effectively. Both Community and Legal Professional participants would like to see additional time allocated on cases for Indigenous clients in the new model. It was noted that time restrictions in the tariff model "disincentivize communication" as lawyers prioritize more formal aspects of legal services delivery. Additional feedback we heard was that there was a lack of communication between legal counsel and clients, leading to client confusion and frustration. Specific suggestions were to ensure the new model allows for more time for effective communication between counsel and clients.

[5] Note that for child protection matters, Legal Aid BC operates legal clinics known as Parents Legal Centres.

Another common criticism of the current model was the misuse of Criminal Early Resolution Contracts (CERCs). LABC introduced CERCs with the intention of expanding criminal legal aid services to clients who were not otherwise eligible for full representation. CERCs were meant to provide clients with an opportunity to have their case reviewed by an LABC lawyer early in the remand process to determine if a resolution with Crown Counsel might be reached. However, both Community and Legal Professional participants noted that in practice, CERCs have been misused to incentivize lawyers to encourage their clients to plead guilty and avoid a lengthy trial. Community participants, in particular, noted that if CERCs will be incorporated into BCFNJC's model, it will need to be reviewed to ensure they are not misused.

— “

The tariff model incentivizes Legal Aid lawyers to take early resolution contracts, i.e. clients enter a guilty plea, to close the file faster by avoiding trial.

” —

Other suggestions include ensuring that Gladue principles are applied throughout the legal process, expanding criminal law coverage to include offences where there is no risk of jail, introducing billable hours for support staff and allowing time for legal counsel to meet with experts, professionals, families and communities regarding a client's case, which is especially important for family and child protection matters. Participants suggested that tariff lawyers be paid an hourly rate as opposed to the block fees and that alternatives to the tariff model might be found by looking at elements from other legal aid models across the country (i.e. Ontario).

— “

The tariff system disincentivizes communication. I'm not going to talk to this person unless I have to, because it's just gonna burn up their hours.

” —

Clinical or Staff Model

Community participants provided primarily positive feedback of a clinical or staff model. Benefits of a clinical model noted by participants included the dedicated time staff lawyers would have to spend with clients and the opportunity to build relationships with the communities they are serving.

— “

The hours allocated for legal aid services is not enough. Clients need time to tell the whole story; issues do not exist in isolation. The dream would be a one stop shop to deal with all legal issues and connect clients to services to deal with other barriers that exist.

” —

In contrast, the Legal Professional participants provided critical feedback of the clinical model. There was skepticism about whether there would be sufficient funding and resources to sustain a clinical model, and it was noted that staying competitive in today's job market (i.e., salary, benefits, job security, etc.) is an important financial consideration. Participants noted that LABC has previously operated under a clinical model, but it was not cost-efficient and ceased to exist. Though, positive feedback of the clinical model by the Legal Professional participants included how staff lawyers would have the capacity to take on complicated and challenging cases.

Hybrid Model

A hybrid model, consisting of features from both the clinical model and tariff model, was also discussed during engagement sessions. A hybrid model can leverage both legal aid clinics (with staff lawyers) and private bar lawyers in delivery of legal aid services for Indigenous people. It was suggested by some participants that a hybrid model could have the potential of addressing some of the criticisms and concerns with both the clinical and tariff models and could be worth exploring.

Additional Themes

In compiling and analyzing the feedback from the engagement sessions, 16 additional themes emerged. This section of the report explains the additional themes related to Barriers and Gaps in the Current Legal Aid Model in more detail and identifies recommendations that have emerged from each of these themes.

Intake Services and Application Process

- **Recommendation 11:** Provide in-person intake services.
- **Recommendation 12:** Partner with community organizations to assist in providing intake services.
- **Recommendation 13:** Provide intake services in Indigenous communities and on reserves via outreach programs or satellite offices.
- **Recommendation 14:** Streamline intake services and the application process to ensure the turnaround is reasonable and timely.
- **Recommendation 15:** Ensure intake staff are properly trained, culturally competent and trauma-informed.
- **Recommendation 16:** Develop an online platform (e.g., website, client portal, phone app, etc.) to allow clients to track their application and access their files.

Community participants were openly critical of the current legal aid intake service and application process. We heard that when applying for legal aid services, the application process can be intimidating and stressful to those in a vulnerable position with limited understanding of the process. Many remarks referred to how the intake services are inefficient and time consuming with minimal communication and follow-up. We heard that clients are often on hold for hours before speaking to someone, which can be difficult for clients who may not have enough phone minutes, are using a public phone or who are borrowing a phone. The feedback provided noted how intake services and the application process is often the client's first point of contact to legal aid services, emphasizing the importance of ensuring the process is accessible, streamlined and considerate of the client's circumstances. Community participants further suggested the implementation of online platforms (e.g., website, client portal, phone app, etc.) to allow clients to track the application process and access their files.

— “ —————

It is not a welcoming system, e.g. waiting on the phone and trying to get information over the phone is not ideal. Intake/lawyers are not very friendly and ask unnecessary questions. Then questionnaires need to be revised.

————— ” —

Conflicts of Interest

- **Recommendation 17:** BCFNJC should be aware of possible conflicts of interest, particularly in family law matters where both spouses are seeking legal services and wrap-around supports, and develop ways to address those conflicts while ensuring access to justice for all individuals.
- **Recommendation 18:** If mitigation of possible conflicts of interest includes contracting private bar lawyers, BCFNJC should ensure that those private bar lawyers are familiar with the community they will be serving.

The Community participants expressed concerns around possible conflicts of interest primarily with family law matters, specifically when the matter at hand is community member versus community member. Participants would like to ensure that BCFNJC has a plan in place to address any potential conflicts that may arise, and if this plan involves contracting with private bar lawyers, to ensure that the contracting lawyer is familiar with the area/community they will be working in. The Legal Professional participants had similar concerns regarding potential family law conflicts of interest and would like to ensure that this issue is addressed in the new model. These participants would also like to see the Law Society of BC's support in developing not only the new model's conflict of interest protocol, but also any privacy or confidentiality procedures.

Front-End Legal Aid Services (Brydges Line and Duty Counsel)

- **Recommendation 19:** Review current front-end LABC services to assess how they might be improved upon in a future legal aid services model.

The current legal aid service delivery model offers a number of front-end legal services, including its Brydges Line service and duty counsel services. Both Community and Legal Professional participants noted concerns with the operations of some of the currently offered front-end services. Participants mentioned that the Brydges line offers minimal legal advice, provided slow service and there is often a lack of a follow-up with clients. This was seen as especially problematic given that the Brydges Line is often the first point of contact for Indigenous accused.

Duty counsel services were identified as in need of improvement in a future legal aid services model. Participants emphasized how there is a lack of duty counsel available, especially in rural communities. We heard that duty counsel are often overstretched and at times, do not have the capacity to explain the legal process or follow-up effectively with clients. As a result, duty counsel can be perceived as providing minimal or rushed legal advice to Indigenous accused.

Most Important Features of an Indigenous-led Legal Aid Service Model

We asked both Community and Legal Professional participants what they believed the most important features of an Indigenous-led legal aid service model would be. Engagement participants reflected on issues that they believe need to be addressed in a future legal aid model for Indigenous people, specific programs or services that should be created or built upon and ways to improve the experiences and outcomes of Indigenous peoples who become involved in the justice system.

Key Themes

In compiling and analyzing the feedback from the engagement sessions, the following key themes related to Most Important Features of an Indigenous-led Legal Services Model emerged:

- Holistic and Wrap-around Supports
- Community Collaboration and Relationship Building
- Cultural Competency and Trauma-Informed Services
- Expanding Legal Services

The following section explains these key themes in more detail and identifies recommendations that have emerged from each of these themes.

Holistic and Wrap-around Supports

- **Recommendation 20:** Holistic, wrap-around services should be embedded into BCFNJC's service delivery model. This could include:
 - Housing, mental health and addictions supports,
 - Indigenous legal navigator and advocate roles,
 - Compiling and maintaining a list of relevant community resources for client referrals, and
 - Various other practical supports, including tax returns for Elders, a drivers' licensing program and gender-based violence programming.

One of the most common themes we heard throughout our engagement sessions was the need for holistic, wrap-around supports and services to be embedded into BCFNJC's legal service delivery model. We heard from both Community members and Legal Professionals that additional services and supports are necessary as a means of preventing involvement in the justice system and improving outcomes for individuals engaged in the justice system. By also providing support services for those who are being released from incarceration, we may reduce recidivism rates. Engagement participants suggested supports be offered by BCFNJC through its IJCs and in close collaboration with community organizations. It was noted that the transition to BCFNJC-led legal support services offers the opportunity to apply supports that are rooted in Indigenous cultural traditions.

Numerous participants identified that issues around poverty, such as addictions, mental health challenges and homelessness posed significant barriers to justice for Indigenous peoples, and that these issues are interdependent, under-resourced and directly related to justice system involvement. One participant emphasized the relationship between the availability of support services for those involved in the criminal justice system and their likelihood of ongoing involvement, noting that "recidivism is largely dependent on lack of services."

— “

If you're dealing with the underlying issues, you don't need a lawyer, you don't.

— ” —

In terms of the criminal justice system, securing affordable and accessible housing plays a pivotal role in bail and/or diversion outcomes, and regaining independence and stability after people have been incarcerated. Our team heard that Indigenous peoples sometimes seek longer jail sentences or reject parole because they have nowhere to go after release from correctional facilities. Supportive temporary, transitional and long-term housing resources need to be in place for Indigenous peoples facing housing insecurity and homelessness.

Suggested mental health and addictions supports included access to counselling services, detox and treatment programs and recovery homes, all of which must be culturally competent and trauma-informed. These services should be made available for individuals, couples and families. We heard that the lack of mental health and addictions supports contributes to the overincarceration of Indigenous peoples. Some offenders may be kept on remand longer due to lack of capacity in recovery homes or seek sentences of 2 years plus a day in order to access federal addiction services.

We heard that individuals who are ready for mental health and addictions treatment services should receive them immediately and without the requirement of completing counselling programs prior. We heard that it is important to allow clients more time in support programs and services, as clients who are able to access current services are often unable to access them for long enough to meaningfully address their needs and can end up back in the legal system as a result.

— “

Problems start at the surface level addiction and then it starts a cycle as they start to commit crimes to deal with debt and drugs. They were honest about their lives and how it started and what led them there. It all started with poverty. It's about breaking crime cycles.

” —

Another common area of feedback we heard was for the creation of an Indigenous Legal Navigator and/or Advocate program. It was suggested that these individuals can help clients with understanding and filling out court and other legal forms, legal aid intakes/ applications, court support and accompaniment, assistance with transportation and other practical supports. Legal Navigators or Advocates are support staff who can walk with clients throughout the legal process, navigating the justice system with them from start to finish. Participants likened the nature of this role to an Elder, Auntie, liaison or peer. Participants noted that LABC has a Legal Navigator program that may offer insight into the development of a similar program offered by BCFNJC.

— “ —————

We have a client in Prince George who had the resources to call but didn't have the courage to call because of the institution that LABC is. She just needed the support to call.

————— ” —

Participants acknowledged that lawyers are often expected to take on certain aspects of the above-mentioned support roles, such as counselling or advocacy. Providing these supports at IJCs and through outreach programs eases the pressure on lawyers, allowing them to spend more time providing effective legal services.

In addition to providing wrap-around services and holistic supports through IJCs, participants emphasized the need for lists of community resources to be compiled and maintained by BCFNJC to use for client referrals in an event that a client requires services outside of the scope of BCFNJC. These community resources would include addictions, mental health and housing resources, among others, offered by both Indigenous communities and organizations, as well as non-Indigenous organizations. Additional practical supports that participants suggested might be offered by BCFNJC include assisting Elders with tax returns, drivers' licensing programs, peer-support programs, gender-based violence support services and other forms of healing supports.

Community Collaboration and Relationship Building

- **Recommendation 21:** Prioritize relationship building with the clients and communities we serve, and legal professionals in the justice system.
- **Recommendation 22:** Build collaborative networks and relationships with communities and service providers who are already supporting Indigenous peoples involved in the legal system.
- **Recommendation 23:** Foster open and effective communication with communities and community-based organizations to set our clients up for success.

Another common theme that we heard during engagement sessions was the importance of building collaborative networks and meaningful relationships with the clients and communities we serve, and with other legal professionals and organizations involved in the delivery of legal services. Community participants emphasized that BCFNJC plays an important role in addressing Indigenous clients' potential distrust in the justice system and that BCFNJC staff should prioritize relationship-building with individual clients and local communities. BCFNJC lawyers and other staff should build rapport and trust with communities they serve. Legal Professional participants also advised in building relationships with judges, Crown Counsel and the Ministry of Children and Family Development (MCFD) counterparts.

— “ —

Legal aid should be a more inviting atmosphere for our people, especially for the ones who have been victimized by the court system and law enforcement officers.

— ” —

Participants shared that BCFNJC should foster open and effective communication with organizations whose work runs parallel to our own. We heard that BCFNJC should not “reinvent the wheel” but rather, work together with Indigenous communities and service providers who are already supporting Indigenous peoples involved with the legal system. We were reminded of the valuable experiences and knowledges of community-based organizations that have been serving Indigenous peoples for decades, and that building partnerships with these organizations is critical to setting our clients up for success.

A “two-way street” of communication between BCFNJC and other service providers is particularly useful across jurisdictions when an individual is moved from one facility to another. Collaboration with community partners in rural or remote areas can also be a good way to provide seamless delivery of services to these communities.

Participants made clear that the Native Courtworker and Counselling Association of BC (NCCABC), in particular, is an important and longstanding organization supporting Indigenous individuals in the legal system. We were told that BCFNJC should work closely with NCCABC to support and learn from the organization. Other organizations to connect and collaborate with include: existing community legal clinics, federally-funded Indigenous Justice Programs, Courthouse Libraries BC, Aboriginal Friendship Centres, Indigenous community justice organizations and other justice professionals such as community legal workers and parole officers.

— “ —

The development of relationship is very important- once we have the relationship and trust built then we can get so much more done.

— ” —

Cultural Competency and Trauma-Informed Services

- **Recommendation 24:** Build culturally competent and trauma-informed legal service delivery into BCFNJC’s legal aid model.
- **Recommendation 25:** Advocate for a culturally competent and trauma-informed justice system (e.g., in the courtroom).
- **Recommendation 26:** Provide cultural competency and trauma-informed training for a wide array of legal professionals, including lawyers, judges, parole and probation officers, court staff, social workers and police officers.

Systemic racism and discrimination within colonial legal institutions was raised repeatedly throughout our engagement sessions. We heard from Community participants that Indigenous peoples experience unjust treatment from the state-imposed legal system at the hands of non-Indigenous legal professionals who lack crucial awareness of the history and lasting nature of colonialism, and the ways that the legal system plays a role in the ongoing colonization of Indigenous peoples. These professionals, it was expressed, can be rude and derogatory towards Indigenous clients, and that there is widespread lack of trust in the system as a result.

Police officers were identified as a group of professionals whose lack of cultural competency has led to an overrepresentation of Indigenous people in the justice system. Participants noted many instances of discriminatory police conduct when working in Indigenous communities and encouraged BCFNJC to address systemic racism and discriminatory behaviour among police service members, for example, by providing education and cultural competency training for RCMP and guiding them on how to build connections with communities.

— “

Where the biggest problems I'm sure are when it starts at the front end. I have friends who practice in child protection, they see the start of it, the police treat people differently if they're in the system. People get criminalized younger when they're Indigenous. They get longer records, they are treated differently, potentially by judges.

” —

Community and Legal Professional participants alike told us that BCFNJC should provide cultural competency training for a wide array of professionals including lawyers, judges, parole and probation officers, court staff, social workers and police officers. Legal professionals and others who take training offered by BCFNJC must understand the history of colonization both broadly and specific to the communities they serve. We heard that cultural competency training must be offered regularly for the content to stay at the forefront of peoples' minds.

— “

One of the things I struggle with is non-Indigenous people not being familiar or educated in specific communities they work with.

” —

We heard that for Indigenous peoples, the colonial legal system can be (re)traumatizing, and that legal services cannot be truly culturally competent without also being trauma-informed. Participants told us that our legal aid model should be client-centred and culturally safe. To avoid re-traumatizing clients, we should eliminate the need for clients to share personal or difficult details of their story multiple times while accessing services.

Cultural competency and trauma-informed service delivery must also be built into the courts. Participants spoke of the incorporation of traditional practices in the courtroom, such as the involvement of Elders and aspects of Indigenous ceremony, practices which should be implemented and expanded upon province wide. Legal professionals must develop awareness of Indigenous cultural traditions and understand that the practice of these traditions might necessitate flexibility and patience, such as for missed appointments due to cultural requirements after a death in the community. Quiet and safe spaces for prayer and smudging should be made available for use.

— “ —————
Lawyers need to know more about the area. For example, a hunting elk case in [remote Indigenous community]. The client was tense until the judge [who is Indigenous] came in and demonstrated cultural competency and understanding of the area/community. Client felt comfortable standing up for himself afterwards.

————— ” —

Expanding Legal Services

- **Recommendation 27:** Expand legal services beyond the scope of what is offered in the current legal aid services model.
- **Recommendation 28:** Prioritize the expansion of services in the following areas: family law, child protection, criminal law, Aboriginal harvesting matters, residential tenancy and wills and estates, particularly probate matters.

Legal Aid BC currently offers legal services for criminal, family and child protection matters. We heard from participants that BCFNJC should expand its legal services beyond the scope of what is currently being offered. The most common areas of law that we heard need expanding are: family law, child protection, criminal law, Aboriginal harvesting matters, pre-charge legal services, residential tenancy and wills and estates.

Family Law

The most common area of law that we heard needed expanding was the area of family law. BCFNJC should offer an array of family legal services such as: divorce/separation, custom adoptions, child support including challenging inaccurate or outdated child support orders and spousal support. We heard that BCFNJC should aim to provide legal services to both parties in family law disputes, which will require us to coordinate carefully between IJCs in order to prevent conflicts of interest.

Community engagement participants shared that Indigenous communities sometimes have very little resources in the area of family law, particularly in terms of family justice centers, counsellors and mediators. It was expressed that families affected by domestic violence or intimate partner violence need additional services and supports.

Community engagement participants also told us that Indigenous peoples would benefit from the creation of Indigenous family courts. Colonial family courts, it was shared, feel very impersonal and intimidating. Indigenous families would benefit from a family legal system that is less “robotic” and that acknowledges Indigenous perspectives. Participants expressed that non-legal family services offerings are needed as well, such as support services for families going through separation.

Child Protection

Participants identified the child protection system as an area of law that requires immediate action to address the injustices of state-imposed Indigenous child apprehension. We heard that BCFNJC should increase legal services and resources to Indigenous parents and families interacting with the child protection or child welfare system, especially MCFD. We heard that this should include expanding legal services to provide representation and other supports to extended family members such as grandparents, aunts and uncles. It was emphasized that we should offer services for Indigenous parents and families before a child is apprehended. Although Parents Legal Centres offer legal aid services to Indigenous parents who may be under investigation by MCFD or a delegated Aboriginal agency, we heard during engagements that there remains a need for more expansive legal services and support to be provided before an Indigenous child is removed from their family.

Indigenous parents and families whose child or children have been apprehended require services that BCFNJC is uniquely positioned to provide. Indigenous parents and families would benefit from legal services that challenge Voluntary Care Agreements, Continuing Custody Orders and other mechanisms of removal. We heard that Indigenous parents and families can face difficulties accessing resources within MCFD, particularly financial resources. We heard that we should work with MCFD and other agencies to improve the availability and accessibility of funds for extended family caring for children who have been apprehended. One participant told us that without Extended Family Program (EFP) funds, grandparents are left to raise their grandchildren on basic pensions alone, and that this is not unusual in the North as opposed to the Lower Mainland.

Increased resources, legal support and advocacy for Indigenous child protection matters is crucial to keeping children connected with their parents, families, communities, cultures and Nations. One Legal Professional participant noted that although there is

work being done to apply the federal United Nations Declaration on the Rights of Indigenous Peoples Act to child protection cases, this work is just beginning and BCFNJC should take a leadership role in increasing the scope and scale of these important efforts.

We recognize that more engagement is necessary to improve legal services for Indigenous peoples in the area of child protection and we will be embarking on more targeted engagements about child protection in the spring of 2024.

Criminal Law

Feedback from Legal Professional participants identified that one of the most significant barriers to criminal legal aid service provision is that individuals must be facing the risk of incarceration to access full legal representation through legal aid. Legal Professionals discussed how Indigenous peoples can feel pressured to accept culpability (i.e. plead guilty) in order to access legal aid (see previous discussion on CERCS) and other supports such as sentencing alternatives and Indigenous Courts. We heard that some Crown Counsel will include the possibility of jail in submissions just to ensure that people can access legal aid. Engagement participants expressed the need to eliminate the requirement of definite incarceration in order to qualify for legal aid services.

We heard that in the area of criminal law, BCFNJC should also expand its legal services model to include the provision of legal services for offences where there is no risk of jail, supporting Indigenous peoples seeking pardons and providing Indigenous-specific legal services in areas that are already covered by the current legal aid model, such as legal services for youth and incarcerated individuals seeking bail.

— “ —————

Individuals can get legal aid if incarceration is definite. For first time offenders, or those involved in an MCFD issue, it is more difficult. Lawyers are encouraging individuals to plead guilty so they can access Indigenous programs, but they shouldn't have to plead guilty to access the programs.

————— ” —

Aboriginal Harvesting Rights such as Hunting, Fishing and Gathering

We heard from participants throughout the province about Indigenous peoples facing criminalization and prosecution for the practice of traditional subsistence activities. Community and Legal Professionals alike told us about increased conflict with the BC Conservation Officer Service and the Department of Fisheries and Oceans. We heard from Community participants that legal aid representation for Aboriginal harvesting issues is

difficult to obtain in the current model and that often full legal aid services are not provided for defense of Aboriginal harvesting matters if there is no risk of jail. BCFNJC should provide legal services in defense of Aboriginal harvesting rights, and help Indigenous peoples understand their rights, clarify how to obtain licenses where required and help coordinate the return of confiscated items.

Residential Tenancy

The need to provide supports for Indigenous peoples who do not have housing security came up a number of times during engagement sessions. Community and Legal Professional participants told us that BCFNJC should expand legal services to include Residential Tenancy Act matters and on-reserve housing matters. It was identified that residential tenancy legal services that include eviction supports can be particularly useful in the Downtown Eastside.

Wills and Estates

Wills and Estates was identified as a key area of law for which BCFNJC should offer legal services, especially for those who live on-reserve. It was recommended that BCFNJC deliver services in this area of law, including probate matters, estate planning, assistance with healthcare directives and trusts. One participant noted the importance of estate planning for Indigenous people given the increasing number of class actions and Settlement claims, such as the Federal Indian Day School Class Action.

Other areas of law and support services that were mentioned during engagement include:

- Aboriginal law, such as challenges to Section 35 of the Constitution Act, land claims and Aboriginal title.
- Civil litigation, such as police complaints, human rights complaints, such as racism in provision of healthcare and education and legal assistance for those who were harmed in custody by police or corrections staff.
- Employment law, including on-reserve matters, labour relations, wrongful dismissal and discrimination complaints.
- Poverty law, such as applications and appeals for social assistance, Canadian Pension Plan and Canadian Pension Plan Disability benefits and Employment Insurance.
- Real estate law and property law, such as selling or purchasing property and the Family Homes on Reserves and Matrimonial Interests or Rights Act.
- Miscellaneous supports, such as status and status card applications, debt counselling, foreclosures, personal injury law, Worker's Compensation Board advocacy, cultural heritage protection, Jordan's Principle advocacy, Motor Vehicle Act offences and ICBC claims.

Additional Themes

In the following section, additional themes related to the Most Important Features of an Indigenous-led Legal Services Model are explained in more detail and recommendations that have emerged from each of these themes are identified.

Uplifting Indigenous Laws

- **Recommendation 29:** Support the integration and recognition of Indigenous laws and traditional governance and provide clarity and support for communities and Nations enacting traditional Indigenous laws.

Participants told us that although we are currently working to rectify the overrepresentation of Indigenous peoples in colonial legal systems, there are many opportunities to uphold and uplift Indigenous laws and traditional governance simultaneously. As mentioned previously, IJCs offer a unique space for collaboration between Indigenous Nations involved in justice and governance work, and we heard that BCFNJC can play a role in providing clarity and support for communities and Nations enacting traditional Indigenous laws. BCFNJC should support the integration and recognition of Indigenous laws, which can involve supporting Indigenous Nations to take back jurisdiction and sovereignty over criminal and child welfare matters.

— “ —————
The traditional peace tea. It's used back generations/centuries where when there's conflict with a Nation, they would all sit around in a circle and they would put the tea in the middle and everyone would have a cup and they would pour a little in each cup. The tea would represent the child and everyone would take a sip of the tea and everyone would care. The father and mother clan would hold everyone accountable for what they needed to do.

————— ” —

Uplifting traditional Indigenous spiritual, ceremonial and governance practices can address the overrepresentation of Indigenous peoples in the legal system by preventing Indigenous peoples from being involved in legal systems in the first place. Individual and community healing from the impacts of colonialism was identified as key to addressing underlying issues that could result in a criminal conviction or child apprehension. BCFNJC heard that uplifting Indigenous traditional practices that centre accountability and responsibility to community can address criminal, child protection and family matters before they become legal matters.

This feedback aligns with BCFNJC's Track 2 work, which is focused on restoring and rebuilding First Nations justice systems and institutions reflecting the right of self-determination and the inherent right of self-government.

— “ —————
I think the Indigenous people don't think there's a lot of legitimacy in the system... I don't know if you'd ever have an all-Indigenous court, but how comfortable would they be applying the colonial law? ... Would it be nice to have a lot of Indigenous representation, of course, but what does that mean? Are we just submitting to the system?... I think Indigenous people have earned the right to say your system is poisoned, we'll be over here doing our own thing.

————— ” —

Elders

- **Recommendation 30:** Elder, Knowledge Keeper or Matriarch roles should be built into BCFNJC's legal services model.
- **Recommendation 31:** Advocate for the incorporation of Elders in the justice system (e.g., attend court as a support person for our clients, development of Elders Councils).

We heard throughout our engagements that Elder, Knowledge Keeper or Matriarch roles should be built into BCFNJC's legal services model. Community participants told us that it is important to have resident Elders in our IJCs, as well as Elders who can attend in court as a support person for our clients. BCFNJC was encouraged to develop Elders Councils to guide the organization on a broad level as involving Elders is an effective way to embed culture into the delivery of legal and other support services. Elders should be available to support clients throughout the process of engaging with the legal system. Elders can be a particularly invaluable resource for youth who are on their journeys of reconnection and healing.

— “ —————
We need to have an Elders advisory council through the whole process. Have their input, lots of our Elders have the lived experience. It would help set the tone of the building, of the work area. Our people need to feel safe there, welcomed there, heard there, judged in no way, accepted as they are. Feel confident enough to share whatever they need to share.

————— ” —

Inclusive of all Indigenous Communities

- **Recommendation 32:** The legal and support services BCFNJC provides must be inclusive of all Indigenous communities in BC, including urban Indigenous, non-status First Nations, Métis and Inuit peoples.

We heard from Community participants that the legal and support services we provide must be inclusive of all Indigenous communities in BC, including urban Indigenous, non-status First Nations, Métis and Inuit people. Our approach, and the delivery of our services should be consistent, with recognition of Indigenous diversity, including different traditions and challenges faced. Services must be tailored to individual communities, and BCFNJC must refrain from offering services that are pan-Indigenous in nature.

Indigenous Representation

- **Recommendation 33:** To increase representation of Indigenous professionals in the legal system, BCFNJC should seek to hire and retain Indigenous staff, including lawyers and support staff within its IJCs.

We heard repeatedly from Community and Legal Professional participants that there needs to be increased representation of Indigenous peoples in professional roles throughout the legal system, such as lawyers, court staff and judiciary. BCFNJC should seek to hire and retain Indigenous staff, including Indigenous support staff and lawyers within its IJCs. We can increase the safety of the legal system for Indigenous peoples by increasing the number of Indigenous legal professionals within it. By hiring and retaining lawyers, BCFNJC can honour the professional and academic achievements of Indigenous peoples and provide safer spaces in the legal system.

— “

Would like to see an Indigenous-led service with Indigenous staff, and Indigenous people on the frontlines that are helping people are Indigenous. Respectful service that is free of racism and barrier-free and the whole model is supportive. Providing as much service as possible with no time limitations.

” —

Diversion

- **Recommendation 34:** Expand and advocate for Indigenous-led diversion options such as alternative measures and restorative justice programs.

Use of alternative measures, such as restorative justice and diversion programs, are encouraged to circumvent the traditional justice system when Indigenous peoples do become involved with the legal system. The Criminal Code of Canada allows Crown Counsel to determine if an alternative measures program would be more suitable and ultimately more beneficial for the victim, community and offender. Community and Legal Professional participants across the province emphasized the need for alternative measures to be culturally relevant and accessible. We heard that legal professionals and Indigenous communities need to collaborate more effectively to ensure culturally relevant, Indigenous-specific alternative measures and restorative justice options can be offered as a means of diversion from the colonial legal system.

— “

Some of the cases that come to us are quite complicated – I would like to see a way that we can prevent some of the cases getting a criminal conviction on their record. It's hard enough as Indigenous peoples to get jobs at times. If a person got the right circle of people around them, it could help them.

” —

Victim Services

- **Recommendation 35:** Develop an Indigenous victim services program led by BCFNJC to support existing Indigenous-led and community-based victim services and address current gaps in victim services delivery.

Victim services are crucial to helping those impacted by crimes and are needed to support victims as they navigate the justice system. In BC, victim services are either police-based or community-based. Some community-based victim services are Indigenous-led or provided as an Indigenous-specific service within community services organizations.

BCFNJC heard from participants that there is a need for expansion of or improvement upon existing victim services programs in BC. Police-based victim services, participants noted, are often underutilized by Indigenous peoples due to lack of trust and safe space. Participants proposed the idea of a victim services program led by BCFNJC to address the current gaps in victim services delivery for Indigenous peoples.

— “

Victim services is a good consideration, RCMP work it now but are usually plain clothed, doesn't create a safe space. Lack of trust is a big issue.

” —

Youth Services

- **Recommendation 36:** Develop youth legal aid services that encourage youth engagement and focus on the specific needs of youth.

Community and Legal Professional participants across the province emphasized the importance of caring for our youth. They noted a gap in legal services as they are not specific to the needs of each youth. Suggestions included determining ways to better engage with youth (e.g., social media, texting, etc.), expanding legal and support services to assist youth, including youth-in-care, and developing programs and services that address the specific needs of each youth.

— “ —
Working with youth they don't always know what is available to them under the Act, would be good to have someone available to explain that to them. Have had youth sentenced without Gladue reports or anything.

— ” —

Legal Education and Information

- **Recommendation 37:** BCFNJC should develop its own legal education and information materials specific to the needs of Indigenous peoples.

We heard from primarily Community participants that some of the biggest barriers to justice within the legal system was the absence of accessible Public Legal Education and Information (PLEI), especially those specific to the needs of Indigenous peoples. Participants encouraged BCFNJC to develop its own legal education materials separate from those offered by LABC. Participants noted the need for these materials to be available in both electronic and physical form, and to include audio and video materials as well.

Participants emphasized that our legal education materials must be accessible, with language that is clear, succinct and straightforward. BCFNJC should refrain from the use of “legalese” and “jargon” in all forms of legal education and information. BCFNJC should aim to demystify the legal system for clients in all areas of law that impact Indigenous peoples.

— “ —
I think that bridging the gap between plain language and professional language is key.

— ” —

Both Community and Legal Professional participants suggested that BCFNJC offer one-on-one legal education and information to clients accessing their legal services, as well as workshops and legal clinics for communities offered in-house at IJCs and virtually.

— “

Communities need to be informed/educated on their rights before they interact with the justice system.

” —

Choice of Service and Choice of Counsel

- **Recommendation 38:** The right to choice of service should be respected. Indigenous clients should have the option of receiving their legal services through BCFNJC or through LABC, and to access legal services at the IJC office of their choice.
- **Recommendation 39:** The right to choice of counsel should be respected. Indigenous clients should have the option of receiving their legal services from their preferred legal counsel, where possible.

Community participants discussed a need for Indigenous clients to have the option of receiving their legal services through BCFNJC or through LABC, and to allow clients to access legal services at the IJC or agency office of their choice. The Legal Professional participants also want to see choice of counsel maintained, which includes allowing clients to work with a lawyer they already have experience with. It was also suggested that having biographies available for the in-house/roster lawyers will help clients make an informed representation decision.

— “

It could be helpful if people can access help from the location of their choice and/or remotely. I've had some clients who are scared to access local resources or local help if they are from smaller communities.

” —

Mentorship for Lawyers

- **Recommendation 40:** Provide mentorship opportunities for lawyers recently called to the bar and for lawyers seeking to expand the legal services they provide or specialize in.
- **Recommendation 41:** Provide mentorship opportunities by having an articling student program and consider having articling students assist with the preparation of court documents, contributing to tribunal matters and working with clients on non-legal matters, such as obtaining a driver's license.

The Legal Professional participants expressed an interest in seeing more mentorship for lawyers (including lawyers recently called to the bar) in the new model, such as mentorship opportunities for lawyers looking to expand the legal services they provide or specialize in. It was also recommended that BCFNJC provide mentorship by having articling students assist with the preparation of court documents, contributing to tribunal matters and working with clients on non-legal matters such as obtaining a driver's license. Comments received from the Community participants included more training for lawyers on mental health issues, substance abuse and understanding contributing factors of the overrepresentation of Indigenous peoples in the criminal justice and child protection legal systems. They would also like to see a mentorship program in place for new lawyers, and to allow space for new lawyers to connect with the community(ies) they are working in.

— “ —————
Lawyers lack mentorship in these areas – not just in the specific technicalities but the values of the community and how to integrate myself into the community. Learn more about what an Indigenous community is saying. Connecting the people with those voices is important and so far, I haven't seen so much of that happen. Focus on the individual and the culture – not so much on the technical parts of the law. Get to know the community – be part of it. Build it together.

————— ” —

Retaining Lawyers

- **Recommendation 42:** Provide incentives for lawyers, such as a competitive salary to help attract and retain lawyers, especially in smaller and remote communities where lawyer retention is an issue.

The retention of lawyers will be an important aspect of any new legal aid model. The Community participants shared feedback primarily around the limited number of legal aid lawyers available, specifically in rural communities and for child protection and family law matters. They would like to see incentives provided, including a competitive salary, to help attract and retain lawyers, especially in smaller and remote communities. Alternatively, when lawyers are not available locally, there should be lawyers from other areas available to serve these communities. The more recent increase to LABC's financial eligibility requirements has also been an issue, as some communities do not have enough lawyers to support the increased client base. It was suggested that ensuring BCFNJC is visible and accessible will help fill any vacant lawyer positions quickly.

The Legal Professional participants also provided feedback on being offered sustainable rates that allow them to carry on with legal aid work, while ensuring that pay, benefits and time worked is consistent between staff lawyers and roster/tariff lawyers. The general lack of legal aid lawyers available for child protection and family law matters was also discussed. Participants would like to see mechanisms put in place to address issues with high case loads in rural communities, while maintaining client access to good, experienced lawyers. Better communication with legal aid lawyers should also lead to increased retention. It was also noted that there is an opportunity for BCFNJC to address the stigma associated with legal aid, as many lawyers do not currently aspire to work in legal aid.

Transparency and Accountability

- **Recommendation 43:** Develop policies that provide for checks and balances to ensure legal aid services remain transparent and accountable.

In order for a new legal aid service model to succeed, the clients and the community need to trust BCFNJC. Community participants suggested ensuring there are clear transparency and accountability policies in place. Transparency is needed for clients and communities to properly understand and trust legal aid services. Policies should be in place to keep legal services accountable, such as conducting regular surveys to assess legal aid lawyers and services.

Information Sharing Agreement

- **Recommendation 44:** Ensure Information Sharing Agreements are in place between BCFNJC, LABC and partner organizations.

Community and Legal Professional participants highlighted that an important feature of the future legal aid model should be ensuring that Information Sharing Agreements are in place between BCFNJC, LABC and partner organizations. Information Sharing Agreements will allow for client information to be shared between organizations whilst collaborating to provide legal services. Benefits of Information Sharing Agreements includes reducing the number of times a client must retell their story, avoiding conflicts of interest and streamlining file sharing.



Conclusions and Next Steps

The overarching goal of Strategy 5 is to establish First Nations legal services that increases and provides more effective access to justice and improves legal counsel and legal aid services to Indigenous peoples dealing with the criminal justice system and child protection system. Engagement was conducted to obtain meaningful feedback from a broad audience with diverse perspectives to inform a future model that will result in increased access to justice for Indigenous peoples.

Key themes heard throughout the BCFNJC Legal Aid Transition engagements were:

- The need for more accessible and culturally informed legal counsel and legal aid services to Indigenous peoples dealing with the criminal justice system.
- A legal aid system that prioritizes relationship building and collaborating with community organizations.
- A model that reduces the barriers of the current eligibility requirements while expanding the legal services offered and providing holistic wrap-around services.
- A review of the current legal aid model to leverage the advantages of the clinical or staff model and tariff model when developing a new model of legal services delivery.

BCFNJC, in partnership with LABC and the Province of BC, will utilize the feedback from the engagement sessions to develop a model and workplan to transition legal aid services for Indigenous people from LABC to BCFNJC.

After reviewing the list of participants engaged with in round one of engagement, missing voices were identified. Further engagement will be conducted to:

- Hear from former LABC clients (including those who are incarcerated),
- Focus on Child Protection matters and
- Speak with organizations not engaged with in Phases 1 or 2 of the transition and organizations recommended by engagement participants.

We anticipate that the new BCFNJC legal aid services model will be implemented in a phased approach, starting with a series of pilot projects. As model development occurs, pilot projects will be identified and run in both urban and rural settings. Once a model has been developed, additional engagement will be held to verify what we heard and obtain feedback on the proposed model.

The insight provided in this report will be invaluable to the development of a model and workplan to transition legal aid services for Indigenous peoples from LABC to BCFNJC. Your voice matters, and we appreciate your participation in ensuring increased and more effective access to justice for Indigenous accused and Indigenous families affected by the child welfare system.

Appendices

A. Glossary

Aboriginal Harvesting Rights

Aboriginal rights are collective rights which stem from Indigenous peoples' continued use and occupation of their traditional territories. They are inherent rights which Indigenous peoples have practiced and enjoyed since before European contact. Aboriginal harvesting rights are based on traditional subsistence activities and include: "fishing, hunting, trapping and gathering plants, fungi or timber" (LABC, "A Guide to Aboriginal Harvesting Rights"). Historic and modern treaties also protect Aboriginal harvesting rights and are protected in section 35 of the Constitution.

Aboriginal Friendship Centres

Aboriginal Friendship Centres are Indigenous community centres that provide a range of services for Indigenous communities. The Province of British Columbia partners with the [BC Association of Aboriginal Friendship Centres](#) to deliver social, recreational and cultural programming to Indigenous people living in urban areas. There are 25 Friendship Centres across BC.

Aboriginal Law

Aboriginal law is a body of law, made by the courts and legislatures, that largely deals with the unique constitutional rights of Aboriginal peoples and the relationship between Aboriginal peoples and the Crown. Not to be confused with Indigenous law (laws that are rooted in the governance and legal orders of Indigenous Nations themselves), Aboriginal law is largely found in colonial instruments such as the Royal Proclamation of 1763, the Constitution Acts of 1867 and 1982 and the Indian Act and court decisions ([Queen's University Library, Aboriginal Law and Indigenous Laws](#)).

Aboriginal Title

Aboriginal title is an inherent right, recognized in common law, that originates in Indigenous peoples' occupation, use and control of ancestral lands prior to colonization. Aboriginal title is not a right granted by the government; rather, it is a property right that the Crown first recognized in the Royal Proclamation of 1763 ([The Canadian Encyclopedia](#)).

Alternative Measures

In BC, alternative measures, also known as diversion, provides the opportunity to have charges against someone dealt with outside the court process. Typically, the person must accept personal responsibility for their behaviour and agree to make amends.

Alternative measures programs are managed by a community corrections (probation) office. If Crown Counsel agrees to recommend someone for alternative measures and the community corrections (probation) office accepts them for this option, the person has to take agreed-upon steps to repair the harm done ([Government of BC](#))

Articling Students

Articling is the last phase of a student's legal education prior to being called to the bar. An articling student must work full-time in the office of a principal for a continuous period of not less than nine months, except for law clerks or others who have been granted a reduced articling period ([Law Society of BC](#)).

BC Conservation Officer Service

The BC Conservation Officer Service (COS) is a public safety provider focused on natural resource law enforcement and human wildlife conflicts prevention and response ([BC Conservation Officer Service](#)).

BCFNJC (BC First Nations Justice Council)

[BC First Nations Justice Council](#) was created in 2016 by the BC Assembly of First Nations, the First Nations Summit and the Union of BC Indian Chiefs. The [Council](#) represents First Nations in BC on justice-related issues to bring about transformative change to the legal system.

Billable Hours

Billable hours for lawyers are the attorney work hours billed to clients for activities that are directly related to client matters. Attorney work not related to client matters, such as professional development, client development, and office management, is considered non-billable ([CLIO](#)).

Brydges Line

Brydges Line is a province-wide toll-free telephone service for individuals needing emergency legal services. Brydges Line is available 24 hours a day, 7 days a week. For more information on Brydges Line, please visit <https://legalaid.bc.ca/services/advice/brydges-line>.

CERC (Criminal Early Resolution Contract)

According to LABC, [Criminal Early Resolution Contracts](#) (CERC) were introduced in 2019 to “expand criminal legal aid services to clients who are not otherwise eligible for full representation under LABC eligibility guidelines. The CERC provides clients an opportunity to have their case reviewed by a legal aid lawyer early in the remand process to determine if a resolution with the Crown might be reached and avoid using limited public resources on unnecessary criminal trials”.

Circuit Courts

Where the number of people in an area doesn't warrant a full-time court, judges visit and hold court in the community at regular intervals. Sometimes the judge and court team will visit several communities in a geographic area. These community sittings of the Court are referred to as circuit courts ([Provincial Court of BC](#)).

Civil Litigation

According to the [Supreme Court of BC](#), civil litigation, or civil law cases, “involve one individual filing a claim against another individual, based on either federal or provincial laws. Examples include contract disputes, landlord-tenant disputes, employment disputes, and divorce.”

Conflict of Interest

In the practice of law, lawyers are obligated to avoid conflicting interests. According to the [Canadian Bar Association](#), a conflict occurs when there exists a “substantial risk that a lawyer's loyalty to or representation of a client would be materially or adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person”.

Continuing Custody Orders

Continuing Court Orders are a type of child protection court order used by the Ministry of Children and Family Services and other delegated agencies. When a continuing custody order is made, a child is placed into foster care permanently.

Courthouse Libraries BC

The Government of BC provides [Courthouse Libraries BC](#) with space in 30 courthouses around the province. All of the libraries have public computers with legal databases and internet access, and eight libraries in larger communities have full-time staff who can assist clients with information requests. Courthouse Libraries BC also has a 1-800 number and an email service that anyone in BC can access to ask a legal information question.

Crown Counsel

Prosecutors in British Columbia are known as Crown Counsel. They are appointed and assigned to cases by the Criminal Justice Branch of the Ministry of Attorney General. The Public Prosecution Service of Canada (the federal Crown) prosecutes cases involving federal offences such as drug violations ([Government of BC](#)).

Cultural Competence

Cultural competency is both knowledge and behavior that enable service providers to provide quality services to diverse peoples in a way that is sensitive to differences. The process of developing cultural competency involves reflecting on our own attitudes, beliefs, and values and how these can influence how we understand the cultural norms of others (adapted from [Syilx Okanagan Nation Alliance](#)).

Department of Fisheries and Oceans Canada

The Department of Fisheries and Oceans Canada is a federal institution responsible for safeguarding Canada's waters and managing Canada's fisheries and oceans resources ([Fisheries and Oceans Canada](#)).

Diversion

The concept of diversion in law refers to "an alternate procedure in a criminal case where the prosecution is interrupted through a deal between the defendant and the prosecutor where the prosecutor either dismisses the charges completely or does not bring any charges to begin with" ([Cornell Law School, Legal Information Institute](#)). Diversion allows a person charged with a crime to avoid a criminal conviction and record. Strategy 1 of the BCFNJC Justice Strategy calls for "reflecting the core value of a presumption of diversion throughout the existing justice system". The presumption of diversion means that legal actors should be instructed to fully consider opportunities for culturally appropriate alternative responses to the existing justice system, with the presumption that, whenever appropriate ([BC First Nations Justice Strategy](#)).

Duty Counsel

Duty counsel are lawyers paid for by Legal Aid BC who can help people with low incomes with their family law, criminal law or immigration law problems. Duty counsel can give free legal advice, but can't take on your whole case or represent you at trial ([LABC](#)).

Extended Family Program (EFP)

The [Extended Family Program](#) provides support for situations when a parent voluntarily authorizes a relative or close family friend to care for their child(ren) in the event they are temporarily unable to. The Extended Family Program is a government program run by MCFD or a delegated agency.

Family Homes on Reserve and Matrimonial Interests or Rights Act

Matrimonial real property refers to real property (property that cannot be physically moved, like land or a family home) that is shared by 2 people during a marriage or common-law relationship. The Family Homes on Reserve and Matrimonial Interests or Rights Act governs the division of real property on reserve when a marriage or common-law relationship ends ([Indigenous Services Canada](#)).

Federal Indian Day School Class Action

The Federal Indian Day School Class Action is a nation-wide class action lawsuit against Canada brought to compensate survivors for harms they suffered while attending federally operated Indian Day Schools ([Federal Indian Day School Class Action](#)). The Federal Indian Day School Class Action settlement was announced in 2019.

Gladue

R.v. Gladue is the 1999 supreme court of Canada decision which recognized the need to deal with the crisis of exceptionally high rates of Indigenous people in jails across Canada. Due to the R. v. Gladue decision, judges now have a duty to review information coming from a Gladue report (or made through Gladue submissions) that outline the unique background factors which may have played a part in bringing an Indigenous individual before the court. A Gladue report is a report prepared for sentencing, bail, appeals, long term offenders hearings, dangerous offenders hearings, or parole hearings that provide the court with comprehensive information on the offender, their community, and their family and a healing and restorative justice plan as an alternative to prison time. For more information on Gladue services offered by BCFNJC, please visit <https://bcfnjc.com/landingpage/gladue-services/>.

Indigenous Justice Programs

The federal [Indigenous Justice Program](#) (IJP) supports Indigenous community-based justice programs that offer alternatives to mainstream justice processes in appropriate circumstances. The objectives of the IJP are to assist Indigenous people in assuming greater responsibility for the administration of justice in their communities, to reflect and include Indigenous values within the justice system and 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.

Jordan's Principle

Jordan's Principle is named in memory of Jordan River Anderson, a young boy from Norway House Cree Nation in Manitoba. Jordan's Principle makes sure all First Nations children living in Canada can access the products, services and supports they need, when they need them. Funding can help with a wide range of health, social and educational needs, including the unique needs that First Nations Two-Spirit and LGBTQQIA children and youth and those with disabilities may have ([Indigenous Services Canada](#)).

Judiciary

The judiciary is, collectively, the judges of the courts of law. It is independent of the legislative and executive branches. Judges are public officers appointed to preside in a court of justice, to interpret and apply the laws of Canada ([The Canadian Encyclopedia](#)).

LABC (Legal Aid BC)

Legal Aid BC is a provincial Crown Corporation that was created by the Legal Services Society Act in 1979 to provide legal information, advice, and representation services. LABC's priority is to serve the interests of people experiencing barriers accessing the legal system in British Columbia ([LABC](#)).

Law Foundation of BC

The [Law Foundation of British Columbia](#) is an independent non-profit foundation established in 1969 under the Legal Profession Act. The Foundation receives the interest on funds held in lawyers' pooled trust accounts maintained in the banks and credit unions of the province. The Foundation in turn distributes these funds by way of grants to five areas, one of which is Legal Aid.

Law Society of BC

The Law Society of British Columbia ensures the public is well served by legal professionals who are honourable and competent. They regulate the legal profession in BC, protecting the public interest in the administration of justice by setting and enforcing standards of professional conduct for lawyers. They also bring a voice to issues affecting the justice system and the delivery of legal services ([Law Society of BC](#)).

MCFD (Ministry of Children and Family Development)

MCFD is the BC provincial ministry responsible for child protection services across much of BC. Other agencies also provide child protection services, including a number of delegated Aboriginal agencies. MCFD's legislative authority comes from the Child, Family and Community Service Act (CFCSA). It is important to note that although Indigenous children make up less than 10% of children in BC, they make up 68% of children in MCFD care. In 2019, Bill C-92 An Act Respecting First Nations, Métis and Inuit Children, Youth and Families became law, paving the way for Indigenous jurisdiction of Indigenous child and family services in Canada. In BC, recent changes to the Child, Family and Community Service Act and the Adoption Act recognize the inherent right of Indigenous peoples to exercise jurisdiction over child and family services.

Ministry of Attorney General

The Attorney General is responsible for legal services including sheriff and court administration services, legal aid, prosecution services, administrative tribunals, civil and family justice services, protection and promotion of human rights, and providing legal advice to Government (Government of BC). The current Attorney General is the Honourable Niki Sharma, K.C.

NCCABC (Native Courtworker and Counselling Association of BC)

The NCCABC “provides culturally-appropriate services to Indigenous people and communities consistent with their needs”. Their services are “accomplished by assisting persons involved in the criminal justice system; providing access to counselling and referral services for clients with substance abuse and detox support issues; providing advocate services for Indigenous family and youth” (NCCABC).

Parents Legal Centres

As a part of LABC, the Parents Legal Centres (PLC) help parents with child protection matters and family law matters in the community. If eligible for services, the PLC lawyer and advocate can help address social worker's concerns about a child's safety (child protection) early on. Together they can help find solutions that work for the client and their family.

PLEI (Public Legal Education and Information)

PLEI involves the delivery of legal materials, services and programs to help people learn about their legal rights and responsibilities. PLEI can take the form of physical or online resources, legal clinics, workshops, and presentations. PLEI has an important role in advancing social justice, as the creation of accessible legal materials can dismantle systemic barriers to justice system participation.

Probate

According to the [Government of BC](#) website, “Probate is a process that verifies a will is real under B.C. laws. Whether a will needs to be probated or not depends on the agencies and financial institutions that hold assets within an estate – they may require that a will is probated before the assets are distributed or accessed by anyone. For example, if your uncle kept the majority of his savings in a local credit union, that credit union may require you to prove his will is legitimate under B.C. law before you withdraw his remaining funds. If you are unsure whether or not a will must be probated, you may wish to seek legal advice.”

Remand

According to the [Government of BC](#) website, “If you are being held in custody while you wait for your trial or sentencing, you are in remand. Remanded people are considered innocent until proven guilty. If you are remanded, you will remain in custody until one of the following occurs: the charges are dismissed, you are granted bail, you are found not guilty or you are sentenced and begin serving your sentence”. Remand is also known as pre-trial custody.

Residential Tenancy Act

All BC tenants are protected by the [Residential Tenancy Act](#), the BC legislation that governs the relationship between landlords and tenants.

Restorative Justice

Restorative justice refers to “an approach to justice that seeks to repair harm by providing an opportunity for those harmed and those who take responsibility for the harm to communicate about and address their needs in the aftermath of a crime.” Restorative justice focuses on “addressing the harm caused by crime, while holding the offender responsible for their actions and provides an opportunity for those impacted to identify and address their needs. It has been part of Canada’s justice system for decades and is used by communities, including Indigenous communities and programs, by police, courts, and corrections” (Department of Justice Canada).

Section 35, Constitution Act

According to the [Centre for Constitutional Studies](#), “Section 35 of the Constitution Act, 1982 “recognizes and affirms” the existing Aboriginal and treaty rights of Aboriginal peoples, that is, Indian, Inuit and Métis peoples. Determining what those rights are has been the work of courts across Canada since 1982.” They add that “Section 35, which was added to the Constitution in 1982, is a tool that Indigenous groups can now use to enforce their rights in the courts when they are infringed by government”.

Self-Determination

In international law, “Self-determination denotes the legal right of people to decide their own destiny in the international order. Self-determination is a core principle of international law” ([Cornell Law School, Legal Information Institute](#)). The principle of self-determination is enshrined in a number of international treaties, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Article 3 of UNDRIP states that “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”.

Self-Government

Indigenous self-government is “the formal structure through which Indigenous communities may control the administration of their people, land, resources and related programs and policies, through agreements with federal and provincial governments” ([The Canadian Encyclopedia](#)). Section 35 of the Constitution Act, 1982 recognizes that Indigenous peoples in Canada have an inherent right to self-government. “Negotiated agreements can set out law-making authority in many areas, including: governance, social and economic development, education, health, lands and more ([Crown-Indigenous Relations and Northern Affairs Canada](#)).

Summary Offences

“A summary conviction offence is the least serious kind of criminal offence under Canada's Criminal Code. It is also known as a “petty crime”, for example, disturbing the peace. These offences usually carry a maximum punishment of six months in jail or a \$5,000 fine. Alternative measures can be considered for less serious summary offences” ([Government of British Columbia](#)).

UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples)

The United Nations Declaration on the Rights of Indigenous Peoples, or “the Declaration” is “the most comprehensive instrument detailing the rights of Indigenous peoples in international law and policy, containing minimum standards for the recognition, protection and promotion of these rights. It establishes a universal framework of minimum standards for the survival, dignity, wellbeing and rights of the world’s indigenous peoples” ([UNHCR](#)). Adopted by the UN General Assembly in 2007, but ratified in Canada only in 2017, UNDRIP is now codified in federal law in Canada as the [United Nations Declaration on the Rights of Indigenous Peoples Act](#) and provincial law in BC as the [Declaration on the Rights of Indigenous Peoples Act \(DRIPA\)](#).

Trauma-informed

To be trauma-informed means to understand the impact of trauma on peoples' lives and behaviours and to adjust the delivery of supports and services to minimize the potential for harm and re-traumatization by creating emotionally and physically safe environments. The term trauma-informed has recently expanded to include violence-informed as well (i.e. trauma- and violence-informed approaches" ([Public Health Agency of Canada](#)). The term trauma-informed is often used in the context of health care or service delivery, and can be applied to the delivery of legal services.

Tribunal

Tribunals perform adjudicative or regulatory functions in the public justice system. They are established by statute and are essential to the governance of the province. They administer rules for everyday things like employment, housing, health and industry. A tribunal may be referred to as a "board" or "commission" ([Government of BC](#)).

Voluntary Care Agreement

A voluntary care agreement is an agreement that a parent or guardian makes with MCFD or a delegated agency for a child to be in foster care for a limited time.

Appendices

B. Recommendations List

Accessibility

- **Recommendation 1:** Partner with community organizations to assist in providing resources (e.g., internet, phone, computer, printer, etc.) to access legal services.
- **Recommendation 2:** Consider providing legal services in Indigenous communities and on reserves via outreach programs or satellite offices.
- **Recommendation 3:** Provide in-person legal services via a brick-and-mortar model.
- **Recommendation 4:** Provide virtual legal services in tandem with in-person legal services.
- **Recommendation 5:** Expand legal service hours and ensure services are provided in a timely fashion (e.g., after hours, drop-in services, 24-hour response turnaround).

Eligibility Criteria

- **Recommendation 6:** Reduce the barriers to being eligible for legal aid services (e.g., financial verification requirements, client identification alternatives, Indigeneity policies, etc.).
- **Recommendation 7:** Eliminate or change the income eligibility requirement for legal aid services so that more Indigenous peoples are eligible to receive legal representation.
- **Recommendation 8:** Expand legal aid coverage to begin earlier in the legal proceedings (i.e. pre-charge).

Limitations of the Current Model

- **Recommendation 9:** Leverage the advantages of the clinical or staff model and tariff model when developing a new model of legal services delivery.
- **Recommendation 10:** When developing a new model of legal services delivery, prioritize the following features:
 - Allocating sufficient time for lawyers to provide quality legal services to Indigenous clients, compared to what is available under the current model.
 - Ensure the new model does not include features that incentive lawyers to encourage their clients to plead guilty and avoid a lengthy trial.
 - Provide legal services for criminal charges even when incarceration is not imminent.
 - Allow for more time on family and child protection matters to reflect the complexity of these matters for Indigenous peoples.

Intake Services and Application Process

- **Recommendation 11:** Provide in-person intake services.
- **Recommendation 12:** Partner with community organizations to assist in providing intake services.
- **Recommendation 13:** Provide intake services in Indigenous communities and on reserves via outreach programs or satellite offices.
- **Recommendation 14:** Streamline intake services and the application process to ensure the turnaround is reasonable and timely.
- **Recommendation 15:** Ensure intake staff are properly trained, culturally competent and trauma-informed.
- **Recommendation 16:** Develop an online platform (e.g., website, client portal, phone app, etc.) to allow clients to track their application and access their files.

Conflicts of Interest

- **Recommendation 17:** BCFNJC should be aware of possible conflicts of interest, particularly in family law matters where both spouses are seeking legal services and wrap-around supports, and develop ways to address those conflicts while ensuring access to justice for all individuals.
- **Recommendation 18:** If mitigation of possible conflicts of interest includes contracting private bar lawyers, BCFNJC should ensure that those private bar lawyers are familiar with the community they will be serving.

Front-End Legal Aid Services (Brydges Line and Duty Counsel)

- **Recommendation 19:** Review current front-end LABC services to assess how they might be improved upon in a future legal aid services model.

Holistic and Wrap-around Supports

- **Recommendation 20:** Holistic, wrap-around services should be embedded into BCFNJC's service delivery model. This could include:
 - Housing, mental health and addictions supports,
 - Indigenous legal navigator and advocate roles,
 - Compiling and maintaining a list of relevant community resources for client referrals, and
 - Various other practical supports, including tax returns for Elders, a drivers' licensing program, and gender-based violence programming.

Community Collaboration and Relationship Building

- **Recommendation 21:** Prioritize relationship building with the clients and communities we serve, and legal professionals in the justice system.
- **Recommendation 22:** Build collaborative networks and relationships with communities and service providers who are already supporting Indigenous peoples involved in the legal system.
- **Recommendation 23:** Foster open and effective communication with communities and community-based organizations to set our clients up for success.

Cultural Competency and Trauma-Informed Services

- **Recommendation 24:** Build culturally competent and trauma-informed legal service delivery into our legal aid model.
- **Recommendation 25:** Advocate for a culturally competent and trauma-informed justice system (e.g., in the courtroom).
- **Recommendation 26:** Provide cultural competency and trauma-informed training for a wide array of legal professionals, including lawyers, judges, parole and probation officers, court staff, social workers, and police officers.

Expanding Legal Services

- **Recommendation 27:** Expand legal services beyond the scope of what is offered in the current legal aid services model.
- **Recommendation 28:** Prioritize the expansion of services in the following areas: family law, child protection, criminal law, Aboriginal harvesting matters, residential tenancy, and wills and estates, particularly probate matters.

Uplifting Indigenous Laws

- **Recommendation 29:** Support the integration and recognition of Indigenous laws and traditional governance, and provide clarity and support for communities and Nations enacting traditional Indigenous laws.

Elders

- **Recommendation 20:** Elder, Knowledge Keeper, or Matriarch roles should be built into BCNFJC's legal services model.
- **Recommendation 31:** Advocate for the incorporation of Elders in the justice system (e.g., attend court as a support person for our clients, development of Elders Councils).

Inclusive of all Indigenous communities

- **Recommendation 32:** The legal and support services BCFNJC provides must be inclusive of all Indigenous communities in BC, including urban Indigenous, non-status First Nations, Métis, and Inuit peoples.

Indigenous Representation

- **Recommendation 33:** To increase representation of Indigenous professionals in the legal system, BCFNJC should seek to hire and retain Indigenous staff, including lawyers and support staff within its IJCs.

Diversion

- **Recommendation 34:** Expand and advocate for Indigenous-led diversion options such as alternative measures and restorative justice programs.

Victim Services

- **Recommendation 35:** Develop or advocate for an Indigenous-led victim services program.

Youth Services

- **Recommendation 36:** Develop youth legal aid services that encourage youth engagement and focus on the specific needs of youth.

Legal Education and Information

- **Recommendation 37:** BCFNJC should develop its own legal education and information materials specific to the needs of Indigenous peoples.

Choice of Service and Choice of Counsel

- **Recommendation 38:** The right to choice of service should be respected. Indigenous clients should have the option of receiving their legal services through BCFNJC or through LABC, and to access legal services at the IJC office of their choice.
- **Recommendation 39:** The right to choice of counsel should be respected. Indigenous clients should have the option of receiving their legal services from their preferred legal counsel, where possible.

Mentorship for Lawyers

- **Recommendation 40:** Provide mentorship opportunities for lawyers seeking to expand the legal services they provide or specialize in.
- **Recommendation 41:** Provide mentorship opportunities, especially for lawyers recently called to the bar, such as having articling students assist with the preparation of court documents, contributing to tribunal matters, and working with clients on non-legal matters such as obtaining a driver's license.

Retaining Lawyers

- **Recommendation 42:** Provide incentives for lawyers, such as a competitive salary to help attract and retain lawyers, especially in smaller and remote communities where lawyer retention is an issue.

Transparency and Accountability

- **Recommendation 43:** Develop policies that provide for checks and balances to ensure legal aid services remain transparent and accountable.

Information Sharing Agreement

- **Recommendation 44:** Ensure Information Sharing Agreements are in place between BCFNJC, LABC, and partner organizations.

Appendices

C. Engagement Schedule

Location	Date
Duncan	September 19, 2023
Nanaimo	September 20, 2023
Chilliwack	September 25, 2023
Merritt	September 26
Surrey	September 27/28, 2023
Vancouver	October 5, 2023
Cranbrook	October 10, 2023
Victoria	October 11/12, 2023
Prince Rupert	October 18, 2023
Kelowna	October 18/19, 2023
Hazelton	October 19, 2023
Terrace	October 20, 2023
Kamloops	October 20, 2023
Fort St John	October 23, 2023
Prince George	October 24, 2023
Port Alberni	November 8, 2023
Campbell River	November 9, 2023
Port Hardy	November 10, 2023
Virtual	November 23/28/30, 2023
Williams Lake (Virtual)	January 9, 2023

Appendices

D. Engagement Session Questions

Community Participants

1. What are the most important features that you would like to see in an Indigenous-led legal aid service model?
2. What issues or gaps exist with current legal aid services for Indigenous peoples?
3. What barriers, if any, currently exist for Indigenous peoples looking to access legal aid services? What suggestions do you have to reduce those barriers?
4. When thinking about legal aid services for Indigenous peoples, are there any specific programs, services, or features of the current Legal Aid system that should be specifically preserved and/or built upon?
5. Currently, legal aid services only include criminal, family, child protection, and immigration matters. We have heard suggestions that a new legal aid model for Indigenous peoples should be expanded to include other areas of law. Do you agree? If yes, what other areas of law and are there any specific areas that should be prioritized?
6. What other groups or individuals, in your opinion, should BCFNJC be engaging with in the development of a new model for legal aid for Indigenous peoples?

Legal Professional Participants

1. What could be improved with current legal aid services for Indigenous people?
2. What issues are communities and service providers facing with the current legal aid system?
3. If you could change current legal aid services for Indigenous people, what changes would you make?
4. What is working well with current legal aid services for Indigenous people?
5. What legal issues should be addressed through a new legal aid model for Indigenous people that there are currently no legal aid services to provide?
6. What is the #1 thing that would improve an Indigenous person's experience through the justice system?
7. Who else should we engage with?

Appendices

E. Community Engagement Survey

LEGAL AID SERVICES TRANSITION ENGAGEMENT SURVEY

Name: _____

If you would like to receive a follow-up email reporting what we heard, please provide your e-mail below.

What region do you currently live/work in?

- Kootenay
- Cariboo
- Lower Mainland Southwest
- North Coast
- Thompson Okanagan
- Nechako
- Northeast
- Vancouver Island & Coast
- Out of Province

Please specify what city/community you currently live/work in.

Do you identify as an Indigenous Person, that is, First Nations, Métis and/or Inuk (Inuit)?

- First Nations
- Métis
- Inuk (Inuit)
- No
- Prefer not to answer

If applicable, please specify which First Nation you are a member/citizen of, or which Métis Chartered Community you are a member/citizen of.

What is your experience with legal aid? Please check all that apply.

- Current/Previous Legal Aid Client
- Family Member of Current/Previous Legal Aid Client
- Provide community services to Indigenous peoples who use legal aid services (please specify the name of the community service in the "Other" field below)
- Employee of a First Nation whose members/citizens use legal aid services
- Legal Professional providing Legal Aid services
- Other

Question 1. When thinking about legal aid services for Indigenous peoples, are there any specific programs, services, or features of the current Legal Aid system that should be specifically preserved and/or built upon?

Question 2. What barriers, if any, currently exist for Indigenous peoples looking to access legal aid services? What suggestions do you have to reduce those barriers?

Question 3. What issues or gaps exist with current legal aid services for Indigenous peoples?

Question 4. What are the most important features that you would like to see in an Indigenous-led legal aid service model?

Question 5. Currently legal aid services only include criminal, family, child protection, and immigration matters. We have heard suggestions that a new legal aid model for Indigenous peoples should be expanded to include other areas of law. Do you agree? If yes, what other areas of law and are there any specific areas that should be prioritized?

Question 6. What other groups or individuals, in your opinion, should BCFNJC be engaging with in the development of a new model for legal aid for Indigenous peoples?

Additional Comments:

Thank you for taking the time to complete the Legal Aid Transition Community Engagement Survey. We truly appreciate your feedback. This will enable us to improve our model and workplan to transition legal aid services for Indigenous peoples from Legal Aid BC to the BCFNJC. For further information about legal aid transition, please see BCFNJC's webpage: BCFNJC.com.



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