

# LILLOOET INDIGENOUS COURT BUSINESS CASE

(May 16, 2022 version v3)



## 1.0 Introduction

The Lillooet Indigenous Court Steering Committee (the "Committee") is proud to present the business case for the establishment of an Indigenous Court in Lillooet, BC. The purpose of this business case is to:

- provide a justification for the creation of an Indigenous Court in Lillooet;
- describe some of the St'at'imc and Nlaka'pamux principles of law and justice that the Committee would like to incorporate into the operation of the court; and
- explain the details of the court's operation.

This court will provide Indigenous peoples in the area with a holistic, culturally-relevant approach to justice that prioritizes healing, accountability, and belonging over punishment and alienation.

The Committee recognizes that Indigenous Courts offer a bridge between the colonial system of courts and the return to revitalized Indigenous legal orders that are entirely within the jurisdiction of Indigenous groups. In the N'laka'pamux language this bridging is reflected in the phrase: x<sup>w</sup>uý kt móq<sup>w</sup>ix eks céwu? kt – we will join together. The Committee recognizes that the Lillooet Indigenous Court (the "LIC") is not intended to be a fully realized representation of Indigenous law, but rather a single strategy among the multiple strategies that Indigenous peoples are using to advance recognition of their inherent rights and responsibilities.

**Trigger warning:** readers may be triggered by the discussion of Indian Residential Schools and other difficult topics. To access a 24-hour National Crisis Line, call: 1-866-925-4419.

## 1.1 History and Context of the Lillooet area

The town of Lillooet is situated within St'at'imc tmicw (territory) along the banks of Satatqwa (Fraser River). The St'at'imc (pronounced Stat-lee-um) have occupied this, and all other parts of their territory, since time out of mind. The St'at'imc language, St'át'imcets, is a branch of Interior Salish. The St'át'imc Nation is composed of eleven communities. There are six communities that belong to the northern St'at'imc. Five of the six northern St'át'imc communities (Sekw'el'was, Tsal'alh, Ts'kw'aylaxw, Xwisten, and Xaxli'p<sup>1</sup>) are served by the Lillooet Tribal Council, which was established in 1976.<sup>2</sup> T'ít'q'et is also a community of the northern St'át'imc and is associated with the P'egp'ig'lha Council, formed in 2002, which is comprised of family representatives from each of the main ten family lines. The communities are connected yet distinct.

Lytton is a village located at the confluence of the Thompson River and Fraser River on the east side of the Fraser. The community includes the Village of Lytton and the surrounding community of the Lytton First Nation, whose name for the place is Camchin, also spelled Kumsheen, meaning, "where the Rivers Cross". Lytton has been home to the Nlaka'pamux (pronounced Ng-khla-kap-muhx), people for over 10,000 years. Sometimes referred to as the Thompson, the Nlaka'pamux speak an Interior Salish language. The word Nlaka'pamux means "People of the Canyon". With a population of approximately 2,048, Lytton First Nation is the largest of all Nlaka'pamux communities and, unlike all other governments of the Nlaka'pamux peoples, it is not a member of any of the three Nlaka'pamux tribal councils.<sup>1</sup>

Information about the individual communities can be found in **Appendix C**. The Indigenous communities in the vicinity of what are now the towns of Lillooet and Lytton protested the incursion of settlers without treaties in place (see **Appendix L**). The territories are unceded and no treaties have been signed with the St'at'imc or the Nlaka'pamux.

While the St'at'imc and Nlaka'pamux take pride in their resilience and resistance, the members have suffered loss of language and traditions as a result of colonialism. Indigenous peoples in the Lillooet and Lytton area also experienced and continue to benefit from ceremony, tradition, governance structures, values, and community. There is a recognition that the St'at'imc and Nlaka'pamux are resilient and active in bringing about healing in their communities.

### Guiding Principles and Values

Our laws come from the land, our language, stories and our way of life. The guiding principles and values of the Indigenous peoples of the Lillooet and Lytton area as are lived by the inhabitants here:

- We value our Elders' input .
- Things take time .
- Everyone has a gift or something to offer, everyone has a role (although we might not know we have a role)
- Teachings and stories such as "How the animals and birds got their names" discuss the place of struggles in our lives. Life isn't perfect, it is part of the journey.
- There are a lot of things that drive our laws, we are a collaborative people.
- Through helping others, we realize that people are here to help us too. It helps me when I help them. "When you are feeling low, help someone." - Larry Narcisse

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<sup>1</sup> Nicola Tribal Association, the Fraser Canyon Indian Administration and the Nlaka'pamux Nation Tribal Council.

- Agency is important in our ways. People do not do or think for you. You are an important part of the process.
- Unconditional love is prevalent in our culture.
- We build and maintain relationships .
- We don't need to return to how we did things before, we are embracing the underlying principles of justice as lived by us.

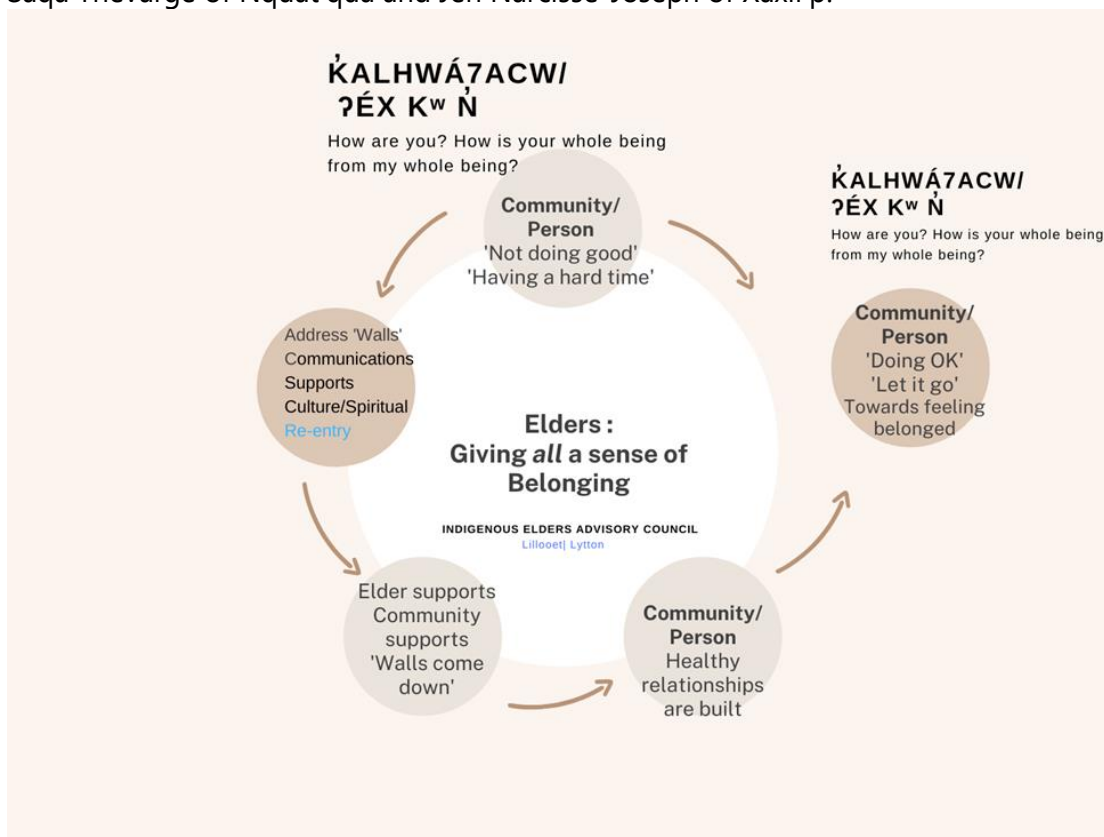
For more information see **Appendix C: Traditional Ways.**

The LIC Logic Model, pictured below, visually represents the vision for the LIC.

- *K'alhwá7acw* is a St'á'timc greeting that means "How are you?". When we ask *K'alhwá7acw* it means how are you from my being to your being – spiritually, physically, and emotionally . Similarly, *ʔéx kʷ n̓* is a Nlaka'pamux question/greeting asking about the wellbeing of someone. The process below demonstrates the initial greeting with a person who is engaged in the LIC. The Elders/people want to know how they are doing, their whole being. Likely, there are walls up, and presumably, there are issues creating this engagement with the LIC. When the person is 'not doing good', neither is the community as everything is connected. Through the process of the LIC and supported by the ways our Elders have of giving *all* a sense of belonging, eventually, the walls will come down and the person should leave the circle feeling towards a sense of belonging and 'doing OK'/able to 'Let it go'. Thus, now he/she/they can leave the circle in a positive way. There is a 're-entry' point option mentioned in the blue writing below where clients re-enter as resources for others in the circle.

*How are you-your whole being?* is more than a phrase, it's a way of life that ebbs the person to go towards a life of 'I am good.'

The Logic Model was inspired by the discussions of the *Indigenous Elders Advisory Council* and was created by Saqa Thevarge of Nquat'qua and Jen Narcisse-Joseph of Xaxli'p.



## **Impact of colonization on traditional justice principles and a call for a re-vitalization of Indigenous approaches to justice**

The Committee believes that Indigenous Courts provide a re-envisioned justice process that incorporates Indigenous traditional peacemaking principles, held by the St'át'imc, the Nlaka'pamux, and other Indigenous groups. While the Committee appreciates that there is great diversity among and even within Indigenous communities, there is a restorative justice approach that is commonly embraced in all of the communities in the Lillooet and Lytton area. The Committee members also see the revitalization of traditional justice practices as having the potential to contribute to the overall health and wellbeing of the persons in contact with the justice system, their families, and the broader communities they come from. Committee members are committed to learning how Indigenous Court process may best find ways to balance keeping clients in the community and keeping community members and victims safe. Among the reasons the Committee members and surrounding Indigenous communities endorse the establishment of an Indigenous Court is that they want to see a focus in sentencing hearings on fostering healthy relationships and forging workable solutions with the aid of service providers and Elders. An Indigenous Court in Lillooet would provide a non-adversarial team approach aimed not at punishment and deterrence but at rehabilitative measures designed and implemented primarily by the parties themselves.

## **Ongoing Effects of Colonization**

Disproportionately affected by poverty, colonization, and disrupted family experiences, Indigenous peoples have a shared history of oppression, facilitated by Indian agent control and residential schools. The results of this legacy of harm include higher rates of Fetal Alcohol Spectrum Disorder, alcoholism, suicide, drug addiction and related traumas, which are often exacerbated by experiences of institutionalized racism in the Canadian justice system. The National Inquiry into Missing and Murdered Indigenous Women and Girls has raised the alarm that Indigenous people are facing a raced-based genocide. Indigenous people have higher mortality rates and are susceptible to higher rates of homelessness, poor health and diets, and increased feelings of hopelessness than are non-Indigenous people in Canada. Broadly speaking, the social determinants of health, which are the social and economic conditions (access to housing, employment opportunities, etc.) that influence the health of people and communities, play a significant role in the now widely acknowledged overrepresentation of Indigenous persons in the Canadian prison system and foster care system. In short, the legacy of harm from colonization puts Indigenous persons in a position where they are more likely to suffer from the vulnerabilities (substance misuse, poverty, homelessness, etc.) that put people at risk for conflict with the law.

## **The Overrepresentation of Indigenous Peoples in the Canadian Justice System**

According to Statistics Canada, Indigenous adults (those who identify as First Nations, Métis, or Inuit) accounted for 31% of admissions to provincial/territorial custody and 29% of admissions to federal custody (those serving sentences of 2 years or more) in 2018/2019, while representing 4.5% of the Canadian adult population. Sources report that these proportions are consistent with the previous year's statistics. Tragically, the impacts of the disproportionate overrepresentation have a devastating affect on children. Deni Hanington, in the Canadian Journal of Family and Youth, writes:

The incarceration of parents can have effects on their children in many diverse ways. As the administration of offenders into institutions continues to increase, so too will the effects on their children. There is a high percentage of children within society who live without one, or both, of their parents due to the way the Canadian criminal justice system operates. The percentages are even higher for children of Indigenous populations, as their mothers and fathers face frightening overrepresentation due to systematic biases of racism and sexism. These children will live with a stigma that

may develop into behavioural problems, issues of theft, and difficulty forming positive relationships. Infants who experience this trauma will likely form negative attachment styles with others and experience lower health outcomes throughout their adult life. Losing a parent to the system can impact the way children cope with grief as they experience the ambiguity of incarceration. Parental incarceration is part of a cycle that produces second generation offenders, who experience more serious adverse effects than their parents.

## **Indigenous Courts**

There are eight First Nations Courts operating in British Columbia: the First Nations Court in New Westminster, the First Nations Sentencing Court in North Vancouver, the First Nations Court in Duncan, Nicola Valley Indigenous Court in Merritt, the First Nations Court in Prince George, the Cknúcwentn Court in Kamloops, the Indigenous Court in Williams Lake, and the Hazelton Indigenous Court.

Indigenous Courts have a significant role to play in helping the judge craft a sentencing decision that incorporates an understanding of what a participant has experienced in their life, the context of their present circumstances, and what healing modalities the participant requires to address the underlying reasons they are before the court, as well as a decision that considers the impact of the sentence on relevant children and family members. Support for Indigenous Courts can be found in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the United Nations Declaration on the Rights of the Child, the Truth and Reconciliation Calls to Action, the National Inquiry into Missing and Murdered Indigenous Women and Girls, and the resiliency of Indigenous peoples and a strength-based approach. See **Appendix P: Support for Indigenous Court** for more information.

### **1.2 Need and Opportunity**

There is a dedicated team of a people offering numerous services in the Lillooet/Lytton area with a commitment to providing culturally appropriate sentencing options through an Indigenous Court in Lillooet. A lack of public transportation makes it challenging for people in Lytton and St'at'imc territory to go to Indigenous Courts outside Lillooet.

The Committee sees Indigenous Courts as contributing to truth and reconciliation efforts. Indigenous Courts also offer a valuable opportunity to incorporate an understanding of a participant's history and background into decision-making processes that affect the lives of the participant, their family, and community members. The community members want to be involved in bringing about healing for individuals, families, and the collective. There are committed persons willing to work with individuals to promote their sense of responsibility to the community and their own healing. They propose doing this by supporting the individual through the journey of a holistic and culturally appropriate sentence informed by teachings and an in-depth knowledge of the individual, their family, and their community.

Many individuals in conflict with the law have a path forward that involves discovering or revisiting their place in community. These persons have often experienced a disconnection from their community as a result of time in residential schools or foster care. The Indigenous Court can provide a safe space for individuals to learn about the circumstances that challenged their parents and ancestors as they sought to parent and provide for them in the throes of their own pain and oppression. Real healing can take place as individuals both understand and acknowledge that "hurt people, hurt people." Along with this understanding comes a chance a break a cycle of hurting and restore a sense of balance and connection. There are concentric circles of healing that can manifest. When the individual embraces a path of healing, they can be a part of broader family and community

peacefulness as all parties open their hearts to share and acknowledge both their pain and strength (past and present).

## 2.0 Background and Development History of the Project

A group of interested individuals have been collaborating since 2019 to bring an Indigenous Court to the Lillooet area. The Committee, includes First Nation's government and health representatives, community support workers, Elders, and lawyers. Various legal parties and community leaders have been involved and consulted throughout the process.

### 2.1 Timeline

The members of the Committee have contributed hundreds of hours to the Indigenous Court initiative. See **Appendix B: Timeline** for an outline of the activities undertaken by the Committee since 2019. See also **Appendix M: Meet the Lillooet & Lytton Area Communities and Volunteers** for more information about the volunteer work and orientations undertaken to-date.

## 3.0 Design and Function of the Court

The purpose of the LIC is to provide a mechanism to include a meaningful discussion of the unique experiences of Indigenous people who are dealing with a shared history of colonization, marginalization, and systemic oppression and offer the sentencing judge thoughtful and culturally appropriate suggestions for a healing plan designed to bring about real change for a person and, by extension, their family and community. The concept of an independent, objective decision maker from outside the community imposing justice on an individual does not align with St'át'imc decision-making protocol. Decisions about how to address unwanted behaviour were, and continue to be, made collectively with the input of Elders, leaders, and community members who know the individual and their family. The vision is that an Indigenous Court will offer a return to a spirit of collective and collaborative crafting of a healing plan and path forward for individuals in need of support and teachings. Rather than an adversarial, retributive justice, the LIC seeks to offer restorative justice that focuses on healing, holding the individual accountable, involving the victim whenever possible, and supporting families and community members impacted by harm done. Elders and community-based agencies have much to offer in the Lillooet and Lytton areas, including the resources necessary to assist Indigenous Court participants in co-crafting culturally appropriate Healing Plans.

By choosing to embark on the process offered in the Indigenous Court, individuals are given a meaningful opportunity to look closely at their lives and how their decisions have impacted others. Any individual who self-identifies as Indigenous will be eligible to use the LIC to pursue a path of healing and empowerment. Accepting responsibility for their actions and choosing to voluntarily receive a judgment in Indigenous Court will be the initial step to participating in the Indigenous Court process.

### 3.1 Types of files

The LIC would have the authority to hear any matter where the Provincial Court has jurisdiction and where the sentence to be imposed would likely have a community-based order as a component of the sentence. Offences involving sexual violence will generally not be referred to the LIC. The LIC is open to accepting other types of files as community resources (including clinicians with sexual abuse expertise) are available and as experience is gained by the participants in the future. The Committee notes that New Westminster First Nation court is conducting a pilot project for child protection matters and the LIC is open to exploring these types



of files in the future. The Committee notes that some types of files are liable to be lengthy and contentious and therefore may not be suitable for the LIC (ex. pipelines protests).

## 3.2 Referral Process

Before an individual can participate in Indigenous Court, they must first be referred to the Court. Referrals can come from a variety of sources; most often referrals come from the Crown, Indigenous Court duty counsel, defence counsel, Native Courtworkers, or the individual themselves.

As part of the referral process, the Crown will consider whether the participant has ties to Lillooet or Lytton area communities. These may include registered members of communities in the area as well as non-registered members who live in a local community. Of course, referrals to Indigenous Court may, with the Crown's consent be waived in from other jurisdictions around the province pursuant the British Columbia Prosecution Service policy. The individual must also want to participate in Indigenous Court. This might seem obvious, but it is imperative they understand the commitment and challenge that participating in Indigenous Court represents.

An individual's file must also meet certain legal criteria. Much of these are criteria that are agreed upon in the lead up to the creation of the Court. For example, some Courts have chosen not to hear files involving allegations of sexual violence, while others will not hear files where the offender is a youth charged under the *Youth Criminal Justice Act*. Notwithstanding, two elements are universal:

- The file must be one where the Crown is seeking a provincial sentence – a sentence no greater than 2 years less one day; and,
- The sentence to be imposed must include – or be likely to include - a community-based order. Without a community-based order – be it a probation order or Conditional Sentence Order – the process whereby participants are compelled to attend Indigenous Court for reviews cannot exist.

## 3.3 Court Processes

### 3.3.1 Scheduling

At this time, the Committee expects the Indigenous Court will sit for one day or one half-day per month. The desired result would be for the Court to sit more frequently. The First Nations Court in New Westminster and the Cknúcwentn Court in Kamloops sit once a month for a full day.

### 3.3.2 Structure of an Indigenous Court Sitting

It is foreseen that the LIC will follow the Kamloops Cknúcwentn First Nations Court and the Merritt Nicola Valley Indigenous Court First Nations Court models whereby the Judge, the Participant, the Participant's family, a group of local Elders, Crown and defense counsels sit around a table in the court room. The victim and their family members may be present if they wish. Social workers, drug and alcohol counsellors, and other support service workers may also be present where relevant. Community Corrections has committed to having a Probation Officer in court all day for proceedings. A Probation Officer is needed to supervise the Probation Orders that are made with attached healing plans.

The Committee supports a sitting that begins with an opening prayer and introductions of all present including sheriffs and clerks. As in the case of some Indigenous Courts elsewhere in BC, the sheriffs may be invited to stand just outside the courtroom.

The charge would then be read and in the case of an arraignment hearing, the plea entered. At this point, the context surrounding the offending event and subsequent decision-making by the Participant would be described to those around the table. If a victim impact statement has been made, it would be entered at this time. Crown counsel would then put forward an initial sentencing position. At this point, the Indigenous court diverges from the traditional system and the Elders would begin to facilitate a discussion between everyone at the table. Finally, once everyone has been invited to provide feedback and the Judge has had the opportunity to consider this feedback, the Participant will receive their sentence from the Judge, which will include a Healing Plan.

Much of the building of the Healing Plans themselves will be carried out by community-based agency partners in conjunction with Elders. It is understood that there will often be a Pre-Sentence Report (all Pre-Sentence reports include a Gladue component) rather than a full Gladue Report ordered as part of the preparation for the hearing unless there is significant jeopardy for a custodial sentence. Gladue Reports are written by Gladue Report Writers typically working on contract with the BC First Nation Justice Council. The reason a full Gladue Report will not often be ordered for an Indigenous Court hearing is that the Elders are familiar with the families, the communities, and the area in which the Participant resides. There will be consent from the Participant before the Elders read any reports submitted for court review. The Elders will speak in turn if they choose to do so. As is customary in the communities of the Lillooet/Lytton area, although this protocol will be established by the Elders Council themselves and may change over time, the Elder who leads a conversation and closes the conversation depends on the connection they have to the matter or topic. Meetings often begin with a storytelling to relax people rather than immediately addressing the agenda items. There is often a conversation that connects people through discussion of a place.

The participant, victims, service providers and others in attendance will also be given an opportunity to speak at the hearing. The Committee envisions a full room discussion in which attendees provide support and guidance. The expectation is that the hearing will be a minimum of one hour per Participant.

A healing plan will be an attachment to a probation order. There will be a condition that states "you must do your best to follow your attached Healing Plan...etc." The Probation Office monitors these conditions regularly and is therefore needed at all Court appearances. Probation Orders are needed to compel clients back for reviews and to report. Unlike standard court sentencing hearings, particular conditions such "abstain from alcohol" may be omitted as there is a recognition these types of orders often set up participants for failure.

### 3.3.3 Sentencing

The overrepresentation of Indigenous peoples in the criminal justice system is one of the issues this court seeks to address. In some instances, such as with those offences that carry mandatory minimum sentences, judges will impose sentences and clients may be required to serve reasonable time prior to working on the Healing Plan.

One of the main purposes of the proceedings is to determine what the Participant needs in order to find a way forward on a path to healing and balance. Sentences, when pronounced, will include a community-based component and sometimes involve a direct restorative component. The Probation Officer, with the assistance of the Elders, will be actively involved in supervising the Participant's implementation of the Healing Plan, monitoring the progress made by the Participant, and reporting the Participant's progress to the court and Elders. To facilitate this, the court will hold review hearings as needed. The Healing Plan will be attached to either the Conditional Sentence Order or the Probation Order to allow it to be more flexible.



Evidence of a Participant's success in the court process will be based on Indigenous principles and as such will be mindful of the need for community-oriented actions by participants to demonstrate the completion of a Healing Plan. When the Participant has reached the end of the Healing Plan, a completion ceremony will be held. The details of the ceremony are currently being determined in consultation with local Elders and artists; they must be culturally appropriate for the peoples, their communities, as well as people in the area who identify with other First Nations. This may manifest itself as the presentation of moccasins, a vest, a gift, or a blanket ceremony.

### 3.4 Healing Plan and Community Supports

Healing Plans will be tailored to individual participants and draw upon their own strengths, resources, and community capacity. Components may include counselling, other mental health or substance use treatment, cultural education, restorative cultural practices, service to the community, apology, and other rehabilitative or restorative actions.

An in-depth knowledge of the resources available in the community will be valuable in the development of a Healing Plan. Fortunately, our catchment area has numerous culturally appropriate resources that could make up components of a Healing Plan. In addition to the support of the local Community Corrections unit, the organizations listed below may provide referrals.

#### 3.4.1 Lytton Restorative Justice

Although Lytton Restorative Justice is not physically open in Lytton as they were sadly impacted from the devastating fire in 2021, they are offering services through email, phone, and social media. The Lytton Restorative Justice Program proudly offers, at no cost, support and confidential service for individuals and their families entering the judicial system regarding Civil, Family and other legal issues. Their services include attending court and providing support, court preparation, court etiquette, explanation of court processes and procedures, referrals, circles (alternative measures, restorative justice, peace making), liaison and advocacy.

#### 3.4.2 Lillooet Restorative Justice

Lillooet Restorative Justice Program (LRJP) is a program of the non-profit Lillooet Learning Communities Society (also known as Lillooet Learns). LRJP conducts free-of-charge community justice forums as a means of addressing crime and other forms of conflict within the community, and as an alternative to more punitive forms of justice, such as criminal charges. LRJP welcomes referrals from individual community members, police, crown counsel, bylaw, schools, and businesses, as well as other community agencies and organizations. LRJP has been operating since 2003. It is a volunteer-based organization that offers training in restorative justice-related areas, such as Community Justice Forum Facilitation.

#### 3.4.3 Lillooet Friendship Centre Society

Lillooet Friendship Centre Society (LFCS) provides an inclusive environment where Indigenous people can go to seek assistance with issues such as addiction, mental health, and family counselling. To provide consistent support, they have alcohol and drug counsellors and Mental Health Outreach Workers. LFCS hosts a variety of workshops and meeting groups, has a mental health worker, and a seasonally available shelter that is open until the end of June and reopens again in October. The LFCS is working on securing second stage housing. Programs offered include: PEACE (Prevention, Education, Advocacy, Counseling, Empowerment for children and youth

experiencing violence) and CWWA (Children Who Witness Abuse). LFCS is a valuable referral resource and the umbrella society for the LIC.

**Men's Talking and Healing Circle :** LFCS has a men's talking and healing circle. The group meets every Wednesday night from 6:00 pm to 8:00 pm at the Community Cares Centre. The group talks about whatever the men bring to the table. They use a talking stick or eagle feather, so each speaker has a chance to share. The group usually begins with a smudge and the facilitator provides snacks. The group agrees to keep everything that is shared confidential.

#### 3.4.4 First Nations Health Authority - Interior Region

The First Nations Health Authority (FNHA) promotes cultural competency, accessible health care, population and public health approaches, enhanced mental wellness, reduced harmful substance use and overall environmental health. The Indigenous communities have access to a community health nurse and counselling services, among other health programs, through the health authority. The availability of health centres within each community should allow participants to utilize the medical treatment or counselling services offered. A Nurse Practitioner travels to each community weekly and there is a schedule available online.

#### 3.4.5 Community Health Centres

The local health centres in each community offer mental health counselling and other health services.

#### 3.4.6 Interior Health Authority

Interior Health Authority (IHA) provides numerous services in the Lillooet area. Interior Public Health programs focus on the promotion of health, prevention of disease and injury and protection of the environment. Programs and services are offered at the individual, group and community levels and in a variety of sites (homes, schools, care facilities, workplaces, health units etc.). Examples of PH programs are Immunizations, Prenatal and postnatal, Infant and Child development, Harm reduction, Youth Clinic, TB screening and follow up, dental follow up. Audiology. Other programs offered by IH are the Opioid program, community mental health and substance use (MHSU) program, Home care, and home support. IHA also provides the Lillooet Medical Clinic which houses Doctors, NP, and a Foot Care Nurse. IHA also includes the local hospital which is full scope with an ER department, lab, x-ray, in-patient, hospice and minor surgeries.

#### 3.4.7 Upper St'át'imc Language, Culture and Education Society (USLCES)

The Upper St'át'imc Language, Culture and Education Society (USLCES) is a registered charitable organization, working on behalf of its First Nations communities and Nations to enhance and maintain St'át'imc language and other cultural knowledge through education in the Lillooet area.

#### 3.4.8 Stl'atl'imx Tribal Police Service (STPS)

The Stl'atl'imx Tribal Police Service (STPS) patrol reserve areas, engaged in preventative work, and liaise with the RCMP regarding criminal activity.

#### 3.4.9 Volunteer Service Work

In many cases an Indigenous Court Healing Plan will include a term that requires the Participant to give back to their community. There are opportunities to volunteer at the food bank and the meal program provided at the Lillooet Friendship Centre. There are often informal opportunities in individual communities to do yard work, snow removal, wood gathering/stacking, fishing/hunting/foraging, etc. for the benefit of Elders. The Lillooet

Volunteer Connect organization published a 2022 Volunteer Directory (available online), which outlines the many volunteer service opportunities in the Lillooet area.

### 3.4.10 Counselling and Other Support Services

**Lillooet Tribal Council: *Kanukw7stáliha Family Services* ‘the one that is able to help’** : The purpose of the Family Services Program is to provide support to our Children, Youth and their Families who are experiencing difficulties with parenting and who are potentially at risk of family or placement breakdown. The program provides culturally relevant Support Services designed to improve and better inform Family Case planning, and, to further help reduce risk through more effective decision making.

**Lillooet Tribal Council - St’át’imc Outreach Health Services (SOHS) program** : The St’át’imc Outreach Health Services (SOHS) “works collaboratively with Northern St’át’imc communities, partners in health, and other agencies in the Northern St’át’imc Territory to plan, communicate, advocate, and deliver shared professional health care services.” Services include Emergency Mental Health & Wellness, Addictions Worker, Child Youth and Family Clinician, Associate Clinician, Primary Care Nurse, Land Based Healing (hunting, fishing, sweats, looking for medicines, etc.) and Nukw7antwál’ Day Treatment program.

**Lillooet Tribal Council - Nukw7antwál’ Day Treatment** : The Day Treatment Program provides participants with daily activities to support their addiction recovery activities include any AA and well-briety meetings, drumming, educational workshops, sharing circles, counselling, ceremony, cooking, recreation, Elder talks, crafting, and many others. Program participation is free and if there are financial or other barriers preventing persons from attending (such as travel to events) these issues can be examined during the intake process as the treatment centre endeavours to help people overcome those barriers. The Day Treatment Centre offers weekly activities posted on the Facebook social media page and information is provided to each community and their counsellors. The sessions focus on goalsetting, communications, anger management, anxiety, and similar topics. The participants have significant input into what the program offers.

## 3.5 Court Roles

Court actors will have particular roles grounded in the values and objectives of an Indigenous Court. Members will work together to ensure those who access the Court are held accountable, supported, and educated throughout the process in a community-based, holistic manner. The format of the proceedings is more conversational than adversarial as the objective is to create a welcoming atmosphere in which people feel they matter and are wanted. It is understood that Court sessions may need to be postponed if there is a death or a funeral in any of the area communities impacting the court participants.

### 3.5.1 Elders

The LIC envisions following the model of the Chnucwentn and Nicola Valley Indigenous Courts with respect to the role of Elders in the sentencing process. Throughout the process, the Elders make suggestions and give the participants ‘homework.’ This homework may involve learning aspects of their family history, culture, tradition and language. The Elders offer insights regarding restorative practices in the community, bringing the Participant cultural awareness and connecting the Participant with community resources. We anticipate that the LIC will engage 8 Elders, up to 6 of whom would be present in Court at any time. The 8 Elders are chosen to represent the 6 northern St’át’imc communities and Lytton First Nation. The Elders present will play a key role in the completion ceremony. As Elders will play a significant role in the LIC, it is imperative that consideration is given to how Elders will be selected, their court orientation, and support.

#### 3.5.1.1 Elder Selection

Guided by an Elders Council Selection Policy, an Elder Selection Committee, headed by individuals who have experience in Elder selection for other projects, will nominate individuals to be selected as Court Elders. Elders will be nominated and selected on the basis of being known in the community and being representative of the six northern St'át'imc communities and Lytton First Nation. The Committee will perform a criminal record check on applicants, but not eliminate people based on having a criminal record. The Committee will consider timing of the offence including age of the offender, seriousness of the offence, and experiences and learning around the offence that the Elder could bring to the Court. The LIC Steering Committee oversees the Elder Selection Committee.

#### 3.5.1.2 Elder Orientation

Eleven Elders from the Lillooet area attended an Elder's orientation session in May/June of 2021, which was put on by the Nicola Valley Institute of Technology and offered online funded by Legal Aid BC. The feedback from the attendees was incredibly positive. Since this session, Elders have expressed interest in further orientations and opportunities to observe Indigenous Court sittings. Support for Elders is important, especially when it comes to the potential of re-traumatization. The model orientation includes a session on self-care and many de-briefing sessions. De-briefing for Elders will be a key component of the LIC's operations.

#### 3.5.2 Judges

At hearings, judges will work co-operatively with everyone at the table to devise an appropriate Healing Plan. This will require the facilitation of a sense of community in which Elders, offenders, victims, counsel, support and service personnel – all those who wish to speak – are heard.

#### 3.5.3 BC Prosecution Service

During court sessions, crown counsel will work co-operatively with everyone at the table to devise an appropriate Healing Plan.

#### 3.5.4 Defense Counsel

As part of the Court process, defense counsel will work co-operatively with everyone at the table to devise an appropriate Healing Plan in the best interest of their clients.

#### 3.5.5 Support Persons

To ensure that those who access and facilitate the court are appropriately supported and informed throughout the process, professional counsellors and other service workers will be invited to attend before, during, and after court sessions.

#### 3.5.6 Navigator and Court Coordinator Role

This part time employee position will function to guide the client through every stage of the Indigenous Court process, with particular attention to explanation and information sharing during the referral stage. This worker will be responsible for ensuring that clients are aware of the requirements of Indigenous Court in terms of potential commitments and expectations. Proceeding through this alternative court is the "healing way," not the easy way. See attached **Appendix 5: Navigator and Court Coordinator Job Description**.

#### 3.5.7 Elder Support Worker

The Navigator and Court Coordinator will ensure counsellors are available to support Elders.

#### 3.5.8 Probation Officer

The Probation Officer continues to be the first line of supervision during the “healing plan” (Probation Order), but there is additional supervision and supports available from Corrections contractors and mentors.<sup>2</sup> The courts determine if an individual is placed under community supervision and the conditions they must follow. This can occur through different types of court orders:

- Probation Orders – Individual is serving a sentence in the community with conditions that they must follow.
- Bail Orders – Individual is waiting for trial in the community (rather than in custody).
- Conditional Sentence Orders – Individual is permitted to serve a sentence of incarceration in the community under stricter conditions than a Probation Order.
- Recognizance/Peace Bonds – Individual has not been convicted of an offence, but the court has reasonable grounds to fear that the individual will cause personal injury or property damage.

### 3.5.9 Victim Support Worker

Currently, Victim Support Workers are available upon request. Victim Support Workers, when engaged, will act as a liaison between victims and the Court, keeping the victims apprised of the progress of the case. This position will also be responsible for connecting victims with appropriate supports outside of the Court that facilitate healing and balance such as counselling.

## 3.6 Resources

The BC First Nations Justice Council signed the Justice Strategy on March 6, 2020. The Justice Strategy offers a roadmap to transforming the justice system and provides for 42 actions along two paths: 1) reform of the current justice system; and, 2) restoration of First Nation legal traditions and structures. Of particular relevance, are strategies number 5 and 12:

Strategy 5: Establish First Nations Legal Services: Ensuring increased and more effective access to justice, and in particular defense counsel, for Indigenous accused.

Strategy 12: Establish a joint approach to the future of First Nations Courts

Under Strategy 5, the Justice Strategy envisions a transition for legal aid services for Indigenous persons from Legal Aid BC (LABC) to an Indigenous controlled entity and under Strategy 12 the BCFNJC and the Province of BC seeks to establish a joint approach to the future of First Nations Courts. The Métis Nation Of BC has a justice strategy as well. A number of Métis individuals access Indigenous courts in British Columbia.

In British Columbia, LABC is the main legal aid services provider for low income British Columbians. LABC is committed to supporting First Nations/Indigenous courts as part of its Reconciliation Action Plan. LABC supports First Nations/Indigenous courts (my preference is to include Indigenous given they are open to all Indigenous people) across the province by funding duty counsel and Elders honorarium for Elders who sit in these courts. LABC is currently working with the BCFNJC to support implementation of the First Nations Justice Strategy, which may include the administration of Elders honorarium and duty counsel being transitioned to the BCFNJC. LABC is nonetheless committed to supporting the implementation and operation of an Indigenous Court in Lillooet provided they remain the administrator of duty counsel and Elders honoraria at the time the LIC is operational.

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<sup>2</sup> Probation officers also supervise alternative measures, which are an option for the prosecutor to provide an individual with the opportunity to accept responsibility for a crime and make amends to the community without going to court .

LABC is committed to funding duty counsel to attend and support one court sitting per month, and will provide up to four Elders with honoraria for their participation in one court sitting per month. LABC also plans to contribute considerable expertise to the LIC as the society has been involved in the planning and implementation of Indigenous Courts in many BC communities. For more information about legal aid services in the Lillooet/Lytton region, see also **Appendix O: Lillooet Area Community Directory**. Other existing resources will support Indigenous Court. These include:

**Crown** (Provincial Crown) – Historically, referrals to Indigenous Courts around the province have arisen almost exclusively out of matters within the jurisdiction of the Provincial Crown. The Provincial Crown (British Columbia Prosecution Service) are committed to providing a dedicated Crown to work with LIC. The Provincial Crown are committed to refer suitable matters to the LIC.<sup>3</sup>

**Court Services Branch:** Court Services Branch supports the proposal and has a system in place should the specialized court be implemented.

**Defence Counsel:** Members of the bar would continue to represent their clients as per legal aid referrals and/or private retainers.

**Duty Counsel:** For unrepresented clients and once approval is given, LSS BC will post the position and appoint specialized duty counsel to act once per month.

**Elders:** Will be paid an honorarium by LSS BC and will be selected by means of an Elders Selection Committee compromising of members from the various communities.

**Probation:** A Probation Officer will be present at each Indigenous Court sitting.

**Youth Probation:** Existing staff resources will be redirected to support Indigenous Court

**Native Courtworkers:** Native Courtworkers often have a presence and support the Indigenous Courts. Lillooet does not currently have a Native Courtworker.

**Navigator/Court Coordinator:** Once approval is given; the Law Foundation of BC will provide funding for a Navigator to assist with the scheduling of Elders and the provision of navigation services for clients. This role is outlined in detail in **Appendix D**. This position will coordinate scheduling of orientations and court sessions, ensure Elders have the information packages in advance of court sittings, arrange for meals and travel, etc.

## 4.0 Operations Budget

As noted above, Legal Aid BC of BC (LSS of BC) has voiced their interest in providing funding for dedicated duty counsel. LSS has also indicated their capacity to contribute to Elder remuneration in the form of Elder honoraria. The Committee is currently in the process of submitting a proposal to the Law Foundation in regard to the remaining expenses, namely: funding for the completion ceremony, requisite Navigator/Court Coordinator support position, Elder orientations, and meals and mileage for Elders. Information about the court name and logo project can be found in **Appendix K**.

Expenditure	Year 1 Fall/Winter 2022	Annual Year 2	Funded By [Proposed]
General Court Operation	~	~	Provincial Court
Travel and training for judges	~	~	Provincial Court

<sup>3</sup> Federal Crown – Gillespie & Company holds the contract with the Public Prosecution Service of Canada (PPSC) for the prosecution of offences arising out of all Federal legislation with the notable exception of the *Criminal Code of Canada*. The Federal Crown Agent is equally committed to refer suitable matters to the LIC.



Duty Counsel	Duty Counsel Rates	Duty Counsel Rates	Legal Aid BC
Elder Honorariums (pre-court) 12 x 4 hour meetings annually	\$1,000	\$6,000	[Legal Aid BC]
Elder Honorariums \$380 per court sitting (4 Elders x 1 day per month annually)	\$3,040	\$18,240	[Legal Aid BC]
Elder Mileage	\$500	\$6,000	[Law Foundation]
Elder Meals, if applicable	\$100	\$4,200	[Law Foundation]
Trainer Honoraria (regular orientations, conferencing)	\$2,000	\$10,000	[Law Foundation]
Court Navigator Position (\$30/hour for 8 days per month) \$1,920/month	\$3,840	\$23,040	[Law Foundation ]
Indigenous Art Work (Logo & Name competition award)	\$1,000	N/A	Lillooet Community Fund (\$500) & Lytton First Nation (\$500) *
Contractor to coordinate drafting Business Case	\$5,000	N/A	Law Foundation \$3,500 *
Supplies & Materials (completion ceremony items, binders, etc.)	\$1,500	\$6,500	Law Foundation
Opening Ceremony (venue, food, gifts & honoraria)	\$4,000	N/A	Law Foundation
Administration (ex. 10% of \$21,980 funding retained by the umbrella society) includes office space, utilities, phone, etc.	\$2,198	\$7,398	Law Foundation
<b>Total Funding Required</b>	<b>\$24,178</b>	<b>\$81,378</b>	
*Total Funding Received To-Date	(-\$4,500)		
<b>Total Outstanding Funding Required</b>	<b>\$19,678</b>		

## 5.0 Measurable Outcomes

The Committee is committed to evaluating the efficacy of the Indigenous Court by monitoring existing data sources. These data sets could include a comparison between Indigenous incarceration rates before and after Indigenous Court implementation, as well as a comparison between Crown Counsel sentencing positions before Indigenous Court proceedings and the Healing Plan established as a result of the alternative justice process. In addition to monitoring available data and ensuring adherence to provincially directed evaluation processes, we also intend to ensure participants engage in the Indigenous Court process which involves obtaining participant consent to the use and disclosure of their personal information as a means to enable access to needed services using a team approach.

## Appendices

Appendix A: Indigenous Court Referral Form

Appendix B: Timeline and Document Revision History

Appendix C: Traditional Ways

Appendix D: Court Navigator/Court Coordinator] Job Description(s)

Appendix E: Lillooet & Lytton Area Support Letters

Appendix F: Lillooet Indigenous Court Steering Committee Terms of Reference

Appendix G: Terms of Reference Indigenous Elders Advisory Council

Appendix H: Indigenous Elders Advisory Council Participant Selection Policy

Appendix I: Lillooet Indigenous Court Service Area

Appendix J: Lillooet Indigenous Court Operations Manual

Appendix K: Name and Logo Development

Appendix L: Declaration of the Lillooet Tribe

Appendix M: Meet the Lillooet & Lytton Area Communities and Volunteers

Appendix N: Resources Consulted

Appendix O: Lillooet Area Community Resource Directory

Appendix P: Support for Indigenous Court