

Saskatchewan Indigenous Justice System: Implementing the Truth and Reconciliation Commission of Canada's Call to Action 42

Jordan Calladine, JD Candidate 2024

Truth and Reconciliation Commission Calls to Action

The Truth and Reconciliation Commission of Canada (TRC) was created as a mandated act following the Indian Residential School Settlement Agreement (IRSSA). It was active from 2008 to 2015 and was established to document the history and lasting impacts of the Indian residential school system on Indigenous peoples and Nations. The TRC released its findings and 94 "calls to action" in 2015. These calls to action (CTAs) are directed at reconciliation between Canadians and Indigenous peoples.

Reasoning for a Provincial Indigenous Justice System (SKIJS)

Treaty Justice Provisions

The entire province of Saskatchewan is covered by the Numbered Treaties and is the only legal standing the Crown has over the lands within Saskatchewan. All of the treaties contain slight variations of a "peace and good order" clause, identifying that the Indigenous peoples entering Treaty would handle justice within and for themselves.

Indian Reservation Creation in Saskatchewan

The Indian Reservation System was used to dispossess and displace Indigenous peoples from their traditional territories, lifestyles, culture, identity, and families. Bands were prohibited from having reserves near each other out of fear of collusion and rebellion. The Pass System was implemented to further limit the movement of Indigenous peoples off reserve.

Indigenous Population in Saskatchewan

Approximately 17% of the population of Saskatchewan self-identified as Indigenous peoples in 2021. Despite this, Indigenous peoples represent 80% of provincially incarcerated inmates in Saskatchewan.

Provincial Boundaries Imposed over Traditional Territories

Saskatchewan is situated upon the traditional lands of the Nêhiyawak (Cree), Nakkawiniwak (Saulteaux), Nakota (Assiniboine), Dakota nd Lakota (Stonx), Denesuline (Dene/Chipewyan) and Métis peoples. Saskatchewan did not become a province until 1905, and no consideration was given as to the history of these peoples and lands.

Affirmation of Indigenous Jurisdiction over Justice

Numerous inquiries, commissions and pieces of legislation have recognized the inherent right of Indigenous peoples to govern themselves, including Justice: *Constitution Act, 1982, The United Declaration on the Right of Indigenous Peoples Act* (2021), the Manitoba Aboriginal Justice Inquiry, the Royal Commission on Aboriginal Peoples, and the National Inquiry into Missing and Murdered Indigenous Women and Girls.

Bijuralism in Canada

Canada has existed with two separate and recognized legal traditions, the common law and civil law, since Confederation in 1867. The argument of not being capable of recognizing another legal tradition, specifically Indigenous legal traditions, fails on this point.

This relationship between our Creator, our Mother, all other life forms, and ourselves forms the basis of all that we know to be true. This relationship forms the basis of our law.

— Harold Johnson

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42. We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the *Constitution Act, 1982*, and the *United Nations Declaration on the Rights of Indigenous Peoples*, endorsed by Canada in November 2012.

Proposed Legal Framework

Interdependent Nation Justice Treaty Agreements

The Federation of Sovereign Indigenous Nations (FSIN) and Métis Nation - Saskatchewan (MNS) would need to enact legislation in their respective legislative assemblies enabling the Nations to enter into an Interdependent Nation Justice Treaty Agreement (INJTA). The INJTA would establish and give authority to a provincial-wide Indigenous Justice System (SKIJS). The INJTA would also need to clarify the separation of powers of the justice system, from both the executive of FSIN and MNS to create a third branch of government for each organization.

Cultural Competency and Trauma-Informed Knowledge

Any officer of the IJS (court) must have extensive knowledge of criminal law, Indigenous peoples, and the genocidal impacts of colonization on the over-incarceration and over-policing of Indigenous peoples, specifically in Saskatchewan. Practitioners aspiring the practice in the SKIJS must pass a written examination on the history of Indigenous peoples within Saskatchewan, focusing on ongoing abuses and how the law has been used to dispossess, displace, and discriminate against Indigenous peoples. All officers of the IJS will be required to take a trauma-informed lawyering course, ideally, one offered by Myrna McCallum or someone of similar knowledge and expertise. Certification of completion is required before any practitioner will be welcome to practice in the SKIJS.

Judges, Decision-Makers, Community Advisors, and Elders

The FSIN Justice Secretariat and MS-S Minister of Justice are eligible to nominate judges, justices of the peace, or community decision-makers to serve in the levels of the SKIJS. Suggestions for initial judges are ones who served on the Cree Court in Saskatchewan or practiced in Northern and isolated communities.

Any judicial nomination would require approval from both the FSIN Indian Justice Commission (FSINIJC) and MN-S Justice Commission (MNSJC). In addition to one judge per case, there will be a panel of community advisors and elders accompanying the judge through all aspects of the SKIJS. The community advisors and elders are there to ensure the views of the community are considered in decision-making, the traditional Indigenous legal orders of the community are followed, and ensure the community and accused are able to reach an agreement as to how to move forward and reconcile from the offense.

Community Sitings

The SKIJS will be able to sit in any identified Indigenous community within the province, including both First Nation reserves and Métis settlements. The current Saskatchewan Provincial Court has circuit-point and Cree Court locations established in the following communities: Ahitahkooop Cree Nation; Beary's and Okemasis' Cree Nation; Beauval; Black Lake Denesuline First Nation; Buffalo Narrows; Buffalo River Dene Nation; Canoe Lake Cree First Nation; Cut Knife; Cumberland House; Deschambault Lake; English River First Nation; Fond du Lac; Fort Qu'Appelle; Île-à-la-Croise; La Loche; La Ronge; Loon Lake; Meadow Lake; Montreal Lake Cree Nation; Onion Lake Cree Nation; Pelican Narrows; Pinehouse; Sandy Bay; Southend; Stanley Mission; Turnor Lake (Birch Narrows Dene Nation); and Whitefish (Big River) First Nation. Set ups in these communities through their use as a circuit point for the Saskatchewan Provincial Court proves they have the capacity and infrastructure for the SKIJS.

Additionally, each First Nation reserve and Métis community not listed previous should have a siting location within their boundaries.

General Operations of the SKIJS

The moment an Indigenous person in Saskatchewan is involved in a criminal act, as either an accused, victim or both, the case automatically becomes the jurisdiction of the SKIJS. Regardless of the role the Indigenous person played in the criminal act, they are dual citizens of their Nations and of Canada. Therefore, they should be tried and/or receive justice first by their sovereign Nation, and secondly, by Canada should the Crown render a second trial applicable. *Gladio* principles will be infused throughout the process, and the structure of a "hearing" will be more like a group conversation about what happened with evidence from all parties, rather than the adversarial two-party colonial system.

Consequences

No two Indigenous Nations and/or communities were identical, with community reactions existing on a spectrum focused on respect, harmony, and balance in addition to punitive sanctions. Indigenous Nations will have to adapt their traditional IJSs to meet the realities of communities today, including consequences. 'Consequences' is used rather than 'sentencing' or 'sanctions' as these are intrinsically Western methods of punishment, rather than the Indigenous way of rehabilitation. The SKIJS has a goal to heal and renew the victim's physical, emotional, mental and spiritual well-being, while simultaneously ensuring the offender makes appropriate retributions and rehabilitative measures to continue to place an important role within their communities.

Anticipated Positive Outcomes

- Less crime committed against and by Indigenous peoples
- Address over-representation of Indigenous people in the Canadian criminal justice system
- Provide Indigenous peoples with an advocate
- Fulfillment of the inherent and treaty rights of Indigenous peoples in Saskatchewan

Visual of the SKIJS

Parallel of the SKIJS and Saskatchewan Courts

