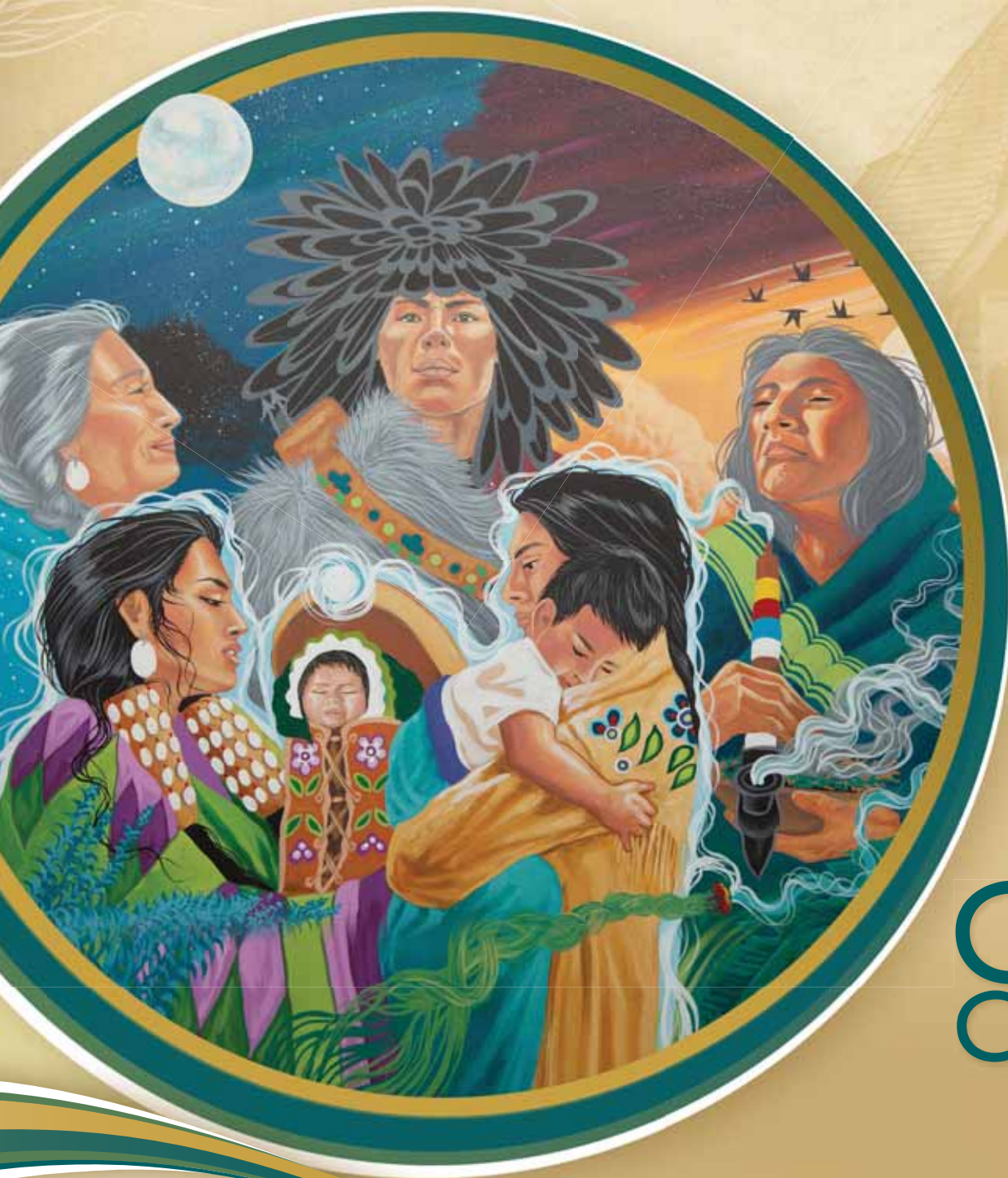


A Community Approach to Addressing Minor Crimes Committed by NCN Youth



Nisichawayasihk
Cree Nation

COMMUNITY YOUTH CREE COURT

Guidelines



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Cover Illustration by: GAYLE SINCLAIR

The cover artwork is a symbol of community unity and connectedness; it represents the “circle of supports” for family systems. At the centre of the circle is the youth or child who has the “spirit” that gives Mitho Pimatisiwin (a good life). The youth give purpose and meaning to parents and those surrounding them. Around the youth are community supports such as aunts, uncles and grandparents. The grandparents signify the role of “Ketiyahtisahk” (the old ones) who are held in great esteem and respect. They are the keepers and transmitters of cultural knowledge. Around the old ones are the Warriors of the community. They are the protectors, peace keepers and leaders. They ensure safety and well-being for all. Each circle is related to the other and has their own role in order to respect, share, guide, and protect the children. The day sun and night moon represents the cycle of life and the life-long responsibility of caring for children. All relationships and interconnectedness to all Creation are of equal value and have strong principles to creating balance in life.

Working to
Effectively Reduce
Youth Crimes in the
Nisichawayasihk
Cree Nation



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References for this Guideline

Circle of Care Manual
Consultation with NCN Kihtehayatisak
Child and Family Services Act
International Youth Survey
Report of the Aboriginal Justice Inquiry, 1991
Canadian Research Institute for Law and the Family (Alberta, 1990)
Statistics Canada



*Nisichawayasihk
Cree Nation
(NCN) has the
benefit of a holistic
care facility
directly in the
community of
Nelson House.*

Thanks to the Elders that were instrumental in conceptualizing and designing the Court.

- Ms. Madeline Nicholas-Spence
- Ms. Dorothy Linklater
- Ms. Madeline Spence
- Mr. Joshua Flett
- Mr. John Solomon Spence
- Reverend Nelson Hart
- Ms. Doris Walker

Message from the CEO

Reducing the Strain on Courts and Law Enforcement with a Community Approach to Youth Crimes

Tansi. I am pleased with the interest and support we have had for managing minor youth crimes in our First Nation, but there is much more to be done. Our overall goal at the Centre, since founded in 2001, is to reduce the negative effects on our youth, to achieve better lives for our Citizens and to improve overall community Mithwayawin (wellness).

The NCN Community Youth Cree Court initiative is an alternative-based community model that will effectively deal with minor youth crimes, keep more youth out of the child welfare system or foster care, and reduce the burden on Manitoba court systems. The guidelines outlined in this document will ultimately deal with and handle crimes directly in the community, reduce the chance of repeat youth offences and allow individuals to contribute to society and have productive lifestyles. The program will also hold offenders accountable for their actions among peers and respected community members and Elders, while providing the necessary services to reform in the community, via a community-driven and a holistic approach to wellness.

All facets of the community-based program will create awareness of the negative effects of crime among our youth, curb the trend in these youth becoming adult offenders and deter other children from getting involved in crime.

We are faced with the reality that crime rates over the past decade within Aboriginal communities and reserves are increasingly higher than the average national crime rates. This is often attributed to the low socio-economic status of Aboriginal people marked by high unemployment, substandard housing, inadequate health care and lack of recreational opportunities or family and community supports.

The *International Youth Survey* found that over 37% of indigenous youth reported having engaged in one or more delinquent behaviours in their lifetime. This involves crimes of violence, acts against property or the sale of drugs. Most youth crimes are committed between the ages of 12 and 17 with a frequency of minor property crimes followed distantly by violent crimes. The most common offences appearing before courts are theft, mischief, drug offences and common assault. Many of these crimes can be handled in the community with quicker outcomes and the use of local community services. This local approach benefits both the youth and the community by decreasing the reliance upon outside resources and decision-makers. The costs of dealing with youth crime in the community are significantly lower than the costs of travelling to other centres or having the outside resources come to the community.

The concept for the NCN Community Youth Cree Court began in 2010 and has operated several successful community mock trials between June 2013 and 2015. With appropriate funding and resources we anticipate operating the program in the community and sharing our results and processes with other First Nations communities.

I hope you will find the information herein useful and informative as we take important steps forward to collectively promote awareness, empower our communities, provide safe environments for Citizens and move our First Nation toward holistic wellness.

Felix Walker
CEO Nisichawayasihk Cree Nation Family
and Community Wellness Centre

A Vision for a Better Tomorrow

A **Community Youth Cree Court** will provide a community approach to address the root causes of the over-representation of youth in the child welfare and criminal justice systems.

Vision: *We will work to reclaim responsibility for our youth who commit minor crimes and restore community harmony by undertaking this community-centred approach to justice.*

It is a reality of today's world that many indigenous youth (under 18 years of age) who commit offences have faced generational impacts, struggles in their life and have been or will become involved in the child welfare system.

The Community Youth Cree Court seeks to unite child welfare concerns with youth criminal justice issues while strengthening the community's relationship with its youth. Once fully operational, the goal of the Court is to reduce the over-representation of NCN youth in Manitoba courts and correctional facilities as well as decrease the number of children in care within and outside of the community.

The NCN Youth Cree Court will empower the community to resolve its own youth criminal justice and child welfare issues through holistic processes that draw upon tradition and Elder teachings or wisdom. Community members will administer this justice system for NCN. The Court will be legitimate, meaningful, and effective. It will make our community healthier and allow relationships between all people to thrive.



Introduction

Nisichawayasihk Cree Nation Community Youth Cree Court

A Community Approach to Youth Justice

The Nisichawayasihk Cree Nation Family and Community Wellness Centre was established in 2001 to support and create approaches to individual, family, and community wellness. The Wellness Centre takes a holistic approach to policy development and service delivery that incorporates the traditions, culture, language, customs, and teachings of NCN's Elders, or Ketiyatisak.

The Wellness Centre commissioned the design of the Youth Court in 2010 as part of an approach to handle NCN youth crimes and minimize over-representation of youth in Manitoba courts.

Blending Past Practices with Current Realities

Historically, for generations it was customary that our community administered its own justice system. This system involved the entire community, so the accused person was accountable to friends, family members, and neighbours rather than a judge or court system disconnected from the community. The Nehetho (Cree) community justice system revolved around the role of Ketiyatisak. By creating strict codes of conduct and acceptable behaviour, community harmony was ensured.

When the first road opened to Nelson House in the 1970s and NCN became connected to other communities, the rules that guided people's behaviour were deeply influenced and soon became eroded. The impacts of the outside influences were seen in the rising rates of poverty, family breakdown, family violence and suicides in our community. During this time many indigenous children were removed from their homes and communities and placed in residential schools, foster and adoption homes. These generational impacts often underlie and can be directly or indirectly linked to offences committed by youth and are the cause of many child welfare issues.

It is well documented; the current justice model is inadequate at addressing both youth criminal behaviour and involvement in child welfare, partly because it has not drawn the connection between the two.



The reclamation of a community-led justice system for NCN youth – that recognizes this connection – fits within Nisichawayasihk Cree Nation Family and Community Wellness Centre’s mandate of bringing about positive changes for the children and families of NCN.

“Aboriginal young people have not been well-served by the separation of the child welfare and the youth justice systems... When family supports systems fail, young Aboriginal people may resort to unacceptable conduct merely to call attention to their predicament.”

- REPORT OF THE ABORIGINAL JUSTICE INQUIRY, 1991

While NCN cannot change the effects of past negative influences, the NCN Community Youth Cree Court will combine historical practices of the previous systems of community justice while taking an innovative approach to addressing the current circumstances. The Youth Court program and approach will deal with minor offences through this community-driven process.

When described simply the procedure for dealing with offences in the community will follow these three steps:

- When a youth is accused of a minor crime, the youth, members of his or her family (or guardians), the person affected by the crime (if they so choose), and community members will come together to discuss what happened.
- A panel of community members will hear and evaluate evidence and ask questions to evaluate what actually happened and determine the facts.
- The panel will make decisions or orders as needed that will require the young offender to do certain actions to restore his or her relationship with the community.

Follow-up and ensuring the terms of the panel’s decision are met will also be important to reducing repeat offences.

Background and “Needs For” Evaluation

The need for this NCN Community Youth Cree Court has been a long time coming. The devastating effects of colonization have affected Aboriginal communities; NCN is no exception. Multiple inquiries into justice and child welfare since the 1990s have confirmed the relationship between colonization and the problems faced by Aboriginal peoples and have signaled the need for appropriate and effective solutions for First Nation communities.

The Aboriginal Justice Inquiry not only recommended that child welfare and youth justice be fully integrated and coordinated, but also that

Aboriginal people have greater control over administering both systems. The NCN Community Youth Cree Court addresses these recommendations

while reducing the demands on the Manitoba courts and justice system.

Our Ketiyatisak identified the need for a justice system such as the proposed NCN Community

This approach was designed in consultation with NCN community members and reflects the importance of kinship, community, accountability and traditional Nehetho relationships.



Youth Cree Court. The Elders stated it is critical to community wellness.

Presentation of the Community Youth Cree Court and mock demonstrations in 2010, June 2013 and October 2014 generated community support for the project. Community consultation to refine the project has been ongoing.

This approach was designed in consultation with NCN community members and reflects

the importance of kinship, community, accountability and traditional Nehetho relationships in NCN.

Since the NCN Community Youth Cree Court was conceived five years ago, the increase in population

and number of youth offences in Nelson House has made the Youth Court Program even more relevant.

Facing Challenges of Youth Criminal Behaviour with a Unique and Alternative Approach

It is clear to the Wellness Centre and NCN community that the current justice system is not working effectively to deal with the steadily increasing number of children involved in criminal activity. Whether it is the apprehension of individuals, the methods of reform or approaches to counselling and well-being of the individual, it is apparent that a new approach – unique to Cree customs – needs to be explored and implemented.

Currently, youth who are in trouble with the law can only access child welfare services if an agency apprehends them. The NCN Community Youth Cree Court will provide a forum in which the child, parents, and community can access resources outside of the standard justice system. As a result, NCN will see fewer and fewer children being arrested, detained, and sent out of our community.

The NCN Community Youth Cree Court approach is based on the following understandings:

- The current youth justice system has been ineffective in reducing youth crime, recidivism, and the incidence of Aboriginal youth in jail.
- Manitoba has the highest rate in Canada of incidences of Aboriginal youth crime and incarceration.
- NCN youth, like adults, are often victimized by systemic discrimination in the justice system. NCN youth are more likely than non-Aboriginal youth to:
 - Have a greater number of charges laid against them

- Be detained for longer periods of time
- Be sentenced to custody
- Serve longer sentences
- Miss out on the benefits from legal representation.

- In 2010/2011 over 70% of Manitoba Aboriginal youth ages 12-17 with criminal offences were admitted to correctional services (Statistics Canada).
- There is an alarming trend in increased number of Aboriginals being admitted to youth correctional facilities
 - In 2010/2011, in eight jurisdictions reported across Canada (including Manitoba), Aboriginals comprised 26% of admissions to youth correctional facilities. These Aboriginal youth only made up about 6% of the total youth population in the same jurisdictions (Statistics Canada, 2012).
 - In 2012/2013, in nine reporting jurisdictions (including Manitoba), Aboriginal youth accounted for 41% of all admissions while representing only 7% of the youth populations in the same jurisdictions (Statistics Canada, 2014).

The NCN community must heal from the effects of colonization that have created these statistics, and must do that cooperatively. Instead of seeing NCN children with troubled backgrounds become statistics in the youth criminal justice system, initiatives must generate integrated and culturally-appropriate resolutions within NCN whenever possible.

A Nehetho View: The Design and Operation of the Community Youth Cree Court

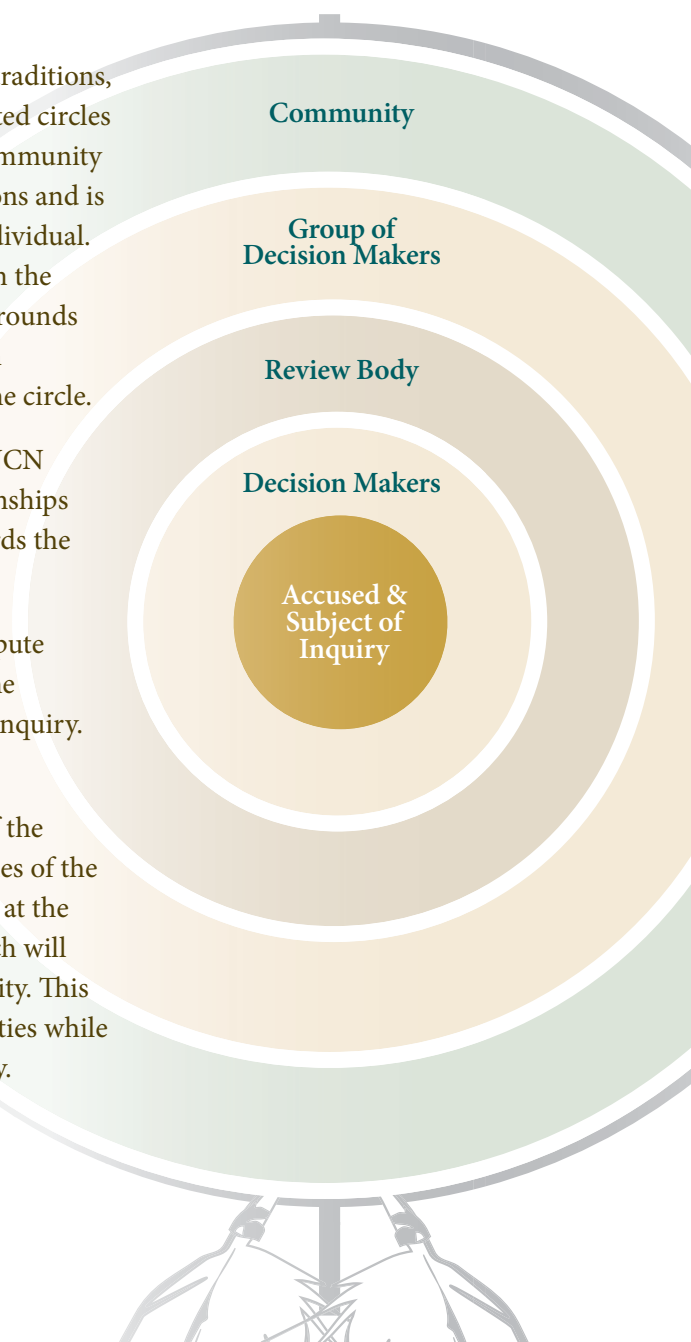
In traditional Nehetho (Cree) teachings, customary laws and traditions, the community can be represented through a series of integrated circles working in unity with each other. The model for the NCN Community Youth Cree Court is developed by First Nations for First Nations and is based on a holistic approach to addressing and healing the individual. By surrounding them and assigning accountability to others in the support circle, there is truly a community foundation that surrounds the individual. Each circle is related to one another and has an important role to respect, share, guide and protect others in the circle.

Through guidance from our Ketiyakisak and input from the NCN community consultation process, the circle and spatial relationships within the concept of the Court was created with an eye towards the centrality of the community.

In the circle model to the right, the parties involved in the dispute or criminal offence – usually the accused young person and the person affected by their wrongdoing – will be the focus of an inquiry. Surrounding them is the judicial panel.

In order to accomplish the goal of rehabilitation, the design of the court will focus the influence of the community onto the parties of the dispute. This will be done by placing the parties to the dispute at the centre, surrounded by the members of the judicial panel, which will be further surrounded by interested members of the community. This series of concentric circles puts the focus on the disputing parties while acknowledging that these disputes affect the entire community.

OPERATIONAL MODEL OF THE COMMUNITY YOUTH CREE COURT



Viewing the components of the operational model from the community inward to the accused and subject of inquiry are:

● The Community

Community is the foundation from which all people are born and all people are accountable. The community will always be invited to observe the justice process.

● Group of Decision Makers

This designated pool of people may be selected to sit as judges and to hear or decide on the matters that come before the Court. They will also hear decisions that need to be reviewed. The Group of Decision Makers will be composed of:

- **21 Elders:** two from each of the eight most representative families (clan and kinship) and one from each of the lesser representative families (clan and kinship) for a total of five
- **13 men:** one man from each of the eight most representative families (clan and kinship) and one man from each of the lesser representative families (clan and kinship) for a total of five
- **13 women:** one woman from each of the eight most representative families (clan and kinship) and one woman from each of the lesser representative

families (clan and kinship) for a total of five

- **13 youth:** one youth from each of the eight most representative families (clan and kinship) and one youth from each of the lesser representative families (clan and kinship) for a total of five.

The Decision Makers will have the powers and authority to:

- Review and request additional information to get the facts
- Dismiss the case
- Delay the case until new facts can be determined or to deliberate as needed
- Pass the case on to law enforcement or social services
- Make orders requiring the young person to do such things as:
 - Attend counselling and treatment
 - Apologize and accept responsibility for their behaviour
 - Compensate the person they harmed
 - Community service work
 - Personal service work
 - Take part in community and cultural education programs.

● Review Body

When an accused young person or an affected party wants to appeal a decision made by the NCN Community Youth Cree Court

Decision Makers, a Review Body will be put together of people from the Group of Decision Makers. The Review Body will be composed of:

3 Elders	OR	5 Elders
1 Woman		1 Woman
1 Man		1 Man
1 Youth		1 Youth

The Review Body will have all the powers of the NCN Community Youth Cree Court Decision Makers, and also have the authority to:

- Keep the order made by the Decision Makers
- Change the order made by the Decision Makers
- Cancel the order made by the Decision Makers
- Make an entirely new order.

● Inquisitorial Panel

The Inquisitorial Panel will be drawn from the Group of Decision Makers and will decide matters when the offences are first brought before the Community Youth Cree Court. Each panel will consist of 3-5 members, including:

1 Elder	OR	3 Elders
1 Woman		1 Woman
1 Man		1 Man

The Inquisitorial Panel will have the following powers:

- Compel people to appear before the NCN Community Youth Cree Court

- Question people who come before the Community Youth Cree Court
- Hear and evaluate evidence
- Make preliminary decisions regarding what happened
- Seek outside reports and assessments.

● Accused and Subject of Inquiry

The accused individual or person being addressed for the alleged offence will be at the centre of the dispute process, along with the person(s) that may be affected by the action.



*“Promoting awareness, empowering
our communities and providing safer
environments for our Citizens.”*



“Native youth are vastly over-represented in Canada’s juvenile justice system. It is apparent that for these youths, the extensive use of police, courts, and a corrections system operated and controlled by white society has been a failure. It has failed to meet the special needs of native young offenders, many of whom continue to commit further offences after their involvement in the system. The system has also failed to meet the needs of native communities: first, by failing to give them responsibility for and involvement in helping their youth; and second, by failing to rehabilitate young offenders, it has also failed to protect their communities from recurrent patterns of offences.”

- Canadian Research Institute for Law and the Family, *Alternative Measures for Native Youth* (Alberta, 1990), p. 1.

Branches of the Community Youth Cree Court

A Positive Presence in the Community

To provide support for the NCN Community Youth Cree Court program, several Justice members will be part of the enforcement, management, monitoring and policing of the program. Their role will range from ensuring decisions of the court are followed, advising the court Decision Makers, follow-up with the accused, community presence/awareness and support patrols in the community.



The Restorative Justice Committee will often identify behaviours and individuals of concern prior to a real incident occurring and liaise with the Court to address issues before they develop into crimes.

The Restorative Justice Committee

As part of the Court, a Restorative Justice Committee (RJC) will be

assembled to make sure the orders made by the Court are followed. The Committee's priority will be to work with the accused young person, the wronged person, and both families to assist in restoring everyone to their "proper place" within the community. This highly connected and integrated community-linked committee will not be like the probation system we see now. Instead, the Restorative Justice Committee will work with all the parties to help discover and address the root causes of the dispute and act as a referral service to the Court.

When the Restorative Justice Committee identifies a behaviour or problem prior to a real incident, the Committee will:

- Invite all concerned parties to discuss the issue: the person accused of inappropriate conduct, the person affected by the conduct, service providers and family members
- Advise the Court of the past history of the individuals involved
- Make recommendations to the Court regarding possible measures to take.

The Restorative Justice Committee will be composed of:

5 Elders	5 Women
5 Men	5 Youth

Once the Court has made a decision about a particular dispute, four members of the Restorative Justice Committee (2 Elders, 1 woman, 1 man, 1 youth, and 1 social worker) will manage the case. A unique feature of the Restorative Justice Committee is that it will have the expertise of a social worker who will help identify services offered in the community, enabling parties to satisfy orders made by the Court.

Tribal Constables

Tribal constables (peace makers) will be responsible for detection, investigation, and complaint services in the community. They will be on patrol and visible in the community. Their role is to act as mediators and problem solvers.



ROLE OF THE RESTORATIVE JUSTICE COMMITTEE

The Restorative Justice Committee's role is community wide and involves a cycle of promoting safety and awareness, remembering or recalling case history, reconnecting and associating the relationship of the concerned parties to the case and ultimately restoring the balance in the community. This cycle gives back to the community and in turn creates a safer and more aware society.

Elder and Citizen Patrol

The role of the Elder and Citizen Patrol is to support the Tribal Constables in their work. The Patrol will be the eyes and ears of the constables and the community. They will:

- Provide moral and practical support to community members struggling with social, personal, and family problems
- Refer serious situations to the Tribal Constables.

The Elders and Citizens on patrol may act as mediators and problem solvers by providing advice and referrals to community service.

NCN Community Youth Cree Court Limitations

The Community Youth Cree Court is limited to family and minor criminal matters. Due to the nature of some of the more serious criminal offences that fall under other jurisdictions, there are limits on the disputes that the NCN Community Youth Cree Court can act, decide upon and resolve.

Our Ketiyatisak set limits on the disputes that can come before the Court. The Court will not hear matters, such as:

- Serious violent crimes or sexual assaults
- Major crimes such as arson or loss of property
- Homicide or attempted homicide.





Summary

Building Better and Safer Communities for Citizens

The NCN Community Youth Cree Court is poised to handle minor youth offences in the Nisichawayasihk Cree Nation. The program has been developed to reduce the number of minor crimes that are currently being handled through the Manitoba Provincial Court and child welfare system and provide a better means of assessment, management, sentencing, reform and guidance to young individuals involved in potential or crime-related offences.

The NCN Community Youth Cree Court will handle cases in a more timely and diligent manner specific to the community and involving NCN youth. The Court's carefully selected

personnel and staff have a knowledge and approach that is both sensitive to the culture, environment, background and circumstances of the persons involved, while also being mindful of the specific aspects and dynamics of the First Nation community.

The NCN Community Youth Cree Court initiatives will not only handle identified minor youth crimes, but through diligent community-involvement the system will also identify and address potential situations or individuals of concern before criminal acts arise or occur.

The holistic community approach to the program will use existing community social

and community services, volunteerism, staffing and supports, where applicable, to offset the development and operational expenses associated with the program. Additional funding will be obtained through other funding sources and reallocation measures may be required to ensure sustainability and growth of the program.

Nisichawayasihk Cree Nation also has the benefit of a holistic-care facility directly in the community of Nelson House. Care and programs like the Intervention and Removal of Parent, Circle of Care, Rediscovery of Families and Child and Family Services are instrumental in providing a broad approach to correction and

healing, not only for the individuals involved but also the community that embraces them. The local law enforcement and RCMP detachment also provide support to the community and NCN Community Youth Cree Court in an advisory capacity.

By listening to Ketiyatisak and community members, learning from the lessons of the past, building and enhancing partnerships and remaining committed to the potential of the youth, these methods and programs can be the pivotal force leading to better outcomes for the youth, families, First Nation and the community.

The Court initiatives will not only handle minor youth crimes, but will also address individuals of concern before criminal acts occur.



*Learning from Ketiyatisak and
Investing in Our Youth to Build a*

BRIGHTER TOMORROW



Nisichawayasihk
Cree Nation

COMMUNITY
YOUTH
CREE
COURT

*By listening to Ketiyatisak and
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“In unity we promote community awareness,
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move toward holistic wellness.”



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