

**APPENDIX A:
ONTARIO COURT OF JUSTICE AND MINISTRY OF THE ATTORNEY GENERAL
JOINT FLY-IN COURT WORKING GROUP
RECOMMENDATIONS**

1. Modernizing Criminal Proceedings

- (a) *Video conference advance days*: The OCJ should pilot video conferencing on advance days to deal with routine court appearances. The pilot should be for one-year and should be evaluated by those involved in it before any decision is made regarding continuation or expansion. Telephone remands may be used for simple remands on advance days.

The expectation is that both the Crown and duty counsel would be in the community on advance days, would identify the cases that can be appropriately dealt with by video conference appearance and then would link up by video conference with a judicial officer sitting in a base court location who would deal with remands and set dates. Pilot locations, venues within the community to hold a video conferencing remand court and start times for that video conferencing remand court should be determined in consultation with the First Nations communities, the Crown and defense counsel, NAN legal, and the police. To reduce delays, the pilot video conference technology should be supplemented by an audio conferencing back-up system.

LEAD: OCJ with CSD/CLD/NAN Legal/CLA

- (b) *Designation of counsel*: In recognition of the difficulties for many accused persons to attend all court appearances and that an accused's personal attendance is often not necessary, in order to reduce the number of warrants issued for failing to appear, and to encourage base court appearances where appropriate, defence counsel should adopt as a best practice the filing of designation of counsel whenever possible.

LEAD: NAN Legal/CLA

- (c) *Dedicated YCJA days*: The OCJ should pilot YCJA dedicated days within existing court schedules in the Northwest Region, recognizing that urgent adult cases may be scheduled on these days if required.

LEAD: OCJ with CSD/CLD/NAN Legal/CLA

2. Family and Child Protection Proceedings

- (a) *Family mediation and information services*: Provide MAG's mediation service and information services in family proceedings by telephone or video conferencing in fly-in court communities.

LEAD: MAG in consultation with fly-in communities

- (b) *Legal advice*: LAO should develop a simplified process that permits residents of fly-in communities to speak to legal counsel about family law or child protection matters to obtain timely independent legal advice beyond summary advice where required, using available technology including the telephone.

LEAD: LAO with NAN Legal

- (c) *Court services and forms*: MAG should continue to take steps to permit people living in fly-in communities greater practical access to family law and child protection services. This includes the following.

- Establish a simple method for persons without Internet access or ability to obtain court forms on a timely basis.
- Establish a simple method to allow persons in fly-in communities to file copies of all court documents (e.g., fax, scan, or other electronic means).
- Review with the Family Law Rules Committee how to address barriers imposed by personal service requirements on persons in fly-in communities, including permitting e-service.
- Ensure persons in fly-in communities are informed in a timely and consistent manner of their ability to participate meaningfully in family court processes that are scheduled to take place outside their home community in the base court.
- Ensure translation/interpretation services are available for individuals prior to a court process.
- Culturally relevant Mandatory Information Programs (MIPs) should be broadly and easily available for the participants, without requiring in-person participation.
- In accordance with judicial direction, court staff should be instructed to process cases for case management regardless of MIPs attendance, where MIPs are not easily available.
- Review alternative means to swear affidavits, where commissioners of oaths are not located in a remote community.

LEAD: MAG/NAN Legal/OCJ

- (d) *Video and telephone conferencing*:

- OCJ judges should assign fixed times for motions and conferences in the case management process to encourage residents of fly-in communities to participate by video or conference call. Court staff should ensure that residents of the remote community, as well as counsel, are informed that they can participate by telephone or video.

LEAD: OCJ and CSD

- The OCJ should pilot scheduling video conferences at dedicated court times for family and child protection motions and case conferences from a fly-in community to a base court, with the possibility for counsel attending by video or conference call from counsel's own home community.

LEAD: OCJ

- Family counsel representing clients living in fly-in communities should be encouraged to make motions and case management conferences returnable before the OCJ case management judge sitting in the related base court location.

Their clients should be permitted and encouraged to attend those hearings by telephone or videoconference. This should ensure that family law and child protection motions and conferences are held in a timely fashion. Trial coordinators should schedule these proceedings in the related base court if ordered by the court or if requested by counsel. Court staff should take steps prior to the scheduled court process to ensure that the litigants are able to participate appropriately from the remote location.

Lead: NAN Legal/CSD

- Motions or case management conferences scheduled for a fly-in court hearing date but not reached, should be adjourned to a date before the OCJ case management judge in the base court that the counsel and litigants can attend by telephone or video.

LEAD: OCJ/NAN Legal/OCJ/CSD

- (e) *Child protection:* Where there are sufficient cases, the OCJ should pilot dedicated case conference times for child protection cases in the Northeast Region.

LEAD: OCJ/MAG/ with Payukotayno: James and Hudson Bay Family Services Family Services /NAN Legal and community band representatives

3. *Gladue* Information

- (a) The OCJ must be provided with *Gladue* information in a timely fashion in all bail and sentencing cases involving First Nations accused persons. This information allows judicial officers to apply the law properly, and also supports First Nations justice values, promotes restorative justice and fosters community-based options. Subject to any judicial order in a specific case, this information can be provided in a number of ways, including the following:

- (i) Counsel, community members, and community legal workers may provide summary *Gladue* information verbally to the Court in appropriate cases (e.g., joint release or sentencing submissions, legislative minimum sentences).

- (ii) Where release is in dispute or custody is a real possibility, a probation officer or community legal worker may provide more detailed *Gladue* information as required by individual circumstances.¹

- (iii) Detailed *Gladue* information similar to what is found in a full “*Gladue* report” must be available to the court whenever a First Nations accused person is at risk of being incarcerated for a lengthy period, and in any other case where the presiding judge determines that it is warranted.

- (b) MAG, in consultation with the judiciary, First Nations groups and NAN Legal, MCSCS, LAO and the CLA, should review how the more summary *Gladue* information referred to above could be more effectively collected and provided to the court.

¹ NAN Legal noted that it has community legal workers at every fly-in court who can speak to *Gladue* issues, and that probation officers should provide *Gladue* information to the court as a last resort.

(c) MCSCS should provide, and continue to provide, *Gladue* specific training to all probation workers who provide pre-sentence reports for First Nations offenders.²

(d) When a judge or justice of the peace determines that further *Gladue* information is required in a proceeding that arises in a fly-in court community there must be resources available to ensure this information is provided in a timely fashion.

LEAD: CLD with OCJ/NAN Legal/CLA/MCSCS

4. Consent Releases and Bail Hearings

(a) Where appropriate, northern police should exercise their discretion to release the accused person into the fly-in community. Police should consult with the Crown whenever detention is contemplated. Northern police services and Crown Offices should review, and adopt if appropriate, a bail consultation process as a best practice to ensure that accused persons are not taken out of the community where the Crown will consent to release.

(b) MAG, NAN Legal and NAPS should work together to develop a protocol for sureties to appear in front of a justice of the peace presiding in a base court location by video or telephone from their home community.

(c) The OCJ should provide education to its judiciary regarding ss. 515(2.2) and (2.3) of the *Criminal Code* and the various options to receive surety information, which include, but not limited to, the standard bail surety affidavit form.

(d) MAG and the OCJ should consider the possibility of recommending to the federal government an amendment to s. 516(1) of the *Criminal Code* to permit an accused person, with his or her consent, to be remanded to somewhere other than “custody in prison” before or during a bail hearing. Such an amendment could potentially allow an accused person to remain in the community for his or her bail hearing. Analysis of this possible recommendation of an amendment would need to consider a number of factors including the limited capacity in communities to hold accused persons in pre-trial custody, and the comments expressed in the case law that the investigative process incidental to arrest has terminated once an accused person is taken before a judicial officer.

LEAD: MAG (CLD)/NAN Legal/NAPS/OCJ

5. Facilities, Security and Equipment

(a) *Facilities:* MAG should regularize by contract or other similar arrangement the use of all fly-in court facilities for advance and court days, and should also look for alternatives to requiring First Nations communities to submit an invoice for the use of

² NAN Legal suggested that its community legal workers be invited to any *Gladue* training the MCSCS provides to probation officers.

a facility for fly-in court purposes. MAG should also take steps to ensure the on-going maintenance of fly-in court facilities.

LEAD: MAG

- (b) *Security:* Police should consult, develop and implement fly-in court security plans as appropriate for local communities (including safe transportation strategies for all participants to and from the court venues).

LEAD: NAPS and OPP

- (c) *Equipment:*

- MAG should also develop a protocol that addresses where portable privacy dividers and vulnerable witness screens for use at fly-in courts will be stored, who will set it up, who will transport it, etc.

LEAD: CSD/V/WAP

- MAG should procure and provide portable laptops and printers for use by court staff at all fly-in court locations.

LEAD: CSD

6. Transportation, Scheduling and Cancellations

- (a) *Air transport:*

- MAG should increase the shared use of chartered planes where appropriate (e.g., the OCL flying on the NAN plane in the Northeast Region, instead of flying on a separate plane.)

LEAD: CSD/CLD/OCL

- The OCJ should consider whether additional personnel with a role to play in the fly-in court process can share the court plane (e.g., a NAPS officer brought in to provide court security only).

LEAD: OCJ

- (b) *Scheduling:*

Recognizing that scheduling is a judicial prerogative and the importance of developing efficient court schedules for fly-in communities, the OCJ should:

- continue to consult appropriate stakeholders (including the Crowns and NAN Legal);
- take into account the previous year's statistics;
- consider scheduling morning and afternoon courts in adjacent communities; and
- continue to explore telephone and video attendances where an appearance before a judicial officer is not required in person.

LEAD: OCJ

- (c) *Cancellations:*

- Once the OCJ court calendar is set, changes should only be made at the direction of the regional senior judge or the local administrative judge in consultation with the affected persons.

LEAD: OCJ

- The OCJ in consultation with MAG, NAN, NAN Legal, the Criminal Lawyers' Association and Band Councils, should develop and adopt a court cancellation policy that respects a community's interest in having a facility available for critical community events, but also recognizes the importance to the community and its members of having scheduled court matters proceed.

LEAD: OCJ

- CSD or NAN Legal should appoint a Fly-In Court Transportation Coordinator who is contacted when courts are cancelled and is responsible for notifying all parties of court cancellations.

LEAD: CSD/NAN Legal

7. Base Court Realignment: Summer Beaver and Webequie

The OCJ should realign court services for Summer Beaver and Webequie with Thunder Bay, rather than Kenora, beginning in 2014.

LEAD: OCJ: with CSD/CLD/NAN Legal/NAPS/Band Councils

8. Band By-law Prosecutions

Where a community has expressed an interest in passing and prosecuting by-laws, the community should initiate discussions with the Crown, police, and the OCJ to review the viability of by-laws being enforced through court prosecutions in those circumstances where the community based by-law enforcement process has been unsuccessful.

LEAD: NAN

9. Technology

MAG should enter into an agreement with KNet to provide residents in fly-in communities greater access to the justice system, through video and internet services, and to specifically:

- pilot video advance days in criminal proceedings (Recommendation 1(a));
- pilot dedicated/scheduled video appearances for family and child protection motions and case conferences from the fly-in community to a base court (Recommendation 2(d));and
- permit sureties to appear in front of a justice of the peace presiding in a base court location by video or telephone from their home community (Recommendation 4(b)).

LEAD: MAG/CSD

10. Savings

MAG should track the implementation of these recommendations to identify any monetary savings, which should be reinvested in enhancing community justice initiatives in fly-in court operations, particularly those that provide *Gladue* non-custodial sentencing options in fly-in communities.

LEAD: MAG