

# ACCESSING JUSTICE AND RECONCILIATION

## Cree Legal Traditions Report

Community Partner: Aseniwuche Winewak Nation



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# **Cree Legal Traditions Report**

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## **Introduction**

The Accessing Justice and Reconciliation Project [AJR Project] is a national research project launched by the University of Victoria Faculty of Law's Indigenous Law Research Clinic, in collaboration with the Indigenous Bar Association and the Truth and Reconciliation Commission and funded by the Ontario Law Foundation. The AJR Project explores how Indigenous societies used and applied their own legal principles to deal with harms and conflicts between and within groups. The overall vision for this project is to honour the internal strengths and resiliencies of Indigenous peoples and to identify and articulate principles within Indigenous legal traditions that might be usefully applied today. The AJR Project's approach is to treat Indigenous laws seriously as *laws*. Researchers analyzed publically available materials and oral traditions within partner communities, using adapted methods and the same rigor required to seriously engage with state laws in Canadian law schools.

In this report, you will find a 'Primer', giving a brief, and no doubt incomplete, overview of the broader Indigenous society the represented legal tradition is part of and an 'Introduction to the Community Partner', introducing the specific community within that society who generously partnered with us for this work. The core of the report is the 'Summary of Legal Principles'. This represents the substantive research results from our engagement with Indigenous laws. Finally, the 'Final Report' is included, which provides an overview of the overall project and identifies several major themes that emerged from the project as a whole.

In our eyes, this report is just one tool for the larger work of law occurring within and between communities. We hope it will be useful as a starting point or framework for communities' own ongoing engagement with and application of their legal traditions. We hope it can be discussed, debated, disagreed with, corrected and changed within each community. At the very least, however, we hope each report conveys our recognition of, and respect for, the internal strengths and intellectual resources Indigenous peoples continue to possess and pass down through the generations. So much has been lost and displaced, and yet these strengths and resources are still with us. It is up to each community to decide how best to use them today.

We give this work back to you with gratitude and good intentions,

**Prof. Val Napoleon, LLB, PhD**  
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## Cree Primer

By Aaron Mills, Senior Researcher

The Cree (*Nehiyaw*, plural *Nehiyawak*) are Indigenous peoples who have historically lived and who continue to live within what is now Canada. The territory which they traditionally occupied and over which Cree First Nations and other Cree communities are now settled is the largest Indigenous territory in Canada. Despite this size, or perhaps because of it, the Cree peoples are not a homogenous cultural group. Considerable variance is manifest across regional Cree groups in respect of dialect, environment, economy, international relations etc. From East to West are the Eeyouch (Eastern James Bay Cree) in Québec, the Mushkegowuk (Moose Cree of northern Ontario, and further West, the Swampy Cree of northern Ontario and Manitoba), the Sakawiniwug (Woods Cree) of Northern Manitoba and Saskatchewan, their neighbours to the South and West in Saskatchewan and throughout most of Alberta and parts of northeastern BC, the Nehiyawin (Plains Cree).<sup>1</sup>

The Cree are also the most populous Indigenous group in Canada and there are more speakers of Cree than there are of any other Indigenous language in Canada.<sup>2</sup> Linguistic anthropologists describe the Cree language as belonging to the Algonkian language family, which includes other Indigenous peoples in Canada such as the five nations of the Wabanaki Confederacy, the Anishinaabe (Ojibway or Chippewa, and including also the Odawa and Potawatomi), the Innu, and the Niitsitapi (Blackfoot Confederacy).

Prior to European colonization and the eventual move of most Indigenous communities to reserves, many Indigenous peoples in Canada – notably Algonquian peoples, to which the Cree belong – did not live year long in established settlements, but rather in kinship-based mobile bands.<sup>3</sup> In a subsistence economy, life is challenging and sufficient stockpiling of food resources to survive the winter requires that discrete social units relocate to where food sources are available. This reality led to an established pattern of seasonal aggregations and dispersals which defined Cree political economy.<sup>4</sup> The

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<sup>1</sup> J.W. Anderson, “Eastern Cree Indians” *MHS Transactions* (1954-54 Season), online: Minnesota Historical Society <<http://www.mhs.mb.ca/docs/transactions/3/easterncree.shtml>>.

<sup>2</sup> Statistics Canada reported in 2006 that 87,285 persons could converse in Cree. Statistics Canada, *Aboriginal Peoples in Canada in 2006: Inuit, Métis and First Nations, 2006 Census*. Catalogue no. 97-558-XIE. January 2008.

<sup>3</sup> Bryan D. Cummins, “*Only God Can Own the Land*”: *The Attawapiskat Cree* (Toronto: Prentice Hall, 2004) at 16-17.

<sup>4</sup> Richard J. Preston, *Cree Narrative*, 2<sup>nd</sup> Ed, (McGill-Queen’s University Press, 2002) at 12-13; Kyle Edward Bateson, *Contemporary and Traditional Values of a Landless Cree First Nation in Northern Ontario* (Unpublished thesis, B.Sc., University of British Columbia, 2006) at 40-43, citing also from Joan Lovisek at Joan Lovisek, *Missanabie Cree land use report* (Lovisek Research, 2003); Edward S. Rogers & Lee Updike, “Mistassini Cree” (1970) *Summer The Beaver* at 22-25; Charles A. Bishop, “Northern Algonquians, 1550-1760”, in Edward S. Rogers & Donald B. Smith, eds., *Aboriginal Ontario: Historical Perspectives on the First Nations* (Toronto: Dundurn Press, 1994) at 280-281.

availability of food resources thus had a significant role in the development of social and political structures.<sup>5</sup>

The Cree were significant players in the development of the fur trade and consequently in the genesis of Canada. For instance, when the Hudson's Bay Company first established Forts at Hudson's Bay, it did so in Cree territory<sup>6</sup> and Cree furriers eagerly participated in trade relations with the newcomers.<sup>7</sup> However as British dominance solidified in what is today Canada, Cree economics shifted dramatically. Whereas French fur traders organized their enterprise by venturing inland and engaging directly with the lives and communities of Indigenous peoples,<sup>8</sup> the British instead established forts that required Indigenous peoples to come to them.<sup>9</sup> The considerable extent of Cree engagement with European fur traders meant that Métis peoples frequently owed their Indigenous heritage to Cree ancestors. Even in common parlance today, while many Métis persons identify simply as Métis or as Métis associated with a particular region, many also explicitly identify as Cree-Métis.

As European settlement in Cree territories expanded, Cree peoples were active participants in various treaty-making processes. For example *Treaties 5 through 10* include large numbers of Cree peoples. Importantly, not all Cree peoples were included in the treaty process. Some examples of the several Cree groups left out of the treaty process or which were denied land allocations under treaties are the Eastern Cree in Quebec, the Missinabie Cree, the Lubicon Lake Nation, Kelly Lake, and the six co-operative communities that constitute the Aseniwuche Winewak Nation. In some cases, modern treaties have now been negotiated. The first such agreement was with the Eastern Cree called the *James Bay and Northern Québec Agreement*, of 1975, and others have followed. One consequence of this difference is that the contemporary reality for Cree peoples varies greatly in terms of governmental structure. There is, for instance, contrast in governance between those communities whose government is mandated under the *Indian Act*,<sup>10</sup> and those whose most immediate government is instead constructed under a modern treaty, or entirely outside of treaty or the *Indian Act*.

A vital component of understanding Cree worldview and hence Cree law is the deep respect with which Cree peoples have traditionally regarded the earth (inclusive of particular geographic features such as mountains or rivers), skyward and celestial formations (such as stars) and plants, animals, birds and all other manner of life. Animating this profound respect is the foundational cultural understanding that non-humans can be persons<sup>11</sup> and non-human persons pre-existed humans.<sup>12</sup> Humankind is,

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<sup>5</sup> Cummins, *supra* note 4 at 17.

<sup>6</sup> Barbara Huck et al., *Exploring the Fur Trade Routes of North America* (Winnipeg: Heartland Associates, Inc, 2002) at 12, 48-50.

<sup>7</sup> *Ibid* at 48-50.

<sup>8</sup> Charles A. Bishop, "Northern Algonquians, 1550-1760", in Edward S. Rogers & Donald B. Smith, eds, *Aboriginal Ontario: Historical Perspectives on the First Nations* (Toronto: Dundurn Press, 1994) at 282.

<sup>9</sup> *Ibid* at 281, 283.

<sup>10</sup> SC 1985 c I-5.

<sup>11</sup> Richard J. Preston, *Cree Narrative*, 2<sup>nd</sup> Ed., (McGill-Queen's University Press, 2002) at 158, 209-218 but especially 210.

like all kinds of persons, notable simply for its particular array of needs and competencies.<sup>13</sup> Animals and various terrestrial and celestial features are therefore possessed of desire, intention, and other volitional states. They have agency, seek to satisfy ends and act consciously in the world.<sup>14</sup>

In a context where a sharp distinction between the nature and the moral worth of humans and others is not privileged, it is natural also not to privilege a distinction between what western societies often understand dichotomously as the “natural” and “supernatural” worlds or orders.<sup>15</sup> Indeed, while a distinction remains for Cree peoples, it lacks the force and certainly the degree of difference the western world ordinarily associates with those categories. From some Cree perspectives, spirits ordinarily enter into human lives<sup>16</sup>, and humans who have developed a specialized skill set may reach into the spirit world.<sup>17</sup> The existence of the spiritual in ordinary life is not limited to the presence of identifiable kinds of spirits. Because of the frequent presence of spirit beings and the habitual role of spiritual engagement in ordinary life events (such as hunting practices<sup>18</sup>), for many Cree peoples, spirit is not something dichotomous or even other than the ordinary world.

There are of course many Cree persons of whom this information would not be accurate. This is to acknowledge nothing more than the fact that no people exists without significant internal differentiation. Because of their considerable diversity, because of various social, historical and political forces, and finally because of natural internal difference common to all groups of peoples, the above description describes Cree peoples in only broad strokes.

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<sup>12</sup> *Ibid* at 209.

<sup>13</sup> *Ibid* at 210, 212.

<sup>14</sup> *Ibid* at 158.

<sup>15</sup> Fikret Berkes, *Sacred Ecology: Traditional Ecological Knowledge and Resource Management* (Taylor & Francis, 1999) at 80.

<sup>16</sup> Preston, *supra* note 16 at 126-127; M. Rossignol, “The Religion of the Saskatchewan and Western Manitoba Cree” (1938) 11(3/4) *Primitive Man* at 69.

<sup>17</sup> Preston, *supra* note 16 at 78-115.

<sup>18</sup> Bishop, *supra* note 9 at 281.

## **Introduction to the Community Partner:** **Aseniwuche Winewak Nation**

By Rachele McDonald, AWN Executive Director

Aseniwuche Winewak Nation of Canada is a distinct group of Aboriginal people descended from Beaver, Sekani, and Shuswap (who originally lived on the Eastern slopes of the Rocky Mountains) and Cree, Iroquois and Ojibway who migrated from the East. “Aseniwuche Winewak” means “People of the Mountains”; this is how we are known to tribes across western Canada. We have never signed Treaty nor received Métis Scrip. We are non-Status Indians. In 1910, after the creation of Jasper National Park, several familial groups of our ancestors were forced to leave behind their homes in the Jasper Valley and relocated to the Grande Cache area, where they settled near extended family.

The Aseniwuche Winewak continued a traditional lifestyle, hunting, fishing and trapping until the creation of the Town of Grande Cache in 1969. Contact with non-Aboriginal people was mainly by choice and generally limited to missionary priests, forest rangers, and traders. It was a way of life that had lasted sustainably for thousands of years. Our people traveled extensively throughout our traditional land use area harvesting its abundant resources. We worked hard not only to survive but also to trade our furs and handiworks. We fully participated in the traditional economy of the past. We were self reliant and independent and very proud of our autonomy.

The development of the Town of Grande Cache in 1969 brought a tidal wave of change to the community. For the first time in our history, children were enrolled in public school, men and women began to participate in the wage economy, and our community faced the cultural impacts experienced by plains tribes in the 1800’s. The development of the town and neighboring coal mine also brought into question the need to establish more permanent settlements for the local Aboriginal people. In the early 1970’s, at the behest of the Provincial government, the local aboriginal community organized itself into four cooperative associations and two limited enterprises. While this secured land tenure for the People, it also created previously unknown divisions between family groups and communities and taxation placed an undue burden on an impoverished community.

In 1994, the organization known today as Aseniwuche Winewak Nation was incorporated to build capacity for local governance and address the crisis being created by a tax recovery sale of three communities. In the twenty year period following the creation of the town, the traditional lifestyle, self reliance and autonomy of the People was threatened by increasing social problems resulting from an inability and lack of preparedness to manage a new way of life thrust upon us. In addition to addressing the threat of losing our land, the newly formed AWN had immense pressure upon it to address the poor living conditions, high unemployment and lack of helping services for our People.



The community leaders of the time were committed to addressing these issues and providing a strong, collective voice for our community. In a mere twenty years, our organization has developed progressive and effective programs and services in the areas of housing, consultation, training, and community services as well incorporating two wholly owned subsidiaries. AWN has gained a provincial reputation as being a dynamic and well-run organization that is meeting the needs of its community through innovative and collaborative partnerships with industry and government. AWN is pursuing a land claim but with the conclusion to this far in the future, we are taking advantage of a robust Alberta economy and returning to a place of self reliance and autonomy by forming our own solutions.

## Introduction to the Summary of Legal Principles

The following Summary of Cree Legal Principles was prepared based on Kris Statnyk's and Aaron Mills' research and analysis of the resources within Cree legal traditions to address harms and conflicts between people. The students relied on publically available resources and interviews within the community of Aseniwuche Winewak in the summer of 2012 for their analysis.

Given the short time period and other practical limitations of this research project, we knew anything we could produce would barely scratch the surface of such a rich, complex, living legal tradition. Keeping this reality in mind, this report provides a simple framework that all the students used to organize the outcomes of their analysis, which can continue to be built on as communities see fit. It is *not* a comprehensive or complete statement of legal principles and is not intended to be. Rather, it gives some examples of the legal principles that stood out in each category of the framework. This is best viewed as one starting point for the ongoing work needed within communities.

The framework for this summary is structured around the following five questions, each one forming a section of the summary:

1. Legal Processes: Characteristics of legitimate decision-making/legal processes
  - 1.1 Authoritative Decision-makers: Who had the final say?
  - 1.2 Procedural Steps: What were the steps involved in determining a response or action?
2. Legal Responses and Resolutions: What principles govern appropriate responses to legal/ human issues?
3. Legal Obligations: What principles govern individual and collective responsibilities? What are the “*shoulds*”?
4. Legal Rights: What should people be able to expect from others?
  - 4.1 Substantive Rights
  - 4.2 Procedural Rights
5. General Underlying Principles: What underlying or recurrent themes emerge in the stories that might not be captured above?

Following each question heading we have included a table providing a general re-statement of law and indication of the source material as a “quick reference” guide.

This summary presents answers to the five questions that were interpreted from engagement with published stories and from conversations with elders and other community members. It is *not* intended to be a codification of law, like a penal code or some legislation. Nor does it claim to be an authoritative statement of law, like a court judgment. Rather, this summary is more like a legal memo back to our partner communities. A legal memo synthesizes the legal researcher's best understanding of relevant legal principles after a serious and sustained engagement with those principles. It organizes information in a way that makes it simpler for others to find, understand and apply those principles to current issues or activities.

We have done our best to identify debates where they arose. We fully expect there will be differing interpretations and opinions within communities and between communities of the same tradition. We believe that rich ongoing debates about legal principles are a sign of health and vitality of these legal traditions. We also note that the length and depth of the various sections will differ in each legal summary and between summaries. The principles identified in each section of a summary are obviously not the only ones in existence, but rather the ones that could be identified most clearly in the particular published stories reviewed and the interviews conducted by the student researchers during one summer. It is critical to conduct further research to explore the many possible factors leading to these differences and fill in gaps where needed. Most importantly, the principles that are identified in the framework need to be discussed within each community further to determine whether they resonate with people's current aspirations and expectations regarding situations of harm or conflict.

In the end, what this summary demonstrates best is what outcomes even a relatively short period of serious and sustained engagement with Cree legal traditions can produce, when we treat it seriously as *law* and work as hard at understanding and expressing it as any other law. It is exciting to imagine the potential outcomes of a longer engagement. We hope this framework, with these examples, provides communities with a way to begin or continue their own ongoing research to identify the rich intellectual and practical resources within their own legal traditions.

## Summary of Cree Legal Principles: Examples of Some Legal Principles Applied to Harms and Conflicts between Individuals within a Group

### 1. Legal Processes: Characteristics of legitimate decision-making/problem-solving processes

#### 1.1 Authoritative Decision-makers: Who had the final say?

##### General Restatements of Law:

a) **Medicine People:** Medicine people who have specialized spiritual and medicine knowledge are relied upon and sought out to use their power to address harms and protect the community: *Killing of a Wife, Anyway, Water Serpent, The Hairy Heart People, AWN Anonymous Interview #2.*

##### b) Elders:

- When there is a risk of danger, or harm, if elders have greater knowledge, they may collectively act or direct action to prevent harm and protect people: *AWN Anonymous Interview #2, The Water Serpent, AWN Anonymous Interview #2, AWN Anonymous Interview #3.*
- Where there is an interpersonal conflict, but no immediate danger or risk of harm to people, elders take on a more persuasive role: *AWN Anonymous Interview #4.*

##### c) Family Members:

- The family members of the person who has caused harm may act to remedy the harm or to prevent further harm from occurring when necessary: *Indian Laws, Mistacayawis, Thunderwomen.*
- Family members may take a pro-active role to prevent harm from occurring: *AWN Anonymous Interview #2, AWN Anonymous Interview #4.*
- Family members take a persuasive role in resolving interpersonal conflict: *AWN Anonymous Interview #4.*

d) **Group:** Important decisions for community safety are made collectively by a group: *Mi-She-Shek-Kak, AWN Anonymous Interview #3, AWN Anonymous Interview #2, AWN Anonymous Interview #5.*

## **Discussion:**

- a) **Medicine People:** *Medicine people who have specialized spiritual and medicine knowledge are relied upon and sought out to use their power to address harms and protect the community.*

Several stories show how the specialized knowledge and skills of medicine people are called upon to help the community protect itself from harmful persons. For example, in the story *Killing of a Wife*, a man kills his wife. Meskino, acting on the guidance of his *mistabeo* (a spiritual helper in the shaking tent), investigates the killing and then publically tells the man that he knows the truth, that what the man did was wrong, and that the man will not live long as a result (he dies within the year).<sup>1</sup> Another example is the story of *Anway*, in which cannibals threaten a community. A medicine person is asked to use a shaking tent to contact Anway, a famed cannibal-hunter, who resolves the problem using spiritual means.<sup>2</sup>

Medicine people are also called upon to protect the community from harm caused by animals. In *The Water Serpent*, a water serpent is a persistent source of danger and harm to women and children. Medicine people and ‘wise ones’ decide to ask the “wisest one” to contact the Thunderbirds through spiritual means, who then resolve the problem.<sup>3</sup>

The role of protecting a community from harm also applies to potential or predicted harms. For example, in *The Hairy Heart People*, an old man with spiritual gifts dreams that there are dangerous people approaching (‘Hairy Heart People’). He warns his camp and uses his power to hide them so they stay safe.<sup>4</sup> An anonymous AWN community member shared another story of how the community members once grew concerned about a woman potentially becoming a *wetiko* (a legal concept describing a very harmful or dangerous person), and hence dangerous. They asked a “tent-shaker” to cure her.<sup>5</sup>

The obligation for those with specialized knowledge to help extends beyond his or her community. Elder Marie McDonald described a situation where people were being attacked by *wetikos* and two medicine men appeared from outside the community. She

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<sup>1</sup> Richard J Preston, “Untitled (Killing of Wife)” in *Cree Narrative*, 2nd ed (Montreal and Kingston: McGill.

Queens University Press, 2002) at 149 [*Killing of a Wife*].

<sup>2</sup> Louis Bird, “Anway and the Cannibals” in *The Spirit Lives in the Mind: Omushkego Stories, Lives, and Dreams*, (Montreal & Kingston: McGill-Queens University Press, 2007) at 116 [*Anway*].

<sup>3</sup> Eleanor Brass, “The Water Serpent” in *Medicine Boy and Other Cree Tales*, (Calgary: Glenbow-Alberta Institute, 1979) [*Water Serpent*].

<sup>4</sup> Robert A Brightman, “The Hairy Heart People” in *A?ca?do?hki?wina and a?cimo?wina: Traditional narratives of the Rock Cree Indians*, (Regina: University of Regina and Canadian Plains Research Center, 2007) at 116 [*The Hairy Heart People*].

<sup>5</sup> Interview of Anonymous AWN Community Member #2 by Kris Statnyk and Aaron Mills (17 June 2012), Grande Cache, Alberta, at 17 [AWN Anonymous Interview #2]. For a more in-depth exploration of the *wetiko* as a legal concept or category, see Hadley Friedland, *The Wetiko (Windigo) Legal Principles: Responding to Harmful People in Cree, Anishinabek and Sauteaux Societies – Past, Present and Future Uses, with a Focus on Contemporary Violence and Child Victimization Concerns* (LLM Thesis, University of Alberta, 2009) [unpublished] at 21-53.

describes how those medicine men took care of the community and used medicine to battle the *wetikos* and force them to leave:

eventually they probably kind of took care of the people, so instead of going after the people, probably *wetiko* would probably have somebody else to curse. So they probably end up like going back and forth like that, that in turn probably left the people alone, so these people probably kind of stepped in and said, no, he can't do that.<sup>6</sup>

**b) Elders:**

- *When there is a risk of danger, or harm, if elders have greater knowledge they may collectively act or direct action to prevent harm and protect people.*

In her interview, elder Marie McDonald described one time when there were safety risks to an isolated family due to a *wetiko* being nearby. The elders from one community directed community members to go get the family members and bring them back to their place before nightfall to protect them. The elders weren't questioned about this decision "because they were the elders in the community...they had more knowledge than everybody else".<sup>7</sup> Other community members also spoke of how, more generally, when an individual showed signs of becoming a *wetiko*, elders would recognize this and take him or her away from the community to someone who could perform the shaking tent ceremony necessary to resolve the issue.<sup>8</sup>

Sometimes the elders' knowledge was not about how to stop threats, but how and when to seek help. In the story *The Water Serpent*, the community faces a serious threat from a giant serpent that lives in the water. The serpent entices women and children to come to the lake where it drowns them. When faced with this threat, which is beyond their capability to remedy, the medicine people and 'wise ones' direct the 'wisest one' to act in order to resolve the harm. In this instance, the 'wisest one' communicates with the Thunderbirds, who remove the serpent from the water.<sup>9</sup>

- *Where there is an interpersonal conflict, but no immediate danger or risk of harm to people, elders take on a more persuasive role.*

Sometimes elders employ communication skills to resolve conflict. Elder Joe Karakuntie explained that elders used to play a major part in dispute resolution by consulting with all the parties involved.<sup>10</sup>

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<sup>6</sup> Interview of Marie McDonald by Kris Statnyk and Aaron Mills (25 June 2012), Grande Cache, Alberta at 7-8 [AWN Interview: Marie MacDonald].

<sup>7</sup> AWN Interview: Marie McDonald, *supra* note 6 at 5.

<sup>8</sup> AWN Anonymous Interview #2, *supra* note 5 at 13; Interview of Joe Karakuntie by Kris Statnyk and Aaron Mills (25 June 2012), Grande Cache, Alberta at 6 [AWN Interview: Joe Karakuntie].

<sup>9</sup> *Water Serpent*, *supra* note 3.

<sup>10</sup> *Ibid* at 3-4.

This use of persuasion was not always successful. In a historic case, when a well-respected family decided to leave the community as a result of a conflict, first extended family members, then elders tried to persuade them to remain. However, the family left anyway.<sup>11</sup> In another historic case in which a married couple decided to separate, first extended family members, then elders tried to persuade them to reconcile. However, the couple separated anyway.<sup>12</sup>

In other cases the elders were successful. For example, a man was creating conflict by inappropriately getting mad at another man for fishing (out of necessity) on his trap line. Elders confronted him about this and resolved the conflict.<sup>13</sup>

**c) Family Members:**

- *The family members of the person who has caused harm may act to remedy the harm or to prevent further harm from occurring when necessary.*

Family members may act to remedy the harmful actions of individuals, as illustrated by the story *Indian Laws*. In that story, after We-ya-te-chu-pao assaults E-pay-as's brother, Mis-ta-wa-sis, his father publically tells people that his son's actions should not have been done, and decides to remedy the harm by offering compensation to E-pay-as.<sup>14</sup> In another story, *Mistacayawis*, a woman becomes an incurable *wetiko*. In order to prevent her from causing any more harm, her only surviving family member, the youngest brother, kills her by chopping off her finger.<sup>15</sup> In yet another example, in *The Thunderwomen*, a younger brother shoots his brother's wife with an arrow. The older brother of the wrongdoer confronts him and then goes on a long journey to make amends to her family, before returning with their forgiveness.<sup>16</sup>

- *Family members may take a pro-active role to prevent harm from occurring.*

Family members sometimes set rules to protect others from harm. Elder Marie McDonald explained that "mama and papa" made the decision that during winter, when *wetikos* were most feared, children had to be indoors and quiet before the sun went down.<sup>17</sup>

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<sup>11</sup> Interview of Anonymous AWN Community Member by Kris Statnyk and Aaron Mills (26 June 2012), Grande Cache, Alberta at 5 [AWN Anonymous Interview # 4].

<sup>12</sup> *Ibid* at 8 and 12.

<sup>13</sup> *Ibid* at 26-27.

<sup>14</sup> Edward Ahenakew, "Indian Laws" in *Voices of the Plains Cree*, (Toronto: McClelland and Stewart Limited, 1973) at 34 [*Indian Laws*].

<sup>15</sup> Robert A. Brightman, "Mistacayawis" in *A?cađo?hki?wina and a?cimo?wina: Traditional narratives of the Rock Cree Indians* (Regina: University of Regina and Canadian Plains Research Center, 2007) at 99 [*Mistacayawis*].

<sup>16</sup> Robert A. Brightman, "The Thunderwomen" in *A?cađo?hki?wina and a?cimo?wina: Traditional narratives of the Rock Cree Indians* (Regina: University of Regina and Canadian Plains Research Center, 2007) at 86 [*The Thunderwomen*].

<sup>17</sup> AWN Interview: Marie McDonald, *supra* note 6 at 2.

Family members also took decisive action to stop the escalation of harmful conflict. In a historical case described by an anonymous AWN community member, the father of one family determined that as a result of the accumulation of bad things and malicious gossip, his family would permanently leave the community.<sup>18</sup>

- *Family members take a persuasive role in resolving interpersonal conflict.*

As is the case with elders, family members may take a persuasive strategy when seeking to prevent or remedy interpersonal conflict. In the above case in which the father of the family decided the family would permanently leave the community, first extended family members, and then elders tried to persuade the family to remain. However, the family left anyway.<sup>19</sup>

In another historic case, when a married couple decided to separate, first extended family members, and then elders tried to persuade them to reconcile. However, in the end, the couple's decision to separate was respected.<sup>20</sup>

- d) Group:** *Important decisions for community safety are made collectively by a group.*

The story of *Mi-She-Shek-Kak*, tells of the time before humans when a giant skunk roamed. The giant skunk, feared because of its size, age and smell, is a threat to the lives of all the other animals. To protect themselves from harm, the animals gather together to collectively decide how to get rid of the giant skunk, which is endangering them all.<sup>21</sup>

There are more recent examples of communities making collective decisions to protect themselves. For example, one anonymous AWN elder related an incident where a woman was becoming increasingly dangerous and the “overall community” determined that she had to be removed from the community for healing.<sup>22</sup> In a situation in which a runaway had been spotted near a homestead and those present needed to decide a course of action, AWN community member Robert Wanyandie explained that “it would probably be a group decision” and “it always kind of went to the oldest” or who had the most relevant experience.<sup>23</sup>

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<sup>18</sup> AWN Anonymous Interview #4, *supra* note 11 at 3-4.

<sup>19</sup> *Ibid* at 5.

<sup>20</sup> *Ibid* at 8, 12.

<sup>21</sup> Louis Bird, “Mi-Shi-Shek-Kak (The Giant Skunk)” in *Telling our Stories* at 73 [*Mi-Shi-Shek-Kak*].

<sup>22</sup> AWN Anonymous Interview #2, *supra* note 5 at 20.

<sup>23</sup> Interview of AWN Community Member Robert Wanyandie by Kris Statnyk and Aaron Mills (19 June 2012), Grande Cache, Alberta at 11 [AWN Interview: Robert Wanyandie].



## 1.2 Procedural Steps: What were the steps involved in determining a response or action?

### General Restatements of Law:

Although the order of these steps is not rigid and not every step is present in every account, several steps emerge as important for ensuring a response or resolution is viewed as legitimate and effective by the community. These are:

- a) **Recognizing warning signals that harm may be developing or has occurred:** *The Hairy Heart People, Mistacayawis, AWN Anonymous Interview #2, Killing of a Wife, AWN Anonymous Interview #5, AWN Interview: Marie McDonald.*
- b) **Warning others of the potential harm and taking appropriate safety precautions to keep people within the group as safe as possible:** *The Hairy Heart People, Mi-She-Shek-Kak, Mistacayawis, AWN Anonymous Interview #1, AWN Interview: Marie McDonald, AWN Anonymous Interview #2.*
- c) **Seeking guidance from those with relevant understanding and expertise:** *Indian Laws, Anyway, The Water Serpent, The Thunderwomen, The Hairy Heart People, AWN Anonymous Interview #1, AWN Anonymous Interview #4, AWN Interview: Joe Karakuntie, AWN Anonymous Interview #2.*
- d) **Observing and collecting corroborating evidence:** *The Hairy Heart People, AWN Anonymous Interview #2, Killing of a Wife, Mistacayawis.*
- e) **Public confrontation and deliberation by appropriate decision-makers when possible:** *Indian Laws, Killing of a Wife, Mistacayawis, AWN Anonymous Interview #4, AWN Interview: Joe Karakuntie, Thunderwomen, AWN Anonymous Interview #1, AWN Anonymous Interview#2.*
- f) **The appropriate decision-makers are identified and implement a response. This may be a pre-emptive response in some cases:** *Indian Laws, Anyway, The Water Serpent, Mi-She-Shek-Kak, Whitiko and the Weasel, Mistacayawis, AWN Anonymous Interview #2, AWN Interview: Joe Karakuntie.*

## **Discussion:**

### **a) Recognizing warning signals that harm may be developing or has occurred:**

- *People may recognize warning signals there is risk of harm or harm has occurred through noticing behavioural signs.*

In *The Hairy Heart People*, a woman recognizes that her husband, who many years ago had hunted other humans, may be becoming dangerous again because he tells her he thinks a person in his hunting party is an animal (distorted thinking). The woman warns another hunter and the husband is stopped before causing harm.<sup>24</sup>

Other community members, not just close family, also look for suspicious behaviour. In *Mistacayawis*, a man recognizes that something may be wrong when a woman goes hunting two days in a row, one day with her brother-in-law, the next with her husband. On both days she returns without them, telling others they got lost (suspicious story). The suspicious man investigates further and discovers the woman is a *wetiko* and has killed both men.<sup>25</sup>

Those with special skills might be able to observe signs of danger and help. A couple who practice traditional medicine talked about an older case where they noticed several behavioural signs that a woman was turning *wetiko*. For example, she was smiling in an odd way, wrapping herself in a black blanket, keeping her whole house dark, and refusing to get out of bed. Despite these signs, her husband denied the risk and refused offers to help for a long time. The couple continued to observe and continued to offer help for some time.<sup>26</sup>

- *People may recognize warning signals that there is a risk of harm or harm has occurred through spiritual means.*

Sometimes information about harm or potential harm arrives in dreams or visions or through the intervention of spirit guides. In *The Hairy Heart People*, an old man gifted with medicine sees that dangerous people (the Hairy Heart people) are nearby through a dream.<sup>27</sup>

In *Killing of a Wife*, a man kills his wife at a site down river from Meskino's shaking tent. The man tells everyone that his wife has drowned then immediately takes a new wife (his reason for killing his first wife). In the shaking tent, Meskino's spirit helper (his *mistabeo*) tells him the man has actually killed his wife, which prompts Meskino to investigate the man's story further.<sup>28</sup>

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<sup>24</sup> *The Hairy Heart People*, *supra* note 4.

<sup>25</sup> *Mistacayawis*, *supra* note 15.

<sup>26</sup> AWN Anonymous Interview #2, *supra* note 5 at 22-26.

<sup>27</sup> *The Hairy Heart People*, *supra* note 4.

<sup>28</sup> *Killing of a Wife*, *supra* note 1.

An anonymous AWN elder recalled that spirits warned her grandfather in a dream that his sister was becoming dangerous (turning *wetiko*). The same interviewee noted that, more generally, elders and medicine people may have visions that tell them when a *wetiko* is near or that someone is turning *wetiko*.<sup>29</sup>

One elder stated that, historically, medicine people could sense when traditional enemies (in this case, Dogrib people) were in the area.<sup>30</sup>

- *People may also recognize warning signals that there is a risk of harm or harm has occurred through observations of the natural world and their environment.*

Elder Marie McDonald stated that observations of nature (in this case, the wind blowing backwards) could be a warning signal someone might be turning *wetiko*.<sup>31</sup> Other examples of warning signs include the weather being colder, and a horse behaving oddly and vomiting ice.<sup>32</sup>

AWN community member Robert Wanyandie shared the importance of more generally observing the natural world for warning signals. He explained that in the bush, a person with enough knowledge can recognize warning signs from listening to animals warn each other. He gave examples of being warned of a bear or a cougar nearby simply from listening to squirrels, beavers or ravens warn each other. Even though the animals are warning each other, and probably scared of the person listening, that person's knowledge still allows him or her to recognize the noise as a warning sign:

if he's warning whatever in his surroundings and you happen to be one of them, you know, I guess I don't know, I guess you could say you're part of it, right. You're part of the relationship, I guess, because you know what he's doing, because you know, because I guess I would say when he's yapping away you know the understanding of that meaning of what he's doing.<sup>33</sup>

**b) Warning others of the potential harm and taking appropriate safety precautions to keep people within the group as safe as possible.**

When individuals observe or receive a warning of harm, they are responsible for warning the larger community. For example, in *The Hairy Heart People*, an old man sees through a dream that harmful people, the Hairy Heart People, are in the area, so he warns the members of his camp and uses his powers to hide them, and then leads the Hairy Heart People in the opposite direction. Once his camp is safe, he sends people to go warn other camps to stay together in a large group for safety.<sup>34</sup>

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<sup>29</sup> AWN Anonymous Interview #2, *supra* note 5.

<sup>30</sup> Interview of Anonymous AWN Community Member by Kris Statnyk and Aaron Mills (22 June 2012), Grande Cache, Alberta [AWN Anonymous Interview #5].

<sup>31</sup> AWN Interview: Marie McDonald, *supra* note 6 at 4.

<sup>32</sup> AWN Anonymous Interview #2, *supra* note 5 at 13.

<sup>33</sup> AWN Interview: Robert Wanyandie, *supra* note 24 at 3-7.

<sup>34</sup> *The Hairy Heart People*, *supra* note 4.

In the extension of the *Hairy Heart People* story, when the wife of one of the former Hairy Heart People observes her husband showing signs of becoming harmful again, she warns her brothers to watch out for him.<sup>35</sup>

In *Mi-She-Shek-Kak*, in which a dangerous and feared giant skunk was roaming the land, the animals developed rules to avoid harm from the giant skunk until they were better positioned to address the harm. When the weasel inadvertently broke a rule and let the giant skunk find them, he got his family to safety and warned all of the other animals that the giant skunk was coming.<sup>36</sup>

Serious consequences can befall those who fail to warn others of harm. In *Mistacayawis*, a woman becomes a *wetiko* and kills her brother-in-law. The woman's younger sister was aware of the danger her sister posed but failed to warn the rest of the family. The younger sister is executed once the murders are revealed, and the narrator suggests this was because her failure to warn was considered so unacceptable or reprehensible by others.<sup>37</sup>

One anonymous elder explained that if a person is warned that someone will be harmed, they will tell other people. The community will then talk about it and pray for them even if they do not know exactly who the victim will be.<sup>38</sup> Similarly, elder Marie McDonald explained that when people recognize warning signs that a *wetiko* might be present, everyone openly discusses present or future observations, because the *wetiko* will hear the discussion and be more cautious because of it.<sup>39</sup> She explained that, historically, people would also gather together in larger groups for safety. For example, where there were warning signals of danger (in this case signs of a *wetiko* nearby), elders from a nearby community sent people to bring an isolated family to stay with them every night so they would not be alone.<sup>40</sup>

The obligation to warn others includes harm caused by outside enemies. Historically, medicine people warned others when they sensed the Dogrib people were near (these are traditional enemies who people feared would kidnap women). They sewed red cloths on the tipis and people gathered together at night to keep women safe when there were warning signs Dogrib people were nearby.<sup>41</sup>

One elder stated that when spirits warned her grandfather in his dreams that his younger sister was becoming harmful (in this case, turning *wetiko*), her grandfather knew that he had to watch her and keep the community safe:

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<sup>35</sup> *Ibid.*

<sup>36</sup> *Mi-She-Shek-Kak*, *supra* note 17.

<sup>37</sup> *Mistacayawis*, *supra* note 15.

<sup>38</sup> Interview of Anonymous AWN Community Member by Kris Statnyk and Aaron Mills (17 June 2012), Grande Cache, Alberta [AWN Anonymous Interview #1].

<sup>39</sup> AWN Interview: Marie McDonald, *supra* note 6 at 4-5.

<sup>40</sup> *Ibid* at 6.

<sup>41</sup> Interview of Anonymous AWN Community Member by Kris Statnyk and Aaron Mills (22 June 2012), Grande Cache, Alberta at 1-2 [AWN Anonymous Interview #5].

Like with my grandfather, he probably should dream about a lot of stuff, like different spirits and stuff they used to come to him in his dreams. So...he was probably forewarned in a dream...what was happening to his younger sister, so in his dream he was probably told, you know, watch her, so that was his responsibility to keep an eye on her and keep the community, you know, from being harmed.<sup>42</sup>

When the same elder became aware that a woman was turning *wetiko*, she told the woman's husband, "you know there's something wrong with your wife...I think you know we should talk about it." She explained that it was her responsibility to tell him because she saw it.<sup>43</sup>

Safety precautions could require action when necessary. In a historical case, prior to police availability in the area, when a woman with two small children was turning *wetiko*, her father had to bring her for healing on horseback with a gun trained on her to protect her children in case she suddenly attacked them in that state.<sup>44</sup>

**c) Seeking guidance from those with relevant understanding and expertise:**

- *When faced with risk of harm or conflict, people seek out and rely on guidance from those with the relevant understanding and expertise to advise and help respond to or resolve the issue.*

Certain community members with roles related to leadership and conflict-resolution are consulted about potentially harmful situations. For example, *Indian Laws* is a story of a young man, E-pay-as, who leads a reckless incursion into Blackfoot territory to bring back horses. The Blackfoot retaliate and kill a woman and child in the Cree community. The murdered woman's grieving husband requests compensation in the form of horses from E-pay-as for the actions of the Blackfoot that E-pay-as caused. When E-pay-as refuses to pay compensation, the husband consults with those in respected roles who enforce rules for safety and hunting, in this case, the Dancers and Providers who enforce the law and who hold roles and responsibility for hunting.<sup>45</sup>

Elders are generally a source of guidance. One elder stated that it is common for people to go to elders for help when they need to resolve a conflict.<sup>46</sup> In the story of *Anway*, the community is endangered by an increasing number of cannibals in the area so they turn to the elder about what to do. The elders use a shaking tent to communicate with Anway, an expert *wetiko* exterminator, who agrees to help.<sup>47</sup> Similarly, in *The Water Serpent*, when a giant serpent is endangering the community, the people consult with medicine people and 'wise ones' to figure out how to get rid of it.<sup>48</sup> In *The Thunderwomen*, an

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<sup>42</sup> AWN Anonymous Interview #2, *supra* note 5.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid* at 22.

<sup>45</sup> *Indian Laws*, *supra* note 14 at 34.

<sup>46</sup> AWN Anonymous Interview #1, *supra* note 39.

<sup>47</sup> *Anway*, *supra* note 2.

<sup>48</sup> *The Water Serpent*, *supra* note 3.

older brother needs to deal with a harm committed by his younger brother against his wife, whose family are Thunderwomen, so he consults with an elder who tells him where the Thunderwomen are and what he needs to reach them.<sup>49</sup>

Sometimes a person with special gifts has the ability to advise the community. For example, in *The Hairy Heart People*, the community relies on the guidance of an old man with spiritual gifts to keep them safe from the impending harm from dangerous people in their area.<sup>50</sup>

Some community members may be the ones best placed to notice potential dangers and prevent conflict because of their closeness to the individuals involved. For example, more than one community member remarked that when people saw that a relationship was in trouble, first family members, then elders, would go talk the people involved, and advise them on how to repair the relationship.<sup>51</sup> When one elder's grandfather had been warned in a dream that his younger sister was turning *wetiko*, she explained that his related responsibility was "for her to be able to go get help. For him to take her to go get help."<sup>52</sup>

In a story mentioned above, a husband, who had rebuffed multiple offers of help for his wife who was feared to be turning *wetiko*, finally relented and requested help from a couple who practices traditional medicine. The elder and her husband came and smudged the woman, and were able to heal her and prevent her from completely turning *wetiko* (although no one can be completely healed and must be watched).<sup>53</sup>

Even where individuals have special roles, skills, or knowledge, they do not act alone unless they have to. One elder, who practices medicine, and is often called upon to be a decision-maker, explained that discussion and deliberation in her role is generally important. She explained she always discusses matters of wrongdoing or harm with her husband. If he is not available, she will seek out one of her sons, particularly the one son who "picks up what she picks up" regarding spiritual warning signs.<sup>54</sup> Interviewees also noted that different individuals, even elders, had different skills and abilities. One interviewee explained that when you look for guidance, you would go to the person who the community recognized was knowledgeable in that specific area. He noted that not every elder or person is fit for everything.<sup>55</sup>

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<sup>49</sup> *The Thunderwomen*, *supra* note 16.

<sup>50</sup> *The Hairy Heart People*, *supra* note 4.

<sup>51</sup> AWN Anonymous Interview #4, *supra* note 11, at 8-10; AWN Interview: Joe Karakuntie, *supra* note 9 at 3-4.

<sup>52</sup> AWN Anonymous Interview #2, *supra* note 5.

<sup>53</sup> AWN Anonymous Interview #2, *supra* note 5 at 24-26.

<sup>54</sup> *Ibid* at 27-28.

<sup>55</sup> AWN Anonymous Interview #4, *supra* note 11.

**d) Observing and collecting corroborating evidence:**

- *When there are warning signs or signals a person is at risk of becoming harmful, others observe him or her before taking further steps.*

Once the warning signs have been noticed, community members will observe the individual for further signs of harmful behaviour. For example, in *The Hairy Heart People*, a wife tells her brothers about her husband, a former Hairy Heart, after recognizing warning signs of danger. Afterwards, her brothers keep a close eye on him when they are out hunting.<sup>56</sup>

Sometimes the observer must have certain skills or attributes. One elder explained that only people who are capable or strong enough to be near someone turning *wetiko* will observe them.<sup>57</sup>

The observation period might be long. In one instance, a couple who practices traditional medicine observed a woman for two years because they noticed behavioural signs she was turning *wetiko*.<sup>58</sup>

- *When a person is suspected of causing grave harm, others observe him or her to confirm suspicions before taking further steps.*

As in the case when there are warning signs of harmful behaviour, suspicions of actual harmful behaviour must be confirmed through observation before further action is taken against the harmful person. This is demonstrated in the story *Killing of a Wife*, when Meskino's spirit helper (his *mistabeo*) tells him a certain man has killed his wife. Meskino goes down river to observe the man in order to confirm what his *mistabeo* had told him.<sup>59</sup> Similarly, in *Mistacayawis*, when a man becomes suspicious of a woman whose brother-in-law and husband both disappeared after going hunting with her, he follows her to observe her and confirm his suspicions. He confirms that she is a *wetiko* and has killed and eaten the two men.<sup>60</sup>

Community member Robert Wanyandie described how, historically, when it was reported or suspected that a dangerous person was nearby, people would be sent to look for evidence of his presence in the area, including identifying missing items. Specifically, he remembered an incident involving a desperate runaway from the local jail.<sup>61</sup>

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<sup>56</sup> *The Hairy Heart People*, *supra* note 4.

<sup>57</sup> AWN Anonymous Interview #2, *supra* note 5.

<sup>58</sup> *Ibid* at 24.

<sup>59</sup> *Killing of a Wife*, *supra* note 1.

<sup>60</sup> *Mistacayawis*, *supra* note 15.

<sup>61</sup> Interview of Robert Wanyandie by Kris Statnyk and Aaron Mills (19 June 2010), Grande Cache, Alberta at 9, 12-13 [AWN Interview: Robert Wanyandie].

e) **Public confrontation and deliberation by appropriate decision-makers when possible:**

- *When a person is suspected of causing harm or conflict, authoritative decision-makers confront him or her publically when possible.*

Public confrontation of suspected wrongdoers is an important procedural step, as demonstrated by the story *Indian Laws* where a man, E-pay-as, is confronted twice about his reckless raid on a Blackfoot camp, which brought harm to others in his camp. The husband and father of two people killed in the retaliatory Blackfoot raid confront E-pay-as about his reckless actions. When E-pay-as refuses to pay compensation and leaves the camp, the Dancers and Providers, both respected groups, go to his camp and confront him about his actions.<sup>62</sup> In both *Killing of a Wife*<sup>63</sup> and *Mistacayawis*,<sup>64</sup> the suspected wrongdoer is publically confronted with the proof of his actions.

Elder Joe Karakuntie confirmed that, generally, when a person was suspected of doing wrong, elders would confront him or her and ask them if it was true.<sup>65</sup> For example, another AWN community member described an incident where a man was fishing on another man's trap line out of necessity for an extended period of time. The man who owned the trap line confronted the wrongdoer. The elders then confronted the owner publically and corrected him for being too stingy and showing a lack of care for another person's welfare. He was told to not be so stingy.<sup>66</sup>

- *At times, private or one-on-one confrontation is seen as effective and beneficial to solving problems and restoring peace.*

There are some exceptions to the general requirement of public confrontation. For example, in the story of *The Thunderwomen*, two brothers and their wives live alone, and the younger brother shoots an arrow at his older brother's wife (she doesn't die, but she and her sister leave). The older brother confronts the younger brother before he leaves to resolve the issue himself. When he returns, he tells the younger brother he can never do what he has done again.<sup>67</sup>

Historically, when there was interpersonal conflict within a family or between people in the community, family members, then elders, would make multiple visits to apply social pressure to solve the problem. This confrontation included room for listening and deliberation. Maintaining relationships was valued, and the confrontations were softened because people loved each other and depended on each other for survival. In one case, in which a respected family decided to leave the community, once the reasons for leaving were given and understood, the decision was accepted and the social pressure ceased.<sup>68</sup>

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<sup>62</sup> *Indian Laws*, *supra* note 14.

<sup>63</sup> *Killing of a Wife*, *supra* note 1.

<sup>64</sup> *Mistacayawis*, *supra* note 15.

<sup>65</sup> AWN Interview: Joe Karakuntie, *supra* note 9.

<sup>66</sup> AWN Interview #4, *supra* note 11 at 26-27.

<sup>67</sup> *Thunderwomen*, *supra* note 16.

<sup>68</sup> AWN Anonymous Interview #4, *supra* note 11 at 11.



One elder suggested that in a situation where an offender does not accept responsibility for his or her actions, the person offended against should confront the offender directly, which might result in the offender apologizing and seeking forgiveness.<sup>69</sup> While stressing that each case of wrongdoing or potential wrongdoing should be addressed based on its own unique circumstances, one elder stated that “most of the time” she responds by confronting the relevant person.<sup>70</sup>

**f) The appropriate decision-makers are identified and implement a response. This may be a pre-emptive response in some cases:**

- *This step includes identifying who is the decision-maker most capable, or best positioned, to respond to the harm or risk of harm, or resolve the conflict in the particular circumstances.*

In *Indian Laws*, after the Dancers and Providers, who typically uphold the laws, are unable to resolve an escalating conflict, Mis-ta-wa-sis, who is capable of doing so, steps in and resolves the conflict by generously giving two of his own horses to be used for compensation.<sup>71</sup>

In the story of *Anway*, a community is in danger from cannibals moving into the area. The elders, to whom the community first turned to for help, decide a resolution is beyond their power and so use a shaking tent to seek further help and call for Anway, an expert cannibal killer.<sup>72</sup> Similarly, in *The Water Serpent*, people seek help dealing with a dangerous water serpent. The medicine people and wise ones decide it is beyond their power to stop the danger and so ask the ‘wisest one’ to use a shake tent to ask the thunderbirds for help.<sup>73</sup>

This principle is evident in ancient stories. When faced with the need to overcome a giant skunk in *Mi-She-Shek-Kak*, the animals discuss things and select the wolverine, as he is the only one who has the necessary physical attributes to defeat the giant skunk.<sup>74</sup> In a Wasakeechaak story, Wasakeechaak identifies weasel as someone capable of saving him by killing a giant *wetiko*.<sup>75</sup>

In *Mistacayawis*, when a woman who had killed many people (as a *wetiko*) wants to be executed, she identifies the only person who can kill her (her younger brother) and she instructs him on how to do so.<sup>76</sup> This story is confirmed by an elder, as pointed out above,

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<sup>69</sup> AWN Anonymous Interview #1, *supra* note 39 at 17-18.

<sup>70</sup> AWN Anonymous Interview #2, *supra* note 5 at 27.

<sup>71</sup> *Indian Laws*, *supra* note 14.

<sup>72</sup> *Anway*, *supra* note 2.

<sup>73</sup> *The Water Serpent*, *supra* note 3.

<sup>74</sup> *Mi-Shi-Shek-Kak*, *supra* note 17.

<sup>75</sup> Robert A Brightman, “Whitikow and Weasel,” *A?cađo?hki?wina and a?cimo?wina: Traditional narratives of the Rock Cree Indians* (Regina: University of Regina and Canadian Plains Research Center, 2007) at 33.

<sup>76</sup> *Mistacayawis*, *supra* note 15.

who explained that only certain people were capable or strong enough to be near to observe someone turning *wetiko*.<sup>77</sup>

In the story told above of the elder's grandfather seeking help for his younger sister who was turning *wetiko*, the elder explained that he was only able to keep her from harming others for a short period before he realized he had to take her elsewhere for help: "he's monitoring her, she's getting worse so he knew he had to take her to somebody else who would be able to help her in a way that he couldn't help her". In this case, he brought her to another community, where a person with the needed expertise and power was expecting them. The elder explained, "that person knew so that person met them there and that person probably had a different kind of power because the only person who could cure that kind of a person is a person who has dreamed of a *wetiko*, probably you dream about it and you get told what to do" (note that this was a pre-emptive, or pro-active response).<sup>78</sup>

Elder Joe Karakuntie described another situation in which expert knowledge was sought when a woman was turning *wetiko* after others had tried to help unsuccessfully through prayer. She was accompanied to a shaking tent by two elders, one of whom was her brother, because she respected them and was afraid of them, which gave them a little bit of control over her. Joe explained not just anyone would have the ability to help. They would have to have knowledge of what was happening. Note that this was a pre-emptive, or pro-active, response.<sup>79</sup>

Joe also explained that, historically, in conflict situations where there was no immediate risk of harm, when elders would go in and try to talk to the people in conflict, it was significant that different people responded better to being talked to by different elders: "probably it wasn't really like nobody didn't listen, but there was always somebody that you would listen to".<sup>80</sup>

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<sup>77</sup> AWN Anonymous Interview #2, *supra* note 5.

<sup>78</sup> *Ibid.*

<sup>79</sup> AWN Interview: Joe Karakuntie, *supra* note 9 at 6.

<sup>80</sup> *Ibid* at 3-4.

## 2. Legal Responses and Resolutions: What principles govern appropriate responses to legal/ human issues?

### General Restatements of Law:

a) **The Principle of Healing:** When someone is becoming or has become harmful or dangerous to others, the predominant and preferred response is the healing of that person: *The Hairy Heart People*, *AWN Interview: Joe Karakuntie*, *AWN Anonymous Interview #2*.

### b) The Principle of Avoidance or Separation:

- When healing is not possible, a group may respond to a harmful actor by moving away from or actively avoiding him or her in order to maintain group safety: *Mi-She-Shek-Kak*, *The Hairy Heart People*, *AWN Interview: Robert Wanyandie*, *AWN Interview: Marie McDonald*, *AWN Interview: Joe Karakuntie*.
- A person becoming harmful or causing harm may be temporarily separated from the group to prevent harm to others: *AWN Interview: Joe Karakuntie*, *AWN Anonymous Interview #2*.
- After multiple interventions by multiple people fail to resolve the issue, active avoidance of an individual, family, or group may be used to deliberately send a message of disagreement or of disapproval of inappropriate or harmful behaviour: *AWN Anonymous Interview #4*.
- Avoidance can be employed to avoid the escalation of conflicts, where the conflict might cause more harm than the original concern: *Indian Laws*, *AWN Anonymous Interview #2*, *AWN Anonymous Interview #5*, *AWN Anonymous Interview #4*.

### c) The Principle of Acknowledging Responsibility as Remedy:

- A wrongdoer can remedy harms by taking responsibility, apologizing, and seeking forgiveness directly from the person harmed: *AWN Anonymous Interview #1*, *AWN Anonymous Interview #4*.
- A wrongdoer, or their family, can remedy harms by paying compensation or restitution directly to the person harmed, or to their family: *Indian Laws*, *AWN Anonymous Interview #1*.

**d) The Principle of Re-Integration:**

- When possible and safe to do so, a person who has committed harms, even grave harms, is integrated or reintegrated back into the community as a fully functioning group member: *The Hairy Heart People, Thunderbird Women, AWN Interview: Joe Karakuntie, AWN Anonymous Interview #2, AWN Anonymous Interview #1.*
- Re-integration includes ongoing observation and monitoring of the person for warning signs that he or she may be becoming harmful again: *The Hairy Heart People, AWN Anonymous Interview #2.*

**e) The Principle of Natural or Spiritual Consequences:**

- In some cases, the legitimate response to someone causing harm is to step back and allow the person who caused the harm to experience the natural or spiritual consequences of his or her action. These consequences are usually proportionate to the harm caused, but may be quite severe: *The Man who was Bitten by Mosquitoes, Killing of a Wife, AWN Anonymous Interview #1, AWN Anonymous Interview #4.*
- Individuals use their knowledge of this principle to guide their own actions, and avoid causing or escalating harm: *AWN Anonymous Interview #5, AWN Interview: Robert Wanyandie.*
- However, in some cases, people may take action to facilitate these consequences to respond to harms: *AWN Anonymous Interview #4.*
- Natural and spiritual consequences for misuse or bad use of medicine can also fall on the wrongdoer's family: *AWN Anonymous Interview #1, AWN Anonymous Interview #5.*

**f) The Principle of Incapacitation:** In older stories, or historically, in cases of extreme and ongoing harm, where no other response could keep the group safe and prevent future harms, a harmful agent would sometimes have to be incapacitated (executed) as a last resort: *Mi-She-Shek-Kak, Anway, The Hairy Heart People, Mistacyawis.*

## **Discussion:**

- a) **The Principle of Healing:** *When someone is becoming or has become harmful or dangerous to others, the predominant and preferred response is the healing of that person.*

Several published stories and interviews with elders and community members revealed a preference for healing wrongdoers above other possible resolutions. For example, in *The Hairy Heart People*, when a father and a son (Hairy Hearts who kill and eat people) arrive at a large camp, the medicine man responds by inviting them into his lodge, which heals them for quite some time by melting the ice in their hearts. The father and son are then welcomed into the community, contributing to it and even marrying.<sup>81</sup>

Elder Joe Karakuntie described how when a woman was becoming increasingly dangerous and bothering a lot of people (in this case, turning *wetiko*), two elders took her to a shaking tent and “they probably healed her...healed her spirits”.<sup>82</sup> One elder related a story of her grandfather, who was warned in a dream that his younger sister was becoming dangerous (in this case, turning *wetiko*). She explained that he knew he needed to find a way “for her to be able to go get help. For him to take her to go get help.” He took her to a person in another community who “could cure that kind of a person” and was able to heal her.<sup>83</sup>

Another elder described how the husband of a woman who was becoming harmful to herself and others (in this case, turning *wetiko*) finally sought help for his wife, after trying to pretend everything was fine for over two years. The elder and her husband, who knew what to do, came and smudged the woman, and were able to heal her to the extent of preventing her turning into *wetiko* once they were invited to help.<sup>84</sup>

The same elder explicitly stressed that the predominant and preferred response to people who are harmful or becoming harmful, such as people turning *wetiko*, is healing. When one researcher asked this elder about published stories he had read in which *wetikos* were killed, the elder stated emphatically that “probably someone who didn’t know nothing and had no compassion would just go kill somebody else.” She went on to say the proper response is to try to help the person turning *wetiko* instead. She stressed that people turning *wetiko* should not be seen as faceless dangers, but rather that “these are our family members”.<sup>85</sup>

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<sup>81</sup> *The Hairy Heart People*, *supra* note 4.

<sup>82</sup> AWN Interview: Joe Karakuntie, *supra* note 9 at 4-5.

<sup>83</sup> AWN Anonymous Interview #2, *supra* note 5.

<sup>84</sup> AWN Anonymous Interview #2, *supra* note 5 at 24-26.

<sup>85</sup> *Ibid* at 21.

## b) The Principle of Avoidance or Separation:

- *A group may respond to a harmful actor by moving away from or actively avoiding him or her in order to maintain group safety.*

Avoidance could be an effective way to prevent harm. In *Mi-She-Shek-Kak* the animals, when faced with the threat of the giant skunk, decide to avoid him, and establish rules to facilitate that avoidance. It is only when weasel inadvertently breaks these rules that they can no longer avoid the giant skunk, and must fight.<sup>86</sup> Similarly, in *The Hairy Heart People*, a medicine man first hides everyone under a moose hide (using medicine) to avoid the threat of the Hairy Heart People until they pass by.<sup>87</sup>

One AWN community member, Robert Wanyandie, explained his understanding that, generally, in the past, a community response to perceived danger was to relocate to a place with more people for safety.<sup>88</sup> He used an example where children were alone at camp, and saw signs of an escaped convict, known as a ‘runaway’ in the area. They decided as a group to relocate and avoid the runaway until he moved on and the danger had passed.<sup>89</sup> Elder Marie McDonald used another example involving children: When there was known danger in the area (in this case a *wetiko*), children were told to stay in inside and a family was relocated closer to a larger group every night in order to avoid potential risks.<sup>90</sup>

In a final example of this principle, elder Joe Karakuntie described how when a woman had brought harm to many of her family and the community recognized she was turning *wetiko*, everyone avoided her because they were afraid of her causing harm to them, although they would have preferred to heal her.<sup>91</sup>

- *A person becoming harmful or causing harm may be temporarily separated from the group to prevent harm to others.*

Elder Joe Karakuntie described a situation where a woman who was becoming increasingly dangerous (turning *wetiko*). Two elders she respected (one was her brother), took her away from her community until she could be healed. It was explained that these two elders took her because they had some control over her behaviour because of her respect for them.<sup>92</sup> In a similar situation, a man’s sister was becoming more and more dangerous to others (becoming *wetiko*). With great difficulty, the man transported her away from the community for safety and to seek the necessary resources for healing because he was “probably the only one who was close to her” and could help.<sup>93</sup>

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<sup>86</sup> *Mi-Shi-Shek-Kak*, *supra* note 17.

<sup>87</sup> *The Hairy Heart People*, *supra* note 4.

<sup>88</sup> AWN Interview: Robert Wanyandie, *supra* note 24 at 10-12.

<sup>89</sup> *Ibid* at 8.

<sup>90</sup> AWN Interview: Marie McDonald, *supra* note 6.

<sup>91</sup> AWN Interview: Joe Karakuntie, *supra* note 9 at 8.

<sup>92</sup> *Ibid* at 6.

<sup>93</sup> AWN Anonymous Interview #2, *supra* note 5 at 13.

- *Active avoidance of an individual, family or group may be used to deliberately send a message of disagreement or of disapproval of inappropriate or harmful behaviour.*

On a general level, one community member explained that his understanding was that avoidance can be used actively by individuals to send various messages. Active avoidance can signal “I’m not comfortable with this” or the absence of support for an idea or proposal. It might mean “somebody’s integrity is in question”. In addition, if a victim of wrongdoing avoids the person who caused them harm, this sends a powerful message. However, he also stressed that elders and extended family would always try intervention before avoidance. Avoidance only occurs when the interventions don’t resolve the issue.<sup>94</sup>

In a historic story, a marital relationship ended after multiple chances were given by multiple people to resolve the conflict. The community believed the relationship ended because one person failed to fulfil the obligations within that relationship so the community actively avoided that person to show its disapproval.<sup>95</sup>

A community member described a historical case where a man engaged in an incestuous relationship with his daughter (connected to the misuse of medicine). The man and his family were actively avoided and shunned by the rest of the community. This was a rare case of instant avoidance with no initial attempt to intervene. The community member explained that the community went straight to avoidance because the community teachings against this act were so strong and clear, meaning that the man would have known engaging in incestuous behaviour was very wrong from a early age.<sup>96</sup>

Active avoidance, such as choosing to permanently separate from the community, can also be practiced by individuals or smaller groups as a way to identify harmful behaviour in the larger group. In a historical story, a respected community member decided to leave the community permanently with his family to show his disapproval of behaviour that was occurring in the community at the time. The message sent by doing this was powerful because of how respected the man was, because he announced his reasons for leaving and left in a very public way, and because this was witnessed by many people.<sup>97</sup>

- *Avoidance can be employed to avoid the escalation of conflicts, where the conflict might cause more harm than the original concern.*

When the conflict arises in *Indian Laws* over whether E-pay-as should pay compensation for the loss of life in the Blackfoot raid he triggered, he branches off from the main camp with his brothers and establishes his own camp. When he is confronted at the new camp and the conflict escalates, rather than retaliate again, he declares they no longer have

<sup>94</sup> AWN Anonymous Interview #4, *supra* note 11 at 1, 4, 15 and 20.

<sup>95</sup> *Ibid* at 11.

<sup>96</sup> *Ibid* at 19-20.

<sup>97</sup> *Ibid* at 2-7.

relatives. This makes it possible for an older man to step in and let him save face through his generosity (compensation is also finally paid).<sup>98</sup>

In a historical situation, local people were using a man's trap line without permission. The man decided to let them continue doing so, avoiding a conflict, out of generosity and because he had a good heart.<sup>99</sup>

In another historical situation, two cousins, one of whom was quite big and mean, often fought but then would make up again and everything would be fine. But the conflicts continued. After trying to talk to them, the rest of the community responded by simply avoiding them whenever they were fighting.<sup>100</sup>

When describing the case of the permanent separation by a respected community member, the interviewee explained that this action could have been out of concern for the best interests of the community, because it avoided what would have otherwise been "a huge rift, not only within that family but the surrounding families and everything else." In part, this was because if the man had chosen to confront the people he disapproved of directly, this would have been understood as direct confrontation with the harmful person's relations, including parents, uncles, and aunts, which could have been seen as disrespectful.<sup>101</sup>

In a historical story, a strange group was observed in the area. After determining that the size of the group indicated it was a scouting party, and not an attacking party, and that the leader was a powerful medicine man, the group decided that they would not attack the party, even though they were in their territory uninvited. Instead, they decided that simply avoiding conflict with them was the best course of action. Some men did escort the group back out of their territory.<sup>102</sup>

On a general level, when asked why there became less conflict in the area, one elder stated that it was probably due to the fact people "ran away and tried to protect their families and stuff like that, go hide somewhere else. Probably lots of times it happened like that".<sup>103</sup>

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<sup>98</sup> *Indian Laws*, *supra* note 14.

<sup>99</sup> AWN Anonymous Interview #2, *supra* note 5.

<sup>100</sup> AWN Anonymous Interview #5, *supra* note 31.

<sup>101</sup> AWN Anonymous Interview#4, *supra* note 11 at 6.

<sup>102</sup> Interview of Anonymous AWN Community Member by Kris Statnyk and Aaron Mills (26 June 2012), Grande Cache, Alberta at 8, 18-19 [AWN Anonymous Interview #3].

<sup>103</sup> AWN Anonymous Interview #1, *supra* note 39.



**c) The Principle of Acknowledging Responsibility as Remedy:**

- *A wrongdoer can remedy harms by taking responsibility, apologizing, and seeking forgiveness directly from the person harmed.*

One elder explained, generally, his belief that the remedy for almost all harms is for the offender to sincerely apologize and seek forgiveness from the person he or she hurt. If the offender will not accept responsibility for his or her actions, the person hurt could confront the offender directly, which the elder believed could then result in the offender apologizing and seeking forgiveness.<sup>104</sup>

A second community member explained that a wrongdoer acknowledging his or her wrongdoing generally sends a powerful message. If the harmed person avoids the wrongdoer this can send a message to the wrongdoer and community.<sup>105</sup>

- *A wrongdoer, or their family, can remedy harms by paying compensation or restitution directly to the person harmed, or to their family.*

The power of compensation as a symbol of acknowledging responsibility and resolving conflict is central in *Indian Laws*. In that story, a huge conflict in a camp was resolved by an older man (Mis-ta-wa-sis), giving two horses to E-pay-as as compensation for his son's wrongdoing, with the expectation that E-pay-as would then pay compensation to Bad Hand's son, who E-pay-as killed in the escalating conflict. The originating cause of the conflict is E-pay-as' refusal to pay compensation to a man who lost his wife and son in a Blackfoot raid triggered by E-pay-as' reckless raid.<sup>106</sup>

One elder stated that the remedy for theft is for the person who stole to return the stolen item, and for the person stolen from to forgive them.<sup>107</sup>

**d) The Principle of Re-Integration:**

- *When possible and safe to do so, a person who has committed harms, even grave harms, is integrated or reintegrated back into the community as a fully functioning group member.*

In *The Hairy Heart People*, a father and son have killed and eaten many people, but are healed, and so are welcomed into the camp and even marry. They live as fully functioning community members until the wife of one notices warning signs that he is becoming dangerous (a Hairy Heart) again.<sup>108</sup>

In *The Thunderwomen*, a younger brother attempts to kill his brother's wife, and she flees back to her family (the Thunderwomen). Once the older brother makes the difficult

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<sup>104</sup> AWN Anonymous Interview #1, *supra* note 39 at 17-18.

<sup>105</sup> AWN Anonymous Interview #4, *supra* note 11 at 15.

<sup>106</sup> *Indian Laws*, *Supra* Note 14, at 36.

<sup>107</sup> AWN Anonymous Interview#1, *supra* note 39, at 17.

<sup>108</sup> *The Hairy Heart People*, *supra* note 4.

journey to make amends, they see the younger brother has been crying the whole time he is gone, and he is told he must never do what he did again. The wife and her sister, who is married to the younger brother, return with the older brother and they all resume living together as before. In fact, the sisters retrieve the arrow used to shoot one of them and give it good hunting luck.<sup>109</sup>

Elder Joe Karakuntie described how a woman was healed after she caused grave harms and even deaths of family members when she was in a harmful state (in this case, a *wetiko*) and so was welcomed back into her community.<sup>110</sup>

One elder explained that a person who had been healed and recovered from becoming a *wetiko* generally would not be treated differently for having been a *wetiko*. Community members would not change their actions in respect to him or her, although they would take sensible precautions and watch him or her carefully for the rest of his or her life because no one could ever be completely healed (in addition, life would often be short for that person after being healed).<sup>111</sup>

On a general level, one elder stated his belief that where a wrongdoer takes responsibility and apologizes to the person harmed, if that person refuses forgiveness, it is his or her choice. The wrongdoer should still be seen as fine in the eyes of the wider community because “there is no more you can ask for.” Similarly, if a someone who has stolen something makes restitution, the person stolen from should forgive them.<sup>112</sup>

- *Re-integration includes ongoing observation and monitoring the person for warning signs he or she may be becoming harmful again.*

The story of *The Hairy Heart People* demonstrates how a father and son who have been healed from their cannibalistic ways can live as fully functioning community members. However, when the wife of one notices warning signs he is becoming dangerous again (in this case, viewing a human as an animal), she warns her family and they are observed closely. In this case, her husband has relapsed, and has to be incapacitated for group safety.<sup>113</sup>

One elder explained that although someone who has been healed from being a *wetiko* would be treated the same as everyone else, the rest of the community would take sensible precautions and watch him or her carefully for the rest of his or her life, because no one can be completely healed.<sup>114</sup>

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<sup>109</sup> *The Thunderwomen*, *supra* note 16.

<sup>110</sup> AWN Interview: Joe Karakuntie, *supra* note 9 at 8-9.

<sup>111</sup> AWN Anonymous Interview #2, *supra* note 5 at 22.

<sup>112</sup> AWN Anonymous Interview #1, *supra* note 39 at 16-17.

<sup>113</sup> *The Hairy Heart People*, *supra* note 4.

<sup>114</sup> AWN Anonymous Interview #2, *supra* note 5 at 22.

**e) The Principle of Natural or Spiritual Consequences:**

- *In some cases, the legitimate response to someone causing harm is to step back and allow the person who caused the harm to experience the natural or spiritual consequences of his or her action. These consequences are usually proportionate to the harm caused, but may be quite severe.*

In an older story, *The Man Who was Bitten By Mosquitoes*, a man living out on the land is aggravated by mosquitoes biting him so he decides to retaliate by capturing them and releasing them in the middle of the winter so they freeze instantly. The next spring, even more mosquitoes bite him until eventually they eat him up entirely. This is explained as a natural consequence of his cruelty.<sup>115</sup>

*Killing of a Wife* also provides a good example of this principle. After a medicine man investigates and confirms that a man has killed his wife, he publically confronts the man in front of the entire group in a shaking tent. He tells him that he knows the truth, that killing is not good, and that he does not have long to live. No human agent takes action against the man, but he dies within the year.<sup>116</sup>

One elder gave the example of meeting up with an old man who had used medicine with bad intentions and was now walking with two canes. The elder explained: “that’s why he’s suffering now. He said, ‘Now I’m paying for it’. He does pay for it all right. And then next year I went back looking for him, he wasn’t there so he must have died or something like that, but he thought he was going to give up so I believe pretty well he got what had come for him.” He went on to state that, more generally, “no matter what you do, something wrong, when you hurt somebody, especially if you’re using medicine, that thing is coming back for you.” Even though this elder saw forgiveness as the best response to most harm, he pointed out that asking forgiveness does not prevent these consequences from occurring.<sup>117</sup>

Another interviewee explained: “I think people would turn around and would say, you know, just leave it be. It’ll come back to him anyways or sometimes bad things will happen to a person, like, just one after another, whatever and people will say, oh, something is visiting him”.<sup>118</sup>

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<sup>115</sup> Douglas Ellis, “The man who was bitten by mosquitoes,” *âtalôhkâna nêsta tipâcimôwina: Cree Legends and Narratives from the West Coast of James Bay*, (Winnipeg: University of Manitoba Press, 1995) at 153 [*The Man Who was Bitten by Mosquitoes*].

<sup>116</sup> *Killing of a Wife*, *supra* note 1.

<sup>117</sup> Awn Anonymous Interview #1, *supra* note 39.

<sup>118</sup> Awn Anonymous Interview #4, *supra* note 11 at 21.

- *Individuals use their knowledge of this principle to guide their own actions, and avoid causing or escalating harm.*

One elder shared a story about a relative who had been killed by a curse. The family chose not to retaliate or fight back because of their understanding that it would have just gotten worse if they had done so.<sup>119</sup>

Although not about harm or conflict between people, one community member, Robert Wanyandie, shared a story that illustrated this principle on a general level. He was out hunting and saw an eagle. He was about to shoot the eagle but something inside told him it was not right because he would face a consequence for harming the eagle:

the instinct inside me was that, you know, if I shoot it, you know, something might not work out for me, you know, like maybe a bad luck or something, you know what I mean? So I just, you know, there's consequences I think you have to face or something, so, so I just, you know, I didn't want to, didn't want to go through that process or I didn't want to find out about it anyways, you know what I mean?<sup>120</sup>

- *However, in some cases, people may take action to facilitate these consequences to respond to harm.*

In one story, told by a community member, a medicine man deliberately triggered spiritual consequences. Many people were using medicine to torment others from one side of a mountain range. A medicine man from the other side blew a beaver tooth over the mountains in return, and it started a forest fire that burned everything. This was seen and accepted as a spiritual consequence for using medicine to torment the other people.<sup>121</sup>

In another story from a community member, a medicine man was not to open his medicine bag in front of women or else they would be seduced. The spiritual consequence of him failing to respect this medicine was that when he opened the medicine bag in front of his daughter, he ended up in an incestuous relationship with her. The community viewed the ongoing harm to his daughter as a consequence of his lack of integrity. In this case, the spiritual consequences were not considered sufficient and the community shunned and avoided the man to show their condemnation of his actions. Unfortunately, his family suffered this response with him.<sup>122</sup>

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<sup>119</sup> AWN Anonymous Interview #5, *supra* note 31 at 4.

<sup>120</sup> AWN Interview: Robert Wanyandie, *supra* note 24 at 1.

<sup>121</sup> AWN Anonymous Interview #4, *supra* note 11 at 18-19.

<sup>122</sup> *Ibid* at 19-20.

- *Natural and spiritual consequences for misuse or bad use of medicine can also fall on the wrongdoer's family.*

One elder explained that, generally, using medicine for bad intentions usually comes back to the wrongdoer's family.<sup>123</sup> These consequences may be disproportionate to the severity of the harm. One elder explained that when someone uses medicine to harm another person, they bring even worse harm to their own families as a consequence.<sup>124</sup>

#### **f) The Principle of Incapacitation**

- *In older stories, or historically, in cases of extreme and ongoing harm, where no other response could keep the group safe and prevent future harms, a harmful agent would sometimes be have to be incapacitated (executed) as a last resort.*

In the story of *Mi-She-Shek-Kak*, after avoidance no longer worked to keep the group safe, the animals gather together to incapacitate the giant skunk. In this case it does not die, but its pieces become small skunks that are less capable of causing future harm.<sup>125</sup>

In an old story, many cannibals attacking a community are unstoppable so an elder calls in *Anway*, a powerful cannibal killer. *Anway* overpowers and kills the cannibals to stop the ongoing harms and deaths in the community.<sup>126</sup>

After using avoidance, then healing and reintegration to respond to a father and son who had been killing and eating people (*The Hairy Heart People*), the son relapses and both become dangerous again. Finally, when no other response is left except to execute them, this is implemented to keep the group safe and prevent future harm.<sup>127</sup>

In *Mistacayawis*, it is the harmful person who decides she should be incapacitated because, as a *wetiko*, she killed almost her entire family. She asks her youngest brother to kill her, and tells him how to do so, in order to prevent her from causing future harms. He complies with her wishes.<sup>128</sup>

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<sup>123</sup> AWN Anonymous Interview #1, *supra* note 39.

<sup>124</sup> AWN Anonymous Interview #5, *supra* note 31.

<sup>125</sup> *Mi-Shi-Shek-Kak*, *supra* note 17 at 63.

<sup>126</sup> *Anway*, *supra* note 2 at 116.

<sup>127</sup> *The Hairy Heart People*, *supra* note 4 at 116.

<sup>128</sup> *Mistacayawis*, *supra* note 15 at 99.

### 3. Legal Obligations: What principles govern individual and collective responsibilities? What are the “*shoulds*”?

#### General Restatements of Law:

##### a) Responsibility to Help:

- People are responsible to help when asked if they are capable of doing so, and to ask for help when they are not: *Mi-She-Shek-Kak, Wasakeechaak Tricks the Bear, Whitiko and the Weasel, Water Serpent, Anway, Killing of a Wife, Indian Laws, The Hairy Heart People, The Thunderwomen, AWN Anonymous Interview #1, AWN Anonymous Interview #2, AWN Interview: Joe Karakuntie, AWN Anonymous Interview #5.*
- The responsibility to help extends to helping people from other groups as well: *The Hairy Heart People, AWN Interview: Marie McDonald, AWN Anonymous Interview #1, AWN Anonymous Interview #3, AWN Anonymous Interview #4.*

**b) Responsibility to Give Back:** People are responsible to give back something for help they ask for or receive: *Whitikow and the Weasel, AWN Anonymous Interview #1, AWN Interview: Joe Karakuntie, AWN Anonymous Interview #5, AWN Interview: Marie McDonald.*

**c) Responsibility to Prevent Future Harms:** People are responsible to find ways to stop ongoing harms and prevent or mitigate future harms when necessary: *Mi-She-Shek-Kak, The Water Serpent, Anway, Mistacayawis, The Hairy Heart People, Indian Laws, The Thunderwomen.*

**d) Responsibility to Warn:** People are responsible to warn others once they are aware of a potential danger or risk of harm: *Mi-She-Shek-Kak, The Hairy Heart People, Mistacayawis, AWN Anonymous Interview #1, AWN Anonymous Interview #2, AWN Interview: Marie McDonald, AWN Interview: Robert Wanyandie.*

## Discussion:

### a) **The Responsibility to Help:**

- *People are responsible to help when asked if they are capable of doing so, and to ask for help when they are not.*

This principle is demonstrated in many older stories. In the story of *Mi-shi-shek-kak*, once the animals decide to defeat the giant skunk, they identify the wolverine as being quick and strong enough to do so and ask him to help. He agrees and the skunk is defeated.<sup>129</sup> In the story *Wasakeechaak Tricks the Bear*, the trees take on the responsibility to remedy a harm. Wasakeechaak, while hunting with a bear, becomes hungry and decides to kill and eat the bear. He tricks the bear into covering his eyes with berries then kills it and prepares the meat. Wasakeechaak is greedy and wants to eat all of the meat, but realizes that he is not able to eat it all himself. He asks two trees to stretch him so that he is able to eat more. The trees agree to stretch him but then trap him between them. The trees then call for all the animals nearby to come and eat the bear meat. When the trees release Wasakeechaak, all the meat was gone. In this way, the trees take on the responsibility of addressing the harm to the bear and Wasakeechaak's greed.<sup>130</sup>

In *Whetiko and the Weasel*, Wasakeechaak has fallen into the grasp of a *wetiko* who has ordered Wasakeechaak to gather sticks so that he can be cooked and eaten. While gathering sticks, Wasakeechaak comes across a weasel and asks the weasel for help. The weasel immediately agrees to do so. He crawls into the *wetiko* and chews on his heart until he dies. The weasel drowns in the *wetiko*'s blood but then is brought back to life by Wasakeechaak.<sup>131</sup>

The principle of providing help to those who ask appears in many stories. For example, in *The Water Serpent*, when the people need help to remove the dangerous water serpents, they call on the Thunderbirds in the shaking tent. The Thunderbirds, who are capable of dealing with the water serpents, respond and remove them.<sup>132</sup> When asked why they would help the people, one elder answered that it was probably because they were asked to do so.<sup>133</sup> Similarly, in *Anway*, when a community is unable to defeat dangerous cannibals on their own, they use the shaking tent to ask for help from Anway, a famed cannibal killer, who is capable of doing so. He is not from the community, but comes to help them get rid of the cannibals when asked.<sup>134</sup>

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<sup>129</sup> *Mi-Shi-Shek-Kak*, *supra* note 17.

<sup>130</sup> Douglas Ellis, "Weesakechak tricks the Bear" in *âtalôhkâna nêsta tipâcimôwina: Cree Legends and Narratives from the West Coast of James Bay*, (Winnipeg: University of Manitoba Press, 1995) at 137 [*Weesakechak Tricks the Bear*].

<sup>131</sup> *Whetiko and the Weasel*, *supra* note 76.

<sup>132</sup> *The Water Serpent*, *supra* note 3.

<sup>133</sup> Awn Interview: Joe Karakuntie, *supra* note 9 at 9-10.

<sup>134</sup> *Anway*, *supra* note 2.

Again, in *Killing of a Wife*, when Meskino is given a vision of a wife's murder by his spirit helper, he uses that knowledge to see the truth behind the husband's story regarding his wife, who was the murderer. Meskino takes steps to confirm the vision, reveal the truth, and denounce the husband.<sup>135</sup>

In *Indian Laws*, a man who felt he is wrongly being refused compensation for the death of his wife and child in a Blackfoot raid triggered by E-pay-as needs help. He approaches the Dancers and Providers (groups known for their strength and ability to provide) for help, who then step in to attempt to resolve the conflict.<sup>136</sup>

In *The Hairy Heart People*, an old man is gifted with the power to help protect the community from the Hairy Hearts, and uses his knowledge and medicine to do so.<sup>137</sup>

Sometimes the obligation falls on close family members, as in *Mistacayawis*. In that story, the husband of a woman who is killing others (as a *wetiko*) is powerful enough to help stop her and doesn't because of his grief. This failure leads to his death. When the woman realizes all she has done, she asks her surviving youngest brother to kill her since he is the only one who capable of doing so. He complies, ending the danger.<sup>138</sup> Similarly in *The Thunderwomen*, an older brother is capable of addressing the harm his younger brother causes to his wife because he knew what has happened. He takes on that responsibility and when he needs help finding his wife's family (the Thunderwomen) he asks an elder for help, who tells him how and where to find them.<sup>139</sup>

One elder discussed his understanding of the obligation for elders and medicine people to help when needed. He believes that the obligation to, for example, pray for someone does not come from someone asking. It comes from messages to pray. He stated, "If somebody asked me to pray for them I just don't know how to pray. If somebody can get me a message, 'Pray for this lady or him', those are the words I hear from somewhere... nobody is around, and I'll be praying for people. If I don't get it at all I won't do it." He explained he sees the obligation of a medicine person to help is also dependent on the intentions or cause of the person who is seeking help. He sees this as a process, rather than a single decision.<sup>140</sup>

One elder explained that when the parents of a women turning *wetiko* called her and her husband on the phone and asked if they would come help her with their medicines, they went over and her husband smudged the woman as requested.<sup>141</sup> The same elder related a story where spirits warned her grandfather (visiting him in his dreams) that his younger sister was turning *wetiko*. The elder stated:

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<sup>135</sup> *Killing of a Wife*, *supra* note 1.

<sup>136</sup> *Indian Laws*, *supra* note 14.

<sup>137</sup> *The Hairy Heart People*, *supra* note 4.

<sup>138</sup> *Mistacayawis*, *supra* note 15.

<sup>139</sup> *The Thunderwomen*, *supra* note 16.

<sup>140</sup> AWN Anonymous Interview #1, *supra* note 39.

<sup>141</sup> AWN Anonymous Interview #2, *supra* note 5.



Like with my grandfather, he probably should dream about a lot of stuff, like different spirits and stuff they used to come to him in his dreams. So he was probably forewarned in a dream what was happening to his younger sister, so in his dream he was probably told, you know, watch her, so that was his responsibility to keep an eye on her and keep the community, you know, from being harmed. So probably like that was his responsibility was her, for her to be able to go get help. For him to take her to go get help.<sup>142</sup>

The elder explained that, more generally, a medicine person who is asked to help with severe harms, such as someone turning *wetiko*, must help. This responsibility is linked to their gift. However, this elder stated that, for less severe matters, a medicine person can decide how or whether to help someone asking them.<sup>143</sup>

When asked how people seeking help from a person running a shake tent would know he would help, elder Joe Karakuntie explained:

he probably wouldn't have any choice; the person who was already being brought to the shake tent, he said the spirits will already know about that person and, you know, to know if they could help that person, but the person holding the shake tent ceremony wouldn't probably have a choice to at least attempt to help.<sup>144</sup>

One elder related a story where she went to go see a medicine person for help with a curse put on her. It was her understanding that the medicine person had to help, or at least attempt to help her because of the gifts and tobacco she brought him.<sup>145</sup> The same elder explained that if someone needed medicine help badly, but would not go for help on his or her own, sometimes other people would take them if the family decided they needed the help.<sup>146</sup>

On a general level, one interviewee explained that because the interviewer had offered him tobacco and he had accepted, he was now obligated to spend time with him, engaging with him about the matter for which he requested assistance (in this case, this very research project). The interviewee explained that if he failed to deliver on the legitimate expectation he created, he would be at fault, his integrity would fall into question, and he would be insulting the interviewer.<sup>147</sup>

- *The responsibility to help extends to helping people from other groups as well.*

The obligation to help extends beyond one's own community, as shown in many stories. For example, in *The Hairy Heart People*, an old man who is gifted with the power to help

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<sup>142</sup> *Ibid.*

<sup>143</sup> *Ibid* at 18-19.

<sup>144</sup> AWN Interview: Joe Karakuntie, *supra* note 9 at 6.

<sup>145</sup> AWN Anonymous Interview #5, *supra* note 31.

<sup>146</sup> *Ibid.*

<sup>147</sup> AWN Anonymous Interview #4, *supra* note 11 at 16-17.

protect people from the Hairy Hearts, uses his knowledge and medicine to protect all the camps, not just his own.<sup>148</sup>

Elder Marie McDonald told a story of a time when two people with a lot of knowledge and medicine came and helped the community by alleviating a lot of the problems with *wetiko* spirits. Although they were not asked to come, they had to help if they knew they could:

with medicine and, like, that you know that much, they don't need to be told, they kind of go where they're needed and they go and help... probably you would ask to come but you didn't have to come, but as soon as they're asked they know they could probably go with the spirit, come and check out the power that the person has. So that person would then, in turn, know if they can come. If they're going to get beat, they won't come.

Similarly, Marie explained her understanding that if someone had knowledge of *wetikos* through medicine, it was generally their responsibility to protect the whole community and, if necessary, take the person turning *wetiko* for help.<sup>149</sup>

Sometimes individuals approach a community that is not their own for help. One elder recalled how after a massacre occurred in his own community, a man fled and was chased to the neighbouring community. The community helped him by protecting him and fighting with him against those who were chasing him.<sup>150</sup> Another elder described how when a Cree couple came upon a woman from far away, who had escaped from the Dogrib people and was living alone in their territory with no clothes and eating only small game, they immediately helped her in every way they could. The elder relating this historical story was taken aback when the interviewers asked if the couple helped because they “had to”, and stressed they helped her out of compassion.<sup>151</sup>

**b) The Responsibility to Give Back:** *People are responsible to give back something for help they ask for or receive.*

The obligation to help is reciprocal. For instance, in *Whitiko and the Weasel* after the weasel saved Wasakeechaak from the Whitiko, Wasakeechaak brought him back to life and gave him his name and a spot on his tale in thanks for the help received.<sup>152</sup>

The community members interviewed gave several examples of individuals giving back to those that helped them. One elder explained that, historically, horses were usually given as gifts to medicine people for their help. Other gifts that were commonly given for advice or help from an elder or medicine person included tobacco, money, horses, medicines or goods that would last a long time.<sup>153</sup> Elder Joe Karakuntie stated that

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<sup>148</sup> *The Hairy Heart People*, *supra* note 4.

<sup>149</sup> AWN Interview: Marie McDonald, *supra* note 6 at 8-10.

<sup>150</sup> AWN Anonymous Interview#1, *supra* note 39.

<sup>151</sup> AWN Anonymous Interview #3, *supra* note 103 at 17.

<sup>152</sup> *Whitiko and Weasel*, *supra* note 76.

<sup>153</sup> AWN Anonymous Interview #1, *supra* note 39.

someone going to a person who runs a shake tent would bring at least tobacco or cloth.<sup>154</sup> Elder Marie McDonald shared that a person who knew medicine and was using it to look after the community would receive tobacco and gifts of gratitude. They used to give a lot.<sup>155</sup> Sometimes the gifts are given in advance like when one elder who went to do see a medicine person for help with a curse put on her, brought tobacco and gifts.<sup>156</sup>

**c) Responsibility to Prevent Future Harms:** *People are responsible to find ways to stop ongoing harms and prevent or mitigate future harms when necessary.*

In the ancient story of *Mi-She-Shek-Kak*, the animals that defeat the giant skunk cut the giant skunk into small pieces and disperse them across the land so that the skunk will not be a dangerous size in the future when the humans come to inhabit it.<sup>157</sup> Similarly, Thunderbirds not only protect the community from the immediate danger posed in *The Water Serpent*, they remove the dangerous water serpent entirely to prevent him from harming the people in the future.<sup>158</sup>

In several stories, where there was no other way to stop ongoing harms or prevent future harms, drastic measures, including incapacitation (execution) of those perpetuating the harms are taken in order to prevent future harms to the group. This is the case in *Anway*, *Mistacayawis*, and *The Hairy Heart People*.<sup>159</sup>

This principle might require an individual to settle a dispute instead of fighting to the end. For example, in *Indian Laws*, after a long and bitter conflict, and after losing his brother, E-pay-as accepts compensation for the welfare of the band.<sup>160</sup>

Sometimes a simple warning or lesson can prevent future harm. In *The Thunderwomen*, an older brother first makes amends to his wife and her family for the harm committed by his younger brother (shooting her with an arrow), and then prevents future harms by forbidding the younger brother from doing what he did again.<sup>161</sup>

**d) Responsibility to Warn:** *People are responsible to warn others once they are aware of a potential danger or risk of harm.*

The responsibility to warn others is at play within communities and across communities. In the story of *Mi-She-Shek-Kak*, when the weasel realizes he has accidentally insulted the giant skunk, rather than just saving his own family, he warns all the other animals as he runs to hide with his family.<sup>162</sup>

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<sup>154</sup> AWN Interview: Joe Karakuntie, *supra* note 9 at 5.

<sup>155</sup> AWN Interview: Marie McDonald, *supra* note 6 at 10.

<sup>156</sup> AWN Anonymous Interview #5, *supra* note 31.

<sup>157</sup> *Mi-Shi-Shek-Kak*, *supra* note 17.

<sup>158</sup> *The Water Serpent*, *supra* note 3.

<sup>159</sup> *Anway*, *supra* note 2; *Mistacayawis*, *supra* note 15; *The Hairy Heart People*, *supra* note 4.

<sup>160</sup> *Indian Laws*, *supra* note 14.

<sup>161</sup> *The Thunderwomen*, *supra* note 16.

<sup>162</sup> *Mi-Shi-Shek-Kak*, *supra* note 17.

In *The Hairy Heart People*, a spiritual man gifted with dreams is warned in a dream that dangerous Hairy Heart People are coming to the camp. He warns others and leads them to a place to hide. The obligation is then spread to everyone who knows of the warning. Once the immediate danger has passed, the people come out of hiding and go warn other camps they should all stay in one large group and watch for the Hairy Hearts.<sup>163</sup> Later in that same story, when a woman notices warning signs her husband may be relapsing and becoming a Hairy Heart again, she warns her brothers immediately and, in doing so, saves the entire camp from him.<sup>164</sup>

In contrast, *Mistacayawis* is a cautionary tale about the consequences of failing to warn. In that story, a woman knows her sister has become extremely harmful (a *wetiko*), but fails to warn others, which results in many more deaths. Once her failure to warn is revealed, she is executed for going along with her sister instead of not warning the others. A man in the camp discovers the older sister is a *wetiko* and does warn the others, but it is too late by that time, and everyone in the entire camp is killed except for one boy.<sup>165</sup>

One elder explained that if a person is warned that someone will be harmed they will tell other people. They will talk about it and pray for the intended victim, even if they don't know exactly who the victim will be.<sup>166</sup> Another elder shared a story in which she became aware that a woman was becoming harmful (turning *wetiko*). The elder told the man's husband, "you know there's something wrong with your wife, I think, you know, we should talk about it." She stated that because she saw this, it was her responsibility to tell him.<sup>167</sup>

One elder talked about long ago when the Dogrib people, who are traditional enemies, used spirits to visit. She explained that medicine people who could feel the Dogrib spirits coming would warn the others.<sup>168</sup>

Elder Marie McDonald talked about the efficiency of warnings. She related that long ago adults used to warn children to stay inside after dark when there was risk of a *wetiko*, which kept them safe. As well, if people noticed spiritual or natural warning signs that a *wetiko* was nearby, people would start talking about it openly to keep safe: "once you start seeing the signs and, you know, observing, like just keep talking about it, kind of be open about it, because that all probably, you know, held back off a little bit because he knows people are talking about him".<sup>169</sup>

More generally, when discussing the observation of a squirrel sending warning signals to others that danger was near (in this case, a cougar), community member Robert

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<sup>163</sup> *The Hairy Heart People*, *supra* note 4.

<sup>164</sup> *Ibid.*

<sup>165</sup> *Mistacayawis*, *supra* note 15.

<sup>166</sup> AWN Anonymous Interview #1, *supra* note 39.

<sup>167</sup> AWN Anonymous Interview #2, *supra* note 5.

<sup>168</sup> AWN Anonymous Interview #5, *supra* note 31.

<sup>169</sup> AWN Interview: Marie McDonald, *supra* note 6 at 3-4.

Wanyandie explained this by saying it was the squirrel's responsibility to warn those with whom he has a relationship.<sup>170</sup>

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<sup>170</sup> AWN Interview: Robert Wanyandie, *supra* note 24 at 5-6.

## 4. Legal Rights: What should people be able to expect from others?

### 4.1 Substantive Rights

#### General Restatements of Law:

- a) **The Right to Protection/Safety:** This right can be inferred from the inverse obligation to protect people from future harms and to warn others of danger or potential harm (See- **Responsibility to Protect from Future Harms:** *Mi-She-Shek-Kak, The Water Serpent, Anway, Mistacayawis, The Hairy Heart People, Indian Laws, The Thunderwomen*, and the **Responsibility to Warn:** *Mi-She-Shek-Kak, The Hairy Heart People, Mistacayawis, AWN Anonymous Interview #1, AWN Anonymous Interview #2, AWN Interview: Marie McDonald, AWN Interview: Robert Wanyandie*).
- b) **The Right to Be Helped when Incapable/ Vulnerable:** This right can be inferred from the inverse obligation to help those when capable and to ask for help when incapable or vulnerable (See – **Responsibility to Help:** *Mi-She-Shek-Kak, Wasakeechaak Tricks the Bear, Whitiko and the Weasel, Water Serpent, Anway, Killing of a Wife, Indian Laws, The Hairy Heart People, The Thunderwomen, AWN Anonymous Interview #1, AWN Anonymous Interview #2, AWN Interview: Joe Karakuntie, AWN Anonymous Interview #5, The Hairy Heart People, AWN Interview: Marie McDonald, AWN Anonymous Interview #1, AWN Anonymous Interview #3*).

#### Discussion:

- a) **The Right to Protection/Safety:** *This right can be inferred from the inverse obligation to protect people from future harms and to warn others of danger or potential harm.*

For a detailed discussion of this legal principle see **Section 3 c) Responsibility to Protect from Future Harms**.

- b) **The Right to Be Helped when Incapable/ Vulnerable:** *This right can be inferred from the inverse obligation to help those when capable and to ask for help when incapable or vulnerable.*

For a detailed discussion of this legal principle see **Section 3 a) Responsibility to Help**.

## 4.2 Procedural Rights

### General Restatements of Law:

a) **The Right to Have Warning Signals Corroborated by Observation or Evidence before Action is Taken:** In all cases, where people recognize warning signals that a person may be becoming harmful, or may have committed harms, no action is taken unless this is corroborated by observation and evidence: *The Hairy Heart People, Killing of a Wife, Mistacayawis, AWN Anonymous Interview #2.*

### b) The Right to Be Heard:

- People who have caused harm, people who have observed harm, and people who have experienced harm have the opportunity to be heard whenever possible prior to a response or resolution: *Indian Laws, Killing of a Wife, The Thunderwomen, AWN Anonymous Interview#4, AWN Interview: Joe Karakuntie.*
- People who have acknowledged their wrongdoing and are sincerely seeking resolution, are given the opportunity to be heard: *Indian Laws, Thunderwomen, AWN Anonymous Interview #1.*

c) **The Right for Decisions to Be Made through Open, Collective Deliberation Guided by Appropriate Consultation:** In all cases where it is possible, decisions about responses or resolutions to harm or conflict are made through an open, deliberative process, guided by appropriate consultation with those who have relevant knowledge or expertise: *Mi-She-Shek-Kak, The Water Serpent, Anway, Mistacayawis, AWN Anonymous Interview #2.*

### Discussion:

a) **The Right to Have Warning Signals Corroborated by Observation or Evidence before Action is Taken:** *In all cases, where people recognize warning signals that a person may be becoming harmful, or may have committed harms, no action is taken unless this is corroborated by observation and evidence (See – Procedural Step 4: Observing and Corroborating Evidence).*

This principle applies even when the suspected harm is severe. The wife in *The Hairy Heart People* takes the precaution of warning her brothers about signs that her husband may be becoming dangerous. They keep a close eye on him when they are out hunting, but take no action until his behaviour confirms he has relapsed and become dangerous again.<sup>171</sup> Similarly, in *Killing of a Wife*, when Meskino's spirit helper (his *mistabeo*) tells

<sup>171</sup> *The Hairy Heart People*, *supra* note 4.

him a certain man has killed his wife, Meskino goes down river to observe the man in order to confirm this before taking any further action.<sup>172</sup> And, in *Mistacayawis*, when a man becomes suspicious about a woman who returns home two days in a row without her hunting partner, he follows her to observe her and confirm his suspicions before taking action.<sup>173</sup>

In one contemporary example, a couple who practices traditional medicine observed a woman for two years because they noticed behavioural signs she was turning *wetiko*, before stepping in to help heal her at the request of her husband.<sup>174</sup>

#### **b) The Right to Be Heard:**

- *People who have caused harm, people who have observed harm, and people who have experienced harm have the opportunity to be heard whenever possible prior to a response or resolution.*

In *Indian Laws*, when a father feels he is being unfairly denied compensation by E-pay-as for the death of his wife and child, he has the opportunity to be heard by the relevant decision-makers (in this case, the Dancers and Providers). The Dancers and Providers then approach E-pay-as and offer him the opportunity to be heard as well.<sup>175</sup>

In *The Thunderwomen*, when an older brother strongly suspects that his younger brother has harmed his wife, he offers him the opportunity to be heard. In this case, the younger brother lies, but after his brother leaves, he weeps constantly.<sup>176</sup>

In *Killing of a Wife*, even though Meskino has observed enough to confirm a man has killed his wife, he holds a shaking tent ceremony and gives the man the opportunity to be heard by the group as Meskino announces the truth and denounces the act.<sup>177</sup>

One elder explained that, historically, when there was interpersonal conflict within a family or between people in the community, family members, then elders, would make multiple visits to apply social pressure to solve the problem. These multiple visits included the opportunity for everyone involved or affected to be heard. In one case, in which a respected family decided to leave the community, once the reasons for leaving were given and understood, the decision was accepted and the social pressure ceased.<sup>178</sup>

Elder Joe Karakuntie stated that, generally, when a person was suspected of doing wrong, elders would confront him or her to ask if it was true. This implies the suspect had an opportunity to be heard before a response was decided upon.<sup>179</sup>

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<sup>172</sup> *Killing of a Wife*, *supra* note 1.

<sup>173</sup> *Mistacayawis*, *supra* note 15.

<sup>174</sup> AWN Anonymous Interview #2, *supra* note 5 at 24.

<sup>175</sup> *Indian Laws*, *supra* note 14.

<sup>176</sup> *The Thunderwomen*, *supra* note 16.

<sup>177</sup> *Killing of a Wife*, *supra* note 1.

<sup>178</sup> AWN Anonymous Interview #4, *supra* note 11 at 11.

<sup>179</sup> AWN Interview: Joe Karakuntie, *supra* note 9.



- *People who have acknowledged their wrongdoing and are sincerely seeking resolution, are given the opportunity to be heard.*

In *Indian Laws*, after the conflict had escalated, resulting in injury and a death, E-pay-as allows the man who brought a peace offering the opportunity to be heard, despite his anger. As a result, E-pay-as accepts his compensation and, in turn, provided compensation for his wrongdoing, ending the conflict.<sup>180</sup>

The older brother in *The Thunderwomen* seeks out the family of his sister-in-law (the Thunderwomen) who has been shot with an arrow by his younger brother in order to make amends. The Thunderwomen gives the older brother the opportunity to be heard, after which the wife and her sister agree to return with him and the younger brother is told he must never do such a thing again.<sup>181</sup>

One elder explained his understanding that the community expects someone who has hurt someone else to visit the person they have harmed, acknowledge the wrongdoing and ask for forgiveness. While the person harmed is not obligated to forgive the person, there is an implicit right of the wrongdoer to be heard by the person harmed. The elder explained that if the person has sought forgiveness sincerely, the community will take note of this and the wrongdoer will not have to ‘own’ the harm any longer.<sup>182</sup>

This principle is practiced at broader levels, including resolution to generational inter-community conflict. One elder gave an example of such a conflict. The Blackfoot had caused his family a great deal of harm in the past. In this generation, descendants approached this elder and his family to seek forgiveness for these harms, bringing tobacco as a gift and inviting him to a ceremony. He gave them the opportunity to be heard. Once he listened to them, he saw their efforts as sincere and did forgive them, resolving the intergenerational conflict.<sup>183</sup>

**c) The Right for Decisions to be Made through Open, Collective Deliberation Guided by Appropriate Consultation:**

- *In all cases where it is possible, decisions about responses or resolutions to harm or conflict are made through an open deliberative process, guided by appropriate consultation with those with relevant knowledge or expertise (See- **Procedural Step 3- Seeking Guidance from those with relevant knowledge and expertise**, and **Procedural Step 5- Public Confrontation and Deliberation**).*

As with most principles, examples can be found in older stories and in historical examples. For example, in *Mi-she-shek-kak*, all the animals are involved in an open, deliberative process to come up with a plan to address the harm of the giant skunk.<sup>184</sup>

<sup>180</sup> *Indian Laws*, *supra* note 14.

<sup>181</sup> *The Thunderwomen*, *supra* note 16.

<sup>182</sup> Awn Anonymous Interview #1, *supra* note 39.

<sup>183</sup> Awn Interview: Joe Karakuntie, *supra* note 9 at 3.

<sup>184</sup> *Mi-Shi-Shek-Kak*, *supra* note 17.

Similarly, in *The Water Serpent*, the entire group deliberated and consulted with the elders and the wise ones, who had appropriate knowledge and expertise (who, in turn, deliberated among themselves). Through this process, they reached the decision to ask the Thunderbirds for help to resolve the danger of the water serpent.<sup>185</sup> *Anway* is another example in which the community, in danger from nearby cannibals, deliberates and consults with elders, who decide to ask Anway for help.<sup>186</sup>

In *Indian Laws* a conflict arises over compensation for harm. The Dancers and Providers are consulted because they have the relevant knowledge and expertise. They lead an open, deliberative process to decide what resolution to impose on E-pay-as and also how to respond to his flouting of this resolution. When Mis-ta-wa-sis decides to resolve the escalated conflict by compensating E-pay-as first, he first consults with the group.<sup>187</sup>

When Meskino discovers the truth about the death of a man's wife in *Killing of a Wife*, he announces the truth and denounces the act openly in a shaking tent ceremony. The decision to allow the man to suffer the natural or spiritual consequences of his act, rather than other responses, is made by the group.<sup>188</sup>

Group deliberation is also used to address threats from within the community, as in *Mistacayawis*, in which a family finds out that a woman is killing her hunting partners. They deliberate together before deciding they must try to kill her in order to stop her.<sup>189</sup>

More generally, one elder, who is often called upon to be a decision-maker because she practices traditional medicine, explained that discussion and deliberation as a decision-maker is important. She explained she always discusses matters of wrongdoing or harm with her husband. If he is not available, she will seek out one of her sons, particularly the one son who "picks up what she picks up" regarding spiritual warning signs.<sup>190</sup>

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<sup>185</sup> *The Water Serpent*, *supra* note 3.

<sup>186</sup> *Anway*, *supra* note 2.

<sup>187</sup> *Indian Laws*, *supra* note 14.

<sup>188</sup> *Killing of a Wife*, *supra* note 1.

<sup>189</sup> *Mistacayawis*, *supra* note 15.

<sup>190</sup> AWN Anonymous Interview #2, *supra* note 5 at 27-28.

## 5. General Underlying Principles: What underlying or recurrent themes emerge in the stories and interviews that might not be captured above?

### General Restatements of Law:

- a) **The Proposition that Responses are Always Fluid and Contextualized:** *AWN Anonymous Interview #2.*
- b) **The Proposition that it is Important to Value and Acknowledge Relationships:** *AWN Anonymous Interview #4, AWN Anonymous Interview #2.*
- c) **The Proposition that Reciprocity and Interdependence are Important.**

### Discussion:

#### a) **The Proposition that Responses are Always Fluid and Contextualized:**

There is no static formula for how to respond to harms or conflicts under the Cree legal tradition. It is a fluid and deliberative process that is dependent on the circumstances posed by the harm or conflict, as well as the people involved. In almost every story and interview, the importance of flexibility and responsiveness to the needs and abilities of the people involved and available, and the context when responding to or resolving harms or conflict is evident. As one elder explained succinctly, because “each case will be different”, her responses to each one will vary as well.<sup>191</sup>

While this explanation suggests some similarity to the fact-specific, case-by-case approach in the common law legal tradition, characterized by the Canadian model of law, the decentralized, non-hierarchical nature of the Cree legal tradition means that flexibility and responsiveness extends beyond what is typical in the common law approach. Although legal responses and resolutions reflect an individualized and contextualized approach, in the Cree tradition, the particular needs of the people involved, their relationships, and the situation or context are additional considerations that influence a number of key questions. These questions include who might be the legitimate decision-maker, what the role and authority of the decision-maker might be, who has the relevant knowledge and expertise to be consulted, and who should be involved in the deliberation to reach a legitimate and effective response.

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<sup>191</sup> AWN Anonymous Interview #2, *supra* note 5 at 27.

## b) The Proposition that it is Important to Value and Acknowledge Relationships:

In almost every story and interview, the importance of recognizing and considering relationships is evident. In two interviews, this point was made explicitly. At a general, cosmological level, one community member explained his belief that the Cree legal tradition needs to be understood as existing fundamentally within larger relationships. He argues that even the term, “law”, can be a misleading term for Cree people, if they associate it only with the Canadian model of law, which assumes a Canadian-style judiciary. Instead, he explained his understanding that Cree law relies on “protocols” — the proper conduct for ceremony, hunting, address of others, life generally, or “everything”. Underlying the importance of protocols, on this view, is the foundational importance of relationship between individuals and Creator, other humans, the land, and “nature.” Protocols are simply ways of understanding that, in respect of these relationships, “there’s right ways of doing things and there’s wrong ways of doing things.” Everything is seen as related parts of one whole: “the language, the culture, and protocols are all so intertwined, I think if you were to take one out, it automatically starts disintegrating the other ones.” He sees this as equally true for spirituality:

in the English language like we say spirituality, but in native cultures, I don’t think it was seen that way. I think it was life. It was all inclusive... And it’s, like, life with the medicines, like there’s life with spiritual realms. There’s life with people, like, but it’s all centred around relationships, right?<sup>192</sup>

This worldview, with its emphasis on relationships and the interconnection of all aspects of life, is reflected throughout the stories and interviews. In particular, spirituality is not separated or elevated beyond other life realms. For example, elders talk matter-of-factly about recognizing warning signs through the observations of people’s behaviour and animals and the natural world, and through spiritual means, such as visions or dreams. Similarly, relevant knowledge and expertise for responding effectively to harms or resolving conflicts can be gained and recognized through these various means. The response principle of healing is most often discussed as implemented through spiritual means. Natural and spiritual consequences are both referred to as well. In general, relationships, between actions and consequences, between people and peoples, and between humans and the rest of the world, are assumed and permeate legal decision-making at many levels.

At a practical level, another interviewee stressed the point that in small, tightly-knit Cree communities, it is vital to keep in mind that people who cause harm are not faceless, nameless agents of harm, but rather loved ones within families. One interviewer believed that, from the published materials he read, someone who had ‘turned *wetiko*’ was generally killed. When he asked about this, the elder responded quite emphatically: “probably someone who didn’t know nothing and had no compassion would just go kill somebody else.” The elder stressed that the appropriate response was to try to help the person instead, explaining: “these are our family members”.<sup>193</sup> This response suggests

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<sup>192</sup> AWN Anonymous Interview #4, *supra* note 11 at 16-17, 21.

<sup>193</sup> AWN Anonymous Interview #2, *supra* note 5 at 21.

that Cree legal tradition does not operate in a way that artificially extracts individuals from community, or ignores the reality that all people involved in a situation of harm or conflict exist within a rich network of familial relationships. Rather, these relationships are acknowledged and even accessed as resources. For example, a family member or elder that has a particular connection or is particularly respected by an individual will be asked to take on a persuasive role in resolving a conflict, or a supervisory role in temporarily separating someone who is dangerous from others, until he or she can be healed. The acknowledgement and valuing of relationships explains the strong rationale behind healing as the most important response, the importance of re-integration, ongoing observation and supervision, and also why avoidance is a response when the original issue is not seen as being as harmful as escalating a conflict within a community.

**c) The Proposition that Reciprocity and Interdependence are Important:**

In many stories and interviews, there appears to be an unspoken assumption of reciprocity or an emphasis on the importance of reciprocity in all relationships. On a cosmological level, the acceptance that there are natural and spiritual consequences to every action informs peoples' decision making and their responses to situations of harm and conflict.

On a practical level, the principle of reciprocity is best illustrated through the obligation of a person to help others when capable and ask for help when incapable or vulnerable, the obligation to give back when asking for or receiving help, and the right to receive help when incapable or vulnerable. One inference supporting these rights and obligations could be that a person may never know when and how they may require help. Thus, reciprocity encourages people to value interdependence, rather than privileging an ideal of independence.

## **List of Interviews**

AWN Interview #1 (Anonymous), June 17, 2012, Grande Cache, Alberta.

AWN Interview # 2 (Anonymous), June 17, 2012, Grande Cache, Alberta.

AWN Interview # 3 (Anonymous), June 19, 2012, Grande Cache, Alberta.

AWN Interview #4 (Anonymous), June 26, 2012, Grande Cache, Alberta.

AWN Interview #5 (Anonymous), June 22, 2012, Grande Cache, Alberta.

AWN Interview, Robert Wanyandie, June 19, 2012, Grande Cache, Alberta.

AWN Interview, Joe Karakuntie, June 25, 2012, Grande Cache, Alberta.

AWN Interview, Marie McDonald, June 25, 2012, Grande Cache, Alberta.

## Cree Bibliography of Published Stories

- “Indian Laws” in Edward Ahenakew. *Voices of the Plains Cree* (Toronto: McClelland and Stewart Limited, 1973).
- “Anway and the Cannibals” in Louis Bird. *The Spirit Lives in the Mind: Omushkego Stories, Lives, and Dreams* (Montreal & Kingston: McGill-Queens University Press, 2007).
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- “Untitled (Killing of Wife)” in Richard J Preston. *Cree Narrative*, 2nd ed (Montreal and Kingston: McGill Queens University Press, 2002).

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## Story Case Brief Example

Story	“Indian laws”
Source	Edward Ahenakew, <i>Voices of the Plains Cree</i> , at 17-19.
Tags	Compensation; Harm; Intra-group; Inter-group; Obligations; Procedure
<b>ISSUES (What is the main human problem in the story?)</b>	
<p>What happens when an individual brings indirect harm to other members of their group as a result of their actions?</p> <p>What happens when someone directly harms a relative while resolving a separate dispute?</p> <p>What are the obligations to maintain peace within a group and who holds them?</p>	
<b>FACTS (What facts are relevant?)</b>	
<p><b>Context:</b> Providers (great hunters) upheld certain roles and authority in relation to hunting. Dancers enforced the laws and were greatly respected. Dancers did not allow anyone to separate from the group to hunt on their own because it could bring harm to them and many others. An exception was that sometimes hunters would have to take chances on their own (in rare instances necessary for survival) but generally must be very cautious.</p> <ul style="list-style-type: none"> <li>• E-pay-as made a raid deep into Blackfoot country on his own and brought back many horses.</li> <li>• The Blackfoot followed him and killed a woman and child from the Cree encampment where E-pay-as was from.</li> <li>• The grieving husband/father blamed him for provoking the Blackfoot to retaliate.</li> <li>• The grieving man asked E-pay-as for horses for compensation of the trouble, death and grief he brought as a result of his raid on the Blackfoot.</li> <li>• E-pay-as refused to pay the compensation.</li> <li>• The grieving man consulted the Dancers and Providers.</li> <li>• The Dancers and Providers went to E-pay-as and asked him to resolve the dispute by giving the grieving man at least his poorest horse as compensation.</li> <li>• E-pay-as refused and said he was tired of being bothers, so left the encampment with his two brothers and their wives to set up their own separate encampment.</li> <li>• The Dancers and Providers all gathered and decided to go to E-pay-as’ new camp and confront him about his actions.</li> <li>• The Dancers and Providers intentionally fired their guns above the tent.</li> <li>• E-pay-as and his two brothers refused to come out of their tent.</li> <li>• An older Provider named Bad Hand (possibly the grandfather of E-pay-as) walked alone to the tent armed with a knife and calling for E-pay-as to come out of the tent.</li> <li>• E-pay-as came out of the tent and Bad Hand states that a Provider does not back down.</li> <li>• A cousin of E-pay-as named We-ya-te-chu-pao (laughing man) was among the</li> </ul>	

Dancers and Providers and approached the scene with a six shooter.

- One of E-pay-as' brothers pointed a gun at We-ya-te-chu-pao as he approached. We-ya-te-chu-pao ran away at the sight of the gun being pointed at him by one of E-pay-as' brothers.
- E-pay-as and his brothers laughed at their cousin We-ya-te-chu-pao for running away. We-ya-te-chu-pao became ashamed by the laughter at his expense and retaliated by hitting one of E-pay-as' brothers across the face.
- The brother of E-pay-as that was assaulted by We-ya-te-chu-pao (his cousin) and fatally wounded.
- The Dancers and Providers started retreating from E-pay-as' new encampment except for Bad Hand.
- E-pay-as did not see who hit his brother. However, E-pay-as saw that Bad Hand was near, picked up a rifle and killed Bad Hand. (E-pay-as assumed Bad Hand hit his brother and not We-ya-te-chu-pao).
- We-ya-te-chu-pao was now retreating from E-pay-as' encampment when E-pay-as shot and wounded him.
- E-pay-as stated to his brothers and their families in his encampment that they no longer have any relatives.
- Mis-ta-wa-sis (the father of We-ya-te-chu-pao) gathered the people from the main encampment. Mis-ta-wa-sis tells the people that the actions of his son We-ya-te-chu-pao (assaulting his relative/E-pay-as' brother) should not have been done.
- Mis-ta-wa-sis decides to offer two of his best horses to E-pay-as as compensation for the harm done by Wa-ya-te-chu-pao. In return, Mis-ta-wa-sis asks if E-pay-as will give two of his horses to Bad Hand's son "Otter Child" as compensation for the wrongful killing of Bad Hand.
- E-pay-as' brother-in-law is charged with taking Mis-ta-wa-sis' two horses to E-pay-as and to retrieve the two horses for Bad Hand's son Otter Child.
- E-pay-as agrees to accept and fulfill the compensation for the sake/well-being of the people and the band.

#### DECISIONS/RESOLUTIONS (What is decided to resolve the problem?)

- After E-pay-as refuses to pay compensation when the bereaved husband/father of a woman and child killed in retaliation of E-pay-as's independent raid on the Blackfoot, and the man goes to the Dancers/ Providers to enforce the decision, the Dancers and Providers attempt to persuade E-pay-as to pay the compensation asked of him.
- When E-pay-as refuses to listen to the Dancers and Providers and leaves the encampment to start his own with his brothers, they decide to confront E-pay-as, more directly through the Provider Bad Hand.

- During that confrontation, after things go terribly wrong (We-ya-te-chu-pao assaults one of E-pay-as' brothers. E-pay-as wrongfully kills Bad Hand in an attempt to avenge the assault of his brother. E-pay-as shoots and We-ya-te-chu-pao), Mis-ta-wa-sis, We-ya-te-chu-pao's father, decides to resolve the escalating harm and conflict by generously offering two of his own horses for the wrong doing of his son. E-pay-as accepts the offering and agrees to give two of his own horses to the son of the man he killed.

**RATIO/ REASONS (What are the stated and unstated reasons for the decision or resolution?)**

- (unsaid) People who uphold and enforce the laws must be consulted.
- (unsaid) Peaceful and non-aggressive negotiation should be tried before more drastic responses.
- (said) One should compensate those harmed by their actions, whether the harm is caused directly or indirectly. Even though the story says the husband/father was being "unreasonable" in his request, the Dancers and Providers still "asked E-pay-as to give him the poorest horse he had" (but he still refused).
- (said) It is the responsibility of family to compensate or make right for harm done by a family member: "Then Mis-ta-wa-sis called the people together, and he said, "I have called you to hear my decision. I had no thought that my son could do such a thing – not among the Crees should this thing be done. I am deeply sorrowful. I would that there should be no more trouble. You know I have horses. Two of the best that I have I will give to E-pay-as, that he may give them, or two of his own, to Otter-child, the little son of Bad Hand. Tell E-pay-as that. Ask him if he will consent."
- (said) Giving and accepting compensation resolves harms and ends conflicts. Consenting to this is important for the sake/well-being of the people and the band: At the end, E-pay-as is asked to accept Mis-ta-wa-sis's peace offering "for the sake of your people, our band." E-pay-as agrees, saying, "I will do as you have asked me to do."

**BRACKETS (What are aspects of the story you don't understand, but aren't necessary for the case analysis?)**

- Why was the original inter-group harm not resolved?
- Why did resolving and compensating the escalated intra-group harms take precedent over a resolution to E-pay-as' original refusal to comply with the compensatory requests of his father and subsequently the Dancers and Providers?

# **IBA Accessing Justice and Reconciliation Project: Final Report**

**February 4, 2014**

Prepared by Hadley Friedland, Research Coordinator

## **I. Introduction:**

The Accessing Justice and Reconciliation Project [AJR Project] is a national research project launched by the University of Victoria Faculty of Law's Indigenous Law Research Clinic, the Indigenous Bar Association and the Truth and Reconciliation Commission, and funded by the Ontario Law Foundation. This report will summarize the major findings from this project and make recommendations for further research.

**Project Vision and Goals:** The overall vision for this project was to honour the internal strengths and resiliencies present in Indigenous societies, including the resources within these societies' own legal traditions. The goal of the AJR Project was to better recognize how Indigenous societies used their own legal traditions to successfully deal with harms and conflicts between and within groups and to identify and articulate legal principles that could be accessed and applied today to work toward healthy and strong futures for communities.

**Project Methodology:** The AJR Project's approach was to engage with Indigenous laws seriously as *laws*. Researchers analyzed publically available materials and oral traditions within partner communities, using adapted methods and the same rigor required to seriously engage with state laws in Canadian law schools. Researchers used an adapted 'case brief' method to analyze a number of published and oral stories, and identify possible legal principles. They presented this work to elders and other knowledgeable people within our partner communities, who graciously shared their knowledge, opinions and stories with them. This helped our researchers to clarify, correct, add to and enrich their initial understandings. The results were synthesized and organized in an analytical framework for accessibility, overall coherence, and ease of reference.

## **II. Recommendations for Future Work:**

In this section, we make recommendations for future work related to the two major overall themes that became evident through our analysis of this research project. These themes, and the recommendations, are discussed in more detail below in the section, “Project Findings: Two Overall Themes”.

### **Theme #1: Diversity:**

*There is no ‘one size fits all’ approach within or among Indigenous legal traditions. There are a wide variety of principled legal responses and resolutions to harm and conflict available within each legal tradition.*

**Recommendation 1.1:** Further research is needed to identify and articulate the full breadth of principled legal response and resolutions within Indigenous legal traditions.

**Recommendation 1.2:** Further research is needed (i) to more clearly identify or develop legal processes necessary for a decision to be accepted as legitimate by those impacted by it, and (ii) identify the guiding or underlying constitutive principles that form interpretative bounds within specific Indigenous legal orders.

### **Theme #2: Consistency, Continuity and Adaptability:**

*Indigenous legal traditions reveal both consistency and continuity over time, and responsiveness and adaptability to changing contexts.*

**Recommendation 2.1:** Support community-based research and engagement processes to enable communities to identify and discuss legal principles so they become more explicit and accessible within communities themselves.

**Recommendation 2.2:** Support community justice and wellness initiatives to identify and articulate guiding or supporting legal principles, as a basis for developing, grounding and evaluating current practices and programming addressing pressing social issues within their communities.

### **III. Summary of Findings: Gathering the Threads:**

I take the thread from the fingers that are weary, and go on with the work.<sup>1</sup>

The existence and ongoing meaningful presence of living Indigenous legal traditions in many Indigenous people's lives and communities is a fundamental premise that underlies this project.<sup>2</sup> Still, even within these communities, it would be misleading to suggest that all Indigenous laws are completely intact or in conscious and explicit use.. Given this, at this point in history, when we talk about Indigenous legal traditions, we are necessarily talking about a project that requires not just recognition, but also mindful, intentional acts of recovery and revitalization. No living tradition remains in some static, pristine state over centuries of inevitable internal and external changes. However, when legal traditions have been so comprehensively denied, disregarded and damaged through the concerted efforts and willful blindness of colonialism, there are real challenges to accessing, understanding and applying them today. Indigenous legal scholar, Gordon Christie, cautions us not to underestimate the immense damage and losses to Indigenous laws over years of colonization, and he describes our work as one way of "gathering up the threads".<sup>3</sup> We agree that 'gathering up the threads' is the most honest, hardheaded way to describe the resource outcomes of this research project.

The themes and principles that emerged from this research project are the threads right now. They were pulled out of published stories, oral traditions, lived experiences, opinions and aspirations shared by the generous and thoughtful respondents interviewed in each partner community. What is perhaps most unique or innovative about this research project is that we have synthesized all of these different strands together into one analytical framework for each partner community. We can take the metaphor one step further and invite people to imagine the framework as a loom. Many more threads are needed, and some may not fit, and will need to be removed later, but in each case, we believe there is enough there to allow us to see the faint outline of the complete fabric the threads come from, and envision the rich, textured material that further careful and deliberate work could produce. Of course, the limit to our metaphor is that, with law, unlike fabric, there is never a completely finished product. In all living legal traditions, statements of law are always provisional, not unchanging truths.<sup>4</sup> Indigenous legal principles are no exception to this. They can and should develop, adapt and transform through time.<sup>5</sup>

In this section, we will list the legal traditions this project engaged with, and the partner communities we worked with for each legal tradition. After briefly describing the

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<sup>1</sup> Edward Carpenter, "By the Shore" in Theo Dorgan, ed., *A Book of Uncommon Prayer* (Toronto: Penguin Books, 2008) at 107.

<sup>2</sup> John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 23.

<sup>3</sup> Gordon Christie, Guest Lecture, IBA AJR Project Intensive Orientation, May, 2012.

<sup>4</sup> See generally, Jeremy Webber, "Legal Pluralism and Human Agency" (2006) 44 *Osgoode Hall LJ* 167.

<sup>5</sup> For an eloquent argument regarding Indigenous peoples' right to this, see generally: John Borrows, "Chapter 15: Physical Philosophy: Mobility and the Future of Indigenous Rights" in Benjamin J Richardson, Shin Imai and Kent McNeil, eds. *Indigenous Peoples and the Law: Comparative and Critical Perspectives* (Oregon: Hart Publishing, 2009) at 403.

overarching research question, and the elements and purpose of the common analytical framework, we then identify the two major overall themes that emerged from our analysis, along with examples and recommendations for further work that flow from these findings.

**A. Legal Traditions and Partner Communities:**

This project reflected only a small taste of the broad diversity of Indigenous societies and communities across Canada. There were six distinct legal traditions, and seven partner communities represented. Partner communities had to submit an expression of interest, have a community justice or wellness program in current operation, and have a number of elders or knowledge keepers willing to participate in interviews for the project. From west to east, the representative legal traditions and partner communities were as follows:

<b>Legal Tradition</b>	<b>Partner Communities</b>	<b>Justice/Wellness Program</b>
<b>Coast Salish</b>	Snuneymuxw First Nation	Social Development and Family Preservation Program
	Tsleil-Waututh Nation	North Shore Restorative Justice Society
<b>Tsilhqot'in</b>	Tsilhqot'in National Government	Culture and Customs Program
<b>Northern Secwepemc</b>	T'exelc Williams Lake Indian Band	Holistic Wellness Program
<b>Cree</b>	Aseniwuche Winewak Nation	Mamowichihitowin Wellness Program
<b>Anishinabek</b>	Chippewas of Nawash Unceded First Nation #27	Maadookii Senior's Centre, Residential School Archives
<b>Mi'kmaq</b>	Mi'kmaq Legal Services Network, Eskasoni	Mi'kmaq Legal Support Network

There are several other related and parallel community research projects that the Indigenous Research Clinic was able to connect to this larger project, but which have not yet been shared with partner communities.

**B. The Research Question:**

The broad research objective of this project is found in the name: “Accessing Justice and Reconciliation”. In order to make justice and reconciliation truly accessible through Indigenous laws today, we knew we needed to move the work beyond broad descriptive or philosophical accounts of these laws to more specific results that communities can access, understand and use on the ground if they want to. We broke down the broad research objective of accessing justice and reconciliation into two focused research questions that could assist communities both to respond to the residential school legacy and impacts and to build toward a stronger, healthier future. These research questions were:

<p><b><u>Residential Schools facts, motives and history:</u></b></p> <p>(Harm caused by the State and Residential Schools to Indigenous students, their families and communities)</p>	<p><b><u>Residential School impacts:</u></b></p> <p>“Residential School Legacy” or “Intergenerational Trauma” (Indigenous people harming other people within communities today).</p>
<p><b>= Inter-group harms and conflict</b></p>	<p><b>= Intra-group harms and conflicts</b></p>
<p><b>= <u>Research Question:</u></b></p> <p>How did/does this Indigenous group respond to harms and conflicts <i>between</i> groups?</p>	<p><b>= <u>Research Question:</u></b></p> <p>How did/does this Indigenous group respond to harms and conflicts <i>within</i> the group?</p>

We note that, while these research questions flow from the fact and impact of the residential schools within Indigenous communities, they are also core questions that any functional social or legal order must minimally be able to address.<sup>6</sup> Thus they form a vital part of a future vision of genuine reconciliation wherein Indigenous societies and communities are strong, self-governing, vibrant and healthy places into many future generations. As the research proceeded, it became apparent that there were far more ‘threads’ in both published materials and oral traditions pertaining to the research question about responses to harms and conflicts within groups. The vast majority of community respondents focused on this issue as well. Given these factors, and in response to the strong community interest, the research outcomes of this project focus almost entirely on this latter research question:

***How did/does this Indigenous group respond to harms and conflicts within the group?***

<sup>6</sup> H.L.A. Hart, *The Concept of Law* 2<sup>nd</sup> ed. (New York: Oxford University Press, 1994) at 194.



### C. The Analytical Framework:

The analytical framework used to approach, explore and organize the information gathered in this project consists of five parts. In answering the research question, we asked student researchers to look for:

1. **Legal Processes:** Characteristics of legitimate decision-making/problem-solving processes, including:
  - a. Who are authoritative decision makers?
  - b. What procedural steps are involved in determining a legitimate response or resolution?
2. **Legal Responses and Resolutions:** What principles govern appropriate responses and resolutions to harms and conflicts between people?
3. **Legal Obligations:** What principles govern individual and collective responsibilities? Where are the “*shoulds*”?
4. **Legal Rights:** What should people be able to expect from others (substantive and procedural)
5. **General Underlying Principles:** What underlying or recurrent themes emerge in the stories and interviews that might not be captured above?

There are two important functions we believe this analytical framework serves. First, it focuses our attention to the specifics and working details of Indigenous legal traditions, rather than remaining at the level of broad generalities which can not only flatten the complexity of these traditions into over-simplified or pan-Indigenous stereotypes, but are hard to imagine applying to concrete issues.<sup>7</sup> Second, while focusing on specific details, we are reminded that, just as with other legal traditions, specific principles, practices and aspirations within Indigenous legal traditions do not stand alone, but are all interconnected aspects of a comprehensive whole.<sup>8</sup> The examples provided below will refer to both the Indigenous group, and which part of the analytical framework they come from.

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<sup>7</sup> The Research Coordinator of this project, Hadley Friedland, has discussed the practical need for moving past generalities and generalizations elsewhere. See Hadley Friedland, “Practical Engagement with Indigenous Legal Traditions on Environmental Issues: Some Questions”, in: *Environmental Education for Judges and Court Practitioners* (University of Calgary, Canadian Institute of Resources Law, 2012), online: [http://cir.l.ca/system/files/Hadley\\_Friedland-EN.pdf](http://cir.l.ca/system/files/Hadley_Friedland-EN.pdf) at 5-8.

<sup>8</sup> The Academic Lead of this project, Val Napoleon has argued elsewhere that is reasonable, and crucial, to contextualize individual legal concepts as one aspect of a “comprehensive whole”, a broader, functioning Indigenous legal tradition “(1) that was large enough to avoid conflicts of interest and which ensured accountability, (2) that had collective processes to change law as necessary with changing times and changing norms, (3) that was able to deal with internal oppressions, (4) that was legitimate and the outcomes collectively owned, and (5) that had collective legal reasoning processes”: Val Napoleon, *Ayook: Gitksan Legal Order, Law, and Legal Theory* (PhD Dissertation, University of Victoria, Faculty of Law, 2009) [unpublished] at 47-48.

#### **D. Project Findings: Two Major Overall Themes:**

It would be impossible to even list all the findings from the syntheses developed from engaging with six legal traditions and seven partner communities. Rather than focusing on the detailed findings within each legal tradition, we will instead focus on the 2 major overall themes that became evident from our analysis of the individual syntheses that made up the project as a whole. The first theme is diversity – there is wide range of principled legal responses and resolutions to harm and conflict in each Indigenous legal tradition. The second theme is consistency, continuity and adaptability. While there is a remarkable consistency and continuity in legal principles over time, how they are implemented demonstrates their adaptability and responsiveness to changing contexts. We include examples to help illustrate these themes, as well as recommendations for future work that flow from each theme:

- 1. Diversity: There is no ‘one size fits all’ approach within or among Indigenous legal traditions. There are a wide variety of principled legal responses and resolutions to harm and conflict available within each legal tradition.**

Often, ‘Aboriginal justice’ is uncritically conflated with ‘restorative justice’ and described idealistically in terms of the values of healing, reconciliation, harmony, and forgiveness. One clear finding of this project is that, while there is often a strong emphasis on some of these concepts, they are not idealized, simple, or stand-alone responses to harms and conflicts. Every Indigenous legal tradition represented had nuanced and robust understandings of what implementation of these principles entail, each legal order has a much broader repertoire of principled legal responses and resolutions to harm and conflict to draw as factual situations warrant.

For example, in our engagement with the Mi’kmaq legal tradition, one elder stated that the Mi’kmaq concept of *abeksikdawaebegik* (reconciliation) was one of the “biggest concepts” in Mi’kmaq society. However, he explained this carefully: “You can tell when reconciliation is done in our community...its not just forgiveness, it’s if that person has taken *abeksikdewapan*, that responsibility”.<sup>9</sup> Indeed, this project’s engagement with the Mi’kmaq legal traditions suggested the predominant legal response to harm is the principle of promoting the taking of responsibility by offenders. The two main ways respondents described promoting responsibility for the offender were, (1) to provide restitution to his or her victims,<sup>10</sup> and (2) to develop empathy for his or her victims.<sup>11</sup> In both published stories and interviews, rehabilitation or personal transformation of offenders emerged as an important principle,<sup>12</sup> as did the principle of healing, support, and rehabilitation of victims.<sup>13</sup> Importantly, both historically and currently, there were also other principled legal responses to harm and conflict. These include either temporary

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<sup>9</sup> *Accessing Justice and Reconciliation Project: The Mi’kmaq Legal Traditions Report* (2013) [unpublished, on file with authors] (footnotes omitted) at 23 [Mi’kmaq Legal Traditions Report].

<sup>10</sup> *Ibid* at 23-25.

<sup>11</sup> *Ibid* at 26-27.

<sup>12</sup> *Ibid* at 27-29.

<sup>13</sup> *Ibid* at 29-31.

or permanent separation of an offender,<sup>14</sup> specific deterrence, including, historically, physical punishment, and currently, temporary loss of freedom.<sup>15</sup> In the published stories, there is also included incapacitation in extreme circumstances of cruel and malicious ongoing harm.<sup>16</sup>

In our engagement with the Cree legal tradition, respondents made it very clear they see healing of the offender as the predominant and preferred legal response to even extreme harms. For example, when one researcher asked about published stories in which people who became *wetikos* (windigos) – a Cree legal concept describing a very harmful or dangerous person)<sup>17</sup> were killed, one elder, who practices traditional medicine, exclaimed: “probably someone who didn’t know nothing and had no compassion would just go kill someone”.<sup>18</sup> She went on to state emphatically that instead, the proper response is to try to help and heal the person turning *wetiko*. She stressed that these people should not be seen as faceless dangers, but rather, “these are our family members”.<sup>19</sup>

However, while healing was a preferred response for Cree peoples, it was not implemented in isolation or blind to ongoing risks of harm. When someone was waiting for or not willing to accept healing, the principle of avoidance or separation was often employed in order to keep others safe.<sup>20</sup> Avoidance or temporary separations were also principled ways of de-escalating conflict and expressing disagreement.<sup>21</sup> Other principles guiding responses to harm and conflict included acknowledging responsibility as a remedy,<sup>22</sup> re-integration,<sup>23</sup> learning from natural or spiritual consequences,<sup>24</sup> and, historically, in published stories, incapacitation in cases of extreme and ongoing harm.<sup>25</sup> Re-integration followed healing or taking responsibility.<sup>26</sup> The same elder quoted above pointed out that re-integration might require ongoing observation and monitoring, even for life where warranted, as it was in the case of someone helped from turning *wetiko*, as no one can be completely healed from this.<sup>27</sup>

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<sup>14</sup> *Ibid* at 31-33.

<sup>15</sup> *Ibid* at 33-34.

<sup>16</sup> *Ibid* at 34.

<sup>17</sup> For a more in-depth exploration of the *wetiko* as a legal concept or category, see Hadley Friedland, *The Wetiko (Windigo) Legal Principles: Responding to Harmful People in Cree, Anishinabek and Sauleaux Societies – Past, Present and Future Uses, with a Focus on Contemporary Violence and Child Victimization Concerns*. University of Alberta LLM Thesis, 2009 [unpublished] at 21-53

<sup>18</sup> *Accessing Justice and Reconciliation Project: The Cree Legal Traditions Report* (2013) [unpublished, on file with authors] (footnotes omitted) at 30 [Cree Legal Traditions Report].

<sup>19</sup> *Ibid*.

<sup>20</sup> *Ibid* at 31.

<sup>21</sup> *Ibid* at 31-32.

<sup>22</sup> *Ibid* at 33-34.

<sup>23</sup> *Ibid* at 34-35.

<sup>24</sup> *Ibid* at 35-37.

<sup>25</sup> *Ibid* at 37-38. See also: Val Napoleon, Jim Henshaw, Ken Steacy, et al, *Cree Law: Mikomosis and the Wetiko* (Victoria, BC: UVIC, 2013).

<sup>26</sup> Cree Legal Traditions Report, *supra* note 18 at 34-35.

<sup>27</sup> *Ibid* at 34.

One of the paramount considerations underlying responses and resolutions to harm in the Tsilhqot'in legal tradition is maintaining individual and community safety. Elder Marie Dick stressed that ensuring safety is one of the key benefits of law, along with providing for discipline and taking care of people.<sup>28</sup> In older published stories, this principle was applied in diverse ways, according to different circumstances, from pre-emptive action to stop a war,<sup>29</sup> to providing food to a starving community, despite being abandoned by them earlier.<sup>30</sup> Proportionality was another important principle that stood out in many stories and accounts.<sup>31</sup> Deterrence, both general and specific, was also considered an important principle. Elders gave a historical example of this, where a chronic thief was physically punished to deter him from stealing (specific deterrence). Later in life, he became a teacher, and was spoken of respectfully for using his own deformity to discourage young people from stealing (general deterrence).<sup>32</sup> Obviously physical punishment for deterrence no longer occurs today, but the principle behind this case is still seen as a valid and practical response to behaviour causing a lot of harm to others.

In our engagement with the Tsilhqot'in legal tradition, temporary separation, and, in very rare, extreme cases, permanent separation, were also mentioned as available responses to harm and conflict.<sup>33</sup> Finally, like in many other Indigenous legal traditions, healing was seen as a preferable resolution. However, elders were careful to point out that it often requires, or occurs after, a period of separation and reflection. According to some of the elders interviewed, the ability to heal the self is a natural consequence of temporary separation.<sup>34</sup> For example, elder Catherine Haller talked about how community members who committed harms might be “locked in a pit house” in the mountains for a while to allow people who committed harms to let their anger subside.<sup>35</sup> Elder Agness Haller noted that people in “bad situations” would go off on their own to “make them think about what they did” and that was a form of healing.<sup>36</sup> Elder Thomas Billyboy talked about how people would come back to a community after a period of separation if they had “smartened up”.<sup>37</sup> The elders’ discussion of the value of a period of voluntary or even forced separation demonstrates that healing requires creating space for the wrongdoer to reflect and change the thinking and behaviour that led to the harm in the first place.

In our engagement with the Coast Salish legal tradition, a broad spectrum of principles for responding to or resolving harms and conflicts emerged, including teaching responsibilities,<sup>38</sup> conflict avoidance,<sup>39</sup> providing guidance to wrongdoers,<sup>40</sup> restitution,<sup>41</sup>

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<sup>28</sup> *Accessing Justice and Reconciliation Project: The Tsilhqot'in Legal Traditions Report* (2013) [unpublished, on file with authors] (footnotes omitted) at 26 [Tsilhqot'in Legal Traditions Report].

<sup>29</sup> *Ibid* at 27.

<sup>30</sup> *Ibid* at 27.

<sup>31</sup> *Ibid* at 28-29.

<sup>32</sup> *Ibid* at 29.

<sup>33</sup> *Ibid* at 29-31.

<sup>34</sup> *Ibid* at 31.

<sup>35</sup> *Ibid*.

<sup>36</sup> *Ibid*.

<sup>37</sup> *Ibid*.

<sup>38</sup> *Accessing Justice and Reconciliation Project: The Coast Salish Legal Traditions Report – Community Partner: Snuneymux'w* (2013) [unpublished, on file with authors] (footnotes omitted) at 25 [Coast Salish Legal Traditions Report].

restoration,<sup>42</sup> providing ongoing support and monitoring,<sup>43</sup> retribution,<sup>44</sup> and punishment for deterrence as a last resort when nothing else works to rectify the harmful behaviour.<sup>45</sup> Elders explained that punishment was only used when the harm was severe and nothing else had worked to help the wrongdoer recognize his or her harmful ways. The wrongdoer would first be provided with guidance and taught responsibilities, and with opportunities to rectify the harms. If the harm continued, after multiple opportunities, or was extremely severe to begin with, then punishment could be an appropriate response.<sup>46</sup> What becomes apparent of course, is the corresponding responsibilities of leadership and other decision-makers, and the group as a whole to fulfill arising obligations for dealing with the offender, to ensure that the appropriate legal processes are adhered to and to protect people's respective substantive and procedural rights.

These examples demonstrate that there are nuanced and robust understanding of principles such as healing or reconciliation that may have much to offer other Indigenous communities and the broader Canadian community as well. They also give a sense of the broad variety of legal principles within each Indigenous legal tradition that are available to respond to the unique actual circumstances of specific situations of harm or conflict.<sup>47</sup> The diversity of existing principles reflects the rich complexity of these legal traditions.

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<sup>39</sup> *Ibid* at 27-28.

<sup>40</sup> *Ibid* at 28-29.

<sup>41</sup> *Ibid* at 33-34.

<sup>42</sup> *Ibid* at 35-37.

<sup>43</sup> *Ibid* at 37.

<sup>44</sup> *Ibid* at 30-32.

<sup>45</sup> *Ibid* at 31-32.

<sup>46</sup> *Ibid* at 29, 30 and 32.

<sup>47</sup> It is absolutely critical not to conflate harm with conflict here, as with Canadian law. For an excellent discussion on this point, see Alan Edwards and Jennifer Haslett, "Violence is not Conflict: Why it Matters in Restorative Justice Practice" (2011) 48:4 *Alberta Law Review* 893.

At least two recommendations flow from these findings:

**Recommendation 1.1: Further research is needed to identify and articulate the full breadth of principled legal response and resolutions within Indigenous legal traditions.**

The Canadian justice system and Aboriginal justice are often discussed in starkly dichotomous terms. This oversimplified dichotomy cuts both ways. Flattening the complexity of Indigenous legal traditions can make it appear as if their applicability and utility is limited in cases of repeated or serious harms. Within communities, this dichotomy may undercut people's perception of the legitimacy of certain decisions that could, in fact, be seen as principled responses rooted in one's own legal tradition, albeit implemented through new means, with new partners, such as justice system actors. While there is no question that important differences do exist, at practical, conceptual and aspirational levels, our research results suggests that when Indigenous legal traditions are considered in their full complexity, there are also points of connection and confluence with western legal traditions. We recommend further research to more fully explore the full complexity within Indigenous legal traditions and to identify points of divergence *and* convergence with principles that guide the Canadian justice system.

**Recommendation 1.2: Further research is needed (i) to more clearly identify or develop legal processes necessary for a decision to be accepted as legitimate by those impacted by it, and (ii) identify the guiding or underlying constitutive principles that form interpretative bounds within specific Indigenous legal orders.**

In each synthesis, substantially more threads emerged in the “Legal Responses and Legal Resolutions” section than in any other, including “Legal Processes” and “General Underlying Principles”. Whether this is due to damage from colonialism, the focus or expectations of researchers or respondents, or just the deeply internalized, implicit nature of these principles, further explorations are needed in these areas in order to effectively and legitimately apply the identified response principles in an explicit and transparent way today. The breadth of principled responses available within each Indigenous legal tradition highlights the need to identify the legal processes and procedures that are important to signal the legitimacy of any particular decision to those impacted by it even if they might not agree with the decision itself. In some cases, where the damage from colonialism has been severe, or contexts have changed radically, this may involve partial or full development of new processes. The breadth of principles also guides our attention to the importance of understanding and making more explicit the background and constitutive themes, aspirations and beliefs that frame the interpretative boundaries of these principles, as well as influence the balancing and blending required in any particular case.

**2. Consistency, Continuity and Adaptability: Indigenous legal traditions reveal both consistency and continuity over time, and responsiveness and adaptability to changing contexts.**

One advantage of analyzing and synthesizing information from multiple resources to answer a specific research question within Indigenous legal traditions is that this method enables us to recognize patterns and themes we might not otherwise spot. The consistency and continuity of certain principles in each legal tradition through history, despite different expressions and disparate resources, was noteworthy and significant. Time and time again, we saw that Indigenous legal principles can and do maintain their core integrity while adapting to new and changing contexts. There was often remarkable continuity and consistency in legal principles within Indigenous legal traditions from ancient stories to contemporary times. These deep-rooted principles are illustrated and implemented in new ways over time and in changing circumstances.

For example, in our engagement with the Anishinabek legal traditions, with regard to legal processes, an important legal principle that emerged was that a collective community process was typically required to determine major decisions over how to address serious harms.<sup>48</sup> Collective community processes for determining responses to serious harms were identifiable in a number of stories (*Animosh w'guah izhitchigaet*/What the Dog Did; The Boy Who Defeated a Windigo; The Story of Redfeather; Another Windigo Story) and recorded in historical reports from outsiders to that tradition (the Mayamaking Case).<sup>49</sup> Anishinabek legal responses were also recorded in band council decisions on how to consult and address community concerns regarding contemporary community issues (e.g., Pow-wow),<sup>50</sup> and in respondents' lived experiences of responding to contemporary issues of harm.<sup>51</sup> The described harms differed, ranging from a man who had become extremely dangerous to himself and all those around him in 1838,<sup>52</sup> to a 2000 decision about whether a pow-wow should be held in a location that would disturb a delicate alvar bedrock.<sup>53</sup> Those involved in the collective processes differed, ranging from birds in one story to a smaller hunting group in one historical account, a group of jingle dancers in a contemporary lived experience, to the band council with the entire reserve, and several outside experts as consultants.<sup>54</sup> What did not differ was that the decisions addressing the harms were made through a deliberate collective community process.

Similarly, an important legal right identified in the Anishinabek legal tradition was the right to be treated with dignity and compassion, even after one caused harm. This was evident in several older stories, which included people, animals, and ghosts (i.e., Mashos

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<sup>48</sup> *Accessing Justice and Reconciliation Project: The Anishinabek Legal Traditions Report* (2013) [unpublished, on file with authors] (footnotes omitted) at 15 [Anishinabek Legal Traditions Report].

<sup>49</sup> *Ibid* at 15-16 and 25-26. Some of these recorded stories were described as myths or folktales and they are housed in different collections.

<sup>50</sup> *Ibid* at 16.

<sup>51</sup> *Ibid* at 15.

<sup>52</sup> *Ibid* at 15.

<sup>53</sup> *Ibid* at 16.

<sup>54</sup> *Ibid* at 15-16.

and the Orphans; Paguak; The Story of Redfeather; Marriage II; The Foolish Maidens and the Diver).<sup>55</sup> It was also evident through the thoughtful opinions and reasoning, and actions of elders in the interviews. One elder, who worked as nurse for many years, sometimes would treat sick and dying prisoners from the local jail. She stated that it was her belief that the prisoners were each entitled to care and compassion in their illness, regardless of the crimes they had been convicted for. When one prisoner had his shackles on too tight, she acted on her Anishinabek responsibilities by repeatedly asked the warden to loosen them so he could be more comfortable.<sup>56</sup>

Another elder, the renowned author, Basil Johnston, gave an articulate opinion about the underlying rationale of this principle. He explained that to treat someone who has committed harm with continued empathy and respect, even when denouncing the harm they have committed, reaffirms that person's basic goodness and capacity for good acts and thereby encourages them to act in a good way in the future. On the other hand, treating someone as if they were fundamentally bad and no longer entitled to respect and compassion may take away their motivation to strive to be a good person capable of making a positive contribution to the community. Thus this principle benefits the individual and the community as a whole.<sup>57</sup> This example is also a good illustration of how many people do consciously act on and think through these deeply rooted principles today – and in the everyday.

In our engagement with the Coast Salish legal tradition, one example of a legal obligation was to take care of and help those in need.<sup>58</sup> This legal obligation was evident in several ancient stories (The Boys who became a Killer Whale; Flea Lady; Wolf and Wren).<sup>59</sup> In the interviews, elders discussed historic examples, such as the whole village gathering up as much food as they could to help a family get through a long winter and the brothers of a man who died looking after his family for life.<sup>60</sup> They talked about learning this obligation and about contemporary ways they and others acted on this Coast Salish responsibility to others.<sup>61</sup> For example, one elder took a couple aside, so it wasn't in front of a group of people, and offered them help and guidance. He explained he had no relationship with them except for being part of the same longhouse and being a close friend of their grandmother; however he believed "it is the responsibility of the people supposedly in the know to guide the rest that are following".<sup>62</sup>

These responsibilities lead to concrete actions, such as helping people who are injured or hurt, or even opening one's home to a woman whose husband is at home drunk.<sup>63</sup> When discussing the hypothetical example of whether a young couple that didn't know how to take care of their child had an obligation to ask for help, one elder stated that they didn't

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<sup>55</sup> *Ibid* at 41-43.

<sup>56</sup> *Ibid* at 43.

<sup>57</sup> *Ibid*.

<sup>58</sup> Coast Salish Legal Traditions Report, *supra* note 38 at 40.

<sup>59</sup> *Ibid*.

<sup>60</sup> *Ibid* at 40.

<sup>61</sup> *Ibid* at 40-41.

<sup>62</sup> *Ibid* at 29.

<sup>63</sup> *Ibid* at 41.



have that obligation. Rather it was up to the rest of the community “to pull them in”.<sup>64</sup> Again, these threads demonstrate that the legal obligation being illustrated in ancient stories, historically acted on, taught, and learned, continue to form part of Coast Salish peoples’ principled legal actions and thought processes today.

In our engagement with the Secwepemc legal tradition, a vital procedural step that emerged was public confrontation and witnessing. This procedural step, which ensured facts were confirmed prior to any legal response to wrongdoing, is evident in older published stories (Coyote and his Son, The Young Hunter and his Faithless Wife).<sup>65</sup> Publically confronting wrongdoers was also seen as a crucial part of the process for resolving harms in the community in the 1940s. Elder Charlie Gilbert said the Chief and a tribunal used to publically confront wrongdoers in front of a crowd.<sup>66</sup> One elder said that, in the old days, when someone did something wrong, they would be asked to come to a circle, with the Chief and council. She said that she “understood it to be more like a public confession...the way I heard it from the old people”.<sup>67</sup> Another community member, Rick Gilbert, explained his understanding that wrongdoers “would have to come before the Chief and everybody would be there to witness it for the village”.<sup>68</sup>

In contemporary times, this procedural step of public confrontation and witnessing is still considered valuable and used sensitively and creatively, depending on the context. One elder gave an example of a medicine person speaking out in a multi-community gathering about youth using drugs and alcohol, to let them know they were noticed, without directly confronting anyone or specifying who was to blame.<sup>69</sup> On the other hand, in another contemporary situation involving a man over-hunting, the community was consulted, and the wrongdoer was “severely reprimanded” at the public meeting.<sup>70</sup> The community nature of the public confrontation can also serve to reinforce the ties of the wrongdoer to the community. For example, in one contemporary sentencing circle, one of the young men being sentenced was from the community but had grown up in Saskatchewan. Elder Lynn Gilbert understood that the young man was affected by the words of one of the elders who “let him know, you know, that he was a member of the hereditary line and he should be behaving with pride and dignity, not bringing shame upon the name”. The young man “really felt that he didn’t...realize at the time that this was his line, so, I’m hoping, haven’t heard anything bad about him since...”.<sup>71</sup> The diversity of these examples illustrate the enduring nature of this procedural principle, as well as Secwepemc people’s ability to adapt it to multiple contexts and apply it flexibly, depending on each unique factual situation.

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<sup>64</sup> *Ibid* at 41.

<sup>65</sup> *Accessing Justice and Reconciliation Project: The Secwepemc Legal Traditions Report* (2013) [unpublished, on file with authors] (footnotes omitted) at 21 [Secwepemc Legal Traditions Report].

<sup>66</sup> *Ibid* at 22.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

In our engagement with the Mi'kmaq legal tradition, when we looked at legal responses and resolutions, one principle that stood out was personal transformation or rehabilitation of offenders.<sup>72</sup> This was colourfully illustrated in ancient stories, where people who caused harm to others were sometimes transformed into somebody or something useful to the community. For example, a man using dark magic who wants to live forever is transformed into a cedar tree (The Man Who Wanted to Live Forever) and a *Jenu*, a dangerous cannibal giant, becomes a beloved, and very helpful, member of a family when they treat him with kindness and hospitality (Jenu). In one story, a girl is cured from causing harm when the underlying cause, a curse from an old man, is discovered and dealt with (The Snow Vampire).<sup>73</sup> This principle is evident and implemented in contemporary times through professional initiatives that employ modern therapeutically transforming practices. Today, the Mi'kmaq Legal Services Network (MLSN) delivers programs to help offenders deal with underlying issues that prompted the offending behaviours, including addiction treatment, therapy, and anger management programs.<sup>74</sup>

When explaining the development of a domestic violence court in nearby Sydney, and the process involved, elder Albert Marshall explained in detail:

You focus on the perpetrator first. If the offence he committed stemmed from dysfunctional family, dysfunctional character, loss of language, residential school, alcohol, addictions, or maybe the person was sexually molested in their lives. All those things have to be dealt with first. So there is going to be very little focus on the offence itself, because when all these things are done and the committee is convinced the person is ready to live up to their responsibility, then you can talk about the healing things we have in our language.<sup>75</sup>

The underlying principle is consistent, although the means through which it occurs has changed drastically. Similarly, it should come as no surprise, given the Cree legal tradition's emphasis on healing as a response to harm, that our AJR Project partner community, AWN, responds to the issue of intimate violence by partnering with the Mamowichihitowin Wellness Program to deliver therapeutic services to offenders and families of offenders.<sup>76</sup> These are just two of many examples of Indigenous communities accessing and applying contemporary professional knowledge and resources to implement enduring legal principles in ways that are responsive to the issues they face today.

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<sup>72</sup> Mi'kmaq Legal Traditions Report, *supra* note 9 at 27-29.

<sup>73</sup> *Ibid* at 28-29.

<sup>74</sup> For more information, see: <http://www.eskasoni.ca/Departments/12/>.

<sup>75</sup> Mi'kmaq Legal Traditions Report, *supra* note 9 at 27.

<sup>76</sup> For more information, see online: [http://www.aseniwuche.com/our\\_people/programs\\_services.html](http://www.aseniwuche.com/our_people/programs_services.html).

At least two recommendations flow from these findings:

**Recommendation 2.1: Support community-based research and engagement processes to enable communities to identify and discuss legal principles so they become more explicit and accessible within communities themselves.**

While this project's findings are clear that Indigenous legal principles have great consistency over time, while being implemented in adaptive and responsive ways, much of their current use is occurring on an informal or implicit level within communities. Yet it is clear that at least in some communities, there are people who can discuss these at a practical and philosophical level, and have implemented them within professional justice and wellness programs. Community-based research and engagement processes that work toward making these legal principles more explicit and accessible may strengthen and reinforce their conscious and active use, especially among youth and those who have been dislocated from their community for various reasons.

**Recommendation 2.2: Support community justice and wellness initiatives to identify and articulate guiding or supporting legal principles, as a basis for developing, grounding and evaluating current practices and programming addressing pressing social issues within their communities.**

Given both the continuity and adaptability of Indigenous legal principles, a promising direction for further research is to explore the potential for using these principles as a basis for developing, implementing and evaluating community initiatives and partnerships. In particular, this may provide an alternate or additional method for principled evaluation of these initiatives, rather than simply relying on anecdotal reports or recidivism rates. This work, if carried out in a serious and sustained way, may provide a robust and transparent foundation for strengthening community justice and wellness initiatives, more symmetrical inter-societal partnerships between communities and outside professionals, and practical justice reform rooted in mutual recognition and respect.

#### IV. Conclusion:

The only conclusion we can possibly reach at the close of this project is that it is just the beginning. The hard work of gathering the threads has started. We believe there is much hope that even the process of intentionally and seriously continuing it will contribute to a truly robust reconciliation in Canada. The process and the results of this work contain their own threads for more symmetrical inter-societal relationships based on reciprocity and mutual respect.

This work is vital for the future health and strength of Indigenous societies and has much to offer Canadian society as a whole. Robert Cover once famously described law as “not merely a system of rules to be observed, but a world in which we live”.<sup>77</sup> Law is a “resource in signification”.<sup>78</sup> Legal traditions are not only prescriptive, they are descriptive. They ascribe meaning to human events, challenges and aspirations. They are intellectual resources that we use to frame and interpret information, to reason through and act upon current problems and projects, to work toward our greatest societal aspirations. Finding ways to support Indigenous communities to access, understand and apply their own legal principles today is not just about repairing the immense damages from colonialism. As Chief Doug S. White III (Kwulasultun) puts it, this is the essential work of our time:

Indigenous law is the great project of Canada and it is the essential work of our time. It is not for the faint of heart, it is hard work. We need to create meaningful opportunities for Indigenous and non-Indigenous people to critically engage in this work because all our futures depend on it.

Snuneymuxw First Nation,  
16 November 2012

This work is about recovering normative possibilities for all of Canada. It is about deciding how we will tell the story of our shared future.

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<sup>77</sup> Robert Cover, “Nomos and Narrative” (1983) 97 Harv L Rev 4 at 5.

<sup>78</sup> *Ibid.*



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