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Developing an Indigenous Justice Strategy: A compilation of thought papers by Indigenous legal experts

With papers

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Introduction

By Jane Evans[1]

Systemic discrimination of First Nations, Inuit and Métis is a serious and persistent problem that has led to the overrepresentation of Indigenous people in Canada's criminal justice system. [2]

It is within this context and in the spirit of reconciliation that the Government of Canada is working in consultation and cooperation with Indigenous partners and provincial and territorial governments to develop an Indigenous Justice Strategy. The development of an Indigenous Justice Strategy through meaningful collaboration is consistent with the Principles Respecting the Government of Canada's Relationship with Indigenous Peoples.[3] It is also in line with the *United Nations Declaration on the Rights of Indigenous Peoples Act*,[4] addressing the Truth and Reconciliation Commission of Canada's Calls to Action,[5] and the National Inquiry into Missing and Murdered Indigenous Women and Girls' Calls for Justice.[6] To date, several activities have taken place to gather community knowledge and inform the development an Indigenous Justice Strategy.

In 2021, Justice Canada received funding to support First Nations-, Inuit- and Métis-led engagements (2022–2024) to gain insight from communities and organizations on how to address systemic barriers in the criminal justice system. In addition, Justice Canada led a series of distinctions-based and regional engagement sessions (2022–2023) to identify concrete actions that could be undertaken in the areas of crime prevention, policing and diversion, courts, corrections, and reintegration. The importance of social supports (e.g., health, mental health, housing, education, employment) in improving the experiences and outcomes of First Nations, Inuit and Métis peoples in contact with the Canadian justice system was discussed. The importance of supporting the revitalization of Indigenous justice systems, self-determination and legislative reforms were key themes that emerged out of these engagement sessions.

In addition to supporting community engagements, Justice Canada commissioned a series of thought papers written by Indigenous legal experts, to help identify what an Indigenous Justice Strategy in Canada could and should include. The authors were asked to provide aspirational visions for the future—a path forward, using strength-based approaches to complement and expand previous work by researchers, inquiries, and commissions that have documented challenges and problems with the justice system. The purpose of these papers was to help facilitate a decolonizing approach[7] to informing an Indigenous Justice Strategy, by providing a space for diverse Indigenous perspectives that respects Indigenous values, philosophies and knowledge.

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[1] Jane Evans is a Senior Researcher with the Justice Canada Research and Statistics Division.

[2] See the State of the Criminal Justice System Dashboard for information about the overrepresentation of Indigenous people in the criminal justice system: https://www.justice.gc.ca/socjs-esjp/en and https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2019/may01.html

[3] https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html

[4] https://laws-lois.justice.gc.ca/eng/acts/U-2.2/page-1.html

[5] https://publications.gc.ca/collections/collection_2015/trc/IR4-8-2015-eng.pdf

[6] https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls_for_Justice.pdf

[7] The Reclaiming Power and Place Final Report defines decolonizing as "a social and political process aimed at resisting and undoing the multi-faceted impacts of colonization and re-establishing strong contemporary Indigenous Peoples, Nations, and institutions based on traditional values, philosophies, and knowledge systems" National Inquiry into Missing and Murdered Indigenous Women and Girls. 2019. "Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls", Volume 1a:78.

To this end, the four papers included in this report were written to reflect First Nations, Inuit, Métis, and Indigenous urban perspectives on justice and the development of an Indigenous Justice Strategy. It is important to note that there is diversity within each of these distinctive groups, and that the perspectives shared within these papers are those of the authors and not of an entire group of people.

The first paper entitled "'Blanketing': Justice for First Nations People in Canada" by Sarah Morales provides recommendations for developing an Indigenous Justice Strategy from a First Nations perspective. She considers the concept of justice through Coast Salish legal traditions and the practice of blanketing. She also examines a holistic approach to justice that focuses on human rights, wellness, prevention and healing.

The second paper, "Creating an Indigenous Justice Strategy, an Aspirational Paper from Inuit Perspectives" by Elizabeth Zarpa and Sarah Arngna'naaq, starts off with a brief history of Inuit in Canada and the Circumpolar World to raise awareness about how Canada's justice system affects Inuit. The authors provide recommendations for developing and implementing an Indigenous Justice Strategy from an Inuit perspective. Specifically, they look at what systems, organizations and agencies need to be involved in the development of an Indigenous Justice Strategy as a first step toward developing an Indigenous justice law, a sustainable solution to addressing the overrepresentation of Indigenous people within the justice system.

The third paper, "Metis[8] Perspectives on Justice: Reweaving Kinship and Recognizing Non-Duality" by Kerry Sloan, looks at strengthening the Metis concept of "wahkotowin", or kinship, in order to achieve justice. This involves "reanimating" four key areas of Metis life that were disrupted by colonialism: family, land, diplomacy and knowledge transmission, through the implementation of Metis laws and other cultural practices. The metaphor of the "ceinture flechée," the traditional Metis multi-coloured or arrow sash, is used to describe both how wahkotowin has been broken and how it can be repaired. The paper concludes with some practices that could be used to reconstitute wahkotowin and restore health to Metis people.

The final paper, "Towards Justice for Urban Indigenous Communities in Canada" by Aaron Mills, begins with a discussion on internal colonialism as the source of systemic discrimination and the overrepresentation of Indigenous people in the criminal justice system. The paper continues to outline the solution of returning legal authority (legality) to urban Indigenous communities and that the development of the Indigenous Justice Strategy should be oriented toward concepts of wellness rather than justice. Rather than providing detailed recommendations, the paper seeks to highlight new possibilities for how Indigenous law should be understood within an Indigenous Justice Strategy.

Although each paper is unique, collectively they outline the impacts of colonialism, overrepresentation and systemic discrimination of Indigenous people in the criminal justice system. They discuss Indigenous concepts of justice and law that focus on health, well-being and prevention. They also call for an Indigenous Justice Strategy that is flexible and structured to empower Indigenous peoples to define their own systems of justice based on their own legal orders and laws.

These papers were written to not only advance discussions taking place by those engaged in the development of the Indigenous Justice Strategy, but also to help foster new ways of thinking about justice so that fundamental change can occur.

[8] The term "Metis" without the accent aigu on the "e" is used by one of the authors whereas the term "Métis" is used throughout the other papers and in the introduction.

"Blanketing": Justice for First Nations People in Canada

By *Su-taxwiye*, Sarah Morales[9]

Introduction

As is well documented, "the justice system has failed … Aboriginal people on a massive scale."[10] Numerous reports[11] have identified and repeated the fact that not only are Indigenous peoples overrepresented in the justice system, but that this system is itself rooted in systemic discrimination and in past and continuing colonial policies and structures such that the inequality between Aboriginal people and the total Canadian population is in some respects "getting worse, not better."[12] Over the past decades, realizing the truth of this statement has generated a search for collaborative responses to the issue of achieving justice for Indigenous peoples by First Nations organizations and governments for collaborative responses to the issue of achieving justice for Indigenous peoples.[13] In January 2021, the Minister of Justice and Attorney General of Canada was mandated with developing, in consultation and cooperation with Indigenous partners, provinces and territories, an Indigenous justice strategy to address systemic discrimination and the overrepresentation of Indigenous peoples in the justice system. But given the inability of past governments and institutions to reform the Canadian justice system in a way that results in true and long-lasting change for Indigenous Peoples,[14] one must seriously turn their mind to the question, what could make an Indigenous justice strategy different?

As I have researched, read, and contemplated all the good work that has been done in the numerous previous reports, inquiries and papers on this topic, I have realized that maybe the challenge is not about implementing

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[9] Sarah Morales is Coast Salish and a member of Cowichan Tribes. Her Hul'qumi'num name is *Su-taxwiye*. Sarah holds a Juris Doctor from the University of Victoria, a Master of Laws from the University of Arizona, a PhD from the University of Victoria and a Post-Doctorate from Illinois. Sarah is an Associate Professor at the University of Victoria, Faculty of Law, where she teaches torts, transsystemic torts, Coast Salish law and languages, legal research and writing, and field schools. Sarah's research centres on Indigenous legal traditions, specifically the traditions of the Coast Salish people, Aboriginal law and human rights. She has been active with Indigenous nations and non-governmental organizations across Canada in nation building, inherent rights recognition and international human rights law. Huy ch q'u to my research assistant Moira Kelly, JID/JD 2025. Moira is a settler of Irish, Scottish and Dutch descent. Moira grew up on and has kinship ties to Alexander First Nation, where as a baby she was customarily adopted by her dad who is nêhiyew (Cree). Huy ch q'u to Beth Fox for her research assistance. Beth is a lawyer and citizen of the Kainai nation from Treaty 7 territory.

[10] Aboriginal Justice Inquiry of Manitoba, Report of the Aboriginal Justice Inquiry of Manitoba, The Justice System and Aboriginal People, Vol 1 (Winnipeg: Aboriginal Justice Inquiry of Manitoba, 1991).

[11] See generally, Canada, Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples, (Ottawa: Canada Communication Group, 1996) [RCAP]; Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, (Vancouver: Privy Council, 2019); Canada, Truth and Reconciliation Commission of Canada, Calls to Action (Winnipeg: Truth and Reconciliation Commission of Canada, 2015); Ivan Zinger, Annual Report: 2021–2022, (Ottawa: Office of the Correctional Investigator, June 2022).

[12] RCAP, *supra* note 11, at 775.

[13] For example, see: Alberta Court of Justice, Indigenous Justice Strategy, (2023), online: https://albertacourts.ca/cj/about-the-court/court-of-justice/indigenous-justice-strategy; BC First Nations Justice Council, The BC First Nations Justice Strategy, (2023), online: https://bcfnjc.com/landing-page/justice-strategy/; BC First Nations Justice Council, Indigenous Justice Centres in British Columbia, (2023) online: https://bcfnjc.com/indigenous-justice-centres-in-british-columbia/; Justice Canada, Indigenous Justice Strategy, (2022), online: https://www.justice.gc.ca/eng/csj-sjc/ijr-dja/ijs-sja/index.html; Legal Aid Ontario, Aboriginal Justice Strategy, (2023) online: https://www.legalaid.on.ca/more/corporate/core-client-strategies/aboriginal-justice-strategy/.

[14] In this paper I will use the term "People(s)" and "people(s). "People(s)" refers to a rights-bearing political body recognized under s. 35 of the *Constitution Act, 1982* and "people(s)" refers to a collective of First Nations persons.

the stated recommendations[15] but rather how we define the concept of justice and how we envision what it is meant to achieve. Arguably, the structure of the current justice system does not reflect Indigenous views of how justice should be administered. In considering an Indigenous justice strategy, the term "justice" must reflect the ways of life and knowing, ways of relating, involuntary obligations, and laws and legal orders of Indigenous Peoples. It is only through developing such a recognition and understanding that Canada will equip itself to appropriately respond to the needs and desires of Indigenous peoples today.

"Indigenous laws and legal orders are distinct and numerous, specific to societies, cultures, geographies, histories, etc."[16] Accordingly, to understand such laws and legal orders, one needs to consider them within the societal context in which they arise.[17] As Napoleon describes:

> In each Indigenous society, citizens organized in various ways were, and are, responsible for the maintenance of their legal order. For example, in Cree society, there are four decision-making groups, and their role and authority depend on the type of legal decision required: the family, medicine people, elders, and the whole community. Another example is Gitxsan society where law operates through the matrilineal kinship units of extended families and overarching clans.[18]

Therefore, when the federal government considers how to develop an Indigenous justice strategy that can respond to how concepts of justice impact decision-making, it must take an Indigenous legal order specific approach—one that is grounded in the society, norms and practices of the various Indigenous Nations in Canada,[19] recognizing that law necessarily changes and adapts to the different needs of each generation.[20] With this guiding principle in mind, this paper will define and examine the concept of justice with a focus on First Nations, in particular, the legal tradition of the Coast Salish People.[21]

This paper will begin by considering the concept of justice in the Coast Salish legal tradition. Using the practice of blanketing,[22] it will illustrate that within the Coast Salish world, justice prioritizes prevention and healing, and requires a holistic approach. The next section of the paper will examine what a holistic approach to justice, focused equally on prevention and healing, could look like for Coast Salish peoples. Finally, I conclude with some

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[15] However, I also recognize that implementation is a huge hurdle. For example, see: Government of Canada, Spotlight on Gladue: Challenges, Experiences, and Possibilities in Canada's Criminal Justice System, (January 2023) online: Department of Justice Canada https://www.justice.gc.ca/eng/rp-pr/jr/gladue/p3.html; Mandeep K Dhami, Greg Mantle & Darrell Fox, "Restorative justice in prisons" (2009) 12:4 Cont Just Rev 433; William R Wood & Masahiro Suzuki, "Four Challenges in the Future of Restorative Justice" (2016) 11:1 V & Offend 149.

[16] Sarah Morales, Indigenous legal responses to hate incidents: A Coast Salish case study, (June 2022) online: British Columbia's Office of the Human Rights Commissioner https://hateinquiry.bchumanrights.ca/wp-content/uploads/Indigenous-legal-responses-to-hate-by-Dr.-Sarah-Morales_BCOHRCs-Inquiry-into-hate-in-the-pandemic.pdf.

[17] See generally, John Borrows, Canada's Indigenous Constitution, (Toronto: University of Toronto Press, 2010) [Borrows].

[18] Val Napoleon, What is Indigenous Law? A Small Discussion, (October 2016) online: University of Victoria https://www.uvic.ca/law/assets/docs/ilru/What%20is%20Indigenous%20Law%20Oct%2028%202016.pdf at 2 [Napoleon].

[19] See generally, Borrows, *supra* note 17 which speaks to the necessity of situating Indigenous legal traditions within their cultural context, recognizing that the "authenticity" of Indigenous laws and governance is not measured by how closely they mirror the perceived past, but by how consistent they are with the current ideas of their communities.

[20] Napoleon, *supra* note 18, at 2.

[21] The Coast Salish world is expansive. It stretches from the coastal areas of the Puget Sound in Washington State to southern Vancouver Island in British Columbia and across the Salish Sea to the valleys of the Fraser River. While I recognize a degree of legal pluralism in the Coast Salish world, I have identified blanketing as a practice in many Coast Salish communities.

[22] This term, or practice, is defined and outlined later in this paper.

recommendations for developing and implementing an Indigenous justice strategy from a First Nations perspective.

The concept of justice in the Coast Salish world

First Nations Peoples in Canada, for instance the Coast Salish, have long expressed that the current form and function of the criminal justice system does not meet the needs of their citizens, and is contrary to their Indigenous legal orders and dispute resolution processes. As stated by Michael Carey:

> During my experience working with the Snuneymuxw community, the following represents some of the common feelings expressed by youth, adults, Elders, political leaders and heads of families about the current form and function of the criminal justice system: It lacks their involvement; it's a foreign system imposed on their people; lacks cultural relevance to their community; it's a system whose structure and values directly oppose Snuneymuxw beliefs and practices when correcting behaviour and resolving conflict; and the courts punish and jail people where Snuneymuxw values trying to heal the individual.[23]

In turning my mind toward a concept of justice defined by Coast Salish legal thought, I was reminded of a beautiful story shared with me by the late Cowichan Elder Wes Modeste. In one of my visits with him, he told me of the last time he witnessed a traditional process being used to restore harmony between individuals, families and communities following an interpersonal dispute. He shared:

> In the late 70s or 80s there was an Indian dance in Nanaimo and a couple of Cowichan boys went outside of the longhouse to have a smoke or something. On their way back in, some of the members of the Nanaimo community beat them up. I'm not sure exactly how things evolved after they were beat up. I guess maybe they went inside, with bloodied faces or maybe they just left the longhouse.
>
> Not long after, the families from Nanaimo came down to Cowichan for another Indian dance – the whole family. And they hired a speaker, and they called witnesses – many, many witnesses.
>
> And they called forward that young fellow that got beat up – they publicly called him forward … [t]hey publicly apologized to that young fellow for the conduct of their children for beating him up like they did in Nanaimo. That is a public form of apology.
>
> And the family put a blanket in his hand and money. The parents of the boys who beat him up put money in his hand and the rest of the family followed (and it is a very large family).
>
> …
>
> But how things unfolded after that, after all the money was given, the speaker got up and concluded the work. But after the speaker said that, witness after witness came up to respond. They said, "We will do the honourable things to restore your honour." And they scolded the young people who had beat up the boys from Cowichan. They said, "See all your family here? They are all here because of your wrongdoing. And you see all your family members following

[23] Michael Carey, Snuneymuxw Justice as an Alternative to the Canadian Justice System (MA Thesis, University of Victoria, 2007) [unpublished] at 20 [Carey].

> with money? You are now responsible to repay it. So anytime any of your family has work, you bring money to help."[24]

Although there is much to unpack in this story about harms, obligations, responsibilities, punishments, etc., for the purposes of this paper and its focus on justice, I want to focus on the significance of blanketing.[25] Blankets are objects of extraordinary complexity and significance in the Coast Salish legal tradition.[26] Wearing or being gifted a blanket during ceremony is transformative, "moving the individual from the domain of the mundane to a sacred space."[27] The blanket also serves as a protection for people by offering emotional strength during times of great change, vulnerability or significance, such as receiving an ancestral name or participating in a marriage.[28] A blanket can also raise the recipient's prestige in the community.[29] When gifted, they represent the respect that an individual, family or community is bestowing on an individual.[30] The late Stz'uminus Elder Willie Seymour said the following, when asked about the significance of blanketing ceremonies:

> … they would blanket the ones that are victims. You shield them from the hurt. You shield them from the harm and at the same time you are embracing them back their strength. You are picking up their soul and putting it back into their being. So, it serves more than one purpose.[31]

These beautiful and complex descriptions of the significance of blanketing, and blanketing ceremonies, can help us deepen our understanding of justice from a Coast Salish legal perspective.

In contrast to the punitive measures of the current justice system, a justice system created to mirror the practice of blanketing would require "a (re)imagining of what justice, safety, and protection means."[32] In the story above, Elder Modeste not only gives insight into what is required to repair the harm done to the individual(s), families and communities involved, but also what is required to restore the honour of the ones who have caused harm. By examining this story, one can see the operationalization of **snuw'uyulh**

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[24] Interview of Wes Modeste (June 23 2020) in Sarah Morales, "Speakers, Witnesses and Blanketing: The need to look beyond the courts to achieve reconciliation" (2017) 78 SCLR (2d) 57 at 71-72 [Morales].

[25] Blanketing is a customary practice of Coast Salish Peoples and is practiced widely throughout the Coast Salish world. This paper is not meant to suggest that the practice itself is universal to all First Nations Peoples, but rather seeks to illustrate that justice initiatives should be drawn from the legal and dispute resolution processes of First Nations Peoples and reflect their laws and societies. While the customary practice of blanketing may not be relevant to other First Nations Peoples, I believe that the principles of a holistic approach, backward and forward looking and restoration of harmony in the community are relevant to other First Nations Peoples across Canada. Similar principles are upheld by the Haida through their potlatch; see generally, Michaela McGuire, "Tll yahda: Visions of a Haida justice system" (2019) 12:2 Intl J Crit Indig Stud 18. The Anishinaabe utilize a circle process which reflects principles similar to those found in the blanketing ceremony; see generally, Phil Lancaster, "Omaminomowayak: Anishinaabe Justice in Muskrat Dam First Nation Discussion" (1994) 14 Windsor YB Access Just 331.

[26] Leslie H. Tepper, Janice George (Chepximiya Siyam), & Willard Joseph (Skwetsimltexw), *Salish Blankets: Robes of Protection and Transformation, Symbols of Wealth* (Lincoln: University of Nebraska Press, 2017) at xiii.

[27] *Ibid*.

[28] *Ibid*.

[29] *Ibid*.

[30] Morales, *supra* note 24, at 76.

[31] *Ibid*.

[32] Kylie Nicole Gemmell, *(Re)writing Criminal Justice in Coast Salish Territory: the Criminality and (Re)entry of American Indians and Alaskan Native* (MA Thesis, University of California, 2019) [unpublished] at 6.

(law),[33] and the guiding legal principles of **sts'lhnuts'amat** (relationality), **si'emstuhw** (respect), **hw'uyuwhulh** (support), **sh-tiiwun** (responsibility), and **nu stl'I ch** (love).[34]

sts'lhnuts'amat (relationality)

The legal principle of **sts'lhnuts'amat** (relationality) is prominent in the story. Although, from a Western legal perspective one might take the position that the harms caused were the fault and responsibility of the young men from Nanaimo, the entire family from Nanaimo came to Cowichan to remedy the harm and repair the relationships. This demonstrates that the breach of interpersonal obligations extends beyond the individual offender to the entire family. I have seen this principle illustrated in many different Coast Salish stories,[35] and it reflects the notion that when a member of one's family causes a harm, the entire family is implicated, both in terms of their obligations to the individual(s) who **suffered** the harm and in terms of their obligations to teach the individual(s) who **caused** the harm. With this in mind, there is also an acknowledgement that when harm is caused to an individual, the effects of that harm may bring harm and suffering to their family as well. Individuals are never viewed in isolation of the relationships that sustain them.[36] Accordingly, the remedying of breaches of legal obligations involves a wide web of relationships in the Coast Salish world.

si'emstuhw (respect)

The legal principle of **si'emstuhw** (respect) is also illustrated in Elder Modeste's story. The legal process to remedy the harm was carried out in a manner that bestowed respect on both the victims and the offenders. As was described above, the victim was blanketed in a public ceremony. Bestowing the gift of a blanket to the victim served to acknowledge the harms caused, restore his dignity, and shield him from further harm. By doing this in a public ceremony, after the calling of witnesses, it created a system of accountability whereby many individuals both knew of the hurt caused but also of the promises going forward. Respect was also shown to the offenders. They were accompanied by their families so that they did not have to stand alone, and a speaker was hired on their behalf to speak for them in the public ceremony. As the witnesses explained, the entire offenders' families followed the young men and put money in the hands of the victim.[37] As explained by those called to witness, the family members were doing so not only to acknowledge and remedy the harms caused, but also to restore the honour of their family members. The families of the offenders did not want their loved ones to have the shame of their wrongs following them and affecting their lives.

hw'uyuwhulh (support)

One can also see the legal principle of **hw'uyulwhulh** (support) demonstrated in Elder Modeste's story. Although support is also illustrated in the explanations of **sts'lhnuts'amat** (relationality) and **si'emstuhw**

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[33] See generally, Sarah Morales, *Snuw'uyulh: Fostering An Understanding of the Hul'qumi'num Legal Tradition* (PhD Dissertation, University of Victoria, 2014) [unpublished] [Morales, PhD]. As my Elders have described, *snuw'uyulh* is a way of life – not merely a codification of accepted practices and sanctions. It touches on all aspects of life and cannot be separated from our relationships to each other, to the natural world, or to the spiritual world. It has many translations in the English language, from "our way of life," "teachings," and "living a good life."

[34] *Ibid* at 221.

[35] Ellen White, *Legends and Teachings of Xeel's, The Creator* (Penticton: Theytus Books, 2018) at 25-46; Morales, PhD, *supra* note 33, at 273-274.

[36] Morales, PhD, *supra* note 33 at 223-225.

[37] A handshake is a symbolic gesture in the Coast Salish world where an individual shakes the hand of another and passes along money (typically two quarters) as a token of their respect and gratitude for the work being done.

(respect) described above, the hiring of a speaker is another way of providing support. Hiring speakers is a widely practiced tradition in the Coast Salish world. As explained by Stó:lō elder Shirley Julian, "At feasts there would be special people who were speakers, real good speakers, one from each place that knew the background and the history and the culture."[38] These speakers undergo training in language and community history, and accordingly, they possess qualities that lend them authority and cause others to call on them for help or to represent their family during ceremonies, disputes, gatherings, etc.[39] When hired, they help to maintain the legitimacy of the legal processes and to ensure that the feelings of those involved do not interfere in the restoration or maintenance of harmony among the individuals and communities involved.[40]

sh-tiiwun (responsibility)

sh-tiiwun (responsibility) is also present in the blanketing story. As described in the section about **sts'lhnuts'amat** (relationality), the entire family (most likely including extended family) participated in the blanketing ceremony to remedy the harms caused by their relations. In the Coast Salish legal tradition, responsibility rests with the entire kinship network and not just the individuals involved. As such, the extended families of the boys would not only have been present for the blanketing ceremony, but they also would have played an important role in the planning and execution of the ceremony.[41]

The young men responsible for causing the harms also have to demonstrate responsibility for the harms that they caused. After the ceremony was completed, the witnesses came forward and scolded the young men. They spoke to them not only of the harms they caused to the injured young man from Cowichan, but also of the harms they caused to their families and community. As such, they told them that they would be responsible to repay their family members for the cost of returning their honour. In speaking to others about this concept of repayment, and in deepening my understanding about the Coast Salish legal tradition in general, I have come to understand this as something more than just balancing a scale. Yes, the young men have a responsibility to support their family members, just as their family members supported them, but by instructing them to participate in the "work" (customary practices and ceremonies) of their relatives, they are ensuring that the young men have ample opportunity to deepen their understanding of **snuw'uyulh**. Not only are they responsible for financially supporting their family members in the work to be undertaken, but by participating in the work they will gain a greater understanding of and appreciation for the legal principles and obligations that flow from our **snuw'uyulh.**

nu stl'I ch (love)

Finally, the legal principle of **nu stl'I ch** (love) is woven throughout Elder Modeste's story. It illustrates that the principle of love is foundational to family and community relationships. Blanketing, as a legal response to harm, recognizes that we all share struggles and that those struggles need to be considered in decision-making processes. This does not mean that we look past the harms incurred, but rather that we look for a compassionate response, one that lifts up the souls of all those involved and restores harmony to the community.

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[38] Bruce Miller, *Problem of Justice – Tradition and Law in the Coast Salish World* (Lincoln: University of Nebraska Press, 2001) at 133.
[39] *Ibid* at 116.
[40] Morales, *supra* note 24 at 73-74.
[41] Although protocols may differ based on the nature and circumstances of the harm caused, in my research to date, the approach to a blanketing ceremony would be similar for all genders.

Blanketing as a holistic approach to justice

What blanketing helps to illustrate is that the concept of justice is both backward looking and forward looking, takes place at both the individual and community level, and incorporates the legal principles relied upon by the individual First Nation to remedy harm and restore harmony within their community. As opposed to a focus on punishment, it encompasses principles that are relevant not only to healing, but also to the prevention of harm. This holistic approach to social wellness and individual and community healing is still relevant for First Nations people today.

Therefore, in thinking about a path forward, we must ask ourselves: what policies are needed to care for and support First Nations people in a way that creates real positive changes for First Nations people in terms of prevention **and** healing?[42] In other words, where do opportunities exist for us as a collective to "blanket" individuals, such that it reduces their interactions with the justice system, either initially or subsequently? As stated above, blanketing not only occurs when harm has been done, but also to show respect and provide protection during any significant event in an individual's life.

Health as an act of blanketing

Throughout Canada, First Nations people and communities "face unacceptable health disparities."[43] These disparities are closely tied to the legacy of colonialism and systemic racism. Accordingly, First Nations peoples "are more likely than other Canadians to experience persistent poverty, food insecurity and barriers to housing and education—key contributors to chronic illnesses and other health challenges."[44]

Not only do First Nations people face barriers in accessing equitable health services, they also experience racism in health systems. More often than not, these two experiences are linked. As found in "In Plain Sight," a report examining Indigenous-specific racism and discrimination in B.C. health care, "racism limits access to medical treatment and negatively affects the health and wellness of Indigenous peoples."[45] In a summary of that report, the researchers found that:

- Indigenous peoples experience inequitable access to primary preventative care services;
- The lack of equity in primary care services results in disproportionately high reliance on emergency services, and can result in hospitalization for avoidable reasons;
- Inequitable health care access, compounded by racism, contributes to poorer health outcomes for Indigenous peoples; and,
- Racism, prejudice and discrimination in all settings are associated with lower health and well-being.[46]

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[42] Although a complete study on the intersection of social and economic factors and justice is beyond the scope of this short discussion paper, such research is necessary and should be considered in creating a First Nations Justice Strategy.

[43] For example, see: Canadian Medical Association, "Indigenous Health," online: *Canadian Medical Association* https://www.cma.ca/our-focus/indigenous-health [CMA]; Tara Hahmann & Mohan B Kumar, *Unmet health care needs during the pandemic and resulting impacts among First Nations people living off reserve, Métis and Inuit* (August 2022), online: Statistics Canada https://www150.statcan.gc.ca/n1/pub/45-28-0001/2022001/article/00008-eng.htm; Brenda Gunn, Ignored to Death: Systemic Racism in the Canadian Healthcare System (n.d.) online: Submission to EMRIP the Study on Health https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/Health/UniversityManitoba.pdf.

[44] CMA, *Ibid.*

[45] Mary Ellen Turpel-Lafond, *In Plain Sight: Addressing Indigenous-specific Racism and Discrimination in B.C. Health Care*, (November 2020) online: Government of BC https://engage.gov.bc.ca/app/uploads/sites/613/2020/11/In-Plain-Sight-Summary-Report.pdf at 24-25.

[46] *Ibid*.

These realities need to be seriously considered in creating an Indigenous justice strategy because the intersection between health, especially mental health, and criminal justice is well known. In a B.C. case study, researchers found that the "synergistic relationship between drug use and poverty" is related to frequent police encounters.[47] As such, one "cannot define or understand police effectiveness without considering whole-of-system effectiveness, including an examination of the health, social, and criminal justice systems and their interrelatedness."[48]

Housing as an act of blanketing

The failure of government to provide safe, healthy and accessible housing for First Nations people has been well documented for decades.[49] Not only are First Nations peoples overrepresented in the population experiencing homelessness, but they are also disproportionately unsheltered and living in encampments.[50] In her report that examines federal obligations to encampment residents, Van Wagner summarized the 2018 and 2021 statistics on homelessness and Indigenous Peoples:

> The last federal point-in-time count of homelessness in Canada found Indigenous people were significantly overrepresented. Indigenous people make up 5% of the population but made up 30% of respondents in the 2018 count. This is consistent with past counts, which ranged between 29% and 37%. Indigenous overrepresentation in the homeless population is even more striking when broken down by gender. In Winnipeg, 80% of women experiencing homelessness were Indigenous. In Vancouver, 45% of women experiencing homelessness were Indigenous. Indigenous women are 15 times more likely to use a shelter than non-Indigenous women, they remain overrepresented in domestic violence shelters, they are six times more likely to be the victims of sexual assault than Indigenous men, and they are more likely to experience post-traumatic stress disorder.[51]

Similar to health, factors leading to Indigenous homelessness are intersectional and rooted in the legacy of colonial policies and their ensuing systemic barriers, "including but not limited to land dispossession, residential schools, loss of language, criminalization, removal of children to foster care, broken treaty

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[47] Amanda Butler, Naomi Zakimi & Alissa Greer, "Total systems failure: police officers' perspectives on the impacts of the justice, health, and social service systems on people who use drugs" 19:48 (2022) Harm Reduct J 1 [Butler].
[48] *Ibid* at 3.
[49] RCAP, *supra* note 11, at 365; Lisa Hardess, Rodney C McDonald & Darren Thomas, *Aboriginal Housing Assessment*, (July 2004) online: Centre for Indigenous Environmental Resources https://publications.gc.ca/collections/collection_2011/schl-cmhc/nh18-1-2/NH18-1-2-170-1-2004-eng.pdf; Canada, Minister of Indian and Northern Affairs, *Government Response to the Seventh Report of the Standing Committee on Aboriginal Affairs and Northern Development; Aboriginal Housing*. Parliament of Canada, 17 October, 2007.http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3077327&Language=E&Mode=1&Parl=39&Ses=1. ; Canada, Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The Legacy*, Vol 5 (Winnipeg: Truth and Reconciliation Commission of Canada, 2015); Leilana Farha, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context*, UNHRC, 28th Sess, Supp No 62, UN Doc A/HRC/28/62 (2014); Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls,* Vol 1a (Vancouver: Privy Council, 2019); Canada, Parliament, House of Commons, Standing Committee on Human Resources and Social Development and the Status of Persons with Disabilities, *Indigenous Housing: The Direction Home*, 44th Parl, 2nd Sess (May 2021) (Chair Hon Sean Casey) in Estair Van Wagner, *Encampments & Expanding Security of Tenure: Federal Obligations to Encampment Residents* at 15 forthcoming: Homeless Hub for Office of the Federal Housing Advocate.
[50] See generally, Estair Van Wagner, *Encampments & Expanding Security of Tenure: Federal Obligations to Encampment Residents* at 10 forthcoming: Homeless Hub for Office of the Federal Housing Advocate.
[51] *Ibid* at 18.

promises, and discrimination in employment and housing."[52] As such, scholars have advocated for a holistic approach to addressing homelessness for Indigenous peoples that "reconstructs the links between the individual, family, community and Aboriginal Nation."[53]

The significance of this holistic approach becomes even more important when one considers the linkages between homelessness and crime. "Homelessness can be both a cause and a consequence of involvement with the justice system."[54] Studies have found that "[i]ndividuals commit more offences after becoming homeless than before and … incarceration contributes to homelessness through the destabilization of housing, unemployment, and the erosion of human rights."[55] As such, housing security is one way to blanket First Nations people by helping to restore their dignity and shielding them from further harm.

Education as an act of blanketing

Systemic racism and socio-economic disadvantages make First Nations people more vulnerable to the criminal justice system. Research has illustrated that Indigenous peoples have been consistently disadvantaged in the capitalist system.[56] Indigenous peoples face lower levels of education and higher rates of unemployment than the non-Indigenous population. This combined with fundamental socio-economic disadvantages and stigmas against Indigenous people may constrain Indigenous peoples' opportunities for legitimate employment to provide the basic needs of life for themselves and their families.[57] This inability to meet the basic needs of life **may** lead to a greater propensity for crime.[58] This is not to suggest that all Indigenous peoples experience this stress, nor that all Indigenous peoples "are pushed toward a life of crime through their experience of strain; however, it is one possible explanation for their over-representation in crime statistics and justice system involvement."[59] It is also telling that patterns of education levels and unemployment among First Nations peoples are mirrored in offender data: "adult aboriginal offenders are generally younger, have less education, and are more likely to be unemployed than are non-aboriginal offenders."[60] Arguably, the economic and social problems faced by these offenders due to their disadvantaged socio-economic statuses are major influences on their involvement with the criminal justice system. This signals to the transformative potential of education for First Nations people.

How could education then serve as a tool for blanketing Indigenous peoples? Studies have shown that the most effective solutions to crime are upstream prevention, not increased policing, use of courts, or

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[52] *Ibid*.
[53] Menzies, 2008 at 47 in Van Wagner at 10.
[54] Julian M Somers et al, "Housing First Reduces Re-offending among Formerly Homeless Adults with Mental Disorders: Results of a Randomized Controlled Trial" (2013) 8:9 PLOS One 1.
[55] *Ibid*.
[56] See generally, Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*, Indigenous Americas (Minneapolis: Univ Of Minnesota Press, 2014); Jessica Evans, "Colonialism, Racism, and the Transition to Capitalism in Canada" in Xavier Lafrance & Charles Post, eds, *Case Studies in the Origins of Capitalism* Marx, Engels, and Marxisms (New York: Palgrave Macmillan, 2019) 191; Heather Dorries, David Hugill & Julie Tomiak, "Racial Capitalism and the Production of Settler Colonial Cities" (2022) 132:1 Geoforum 263; Susan Koshy et al, *Colonial Racial Capitalism* (Durham: Duke University Press, 2022).
[57] Ally Sandulescu, "Indigenous Peoples in the Canadian Criminal Justice System: Over-representation & Systemic Discrimination" (2021) 3:1 York U Crim Rev 65 at 68.
[58] *Ibid* at 68-69.
[59] *Ibid* at 69.
[60] Carol La Prairie, "Aboriginal Over-Representation in the Criminal Justice System: A Tale of Nine Cities" (2002) 44:2 Can J Crim 181 at 189.

corrections.[61] This could mean investing in preschool and other early childhood education programs, school curricula reform, life skills programs, vocational training, etc.

In turning our minds toward a holistic approach to justice, we must fight against the silo effect that occurs when providing services to First Nations men, women and gender-diverse people. Like the Coast Salish practice of blanketing, we must look at First Nations people in their entirety, recognizing their individuality and unique needs and circumstances, encased in a web of relationships, and accompanying obligations. As such, we must approach the work of blanketing them, or conferring justice upon them, in way that does not cause them to have to "navigate a fragmented system built around a variety of actors responsible for different parts of the care pathway."[62] An individual should not have to seek out the threads of their blanket and attempt to weave it together, it should be wrapped around them in its completed form, with a pattern that reflects their unique needs and responsibilities.

Recognizing jurisdiction as a path forward

As illustrated by this paper, Indigenous legal traditions are imperative to creating and maintaining a system of justice for First Nations Peoples in Canada. As Linda Robyn and Thom Alcoze have written:

> … [b]efore government intrusion, native life, culture, environment, relationship to the land, and justice systems (i.e., peacemaking) functioned as a whole to the social structure and enhanced survival in their environment.[63]

Accordingly,

> … changes in spiritual, environmental, and other subsystems that reverberate negatively backward through the whole of indigenous culture. When an entire culture and way of life is taken away from a group of people and is replaced with a new system, everything collapses.[64]

Michael Carey explains:

> It's this disequilibrium and collapse brought about through the imposition of Western justice, which provides an historical and generational basis for why justice currently isn't working for indigenous peoples. This also supports arguments for why indigenous peoples can not just simply conform, adapt and assimilate to the Canadian justice system.[65]

As stated at the outset of this paper, conversations around Indigenous criminal justice reform have been going on for decades, but the reality is that the "system is too large, too cumbersome, and too entrenched to ever change."[66] What is needed is a justice strategy that empowers First Nations Peoples to define justice according to their own laws and legal orders and to support them in developing systems and processes that both prevent harm and facilitate healing. Similar to a blanketing ceremony, these systems and processes must be able to respond to the unique needs of each individual, taking into account their

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[61] Irvin Waller et al "Using Criminological Evidence to Shift Policy: From a Punishment to a Prevention Agenda in Contemporary Criminological Issues" in Carolyn Cote-Lussier et al, ed, *Contemporary Criminological Issues* (Ottawa: University of Ottawa Press, 2020) 265 at 279.
[62] Butler, *supra* note 47, at 3.
[63] Jeffrey Ross and Larry Gould. *Native Americans and the Criminal Justice System* (Boulder: Paradigm Publishers, 2006) at 68.
[64] *Ibid* at 68.
[65] Carey, *supra* note 23 at 12-13.
[66] Harold Johnson, *Peace and Good Order: The Case for Indigenous Justice in Canada* (New York: McLelland & Steward, 2019) at 137.

gender, identity, life history and experiences, relationships, etc. at all significant stages of their life, not just **after** they have come into contact with the justice system.

It is only through greater recognition and tangible support for the implementation of Indigenous self-determination in the justice system that we will see First Nations peoples' souls picked up off the ground and shielded from further harm.

Creating an Indigenous Justice Strategy, an aspirational paper from Inuit perspectives

By Elizabeth Zarpa[67] and Sarah Arngna'naaq[68]

Introductory remarks

> When we speak about the origins and history of our culture, we do so from a perspective that is different from that often used by non-Inuit who have studied our past. For example, in our culture we do not divide the past from the present, so we do not like to use terms such as 'prehistory.' Our history is simply our history, and our oral histories stretch back to time immemorial. We feel that the time has come for us, as Inuit, to take more control over determining what is important and how it should be interpreted. To be of value, our history must be used to instruct our young and to inform all of us about who we are as Inuit in today's world. We do not want our history to confine us to the past.[69]

A large portion of Canada's population knows very little or nothing about the history of Inuit. The legal, political, cultural and linguistic realities of Inuit make up a significant portion of this country's fabric, yet it goes unrecognized in mainstream educational institutions.[70] So, when Inuit interact with systems of power, such as the justice system, there is little to no support or cultural understanding to support them as they encounter an oppressive and punitive colonial system. The overrepresentation of Indigenous people (including Inuit) in the justice system has been extensively documented over the last several decades; the most recent finding as of this writing is from the Office of the Correctional Investigator in their 2021–2022 Annual Report.[71]

This aspirational paper aims to shed light on what areas of society the federal government could make a priority and how sustained funding for select initiatives might help address the overrepresentation of Inuit within Canada's justice system. In addressing this multifaceted question, this paper looks at finding answers to what systems, organizations and agencies need to be involved in developing an Indigenous Justice Strategy. The ultimate recommendation of this paper is a shift from seeing the development and implementation of such a strategy as an end goal to instead seeing it as a first step toward developing an "Indigenous Justice Law."[72] The paper also briefly touches on how the federal government could incorporate the unique experiences of First

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[68] Sarah Arngna'naaq works as crown counsel with the Public Prosecution Service of Canada. She received her Juris Doctor from the University of Victoria, was called to the bar in 2013, and has practiced criminal law in Nunavut and the Northwest Territories since. Originally from Baker Lake, Nunavut, Sarah's familial ties are both Inuit and qalunaat or European. With this background, she has always been interested in working towards reconciling Indigenous approaches to justice with the common law system. She is working on a pilot project to facilitate access to Inuit Qaujimajatuqangit or "IQ" to provide an Inuit lens to the Crown's approach to criminal prosecutions.

[69] "Inuit Nunangat." *Indigenous Peoples Atlas of Canada*, Canadian Geographic, https://indigenouspeoplesatlasofcanada.ca/article/inuit-nunangat/.

[70] Zarpa, Elizabeth. "A Conversation Piece About Implementing Inuit Legal Orders Into The Nunatsiavut Government's Inuit Court." *Dalhousie University*, 2022, p. 43.

[71] Government of Canada: Office of the Correctional Investigator, 2022, *Annual Report 2021-2022*, https://oci-bec.gc.ca/en/content/office-correctional-investigator-annual-report-2021-2022.

[72] An "Indigenous Justice Law" is envisioned as legislation that is drafted by Parliament in conjunction with Indigenous people and passed through the Parliamentary process, similar to *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24.

Nations, Inuit and Métis as well as diverse groups of women, men and gender-diverse people into their legislative, program and policy initiatives.[73]

In answering the first portion of the question, we lay some groundwork to shed light on where Inuit in Canada fit into the landscape of Indigenous populations across the country. Next, we go into detail about the key stakeholders who play an important role in advocating for Inuit at the local, provincial, territorial and national levels. These organizations would be important stakeholders when it comes to Inuit interests across Canada and would be instrumental in the development and implementation of an Indigenous Justice Strategy that accurately reflects Inuit perspectives. These entities would also be relevant in the development of a federal Indigenous Justice Law, which we argue is something that is likely more sustainable in the long term as a solution to addressing the overrepresentation of Indigenous people within the justice system. Then we look at how the Indigenous Justice Strategy could ensure that the unique experiences of First Nations, Inuit and Métis and diverse groups of women, men and gender-diverse people could be incorporated within the legislative, program and policy initiatives of the federal government. We conclude with some recommendations for developing and implementing an Indigenous Justice Strategy from an Inuit perspective.

A brief historical context

Understanding the history of Inuit in Canada and the Circumpolar World[74] is integral to understanding how systems such as Canada's justice system affect Inuit. Inuit make up some 65,000 people, the majority of whom live throughout Inuit Nunangat.[75] In Inuktitut, Inuit Nunangat means the homelands of the Inuit, which make up the land claim regions known as modern treaties that stretch from across from the Inuvialuit Settlement Region (ISR) in the Northwest Territories and Yukon, the territory of Nunavut, Nunavik in northern Québec, and Nunatsiavut in northern Labrador.

The regional governance bodies that exercise jurisdiction over their respective region and constituency are the Inuvialuit Regional Corporation (IRC) in the Western Arctic, the Government of Nunavut in the Central and Eastern Arctic, the Kativik Regional Government in northern Québec and the Nunatsiavut Government in northern Labrador. Further, the territory of Nunavut is divided into three regions and each region has its own Inuit association. Consulting with each of these regional bodies would be integral to ensuring an accurate reflection of current Inuit perspectives on an Indigenous Justice Strategy.

Additionally, Inuit are increasingly moving to southern and urban centres. These major hubs are St. John's, Halifax, Montreal, Ottawa, Yellowknife and Edmonton. In addition to being urban hubs for the average Canadian, these cities are also known as hubs for Inuit. People who live in northern and remote areas usually

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[73] The *2021-2022 Annual Report of The Office of the Correctional Examiner* emphasized that the number of incarcerated Indigenous women has increased; page 20 of that Report states, "Indigenous women continue to be one of the fastest growing federally incarcerated populations in Canada. In December 2021, my Office issued a press release with data showing that the proportion of incarcerated Indigenous women continued to increase unabated and was nearing 50% of all federally sentenced women.
On April 28, 2022, the number of incarcerated Indigenous women reached 50% for the first time (298 Indigenous and 298 non-Indigenous women in federal custody). Even more concerning is the fact that, of the women who are classified as maximum security, almost 65% of them are Indigenous. Unfortunately, these are not new developments in federal corrections. My Office and others have been reporting on the Indigenization of Canadian corrections for years. A deeper dive into the situation uncovers that this overrepresentation is largely the result of systemic bias and racism, including discriminatory risk assessment tools, ineffective case management, and bureaucratic delay and inertia." https://oci-bec.gc.ca/en/content/office-correctional-investigator-annual-report-2021-2022

[74] "The Inuit Circumpolar Council Political Universe." *Inuit Circumpolar Council*, https://www.inuitcircumpolar.com/about-icc/icc-political-universe/.

[75] Inuit Tapariit Kanatami, *2021-2022 Annual Report*, https://www.itk.ca/wp-content/uploads/2022/09/01_ITK_2021-2022-Annual-Report_ENGLISH_08.pdf.

don't have access to basic universal health care,[76] such as birthing centres or hospitals.[77] Although each region throughout Inuit Nunangat has its own modern treaty, each region is still in the early stages of adjusting to the realities of living in a colonized, Westernized world. Inuit were nomadic prior to the introduction of forced settlement by the federal and provincial governments and other entities. Therefore, access to what are considered basic services in the south, such as a university, housing or universal health care, is still an evolving process in its early stages of development in northern regions where the majority of Inuit reside. Inuit are therefore leaving their northern communities to relocate in the south in search of more services in these urban hubs. Identifying and consulting Inuit-centred organizations in these hubs would also be important in ensuring that urban Inuit perspectives are reflected in the strategy.

Each of the four Inuit land claim agreement regions and their geography is unique in their own regard. Of the four Inuit regions, only the Nunatsiavut Government has a self-government chapter. Under Chapter 17, Part 17.31,[78] of the *Labrador Inuit Land Claims Agreement*, the Nunatsiavut Government has jurisdiction to create an Inuit Court. There is also jurisdiction within Chapter 17 of the *Labrador Inuit Land Claims Agreement* for the Nunatsiavut Government to make their own Inuit Laws and for the local Inuit Community Governments of Nain, Hopedale, Makkovik, Postville and Rigolet to make their own bylaws.

In advancing the inherent right of Inuit to govern themselves with their own legal orders and protocols in areas such as justice, the federal government must acknowledge and respect the right to self-determination and the inherent right that Inuit have to govern themselves and to make laws, including laws related to criminal justice and procedure. It is also important that these regional governance bodies are funded sustainably to ensure that the Inuit regions can build the capacity to implement the Strategy and to successfully maintain it into the future.

Consultation and challenges with administering justice within Inuit communities

In creating and implementing an Indigenous Justice Strategy throughout Inuit Nunangat, it is imperative to consult with Makivik, Nunavut Tunngavik Incorporated, the Inuvialuit Regional Corporation and the Nunatsiavut Government. Each region has its own *sui generis* cultural and political context and its own unique issues as they pertain to justice, which apply to its population and region.

It is also relevant to consult with the national Inuit organizations such as Inuit Tapiriit Kanatami and Pauktuutit Inuit Women of Canada. Both of these organizations advocate for Inuit on a national level. More localized, front-line organizations that work with Inuit who encounter the criminal justice system should also be consulted, such as regional Friendship Centres nationally; Ananaukatiget Tumingit, which is the Regional Inuit Association in Nunatsiavut; Isuarsivik, a recovery center in Nunavik; and Saturviit Inuit Women's Association[79] in Nunavik. It is important to ensure that there is thorough consultation with as many stakeholders as possible that have a legal and political tie to Inuit, as well as with the more institutional and front-line workers who work within the justice system and with Inuit.

As discussed above, there are four significantly diverse Inuit regions. Broaden this out to Indigenous groups across Canada and there are over 50 distinct First Nations in Canada with over 600 First Nation communities and

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[76] National Inquiry Into Missing and Murdered Indigenous Women and Girls, *Final Report Volume 1b*, Calls for Justice 3.1 to 3.7, https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls_for_Justice.pdf.
[77] National Inquiry Into Missing and Murdered Indigenous Women and Girls, *Final Report - Calls For Justice*, p. 540 and 606, https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls_for_Justice.pdf.
[78] *Labrador Inuit Land Claim Agreement*, Chapter 17, s. 17.31, https://www.gov.nl.ca/exec/iar/files/ch17.pdf.
[79] Saturviit Inuit Women's Association of Nunavik, 2018, *Justice in Nunavik Communities*, https://saturviit.ca/wp-content/uploads/2024/01/Report-Justice-Social-Harmony_ENGLISH.pdf.

many Métis communities throughout Canada,[80] each with different interests and issues that will need to be reflected in a federal Indigenous Justice Strategy. While there are certainly more general steps that can be taken to address justice issues that affect Indigenous communities, a federal Indigenous Justice Strategy will need to be flexible enough to allow for regional and community specific adaptation and implementation. This flexibility will ensure that issues specific to a given group or region can be addressed, rather than trying to find a one-size-fits-all solution.

The justice system across Canada is a complex one, with many levels of government and non-governmental entities involved and many moving parts.[81] Criminal justice in Inuit Nunangat is no different, and it is administered differently in each of the four regions. From the moment someone calls for police assistance through to where an offender serves a term of imprisonment, how individuals experience their interactions with the justice system across Inuit Nunangat varies significantly. These distinctions have to be taken into consideration in the development and implementation of an Indigenous Justice Strategy, as each region will come with their own set of issues and priorities as well as their own solutions.[82]

In terms of accessing police services, while two of the four Inuit regions that make up Inuit Nunangat have 911 services, no part of Nunavut, Nunatsiavut or the ISR has these services. Instead, individuals have to call the local police detachment or a central dispatch service specific to the police in that region. Meanwhile, for policing specifically, the ISR, Nunavut and Nunatsiavut only have the Royal Canadian Mounted Police (RCMP).[83] Nunavik, however, has a blend of Sûreté du Québec (Québec Provincial Police), RCMP, and the Nunavik Police Service.[84]

Looking at access to legal services, the regions also vary. The Public Prosecution Service of Canada handles all prosecutions for the ISR and Nunavut, while the Nunavik and Nunatsiavut regions have a divide between provincial and federal prosecution services.[85] Public access to defence counsel within each region align with each jurisdiction's legal aid system: in Nunavut, for example, cases default to legal aid and are later moved out of that system if an individual does not qualify. This is a different model for accessing legal aid than what most Canadian jurisdictions use. Usually, someone would show up for their first appearance and that's when they would begin the qualification process for legal aid representation. If an Inuk cannot afford private counsel, they would have to meet the qualification requirements of the larger legal aid system for the province or territory. That means showing that the Inuk has financial hardship and that their offence is one for which they are facing a potential term of imprisonment.

The court systems also differ across Inuit Nunangat. Nunatsiavut and Nunavik both currently fall within the classic southern Canadian court system, with a provincial and superior court division. However, as discussed, this

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[80] Indigenous Services Canada, 2020, *Annual Report to Parliament 2020*, https://www.sac-isc.gc.ca/eng/1602010609492/1602010631711.
[81] *Overview of the Adult Criminal Justice System*, Statistics Canada, https://www150.statcan.gc.ca/n1/pub/85-005-x/2018001/article/54967-eng.htm.
[82] Different studies and reports have analyzed the justice system in different parts of Inuit Nunangat over the last several years. Most recently, Pauktuutit Inuit Women of Canada published *Meeting Survivors' Needs: Gender-Based Violence against Inuit Women and the Criminal Justice System Response, Phase II - Final Report* (2022), https://pauktuutit.ca/wp-content/uploads/Meeting-Survivors-Needs-Gender-Based-Violence-against-Inuit-Women-and-the-Criminal-Justice-System-Response_Phase-II-Final-Report-Sept2022.pdf. Additionally Makivik Corporation and Minister of Justice and Attorney General of Quebec published, *Report on the Situation of the Itinerant Court in Nunavik* (2022), https://cdn-contenu.quebec.ca/cdn-contenu/adm/min/justice/publications-adm/rapports/Report_Latraverse_2022-07-06.pdf.
[83] Ibid Pauktuutit report. See relevant "Policing" sections.
[84] "Our History." *Nunavik Police Service*, https://www.nunavikpolice.ca/en/about/our-history/.
[85] *Supra* note 82, Pauktuutit report, relevant "Crown Prosecutors" sections.

could change in Nunatsiavut where the *Labrador Inuit Land Claims Agreement* contains clauses that contemplate the creation of an Inuit Court. The ISR falls within the jurisdiction of the Northwest Territories court system, which is composed of a Justice of the Peace (JP) court/bail system, a Territorial Court level, and a Supreme Court. Nunavut has the only unified court system in Canada where the vast majority of cases are heard by the Nunavut Court of Justice (NCJ), one court with a blend of territorial and superior court powers. It also has a strong Justice of the Peace program in Iqaluit, where summary conviction offences can be dealt with from Crown election through to sentencing following a guilty plea or a finding of guilt after a trial.[86]

Each region of Inuit Nunangat also has a variety of levels of access to social services as well as correctional services. The entire region covered by the *Nunavut Land Claim Agreement* is covered by the territory of Nunavut, so Inuit interests are reflected very strongly in every policy or decision made by the Government of Nunavut. This is also the case within the Nunatsiavut region, where the Nunatsiavut Government has jurisdiction over health and social development under the *Labrador Inuit Land Claims Agreement*. Therefore, the programming for Inuit cultural support is prevalent within Nunatsiavut, but in communities outside of those regions such as in St. John's, these Inuit-specific programs are not necessarily as highly prioritized by the provincial or federal government. As a result, Inuit-specific programs and services are not as common in urban settings. That said, the federal government recently committed to funding programming to address the overrepresentation of Inuit within the criminal justice system in Nunatsiavut[87] and Nunavik.[88] With sustained financial and political commitment from all levels of government to address the issue of the overrepresentation of Indigenous people in the justice system in the long term, the more promising it is that this issue will slowly begin to change.

Long-term, sustained political and financial commitment toward Inuit-specific social programming and programming that addresses the overrepresentation of Indigenous people in the justice system has to take place across Inuit Nunangat—not just in one or two regions. To address the issue of overrepresentation, it is relevant to recognize the harm that the system causes. For example, Inuit who reside in one of the communities in Inuit Nunangat and are sentenced to a federal term of imprisonment have no choice but to serve their time in a southern region because there are no federal penitentiaries in the North. In the Nunavut Court of Justice decision of *R v Itturiligaq*, this was recognized by Justice Bychok:

> There is no federal penitentiary in Nunavut. Inuit must serve their federal prison time in the south where they are forced to live in isolation from their culture, family and social networks. In many ways, the federal penal system is a twenty-first century continuation of the philosophy of forced resettlement, Residential Schools and southern tuberculosis sanitaria. Many Nunavummiut cannot understand why we continue to let our offenders be sent south.[89]

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[86] *Supra* note 82, Pauktuutit report, relevant "Court Systems" sections.

[87] *Addressing the Overrepresentation of Indigenous People in the Justice System in Nunatsiavut,* Department of Justice Canada, 2023, https://www.canada.ca/en/department-justice/news/2023/01/addressing-the-overrepresentation-of-indigenous-people-in-the-justice-system-in-nunatsiavut.html.

[88] *Addressing the Overrepresentation of Indigenous People in the Criminal Justice System in Québec*, Department of Justice Canada, 2023, https://www.canada.ca/en/department-justice/news/2022/06/addressing-the-overrepresentation-of-indigenous-people-in-the-criminal-justice-system-in-quebec.html.

[89] *R v Itturiligaq*, [2018] NuJ No 29, 2018 NUCJ 31, at para 116. Although this decision was overturned on appeal, the commentary around Nunavummiut access to the federal prison system remains relevant. In this case, a male Inuk first-time offender was convicted for an offence that carried a penitentiary term as a mandatory minimum sentence. If he were to serve the minimum sentence for his offence, he would be flown to a southern prison. He resided in a remote Inuit community in Nunavut, and the sentencing judge indicated that if he were to be flown to a southern institution to serve his time, it would be akin to residential schools and resettlement.

Identifying possible solutions

When imagining and implementing an Indigenous Justice Strategy in Inuit communities, it is important to recognize that for people who are engaged in the process of criminal justice, the justice system—a system that is completely foreign and does not reflect their language or cultural and legal norms[89]—has a huge lasting impact.[90] These are important factors to consider when imagining how to address the harms perpetuated by the justice system and also address the overrepresentation of Inuit within the correctional systems. To reduce recidivism, it is important to create and fund Inuit-specific programming that alleviates the detrimental effects of being processed through the justice system and often going to prison.

In thinking through an Indigenous Justice Strategy that reflects the needs of Inuit who experience the justice system either as an offender or as someone who is affected, such as a family or community member, the issues that exist for Inuit in the current justice system have to be brought to light. While there is overlap between how different regions of Inuit Nunangat experience the justice system, not all issues will be the same. What priorities will be preferred for different issues will also vary. In implementing an Indigenous Justice Strategy, it is important to consult each Inuit region in the implementation of a strategy with a distinctions-based lens.[91] While engaged in that consultation, it would be beneficial to also look at whether each region would like to amend their existing modern treaty to allow Inuit to administer justice in their own regions. It will be critical to apply a lens that assesses the unique interests, priorities, rights and circumstances of each community[92] when it comes to administering justice across each region of Inuit Nunangat.

Expand this short discussion out to include First Nations and Métis groups across Canada, and the federal Indigenous Justice Strategy faces a tremendous hurdle in trying to appropriately reflect diverse and varying legal orders, cultural norms, languages and diversity amongst Canada's Indigenous populations. For this reason, we suggest that the Strategy must be equitably adaptable to different regions and Indigenous groups. The strategy has to be distinctions-based in its application and in its process for analyzing the effectiveness of the implementation of the Strategy.

Finally, it could be argued that a strategy is a good starting point in attempting to address the over-representation of Indigenous people in the justice system, but it simply does not go far enough. Instead, the development of an Indigenous Justice Law,[93] potentially under section 91(24) of the *Constitution Act*, *1867* and/or in accordance with section 35 of the *Constitution* Act, *1982* could be drafted and adopted by the Parliament of Canada. This legislation would have to be developed through consultation with Indigenous people from across Canada in a similar manner as proposed in this paper. Such legislation would also benefit from

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[90] "Addressing the Overrepresentation of Indigenous People in the Justice System in Nunatsiavut." *Government of Canada,* 2023, https://www.canada.ca/en/department-justice/news/2023/01/addressing-the-overrepresentation-of-indigenous-people-in-the-justice-system-in-nunatsiavut.html. At p. 28 of this Report, it highlights that there is more access to First Nations cultural programming than Inuit cultural programming within corrections and that First Nations' access to their cultural programming is something that increases their connection to their traditions.

[91] A distinctions-based approach recognizes that each of the Indigenous communities of Inuit, First Nation and Métis are diverse in their own regard, but also within each of these three distinct communities there are variations in culture, language, political and legal history, and needs. A one size fits all Indigenous Justice Strategy and an analysis into how that Strategy is being effectively implemented may not work or be equitable. Therefore, in the Strategy's development and implementation along with its evaluation, a provision must be included which allows for an approach that keeps these realities in mind. Otherwise, there is a risk that situations such as those reported on in this CBC news article may arise: https://www.cbc.ca/news/canada/north/why-does-the-canadian-justice-system-treat-aboriginal-people-as-if-they-re-all-the-same-1.2886502

[92] *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*, 2017. https://westawaylaw.ca/wp-content/uploads/2017/07/Principles-respecting-the-Government-of-Canadas-relationship-with-Indigenous-peoples.pdf, at p. 4

[93] The scope and depth of this Indigenous Justice Law would be drawn out throughout the process of consultation.

looking to other jurisdictions internationally, to see what legislative measures other countries have adopted to manage the issues that arise within the area of justice within their respective Indigenous communities. For example, the Navajo Tribal Court system has implemented its own Navajo legal orders and procedures in the development of its laws and the application of laws in judicial proceedings.[94] A Canadian Indigenous Justice Law may be an appropriate mechanism to lay out a framework by which the Canadian court system might begin to engage formally with Indigenous legal orders in a systematic way.[95] There are other jurisdictions around the world that have adopted innovative approaches to navigating the issues that arise from the overrepresentation of Indigenous people within their criminal justice system. These examples could provide some insight into how Canada could develop its own Indigenous Justice Law.

Creating new legislation as part of a national Indigenous Justice Strategy would mean that the decisions made under the legislation and its administration would be open to judicial review, adding a layer of accountability. If issues arise in relation to the implementation of this Indigenous Justice Law, there would be an opportunity for it to be assessed by the judicial system. This would create jurisprudence and precedent pertaining to Indigenous justice issues and potential solutions that arise from that judicial process. An Indigenous Justice Law that is passed by the Parliament of Canada would not only be reviewable by the courts, it would also be less susceptible to government changeover after every election. A policy or strategy can be altered at the whim of the sitting government, whereas legislation is more entrenched. It would be woven into the national fabric of our country's laws.

The aspirations and spirit of an Indigenous Justice Law would be in alignment with the *United Nations Declaration on the Rights of Indigenous Peoples Act*; the United Nations Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Racial Discrimination Against Women; and the United Nations International Convention on the Elimination of All Forms of Racial Discrimination. The development of an Indigenous Justice Law would follow a similar thorough consultation process with Indigenous stakeholders as a strategy. At the end of the consultation process, the result would be more than a strategy—the Government of Canada would be demonstrating its commitment to the Indigenous population by enacting legislation specifically tailored to address Indigenous overrepresentation in the justice system.

Concluding thoughts

The aim of this paper was to apply an Inuit lens in trying to address difficult and complicated questions that tackle the overrepresentation of Indigenous people in Canada's justice system. There is no one-size-fits-all answer to tackling such important questions. However, it is possible that through the process of ongoing consultation with Inuit, First Nations, Métis and 2SLGBTQQIA+ people in the development and implementation of an Indigenous Justice Strategy, the way forward in dealing with this national crisis could become clearer. It is important that the information gathered in the development of this strategy and ongoing work into the future be deliberately disaggregated. Why? Because the experiences of each Indigenous community will be different

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[94] "Courts & Peacemaking in the Navajo Nations." *Judicial Branch*, Navajo Nation, https://courts.navajo-nsn.gov/.

[95] Couturier, Don. "Judicial Reasoning Across Legal Orders: Lessons from Nunavut." *Queen's Law Journal*, 2020, https://www.canlii.org/en/commentary/doc/2020CanLIIDocs3872#!fragment/zoupio-_Tocpdf_bk_1/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoAvbRABwEtsBaAfX2zhoBMAzZgI1TMAjAEoANMmylCEAIqJCuAJ7QA5KrERCYXAnmKV6zdt0gAynllAhFQCUAogBl7ANQCCAOQDC9saTB80KTsIiJAA. Canadian courts are currently struggling with how to appropriately and meaningfully engage with Indigenous legal orders. This paper proposes one possible systematic approach to tying the common law system in with different Indigenous legal orders.

and so will the issues, challenges and solutions. There is no single solution in managing this complex issue; it has to be managed in an equitable manner that reflects the realities of each Indigenous group and region.

The approach in consulting with Inuit in the development and implementation of an Indigenous Justice Strategy was highlighted in full throughout. To reiterate, it is important to consult Inuit at the regional levels in Nunatsiavut, Nunavik, Nunavut and ISR. Further, it is important to consult the front-line organizations who work directly with Inuit that are affected by the justice system. It is also important to consult with the national entities that advocate for Inuit at the federal and provincial/territorial levels. There are approximately 65,000 Inuit nationally and they are spread out from coast to coast to coast.

Lastly, it was argued that a strategy is a good starting point in addressing the overrepresentation of Indigenous people in the justice system, but it remains simply a strategy. If a more serious approach were to be adopted, then the federal government should prioritize a national Indigenous Justice Law. An Indigenous Justice Law is a more sustainable tool that would allow the federal government and Indigenous groups to legally address the overrepresentation of Indigenous people in the justice system. A law holds more weight than a strategy because legislation undergoes a rigorous enactment process before being passed. It is also a tool that is judicially reviewable when issues arise and allows for precedent to be created, which could be beneficial in assessing the possible issues that arise when dealing with the justice system within Indigenous communities.

Considerations for decision-makers

To summarize the recommendations from this paper, below are some points to consider when looking at the development of an Indigenous Justice Strategy from an Inuit perspective:

1. The aim of developing an Indigenous Justice Strategy should be to work toward building an Indigenous Justice Law;
2. Regional governments and organizations throughout IRC, Nunavut, Nunavik and Nunatsiavut should be consulted;
    a. Consultation should include the possibility of amending existing modern treaties to include self-government provisions with the ability to codify Inuit laws and create an Inuit court system if the Inuit region consents to that as a priority;
3. Front-line organizations that work directly with Inuit who engage with the justice system should be consulted. This should include organizations that work with both offenders and victims;
4. National, provincial and territorial organizations that advocate for Inuit political and legal rights should be consulted;
5. The information compiled should ideally be disaggregated so as to highlight the distinctions between the *sui generis* needs and issues of Inuit, Métis, First Nations and 2SLGBTQQIA+ people;
6. The information compiled should ideally be disaggregated by men, women and gender-diverse people when possible;
7. The information compiled throughout the consultation should be compiled with an understanding of the importance of compiling this information so it can be stored in a mechanism whereby it can be useful for future generations of Indigenous peoples;
8. In the development of an Indigenous Justice Strategy and Law, international examples should be considered as potential models that could be incorporated;
9. Provisions of the federal Canadian *United Nations Declaration on the Rights of Indigenous Peoples Act* should be incorporated into the development of an Indigenous Justice Strategy and Law; and

10. The relevant United Nations Conventions should be incorporated into the development of an Indigenous Justice Strategy and Law, as well as the Truth and Reconciliation Commission's Calls to Action and the National Inquiry into Missing and Murdered Indigenous Women and Girls' Calls to Justice.

Metis perspectives on justice: Reweaving kinship and recognizing non-duality

By Kerry Sloan[96]

Reframing the question: From "Justice" to Wahkotowin

I have been asked to respond to the question, "What might justice look like for Metis[97] people?" Given that the term "justice" stems from ancient Greek and Roman ideas of fairness,[98] I would like to reframe the question so that it is more culturally aligned with Metis thinking:[99] "How can the laws of wahkotowin, or 'kinship'[100] help us to foster good relations with all of our relatives so that we can live good lives?"[101] I suggest that strengthening kinship at all levels of Metis relationships – with the Creator, the Earth, the self, family, community, nation, other Indigenous nations, and with the state actors – will help to create conditions that allow Metis individuals and collectivities to flourish. Strengthening kinship will reduce the incidence of harms perpetrated both by and against Metis people, thus promoting healthy social functioning in a Metis law sense[102] – and it will also help to create "justice," both in terms of the Canadian criminal law and in terms of fair treatment of Metis people within Canadian society more broadly.

While Metis kinship relations have been disrupted by colonialism, including via residential schools, the "sixties scoop," and over-incarceration, I have not focused here on the negative effects of these disruptions, which have been documented by other authors.[103] My intent is to reveal the need to support and participate in the ongoing reanimation of kinship relations, and to suggest that doing so will improve the lives of Metis people.

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[96] Kerry Sloan is a citizen and past board (governing council) member of the Metis Nation of Greater Victoria, and an Assistant Professor at McGill University's Faculty of Law.

[97] I use "Metis" without the *accent aigu* on the "e" to denote all people of the historic Metis Nation, regardless of whether they descend from French speakers. "Métis" is used where it appears in titles or other works.

[98] See, e.g., volume V of Aristotle's *Nichomachean Ethics*, 3d ed, trans Terence Irwin (Indianapolis, IN: Hackett, 2019) 79. *Ius* ("that which is right"), translated as "law" in English, was defined by the Roman lawyer Celcus as "the art of what is good and fair": as cited by Ulpian in Justinian's *Digest*, 1,1,1.

[99] This is not to imply that fairness isn't a consideration in Metis law, but it might not be an overriding one.

[100] Maria Campbell, "We Need to Return to the Principles of Wahkotowin", *Eagle Feather News* (November 2007) 5, online: <https://www.eaglefeathernews.com/quadrant/media//pastIssues/November_2007.pdf> [Campbell, "Wahkotowin"]; Brenda Macdougall, *One of the Family: Metis Culture in Nineteenth-Century Northwestern Saskatchewan* (Vancouver: UBC Press, 2010) [Macdougall, *One of the Family*].

[101] On the Cree laws of *miyo-wicehtowin* (Nehiyawewin: "having or possessing good relations"), see Harold Cardinal & Walter Hildebrandt, eds, *Treaty Elders of Saskatchewan: Our Dream Is That Our Peoples Will One Day Be Clearly Recognized as Nations* (Calgary: University of Calgary Press, 2000). Practice of the Anishinaabe laws of *mno-bemaadiziwin* can result in having "a good life." See, e.g., John Borrows, "Language and Anishinaabe Consultation Law" (2018), Indigenous Law Association at McGill (blog), online: https://indigenous-law-association-at-mcgill.com/2018/04/14/language-and-anishinaabe-consultation-law-by-john-borrows/ [Borrows, "Language"]. These principles have been incorporated into Metis law.

[102] According to Metis scholar Cindy Gaudet, "Well-being stems from the social structures of kinship, and strengthening kinship can help us to resist being categorized by the other and devalued by ourselves." In "*Keeoukaywin*: The Visiting Way—Fostering an Indigenous Research Methodology" (2019) 7:2 aboriginal policy studies 47 at 53.

[103] These disruptions resulted in, among other things, loss of culture, identity and language, dispersal and land loss, economic marginalization, and subjection of Metis children to physical, emotional, and sexual abuse. See, e.g., "Canada's Residential Schools: The Métis Experience", in volume 3 of the Truth and Reconciliation Commission of Canada, *The Final Report of the Truth and Reconciliation Commission of Canada* (Montreal & Kingston: McGill-Queen's University Press, 2015); Métis Nation, *What We Heard: Report of the Métis Nation's Engagement with Métis Sixties Scoop Survivors* (2019); Jeannine Carrière & Catherine Richardson, eds, *Calling Our Families Home: Métis Peoples' Experiences with Child Welfare* (Vernon, BC: J Charlton, 2017). For some autobiographical accounts of the effects of colonialism on Metis people, see, e.g., Maria Campbell, *Halfbreed*, restored edition (Toronto: Penguin, 2019); Beatrice Moisonier, *In Search of April Raintree*, 25th anniversary edition (Winnipeg: Portage & Main Press, 2008). On causes of overincarceration among Indigenous people generally, see, e.g., Scott Clark, *Overrepresentation of Indigenous People in the Canadian Criminal Justice System: Causes and Responses*, for the federal Department of Justice (2019).

A "roadmap" to responses to the question

In the discussion below, I reflect on four key areas of Metis life in which wahkotowin/kinship could be strengthened, leading to positive "practical results": 1) family; 2) the land; 3) diplomacy; and 4) knowledge transmission. [104]

As I understand this to be an exercise in creative idea generation, I have not detailed how these practical results might be realized, or the degree to which federal government-Metis collaboration might be required, except in the section on Metis diplomacy, since it deals in part with Metis relations with the state. I think it is entirely possible that much of the reanimation of wahkotowin will take place independent of the state and, indeed, this is already happening.

While some suggestions for creating positive change appear in the concluding section, my aim here is not primarily to provide a list of action items; this has been done by many others.[105] Steps to follow up many of these items have already been taken by federal and provincial governments.[106] Nevertheless, true justice has yet to be achieved. My purpose, then, is to invite readers to imagine what it might be like to look at the creation of "justice" from Metis legal perspectives, and thus to imagine appreciating Metis law as inherently valuable – without needing to fit it within the "container" of Canadian law.[107] Creating "Metis justice" would mean, from my perspective, not only solving practical problems, but engaging in relationship-building, and fostering miyo-wicehtowin – good relations – over time.

In formulating my responses, I assume that the Metis would have the political power to strengthen wahkotowin as described. This would imply the freedom of Metis people to strengthen, develop and use our own laws, but does not necessarily imply jurisdiction over/stemming from a land base (these issues will be discussed further in the section on "Land-Fraying and Reweaving"). Given historic Metis mobility – for instance, in pursuing the buffalo hunt, the fur trade and the cartage trade – Metis have long had forms of mobile jurisdiction[108] that have depended on kinship and consent rather than, necessarily, on territory.

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[104] At Louis Riel's trial for treason at Regina, in his July 31, 1885 address to the jury, he states, "During my life I have aimed at practical results. I have writings, and after my death I hope that my spirit will bring practical results." Reproduced in Hans V Hansen, ed, *Riel's Defence: Perspectives on His Speeches* (Montréal & Kingston: McGill-Queen's University Press, 2014) at 28.

[105] The Royal Commission on Aboriginal Peoples addresses Metis issues and provides Metis-specific recommendations in volume 4, *Perspectives and Realities* (1994) [RCAP]; the National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (volumes 1a and 1b) (Ottawa: Canada, 2019) [MMIWG Report], provides 29 Metis-specific calls for justice. See also Patricia Linn, ed, *Report of the Saskatchewan Metis Justice Review Committee* (1992), and the recommendations of the Government of Saskatchewan's Commission on First Nations and Métis Peoples and Justice Reform, *Legacy of Hope: An Agenda for Change*, vols 1 & 2 (2003); the submission to the commission (vol 2, section 1) by Métis Family and Community Justice Services, Inc (2003) is particularly instructive. See also the Métis Nation Working Group on Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (volumes 1a and 1b) (2019). The Métis Nation of Alberta (MNA) has provided a list of citizen priorities to reduce over-incarceration of Metis people: MNA, "Métis Nation of Alberta to Develop Renewed Justice Strategy" (23 May 23), online: https://albertametis.com/news/mna-to-develop-renewed-justice-strategy/.

[106] For instance, the federal government's Indigenous Justice Program (IJP), which includes cost-sharing with the provinces and territories, supports Indigenous community-based justice initiatives. According to a follow-up report, the IJP decreased the likelihood of reconviction among participants by 50% over 5 years post-completion. See Government of Canada, "Recidivism and Costing Analysis" (last modified 19 October 2022), online: https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/2021/indigenous-autochtone/rsca-erac.html.

[107] For instance, the "restorative justice" movement has arguably been influenced by Indigenous law. At the same time, while principles of restoration are key to Cree and Metis law, for example, restorative justice still operates within the state law sphere. See Larry Chartrand & Kanatase Horn, *A Report on the Relationship between Restorative Justice and Indigenous Legal Traditions in Canada*, prepared for the federal Department of Justice (2016).

[108] Karen Drake, "*R. v. Hirsekorn*: Are Métis Rights a Constitutional Myth?" (2013) 92:1 Can Bar Rev 149.

The use of Metis laws by Metis people is not limited to the Canadian law concept of "Aboriginal self-government," which forms part of and is subordinate to state law,[109] but refers to the exercise of law and governance on Metis terms, as envisioned by Metis people. Limiting Metis governance to "self-government" will impede the strengthening of wahkotowin necessary to achieve practical results. While greater scope for Metis self-government may be useful and beneficial, a "nation-to-nation" relationship implies a standard of *self-determination* for Metis and other Indigenous peoples. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states that Indigenous self-determination is an inherent right.[110] The federal government, in its *UNDRIP Act*[111] Action Plan, has stated its support for Metis self-determination.[112] Notwithstanding all the hard work and well-intentioned effort that has gone into creating Metis self-government agreements in Alberta, Saskatchewan and Ontario, a nation-to-nation relationship implies that the Metis nation is not solely a collection of provincial political organizations; Metis people participate in a variety of polities. Metis nationhood also encompasses kinship and treaty relations with other Indigenous nations.

A word about the definition of "Metis"

Issues surrounding Metis identity are complex and contentious. Perhaps the problem is partly with the term itself. Given that "métis" derives from a French word, via Latin, meaning "mixed", it has been used as a general term to describe people with both Indigenous and non-Indigenous ancestry. However, Metis people[113] are not simply mixed; we are a distinctive historic nation descended from Indigenous and non-Indigenous ancestors who created families and other social relations with each other over many generations.[114] Our identity is not based in blood quantum, but in wahkotowin. A Metis person is thus someone who is connected by kinship (through birth, adoption, or other means[115]) and community ties to a historic group with a national identity and a distinctive culture (with regional variations). This group is often referred to as the "Metis of the Northwest," or as the "Red

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[109] Gordon Christie, "Aboriginal Nationhood and the Inherent Right to Self-Government", research paper for the National Centre for First Nations Governance (2007).

[110] UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: Resolution adopted by the General Assembly*, (2 October 2007) A/RES/61/295 [UNDRIP], article 3.

[111] *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c-14 [*UNDRIPA*].

[112] See Department of Justice of Canada, *The* United Nations Declaration on the Rights of Indigenous Peoples Act: *Action Plan*, Chapter 4: "Métis Priorities" (2023), online: https://www.justice.gc.ca/eng/declaration/ap-pa/ah/p5.html. The recently introduced Bill C-53 recognizes the Métis Nation of Alberta, the Métis Nation of Saskatchewan, and the Métis Nation of Ontario as legitimate governments with some self-government powers. Bill C-53 also contemplates future treaties between the federal government and provincial Metis organizations in line with UNDRIP and *UNDRIPA*. Federal and provincial/territorial self-government negotiations are ongoing with the Métis Nation of BC and the Northwest Territory Métis Nation.

[113] Metis people traditionally often referred to themselves as "Michif" (also the name of a Metis language complex), or "Metif"; sometimes, people who were descended from non-francophone Europeans were referred to as "half-breeds." While "half-breed" was often used by outsiders as a derogatory term, it was used internally as well, and recently some people have tried to reclaim it. Other historic terms for Metis people include bois brulés ("burnt wood people"), otipemisiwak ("independent people"), âpihtawikosisân ("half son"), chicot (literally, "stump" – a short tributary of the St Lawrence River) and bungee (usually used to denote people of Saulteaux and Scottish background). Bungee is also the name of a (possibly) extinct Metis language.

[114] Chris Andersen, *"Métis": Race, Recognition, and the Struggle for Indigenous Peoplehood* (Vancouver: UBC Press, 2014); Chelsea Vowel, *Indigenous Writes: A Guide to First Nations, Métis, and Inuit Issues in Canada* (Winnipeg: Highwater Press, 2016).

[115] *R v Powley*, [2003] 2 SCR 207. "Other means" could presumably include marriage/partnership, fosterage, godparenting, and naturalization, although these possibilities are also contested. See Larry Chartrand, "Métis Identity and Citizenship" (2001) 12:5 Windsor Review of Legal & Social Issues 5. While ideas of "citizenship" and "naturalization" are borrowed from western political philosophy, they reflect the agency of Metis in employing so-called "fictive" kinship to create mutual obligations.

River Metis" – although there was also ethnogenesis elsewhere.[116] Thus, while our Metis nation is distinctive, we are also diverse, encompassing a range of heritages, cultural practices, and experiences.[117]

Today, questions about Metis belonging are highly divisive, as are questions about connections to other mixed rooted Indigenous communities (sometimes referred to as "the other Metis").[118] For instance, in 2020, the Métis National Council (MNC) suspended the Métis Nation of Ontario (MNO) for granting citizenship to people from certain mixed rooted communities in Ontario, alleging they were not part of the historic Metis nation. The Métis Nation of Alberta (MNA) and the Métis Nation of Saskatchewan supported the MNO's position, while the Métis Nation of BC and the Manitoba Métis Federation (MMF) were opposed. There has been further fragmentation provincially, with some people seceding from the MNA. The MMF has since left the MNC.[119] While all groups except the MMF have since met under new MNC leadership, questions about Metis identity remain unresolved.

The teachings of wahkotowin ask us to find respectful ways of managing conflict, through regularized meetings and dialogue, consultation, and diplomacy. Wahkotowin and miyo-wicehtowin ask us to work towards repairing our relationships and expanding our network of alliances.

The importance and meaning of wahkotowin/kinship

In Metis legal theory, wahkotowin – literally, "kinship"[120] – is a foundational concept;[121] the term and what it represents both derive from Cree philosophy.[122] Wahkotowin is about inter-human relationships, but it is also about all relationships within the natural world, as in the phrase "all my relations." Wahkotowin implies all human- and non-human beings (including water, rocks and soil) are interrelated and have kinship obligations to look after one another. Inter-human relations imply kinship at every level: thus, wahkotowin governs family relations; it guides harvesting and other practices on the land; and it informs law, leadership, and diplomacy.[123]

Given the depths of our interconnections and interdependence, wahkotowin also implies that the divisions between beings are more apparent than actual. "Trickster" (Wesakajak – Nehiyaw/Cree; Nanabush – Anishinaabe/Saulteaux) stories, in which beings shapeshift, illustrate this aspect of wahkotowin. As we could potentially exist in another lifeform, we are bound to consider others with compassion. This non-dualist aspect

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[116] See Macdougall, *One of the Family, supra* note 100 regarding northwestern Saskatchewan; regarding northern Metis, see Northwest Territory Métis Nation, "Declaration" (2023), online: https://nwtmetisnation.ca/about/; this may also have happened in British Columbia: Mike Evans, Jean Barman & Gabrielle Legault, "Métis Networks in British Columbia: Examples from the Central Interior" in Nicole St-Onge, Carolyn Podruchny & Brenda Macdougall, eds, *Contours of a People: Metis Family, Mobility and History* (Norman, OK: University of Oklahoma Press, 2012) 331.

[117] Catherine Richardson/Kinewesquao, *Belonging Métis* (Vernon, BC: J Charlton, 2016); Mike Evans, *et al*, "Principles of Ethical Métis Research" (2012) 5:1 Journal of Critical Indigenous Legal Studies 54.

[118] In my view, this is partly because state categorization of Indigenous people via legislation and case law has influenced how we think about ourselves. See section on "'Broken' Wahkotowin" for further discussion.

[119] There are other reasons for this split; in 2022, the MNC launched a multi-million-dollar lawsuit against the MMF, alleging financial improprieties.

[120] According to Maria Campbell, wahkotowin can mean "kinship" in a broader sense as well: "There is a word in my language that speaks to these issues: 'wahkotowin.' Today it is translated to mean kinship, relationship, and family as in human family. But at one time, from our place it meant the whole of creation. And our teachings taught us that all of creation is related and inter-connected to all things within it. Wahkotowin meant honoring and respecting those relationships. […] Human to human, human to plants, human to animals, to the water and especially to the earth. And in turn all of creation had responsibilities and reciprocal obligations to us." See Campbell, "Wahkotowin", *supra* note 100.

[121] *Ibid*; Macdougall, *One of the Family, supra* note 100.

[122] Sylvia McAdam (Saysewahum), *Nationhood Interrupted: Revitalizing* nêhiyaw *Legal Systems* (Saskatoon: Purich, 2015).

[123] Adam James Patrick Gaudry, Kaa-tipeyimishoyaahk – *"We are those who own ourselves": A Political History of Métis Self-Determination in the North-West, 1830-1870* (PhD Dissertation, University of Victoria, 2014) [unpublished].

of wahkotowin[124] thus implies the need to respect others, listen to others, and to try to assist others, even if it might mean we endure difficulties or might have to give up something of ourselves.

While the goal of having healthy, functional relationships is not always attainable, non-duality implies impermanence as well as the fluidity of time,[125] which suggest the benefit of taking a long view of things. Cycles of change in international relations might be longer than cycles of individual human lives. The goal is not to resolve or fix all problems for all time, but to engage respectfully in relationships, being mindful of our kinship responsibilities.[126]

Wahkotowin is embedded in Cree and Metis cultures, and has parallels across related Algonquian cultures, such as in the Anishinaabe concept of gdinawendimi ("we are all related").[127] It is enacted in ceremonies, and in art, music and aesthetics, as ways of reminding ourselves of our interconnections with other humans and non-human beings.[128] A goal of these reminders is to learn to develop compassion and understanding, and thus to learn to refrain from harming others. At the same time, wahkotowin is an expression of science, of how things really are – it is based on observations of the natural world,[129] including the idea of "spiritual exchange"[130] between beings (e.g., an animal giving its life for another; decay allowing for conditions of life). Ideas of kinship are not vague, romantic concepts, but ones that were/are employed in life-or-death contexts such as diplomacy and warfare, and in reliance on the land for survival.[131]

Kinship can be strengthened by exchange and gifting (reciprocity); visiting;[132] and cultural learning. For instance, the kinship practice of kiyokewin (visiting) has benefitted Indigenous youth in jail in Toronto, as documented by Metis criminologist Anna Flaminio. Through the visiting program—a collaboration between Aboriginal Youth

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[124] Anishinaabe scholar John Borrows states, "Anishinaabe law supports and even celebrates indirection, metaphor, ambiguity, and double entendre" (2016) 844: "Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education" (2016) 61:4 McGill LJ/RD McGill 795. According to Cree Moshom (Elder) Michael D Thrasher and co-author Jennifer S Dockstator, "[...] the existence of a dualist binary stance is not substantiated within Indigenous philosophies": in "Take Care of 'the Land' and 'the Land' Will Take Care of You: Relationship-Building through an Introduction to Indigenous Holistic Thought" in M Hankard & John Charlton, eds, *We Still Live Here: First Nations, Alberta Oil Sands, and Surviving Globalism* (Vernon, BC: J Charlton, 2016) 51 at 61.

[125] Willard Buck, *I Have Lived Four Lives …* (Winnipeg: Arbeiter Ring, 2021); Leah Marie Dorion, *The Giving Tree: A Retelling of a Traditional Métis Story* (Saskatoon: Gabriel Dumont Institute, 2009).

[126] For example, Allison Hargreaves and David Jefferess muse: "In mainstream conceptions of reconciliation, particularly in official discourses in Canada, reconciliation is most often supposed to provide closure – new beginnings, perhaps, but most importantly closure. Reconciliation purports to redress historic suffering and injustice, and in so doing provides an end to non-Indigenous guilt and responsibility. [...] But what if we understood reconciliation not as a means to secure closure – thus fulfilling Canada's national mythology of progress and inclusion – but rather as a place from which to begin the hard work of rethinking relationships and renegotiating responsibilities?" See Allison Hargreaves & David Jefferess, "Always Beginning: Imagining Reconciliation beyond Inclusion or Loss" in Gabrielle L'Hirondelle Hill & Sophie McCall, eds, *The Land We Are: Artists and Writers Unsettle the Politics of Reconciliation* (Winnipeg: Arbeiter Ring, 2015) 200 at 200. See also Gaudet, *supra* note 102.

[127] Borrows, "Language", *supra* note 101.

[128] Darcy Lindberg, "Miyo Nêhiyâwiwin (Beautiful Creeness): Ceremonial Aesthetics and Nêhiyaw Legal Pedagogy" (2018) 16/17:1 Indigenous LJ 51; Danielle Lussier, *Law with Heart and Beadwork: Decolonizing Legal Education, Developing Indigenous Legal Pedagogy, and Healing Community* (PhD Dissertation, University of Ottawa, 2021) [unpublished]; McAdam, *supra* note 110; Sherry Farrell Racette, *Sewing Ourselves Together: Clothing, Decorative Arts and the Expression of Metis and Half Breed Identity* (PhD Dissertation, University of Manitoba, 2004) [unpublished]; Kerry Sloan, "Dancing the Nation" 1:1 Rooted [17].

[129] John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010).

[130] Elmer Ghostkeeper, *Spirit Gifting: The Concept of Spiritual Exchange*, 2nd ed (Raymond, AB: Writing On Stone Press, 2007); Jennifer Adese, "Spirit Gifting: Ecological Knowing in Métis Life Narratives" (2014) 3:3 Decolonization: Indigeneity, Education & Society 48.

[131] See Zoe Todd, "Fish, Kin and Hope: Tending to Water Violations in amiskwaciwâskahikan and Treaty Six Territory" (2017) 43:1 Afterall: A Journal of Art, Context & Enquiry 102.

[132] Anna Corrigal Flaminio, "Kinship-visiting: Urban Indigenous Deliberative Space" in Karen Drake & Brenda L Gunn, eds, *Renewing Relationships: Indigenous Peoples and Canada* (Saskatoon: Wiyasiwewin Mikiwahp Native Law Centre, 2019) 143; Gaudet, *supra* note 102; Richardson, *supra* note 117.

Court and Aboriginal Legal Services of Toronto—Indigenous youth visit with Elders, community members and urban Indigenous youth workers, and participate in group circle settings, resulting in diversion from youth court and further jail time. This has created a greater degree of wellness among Indigenous youth involved with the criminal justice system in Toronto.[133] Similarly, the Metis Justice Institute of Manitoba seeks to provide culturally relevant supports and diversion programs to Metis people who have been charged with criminal offences.[134]

A note about Metis law

As might be deduced from the above, many aspects of Metis political and legal thought are based in the traditions of our Indigenous kin, most notably the Nehiyaw/Cree, prairie Anishinaabe/Saulteaux, and Nakota/Assiniboine. These nations, along with the Metis, formed the Nehiyaw Pwat, or Iron Alliance, a more than 200-year-old treaty relationship of the central North American Plains.[135] Because of historic kinship ties, Haudenosaunee (e.g., Kanien'ke:ha/Mohawk) and Dene cultures have likely also influenced Metis philosophy. Owing to the incorporation of congenial European borrowings – from French, Breton, Scottish, Irish and other traditions – Metis laws are distinctive, although still retaining their fundamental indigeneity.[136]

From all these traditions, we have woven a "new nation" with new cultures and new laws that share commonalities with both Indigenous and non-Indigenous inheritances and yet are particularly our own. Many Metis use the metaphor of the ceinture flechée, or arrow sash, a traditional Metis garment woven of multi-coloured threads,[137] to describe the weaving together of various cultures, where the individual threads are still visible, but united to create a distinctive, unique artifact. At the same time, Metis law is not a monolith; laws may vary across communities.[138]

Metis law still operates today, and is constantly transforming.[139] For instance, the oral Law of the Hunt, derived from Cree law, continues to be practised on the land, but parts of it have been codified, including the roles of Hunt Captains, who govern the hunt, as well as penalties for infractions (e.g., MNBC, Natural Resource Act, 2010).[140] Although our wahkotowin has not disappeared, it is still in the process of being revitalized.

"Broken" wahkotowin

The well-known Metis Elder, educator playwright and storyteller Maria Campbell has suggested that we are living in an age of "broken" wahkotowin. This is not to suggest that kinship no longer exists, but that sometimes

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[133] Flaminio, *ibid*.
[134] See www.mmf.mb.ca/metis-justice-institute.
[135] See also Nicholas Vrooman, "Many Eagle Set Thirsty Dance (Sun Dance) Song: The Metis Receive Sun Dance Song" in Lawrence J Barkwell, Leah M Dorion, & Audreen Hourie, eds, *Metis Legacy II: Michif Culture, Heritage, and Folkways* (Saskatoon: Gabriel Dumont Institute; Winnipeg: Pemmican, 2006) 187; Nicholas CP Vrooman, *et al*, *"The Whole Country Was ... 'One Robe'": The Little Shell Tribe's America* (Helena, MT: Little Shell Tribe of Chippewa Indians of Montana; Drumlummon Institute, 2012). The Gros Ventre/A'aninin/Atsina entered the confederacy in the 1860s.
[136] Kerry Sloan, "Four Views of Metis Constitutionalism" (forthcoming, 2023) [Sloan, "Metis Constitutionalism"].
[137] The sash is also an element of Québec culture, but derives ultimately from Indigenous art forms: Marius Barbeau, *Assomption Sash*, National Museum of Canada Bulletin 93 (Ottawa, 1939), published in French as *Ceintures fléchées* (Montréal: Éditions Paysana, 1945); Racette, *supra* note 128; Louise Vien & Lawrence J Barkwell,
A History of the Métis Sash (Saskatoon: Gabriel Dumont Institute, 2014), Virtual Museum of Metis History and Culture, online: http://www.metismuseum.ca/media/document.php/14789.History%20of%20the%20Metis%20Sash.pdf.
[138] Maria Campbell, personal communication (2019); Macdougall, *supra* note 100.
[139] On Indigenous laws as dynamic, living laws, see John Borrows, *Freedom and Indigenous Constitutionalism* (Toronto: University of Toronto Press, 2016).
[140] See MNBC's *Natural Resource Act* (2008, amended 2010).

we are not able to see it or have forgotten how to respect it – and each other. Campbell exhorts people to "return to the principles of wahkotowin," in order to create better lives for Indigenous people.[141]

Broken wahkotowin has resulted in part from the imposition of state law-based divisions between Indigenous peoples, such as between "Indian" and Metis, which are not consistent with traditional Metis kinship practices. While Metis people are culturally and politically distinctive, we often have complex kinship ties to other Indigenous nations, especially those of the Nehiyaw Pwat/Iron Alliance. While the intent of some state-based categorizations of Indigenous people may be ameliorative, in practice they foster division amongst Indigenous peoples and interfere with people's identity formation and attachment to their communities. For instance, people seeking constitutional protection of their Metis Aboriginal rights according to the legal test in *Powley* must define themselves according to criteria that assume hard divisions between Metis and other Indigenous people (who may be their kin) and oblige them to describe their communities in ways that might not be accurate. Further, one of the consequences of *Powley* is that a long-standing alliance between Metis and "non-status Indians" – who were similarly unable to obtain *Indian Act* benefits – has been eroded, due to the legal need of Metis rights claimants to define themselves in opposition to "Indians."[142]

According to Metis scholars Anna Flaminio and Cindy Gaudet, broken wahkotowin has also resulted from colonialist interference with visiting. For example, people who are incarcerated, whether in prison or in residential school, are prevented from visiting their relatives, and their lands.[143] Interference with visiting amounts to interference with cultural knowledge transmission: languages may be lost, skills may be forgotten; ties with the land may be severed. When bonds of kinship are broken, so are feelings of belonging to family and community. Enforced separation from those we care about creates trauma that may impact our ability to care about others.

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[141] Campbell, "Wahkotowin", *supra* note 100.

[142] A Metis Aboriginal rights claimant must be from a "historic" Metis community – a group of Metis with "a distinctive collective identity, living together in the same geographic area and sharing a common way of life" (*Powley, supra* note 20 at para 12); however, this requirement does not square with the realities of most Metis communities, which are not necessarily geographically bounded, may or may not be locally distinctive, and – because of the effects of colonialism – may be culturally diffuse. See Kerry Sloan, "Reference re *R v Powley*" in Kent McNeil & Naiomi Mettalic, eds*, Judicial Tales Retold: Reimagining Indigenous Rights Jurisprudence*, [2020] CNLR Special Edition 125. Space does not permit a more fulsome discussion of the effects of colonial and Canadian law assumptions about the need to restrictively categorize and define Indigenous peoples and their communities. There is a vast literature about the negative effects of the *Indian Act*, RSC 1985, c I-5, on Indigenous kinship practices, especially for women and children. See, for instance, Mary-Ellen Kelm & Keith D Smith, *Talking Back to the Indian Act: Critical Readings in Settler Colonial Histories* (Toronto: University of Toronto Press, 2018). Metis scholar Brenda L Gunn critiques *Cunningham v Alberta (Aboriginal Affairs and Northern Development)*, [2011] 2 SCR 670, which – with some limited exceptions – supports the denial of Alberta Metis Settlement membership to Metis people who register as status Indians. In her essay "Defining Métis People as a People: Moving beyond the Indian/Métis Dichotomy" (2015) 38:2 Dal LJ 413, Gunn states at 420 that "*Cunningham* highlights the many issues that follow from the dichotomous approach to defining Indian and Métis. Setting a hard line between Indian and Métis creates an artificial distinction that, for many, would force people to choose an identity even when one could potentially have one Indian and one Métis parent, and have biological, cultural and political allegiance to both". See Robert Innes, *Elder Brother and the Law of the People: Contemporary Kinship and Cowessess First Nation* (Winnipeg: University of Manitoba Press, 2013) for a description of how the Cowessess First Nation in Saskatchewan has preserved their kinship law practices, both internally and with neighbouring nations, including the Metis, despite the effects of the *Indian Act*.

[143] Flaminio, *supra* note 130.

Based on results over time, it seems that repairing wahkotowin may be difficult given ongoing colonial realities. Nevertheless, I contend Metis law has ways of teaching us how to remember our kinship responsibilities.

In discussing family, land, diplomacy and knowledge transmission – four aspects of "broken" wahkotowin in the process of being repaired – there is no correct order, as these aspects are interlinked. For instance, land is also part of our family, and knowledge is not possible without land. The format below relates to Metis ideas of governance radiating outward from the family in concentric circles,[144] but could easily be described in another way.

In the headings below, I have returned to the Metis metaphor of the ceinture flechée, which embodies the Cree concept of law as a kind of weaving or braiding,[145] to describe both the brokenness of wahkotowin and its possibility of repair. In restoring wahkotowin, we are participating in weaving ourselves together.

Family – fraying and re-weaving

Audreen Houle and Elder Anne Carrière-Acco assert that "the extended family was and is the basic unit of Metis society," and that the process of "creating good relations" was first exercised within the family.[146] Thus, a Metis family is both a source and a microcosm of governance. Family-level governance controlled (and may still control) many areas of law analogous to family and child welfare law, criminal law, estates, property, and social welfare.[147] The harmonious operation of these legal spheres has depended on healthy, functional relationships across extended families, and respect for older people (not just Elders) who act as decision makers in these contexts.

Respect for family also includes respect for self. It is this relationship through which we view all others. While, many times, others' needs must come before our own, there are basic human needs that must be met before there can even be the possibility of participating in healthy kinship relations.

In order to provide minimal care of the body for survival, a person needs food, water, shelter, clothing, exercise and, occasionally, health care. However, people also have emotional, intellectual and spiritual needs.[148] To flourish beyond mere physical survival, and to be able to be part of healthy social networks, people need meaningful human relationships, emotional and spiritual supports, methods of communication, education and training, and livelihoods. To be a functional part of any social unit, these needs must be met. To be able to respect others, one must be able to respect oneself, and be able to care for oneself, at least at a basic level. For many Metis people, poverty and discrimination have meant that these basic human needs have not been met.[149]

Traditionally, Metis people had a positive legal obligation to look after their family members and community members. In Metis communities, members were/are literally the extended kinship network in a local area. Many Metis stories illustrate the importance of providing for those who might have fewer family ties than others:

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[144] Maria Campbell, cited in Flaminio, *ibid*; see also M Max Hamon, *The Audacity of His Enterprise: Louis Riel and the Métis Nation That Canada Never Was, 1840-1875* (Montreal; Kingston: McGill-Queen's University Press, 2020).
[145] McAdam, *supra* note 122.
[146] In Lawrence J Barkwell, Leah M Dorion & Audreen Hourie, eds, *Metis Legacy II: Michif Culture, Heritage, and Folkways* (Saskatoon: Gabriel Dumont Institute; Winnipeg: Pemmican, 2006) at 56; Hamon states at 21, *supra* note 144, "The family was the primary public institution for the Métis. It was the centre of social relations and the root of political sovereignty."
[147] Fred J Shore & Lawrence J Barkwell, *Past Reflects the Present: The Metis Elders' Conference* (Winnipeg: Manitoba Metis Federation, 1997) [*Elders' Conference*].
[148] These understandings are based in Algonquian medicine wheel teachings about the four aspects of the self; these teachings are known and used by many Metis people.
[149] See, e.g., Les Femmes Michif Otipemisiwak/Women of the Métis Nation, *Anti-Racism & Métis Women, Girls and Gender-Diverse People* (2021), online: https://metiswomen.org/wp-content/uploads/2021/06/Anti-Racism-Paper.pdf [Les Femmes Michif].

single parents, orphans, and the elderly.[150] For instance, part of the role of the Hunt Captain is to ensure meat and other animal products are distributed fairly. People would be assigned to hunt for the elderly and others not able to hunt for themselves. This still happens in Metis communities, as many people, especially in rural areas, would go hungry over the winter without a freezer full of "country food." Another modern outgrowth of the law of sharing is the Alberta Métis Housing Society, which helps Metis people secure affordable housing.[151] Similarly, during the COVID-19 pandemic, many Metis communities delivered food, toiletries, medicines and other necessities to people who had lost their jobs, or were house-bound. Proper functioning of the family, and family governance, depends on the basic needs of life being met.

Of course, ideally, family is also a source of love, support and care, without which most humans cannot flourish. Having healthy family-based governance requires healthy family relationships across generations. Traditionally, relationships between children and their aunts and uncles,[152] and between children and grandparents and other elders were as important as the relationships children had with their parents.

Given the key importance to Metis governance of healthy family functioning, people had a positive obligation to help prevent families from breaking up, and to support families if break-up did eventually occur. According to Elders interviewed as part of a community research project about Metis law (the "*Elders' Conference*"), a family experiencing difficulties had a right to expect help with childcare and instruction, and with basic necessities.[153] Those helping families in need had a right to expect community assistance. Only in extreme cases were children separated from their parents.[154] Anyone mistreating children would be subject to punishment, and eventually to banishment. Banishment – and any subsequent reinstatement – would only happen upon community consensus.

Unfortunately, as with other Indigenous peoples, as Metis people we have had our families disrupted by residential schools, day schools, the "sixties scoop", and – still – outrageously high numbers of children in care.[155]

Modern Metis child and family service agencies and social welfare agencies have taken on many of the traditional functions practised by extended families and communities, and are thus revitalizing wahkotowin. CUMFI, the Central Urban Métis Federation Inc. in Saskatoon, is an example. CUMFI, which is run by and for Metis people as an independent agency, provides subsidized and supportive housing for families, temporary emergency housing, and educational and cultural programs.[156] One of the main goals of CUMFI is to support families to retain or regain custody of their children.

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[150] See, e.g., Maria Campbell, trans, *Stories of the Road Allowance People,* rev ed (Saskatoon: Gabriel Dumont Institute, 2010); Norman Fleury, *et al*, eds, *Stories of Our People/Lii zistwayyr di la naasyoon di Michif: A Métis Graphic Novel Anthology* (Saskatoon: Gabriel Dumont Institute, 2008); Henri Létourneau, *Henri Létourneau reconte* (Winnipeg: Éditions GFL, 1992).

[151] See online, https://www.metishousing.ca/mtis-housing-home-page/. See also Nathalie Kermoal, « Canative, 'Un propriétaire qui fait toute la différence': Mise en place d'une société de logement métisse à Edmonton dans les années 1970 » (2017) 47:1 Recherches amérindiennes au Québec 111.

[152] Compare the role of uncles in Cree hunting law in helping youth who have committed harvesting infractions: Cree Trappers Association's Committee of Chisasibi, *Cree Trappers Speak* (Chisasibi, QC: James Bay Cree Cultural Education Centre, 1989).

[153] *Elders' Conference*, supra note 147.

[154] *Ibid*.

[155] Les Femmes Michif, *supra* note 149.

[156] See www.cumfi.org.

On January 1, 2020, *An Act respecting First Nations, Inuit and Métis Children, Youth and Families*[157] came into effect. This law affirms Indigenous peoples' inherent right to exercise jurisdiction over their own child and family services. While it is still not clear how this will affect Metis agencies that are not Delegated Aboriginal Agencies, it is hoped that, in future, Metis people will be fully able to exercise our own child welfare jurisdiction, and will revitalize supports based in Metis laws.

Revitializing wahkotowin in families can also be achieved by supporting youth and Elders – and by fostering connections between them. Traditionally, children and youth spent a great deal of time with older people, learning life skills, land-based skills, stories, family histories, law and ethics, and other cultural knowledge. Older people, particularly women, made many decisions in communities dealing with harmful behaviour, especially in family matters.[158] Depending on the severity of wrongs that might have been perpetuated, consultations and exhortations within the family were enough to help prevent harms from continuing. While close family members would be decision makers in various kinds of minor conflicts, larger, more serious offences would be dealt with at the extended family or clan level.[159]

Women are central to family governance and cultural knowledge transmission, and also have the responsibility to protect the land and water. Women are considered keepers of legal knowledge,[160] as well as family histories.[161] Traditionally, women mediated conflicts related to land rights. Given these important roles, as well as their role as life-givers, women were highly respected in Cree and Metis societies. Broken wahkotowin can be seen in departures from this – Metis women are now more likely than non-Indigenous women to be victims of domestic violence, murder and other violent crime.[162]

In addition to supporting women, tending to wahkotowin within families includes supporting 2SLGBTQQIA+ people and families. For instance, my Metis local (the Metis Nation of Greater Victoria) has its own 2SLGBTQQIA+ portfolio, which is especially active in supporting two-spirit/queer youth.

People of all genders, family configurations, ages and backgrounds are entitled to be supported as part of the larger Metis kinship network.

Land – Fraying and Reweaving

Kinship exists not just with other humans, but with all sentient beings, including the land, waters, and skies. Thus, in Metis practice, animals are respected as relatives. Animals should not be spoken of negatively, or teased. Animal habitats should be protected. If it is necessary to kill an animal for food, it should be done skillfully and mindfully. Prayers are said for a good hunt, and if any animals or birds are killed, offerings are given for them such as tobacco or other herbs. The carcass of an animal must be treated with respect, and all the meat and other parts should be used, so that an animal does not give its life in vain.[163] Prayers and offerings are also given for fish and plants that are taken; permission should be asked before taking plants.[164]

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[157] SC 2019, c 24.
[158] *Elders' Conference, supra* note 147.
[159] *Ibid*.
[160] McAdam, *supra* note 122; Sharon Venne, "Understanding Treaty 6: An Indigenous Perspective" in Michael Asch, ed, *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality and Respect for Difference* (Vancouver: UBC Press, 1997) 173.
[161] *Elders' Conference, supra* note 147.
[162] MMIWG Report, *supra* note 105; Les Femmes Michif, *supra* note 149.
[163] Metis research participants in Karen [Kerry] Sloan, *The Community Conundrum: Metis Critical Perspectives on the Application of* R v Powley *in British Columbia* (PhD Dissertation, University of Victoria, 2016) [unpublished]: Elder Eldon Clairmont, Elder Lottie McDougall Kozak, former Hunt Captain Dan LaFrance, former Hunt Captain Dean Trumbley, Wayne Bousquet, Greg Willison.
[164] Metis research participants in Sloan, *ibid*: Lottie McDougall Kozak and Dan LaFrance.

A Metis story collected by Abenaki storyteller Joseph Bruchac tells of how the moose smoked the pipe of the humans and agreed to sometimes allow themselves to be killed and eaten by humans in exchange for the humans agreeing to only take what they need and to preserve the moose's habitat.[165] This is a human-moose treaty relationship based in wahkotowin. Similarly, the Cree Trappers of Chisasibi have stressed the agency of animals: "[...] hunters have no power over the game, animals have the last say as to whether they will be caught."[166] In addition to regulating human/non-human relationships, the law of the hunt was central to Metis governance and political culture.[167] This law went with the Metis on hunts and was a form of mobile jurisdiction.[168]

In Saskatchewan in 1875, Metis attempts to enforce their own conservation laws in order to preserve the remaining buffalo were met with consternation by Canadian authorities, who were on the verge of claiming jurisdiction themselves in the Northwest.[169] In addition to sending 50 Northwest Mounted Police to the Metis at Batoche as a show of force, the Canadians exacted a promise that the Metis would cease to publicly enforce their laws in the territory. This had disastrous consequences for the buffalo – and for the Metis and other Indigenous people who relied on them. The Hudson's Bay Company and others were then free to kill buffalo indiscriminately, leading to the extirpation of buffalo on the plains; these actions led to Indigenous people's starvation, and were seen as a coercive factor in the signing of Treaty 6.[170]

Metis in the Saskatchewan region at the time had mostly migrated there from the Red River area in Manitoba.[171] Migration was prompted by a sudden influx of post-confederation settlers, and by the Canadian government's failure to guarantee Metis land rights in the region. These rights were supposedly guaranteed by the *Manitoba Act, 1870* – viewed by many Metis as a treaty. While most Red River Metis obtained scrip certificates entitling them to land (although not necessarily their own), scrip fraud and speculation were rife, leading many to lose their lands.[172] Others sold theirs (often for far less than market value), choosing to leave for the west and north, where waves of settlement had yet to reach. However, it was not long before encroaching colonialism caught up with the Metis in Saskatchewan. Confronting this reality, Metis in the Batoche area requested recognition of their lands, especially as previous requests for representative government had been ignored. The Canadian government caused desperation among the region's Metis by declining. With the buffalo herds drastically diminished, and residents' fields and flocks now in jeopardy, people were faced with starvation. The Resistance of 1885 was entered into reluctantly,[173] and failed to secure Metis land rights. With no way to preserve their

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[165] Canadian Museum of History/Musée canadien de l'histoire, "How the People Hunted the Moose" (long version), online: https://www.historymuseum.ca/cmc/exhibitions/aborig/storytel/crme2eng.html. Adapted from Michael J Caduto & Joseph Bruchac, *Keepers of the Animals: Native American Stories and Wildlife Activities for Children*, 2d ed (Golden, CO: Fulcrum, 2013).
[166] Cree Trappers, *supra* note 152 at 21.
[167] Gaudry, *supra* note 122.
[168] Drake, *supra* note 108; Adam Gaudry & Karen Drake, "The Resilience of Métis Title: Rejecting Assumptions of Extinguishment" in Yvonne Boyer & Larry Chartrand, eds, Bead by Bead: Constitutional Rights and Métis Community (Vancouver: UBC Press, 2021) 71.
[169] Don McLean, *Home from the Hill: A History of the Metis in Western Canada* (Regina: Gabriel Dumont Institute, 1987); Diane Payment, *The Free People – Li Gens Libres: A History of the Métis Community of Batoche, Saskatchewan* (Calgary: University of Calgary Press, 2009).
[170] McLean, *ibid*; James Daschuk, *Clearing the Plains: Disease, Politics of Starvation, and Loss of Indigenous Life (Regina: University of Regina Press, 2014).*
[171] Gabriel Dumont was the south Saskatchewan Hunt Captain from 1863, and knew the Indigenous trade routes in the area, as well as the buffalo migration routes. Metis traders and hunters in the area would have known their Cree allies there, who lived on both sides of the South Saskatchewan River. Based on these relationships, it was Dumont and his wife Madeleine Wilkie who persuaded many displaced Manitoba Metis to settle in the Batoche area. See McLean, *ibid*.
[172] Frank Tough & Erin McGregor. "'The Rights to the Land May Be Transferred': Archival Records as Colonial Text – A Narrative of Métis Scrip" in Paul W dePasquale, ed, *Natives & Settlers, Now & Then: Historical Issues and Current Perspectives on Treaties and Land Claims in Canada* (Edmonton: University of Alberta, 2007) 33.
[173] McLean, *supra* note 169, Joseph F Dion, *My Tribe the Crees* (Calgary: Glenbow-Alberta Institute, 1994).

lands, many Metis became "road allowance" people, literally liminal, squatting on government rights of way. Nearly 200 people died following the Battle of Batoche[174] – not from combat wounds, but due to starvation and poverty, which exacerbated mortality from tuberculosis, influenza, and other diseases.

While Metis activism in Alberta resulted in government recognition of some Metis settlements in the province in the 1930s,[175] in that same decade a traditional Metis village in Manitoba, Ste-Madeleine, was razed to create pastureland for settlers.[176] This action was undertaken pursuant to the *Prairie Farm Rehabilitation Act* (1938) without consultation – many residents were not even informed in advance.[177] Other than the Alberta Metis Settlements, no Metis territories have been officially recognized by Canadian governments, although Metis are pursuing a land claim in northwestern Saskatchewan and northeastern Alberta. In 2013, the Supreme Court of Canada granted a declaration in the *Manitoba Métis Federation* case (SCC 2013 14) that the Canadian government had failed to live up to its obligations in the administration of the scrip system in Manitoba. But the lands – now owned by innocent third parties – cannot be recovered.

There are still traditional Metis territories from Ontario to BC, and in the north. While many of these areas are sites of use rights, some scholars assert that Metis title (including shared title) still persists in some areas.[178] Regions in northwest Saskatchewan and southern Manitoba have been recognized in case law as supporting Metis harvesting rights (e.g., *Belhumeur* (2007 SKPC 114); *Laviolette* (2005 SKPC 70); *Goodon* (2008 MBPC 59)). Metis land use patterns in northeastern BC gave rise to the requirement of a medium degree of consultation on the Site C hydroelectric dam project.

While there are Metis who do live a "traditional" lifestyle, living with the land, there are many others who have no connection to lands where their families once lived. As "the land helps us see and feel differently,"[179] it is important for the preservation and practice of Metis culture that people, especially youth, have opportunities to experience being on the land. However, Metis relationships with territory are complicated.[180] For instance, lands in the Metis "homeland" are in the traditional territories of allied First Nations (i.e., the nations of the Nehiyaw Pwat, or Iron Alliance, between the Nehiyaw/Cree, Anishinaabe/Saulteaux, Nakota/Assiniboine and Metis); Metis were permitted to live in these areas because of their kinship and other social ties to their allies. [181] Eventually, these areas came to be seen as Metis. Sometimes, Metis had shared title with their allies; sometimes, they only had use rights – for instance, those agreed to via treaty (e.g,. Metis-Dakota treaties in the mid-1800s). Metis arguably had passage rights through non-allied territories (e.g., Blackfoot/Siksika territory in southern Alberta). [182] Often, Metis organized land rights as between themselves based on the long lot patterns of their Québec cousins (although they dispensed with the semi-feudal aspects of these tenures). This was true, for example, at Red River and Batoche.

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[174] 191 from 1894-1904 according to Parks Canada signage at Batoche.
[175] Nicole O'Byrne, "'No other weapon except organization': The Métis Association of Alberta and the 1938 Métis Population Betterment Act" (2013) 24:2 J Canadian Historical Association 311.
[176] Trevor Harriott, Towards a Prairie Atonement (Regina: University of Regina Press, 2016).
[177] Shane Gibson, "'We lost our homes': Museum tells story of Métis village's displacement", CBC News (24 May 2019); online: https://www.cbc.ca/news/canada/manitoba/manitoba-museum-metis-ste-madeleine-1.5149812.

[178] Gaudry & Drake, supra note 168.
[179] Maria Campell, cited in Gaudet, supra note 102 at 56.
[180] Kerry Sloan, "Always Coming Home: A Story of Metis Legal Understandings of Community and Territory" (2017) 33:1 Windsor Yearbook of Access to Justice 125.
[181] Gaudry, supra note 123; Daniel Jacob-Paul Voth, The Devil's Northern Triangle: Howard Adams and Métis Multidimensional Relationships with and within Colonialism (PhD Dissertation, University of British Columbia, 2015) [unpublished].
[182] See Drake, supra note 108.

While some Metis people today live in traditional settlement areas, many of us do not. Some of us may be urban, some may be rural. The modern Metis Nation is thus made up of many communities, some of which are physically disparate, some of which are separated from their traditional land bases, and some of which are arguably not attached to particular lands. Although these territories were once connected, weblike,[183] through trade and migration routes,[184] they are now more likely to be connected virtually.

Nearly 30 years ago, the Royal Commission on Aboriginal Peoples (RCAP) recommended state recognition of Metis territories and jurisdiction.[185] The drafters of RCAP recognized the harms that have resulted from Metis people's broken wahkotowin with their lands: loss of cultural knowledge transmission, loss of economies, loss of access to food and medicines, and erosion of spiritual well-being.[186] There have been efforts at the local community level to have older people teach urban and small-town youth skills out on the land; some Metis have shared hunts with First Nations in which Metis are invited to organize the hunt – a skill that harkens back to the buffalo days of the prairies. However, reweaving inter-Indigenous harvesting connections properly, in accordance with Metis law, would require wahkotowin of another kind: diplomacy. This is because the Metis Law of the Hunt is about international relations as well as inter-community matters. The Metis hunt law prescribes that if Metis people want to harvest in the territory of another nation, they must first ask permission. This will be particularly relevant where Metis currently have no treaty relationships and relatively few kinship ties with other Indigenous nations.

Diplomacy – fraying and reweaving

To prevent the continuation of wars in the mid-1800s over hunting territories, the Metis and the Dakota entered into harvesting and friendship treaties that built on the Iron Alliance – the Dakota are related to the Nakota, who were already treaty parties. To solidify the wahkotowin of these treaties, Metis and Dakota people intermarried and adopted each other's children, including war orphans.[187] Thus, today many Metis people have Dakota ancestry, and Dakota people have Metis ancestry. This is one example of the Iron Alliance leading to the creation of intercultural communities among alliance members.[188]

According to Cree scholar Robert Innes, in his nation, the Cowessess First Nation in Saskatchewan, these relationships still persist.[189] Areas of Metis settlement such as Île à la Crosse (northwest Saskatchewan), St Louise (central Saskatchewan), Turtle Mountain (southern Manitoba and northern North Dakota), and the Peace Country in northeast BC are also intercultural spaces where Metis and their allies have lived together over many generations.

Since the Metis-Dakota treaties, Metis relations with other Indigenous nations have generally been peaceful … but not without differences of opinion. For instance, some First Nations at the time of the second Riel Resistance

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[183] See Brenda Macdougall, Carolyn Podruchny & Nicole St-Onge "Introduction: Cultural Mobility and the Contours of Difference" in Nicole St-Onge, Carolyn Podruchny & Brenda Macdougall, eds, *Contours of a People: Metis Family, Mobility, and History* (Norman: University of Oklahoma Press, 2012) 3; Nicole St-Onge & Carolyn Podruchny, "Scuttling along a Spider's Web: Mobility and Kinship in Metis Ethnogenesis" in *Contours of a People*, 59; Jean Teillet, *Metis Law in Canada* (Toronto: Pape Salter Teillet, 2013).
[184] Shalene Jobin, "Cree Peoplehood, International Trade, and Diplomacy" (2013) 43:2 Revue général de droit 599.
[185] RCAP, *supra* note 105 at 228-34; Sloan, "Metis Constitutionalism" supra note 136.
[186] For further details, including on the effect of loss of lands on Metis people's well-being generally, see Brenda Macdougall, Land, Family and Identity: Contextualizing Metis Health and Well-being (Prince George, BC: National Collaborating Centre for Aboriginal Health, 2017).
[187] There are many Metis stories about these relationships – see Letourneau, *supra* note 150. The Wilkie family, Gabriel Dumont's in-laws, were married into the Dakota nation; Gabriel Dumont and Madeleine Wilkie adopted Dakota children.
[188] Innes, *supra* note 142.
[189] *Ibid*.

in 1885 said that it would be wrong to fight, as it would violate their treaty commitments with the Crown.[190] Because of some Metis people's connections with both settler and Indigenous societies and because of their multilingualism, Metis often functioned as cultural intermediaries. For instance, Metis people acted as interpreters during treaty negotiations, and others were scouts for the Northwest Mounted Police. Because some Metis farmed as well as hunted, fished and trapped, Metis were occasionally sought out by Indian Agents as farm instructors. While not many Metis people acted in these colonial roles, these choices did cause some resentment among other Indigenous people.

The most recent expression of this kind of sentiment was made by the Union of BC Indian Chiefs, who claimed that the Métis Nation of BC, the largest Metis political association in the province, acted in colonialist ways by supporting pipeline projects through unceded Indigenous territories (including those subject to land claims), and by declaring self-government.[191]

Twenty years ago, conflict was also generated when the Métis Nation of Alberta negotiated a harvesting agreement with the provincial government without consultation with other Indigenous nations. This angered many Indigenous people in Alberta, because, in their view, the Metis-provincial agreement challenged their claims to title and jurisdiction; as well, many Alberta nations, in the wake of *Delgamuukw v BC*, had title claims and treaty land entitlement claims pending. Eventually, the harvesting deal had to be scrapped, although the current regime has not involved full First Nations inputs either.[192]

Various First Nations have protested the self-government agreements signed with Metis nations in Alberta, Saskatchewan, and Ontario. For instance, in Ontario, some Chiefs have protested the MNO self-government agreement; this position has been supported by the Assembly of First Nations.[193] The Wabun Treaty Council, a group of six nations in northeastern Ontario, has filed a court application to challenge the agreement. At issue is the potential that Metis "self-government" means title and jurisdiction, especially as Metis are claiming rights to consultation and accommodation in others' territories. While the current wording of the three agreements does not encompass questions of title, or even harvesting rights, subject matters of future talks are not restricted.[194]

This conflict has prompted the Anishinabek Nation of Ontario to withdraw from a treaty relationship it entered into in 2004 with the MNO, as it views the western Ontario community members as Anishinaabe, and therefore not under Metis jurisdiction.

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[190] See Blair Stonechild & Bill Waiser, *Loyal till Death: Indians and the North-west Rebellion* (Calgary: Fifth House, 1997).

[191] See Union of BC Indian Chiefs, "UBCIC Unanimously Passes Resolution Rejecting and Denouncing Métis Colonialism in BC and the Crown's Past and Ongoing Facilitation of It" (13 June 2023), online (press release): https://www.ubcic.bc.ca/ubcic_unanimously_passes_resolution_denouncing_metis_colonialism. Many Metis groups actually protested these pipeline projects, and some board (council) members even resigned: "Enbridge Deal Divides Metis", Terrace Standard (19 June 2012).

[192] Delgamuukw v BC, [1997] 3 SCR 1010. In September of 2004, the Métis Nation of Alberta ("MNA") entered into an *Interim Métis Harvesting Agreement* ("IMHA") with the Province of Alberta. The Agreement gave eligible Metis the right to harvest for food year-round on all unoccupied Crown lands in Alberta. After the Alberta Queen's Bench decision in *R v Kelley,* [2006] No. 353 (APC), [2007] No. 67, which upheld a Metis claimant's right to rely on the IMHA, and after subsequent negotiations between the MNA and the province, Alberta terminated the IMHA on July 1, 2007 and implemented a unilateral harvesting policy that recognizes 17 Metis communities north of Edmonton. According to the new policy, each of these communities may harvest within a 160 km radius only.

[193] Assembly of First Nations, "Assembly of First Nations (AFN) Supports First Nations Calls to Delay Implementation of Metis Self-Government Implementation and Recognition Legislation" (20 June 2023), online (press release): https://afn.ca/all-news/press-releases/assembly-of-first-nations-afn-supports-first-nations-call-to-delay-implementation-of-metis-self-government-recognition-and-implementation-legislation/.

[194] For example, see the Metis Nation of Saskatchewan agreement, sections 8.05-8.08.

From a Metis perspective, title is not necessarily implicated in harvesting, as many Indigenous nations had/have use rights in the territories of other nations. Metis provincial organizations already exercise jurisdiction with respect to their own citizen harvesters. MNBC, for example, uses a modified Hunt Captain system, with regional Hunt Captains, who also have liaisons with local Metis communities. MNBC has enacted the *Natural Resource Act*, which embeds and expands on the Metis hunt laws. Again, harvesting laws were based on a form of mobile jurisdiction.

In discussing these issues with other Metis people and in reading the works of my Metis colleagues, it has been suggested to me that the best way to encourage and sustain good relationships within Metis society, with other Indigenous nations, and with the Crown, is to return to wahkotowin by engaging in treaty practices. This would entail having the physical and virtual space for meeting and visiting, including eating together. Having regularized meetings could help to prevent conflict from escalating, and – if sufficient time were set aside – could lead to creative, collaborative problem solving. A form of this has already been arranged by the federal government in its recognition of rights discussion tables, but these seem to be between Indigenous peoples and the Crown; they do not involve inter-Indigenous dialogue.

The possibility of expanded dialogue processes raises the question of who should represent Metis people. Although the government is accustomed to dealing with Metis provincial political associations (which were created partly for this purpose), these organizations are not the nation itself, and represent only a segment of the population. For instance, many local Metis communities are "charter communities" with ties to their provincial organizations but are fairly autonomous and are not beholden to support provincial-level decisions. In BC, for example, there are two large political organizations – MNBC and the BC Metis Federation – but there are also smaller organizations, such as the Louis Riel Society in the Vancouver Lower Mainland, and the independent societies in the environs of Kelly Lake, in the BC Peace Country. It is unfortunate that, in one of the key arenas of conflict between the Metis and the Crown, courts have ruled that the Crown is only obliged to deal with the largest Metis associations – those that have state recognition (*Ft Chipewyan Métis Nation v Alberta*, 2016 ABQB 713). Of course, it is understandable that the Crown would wish for some degree of certainty, a sense that they are dealing with reliable, legitimate authority, but Metis people should be able to have more latitude in determining who speaks for them. Some are worried that the intent of the federal government in signing the Metis self-government agreements is to only have to deal with the provincial Metis associations under the aegis of the MNC.[195]

Of course, repairing wahkotowin with other Indigenous nations and the state does not mean we can ignore inter-Metis conflict; we need to repair kinship amongst ourselves too. We can't "unhear" *Powley*, or the *Indian Act*, or the *Cunningham* and *Ft Chipewyan* cases, we can continue to value ourselves, learn about our history and revitalize our cultures. We can continue to learn our laws, laws that teach inclusion and the fostering of alliances.

Knowledge transmission – gathering the threads

Learning about Metis history and culture, including law, is key to individual and group health, family cohesion, good governance, thoughtful relationships with the land, and functional diplomacy. Remembering our practices of wahkotowin and passing these down in every area of life is something we are re-learning. While government funding has been helpful in supporting cultural events, language learning, skills training, youth programming and

[195] For a critique of this position, see Wesley Simpson-Denig, "Constitutional Crisis at the Métis Nation of Alberta", Yellowhead Institute (9 February 2023), online: https://yellowheadinstitute.org/2023/02/09/mna-constitutional-crisis/.

health education, there is still much to do. It is not just we as Metis who need to learn about our history and culture – settlers and other Indigenous people could benefit from this as well.[196] Because our cultures are distinctive, we might not have the same views or practices as other Indigenous people. We might make different cultural assumptions.

The subjects discussed above are interconnected. For instance, people who are not physically or mentally healthy cannot be fully open to learning. Emotional discord resulting from broken wahkotowin, at any level, impedes learning. Further, learning cannot be successful without connections to the land; dedicated indoor spaces are needed as well. Learning requires fostering connections with others. It is a collaborative process by which we become open to new ideas, even if uncomfortable. Finally, learning is most successful when there is support for those who share their knowledge, and for those who receive it.

Metis criminologist Anna Flaminio has suggested the creation of Metis legal institutions, in line with Call to Action No 50 of the Truth and Reconciliation Commission Report: "In keeping with the United Nations Declaration on the Rights of Indigenous Peoples, we call upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the development, use, and understanding of Indigenous laws and access to justice."[197] So far, although people practise Metis law every day in multiple contexts, there is little literature about it, either popular or scholarly. I have tried to reference works and ideas of my colleagues in academia and Metis government, but I look forward to a future when there are thriving Metis legal institutions and Metis spaces for learning. I look forward to a future when Metis individuals, families and communities are thriving too, as we learn to better care for one another.

Concluding thoughts and suggestions

While the concern that inspired the request for this thought paper was the incarceration of Indigenous people all out of proportion to our numbers, I have tried to think about the question of "justice" for Metis people more broadly. Even if I wished to simply look at statistics, that might be challenging, as often data about Metis people is not disaggregated from data about Indigenous people generally, especially regarding criminal matters.[198] While it is likely true that a variety of social factors, such as poverty, family ruptures, lack of access to education and good jobs, and poor mental health all contribute to over-incarceration, these realities have been documented by social scientists and numerous government reports. The overriding reason for a lack of "justice" among Metis people is colonialism, and the capitalism it has engendered.

Whether as a direct or indirect result of colonialism, our wahkotowin is broken. This is not to say Metis people have never had conflict for other reasons, or that Metis people are exempt from replicating unfortunate behaviours that seem to be part of the human condition. What I am saying is that, over time, Metis people developed theories and practices of dealing with conflict and social ills and these were functional.[199] I have described these theories and practices, such as kinship and visiting, as "Metis law," although even the term "law" is a borrowed one.[200] Law includes jurisdiction, whether based in territories or otherwise. A key to healthy

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[196] RCAP, *supra* note 105.
[197] Anna Corrigal Flaminio, "Urban Indigenous Kinship Visiting: Deliberative and Healing Approach", presentation to the World Indigenous Law Conference, University of Windsor (19 November 2018), online: https://www.uwindsor.ca/law/sites/uwindsor.ca.law/files/wilc_urban-indigenous-kinship_annacorrigalflaminio.pdf.
[198] Les Femmes Michif, *supra* note 149.
[199] Gaudry, *supra* note 123.
[200] Maria Campbell, personal communication (2019); McAdam, *supra* note 122.

Metis functioning, then, is to be free from restraint in practising Metis law – including teaching Metis law – and to be encouraged and supported in doing so.

One of the foundational concepts of Metis law is wahkotowin, which is both theory and practice.[201] Wahkotowin includes practices that help us recall the reality that we are all kin. This includes reaffirming our relationships to ourselves, our families, our communities, our lands and our neighbours – all our relations. It includes reinforcing knowledge about kinship through ceremony, spirit gifting, and visiting. Other Metis thinkers have suggested that revitalizing visiting is key to Metis wellness and is itself a form of ceremony.[202] Creating space – literal and metaphorical – for kinship practices can help to restore health to Metis people at all levels. The following are some practices that could be helpful in reconstituting wahkotowin:

- creating treaty tables and regularized meetings (internal, with other Indigenous nations, with the Crown), including creating positive physical spaces for such meetings;
- creating Metis law institutes and historical research centres;
- creating more opportunities for visiting between youth (especially at-risk and criminalized youth) and Elders/knowledge holders;
- participating in ceremony;
- creating more opportunities for on-the-land learning and other cultural education for people of all ages—this includes learning for non-Metis people as well;
- supporting publication of learning materials;
- creating supports for family cohesion; and
- fostering a sense of positive identity and belonging.

Reconstituting wahkotowin helps us to remember who we are and teaches us to value ourselves and others.

In reanimating these practices, we can remind ourselves of the non-duality teachings of wahkotowin that encourage us to value the uniqueness of individual and community expressions of Metisness, and to be inclusive and accepting of all our relatives, even when we disagree. These non-duality teachings also encourage us to take a long view of relationships, knowing that recognizing kinship doesn't always mean an absence of conflict.

To help create health for Metis people – whether conceived of as "justice" or as the "good life" – we must, as Maria Campbell exhorts us, "return to the principles of wahkotowin."

[201] Gaudet, *supra* note 102.
[202] Ibid; Flaminio, *supra* note 199.

Towards justice for urban Indigenous communities in Canada

By Aaron Mills[203]

Project and approach

The purpose of this report is to guide the development of the urban Indigenous component of the Department of Justice Canada's (JUS) Indigenous Justice Strategy (IJS). I have been asked to consider two issues in particular within my recommendations:

- The overrepresentation of Indigenous peoples in the criminal justice system; and,
- The systemic discrimination against Indigenous peoples within Canada's justice system.

With respect to the second issue, I have been advised that the reference to "justice system" is intended to point beyond the criminal context, while of course including it.

I have also been asked not to focus on challenges and problems already documented through inquiries, commissions and scholarly research.[204] Instead, my task is aspirational: I am asked to articulate a path forward, a vision for the future. Importantly, I am encouraged to proceed unencumbered by worries about federal government (including JUS) interests. I am specifically encouraged to engage with the prospect of Indigenous law revitalization—that is, bringing Indigenous law back—insofar as doing so relates to the research question. This is important because I take, as a starting point, that Indigenous systems of law and governance have never been legitimately terminated. Albeit seriously damaged, in many Indigenous communities' Indigenous law is still functioning. With careful work and adequate support, I think this could be true of all Indigenous communities in Canada.

My approach is as follows. I begin by explaining that both of the focus issues identified above are consequences of "internal" colonialism.[205] This means that while we might reform (improve upon) these two issues by tackling them directly, we can only transform (eliminate) them by ending internal colonialism. As our focus therefore

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[204] A non-exhaustive list of relevant governmental final reports includes: AC Hamilton and CM Sinclair, *Report of the Aboriginal Justice Inquiry of Manitoba, Volume 1: The Justice System and Aboriginal People* (Winnipeg: Queen's Printer, Province of Manitoba, 1991); Law Reform Commission of Canada, *Report on Aboriginal Peoples and Criminal Justice: Equality, Respect and the Search for Justice* (Ottawa: Law Reform Commission of Canada, 1991); Canada, Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (Canada Communication Group, 1996); Hon David H Wright, *Report of the Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild* (Saskatchewan: Government of Saskatchewan, 2004); Hon Sidney B Linden, *Report of the Ipperwash Inquiry, Volume 1: Investigation and Findings* (Toronto: Government of Ontario, 2007); Hon Frank Iacobucci, *First Nations Representation on Ontario Juries: Report of the Independent Review Conducted by The Honourable Frank Iacobucci* (Government of Ontario, 2013); Truth and Reconciliation Commission of Canada, *The Final Report of the Truth and Reconciliation Commission of Canada, 6 Vols* (MQUP, 2015); Gerry McNeilly (Independent Police Review Director), *Broken Trust: Indigenous Peoples and the Thunder Bay Police Servic*e (Toronto: Office of the Independent Police Review Director, 2018); Hon Murray Sinclair, *Thunder Bay Police Services Board Investigation: Final Report* (2018); The National Inquiry Into Missing and Murdered Indigenous Women and Girls, *Final Report: Reclaiming Power and Place, vols 1a, 1b* (Her Majesty the Queen in Right of Canada, 2019).

[205] As I explain in more detail below, "internal colonialism" describes a particular kind of relationship between indigenous and settler peoples. Instead of extracting goods and/or labour from indigenous peoples for the benefit of Europeans in a distant country (as in "classical" or "extractive" colonialism), the colonizing power claims title and jurisdiction over indigenous peoples and their lands, and settles a population permanently upon them. Canada is an example. The meaning and significance of this term is discussed at length in the following section, *The Problem of Internal (or 'Settler') Colonialism*, on pages 2-3). For a still more detailed introduction of this term, see James Tully, *Public Philosophy in a New Key: Volume 1, Democracy and Civic Freedom* (New York: CUP, 2008) ch 8.

shifts to internal colonialism, the question then becomes what would ending internal colonialism look like? The standard reply is that Canada should return **political** authority (sovereignty) to Indigenous communities, through recognition of their sovereignty. I suggest that, especially in the urban Indigenous context, the standard reply presents serious problems. Instead, Canada should return **legal** authority (legality) to urban Indigenous communities.

Now the question becomes: what kind of legal authority is appropriate to urban Indigenous communities? I suggest an approach which combines a measure of urban Indigenous authority over Canadian law (insofar as it touches upon urban Indigenous people) with urban Indigenous authority over the creation of a **deliberately incomplete** system of Indigenous law specific to urban Indigenous peoples. The core idea is that as capacity in the latter strengthens, reliance on the former weakens. However, I explain below that urban Indigenous law should never be fully developed into a complete system of law, animated by its own authority. The cost of that authority would be borne not only by Canada, but also by the Indigenous people(s) upon whose traditional territory the urban community exists.

However, even incomplete urban Indigenous legal authority will represent a sea change in how Law is imagined within Canada. Although it is not novel, one of the key insights I present is that Indigenous systems of law sourced in their own authority are oriented towards wellness, not justice. I suggest, therefore, that an IJS should orient urban Indigenous communities towards wellness and should adequately support them in pursuing it. I explain that, amongst other things, this will mean establishing a positive sense of urban Indigenous community in which each member is honoured for their contributions and provided for.

As a final introductory remark, I suspect that many readers will approach this report with the expectation of finding recommendations that support and are supported by the idea of Indigenous sovereignty (and so familiar institutions like legislatures and courts, now to be run by and for Indigenous peoples). Such an expectation is understandable, because it builds upon the familiar context of Canadian legal and political institutions. However, as a general approach this report does not recommend the expansion of familiar ideas about law and justice, and thus it does not provide any such blueprint for an IJS. Instead of Indigenous sovereignty, it aims at Indigenous **legality** (legal authority), an idea not nearly as well understood. At stake in the difference is one of my late grandmother's most important teachings: when Indigenous peoples' systems of law are grounded in their own sources of authority, they do not require sovereignty to operate.[206] In the result, this report seeks to open up new and creative possibilities for how Indigenous law should be understood within a modern IJS, rather than a detailed IJS implementation strategy.

The problem of internal (or "settler") colonialism

One cannot address either the overrepresentation of Indigenous peoples in Canada's criminal justice system (focus issue one) or systemic discrimination against Indigenous peoples within Canada's justice system (focus issue two) without understanding what causes these problems. The answer is not so simple. In taking up the first issue, and given the state of social and economic struggle within many urban Indigenous communities in Canada, one might be tempted to point towards the relationship between social welfare indicators and behaviours the state recognizes as criminal. In taking up the second issue, one might point towards prevailing attitudes and institutional cultures prejudiced against Indigenous peoples throughout Canada's justice system. The difficulty is that both of these answers beg the further question, "and where did those problems come

[206] Elder Bessie Mainville (17 July 1935–4 October 2021) of Couchiching First Nation.

from?" I suggest that when we follow that question all the way down, we find a form of colonialism called "internal" or "settler"[207] colonialism as the root cause.

The term "internal colonialism" does not refer to the fur trade era, nor does it describe a historical fact. Rather, it describes an ongoing power dynamic—a kind of relationship—between settler peoples and Indigenous peoples, in which the former exercise power **over** the latter. It consists of the settler peoples claiming the Indigenous peoples' lands and jurisdictions for the purpose of settlement and settler governance: for a settler society which intends to stay.[208] In claiming authority over Indigenous lands and Indigenous jurisdictions, internal colonialism disallows Indigenous law, except where the settler colonial power (here, Canada) recognizes an exception and makes an allowance. Thus, where Indigenous law survives settler authority, it does so because Canadian law has permitted it. This form of colonialism is thus called "internal" because whatever powers of law and governance Indigenous peoples retain or acquire, they hold them **inside of** Canadian legal and political authority.

Within this dynamic, Canadian legal and political authority is rendered ordinary and Indigenous legal and political authority is rendered exceptional, even though Indigenous peoples were here first. Canadian law attempts to resolve the tension by formalizing Indigenous exceptionalism.[209] Thus, rather than living within social, economic, legal, and political systems and infrastructures authorized **by** Indigenous law and **for** the specific needs of Indigenous peoples, Indigenous peoples have Canadian systems and infrastructures applied to them in an exceptional way. Since those systems and infrastructures were not designed for the unique circumstances of Indigenous peoples, they are frequently ill-fitting and minimally (or non-) functional. The predictable consequence of long-term, ill-fitting and misapplied social, economic, legal, and political systems and infrastructures is Indigenous communities that do not have healthy, well-functioning social, economic, legal, and political systems and infrastructure, and which therefore suffer all manner of systemic harm. This includes, for instance, lower health and education outcomes, unemployment and poverty, the mass apprehension of children and police abuse, and the absence of basic municipal infrastructure, amongst many other systemic harms. Canadian Courts, including the Supreme Court of Canada, have repeatedly drawn a direct line from colonialism to systemic harms (like focus issues one and two) in Indigenous communities.[210]

From internal colonialism to Indigenous legal authority

I have argued so far that internal colonialism is the root cause of Indigenous over-incarceration and of anti-Indigenous racism throughout Canada's justice system. Eliminating such problems requires that we eliminate internal colonialism. The question now becomes determining what precisely that means.

A standard (perhaps **the** standard) Indigenous reply draws upon the fact that what Canada has unjustly taken—Indigenous lands and jurisdictions—are the contents of Indigenous sovereignty. Indigenous sovereignty, then, is what has been taken and Indigenous sovereignty is what must be returned. This proposition is often presented

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[207] There is a literature on the topic of settler colonialism. A benchmark text is Patrick, Wolfe, "Settler Colonialism and the Elimination of the Native" (2006) 8:4 J of Genocide Res 387.

[208] For an explanation of how these moves were justified, see John Borrows, "The Durability of *Terra Nullius: Tsilhqot'in Nation v British Columbia*" (2015) 48:3 UBC L Rev 701 at 723-726.

[209] This is a commitment carried as constitutional law. For instance, section 91(24) of the *Constitution Act, 1867* regards "Indians and Lands Reserved for Indians"; section 35 of the *Constitution Act, 1982* regards Aboriginal and treaty rights: rights specific to the Aboriginal peoples of Canada.

[210] See, for instance, *R v Ipeelee*, 2012 SCC 13 at 60; *R v Turtle*, 2020 ONCJ 429 (CanLII) at paras 97-99. See also Scott Clark, "Overrepresentation of Indigenous People in the Canadian Criminal Justice System: Causes and Responses" (Research and Statistics Division, Department of Justice Canada, 2009) at 13-15. Online: https://www.justice.gc.ca/eng/rp-pr/jr/oip-cjs/oip-cjs-en.pdf.

using the language of sovereignty, but just as often the language of self-government, self-determination, or inherent rights has been used. Framing the central harm of internal colonialism as a matter of political authority has an intuitive appeal: Indigenous peoples feel all too keenly that we are not the ultimate authority for decision-making in our own communities. It is a fundamental indignity to have a political master one has not chosen and to whose political authority one has not consented.

While I recognize the obvious appeal of such an approach, I suggest that it is nonetheless misguided. For one thing, from the standpoint of Indigenous law, the notion of sovereignty is vexing because it assumes that political authority is top-down and coercive, and thus to be exercised **over** members of the political community. There is a literature built around this problem.[211] But even if the problem of the nature of political authority can be resolved in a manner reconcilable to Indigenous systems of law and governance, the notion of sovereignty poses a residual problem for urban Indigenous communities. Political sovereignty is necessarily a claim against the political authority, contemplated in respect of clear territory and membership boundaries. Urban Indigenous communities possess neither of these features.[212]

As for membership, the identity of the Indigenous people represented within an urban Indigenous community rarely corresponds neatly to the identity of the Indigenous people(s) upon whose traditional territory the urban community exists.[213] One or two Indigenous peoples may be more frequently represented within an urban Indigenous community (because they belong to the host Indigenous people), but the general composition of the community is typically diverse, consisting of individuals from distinct Indigenous peoples, often from distinct Indigenous language families. The individual members of urban Indigenous communities therefore frequently lack a shared history, culture, language, and experience of colonialism. Their sense of shared Indigenous identity is thus loose and unsettled, defined by their common experience of, and participation within, the larger municipal context as Indigenous people (regardless of how they might be specifically situated). Because the sense of shared Indigenous identity is open to interpretation, it is difficult to clearly determine who is included and excluded from membership in this context. Unlike rural Indigenous communities, which typically have clear membership rules, there is no equivalent to a membership list for urban Indigenous communities, no formal conditions of entry to or exit from belonging. Further complicating the matter, Canadian censuses continue to indicate that urban Indigenous peoples are frequently itinerant—instead of residing permanently in their urban Indigenous community, they move back and forth between urban and rural Indigenous communities.

Directly related, the political boundaries around the space urban Indigenous communities occupy are at best ambiguous, and are often non-existent. In many urban Canadian environments, particular neighbourhoods are more strongly associated with Indigenous peoples, but there are no **formal** boundaries dividing the urban Indigenous community's space from other community spaces.[214] Because they lack the requisite "closedness" of membership and of territory, it seems unlikely that an urban Indigenous community could mount a claim for sovereignty.

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[211] As a point of entry, see Taiaiake Alfred, "Sovereignty" in Joanne Barker, ed, *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination* (Lincoln: University of Nebraska Press, 2005) 33.

[212] My remarks regard **informal** urban Indigenous communities. These communities differ significantly from formally constituted urban Indigenous communities (such as the two reserves of Westbank First Nation adjacent to the city of Kelowna, or the small Long Plain First Nation reserve in Winnipeg along Madison St., between Silver Ave. and St Matthews Ave). For greater certainty, my comments do not apply in the same way to formally constituted urban Indigenous communities like these.

[213] I am referring to what is commonly called the "host nation," except I decline to use the term "nation" as I worry that it is too closely associated with sovereignty.

[214] Once again, formally constituted urban Indigenous communities like Westbank First Nation are clear exceptions, but as I have said, these are not urban Indigenous communities in the same sense of the term.

The territorial and membership "openness" of urban Indigenous communities does not present the same sort of obstacle if we say that it is Indigenous peoples' **legal** authority which internal colonialism has unjustly taken, and, therefore, which must be returned. To be clear, I am not suggesting that the following proposal is ideal. It comes with many, and sometimes significant, problems of its own. Yet I remain convinced that working through what Indigenous legal authority means in the context of urban Indigenous communities provides a workable path forward worth striving for.

What, then, Is Indigenous legal authority?

Before turning to the urban Indigenous context, a preliminary question is "what do we mean by Indigenous legal authority?" We might mean different things. Most of my work regards Anishinaabe law as taught to me by my grandmother and other elders from Treaty #3 and from southern Manitoba. When I think about Anishinaabe legal authority, I have Anishinaabe **legality** in mind. Legality refers to "the property of being law": that which makes law, law.[215] From this standpoint, Anishinaabe legal authority means not only being the author of Anishinaabe law (i.e., being the one generating, interpreting and enforcing Anishinaabe law), but also—and this is vital—the capacity to re-imagine what "law" means from an Anishinaabe standpoint.

Anishinaabeg might give a different answer to the question "what makes law, law?" than settler Canadians. In other words, it isn't enough to be put in the position of generating, interpreting and enforcing Anishinaabe law (so to speak, being in the "driver's seat"). That freedom is but a first step. It might win Indigenous peoples nothing more than the freedom to be the ones running things the way that Canada does. Beyond that first step, we must be free to authorize our own law **on its own conceptual terms and within its own institutional forms** (i.e., as our ancestors lived it, but modified to our contemporary needs). This "legality" standard of Indigenous legal authority is what we might call a full form of legal authority.

Although my primary scholarly commitment regards the revitalization of Indigenous systems of law in the full forms of their legal authority, I do not think that Indigenous legality is the appropriate standard of Indigenous legal authority for urban Indigenous communities today. First, for reasons similar to those given above, urban Indigenous communities are not "communities" in a sufficiently robust sense that they could produce and operate a legal system animated by their own unique Indigenous legalities. Second, even if in time they were able to do so, I would be gravely concerned about injustice to the Indigenous people(s) upon whose traditional territory the urban environment exists. With few exceptions, Indigenous systems of law and governance have never been legitimately terminated; except for the exercise of internal colonial power over them, they would still be functioning (and in many communities, albeit seriously damaged, they are still functioning). Therefore, any other legal system—including an urban Indigenous one—is an interloping second-comer and cannot justly disrupt the authority of the colonized Indigenous one that was already there and that has never been legitimately displaced. I suspect that members of urban Indigenous communities share this sensibility, and thus that many urban Indigenous communities would not **want** to possess full legal authority.[216]

We might call this "the interloper worry." Importantly, it is not triggered insofar as urban Indigenous communities aspire to a measure of legal authority that in no way impairs the underlying legal authority of their host Indigenous people(s). This more modest approach to Indigenous legal authority—what we might call partial

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[215] Scott J Shapiro, *Legality* (Cambridge: The Belknap Press of Harvard University Press, 2011) at 7.

[216] We might carve out an exception where an urban Indigenous community that desires full legal authority enters into an agreement with its host Indigenous people(s) to acquire it, and therefore does so by the host people(s)' consent. I make no comment on this possibility, other than to recognize it.

legal authority—is also more practical given the particulars of the urban Indigenous context discussed above. The remaining questions are: first, what might a model of partial Indigenous legal authority appropriate to the urban Indigenous context look like; and second, how can it be achieved? The first question is one of vision; the second, one of practicality. I take them up together, offering practical recommendations as I unpack the vision.

A model of partial Indigenous legal authority for urban Indigenous communities

This section includes three subsections, each of which presents an aspect of partial Indigenous legal authority for urban Indigenous communities, and vitally, the kind of JUS and federal government IJS commitments necessary to support them. The first subsection considers overarching and foundational aspects of partial Indigenous legal authority upon which the next two subsections depend. The second subsection considers what I shall call the "reactive" aspect of partial Indigenous legal authority: the capacity to react to immediate harms. Given the immediate context of Canadian internal colonialism, this section necessarily centres on Canadian law. The third subsection considers the "proactive" aspect of partial Indigenous legal authority: the capacity to proactively create the conditions which diminish the intensity and the amount of harm in the community. This capacity draws dominantly from Indigenous law. The model presents a progressive movement from the former towards the latter.

Overarching and foundational commitments

The six foundational IJS recommendations which follow represent a paradigm of an Indigenous-Canada relationship which begins to unwind the internal colonial status quo. It should come as no surprise that a postcolonial relationship—a relationship that imagines Canada exercising power **with** Indigenous peoples, not **over** them—will dramatically unsettle long-established norms of federal behaviour, responsibility and entitlement that have not been reckoned with the legitimate interests of Indigenous communities (whether urban or rural), and which have long benefited from that failure. Again, I was invited to dream big.

A vast literature supports the proposition that most systems of Indigenous law in North America, when empowered by their own legal authority, were not oriented towards justice, but rather wellness.[217] Justice is the idea that each subject of the law should receive its due; wellness is the idea that each subject of the law should have its needs met. As a general matter then, justice remains a purpose of Indigenous legal systems only as a function of wellness, not as an end in itself. A model of partial Indigenous legal authority appropriate to urban Indigenous communities should share this foundational understanding of Indigenous law's primary purpose.

An initial recommendation is thus for the IJS to anticipate that the Indigenous law projects of actual urban Indigenous communities may share this orientation. JUS must therefore reconcile itself to the position that an urban Indigenous law orientation to wellness, in lieu of justice (or as the point is often put, justice **as** wellness), is not to be considered a matter **of** negotiation, but rather as an enabling condition **for** negotiation. Given JUS's familiarity with and experience of Indigenous law's orientation towards wellness,[218] the recommendation that it prepare to actively support that understanding should be neither surprising nor intimidating, even in its vastness. And it is indeed vast: we are not only talking about how to understand and empower Indigenous law, but also about changing the way that certain elements of Canadian law regard urban Indigenous peoples. Second, each distinct urban Indigenous community is sure to have its own vision of wellness, and local urban

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[217] A useful starting point is Wanda D McCaslin, ed, *Justice as Healing: Indigenous Ways* (St Paul: Living Justice Press, 2005).
[218] See, for instance, Royal Commission on Aboriginal Peoples, *Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues* (Ottawa: Minister of Supply and Services Canada, 1993) at 383-404; Ross Gordon Green, *Justice in Aboriginal Communities: Sentencing Alternatives* (Saskatoon: Purich Publishing, 1998).

Indigenous voices must be empowered to define what wellness means for the purposes of how an IJS might apply to them.

To be sure, these complexities present challenging questions (not the least of which regard the *Charter*[219]). Yet, if JUS cannot do what is necessary to allow urban Indigenous law to orient itself towards wellness, then the IJS will likely be a further instrument of internal colonialism and status quo, not a pathway to its end and a better future beyond. The IJS will stay mired in the realities of Indigenous over-incarceration and systemic anti-Indigenous racism throughout Canada's justice system. Finally, on practical terms, it should go without saying that an Indigenous approach to law centred on wellness is ideally placed to confront the mass-scale, systemic unwellness (including over-incarceration) that too-frequently characterizes urban Indigenous communities.

Internal to this JUS commitment is an obligation for the federal government to accept responsibility for coordinating its various ministries, agencies and units to work together to allow JUS to achieve this goal. It is no answer to an urban Indigenous community to say that the federal Crown is divided across many bodies, all of which have to be accommodated and not all of which are yet supportive. An effective IJS must account for the cost of internal federal coordination by establishing a legal responsibility for the federal government to reconcile conflicting federal voices. Presumably an institution vested with the necessary authority to evaluate and compel timely compliance will need to be created.

A third related commitment is that the federal order of government shall have to commit to fully funding urban Indigenous wellness (in the specific ways that that notion is explained in the following two subsections). Amongst other things, this will include establishing core programs, services, and infrastructure funding—and maintaining their effective functioning in perpetuity.

As urban Indigenous wellness is progressively attained, presumably part of this cost will be offset by reduced costs on Canada's social, economic and legal systems. However, such costs would be improperly understood as novel burdens unduly imposed upon taxpayers and/or on the state. Properly understood, the costs associated with these changes merely begin to account for the legal, political, economic and social benefits of internal colonialism that Canada and Canadians have already realized. They would correct a distortion, internalizing what systemic racism has allowed to be treated as an externality. Restated, the payment of such costs should be understood as a logical and necessary part of Canada's commitment to reconciliation. And if, as the Truth and Reconciliation Commission teaches us, reconciliation is not only a goal but also a process, then there is no logical end to the government's obligation to pay such costs, insofar as internal colonialism continues. All of this is to say that while the payment scheme must be negotiated, the federal government must openly choose to pay it; adjudicated proof that colonialism is a sufficient legal cause of systemic harms in urban Indigenous communities must not be required.

A fourth foundational commitment regards the fact that, as discussed, unlike rural Indigenous communities, urban ones are not political communities. They have no political boundaries, governments or citizens of their own. They, too, are second-comers to already existing Indigenous political communities. I have already stated that I do not think the answer to this difficulty is to make political communities of urban Indigenous

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[219] While the *Charter* contemplates much more than fundamental individual rights, its first 14 sections assume that human dignity is fundamentally about individual autonomy: an individual's capacity to choose his/her/their own ends. Yet a fundamental commitment to autonomy is difficult—arguably impossible—to square with a legal system oriented towards wellness. The capacity to make choices for oneself is only one part of wellness, even if it is a vital part. More important to wellness is the capacity to be living as fulsomely as one can. To be living vibrantly requires countless forms of exchange with humans and others kinds of beings each day. The animating constitutional norm is sharing, not autonomy.

communities. Rather, the federal government will have to enter into negotiations with urban Indigenous community members to creatively co-develop a system of informal democratic governance which urban Indigenous community members would accept. Whatever model of informal governance (MIG) is chosen—and the model is likely to vary from one urban Indigenous community to another—the federal government will need to be formally responsible for adequately resourcing it in perpetuity. The analysis and recommendations in the next two subsections all take that an adequately resourced and supported MIG exists.

Fifth, the development of a MIG responsible for the development of (a) urban Indigenous authority over Canadian law, and (b) urban Indigenous law oriented to wellness, will necessarily touch upon matters under provincial heads of constitutional authority.[220] Elements of JUS's IJS that require provincial support will require provincial agreement. This is a deep challenge, but it is one which must be carried by the federal government. It is not the fault of Indigenous peoples that Canada's practice of internal colonialism is untidily organized across both federal and provincial sides of the federation; it is no answer to urban Indigenous communities for the federal government to complain of a provincial hold-out. Rather, the federal government will need to be made responsible for getting the relevant province(s) on board. While the context is different, the logic applied here is similar to that of Jordan's Principle.

Sixth, the IJS should require that each MIG, the federal government, and the relevant provincial government(s) enter into a comprehensive long-term, and legally enforceable, urban Indigenous wellness agreement that articulates how individual and collective urban Indigenous wellness will be achieved (with a full accounting of all of Canada's associated resource obligations) over time. Each agreement must require the development of a community plan with short-, medium-, and long-term goals and their associated measures. These agreements (and the community plans they contemplate) will be sufficiently complex that I do not think it is helpful to begin to stipulate here what they must include.

The reactive aspect of partial Indigenous legal authority for urban Indigenous communities: Adjusting Canadian law

The temporal thrust of a legal system oriented towards wellness is proactive. As a general matter, Indigenous systems of law seek to create the conditions that foster and sustain individual and collective wellness.[221] The long-term gains that such an approach promises require a long-term investment. The resulting temporal delay for the system to be running efficiently cannot be allowed to paralyze urban Indigenous communities with unresolved conflict and unaddressed harm. Wellness requires that urban Indigenous communities must be empowered to react effectively to real-time challenges in the interim. Therefore, as urban Indigenous communities slowly build up elements of a system of Indigenous law, they will need to rely on Canadian law to

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[220] The *Constitution Act, 1867* identifies which powers of government fall under federal authority and which fall under provincial authority.

[221] For many Indigenous peoples—and so for many Indigenous systems of law—individual and collective wellness cannot be disentangled. The late, great Anishinaabe philosopher and storyteller Basil Johnston put the point this way: "The community had a duty to train its members not so much for its own benefit though there was that end, to be sure, but for the good of the person. The man or woman so trained had received a gift from the community which he was to acknowledge in some form; and that form consisted simply of enlarging one's own scope to the fullest of its capacity. The stronger the man, the stronger the community; and it was equally true that the stronger the community, the firmer its members." Basil Johnston, *Ojibway Heritage: The Ceremonies, Rituals, Songs, Dances, Prayers and Legends of the Ojibway* (Toronto: McClelland and Stewart, 1976) at 70. Renowned Mikmaq education scholar Marie Battiste likewise says of Mikmaq society that, "Each person, whether male or female, elder or youth, has a unique gift or spark and a place in Mikmaq society. Each person has a complementary role and function that enables the allied families to flourish in solidarity. In every generation, each person must find his or her gifts, and each person also needs the cumulative knowledge and wisdom of the community to survive successfully in a changing environment." Marie Battiste, "Nikanikinútmaqn" in James (Sákéj) Youngblood Henderson, ed, *The Míkmaw Concordat* (Halifax: Fernwood Publishing, 1997) 13 at 18.

fill the void (to some degree this may remain true in perpetuity, because the urban system of Indigenous law developed will always remain incomplete).

This is a vexing circumstance because although Canadian law possesses resources to manage conflict and to address harm, it has been one of the primary mechanisms through which systemic harms in urban Indigenous communities have been created and sustained. As a result, Canadian law must be used, but it must be reformed so as to address, rather than perpetuate, the systemic impacts of internal colonialism. This means that urban Indigenous communities require a measure of authority over Canadian law, insofar as it conditions and empowers their lives. An institutional consequence of this transfer of authority is the development of a body within the MIG vested with the responsibility and the power necessary to oversee the development of Indigenous authority over Canadian law within the urban Indigenous community.

It is not possible, within the context of this report, to identify everything such a body might consider. I shall focus on one matter: Indigenous legal "transplants."[222] One way that Canadian law can be made more amenable to the interests of Indigenous peoples is by progressively incorporating more (and more significant) elements of Indigenous law. In considering this possibility, it is essential to understand that transplants are not Indigenous law. When an element of an Indigenous system of law is severed from that system and transplanted into the Canadian legal system, it becomes Canadian law inspired and informed by Indigenous law.

Transplants need not be any particular element of an Indigenous system of law. I shall identify a few kinds of Indigenous law transplants (and one or two examples of each) with progressively greater impact upon Canadian law. The use of Indigenous law which arguably bears least upon Canadian law is the treatment of Indigenous law as factual evidence for Canadian law. In the Ontario Court of Appeal's recent *Restoule* decision,[223] the Court recognized the Anishinaabe law principles of **pimaatiziwin** and **gizhewaadiziwin** as evidence of the existence of Anishinaabe governance.[224] In a remarkable Ontario Court of Justice decision, in *R. v. Turtle*,[225] Justice Gibson recently considered multiple elements of Anishinaabe law as evidence of unequal treatment under section 15 of the *Charter*.[226] Other judges, notably at the Federal Court of Canada, are increasingly engaging with Indigenous law **as** Canadian law: they have brought Indigenous law into Canadian law as formal legal rules[227] or standards.[228]

Arguably, a more fulsome engagement with Indigenous law occurs when courts engage with Indigenous law remedies (the relief that courts order to address or prevent harms) or procedures. Remedy was the central aspect of Indigenous law engaged in the Nunavut Court of Appeal's recent *Ippak* case.[229] Procedural accommodations may permit Indigenous peoples to act or to speak in a manner more consistent with the conduct of their own respective legal systems. For this reason, the Federal Court of Canada's *Practice Guidelines*

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[222] Alan Watson, *Legal Transplants: An Approach to Comparative Law, 2nd Ed* (Athens, GA: University of Georgia Press, 1993); John W Cairns, "Watson, Walton, and the History of Legal Transplants" (2013) 41 GA J Int'l & Comp L 637.
[223] *Restoule v Canada (Attorney General)*, 2021 ONCA 779.
[224] *Ibid* at para 13.
[225] *R v Turtle*, 2020 ONCJ 429 (CanLII).
[226] *Ibid* at paras 38-45, 72-76.
[227] *Alderville First Nation v Canada*, 2014 FC 747 (CanLII) at paras 22-25; *Whalen v Fort McMurray No. 468 First Nation*, 2019 FC 732 (CanLII) at paras 31–40; *Thomas v One Arrow First Nation*, 2019 FC 1663 (CanLII) at para 130; *Alexander v. Roseau River Anishinabe First Nation Custom Council*, 2019 FC 124 (CanLII) at para 18; *Linklater v Thunderchild First Nation*, 2020 FC 1065 (CanLII) at paras 37-39, 44-45.
[228] *Pastion v Dene Tha' First Nation*, 2018 FC 648 (CanLII) at paras 24-26.
[229] *R v Ippak*, 2018 NUCA 3, concurring reasons of Berger J at paras 70, 76-77, 83, 87-95, 99, 102-104. See also *R v Turtle*, 2020 ONCJ 429 (CanLII) at para 110-111.

For Aboriginal Law Proceedings,[230] to which JUS is a contributor, suggests a unique approach to the oral testimony of certain Indigenous parties.

Another kind of transplant regards the appointment of Indigenous persons to key legal functions, such as justices of the peace, administrative decision-makers, and judges. If a sound appointment is made, it offers direct access to the standpoint, experience, and intellectual resources of Indigenous law. However, this approach also carries considerable risk. If an inappropriate appointment is made, then Canada's justice system may acquire someone with an Indigenous subject position, but without meaningful connection to Indigenous law. A step beyond transplanting legal actors is transplanting entire legal processes and institutions. This is the approach represented by the use of restorative justice processes at sentencing, Correction Service Canada's use of healing lodges and ceremonies, community-based peacemaker courts, and in the American context (and at Akwesasne), tribal courts. This approach combines multiple elements of Indigenous law and transplants the integrated nodes.

There are many avenues by which a MIG might seek to exercise the appropriate measure of urban Indigenous authority over the urban Indigenous community's experience of Canadian law. My point was not to suggest that MIG's **should** pursue Indigenous law transplants (which I have argued are easily rendered problematic). On the contrary, I suspect more significant gains can be realized by placing more emphasis on **how** Canadian law should regard urban Indigenous communities than on **what** Canadian law should include. My purpose has been to use the example of Indigenous law transplants to show (1) the remarkable range of choice that MIG's might creatively consider from the standpoint of their unique circumstances, and directly related, (2) the kinds of matters for negotiation that the IJS should contemplate.

The proactive aspect of partial Indigenous legal authority for urban Indigenous communities: Developing Indigenous law

As important as the reactive aspect of partial Indigenous legal authority is for law and governance in urban Indigenous communities, from the standpoint of Indigenous law, it is supplementary. Proactively exercising legal authority to create and sustain wellness is of primary importance. In this section we shall see that although this goal does not require an urban Indigenous community to be fully possessed of legality, it still requires that urban Indigenous people understand their communities as sustained, positive projects.

For some Indigenous peoples' systems of law, wellness may have been partly achieved through the creation and observance of legal rules. Where this is true, we might expect that while working Indigenous law and Canadian law together will take significant effort, it will not present serious conceptual or institutional challenges. However, there was—and in many communities, remains—a more prominent form of Indigenous law: what in English we typically call "teachings." Teachings are relationship-specific principles and standards of proper conduct. Rather than externalized rules to interpret and follow, teachings are internalized understandings achieved through participating in ceremonies; listening to community histories, elders' teachings, and legends; observing the land, and processing the significance of all of these experiences over time. Mishkeegogamang First Nation, an Anishinaabe community, writes that "after careful teaching in childhood, people took responsibility for their own moral conduct through inner control, rather than by responding to rules or laws imposed by government or leader."[231] Whereas legal rules establish specifically what one must, may, or must not do,

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[230] *Practice Guidelines For Aboriginal Law Proceedings, 4th Ed* (September 2021) at 32-53.
[231] Marj Heinrichs & Diane Hiebert with the people of Mishkeegogamang, *Mishkeegogamang: The Land, the People & the Purpose* (Rosetta Projects, 2009) at 217.

teachings disclose more generally how, and how not, to conduct oneself within the full range of one's relationships. The Honourable Murray Sinclair has helpfully explained:

> Appropriate conduct in Aboriginal societies was assured through the teaching of proper thought and behaviour from one generation to the next. Moral, ethical and juridical principles were taught by example. Individuals within society who lived according to tribal principles were esteemed and honoured. They were treated as living role models of fitting conduct. Examples were also drawn from the lives of people no longer living and from the lives of fictitious heroes and heroines whose manners and behaviour were considered worth emulating.[232]

Blackfoot scholar Leroy Little Bear explains how a legal system in which teachings feature centrally, results in, "a positive rather than a negative approach to social control. If individuals are appropriately and immediately given recognition for upholding strength, honesty and kindness, then a 'good' order will be maintained, and the good of the group will continue to be the goal of all the members of the Society."[233] Vitally, such an approach to law requires a cradle-to-cradle commitment, entangling individual and community welfare as a permanent state of affairs:

> How do Aboriginal peoples educate and inculcate the philosophy, values, and customs of their cultures? For the most part, education and socialization are achieved through praise, reward, recognition, and renewal ceremonies and by example, actual experience, and storytelling. Children are greatly valued and are considered gifts from the Creator. From the moment of birth, children are the objects of love and kindness from a large circle of relatives and friends. They are strictly trained but in a "sea" of love and kindness. As they grow, children are given praise and recognition for their achievements both by the extended family and by the group as a whole. Group recognition manifests itself in public ceremonies performed for a child, giveaways in a child's honour, and songs created and sung in a child's honour.[234]

Of critical importance, these descriptions presume a strong and unequivocally *positive* sense of Indigenous community. **Under Indigenous law, Indigenous community is a sustained positive project**. That means that it is not enough to have a grouping of racially same or similar individuals living in proximity to one another. In this respect, it is like Canadian law. However, neither is it enough to constrain community members' fundamental shared commitment to procedures which enable and coordinate their activity such that one does not overstep the legal interests of another. It requires community members to have a much thicker commitment to one another, and in this respect, it differs from Canadian law.

Because teachings are oriented towards establishing good relationships, because they operate by transforming individuals' character and capacity for judgment, and because the wider community is involved in offering and imparting teachings, **a system of law which presents laws in the form of teachings both presumes and fosters a positive sense of community.** Only in a secondary sense is law about resolving problems: its primary purpose is to create healthy and sustainable relationships (and in so doing, a general state of individual and collective

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[232] Murray Sinclair, "Aboriginal Peoples, Justice and the Law" in Richard Gosse, James Youngblood Henderson & Roger Carter, eds, *Continuing Poundmaker and Riel's Quest: Presentations Made at a Conference on Aboriginal Peoples and Justice* (Saskatoon: Purich Publishing, 1994) 173 at 176-177.
[233] Leroy Little Bear, "Jagged Worldviews Colliding" in Marie Battiste, ed, *Reclaiming Indigenous Voice and Vision*, (Vancouver: UBC Press, 2000) 77 at 80.
[234] *Ibid* at 81.

wellness), and thus to prevent conflict as much as possible.[235] The institutions, actors, processes and remedies of such legal systems are organized and oriented accordingly, which means that in vital respects, they often look and function quite differently than those of modern liberal democratic states like Canada.

Internal colonialism has too often disrupted the proper functioning and even the contemporary existence of teachings-based legal institutions, processes, actors and remedies. The problem impacts contemporary urban Indigenous communities in a particularly fulsome way: urban Indigenous communities never had any of these features of Indigenous law (although often individual members do). For many urban Indigenous individuals, there is just an absence where teachings—and thus integration into community and a sense of one's own limitless value—should be. On my account then, the crisis that internal colonialism has created for many urban Indigenous communities is the almost total absence of any positive sense of community.[236] In the absence of a positive sense of community, we can only expect systemic harms to dominate, for there is only periphery, not centre, from which to oppose them, and more importantly, from which to establish something better. If urban Indigenous peoples are to have any hope of achieving wellness, we shall have to be defined by much more than common subject position and service provision.

Indigenous law, teachings, and wellness

First, the IJS should recognize that Indigenous people, including urban Indigenous people, may understand that law takes the form of teachings in addition to, and often, perhaps even in lieu of, legal rules. The IJS should require Canadian governments (both federal and provincial/territorial) to accept this reality and to actively and constructively engage with it. The IJS should empower the use of teachings (in addition to, or even as opposed to, legal rules), under Indigenous law. This allowance will have far-reaching institutional, procedural and remedial consequences. Indigenous law institutions, processes and remedies often may not be immediately reconcilable to those of Canadian law, yet this challenge must not be used as a reason to fail to recognize, empower or engage with them. From the standpoint of Indigenous legal systems, Canada's legal institutions, processes and remedies may appear just as unreasonable, unworkable, and impractical. Once more, ending internal colonialism means that Canadian law must allow and empower Indigenous systems of law to function under their own legal authority. Although in the case of urban Indigenous communities that authority will be only partial, it may still extend to law represented as teachings.

The IJS should recognize that urban Indigenous communities will not be only starting to envision individual and collective wellness and to take steps to achieve it. On the contrary, there are frequently community members and service organizations with considerable experience in promoting, protecting and developing urban Indigenous wellness. Although the federal and provincial governments are vital parties to the urban Indigenous wellness agreements, their role with respect to envisioning wellness, as the IJS should understand it, is to listen and to support, but not to lead. It will not be state actors who oversee, or even populate, the institutions and processes which render urban Indigenous wellness. Indigenous service organizations frequently complain about constraints on how their funding may be spent. While accountability, including fiscal accountability, is essential

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[235] See, for instance, Patricia Monture-Angus, *Journeying Forward: Dreaming First Nations' Independence* (Winnipeg: Fernwood Publishing, 2011) at 8; Leanne Simpson, "Looking after Gdoo-naaganinaa: Precolonial Nishnaabeg Diplomatic and Treaty Relationships" (2008) 23:2 Wíčazo Ša *Review* 29 at 32.

[236] I anticipate that, based on their lived experience, some urban Indigenous folks may react strongly to this conclusion. I am not denying that positive and even beautiful things occur within urban Indigenous spaces on the daily. Nor am I challenging the deep sense of connection and attachment that urban Indigenous individuals may feel for their community. Finally, I recognize that within every urban Indigenous community, there are always shared projects organized and governed by and for the Indigenous community. None of these recognitions touches upon the larger sense of community that we have been denied.

to ensuring urban Indigenous wellness, the move to specify when and how monies must be spent is an example of Canada imposing upon the wellness vision of urban Indigenous communities.

Every person (whether or not they are Indigenous and whether or not they are urban) who has not been pushed so far into unwellness that they have stopped imagining a future, wants to be a healthy, productive, growing person who realizes their individual potential and who contributes to their community. For too many urban Indigenous peoples, there are significant obstacles to even being pointed towards this basic human goal. Some of us need basic life supports, such as nutritionally adequate food, shelter, clothing, childcare, and income sufficient to cover basic needs. Some of us have physical and/or mental health needs that are unmet or inadequately met. Some of these are minor and fleeting, while others are severe and chronic. Some of us need professional supports in order to shift direction in our life, such as training, licensing, skills development, mentorship and/or education. Some of us need help correcting our life choices so that we stop hurting ourselves and others; some of us need help making amends; some of us need help believing that it could ever be any different. Some of us just need someone else to believe in us so that we can remember what it is to believe in ourselves. Some of us need to connect for the first time with what it means to be an Indigenous person; some of us, to allow ourselves to remember. Some of us need our stolen children returned. Some of us need police to pay attention to us, or to finally leave us alone. All of us need the dignity that comes with the capacity to make real choices for ourselves. All of us need to belong. All of us need to be honoured for who we are, and to remember that we have a gift the world needs.

Although it varies dramatically from one territory to another, Indigenous law—typically, but not exclusively through teachings—is designed to do all of these things. An IJS committed to a better future will empower urban Indigenous law. It will take a complex and integrated suite of supports (institutions, programs, services and relationships) to create and deliver all of this in a manner that flexibly responds to the needs of individual community members, while maintaining fiscal and ethical accountability for the extraordinary investments that will be needed for the wellness of urban Indigenous communities. However, providing urban Indigenous communities with both the reactive and proactive legal authority necessary to envision and execute a community plan that organizes and offers those supports, and to fully fund that plan even when it contemplates elements of legal authority starkly different from those of Canadian law, is exactly what an IJS that wishes to end the injustice of internal colonialism should strive for.

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