



# INDIGENOUS JUSTICE

## Paths to Reconciliation

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Updated as of February 17, 2023





# WAHKOMITOWIN

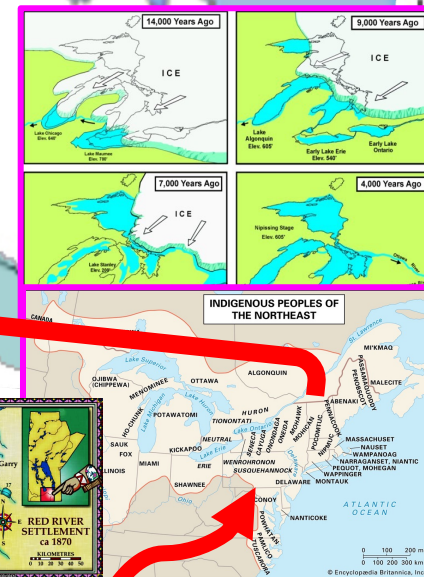
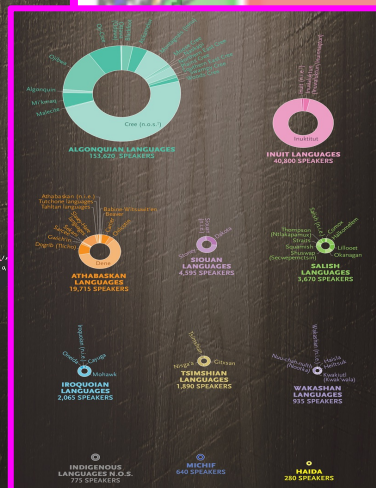
## *All My Relatives*

A Cree Proverb read by Irene Morin from Enoch Cree Nation

Ka-kí-kiskéyihtétan óma, namoya kinwés maka aciyowés pohko óma óta ka-hayayak  
wasétam askihk, ékwa ka-kakwéy miskétan kiskéyihtamowin, iyinísiwin, kistéyitowin,  
mina nánisitotatowin kakiya ayisiniwak, ékosi óma kakiya ka-wahkotowak

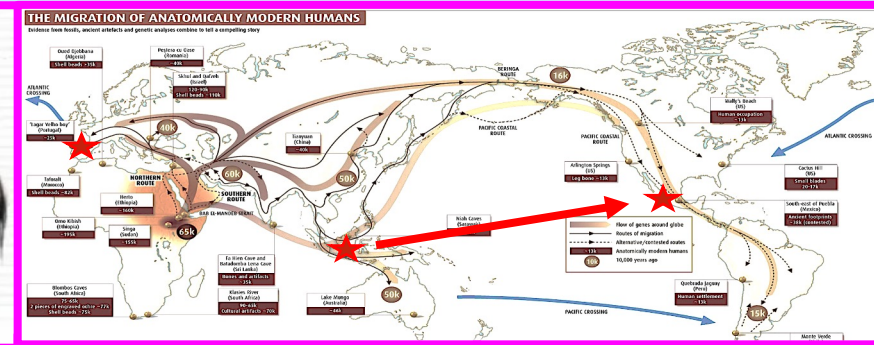
Realize that we as human beings have been put on this earth for only a short time and  
that we must use this time to gain wisdom, knowledge, respect, and the understanding for  
all human beings since we are all relatives



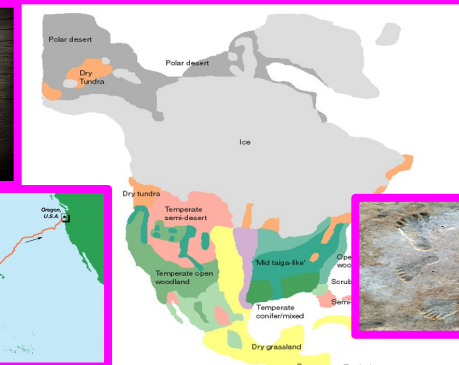




# WESTERN KNOWLEDGE



- 1859: Charles Darwin's Origin of Species
- 1955: Cultural Evolution
- 1976: Memetics Theory
- 2009: Gene-Culture Coevolution Theory
- 2011: Epigenetics and Culturally Enriched Environments



Human society is held together by *moral values* that are transmitted from generation-to-generation by the process of *socialization*, perhaps the most powerful form of epigenetic transmission found in nature. The initiated (for First Nations those healers or knowledge keepers identified by the community) instill values into the uninitiated (usually the younger generation, but may just as effectively include adults who are intergenerationally disconnected from their First Nations' teachings and practices that promote prosocial development) through an extended series of personal interactions, relying on a complex interplay of affect and authority, specific to the familiar environment from which they developed. This environmental process activates altruistic biological predispositions that account for the remarkable evolutionary success of our species, including our pre-contact indigenous communities. Among such predispositions are character virtues (honesty, courage, trustworthiness, considerateness, etc. - in Cree culture the Seven Sacred Traditions) and strong reciprocity, which is a predisposition to cooperate with others in a collective task, and to punish those who fail to cooperate. When individuals internalize a norm, the frequency of the desired behaviour will be higher than if people follow the norm only instrumentally (when they perceive it to be in their interest to do so on other grounds). The increased incidence of prosocial behaviours is precisely what permits humans to cooperate effectively.








# TÂPWEMAKAN

## Pursuing Truth

**COLLECTIVE RIGHTS: INHERENT, TREATY & MODERN AGREEMENTS RECOGNIZED  
AFFIRMED & PROTECTED UNDER S. 35(1) OF THE CONSTITUTION ACT, 1982**

The Royal Proclamation of 1763 is a foundational document in the relationship between First Nations people and the Crown and laid the basis for Canada's territorial evolution.

The oral traditions of our communities creates a strong, reliable and provides a significant source of treaty intentions, our clearly understood rights, and the Crown's unfulfilled obligations:

-  We were willing to embark together on a common future as allies based on our tradition of
-  We were agreeing to peace and friendship treaties, providing an affirmation or recognition of our rights to the land, economy, and cultural continuity.
-  We did not surrender our territories, resources or agree to stay on allocated reserved land
-  We refused to sign treaty until we were assured our rights and freedoms throughout the region would continue unaffected
-  After the treaties were negotiated, our affairs came under the jurisdiction of a distant federal bureaucracy and unfit field staff. The Crown's treaty obligations were never fulfilled.



# Where We Are Now *Child Welfare*

For our self-governing First Nations, Prevention is Least Intervention

To know is to do. Ethical standards high. Case workers must come from a place of **experiential knowledge** and **educational training**. They must show adherence to the community's **Sacred Teachings** to be considered **miyo otôtemihtohiwew otatoskew** (good relationship workers).

We rely on the legal framework that we created in *Western Cree Tribal Council v SG, 2021 ABQB 967* to transform intervention into prevention. Justice Donna Shelley reinforces that “**least intrusive**” **intervention** under the **CYFEA** requires the use of **Supervision Orders** (section 28), **adjusted as need arises** (section 29), **without apprehending children** and proceeding to trial with unnecessary that cause alienation of children from their parents and communities.

Our **holistic approach** re-establishes **traditional community roles and relationships** using language, **teachings and ceremony** that works relatively quickly to restore **emotional, physical, cognitive and spiritual** harmony both within our communities and the urban centres where our families dispossessed by the 60s scoop are now located:



In 2021-22, the rate of **Family Preservations** increased to 80 % (+42% from 2020-21)



**Kinship placements** at 95%



# MIYO OHPIKINÂWASOWIN *Good child raising*

## Purposive Application of Bill C-92 and *An Act Respecting First Nations* ("ARFN")

- ❖ Devolving jurisdiction takes time, but process creates reality, e.g. *MM v Alberta (CYFEA, Director)*, 2021 ABPC 317
- ❖ In June 2021, Western Cree served Indigenous Services Canada and Children's Services ministries Canada-wide notice of its indigenous governing body status ("IGB") as directed by its governing First Nations thereby enabling Western Cree to identify and help our families wherever they reside in either its role as DFNA or IGB.
- ❖ The ARFN, binding on directors of both Alberta and CYFE, and others across Canada, recognizes and affirms our inherent right of self-government and jurisdiction over child and family services without passing our own codified legislation (ss. 7, 18); specifically, the informational and implementational right to participate in cultural planning for our children and parents starting before or immediately following intake; and, the right to use our own programs and services.
- ❖ This required our program to develop procedures necessary to 1) obtain confidential information from Children's Services to inform our planning without having to apply to Court, 2) providing feedback & direction to Children's Services on steps to promote healing and sustained connections between our children, families and communities, 3) developing MOUs with allied organizations; 4) developing our laws using our own traditions.



# Where We Are Now *Criminal Law*

In 1996 the Parliament enacted a new Part XXIII of the *Criminal Code*. Then federal justice minister Allan Rock explained:

[T]his bill creates an environment which encourages community sanctions and the rehabilitation of offenders together with reparation to victims and promoting in criminals a sense of accountability for what they have done. It is not simply by being more harsh that we will achieve more effective criminal justice. We must use our scarce resources wisely.”

In 1999 the Supreme Court of Canada in *R v Gladue* interpreted the new Part XXII declaring that the new provisions, taken together, represented a watershed moment, marking the first codification and significant reform of sentencing principles in the history of Canadian criminal law. The SCC ruled that Part XXIII, including s. 718.2(e), must be purposively interpreted, taking into account the restorative justice provisions under ss. 718(d)-(f) and ss. 718.2(d)-(e) which are of "primary relevance precisely because the prevention of crime as well as individual and [community] healing cannot occur through other means”; as consequence, the appropriateness of a particular sanction is determined by exploring and then focusing on those most closely affected by the crime, including the indigenous community whose member or potential member remain disconnected due to the Canada's criminal justice system, just as they or their parents were lost to Alberta's child welfare system, just as their grandparents were lost to Canada's residential school system: *Gladue* at paras 33, 37, 39, 47, 64, 69-71, 74, 82, 84, 90-92.

*An Act to amend the Criminal Code and the Controlled Drugs and Substances Act* received royal assent on November 17, 2022.

Parliament has restored sentencing policy that prioritizes restorative justice over incarceration. There is greater opportunity to chart a leading path to reducing incarceration and, importantly, recidivism and victimization by creating room for substantive equality without racial discounts, resolving the the long-standing quandary how First Nations' collective rights under s. 35(1) of the *Constitution Act*, 1982, as opposed to individual rights under ss. 7, 12, 15 of the *Charter*, can be successfully applied.



# KANIPAWISTATAMETIN *I will stand up for you*

## First Nations' Restorative Justice

### Case Law & Legislation - Hyperlinked

Isabelle Brideau, *The Duty to Consult Indigenous Peoples* (17 June 2019), online: Parliamentary Information and Research Services  
<[https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/201917E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201917E)>

Larry Chartrand & Kanatase Horn, *A Report on the Relationship between Restorative Justice and Indigenous Legal Traditions in Canada* (October 2016), online: Department of Justice Canada <<https://www.justice.gc.ca/eng/rp-pr/jr/rjilt-jrtja/rjilt-jrtja.pdf>>

*Indigenous Justice Strategy* (September 2022), online: Alberta Provincial Court <[https://albertacourts.ca/docs/default-source/pc/pc-indigenous-justice-strategy-report---final.pdf?sfvrsn=a4ec6582\\_3](https://albertacourts.ca/docs/default-source/pc/pc-indigenous-justice-strategy-report---final.pdf?sfvrsn=a4ec6582_3)> at pp 5-11, 13-16, 27, 29-31, 34-36.

The Honourable Robert J. Bauman, *A Duty to Act* (17 November 2021), online: Canadian Institute for the Administration of Justice <[https://www.bccourts.ca/Court\\_of\\_Appeal/about\\_the\\_court\\_of\\_appeal/speeches/A\\_Duty\\_to\\_Act\\_CIAJ\\_%20Indigenous\\_Peoples\\_and\\_the\\_Law.pdf](https://www.bccourts.ca/Court_of_Appeal/about_the_court_of_appeal/speeches/A_Duty_to_Act_CIAJ_%20Indigenous_Peoples_and_the_Law.pdf)>

The Honourable Lance Finch, *The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice* (November 2012), online: Continuing Legal Education Society of BC <[https://www.cerp.gouv.qc.ca/fileadmin/Fichiers\\_clients/Documents\\_deposes\\_a\\_la\\_Commission/P-253.pdf](https://www.cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Documents_deposes_a_la_Commission/P-253.pdf)>

The Honourable Sheila Greckol, *Restorative justice and aboriginal offenders* (30 May 2013), PDF enclosed

The content and ideas belong to the author.





## Case Law & Legislation – Hyperlinked

[R v Arcand, 2010 ABCA 363](#)

[R v BL, 2002 ABCA 45](#)

[R v Corbiere, 2017 ABCA 164](#)

[R v Gladue, \[1999\] 1 SCR 688](#)

[R v Haggerty, 2013 ABQB 711, Thomas J](#)

[R v Ipeelee, \[2012\] 1 SCR 433](#)

[R v Lacasse, 2015 SCC 64](#)

[R v Okimaw, 2016 ABCA 246](#)

[R v Poucette, 2021 ABPC 192 at paras 26-37](#)

[R v Proulx, 2000 SCC 5](#)

[R v Sharifi-Jamali, 2022 ABQB 52, rev'd in part 2022 ABCA 322](#)

[R v Willier, 2016 ABQB 241](#)

[R v Wolftail, 2022 ABPC 102](#)

[R v Magill, 2013 YKTC 8](#) and [R v Zora, 2020 SCC 14](#) at para 79 (JIR/bail)

[The Constitution Act, 1982, Schedule B to the Canada Act 1982 \(UK\), 1982, c 11](#)

# Multi-jural Justice System



BC FIRST NATIONS  
JUSTICE COUNCIL



The content and ideas belong to the author.



# Shared Practices

## Sentencing Circles

I have used the below procedure on several files involved serious crime and non-indigenous offenders (aggravated assault, home invasion, criminal harassment) heard by the Provincial Court in Grande Prairie and St Paul with excellent results i.e. addressing trauma, preventing recidivism, non-custodial sentences that comply with CC ss 718 to 718.3). This process is aimed at restorative justice and takes into consideration the precautions in the ABCA decision of *BL*

### Circle Procedure

- ❖ Explain the process established in *R v BL* (pleas entered, ASF filed, no factual disputes)
- ❖ Explain the ground rules (without prejudice, one person speaks at a time, respect for the views of others, as many breaks as needed, consensus required for joint position on terms of CSO/probation).
- ❖ Circle 1: Circle begins with Victim, ends with Offender. Each person introduced her/himself and explained his/her relationship to the Offender (break taken);
- ❖ Circle 2: If applicable, each person shares their positive experiences with the Offender prior to the offence (break taken) (nb. focus on humanizing the offender without diminishing trauma from the offence);
- ❖ Circle 3: ASF and Exhibits read aloud by moderator (establish the specific injury);
- ❖ Circle 4: Each person shares her/his recall of the offences and consequent trauma/injuries (break taken);
- ❖ Circle 5: (Offender goes person-to-person ending with the Victim) Explains in his own words how his actions impacted each party and the community (break taken);
- ❖ Circle 6: (Starting with the Victim) Each person shares his/her views on appropriate sanctions;
- ❖ Conclusion: Offender responds to these views as a whole (buying in, participating in her/his own sentencing); and,
- ❖ Next Steps: Consensus on sentence (terms of CSO/C/D/Probation, total consensus not required)

# Where We Are Now: *First Nation Governance*

## **KAWISTAMATOWIN** *Standing up for your people*

### Justice Bylaws

In 2014 the Federal Crown amended section 81 of the *Indian Act* as means of devolving governance to Canada's self-governing indigenous communities. These amendments recognized the inherent right under section 35(1) of the *Constitution Act*, 1982, to enforce their own laws and impose their own sanctions, which our Cree forebears saw fit to negotiate into the 'peace and friendship' treaties.

In 2016 Chief Richard Kappo of Sturgeon Lake Cree Nation and Detachment Commander Carolin Respect approached me while I worked for the Alberta Crown Prosecution Service in Grande Prairie. In less than 2 years we had created a community-led program which survived judicial scrutiny at the Court of King's Bench:

see ***R v Virginia Papastesis* (6 November 2017), 160984423S1 (AB KB) A/Chief Justice Ken G. Nielsen.**

First Nations can use this program, judicially tested for procedural fairness and due process, to restore their own systems that work to identify and expel harmful influences from their communities. A complete range of sanctions are possible, the key being dispute resolution which can involve the Courts through ss. 82(2) and (3) of the *Indian Act*. Fine Orders are payable to First Nations' administrations, thereby demonstrating their autonomy and governance while creating a funding stream for restorative programs that benefits their communities.



CONNECTIONS between the Anishinabe Clan System, the Teachings of The Seven Grandfathers & emerging Models of Governance

# Where We Are Going

MARTEN:  
WARRIORS

BEAR:  
JUSTICE

FISH:  
INTELLECTUALS

LOON:  
INTERNAL LEADERSHIP

DEER:  
GENTLE PEOPLE

CRANE:  
EXTERNAL LEADERSHIP

BIRDS:  
SPIRITUAL LEADERS



Aimee Bailey 2009  
Sturgeon Clan

## MIYO PIMATISIWIN

*the Good Life*







# Kinanâskomitin

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**Duncan's First Nation**



**FROG LAKE CREE NATION**



# SELECT CREE TERMS

*Community to confirm dialect, pronunciation, application, and other terms*

isihcikewin (things you do)

kahkiyaw niwahkomakanitik (all my relations)

kanipawistatametin (I will stand up for you)

kiskinihamakewin (to educate/teach)

miyo ohpikinâwasowin (good child raising)

miyo ohtahk otatoskewak (good relationship worker)

miyo pimatisiwin (the good life)

miyo wicehtowin (friendship)

nakayaskamowin (familiar land)

nehiyawaskiy (indigenous land)

nikawiy (mother) & nikawasis (little mother)

nipawistamatowin (to stand up for people)

nipawistamowak (to stand up for a certain person)

nohtawiy (father) & nohcawis (little father)

tapahkotowin (relations who take on a family role)

tawaw (come in there's room)

wahkomitowin (relatives)

wahktowak (they are related)

wiyasowewin (law)

# A VISION FOR THE JOURNEY

*Prepared by Anthony Oliver for his presentation at Western Cree Tribal Council's October 26, 2022, AGM  
for members of Sturgeon Lake Cree Nation, Duncan's First Nation & Horse Lake Nation*

**Clan Mother, we see you,**

Long ago, our ancestors began to journey beyond their familiar territory, observing the skies and birds which foretold the coming conditions, guided by the star lit sky that illuminated and charted their path at night. We learned to recognize and trust the powerful currents in the air and water which led us to resource filled valleys and waters. We followed the ancient bison who long-ago forged pathways across hemispheres, and the green turtle who gifted us seafaring technology long before Europeans figured out how to transport their heavy colonial plundering.

**We filled Turtle Island with our relations,** forming distinct societies across the Four Directions, each formed in and out of its distinct environment. You taught us that our most important resource - our children - whose spiritual gifts are needed to sustain our way of life, could only be revealed through good parenting that taught our sacred teachings and relied on our familiar land-based practices.

**You chose from our most courageous warriors and our most skilled hunters** those who would not fall victim to the trickster but rather who our neighbors would respect, resulting in strong alliances formed through council, ceremony, trade and sports, a process which cemented our bonds of kinship and protected our resources, medicines, and connection to the spirit world.



# A VISION FOR THE JOURNEY



**Our home** was akin to what the Christian tradition calls "the Garden of Eden", a physical world where powerful spirits either help or harm. You recognized the need for collective responsibility and the need for everyone and everything to have a meaningful role, including that pesky trickster who shows us the chaos that unfolds when we neglect our sacred teachings.

**You ensured** that our oral traditions were carried on by knowledge keepers, our ceremonies by faith keepers, our most important resource, our children, by those who were willing and able to dedicate themselves to raising our children in the right way. When dispute arose we came to you for guidance.

**We experienced** a good life in conditions that colonial settlers could not handle without our compassion or by creating immensely unfair advantage.

# A VISION FOR THE JOURNEY

Then one day, not long ago, the British King arrived on an Anglo-Saxon horse that he called Great White Father; the King offered us Great White Father as means of rounding up his people who had entered our lands uninvited, savagely killing our horses, destroying our traplines, and spreading their sickness and disease amongst our people;

The King admitted his mismanagement, which we could understand because he had no Clan Mother like you to guide him; as was our way, we told the King that we would take time to consider his offer, but, as a sign of good faith, he should begin sending us the things we required to repel the heathens;

The King agreed, telling us that Great White Father would remain nearby to protect us as we discussed the merits of making treaty; the King left and promptly ushered even more of his subjects onto our land illegally;



# A VISION FOR THE JOURNEY

After the King left, you told us that your Grandmother Spirit had come to you in ceremony, telling you she recognized the King from an earlier time when we were part of one clan that shared our teachings that we still keep. One day our relatives left to explore the unfamiliar parts of the world to the east.

The King and his relatives moved north where they spent countless generations destroying everything around them, building walls to protect their stolen resources which the King covered in gold to hide the decay; the King was here now in search of new resources to satiate his hereditary greed.

You told us that we need to make treaty with the King, but that when we do the King would remove the horse-skin from Great White Father revealing his true form and bad intentions. You told us that the beast would kill you first, and for generations following Great White Father would force our people to kneel and beg for use of our own resources, the whole while blaming you for the harms our people experienced

You told us that after awhile Great White Father would perish and be replaced by Little White Father; you told us that if we kept your spirit alive through ceremony, you would return when the time was right to tell us to stand-up again.

**CLAN MOTHER, WE SEE YOU! WELCOME HOME!**