

Indigenous legal responses to hate incidents: A Coast Salish case study

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Readers guide

There are a few considerations that are important to note before engaging with this report:

First, for the purposes of the BC’s Office of the Human Rights Commissioner’s inquiry, “hate incidents” are “actions and speech rooted in prejudice that, in the view of the person who experiences or witnesses it, are: aimed at a person or group of people because of their actual or perceived individual, collective or intersecting characteristics including age, disability, gender expression or identity, ethnicity, Indigenous identity, place of origin, race, immigration status, religion, sex, sexual orientation and social condition; and intended to, or does, significantly dehumanize, humiliate, degrade, injure, silence and /or victimize the targeted individual or group.”² As one can imagine, it is challenging to find Indigenous oral histories that focus directly on these types of incidents. In thinking about how to engage with the topic of “hate incidents” from an Indigenous legal perspective, taking into account that it was beyond the scope of this report to conduct primary interviews, I have decided to focus on interpersonal harms – harms caused as a result of interhuman interaction. Although not all the stories relied upon have hate incidents at their roots, they all refer to important laws and legal responses about what constitutes an interpersonal harm and how to respond to interpersonal harms (whether caused by an action captured by the definition of hate incidents or not). As we know, Indigenous laws and legal orders are living, so it is appropriate to consider how the laws and legal responses captured in these stories could evolve, or be interpreted, to respond to hate incidents in our ever-changing societies.

Second, as you will read in this report, Indigenous laws and legal orders are distinct and numerous, specific to societies, cultures, geographies, histories, etc. In order to avoid a pan-Indigenous approach to Indigenous law and legal orders in this report, I have chosen to focus my analysis on the Coast Salish legal order, specifically the laws and legal processes of the Hul’qumi’num-speaking First Nations of southeast Vancouver Island (the Hul’qumi’num people or Hul’qumi’num Mustimuhw). As a member of one of these communities, Cowichan Tribes, this is the legal tradition with which I am most familiar and have spent the most time researching, thinking about and engaging with. However, this is not to say that the laws and legal principles described in this report are not shared by other Coast Salish communities or other Indigenous Nations across Canada, simply that I am not in a position to make those assumptions at this point in time. Accordingly, this report, and the analysis contained within it, can be seen as a case study of sorts. It provides a framework of analysis that can be drawn on when considering other Indigenous laws and legal orders.

Finally, in order to ensure that this report is accessible to a variety of readers, I have included additional resources and appendices to help guide the research and analysis that may be required for other Indigenous legal orders. A bibliography of resources to guide the reader to additional materials on Indigenous law generally, and other specific Indigenous legal orders, has been

² British Columbia’s Office of the Human Rights Commissioner (BCOHRC), “[Inquiry Details](#),” online: *BCHumanRights*.

included. Although not exhaustive, it provides readers with a starting point for thinking about and engaging with Indigenous laws and legal orders. Appendix A is a resource created by my research assistants, two fourth-year students in the University of Victoria's joint JD/JID degree (focusing on Indigenous law and Canadian common law), which attempts to analyze the oral traditions of other Indigenous legal orders that may be of relevance to the question of appropriate legal responses to hate incidents in B.C. and Canada. Again, while not comprehensive, it can serve as a useful tool for drawing connections between the analysis found in this report and the ongoing work of meaningfully engaging with Indigenous laws and legal orders in the Canadian legal system. Throughout the report, you will find footnotes that direct you to Appendix A and suggest parallels that may be drawn across different Indigenous legal orders. Finally, Appendix B draws on the work of Dr. Hadley Friedland and the Wahkotowin Law and Governance Lodge and the Indigenous Legal Research Unit, and outlines a methodology for engaging with Indigenous oral histories.

Introduction

Indigenous peoples have unique histories and experiences of harms and injustices that many others in Canada have not encountered. Countless commissions, studies and reports provide overwhelming evidence of racial discrimination and harms effected against Indigenous peoples living all across the country.³ These findings illustrate that oppression, racism and discrimination are unrelenting, pervasive and present in today's society, especially for its Indigenous citizens.

The COVID-19 pandemic has increased awareness of hate-motivated offences in Canada. In July 2021, Statistics Canada reported that hate crimes rose 37% from 2019 to 2020, during the first year of the pandemic, and in particular, police-reported hate incidents against Indigenous peoples jumped 152% in 2020.⁴ In late January 2021, as the Cowichan Tribes' community was dealing with a COVID-19 outbreak, Chief William Seymour reported numerous hate incidents involving Cowichan Tribes' members and other Indigenous peoples. In some instances, visibly racialized community members were asked by employees of local businesses if they were Cowichan Tribes' members, and if they responded "yes," they were refused service.⁵ In other situations, businesses refused to make deliveries, e.g., food to the reserve.⁶ Other incidents illustrated a complete disregard for the human rights of Cowichan Tribes' members. Several online comments called for Indigenous employees to be terminated, and members also reported the cancellation of medical appointments after being asked for their ethnic background and connection to the Cowichan Tribes community.⁷

³ Canada, Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, (Ottawa: Canada Communication Group - Publishing, 1996); 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, B.C.: Privy Council Office, 2019); Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action*, (Winnipeg: Truth and Reconciliation Commission of Canada, 2015); Saskatchewan, Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild, *Report of the Commission of Inquiry into Matters Relating to the Death of Neil Stonechild* (Regina: Queen's Printer, 2004) [*Stonechild Inquiry*]; Saskatchewan, Commission on First Nations and Métis Peoples and Justice Reform, *Final Report of the Commission on First Nations and Métis Peoples and Justice Reform: Legacy of Hope: An Agenda for Change*, vol. 1 (Regina: Queen's Printer, 2004); Canada, Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice Canada* (Ottawa: Minister of Supply and Services, 1996) [*Bridging Cultural Divide*]; Manitoba, Aboriginal Justice Implementation Commission, *Aboriginal Justice Implementation Commission Recommendation on Policing*, (Winnipeg: Queen's Printer, 1991); Alberta, Task Force on the Criminal Justice System and Its Impact on the Indian and Métis People of Alberta, *Justice on Trial: Report of the Task Force on the Criminal Justice System and Its Impact on the Indian and Métis People of Alberta* (Edmonton: Province of Alberta, 1991); Michael Jackson, *Locking up natives in Canada: a report of the Committee of the Canadian Bar Association on Imprisonment and Release*, (Ottawa: The Association, 1988); Jonathan Rudin, *Aboriginal Peoples and the Criminal Justice System*, (Toronto: Ipperwash Inquiry, 2005).

⁴ Statistics Canada, *Police-reported crime statistics in Canada, 2020*, by Greg Moreau, Catalogue No. 85-002-X (Ottawa: Statistics Canada, 27 July 2021).

⁵ Lindsay Kines, "[Cowichan Tribes still facing racism in wake of COVID-19 outbreak](#)," *Times Colonist* (23 January 2021), online.

⁶ *Ibid.*

⁷ Scott Cunningham, "[Treat everyone equally: Island First Nation faces spike in racism as COVID-19 cases climb](#)," *CTV News* (11 January 2021), online.

Reducing racism, bias, prejudice and hatred are important goals for democratic societies pursuing equality and the protection of human rights. Responding to the increase in hate incidents during the pandemic, Human Rights Commissioner Kasari Govender has stated: “It is an ugly and disturbing trend. Some members of our communities are being treated as less than human and therefore somehow deserving of vitriol and violence. It is devastating and unacceptable.”⁸ As such, BC’s Office of the Human Rights Commissioner (BCOHRC) launched a year-long inquiry (the Inquiry) in August 2021 to examine hate in all its forms: not only racism and racial hate, but also hate directed at groups experiencing poverty or homelessness, and at groups protected under B.C.’s *Human Rights Code*, including hate perpetuated on the basis of religion, gender identity, disability, Indigenous identity and sexual orientation.

At the close of the Inquiry, the Commissioner will release a final report with recommendations to address, prevent and eliminate incidents of hate during times of crisis. The final report will attempt to respond to some of the overarching questions: How do we achieve these goals? And when hate incidents occur, what are appropriate responses?⁹ This report attempts to respond to these questions from an Indigenous law perspective. In particular, it will draw on the Coast Salish legal tradition, focusing on the laws of the Island Hul’qumi’num peoples to answer questions such as: What are our obligations to one another? What are appropriate responses when harm occurs? Who should be involved in these processes? Finally, it will consider how Indigenous laws and legal orders can inform the current human rights processes and help to develop a system that captures the legal principles and processes of all members of society.¹⁰

⁸ BCOHRC, “[1 in 4 British Columbians have experienced or witnessed hate incidents since start of pandemic](#)” (2 February 2022), online: *BCHumanRights*.

⁹ For the purposes of this Inquiry, “hate incidents” are “actions and speech rooted in prejudice that, in the view of the person who experiences or witnesses it, are: aimed at a person or group of people because of their actual or perceived individual, collective or intersecting characteristics including age, disability, gender expression or identity, ethnicity, Indigenous identity, place of origin, race, immigration status, religious, sex, sexual orientation and social condition; and intended to, or does, significantly dehumanize, humiliate, degrade, injure, silence and /or victimize the targeted individual or group.” (BCOHRC *supra* note 2).

¹⁰ I have chosen to focus my analysis on stories and oral traditions of the Island Hul’qumi’num Mustimuhw that illustrate the interpersonal legal obligations that we owe to one another in the context of harm, and that relate to, or can provide insight into, the topic of hate incidents and the proper legal response to such incidents.

Indigenous laws and legal orders

Before we can begin to unpack how Indigenous laws and legal orders may inform human rights processes in British Columbia, we first need to consider what we mean by Indigenous laws and legal orders. As Indigenous scholars have noted, the question of what is law is one that has preoccupied legal scholars, legal practitioners, students, politicians, government officials and community members.¹¹ Notions about law are varied and vast because, as Val Napoleon, Law Foundation Chair of Indigenous Justice and Governance at the University of Victoria, has so aptly stated: “We all hold expectations for what law is and what it should do in our world and beyond.”¹² One commonality is that law is a practice, or an activity, which comes to life in people’s lives, not just their minds. As Val Napoleon describes: “... law is a human endeavour. It is an active collaborative and public process and is never insulated from the larger social and political forces around it. Rather, law can be understood as being formed by and forming those constant social, economic and political dynamics.”¹³ As stated by John Borrows, Canadian Research Chair in Indigenous Law at the University of Victoria: “Laws arise whenever interpersonal interactions create expectations and obligations about proper conduct.”¹⁴ As such, in order to understand law, we need to consider it within the cultural, or societal, context in which it takes place.¹⁵

Indigenous peoples were the first legal practitioners in what is now referred to as Canada. Long before European settlers arrived, Indigenous peoples developed social, political and spiritual customs to guide their interactions and relations both within and outside of their communities. These customs developed into systems of laws, many of which continue to guide Indigenous peoples today.¹⁶ There are a number of sources of Indigenous laws. John Borrows has developed a taxonomy of different sources of Indigenous law: sacred, deliberative, custom, positive and natural.¹⁷ Other scholars have added to this taxonomy, including human interaction and general

¹¹ Val Napoleon, “[What is Indigenous Law? A Small Discussion](#)” at 2, online (pdf): *University of Victoria Indigenous Law Research Unit*; Sarah Morales, *Snuw’uyulh: Fostering an Understanding of the Hul’qumi’num Legal Tradition* (PhD Dissertation, University of Victoria, 2014) [unpublished] at 3–4; John Borrows, “Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education” (2016) 61:4 McGill LJ 795; Hadley Friedland & Val Napoleon, “Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions” (2015–2016) 1:1 *Lakehead Law Journal* 16.

¹² Napoleon, *supra* note 11 at 1.

¹³ *Ibid.* at 1.

¹⁴ John Borrows, *Canada’s Indigenous Constitution*, (Toronto: University of Toronto Press, 2010) at 7.

¹⁵ See generally, *Ibid.*

¹⁶ See generally, *Ibid.*

¹⁷ *Ibid.* at 23–58. Sacred laws are laws that “stem from the Creator, creation stories or revered ancient teachings that have withstood the test of time.” Natural laws are based on “observations of the physical world” and “attempts to develop rules for regulation and conflict resolution from a study of the world’s behaviour.” Deliberative law is “[a]n especially broad source of Indigenous legal tradition [that] is formed through processes of persuasion, deliberation, council, and discussion.” Positivist law is “legal rules, regulations and teachings that people follow based solely on their perception of the authority of the person or persons proclaiming them.” “Customary law can be defined as those practices developed through repetitive patterns of social interaction that are accepted as binding on those who participate in them.”

patterns of how we treat one another over time.¹⁸ However, these sources should not be treated as mutually exclusive because, in practice, “Indigenous legal traditions usually involve the interaction of two or more ... sources.”¹⁹

While much has been written about Canada’s common law and civil law traditions, there has been much less written about Indigenous legal traditions. This is due, in large part, to Canada’s colonial history and the dark shadow it has cast over Indigenous laws and legal processes. When Europeans arrived in Indigenous territories, they brought with them other systems of law. Those systems sought to transform and subordinate Indigenous governance systems, laws and legal processes. They undermined Indigenous peoples’ relationships with their kin, their lands, their ancestors and other Indigenous peoples. As such, the laws of Indigenous peoples, including their laws relating to societal obligations, were generally not observed or respected by colonial authorities because of their “perceived incompatibility with, or supposed inferiority within, the legal hierarchy.”²⁰

Despite the immense pressure to displace Indigenous legal traditions, they did not disappear. Rather, these laws, teachings, traditions and processes are lived in present day through stories, songs, dances, ceremonies, family gatherings, declarations, decision-making processes and innumerable other practices and customs. Accordingly, John Borrows has argued that “Canada is a legally pluralistic state: civil law, common law, and Indigenous legal traditions organize dispute resolution in our country in different ways.”²¹ It is also important to note the legal pluralism that exists within Indigenous legal orders. As previously stated, law cannot be separated from culture.²² As such, there are numerous different Indigenous legal traditions across the country. As Val 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.²³

This requires that when we are considering Indigenous laws and legal orders and their impacts on decision-making (both substantively and procedurally), we must take a distinctions-based approach – one that is grounded in the society, norms and practices of the individuals or

¹⁸ Val Napoleon, “Thinking About Indigenous Legal Orders” (revised) in Colleen Shepard & Kirsten Anker, eds., *Dialogues on Human Rights and Legal Pluralism* (Dordrecht, Heidelberg, New York, London: Springer, 2012) 229 at 233.

¹⁹ *Ibid.* at 55.

²⁰ Borrows, *supra* note 14, at 8.

²¹ *Ibid.* at 8.

²² *Ibid.* at 118.

²³ Napoleon, *supra* note 11, at 2.

communities involved, recognizing that law necessarily changes and adapts to respond to the different needs of each generation.²⁴

With this approach in mind, this report will focus on the legal tradition of the Island Hul'qumi'num-speaking communities. The Island Hul'qumi'num peoples, also referred to as Hul'qumi'num Mustimuhw,²⁵ are an Indigenous community of approximately 7,500 people living in and around the southeast coast of Vancouver Island, British Columbia, Canada. Culturally and linguistically, they are Coast Salish peoples who have lived in this area since time immemorial. They are communities with whom I have worked closely over an extended period of time and with whom I have kinship relations. However, at this point in time in my research (as noted in the Readers Guide at the beginning of this report), I do not feel comfortable generalizing their principles and practices as the Coast Salish legal tradition, although there are aspects of their laws and legal order which are held in common with other Coast Salish communities.

***Snuw'uyulh* and legal obligations**

When discussing the notion of law and legal processes with Island Hul'qumi'num Elders and Knowledge Holders, the word that kept coming up in our discussions was *snuw'uyulh*. *Snuw'uyulh* is a Hul'qumi'num word that has many interpretations in English, from “the teachings” to “our way of life” or “our way of being on Mother Earth.”²⁶ Accordingly, it touches on all aspects of life and is inseparable from Island Hul'qumi'num peoples' relations to each other, the natural world and the spiritual world.²⁷ It is also legal in nature. Through the principles that emanate from *snuw'uyulh*, Island Hul'qumi'num peoples can determine standards and practices for judgment and decision-making that help to regulate relationships and resolve disputes. As articulated by late Stz'uminus First Nation Elder Willie Seymour:

Snuw'uyulh is incorporated into everything ... The old people used to say, do you want an easy life or a hard life? You want an easy life; you listen to the traditional ways, the traditional laws. You're going to be kind to people. You're going to help people. You're going to support people. You want a tough life? Then you go and challenge people and you will become known for that.²⁸

As this understanding suggests, *snuw'uyulh*, and the teachings or principles contained within it, provide the Island Hul'qumi'num people with the legal framework of thinking, planning and decision-making so that right choices lead to “living a good life.”

²⁴ *Ibid.* at 2.

²⁵ The Island Hul'qumi'num peoples profiled in this report include member First Nations of the Hul'qumi'num Treaty Group (HTG), a political organization formed in 1993 to engage in comprehensive negotiations with the federal and provincial governments for the recognition of Hul'qumi'num peoples' rights, title and governance. The five First Nations members of this organization include Cowichan Tribes, Penelakut Tribe, Lyackson First Nation, Halalt First Nation and Lake Cowichan First Nation.

²⁶ See Morales, *supra* note 11, at 6.

²⁷ *Ibid.* at 18.

²⁸ Interview with Willie Seymour (23 June 2010) in Morales, *supra* note 11, at 220.

There are seven teachings that have been identified to me as comprising *snuw'uyulh*.²⁹ These teachings are:

- *Sts'lhnuts'amat* (kinship/family)
- *Si'emstuhw* (respect)
- *Thu'it* (trust)
- *Hw'uywulh* (sharing/support)
- *Nu stl'i ch* (love)
- *Mel'qt* (forgiveness)
- *Sh-tiiwun* (responsibility).³⁰

These are key teachings with deep roots in Hul'qumi'num Mustimuhw customs and traditions, which are applied as guiding norms and values in virtually every important area of life in the community. In essence, they represent a set of overarching teachings that seek to foster harmony, peacefulness, solidarity and kinship between all living beings and nature in the world.³¹

Although an in-depth examination of each of these teachings is beyond the scope of this report, a number of them are of particular importance when considering appropriate responses to hate incidents: *sts'lhnuts'amat* (kinship); *si'emstuhw* (respect); *nu stl'I ch* (love); *mel'qt* (forgiveness) and *sh'tiiwun* (responsibility). These teachings significantly influence the laws and legal processes associated with obligations and with the remedies for breaches of such obligations. As such, the following section attempts to broadly explain these teachings within the context of hate incidents.

***Sts'lhnuts'amat* (kinship)**

The notion of kinship, or relationality, is inherent to *snuw'uyulh*, or “living a good life.” Family is often viewed with the utmost importance for Hul'qumi'num Mustimuhw because family is what holds us in relationship as individuals and bridges us as individuals into our communities and nations. Because kinship was, and still is, the primary vehicle through which the ethics of sharing is exercised, Hul'qumi'num communities value strengthening their relationships and kinship ties with those around them.³²

In Hul'qumi'num communities, *snuw'uyulh* reinforces the teaching of relationality through values and virtues that include respect, kindness, cooperation, friendliness, reciprocal relations and love. The Hul'qumi'num language, traditional stories, ceremonies and songs contain and reinforce values that Hul'qumi'num Mustimuhw express through kinship relations. These values emanate from the principle of kinship and prescribe norms and practices that Hul'qumi'num Mustimuhw must follow when interacting with all their relations – animate, inanimate and

²⁹ Interview with Joe Norris (1 July 2010); Interview with Florence James (19 July 2010); Interview with Arvid Charlie (23 June 2010); Interview with Willie Seymour (23 June 2010) in Morales, *supra* note 11, at 221.

³⁰ Translations provided by Florence James via email on August 7, 2010, in Morales, *supra* note 11, at 221.

³¹ Morales, *supra* note 11 at 221.

³² Brian Thom, *Coast Salish Senses of Place: Dwelling, Meaning, Power, Property, and Territory in the Coast Salish World* (PhD, McGill University Department of Anthropology, 2005) [unpublished] at 358.

spiritual. As one can imagine, if creating and maintaining good relations is one of the primary objectives of a legal tradition, then this would greatly influence the legal obligations between individuals and also legal responses.

***Si'emstuhw* (respect)**

Respect is another teaching of *snuw'uyulh* that is relevant to our understanding of hate incidents and appropriate responses. Ellen White, the late Snuneymuxw First Nation Elder, author and academic, describes the concept of respect as, "... respect for others and their differences and for the power of love. The teachings [*snuw'uyulh*] show that we are all different, but the power of love and commitment transcends all differences."³³ Implicit in this statement is the understanding that differences are to be celebrated and viewed as a strength to the community. As such, we all have obligations to offer respect in all our interactions with the natural world – animate and inanimate.

***Nu stl'I ch* (love)**

The teaching of love arguably touches on all of the teachings of *snuw'uyulh*. When considering its importance to the topic of hate incidents, I was reminded of a phrase echoed often by late Stz'uminus Elder Roy Edwards: "*Uy'ye'thut ch 'u'suw ts'its'uwatul'ch*." It is a Hul'qumi'num phrase that translates loosely into: "Treat each other well, and you will help each other." I believe that this idiom reflects how Hul'qumi'num Mustimuhw can show love to one another in a way that reflects the teachings of *snuw'uyulh*. In it is a recognition that we are all related, therefore we need to treat each other with love and respect, and doing so will benefit us all.

***Sh'tiiwun* (responsibility)**

Although relationality is a guiding principle in the Hul'qumi'num legal tradition, approaching issues with a kinship orientation does not mean that individual rights and freedoms always give way to community interests. Hul'qumi'num law respects individual rights, but they must be exercised responsibly within a community context, just as is the case in Canadian constitutionalism.³⁴ Hul'qumi'num Mustimuhw have the freedom to do what they want, but they must do so in a manner that respects the collective nature of their relationships.

Although there is a high level of respect for individual freedom within Hul'qumi'num communities, it is balanced by fundamental responsibilities and duties. Hul'qumi'num Mustimuhw have a deep respect for kinship or family. As noted, the respect for kinship encompasses extensive responsibilities and respect for others. The others include spouses, children, immediate blood relations, community relations, Coast Salish people in general and

³³ S. Marlo Paige, *In the voices of the Sul-hween/Elders, on the Snuw'uyulh teachings of Respect: their greatest concerns regarding Snuw'uyulh today in the Coast Salish Hul'qumi'num Treaty Group territory* (MA Thesis, Malaspina University-College, 2004) [unpublished] at 11.

³⁴ For the importance of balancing individual and collective rights see generally *Dagenais v. Canadian Broadcasting Corp.* [1994] 3 SCR 835, 120 DLR (4th) 12; *R v. Keegstra* [1990] 3 SCR 697, [1991] 2 WWR 1.

non-Coast Salish individuals. Even ancestors and plants and animals are included under this principle of responsibility.

A Hul'qumi'num person also has a responsibility to *snuw'uyulh* itself. Florence James, Penelakut Elder and Hul'qumi'num language instructor, described this teaching to me with the following words:

Once you are passed down the traditional teachings, you had to believe it in your heart – all the rules and ways to live ... It's not just about saying it. You have to live it for it to be creditable. When you just say it, then it won't have meaning if you aren't living it in your heart. So that is what makes us authentic when we tell you the law ... *Sni'niw* means that you know the knowledge of *snuw'uyulh*.

... Once they teach you these laws, the *snuw'uyulh*, as soon as I say it to you, you are now responsible. That is why we say *sni'niw* – you are a responsible person of the traditional ways. So that is why they say to you – you are responsible.

If you are behaving badly and breaking all the laws of our First Nation ways then you have not followed any of the teachings. You are breaking one after another all the laws that you have been given to live by. Your whole life is guided by that law.³⁵

As this passage demonstrates, responsibility not only entails duties, it also entails accountability. As we will see in the following sections of this report, responsibility and accountability play an integral role in Hul'qumi'num dispute resolution processes and other legal processes designed to restore harmony when obligations have been breached.

***Mel'qt* (forgiveness)**

Forgiveness is a corollary teaching to responsibility. As numerous stories within the Hul'qumi'num legal tradition illustrate,³⁶ forgiveness is a necessary and integral part of restoring harmony and healing within a community when a breach of obligations has occurred. There is a recognition that fostering hard feelings not only harms the individual responsible for the breach of obligation, but also continues to hurt the individual harmed. As such, we often see this principle embedded into dispute resolution processes.

³⁵ Interview with Florence James (19 July 2010) in Morales, *supra* note 11, at 236.

³⁶ See Willie Seymour's story in Morales, *supra* note 11, at 238-239; Dr. Ellen Rice White (Kwulasulwut), "The Boys Who Became a Killer Whale," in Dr. Ellen Rice White (Kwulasulwut), *Legends and Teachings of Xeel's, The Creator*, (Penticton, B.C.: Theytus Books, 2018); "Siamtunaat's Story," in Beryl Mildred Cryer, *Two Houses Half-Buried in Sand: Oral Traditions of the Hul'qumi'num Coast Salish of Kuper Island and Vancouver Island*, (Vancouver, B.C.: Talonbooks, 2007) 136.

Interpersonal legal obligations in the Island Hul’qumi’num legal tradition

As discussed in the Readers Guide at the beginning of this report, for the purposes of this Inquiry, hate incidents are “actions and speech rooted in prejudice that, in the view of the person who experiences or witnesses it, are: aimed at a person or group of people because of their actual or perceived individual, collective or intersecting characteristics including age, disability, gender expression or identity, ethnicity, Indigenous identity, place of origin, race, immigration status, religion, sex, sexual orientation and social condition; and intended to, or does, significantly dehumanize, humiliate, degrade, injure, silence and /or victimize the targeted individual or group.”³⁷ As one can imagine, there are few, if any, Indigenous oral traditions focusing solely on the topic of hate incidents. Accordingly, I have chosen to focus my analysis on stories and oral traditions of the Island Hul’qumi’num Mustimuhw that illustrate the interpersonal legal obligations that we owe to one another and that relate to, or can provide insight into, the topic of hate incidents and the proper legal response to such incidents. Although not a comprehensive enumeration, the following sections will attempt to describe the different categories of individuals to whom interpersonal legal obligations are owed and the nature of those legal obligations in the Island Hul’qumi’num legal tradition.

To whom do we owe interpersonal legal obligations?

As described in the previous section, kinship, or relationality, is an inherent legal principle within the Island Hul’qumi’num legal tradition. Because of the perceived benefit of creating and maintaining relationships, Island Hul’qumi’num people seek to foster good relations with not only their kin and community, but also with strangers and non-community members, as they have the potential to become kin.

Kin: Family and community

Interpersonal legal obligations are owed by individuals to their family and community members, i.e., their kin. Stories within the oral traditions of the Coast Salish speak to the high level of obligations owed to family and kin, encompassing not only the duty not to cause harm, but also the duty to protect – a more positive legal obligation.³⁸ The importance of these interpersonal legal obligations is also illustrated in the way that *snuw’uyulh* is taught to Coast Salish children. Children learn proper attitudes and behaviours that promote appropriate conflict avoidance and resolution. A study of the Northwest Intertribal Court System (NICS), a consortium of Indigenous nations in the Pacific Northwest United States, described these interpersonal legal obligations in the following way:

The family was the most important social group. When conflict arose within a family, every effort was made to resolve the issue within the

³⁷ BCOHRC, *supra* note 2.

³⁸ See generally Cryer, *supra* note 36; Morales dissertation at *supra* note 11.

family. Dispute resolution was learned from birth. Proper attitude and behaviour were taught – primarily by elders – by example, lecture, story telling and recounting of family history. Story telling, history and advice that was passed on from generation to generation within the families ensure the continuity of tradition and identity.

Children were trained from an early age in the qualities that led to continuity and flexibility within the communities. They learned to respect their elders and teachers, to refrain from boastfulness, and to value qualities of self-discipline, self-control, generosity, peaceful attitude and hospitality. Their training prepared them for their role in a society that was structured to minimize open expression of dispute.³⁹

As one can see from this passage, obligations premised on the principles of relationality, respect, love and responsibility are of the utmost importance in Coast Salish society, including amongst Island Hul'qumi'num Mustimuhw.

Non-kin: Strangers

As stated previously, interpersonal obligations are also owed to non-kin. These obligations are premised on the notion that all non-kin have the potential to become kin and bring value to a family, community, territory, etc. Accordingly, the principles of *snuw'uyulh*, such as respect and love, also apply to those we are not yet in a kinship relation with.

This teaching is evidenced in several oral histories of the Island Hul'qumi'num Mustimuhw. In part of the story *The Stequham and the Spoll* (The Grouse and The Raven),⁴⁰ Raven, a chief of his village, goes into the forest to hunt for a deer. Shortly after beginning his hunt, he spots a large deer and shoots it with his arrow. He removes its heart and wraps it up to give it to his youngest son, and then puts the deer on his back and starts for home. On his way home, he meets an old man. Admiring the deer, the old man asks Raven for the heart. Raven refuses, stating that he does not give away food to strangers and that the old man ought to be fine enough to get food for himself. The old man replies that he is old and his limbs are feeble, and that it prevents him from killing deer like he did when he was young. Raven responds by telling him he should be dead, because those who cannot provide for themselves should not live. The old man tells Raven that the old people live to provide counsel to the young and to make the burden of others light. He then breathes on the deer and tells Raven to be on his way. When he gets to his house, Raven throws the deer down outside and walks into his house. He takes out the deer's heart and throws it towards his youngest son. But as soon as the heart leaves his hands, it turns to stone. The stone strikes the boy and kills him. Raven then tells his eldest son to go outside and bring in the deer. But when his eldest son goes out, he cannot find the deer. All he notices is a big piece of wood

³⁹ Northwest Intertribal Court System (NICS), *Traditional and Informal Dispute Resolution Processes in Tribes of the Puget Sound and Olympic Peninsula Region* (Edmonds, WA: NICS, 1991) at 4–5.

⁴⁰ Diamond Jenness, *Faith of a Coast Salish Indian: Memoirs in Anthropology no 3* (Victoria, B.C.: British Columbia Provincial Museum, 1955) at 5. The full story is not summarized here, just the points of significance to the discussion for the subject matter of this section.

shaped like a deer. He tells his father that he cannot find the deer and Raven goes out to look for the deer. When he sees the wood, he cries out in despair. He becomes very upset because he knows that if his food continues to disappear in this manner, he soon will become old and feeble like the old man of the forest. This story teaches the importance of showing respect and love to strangers, recognizing that everyone has gifts that they bring with them to community.

More vulnerable: Children, elders, disabled

The story of The Grouse and The Raven also demonstrates another special category of individuals to whom interpersonal legal obligations are owed: the more vulnerable. Obligations owed to those who are more at risk of either physical or spiritual harm, or for whom the physical or spiritual harm is greater, are viewed with the utmost importance. In the story of The Grouse and The Raven, the importance of caring for the elderly and feeble was illustrated by the severity of the consequence, or response to the breach of that obligation.⁴¹ Raven not only lost his son; he also lost his ability to provide food for himself and his family.⁴²

In many Indigenous communities, including Coast Salish communities like the Hul'qumi'num Mustimuhw, Indigenous children are viewed as the most important segment of society. Not only are they viewed as being more susceptible to physical and spiritual harm, but they are viewed as being the future of the community. As such, they are to be shielded from harm whenever possible. Coast Salish oral traditions contain many stories that outline the severe consequences that can befall an individual who harms a child. The story of *Slal-acum-cul-cul-aith* (The Evil Woman of the Fraser River Flats)⁴³ is a narrative that has similar iterations in many different Coast Salish communities.⁴⁴ In this story, two bad (*slal-acum*) women (remembered as *Cul-cul-aith*) preyed on young children, travelling from village to village and putting them in the baskets on their back. One day, one of the women went to the village of Lummi and snatched several children. At night, she lit a fire and instructed the children to close their eyes and dance around her. The older children cautiously peeked through their fingers at times to see what she was doing, and when they got their opportunity, they pushed her into a hole near the fire where she was burned. Her evil spirit continued to live on after that, as it was transformed into mosquitoes and blown about by the wind out of her ashes. Again, the severity of the consequence

⁴¹ See also Appendix A, "The Giant Skunk." This Cree story also teaches about the obligation to protect the vulnerable from harm.

⁴² See also Appendix A, "Butterflies." This Anishinaabe story recounts how the manitou (spirit) of the milkweed offered its own nectar as medicine to a butterfly that was being constantly tormented/sought after by birds. This story also teaches that one has an obligation to help those who are more vulnerable, especially when one has resources available that can be of help.

⁴³ Robert Brown, John Hayman, *Robert Brown and the Vancouver Island Exploring Expedition*, (Vancouver: University of British Columbia Press, 1989) at 188.

⁴⁴ Suzanne Fournier, *Stolen from our embrace: the abduction of First Nations children and the restoration of aboriginal communities* (Vancouver, B.C.: Douglas & McIntyre, 1997) at Preface.

(transformation) illustrates the importance of Island Hul'qumi'num peoples' legal obligations to prevent harm to children.⁴⁵

In the context of acts of hate, there is an increased responsibility to protect vulnerable people. Family members, community and third parties are all responsible to prevent harm, provide assistance and support vulnerable individuals. When harm has occurred, Island Hul'qumi'num oral histories⁴⁶ teach that the remedy will be proportionate to the grave nature of harm against a vulnerable person.⁴⁷ This is illustrated in more detail in the section below.

What is the nature of the interpersonal obligations owed?

As detailed earlier, this report does not attempt to examine all Coast Salish or Island Hul'qumi'num interpersonal obligations. Rather, it focuses on those interpersonal obligations related to the concept of hate incidents. As such, the following section will examine four teachings, or legal principles, that I have identified as being of significance when considering whether an individual has acted in a lawful manner or breached their obligations to one another: 1) respect differences; 2) show love; 3) support one another; and 4) be truthful/expose harms.

Respect differences

Respect is an inherent legal principle of *snuw'uyulh*. Embedded in the oral tradition of the Island Hul'qumi'num Mustimuhw is the notion that we show respect by honouring differences and treating individuals in the way that we would treat our closest of kin. In speaking with me about this concept, late Cowichan Elder Wes Modeste shared the following:

One story that intrigued me is that there used to be stories of giants. I suppose they were something like Goliath.

One day, a man came across a very large bow when he was hunting. He was looking at it. He could see that it wasn't a natural branch that had fallen in the forest. After he had satisfied his curiosity, he continued on.

It wasn't long after that he came across human remains – but they were from a very large person. “This man must have been accidentally killed,” he thought to himself. So he went walking around the mountain, looking for a resting place for the bones. He came across a crack in the rock. So

⁴⁵ See also “Wiigyey Brings Light to the World” in Appendix A. This Gitksan oral history also illustrates the higher level of obligation owed to children as compared to others. Similarly, the story “*E-hep*” in Appendix A also addresses the special duty owed to children in the Cree legal tradition.

⁴⁶ See “*Skelechun*, the Lightning-Eyed” in Brown & Hayman, *supra* note 36, at 185; “*Xeel's* Makes Raven a Bird” in Barnett Richling, ed., *The WSANEC and their Neighbours*, (Rock's Mills Press, 2016) at 136; “*Slal-acum-cul-cul-aiih*” in Brown & Hayman, *supra* note 36, at 188; and “*Siamtunaat's* Story” in Cryer, *supra* note 36, at 136.

⁴⁷ The Anishinaabe oral history, “Mosquitos” (Appendix A) also provides insight into the notion of proportionality. In this story, Crying Dog was treated in the exact same way – with the same psychological manipulation and physical treatment – as he treated the mosquitos and other flies with.

he gathered up some moss and laid it down and then picked up all the bones and started placing them in this shelter by the rocks.

After he had gathered up all the remains that he could find, he remembered the bow. “That must have belonged to this man,” he said to himself. So he went back until he found it. He covered it over with moss and placed it with the remains. Then he covered all of it over with moss.

That night, that man came to him in his dreams and expressed gratitude for his gesture of kindness and for taking care of his remains. He especially thanked him for returning his bow, because he had been missing it.

The giant bestowed a gift on the man. I don’t remember the gift; maybe it was to be lucky in hunting or something similar. So the gesture was not without reward.

That’s a teaching. To save respect for something like that and to go out of your way to respectfully remove the remains to a place they know more. That is more in keeping with how bodies should be kept.⁴⁸

There are many teachings implicit in this account. For the purposes of this report, I want to draw out a few of my own observations. First, the remains that the hunter came across were from a giant; they were not the remains of a kinship relation (at least from what we know from the story). The hunter observed the differences between himself and the giant, but still acted on his obligations to treat the remains in a respectful manner. The differences, or lack of a kinship relationship, did not preclude the hunter from owing positive legal obligations stemming from the principle of respect.

Second, as observed by Wes Modeste, the hunter treated the remains, despite the fact that they belong to a giant, in the manner that Island Hul’qumi’num law requires remains to be treated. He buried them in a proper resting place and went out of his way to ensure that the belongings of the giant were buried along with him.⁴⁹ As the story describes, the hunter was rewarded for his adherence to his obligations, again illustrating the idea that everyone deserves respect because everyone imparts value to the community.

Another story which helps us to understand the importance of respecting difference is *The Adventures of the Young Man with Crooked Eyes*.⁵⁰ In this story, a young man who is born with squint eyes falls in love with the Chief’s daughter. After many weeks of vying for her attention, and being treated very poorly in return, the young man is rejected for being too ugly. The young

⁴⁸ Interview with Wes Modeste (23 June 2010) in Morales, *supra* note 11, at 236.

⁴⁹ For a more comprehensive discussion on obligations owed to the dead, see generally Eric McLay et al., *A’lhut tut et Sulhween* “Respecting the Ancestors”: Report of the Hul’qumi’num Heritage Law Case Study (Ladysmith: Hul’qumi’num Treaty Group, 2004).

⁵⁰ Martha D. Harris, *History and Folklore of the Cowichan Indians* (Victoria, B.C.: Colonist Printing and Pub. Co., 1901) at 22.

man goes to visit a wise woman, who tells him to go to his grandfather, who makes him a new face. When he returns home, after several adventures, the Chief's daughter is now interested in him, but he rejects her. She seeks help from the same wise woman and is counselled to visit the young man's grandfather as well. When she does, the grandfather gives her the young man's old face as punishment for her actions. From this story, Island Hul'qumi'num Mustimuhw are taught that not respecting difference can result in severe emotional harm, or harm to the dignity of others, and as a result, there may be long-lasting and severe consequences for breaching such obligations.⁵¹

Show love

As Ellen White observed, closely connected to the principle of respect is the principle of love, as it is love that enables us to look past differences and treat people in a respectful manner.⁵² Wes Modeste shared the following story with me:

There were always stories of very large snakes – large and invisible to most of us. This lady was picking berries in the mountains and she came across a very large snake. It was all coiled up with its head up, watching her. She ran over and embraced the snake. (I think I would be too frightened to do something like that.) She woke up and she wasn't at the place where the snake was coiled up. But for the rest of her life, her gift was making beautiful baskets. That was her gift.⁵³

In this short narrative, we see the principle of love in action. The lady, rather than act on perhaps her first instinct of fear of difference, chose instead to show love to the snake. As a result, she was gifted with the ability to make beautiful baskets – a constant reminder of the benefit of showing love to others.

In *The Adventures of the Young Man with Crooked Eyes*, not only did the Chief's daughter fail to show respect, but she also failed to show love and compassion to the young man. This story teaches us that the principles of respect and love require us to be kind to one another and to approach situations seeking to understand how others may be suffering or otherwise vulnerable. If the Chief's daughter had considered that the young man was in a position where he had been ostracized and victimized, possibly for his entire life, she may have responded with more love and compassion than she did and may not have suffered in the end as a result.⁵⁴

⁵¹ A parallel may be drawn here between this Coast Salish story and the Anishinaabe story "Mosquito" (Appendix A). Similarly, in "Mosquito" emotional harm/harm to dignity and physical harm is brought upon the mosquitos and other flies. The harm occurs, in part, because Crying Dog is annoyed by the mosquitos and flies and doesn't want to deal with them anymore. Just as in "Young Man with Crooked Eyes," "Mosquito" also teaches one that importance of valuing and respecting differences.

⁵² Paige, *supra* note 32 at 11.

⁵³ Interview with Wes Modeste (23 June 2010) in Morales, *supra* note 11, at 230.

⁵⁴ Many of the Anishinaabe and Gitksan oral histories found in Appendix A may also be of relevance here. In particular, the Anishinaabe story "Mosquitos" really emphasizes the idea of proportionality in legal responses.

Support one another

The Island Hul'qumi'num legal principles of respect and love are also related to the principle of support. When thinking about how to best articulate this connection, my thoughts turned to a phrase often echoed by the late Stz'uminum Elder Roy Edwards: "*Uy'ye'thut ch 'u'suw ts'its'uwatul'ch.*" It is a Hul'qumi'num phrase that translates loosely into "Treat each other well and you will help each other."

This teaching is illustrated in the story of The Grouse and The Raven (another portion of which, focusing on the actions of Raven, was recounted previously in this report).⁵⁵ Grouse was Chief, greatly loved by his people. One day, after Raven refused to share his herrings with him, Grouse decided to make a bow and some arrows and go out to hunt deer. Shortly after he departed, he saw a beautiful fat deer. He strung his bow and shot an arrow at the deer. It was a beautiful shot; the arrow pierced the deer's heart and killed it. He put the deer on his back and started for home. On his way home, Grouse met a very old man. His hair was white and he was bent almost in half and required a stick to help him walk. The old man admired Grouse's kill and told him that he was short of food. He asked for the heart of the deer. Grouse readily agreed and the old man ate it up at once. The old man thanked Grouse and told him to put the deer on his back again so that he could breathe on it to make Grouse's burden light. Grouse put the deer on his back and the old man breathed on it, and it became so light he could scarcely feel its weight. He soon arrived home and there was great rejoicing in his house. As illustrated by this story, in helping the old man, Grouse also helped himself. By sharing the heart of the deer with the Old Man, the Old Man, in return, lightened the load of the Grouse and enabled him to carry the deer home and share it with his family. It teaches us that when we support one another, we help ourselves.⁵⁶

Another important factor to consider in the story of The Grouse and the Raven is the fact that both the Grouse and the Raven were chiefs of their village. Within the Island Hul'qumi'num legal tradition, the principle of trust⁵⁷ and the responsibility to maintain trust greatly influence the obligations held by those in positions of power and privilege. Leadership authority, in the Coast Salish world, is said to be based on respect and acceptance of established modes of conduct and behaviour.⁵⁸ Florence James shared her experience with me:

... If you can speak to something that you or a group that needs healing, and they feel that difference in the way you are speaking to them, they are going to feel respected. They will want to heal, or they will want to

⁵⁵ Jenness, *supra* note 40 at 5.

⁵⁶ See Appendix A, Anishinaabe oral history, "The Old Woman Becomes a Woodpecker." In this story, similar to Raven's actions, the old woman acts selfishly and refuses to share her bread with *Nanabush* when asked for it. Other similar stories found in Appendix A are the Cree story, "*Wisahketchek* and the Magic Headgear," which illustrates the importance of supporting one another, and the Gitksan story, "*Wiigyey* Brings Light to the World," which teaches that when you help those around you, you also help yourself.

⁵⁷ See Morales, *supra* note 11 at 236.

⁵⁸ Bruce Miller, *The Problem of Justice: Tradition and Law in the Coast Salish World* (Lincoln: University of Nebraska Press, 2001) at 115.

listen to whatever it is that they need from you – if you are using the traditional ways.

That is the one main rule my grandpa said. He was from Quamichan area and he married at Kuper Island (that is why we were there). He wife's dad was Moses Peter.

He ran his Big House in that rule – that teaching. So the people would love to be near him and accept the ways he wanted them to be. That is how he ran his Big House.

So every time they had a ceremony, most of the people would run to him because they knew they were going to be respected, honoured and treated well. It is called *a'lha'tham* – they were going to respect you and honour you when you are in their presence. *A'lha'tham* is treating you in a highly respectful way.⁵⁹

As this example demonstrates, the principles of respect and trust are highly valued in the Hul'qumi'num communities. It has been explained to me that leadership and governance were more fluid and that if a leader was found to be acting in a disrespectful or untrustworthy manner, he could quickly lose the support of this community. Conversely, individuals often rose to positions of influence by virtue of their ability to demonstrate respect, as was illustrated in the case of Florence James's grandfather. As a result, there may be greater obligations put on individuals in positions of power or privilege to offer support to their relations or those in need around them, as we saw in the story with the obligations owed to the Old Man by Grouse and Raven.

In the story of The Monster of Octopus Point,⁶⁰ a monster, *Shuh-shu-cum*, was harming travellers by opening his mouth and sucking in anyone who tried to pass by him in their canoes. The villagers agreed to send their fastest runners in search of a person of supernatural strength and wisdom to help them. They found a man called *Sum-ul-quatz*, who agreed right away to help them. He slung several boulders toward *Shuh-shu-cum*, but realized that he could not properly aim because Mount Maxwell was in the way. *Sum-ul-quatz* asked the spirit of the mountain to hunch down to give him a clear shot, and it was only too happy to do so, having witnessed the harms caused by *Shuh-shu-cum*. *Sum-ul-quatz* launched another boulder, shattering *Shuh-shu-cum*'s nose, so he could no longer harm anyone.

Sum-ul-quatz agreed to help the villagers, even though he did not know them and had no part in causing them harm. Perhaps a part of this obligation was the fact that *Sum-ul-quatz* had knowledge and abilities the others did not. The principle of responsibility encourages individuals to recognize that they live and operate within a community context. Further, the principles of kinship/relationality and love imply a responsibility to understand our relationality with those we

⁵⁹ Interview with Florence James (19 July 2010) in Morales, *supra* note 11, at 228–229.

⁶⁰ Dolby Bevan Turner, *When the Rains Came and Other Legends of the Salish People*, (Victoria, B.C.: Orca Book Publishers, 1992), at 99–103.

interact with in the Coast Salish world and to treat them well. Individuals who have special knowledge, skills or expertise are particularly well situated to use their skills and positions of power/authority to respond to harm in ways that help or benefit others.

In the context of acts of hate, the obligation to utilize special knowledge, skill, authority or expertise to help others may mean that certain people have a duty to intervene to prevent further hateful behaviour (e.g., media, social media platforms, community leaders, etc.), or to enact remedies. This obligation arises not necessarily as a result of certain connections or established relationships, but as a result of the special abilities the individuals possess and their position within the community as a result.

Trust: Be truthful /expose harms

Within the context of hate incidents, the Island Hul'qumi'num legal principle of trust implies an obligation to be truthful and/or expose harms. In the Coast Salish story of Whatever Happened to Greedy Raven,⁶¹ Raven joined a group of lady birds who were going out berry picking, but stayed behind in the canoe and devised a plan to get all the berries for himself. He planned to use his spirit power to turn bundles of moss into war canoes once the women came back. When they returned, a line of war canoes chased after their canoes, and Raven told the women to head ashore and hide. Once they left, he ate all the berries they had picked. Then he rubbed berry juice all over his feathers to look like blood so the women would think he had been attacked and their berries stolen by the warriors. But Snail, who had seen the entire thing, told the women the truth about what happened, and they took Raven and threw him far into the water to swim home.

Raven breached his obligations to be honest and truthful to his relations in accordance with the principles of respect, love and responsibility. As a result, he caused significant harm to his community members, who were left with nothing to eat. However, Snail, who was a stranger to the women, took up the obligation. The principles of responsibility and trust imposed upon Snail an obligation to be honest and expose the truth, as a witness to the harm done. In doing so, Snail showed the women respect.

This story illustrates that obligations may be placed on those who witness harm, within the Coast Salish world. In the context of hate incidents, members of the broader community who witness the harms caused may owe obligations as well, even if they were not directly involved in causing the harm. For example, the principle of responsibility may require individuals to expose racist and hateful behaviour and speak out against it, similarly to how Snail spoke up in support of the women. This is because individuals, especially those who are more vulnerable, should be able to rely on the knowledge that they will be supported and cared for by others in accordance with *snuw'uyulh*.

⁶¹ Cryer, *supra* note 36, at 324.

Island Hul'qumi'num legal responses to harm

As the previous sections illustrate, there are many legal principles within the Island Hul'qumi'num legal tradition that can serve to deepen our understanding of the interpersonal obligations owed when hate incidents occur. Within this legal tradition, there are also principles and practices that can inform our understanding of how one ought to respond when interpersonal harm occurs. The following narratives will be used, in conjunction with the oral histories shared in the previous sections, to help us understand how the Island Hul'qumi'num legal tradition responds to harm.⁶²

One of my favourite stories, shared with me by late Cowichan Elder Wes Modeste, is a beautiful account about the last time he witnessed blanketing as a way to restore balance to the community after an interpersonal dispute between two families:

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. And they 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). He had a lot, a lot of money in his hand.

I'm not sure if both of the young men who got beat up were present that night. There's only one that I remember.

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

⁶² This is not an exhaustive accounting, but rather focuses on instances where interpersonal harms have occurred.

you see all your family members following with money? You are now responsible to repay it. So anytime any of your family has work, you bring money to help.”

And with a large family like that, I suspect it took him quite a while to repay.⁶³

Frank Malloway, late Stó:lō Heredity Chief, gave this description of how Coast Salish families used gift exchange to settle problems between them:

I think most of it was done through the head of the family. The head of the families would meet and they would discuss the crime, or whatever it was, and they'd reach a consensus. I've never really heard about what the sentences were. They'd say, “Well, we had a family meeting with this family, and they decided on what had to be done,” but you never really hear about the punishment itself and how the families reach that verdict, or whatever you'd call it. ... If you did something wrong the family would take the responsibility and make an offering. They call it an offering. Some of the things in the old days were canoes, because they were like cars today, “Ah, I'll give you my car if you forget about this.” But it was canoes in those days. I don't think it was really food because food was so plentiful that it wasn't expensive. Later on, my dad was saying, when it was settlement time, it was horses. They took the place of canoes. He talked about bringing horses right into the longhouse to distribute to somebody.⁶⁴

The following story, shared with me by late Stz'uminum Elder Willie Seymour, illustrates how restitution can take a variety of different forms:

One evening two brother-in-laws were partying. There was quite a few of them sitting on the beach near the big house and they were partying. Anyways, the two brother-in-laws got into it and one brother-in-law beat this brother-in-law (his sister's husband) real bad. It put him in the hospital and he was in a coma for a couple of days.

The Old People got together right away. I remember them saying that they'd all go to the hospital when the other brother-in-law comes out of unconsciousness and ask him what he wants.

So the Elders were there when he woke up and the first thing he asked was, “How is my brother-in-law?” He didn't know the situation because he was pretty intoxicated when it all happened.

⁶³ Interview with Wes Modeste (23 June 2010) in Morales, *supra* note 11 at 271–272.

⁶⁴ Miller, *supra* note 58, at 146.

They told him he was charged with attempted murder. And they asked him, “How do you feel?” He replied, “Honestly, I have no argument with my brother-in-law. I was part of the problem and I don’t want to see him incarcerated or put in jail.” So they had that discussion right there.

A couple of days later the brother-in-law was in court and all the Elders from Chemainus Bay showed up ... They were all there ... And they had a spokesperson get up and talk about what the brother-in-law in the hospital had said. They requested time in the courts and explained how the victim felt that he was somewhat part of the problem that happened and said that he was requesting to drop the charges.

But the courts couldn’t drop the charges. So they gave him a \$300 fine. The Elders right there gathered the money and bailed him out. And they told him that when the winter starts, he had to be down there helping in the big house. And as long as his brother-in-law was injured, he had to go hunting and fishing for his sister.⁶⁵

These three accounts, along with the oral histories shared in previous sections, will be drawn out in the next sections of the report to help us understand, in more detail, Island Hul’qumi’num legal responses to interpersonal harms.

Who is involved?

One of the first things to consider when determining an appropriate legal response to a harm such as a hate incident, is who ought to be part of the process. The previous narratives provide insight that within the Island Hul’qumi’num legal tradition, it is not just the individual(s) who cause harm and the individual(s) who are harmed, but also the family of those individuals, leaders of the community and the community in general.

Family

The family of the offender(s) plays a large part in the restitution process. This is because of the principle of relationality and the idea that when one brings shame upon themselves, they also bring shame upon their family.⁶⁶ As such, when a family member breaches an interpersonal obligation, the responsibility for remedying that breach falls upon the whole family. We see that in the narratives provided. In the story shared by Wes Modeste, it is the family who hired the speakers, called the witnesses and blanketed those harmed, on behalf of their relations. The story by Frank Malloway is even more explicit in its recognition of the importance of family in remedying harms. Through his account, we learn that responsibility for determining an appropriate response to a breach of obligations would fall primarily on the heads of family.

⁶⁵ Interview with Willie Seymour (23 June 2010) in Morales, *supra* note 11, at 273–274.

⁶⁶ Morales, *supra* note 11 at 51–52.

As such, when interpersonal harms occur, family members must be involved in the process to remedy those harms, recognizing that breaches of obligations not only implicate the entire family, but also cause harm to the entire family.

Leaders

The story shared by Frank Malloway also teaches us about the role of leaders in remedying harm. In his story, it was the heads of family who took on the responsibility for leading the process and ensuring that an appropriate response, one that all involved were satisfied with, was taken.

We also see the role of leaders in resolving interpersonal disputes illustrated in the story shared by Willie Seymour. In that story, it was the Elders from the community who appeared before the court and spoke on behalf of those involved. When it became apparent that the court could not follow their advice regarding an appropriate remedy, they took it upon themselves to pay for his fine and then instructed him on what was required of him to remedy the harm caused, i.e., hunting and fishing for his sister until his brother-in-law was well enough to undertake those tasks himself.

As the story of The Monster at Octopus Point teaches us, those with specialized skills and authority occupy positions of privilege and respect within communities. In this story, Elders and Chief both played a particular role in the decision-making process – the Elders organized the initial meeting to decide what to do, and the Chief made an ultimate decision. As we see, these types of individuals have an important role to play in the remedying of harms and restoration of balance to communities when such harms occur. This is because they are best positioned to instruct and counsel community members, and they also have a greater understanding of what is best for the future of the community.

Community members

As illustrated by the three stories provided, the process of healing/restoring those who are severely harmed may involve the entire community. When the harm is one that affects an entire community, everyone has a voice in the decision-making process. The restitutionary process may require bringing people together to determine who has the knowledge, expertise and/or capacity to respond appropriately, as was the case in The Monster of Octopus Point. Similarly, even when the harm only directly affects one individual, the entire community may be involved in the response. In Wes Modeste's story, we see the role that community members played in witnessing not only the taking of responsibility by the young men and their families, but also in witnessing the blanketing ceremony undertaken to remedy the harm and make the young man whole again. We also see the important role that the witnesses played in holding the young men to account by speaking to them and impressing upon them the wrong that had occurred and what must be done to not only make the victim whole again, but what obligations they have to make their family members whole again.

In the context of hate incidents, which often have effects far beyond individuals who are harmed directly, the entire affected community may have a right to participate in the decision-making

process surrounding a response. Certain individuals may also have particular obligations within this process, depending on their role within the community, e.g., community leaders, Elders and those with specific knowledge.

Steps within the legal process

From these narratives, we can begin to identify some important steps within Island Hul'qumi'num legal processes⁶⁷ to remedy interpersonal harms: identify family(ies), ask for help, engage in collective deliberation to determine the best response to harm or families collectively agree on a third-party decision-maker, family of wrongdoer makes restitution and re-integrate/rehabilitate wrongdoer back into community. Each of these will be examined below.

Identify family(ies)

As the narratives illustrate, the first step in remedying a harm is to ensure that families of those involved participate in the process. This involves not only making space for them in the process, but also ensuring that they have input into an appropriate remedy for the harm caused.

In thinking about this in terms of society today, I believe that “families” can also include those individuals we are in relationality with (taking into account the context in which harm occurs). For example, if the harm occurs within a workplace setting, then perhaps coworkers/management, etc., form part of the family. If the harm occurs within a school setting, perhaps classmates/schoolmates, teachers, support workers, principals, administration, etc., also form part of the family.

Ask for help

Asking for help refers to ensuring that all individuals who might have something to contribute to the restoration of the harm are invited to be part of the process. We see this illustrated in *The Monster of Octopus Point*, when runners are sent to find *Sum-ul-quatz* (who has special knowledge and strength) and Elders and Chief are included in the decision-making process. In the story by Wes Modeste, he references the use of speakers. Hiring speakers is a widely practiced tradition within the Big Houses of the Coast Salish people. Shirley Julian, a Stó:lō Elder explains: “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.”⁶⁸ These speakers are trained from a young age in the Hul'qumi'num' language and in the history of the community. As a result, 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.⁶⁹ Their judgment, relating to the words they choose to use, is trusted when they are facilitating disputes, namings, memorials, etc. In fact, different speakers are utilized for their varying techniques:

⁶⁷ See generally Morales, *supra* note 11; Sarah Morales, “Speakers, Witnesses and Blanketing: The Need to Look Beyond the Courts to Achieve Reconciliation” (2017) 78(2d) SCLR at 139–160.

⁶⁸ Miller, *supra* note 58, at 133.

⁶⁹ *Ibid.* at 116.

... Then they will appoint a couple of elders to go deal with those involved ... They selected ... people that were appropriate for that situation. There were many different speakers, the speakers that were real direct and hit hard and really shook you up. There were speakers that were really calm and read into your emotion and threw out the feeling. There were other speakers that could be for the rebels ... We looked at the individual and decided ... This is a real tricky matter so we're going to get an aggressive speaker that he can't dominate. So we went to this young man, he could be really cheeky, smart-mouth, so we get an aggressive speaker who will say, "Listen to me now!" You know it stops them in their tracks. So we had these different levels of speakers.⁷⁰

Although different situations require different speakers, one unifying characteristic of speakers is that they are all trusted to speak on behalf of the families they represent. In doing so, they often begin their remarks by recounting the family history and contextualizing it in relation to the work at hand, whether it be a naming ceremony, a memorial or a dispute resolution process. This process enables all parties involved to share their understanding of the history, rights and/or dispute at issue. In effect, it allows for recognition of counter-narratives through the use of hired speakers. This recognition helps to develop an environment of trust and mutual respect, as all parties involved have an opportunity to both hear and reflect upon the other parties' positions.

Engage in collective deliberation to determine the best response to harm or families collectively agree on a third-party decision-maker

Depending on the nature of the harm, decision-making can occur either through a consensus-based process or by a third-party decision-maker. Oftentimes the choice of process is determined by the relationship between the parties involved, i.e., kin or non-kin relations.⁷¹ A story told to me by Willie Seymour provides insight into what a consensus-based process might look like:

Another one I remember clearly, I was just a little guy and there was a problem in the community that needed to be dealt with right away.

All the big houses were on the waterfront in Kulleet Bay, and there was a point, a rock that went out ... my grandfather went down there.

I remember one summer day and somebody was there talking to him and it wasn't long and he grabbed his drum. He had a big drum – hand drum.

We walked down to the big house, he unlocked the doors, opened up the doors, and someone saw him walking, I can't remember who it was, they went in and started the fire right away. And he beat on his drum. Beating on his drum for maybe five minutes so the whole community can hear it. And then five minutes later, he beat on his drum again and that was his

⁷⁰ Interview with Willie Seymour (23 June 2010) in Morales, *supra* note 11, at 299.

⁷¹ For more detail see Morales, *supra* note 11 at 251–314.

notice for the people to come; that there was business to be taken care of. And if it was an urgent matter, then there was a third time.

The people rushed down, “We need to talk about whatever the concern was.” And every family brought something. The women, they would go in the kitchen ... the women would start cooking and the men would be down the other end discussing what had to be taken care of.

When the table was ready, they continued their discussion as they ate. And when the women were finished cleaning up, they came in and joined and they were invited to continue the discussion. It was open and sometimes they involved women if it was a husband and wife conflict or whatever.

And they didn’t leave until they came to a satisfied resolution. Sometimes they were there until real late at night. Really late at night they would stop and eat again ...

If there was somebody missing, they would send one of the young men. There was trails between the villages ... so they would send a runner from Kulleet Bay to Shellbeach, from Kulleet Bay to Nelson Point – to call all the individuals that were knowledgeable on the issues they were discussing, or so that they could contribute to some solution.

... They asked everyone; they asked every individual, “*nil ow’ sthuthi’ ni’ ’utun shquahuwun.*” “Is it okay with you, okay with you personally? Is our decision effective? Is our decision acceptable?” They go around asking each individual and then they say, “*tun’ ni’ ’utunu ’il kwet ch*” – from this day on we put this to rest. Then they will appoint a couple of elders to go deal with the involved⁷²

This description of an intra-family dispute resolution demonstrates the importance of maintaining community harmony. All Willie’s grandfather had to do was beat on the drum. The community recognized that there was a matter that needed attention. It was dealt with immediately. It wasn’t postponed until a time that was convenient for all involved. As soon as individuals heard the drum, they stopped what they were doing and gathered at the longhouse.

As explained to me, the process for dealing with inter-family disputes or disputes between communities could be quite similar:

The leaders got together from the different communities and whatever time it took, one day, two days, three days, of deliberations and then they would decide. They decided, well, you can go ... and my community will go ... and someone else will sometimes volunteer, I will go ... But the

⁷² Interview with Willie Seymour (23 June 2010) in Morales, *supra* note 11, at 306–307.

leaders deliberated and then the communities were brought together and this is what I'm talking about – reconciliation.

If one community was offended, they never allowed that to go by. Somebody would step in, even somebody that is in the background would step in, and then they would blanket the ones that are victims ... they will have a ceremony, mask dance or sometimes they will just stand them up ... and honour them with gifts.

... blanketing them. 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.⁷³

This description is in line with the understanding shared by Frank Malloway in the previous quotation.

Sometimes it is not possible to resolve the dispute through a consensus-based process. In those circumstances, individuals or families, would call upon a highly respected individual, or *si'em*, to make a binding decision.⁷⁴ Although the decision is not consensus-based, it is important to note that the choice of such a *si'em* is consensus-based and agreed upon by both parties. This helps to ensure that even if the resulting remedy is not deemed to be satisfactory to all the parties involved, the decision will be respected based on the respect those involved have for the decision-maker themselves.

Restitution made by family of wrongdoer

As all three accounts above illustrate, restitution plays an important role in remedying interpersonal harm in the Island Hul'qumi'num legal tradition. In Wes Modeste's story, the victim was gifted a blanket. Blankets have value, spiritual and financial, within the Coast Salish culture.⁷⁵ As such, when gifted, they represent the respect that an individual or family is bestowing upon the recipient. In describing the symbolism of a blanketing ceremony above, late Elder Willie Seymour emphasized that it's meant to symbolize shielding an individual from further harm, while simultaneously picking up their soul and putting it back into their being.⁷⁶

Depending on the type of harm suffered, restitution beyond a symbolic kind might also be appropriate. We see that in the story shared by Willie Seymour about the brothers-in-law. In that

⁷³ Interview with Willie Seymour (23 June 2010) in Morales, *supra* note 11, at 307.

⁷⁴ See Crisca Bierwert, *Brushed by Cedar, Living by the River: Coast Salish Figures of Power* (Tucson: University of Arizona Press, 1999) at 183–185.

⁷⁵ Wendy John and Ray Harris, "[The Blanket and the Bighouse](#)," *Salish Sea Sentinel*, online.

⁷⁶ Interview with Willie Seymour (23 June 2010) in Morales, *supra* note 11, at 307.

instance, in order to remedy the harm, the brother responsible for breaching his interpersonal obligations was required to provide food, by way of hunting and fishing, for his sister until such a time as his brother-in-law was able to.

Re-integration/rehabilitation of wrongdoer back into community

Within the Island Hul'qumi'num legal tradition, there is a recognition that in order to restore balance to the community, reintegration or rehabilitation of the wrongdoer back into the community must also occur. Again, Wes Modeste's story does a beautiful job of illustrating this point. In his recounting of events, we see the offenders are instructed that every time their family has a "work," they must be present to help. Within the Coast Salish world, "work" refers to cultural customary practices, e.g., memorials, namings, etc. Requiring the young men to help their family with such practices has the effect of immersing them in their culture, and in the teachings embedded within those legal processes. Not only does it serve to restore relations between the young men and their family members, but it also serves to provide the young men with immersive instruction on what it means to "live a good life" or to live according to the teachings of *snuw'uyulh*.

Similarly, in the story of the brothers-in-law, the Elders came together to ensure that the brother responsible for breaching his obligations was able to pay for his bail. There was an understanding that time spent in jail would not serve to rehabilitate the man into the community. Rather, they had the insight that the most effective way to restore relations within the family would be to have him help his sister and brother-in-law while his brother-in-law healed from his injuries.

As the Island Hul'qumi'num oral tradition illustrates, it is not only those harmed that require attention when a breach of obligations has occurred, but often those who cause the breaches require help as well. In focusing attention on both the individuals and families, the legal tradition seeks to strengthen relationality between the parties and within the community itself. This is in keeping with the understanding that interpersonal harms have the potential to affect entire communities and groups of people. As such, in order to heal the community, all parties involved must also be healed.

Incorporating Indigenous laws and legal orders into existing legal frameworks

As the previous sections have illustrated, Indigenous laws and legal processes can greatly influence both the manner in which we conceptualize our obligations to each other and our legal responses to incidents of hate. These legal standards and responses are of relevance not only to Indigenous peoples, but to all Canadians. They have the ability to reshape our approach to such incidents and have the potential to create transformative healing for all those involved. The concluding section of this report will speak to the potential of Indigenous laws and legal orders to transform our current approach to hate incidents.

United Nations Declaration on the Rights of Indigenous Peoples

On May 10, 2016, the federal Minister of Indigenous and Northern Affairs, Hon. Carolyn Bennett, announced Canada's latest position statement on the *United Nations Declaration on the Rights of Indigenous Peoples* ("the Declaration"). She confirmed that Canada is now a full supporter of the Declaration, without qualification, and that Canada intends to adopt and implement the Declaration in accordance with the Canadian Constitution. This statement was realized on June 21, 2021 when *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*⁷⁷ received Royal Assent. The purpose of this Act is to affirm the Declaration as an international human rights instrument that can help interpret and apply Canadian law. It also provides a framework to advance the implementation of the Declaration at the federal level. It requires the Government of Canada, in consultation and cooperation with Indigenous peoples, to do the following: 1) take all measures necessary to ensure the laws of Canada are consistent with the Declaration; 2) prepare and implement an action plan to achieve the Declaration's objectives; and 3) table an annual report on progress to align the laws of Canada on the action plan. In November 2019, the government of British Columbia passed the *Declaration on the Rights of Indigenous Peoples Act* into law. Similarly, the provincial legislation sets out a process to align B.C.'s laws with the Declaration. It mandates that government bring provincial laws into harmony with the Declaration and requires the development of an action plan to achieve this alignment over time – requiring transparency and accountability. In addition, the provincial legislation allows for flexibility for the Province to enter into agreements with a broader range of Indigenous governments and provides a framework for decision-making between Indigenous governments and the Province on matters that impact their citizens.

Implementation of the Declaration is relevant to the discussion at hand because at its core, the Declaration is about realizing the right to self-determination. As such, numerous provisions in the Declaration relate to Indigenous peoples' right to participate in decision-making, including

⁷⁷ *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14.

articles 3–5, 10–12, 14, 15, 17–19, 22,23, 26–28, 30–32, 36, 40 and 41.⁷⁸ As such, if Canada is committed to reconciliation through a “nation-to-nation” relationship, Canada must recognize Indigenous Nations as peoples who bring well-established legal traditions to the relationship. As stated previously, these laws and legal orders are not only capable of influencing their own internal decision-making practices, but also the external practices of the Canadian state.

Articles 18 and 19 of the Declaration explicitly state that Indigenous peoples have the right to participate in decision-making processes according to their own legal traditions. Accordingly, if Canada is to implement the Declaration in any meaningful way, it must make space for Indigenous laws and practices to be utilized within the legal processes that affect them. These include processes developed to deal with hate incidents, or other human rights processes.

However, as described in the previous section on Indigenous laws and legal traditions, there are a plurality of Indigenous legal orders all across Canada. These legal orders contain different legal obligations, standards for judgment and decision-making processes. As such, incorporating Indigenous laws necessarily means creating different processes for different Nations.

Lessons learned from Island Hul’qumi’num legal responses to interpersonal harm

In considering how Indigenous laws and legal orders can influence both conceptions of interpersonal harm and the processes used to remedy such harms, my mind has continually gone back to the late Willie Seymour’s description of the symbolism of blanketing – to shield an individual from further harm, while simultaneously picking up their soul and putting it back into their being. Because law takes place in people’s lives, not just their minds, what is required to remedy such a harm, i.e., to pick up a soul off the ground and put it back in their body, is unique and specific to the individuals involved, depending on their relationality to the world around them. As such, I don’t think it would be appropriate or possible to prescribe a single process that could achieve this result in every instance. Rather, what I propose is that legal principles stemming from the appropriate Indigenous legal order are considered at the outset and used to guide the creation of a process aimed at remedying the harms caused by a breach of interpersonal legal obligations.

In the case of the Island Hul’qumi’num legal tradition, the principles of *sts’lhnuts’amat* (kinship), *si’emstuhw* (respect), *nu stl’I ch* (love), *mel’qt* (forgiveness) and *sh’tiiwun* (responsibility) are relevant to determining an appropriate response to a breach of an interpersonal obligation.

Sts’lhnuts’amat: Who is involved?

The principle of kinship helps us to determine who is required to be involved in the process. As we can see in the stories shared above, rarely does a breach of interpersonal obligations solely

⁷⁸ Sarah Morales, “[Braiding the Incommensurable: Indigenous Legal Traditions and the Duty to Consult](#),” in Brenda L. Gunn et al., *UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws*, (Waterloo, ON: Centre for International Governance Innovation, 2017) 63, online.

involve the two parties affected. Depending on the nature of the harm and its intended or unintended consequences, family, friends, community, Elders and leaders may all have a role to play in picking up the soul and returning it to the individual's being. Although these individuals may not have been personally responsible for the harm, because of their relationality to the parties involved, they may have responsibilities to honour in remedying the harm.

Sh'tiwun: Roles and responsibilities of those involved

Closely related to the principle of kinship is the principle of responsibility. Within the Island Hul'qumi'num legal tradition, it is our relationality which guides our understanding of our roles and interpersonal responsibilities within the community, the family and with individuals. The stories told by Wes Modeste and Willie Seymour illustrate that families have a pivotal role to play in remedying harm, whether it be helping individuals to remedy a harm or helping to reintegrate the individuals responsible for the interpersonal breach back into the community.

We also see illustrated the important role that leaders play in remedying harm. In January 2021, when the hate incidents were occurring in the Cowichan Valley, a number of government officials, including the Premier and the federal Indigenous Services Minister, as well as the local school board and the Cowichan Valley Quakers, made public statements in support of Cowichan Tribes, denouncing racism.⁷⁹ But given their positions, was this enough? Was any more required of them? In the story shared by Willie Seymour, we see that the Elders came together and deliberated on an appropriate remedy, and when that remedy was not followed, they used their own resources to ensure that all parties involved felt loved, respected and forgiven during the process.

In May and June of 2021, multiple schools in the Cowichan Valley were targeted with racist graffiti.⁸⁰ Schools play a large role in the lives of youth – oftentimes they are their second home. As such, what is the role of teachers, principals and school boards in remedying harms when these incidents of hate arise? What is required of them, especially given the fiduciary role that they occupy? Is their obligation simply to remove the graffiti and try and find the individuals responsible? Or is the graffiti indicative of a greater issue in their school community, and are active steps required to prevent further harm from occurring?

Si'emstuhw: What does the process look like?

The principle of respect is of importance when designing the process used to remedy the harm. Depending on the type of harm and the number of individuals involved, some responses may require a public process, and others may be best remedied through a private process. It is also important to consider this principle when determining how best to honour the voices of the individuals involved and show them respect in the process. Finally, consideration of the desired

⁷⁹ Jacqueline Ronson, "[Cowichan leaders speak out against racism and discrimination](#)," *The Discourse* (20 January 2021), online.

⁸⁰ Simon Little, "[Multiple Cowichan Valley schools hit with racist graffiti spree](#)," *Global News* (24 June 2021), online.

outcome, i.e., what would be required to pick up the soul and put it back in the body, also informs the creation of the dispute resolution process.

Three different types of dispute resolution processes were illustrated in this report: consensus-building circles, blanketing ceremonies and private dispute resolution processes that utilized a *si'em*, or respected third-party decision-maker. Within the Coast Salish legal tradition, consensus-building circles can either be “closed” (limited to those families involved) or “open” (open to the community at large to participate in). There are many factors considered in determining which process to utilize, including the nature of the dispute/breach of obligation, the number of individuals affected, the remedy sought and the knowledge/expertise required to both understand and remedy the harm. Once the decision is made as to who should constitute the circle, protocol is used to ensure that all parties are shown respect in the process and given an opportunity to be heard. Dialogue is used to develop consensus, and the circle is not broken until a respectful resolution has been reached.

The blanketing ceremony, described by Wes Modeste, is another process utilized in the Island Hul'qumi'num legal tradition. This form of restitution is much more public, with community members being called to witness and respond to the process. The use of witnesses, and the public nature of the ceremony, creates an added layer of accountability, as witnesses have an obligation to speak to and share what they observed and heard during the ceremony. The use of speakers within the ceremony may help to ensure that those harmed, especially if the individual harmed is more vulnerable, are shielded from further harm. It provides a degree of separation between the parties involved and ensures that the parties have an equal opportunity to be heard.

In some instances, a *si'em* is used to resolve disputes in the Coast Salish world, acting as an arbiter of sorts. This often occurs when parties are unable to reach consensus. However, it is important to note that there is often consensus reached on the decision to go to a *si'em* and the choice of the *si'em*.⁸¹ This is important because it is necessary to bring legitimacy to the process. One could also see the utility of relying on a *si'em* in instances where a public, or less private, process would cause further harm to the individual(s) involved.

Mel'qt: Fostering forgiveness

Whatever the design of the process or the individuals involved, it must be aimed at fostering forgiveness for all parties involved. As previously stated, within the Coast Salish worldview, there is a recognition that harbouring hard feelings not only harms the individual responsible for causing the harm, but also continues to hurt the individual being harmed. As such, there is utility in developing a process which brings healing to the harmed individual, such that they are better positioned to let go of any hard feelings that may be causing them further distress.

What is required to foster forgiveness is subjective. What one person might require to forgive will be completely different for another. However, forgiveness is more likely to occur if the parties involved deem the process to be legitimate and reflective of their worldviews. It must

⁸¹ Morales, *supra* note 11 at 270.

reflect their principles of obligations and remedies. It must take into account their principles of relationality. It must be designed in a manner that fosters respect and lifts them up, i.e., blankets them.

For example, in the case of the hate graffiti at the schools in the Cowichan Valley, what could a process look like that would foster forgiveness? If you were a racialized student attending one of those schools, who should be involved in the process to make you feel lifted up and shielded from further harm? As the individual(s) who caused the harm were unknown, perhaps the entire school should be involved. As the graffiti was arguably symptomatic of a larger issue, perhaps the administration should be involved. Perhaps counsellors or Elders need to be included to ensure that the racialized students are shielded from further harm throughout the process. Given the vulnerability of racialized students, perhaps speakers should be utilized to stand up and bring their thoughts and feelings forward. Should the process include ongoing responsibilities by those involved, i.e., students, administration, etc.? If forgiveness is to be obtained, then the process needs to be designed in a way that helps to restore the dignity to the person(s) and protect them from further harm. Only when this is done will the possibility of forgiveness be achievable.

Nu st'I ch: A legal response grounded in love

Finally, love is a guiding principle in determining how to best respond to hate incidents. How can a process be created that not only makes all parties involved feel loved and cared for, but that fosters love in return? Wes Modeste's story is a great example of this principle in action, as both the boys harmed and the boys who caused the harm are cared for and looked after by their families and community. The remedy blanketed the boy who was harmed, but also the boys who caused the harm, wrapping them in their culture and teachings. It healed forward as much as it healed backwards, recognizing that the end goal was to create a healthier community and strengthen relationships between all those involved.

Conclusion

As this report has illustrated, Indigenous laws and legal orders have much to offer us in terms of how we conceptualize hate incidents and how best to respond to hate incidents. Not only can they provide insight into our interpersonal obligations; they can also help to inform us about ways to provide remedies that foster respect and healing, both for individuals and communities, when those interpersonal obligations are breached. Although grounded in worldviews specific to their societies, Indigenous laws and legal orders provide an additional lens by which other societies can examine their own laws and legal processes designed to reduce and remedy hate incidents.

Given timeframe and other practical limitations of this report, I acknowledge that what has been produced has barely scratched the surface of the potential of Indigenous legal orders to contribute to this pressing and complex issue. Keeping this reality in mind, this report provides a case study and a simple framework for thinking about Indigenous legal responses to hate incidents. As stated in the Introduction, this is not a comprehensive or complete statement of Island Hul'qumi'num, Coast Salish or Indigenous legal principles. Rather, it provides some examples of the legal principles that could be used to guide our thinking around hate incidents in British Columbia and Canada, specifically, legal principles that stem from the questions: To whom are interpersonal legal obligations owed? What interpersonal legal obligations are owed? What are appropriate legal responses when such interpersonal legal obligations are breached?

You may find that as you begin to work with other Indigenous laws and legal orders, the responses to these questions differ from those found in this report. That is to be expected. Indigenous laws and legal orders are distinct and responsive to the societies in which they arise. It is also of great value. It means we have many different principles and practices to draw from to inform our own work and to improve our existing institutions and systems. You may also find that the answers are not clear, that you don't have the knowledge or expertise to make these conclusions. That is also to be expected. These are complex and nuanced legal traditions. Gain comfort in the fact that there are experts in our communities who can provide these answers, such as Elders and Knowledge Holders who have a deep understanding of our teachings and legal processes, much like the Elders who taught me and helped me gain insight into many of the teachings shared with you in this report. Seek out these experts. If victims of hate incidents are Indigenous, start by asking them who should be involved in designing the process. Who has the knowledge and expertise? Defer to them, respect them, learn from them and create processes that respond to them. Doing so will not only blanket the victims of hate incidents, but blanket us all as we engage in this work.

Appendix A: Oral histories⁸²

Coast Salish oral histories

<i>Siamtunaat's story</i> ⁸³	
Keywords	vulnerable persons
Summary	<p>A Songhees girl was captured by the Bella-Bella people and became a slave. She was eventually traded to the Haida. Many years later, the Haida brought her with them when they travelled to Victoria (because they didn't know she was from there). When they got to Victoria, they made her lie down in the canoe, tied her up and covered her with an old mat. They left the canoe out in deep water while they went to shore. A Songhees man came by in his canoe and, hearing the woman tapping, asked her who she was. She told him the name of her uncle, and since he knew who he was, the man went to the Chief and told him about her. The Chief then called all the people to wait on the beach for the Haidas to come. When they came, he asked for the Haida Chief and told him that the woman had been taken by the Bella-Bella people long ago. He asked how many blankets the Haida would take for her. The Haida Chief requested 20 blankets and one gun. The Songhees complied, and the woman was returned to her community. Once she was back with her uncle, her uncle paid the Chief back for the gun and blankets.</p>
Reflections	<p>Island Hul'qumi'num Mustimuhw have an increased responsibility to protect those who are more vulnerable from harm. The responsibility to remedy such harms may extend to third parties (e.g., in this case, the Haida).</p>

⁸² This Appendix was created by Beth Fox (JD/JID candidate '22) and Kelsie McNeil (JD/JID candidate '22), two of my research assistants. After conducting a literature review of oral histories from the various Indigenous legal traditions they were introduced to during their first few years of study in the joint Bachelor of Indigenous Law/Common Law degree program, they identified the following stories to be of relevance to this report.

⁸³ Beryl Mildred Cryer, *Two Houses Half-Buried in Sand: Oral Traditions of the Hul'qumi'num Coast Salish of Kuper Island and Vancouver Island*, (Vancouver, B.C.: Talonbooks, 2007) at 136.

<i>Slal-acum-cul-cul-aith</i> (the evil woman of the Fraser River Flats)⁸⁴	
Keywords	children; vulnerable persons
Summary	Two bad (<i>slal-acum</i>) women (remembered as <i>Cul-cul-aith</i>) preyed on young children, travelling from village to village and putting them in the baskets on their back. One day one of the women went to the Lummi village and snatched several children. At night, she lit a fire and instructed the children to close their eyes and dance around her. The older children cautiously peeked through their fingers at times to see what she was doing, and when they got their opportunity, they pushed her into a hole near the fire, where she was burned. Her evil spirit continued to live on after that, as it was transformed into mosquitos and blown about by the wind out of her ashes.
Reflections	The severity of the legal response in this situation (transformation) illustrates the importance of Island Hul'qumi'num peoples' legal obligations to prevent harm to children.

<i>Skelechun</i>, the lightning-eyed⁸⁵	
Keywords	children; emotional/psychological harm; vulnerable persons
Summary	<i>Skelechun</i> , a poor man's son, had a head full of vermin and scabs and no one would play with him. One day he decided to seek medicine for his wounds. At night, when he lay at the top of a high hill during a storm of thunder and lightning, the lightning birds took out his eyes, putting in those of the lightning serpent instead. Whenever <i>Skelechun</i> opened his eyes, he burnt everything in front of him. He used his power to amass a number of slaves and wives, but others tired of his behaviour and devised a plan to kill him, taking their wives and daughters back.
Reflections	The response to harmful acts against vulnerable persons will be proportionate to the grave nature of the harm suffered, because Island Hul'qumi'num Mustimuhw have a responsibility to protect those who are more vulnerable. In this situation, the remaining community members owed an obligation to their wives and daughters to protect them from <i>Skelechun</i> .

⁸⁴ Robert Brown & John Hayman, [*Robert Brown and the Vancouver Island Exploring Expedition*](#), (Vancouver: University of British Columbia Press, 1989) at 188, online.

⁸⁵ Robert Brown, John Hayman, [*Robert Brown and the Vancouver Island Exploring Expedition*](#), (Vancouver: University of British Columbia Press, 1989) at 185, online.

The adventures of the young man with crooked eyes⁸⁶	
Keywords	emotional/psychological harm
Summary	A young man who was born with squint eyes fell in love with the Chief's daughter. After many weeks of vying for her attention and being treated very poorly in return, the young man was rejected for being too ugly. The young man went to a wise woman who told him to go to his grandfather, and his grandfather made him a new face. Once he returned home, the Chief's daughter was now interested in him, but he rejected her. She sought help from the same wise woman and was counselled to visit the young man's grandfather, who gave her the young man's old face as punishment for her actions.
Reflections	Failing to respect the differences of others can cause them severe emotional harm or harm to their dignity and may therefore result in lasting and severe consequences to those who fail to meet their obligations. In this situation, the Chief's daughter failed to consider all that the young man had gone through as a result of being different from everyone else, and she suffered as a result.

The monster of Octopus Point⁸⁷	
Keywords	leadership/authority; witnessing
Summary	At Octopus Point, <i>Shuh-shu-cum</i> (Open Mouth) used to open his mouth and suck in anyone who tried to pass in their canoes. The Elders organized a meeting, and the Chief's son offered to intervene. The villagers agreed that they could not lose him, so the Chief decided to send out their fastest runners to find a person of supernatural strength and wisdom to help. A man called <i>Sum-ul-quatz</i> , who was said to have the strength of a thousand men, came to help. <i>Sum-ul-quatz</i> slung a boulder into the sky that landed in Ladysmith, where it remains to this day. He slung another boulder that landed near Mayne Island, and a third that went to Maple Bay. After these unsuccessful attempts, he realized he could not aim properly because Mount Maxwell was too high. <i>Sum-ul-quatz</i> asked the spirit of the mountain to hunch down to give him a clear shot. The spirit was happy to do so because he had witnessed the harm that <i>Shuh-shu-cum</i> had inflicted on the people. <i>Sum-ul-quatz</i> was then able to sling a boulder right on target, shattering <i>Shuh-shu-cum</i> 's snout so that he could no longer control the waterway. <i>Shuh-shu-cum</i> still lurks in

⁸⁶ Martha D Harris, *History and Folklore of the Cowichan Indians* (Victoria, B.C.: Colonist Printing and Pub. Co., 1901) at 22.

⁸⁷ Dolby Bevan Turner, *When the Rains Came and Other Legends of the Salish People*, (Victoria, B.C.: Orca Book Publishers, 1992), at 99–103.

	the waters. You can see when he is nearby because of the great whirlpools he causes. Caution is needed to avoid the swirls, but with care, canoes can travel safely through the Sansum Narrows.
Reflections	Those with specialized skills and authority occupy positions of privilege and respect in relation to others and have an important role to play in responding to harm. Such individuals may be required to respond appropriately, contributing their skills and authority within the restitutionary process. In this situation, <i>Sum-ul-quatz</i> may have recognized that he had knowledge and abilities the others did not and that he had a responsibility to use his skills to help protect everyone.

Whatever happened to greedy Raven⁸⁸	
Keywords	emotional/psychological harm; honesty/truth; witnessing
Summary	A group of lady birds were going berry picking, and Raven asked if he could join. He stayed behind in the canoe and devised a plan to get all the berries for himself, using his spirit power to make it so that when bundles of moss touched the water, each bundle would turn into a war canoe. When the women came back and they all began to paddle away, Raven dropped the bundles over the water, and they turned into a line of war canoes with fighting men chasing them. Raven told the women to head ashore and hide, and when they were gone, he began to eat all the berries. When he was finished, he rubbed berry juice all over his feathers to look like blood. When the women returned, they thought Raven had been attacked and all their berries stolen. But Snail, who had been watching, told the women the truth about what had happened. The women listened to this story and then took Raven and threw him far into the water to swim home.
Reflections	Island Hul'qumi'num Mustimuhw owe obligations to others to be honest and truthful and to expose the truth when others do not meet those obligations. In this situation, although Snail was a stranger to the women, he recognized his obligation to reveal the truth, as a witness to the harm done to the community by Raven.

⁸⁸ Beryl Mildred Cryer, *Two Houses Half-Buried in Sand: Oral Traditions of the Hul'qumi'num Coast Salish of Kuper Island and Vancouver Island*, (Vancouver, B.C.: Talonbooks, 2007) at 324.

<i>Xeel's</i> makes Raven a bird⁸⁹	
Keywords	children; vulnerable persons
Summary	<i>Satitc</i> , the north wind, blew so hard that Raven, a big man, could not keep his house warm. He and Mink went over to the house of <i>Satitc</i> and stole his daughter. Raven then instructed one of his sons to poke her with a lighted stick every time the wind was strong. The boy listened, and the girl screamed. Then the wind died down as <i>Satitc</i> and his people came to save her. <i>Satitc</i> offered anything in exchange for his daughter, but Raven only instructed his son to poke her again, causing her to scream. When <i>Satitc</i> asked again, Raven told him he wanted refuge from the wind, and <i>Satitc</i> complied. But <i>Xeel's</i> , the Transformer, was so disgusted with Raven's behaviour that he turned him into a bird. <i>Xeel's</i> said, "Hereafter, everyone who uses bad words shall be called by your name."
Reflections	This situation illustrates the severity of the response when harm is caused to children. As children are particularly vulnerable, Island Hul'qumi'num Mustimuhw have a responsibility to prevent harm to children. When harm is done to children, the response will be proportionate to the harm.

Anishinaabe oral histories

Butterflies⁹⁰	
Keywords	emotional/psychological harm; vulnerable persons; witnessing
Summary	At one point, the birds would eat nothing but butterflies, because they were very tasty and easy to catch, but the butterflies were terrified and could not eat, sleep or rest for fear of birds catching them. One day, a butterfly hid from the birds under the leaf of a milkweed plant. The <i>manitou</i> (spirit) of the milkweed told the butterfly to drink its nectar, as it was medicine and would cause the birds to leave it alone. The butterfly did so, forgetting about the birds entirely until a crow came along and snatched the butterfly in its beak. But the crow quickly spit the butterfly back out, exclaiming that it tasted like rotten fish or poison. The crow spread the word, and soon no birds were eating butterflies anymore. Ever since then, monarch butterflies have taken most of their food from milkweed.
Reflections	In this situation, butterflies were suffering ongoing physical and emotional/psychological harm as a result of being constantly sought after by

⁸⁹ Barnett Richling, ed., *The WSANEC and their Neighbours*, (Rock's Mills Press, 2016) at 136.

⁹⁰ Basil H. Johnston, *Honour Earth Mother: Mino-Audjaudauh Mizzu-Kummik-Quae*, (Cape Croker Reserve, Wiarton ON: Kegeponce Press, 2003) at 72.

	the birds. The manitou of the milkweed, a stranger to the butterfly, offered its own medicine, perhaps recognizing an obligation to help or protect those who are more vulnerable with the resources available to us.
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Mosquitos⁹¹	
Keywords	emotional/psychological harm; honesty/truth
Summary	<p>The mosquitos and their brothers, including the blackflies, were driving a Cree man named Crying Dog, from James Bay, mad. When they left in the fall and winter, Crying Dog would work extra hard so he wouldn't have to hunt and find food when they came back in the spring. One day Crying Dog had an idea to get rid of the mosquitos and their brothers for good. He went to the Chief and asked him to call all Indigenous nations to a great battle. But when they arrived and realized that Crying Dog only wanted to kill mosquitos and other flies, they vowed to kill Crying Dog instead, for making a mockery of the Chief. So, Crying Dog fled, and worked on his own to make thousands of bags and baskets, using them to catch mosquitoes and the other flies until no more could be found. Then he constructed several longhouses to store them in and gathered wood to build fires and keep them warm and comfortable. Finally, on the coldest day in February, Crying Dog went and retrieved the bags, taking them out to the middle of the bay, where he released them. The mosquitos and other flies rose into the air before falling to the ice, dead. Crying Dog was very happy until, one day in spring, he heard the buzzing of a mosquito. All of a sudden, they were swarming and biting him everywhere. Crying Dog dove into the water to try to save himself, but he soon became exhausted from trying to escape them and lay almost unconscious. The mosquitoes and other flies flew Crying Dog somewhere far away, making a bag to keep him in and building a longhouse for him to stay and fires to keep him warm. Then, on the coldest day of winter, they took him back out, flew him away and dropped him in the bay, where his community members later found his body.</p>
Reflections	<p>Crying Dog kept the mosquitoes and other flies comfortable in the longhouses all winter long, knowing that he was going to kill them. When he did, the response was proportional to the harm – Crying Dog suffered the same fate as the mosquitoes and other flies he killed. This situation illustrates a potential Anishinaabe response when harm is intentionally inflicted on others.</p>

⁹¹ *Ibid.* at 76.

The old woman becomes a woodpecker⁹²	
Keywords	emotional/psychological harm; honesty/truth
Summary	<p>One day an old woman was baking when she saw a man who she recognized to be <i>Nanabush</i> (trickster) walking toward her house. She resolved not to give him even a crumb of food, because she thought he was lazy, going from place to place begging for food. When <i>Nanabush</i> arrived, he told her that he had been hunting for days but had not found a single animal and asked for only a crust of bread to get him through. The woman showed him a ball of dough the size of an apple, saying that she would give him half. While <i>Nanabush</i> slept, the woman took half the dough and put it by the fire. It swelled and swelled until it was brown and the size of a large pumpkin. The woman thought she shouldn't have to share such fortune with a beggar, who deserved no more than a crust, and hid it in the wigwam. She broke another piece off of the remaining dough and put it by the fire. Again, it swelled to be the size of a large pumpkin, and the woman hid it in the wigwam. So, she took what was left of the dough, a piece no larger than an acorn, and put it by the fire. But again, it swelled to the size of a large pumpkin, so the woman hid the loaf. When <i>Nanabush</i> awoke and asked for a crust, she told him all of the dough fell into the fire. But <i>Nanabush</i> knew she was lying and told her she would be punished for her selfishness. Then he turned her into a woodpecker, destined to never again eat a meal in comfort, having to peck instead for grubs and termites, and the sap from trees.</p>
Reflections	<p>The woman was punished for failing to share what she could with someone who needed it. It may also be important that she was dishonest in the process, lying to <i>Nanabush</i> about all she had. This situation illustrates an Anishinaabe response to harm caused by selfish and dishonest behaviour.</p>

⁹² Basil H. Johnston, *Honour Earth Mother: Mino-Audjaudauh Mizzu-Kummik-Quae*, (Cape Croker Reserve, Wiarton ON: Kegedonce Press, 2003) at 96.

Gitxsan oral histories

<i>Wiigyet brings light to the world</i> ⁹³	
Keywords	children; vulnerable persons
Summary	The Chief found a baby boy all alone and took him in. He and his wife raised the boy alongside their baby son. The first son was named <i>Lagabuula</i> and was put in charge of <i>Xsi'yeen</i> (Skeena), while the adopted son was named <i>Wiigyet</i> and was put in charge of <i>Xsitxemsem</i> (Nass). The entire community/world was rewarded for this kindness when <i>Wiigyet</i> brought light to the world, which had previously been in near darkness, making life challenging.
Reflections	This situation illustrates the importance of taking responsibility for the protection of children. The Chief and his wife demonstrated the level of obligation that may be owed by taking in <i>Wiigyet</i> and treating him the same as their first son.

Cree oral histories

<i>E-hep</i> ⁹⁴	
Keywords	children; vulnerable persons
Summary	Two young lovers wanted to find a place for themselves. <i>E-hep</i> (the Spider) agreed to help lower them to a private area, but they rushed him despite his warning that he needed time to prepare. They got stuck at the top of a tall tree because of their impatience. They called to the Bear and the Wolf to help them. The Wolf and Bear worked together to lower the youths back to the ground, and that is how humans began to stay on the earth.
Reflections	<i>E-hep</i> , the Bear and the Wolf helped the youths whenever they could. Even though the youths did not listen to <i>E-hep</i> and caused themselves to be stuck, the Wolf and the Bear assisted them. This demonstrates the high standard of the duty to help children and vulnerable people in the Cree legal order.

⁹³ Neil J. Sterritt, *Mapping My Way Home*, (Smithers, B.C.: Creekstone Press, 2016).

⁹⁴ Louis Bird, *Telling our Stories: Omushkego Legends & Histories from Hudson Bay*, (North York, ON: University of Toronto Press, 2011), at 69.

I cannot have anything from these <i>We-mis-ti-go-si-wak</i>⁹⁵	
Keywords	elders; vulnerable persons
Summary	During the time of a famine, an old man who was blind and frail realized he was not able to travel anymore with the group. He decided the family should leave him behind so they could survive without him. He was left behind in a place where he had requested, but by some reason he could not explain, he constantly found food and water beside where he laid. It kept him alive until the season changed to spring.
Reflections	The old man did not want to burden his family and acted in their best interests so they could survive. As a result, he was provided with what he needed to make it through the winter. By doing what was best for others, the old man was rewarded.

<i>Mi-she-shek-kak</i> (the Giant Skunk)⁹⁶	
Keywords	children; vulnerable persons
Summary	All the animals feared the Giant Skunk, who threatened their lives. The animals banded together to lay a trap to kill it. When it came time to make a stand and fight against the Giant Skunk, the animals sent away the Elders and children. The animals carried out their plan to kill the Giant Skunk. Wolverine held down its tail, and the Big Cat jumped on its neck.
Reflections	The animals used their skills to kill the Giant Skunk but recognized the need to protect the vulnerable people such as the Elders and the children. They were not expected to participate in the dangerous activity, which illustrates the duty to protect the vulnerable.

⁹⁵ Louis Bird, *Telling our Stories: Omushkego Legends & Histories from Hudson Bay*, (North York, ON: University of Toronto Press, 2011), at 147.

⁹⁶ *Ibid.* at 69.

<i>Wisahketchek and the magic headgear</i>⁹⁷	
Keywords	honesty
Summary	<i>Wisahketchek</i> was wandering when he found a tipi. His older brother was inside and offered to feed him. His brother had magic headgear that helped him catch game for food. <i>Wisahketchek</i> ate the food and later tried to steal the headgear during the night. The headgear caused him to sleepwalk back to his brother. <i>Wisahketchek</i> tried multiple times to steal the headgear in the night, but each time he sleepwalked back. He ate a final meal with his brother and left without the headgear.
Reflections	<i>Wisahketchek</i> acted dishonestly by trying to steal the headgear and putting his own needs above his brother's. <i>Wisahketchek</i> 's brother continued to feed him despite his multiple attempts to steal, demonstrating the value of sharing and supporting one another.

Kwakwaka'wakw oral histories

Speaking blind⁹⁸	
Keywords	emotional/psychological harm
Summary	The Transformer approached two blind ladies digging roots in a mud flat. One lady stated that she smelled something awful and made a joke that it was "he that is supposed to be coming." Both women laughed. The Transformer confronted them and asked them if they'd like to see. When they could both see, they realized that it was him. He turned them into mallard ducks who would feed in the smelly mud for the rest of their lives.
Reflections	This situation illustrates the importance of taking care with our words to avoid causing harm to others. The women made a joke and laughed at the Transformer's expense, failing to show him respect.

⁹⁷ Leonard Bloomfield, *Sacred Stories of the Sweet Grass Cree*, (Ottawa, ON: Fitzhenry & Whiteside Publishing, 1930), at 55.

⁹⁸ Chief James Wallas & Pamela Whitaker, *Kwakiutl Legends: as told to Pamela Whitaker by Chief James Wallas*, (Surrey, B.C.: Hancock House Publishers, 1989) at 26.

Appendix B: Engaging with oral histories⁹⁹

Indigenous law can have sacred, natural, positive, customary and deliberative sources. Regardless of the origin, it is imperative to engage seriously with these sources of law. Many methods can be used to engage law as we work toward our societal goals, obligations, responsibilities and concepts of justice, fairness and peace. These include the community embedded method, land-based learning, ceremonial practice, the linguistic method, relational governance method, interviews and focus groups in community with Elders and Knowledge Holders, story-based methods and the story analysis (Indigenous Law Research Unit (ILRU) method).

The ILRU method is an analytical framework that poses a series of questions that help us organize large amounts of information in a consistent, convenient format but does not change the information. By engaging with this method, stories can be brought together in a way consistent with how lawyers engage with cases for legal research. This method can be built on, added to, or adapted as needed.

Engaging in this method requires a summary of the relevant facts of a selected story, a statement of the decision, a list of reasons for the decision and a bracketing of any other aspects of the story that were noteworthy but not particularly relevant to the issue at hand. It involves asking questions such as:

- 1) *Issue: What is the main human problem the story focuses on?*
- 2) *Relevant Facts: What facts matter?*
- 3) *Response: What is decided or how is the issue resolved?*
- 4) *Reason: What is the reason behind the decision or resolution?*
- 5) *Bracket: What are noteworthy aspects should we take record of?*

Once this groundwork is completed, the information can be synthesized to provide a broader framework to address the issue in question.

Example: The monster of Octopus Point

Summary: At Octopus Point, *Shuh-shu-cum* (Open Mouth) used to open his mouth and suck in anyone who tried to pass in their canoes. The Elders organized a meeting, and the Chief's son offered to intervene. The villagers agreed that they could not lose him, so the Chief decided to send out their fastest runners to find a person of supernatural strength and wisdom to help. A man called *Sum-ul-quatz*, who was said to have the strength of a thousand men, came to help. *Sum-ul-quatz* slung a boulder into the sky that landed in Ladysmith, where it remains to this day. He slung another boulder that landed near Mayne Island and a third that went to Maple Bay.

⁹⁹ Hadley Friedland, "Working with Indigenous Law Today" (Workshop delivered at the Cowichan Tribes Family Justice Workshop, 29 May 2019) [unpublished].

After these unsuccessful attempts, he realized he could not aim properly because Mount Maxwell was too high. *Sum-ul-quatz* asked the spirit of the mountain to hunch down to give him a clear shot. The spirit was happy to do so because he had witnessed the harm that *Shuh-shu-cum* had inflicted on the people. *Sum-ul-quatz* was then able to sling a boulder right on target, shattering *Shuh-shu-cum*'s snout so that he could no longer control the waterway. *Shuh-shu-cum* still lurks in the waters. You can see when he is nearby because of the great whirlpools he causes. Caution is needed to avoid the swirls, but with care, canoes can travel safely through the Sansum Narrows.

- 1) Issue: How do you respond when someone is causing harm to the community?
- 2) Relevant Facts:
 - *Shuh-shu-cum* was opening his mouth and sucking in anyone who tried to pass through Octopus Point in their canoes.
 - Everyone, including Elders and the Chief, met to decide what to do.
 - The Chief sent runners to seek out a person of supernatural strength and wisdom to help.
 - A runner found *Sum-ul-quatz*, who agreed to help.
- 3) Response: *Sum-ul-quatz* slung several boulders, eventually shattering *Shuh-shu-cum*'s snout so he could no longer control the waterway.
- 4) Reason: Everyone, including Elders, had input in the decision. The Chief ultimately decided on the response. A person external to the community who had skills that the community members didn't have was able to help them by incapacitating *Shuh-shu-cum*.
- 5) Bracket: The role of the natural world (Mount Maxwell) in the response.

Reflection: Those with specialized skills and authority occupy positions of privilege and respect in relation to others and have an important role to play in responding to harm. Such individuals may be required to respond appropriately, contributing their skills and authority within the restitutionary process. In this situation, *Sum-ul-quatz* may have recognized that he had knowledge and abilities the others did not and that he had a responsibility to use his skills to help protect everyone.

Additional resources for engaging with Indigenous law

Indigenous law & methodology

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

Borrows, John, ed., "Special Issue: Indigenous Law, Lands and Literature" (2016) 33:1 Windsor Y B Access Just.

Clifford, Robert YELKÁTTE, "[Saanich Law and the Trans Mountain Pipeline Expansion](#)" (4 July 2019), online: *Centre for International Governance Innovation*.

Clifford, Robert YELKÁTTE, "[WSÁNEĆ Legal Theory and the Fuel Spill at SELEKTEL \(Goldstream River\)](#)" (2016) 61:4 McGill LJ 755, online.

Craft, Aimee "[Ki'inaakonigewin: Reclaiming Space for Indigenous Laws](#)" (2015) Working Paper, online (pdf).

Craft, Aimee, "[Treaty interpretation: A tale of two stories](#)" (2011) Working Paper, online (pdf).

Drake, Karen, "Finding a Path to Reconciliation: Mandatory Indigenous Law, Anishinaabe Pedagogy, and Academic Freedom" (2017) 95:1 Can B Rev 9.

Friedland, Hadley, "Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Law" (2012) 11:1 Indigenous Law Journal.

Friedland, Hadley, and Val Napoleon, "Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions" (2015) 1:1 Lakehead Law Journal 16.

Hewitt, Jeffery G., "Indigenous Restorative Justice: Approaches, Meaning & Possibility" (2016) 67 UNBLJ 313.

Lindberg, Darcy, "[Wahkotowin, Corporate Separateness and Potential Futures for Indigenous Laws](#)" (July 2019), online: *Centre for International Governance Innovation*.

Morales, Sarah, "[Locating Oneself in One's Research: Learning and Engaging with Law in the Coast Salish World](#)" (2018) 30:1 CJWL 144, online (pdf).

Morales, Sarah, "[Stl'ul nup: Legal Landscapes of the Hul'qumi'num Mustimuhw](#)" (2016) 33:1 Windsor Y B Access Just 103, online.

Mills, Aaron, "The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today" (2016) 61:4 McGill Law Journal.

Napoleon, Val, “[An Inside Job: Engaging with Indigenous Legal Traditions through Stories](#)” (2016) 61:4 McGill LJ 725.

Napoleon, Val and Richard Overstall, “[Indigenous Laws: Some Issues, Considerations and Experiences](#)” (2007), opinion paper prepared for the Centre for Indigenous Environmental Resources, online (pdf).

Stark, Heidi Kiiwteinespinesiiik, James Niigaanwewidam Sinclair and Jill Doerfler, eds., *Centering Anishinaabeg Studies: Understanding the World Through Stories* (East Lansing: Michigan State University Press, 2013).

University of Victoria, [Indigenous Law / Indigenous Legal Traditions](#), (Victoria: University of Victoria, 2021), online.

Wahkotowin Law and Governance Lodge, [Indigenous Law](#) (Edmonton: University of Alberta, 2021), online.

Anishinaabe resources

Johnston, Basil H., *Honour Earth Mother: Mino-Audjoudauh Mizzu-Kummik-Quae*, (Cape Croker Reserve, Wiarton, ON: Kegedonce Press, 2003).

Coast Salish resources

Cryer, Beryl Mildred, *Two Houses Half-Buried in Sand: Oral Traditions of the Hul'qumi'num Coast Salish of Kuper Island and Vancouver Island*, (Vancouver, B.C.: Talonbooks, 2007).

Marshall, Daniel P., *Those who fell from the sky: a history of the Cowichan peoples*, (Duncan, B.C.: Cowichan Tribes Cultural & Education Centre, 1999).

Turner, Dolby Bevan, *When the Rains Came and Other Legends of the Salish People*, (Victoria, B.C.: Orca Book Publishers, 1992).

White, Ellen Rice, *Legends and Teachings of Xeel's the Creator*, (Penticton, B.C.: Theytus Books, 2018).

Cree resources

Bird, Louis, *Telling our Stories: Omushkego Legends & Histories from Hudson Bay*, (North York, ON: University of Toronto Press, 2011).

Bloomfield, Leonard, *Sacred Stories of the Sweet Grass Cree*, (Ottawa, ON: Fitzhenry & Whiteside Publishing, 1930).

Gitxsan resources

Sterritt, Neil J., *Mapping My Way Home*, (Smithers, BC: Creekstone Press, 2016).

Kwakwaka'wakw resources

Wallas, Chief James and Pamela Whitaker, *Kwakiutl Legends: as told to Pamela Whitaker by Chief James Wallas*, (Surrey, B.C.: Hancock House Publishers, 1989).

Bibliography

International materials

United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, c 14.

Jurisprudence

Dagenais v. Canadian Broadcasting Corp. [1994] 3 SCR 835, 120 DLR (4th) 12.

R v. Keegstra [1990] 3 SCR 697, [1991] 2 WWR 1.

Secondary materials: Articles

Borrows, John “Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education” (2016) 61:4 McGill LJ 795.

Friedland, Hadley and Val Napoleon, “Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions” (2015–2016) 1:1 *Lakehead Law Journal* 16.

Morales, Sarah, “Speakers, Witnesses and Blanketing: The Need to Look Beyond the Courts to Achieve Reconciliation” (2017) 78(2d) SCLR.

Napoleon, Val, “[What is Indigenous Law? A Small Discussion](#),” online (pdf): *University of Victoria Indigenous Law Research Unit*.

Secondary materials: Books and book chapters

Borrows, John, *Canada’s Indigenous Constitution*, (Toronto: University of Toronto Press, 2010).

Bierwert, Crisca, *Brushed by Cedar, Living by the River: Coast Salish Figures of Power* (Tucson: University of Arizona Press, 1999).

Brown, Robert and John Hayman, *Robert Brown and the Vancouver Island Exploring Expedition*, (Vancouver: University of British Columbia Press, 1989).

Cryer, Beryl Mildred, *Two Houses Half-Buried in Sand: Oral Traditions of the Hul’qumi’num Coast Salish of Kuper Island and Vancouver Island*, (Vancouver, B.C.: Talonbooks, 2007).

Fournier, Suzanne, *Stolen from our embrace: the abduction of First Nations children and the restoration of aboriginal communities* (Vancouver, B.C.: Douglas & McIntyre, 1997).

Harris, Martha D., *History and Folklore of the Cowichan Indians* (Victoria, B.C.: Colonist Printing and Pub. Co., 1901).

Jackson, Michael, *Locking up natives in Canada: a report of the Committee of the Canadian Bar Association on Imprisonment and Release*, (Ottawa: The Association, 1988).

Jeness, Diamond, *Faith of a Coast Salish Indian: Memoirs in Anthropology no 3* (Victoria, B.C.: British Columbia Provincial Museum, 1955).

Miller, Bruce, *The Problem of Justice: Tradition and Law in the Coast Salish World* (Lincoln: University of Nebraska Press, 2001).

Morales, Sarah, “[Braiding the Incommensurable: Indigenous Legal Traditions and the Duty to Consult](#),” in Brenda L. Gunn et al., *UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws*, (Waterloo, ON: Centre for International Governance Innovation, 2017) 63, online.

Napoleon, Val, “Thinking About Indigenous Legal Orders” (revised) in Colleen Shepard and Kirsten Anker, eds., *Dialogues on Human Rights and Legal Pluralism* (Dordrecht, Heidelberg, New York, London: Springer, 2012) 229.

Richling, Barnett, ed., *The WSANEC and their Neighbours*, (Rock’s Mills Press, 2016).

Turner, Dolby Bevan, *When the Rains Came and Other Legends of the Salish People*, (Victoria, B.C.: Orca Book Publishers, 1992).

White, Dr. Ellen Rice (Kwulasulwut), “The Boys Who Became a Killer Whale,” in Dr. Ellen Rice White (Kwulasulwut), *Legends and Teachings of Xeel’s, The Creator*, (Penticton, B.C.: Theytus Books, 2018).

Secondary materials: Reports

Alberta, Task Force on the Criminal Justice System and Its Impact on the Indian and Métis People of Alberta, *Justice on Trial: Report of the Task Force on the Criminal Justice System and Its Impact on the Indian and Métis People of Alberta* (Edmonton: Province of Alberta, 1991).

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, B.C.: Privy Council Office, 2019).

---, Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice Canada* (Ottawa: Minister of Supply and Services, 1996).

---, Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, (Ottawa: Canada Communication Group – Publishing, 1996).

Manitoba, Aboriginal Justice Implementation Commission, *Aboriginal Justice Implementation Commission Recommendation on Policing*, (Winnipeg: Queen's Printer, 1991).

McLay, Eric, et al., *'A'lhut tut et Sulhween* "Respecting the Ancestors": Report of the Hul'qumi'num Heritage Law Case Study (Ladysmith: Hul'qumi'num Treaty Group, 2004).

Rudin, Jonathan, *Aboriginal Peoples and the Criminal Justice System*, (Toronto: Ipperwash Inquiry, 2005).

Saskatchewan, Commission of Inquiry into Matters Relating to the Death of Neil Stonechild, *Report of the Commission of Inquiry into Matters Relating to the Death of Neil Stonechild* (Regina: Queen's Printer, 2004).

---, Commission on First Nations and Métis Peoples and Justice Reform, *Final Report of the Commission on First Nations and Métis Peoples and Justice Reform: Legacy of Hope: An Agenda for Change*, vol 1 (Regina: Queen's Printer, 2004).

Statistics Canada, *Police-reported crime statistics in Canada, 2020*, by Greg Moreau, Catalogue No 85-002-X (Ottawa: Statistics Canada, 27 July 2021).

Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action*, (Winnipeg: Truth and Reconciliation Commission of Canada, 2015).

Secondary materials: Other

British Columbia's Office of the Human Rights Commissioner, "[1 in 4 British Columbians have experienced or witnessed hate incidents since start of pandemic](#)" (2 February 2022), online: *BCHumanRights*.

---, "[Inquiry Details](#)," online: *BCHumanRights*.

Cunningham, Scott, "[Treat everyone equally: Island First Nation faces spike in racism as COVID-19 cases climb](#)," *CTV News* (11 January 2021), online.

Interview with Arvid Charlie (23 June 2010).

Interview with Florence James (19 July 2010).

Interview with Joe Norris (1 July 2010).

John, Wendy and Ray Harris, "[The Blanket and the Bighouse](#)," *Salish Sea Sentinel*, online.

Kines, Lindsay, "[Cowichan Tribes still facing racism in wake of COVID-19 outbreak](#)," *Times Colonist* (23 January 2021), online.

Little, Simon, "[Multiple Cowichan Valley schools hit with racist graffiti spree](#)," *Global News* (24 June 2021), online.

Morales, Sarah, *Snuw'uyulh: Fostering an Understanding of the Hul'qumi'num Legal Tradition* (PhD Dissertation, University of Victoria, 2014) [unpublished].

Northwest Intertribal Court System (NICS), *Traditional and Informal Dispute Resolution Processes in Tribes of the Puget Sound and Olympic Peninsula Region* (Edmonds, WA: NICS, 1991).

Paige, S. Marlo, *In the voices of the Sul-hween/Elders, on the Snuw'uyulh teachings of Respect: their greatest concerns regarding Snuw'uyulh today in the Coast Salish Hul'qumi'num Treaty Group territory* (MA Thesis, Malaspina University-College, 2004) [unpublished].

Ronson, Jacqueline, "[Cowichan leaders speak out against racism and discrimination](#)," *The Discourse* (20 January 2021), online.

Thom, Brian, *Coast Salish Senses of Place: Dwelling, Meaning, Power, Property, and Territory in the Coast Salish World* (PhD, McGill University Department of Anthropology, 2005) [unpublished].