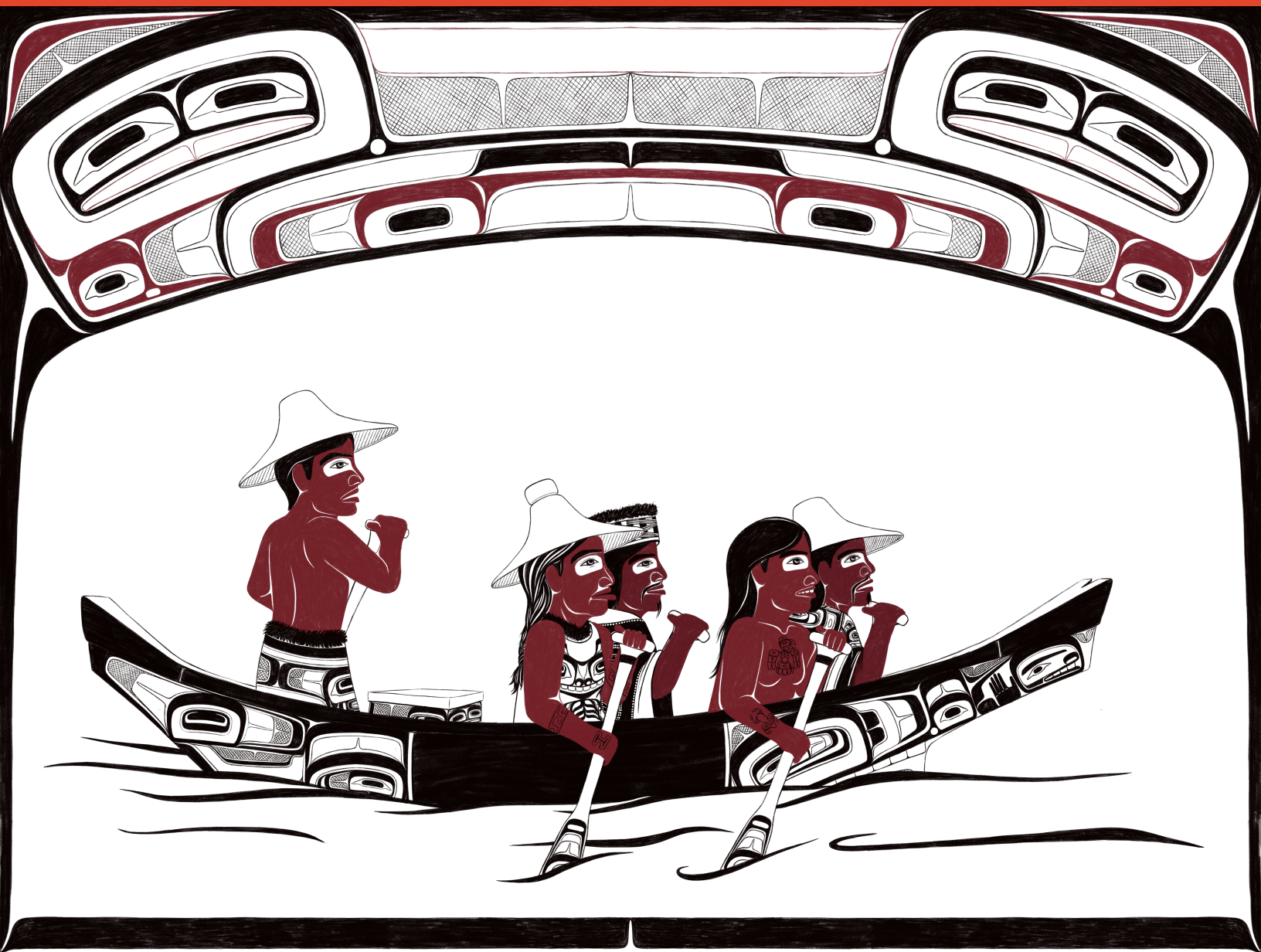
RECONCILING CROWN LEGAL FRAMEWORKS
BRITISH COLUMBIA LAW INSTITUTE

NAVIGATING SHARED WATERS:

Study Paper on Indigenous-Led Conflict Resolution

JULY 2025



Navigating Shared Waters: A Study Paper on Indigenous-Led Conflict Resolution

BCLI Study Paper no. 15 **July 2025**

Disclaimer

The information and commentary in this publication is not offered as legal advice. It refers only to the law at the time of publication, and the law may have since changed. BCLI does not undertake to continually update or revise each of its publications to reflect post-publication changes in the law.

The British Columbia Law Institute disclaims any and all responsibility for damage or loss of any nature whatsoever that any person or entity may incur as a result of relying upon information or commentary in this publication.

You should not rely on information in this publication in dealing with an actual legal problem that affects you or anyone else. Instead, you should obtain advice from a qualified legal professional concerning the particular circumstances of your situation.

Publication art by SGidGang.Xaal / Shoshannah Greene.

Published in Vancouver on unceded Coast Salish homelands, including the territories of the xʷməθkwəy̓əm (Musqueam) Skwxwú7mesh (Squamish), and SəlílGlwətaʔ/Selilwitulh (Tsleil-Waututh) Nations.

British Columbia Law Institute

1822 East Mall, University of British Columbia, Vancouver, BC, Canada V6T 1Z1

Phone: (604) 822-0142 E-mail: bcli@bcli.org
Website: https://www.bcli.org

The British Columbia Law Institute was created in 1997 by incorporation under the provincial *Society Act*. Its purposes are to:

- promote the clarification and simplification of the law and its adaptation to modern social needs,
- promote improvement of the administration of justice and respect for the rule of law, and
- promote and carry out scholarly legal research.

This project was made possible with project funding from the McLachlin Fund and the sustaining financial support of the Law Foundation of British Columbia and the Ministry of Attorney General for British Columbia. The Institute gratefully acknowledges the support of the Law Foundation of British Columbia and the Ministry for its work.

Reconciling Crown Legal Frameworks

The BCLI established the Reconciling Crown Legal Frameworks Program (RCLF Program) to support the alignment of BC's Crown legal framework with Indigenous laws. In November 2019, the BC government passed the *Declaration on the Rights of Indigenous Peoples Act (Declaration Act)*, a globally significant legislative development which creates a path forward that respects the human rights of Indigenous peoples.

The members of the RCLF Program Advisory Committee are:

Marian K. Brown
Barbara Carmichael, KC
Hon. Steven Point, OC, OBC
Jessica Wood
Dana Kingsbury
Dr. Val Napoleon
Stacey M. Edzerza Fox, KC
Leah D. George-Wilson

Introductory Note

Navigating Shared Waters: A Study Paper on Indigenous-Led Conflict Resolution

The British Columbia Law Institute is committed to supporting law reform that advances the alignment of BC laws with the *United Nations Declaration on the Rights of Indigenous Peoples*. This study paper reflects this commitment to transformative law reform. It builds on the BCLI's primers on legal pluralism and explores ways of supporting the application of Indigenous legal orders alongside the Canadian legal system. The BCLI is grateful for the guidance of the Honourable Steven Point as we learn to approach law reform along a path that enables the application of both Indigenous and Canadian laws.

This study paper looks at the important role that conflict resolution plays within legal orders. It highlights some of the ways Indigenous peoples are applying their laws to conflict resolution and identifies opportunities for Canadian legal systems to address barriers and better support approaches to justice as led by Indigenous peoples.

Edward L. Wilson
Chair,
British Columbia Law Institute
July 2025

Table of Contents

Foreword by the Honourable Grand Chief Steven Point

The Canadian Justice System has failed First Nations. How many times have you heard this statement and wondered what this means and why it is even said. My hope is to help the average Canadian to understand its meaning and its call for change in Canada.

"Canada was a wild frontier begging to be tamed and settled by more advanced civilizations. First Nations have gained in many ways by the arrival of Europeans and their sharing of their knowledge and social advancement. The newcomers had a responsibility to bring this knowledge and Christian belief to a people who were living in the stone age."

This is the popular myth that is the historic backdrop and rationale to the taking of Indian lands by Europeans. It is only today after the bringing home of the *Declaration on the Rights of Indigenous Peoples* that Canada is now asking itself about reconciliation, about the re-writing of Canadian History.

The Canadian Common Law and then the statutory laws were largely a British inheritance. They did not originate in Canada. These laws came here with the arrival of Europeans. These laws were created by Europeans for Europeans and then resurrected in Canada and applied to the Indians.

Indians had their own social order, their own political structures and their own conflict resolution mechanisms. Like British laws, Indigenous laws reflected Indigenous beliefs and values.

The Canadian Justice System is thus a system not based on Indigenous beliefs and values and for that reason alone has not worked for us. We are people who lived in great collectives, who adhered to the laws passed down to us from our grandparents. We were therefore much more egalitarian and less centralistic. We viewed things in the context of mother earth and the importance of harmony and peace.

Canada's laws protect individual land and property ownership, while Indigenous laws protect the collective interests of the family and tribe.

I am only speaking now of just a few differences that must be at some point reconciled.

What is happening now is amazing. We are in a time of great change and great expectation of change. We have First Nation's family courts and criminal courts, we have the prospect of creating our own land management regime complete with magistrates' courts to settle disputes, we are on the doorstep to creating our own legal orders to resolve child protection matters under proposed Federal child protection laws. Where is this all going?

I think we are heading to a conflict resolution process that will be developed under treaties or under self-government agreements. As governments like British Columbia continue to embrace UNDRIP and to recognize Indigenous land title, we are heading to a new relationship with this country never before seen.

I trust that this paper will act as a tool to inform us all about what is happening now on the ground in Indian Country, but also to help illuminate the path forward with regard to conflict resolution mechanisms as they are grown by First Nations.

The Honourable Grand Chief Steven Point

Acknowledgements

The BCLI is grateful for the insights and perspectives of the many individuals who contributed to the development of this study paper. We are especially grateful to the Honourable Grand Chief Steven Point, OC, OBC for the invaluable assistance he provided in framing this paper. Special thanks are also due to Dr. Val Napoleon (Law Foundation Chair of Indigenous Justice and Governance at the University of Victoria Faculty of Law), Christina Cook, KC (lawyer), Andrea Hilland, KC (Allard School of Law), David Milward (University of Victoria, Faculty of Law), and Catherine Bell (University of Alberta, Faculty of Law). Their willingness to share their knowledge, answer our inquiries and provide feedback greatly contributed to this publication.

BCLI remains grateful for the core support of the Law Foundation of British Columbia and the BC Ministry of the Attorney General for our work.

BCLI also acknowledges the contributions of the following present and former staff members in the preparation of this study paper: Megan Vis-Dunbar, Greg Blue, KC, Meghan Little, Kira Davidson, Maria Michouris, Ignacia Mendez, Oluwaseun Fadairo, Ken Chau, and Shauna Nicholson.

The BCLI also wishes to express its respect for the many First Nations who continue to honour, practice, and apply their legal orders, enriching legal pluralism within Canada.

Terminology

First Nation, Indigenous & Aboriginal

The term Indigenous is often used in the international context to refer to the distinct social, economic, and political groups that made up the pre-existing societies in areas that have been colonized or otherwise dominated by settlers. In the Canadian context, the term "Indigenous peoples" refers collectively to the First Nations, Inuit and Métis peoples, aligning with the use of "Aboriginal" in the Canadian Constitution, which recognizes three distinct categories of Aboriginal peoples: Indians (First Nations), Métis and Inuit. Within BC, "First Nation" is the term often used to describe the sovereign and distinct societies that pre-existed the arrival of Europeans.[1] The term Indian is used when referring to the federal *Indian Act*,[2] which relates to the exercise of federal jurisdiction over "Indians and lands Reserved for Indians" under section 91(24) of the *Constitution Act, 1867*.[3] The *Indian Act* applies to First Nations. The terms "Indian" and "Indian Country" are commonly used in legal discourse in the US.

This paper discusses internationally and nationally recognized rights of Indigenous peoples as those apply to First Nations within BC. We use the terms First Nation and Indigenous throughout this paper depending on whether we are referencing First Nations within BC or Indigenous populations more broadly. At times we use the term Indian where that term carries legal significance or reflects the terminology used by the peoples referenced.

Inherent rights

Inherent rights derive from a source independent of a state government. For example, an inherent right of self-determination arises from the fact that First Nations were sovereign, independent governing bodies prior to European colonization and the creation of the Canadian state. Certain inherent rights of Indigenous peoples are recognized within the *United Nations Declaration on the Rights of Indigenous Peoples*[4] (UN Declaration) and the Canadian Constitution. Neither the UN Declaration nor the Canadian Constitution are the source of inherent Indigenous rights.

Crown & state legal systems

Canada is a constitutional monarchy and therefore, the Canadian state is often referred to as the Crown. Technically, within Canada, the Crown refers to Canada's Head of State, the King. Canadian state governments include federal, provincial and territorial governments, each of

[1] British Columbia, *Distinctions-Based Approach Primer* (December 2023) at 2.
[2] RSC 1985, c I-5 [*Indian Act*].
[3] *Constitution Act, 1867*, 30 & 31 Vict, c 3 [*Constitution Act*].
[4] GAOR, 61st Sess., Annex, Agenda Item 68, UN Doc. A/res/61/295 (2007) [UN Declaration].

which are entrusted with the Crown's power to govern.[5] This is part of the Crown framework that shapes Canadian state governments and associated state legal systems.

State legal systems within Canada include the common law of England as it has been applied to Canada, the Civil Code of Québec, as well as bodies of laws that have been created by federal, provincial and territorial governments within Canada.

State recognition
State governments may formally recognize the existence of inherent rights within legislation, treaties, policy or government statements. Such formal recognition can signal a state's commitment to upholding those rights. State recognition can also be an aspect of ensuring the application of co-existing legal systems.

Legal pluralism
Legal pluralism refers to the co-existence of two or more legal systems within the same social field.[6] Canada is a legally plural society comprised of co-existing state legal systems and distinct Indigenous legal orders. A legally plural society can benefit from frameworks that manage the application and prioritization of distinct legal systems. This paper discusses co-existing conflict resolution bodies stemming from distinct legal orders. In other words, it discusses legal pluralism and how it may function in relation to conflict resolution.[7]

[5] Local governments, including municipalities are also state governments. Their power to govern is delegated by provincial governments.
[6] Val Napoleon, "Legal Pluralism and Reconciliation" (2019) Māori L Rev 1 at 5.
[7] For more on legal pluralism, see BC Law Institute, "Legal Pluralism in Canada" (September 2023), online (pdf): <https://www.bcli.org/wp-content/uploads/BCLI_Primer3-New.pdf>.

1. Introduction

Conflict resolution is one way law is applied in society. First Nations, in exercise of their right to self-determination, control their own laws and associated approaches to conflict resolution in application of those laws. As was noted in the Truth and Reconciliation Commission (TRC) Final Report, recognition of the authority and capability of First Nations to address disagreements involving their peoples, resources and lands in accordance with their laws "is necessary to facilitating truth and reconciliation within Aboriginal societies".[8] It is also a necessary component of the implementation of the BC *Declaration on the Rights of Indigenous Peoples Act*,[9] which affirms the application of the UN Declaration to BC. The UN Declaration recognizes the inherent right of Indigenous Peoples to self-determination and the right to maintain and strengthen their legal institutions.[10]

In 2015, the TRC called for a commitment on the part of federal and provincial governments to recognize and support the implementation of Aboriginal justice systems. Five years later, the BC First Nations Justice Council and the Province of British Columbia signed the BC First Nations Justice Strategy, which includes commitments to support the development of First Nations justice systems. In 2025, the Department of Justice Canada published its Indigenous Justice Strategy setting out action items in response to engagements with First Nations, Inuit, and Métis governments and organizations. The TRC Calls to Action, the BC First Nations Justice Strategy, and the Indigenous Justice Strategy all recognize the harms caused by the imposition of the Canadian state justice system on First Nations, Inuit, and Métis peoples.

Advancing First Nations' right to self-determination is a common thread crossing all three of these documents as they set out actions for addressing those harms. The national Indigenous Justice Strategy identifies its first principle and goal as supporting rights to self-determination, including in the development and implementation of Indigenous laws.[11] The first pillar of the BC First Nations Justice Strategy includes as a strategy, the advancement of First Nations' self-determination through supporting First Nations in developing their laws and justice systems in the manner they choose.[12] The TRC Final Report, in calling on federal and

---

[8] Truth and Reconciliation Commission of Canada, Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada (2015) at 205, online (pdf): <https://publications.gc.ca/collections/collection_2015/trc/IR4-7-2015-eng.pdf> [TRC Final Report].

[9] S.B.C. 2019, c. 44.

[10] UN Declaration, *supra* note 4, arts 5 & 34.

[11] Department of Justice Canada, Indigenous Justice Strategy (March 2025) at 7, online (pdf): <https://www.justice.gc.ca/eng/csj-sjc/ijr-dja/ijs-sja/tijs-lsja/pdf/IJS_EN.pdf>.

[12] BC First Nations Justice Council, "BC First Nations Justice Strategy"(2020) at 13-14, online (pdf): <https://bcfnjc.com/wp-content/uploads/2024/04/The-BC-First-Nations-Justice-Council-Justice-Strategy-2024.pdf>.

provincial governments to commit to the implementation of Aboriginal justice systems noted that "[a]ny strategy aimed at reducing Aboriginal offending and victimization must also include recognition of the rights of Aboriginal communities to develop their own justice systems as part of a larger commitment to Aboriginal self-determination and self-government."[13]

The application of Canadian state laws has resulted in the imprisonment of disproportionately high numbers of Indigenous peoples and removal of Indigenous children from their families, communities, and cultures.[14] Many Indigenous peoples and communities turn to Canada's courts knowing their laws and means of conflict resolution are unlikely to be recognized there. However, there is often a lack of other formally recognized legal mechanisms for them to choose from.[15] As discussed later in this paper, many First Nations have tried to work within the confines of Canadian law to enact bylaws under the *Indian Act* regarding public safety and conflict within their communities. However, the Canadian legal system, including policing and prosecution services, fails to enforce these laws - continuing to prioritize the application of Canadian laws to Indigenous peoples and undermining the right of self-determination.

The BC First Nations Justice Strategy aims to address the harms caused to Indigenous peoples and their communities by the systematic prioritization of Canadian laws over Indigenous laws through the two tracks of reforming the Canadian justice system and restoring Indigenous justice systems and structures. It relies on interconnected strategies and lines of action with an overall goal of advancing "the development and implementation of Indigenous justice systems and institutions" in a manner consistent with the right to self-determination.[16]

Truth and Reconciliation Commission of Canada, Call to Action #42:

We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the *Constitution Act, 1982*, and the *United Nations Declaration on the Rights of Indigenous Peoples*, endorsed by Canada in November 2012.

[13] TRC Final Report, *supra* note 8 at 181.
[14] *Ibid* at 202.
[15] *Ibid* at 202-203.
[16] BC First Nations Justice Council, *supra* note 12 at 3-4.

United Nations Declaration on the Rights of Indigenous Peoples:

Article 5
Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 34
Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Effective implementation of the BC First Nations Justice Strategy will require the province to adapt its systems to create space and support for First Nations-led approaches to justice, including First Nations-led approaches to conflict resolution. This paper aims to help inform Crown legal systems in adapting to First Nations' approaches to conflict resolution.[17] Crown responses will be more effective where they are informed of the ways in which distinct legal orders approach conflict resolution. They need to recognize that while the processes and expressions of law within First Nations legal orders may look different from what takes place within Canadian courtrooms, they serve an equivalent function in practice.[18] Support for Indigenous-led conflict resolution also requires collaboration between provincial and federal governments. Siloed approaches to recognition can result in barriers to implementation, gaps in enforcement and uncertainty across jurisdictions when First Nations approaches to conflict resolution interact with state legal systems and procedures. Frameworks that clarify priority of laws, whether agreements, other types of arrangements, or co-developed legislation, can alleviate conflict through rules of paramountcy. These types of frameworks can be further strengthened when backed by effective enforcement mechanisms.

[17] Throughout this paper, we generally refer to approaches to conflict resolution more so than justice systems. Our use of conflict resolution is intended to be inclusive of the multitude of approaches to the application of law to conflict within distinct legal orders. While some First Nations use the terminology of justice system to describe the systems and procedures related to applying their laws to resolve conflicts, we found that many do not.

[18] Val Napoleon, "Public Faces: Indigenous Law Today and Through the Futuristic Looking Glass" (Paper prepared for the Public Law Conference, 2022) at 6, online (pdf): <https://allard.ubc.ca/sites/default/files/2022-10/Napoleon%20Indigenous%20Public%20Law%20012.pdf>.

1.1 Legal Pluralism as a Framework

Legal pluralism exists within Canada by virtue of the fact that there are multiple distinct and co-existing legal systems. Indigenous legal orders together with state legal systems comprise the legally plural system of administration of justice within Canada. Within Canadian state legal systems, there are additional layers of legal pluralism. For example, the civil law system within Quebec is grounded in French legal traditions and the common law system within other Canadian provinces is founded on the British legal system.[19] Ensuring co-operation as between distinct and co-existing sources of law is a familiar concept within Canadian law from which some lessons can be drawn as we look to ways of strengthening frameworks for legal pluralism as between Indigenous legal orders and Canadian legal systems.

Indigenous laws exist and are applied to conflict resolution in many instances independently of the state. Legal pluralism can take many forms, and it is not dependent upon a framework to manage the co-existence of different legal systems. However, a legally plural framework based in co-operation and support can facilitate respectful relationships between co-existing legal systems. A framework supporting relationships between state and Indigenous legal systems can also alleviate points of friction when distinct legal systems interact.

As with all legal systems, Indigenous legal orders are generally circumscribed in their application. Indigenous laws may apply only to members of an Indigenous nation or in respect of their lands.[20] However, as people move and interact across territories and societies, there is a greater likelihood of distinct legal orders needing to interact. These situations can benefit from greater state acknowledgment and respect of the legitimacy of Indigenous legal orders and a framework for managing relationships between state and Indigenous legal orders.

Legal pluralism can encompass a range of concepts. Simply acknowledging the co-existence of multiple legal orders is an acknowledgment of the fact that legal pluralism exists within a social or geographic space. A legally plural framework can also involve intentional adaptations to accommodate and manage relationships between co-existing legal orders. Within the Canadian state legal system, federal and provincial governments intentionally adapt their systems and procedures to allow for co-operation between them. When Indigenous legal orders interact with Canadian state legal systems, they are also generally expected to adapt to incorporate values and principles characteristic of the state system. If state legal systems do not also adapt to co-operate with Indigenous legal orders in alignment

[19] John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 8.
[20] Ghislain Otis, Jean Leclair and Sophie Thériault, *Applied Legal Pluralism: Processes, Driving Forces and Effects* (Oxon, UK: Routledge, 2023) at 25.

with the procedures and values of those legal orders, it leads to friction and uncertainty across jurisdictions. For example, individuals may be at greater jeopardy of being sanctioned for the same conduct within both Indigenous and Crown jurisdictions. Or, as explored in more detail in section 3.2 of this paper, gaps can arise in enforcement processes across jurisdictions. Furthermore, state processes or sanctions can undermine the goals and values of Indigenous legal processes. These types of situations can lead to further conflict and increased tolls on resources across legal orders.

A variety of First Nations governments and legal orders exist in BC. Sometimes, a First Nation in exercise of its inherent jurisdiction will apply its laws without resort to or interaction with Canadian legal procedures or institutions. There are many reasons for a First Nation to choose to not have their laws subjected to interpretation or application by the state.[21] In such situations it may be inappropriate for the Canadian legal system to intervene beyond recognizing and acknowledging the co-existing jurisdiction of a First Nation. For example, when Indigenous laws are applied to a conflict in the nature of a private law matter, an approach of recognition without further involvement on the part of the Canadian legal system may be the most appropriate.[22]

A First Nation can exercise powers pursuant to inherent jurisdiction, meaning its authority and legitimacy "rooted in Indigenous traditions, philosophies and worldviews".[23] Both Indigenous and non-Indigenous people can choose to comply with that system of laws in addition to complying with Canadian laws. In such situations, there is no complaint involving the Canadian legal system and Canadian courts have no jurisdiction to involve themselves in such matters.[24] However, such situations can benefit from strengthened state acknowledgment of the Indigenous legal orders and processes to minimize interjurisdictional friction as referenced above.

Some exercises of jurisdiction by First Nations do involve more interactions with the Canadian legal system. In addition to inherent law-making powers, First Nations have some federally delegated law-making powers, which need to be exercised in accordance with requirements set by the Canadian legal system. Certain law-making powers may also form part of an agreement between a First Nation and the Canadian state by way of a treaty or self-government agreement. First Nations may also choose to resort to Canadian legal procedures and institutions to have their laws enforced.

---

[21] See Alan Hanna, "Spaces for Sharing: Searching for Indigenous Law on the Canadian Landscape" (2018) 51:1 UBC L Rev 105 at 108.
[22] See *George v Heiltsuk First Nation*, 2023 FC 1705.
[23] *George v Heiltsuk First Nation*, *supra* note 22 at para 28.
[24] *Ibid* at paras 22, 28, 67 & 75.

This paper explores some of the ways Indigenous peoples are exercising both their inherent law-making powers and state recognized or delegated law-making powers to resolve conflicts in their communities. It further explores some of the points of friction and barriers that arise when Indigenous and state legal systems interact without adaptation or support on the part of the state legal system. It concludes by looking at ways of uplifting the application and enforcement of Indigenous laws to resolve conflicts within a legally plural society drawing on examples within Canada and abroad.

The content of this paper is based on research of Indigenous-led approaches to conflict resolution, analyses of state frameworks related to those systems, and conversations with Indigenous and non-Indigenous peoples involved in work related to establishing conflict resolution processes that apply Indigenous laws ("engagement participants").

1.2 The Right of Self-Determination and the Application of Indigenous Laws

The right of self-determination grounds and informs other Indigenous rights recognized within the UN Declaration. How each First Nation exercises their right to self-determination can be distinct. Similarly, the way in which each First Nation chooses to take up jurisdiction and exercise their laws can be distinct. As David Milward noted, "[t]here is … no single vision of self-determination".[25]

In addition, different First Nations are in different places of reinvigorating and applying their laws and legal orders. The impacts of colonization on some First Nations includes a loss of knowledge keepers knowledgeable in their legal orders and laws. Some First Nations are just now revitalizing their laws. Other First Nations have been able to keep their legal orders active and may be in a space where they are working towards greater state recognition and adaptation in relation to their laws.

[25] David Milward, *Aboriginal Justice and the Charter: Realizing a Culturally Sensitive Interpretation of Legal Rights* (Vancouver: UBC Press, 2012) at 5.

The right of self-determination includes the right of First Nations to apply their laws.[26] However, the manner in which the right to self-determination is exercised may look different depending on where a First Nation is in terms of applying their laws. It is essential that Canadian state responses to First Nations' approaches to conflict resolution recognize and adapt to the different places First Nations are at in reinvigorating the application of their laws.

Conflict resolution based in Indigenous legal orders can be an important expression of sovereignty and self-government. There is also a basis for justice systems grounded in Indigenous laws in sections 25 and 35 of the *Constitution Act, 1982*.[27] Ensuring support for Indigenous-led conflict resolution is of particular significance when we consider the many ways in which the Canadian justice system fails to be an effective tool for conflict resolution within Indigenous communities.

When decision-making and conflict resolution are led by Indigenous peoples applying Indigenous legal orders, it alleviates some of the concerns around Canadian courts interpreting and applying Indigenous laws through a Canadian legal lens. It allows for the application of Indigenous laws by decision-makers with knowledge of the traditions and teachings in which the laws are grounded. Such an approach to interpretation and application of Indigenous laws is in line with the right to self-determination.[28]

Conflict resolution is also an important function of law and allows law to grow in response to the complexities of life. As John Borrows put it:

> Indigenous law must be practiced in the real world with all its complexity. …[N]o one has any monopoly on goodness. Law does not just flow from what is beautiful in Anishinaabe or Canadian life. Law also springs from conflict. It emerges from our responses to real-life needs, which are often rooted in violence, abuse, exploitation, dishonesty, political corruption, and other self-serving and destructive behaviours. At the same time, law also comes from good and wise practitioners inside *and* outside our communities.[29]

---

[26] British Columbia, *Declaration on the Rights of Indigenous Peoples Act Action Plan 2022-2027* (2022) at 10, online (pdf): <https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/ministries/indigenous-relations-reconciliation/declaration_act_action_plan.pdf>.

[27] Karen L. Whonnock, "A Tale of Two Courts: The New Westminster First Nations Court and the Colville Tribal Court" (2011) 44:1 UBC L Rev 99 at 108.

[28] Sebastien Grammond, "Recognizing Indigenous Law: A Conceptual Framework" (2022) 100:1 Can B Rev 1 at 22.

[29] John Borrows, *Law's Indigenous Ethics* (Toronto: University of Toronto Press, 2019) at 239.

As Val Napoleon has noted, applying Indigenous laws to conflict resolution is not necessarily about doing things the way they were done historically. Rather, it is about applying Indigenous laws and legal principles to manage modern day issues.[30]

> "The process of restoring Indigenous laws entails revitalizing the public, reasoned, and transparent conflict resolution processes, which draw on oral histories, narratives and stories to help Indigenous people grapple with the daily challenges of contemporary life."[31]

1.3 Relationships of Rights

Indigenous peoples are holders of both individual and collective rights. Within each of those categories of rights, there are further relationships. The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls describes Indigenous and human rights as "representative of linked, but distinct, ideas". This framing was considered important to ensuring that solutions not violate some rights to uphold others. The National Inquiry noted how at times, human rights have been used as a justification for the violation of Indigenous rights and vice-versa.[32]

> "Indigenous women's rights include both individual human rights and collective Indigenous rights – with overlap between these two categories, where collective rights are also human rights and Indigenous rights also belong to individuals."[33]

When thinking about frameworks for supporting legal pluralism founded on respectful relationships between self-determining nations, we can also think about respectful relationships between rights. This can be especially important in the context of conflict resolution, which often involves consideration of power dynamics. Power dynamics can exist as between decision-makers and the people appearing before decision-makers. Power

[30] Napoleon, *supra* note 18 at 16.
[31] Val Napoleon and Hadley Friedland, "An inside job: Engaging with Indigenous Legal Traditions through Stories" (2016) 61:4 McGill LJ 725 at 740.
[32] National Inquiry into Missing and Murdered Indigenous Women and Girls, "Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls", Vol 1a (2019) at 218.
[33] *Ibid* at 221.

dynamics can also exist as between the people seeking a resolution in a situation of conflict. Legal systems can support relationships between rights by respecting the right to self-determination, being alive to power dynamics within systems of law and governance, and recognizing Indigenous peoples as holders of both individual and collective rights within their own systems of governance, within state systems of governance, and within international contexts. Respect for both individual and collective rights creates space for greater accountability.[34]

As this paper explains, siloed approaches to recognition of laws and legal orders create barriers to the application and enforcement of laws. Building respectful relationships across legal orders and systems of government can enhance opportunities for access to justice, including for vulnerable peoples and people whose rights have been disregarded within one system. Frameworks supporting legal pluralism should recognize that rights frameworks are multi-dimensional and ensure access to legal systems. Pursuing a resolution within one legal order does not need to foreclose access to justice within another to ensure respect for both Indigenous and human rights. As affirmed within Article 5 of the UN Declaration, Indigenous peoples have the right to participate in their distinct political and legal systems while retaining the right to participate in state systems as they choose.

> Human rights frameworks, as interpreted within the spirit and context of Indigenous laws, are important tools to begin to change the conversation about Indigenous roles, responsibilities, rights, and, ultimately, self-determination. In this, we all have a role to play. We can restructure our own relationships and transform our own encounters, all the while contributing to the protection and restoration of Indigenous women's and gender-diverse people's power and place through respect for Indigenous laws and principles, and human and Indigenous rights. When Indigenous and human rights are respected fully, then Indigenous women and girls will be safer. We can transform encounters that endanger women, girls, and 2SLGBTQQIA people into ones that can protect them.[35]

[34] *Ibid* at 222.
[35] *Ibid* at 224.

2. Approaches to Indigenous-led Conflict Resolution

This section highlights some of the pathways Indigenous peoples are embarking on in exercising both their inherent law-making powers and state recognized or delegated law-making powers to resolve conflicts in their communities. The examples highlighted here are informed by our conversations with engagement participants where we heard about some of the initiatives being undertaken by First Nations in BC and elsewhere which have been a source of inspiration and learning. While these examples demonstrate some of the diversity in approaches to conflict resolution, they do not reflect the full spectrum of approaches First Nations are pursuing to apply and enforce their laws.

There are numerous ways in which the Canadian justice system is working to acknowledge the circumstances of Indigenous participants within Crown courts and modify Crown judicial processes to address harm to Indigenous participants. Those efforts are significant in addressing the ongoing harms the Canadian legal system causes Indigenous peoples and communities. However, it is not the focus of this paper which highlights initiatives led by First Nations with regard to conflict resolution.

2.1 Approaches to Conflict Resolution in First Nations Communities in BC

2.1.1 Navigating Spaces within Crown Frameworks

Effective application of First Nations' laws to conflict resolution can be strengthened by coordinated efforts between multiple levels of government and state agencies to ensure meaningful opportunities for Indigenous-led approaches to conflict resolution and address gaps in enforceability. It also requires resources to lift up the capacity of First Nations.

A common theme we noted in how First Nations are approaching conflict resolution is that it involves navigating state legal systems to find spaces and opportunities for First Nations to exercise their jurisdiction. In reflection of this reality, the examples below are framed in relation to spaces within the state legal system where First Nations are exercising their jurisdiction.

Some spaces are created within state legislation, such as the *Indian Act*, the *Framework Agreement on First Nations Land Management Act*[36] (*Framework Agreement*), or the *Act Respecting First Nations, Inuit, Métis children, Youth and Families* (*Children, Youth and Families Act*).[37] The jurisdictional spaces recognized within state legislation can be quite varied. The *Indian Act*, for example recognizes the authority of federally recognized band councils to enact by-laws regarding certain aspects of public safety on reserve lands. Whereas the *Children, Youth and Families Act*, recognizes a sphere of jurisdictional authority in relation to children and families that can be determined by a First Nation government drawing authority from the community and people it represents.

The Canadian state also recognizes First Nations' jurisdictional authority within modern treaties and self-government agreements. Again, the scope of jurisdiction recognized within these spaces can vary significantly from one agreement to another. First Nations are also finding spaces in which to assert their inherent jurisdiction, not limited by state government formal recognition.

Regardless of whether First Nations are identifying spaces within legislation, agreements or opportunities to assert inherent jurisdiction, one engagement participant described it as a process of looking for an open doorway through which to navigate and establish a small sphere of jurisdiction. These spaces are carved out from within state legal systems, but generally not fully supported by state legal systems.

Recognition of and support for the work First Nations are doing to revitalize and apply their laws is piecemeal and tangled up in the interjurisdictional complexities of the Canadian state legal system. The absence of an interjurisdictional framework to support First Nations justice systems results in significant barriers to the exercise of jurisdiction by First Nations. Those barriers and potential pathways to more fulsome support of the application of First Nations laws to conflict resolution are explored in more detail in sections 3 and 4 of this paper.

Spaces within Federal Legislation

Cowichan Tribes

The Cowichan Tribes have been developing ways to apply their laws in relation to child and family welfare within spaces recognized by the federal *Children, Youth and Families Act*. The Act enables coordination agreements between Indigenous governing bodies and provincial governments, which have the effect of ensuring that Indigenous laws on child and family

[36] SC 2022, c 19, s 121 [*Framework Agreement*].
[37] SC 2019, c 24 [*Children, Youth and Families Act*].

welfare can prevail over federal or provincial laws in certain situations and enable coordinated financial support.

Whereas laws recognized by the federal government pursuant to the *Framework Agreement* are defined in scope territorially, those recognized pursuant to the *Children, Youth and Family Act* are defined in scope by personal jurisdiction. Accordingly, in regards to Cowichan child and family welfare laws, they can apply throughout Canada to Cowichan children and families. In BC, where there is a coordination agreement in effect, Cowichan laws have the force of federal law and will prevail over provincial law in the case of conflict or inconsistency. In other provinces and territories where there is no coordination agreement in place as of yet, Cowichan laws are recognized as having the force of Indigenous law.[38]

While the Cowichan family and child welfare laws are strongly focused on prevention, they encompass conflict resolution processes that ensure the laws are interpreted and applied in accordance with Cowichan *snuw'uy'ulh*.[39]

Conflict resolution involves collaborative decision-making following Cowichan *snuw'uy'ulh*. Some elements include speakers, witnesses, decision-makers, and blanketing. Speakers or trusted advocates help ensure that children and families involved in a dispute are able to exercise their rights in accordance with the law.[40] A speaker is mandatory for a child involved in the dispute.[41] Witnesses to the process provide accountability and record a memory of the process. Decision-makers and knowledge-holders apply the law while also considering the impacts of colonialism and ways in which Canadian systems, laws and policies affect those involved.

K'ómoks First Nation

The K'ómoks First Nation (KFN) is a signatory to the *Framework Agreement*. Signatory First Nations can opt out of land management under the *Indian Act* and enact laws in relation to their reserve lands. A land code enacted under the *Framework Agreement* can include offences and a First Nation can appoint prosecutors and justices as part of an enforcement

---

[38] Robert B. Morales, "Transforming Existing Legal Institutions: The Cowichan Example" (Presentation delivered at the CLEBC Indigenous Legal Orders Conference, Vancouver, 14 June 2024). The weight and priority Indigenous law has in relation to federal, provincial and territorial laws is not clarified in the Act.

[39] *Snuw'uy'ulh* is the closest word in the Hul'qumi'num language for the word *law*. Within the Cowichan child and family law, snuw'uy'ulh is defined as "a set of teachings including the traditional beliefs, practices and laws for Cowichan". Snuw'uy'ulhtst tu Quw'utsun Mustimuhw u' tu Shhw'a'luqwa'a' i' Smun'eem [Laws of the Cowichan People for Families and Children], s 1.9(oo), online (pdf): <https://ourchildlaw.cowichantribes.com/wp-content/uploads/2024-06-11-Cowichan-CFS-Law-FINAL-Approved-by-Council-003.pdf> [Cowichan Tribes' law].

[40] *Ibid*, s 1.9(pp).

[41] Morales, *supra* note 38.

scheme. The BC Court of Appeal has analogized this recognition of jurisdiction as similar to the powers given to municipalities.[42]

In accordance with the *Framework Agreement*, the KFN has passed a Land Code, and enacted laws related to management of their lands and resources. For example, there are KFN laws pertaining to trespass, residency, and summary offences.

To support enforcement of these laws, the KFN has established a Justice Process. Through this process, KFN oversees the resolution of certain conflicts within their own community. Enforcement and application of K'ómoks laws can be supported by a KFN appointed Justice of the Peace, Prosecutor, Administrator, and Community Protection Coordinator. The KFN has now appointed a Justice of the Peace to support the enforcement of K'ómoks laws that have been enacted under the Land Code, and which apply to their reserve lands.[43]

Spaces within Modern Treaties

The KFN has also ratified a treaty negotiated with the BC and federal governments, which will open the door to broader jurisdiction outside of the *Indian Act* and *Framework Agreement*. Within current formal state systems, the KFN is therefore transitioning from a model of delegated authority under federal legislation to one of state recognized self-governance coordinated under a treaty.

Implementation of a treaty requires amendments to state laws to facilitate the jurisdictional authority recognized within the treaty. As BC and Canada move forward with formally recognizing KFN self-governance through the restructuring of state laws, it is anticipated that KFN will be able to expand its Justice Process and have opportunities to administer justice throughout their treaty lands. The treaty will provide a pathway to transition the office of the Justice of the Peace into a K'ómoks Court and broaden the scope of application of state recognized K'ómoks laws.[44]

The K'ómoks Treaty as ratified, affirms KFN's authority to constitute a K'ómoks Court that administers K'ómoks Laws. K'ómoks Laws can enable the Court to deal with a wide range of matters arising under them, including disputes between persons and offences. The K'ómoks

---

[42] *Kumagai v Campbell Estate*, 2018 BCCA 24 at para 26.
[43] K'ómoks First Nation, "K'ómoks First Nation Justice Process: Key Messages" (last visited 5 February 2025), online (pdf): <https://komoks.ca/wp-content/uploads/2024/12/2024-12-02-KFN-Key-Messages-FINAL.pdf> at 1-5 [KFN Justice Process].
[44] *Ibid* at 6 & 7.

Court will have jurisdiction to deal with Aboriginal and treaty rights in relation to their territory and members, powers to deal with challenges to the validity of any K'ómoks Law, and certain matters arising under the *Canadian Charter of Rights and Freedoms*. The treaty further recognizes authority of a K'ómoks Court to deal with summary offences established under K'ómoks law which could result in an imprisonment sentence, and contempt of court powers. In order to exercise this authority, there are certain criteria a K'ómoks law relating to the constitution of a court must meet including standards of judicial independence and impartiality in relation to the appointment of judges.[45]

Not all treaties recognize authority to establish a court. Some modern treaties establish other frameworks for decision-making in application of a treaty first nation's laws with varying levels of interplay between Crown and First Nation systems. For example, the treaty with the Tsawwassen First Nation (TFN) provides the Provincial Court of BC and the BC Supreme Court with jurisdiction to hear certain matters under Tsawwassen Law.[46] The Final Agreement also provides for the future possibility of exploring opportunities for establishing a separate court to adjudicate on matters arising under Tsawwassen Law.[47] The treaty framework also creates opportunities for other forms of conflict resolution. For example, the TFN has created a judicial council to resolve conflicts within the community and provide a forum for challenges to the validity of Tsawwassen Laws.[48] The TFN also has an agreement with a local municipal police service, the Delta Police Department, for policing services inclusive of authority to enforce Tsawwassen Laws. In addition, the TFN has its own enforcement officers for non-criminal law matters.[49]

The Nisg̱a'a Treaty, which came into effect in 2000, was the first modern treaty to be finalized within BC. It recognizes the law-making authority of the Nisg̱a'a Lisims Government, including in relation to establishing a Nisg̱a'a Court. In addition, the treaty enables relationships and agreements between Nisg̱a'a Lisims and various branches of the Crown justice sector, such as

---

[45] *K'ómoks First Nation Treaty*, "A Living Agreement", Ratification Version, November 2024, ss 81-86, online (pdf): <https://engage.gov.bc.ca/app/uploads/sites/121/2024/12/Komoks-Treaty_Ratification-Version.pdf>.

[46] *Tsawwassen First Nation Final Agreement*, 6 December 2007, ss 147 & 151, online (pdf): <https://tsawwassenfirstnation.com/wp-content/uploads/2019/07/1_Tsawwassen_First_Nation_Final_Agreement.pdf> [TFN Final Agreement].

[47] *Ibid*, ss 141 & 143.

[48] Kim Baird, "Away from the *Indian* Act - Treaty Governance at Tsawwassen First Nation" (2011) 1:2 Aboriginal Policy Studies 171 at 178-179. See also Tsawwassen First Nation "Governance Overview", online: <https://tsawwassenfirstnation.com/governance-overview/>.

[49] Department of Justice Canada, "What We Learned: Discussions with Four First Nations about the Administration and Enforcement of their Laws and By-Laws" at 11, online (pdf): <https://www.justice.gc.ca/eng/rp-pr/jr/dffn-dqpn/docs/rsd_rr2024_administration-and-enforcement-of-first-nations-laws-and-bylaws_eng.pdf>.

police, corrections, and the Provincial Court.[50] The Nisg̲a'a Lisims Government has created an Access to Justice Department to address conflict resolution through education and awareness of both Ayuukhl Nisg̲a'a and Canadian laws and legal processes. The Department is able to encourage the application of Ayuukhl Nisg̲a'a to conflict resolution and build relationships with Crown justice sector agencies.[51]

Spaces within Self-Government Agreements

Westbank First Nation

Self-government agreements are another path by which state governments formally recognize First Nations' laws. The Westbank First Nation (WFN) has a self-government agreement with the federal government. Through this agreement, Canada recognizes the jurisdiction of WFN to govern, control, and regulate in relation to Westbank Lands.[52] Canada further recognizes WFN jurisdiction to appoint enforcement officers to enforce Westbank laws.[53]

As there is a combination of Westbank, provincial, and federal laws that apply to Westbank Lands, the WFN has approached law enforcement by appointing their own enforcement officers and entering into an agreement with the RCMP for enforcement of laws, including Westbank laws. The memorandum of understanding between the WFN and the RCMP establishes a pathway towards comprehensive enforcement of laws on Westbank Lands.[54]

The self-government agreement further provides for dispute resolution to take place in provincial courts or before a WFN tribunal. For example, a violation of a Westbank Law can be tried in the Provincial Court of BC or the Supreme Court of BC and a penalty can be imposed pursuant to Westbank Law.[55] The WFN also has its own *Dispute Adjudication Law*, which sets up an adjudication process for disputes regarding violation tickets issued in relation to an offence under Westbank law.[56]

---

[50] Nisg̲a'a Final Agreement, 27 April 1999, ch 12, ss 33 & 34, online (pdf): <https://www.nisgaanation.ca/wp-content/uploads/2024/07/Nisgaa-Final-Agreement-Effective-Date.pdf>.

[51] See Nisg̲a'a Lisims Government, "Access to Justice Department", online: <https://www.nisgaanation.ca/services/justice/access-to-justice-department/>.

[52] *Westbank First Nation Self-Government Agreement between Her Majesty the Queen in Right of Canada and Westbank First Nation*, ratified on 24 May 2003, s 103, online (pdf): <https://www.wfn.ca/docs/self-government-agreement-english.pdf> [WFN Self-Government Agreement].

[53] *Ibid*, ss 195 & 198–199.

[54] Aaron Hemens, "Westbank First Nation sign historic agreement with BC RCMP", *Kelowna Capital News* (23 September 2021), online: <https://www.kelownacapnews.com/news/westbank-first-nation-sign-historic-agreement-with-bc-rcmp-3219797>.

[55] WFN Self-Government Agreement, *supra* note 52, ss 197 & 201.

[56] Westbank First Nation Dispute Adjudication Law No. 2008-01. The Canadian government recognizes the jurisdiction of the WFN to establish adjudicative bodies within the WFN Self-Government Agreement, *supra* note 52, s 47.

Taking up Inherent Jurisdiction

Stó:lō First Nation

In exercise of their inherent jurisdiction, the Stó:lō Nation is expanding its justice program to enable greater application of Stó:lō laws and tradition to conflict resolution within their community.

The Stó:lō Nation has a Quí:welstóm justice program, which works with individuals involved in the Canadian criminal justice system. It aims to improve community wellness through prevention and intervention programs guided by Elders and Stó:lō traditions. Referrals to the program can come from Crown agencies.[57] The expanded approach to conflict resolution sees Stó:lō laws being applied more broadly within the community to resolve non-criminal matters outside of state courts. This community-based conflict resolution system is grounded in Stó:lō inherent jurisdiction and laws.[58]

Traditional conflict resolution within Stó:lō culture was through the potlatch system and involved speakers, witnesses, food, and prayer. For example, speakers would be hired to represent parties at a potlatch. This system has been weakened by colonization and the residential school system. However, the Stó:lō Nation is moving towards incorporating those philosophies and teachings into its community-based conflict resolution system.[59]

Speakers can be hired to facilitate communication. Speakers are blanketed and there are rules guiding their involvement. Elders also fulfil an important role in social validation of the process. Food is another important element as it is part of building connections. The Stó:lō justice system, which will incorporate Elders, prayer, food, and speakers is being reinvigorated to provide Stó:lō Nation members with an option for resolving conflicts in accordance with their culture and laws.[60]

There is a focus on rehabilitation and creating harmony as opposed to restitution or protection of people as emphasized within the Canadian justice system. These goals are approached from a perspective of fairness and egalitarianism.[61]

---

[57] Stó:lō Nation, "Qwí:qwelstóm Justice Program" (last visited 25 June 2025), online: <https://www.stolonation.bc.ca/programs-and-services/qwi-qwelstom-justice>.
[58] Conversation with the Honourable Grand Chief Steven Point.
[59] *Ibid*.
[60] *Ibid*.
[61] *Ibid*.

2.2 Approaches to Conflict Resolution by Indigenous Peoples Outside of BC

This section highlights a few ways that Indigenous peoples situated in other parts of Canada and other nation states are applying their laws and jurisdictional rights.

Tsuu T'ina First Nations Court and Peacemaking Initiative

The Tsuu T'ina Nation has developed a conflict resolution system based on Tsuu T'ina culture, tradition, and laws. The Tsuu T'ina reserve is located adjacent to Calgary, Alberta. A court and a peacemaking program were established with jurisdiction in relation to offences on the Tsuu T'ina reserve. The Tsuu T'ina court is distinct from First Nations' sentencing courts. It has been described as a "hybrid form of justice incorporating both Indigenous and non-Indigenous legal philosophy and practice."[62] It was designed and implemented by the Tsuu T'ina Nation and enables the application of both Dene legal orders and Crown laws through collaboration with the provincial court.[63]

Lack of enforcement of First Nations' laws and bylaws by provincial and federal governments, police, prosecutors, and state courts creates significant barriers to full recognition of First Nations' laws as explored in section 3 of this paper. The Tsuu T'ina Court and peacemaking program enable the enforcement of the Nations' laws and bylaws both within the community and within the provincial court system. The relationship involves coordination between the Court and peacemaking program to facilitate the application of Tsuu T'ina laws.

The Court, which is a branch of the Alberta Court of Justice, has jurisdiction over criminal and youth matters as well as infractions of band council bylaws. As a branch of the Alberta Court of Justice, the Tsuu T'ina Court can exercise jurisdiction over anyone, Indigenous or non-Indigenous who violates Canadian or First Nations laws on reserve. While the Court was originally located on reserve, it now operates within a specially designed space in the Calgary Courts Centre, which is shared with the Calgary Indigenous Court, a bail and sentencing court for Indigenous people.

The court staff, the judge and the prosecutor who work in the Tsuu T'ina Court are Indigenous.[64] The Court deals with criminal matters under the *Canadian Criminal Code* and

---

[62] Gladue Rights Research Database, "The Tsuu T'ina Peacemaker Court" (last visited 14 March 2025), online: <https://gladue.usask.ca/node/6664>.
[63] *Ibid.*
[64] Natasha Brakht, "Problem Solving Courts as Agents of Change" (2005) 50:3 Crim LQ 224 at 241.

does so within an approach that reflects Tsuu T'ina traditions and culture. For example, smudging is integrated into the Court's protocol and eagle feathers and beaded medallions are used within the Court.[65]

The Tsuu T'ina Nation also operates a peacemaking program, which applies Tsuu T'ina law and interacts with the Tsuu T'ina Court. Referrals to the peacemaking program can come from the Provincial Court. At the first appearance on criminal charges at the Tsuu T'ina Court, an assessment is conducted to determine whether to refer the case to the peacemaking program.[66] Any matter, with the exception of homicide and sexual assault charges, can be referred to the peacemaking process rather than having the charge proceed to trial under the provincial court procedure.[67] The Peacemaking Coordinator determines whether the case should be accepted into peacemaking and, during that process, if it goes ahead.[68] The peacemaking process is dependent upon the victim's willingness to participate. If the case is accepted for peacemaking, the Peacemaking Coordinator turns the matter over to a Tsuu T'ina peacemaker who convenes a peacemaking circle with the assistance of an Elder.

A peacemaking circle includes the judge, prosecutor, court workers, the accused, the victim, members of their families, Elders, and Tsuu T'ina peacemakers. The peacemakers sit opposite the Crown prosecutors to indicate equal status.[69] The circle may range from 5 to 25 people. Discussion continues until the circle reaches agreement on what should be done to resolve conflict, heal the victim and the accused, and restore relationships within the community.[70] The defendant enters into an agreement to fulfil what the circle has decided is necessary to right the wrong, such as an apology, restitution, taking counselling, or performing community service. A ceremony takes place at a final peacemaking circle when the defendant has completed these obligations.[71]

The matter is then returned to court, where the Peacemaking Coordinator reports on the process. The Crown then decides whether to withdraw the charges. If the charge is not

---

[65] Gladue Rights Research Database, *supra* note 62.
[66] Brakht, *supra* note 64 at 241.
[67] Gladue Rights Research Database, *supra* note 62. The exclusion of homicide and sexual assault charges from the scope of the peacemaking process was a choice of the Tsuu T'ina Elders when the court was founded, according to the Provincial Court of Alberta judge who assisted in its creation: Hon. Leonard Stephen Mandamin, *Naadamaagewin: Indigenous Restorative Justice*, (M.A. thesis, University of Alberta, 2021) at 42, online: <https://era.library.ualberta.ca/items/4d228b2e-1a4c-4b66-9877-cb63977d1979>.
[68] Gladue Rights Research Database, *supra* note 62.
[69] *Ibid*.
[70] Mandamin, *supra* note 67 at 44.
[71] *Ibid* at 45.

withdrawn, the peacemaking report still goes before the court to be considered in sentencing at the conclusion of the case.[72]

Siksika Nation Court

The Siksika Nation Court is another hybrid form of justice operating in Alberta, which enables the enforcement of First Nations' laws in a coordinated manner. It operates on the Nation's reserve. A judge of the Alberta Court of Justice who is Indigenous sits on the Nation Court. A Crown counsel position in the Calgary Crown Prosecutors Office is also dedicated to the Siksika Nation Court.[73] However, the Siksika Nation enacted a *Prosecution Bylaw* in 2024 to enable a transition to a Siksika Nation Prosecutor's Office.[74] The court's programs provide services for Siksika Nation members and non-members living with Nation members.

A two-staged dispute resolution process called *Aiskapimohkiiks*, is employed at the Siksika Nation Court. It resembles mediation-arbitration, but incorporates Blackfoot traditions, customs, and values. Elders are involved in these processes alongside Siksika mediators who have had training in both Siksika and mainstream academic dispute resolution approaches.[75]

Aiskapimohkiiks, a Siksika conflict resolution program, is used in mediation referrals from the family, criminal, youth, and small claims divisions of the Alberta Court of Justice, as well as in disputes arising between members of the Siksika Nation.[76] It is also used in matters arising under Siksika Nation bylaws. Siksika Nation has enacted bylaws in accordance with powers conferred under the *Indian Act* and inherent treaty rights.

The *Prosecution Bylaw* establishes a Siksika Nation Prosecutor's Office, whose role is to litigate and enforce Siksika bylaws in provincial courts. Of note, the Siksika *Prosecution Bylaw* prohibits a prosecution in court where Siksika law provides for conflict resolution through *Aiskapimohkiiks*. If an offence is referred to *Aiskapimohkiiks*, but not accepted or is otherwise unable to be resolved within that process, the Nation's Prosecutor's Office may then proceed with a prosecution in court.[77] In comparison with the scope of prosecutorial discretion under Canadian laws, this approach more clearly limits the scope of prosecutorial discretion to proceed with charges in court where *Aiskapimohkiiks* applies as a means of conflict resolution.

---

[72] *Ibid*.
[73] Alberta Court of Justice, "Indigenous Courts in Indigenous Communities" (last visited 5 February 2025), online: <https://albertacourts.ca/cj/areas-of-law/criminal/special-courts/ICIC>.
[74] Siksika Nation Prosecution By-law No. 2024-03, online: <https://partii-partiii.fng.ca/fng-gpn-ii-iii/pii/en/item/521641/index.do> [Siksika *Prosecution Bylaw*].
[75] Mandamin, *supra* note 67 at 51.
[76] Siksika Justice Department, "*Aiipohnsiniisma Aiskapimohkiiks*", online: <https://siksikanation.com/wp-content/uploads/2021/03/AISK-Brochure-October-2020.pdf>.
[77] Siksika *Prosecution Bylaw*, *supra* note 74, s 13.

Akwesasne Court

The Akwesasne Court has been described as "a landmark achievement for First Nations across Canada as it is the first Aboriginal court created, sanctioned, and enacted by an Aboriginal community."[78] It operates on Akwesasne territory which encompasses parts of Ontario and Quebec and is completely independent of provincial and federal court systems.[79] A version of the Akwesasne Court was originally established in 1965 under s. 107 of the *Indian Act*. However, in 2016, the Mohawks of Akwesasne in exercise of their inherent right of self-government created, developed, and passed the Akwesasne *Court Law*.[80] The Akwesasne Court now operates pursuant to that exercise of self-determination. No federal or provincial authorization for the establishment of the court was sought or obtained. [81]

The Akwesasne justice system has been described as based on four principal themes: social order, stability and certainty, standards of conduct, and protection of the members of the community. Values it reflects are preservation of the kinship and clan system, collective rights, peace, strength and the "good mind", non-adversarial interaction, and restorative justice.[82]

The Court operates under the Akwesasne *Court Law* (*Akwesasne Tekaia'torehtà:ke Kaianerénhsera*), which is expressed to reflect the values of the Mohawks of Akwesasne.[83] The Court follows the principles of *Sken:nen* (peace), *Kasatstensera* (strength), and *Kanikonri:io* (good mind).[84] It is directed by the Akwesasne Court Law to consider, *inter alia*, protection of the collective inherent rights of the community, responsibility of individuals for their actions, and the necessity of impartiality and independence.[85] The Law states that the purpose of imposing sanctions for improper acts is to restore balance in the community, maintain its cultural values, and insofar as reasonably possible to follow a non-adversarial approach in

---

[78] Gabe Boothroyd, "Urban Indigenous Courts: Possibilities for Increasing Community Control Over Justice" (2019) 56:3 Alta L Rev 903 at 904.

[79] Mohawk council of Akwesasne, *Akwesasne Court: Court Without Borders*, (last visited 14 March 2025) online: <http://www.akwesasne.ca/justice/akwesasne-court/>.

[80] Canada, House of Commons Standing Committee on Indigenous and Northern Affairs, 43rd Parl, 2nd Sess, No 34 (13 May 2021) (Chief Connie Lazore, Mohawk Council of Akwesasne) at 1110, online: <https://www.ourcommons.ca/DocumentViewer/en/43-2/INAN/meeting-34/evidence>.

[81] Boothroyd, *supra* note 78 at 904.

[82] Angelique Eaglewoman, "Envisioning Indigenous Community Courts to Realize Justice in Canada for First Nations" (2019) 56:3 Alta L Rev 669 at 700, citing a presentation by Akwesasne Director of Justice Joyce King at the 2018 Aboriginal Justice Systems Conference.

[83] No. 2016-01, enacted 12 February 2016 under Mohawk Council Resolution 2015-2016-#322.

[84] *Ibid*, s 3.1.

[85] *Ibid*, ss 3.3(b), (c), (f).

resolving disputes or dealing with violations of Akwesasne law.[86] Use of alternate dispute resolution processes in family or civil matters is encouraged.[87]

Justices of the Akwesasne Court must be a member of a First Nation, be at least 25 years of age, and have good character, credibility, and reputation in their community.[88] They must have knowledge of Mohawk culture and traditions.[89] They cannot hold an elected office in a Mohawk political body, be an employee of the Mohawk Council of Akwesasne, or a member of a board, commission, or tribunal in the Akwesasne Lands.[90]

Justices are not required to have a law degree. They do receive 10 weeks of training from the Canadian Institute for the Administration of Justice.[91]

The Akwasasne *Court Law* confers a very broad civil and criminal jurisdiction on the Court comprising all offences under Akwesasne laws within Akwesasne Lands and disputes arising under Akwesasne laws, as well as the application of Canadian criminal law, common law and equity, and the *Canadian Charter of Rights and Freedoms*.[92] The jurisdiction of the Akwesasne court in criminal matters, however, is not recognized currently by the courts of Ontario and Quebec, both of which exert territorial jurisdiction overlapping different portions of Akwesasne Lands.[93]

The Akwesasne Court exercises jurisdiction over quasi-criminal regulatory matters such as tobacco infractions, sanitation, elections, and wildlife conservation. Criminal matters continue to be tried in the provincial courts.

---

[86] *Ibid*, s 3.3(d).

[87] *Ibid*, s 3.3(h). The section refers to the dispute resolution processes contemplated by s 8.0, which would be predicated on protocols or agreements concluded between the Mohawk Council of Akwesasne, the Mohawk Nation Council, or the Saint Regis Mohawk Tribal Council.

[88] *Ibid*, ss 6.1(a) –(c) inclusive.

[89] *Ibid*, s 6.1(f).

[90] *Ibid*, ss 6.1(g) –(i) inclusive.

[91] Mohawk council of Akwesasne, *supra* note 79.

[92] No. 2016-01, *supra* note 83, ss 5.3 and 5.4.

[93] The federal government may nevertheless have implicitly recognized the Akwesasne Court as having jurisdiction to enforce Akwesasne laws about the use and occupation of family homes, conjugal relationships, and division of property on breakdown of spousal relationships in s 7(2) of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*, S.C. 2013, c. 20. See Angelique Eaglewoman, *supra* note 82 at 701. Section 7(1) of that Act authorizes a First Nation to enact laws about these matters for its reserve. Section 7(2) states that laws made by a First Nation under s 7(1) may include procedures for administering them and enforcing court orders made under them. While the Akwesasne Mohawks created the Akwesasne Court unilaterally as an exercise of the inherent right of self-government, its authority to administer Akwesasne enactments arguably could also be upheld in the Canadian legal system under s 7(2) of the federal Act.

The Akwasasne Court has an appellate division in which panels of three Appeal Justices, or a combination of a judge of the Court and one or two members of other Akwesasne decision-making bodies sit.[94]

The Mohawk Council of Akwesasne, the federal government, and the governments of Ontario and Quebec established a quadripartite technical working group to examine the issues surrounding interaction of the Akwesasne Court and the courts of Quebec and Ontario. In 2018, that working group made a recommendation for an approach that would recognize the jurisdiction of the Mohawk and Akwesasne and the enforcement power of the Akwesasne Court.[95]

Court of Kahnawà:ke

The Court of Kahnawà:ke, which operates within Quebec, functions under a *Kahnawà:ke Justice Act* passed by the council of Kahnawà:ke in 2015 as an assertion of the right of self-government.[96] The Act states the Court of Kahnawà:ke is "the court of original general jurisdiction within the Territory in all civil, criminal and penal matters."[97] The Court currently exercises a much narrower jurisdiction in practice.[98] The Act is gradually being implemented.

The Court has two departments, Criminal and Traffic. The Criminal department deals with summary conviction offences committed on Kahnawà:ke Territory.[99] The traffic department deals with disputed ticket offences under the Quebec *Highway Safety Code*.[100]

Judges are required to have formal legal training, be a member of a recognized Bar in North America, and have five years of experience in legal practice in addition to knowledge of the culture and customs of the community and the law applicable on the Kahnawà:ke Territory.[101] They are selected from eligible applicants by the Kahnawà:ke Justice Commission and their

---

[94] No. 2016-01, *supra* note 83, ss 10.1 and 10.2.

[95] Canada, House of Commons Standing Committee on Indigenous and Northern Affairs, 43rd Parl, 2nd Sess, No 34 (13 May 2021) (Chief Connie Lazore, Mohawk Council of Akwesasne) at 1115.

[96] K.R.L. c. J-1, s 1.1, enacted by MCR #1/2015-2016, 15 June 2015 (*Kahnawà:ke Justice Act*). Similar to the Akwasasne Court, the Court of Kahnawà:ke was initially developed as a s 107 court in the late 1970s. It subsequently transitioned to an inherent rights court when the *Kahnawà:ake Justice Act* was passed. Naiomi Metallic, Roy Stewart and Ashley Hamp-Gonsalves, *Connecting the Dots to Reveal a New Picture: A Report on Indian Act By-Law Enforcement Issues Faced by First Nations in Nova Scotia and Beyond* (10 January 2023) at 190.

[97] *Kahnawà:ake Justice Act*, *supra* note 96, s 8.1.

[98] Kevin Fleischer, *The Court of Kahnawà:ke & Kahnawà:ke Justice System*, (15 February 2018), submitted to CERP as document P-365.

[99] *Ibid.*

[100] CQLR c. C-24.2.

[101] *Kahnawà:ke Justice Act Regulation* 1.

appointments are confirmed by consensus of the community at a public meeting held 60 days after their names have been published.[102]

There is a Kahnawà:ke Court of Appeal, comprising panels of judges of the Court of Kahnawà:ke or judges from other communities with whom Kahnawà:ke has a reciprocal agreement on judicial qualifications.[103]

In addition to the court, the *Kahnawà:ke Justice Act* provides for a parallel system of dispute resolution called *Skén:nen Aonsón:ton* ("to become peaceful again") and an administrative tribunal. *Skén:nen Aonsón:ton* involves a healing circle and mediation processes.[104] Parties are encouraged to resort to this process before turning to the court.

The administrative tribunal, which was recently established, is composed of a public matters division which can review and correct administrative decisions of the Kahnawà:ke government or governmental entities. It also consists of a private disputes division, which can resolve disputes between persons that arise under Kahnawà:ke laws of public order. It is described as being more flexible and user-friendly than courts.[105]

2.3 Peacemaking Processes in the US Tribal Justice System: The Navajo Nation Example

This section explores peacemaking processes in the US which manage conflict resolution alongside the US tribal court system. It begins by briefly setting out the legal framework within which US tribal courts operate.

---

[102] Fleischer, *supra* note 98.

[103] *Kahnawà:ake Justice Act*, *supra* note 96, s 18.1. The *Kahnawà:ke Justice Act* is unclear regarding the forum for criminal appeals. It states that criminal appeals go to the "court of competent jurisdiction," which it defines as the court designated by Kahnawà:ke law, but the Act contains no such designation.

[104] *Kahnawà:ake Justice Act*, *supra* note 96, ss 6.1-6.5.

[105] *Regulation respecting the Institution and Management of the Administrative Tribunal*, K.R.L. c., J-1, r.3, enacted by MCED #117/2023/2024, 25 March 2024, ss 4.1 – 4.3. See also "Decision-makers sign Oath of Office" (22 April 2025), online: *Mohawk Council of Kahnawà:ke Public Service Announcement* <https://kahnawake.com/decision-makers-sign-oath-of-office/>.

2.3.1 The US Tribal Court System in Brief

The tribal justice system in the US functions alongside the federal and state court systems. Some 400 formal court systems operated by Indigenous nations are in existence.[106] Known as "tribal courts," they exercise criminal and civil jurisdiction within reservation boundaries and certain other lands occupied or reserved for members of the tribal communities they serve.[107]

The emergence of a separate tribal court system in the US was facilitated by the recognition at an early point in the development of US constitutional jurisprudence that Indigenous nations possess inherent powers to govern their own internal relations and exercise authority over their members.[108] In the nineteenth century, the US Supreme Court affirmed that the tribal right of self-government is not delegated by Congress, and the powers flowing from it do not arise from the US Constitution, nor are they created by it.[109]

Officially, three domestic sovereignties are recognized under US constitutional law: the federal union, the states, and Native American tribes.[110] Distinct judicial systems have been created under each of the three.[111]

The US tribal court system has been described as a "hybrid" approach, blending elements of the American adversarial legal culture with those of Indigenous legal cultures.[112] The presence

---

[106] U.S. Dept. of the Interior, Bureau of Indian Affairs, "Tribal Court Systems," online: <https://www.bia.gov/CFRCourts/tribal-justice-support-directorate>.

[107] Tribal courts have criminal jurisdiction over members of their respective nations and other Indigenous persons, except for certain major offences that are tried in federal courts. The US Supreme Court has held that tribal courts have no inherent criminal jurisdiction over non-Indigenous persons: *Oliphant v Suquamish Indian Tribe*, 435 U.S. 191 at 212 (1978). Congress has conferred non-exclusive criminal jurisdiction on tribal courts over non-Indigenous persons in the *Violence Against Women Reauthorization Act* (VAWA) of 2013 in relation to certain domestic violence offences, and assault on or obstruction of tribal justice personnel: §§ 1304(b)(1)(a), (c) and (4)(A), inclusive. Either the accused or the victim must be Indigenous and the offence must have occurred within the tribal court's territorial jurisdiction in order for this special jurisdiction to arise under VAWA. Tribal courts have civil jurisdiction over some matters arising in their territory regardless of the ethnicity of the parties as long as at least one party to a dispute is a member of the tribe. They have no jurisdiction over disputes between non-members even if the disputes arise on reservation lands, however: *Strate v A-1 Contractors*, 520 U.S. 438 (1997).

[108] Cherokee Nation v Georgia, 30 US 95 (Pet.) 1 at 17 (1831); *United States v Kagama,* 118 U. S. 375 at 381 (1886).

[109] *Talton v Mayes*, 163 U.S. 376 at 384 (1986); Robert J. Wild, "The last Judicial Frontier: The Fight for Recognition and Legitimacy of Tribal Courts" (2019) 103:3 Minn L Rev 1603 at 1615. This stands in marked contrast to the case in Canada, where inherent Indigenous rights were not recognized at all under the constitutional framework until the 1982 reforms, and then achieving constitutional recognition only in terms of their existence, with much of their content left to be illuminated by later litigation and political negotiation. See the *Constitution Act, 1982*, s 35 being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

[110] Sandra Day O'Connor, "Lessons from the Third Sovereign: Indian Tribal Courts" (1997) 33 U Tulsa LJ 1 at 1.

[111] Wild, *supra* note 109 at 1607.

[112] Maha Jweied, *Expert Working Group Report: Native American Traditional Justice Practices* (Washington: US Dept. of Justice and Dept. of the Interior, Sept. 2014) at 3.

of American adversarial elements stems from the reality that the courts are or have been dependent on federal support, and the federal government encouraged the establishment of courts that largely followed the US model.[113] A federal statute, the *Indian Civil Rights Act* of 1968,[114] obliges tribal governments to abide by US constitutional guarantees of due process, equal protection of the laws, and certain other constitutional rights. Apart from this, however, tribal courts are largely able to determine what legal rules they will apply to decide a matter over which they have jurisdiction.[115]

Tribal courts have incorporated Indigenous justice norms and practices of the communities they serve into their processes to varying extents. As a general proposition, it can be said that the norms and practices of tribal law are among the sources of law drawn upon by tribal courts. Some tribal courts have declared that these, as well as legislation passed by their nations' governments, rank highest in a hierarchy of laws that they can apply.[116] Some of the nations have enacted this hierarchy into legislation. For example, Title 7 (Courts and Procedure) of the Navajo Nation Code provides that the courts of the Nation shall apply Navajo statutory laws and regulations first to resolve matters in dispute before them, and their interpretation must be guided by *Diné bi beenahaz'áanii* (Navajo Traditional, Customary, Natural or Common Law). The Code also requires Navajo courts to refer to *Diné bi beenahaz'áanii* when Navajo statutes or regulations are silent on a matter in dispute.

2.3.2 Revival of Peacemaking Processes

Restoration of peacemaking processes which operate in co-operation with tribal courts began in recent decades and has gained momentum.[117] As in the Indigenous nations located in Canada, peacemaking as practised by nations in the US is a community-based process for resolving conflict incorporating ceremonial practices. It typically involves the parties to a dispute, relatives and supporters of the parties, Elders, and other members of the community.[118] Participants are typically seated in a talking circle to promote an atmosphere of equality and encourage respectful interaction.[119]

---

[113] Matthew L.M. Fletcher, "Tribal Justice Systems" Research Paper No. 11-23, Michigan State U College of L Leg Studies Research Paper Series (2014) at 3, online: http://ssrn.com/abstract=2378526.
[114] 25 U.S.C. 1301.
[115] Nell Jessup Newton et al, eds. *Cohen's Handbook of Federal Indian Law*, 2012 edition (New Providence and San Francisco: LexisNexis 2012) at 269.
[116] *Ibid* at 19.
[117] Maha Jweied, *Expert Working Group Report: Native American Traditional Justice Practices* (Washington: US Dept. of Justice and Dept. of the Interior, Sept. 2014) at 3.
[118] Indigenous Peacemaking Initiative, "Frequently Asked Questions" (last visited 25 June 2025), online: <https://peacemaking.narf.org/frequently-asked-questions-about-peacemaking/>.
[119] *Ibid.*

Navajo Peacemaking Program

In the 1980s, the Navajo Nation reintroduced peacemaking programs, founded in Navajo approaches to conflict resolution.[120] This took place initially within the Navajo Nation tribal court system as an alternative to adversarial litigation, and met with considerable support and success.[121] The former Chief Justice of the Navajo Nation court system has attributed this to peacemaking being rooted in the "fundamentals of Navajo moral values," and in particular "the traditional Navajo concepts of solidarity, mutuality, and reciprocal obligations," expressed by the word *k'e.*[122]

Initially after the revival, tribal court judges would select cases to be referred to peacemaking.[123] As peacemaking quickly became the preferred choice for conflict resolution in Navajo communities, support grew among tribal court judges for it to operate again as a justice institution independent of the courts.[124]

The Navajo peacemaking program shares some common features with the Tsuu T'ina peacemaking program. Whereas the Tsuu T'ina peacemaking program operates alongside and in interaction with the Alberta Court of Justice, the Navajo peacemaking program operates alongside and interacts with the Navajo Nation Court.

The peacemaking program is run by the judicial branch of the Navajo Nation. It is grounded in *Diné* approaches to conflict resolution and deals with conflicts flowing from both civil and criminal issues. The peacemaking program offers an alternative to formal court systems. It aims to address disharmony and resolve disputes in accordance with *Diné* values and laws.[125]

Referrals to the program can be made by various agencies, including courts, prosecution services, social services, probation services, and schools. In addition, individuals can request services through the program independently.

---

[120] Marianne O. Nielsen, "Navajo Nation Courts, Peacemaking and Restorative Justice Issues" (1999) 44 J Legal Pluralism 105, online: <https://commission-on-legal-pluralism.com/system/commission-on-legal-pluralism/volumes/44/nielsen-art.pdf>.

[121] Robert Yazzie, "Navajo Peacemaking and Intercultural Dispute Resolution" in Catherine Bell and David Kahane, eds., *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: UBC Press, 2004) 107 at 108. Chief Justice Yazzie presided over the Navajo Nation court system from 1992-2003.

[122] *Ibid* at 108 & 113.

[123] *Ibid* at 112—113.

[124] *Ibid* at 113.

[125] Navajo Nation, Judicial Branch, "*HÓZHÓJI NAAT'AAH* - (Diné Traditional Peacemaking)" (last visited 5 February 2025), online: https://courts.navajo-nsn.gov/Peacemaking/Plan/peace.html. See also Nielsen, *supra* note 120 at 110.

The *hózhǫ́ójí naat'áanii* (peacemaker) is the central figure in Navajo peacemaking. However, the term translates more accurately to a combination of leader, teacher, and healer. Their role involves guiding people through stories and teachings to resolve the problem at issue. The *hózhǫ́ójí naat'áanii* is not expected to be impartial. Rather, they actively engage with participants, guiding them so that the participants can come to a mutual decision on positive action for the good of the whole community. The decision can involve forms of compensation.[126]

Family members (including children), friends, and other people affected by the disharmony can contribute to the process.[127] The focus of the process is more on forgiveness and achieving good relations as opposed to assigning blame.[128]

All parties are encouraged to work together to unearth the reason for the conflict or violence and to come to a mutual decision through talking and learning. Participants are encouraged to focus on their emotions to foster authenticity. The process is grounded in ceremony, including prayer, songs, and offerings. As food is commonly a part of peacemaking, participants are also encouraged to arrange for providing food at the conclusion.[129]

The former Chief Justice of the Navajo Nation has described Navajo peacemaking as less a conflict resolution technique or method of justice than as "a way of thinking and living in respectful relations".[130]

[126] See Navajo Nation, *supra* note 125. See also Nielsen, *supra* note 120 at 111.
[127] Navajo Nation, *supra* note 125.
[128] Nielsen, *supra* note 120 at 111.
[129] Navajo Nation, *supra* note 125.
[130] Yazzie, *supra* note 121 at 112.

3. Points of Friction where Indigenous and State Pathways Come Together

The Indigenous-led approaches to conflict resolution highlighted above co-exist with state justice systems. They form part of the legally plural juridical systems within which they exist. This next section explores some of the challenges First Nations face within Canada's legally plural system stemming from jurisdictional boundaries and siloed approaches to recognition of Indigenous legal authority. It also explores how some other nation states have established frameworks for supporting enforcement of and compliance with Indigenous laws.

Many forms of conflict resolution can and do occur within Indigenous communities without interaction with state legal systems. However, when interactions between distinct legal systems arise, the framework supporting the co-existence of multiple legal systems needs to account for jurisdictional boundaries. Otherwise, First Nations-led justice systems and processes for conflict resolution face barriers to enforcement. This leads to friction between systems, uncertainty, and potentially the breakdown of systems.

Simply recognizing First Nations laws through legislation, treaties or self-government agreements does not in and of itself place First Nations on the same footing as other governments. Further steps are needed to empower First Nations with the tools for applying and enforcing their laws. Effective First Nations justice systems that are supported in applying and enforcing their laws are a necessary means of ensuring access to justice for First Nations peoples who have been failed by Canadian state justice systems.

3.1 Tools of Enforcement Spanning Jurisdictional Boundaries

Laws shape and inform our lives in many ways, not just in response to conflict. They are often based on values and morals that guide and inform human behaviour. When multiple parties have a conflict or disagreement, laws can guide the resolution. Some types of conflict involve non-compliance with systems of laws themselves. This may involve behaviour that violates a system of laws, such as bylaws or criminal offences. It can also involve parties who initially agree to a conflict resolution process, mediation or arbitration subsequently not acting in compliance with the decision arising out of that process. Disputes involving non-compliance with laws require a means of enforcement to ensure the system of laws continues to be upheld and respected.

Many justice systems rely on three types of tools for enforcement of laws: policing, prosecution, and courts. The term policing is used here to generally refer to initial enforcement stages, which might involve police or other types of enforcement officers with powers to investigate and issue violation notices or tickets. Prosecution is the mechanism by which a matter is brought to court. It often involves an assessment of whether further enforcement steps are warranted. Court systems involve a further level of decision-making regarding compliance with laws and potential consequences in situations of non-compliance.

Within Canadian state-run justice systems, each of these stages of enforcement can involve a complexity of relationships between federal, provincial, and municipal levels of government. These relationships support enforcement of multiple systems of laws in alignment with the division of powers under the *Constitution Act*.

For example, to support the application of state laws across jurisdictional boundaries, the federal government delegates to provinces the ability to prosecute a wide scope of federally regulated offences. Provinces in turn delegate to municipal governments the ability to pass bylaws and support the enforcement of those bylaws through mechanism such as:

- Recognizing bylaw officers as peace officers within the meaning of the *Criminal Code of Canada*.[131]
- Ensuring bylaw officers have the authority to conduct investigations, detain, and arrest offenders.
- Ensuring that police officers can also enforce local government bylaws.
- Including the enforcement of bylaw violations under the provincial *Offence Act* and allowing the prosecution of bylaw violations within the provincial court. So that, for example, a fine owed to a municipal government can, if necessary, be enforced as an order of the Provincial Court.

These are just some of the ways in which the plurality of laws stemming from federal, provincial, and local governments are enforced through shared and delegated policing, prosecutorial, and judicial resources.

Section 35 of the *Constitution Act* recognizes and affirms existing Aboriginal and treaty rights. The Supreme Court of Canada has interpreted existing Aboriginal rights as requiring sufficient flexibility to permit their evolution over time.[132] Since 1995, the federal government has formally recognized within policy the inherent right of self-government as an existing

[131] *R v Harrison* (29 April 2021), BCPC, File no. 53553-1 (unreported), paras 16 & 17.
[132] R v Sparrow, [1990] 1 SCR 1075.

Aboriginal right under section 35 of the *Constitution Act*. As outlined in the examples above, the federal government further recognizes law-making authority of First Nations within legislation, treaties, and self-government agreements.

Despite this recognition, enforcement of First Nations' laws is not supported across jurisdictional boundaries in the same way as laws enacted by federal, provincial, and local governments. Cross-jurisdictional recognition, support, and resourcing are necessary to ensure effective enforcement of First Nations laws and to uphold the application of First Nations laws to conflict resolution.

Under the *Constitution Act*, the federal government has jurisdiction over criminal law, including criminal procedure.[133] The federal government also has jurisdiction over "Indians, and Lands reserved for the Indians".[134] Provinces have jurisdiction over property and civil rights and can impose penalties for the purpose of enforcing provincial laws made in relation to this and other areas of provincial jurisdiction.[135] In addition, provinces have jurisdiction over the administration of justice in the province, including the constitution of provincial courts of criminal jurisdiction.[136] As these heads of power intersect, federal and provincial jurisdiction overlap in relation to the provision of policing and justice services for First Nations people.[137]

Overlapping jurisdiction can be supported through relationships across institutions. Sometimes, it requires specific delegations of authority from one level of government to another. However, in relation to the provision of justice services on reserves and support for enforcement of First Nations laws generally, relationships across institutions and mechanisms to support delegated authority are lacking. Where First Nations laws are recognized by state agencies, it is often done in a jurisdictionally siloed manner.

3.2 Silos of Recognition

Certain types of Indigenous law-making powers and correlated conflict resolution systems operate within silos of state recognition. For example, band council bylaws are recognized

---

[133] *Constitution Act, supra* note 3, s 91(27).
[134] *Ibid*, s 91(24).
[135] *Ibid*, ss 92(13) and (15).
[136] *Ibid*, s 92(14).
[137] See for example, *Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada*, 2022 CHRT 4 at para 49.

within the federal *Indian Act*,[138] the *Framework Agreement on First Nations Land Management Act*, and *Family Homes on Reserves and Matrimonial Interests or Rights Act* in relation to select spheres of jurisdiction. Some self-government agreements are also only between a First Nation and the federal government. This is the situation with the Westbank First Nation Self-Government Agreement.

First Nations laws and conflict resolution, whether stemming from an exercise of delegated federal powers, federally recognized self-government powers, or assertions of self-governance should be able to operate within Canada's legally plural system of laws with the same force and effect as state laws. However, state government agencies do not recognize them as such, and their enforcement is generally not supported by or within federal and provincial systems.

3.2.1 Issues of Non-Enforcement

There is a historical and ongoing issue of First Nations laws and decisions of First Nations conflict resolution bodies not being enforced by Canadian state institutions. Enforcement issues cross the many pathways First Nations have navigated in taking up jurisdiction.

In 2014, the *Indian Act* was amended to remove a requirement for federal ministerial review of bylaws enacted under the Act. These changes did not do away with the authority of Canadian courts to review band council bylaws if alleged to violate constitutional principles.[139] After the 2014 amendments to the *Indian Act*, the Public Prosecution Service of Canada (PPSC) and the RCMP indicated that band council bylaws passed under the *Indian Act* would not be enforced or prosecuted unless they "had been reviewed by 'an appropriate federal authority' for validity and Charter compliance". PPSC further takes the position that it is not authorized to prosecute bylaws passed pursuant to the *Framework Agreement*.[140] While these stated

---

[138] *Indian Act*, *supra* note 2, s 81(1). This section of the *Indian Act* recognizes 22 areas within which band councils may enact bylaws.

[139] As recently affirmed by the SCC, review of First Nations laws by Canadian courts is not limited to delegated powers. Laws passed by a First Nation pursuant to self-government powers are also subject to review under the *Charter*. Such a review involves consideration of both the collective rights of Indigenous peoples protected by s 25 of the *Charter* as well as individual *Charter* rights, which may need to be reconciled with the exercise of collective rights. *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10.

[140] Senator Mary Jan McCallum, Senate of Canada, Fall Economic Statement Implementation Bill, 2022 (7 December 2022) at 15:40, online: https://sencanada.ca/en/senators/mccallum-mary-jane/interventions/595441/24. See also Revised Submission of Grand Chief Garrison Settee, Manitoba Keewatinowi Okimakanak, Inc., "Recognition, Respect, Enforcement and Adjudication of First Nation Laws" before the Standing Senate Committee on National Finance In the Matter of Bill C-32, *Fall Economic Statement Implementation Act, 2022*, with specific reference to Part 4 of Division 3, *Framework Agreement on First Nation Land Management Act* (4 December 2022), online: https://sencanada.ca/Content/Sen/Committee/441/NFFN/briefs/SM-C-32_Brief_MKO_e.pdf at 3.

positions mark a significant denial of policing and prosecutorial services, it is important to note that enforcement issues pre-date the 2014 amendments to the *Indian Act*. A report commissioned by the Government of Canada in 1979 highlighted the issue of non-enforcement of *Indian Act* bylaws as being of concern as early as 1977.[141] This report points to a denial of policing and prosecutorial services even in relation to band council bylaws subjected to federal ministerial review.

The *RCMP Act* gives a broad scope of jurisdiction to RCMP officers, placing a duty on every member of the RCMP to uphold "all laws in force in any province" in which they are assigned to work.[142]

In relation to prosecution services, the federal Director of Public Prosecutions can authorize a federal prosecutor to perform duties under the *Director of Public Prosecutions Act* or any other Act of Parliament. The duties under the *Director of Public Prosecutions Act* include initiating and conducting prosecutions under the jurisdiction of the Attorney General of Canada, assuming conduct over private prosecutions, and intervening in "any matter that raises a question of public interest that may affect the conduct of prosecutions or related investigations".[143]

The BC *Crown Counsel Act* allows provincial prosecutors to conduct prosecutions under a provincial enactment or a federal enactment in relation to which the Attorney General of BC has been delegated the authority to initiate and conduct a prosecution.[144] This arguably limits the ability of provincial prosecution services to initiate prosecutions in relation to First Nations bylaws enacted pursuant to powers recognized within the federal *Indian Act* and the *Framework Agreement* which incorporate summary conviction procedures under the federal *Criminal Code*. However, any such limitation could be addressed through a delegation of authority to the provincial Attorney General.

The BC Provincial Court has ruled in at least 2 separate cases that First Nations land codes enacted pursuant to the *Framework Agreement* can create laws related to the use and occupation of the nation's lands and can adopt or incorporate the summary conviction procedures of the *Criminal Code* for the purposes of enforcement. Where this is done, land

---

[141] Robert H. Debassige, "Section 107 of the Indian Act and Related Issues" (September 1979), A paper prepared for Policy, Research and Evaluation Group, Department of Indian and Northern Affairs, online (pdf): <https://publications.gc.ca/collections/collection_2017/aanc-inac/R32-310-1979-eng.pdf> at 18.

[142] *Royal Canadian Mounted Police Act*, RSC 1985, c R-10, s 18.

[143] *Director of Public Prosecutions Act*, SC 2006, c 9, s 121, ss 2, 3(3) & 9(1).

[144] *Crown Counsel Act*, RSBC 1996, ch 87, ss 1 & 2. The *Criminal Code of Canada* specifically delegates authority to provincial Attorneys General to prosecute certain offences.

code offences fall under the jurisdiction of summary conviction proceedings. By this means, a justice or judge of the provincial court in the territorial division where the subject matter of the proceedings is alleged to have arisen can exercise jurisdiction to adjudicate upon the land code offences.[145]

In the case of *Lower Nicola Indian Band v Caldwell and Pockrant*, the Court outlined the jurisdictional pathway to enforcement flowing from the *Framework Agreement*. As noted above, the *Framework Agreement* enables signatory First Nations to incorporate summary conviction procedures from the *Criminal Code* to support enforcement of First Nations bylaws. Unless a First Nation appoints its own justice of the peace under its Land Code, jurisdiction over summary conviction offences lies with the provincial court.[146] Commencing proceedings in the provincial court requires a prosecution to be initiated. Federal and provincial prosecution services decline to prosecute First Nations bylaws, as noted above. Consequently, the only means by which the Lower Nicola Indian Band was able to seek enforcement of its bylaws by the provincial court was to resource its own private prosecution.[147]

Private prosecutions are an important tool for being able to initiate proceedings where a Nation has capacity. However, this framework also places the burden on First Nations to unilaterally initiate and undertake enforcement proceedings at their own expense without access to many of the existing enforcement tools available to state governments. Private prosecutors do not have access to the same processes, scheduling information, and software as Crown prosecutors, which has been identified as a challenge and limitation to private prosecutions leading in some situations to First Nations opting to not take up this tool.[148]

Private prosecution proceedings needed to be undertaken by the Lower Nicola Indian Band and the K'ómoks First Nation in order to obtain a court order directing the police to assist with enforcement of the nations' bylaws. However, given the broad scope of authority granted to the RCMP to uphold the laws in force in any province in which they are employed, the barrier to enforcement by the RCMP in the first place is not clear. The broad scope of Crown discretion within Canadian law and the lack of funding for First Nations to engage prosecutorial services does present a significant barrier to access to prosecution services.

---

[145] See *Lower Nicola Indian Band v Barb Caldwell and Mike Pockrant* (16 July 2024) BCPC, File no. 114041 (unreported) [*Lower Nicola Indian Band*]. See also *K'omoks First Nation v. Thordarson and Sorbie*, 2018 BCPC 114 [*Thordarson*]. The Ontario Court of Justice similarly affirmed that a band can lay an information initiating summary conviction proceedings in relation to prosecution of band bylaws: *Mississauga First Nation v Roberta Witty* (22 April 2024) Ont CJ (unreported).

[146] *Criminal Code*, RSC 1985, c C-46, ss 785 & 798. See also *Lower Nicola Indian Band*, *supra* note 145 at paras 18 & 19.

[147] *Lower Nicola Indian Band*, *supra* note 145 at para 25.

[148] Department of Justice Canada, "What We Learned", *supra* note 49 at 18.

Hence, while Canadian law recognizes the authority of First Nations to retain their own prosecutors or enter into an agreement with federal or provincial Crown for prosecution services in some circumstances,[149] First Nations are not funded in the same manner as federal and provincial prosecution services. Retaining a prosecutor or initiating a private prosecution involves significant expense. Similarly, there are considerable expenses associated with First Nations engaging their own police services. Potential pathways to address barriers to accessing prosecutorial and policing services within Canadian law and policy are addressed in the section below.

3.2.2 Potential Pathways to Alleviating Enforcement Expenses

First Nations are not funded on par with Crown prosecution and policing services to advance enforcement within their communities. The chief of police for the Tsuu T'ina First Nation, which has a tripartite agreement for funding of the Nation's police service has noted that the federal and provincial funding they receive is about 30 percent less than that received by mainstream police services.[150] The imbalance in funding of First Nations to advance their own enforcement mechanisms needs to be remedied to support implementation of enforcement mechanisms in the manner chosen by First Nations. Some interim measures involving a sharing of state resources could assist with enforcement of First Nations laws through co-operation with First Nations.

Arguably, space already exists within the current framework of prosecutorial jurisdiction and discretion to enable a sharing of resources.

In circumstances where First Nations are able to fund private prosecutions, once a private prosecution has been initiated, the PPSC would have jurisdiction, at least in relation to federally delegated laws such as *Indian Act* bylaws and land code offences, to assume conduct of the prosecution. Any such assumption of conduct could be undertaken in co-operation and consultation with the First Nation to ensure the actions of the PPSC respect the nation's authority to choose to prosecute the nation's laws. This type of approach could potentially alleviate some of the resources associated with the First Nation having to take sole responsibility for enforcement of their laws. However, it is not currently an option as the PPSC declines to prosecute band bylaws.

---

[149] See *Thordarson, supra* note 145 at paras 14—15.

[150] See Sarah Offin, "Canadian First Nations call for stable, equitable funding for local police" Global News (21 February 2025), online: <https://globalnews.ca/news/11029836/canadian-first-nations-call-for-funding-local-police/#:~:text=Their%20costs%20are%20funded%20by,less%20funding%20than%20mainstream%20policing>.

A key aspect of the rule of law within Canadian law involves recognizing the independence of Crown prosecutors to decide whether to prosecute an offence. The exercise of prosecutorial discretion involves a two-step test, which includes consideration of the likelihood of a conviction and whether a prosecution is in the public interest. Prosecutorial discretion is not to be based on bias or discrimination on the basis of race, national or ethnic origin.[151] Whether a prosecution is in the public interest involves consideration of many factors. According to the BC Prosecution Service, Crown Counsel Manual, "[h]ard and fast rules cannot be imposed".[152] The PPSC Deskbook describes the public interest assessment as needing to be flexible and context driven.[153] The concept of the public interest also applies in other Canadian criminal law contexts. Addressing the public interest requires a preliminary question of who amongst the public needs to be considered. In a sentencing decision of the Ontario Court of Justice involving a Haudenosaunee person whose actions were consistent with Haudenosaunee law, but inconsistent with Canadian law, the Court held that the public interest applicable in such a situation included that of the Haudenosaunee people.[154]

Where Crown prosecutors are called upon to determine whether to prosecute an offence under First Nations law, that exercise of discretion allows for consideration of the First Nations people and laws at issue within the public interest assessment. Applying Crown discretion in a manner that includes affected First Nations as part of the public to be considered enables consideration of the legally plural context within Canada rather than a blanket denial of services in relation to First Nations laws. This is another potential pathway by which state resources could be shared to support enforcement of First Nations laws.

State resources could also be shared to assist with policing in co-operation with First Nations. While some funding is available for First Nations police services, the precarious nature of such funding is highlighted in the case of *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*.[155] The Pekuakamiulnuatsh First Nation incurred significant expenses to maintain its police force because federal and provincial funding were insufficient. The funding arrangement, similar to many tripartite policing agreements, involves successive short-term contracts. The First Nations Policing Program addresses the cost sharing arrangement as between Canada and the province or territory in relation to "eligible expenses" but does not

[151] Public Prosecution Service of Canada, *Public Prosecution Service of Canada Deskbook*, s 4.1.2, online (pdf): <https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/d-g-eng.pdf> [PPSC Deskbook].
[152] BC Prosecution Service, "Crown Counsel Policy Manual: Charge Assessment Guidelines" (15 January 2021) at 3, online: <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/cha-1.pdf>.
[153] PPSC Deskbook, *supra* note 151, s 4.2.1.
[154] *His Majesty the King v Wkyler Williams* (29 June 2023), Ont Crt J, File no. 1111-998-20-455-00 (unreported).
[155] 2024 SCC 39.

provide comprehensive funding of policing for First Nations.[156] Funding benchmarks are determined by provinces and generally fall far short of covering costs or being on par with funding of Crown policing services.[157]

In addition, funding under the First Nations Policing Program is project-based whereas other models of policing within Canada are funded as essential services. The project-based nature of the funding limits the ability of First Nations to respond to changes in service demands and to resource support staff.[158] These funding gaps need to be addressed by Crown governments to enable First Nations to enforce their laws. Resource sharing arrangements in relation to policing services could alleviate costs over the interim.

The memorandum of understanding between the Westbank First Nation and the RCMP for enforcement of Westbank laws is one example of how adaptive resource sharing arrangements could be structured. The MOU, which does not have a fixed term, recognizes the co-existing jurisdiction of RCMP and Westbank First Nation Enforcement Officers to enforce Westbank laws and provides a framework for sharing information and resources.

Ultimately, a model that aligns with the right of self-determination would enable First Nations to determine their own enforcement priorities without the funding risks they currently have to manage.

3.2.3 Consequences of Non-Enforcement

The challenges created by the lack of interjurisdictional support and resourcing of First Nations to apply and enforce their laws are evident in the case of *K'ómoks First Nation v Thordarson and Sorbie*.[159]

When the KFN tried to enforce its Land Code as against trespassers, they were unable to access the services of the local RCMP, Provincial Prosecution Service or Federal Crown to assist in enforcement of their laws. The KFN brought a private prosecution in the BC Provincial Court for the enforcement of the Nation's laws. The Provincial Court issued an order that the police assist in the enforcement of the First Nations' Land Code so that the case

[156] Public Safety Canada, "Parliamentary Committee Notes: First Nations and Inuit Policing Program" (26 September 2024), online: <https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20241001/03-en.aspx>.
[157] Tom Fennario, "Essential Service: The hidden cost of underfunding Indigenous police services" (31 March 2025), APTN News, online: <https://www.aptnnews.ca/investigates/essential-service-the-hidden-cost-of-underfunding-indigenous-police-services/>. See also Sarah Offin, *supra* note 150.
[158] Department of Justice Canada, "What We Learned", *supra* note 49 at 18.
[159] *Thordarson*, *supra* note 145.

could go forward, and the justice system could be accessed to address what was otherwise "an unsolvable problem".[160] The Court recognized that the "Band has a law on the books that may give relief from trespass, by way of a court order, but no ability to enforce the law without the cooperation of authorities outside the Band".[161]

Similarly, the Tsuu T'ina First Nation was unable to enforce traffic bylaws on reserve to address concerns related to the conduct of drivers. When a member of the Tsuu T'ina First Nation was charged with operation of an uninsured motor vehicle on a road located on reserve, the Alberta Court of Justice dismissed the charge on the basis that the provincial *Motor Vehicle Administration Act* did not apply to roads on reserve. Pursuant to the federal *Indian Act*, the Tsuu T'ina First Nation then enacted a traffic bylaw to address concerns related to the conduct of drivers on reserve. That bylaw was not enforced by RCMP.[162] The Tsuu T'ina First Nation now has its own police service to enforce laws on reserve. While the Nation police service is partially funded by Crown governments, the Nation has to make up for the funding shortfalls.

In a CBC News Report regarding a *Charter* challenge initiated by the Heiltsuk First Nation in relation to the RCMP refusal to enforce band bylaws, Chief Marilyn Slett states:

> "This refusal to enforce First Nations' bylaws is a Canada-wide issue that erodes the rule of law in First Nations communities, exacerbates systemic problems involving substance abuse, [and] deprives First Nations government of the necessary tools to protect our communities".[163]

The steps the K'ómoks First Nation had to take to have their laws enforced by state courts required significant resources, including costs of litigation and time associated with going through those procedures. The *Thordarson* case cost the Nation approximately $170,000.[164]

Cross-jurisdictional complexities inform the application of laws in many ways throughout BC. In relation to the application of federal, provincial, and local government enactments, these complexities inform relationships across state institutions to ensure the seamless application of laws. In the context of First Nations bylaws, however, they stand as barriers to the application of laws. As noted above, municipalities have both the power to enact bylaws in

---

[160] *Ibid* at paras 24-26.
[161] *Ibid* at para 16.
[162] Sherry L. Van de Veen, "Some Canadian Problem Solving Court Processes" (2004) 83:1 Can B Rev 91 at 119.
[163] Ashley Joannou, "Heiltsuk Nation files Charter challenge over RCMP refusal to enforce bylaws" (25 February 2025), online: <https://www.cbc.ca/news/canada/british-columbia/heiltsuk-first-nation-charter-challenge-rcmp-1.7468286>.
[164] See K'ómoks First Nation, "K'ómoks First Nation Treaty Frequently Asked Questions" (last visited 5 February 2025) https://komoks.ca/treatyfaq/ .

relation to certain matters and access to tools and resources within the provincial justice system to carry out inspections, issue tickets, and seek formal consequences for bylaw violations. Municipalities are not required to have each bylaw they enact reviewed by the attorney general for validity and *Charter* compliance before they can access the tools and resources related to enforcement. In the absence of similar support for First Nations, the BC Court of Appeal's analogy between First Nations' land codes and municipal bylaw powers is challenging to see.[165]

3.2.4 Layers of Barriers to Enforcement

The lack of enforcement of First Nations laws stems in part from the refusal of the RCMP and prosecution services to enforce *Indian Act* bylaws and other offences enacted pursuant to delegated and recognized law-making authority. However, a broader view of First Nations laws unearths additional barriers to the enforcement of First Nations laws by state courts.

In the self-government context, the Westbank First Nation faced barriers accessing the procedures of the BC Provincial Court to enforce an arbitration order made in accordance with their laws and pursuant to their federally recognized self-government powers. Initially, the BC Provincial Court declined to enforce a WFN arbitration order on the basis that the BC government had not given the Provincial Court the jurisdiction to enforce the "plethora of different laws" First Nations would enact.[166] Following further litigation of the issue, the BC Supreme Court ordered the Provincial Court to accept the arbitrator's award for filing and enforcement.[167] The BC Supreme Court held that a First Nations law imposing a duty on the Provincial Court to enforce an arbitration order made under WFN law was valid and binding on the Provincial Court as a law authorized by a federal act and an agreement with the federal government.[168]

In the modern treaty context, recent legislative amendments in BC address some of the barriers to enforcement. The BC *Offence Act* now recognizes the authority of enforcement officers designated as such by a treaty first nation and accommodates the prosecution of "violation tickets" issued by a treaty first nation in the BC Provincial Court. Amendments to the *Fines Enforcement Regulation* under the BC *Offence Act* now enable treaty first nations to

[165] See above and *Kumagai v Campbell Estate*, 2018 BCCA 24 at para 26.
[166] *Waterslide v Bolduc (Westbank First Nation),* 2006 BCPC 297 at para 28.
[167] *Waterslide Campground v Goulet*, 2008 BCSC 532 at para 40 [*Waterslide v Goulet*].
[168] *Ibid* at paras 32 & 34.

file a certificate with the BC Provincial Court to enforce the payment of fines owed to the First Nation.[169]

Within the legally plural juridical framework within Canada, tools exist to enforce First Nations laws. However, they are not consistently made available to First Nations. For example, the federal government has declined for over 20 years to appoint justices of the peace to adjudicate band council bylaws. The *Indian Act* gives the federal government the power to appoint justices to hear offences under the *Indian Act* as well as certain *Criminal Code* offences.[170] While not all First Nations will necessarily want to employ the use of s. 107 justices, numerous First Nations have called for such appointments to be made to enable adjudication of band council bylaws and *Criminal Code* offences.[171] Despite these requests, the federal government has declined to act in accordance with its jurisdiction.

As the next section discusses, further tools could be considered to facilitate state courts in enforcing compliance with First Nations laws and decisions made in accordance with those laws.

3.3 Pluralistic Enforcement Frameworks within Other Nation States

Internationally, there are examples of plurilegal frameworks for the enforcement of the laws of Indigenous societies by or with the assistance of state systems. In some of these frameworks, schemes of statutory support for Indigenous legal orders are backstopped by constitutional recognition and protection.

Bolivia has one of the most elaborate of these frameworks for state support of Indigenous justice. The first article of the Bolivian constitution states that the country is founded on linguistic, cultural, economic, political, and legal pluralism.[172] The constitution also recognizes "the rural native indigenous jurisdiction" as one of three jurisdictions in the country's legal system, ranking equally with the "ordinary jurisdiction" of the courts of justice and the

---

[169] *Fines Enforcement Regulation*, BC Reg 187/96.
[170] *Indian Act*, *supra* note 2, s 107.
[171] See Naiomi Metallic, Roy Stewart and Ashley Hamp-Gonsalves, *Connecting the Dots to Reveal a New Picture: A Report on Indian Act By-Law Enforcement Issues Faced by First Nations in Nova Scotia and Beyond* (10 January 2023), online:<https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=1054&context=reports> at 189. See also, Canada, House of Commons Standing Committee on Indigenous and Northern Affairs, 43rd Parl, 2nd Sess, No 34 (13 May 2021) (Chief Connie Lazore, Mohawk Council of Akwesasne) at 1115.
[172] Constitution of Bolivia, 2009, Article 1.

specialized "agro-environmental jurisdiction".[173] The constitution also requires that the members of the Plurinational Constitutional Court must include representation from the rural native Indigenous jurisdiction as well as from the "ordinary system".[174]

The *Law on the Judicial Branch (Ley Nº 025 del Órgano Judicial)* specifies that the judicial function is exercised by "the rural native Indigenous jurisdiction, by its own authorities, according to its own rules and procedures".[175]

Article 192.1 of the constitution establishes a framework of interjurisdictional support for Indigenous justice, requiring "each public authority to obey decisions of the rural native indigenous jurisdiction" and empowering Indigenous authorities to request the support of "the competent bodies of the State". The Article declares that "the State shall promote and strengthen rural native indigenous justice," and specifies that the *Law of Jurisdictional Demarcation* shall determine "the mechanisms of coordination and cooperation" between rural native Indigenous jurisdiction and the other jurisdictions of the Bolivian legal system.

The Bolivian *Law of Jurisdictional Demarcation* (*Ley Nº 073 de Deslinde Jurisdiccional*) reaffirms the equal status of the rural native Indigenous jurisdiction, as defined by this Law, with the other jurisdictions making up the country's legal system.[176] It mandates co-operation between the rural native Indigenous authorities and those of the state authorities, including the police and correctional officials.[177]

South Africa is another country that provides a statutory and constitutional framework for the enforceability of Indigenous tribunal decisions and procedures. The South African constitution expressly recognizes a role for Indigenous leadership exercising judicial functions in accordance with their laws.[178] It declares that a "traditional authority that observes a system of customary law" may function subject to "any applicable legislation and customs."[179] The constitution also requires courts to apply customary law "when that law is applicable," subject to the constitution and any legislation dealing specifically with customary law.[180]

---

[173] *Ibid*, art 179. Article 4, paragraph III of the Bolivian *Law on the Judicial Branch* (*Ley Nº. 025 del Órgano Judicial)* reiterates that the "original peasant indigenous jurisdiction" enjoys the same status as the "ordinary jurisdiction".
[174] *Supra* note 172, art 197, para I.
[175] Art 4, para I, subpara. 4.
[176] Art 3. Articles 8-11 of the Law define the rural native Indigenous jurisdiction as having three elements of validity: *personal* (applying to members of an Indigenous nation), *materia*l (exercised over all but certain listed matters reserved by the Law to the other jurisdictions) and *territorial* (applicable if a matter arises or its effects occur within the territory of an Indigenous people when personal and material validity are concurrently present).
[177] Art 16.
[178] *Constitution of the Republic of South Africa*, 1996, s 211(1), online: <saconstitution-web-eng.pdf>.
[179] *Ibid*, s 211(2).
[180] *Ibid*, s 211(3)

The recently enacted *Traditional Courts Act, 2022*[181] is intended to give effect to the recognition in the constitution of customary law as part of the legal system of South Africa. Its preamble refers to customary law as "a legal system that lives side by side the common law and legislation."[182] The Act regulates the composition and activity of traditional courts to a degree that can be said to detract from their status as Indigenous justice institutions and allows for appeal and judicial review of their decisions by state-run courts. It nevertheless empowers traditional courts to invoke the aid of the Magistrate's Court to enforce compliance with their orders or compel appearance by a party to a dispute.[183] In that respect, the *Traditional Courts Act, 2022* supports the authority of traditional courts by giving them more means of enforcement than having to rely on voluntary participation and compliance.

In Canada, measures to support the enforcement of Indigenous laws when a First Nation has insufficient policing and other resources available to them to deal with a lack of voluntary compliance with their processes could equally as well be incorporated into the justice system. For example, a record of a violation of a First Nation's land code could be filed in a provincial court and enforced as an order of that court, similar to the way in which many statutes provide for the enforcement of decisions of administrative tribunals. A summary of a collective decision reached through a healing circle process in which a party has voluntarily participated could be statutorily deemed to be an order of a provincial or federal court that would have jurisdiction over a dispute or issue of a similar nature as the one that led to that process being invoked. Alternatively, it could be treated similarly to an arbitration award, to which courts are obliged to give effect apart from a few exceptional circumstances.[184] Through co-operative mechanisms like these, the Canadian justice system could support the reinvigoration of Indigenous legal orders during the process of building capacity within Indigenous communities to enforce their own laws.

[181] No. 9 of 2022.
[182] *Ibid*. Section 1(2) defines "customary law" as "the accepted body of customs and practices of communities which evolve over time in accordance with prevailing circumstances, subject to the Constitution."
[183] *Ibid*, s 4(4) (compelling appearance); ss 9(2) and (4) (aid in enforcement of orders).
[184] See *Arbitration Act*, SBC 2020, c 2, s 61; *Family Law Act*, SBC. 2011, c 25, ss 19.16 and 19.20(1). *International Commercial Arbitration* Act, RSBC 1996, c 233, ss 35(1); *Commercial Arbitration Act*, R.S.C. 1985 (2nd Suppl.), c. 17, Sch 1, arts 35 and 36.

4. Interjurisdictional Support of First Nations Justice Systems

A siloed approach to jurisdiction and recognition of First Nations' laws and conflict resolution mechanisms is not an approach necessarily anticipated by Canada's constitutional framework. It is an approach that gives little effect to the right of self-determination.

Each of the examples of First Nations-led conflict resolution within Canada highlighted in this paper can be viewed as a distinct approach to the exercise of the right to self-determination. The pathways navigated by First Nations to assert their jurisdiction are also shaped by the jurisdictional barriers erected by state governments and justice systems. Canadian federal and provincial governments need to collaboratively address these barriers to support relationships with First Nations. Such collaboration would also be beneficial to state justice systems.

Proactive support from both federal and provincial governments can be especially important to avoid gaps in enforcement of laws in circumstances where First Nations transition from federally recognized spheres of jurisdiction to broader exercises of self-government powers.

The K'ómoks First Nation, for example, is on a pathway of transition away from the *Indian Act* and *Framework Agreement* to self-governance under a treaty. Pursuant to authority recognized under the *Framework Agreement*, the KFN has appointed a justice of the peace to help resolve conflicts pursuant to KFN laws. Transition to the treaty framework will necessitate transitioning their justice system under the *Framework Agreement* towards implementation of the K'ómoks Court under their treaty.[185] Coordinated efforts on the part of both the federal and provincial governments throughout this transition will be of particular importance in giving effect to KFN laws.

4.1 Pathways towards Interjurisdictional Support

Agreements between First Nations and state agencies to support collaboration, sharing of resources and cross-jurisdictional referrals present some pathways for supporting the application of First Nations' laws in conflict resolution processes led by First Nations. In some situations, co-operation and support involve one legal system vacating space for another to

[185] KFN Justice Process, *supra* note 43.

operate. At its core, supportive measures must recognize Indigenous laws, whether transmitted orally or in writing, as law.

4.1.1 Support Through Recognition of Orally Transmitted Law as Law

Support and recognition should not be contingent upon First Nations drafting or enacting laws in a manner determined by Crown systems. Written laws, such as land codes or laws enacted pursuant to a treaty or self-government agreement are just one aspect of laws a First Nation may have. First Nations can also have laws, which may be recorded in narratives, oral histories, crests, songs, or other societal expressions. One reason for not incorporating laws recorded in other formats into written laws may be to limit their reinterpretation through a Canadian law lens.[186]

A desire to not have laws reinterpreted, disregarded, stolen or appropriated by a colonial power should not be conflated with secrecy. All laws, whether recorded in writing, orally or otherwise, include a public element, which is part of what makes them legal. The public element of laws may differ in relation to different groups of people. Public sharing and deliberation of laws within a First Nations community may look different than outside of the community. As with all systems of law, rules may determine who has authority to promulgate laws and who has authority to apply them.

Ultimately, for laws to be understood and followed, they must be known to those to whom they apply. Similarly, laws must have a public element in order to be challenged and deliberated upon.[187] As Val Napoleon has argued in respect of Gitxsan laws, which Gitanyow chiefs chose to publish, the publication was a deliberate recognition by the Gitanyow chiefs' "of the necessary public nature of law as an essential legality, for all law … the chiefs were seeking to ensure that their law was public in the broader, larger world, and in a form (i.e., text) that would be cognizable as law in that sphere".[188]

Indigenous laws, in the various forms that they may be publicly recorded and recounted, can form the basis of conflict resolution processes. Further, their application can be recognized and supported by Canadian courts and Crown agencies without subjecting them to

---

[186] See K'ómoks First Nation, "FAQ" (last visited 5 February 2025), online:<https://komoks.ca/faq-items/there-are-big-breakthroughs-with-indigenous-scholars-on-indigenous-governance-self-determination-and-indigenous-frameworks-that-aim-to-not-to-simply-fit-info-westernized-frameworks-will-there-be/>. See also: Hanna, *supra* note 21 at 108.

[187] Val Napoleon, "Did I Break It? Recording Indigenous (Customary) Law" (2019) 22 Potchefstroom Electronic LJ at 14-15, online: <http://dx.doi.org/10.17159/1727-3781/2019/v22i0a7588>.

[188] Val Napoleon, "Taking Indigenous Intellectual Property Law Seriously as Law" [forthcoming] at 4.

interpretation through a colonial lens. The BC *Child, Family and Community Service Act* (CFCSA) provides an example of how a provincial law can provide a framework for such support.

Sections 33.01 through 33.06 of the CFCSA set out pathways for the provincial ministry's director to withdraw from a presentation hearing related to the removal of a child where the child is Indigenous and child and family services can be provided to the child in accordance with an Indigenous law. This process requires the agreement and participation of the First Nation or Indigenous authority whose laws are to apply.[189] By this means, the question of care of a child can transition from the Crown system to an Indigenous decision-making process. The CFCSA defines an Indigenous law as "a law in relation to Indigenous child and family services that is made in respect of Indigenous children and families by an Indigenous governing body in accordance with the law-making authority of the Indigenous governing body".[190]

The applicable law must be known to be applied. However, the process within the CFCSA does not require an Indigenous law to be recorded in writing or subjected to interpretation by a Canadian court. The process does depend on written communication between the provincial ministry, the First Nation, the parent entitled to custody, and the provincial court regarding the law to be applied. The legislative framework effectively allows for the application of orally transmitted laws in accordance with a First Nations legal order while recognizing the legitimacy of the applicable legal process.

It is foreseeable that where a decision regarding the care and custody of a child has been made pursuant to Indigenous law, a Crown agency or court could be asked to recognize the validity of that decision. For example, a person determined to have care and custody of a child pursuant to an Indigenous law may require state issued documentation affirming their status for certain purposes such as international travel or decision-making on behalf of the child. Crown agencies could recognize and affirm the validity of the decision made pursuant to an Indigenous law without reinterpreting the applicable law.

Procedures of this nature create space for symmetrical relationships between state and Indigenous law, which enable the application and enforcement of both. Such procedures recognize Indigenous and state laws as laws, both of which have a public element and can be engaged with collaboratively, without requiring Indigenous law to conform to a format dictated by state systems.

---

[189] RSBC 1996, c 46.
[190] *Ibid*, s 1.

4.1.2 Support Through Formal Agreements, Relationship Building, and Resource-sharing

When the Tsuu T'ina First Nation was faced with their laws not being enforced, they built a relationship with the Alberta Court of Justice and the Crown prosecution office to ensure that both criminal and bylaw infractions committed on reserve could be prosecuted. The Tsuu T'ina Nation also established their peacemaking program to apply Dene law. By working in relationship with the provincial court, matters can be referred to the peacemaking program by the provincial court and vice versa.

Recognition of the complementary roles Indigenous-led conflict resolution processes and court processes can serve supports a harmonious co-existence of the two processes and allows for smoother referrals across systems.

The Cowichan Tribes' exercise of jurisdiction over child and family services for members of their nation has been supported through formal agreements and relationship building. The framework involves a co-ordination agreement between Cowichan Tribes, the BC government, and the federal government which addresses resourcing and priority of laws. In addition, new provincial court rules were enacted to enable access to provincial court resources for certain matters to be adjudicated on in accordance with the Cowichan Tribes' law.[191]

The Cowichan Tribes' law further provides for the future possibility of the Cowichan council establishing its own adjudication and dispute resolution body rather than employing the provincial court in the process of dispute resolution.[192]

The Navajo Nation courts also share administrative support with Navajo peacemaking courts. Court staff assist with the implementation of peacemaking, referrals, and liaising as needed between the two processes to facilitate enforcement of decisions.[193]

Another example of interjurisdictional resource-sharing, also from the US, is the Joint Powers Agreement signed between judges of the Leech Lake Ojibwe Tribal Court and the Cass County District Court in Minnesota.[194] The Joint Powers Agreement between the tribal court and the state court in the adjacent county contemplates sharing of court facilities and collaboration on

[191] British Columbia Attorney General, News Release, "Provincial court to use Cowichan Tribes laws for child and family services" (1 August 2024), online: <https://news.gov.bc.ca/releases/2024AG0039-001196>.
[192] Cowichan Tribes' law, *supra* note 39, s 8.5.
[193] Nielsen, *supra* note 120 at 112.
[194] Korey Wahwassuck, "The New Face of Justice: Joint Tribal-State Jurisdiction" (2008) 47:3 Washburn LJ 733 at 747.

various matters, including co-operation in juvenile justice cases and diversion programs.[195] A specialized post-conviction, post-sentencing court for impaired driving offences, the Leech-Lake Ojibwe - Cass County Wellness Court, also operates under the Agreement, providing opportunities for treatment and accountability with the objective of increasing public safety and quality of life within families and the communities.[196] Tribal and non-Indigenous "clients" alike can benefit from the programs of the Wellness Court, and have the option to appear in either location.[197] The Leech Lake Ojibwe Band replicated this model with another neighbouring Minnesota county, forming the Leech Lake Ojibwe – Itasca Wellness Court. Judges from both the tribal court and state court preside over hearings in the Wellness Courts and can cover for each other in the event of scheduling conflicts.[198]

4.1.3 Support Through Vacating Space

Part of the work of legal pluralism is to create space for traditional conflict resolution systems. A notable example is provided by the states of northeastern India.

Traditional conflict resolution in northeastern India

While the legal system of India as a whole is pluralistic and decentralized, the northeastern region presents a special case. The tribal areas in the northeastern states have enjoyed a high degree of autonomy in administrative and judicial matters both under British colonial rule and following India's independence.[199] This special status has enabled preservation of the customary laws and justice practices of the ethnically diverse peoples in the northeastern region.[200]

The policy of non-interference with the traditional institutions and legal orders that prevailed in the northeastern region, both in colonial times and post-independence, was implemented in part by making many laws in force in the rest of India inapplicable there.

---

[195] *Ibid.*

[196] *Ibid.* See also "Leech Lake Band of Ojibwe Joint Jurisdiction Healing to Wellness Courts," (last accessed 22 July 2025), online: *Tribal Access to Justice Innovation* <https://tribaljustice.org/places/specialized-court-projects/leech-lake-band-of-ojibwe-joint-jurisdiction-healing-to-wellness-courts/>.

[197] Leech Lake Band of Ojibwe Joint Jurisdiction Healing to Wellness Courts, *supra* note 196.

[198] Ibid.

[199] Moatoshi Ao, "Branding and Commercialization of Traditional Knowledge and Traditional Cultural Expressions: Customary Law of Northeast vis-a-vis Contemporary Law" (2020) 6:1 UCLA The Indigenous Peoples' Jl of L, Culture & Resistance 75 at 81.

[200] N.K. Das, "Customary law, state law and non-state organisation" in Melvil Pereira, Bitopi Dutta, and Binita Kakati, eds., Legal Pluralism and Indian Democracy: Tribal Conflict Resolution Systems in Northeast India (London and New York: Routledge, 2018) 67 at 67-68.

Today the Sixth Schedule to the Constitution of India creates a special legal zone in listed tribal areas in four northeastern states (Assam, Meghalaya, Tripura, and Mizoram).[201] It provides for district and regional councils to be established in each tribal area with nearly full autonomy regarding administrative, legislative, and most judicial functions.[202] It also provides that no Act of the legislatures of the states subject to the Schedule regarding a matter on which a district or regional council is authorized to legislate will apply to an autonomous district or region in the state, except to the extent that its district or regional council directs.[203] The governor of the state may also direct that any Act of the Indian Parliament or Act of the state legislature is inapplicable to an autonomous district or region.

Regional and district councils are empowered to establish "village councils or courts for the trial of suits or cases" between members of Scheduled Tribes within the areas under their control "to the exclusion of any court in the State".[204] The Sixth Schedule declares that the Indian *Code of Criminal Procedure, 1898* and the *Code of Civil Procedure, 1908* do not apply to the trial of any suits, cases, or offences in an autonomous district or region.[205] The only exception is if the Governor of the state has acted to confer jurisdiction on the District or Regional Council to exercise powers under those enactments to try the most serious offences or suits arising under any specified law in force in the district or region in question.[206]

The effect of the Sixth Schedule has been described by a leading scholar on northeastern India as follows:

> It is well established that traditionally, the North East India had a different and well defined customary legal system and that the Indian constitution incorporated the sixth schedule to protect this traditional system. As a result, a pluralistic judicial system operates in the region, one comprising of the traditional village courts where customary law is enforced and the other comprising of the normal court system where the Indian Civil Procedure Code and Criminal Procedure Code are applied.[207]

---

[201] Constitution of India, art 244(2) and Sixth Schedule, para 1. The tribal areas are identified in Parts 1, II, IIA, and III of the table following s 20 of the Sixth Schedule.
[202] Sanjib Goswami, "Legal Pluralism and the Administration of Justice in Northeast India" (paper delivered at the Conference on Non Adversarial Justice: Implications for the Legal System and Society, Monash University, 4-7 May 2010) [unpublished] at 8, online: <www.aija.org.au/wp-content/uploads/2017/08/Goswami.pdf>.
[203] Sixth Schedule, *supra* note 201, para 12(a), 12A(a), 12AA(a), 12B(a).
[204] *Ibid* at para 4(1). Village courts do not decide disputes involving non-tribal persons: Goswami, *supra* note 202 at 8.
[205] Sixth Schedule, *supra* note 201, para 5(3).
[206] *Ibid* at paras 5(1) and (3).
[207] Goswami, *supra* note 202 at 10.

The Sixth Schedule to the Constitution of India does not apply to all the states of northeastern India, but traditional tribal authorities dispense justice at the village level in other states in the northeast as well according to their customary laws.[208]

Creating space for Indigenous legal orders in BC

The BC First Nations Justice Strategy aims to "systematically advance the development and implementation of Indigenous justice systems and institutions, so that Indigenous laws and governments are ensuring the safety and well-being of citizens and maintaining harmony and balance within communities".[209] The vision for implementation of this strategy will need to be informed by self-determining nations moving towards a justice system that is First Nations-led and creates space for community-based justice. The creation of space for First Nations justice institutions may require some form of suspension of federal and provincial laws in spheres of jurisdiction and should take place in co-operation with First Nations to address their priorities and avoid gaps.

The history and experience of legal pluralism in northeastern India provides some insights into one approach to creating space. Within the Canadian Constitutional framework, provinces cannot unilaterally suspend the operation of the *Criminal Code* and other federal laws as the Constitution of India does with respect to national and state laws in the tribal areas of that country's northeast region. Provincial action to create space for First Nations laws and conflict resolution practice does not have to be restricted to legislating inapplicability of laws, however, nor can it be. Policy choices can play a role as well.

Prosecutorial discretion or a blanket diversion policy could be used to allow the provincial Crown to stand back to leave traditional conflict resolution processes to deal with conduct disruptive to relations within an Indigenous community according to the laws of that community. The BC First Nations Justice Strategy highlights a presumption of diversion as a core value in helping Indigenous people break free from cycles of harmful interactions with the justice system.[210] A presumption of diversion enables access to culturally appropriate means of conflict resolution for Indigenous peoples and creates space for Indigenous-led conflict resolution processes.

Policies related to prosecutorial discretion could also limit the ability of Crown prosecutors to initiate a prosecution where a First Nation law provides for a resolution process. As noted

---

[208] *Ibid* at 13-14, regarding the state of Arunachal Pradesh. See also N.K. Das, *supra* note 200 at 69 regarding Nagaland.
[209] BC First Nations Justice Council, *supra* note 12 at 4.
[210] *Ibid* at 11.

above in section 2.2, this is the approach adopted by the Siksika Nation in their *Prosecution Bylaw*.

Approaches that involve vacating space for First Nations-led conflict resolution processes can benefit state court systems by providing alternative avenues for conflict resolution. This can alleviate pressures on state courts. Ultimately, the Canadian justice system must come to accept that justice can be dispensed by more than one kind of institution, including ones within First Nations communities that do not resemble a common law court and its processes.

5. Conclusion

First Nations legal orders have been eroded by colonialism. In spite of this, First Nations legal orders continue to exist, and First Nations are applying their laws to resolve conflicts in relation to their communities, resources, and lands. This happens independent of state recognition.

State recognition and support for First Nations legal orders can foster trust and affirm the legitimacy of co-existing systems. Moving beyond recognition, plurilegal frameworks can further facilitate co-operation between state justice systems and Indigenous-led conflict resolution processes through financial and infrastructural support.

Recognition is a significant aspect of Crown legal systems. Both the *Waterslide* and *K'ómoks* cases involved enforcement of First Nations laws, enacted pursuant to jurisdictional authority formally recognized within Canadian law. The state's recognition of the First Nations laws at issue in those cases was significant to the courts' analyses and conclusions.[211]

As First Nations exercise their right to self-determination and take up their jurisdiction to make laws and decisions in relation to their communities, lands, and resources, federal and provincial governments and justice systems will need to recognize this inherent law-making authority as legitimate and enforceable. Formal recognition of the jurisdiction to both make laws and have them enforced is an important element in managing multiple legal orders. Federal and provincial agencies need to actively engage in the work to provide such formal recognition.

5.1 Recognition Grounded in Respect

State recognition needs to be grounded in respect for First Nations laws as laws stemming from distinct legal orders. This paper has highlighted examples where the state recognizes the authority of First Nations to make laws but does not fully support the application of those laws to address harm within the community and does not recognize those laws as an enforceable means of resolving conflict.

[211] *Thordarson*, *supra* note 145 at para 16. *Waterslide v Goulet*, *supra* note 167 at para 32.

Recognition grounded in respect for First Nations' laws as laws needs to recognize the wholistic nature of laws from their origins within distinct legal orders to their application to resolving modern day conflicts. This necessitates recognition that:

- laws can be written or transmitted orally;
- laws can be applied within circles of families, community members, and Elders;
- some laws or circumstances of application require enforcement processes; and
- laws need space and support to evolve over time to respond to the complexities of life.

5.2 Recognition Grounded in Relationships

This paper started with the proposition that a legally plural framework based in co-operation could support long term relationships between Crown and First Nations legal orders and alleviate friction between systems. Such a framework may involve providing opportunities for First Nations to build capacity in their communities to apply and enforce their laws or opportunities for them to lean on tools within the state legal system for the application and enforcement of laws.

> First Nations justice strategies need to empower "First Nations Peoples to define justice according to their own laws and legal orders and to support them in developing systems and processes that both prevent harm and facilitate healing".[212]

A framework can support pathways for dialogue across and within jurisdictional boundaries. As seen in the *Waterslide* case mere recognition by the federal government that provincial courts are one of the tools available for enforcement of First Nations laws was insufficient to ensure access to that tool. Where provincial courts are intended to serve as part of the enforcement mechanism for First Nations laws, there should be dialogue involving all levels of government as well as the courts, prosecution services, and police to ensure that tool can be effectively accessed and utilized.

A framework can facilitate agreements between First Nations and state agencies to support complementary justice systems. Entering into such agreements also requires immense

[212] Sarah Morales, "'Blanketing': Justice for First Nations Peoples in Canada", a paper published by the Government of Canada within *Developing an Indigenous Justice Strategy* (December 2023) at 15, online (pdf): <https://www.justice.gc.ca/eng/rp-pr/jr/dijs-esmja/pdf/rsd_rr2023-ijs-thought-papers_eng.pdf>.

resources on the part of First Nations. As First Nations build their capacity and reassume their inherent law-making powers, interim model agreements or approaches to resource sharing could foster the ability to work towards longer term solutions in exercise of the right of self-determination.

Where First Nations have an existing treaty or agreement or are negotiating one, federal and provincial governments can take steps to ensure those treaties and agreements recognize the authority of First Nations to establish their own approaches to conflict resolution within their communities as and when that is a priority for them. In addition, any legislative and policy changes that state governments view as necessary to give effect to the enforcement, prosecution, and adjudication priorities in those agreements must be promptly made. First Nations who have entered into agreements with state governments related to the exercise of their legal orders should not be faced with denied access due to state agencies refusing to honour agreements without explicit legislative delegation of authority.

5.3 Strengthening Legal Pluralism Frameworks

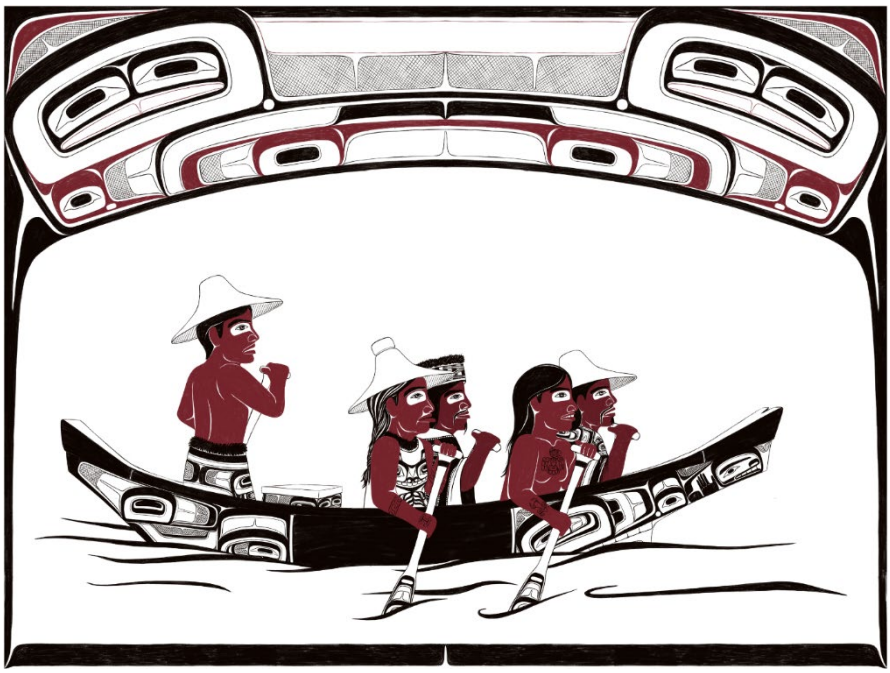
Ultimately, Crown governments and agencies need to view conflict resolution as something that can take many different forms and be grounded in different value systems. Crown governments and agencies also need to ensure that state created jurisdictional spaces are created in partnership with First Nations to align with their priorities and that the spaces do not act as barriers to the application of First Nations' laws. As First Nations continue to reinvigorate their legal orders, take up their inherent jurisdiction, rooted in their traditions, philosophies and worldviews, and apply their laws and values to conflict resolution, they should be supported by all levels of government and Crown agencies within the justice system in building approaches that align with their priorities and challenges as identified by First Nations.

About the Artwork and Artist

The artwork depicts the journey of Indigenous-led justice, honouring each Nation's laws, values, and traditions while restoring relationships and navigating new pathways for conflict resolution. Five people paddle a painted cedar canoe, moving forward with purpose. In front of the steersman there rests a bentwood box—a container of treasures, symbolizing wealth measured by generosity rather than possession. Framing their journey is The One In The Sea, the Orca and wealthiest supernatural. He stands as their guardian, protecting them as they navigate a future shaped by Indigenous laws and justice traditions—pathways that complement and enrich, rather than replace, existing systems.

SGidGang.Xaal / Shoshannah Greene

SGidGang.Xaal / Shoshannah Greene was born and raised on Haida Gwaii. She is a member of the St'awaas XaaydaGaay, from Hlkinil llnagaay (Cumshewa Village). From a young age, Shoshannah always had a strong drive to be creative. She pursued a Bachelor of Media Arts at Emily Carr University, with a major in hand-drawn animation. During these years, her interests shifted from classical animation to classical Haida formline. Today, Shoshannah works as a full-time artist, with a creative practice focused on Haida design, both traditional and digital painting, and illustration. Utilizing formline and passed-down cultural stories to colour her work, Shoshannah brings a contemporary lens to the Pacific Northwest artistic style of art-making.



BRITISH COLUMBIA LAW INSTITUTE

This project is funded by

FONDS McLACHLIN FUND

Supported by

BRITISH COLUMBIA | Ministry of Attorney General

THE LAW FOUNDATION OF BRITISH COLUMBIA