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Cree Legal Summary  
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# ACCESSING JUSTICE AND RECONCILIATION

## Cree Legal Summary

A part of:

**Cree Legal Traditions Report**

*Community Partner: Aseniwuche Winewak Nation*



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# **Cree Legal Traditions Report**

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## **Introduction to the Summary of Legal Principles**

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

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

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

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

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

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

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

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

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

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

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

##### General Restatements of Law:

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

##### b) Elders:

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

##### c) Family Members:

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

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

## **Discussion:**

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

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

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

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

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

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

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

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

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

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

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

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

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

**b) Elders:**

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

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

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

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

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

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

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

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

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

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

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

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

**c) Family Members:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### General Restatements of Law:

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

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

## **Discussion:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### General Restatements of Law:

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

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

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

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

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

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

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

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

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

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

## **Discussion:**

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

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

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

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

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

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

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

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

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

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

## b) The Principle of Avoidance or Separation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### General Restatements of Law:

##### a) Responsibility to Help:

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

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

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

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

## Discussion:

### a) The Responsibility to Help:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 4.1 Substantive Rights

#### General Restatements of Law:

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

#### Discussion:

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

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

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

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

## 4.2 Procedural Rights

### General Restatements of Law:

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

### b) The Right to Be Heard:

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

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

### Discussion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### General Restatements of Law:

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

### Discussion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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