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 - As speaking notes, some of the entries may appear rather cryptic. A longer version of this paper was prepared for the Law Commission's 2005 Indigenous Legal Traditions initiative. A pre-publication draft is available at
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Aboriginal Justice: Taking Control and Responsibility

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Indigenous Rights and Justice

- The contemporary effort by many First Nation communities to regenerate their own justice systems has roots in at least three different aspects of their experience
 - **Rights:** inherent; also recognized in Canada's *Charter* and international documents such as the UN Working Group on Indigenous Populations's draft *Declaration on the Rights of Indigenous Peoples*
 - **Necessity:** the injustice system; commission after commission has made the point that the Canadian Justice System is a foreign, imposed system that has failed Aboriginal peoples at every turn
 - **Being:** integral to being Stó:lō; denying the Stó:lō the right to practice justice their way exemplifies the failed policy of assimilation that has led to so many contemporary problems and injustices

The Stó:lō

- Comprise 24 different communities from Langley area to Yale along both sides of the Fraser River; 5000 people
- 1999: Mandate affirmed by the House of Leaders and House of Elders to establish an "alternative" Stó:lō justice programme
- Programme must be
 1. based on Stó:lō culture, customs and traditions;
 2. supported by the Stó:lō communities; and
 3. driven by the Stó:lō people.

1. Based on Stó:lō Culture, Customs and Traditions

- Recognizing the Role of Language
 - Sensitivity to English words steeped in implicit colonialism, e.g., “alternative,” “mainstream.”
 - Names come embedded in world views; important to use own
 - “Justice” has no direct translation in Halq’eméylem
 - Asked Elders who came back with *Qwi:qwelstóm kwelam t’ ey*, “they are teaching you, moving you toward the good”
- Research undertaken that involved asking Elders about traditional practices
 - “Traditionally, prior to courts coming to our territory, what did we do to resolve conflict within our communities?”
 - Not once were the words “crime,” “criminal,” or “punishment” used
 - Four main tenets: (1) role of Elders; (2) role of family, family ties and connections; (3) teachings; and (4) spirituality.
- Stó:lō seek to avoid the false dichotomy between “traditional” and “newly invented”
- First Nations evolve
- Looking to create something that reflects traditional values, principles, and philosophies, and applying them to contemporary issues

2. Supported by the Stó:lō Community

- Accountable to people, Stó:lō governance
- Discussed with each Stó:lō community about establishing a Stó:lō Nation dispute resolution process
 - Many problems that need attention. Can do no worse than Canadian system.
 - Community encouraged seeking mandate for dealing with more serious offences, problems, situations
 - Diversity of opinion – all views welcome

3. Driven by the People

- Referrals
 - Community and Self-referrals
- Community referrals:
 - Self-determination by the Nation by defining for itself what its “problems” are that require attention; and
 - A concrete manifestation of confidence and trust the community has in the process.
- Approximately twenty *Smómíyelhtel* (facilitators) from the community

- They inform circle participants of the process; organize and lead the circles; document the proceedings and resolution
- Elders an integral part of the process
 - Only time a circle is rescheduled is when the Elder cannot attend
- Family Ties and Connections
 - Important to re-establish family ties to connect paths of responsibility
 - Ancestral names come with relations, connections, history, and cultural responsibilities
 - Poor behaviour reflects on more than self
 - Family accountability a stronger influence than strangers (e.g., judges)

***Qwi:qwelstóm* and the Canadian Justice System**

- No Nation is an island. The Stó:lō look to partner with Canadian processes, institutions
 - Protocols developed with RCMP, Crown, Probation, DFO, MCFD
 - However, bridging the “cultural divide” is often a challenging endeavour
 - Must be based on mutual respect
- Currently, federal government retains control over programs and initiatives of “Aboriginal justice” through the “Aboriginal Justice Strategy,” in existence for more than 15 years
- Glacially slow progression:
 - “indigenization” strategies of the 1970s and 80s
 - “accommodation” strategies of the 1980s and 90s
 - the beginnings of “parallel systems” in the late 1990s and early 2000s
- Each slightly more palatable than the last, but still government sets the rules, decides what the options will be, and allocates the funds.

***Qwi:qwelstóm* Challenges**

- Education, among both Euro-Canadians and Stó:lō
- Staying focussed despite magnitude of problems; lack of resources; burnout; Canadian efforts to dismiss, undermine
- Always imposed challenges to justify existence. Could Canada pass the same tests?

Encouraging Dreams: What Can Canada Do?

1. Recognize that healthy and thriving Aboriginal communities are in everyone’s interest
2. Realize Aboriginal ways of doing “justice” do not call into question the sovereignty of the Crown
3. Formally recognize Aboriginal jurisdiction over Aboriginal justice

4. Support First Nation justice initiatives without subsuming and assimilating them
5. Help foster a stable infrastructure
6. Begin negotiation with Provinces and First Nations organizations to create an Aboriginal-run Justice authority
7. Find ways to improve the relationships between the two “systems.”