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The notes below are generated from the overheads shown during the presentation, and, as such, may at times be a bit cryptic. A more formal version of the paper will be completed later in 2005 and will be included in a Law Commission of Canada book on Indigenous Legal Traditions to be published by LCC in conjunction with UBC Press.

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## **“Getting to a Better Place”: Qwi:qwelstóm, the Stó:lō Nation and Self- Determination**

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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:** part of the inherent rights of self-determination and self-governance; also recognized by, for example, the Canadian Charter and the UN Working Group on Indigenous Population’s Draft *Declaration on the Rights of Indigenous Peoples*
  - **Necessity:** commission after commission has concluded that the Canadian justice system has failed Aboriginal peoples at every turn; an injustice system
  - **Being:** integral to being Stó:lō

### **Stó:lō Nation**

- *S’ólh Téméxw*. From Langley area to Yale along both sides of the Fraser River
- 24 different communities ; 5000 people
- Governance through three Houses: *Lalems Ye Siyolexwe* (House of Elders); *Lalems Ye Sto:lo Sí:yá:m* (House of Leaders); and the House of Justice

### **The Path to Stó:lō Justice**

- 1999: Mandate to establish “alternative” Stó:lō justice programme
- Commitment to three principles. Any programme to be developed 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 about a proper name; they came back with *Qwi:qwelstóm q’lam t’ey*, “they are teaching you, moving you toward the good”
- In her MA thesis, Wenona asked Elders about traditional practices
  - The question posed was, “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.

## **2. Supported by the Stó:lō Community**

- Formally accountable to the House of Justice and the Elders Council
- Went to each Stó:lō community to talk about establishing a Stó:lō Nation dispute resolution process
  - Many serious community problems that need attention. Under-reporting a problem; Could do no worse than Canadian system.
  - Community encouraged the programme to seek a mandate for dealing with more serious offences, problems, situations

## **3. Driven by the People**

- Referrals
  - Both 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 cancelled is when the Elder cannot attend
- Family Ties and Connections are emphasized

- Important to re-establish family ties to connect paths of responsibility
- Ancestral names come with relations, history, obligations
- 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
  - However, bridging the “cultural divide” is often a challenging endeavour
  - Must be based on mutual respect
- Federal government retains control over “Aboriginal justice” through its “Aboriginal Justice Strategy”
- A 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
- The Stó:lō are constantly challenged by Canadian Justice System actors to justify *Qwi:qwelstóm*’s existence. Could Canada pass the same tests?

### **Encouraging Dreams: What Can Canada Do?**

- Recognize that healthy and thriving Aboriginal communities are in everyone’s interest
- Realize Aboriginal ways of doing “justice” do not call into question the sovereignty of the Crown
- Formally recognize Aboriginal jurisdiction over Aboriginal justice
- Support First Nation justice initiatives without subsuming and assimilating them
- Help foster a stable infrastructure
- Begin negotiation with Provinces and First Nations organizations to create an Aboriginal-run Justice authority
- Find ways to improve the relationships between the two “systems.”