

Research Partnership	The State and Indigenous Legal Cultures: Law in Search of Legitimacy
Sub-Project	Secwepmec Laws Governing Land and Resources [Theme: Land]
Integration Report	How Does Legal Pluralism Manifest Itself?
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PART ONE: SUB-PROJECT DESCRIPTION AND METHODOLOGY

The recognition of indigenous property rights by settler States often results in the creation of distinctive legal regimes for those indigenous property interests [that] ... typically serve to protect a land base and frequently recognise that land is a communal asset. Canada's modern land claim Agreements ... typically vest ownership of indigenous lands in some form of communal entity, and then restrict the alienation of those lands. But these Agreements say little about internal ordering within the community, about how decisions are made with respect to those lands, and about the relationship between community entitlements and individual entitlements.¹

Background and Objectives of the Sub-Project:

As legal scholar, Nigel Banks, observes in the above quote, sorting out the issues of Indigenous lands in a present-day colonial context is complicated, and as a practical consequence of available state negotiation or judicial processes, most current processes focus only on the narrow Canadian legal interface between Indigenous land title and the state. Ongoing questions of what is arguably an area of Indigenous public² law and governance that extends beyond the interface on the Indigenous side are rarely taken up, and too often are dealt with either simplistically or by default, simply mirroring Canadian law.³ According to Dene scholar, Glen Coulthard, Indigenous land negotiation processes with Canada excludes Indigenous economies and forms of political authorities, and instead such processes insist on institutionalized accommodations constrained by unquestioned colonial sovereignty and a capitalist mode of production.⁴ To more deeply explore these dynamics, Coulthard draws on the enduring work of Franz Fanon:

In situations where colonial rule does not depend solely on the exercise of state violence, its reproduction instead rests on the ability to entice Indigenous peoples to *identify*, either implicitly or explicitly, with the profound *asymmetrical* and *nonreciprocal* forms of recognition either imposed on or granted to them by the settler state and society.⁵

Taking this analysis further, Isabel Altamirano-Jiménez argues that over the past several decades, a neoliberal grid of intelligibility has been imposed on Indigenous peoples⁶ which essentially

¹ Nigel Banks, "Forms of Recognition of Indigenous Property Rights in Settler States: Modern Land Claim Agreements in Canada" in Nigel Banks and Timo Koivurova, eds., *The Proposed Nordic Saami Convention: National and International Dimensions of Indigenous Property Rights* (Oxford: Hart Publishing, 2013) 351 at 377

² Jeremy Webber, "The Public-Law Dimension of Indigenous Property Rights" in Nigel Banks and Timo Koivurova, eds., *The Proposed Nordic Saami Convention: National and International Dimensions of Indigenous Property Rights* (Oxford: Hart, 2013) 79.

³ Also see Val Napoleon, "Tsilhqot'in Law of Consent", in Joshua Nichols, ed., UBC Law Review Special Issue on Tsilhqot'in Nation [forthcoming 2015] and Brian Slattery, "The Constitutional Dimensions of Aboriginal Title" (speaking notes for Tsilhqot'in Nation and Recognition of Aboriginal Title at the Supreme Court of Canada: Analysis and Impact, conference organized by the Pacific Business & Law Institute, Vancouver, 7-8 October 2014).

⁴ Glen Coulthard, *Red Skins White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014) at 66.

⁵ *Ibid.* at 25.

⁶ Isabel Altamirano-Jiménez, *Indigenous Encounters with Neoliberalism: Place, Women, and the Environment in Canada and Mexico* (Vancouver: UBC Press, 2013) at 2.

enacts and fulfills Fanon's "non-violent" colonial rule. Through this grid, Indigeneity, gender, nature (land), and the market are recast and defined according to neoliberal precepts – and only that which accords with the grid are understood as intelligible not only by state societies, but also by Indigenous societies.⁷ Predominate neoliberal narratives are rendered as powerful unassailable "common sense" ideologies through which it is understood and accepted that global markets must grow, natural resources must be exploited, and hence, Indigenous peoples must be dispossessed of their lands through courts, negotiations, or other indirect measures. If Indigenous peoples cannot be completely divested of their land, then Indigenous peoples must reshape their own economies and their relationship to their lands according to market demands in order to fit and be "successful" within the dominate narrative.

So where and how does Indigenous land law factor into this complex grid of implicit and explicit power relations? Indigenous laws, and specifically land and resource laws, are one way to practically and forcefully expand and push back the pervasive grip neoliberal grid of intelligibility. From the ground up, Indigenous land laws can productively fill the vacuum created by the asymmetrical focus on Canadian law by building a new legal imaginary that includes Indigenous laws and legal institutions concerning lands and their governance. Indigenous peoples in Canada have, to varying degrees of success, attempted to protect their lands and its natural environment by participating in available state administrative and legal processes, as well as direct political actions. Some of the state processes include engaging with Canadian environmental assessments and inquiries of large-scale resource extraction or transportation projects – pipelines, mines, roads or aboriginal rights and title litigation.⁸

Today, many Indigenous peoples are turning to their own Indigenous laws and legal institutions through which to inform and govern present-day land management and related issues. As suggested by Nigel Banks, Jeremy Webber and others, land ownership requires not only law, but legitimate forms through which the practicalities and decision-making of land ownership operate to legitimately manage everyday matters of allocation, determination of proprietary interests and rights holders, inheritance, access, harvesting, resource distribution, responsibilities, boundaries, and inevitable disputes. These Indigenous legal regimes existed historically and have continued despite colonialism, but as we have noted elsewhere, Indigenous legal traditions have been undermined, obscured, and in some cases distorted. Given this, it is important that Indigenous land laws critically examine the more rhetorical declarations of harmony, stewardship, and respect – not that these are unimportant principles, but rather to ensure that the research move beyond generalities and philosophy to asking specific legal questions of Indigenous law.

One emerging element in this area of research internal reconciliation processes necessitated by the complex of competing and often contradictory, historic legal institutions and law, contemporary legal institutions and law (e.g., bands, tribal councils, etc.), and related Canadian law. Indigenous communities are engaged in each of these levels of law. While there are obvious differences between the respective legal regimes, it is just as important to identify and understand the convergences in this area of law as with other areas of Indigenous law.

⁷ *Ibid.*

⁸ See Val Napoleon and Richard Overstall, *Indigenous Laws: Some Issues, Considerations and Experiences* (2007) online <http://www.cier.ca> [Napoleon and Overstall].

Research Questions:

The overall research question is: How do people within the Secwepmec legal tradition manage lands and resources, and respond to disputes or issues concerning lands or resources.

Related research questions are:

- What are the legal principles and legal processes for reasoning through questions about lands and resources within the Secwepmec legal tradition?
- What are the legal concepts and categories within the Secwepmec legal tradition relevant to the management and planning for lands and resources?
- What are the legal principles relevant to Secwepmec relations to lands and resources?
- What are the legitimate procedures for collective decision-making about lands and resources?

Theoretical Framework/Methodology:

The logical first step to achieving more specific research outcomes from our engagement with Indigenous laws is to ask more specific research questions *of* Indigenous laws. This is both practical and in keeping with our commitment to approach Indigenous laws as *laws*. ... All law has to be capable of being specific, responsive, and applied to the real and messy life of human communities. For instance, general statements about equality in Canada reflect normative commitments and provide us with very important aspirations, but at some point, what equality means can only be determined when it is applied to the mundane and to the everyday where it can actually help to solve problems in real relationships between people.⁹

Indigenous stories are rich and complex sources of normative material.¹⁰ We can bring questions to Indigenous stories and draw a range of legal principles, processes, and procedures from them according to the problem at hand. While there are many interpretations of each story, the key is that interpretation must be part of a collaborative process, and it must also be accountable to the legal tradition one is working within. It is this collective enterprise that serves as a legitimizing factor for local communities. Indigenous legal processes of collective engagement comprise individual and collective agency operating within the form through which law is constituted in each Indigenous society.¹¹

Research and engagement with Indigenous legal traditions must be rigorous, transparent, and consistent. This means citing our sources, whether this is a certain elder, a ceremony, a story, a historical account from anthropological literature, or all of the above. This means we do not

⁹ Hadley Friedland and Val Napoleon, "Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions" forthcoming *Lakehead Law Journal*, 2015 [Friedland and Napoleon, Gathering].

¹⁰ *Ibid.* Our methodology is fully described in the above publication and this section draws heavily on that paper. Also see Val Napoleon and Hadley Friedland, "An Inside Job: Engaging with Indigenous Legal Traditions through Stories" in Dale Turner, ed., *Oxford Handbook on Governance* [forthcoming 2015] [Napoleon and Friedland, Inside Story]; Emily Snyder, Val Napoleon and John Borrows, "Gendered Violence: Resources from Indigenous Legal Orders" *UBC Law Review* 48:1 2015 [Snyder, Borrows, Napoleon]; Val Napoleon and Hadley Friedland, "From Roots to Renaissance", in Markus Dubber, ed., *Oxford Handbook of Criminal Law* (Oxford: Oxford University Press, 2014) [Napoleon and Friedland, Roots to Renaissance].

¹¹ Kirsten Rundle, *Forms Liberate: Reclaiming the Jurisprudence of Lon L Fuller* (Oxford, UK: Hart Publishing, 2012) at 9-10 [Rundle].

simply describe behaviours or ideals, make unsupported assertions about law, and we consider actual decisions or responses. This includes deliberately making our own thinking explicit, including our experiences, interpretation, and inferences. This methodological approach also enables us to develop an internal view of “how arguments are fashioned and deployed within legal practices”.¹² It is this internal perspective of law that is necessary to applying and practicing Indigenous law in the years to come.¹³

Methodology: Phase One

The first phase requires setting out a specific research question (see above).

Methodology: Phase Two

This phase starts with assembling all the publicly available stories or oral histories and reviewing them to identify those that best relate to the question being asked.

- What are the facts that matter to the research question?
- What is the main problem or concern in the story/oral history?
- How was the problem or concern responded to?
- What were the reasons for this legal response?
- Bracket information for which there is not yet a terms of reference.

Methodology: Phase Three

This phase involves analysing the case briefs to find similarities and differences, and to organize the information into an accessible, understandable framework that can be applied today.

- (i) *Legal Processes*: Final decision-makers and the procedural steps for determining a response or action.
- (ii) *Legal Responses and Resolutions*: Principles governing appropriate responses to legal/human issue.
- (iii) *Legal Obligations*: Principles governing individual and collective responsibilities.
- (iv) *Legal Rights*: Procedural and substantive.
- (v) *General Underlying Principles*

Methodology: Phase Four

This phase is beyond the scope of this report, but very briefly, this is the application phase of taking a problem and working through each step of the synthesis. For example: Who has to be involved? How are they involved? What do people need to learn about the problem? What do people do about the problem? This requires a critical and ongoing evaluation process.

Historically, most Indigenous peoples were not centrally organized with formal bureaucracies. Their legal traditions were organized de-centrally through relationships and kinship systems (e.g., families, clans, communities). These were the historic legal institutions that law operated through and today, there are new laws and new legal institutions in the various governing entities. Future application will require reconciling the historic legal institutions and law with today’s legal institutions and law.

¹² Jeremy Webber, “The Past and Foreign Countries” (2006) 10 Legal Hist 1 at 2.

¹³ For further discussion on this point, see Hadley Friedland, “Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws” 11 (1) Indigenous Law Journal 1at 29-31 [Friedland, Reflective Frameworks].

PART TWO: PRESENTATION OF THE LEGAL ORDER/SYSTEM OBSERVED

(Preliminary distillation only – further community consultation is required before finalizing. This summary was developed from the Secwepmec stories presented at the two community workshops, but the overall synthesis is not yet complete.)

Theme: Lands (sub-project Secwepmec Laws Governing Lands and Resources)	
I. Variables	Secwepmec Law
Values/Beliefs	<p>Secwepmec lands must be protected and respected by all Secwepmec people as it is the guardian and source of Secwepmec people’s health. This is a reciprocal relationship between people and land, not simply one of extraction of resources.</p> <p>Secwepmec legal precedent and history is embedded in the land (e.g., land forms) that continually teach each new generation. The land is a teacher and travelling on the land is a type of research.</p> <p>Both authority and collective safety derives from knowledge. People have a responsibility to learn about the land and all the beings on the land, in the air, and in the water.</p> <p>Secwepmec songs record and maintain people’s legal relationship with the land.</p> <p>Sweat baths and prayers will ensure the health and safety of both people and the land, and will maintain ongoing connections between people and land.</p> <p>Secwepmec people need the land, water, trees, and spirits for health and life. Disrespecting the land, water, trees, and spirits can have serious consequences for people (e.g., waste, taking too much, etc.).</p> <p>People are responsible for learning the skills they need to survive from the land. Older generations are responsible for these teachings and for providing guidance to the young.</p> <p>There is value in learning from other peoples and beings, and this enables Secwepmec people to form political alliances and to travel beyond their lands.</p> <p>Secwepmec people must honour the experience and ability to survive of each other.</p>

	<p>The vulnerable must be protected and those in need must be helped by others who have the necessary knowledge, abilities, or information.</p> <p>People must be humble in order to learn.</p>
Variables	State Law
Values/Beliefs	<p>There are private and public values throughout Canadian legal processes, policies, and laws concerning both lands and resources. These are most obviously reflected in private property law, public parks, and through various environmental processes. As with other legal regimes, Canadian legal decisions represent points of agreement against a backdrop of disagreement, and there are inevitable ongoing tensions and contradictions between law’s aspirations and its performance.¹⁴ In all living legal traditions, statements of law are always provisional, not unchanging truths.¹⁵ Furthermore, as with any large or small populations, Canadians are not homogenous and there is a broad diversity of values concerning land, nature, property, and the larger environment. Canadian law’s legitimacy will determine the extent to which those diverse interests maintain and participate in Canadian legal processes and adhere to legal decisions and laws.</p>

Comparative Note

Indigenous law, including Secwepmec law is non-state, operating through institutions of kinship and relationships. Historically, authority and decision-making was dispersed horizontally and decentrally through these institutions, and law was not delegated to centralized professionals.

Historic Indigenous societies might well be described as risk averse¹⁶ with deeply held ethics of minimizing risk to the necessities of life and to their legal and social orders. The Secwepmec oral histories and stories reflect this risk aversion in the legal norms and overall legal tradition. This orientation is also the result of a cosmology that values past, present, and future generations and attaches kinship obligations to decisions and behaviours with long-term consequences. Hence, legal principles of prevention, caution, and long term stability and collective well-being underlies the form and operation of the legal order.

In contrast, societies such as Canada might be best understood as “risk-centric”, and tend to sacrifice long term stability for immediate political and economic gains. Risky undertakings such as wide-scale wars in the furtherance of markets and capitalism could be characterized in this light. Such risky policy instruments have increased globally with severe, sometimes devastating long-term effects (e.g., climate change, nuclear or biologic weapons). Similarly, severe long term effects have resulted from pesticides, pollution, resource over-harvesting, and unsustainable fossil fuel use. State environmental laws are of a command and control type

¹⁴ Jeremy Webber, “Legal Pluralism and Human Agency” (2006) 44 Osgoode Hall LJ 167.

¹⁵ *Ibid.*

¹⁶ Napoleon and Overstall, Indigenous Laws *supra* note 8 at 6.

where specific harms are forbidden unless conducted according to legislation and policy. In this way, state law generally perpetuates this risk-centric ethic and it continues to be the flash point for much Indigenous and non-Indigenous resistance.¹⁷

To varying degrees, many contemporary Indigenous institutions and laws now replicate the command and control structure for resource use activities. However, for the most part, Indigenous peoples have endeavored to protect their lands through available state processes and direct political action. Future negotiation of these issues will be one of the major challenges for Secwepmec and other Indigenous law at the application stage and in working through the practical, jurisdictional relationship between Indigenous law and state law.

II. Variables	Secwepmec Law
<p>Principles</p>	<p>Protecting the well-being and livelihood of Secwepmec people, families, and communities underlie the Secwepmec relationship to land, and the management of lands and resources.</p> <p>Generosity and fair distribution of wealth underlies good decisions and effective legal responses. People who benefit from generosity have a responsibility to help others as they are able.</p> <p>Among Secwepmec, everyone should have fair access to necessary resources. Greediness and restricting access can have serious consequences (human and spiritual).</p> <p>Food sources have to be protected. Animals have to be respected and not abused when taken for food. People will suffer when care is not taken while harvesting, travelling, hunting, and living on the land.</p> <p>Leaders and groups have a responsibility to assess problems and carefully think through their responses and future management.</p> <p>Individuals and groups have the responsibility to share knowledge, and to help those that are vulnerable because it is the most vulnerable who pay the price when those who are responsible do not uphold their duties.</p> <p>When there is danger, it has to be understood, assessed, and addressed by those responsible or who will be impacted.</p> <p>People, including the vulnerable, should not be underestimated as they may have gifts or may become future leaders or experts.</p>

¹⁷ See generally, the Community Environmental Legal Defense Fund, online www.celdf.org/ordinances.

	People who hoard resources or who are greedy should still be allowed some access to food and resources. No access to necessities is too harsh.
Variables	State Law
Principles	Canadian law and legal processes are formally inclusive and representative of those who are affected by legal and political decisions. There is an extensive “Access to Justice” literature that addresses many of the limitations to participation created by economic and political disparity and power imbalances.
Comparative Note	
<p>Jurisdiction for Indigenous lands in the Canadian legal regime is mixed.¹⁸ Lands designated as reserve lands are under federal jurisdiction as per the <i>Constitution Act, 1967</i> which operates through the <i>Indian Act</i>,¹⁹ <i>First Nations Land Management Act</i>,²⁰ <i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i>,²¹ and a range of self-government and modern-day treaty agreements. For the most part, natural resources are within the purview of the provinces while jurisdiction for the environment is divided between federal and provincial powers. There is also the burgeoning Aboriginal rights and title jurisprudence which brings together a complicated tangle of both federal and provincial constitutional heads of power on a range of questions including consultation and accommodation, Indigenous proprietary interests, and governance.</p>	

III. Variables	Secwepmec Law
Rules	<p>Substantive Rules Secwepmec people must protect their lands.</p> <p>Access to resources must be fair to all Secwepmec people. Greediness and laziness can have serious consequences. Some resources cannot be the sole property of a group, especially when it is to the detriment of another group.</p> <p>People are responsible for their behaviours and must learn what they need in order to fulfil their obligations to the land, beings, spirits, and other people.</p>

¹⁸ Val Napoleon and Emily Snyder, “Indigenous Laws and Housing on Reserve: Developing an Indigenous Property Theory and a Critical Indigenous Feminist Property Theory” in Sari Graben and Angela Cameron, eds. *Critical Issues in Indigenous Lands* [2015 forthcoming]

¹⁹ R.S.C. 1985, c. I-5.

²⁰ S.C. 1999, c. 24.

²¹ S.C. 2013, c. 20.

	<p>Bad or dangerous people/forces are always present, but their influence must be limited so that the collective well-being and safety of Secwepmec peoples is protected.</p> <p>Human frailty must be accounted for even with chiefs and leaders.</p> <p>Those that are delegated the responsibility of maintaining safety must try to fulfill that responsibility.</p> <p>When there is danger on the land, it must be dealt with so the people are protected. Those unable to protect themselves must not travel where it is dangerous, or they must seek assistance to do so.</p> <p>Procedural Rules Visitors to Secwepmec lands must learn and follow Secwepmec law.</p> <p>Everyone must be a part of decisions regarding the land. There must be consultations and the sharing of information.</p> <p>Disagreements must be assessed collectively, information and evidence gathered for determining decisions.</p> <p>Gifting and feasting are important ways of restoring relationships or building new relationships.</p> <p>People have a right to be heard and a right to make their case when an issue concerns them. Even problematic people have this right.</p> <p>Obligation Rules When others need help, there is an obligation to help. Those that need help are obligated to do as much as they are able.</p> <p>When others are in danger, there is an obligation to warn them and to share information about the danger.</p> <p>Visitors must be taught Secwepmec law.</p> <p>Problems must be assessed and carefully thought through before responding to them.</p> <p>When Secwepmec people leave Secwepmec lands, they should be welcomed back, carefully observed to ensure their proper recognition, respected and not harmed, and learned from.</p>
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Variables	State Law
Rules	There is a complex of laws resulting from both federal and provincial heads of power.
Comparative Note	
<p>At a practical and accessible level,²² a legal pluralist approach could begin with a river, a caribou herd, a mountain valley, or other geographic site. The indigenous laws for that site, river, or caribou herd must be ascertained, substantively articulated or restated. Corresponding state laws must also be identified. A plurality of law could flow from first, identifying those aspects of Indigenous law that converge with state law and could be interfaced. Second, coming to a mutual agreement to continue Indigenous law that does not require state recognition or acknowledgement for an implicit co-existence of law. Ongoing attention to the dialectic of Indigenous/state relations could ensure that both internal and external legal interactions are brought into focus by generating both a normative and functioning understanding of both state and non-state legal orders.</p>	

IV. Variables	Secwepmec Law
Actors/ Stakeholders	<p>Decision-Makers</p> <ol style="list-style-type: none"> 1. Leaders – in leadership role and depending on the scope of the problem, in consultation with larger group or community. 2. Experts (depending on the issue and available expertise). 3. Whole community when issue concerns the safety or well-being (and livelihoods) of the entire community. 4. Elders depending on their expertise and the scope of the specific problem. 5. Specific groups effected by a particular problem and its scope.
Variables	State Law
Actors/ Stakeholders	Multiscalar legal institutions and officials with varying levels of legal and political authority.

²² Napoleon and Overstall, Indigenous Laws *supra* note 8 at 8.

Comparative Note

Further research and analysis on Secwepmec law and gender is necessary.²³ The next steps with the Shuswap Nation Tribal Council will include another meeting with the leadership, and scheduling the series of focus groups and interviews for the communities. The SNTC has identified a community coordinator to work with our student researchers this summer.

As with any complex social, political, legal, and economic issue, dichotomies are not helpful. The relationship between Secwepmec law and state law has to be worked out symmetrically from the ground up – from a place of strength for Indigenous law. This means that Secwepmec law or other Indigenous law must be accessible, understood, and applied.

V. Variables	Secwepmec Law
<p>Processes</p>	<p>Problems must be assessed and carefully thought through before responding to them.</p> <p>The scope of the problem or concern must be assessed in order to determine the decision-makers (e.g., whole community or particular group).</p> <p>Deliberation, information gathering, assessment of evidence is critical for the application of Secwepmec law.</p> <p>Depending on the scope of the problem, consultations may include knowledgeable people, a specific group, or the whole community.</p> <p>People have a right to participation in legal processes and decisions.</p> <p>Legal processes must be fair and participants must be properly informed in the decision-making.</p> <p>Any punishment or consequences must be proportional.</p>
Variables	State Law
<p>Processes</p>	<p>Multiscalar adversarial and adjudicative processes.</p>

²³ Snyder, Napoleon, Borrows *supra* note 10.

Comparative Note

We have suggested elsewhere that sustainable environmental practices require place-based, participatory models.²⁴ Arguably, the current debates about environmental problems or crisis are actually complex systems problems and consequently, resistant to the application of simple environmental problems. Given this, adaptive co-management approaches that allow the sharing of real management (i.e., not operational) power, is necessary to create flexible, symmetrical, multi-governing systems through which Indigenous-state agreements and legal arrangements would be possible.

V. Overall Comparison

Thus far, our approach is to ensure that we identify both convergences and divergences between Secwepmec and Canadian law. At this stage, we are concerned about creating unproductive and unnecessary dichotomies and about over-simplifying or essentializing either Secwepmec or Canadian law. We will revisit the question of overall comparisons next year once we have had an opportunity to complete the community discussions and the Secwepmec legal synthesis on land and resources law.

²⁴ Napoleon and Overstall, *supra* note 8.

APPENDICES

APPENDIX 'A': Selected Bibliography

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APPENDIX 'B': Significant extracts from the collected data

The oral histories/stories are the main data. They form the basis for our community discussions and interviews. Community participants discuss the stories, add new stories or new versions of stories, review/add/revise our story analyses and synthesis until they are satisfied with the final report. Given this, I am including seven of the twenty-five Secwepmec stories we have worked with so far in the community workshops, and which I drew from for the rest of the Secwepmec report already submitted. We also have another thirty or so stories that we will be adding to this project.

1. Bush Tailed Rat
Bush Tailed Rat Sample Case-Brief
2. The Fishes and the Cannibal
3. The War with the Sky People
4. Coyote and his Son
5. Coyote and Wolf
6. Old-One and the Sweat-House
7. Story of Hu'pken

Sample Case: The Bush-Tailed Rat

This case is taken from “The Story of the Bush Tailed Rat” [Nkamtcī’nEmux] in James Teit, *Traditions of the Thompson River Indians of British Columbia* (Cambridge, Mass.: Riverside Press, 1898) page 46.

It was winter and many people were living in a large underground lodge. There were other lodges nearby with many more people. The people were losing their food supplies because someone was stealing them. No one knew who the thief was.

The thefts happened every winter and continued until spring. One night, an old woman could not sleep. She heard someone enter the lodge, run around the house, and then go up the ladder and vanish. The next morning, she told the others. They noticed that a number of things had been stolen the previous night.

The following night, a number of people lay down and pretended sleep and they were armed. At about midnight, someone came down the ladder and began to pick up food and other things, these things were all put into a sack. The people recognized him as the bush-tailed rat. When he left, the people followed him to his house between the rocks. The bush-tailed rat called to his door, “Tla’qui’pa!” The door opened and he went in with his sack.

Before the door could close, one man who was following closely jumped forward and put his arrow cross-ways in the door so it could not close. He and the others went into the bush-tailed rat’s home and found things that had been missing, some for many years. There were piles of ornaments, clothing and food.

The people attacked the bush-tailed rat and crushed him. They threw him outside among the rocks, and said, “Henceforth you shall be a rat, and shall steal only a little bit at a time. You shall eat rose hips and prickly pears. You shall gather sticks and your excrement shall be valuable as a medicine.”²⁵ And the bush-tailed rat was transformed into an ordinary rat.

²⁵ According to James Teit, the old people call the droppings of the bush-tailed rat smu’tlast and is used by some as a tonic or medicine for the stomach. A small dropping is dissolved in a cupful of water to make a single dose.

Sample Case Brief: The Bush-Tailed Rat (Pack Rat)

What is the main human problem that the story focuses on?

How does one respond to serious and continual theft?

How does one respond when someone's actions have ongoing harmful consequences for the community's wellbeing/livelihood?

What facts matter?

- Bush-tailed Rat had been stealing from the people for many years.
- The people followed Bush-tailed Rat to his home where they found piles and piles of clothing, valuables, and food – much had been stolen years many before.
- When the people caught the Bush-tailed Rat, they crushed him and transformed him into an ordinary bush-tailed rat who could only steal a little bit at a time.

What is decided or how is the issue resolved?

1. The people followed Bush-tailed Rat and collectively confirmed that he was the thief who had been stealing from them for years.
2. The people crushed Bush-tailed Rat, but did not kill him. Instead, the people transformed him into an ordinary bush-tailed rat with limited theft abilities.
3. The people were willing to share smaller amounts of food and other things with the bush-tailed rat in the future.

What is the reason(s) behind the response? Is there an explanation in the story? Is the reason said or unsaid?

1. Bush-tailed rat had been stealing without consequence for many years.
2. Bush-tailed rat hoarded the stolen goods and stole much more than he needed.
3. The Bush-tailed Rat was not prohibited from future stealing, but transformed into a being that could only steal a little bit at a time.
4. The people found evidence before acting in a way that did not prevent Bush-tailed Rat from stealing, but they reduced future harms to the people.
5. The Bush-tailed Rat still had value as a being as its excrement was used by some as a medicine.

Bracket/Other

The Fishes and the Cannibal

This case is taken from a story entitled "The Fishes and the Cannibal" in James Teit, *The Jesup North Pacific Expedition, Memoir of the American Museum of Natural History*, The Shuswap, Publications of The North Pacific Expedition, Volume II, Part VII (Leiden: EJ Brill, 1909; New York: GE Stechert, 1909), pp 670-671

A cannibal lived with his family in a canon through which flowed a river. His house was a cave in the rock, the entrance to which he made open and close at will. He spent most of his time hammering and chipping with an adze, as if engaged in making canoes. He probably did this so that the noise might attract people's attention. He had a canoe which he always left tied to the opposite side of the river, which was the side on which the people lived, and where a trail followed along the bank. Strangers passing along the trail often called to be taken across, and the cannibal invariably told them to take the canoe, and cross themselves. As soon as they reached the shore, he seized them and put them in his house, the entrance to which at once closed. Sometimes, however, the people who were crossing became afraid, when they came close enough to see the cannibal, for he had a very fierce appearance, and wore ear-rings and necklaces of human fingers, men's testicles, and finger and toe nails. Then they would turn around and paddle back; but the cannibal would hook them with a very long-handled hook which he always kept ready, and, drawing them ashore, would eat them. If he was not hungry at the time, he put them in his house, or took pleasure in placing them in the entrance, and seeing the rock close on them.

The cannibal's great magic power was the Cold, and any being that entered his house froze to death at once.

Not far from the canon lived a number of people in two houses.²⁶ The Fishes inhabited one house, while in the other dwelt the water-birds; namely, the Swan, Goose, and many kinds of Ducks. These people knew what the cannibal did, and never went near the place where he lived. Once the Sturgeon's brother, thinking himself equal in magic to the cannibal, went over to his house and was killed. The Swan²⁷ alone could visit the cannibal with safety. The cannibal never attempted to harm him, and always asked him to return again soon and bring him news.

One day the Fishes and Birds held a council, and came to the conclusion that they would all train themselves and try to master the secrets of the cannibal's mystery. After training a long time, the Sturgeon at last gained the desired knowledge. He learned how to make the rock open and shut, and how to counteract the Cold.

Then he said to the people, "We will go and kill the cannibal and his family." They sent out the Swan as a scout, and he returned with the information that the cannibal and his family were asleep in the cave. Going up to the house, the Sturgeon made the rock open, and they all walked in. The cannibal caused the rock to shut behind them, and pretended to welcome them, thinking that shortly they would all freeze to death. Then the Sturgeon opened his bag, which contained

²⁶ Some say in one house, or together.

²⁷ The Swan was a man noted for his goodness.

heat²⁸, and soon the house was filled with a dense fog. Then the animals killed the cannibal and his family, opened the rock again, and went out. They said, "Henceforth the cannibal's house shall be only a common cave²⁹, the entrance to which shall never shut, and the cannibal himself shall be only a canon mystery. Sometimes, but very rarely, people may get harmed if they see or hear his spirit, which shall henceforth haunt this place."

The War with the Sky People³⁰

This case is taken from a story entitled "The War with the Sky People" in Teit, James. *The Jesup North Pacific Expedition, Memoir of the American Museum of Natural History*, The Shuswap, Publications of The North Pacific Expedition, Volume II, Part VII (Leiden: EJ Brill, 1909; New York: GE Stechert, 1909), p 749

Black Bear and Wolverine were great chiefs, the former of the Fish people, the latter of the Bird people. They assembled the warriors of all the fishes and birds of the earth to go on a war expedition against the people of the sky. All the men shot their arrows up towards the sky, but they fell back without hitting it. Last of all, Wren³¹, who was the smallest of all the birds, shot an arrow, which stuck in the sky. The next smallest bird shot an arrow, which hit the end of the first one; and thus they shot arrows; and one stuck in the end of the other, until there was a chain of arrows forming a ladder from earth to sky. On this all the warriors ascended, leaving the two chiefs to guard the bottom. Soon after all had reached the sky world, Wolverine and Black Bear began to laugh at each other's tails. Black Bear grew angry, chased Wolverine around the foot of the ladder, struck against it, and knocked it down.

Meanwhile the earth people had attacked the sky people, and at first were victorious; but afterwards the latter. Gathering in great force, routed the earth people, who fled in great disorder towards the top of the ladder. By its fall their retreat was cut off; and many made a stand against the sky people, while others threw themselves down. The birds were able to reach the earth safely, for they could fly down; but many of the fishes, who tried to throw themselves into a large lake, were wounded. In their fall some missed the lake and dropped on rocks. Thus the skull of the sematsa'i came to be flattened, the kwa'ak broke its jaw, the tcoktci'tcin got a bloody mouth, and the sucker had all its bones scattered and broken, so that it died. The grandson of a man called Tcel gathered the bones, put them back into the body, and revived it. This is the reason why the sucker has now so many bones scattered through its flesh, why the sematsa'i has a flat head, the tcoktci'tcin³² a red mouth, and why the mouth of the kwa'ak appears to be broken. The earth people who remained above were all slain, and transformed by the sky people into stars.

²⁸ See Farrand, Traditions of the Chilotin Indians

²⁹ See Teit, Traditions of the Thompson River Indians

³⁰ See Boas, Indianische Sagen, p. 17; also Sagen der Kootenay (Verhandlungen der Berliner Gesellschaft für Anthropologie, Ethnologie und Urgeschichte, 1891, pp. 161-172).

³¹ Some say Humming Bird, others Chickadee.

³² The Shuswap in many parts of the country do not eat this fish

Coyote and his Son³³

This case is taken from a story entitled "Coyote and his Son" in Teit, James. *The Jesup North Pacific Expedition, Memoir of the American Museum of Natural History*, The Shuswap, Publications of The North Pacific Expedition, Volume II, Part VII (Leiden: EJ Brill, 1909; New York: GE Stechert, 1909), pp 622-623

Coyote lived with his son (or nephew) Three-Stones (Kalla'llst), who had two wives, one of whom was old and the other young. Coyote desired to possess his daughters-in-law, and made up his mind to get rid of their husband. One night he was heard laughing as he approached the house; but when he came nearer, he began to cry, and upon entering went to his place on the opposite side of the fire and wiped his eyes. He was asked why he cried, and he answered, "What I saw to-day makes me sad. I saw an eagle's nest with the eaglets nearly ready to fly. I considered how highly our ancestors valued eagle-feathers, and thought how we had none. I wished to get them, but knew I was too old and stiff to climb up for them.' Afterward he said to Three-Stones, "You had better climb for the feathers to-morrow. Put on all your best clothes. Our ancestors always dressed nicely when going after eagles."

Next morning Coyote took his son to a cliff some distance away, and pointed out to him the nest. The cliff was very low, and easy to ascend, having many jagged steps leading up to the ledge where the nest was. Then he told his son to divest himself of all his clothes, and leave them behind, adding, "Our ancestors always did so." Three-Stones stripped off his clothes and ascended the cliff. When he had but one more step to take to reach the nest, he became aware that something was wrong. Looking below, he saw that the cliff had grown to such a height that he was almost afraid to look down, and, instead of having rough steps as before, it was now smooth. Looking up, he saw that the cliff above was overhanging. He was as if in a hole, and could neither get up nor down. Coyote had caused the cliff to grow so that his son could not return.

Then Coyote gathered up his wrinkled skin so as to make it look smooth, and tied it in several places on his back. He did this to make himself look young, and to resemble his son. Then, putting on Three-Stones' clothes, he went to the lodge, saying to himself, 'I will deceive my daughters-in-law.'" When he neared the camp, he cried, saying, "Oh! my father climbed after the eagle's nest, and was killed. Poor father!" The women thought he was their husband, and bewailed Coyote's death.

He slept with them that night, and on the next morning said, "We will move. Father's ghost may visit us, and, besides, we do not wish to be reminded of him by seeing constantly the place where he has lived so long." They shifted camp to a place two days' journey away.

Meanwhile Three-Stones sat on the cliff and lamented his fate. Two women, the Bush-tailed Rat and the Mouse, heard him, for they were gathering Indian-hemp bark on a hillside underneath, and they resolved to help him. They said, "Our nephew is in difficulty. We must try to help him." The Mouse sang, and the cliff grew lower until it was only half the height. Then the Rat sang,

³³ This legend is a much-distorted account of Coyote's son's ascent to the sky (see Teit, Traditions of the Thompson Indians of British Columbia, pp. 21 et seq; Farrand, Traditions of the Chilcotin Indians, p. 29 of this volume.

and the cliff assumed its former height and shape. Three-Stones descended and thanked the women for their assistance.

Turning aside a little distance, he pulled out four pubic hairs, and threw them on the ground. From these there grew up a dense thicket of tall Indian-hemp bushes, which he showed to the women, who were glad to find a place where they could obtain so much good bark³⁴. Proceeding to his camp, he found it deserted, but he followed the tracks of the party until he located them.

It was night, and Coyote was sleeping with both the women. Three-Stones entered, lighted the fire, and waked Coyote, who pretended to be half asleep. Then he struck the women, saying, "Why do you roll over so near to me? Your husband has come back." Three-Stones said to him, "Say no more. You need not try to deceive me." He then took his clothes away from Coyote, and discovered the knots in which the loose skin of the old man was tied up. He untied it and informed Coyote that henceforth they would live apart. Taking the younger wife for himself, he gave the older to Coyote and left him.

Coyote and Wolf

This case is taken from a story entitled "Coyote and Wolf" in Teit, James. *The Jesup North Pacific Expedition, Memoir of the American Museum of Natural History*, The Shuswap, Publications of The North Pacific Expedition, Volume II, Part VII (Leiden: EJ Brill, 1909; New York: GE Stechert, 1909), pp 637-638

Coyote lived with Wolf. They hunted together, and killed many deer and elks. Wolf said, "When we kill animals, we should take their skins off before eating them. The skins are not good for us to eat. We might leave the skins wherever we kill the animal, and the people might find them and be glad to have them. They might dress the skins and make clothes and moccasins of them." Coyote answered, "No, that would not do. It would take too long to skin each animal. We will eat the skin with the flesh."

This is the reason that at the present day wolves and coyotes, when they kill or find an animal, always eat the skin with the flesh, leaving nothing but the bones. If Coyote had been more considerate, and not so selfish, but allowed Wolf to have his wish, the people would have been better off.

Old-One and the Sweat-House

This case is taken from a story entitled "Old-one and the Sweat-House" in Teit, James. *The Jesup North Pacific Expedition, Memoir of the American Museum of Natural History*, The Shuswap, Publications of The North Pacific Expedition, Volume II, Part VII (Leiden: EJ Brill, 1909; New York: GE Stechert, 1909), pp 642-643

³⁴ See Teit, Traditions of the Thompson River Indians, p. 24.

Old-One was travelling over the earth, visiting the people, and putting everything to rights. He taught the people how to sweat-bathe and make sweat-houses. He told them, "When you sweat-bathe, pray to Swalu's³⁵ that you may be healthy, and obtain success in hunting and gambling." Soon after this he met Swalu's, and said to him, 'Henceforth people will make sweat-houses, and, when they sweat-bathe, they will supplicate you, to whom the mystery of the sweat-bath belongs. When they pray for relief from pain, for health, long life, lightness of body, fleetness of foot, wisdom, wealth, and success in hunting, gambling, and war, pay heed to them, and grant their desires. Gather their sickness when they are in the sweat-house, take it from their bodies, and cast it to the winds."

Then Old-One visited the Water, and said to him, "When my children wash and bathe themselves, draw sickness from their bodies, heal their wounds, refresh them; and, when they pray to you, answer their supplications. You shall be the guardian of those who constantly seek you."

Old-One also visited the Fir-Tree, and said to him, "When my children take your branches and wash with them, may your mysterious power help them!"

For this reason the Indians use fir-branches, bathe in the cold water, and sweat-bathe at the present day.

Story of Hu'pken³⁶

This case is taken from a story entitled "Story of Hu'pken" in Teit, James. *The Jesup North Pacific Expedition, Memoir of the American Museum of Natural History, The Shuswap, Publications of The North Pacific Expedition, Volume II, Part VII* (Leiden: EJ Brill, 1909; New York: GE Stechert, 1909), p 710-711

Hu'pken³⁷ was a lad who lived with his parents, but would do nothing they told him. He was very mischievous, lazy, and quarrelsome, and would not train himself like other lads. As he was a nuisance to the people, his parents arranged to desert him at the first opportunity.

One day the boy went off into the woods and lay down in the shade, as he felt very lazy, and thought his parents might send him to do some work. When he returned home at sundown, he found the houses all deserted, so he started to follow the people's tracks and learn where they had gone. He said, "They cannot be far away, for I hear them whistling." He went in the direction of the sound, but next time it came from another quarter, sometimes in front of him, then behind him, sometimes distant, and again close. Soon he became weary of following the sound, which really came from the excrements of the people, and, as it was getting dark, he returned to the village.

³⁵ Swalu's is the name of the spirit of the sweat-house, or the deity of the sweat-bath. The name is the same in Shuswap and Thompson, and seems to mean "open face," or "face not hidden" (uncovered).

³⁶ A small variety of bird which attacks other birds. I had no chance to identify it.

³⁷ See Teit, Traditions of the Thompson River Indians, pp. 26, 51.

He entered one house after another, feeling very angry and disconsolate. He could find nothing to eat, except in the houses of Raven and Crow, who had left some fish-skins and other scraps. In the last house he noticed a large basket turned mouth down, and, feeling angry, he kicked it over, saying, "Why did the people not take this with them also?"

He was surprised to find his old grandmother hidden underneath. She was too old to follow the people, and they had left her behind. He was going to kick her also, but she said to him, "Do not kick me! I will be of service to you, and will teach you many things. Here is a lighted slowmatch. Kindle a fire with it."

Then the old woman taught him how to make bows and arrows, and shoot game, that they might have food and clothing. At first he shot mice, rats, chipmunks, and squirrels; and the old woman sewed their skins together and made robes. Then he shot many bright-plumaged birds, and she also sewed their skins into robes. On sunny days the lad delighted in spreading out all his many robes in the sunshine, and admiring them. At last he was able to shoot large game, such as deer, sheep, elk, and bears, and he soon had great stores of skins, fat, and meat.

Now Porcupine happened to come along. When he saw the large amount of provisions the lad had collected, he hurried away to the people's camp, and told them that Hu'pken was now a great hunter, and had large stores of meat and fat, and many beautiful robes. The people would not believe Porcupine's story, and sent Crow to verify the report.

When Crow arrived, Hu'pken invited him to eat, and asked him how the people fared. Crow said, "We have found very little game, and are all starving." When he returned, Hu'pken gave him a present of fat to carry to the people; but Crow hid it and told the people that Porcupine had lied about the lad, who was just as poor as when they left him. During the night Crow got up and fed his children with some of the fat. The children quarrelled over the food, and made much noise as they ate; and the people, hearing them, said, "Crow is feeding his children secretly."

Crow returned to Hu'pken and got more fat, which he fed to his children, so that they became fat and sleek. Then the people said, "Crow must feed his children on good food, for they are getting fat, while our children are getting thin. We know he is no hunter, and cannot kill game. Where does he obtain his supply?" They sent Flying-Squirrel to watch Crow. He clad himself in black moss, and, keeping in the timber, walked along unobserved, and watched Crow's camp. Seeing Crow's children eating fat³⁸ he returned and informed the people, who asked Crow where he got it, and, he acknowledged that he received it from Hu'pken. The people then returned to their village, where they were feasted by the lad. Hu'pken had filled the houses of Crow and others who had left him food, but he put no meat into the houses of those who had not pitied him.

³⁸ Some say Flying-Squirrel heard Crow's children eating, and their father scolding them for making a noise, as the people would hear them and become suspicious. He ran out and seized some of their food, which he brought to the people, who discovered that it was fat.

APPENDIX ‘C’: Data collection tools

RESEARCH QUESTIONS (approved by community partner):

Theme: Lands	
<p>Question 1: The first question gets to the body of law on land and natural resource issues such as access, harvesting, inheritance, etc.</p>	
<p>Question 2: The second question is trying to get at the legal principles that may be within stories about land and natural resources that are not about conflict.</p>	
<p>How do people within the Secwepemc legal tradition respond to disputes/conflicts concerning lands or resources?</p>	
Internally?	Externally?
	<ul style="list-style-type: none"> - land? - water? - to animals used? - plants?
<p>Subquestion: What are the consequences of not responding to disputes/conflicts concerning lands or resources appropriately?</p>	
Internally?	Externally?
	<p>Subquestion: What are the consequences of ignoring/disrespecting these responsibilities/obligations to (land, water, animal use, plants etc)?</p>

STUDENT GUIDELINES:

1) Introduction

Start by acknowledging the territory you have been invited to, letting them know you are honoured to be invited to their territory. This serves to show your respect for them and acknowledges their presence and time

Then introduce who you are and where you are from. Then you can talk about your community and education. Providing information about yourself and your community serves to bring you in and not be a stranger. Here you may also explain why you are doing this work.

Here is an appropriate place to offer and explain any gifts you are providing.

2) Group Members Introduction

A good way to do this is to start by doing a round and maybe give people a topic to say something interesting about themselves. Then maybe mention your academic self and whatever community experience you have that is relevant.

3) Explain the Project

Some of this will have been introduced during step one. Start by asking the witnesses/interview participants what law means to them? Explain what you mean by Indigenous Legal Traditions. Take time to explain what you are doing, what the project is and why it is. Be attentive to the way people are responding and give space for participants to voice their concerns.

- Concern: Common response is “we don’t have laws.” To this, explain what you mean, don’t challenge the assertion. This means you have work to do to explain the project. Saying something about how there was always a way of doing things, always a way to know right from wrong is a possible way to talk about law.

4) Explain the Why of the Project – what the research will be used for

Explain what you are doing is for the benefit of the community and whatever is produced stays with the community. Explain that you have been invited to work with the community to articulate concepts and principles and document them for the community’s use and benefit, such as for governance, policies, programs or regulations. It is completely up to the community to decide how to use it. Note also that it will be shared with UVic to help build teaching materials (JD in Indigenous Laws). .

- Question: “How will this be used against us?” You have to be honest and say you aren’t sure, but that the final information is their work for the community and it is for their community to determine how to use it.
- Question: “What can we do with this work?” Possibly to inform governance, policies, programs.
- Question: You may face critique of the process and method. One response is to say “this is just the beginning and we are here to facilitate this process in a way that makes indigenous law accessible to the community. The method is not indigenous – it is a western method that we use to understand the stories that are heard by a court, which helps us understand Canadian law. We are using the same method to look at your stories to help us to understand the legal principles that guide your community. We know it isn’t indigenous and we know it isn’t perfect, but we find value in this method.” Remind participants that we are only looking at a tiny slice in a particular area of law. It is something tangible to say that these legal principles are coming from old places and being passed on through the generations they are able to be dynamic and flexible in the face of change. They do have the ability to be applied to real human problems.

5) Ask if Anyone has Any Questions

Allow for silence and percolation time.

- Question “I don’t know anything.” Remind them that we are inviting them to share their knowledge. That we bring the method by they bring what they know – we won’t be asking them for anything they don’t already know.

6) Consent Form Signing

We are inviting the community to share their knowledge and have developed this method, as we said, to document legal principles that order indigenous societies. In order for us to do this ethically and professionally, we must use consent forms. The forms give us a way of being accountable both to the community and the university.

- can be confidential – “keep it secret that you participated”
- don’t have to answer anything you do not want to
- print legibly, ensure names are on the consent forms, be diligent and detailed.
- print out a lot of copies and leave one with the community

At the end of the day, we want to understand the legal principles so we can move them into the practical realm; to be used in the community to understand, approach and resolve social issues. We may struggle with the methodology but we must continue moving forward so we have something tangible to work with.

If they do agree to signing the form, start the recording and ask them to consent while recording, stating their name.

The next two steps are pieces to help you through the interview and wrap it up

7) The Actual Interview

Start recording – don’t forget to use creative ways to say their names for transcription purposes.

The material you will be using in each interview should be prepared ahead of time. In our case the community members will set up the interviews and we will need to determine which stories to focus on and the major topics you would like to hit. There are also questionnaires that will serve as a guide if the conversation stalls.

Generally, when you begin this part of the interview, you can begin with one story. Read it and gather the groups perspective, conversation will organically flow from there and you will have to continue moving the group through the stories, topics and your questions. Allowing them to ask questions along the way as well.

- Issue: someone starts disclosing traumatic personal experiences. You have to be abrupt and interrupt. Note their courage and thank them for wanting to share, but let them know you are not in a position to help and don't want to be the person to make them feel bad.
- Issue: person says they know nothing about stories. Ask about family, bring their lives into the conversation – “who in your family made the decisions about X”, then ask “why.”

8) Wrapping up the Interview

Thank everyone once again for their insights and the time they took to share their knowledge with us. Ask them if they have any final questions. Give contact information in case anyone has any questions later on.

CASE BRIEF OUTLINE (for each story):

- What are the facts that matter to the research question?
- What is the main problem or concern in the story/oral history?
- How was the problem or concern responded to?
- What were the reasons for this legal response?
- Bracket information for which there is not yet a terms of reference.

SYNTHESIS FRAMEWORK (for all the stories):

One of the key factors in the analysis is not to just look for the patterns and similarities in the stories (i.e., cases), but to also look for the dissimilarities. It is just as important to discern when a decision was different from the pattern, and to look for the reasons behind the difference. This means identifying the specific factors in the case and examining the “why” and “how” behind the reasoning processes.

- (vi) *Legal Processes*: Final decision-makers and the procedural steps for determining a response or action.
- (vii) *Legal Responses and Resolutions*: Principles governing appropriate responses to legal/human issue.
- (viii) *Legal Obligations*: Principles governing individual and collective responsibilities.
- (ix) *Legal Rights*: Procedural and substantive.
- (x) *General Underlying Principles*

ANNEX 'D': Additional data

Question 1: How would you define “leadership” according to Secwepmec law? Who are the leaders - or how does a person become a leader - in Secwepmec society? Can the elders and the experts be considered in certain circumstances as leaders?

Answer 1: While there is definitely overlap in real life, we prefer to keep elders and experts separate from leaders as a category. The roles do appear to be distinct. In the majority of stories, leaders are chiefs. Chiefs were historically trained from a very young age, and either recognized due to specific traits or hereditary lineage. However, if someone who had a hereditary chief’s lineage was determined as appropriate to assume a leadership role, he or she would not be trained. Now, there are complexities, including the *Indian Act*, elected chiefs, and tribal councils – and present day Secwepmec legal institutions. How these changes shape or reshape the definition of leadership is an important, but complex question that is for communities to take up and examine. It is also a question that will be determined through the application of Secwepmec law and its deliberation.

Question 2: Using the data you have gathered so far, would it be possible to provide an example of a decision-making process that was applied in the case of a project affecting the entire community (or a specific group within)? And an example of how the community dealt with the situation of a person - or a group of persons – having violated their obligations in relation to the land?

Answer 2: By the end of this project, this should be possible with permission from the tribal council. At this point in the research, we do not think it would be responsible to do this. The Secwepmec participants are looking toward implementation of their laws relating to lands and resources, so this will be an ongoing process.

Question 3: In your report, according to Secwepmec law, “everyone must be a part of decisions regarding the land” and “have a right to participation”. However, Secwepmec law also provides that “the scope of the problem or concern must be assessed in order to determine the decision-makers”, and that “depending on the scope of the problem, consultations may include knowledgeable people, a specific group, or the whole community”. How do you reconcile these rules and principles?

Answer 3: This is a very good question. One of the issues with interviews we have found repeatedly, in all communities, is that elders often state things such as “everyone” and “must” when in fact, there are other principles and case scenarios that clearly show, as you have flagged here, that these are not hard and fast rules, but rather are aspirations to be deliberately balanced against other aspirations and principles including efficiency, practicality and proportionality. This principle might be better worded as, “in Secwepmec law, everyone having a right to participation and taking part in a decision is seen as ideal. This ideal is balanced against proportionality and specific groups’ rights and responsibilities to specific resources. The result is

that the actual scope of participation depends on the scope and location of the particular resource issue”. We are continuing to work with these clarifications and are adapting our methodological framework as we are learning with the community.