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

**Authoritative Decision makers:** Who had the final say?

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Discussion:

a. Medicine People

**General Re-Statement of Law:**
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.

- When a man kills his wife, Meskino, acting on the guidance of his Mistabeo (a spiritual helper in the shaking tent), investigates, then publically tells the man he knows the truth, what he did was wrong, and he will not live long as a result (he dies within the year): *Killing of a Wife*¹
- When 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: *Anway*²
- When 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 Thunderbirds through spiritual means, who then resolve the problem: *Water Serpent*³
- When an old man with spiritual gifts dreams of dangerous people approaching (‘Hairy Heart People’), he warns his camp and uses his power to hide them so they stay safe: *The Hairy Heart People*⁴
- When people grew concerned about a woman potentially becoming a wetiko, and hence dangerous, they asked a “tent-shaker” to cure her: *AWN Interview #2*⁵
- When people were being attacked by wetikos, 2 medicine men appeared from outside the community. They 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”: *AWN Interview: Marie McDonald*⁶

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⁵ AWN Anonymous Interview #2, June 17, 2012, at 17.
⁶ AWN Interview, Marie McDonald, June 25, 2012, at 7-8.
Further Questions:

In Anway, Water Serpent, and AWN Interview #1, people seek out and ask a medicine person for help. In AWN Interview #2, the medicine people appear. How do people discern who the appropriate medicine person is, or if a medicine person who shows up is good?

While recognizing there is not always a bright line between the ‘spiritual’ and the ‘non-spiritual’, does the harm or threat need to have a spiritual cause in order for a medicine person to be the appropriate decision maker?

Can this principle about medicine people as authoritative decision-makers be analogized or be transferable to people with non-spiritual specialized knowledge? For example, today, would someone with specialized knowledge or power related to religion, psychology or western medicine, be sought out and relied on as a legitimate authoritative decision-maker?

b. Elders

**General Re-Statements of Law:**

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.

- When there were safety risks to an isolated family due to a wetiko being nearby, the elders from one community direct community members to go get them and bring them back to their place before nightfall in order 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”: AWN Interview: Marie McDonald\(^7\)
- When faced with a serious threat, medicine people and ‘wise ones’ direct the ‘wisest one’ to act in order to resolve the harm (here by communicating with Thunderbirds): Water Serpent\(^8\)
- When someone showed signs of becoming a wetiko, elders recognized this and took her away from the community to someone who could perform the shaking tent ceremony necessary to resolve the issue: AWN Interview # 2; AWN Interview: Joe Karakuntie\(^9\)

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

- One Elder explained that Elders used to play a major part in dispute resolution by consulting with all the parties involved: AWN Interview: Joe Karakuntie\(^10\)
- 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

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\(^7\) AWN Interview, Marie McDonald, Supra Note 6, at 5.
\(^8\) Water Serpent, Supra Note 3.
\(^9\) AWN Interview #2, Supra Note 5, at 13 and AWN Interview: Joe Karakuntie, June 25, 2012, at 6.
\(^10\) Ibid, at 3-4.
remain. However, the family left anyway: *AWN Interview #4*¹¹

- In a historic case, when a married couple decided to separate, first extended family members, then elders tried to persuade them to reconcile. However, the couple separated anyway: *AWN Interview #4*¹²

- In a historic case, when a man was creating conflict by inappropriately getting mad at another man for fishing for necessity on his trap line, elders confronted him about this. In this case the elders resolved it: *AWN Interview #4*.¹³

**Further Questions:**

In all of the published stories and interviews, except 1 (Grandfather taking a woman to a shaking tent- *AWN Interview #2*), it appears that elders acted collectively when they acted as authoritative decision-makers. Is the authority dependent on a group of elders reaching a decision together? Would one elder, acting alone, hold the same authority? Are there exceptions?

The reason given for the elders’ decision being unquestioned was that they knew more than everyone else. Is the authority dependent on knowledge?

c. Family Members

**General Re-Statements of Law:**

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.

- 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: *Indian Laws*¹⁴

- Where a woman has become an incurable *wetiko*, her only surviving family member, the youngest brother, kills her by chopping off her finger: *Mistacayawis*¹⁵

- When his younger brother kills his wife out of jealousy, the older brother of the wrong-doer confronts him and then goes on a long journey to make amends to her family, before returning with their forgiveness: *The Thunder Women*¹⁶

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

- Generally, one elder 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

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¹² Ibid, at 8 and 12.
¹³ Ibid, at 26-27.
¹⁴ Edward Ahenakew, “Indian Laws,” *Voices of the Plains Cree*, (Toronto: McClelland and Stewart Limited, 1973) at p 34 [*Indian Laws*].
sun went down: *AWN Interview: Marie McDonald*¹⁷

- In a historical case, the father of one family determined that as a result of the accretion of bad things and of malicious gossip his family would permanently leave the community: *AWN Interview # 4* ¹⁸

**Family Members take a persuasive role in resolving interpersonal conflict.**

- In the above historic case, first extended family members, then elders tried to persuade the family to remain. However, the family left anyway: *AWN Interview #4* ¹⁹
- In a historic case, when a married couple decided to separate, first extended family members, then elders tried to persuade them to reconcile. However, the couple separated anyway: *AWN Interview #4* ²⁰

**Further Questions:**

Do family members have an obligation to attempt to resolve harms caused by other family members and prevent further harms?

d. Group

**General Re-Statements of Law:**

**Important Decisions for Community Safety are made collectively by a group.**

- The animals come to a collective decision as to how to get rid of the Giant Skunk who was endangering them all: *Mi-She-Shek-Kak* ²¹
- After agreeing to relocate once under threat, the AWN communities decided collectively not to relocate a second time when asked to do so by the Canadian government: *AWN Interview: Joe Karakuntie* ²²
- When a woman was becoming increasingly dangerous, the “overall community” determined that she had to be removed from the community for healing: *AWN Interview #2* ²³
- In a situation where a runaway had been spotted near a homestead and a course of action needed to be decided for those present, one interviewee explained “it would probably be a group decision” and “It always kind of went to the oldest” or who had the most relevant experience: *AWN Interview: Robert Wanyandie* ²⁴

**Further Questions:**

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¹⁷ *AWN Interview: Marie McDonald, Supra Note 6, at 2.*
¹⁸ *AWN Anonymous Interview #4, Supra Note 11, at 3-4.*
¹⁹ *Ibid, at 5.*
²⁰ *Ibid, at 8 and 12.*
²¹ Louis Bird, “Mi-She-Shek-Kak (The Giant Skunk),” *Telling our Stories* at p 73 [Mi-She-Shek-Kak].
²² *AWN Interview: Joe Karakuntie, Supra Note 9, at 3.*
²³ *AWN Anonymous Interview #2, Supra Note 5, at 20.*
Who is considered part of the group or collective? Is the entire community? Everyone available? Heads of families? A leader from each community?

Is there age privileging in group decisions generally? Or is this more based on specialized or appropriate knowledge? For example, in AWN Interview #5, the decision is discussed as something the group makes, but also as something that would go to the oldest person there. How is this best understood?
b. **Procedural Steps:** What were the steps involved in determining a response or action?

**General Re-Statements of Law:**
While the order of these steps is not rigid, and not every step is present in every account, there are several steps that emerge as important for ensuring a response or resolution is seen as legitimate and effective. These are:

1. **Recognizing Warning Signals that harm may be developing or has occurred:**
   - The Hairy Heart People; Mistacayawis; AWN Interview #2; Killing of Wife;
   - AWN Anonymous Interview #5; AWN Interview: Marie McDonald.

2. **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 Interview #1; AWN Interview: Marie McDonald; AWN Interview #2.

3. **Seeking guidance from those with relevant understanding and expertise:**
   - Indian Laws; Anway; The Water Serpent; The Thunder Women; The Hairy Heart People; AWN Interview #1; AWN Interview #4; AWN Interview: Joe Karakuntie; AWN Interview #2.

4. **Observation, and Corroborating Evidence:** The Hairy Heart People; AWN Interview #2; The Killing of a Wife; Mistacayawis.

5. **Public Confrontation and Deliberation by Appropriate Decision-makers when possible:** Indian Laws; Killing of a Wife; Mistacayawis; AWN Interview #4; AWN Interview: Joe Karakuntie; Thunderwomen; AWN Interview #1; AWN Interview #2.

6. **The appropriate decision-makers are identified and implement a response. This may be a pre-emptive response in some cases:** Indian Laws; Anway; The Water Serpent; Mi-She-Shek-Kak; Whitiko and the Weasel; Mistacayawis; AWN Interview #2; AWN Interview: Joe Karakuntie.
Discussion:

General Re-Statements of Law:

Step 1: 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:

- A woman recognizes her husband may be becoming dangerous again after many years when he tells her he thought a person was an animal (distorted thinking): *The Hairy Heart People*[^25]
- A man recognizes something may be wrong when a woman goes hunting with first one brother, than another, 2 days in a row, and returns without them, telling others they both got lost, and investigates further (suspicious story): *Mistacayawis*[^26]
- A couple who practices traditional medicine noticed several behavioral signs a woman was turning wetiko, despite the fact her husband denied this and refused offers to help for a long time, so kept observing and offering help (strange behavior included oddly smiling, wrapping herself in black blanket, keeping her whole house dark, and refusing to get out of bed): *AWN Interview #2*[^27]

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

- An old man gifted with medicine sees that dangerous people (the Hairy Heart people) are nearby through a dream: *The Hairy Heart People*[^28]
- Meskino’s spirit helper (his Mistabeo) tells him a certain man has killed his wife, which prompts him to investigate the man’s story further: *Killing of a Wife*[^29]
- A man recognizes his sister is becoming dangerous (turning wetiko) when he is warned by spirits visiting him in a dream. More generally, elders and medicine people may also have visions that indicate to them that a wetiko is near or that someone is turning wetiko: *AWN Anonymous Interview #2*[^30]
- One Elder stated that, historically, medicine people could sense when traditional enemies (in this case, Dogrib) were in the area: *AWN Interview #5*[^31]

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:

- One Elder stated that observations of nature (in this case, the wind blowing backwards)

[^25]: *The Hairy Heart People*, Supra Note 4.
[^26]: *Mistacayawis*, Supra Note 15.
[^27]: *AWN Anonymous Interview #2, Supra Note 5*, at 22-26.
[^28]: *The Hairy Heart People*, Supra Note 4.
[^29]: *Killing of a Wife*, Supra Note 1.
[^30]: *AWN Anonymous Interview #2, Supra Note 5*.
[^31]: *AWN Anonymous Interview #5, June 22, 2012*, at 3.
can be a warning signal someone might be turning wetiko: *AWN Interview: Marie McDonald*\(^{32}\) See also *AWN Interview #2* (examples being the weather being colder, and a horse behaving oddly and vomiting ice)\(^ {33}\)

- The importance of observing the natural world for warning signals was shared, on a general level by one interviewee. He explained that that in the bush, someone with enough knowledge can recognize warning signs from listening to animals warn each other, giving 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 them 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”: *AWN Interview: Robert Wanyandie*\(^ {34}\)

### General Re-Statements of Law:

**Step 2: Warning others of the potential harm and taking appropriate safety precautions to keep people within the group as safe as possible.**

- When an old man sees, through a dream, that there were many harmful people (in this case, ‘hairy heart people) in the area, he warns his camp and uses his power to hide them and lead the hairy hearts 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: *The Hairy Heart People*\(^ {35}\)
- When she observes her husband showing signs of becoming harmful (a ‘hairy heart’) again, his wife warns her brothers to watch out for him: *The Hairy Heart People*\(^ {36}\)
- In an old story where a dangerous and feared Giant Skunk was roaming the land, the animals developed rules to avoid any 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: *Mi-She-Shek-Kak*\(^ {37}\)
- In one case, where the younger sister of a woman killing others (as a wetiko) fails to warn the rest of the family, she is actually executed once the murders are revealed, suggesting this failure to warn was considered unacceptable by others: *Mistacayawis*\(^ {38}\)

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32 AWN Interview: Marie McDonald, Supra Note 6, at 4.
33 AWN Anonymous Interview #2, Supra Note 5, at 13.
34 AWN Interview: Robert Wanyandie, Supra Note 24, at 3-7.
35 The Hairy Heart People, Supra Note 4.
36 Ibid.
37 Mi-She-Shek-Kak, Supra Note 17.
38 Mistacayawis, Supra Note 15.
• 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 them even if they do not know who exactly the victim will be: *AWN Interview #1* 39

• Similarly, another Elder 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: *AWN Interview: Marie McDonald* 40

• Historically, people would also gather together in a larger group for safety. An example of this was that, 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: *AWN Interview: Marie McDonald* 41

• Historically, medicine people warned others when they sensed the Dogrib people (traditional enemies people feared would kidnap women) were near. They sewed red cloths on the tipis and people gathered together at night to keep woman safe when there were warning signs Dogrib people were nearby: *AWN Interview #5* 42

• One Elder stated that when her grandfather was warned by spirits visiting him in his dreams that his younger sister was becoming harmful (in this case, ‘turning wetiko’) he knew he had to watch her and keep the community safe:

  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.: *AWN Interview #2* 43

• When the same Elder became aware that a women 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: *AWN Interview #2* 44

• Protection could be very concrete – in a historical case, where a woman with two small children was turning wetiko, her father brought her for healing with a gun trained on her to protect her children in case she suddenly attacked them in that state: *AWN Interview #2* 45

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39 *AWN Anonymous Interview #1*, June 17, 2012.
40 *AWN Interview: Marie McDonald, Supra Note 6, at 4-5.
41 Ibid, at 6.
43 *AWN Anonymous Interview #2, Supra Note 5.
44 Ibid.
General Re-Statements of Law:

Step 3: Seeking guidance from those with relevant understanding and expertise

When faced with risks 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:

- When a grieving father is upset that a young man (E-pay-as) will not pay him horses for compensation of the loss of his wife and child in a retaliatory Blackfoot raid provoked by E-pay-as’s reckless actions, he consults with those in respected roles who enforce rules for safety and hunting (in this case, the ‘Dancers’ and ‘Providers’): *Indian Laws*[^46].
- When there is an increasing amount of very dangerous people (in this case, cannibals) in the area, endangering the community, the people turn to Elders about what to do: *Anway*[^47].
- 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: *The Water Serpent*[^48].
- When an older brother needs to deal with a harm committed by his younger brother against a Thunder Woman, he consults with an Elder who tells him where they are and what he needs to reach them: *The Thunder Women*[^49].
- People rely on the guidance of an old man with spiritual gifts to keep them safe from the impending harm from dangerous people in their area (in this case, ‘Hairy Hearts’): *The Hairy Heart People*[^50].
- One Elder stated that it is common for people to go to Elders for help when they need to resolve a conflict: *AWN Interview #1*[^51].
- Historically, 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: *AWN Interview #4; AWN Interview: Joe Karakuntie*[^52].
- 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”: *AWN Interview #2*[^53].
- After they offered to help many times, and rebuffed, the husband of a woman turning wetiko finally requested help from an couple who practices traditional medicine through his wife’s parents, and later himself. The elder and her husband came and smudged the woman, and were able to heal her and prevent her from completely turning wetiko once

[^46]: *Indian Laws*, Supra Note 14, at 34.
[^47]: *Anway*, Supra Note 2.
[^48]: *The Water Serpent*, Supra Note 3.
[^49]: *The Thunder Women*, Supra Note 16.
[^50]: *The Hairy Heart People*, Supra Note 4.
[^51]: *AWN Anonymous Interview #1*, Supra Note 39.
[^52]: *AWN Anonymous Interview #4*, Supra Note 11, at 8-10; *AWN Interview: Joe Karakuntie*, Supra Note 9, at 3-4.
[^53]: *AWN Anonymous Interview #2*, Supra Note 5.
they were invited to help (although no one can be completely healed and must be watched): *AWN Interview #2* 54

- On a general level, one elder, who is often called upon to be a decision-maker, 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: *AWN Interview #2* 55

- On a general level, 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: *AWN Interview #4*. 56

**General Re-Statements of Law:**

**Step 4: Observation, and 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.

- When a woman recognizes warning signs her husband may be becoming dangerous and warns her brothers, they keep a close eye on him when they are out hunting: *The Hairy Heart People* 57

- One Elder explained that people who are capable or strong enough to be near someone turning wetiko will observe them: *AWN Interview #2* 58

- In one instance, an couple who practices traditional medicine observed a woman for two years because they noticed behavioral signs she was turning wetiko, despite the fact her husband denied this and refused offers to help for a long time: *AWN Interview #2* 59

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

- 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: *Killing of a Wife*. 60

- When a woman goes hunting with first one brother, than another, and tells others they both got lost, a man becomes suspicious about a woman’s story so he follows her to observe her and confirm his suspicions (in this case, she is a wetiko and has killed and eaten them): *Mistacayawis* 61

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54 *AWN Anonymous Interview #2, Supra Note 5*, at 24-26.
56 *AWN Anonymous Interview #4, Supra Note 11*.
57 *The Hairy Heart People, Supra Note 4*.
58 *AWN Anonymous Interview #2, Supra Note 5*.
60 *Killing of a Wife, Supra Note 1*.
61 *Mistacayawis, Supra Note 15*.
Historically, when it was reported or suspected that a dangerous person (in this case, a desperate runaway from the local jail) was nearby, people would be sent to look for evidence of his presence in the area, including identifying missing items: *AWN Interview: Robert Wanyandie*  

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**General Re-Statements of Law:**

**Step 5: 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:

- After a man’s reckless raid on the Blackfoot brought harm on others in his camp, his father confronts him. When the same man refuses to pay compensation to the husband and father of two people killed in the retaliatory Blackfoot raid, and leaves the camp, the ‘Dancers’ and ‘Providers’, both respected groups, go to his camp and confront him about his actions: *Indian Laws*  

- After Meskino, a medicine man, investigates and confirms a man has killed his wife, he publically confronts him and brings forward the truth around his wife’s murder: *Killing of a Wife*  

- When a man investigates and sees proof a woman is killing others (as a wetiko), he and the entire camp confront her directly: *Mistacayawis*  

- One elder stated that, generally, when a person was suspected of doing wrong, elders would confront him or her and ask them if it was true: *AWN Interview: Joe Karakuntie*  

- In a historic case, when 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 man. 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: *AWN Interview #4.*  

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

- Where 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 leaving to resolve the issue. When he returns, he tells the younger brother he can never do what he has done again: *Thunderwomen*  

- Historically, when there was interpersonal conflict within a family or between people

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63 Indian Laws, Supra Note 14.  
64 Killing of a Wife, Supra Note 1.  
65 Mistacayawis, Supra Note 15.  
66 AWN Interview: Joe Karakuntie, Supra Note 9.  
67 AWN Interview #4, Supra Note 11, at 26-27.  
68 ThunderWoman, Supra Note 16.
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 confrontation were softened because people loved each other and depended on each other for survival. In one case, where 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: *AWN Interview #4*⁶⁹

- 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: *AWN Interview #1*⁷⁰
- 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: *AWN Interview #2*⁷¹

### General Re-Statements of Law:

**Step 6: 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:

- 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: *Indian Laws*⁷²
- When people ask the Elders for help regarding impending danger from cannibals, the Elders decide it is beyond their power to resolve and so use a shaking tent to seek further help and call for Anway, an expert cannibal killer: *Anway*⁷³
- Where people seek help dealing with a dangerous water serpent, the medicine people and wise ones decide it is beyond their power to resolve. They ask the ‘wisest one’ to use a shake tent to ask the Thunderbirds for help: *The Water Serpent*⁷⁴
- When faced with the need to overcome a Giant Skunk, the animals discuss things and select the wolverine, as he is the only one who has the necessary physical attributes to: *Mi-She-Shek-Kak*⁷⁵
- In a Wasakeechaak story, Wasakeechaak identifies Weasel as someone capable of

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⁶⁹ *AWN Anonymous Interview #4*, Supra Note 11, at 11.
⁷⁰ *AWN Anonymous Interview #1*, Supra Note 39, at 17-18.
⁷¹ *AWN Anonymous Interview #2*, Supra Note 5, at 27.
⁷² *Indian Laws*, Supra Note 14.
⁷³ *Anway*, Supra Note 2.
⁷⁴ *The Water Serpent*, Supra Note 3.
⁷⁵ *Mi-She-Shek-Kak*, Supra Note 17.
saving him by killing a giant wetiko: *Whitiko and Weasel*

- When a woman who had killed many people (as a wetiko) wants to be executed, she identifies the only person who can kill her, in this case, a young boy, and instructs him on how: *Mistacayawis*.

- As pointed out above, one Elder explained that only certain people were capable or strong enough to be near to observe someone turning wetiko: *AWN Interview #2*.

- In the story of the Elder’s grandfather seeking help for his younger sister turning wetiko, the Elder explained 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: this was a pre-emptive, or pro-active response) *AWN Interview #2*.

- When a woman was turning wetiko, and others had tried to help unsuccessfully through prayer, she was accompanied to a shake tent by 2 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: this was a pre-emptive, or pro-active response): *AWN Interview: Joe Karakuntie*.

- One Elder 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”: *AWN Interview: Joe Karakuntie*.

For Responses, see: Legal Responses and Resolutions

Further Questions:

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77 Mistacayawis, Supra Note 15.

78 *AWN Anonymous Interview #2*, Supra Note 5.

79 Ibid.

80 *AWN Interview: Joe Karakuntie*, Supra Note 9, at 6.

81 Ibid, at 3-4.
2. Legal Responses and Resolutions: What principles govern appropriate responses to legal/human issue?

**General Re-Statements of Law:**

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

**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: *The Giant Skunk; 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 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 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 Interview #2; AWN Interview #5; AWN Interview #4.*

**The Principle of Acknowledging Responsibility as Remedy:**
- A Wrong-doer can remedy harms by taking responsibility, apologizing, and seeking forgiveness directly from the person harmed: *AWN Interview #1; AWN Interview #4.*
- A Wrong-doer, or their family, can remedy harms by paying compensation or restitution directly to the person harmed, or to their family: *Indian Laws; AWN Interview #1.*

**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 Interview #2; AWN Interview #1.*
- Re-integration includes ongoing observation and monitoring the person for warning signs he or she may be becoming harmful again: *The Hairy Heart People; AWN Interview #2.*

**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*
Interview #1; AWN Interview #4.
- Individuals use their knowledge of this principle to guide their own actions, and avoid causing or escalating harm: AWN Interview #5; AWN Interview: Robert Wanyandie.
- However, in some cases, people may take action to facilitate these consequences to respond to harms: AWN Interview #4.
- Natural and Spiritual Consequences for misuse or bad use of Medicine can also fall on the wrongdoer’s family: AWN Interview #1; AWN Interview #5.

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: The Giant Skunk; Anway; The Hairy Heart People; Mistacayawis.

Discussion:

General Re-Statements of Law: The Principle of Healing

When someone is becoming or has become harmful or dangerous to others, the predominant and preferred response is healing of that person:
- When a father and a son known as hairy hearts, who kill and eat people, arrive at a large camp, the medicine man responds by is to invite them into his lodge, which heals them for quite some time (by melting the ice in their hearts), and they are welcomed into the community, contributing and even marrying women: The Hairy Heart People82
- Where a woman was becoming increasingly dangerous and bothering a lot of people (in this case, turning wetiko), 2 elders take her to a shaking tent and “they probably healed her…healed her spirits”: AWN Interview: Joe Karakuntie83
- 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 the response to this he knew he needed to take was 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: AWN Interview #284
- Where a woman was becoming harmful to herself and others (in this case, turning wetiko), her husband finally sought help for her, after trying to pretend everything was fine for over two years. An 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 (although no one can be healed completely, and must be watched for life): AWN Interview #285

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82 The Hairy Heart People, Supra Note 4.
83 AWN Interview: Joe Karakuntie, Supra Note 9, at 4-5.
84 AWN Anonymous Interview #2, Supra Note 5.
85 AWN Anonymous Interview #2, Supra Note 5, at 24-26.
One elder strongly and 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 where 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, “these are our family members”: *AWN Interview #2*  

Further Questions:

Elders often refer to healing through spiritual means. Recognizing there is no bright line between the spiritual and other aspects of life, to what extent is this response principle equally predominant and preferred in relation to other underlying causes of people becoming harmful?

People who need spiritual healing are taken to those with the relevant spiritual expertise and ability to heal them. Who has the relevant expertise and ability to help with healing in areas of harm that overwhelm many communities today, such as addictions, abuse and intimate violence? What resources are needed for communities to effectively be able to implement this principle today and access healing for those who need it?

Are there partnerships with the Canadian legal or mental health systems that might enable communities to effectively access expertise and ability to implement this principle?

How and when is it determined that a person is beyond healing, or healing is not the appropriate response principle under the circumstances?

**General Re-Statements of Law: 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:

- When faced with the threat of the Giant Skunk, the animals 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: *The Giant Skunk*  

- When faced with the threat of Hairy Heart People, who were powerful and cannibalistic, a medicine man first hides everyone under a moose hide (using medicine) to avoid the Hairy Heart People until they pass by: *The Hairy Heart People*  

- One community member explained his understanding that, generally, a community

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86 Ibid, at 21.
87 Mi-she-shek-kak, Supra Note 17.
88 The Hairy Heart People, Supra Note 4.
response to perceived danger is to relocate to a place with more people for safety: *AWN Interview: Robert Wanyandie*  

- 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: *AWN Interview: Robert Wanyandie*  
- Where 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: *AWN Interview: Marie McDonald*  
- Where a woman had brought harm to many of her family and the community recognized she was turning wetiko, although they preferred to heal her, everyone avoided her because they were afraid of her causing harm to them: *AWN Interview: Joe Karakuntie*  

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

- Where a woman was becoming increasingly dangerous (turning wetiko), two elders who she respected, one of whom was her brother, took her away from her community until she could be healed. It was explained these two elders took her because they had some control over her behaviour due to her respect for them: *AWN Interview: Joe Karakuntie*  
- Where a man’s sister was becoming more and more dangerous to others (becoming wetiko), with great difficulty, he 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”: *AWN Interview #2*  

**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 his understanding that avoidance can actively be used by individuals to send various messages. Active avoidance can signal that “I’m not comfortable with this” or the absence of support for an idea or proposal. It might mean that “somebody’s integrity is in question”. In addition, if a victim of a 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: *AWN Interview #4*  
- In a historic story, where a marital relationship ended, after multiple choices were given by multiple people to resolve the conflicts, and the community believed this was the

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89 *AWN Interview: Robert Wanyandie, Supra Note 24, at 10-12.*  
90 Ibid, at 8.  
91 *AWN Interview: Marie McDonald, Supra Note 6.*  
92 *AWN Interview: Joe Karakuntie, Supra Note 9, at 8.*  
93 Ibid, at 6.  
94 *AWN Anonymous Interview #2, Supra Note 5, at 13.*  
95 *AWN Anonymous Interview #4, Supra Note 11, at 1, 4, 15 and 20.*
result of one person failing to fulfil their obligations within that relationship, the community actively avoided that person to show their disapproval: *AWN Interview #4*

- Where a man engaged in an incestuous relationship with his daughter (connected to the misuse of medicine), he and his family was actively avoided and shunned by the rest of the community. This was a rare case of instant avoidance, because the intervention step was being taught all along the teachings that were so strongly against this: *AWN Interview #4*

- Avoidance can be active, such as choosing to permanently separate from the community. In a historical story, a very 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, and because he announced his reasons for leaving and left in a very public way, and this was witnessed by many people: *AWN Interview #4*

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

- Where a conflict arose over whether E-pay-as should pay compensation for the loss of life in a Blackfoot raid he triggered, he branched 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 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): *Indian Laws*

- In a historical situation where local people were using a man’s trap line without permission, he decided to let them continue doing so, avoiding a conflict, out of generosity and because he had a good heart: *AWN Interview #2*

- In a historical situation where two cousins, one of whom was quite big and mean, often fought, but then would make up again and everything would be fine, after trying to talk to them, the rest of the community responded by simply avoiding them whenever they were fighting: *AWN Interview #5*

- In the case of the permanent separation by a respected community member, above, the interviewee explained 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 also with the harmful person’s relations, including parents, uncles, and aunts etc., which could have been seen as disrespectful: *AWN Interview #4*

96 Ibid, at 11.
97 Ibid, at 19-20.
99 Indian Laws, Supra Note 14.
100 AWN Anonymous Interview #2, Supra Note 5.
101 AWN Anonymous Interview #5, Supra Note 31.
102 AWN Anonymous Interview#4, Supra Note 11, at 6.
In a historical story, where a strange group was observed in the area, after it was
determined 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 made a decision that
they would not attack the party, even though they were in their territory uninvited, and
that simply avoiding conflict with them was the best course of action. Some men did
escort the group back out of their territory: AWN Interview #3\(^\text{103}\)

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”: AWN Interview #1\(^\text{104}\)

Further Questions:

Housing and living situations are less mobile in most Cree communities than in historical
times. To what extent and in what circumstances is avoidance of a harmful individual by
moving away from them still possible and effective today? In what circumstances might
other legal responses, or other forms of avoidance or separation need to be considered
and explored today?

Avoidance and separation is a complex, multi-faceted response to harms and conflicts. To
what extent is the effectiveness of this response reliant on implicit understandings that are
deeply internalized? How are these understandings being taught and passed down today?
How many people, and youth today, carry these understandings?

What are the unintended impacts and risks to vulnerable people of the implementation of
this principle in cases where avoidance is applied to an entire family, but the harm is
occurring within a family, such as the case of incest discussed above? How might this
approach be critically evaluated, and possibly explicitly changed today?

Can temporary separation of a harmful individual for group safety be implemented
though partnerships with the Canadian justice system or mental health system today?
What would be required to make such a partnership and implementation seen as
legitimate within a community? Is this already happening at an unexamined level in
individual cases when people do call the police to prevent imminent harm? Is it possible
to examine this practice as a principled legal response to harm within communities?

What factors are considered when determining the harm of escalating a conflict outweigh
the original concern?

\(^{103}\) AWN Anonymous Interview #3, June 26, 2012, at 8, 18-19.
\(^{104}\) AWN Anonymous Interview #1, Supra Note 39.
General Re-Statements of Law: The Principle of Acknowledging Responsibility as Remedy

A Wrong-doer 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: *AWN Interview #1*[^105]

- One Interviewee explained, generally, that a wrongdoer acknowledging his or her wrongdoing can send a powerful message. If the person hurt avoids the wrongdoer this can send a message to the wrongdoer and community: *AWN Interview #4*[^106]

A Wrong-doer, 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, when, 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 wrong conduct, with the expectation that E-pay-as then pays compensation to the son of Bad Hand, who he killed in the escalating conflict. The originating cause of the conflict E-pay-as refusing to pay compensation to a man who lost his wife and son in a Blackfoot raid triggered by E-pay-as’s reckless raid: *Indian Laws*[^107]

- 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: *AWN Interview #1*[^108]

Further Questions:

How is it determined what harms and circumstances require compensation or restitution, and which can be resolved through a sincere apology to the person or people harmed?

Who decides if a wrongdoer is taking responsibility and an apology is sincere? Is it up to the person harmed or their family? Are there certain behavioral indicators relied on?

[^105]: *AWN Anonymous Interview #1, Supra Note 39, at 17-18.
[^106]: *AWN Anonymous Interview #4, Supra Note 11, at 15.
[^107]: *Indian Laws, Supra Note 14, at 36.
[^108]: *AWN Anonymous Interview#1, Supra Note 39, at 17.*
General Re-Statements of Law: 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:

- Where a father and son have killed and eaten many people, but are healed, they are welcomed into the camp and even marry women. They live as fully functioning community members until the wife of one notices warning signs he is becoming dangerous (a hairy-heart) again: *The Hairy Heart People* 109

- Where a younger brother has attempted to kill his brother’s wife, and she flees back to her family (Thunderbirds), once the older brother makes the difficult journey to the Thunderbirds 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, she 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: *The Thunderbird Women* 110

- Where 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), she was welcomed back into her community: *AWN Interview, Joe Karakuntie* 111

- On a general level, one elder explained that a person who had been healed and recovered from becoming a wetiko 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 cautions and watch him or her carefully for the rest of his or her life (life would often be short for that person after being healed): *AWN Interview #2* 112

- 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 their own problem. 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

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109 *The Hairy Heart People*, Supra Note 4.
110 *The Thunderbird Women*, Supra Note 16.
111 *AWN Interview: Joe Karakuntie*, Supra Note 9, at 8-9.
112 *AWN Anonymous Interview #2*, Supra Note 5, at 22.
something makes restitution, the person stolen from should forgive them: AWN Interview #1\textsuperscript{113}

Re-integration includes ongoing observation and monitoring the person for warning signs he or she may be becoming harmful again:
- A father and son who have been healed from their cannibalistic ways, live as fully functioning community members but 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: The Hairy Heart People\textsuperscript{114}
- 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 cautions and watch him or her carefully for the rest of his or her life: AWN Interview #2\textsuperscript{115}

Further Questions:

What factors increase the long-term success of re-integration? What resources would best support communities today in successful implementation of this principle?

How are people who have been negatively impacted or traumatized by harms supported or responded to when a person who caused that harm is re-integrated into the group?

Certain elders have vast spiritual knowledge and practical expertise in observing and monitoring warning signs in certain areas of harm, such as someone turning wetiko. What knowledge and expertise would be useful for communities to access today in order for people to equally effectively observe and monitor re-integrated people who have caused other types of harm, such as domestic or sexual violence and abuse? What resources would best support communities to most effectively implement this aspect of the re-integration principle?

General Re-Statements of Law: 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, a man living out on the land is aggravated by mosquitoes biting him and decides to retaliate them 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

\textsuperscript{113} AWN Anonymous Interview #1, Supra Note 39, at 16-17.
\textsuperscript{114} The Hairy Heart People, Supra Note 4.
\textsuperscript{115} AWN Anonymous Interview #2, Supra Note 5, at 22.
they eat him up entirely. This is explained as a natural consequence of his cruelty: *The Man Who was Bitten By Mosquitoes*\(^{116}\)

- After a medicine man, investigates and confirms a man has killed his wife, he publically confronts the man in front of the entire group in a shaking tent. He tells him he knows the truth, 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: *Killing of a Wife*\(^{117}\)

- 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, more generally, that “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 forgiveness was seen by this elder as the best response to most harms, he pointed out that asking forgiveness does not prevent these consequences from occurring: *AWN Interview#1*\(^{118}\)

- 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”: *AWN Interview #4*\(^{119}\)

**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: *AWN Interview #5*\(^{120}\)

- Although not about harm or conflict between people, one interviewee shared a story that illustrated this principle on a general level, where 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?”: *AWN Interview: Robert Wanyandie*\(^{121}\)

**However, in some cases, people may take action to facilitate these consequences to**

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116 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 p 153 [*The Man Who was Bitten by Mosquitoes*].  
117 *Killing of a Wife*, Supra Note 1.  
118 *AWN Anonymous Interview #1*, Supra Note 39.  
119 *AWN Anonymous Interview #4*, Supra Note 11, at 21.  
120 *AWN Anonymous Interview #5*, Supra Note 31, at 4.  
121 *AWN Interview: Robert Wanyandie*, Supra Note 24, at 1.
respond to harms:
- In one story, a medicine man did deliberately trigger spiritual consequences, rather than just leaving it be. Where many people were using medicine to torment others from the other side of the 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: *AWN Interview #4*.\(^{122}\)
- In another story, 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. This ongoing harm to his daughter was seen by the community 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: *AWN Interview #4*.\(^{123}\)

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: *AWN Interview #1*.\(^{124}\)
- 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: *AWN Interview #5*.\(^{125}\)

Further Questions:
How is it decided when to ‘leave it be’ and allow natural or spiritual consequences to take their course, and when to step in to facilitate these, or to take additional measures to respond to a harm? What indicates to the community at large that a decision one way or the other is legitimate under the circumstances? Is this procedural, fact-dependent, or both?

To what extent does this principle extend beyond harms caused through spiritual means, such as bad use or misuse of medicine? Does it also apply to harms caused through bad use or misuse of other sources of power?

Some individuals indicate they have deeply internalized this principle and they use it to reason through their own decisions and actions. How is this principle taught and passed on effectively? How many people and youth today have learned and internalized this principle to the extent they use it in their decision-making? Is it effective today as a preventative or protective factor against causing harm to other people?

\(^{122}\) *AWN Anonymous Interview #4*, Supra Note 11, at 18-19.
\(^{123}\) Ibid, at 19-20.
\(^{124}\) *AWN Anonymous Interview #1*, Supra Note 39.
\(^{125}\) *AWN Anonymous Interview #5*, Supra Note 31.
In behavioral modification theories, allowing a person to experience the natural consequences of their actions is considered ideal. The next best response is to impose a logical consequence – an artificial consequence logically connected to the undesired behavior. Today, could it be a legitimate movement in the Cree legal tradition to respond to certain prevalent harms by similarly implementing logical consequences where natural or spiritual consequences are not obvious or immediate enough to the wrong-doer to prevent further harms?

**General Re-Statements of Law: 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 an old story, after avoidance no longer worked to keep the group safe, the animals gathered together to incapacitate the Giant Skunk. In this case it didn’t die, but it’s pieces became small skunks that were less capable of causing future harm: *The Giant Skunk*[^126]

- In an old story, where there are many cannibals attacking a community who are unstoppable by any other means, an elder calls in Anway, a powerful Cannibal killer, to overpower and kill the cannibals to stop the ongoing harms and deaths in the community: *Anway*[^127]

- After using avoidance, then healing and reintegration to respond to an father and son who had been killing and eating 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: *The Hairy Heart People*[^128]

- Where a woman has been a wetiko and killed almost her entire family, she asks her youngest brother to kill her, and tells him how to do so, in order to prevent herself from causing future harms, He complies with her wishes: *Mistacayawis*[^129]

**Further Questions:**

Today, could incarceration or banishment be a way to implement this response principle?

[^126]: Mi-she-shek-kak, Supra Note 17, at 63.
[^127]: Anway, Supra Note 2, at 116.
[^128]: The Hairy Heart People, Supra Note 4, at 116.
[^129]: Mistacayawis, Supra Note 15, at 99.
How could communities partner with actors in the Canadian justice system, such as the police and courts, to implement this response principle today? What would this require to be seen as legitimate to the community?

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

### General Re-Statements of Law:

**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: *The Giant Skunk; Wasakeechaak Tricks the Bear; Whitiko and the Weasel; Water Serpent; Anway; Killing of a Wife; Indian Laws; The Hairy Heart People; The Thunder Women; AWN Interview #1; AWN Interview #2; AWN Interview: Joe Karakuntie; AWN Interview #5.*
- The Responsibility to help extends to helping people from other groups as well: *The Hairy Heart People; AWN Interview: Marie McDonald; AWN Interview #1; AWN Interview #3; AWN Interview #4.*

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

**Responsibility to Prevent Future Harms:**
- People are responsible to find ways to stop ongoing harms and prevent or mitigate future harms when necessary: *The Giant Skunk; The Water Serpent; Anway; Mistacayawis; The Hairy Heart People; Indian Laws; The Thunder Women.*

**Responsibility to Warn:**
- People are responsible to warn others once they are aware of a potential danger or risk of harm: *The Giant Skunk; The Hairy Heart People; Mistacayawis; AWN Interview #1; AWN Interview #2; AWN Interview: Marie McDonald; AWN Interview: Robert Wanyandie.*
Discussion:

**General Re-Statements of Law: 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:

- When the animals needed to defeat the Giant Skunk, they identified the wolverine as being quick and strong enough to do so and asked him to help. He agreed and the skunk was defeated: *The Giant Skunk*[^130]

- When Wasakechaak was being greedy with his bear meat, trees that were capable of addressing the harm did so by trapping him until his meal was eaten by the other animals: *Wasakechaak Tricks the Bear*[^131]

- When Wasakechaak needed help, he asked the weasel because he was capable of helping. The weasel immediately agreed to do so when asked by the vulnerable Wasakechaak, and defeats the wetiko: *Whetiko and the Weasel*[^132]

- When the people needed help to remove the dangerous water serpents, they called on the Thunderbirds in the shaking tent. The Thunderbirds, who were capable of dealing with the water serpents, responded and removed them: *The Water Serpent*[^133] When asked why they would help the people, one elder answered that it was probably because they were asked to do so: *AWN Interview: Joe Karakuntie*[^134]

- When a community was unable to defeat dangerous cannibals on their own, they used the shaking tent to ask for help from Anway, a famed cannibal killer, who was capable of

[^130]: Mi-she-shek-kak, Supra Note 17.
[^132]: Whetiko and the Weasel, Supra Note 76.
[^133]: The Water Serpent, Supra Note 3.
[^134]: AWN Interview: Joe Karakuntie, Supra Note 9, at 9-10.
doing so. He was not from the community, but came to help them get rid of the cannibals when asked: *Anway* 135

- When a Meskino’s spirit helper gives him the capability to see the truth behind a man’s story regarding his wife, whom he actually killed, through a vision, Meskino takes steps to confirm the vision, then helps by revealing the truth and denouncing the act publically in the shaking tent: *Killing of a Wife* 136

- When a man who felt he was wrongly being refused compensation for the death of his wife and child in a Blackfoot raid triggered by E-pay-as needed help, he approached the Dancers and Providers (groups known for their strength and ability to provide) for help, who then stepped in to attempt to resolve the conflict: *Indian Laws* 137

- Where the husband of a woman who was killing others (as a wetiko) was powerful enough to help stop her and didn’t because of his grief, this failure lead to his death. When the woman realized all she had done, she asked her surviving youngest brother to kill her as he was the only one who was capable of doing so. He complied, ending the danger: *Mistacayawis* 138

- When an old man was gifted with the power to help protect the people from the Hairy Hearts, he used his knowledge and medicine to do so: *The Hairy Heart People* 139

- Where an older brother was capable of addressing the harm his younger brother caused to his wife because he knew what happened, he set out to do so. When he needed help himself finding his wife’s family, the Thunderwomen, he asked an elder for help and she told him how and where: *The Thunderwomen* 140

- One elder discussed his understanding of the obligation for 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: *AWN Interview #1* 141

- One elder matter-a-factly 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: *AWN Interview #2* 142

- The same elder related a story where her grandfather was warned by spirits visiting him in his dreams that his younger sister was turning wetiko. The Elder stated, “Like with my

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135 Anway, Supra Note 2.
136 Killing of a Wife, Supra Note 1.
137 Indian Laws, Supra Note 14.
138 Mistacayawis, Supra Note 15.
139 The Hairy Heart People, Supra Note 4.
140 The Thunderwomen, Supra Note 16.
141 AWN Anonymous Interview #1, Supra Note 39.
142 AWN Anonymous Interview #2, Supra Note 5.
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”: *AWN Interview #2*[^143]

- On a general level, the elder explained that a medicine person 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: *AWN Interview #2*[^144]

- When asked how people seeking help from a person running a shake tent would know he would help, one elder 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”: *AWN Interview: Joe Karakuntie*[^145]

- 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: *AWN Interview #5*[^146]

- The same elder explained that if someone needed medicine help badly, but would not go for help on their own, sometimes other people would take them if the family decided they needed the help: *AWN Interview #5*[^147]

- 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: *AWN Interview #4*[^148]

The Responsibility to Help extends to helping people from other groups as well:

- When an old man was gifted with the power to help protect the people from the Hairy Hearts, he used his knowledge and medicine to protect all the camps, not just his own: *The Hairy Heart People*[^149]

- One elder 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

[^143]: Ibid.
[^144]: Ibid, at 18-19.
[^145]: *AWN Interview: Joe Karakuntie*, Supra Note 9, at 6.
[^146]: *AWN Anonymous Interview #5*, Supra Note 31.
[^147]: Ibid.
[^149]: *The Hairy Heart People*, Supra Note 4.
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.” On a similar line, more generally, the elder explained her understanding that if someone had knowledge of wetikos through medicine, it was their responsibility to protect the whole community and if necessary take the person turning wetiko for help: *AWN Interview: Marie McDonald* 150

- Where a massacre occurred in his own community, a man fled and was chased to the neighbouring community. They helped him by protecting him and fighting with him against those who were chasing him: *AWN Interview #1* 151

- When a Cree couple came upon a woman from far away who had escaped from the Dogrib and was living alone in their territory with no clothes and eating only small game, they immediately helped her 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: *AWN Interview #3* 152

**Further Questions:**

While there is no question that there is a responsibility to help when someone is asked, and is capable of doing so, a rich diversity of views emerges as to the reason for this obligation. Some interviewees saw this obligation as an inextricable aspect of having been given the gift or knowledge that makes them capable of helping, some saw it as rooted in compassion, and some saw it as triggered by being asked with attendant tobacco and gifts. How might these different underlying reasons impact this obligation and its application today?

At least one elder suggested that a medicine person has a high obligation to help with severe and imminent harm (like someone turning wetiko), but has more choice in the matter with lesser harms. It could useful to explore this further when considering the limits of this obligation and how it works in practice.

**General Re-Statements of Law: The Responsibility to Give Back**

**People are responsible to give back something for help they ask for or receive:**

- After the Weasel saved Wasakeechaak from the Whitiko, Wasakeechaak gave him his name and a spot on his tale: *Whitiko and the Weasel* 153

- One elder explained that, historically, horses were usually given as gifts to medicine

150 *AWN Interview: Marie McDonald,* Supra Note 6, at 8-10.
151 *AWN Anonymous Interview#1,* Supra Note 39.
152 *AWN Anonymous Interview #3,* Supra Note 103, at 17.
153 *Whitiko and Weasel,* Supra Note 76.
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: *AWN Interview* #1\(^{154}\)

- One elder stated that someone going to a person who runs a shake tent would bring at least tobacco or cloth: *AWN Interview: Joe Karakuntie*\(^{155}\)
- One elder 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: *AWN Interview: Marie McDonald*\(^{156}\)
- When one elder went to do see a medicine person for help with a curse put on her, she brought tobacco and gifts: *AWN Interview #5*\(^{157}\)

**General Re-Statesments of Law: Responsibility to Prevent Future Harms**

People are responsible to find ways to stop ongoing harms and prevent or mitigate future harms when necessary:

- In one ancient tale, the animals 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: *The Giant Skunk*\(^{158}\)
- Similarly, Thunderbirds remove a dangerous water serpent to prevent him from harming the people in the future: *The Water Serpent*\(^{159}\)
- 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: *Anway; Mistacayawis; The Hairy Heart People*\(^{160}\)
- After a long and bitter conflict, and losing his brother, the narrator explains that E-pay-as accepts compensation for the welfare of the band: *Indian Laws*\(^{161}\)
- When an older brother makes amends to his wife and her family for the harm his younger brother did to her (shooting her with an arrow), future harms are expressly forbidden when the younger brother is told to never do what he did again: *The Thunder Women*\(^{162}\)

**General Re-Statesments of Law: Responsibility to Warn**

People are responsible to warn others once they are aware of a potential danger or

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\(^{154}\)AWN Anonymous Interview #1, Supra Note 39.

\(^{155}\)AWN Interview: Joe Karakuntie, Supra Note 9, at 5.

\(^{156}\)AWN Interview: Marie McDonald, Supra Note 6, at 10.

\(^{157}\)AWN Anonymous Interview #5, Supra Note 31.

\(^{158}\)Mi-she-shek-kak, Supra Note 17.

\(^{159}\)The Water Serpent, Supra Note 3.

\(^{160}\)Anway, Supra Note 2; Mistacayawis, Supra Note 15; The Hairy Heart People, Supra Note 4.

\(^{161}\)Indian Laws, Supra Note 14.

\(^{162}\)The Thunder Women, Supra Note 16.
When the weasel realized he had accidently 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: *The Giant Skunk*.

When an 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. 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: *The Hairy Heart People*.

When a woman notices warning signs her husband may be relapsing and becoming harmful again, she warns her brothers immediately, and in do so saves the entire camp from him: *The Hairy Heart People*.

In contrast, in a cautionary tale of the consequences of failing to warn, where a woman knows her sister has becoming extremely harmful (a wetiko) and fails to warn any of the others, this results in many more deaths. Once it comes out, she is actually executed for going along with her sister for 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 one boy: *Mistacayawis*.

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: *AWN Interview #1*.

One elder shared a story in which she became aware that a women 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 have to tell him: *AWN Interview #2*.

One elder talked about long ago when Dogrib People, traditional enemies, used spirits to visit. She explained that Medicine people who could feel the Dogrib spirits coming would warn the others: *AWN Interview#5*.

One elder 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 a wetiko was nearby, people would start talking about it openly to keep safer: “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”: *AWN Interview: Marie McDonald*.

On a general level, when discussing observation of a squirrel sending warning signals to
others that danger was near (in this case, a cougar), one interviewee explained this by saying it was the squirrel’s responsibility to warn those that he has a relationship to: *AWN Interview: Robert Wanyandie*[^24]  

Further Questions:

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

a. **Substantive**

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**General Re-Statements of Law:**

**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: *The Giant Skunk; The Water Serpent; Anway; Mistacayawis; The Hairy Heart People; Indian Laws; The Thunder Women, and the Responsibility to Warn: The Giant Skunk; The Hairy Heart People; Mistacayawis; AWN Interview #1; AWN Interview #2; AWN Interview: Marie McDonald; AWN Interview: Robert Wanyandie*).

**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: *The Giant Skunk; Wasakeeuchaak Tricks the Bear; Whitiko and the Weasel; Water Serpent; Anway; Killing of a Wife; Indian Laws; The Hairy Heart People; The Thunder Women; AWN Interview #1; AWN Interview #2; AWN Interview: Joe Karakuntie; AWN Interview #5; The Hairy Heart People; AWN Interview: Marie McDonald; AWN Interview #1; AWN

[^24]: AWN Interview: Robert Wanyandie, Supra Note 24, at 5-6.
b. Procedural

**General Re-Statements of Law:**

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 Interview #2.*

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; Thunder Women; AWN Interview#4; AWN Interview: Joe Karakuntie.*
- Someone who has acknowledged their wrongdoing and is sincerely seeking resolution, is given the opportunity to be heard: *Indian Laws; Thunder Women; AWN Interview #1.*

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: *The Giant Skunk; The Water Serpent; Anway; Mistacayawis; AWN Anonymous Interview #2.*

**Discussion:**

**General Re-Statements of Law: 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: Observation and Corroboration of Evidence). Examples:
- When a woman recognizes warning signs her husband may be becoming dangerous and warns her brothers, they keep a close eye on him when they are out hunting, but no action
is taken until his behavior confirms he has relapsed and become dangerous again: *The Hairy Heart People*\(^{172}\)

- 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 before taking any further action: *Killing of a Wife*\(^{173}\)

- When a woman goes hunting with first one brother, than another, and tells others they both got lost, a man becomes suspicious about a woman’s story so he follows her to observe her and confirm his suspicions before taking action: *Mistacayawis*\(^{174}\)

- In one instance, an couple who practices traditional medicine observed a woman for two years because they noticed behavioral signs she was turning wetiko, before stepping in to help heal her at the request of her husband: *AWN Interview #2*\(^{175}\)

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**General Re-Statements of Law: 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:*

- Where a father felt he was unfairly being denied compensation by E-pay-as for the death of his wife and child, he had the opportunity to be heard by the relevant decision-makers (in this case, the Dancers and Providers). The Dancers and Providers then approached E-pay-as and offered him the opportunity to be heard: *Indian Laws*\(^{176}\)

- When an older brother strongly suspected his younger brother had harmed his wife, he offered him the opportunity to be heard. In this case, the younger brother lied, but after his brother left, he wept constantly: *The Thunder Women*\(^{177}\)

- When Meskino has observed enough to confirm a man has killed his wife, he holds a shaking tent ceremony and is given the opportunity to be heard by the group as he announces the truth and denounces the act: *Killing of a Wife*\(^{178}\)

- 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, where 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: *AWN Interview #4*\(^{179}\)

- One elder stated that, generally, when a person was suspected of doing wrong, elders would confront him or her and ask them if it was true. This implies the suspect had an

\(^{172}\) *The Hairy Heart People*, Supra Note 4.

\(^{173}\) *Killing of a Wife*, Supra Note 1.

\(^{174}\) *Mistacayawis*, Supra Note 15.

\(^{175}\) *AWN Anonymous Interview #2*, Supra Note 5, at 24.

\(^{176}\) *Indian Laws*, Supra Note 14.

\(^{177}\) *The Thunder Women*, Supra Note 16.

\(^{178}\) *Killing of a Wife*, Supra Note 1.

\(^{179}\) *AWN Anonymous Interview #4*, Supra Note 11, at 11.
opportunity to be heard before a response was decided upon: *AWN Interview: Joe Karakuntie*¹⁸⁰

**Someone who has acknowledged their wrongdoing and is sincerely seeking resolution, is given the opportunity to be heard:**

- After the conflict had escalated, resulting in injury and a death, E-pay-as allowed the man who brought a peace offering the opportunity to be heard, despite his anger. He accepted his compensation and in turn made compensation himself for his wrongdoing, ending the conflict: *Indian Laws*¹⁸¹
- When the older brother of a man who had shot his wife with an arrow sought out the wife’s family to make amends, the family (in this case, the Thunder women) gave him the opportunity to be heard. The wife and her sister agreed to return with him, and the younger brother was told he must never do such a thing again: *The Thunder Women*¹⁸²
- One elder explained his understanding that the community expects someone who has hurt someone to go visit the person they harmed, acknowledge their wrongdoing and ask forgiveness. While the person harm is not obligated to forgive the person, there is an implicit right for the wrongdoer to at least be heard by the person harmed. The elder explained that if the person has sought forgiveness sincerely, the community will note this and the wrongdoer does not have to ‘own’ the harm any longer: *AWN Interview #1*¹⁸³
- The same elder gave an example from a generational inter-community 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: *AWN Interview #1*¹⁸⁴

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**General Re-Statements of Law: 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):*

- All the animals were involved in an open deliberative process to come up with a plan to address the harm of the Giant Skunk: *The Giant Skunk*¹⁸⁵
- Similarly, the entire group deliberated, and consulted with the elders and the wise ones,

¹⁸⁰ *AWN Interview: Joe Karakuntie*, Supra Note 9.
¹⁸¹ *Indian Laws*, Supra Note 14.
¹⁸² *The Thunder Women*, Supra Note 16.
¹⁸³ *AWN Anonymous Interview #1*, Supra Note 39.
¹⁸⁴ Ibid.
¹⁸⁵ *Mi-She-Shek-kak*, Supra Note 17.
who had appropriate knowledge and expertise (who in turn deliberated among themselves) to reach the decision to ask the Thunderbirds for help to resolve the danger of the Water Serpent: The Water Serpent See also: Anway (The group deliberates and consults with the elders, who decide to ask Anway for help).

- Where a conflict had arisen over compensation for harm, the Dancers and Providers were consulted because they had the relevant knowledge and expertise. They led 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 decided to resolve the escalated conflict by compensating E-pay-as first, he first consulted with the group: Indian Laws

- When Meskino discovered the truth about the death of a man’s 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 thus made by the group: The Killing of a Wife

- When a family finds out a woman is killing people, they deliberate together before deciding they must try to kill her in order to stop her: Mistacayawis

- On a general level, one elder, who is often called upon to be a decision-maker, 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: AWN Interview #2

Further Questions:

This section on rights is notably sparse, tentative, and no doubt incomplete. They are also largely based on the implications flowing from responsibilities or procedural steps that seem more obvious. In each community, it would be important to discuss these to see if they make sense or not, and to discuss what other expectations people may have of each other in situations of harm or conflict.

186 The Water Serpent, Supra Note 3.
187 Anway, Supra Note 2.
188 Indian Laws, Supra Note 14.
189 The Killing of a Wife, Supra Note 1.
190 Mistacayawis, Supra Note 15.
191 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?

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**Discussion:**

**General Re-Statements of Law:**

**General Underlying Principle: Fluid and Contextualized Responsiveness:**

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 specific circumstances posed by the harm or conflict, as well as the particular people involved. In almost every story and interview, the importance of flexibility and responsiveness to the particular needs and capabilities of the specific people involved and available, and the situation and context when responding 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: *AWN Interview #2*192 While this explanation suggests an affinity to the fact-specific, case by case basis preferred by the Common-law, the decentralized nature of the Cree legal tradition means this flexibility and responsiveness extends beyond the typical parameters of this in a Common-law legal system. Legal responses and resolutions reflect an individualized and contextualized approach, but in addition, the particular needs of the people involved, their relationships and the situation and context also are considerations for who might be a legitimate decision-maker in a particular case, what their role and scope of authority might be, who would have the relevant knowledge and expertise to be consulted, and who should be involved in the necessary deliberation to reach a legitimate and effective response or resolution.

**General Underlying Principle: Acknowledging and Valuing 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 interviewee 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 that presupposes 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?: *AWN Interview #4*193

This worldview of the paramountcy of relationships and the interconnection of all aspects of life, is reflected throughout the stories and interviews. In particular, spirituality is not severed or elevated beyond other life realms. For example, elders talk matter-a-factly about recognizing warning signs through observations of people’s behavior, through observations of 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 legitimately 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

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192 *AWN Anonymous Interview #2*, Supra Note 5, at 27.
between peoples, and between humans and the rest of the world, are assumed and imbue legal decision-making at many levels.

At a very 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 familial relationships. 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”: AWN Interview #2. This suggests that the Cree legal tradition does not operate in a way that abstracts individuals into atomistic units, 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 the particular individual or individuals in question, will be asked to take on a persuasive role in resolving a conflict, or a supervisory role in temporarily separating someone who is dangerous to others, until they can be healed. The acknowledgement and valuing of relationships also suggests a strong rationale behind the primacy of the response principle of healing, as well as the importance of re-integration, ongoing observation and supervision, and why avoidance may be selected as a response rather than confrontation where the original issue is not seen as harmful as escalating a conflict within a community with a dense network of relationships.

The Principle of Reciprocity and Interdependence:
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 unquestionable acceptance that there are always natural and spiritual consequences to every action informs people’s decision making on a personal level and also their responses to situations of harm and conflict.

On a practical level, the principle of reciprocity is best illustrated through the obligation of helping others when capable and asking 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. A logical inference is that one rationale behind these rights and obligations could be that one never knows when and how they may require help. Thus reciprocity grounds and encourages people to value interdependence, rather than privileging an abstract ideal of independence.

Further Questions:

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194 AWN Anonymous Interview #2, Supra Note 5, at 21.
A concern often raised about written work on Indigenous legal traditions is whether something gets lost or distorted when abstracting principles or discussing legal traditions outside of the network of relationships, both cosmological and practical, that these legal traditions are part of. What are some ways of acknowledging, addressing and mitigating this concern? In community projects engaging wider systems? In academic work?

Through what means and to what extent are reciprocity and interdependence taught and passed on today? Are the underlying rationales still present? What happens when roles become static within communities, so there is less possibility of recognizable or meaningful reciprocity in the future?