**Intersocietal Approaches to Dispute Resolution:**
**Learning from Indigenous Legal Orders**
**Alternative Dispute Resolution BC Symposium**
**June 5, 2023**
**Keynote Address of The Honourable Robert J. Bauman, Chief Justice of BC**

## I. Introduction

[1] First, I want to thank ADRBC for the invitation to speak today.

[2] It's an honour to be part of the Symposium and this morning I expect to learn at least as much as I share, from you and from the distinguished panelists who will join us after my comments.

[3] I'll start by observing that dispute resolution is about relationships: repairing or maintaining relationships, compensating and restoring the parties to the dispute to wholeness.

[4] At its best, it is about peace-building, reflected in the theme of the Symposium.

[5] While an important part of access to justice is ensuring that individuals are able to access courts to resolve their disputes[1], we know that the adversarial court process is not necessarily the best forum for peace-building, or resolving interpersonal or intersocietal disputes where parties must continue to live alongside each other.

[6] ADR in all its diversity is a response to this, and to the complex social and legal challenges that face us. This is our shared interest and passion today.

[7] We are in a time of transformation, acknowledging that in certain contexts our court-oriented justice system is not building peace, and in some cases is causing harm even as it attempts with good intentions to resolve the dispute. For example, as a judge I have personally witnessed how deeply entrenched family conflict can become in the

[1] *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59.

courts. Through my role as chair of Access to Justice BC, I have learned of the harmful effects of a protracted adversarial court process on children, youth and families, and of cross-sectoral efforts to transform the family justice system, which we will touch on in today's discussion. This harm is not intentional, but is deep-rooted and systemic.

[8] We have a responsibility to respond when we know harm is occurring. It is challenging and hard work to know how to respond when the problems are embedded in our institutions and, even more deeply, our worldviews and assumptions about how to achieve justice.

[9] Nowhere is this truer than in our need, indeed our duty, to learn from Indigenous peoples about the work of revitalizing their legal orders, and specifically, their processes and principles of dispute and conflict resolution.

[10] In my comments today, I will expand upon my sincere belief that Canadian law, and the legal profession, including ADR professionals, have much to learn from Indigenous legal orders. The late Honourable Chief Justice Finch amplified this for us a decade ago in his essay, "The Duty to Learn"[2]. This learning is threefold and, as I have said elsewhere, comes with a duty to act[3].

[11] First and foremost, as a society we must learn in order to act to support Indigenous peoples in their work to become self-determining according to their own processes, including dispute resolution processes. This is part of the imperative of reconciliation, the responsibility for which belongs to us all in the legal profession, to respond to the harm caused to Indigenous peoples, communities, and families by the Canadian justice system.[4]

---

[2] Honourable Chief Justice Lance SG Finch, "The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice" (prepared for the Continuing Legal Education Society of BC, November 2012).
[3] Honourable Chief Justice RJ Bauman, "A Duty to Act" (prepared for the Canadian Institute for the Administration of Justice, November 2021).
[4] Truth and Reconciliation Commission of Canada*, Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Winnipeg: Truth and Reconciliation Commission of Canada, 2015).

[12] Which leads to the second point: following the insight of my colleague Dr. Sarah Morales in her article "Speakers, Witnesses and Blanketing: The Need to Look Beyond the Courts to Achieve Reconciliation", processes of reconciliation must draw on Indigenous legal orders in addition to Canadian law – as intersocietal processes of dispute resolution.[5] What do Indigenous legal orders teach us about how we can repair and rebalance our relationships?

[13] And thirdly, Indigenous legal orders have much to teach the Canadian legal system, legal professionals, and ADR professionals about how to more effectively resolve disputes and transform conflicts for all Canadians – Indigenous and non-Indigenous. Indigenous legal traditions can and should guide us in the transformations we know are needed to address the shortcomings in our own system.

[14] I will endeavour to make these reflections with humility and in the spirit of learning, mindful of the need not to appropriate Indigenous procedures divorced from their political and legal contexts, as Dr. Val Napoleon cautions[6], but also mindful of our duty to act and engage meaningfully with Indigenous law. I attempt to do what scholars of Indigenous legal orders urge us to do and engage seriously with Indigenous law as law, and as intellectual systems with unique and time-tested ways of approaching problems, which I daresay we need now more than ever. [7] This is a mentorship that has been missing from our intersocietal relationship, as Canadian law has asserted itself as the centre of the story, if not the only story.

[15] Before I get into the substance of my remarks, I want to make a couple of observations.

[16] First, I recognize there is some irony in hearing from a judge at an ADR conference, especially one who is the administrative head of the court system. You are

[5] Sarah Morales, "Speakers, Witnesses and Blanketing: The Need to Look Beyond the Courts to Achieve Reconciliation" (2017) 78 (2d) SCLR 139 at 158.
[6] Val Napoleon, "Who Gets to Say What Happened? Reconciliation Issues for the Gitxsan" in Catherine Bell and David Kahane, eds., *Intercultural Dispute Resolution in Aboriginal Contexts* (Vancouver: UBC Press, 2002).
[7] See, for example: Napoleon, V & Friedland, H, 'An Inside Job: Engaging with Indigenous Legal Traditions Through Stories' (2016) 61(4) McGill Law Journal at 725.

the ones providing alternatives to this system! Yet, as a judge with such a responsibility, it is incumbent upon me to self-reflect on behalf of the courts. We judges are very much in a position of learning from those who are building alternatives, and understanding how our different systems interact.

[17] Second, I am mindful of the limitations on my comments as a judge. As my predecessor Chief Justice Sloan (4th Chief Justice of British Columbia) once wrote, "A judge's first prayer should be, 'God give me strength to button my lip'." Judicial restraint in speech is grounded in the idea that the role of a judge carries with it the responsibility to always be and appear to be impartial and independent. Judges must take care not to use our office to amplify the influence of statements we may make in a personal capacity (in contrast to statements made in an official adjudicative capacity, which do attract the authority of the judge's office)[8]. Thus the commonly spoken line: "judges speak through their judgments".

[18] I take no particular view of where we are heading in terms of the future of Indigenous legal orders within our justice system. Indeed part of my message today is to highlight that this future will be determined by and with Indigenous peoples. However, in order to meet this opportunity as non-Indigenous peoples and institutions, we must educate ourselves and engage in conversations like the one we are having today. Not only do I feel learning about and from Indigenous legal orders is an acceptable topic for judges, but I consider it fully consistent with—and in advancement of—my ethical duties as a judge and as Chief Justice.[9]

[19] I am honoured to be joined for a discussion afterwards with colleagues who have been working on matters of systems transformation and dispute resolution tirelessly, both with regards to the Canadian family justice system and with regards to restoring Indigenous jurisdiction and authority over children and family welfare:

[8] See, for example: Professor Enid Campbell, "Judges' Freedom of Speech" (2002) 76 Australian Law Journal 499 at 511, cited in Matthew Groves; "Public statements by judges and the bias rule" (2014) Monash University Law Review 40.1 at 115.
[9] Canadian Judicial Council, *Ethical Principles for Judges* (Ottawa, 2004).

- Dr. Morales (Su-taxwiye), University of Victoria law professor in Indigenous legal orders, and a leader in the Cowichan Tribes Child and Family Wellness Legislation Project

- Wenecwtsin, former Kukpi7 of Splats'in First Nation;

- Jane Morley, K.C., ADR professional and a leader in the Transform the Family Justice Collaborative at A2JBC.

## II. Duties to Learn and to Act – Indigenous legal orders and Canadian law

[20] To set the stage for this topic we need to appreciate the moment we are in and why it demands our attention and places on us duties to learn and to act. We are in a moment of transformation with respect to Indigenous law, and also in a moment of transformation as Canadian society in acknowledging the truth of our shared history. We have learned from the Truth & Reconciliation Commission that Canadian law has suppressed truth and deterred reconciliation. Indeed, it has been recognized in many reports and commissions of inquiry over the decades that the Canadian justice system, and Canadian law and policy in general, have failed Indigenous peoples. The Report on the National Inquiry on Missing and Murdered Indigenous Women and Girls called this tragedy an ongoing genocide.[10]

[21] We know that many of Canada's most shameful trends are getting worse instead of better: for example, as of 2020, the proportion of Indigenous people in federal prisons has exceeded 30%, up from 25% just four years before. This proportion is even higher for Indigenous women.[11]

[22] With regards to child welfare, we know that overrepresentation of Indigenous children in the foster system continues, some have identified this as a continuation of

[10] National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (June 3, 2019) online: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf

[11] Office of the Correctional Investigator. "Indigenous People in Federal Custody Surpasses 30% - Correctional Investigator Issues Statement and Challenge" (January 21, 2020) online: https://www.oci-bec.gc.ca/cnt/comm/press/press20200121-eng.aspx

the legacies of the residential school system.[12] And most recently, all Canadians are now grappling with what Indigenous peoples have been telling us for decades: the devastating truth of the unmarked burials of Indigenous children at those institutions.

[23] We have a responsibility to respond urgently to our knowledge of these profound harms.

[24] Indigenous peoples are responding by revitalizing their legal orders and their processes of conflict and dispute resolution that have existed here long before the Canadian legal system. While Indigenous legal orders are many and are diverse, all Indigenous legal orders contain principles and processes for self-determined dispute resolution.[13] These legal orders were fragmented, but not destroyed, by the imposition of Canadian law.[14] The child and family context is one of the most significant areas where Indigenous law is being revitalized and implemented.

[25] One example is Indigenous nations and governing bodies re-taking jurisdiction over children and families, supported by the passing of federal act C-92[15], as Cowichan Tribes is doing, led by Dr. Morales.

[26] And at this point I also want to acknowledge the work of former Kukpi7 Wenecwtsin, who over his decades as a leader, including seven terms as Chief, led the first community-controlled child welfare legislation in Canada.

[27] Another promising contemporary initiative is the BC First Nations Justice Strategy partnership between the Province and the BC First Nations Justice Council, in

[12] Public Inquiry into the Administration of Justice and Aboriginal People, "Child Welfare", *Report of the Aboriginal Justice Inquiry of Manitoba* (1991) online: http://www.ajic.mb.ca/volumel/toc.html
[13] Val Napoleon and Hadley Friedland, Indigenous Law Research Unit, *A Toolkit for On-Reserve Matrimonial Real Property Dispute Resolution* at 46–47, online: https://ilru.ca/wp-content/uploads/2020/08/on-reserve-matrimonial-real-property-dispute-resolution-toolkit.pdf
[14] Napoleon and Friedland, *supra* note 7.
[15] *An Act respecting First Nations, Inuit and Metis children, youth and families*, S.C. 2019, c. 24.

collaboration with First Nations, which takes a dual approach of reforming the existing criminal justice and family systems and restoring Indigenous justice approaches.[16]

[28] We are also seeing a movement to align Canada's laws with international human rights standards, through legislation to implement the *UN Declaration on the Rights of Indigenous Peoples* (UN Declaration) in BC and federally.[17] The heart of this is the right of Indigenous peoples to self-determination and self-governance.[18] This includes the right of Indigenous peoples to their distinct decision-making institutions and juridical systems.[19] The work Indigenous peoples are doing is innovative, hard work that deserves our full attention.

[29] The ways in which Indigenous legal orders and processes interact with the Canadian legal system and processes is itself a set of relationships in need of dispute resolution, conflict transformation, and healing. Part of the work of reconciliation is to acknowledge that this work is intersocietal work, it belongs not only to Indigenous peoples but to all of us. We all have a responsibility to seek to find our role within it. This is true for judges as well as for ADR practitioners.

[30] I reflect on Dr. Morales' insight that "Indigenous and non-Indigenous peoples alike must look beyond the Court in order to achieve meaningful reconciliation in Canada"[20], and that we as a society have arguably placed too much responsibility in the hands of the Court, expecting that the Court will resolve our relationship. Instead, every Canadian must have a vested interest in reconciliation. Canadian courts, I think, have recognized their limitations in this regard and have urged governments to negotiate in good faith with Indigenous peoples to achieve a lasting and just reconciliation.[21]

---

[16] BC First Nations Justice Council, BC Ministry of Attorney General, BC Ministry of Public Safety and Solicitor General, *BC First Nations Justice Strategy* (February 2020) online: https://news.gov.bc.ca/files/First_Nations_Justice_Strategy_Feb_2020.pdf
[17] *Declaration on the Rights of Indigenous Peoples Act*, S.B.C. 2019, c. 44; *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14.
[18] UN Declaration, Articles 3, 4 and 5.
[19] UN Declaration, Articles 18, 34.
[20] Morales, *supra* note 5 at para. 6.
[21] See for example *R. v. Sparrow*, [1990] 1 SCR 1075; *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010.

[31] I further reflect on an insight from Dr. Ted Palys and Dr. Wenona Hall, formerly Wenona Victor, in an article about Stó:lō, justice that was part of a collection of essays published by the Law Commission of Canada on Indigenous Legal Traditions.[22] Dr. Hall shares that, in the process of setting up a distinctively Stó:lō dispute resolution process as an alternative to the criminal justice system, an Elder asked her why it was being called "alternative" when it clearly was not an alternative to the Stó:lō people, but in fact the way that they have always addressed conflict until the imposition of courts and Canadian law.

[32] It leads me to reflect on what we place at the centre in our thinking about dispute resolution, law and justice. If we conceive of the court as being at the centre, then alternatives to it will be just that – alternatives.

[33] Of course, the right of self-determination affirmed in UNDRIP lends special relevance for Indigenous peoples developing their own dispute and conflict resolution processes and taking responsibility over family welfare. However, I suggest that the authors' insight can apply to other efforts to design dispute resolution processes that put people at the centre instead of the court system. What if it were the courts that were an "alternative", simply part of the constellation of dispute resolution options available, and not necessarily the best or the first choice?

[34] Of course, this is not to say the courts do not continue to have an important role to play in resolving conflicts and determining rights and obligations in our society. An independent judiciary is a cornerstone of our system of democracy in Canada and in ensuring the rule of law, and must remain available to all. Courts are still needed to define and enforce legal rights and develop jurisprudence.

[35] I note that, in the case of Splats'in child welfare, when a decision of the band council regarding the placement of a child with extended family members was challenged by non-Indigenous foster parents in 1998, the Supreme Court of BC upheld

[22] Ted Palys and Wenona Victor, "Getting to a Better Place: Qwi:qwelstom, the Stó:lō, and Self-Determination" in Law Commission of Canada, ed, Indigenous Legal Traditions (Vancouver: UBC Press, 2007).

the authority of the Splats'in by-law.[23] The foster parents argued that the by-law was not as extensive a code as the *Family Law Act*[24] and that the court should intervene. The court ruled that the bylaw was "a clear statutory scheme whereby the Band, consistent with enunciated goals and priorities set out in the by-law, is to exercise its responsibility for the care of [Splats'in] children..." The judge noted that, if it was a deficiency in the bylaw not to provide status for foster parents to apply for access or custody of children, then this was also a deficiency in the *Family Law Act*, as the provincial legislation didn't provide for this either. This is an example of the ongoing role the courts have played and will continue to play in terms of defining rights and obligations and statutory interpretation.

[36] Of course, in the emerging landscape of UNDRIP and increasingly self-determined processes, such a challenge brought by foster parents might go instead to a dispute resolution process designed by the Nation itself, or to the court by agreement, or as a matter of judicial review – if at all. But the overall import of this point is that courts should not be the only or the default option when other processes would better suit the relational needs of the issue at hand. And indeed courts have not been the only option—courts play a particular role among an array of other dispute resolution mechanisms, including a plethora of ADR options and administrative bodies and tribunals.

[37] The Court of Appeal itself has built an ADR function into its processes. While well-known in trial courts, it is less well known that the Court of Appeal has a judicial settlement conference program too (albeit much under-utilized).

[38] I note that Dr. Palys and Dr. Hall, in describing the standards often applied by the Canadian justice system to Indigenous peoples' efforts to design processes that work for them according to their own procedures, commented that "it is a particular truism of power that those who wield it can hold others to standards they do not apply to themselves". They ask, "can the Canadian justice system demonstrate its effectiveness

[23] *Sims v. Spallumcheen Band Council and Cook*, 1998 CanLII 3701.
[24] *Family Law Act*, SBC 2011, c. 25.

with its own people?" [25] Our duties to learn and to act must involve becoming more self-aware, taking a good look at ourselves and our own processes and where they are working, or not, as we are beginning to do with the family justice system.

[39] In the family law context, with the participation of many stakeholders, we are learning to design processes that empower participants to, with appropriate guidance and protections, take greater responsibility for resolving their own disputes and conflicts. In this work, there is much that we can learn, in seeking to transform the Canadian family justice system, from Indigenous legal approaches and experiences, remembering that the rule of law in Canada includes the existence of Indigenous legal traditions.

## III. Family Justice System – Putting Families at the Centre

[40] Before speaking in more detail about what family justice actors and ADR professionals might learn from Indigenous law, I want to provide some context for my interest in family justice from my own experience as a trial court judge in New Westminster. What stands out in my memory are the stacks of material, endless motions and hearings, and the parties confused about the process and unable to come to a resolution, or even to know what issues required resolution. Plainly the system was not working for families and it was also a waste of court resources that could have gone to more effectively serve others.

[41] But it wasn't until my present role as Chief Justice, when I became involved with Access to Justice BC that I understood more fully the impact this protracted conflict has on families and particularly on children. A2JBC advocates for a user-centred, collaborative, experimental, and evidence-based approach. The Transform the Family Justice Collaborative is a multi-sectoral effort that seeks to apply this approach to the family context, putting families at the centre.[26] I want to recognize my colleague Jane Morley for her leadership on this Collaborative. It was the brain science findings around

[25] Palys and Victor, *supra* note 22 at 33.
[26] Access to Justice BC, "Transform the Family Justice System, the (TFJS) Collaborative (2021) online: https://accesstojusticebc.ca/family-justice-collaborative/

adverse childhood experiences relating to family conflict, and the immediate and long-term repercussions of this harm, that impressed upon me the need for change.

[42] An initiative drawing on this approach with remarkable results is the Early Resolution and Case Management Model prototype in Victoria, implemented in the Provincial Court in May 2019.[27] The Model provides early information and needs assessment, referrals, and consensual dispute resolution (where appropriate). The parties first attend for needs assessment, and based on their situation and legal needs, an appropriate approach is recommended. Parties can choose to have their session outside of the Centre with a private family mediator or in a collaborative family law process. If issues remain unresolved, they can proceed to a family management conference conducted by a Provincial court judge. The process aims to narrow or resolve issues outside of court. There are also benefits from earlier awareness and intervention in matters with risk of family violence.

[43] One of the Model's stated goals for the early assessment process is to "balance the person's need to tell their story in a meaningful way with what the Court needs to know to make decisions."[28] Another primary objective is to help parties understand their legal issues and be better prepared for each step of the process. The results have been remarkable, with a 53% reduction in overall court appearances in family law cases, and a sharp reduction in cases with over 100 minutes of court time. Even when parties do proceed to court, the Model has contributed to reducing the total number of adjournments by 71%. While effective or efficient use of court is of course a major benefit of this effort, part of placing families at the centre is focusing on the human aspect and whether this process is working for families.

[27] Provincial Court of British Columbia. "Evaluation shows "Early Resolution Model" helped families resolve disputes without court battles" (March 22, 2022) online: https://www.provincialcourt.bc.ca/enews/enews-22-03-2022

[28] Ministry of Attorney General and Provincial Court of British Columbia, *Final Evaluation Report, Evaluation of the Victoria Early Resolution and Case Management Model* (2021) at 3.

## IV. Learning from Coast Salish Processes of Dispute Resolution

[44] I want to turn now in more detail to the two examples I mentioned earlier, the article by Dr. Morales and the article by Dr. Palys and Dr. Hall, and the principles these scholars articulate from their Coast Salish legal traditions, Hul'qumi'um and Stó:lō. As I've said, I do this in a spirit of humility and learning, recognizing that these legal traditions exist in their own political and governance contexts. It is Hul'qumi'num and Stó:lō people who practice and define these processes, and who have maintained them in the face of the Canadian legal system's attempts to undermine them. I've also sought examples available from public sources, and from Coast Salish legal orders, as broadly speaking that is the territory I am on and where I live and work.

[45] In "Speakers, Witnesses and Blanketing", Sarah Morales describes each of these three Coast Salish dispute resolution processes named in the title of the article. The principles I take from her discussion are:

- The need for a trusted figure to facilitate dispute resolution, who possesses qualities that lend them authority in the eyes of the participants;
- The recognition of counter-narratives and multiple truths in a way that develops trust and mutual respect – so that parties have an opportunity to hear and reflect on others' positions;
- The importance of placing the responsibility for the maintenance of relationships in the hands of the participants, at a family-wide and societal level; and
- The need for procedures that seek to publicly restore strength and honour to those who have been harmed.

[46] These principles are very different from how court processes occur, where two parties in an adversarial process make all possible arguments to support their position to an impartial judge, and the theory is that the judge, having heard all arguments, will be in the best position to decide what is just.

[47] In the Stó:lō context, the authors discuss the difference between a process led by a figure of authority who knows how each person is tied to the community and has an ability to re-establish those connections, and "sitting in a courtroom saying nothing facing a stranger who does not know you".[29]

[48] These are different theories of justice. The court model is important, as I've said, in determining rights and developing jurisprudence. In some cases, the court may be the appropriate and necessary forum for resolving disputes. Yet in processes where the parties must live together in an on-going fashion, the courts' processes do not always maintain or cultivate peace.

[49] The authors described consulting with Elders on the concept for justice. They proposed what is now the name of the Stó:lō justice program, which still exists today: Qwí:qwelstóm, or "they are teaching you, moving you toward the good". The authors in their research asked the question, "prior to courts coming to our territory, what did we do to resolve conflict within our communities?" Community members spoke continually about how justice was centred upon the family - not once was crime or punishment mentioned. The authors also spoke of healing and peacemaking circles and that each have a different role in restoring the balance that has been disrupted.

[50] One specific procedure that stood out to me from the Qwi:qwelstom process described in the article was that there are very limited circumstances in which a scheduled circle will be canceled. An Elder must be present, so only if an Elder is unable to make it and another cannot come at the last moment will a circle be rescheduled. Even if one of the parties fails to appear, those who are there will proceed. The reasons for this are:

- The interrelatedness and equality of all involved; and

[29] Palys and Victor, *supra* note 22.

- The spiritual, emotional and material preparation of those who have come – to prepare for a process only to have it not occur can disrupt a person's balance and create further friction and disharmony.

[51] This to me is a profound insight. Relating this to my experience, although of course in an entirely different context, I have witnessed in the family court process how adjournments and delays can frustrate and more deeply entrench conflict.

[52] The court system and actors are learning how better to support parties to prepare for and understand the process they are entering into. In that light, it is significant that one of the outcomes of the Early Resolution Model is to reduce the number of adjournments.

[53] Now, we in the Canadian court system are learning through evidence-based approaches what these Indigenous models have long understood and practiced – that processes of dispute resolution are more effective and lasting when participants are empowered, when they can take ownership over the outcomes of the process – which is of course what many of you as ADR professionals are trained to facilitate. Yet it seems to me that something that our Canadian legal and ADR systems, even these innovative and evidence-based approaches, can learn from the Hul'qumi'num or Stó:lō processes, is how to recognize and meet the whole person in a dispute resolution process.

[54] What would change if peacemaking or peacebuilding, or restoring harmony, were part of our objectives? In recognizing the need for family justice participants to tell their stories, the Early Resolution Model has changed the forms to be submitted to a more conversational format that provides this opportunity, rather than being about simply extracting information the Court considers necessary. This is one small step towards acknowledging the whole person.

[55] The Coast Salish procedures Dr. Morales describes that restore honour do more than compensate financially. Restoring the parties to wholeness means something different in Canadian tort law than it does in Coast Salish law. She suggests these processes should be put into place specifically in the context of reconciliation between

Indigenous and non-Indigenous peoples, and that the opportunity to articulate what reconciliation looks like according to Indigenous legal orders is one way of honouring Indigenous peoples. It is to these intersocietal processes of dispute resolution and peacebuilding that I turn briefly to conclude my comments.

## V. Intersocietal Dispute Resolution

[56] The point that Indigenous legal orders should provide the criteria for reconciliation is one that was addressed by Paulette Regan in her article: “An Apology Feast in Hazelton: Indian Residential Schools, Reconciliation, and Making Space for Indigenous Legal Traditions”.[30] Briefly, in 2004, Canada and the United Church were invited by a Gitxsan community to host a feast to welcome residential school Survivors home and provide restitution and apology through procedures that would be recognized as legitimate and meaningful by Gitxsan people. Non-Indigenous institutions that caused harm were invited into Indigenous legal orders – and their representatives were given specific responsibilities to fulfill. The author was one of the non-Indigenous representatives of Canada and had a transformative experience of learning.

[57] Of note is that this feast took place at a time when an ADR program had been rolled out by the federal government as a more suitable and expedient alternative to the courts, where many lawsuits and class actions by residential school survivors were being advanced. The author details the way in which that ADR program, while indeed providing a better alternative to the courts for certain claims, failed to include Indigenous criteria for reconciliation and privileged Euro-Canadian legal concepts and values. She describes the kind of truth privileged by the courts: forensic, or legal truth – and the need to include other kinds of truth that are valued and included in Indigenous legal orders: such as narrative, social and restorative truth.

[58] In my previous comments on the duty to act, I observed that even though it is a myth that a judge can always discover the truth behind a matter, the pronouncement of

[30] Paulette Regan, “An Apology Feast in Hazelton: Indian Residential Schools, Reconciliation, and Making Space for Indigenous Legal Traditions” in Law Commission of Canada, ed, Indigenous Legal Traditions (Vancouver: UBC Press, 2007).

legal truth is a core function of the courts in deciding the rights of the parties. But "when legal truths announced in pursuit of that goal drift away from reality, courts lose their relevance."[31]

[59] As a judge, I have certainly experienced moments when the facts that I can find with the tools at my disposal do not quite speak to the parties' idea of truth. At times this fact finding is necessary, but when a wider approach is needed, it can be counter-productive.

[60] Building on this, dispute resolution procedures like those employed in the Coast Salish processes just discussed acknowledge more than one truth and build toward shared truths, thereby remaining relevant to the parties, and society at large. In an intersocietal context, where we may be coming to the table with entirely different understandings of what justice and truth mean, this is even more vital.

[61] In "A Duty to Act", I said that I have learned I cannot hide behind the law. To recognize the existence of Indigenous law is to simply recognize the truth, which falls within my duty as a judge, if not as a human being. In recognizing that reconciliation must involve both Indigenous and Canadian legal orders, we recognize that the institutions Indigenous peoples are building are intersocietal because, as I was reminded recently by Dr. Morales, we are intersocietal people. There is much work ahead to build and adapt dispute resolution structures that create channels of communication between Indigenous and non-Indigenous legal realities.

[62] What is the role of ADR professionals and legal professionals more broadly in this transformation? How can we all acknowledge that we live and work in intersocietal contexts, and learn from Indigenous legal orders and Indigenous peoples in ways that are meaningful to our clients?

[63] One very useful starting place, for those who, like me, may wonder where to begin, is to look to the standards of the UN Declaration. The rights in the Declaration are not new rights, but are affirmations of the rights that already exist by virtue of

[31] Chief Justice Bauman, *supra* note 3 at para. 13.

Indigenous peoples' existence as peoples, including their distinct political, social, economic and juridical structures. So, the minimum standards set by UNDRIP can provide some criteria for evaluating whether our frameworks, institutions and dispute resolution approaches are also meeting the criteria of Indigenous legal orders.

[64] I look forward to hearing from my colleagues in the discussion to follow. Thank you.