

URBAN INDIGENOUS KINSHIP VISITING: DELIBERATIVE AND HEALING APPROACH

ANNA CORRIGAL FLAMINIO, BSW, JD, LLM, SJD

WORLD INDIGENOUS LAW CONFERENCE

NOVEMBER 19, 2018

THANK YOU & ACKNOWLEDGMENT

Thank you for welcoming me to

Windsor Faculty of Law

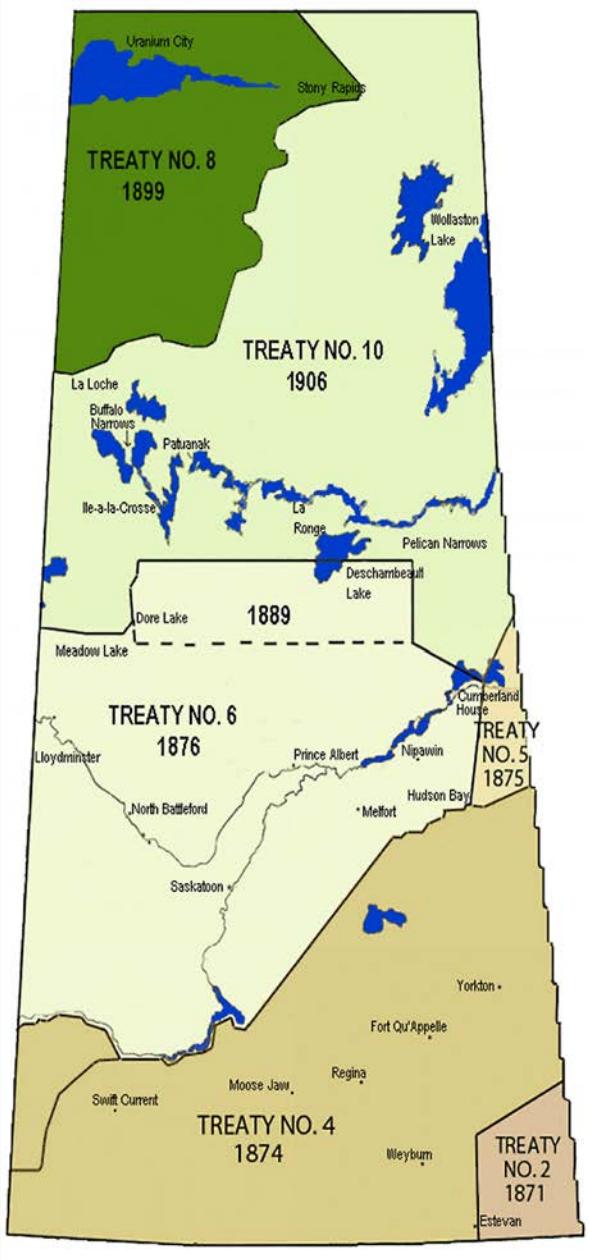
Territory of the

Three Fires Confederacy of First Nations -

the Ojibwa, the Odawa, and the Potawatomie

PEHONAN: VISITING & WAITING PLACE





INDIGENOUS LOCATION

- **Treaty 6 Territory and Métis homelands**
- **Halfbreed and Métis/ Italian**
- **North and South Saskatchewan Rivers – Prince Albert/ St. Louis, SK**
- **Urban SK – Cree, Saulteaux, Metis, Dene, Lakota, Dakota, Nakoda**
- **Incarceration Industry**
- **Indigenous Knowledges and Methods of Healing**

PRINCE ALBERT, SK: KISTAPINANIHK

SITTING PLACE – NEUTRAL PLACE



INDIGENOUS INCARCERATION



- **Federal Penitentiary**
- **Men's Provincial Jail**
- **Women's Provincial Jail**
- **Youth Jail**
- **Over-representation of Indigenous inmates**
- **Aboriginal adults in federal correctional services accounted for 28% of admissions to custody and 26% to community supervision [2015/2016].**

PRESENTATION OUTLINE

- Indigenous Youth and Criminal Law
- Supreme Court: Gladue and Ipeelee
- Kinship-Visiting Methodology & Analytical Lens
- Indigenous Laws: Wahkotowin and Kiyokewin
- Kinship Visiting Deliberative and Healing Approach
- Case Study: Aboriginal Youth Court & Aboriginal Legal Services
- Kinship Visiting Forums: Indigenous Law Institutes

URBAN INDIGENOUS YOUTH

- 51.8% of Aboriginal peoples across Canada live in **cities**
- 2016-2017, Aboriginal youth -- 46% of total admissions
- SASK –Indigenous youth in custody -- 92% boys -- 98% girls
- Youth are resilient, yet issues of housing, health, identity, trauma



R V GLADUE: REMEDIAL PROVISION

Section 718.2(e):

A court that imposes a sentence shall also take into consideration the following principles:

all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for

ALL offenders, with particular attention to the circumstances of Aboriginal offenders.

YCJA: STATUTORY PROVISIONS

38. (2) A youth justice court that imposes a youth sentence on a young person shall determine the sentence in accordance with the principles set out in section 3 and the following principles:

(d) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons.

R V GLADUE [1999]: METHODOLOGY

s. 718.2(e) FRAMEWORK OF ANALYSIS:

(A) The unique systemic and background factors which may have played a part in bringing the particular Aboriginal offender before the courts;

(B) The types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection

R V IPEELEE 2012 SCC 13

Judges **must** take judicial notice of:

“the history of colonialism, displacement, and residential schools” and a recognition of **“the inter-generational effects of the collective experience of Aboriginal peoples”**

- *Ipeelee*, paras 60, 80

TRUTH AND RECONCILIATION: JUSTICE AND EQUITY

42. We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems

Indigenous Legal Systems: Algonquian knowledge, including Métis, Nehiyawak and Anishinaabek (Ojibway and Saulteaux) legal orders.

URBAN INDIGENOUS KINSHIP-VISITING APPROACH

- 1) Kinship-visiting **METHODOLOGICAL** approach
- 2) Kinship-visiting **ANALYTICAL** lens
- 3) Kinship-visiting as **DELIBERATIVE** and **HEALING** approaches
- 4) Kinship-visiting **FORUMS**: culturally-safe urban Indigenous spaces

KINSHIP-VISITING

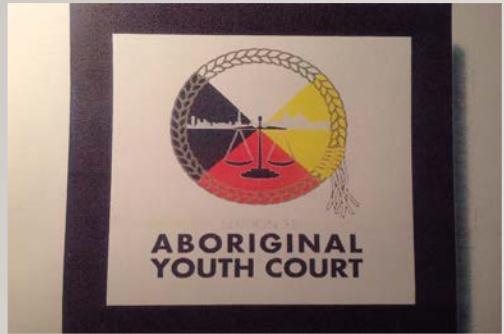
METHODOLOGICAL & ANALYTICAL LENS

COMMUNITY ENGAGEMENT:

VISITING & RELATIONSHIP-BUILDING

- Visit with Urban Indigenous Organizations
- Trust-Building: Talking & Visiting
- Exchanging Gifts/ Sacred Medicines
- Listening & Hearing Questions re: Research Intent
- Dissemination (feast/gifts)





TORONTO INTERVIEWS

ABORIGINAL YOUTH COURT

Justices @ 311 Jarvis

Crown @ 311 Jarvis

Aboriginal Youth Courtworker

ALS Program Director

ABORIGINAL LEGAL SERVICES

Youth Addictions and Mental Health worker

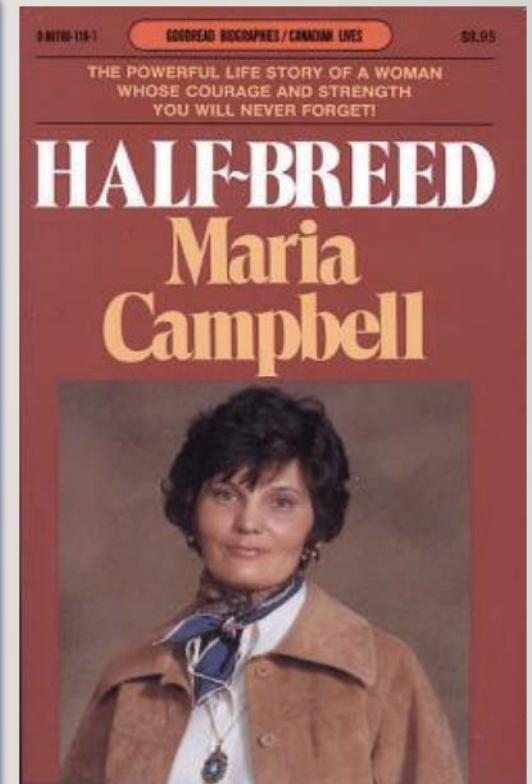
Manager Community Council

Youth Community Council worker

Giiwedin Anang Council worker

KINSHIP RELATIONSHIP WITH AND OBLIGATION TO KNOWLEDGE KEEPER

- **Dr. Maria Campbell**, Métis Knowledge Keeper
- **Multi-year** Spiritual and Academic Commitment
- **Gifts** and Sacred Medicines (sage, sweetgrass)
- **Visiting, Fasting and Responsibility**
- **Kiyokewin & Wahkotowin** as laws, values, methods, ways of being

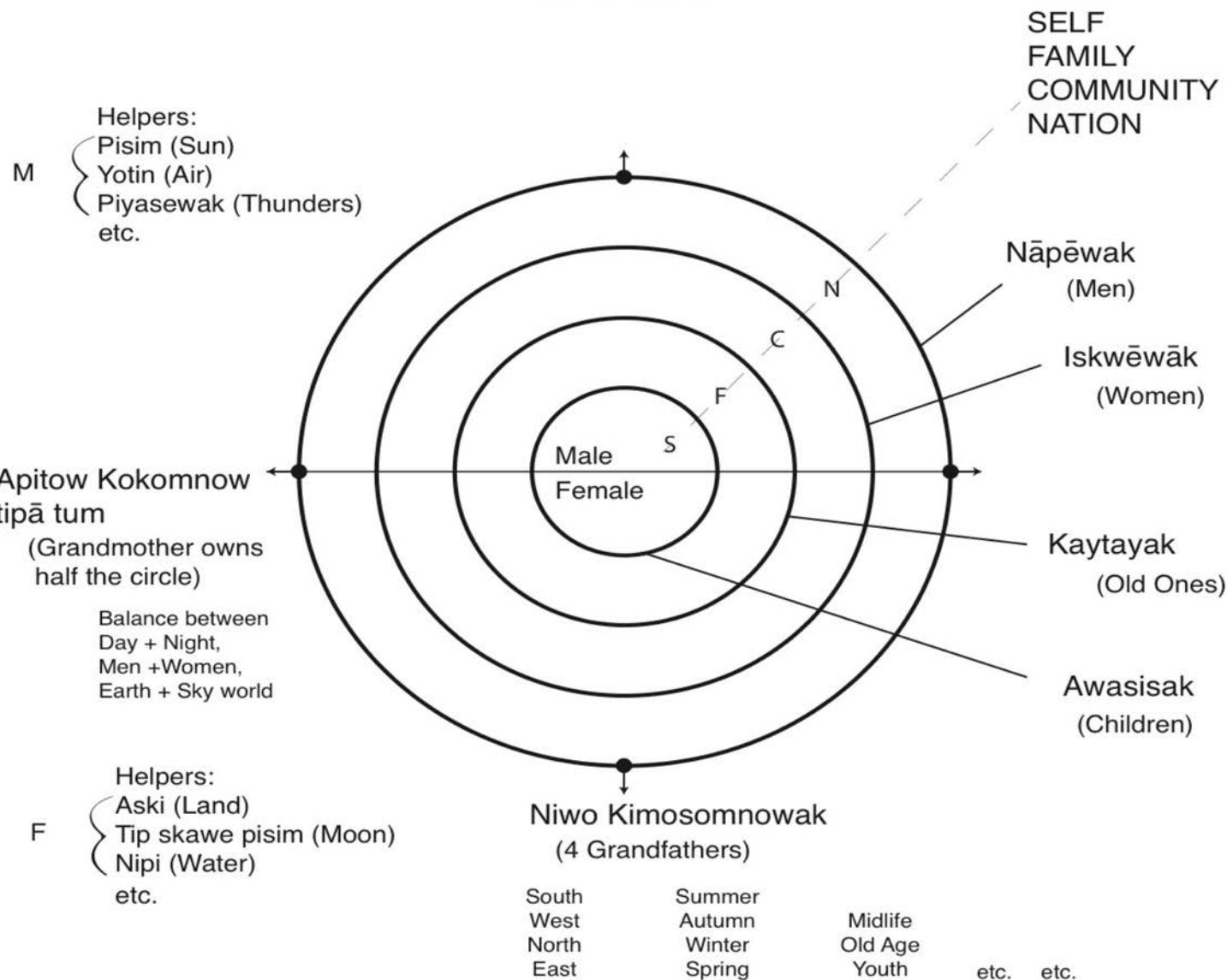


WAHKOTOWIN: KINSHIP RELATIONSHIP LAWS & RESPONSIBILITIES

A wide-angle photograph of a sunset over a body of water, likely a lake or river. The sky is filled with dramatic, layered clouds in shades of orange, yellow, and blue. The sun is low on the horizon, casting a warm glow. In the foreground, the dark silhouettes of evergreen trees are visible against the bright sky. The water reflects the colors of the sunset.

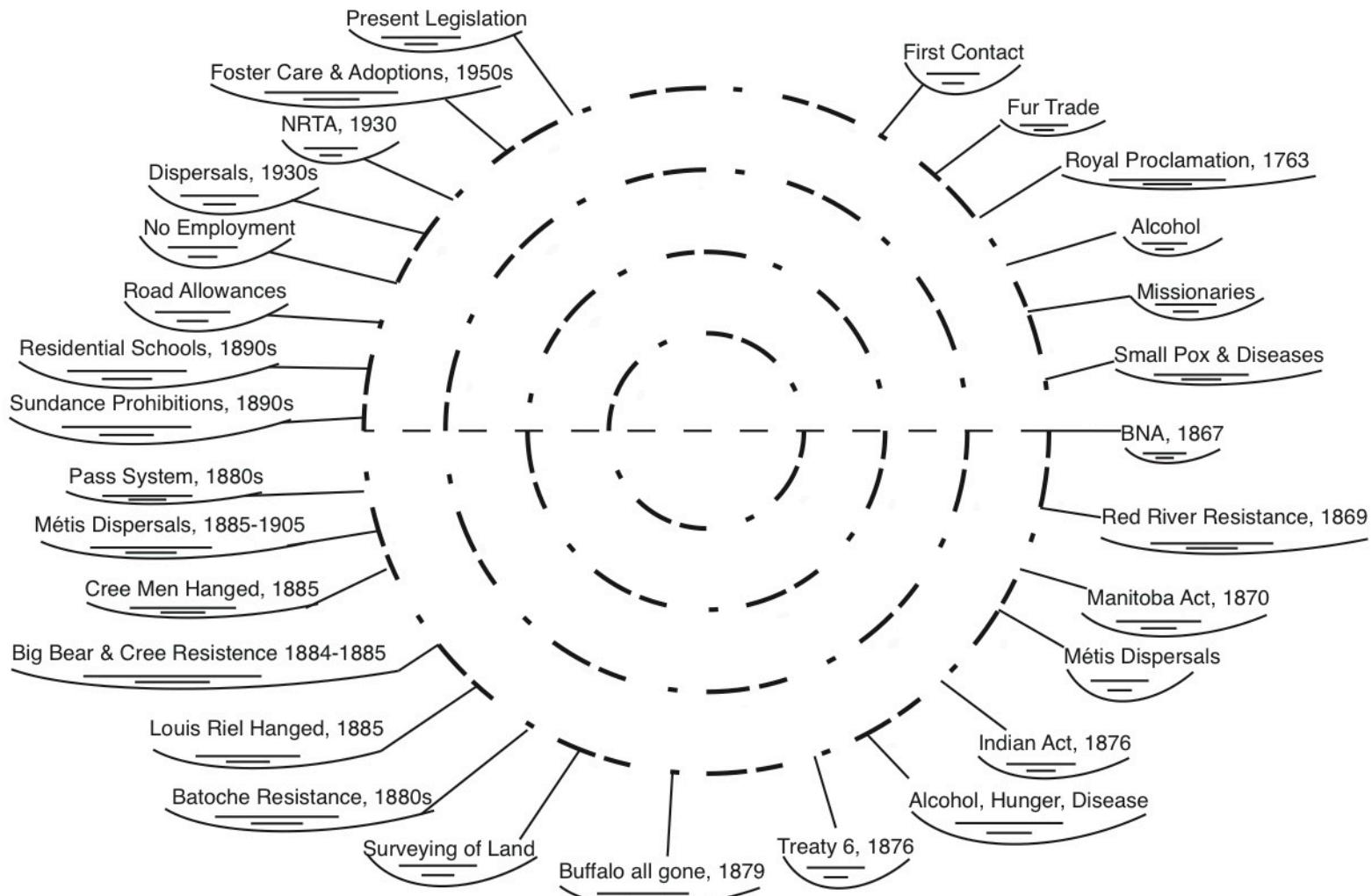
Maria Campbell
Sylvia McAdam
John Borrows
Hadley Friedland
Tracey Lindberg
Brenda Macdougall
Shalene Jobin
Janice Makokis
many others...

Intact Circle



@ M Campbell, 1986

Broken Circles



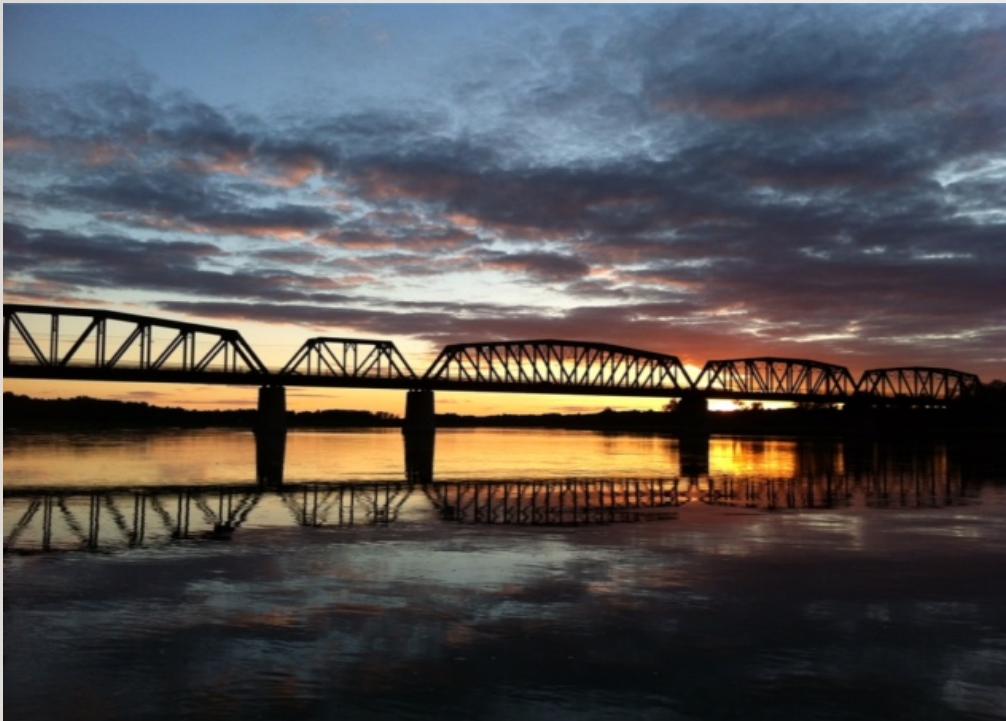
KIYOKEWIN: RESPONSIBILITY OF VISITING AND CARING FOR OUR RELATIVES (HOSPITALITY)



BREAKING KINSHIP VISITING: IMPRISONMENT AND DISCONNECTION

- Imprisoned on
small reserves
 - Forbidden or limited
to visit land and practice spirituality
- Imprisoned in
residential schools
 - * **Forbidden or limited**
visits with siblings, parents and grandparents
- Imprisoned in
foster/ group homes
 - **Forbidden or limited**
movement to visit communities, lands
- Imprisoned in
jail and penitentiary
 - **Forbidden or limited**
use of first language and sacred ceremonies

KIYOKEWIN (VISITING) REQUIRED TO MAINTAIN LAWS OF WAHKOTOWIN



VISITING WITH ELDER:

- Kiyokewin is **ROOT** of rebuilding the shattering
- Kiyokewin is **ROOT** of Indigenous education
- **Without visiting, youth are lonely and desolate**
- Kinship Relationships and Visiting are **NEEDS**

VISITING METHODOLOGY AND LENS:

MAMAWI-KIYOKEYAHK & MAWADISHIWIN

NEHIYOW

- *Mâmawî-kiyôkeyahk* is an essential protocol for building and maintaining loving relationships – it invites humility and openness into the learning environment and establishes a focused intensity and observation for learning and retaining information

ANISHINAABE

- I relied heavily on the Anishinaabemowin concepts of *mawadishiwin* or ‘visiting’, and on *odaniibiishimidaa*, ‘let’s have tea’ and *dibaajimowinan*, ‘stories’. These relatively simple terms represent the foundation of [decolonizing] Indigenous research to me

Dr. Leona J Makokis et al.

Dr. Agnieszka Pawlowska-Mainville

KINSHIP VISITING WITH RELATIVES

Visiting: checking in on people, bringing food, talking, seeing what's going well and what is not



(Richardson & Seaborn, 2009)

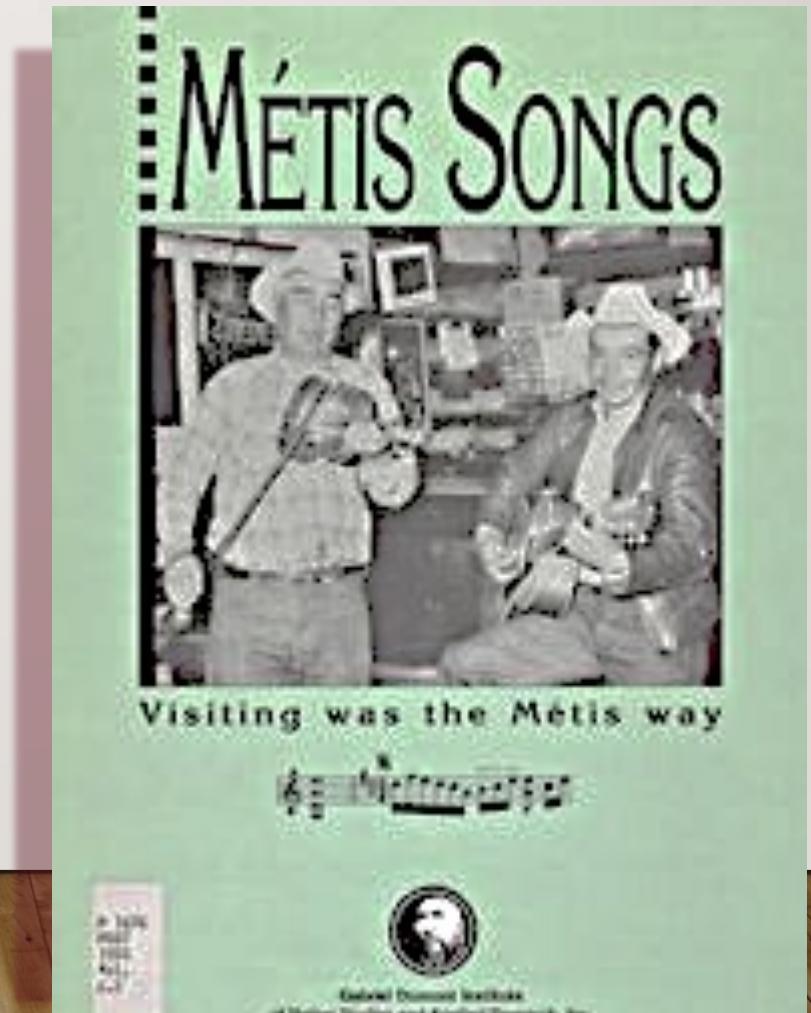
KINSHIP-VISITING AS WAY OF LIFE

kiyokewin is the

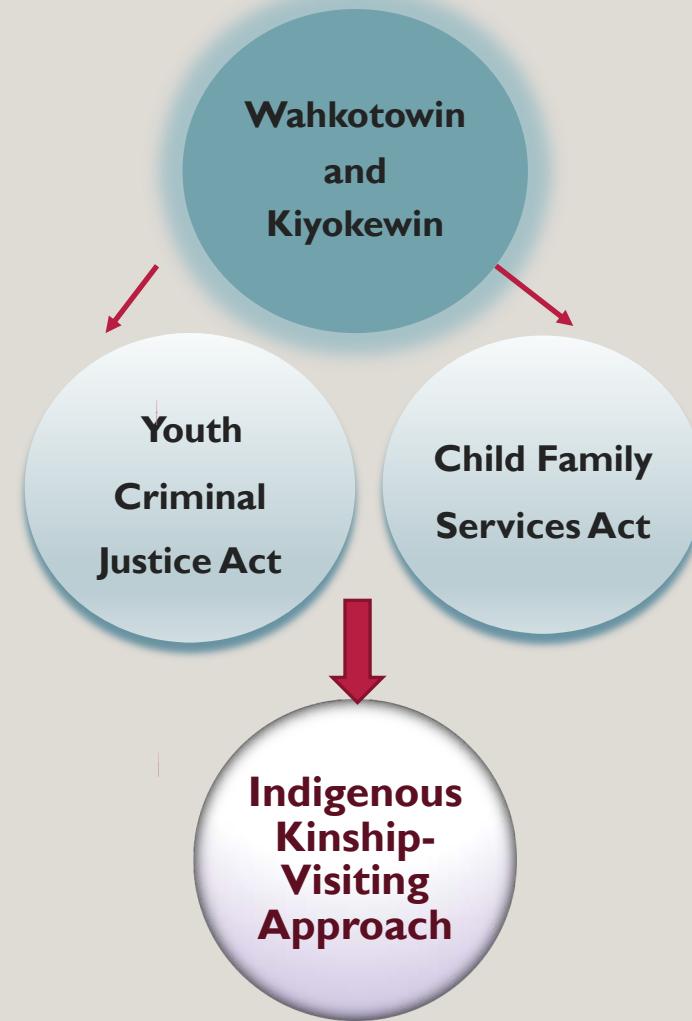
HEART

of Cree and Metis

ways of life



INDIGENOUS CHILD-CENTERED KINSHIP-VISITING ANALYTICAL & DELIBERATIVE APPROACH



KINSHIP-VISITING:

DELIBERATIVE & HEALING APPROACH

KINSHIP-VISITING: DELIBERATIVE LAW (JOHN BORROWS)

- How we *visit* within a one-on-one meeting?
- How we *visit* within a “Talking Circle”?
- How do urban institutions *visit* with each other?
- How do INDIGENOUS LAWS *visit* with CAN LAW?



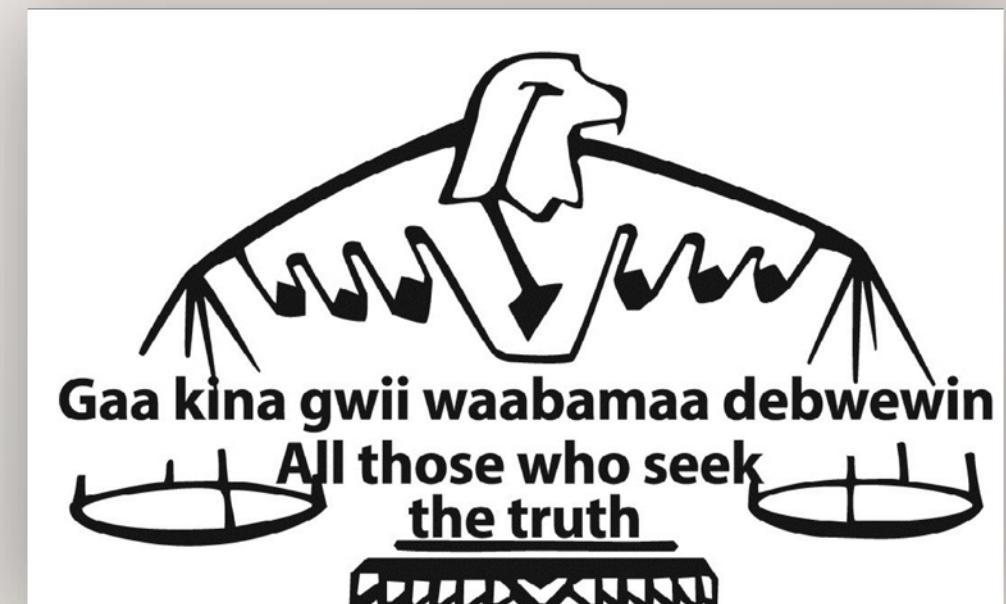
Leah Dorion

URBAN DELIBERATIVE INSTITUTIONS: STRENGTHS AND LIMITATIONS

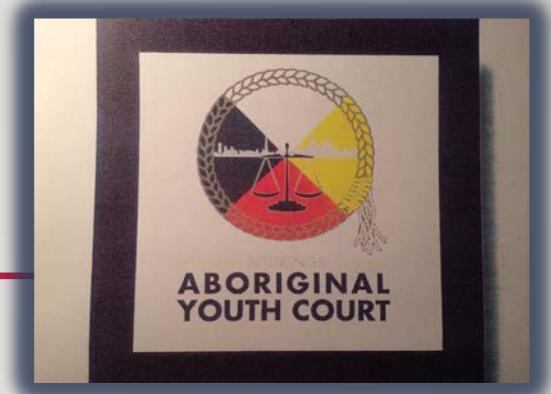
ABORIGINAL YOUTH COURT



ABORIGINAL LEGAL SERVICES



ABORIGINAL YOUTH COURT



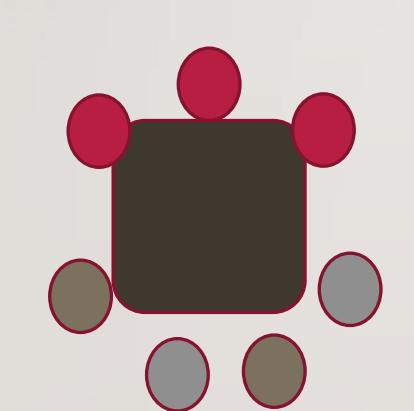
- **Resolution Court** initiated in 2012 – no trials
- **Objective:** to ensure Indigenous youth **connect** with Indigenous community
- Friendlier approach, less adversarial, **conversational**
- **Circle-like deliberative** approach – judge, crown, defence, courtworker, youth at table
- **Diversion to the ALS Community Council** – Youth Do **NOT** return to Court



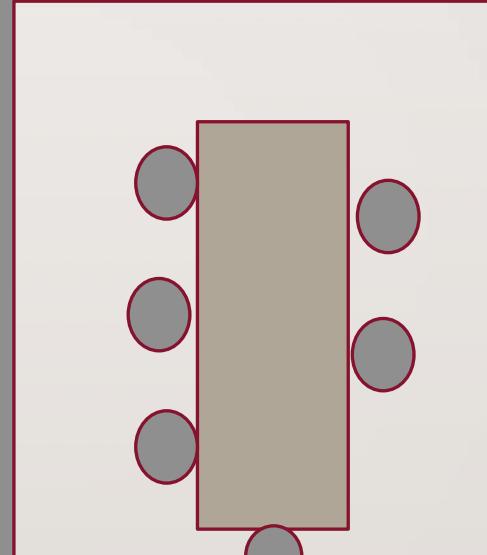
ABORIGINAL LEGAL SERVICES

- Indigenous-run not-for-profit multi-service legal agency established in 1990
- Indigenous staff & volunteers abide by Indigenous laws/values/ clan responsibilities
- Community Council: criminal diversion process adheres to Indigenous laws & procedures - kindness, caring, and respect
- Giwedin Anang Council: child welfare talking circle (AADR) for families & workers

DELIBERATIVE FORUMS: “CIRCLES”



Abor Youth Court



Community Council

CIRCLE DELIBERATION DIFFERENCES

ABORIGINAL YOUTH COURT

- **Circle-like** deliberation
- **Non-Indigenous Judge-led**
- **Crown, Defence, Social Workers**
- **Parent involvement**
- **Weight of the law** and courtroom

ABORIGINAL LEGAL SERVICES

- **Indigenous Talking Circle** deliberation
- **Indigenous community-led**
- **Volunteers** from Indigenous community
- **Parent involvement**
- **Spiritual kinship** process with relatives

BENEFITS OF ABORIGINAL YOUTH COURT

- Recognize importance of **connecting Indigenous youth** to Indigenous community
- Open to **visiting with and learning from** Indigenous organizations
- AYC open to **learning about colonial history** and intergenerational impacts
- AYC open to the **transfer of jurisdiction** to Community Council Talking Circle

BENEFITS OF ABORIGINAL LEGAL SERVICES



Indigenous staff/ youth workers:

- Ensure urban Indigenous youth **connected to urban social agencies**.
- **Unconditionally welcome** urban Indigenous youth to ALS
- Enact Indigenous **clan responsibilities** and are older **“helper”** relatives
- Mentor urban Indigenous youth to take on their role as **“helpers”**

ABORIGINAL LEGAL SERVICES: KINSHIP VISITING APPROACH

- **Kinship-visiting Roles**: Aunty, older brother, older relative to younger urban relatives;
- **Visiting with Youth**: ensure youth to feel comfortable, belonging and welcomed into;
- **Urban Visiting**: youth visiting urban elders, urban powwows, sweatlodges, sports activities;
- **Inter-organizational Visiting**: urban Indigenous and non-Indigenous entities talking/ trusting;
- **Community Council Visiting**: re-build urban mentors/helpers with respect and kindness.

CREE/ METIS LAW THEMES

INFORMING KINSHIP-VISITING APPROACH

- **Wahkotowin** – honouring kinship relationships and responsibilities
- **Kiyokewin** – visiting our relatives
- **Wîcihitowin** - the act of helping one another
- **Manâtisiwin** - the inner capacity to be respectful
- **Kisêwâtisiwin** - the inner capacity to be kind
- **Tâpwêwin** - speaking the truth with precision



URBAN INDIGENOUS

KINSHIP-VISITING APPPROACH

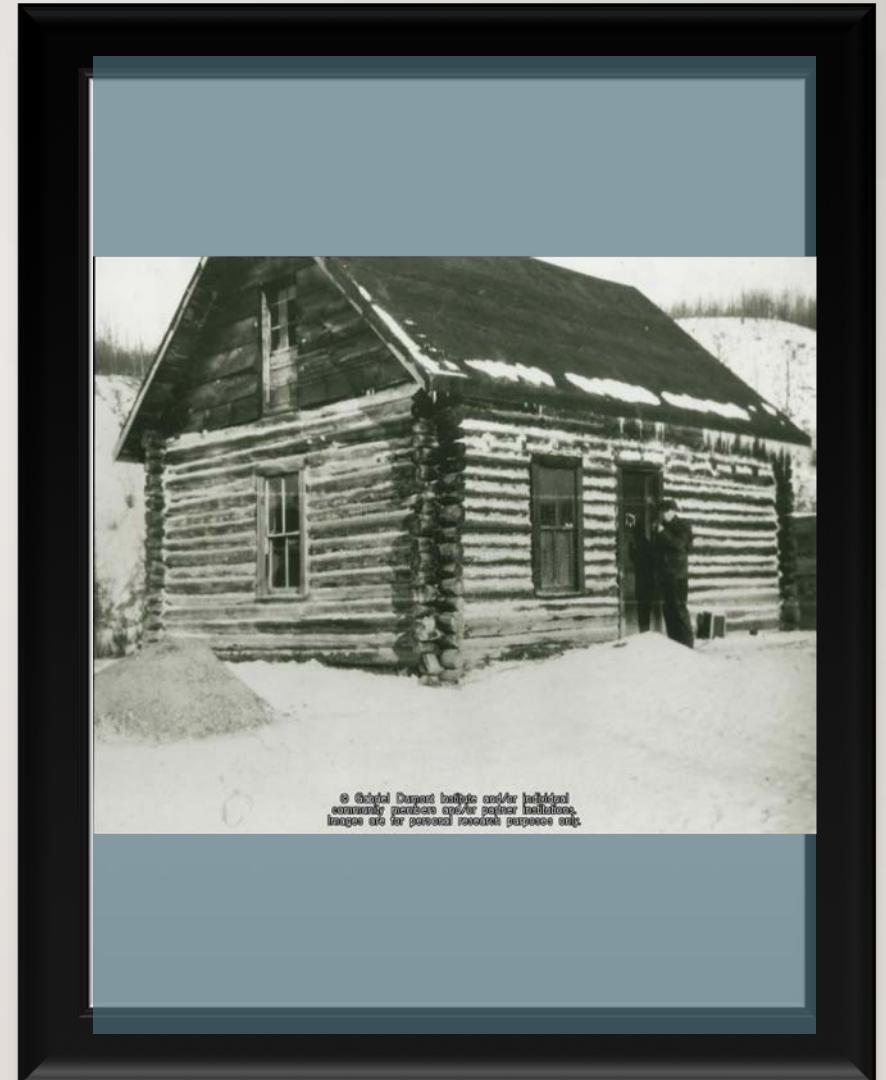
- Indigenous kinship roles, relationships and responsibilities
- Visiting Indigenous relatives key method to maintain kin responsibilities
- Children and youth-centred approach
- Centred in Indigenous history, identity, caring, belonging

KINSHIP-VISITING FORUMS

METIS MOTHER INTERVIEW

- “Usually by the time we stopped at one house, we’d go in there and talk, it was always shortly after we’d arrive, we were always offered **tea, bannock and jam**”

-
- “It was all one big room, with the cook stove and the **kitchen table**, and the living room was all kind of one room. Always small, little log houses, but **very cozy, very cozy**.”



© Chantal Durocher Indigenous and/or Métis
community members & partner institutions.
Images are for personal research purposes only.

TRUTH AND RECONCILIATION: JUSTICE AND EQUITY

50. In keeping with the **United Nations Declaration on the Rights of Indigenous Peoples**, we call upon the federal government, in collaboration with Aboriginal organizations, to **fund the establishment of Indigenous law institutes** for the development, use, and understanding of Indigenous laws and access to justice

VISITING FORUMS: INDIGENOUS LAW CENTRES

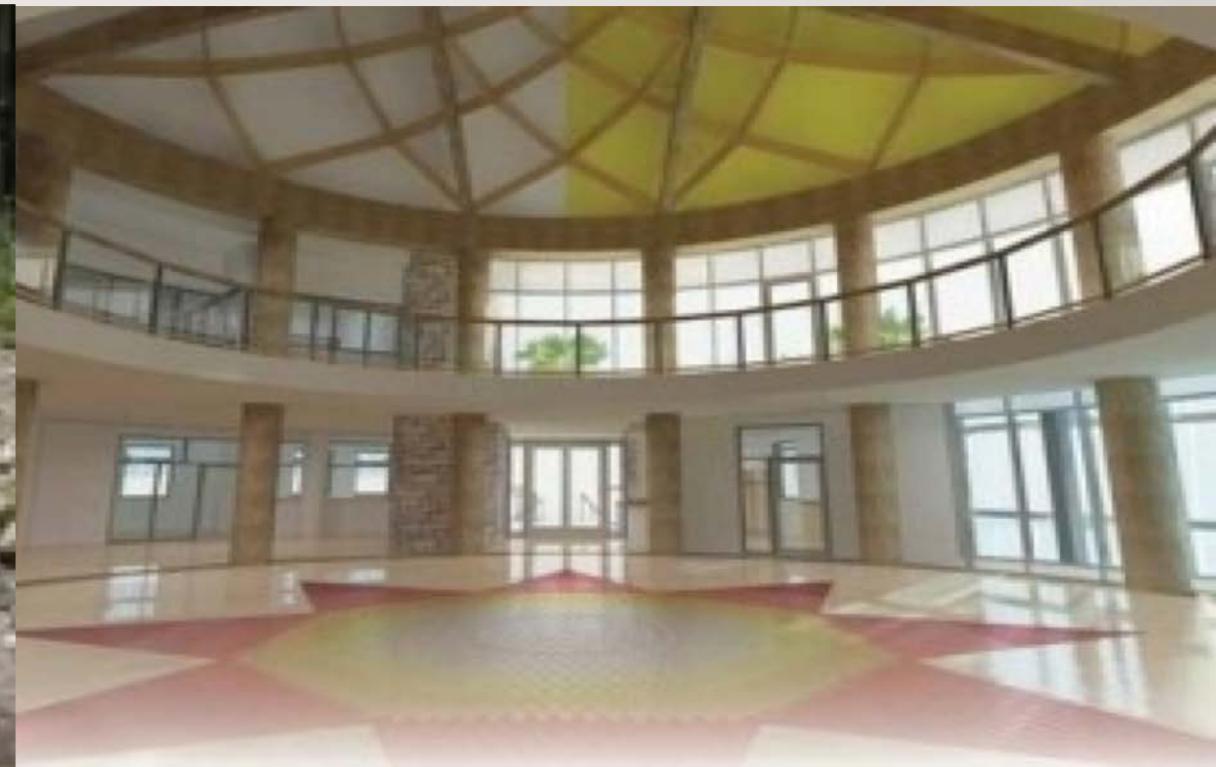
LAND-BASED

- Place to go 'home' to



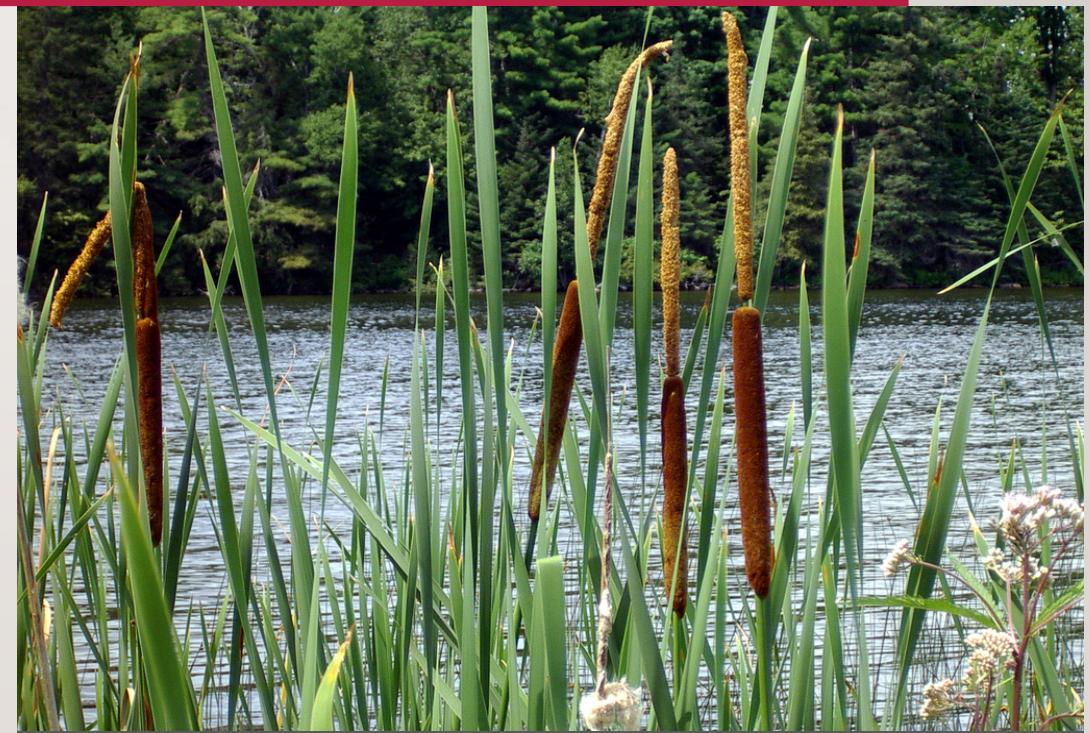
CITY LAND-BASED

- Space to 'feel at home'



UNDRIP 25: SPIRITUAL RESPONSIBILITY CARETAKING OUR WATERS

- Water is our **relative**
- Reciprocal Responsibilities: **Caretaking WATER**
- Humans cannot survive without **WATER**
- Indigenous Traditional Knowledge:
 - Laws and Protocols when **visiting WATER**
 - See Deborah McGregor, (2012). Traditional Knowledge: Considerations for Protecting Water in Ontario, *The International Indigenous Policy Journal* 3(3).



KIYOKEWIN: VISITING PLACE

