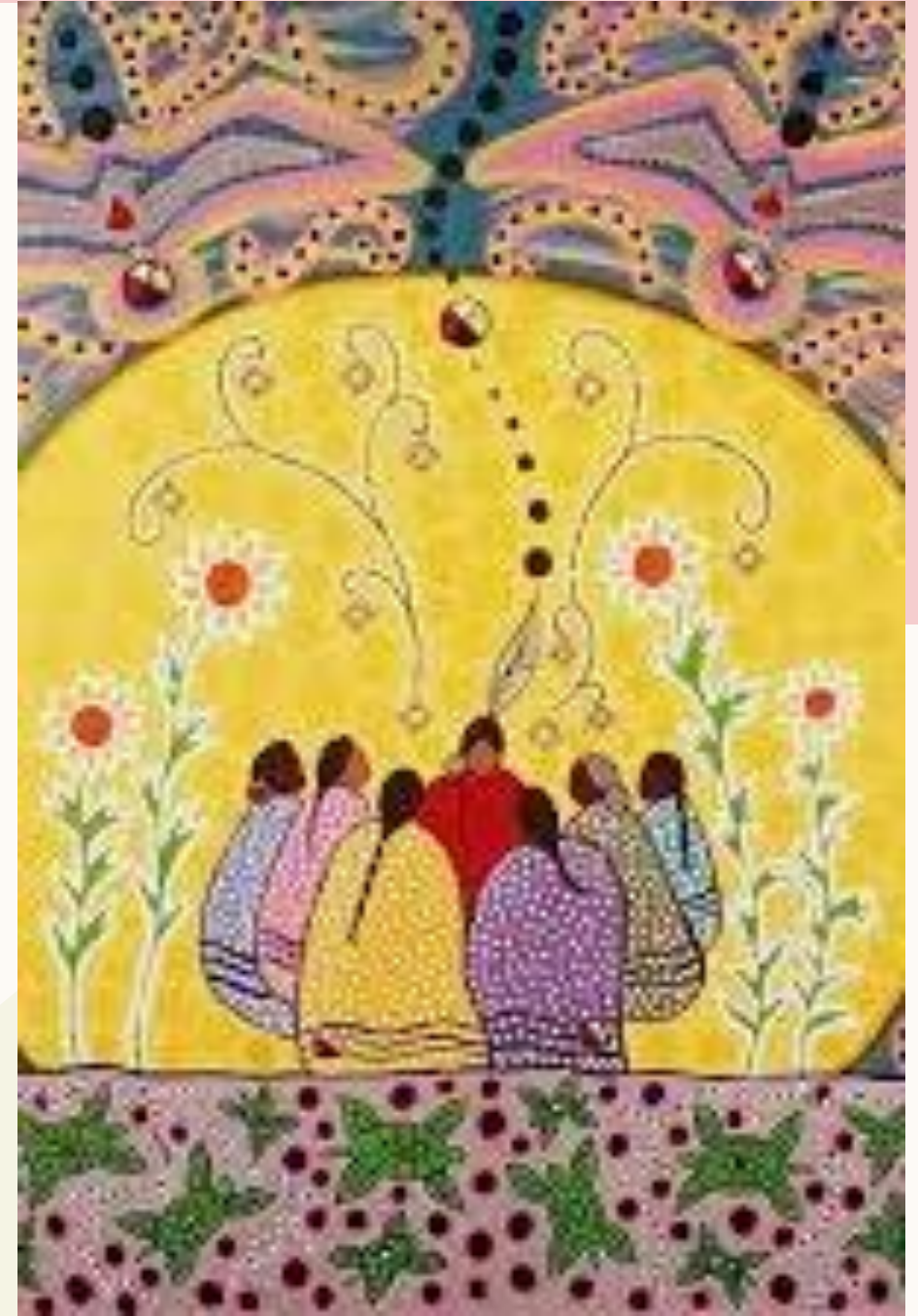


# **RESTOR(Y)ING THE BALANCE: INDIGENOUS UNDERSTANDINGS OF RESTORATIVE JUSTICE**

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# AGENDA

1. Introduction
  - Setting Context for “Restor(y)ing the Understanding”
  - Nikwakomakanak (My Relations)
2. Indigenous Narratives
3. Jagged Worldviews
4. Living Law
5. Restorative Justice and Indigenous Legal Traditions
4. Finding Healing and Seeking Balance



# ACKNOWLEDGEMENTS





# ***NIWAKOMAKANAK***

## **– MY RELATIONS**

- Grandparents (*Nimosompan* Vernon—trained to be WWII Sniper; ran away from IRS at 7)
- *Nohkompan* Alice – “Blue Quills Takeover”
- *Nisikos* – Dr. Leona Makokis (Former President of Blue Quills)
- *Nohtawiy* – Eugene Makokis
- *Nohkom* – Mildren Suvee
- *Nikawiy* – Pat Makokis





**“A NATION IS NOT CONQUERED UNTIL THE HEARTS OF ITS WOMEN ARE ON THE GROUND. THEN IT IS DONE, NO MATTER HOW BRAVE ITS WARRIORS OR STRONG ITS WEAPONS.”**

**SOURCE: CHEYENNE PROVERB**

# DIFFERENT UNDERSTANDINGS: INDIGENOUS RESTORATIVE JUSTICE

- Core values of restorative justice are: healing with community participation and directing respectful dialogue to responsibility, apology, forgiveness, and making amends (**John Braithwaite**)
- Justice that focuses on bringing together offenders, victims and communities to recognize a harm has been done and decide what should be done (**Kent Roach**)
- Directed to repairing the relationship, understanding the social context surrounding the harm, and empowering those affected so they can address and repair it (**Annalise Buth and Lynn Cohn**)



Naadamaagewin: Indigenous Restorative Justice

By

Leonard Stephen Mandamin

# HOW WE GOT HERE: UNDERSTANDING INDIGENOUS NARRATIVE(S)

- Learning Nehiyaw (Cree) Laws/ Governance from parents/ extended kinship
- Sophisticated Laws tied to the land and based in our kinship (human and non-human) relationship(s)
- Laws grounded in respect, love, kindness and causing no harm
- Teachings grounded in being a good human being to live the 'good life' (miyo-pimatisiwin)
- Learning 'fasting ceremony' by watching my mom



# “GO BACK TO THE BEGINNING NOSISIM”

- The realization I know nothing (colonial impacts)
- Ceremony is Governance and the strength/power of women
- Elder’s teaching me about law and governance





# SEARCHING FOR IYINIW PAHMINSOWIN<sup>9</sup> (SELF-DETERMINATION)

- The nehiyaw ideological concept that best articulates self-determination is ‘iyiniw pahminsowin.’ This is the Cree term that explains “how order and organization are given to the people” (Makokis)
- “Ceremony is where we connect to our ancestors, their teachings, and the way of life they left for us to practice. Ceremony demands understanding traditional knowledge as the tool we utilize to discover who we are and the place where we practice self-determination, governance, and our natural laws.” Makokis

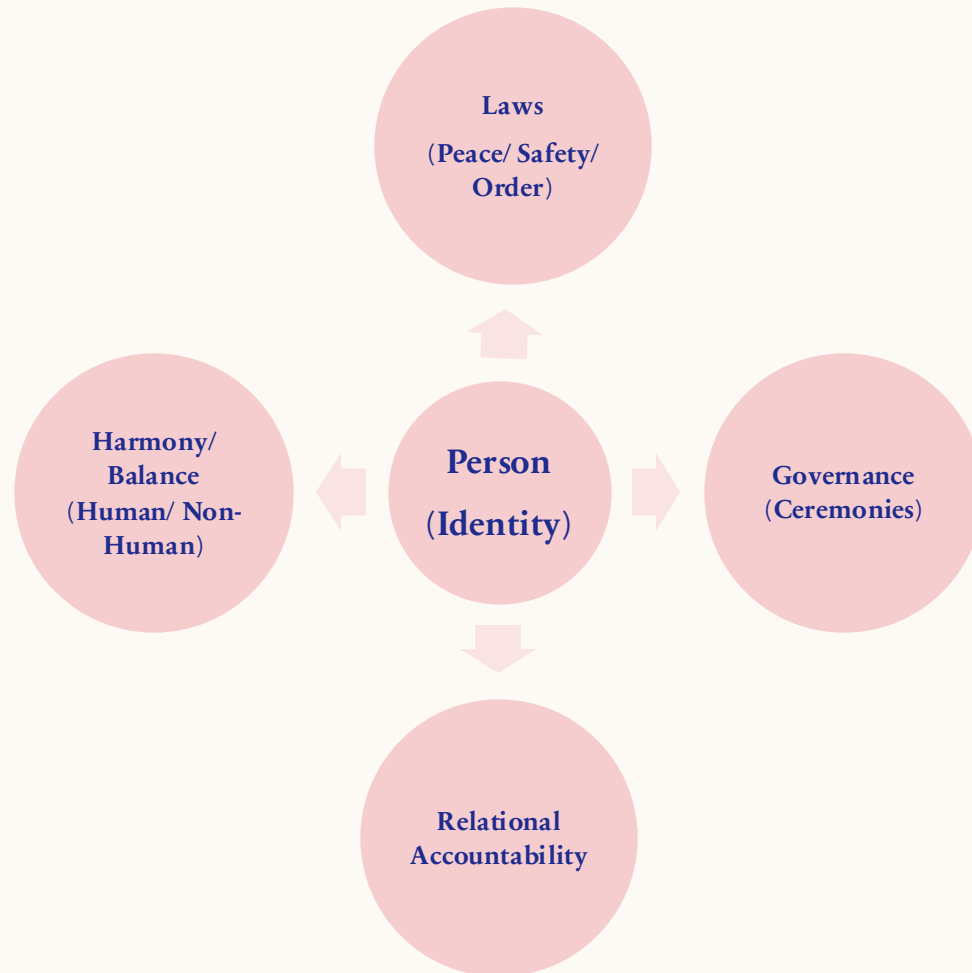
**Nehiyaw iskwew  
kiskinowâtasinahikewina—  
paminisowin namôya tipeyimisowin**

**Learning Self Determination Through the Sacred**

WAHPIMASKWASIS (LITTLE WHITE BEAR)  
JANICE ALISON MAKOKIS

Revitalizing laws to Restore Balance

# LIVING 'MIYO-PIMATISIWIN' (A/ THE GOOD LIFE)



- What makes me 'who I am'?
- Living a nehiyaw (Cree/Indigenous) way of life based in a worldview that connects one's identity to a philosophical understanding of balance within the natural world
- Identity tied to ceremonial governance (land, nature, kinship, etc.)
- Relationships that keep us relationally accountable to each other and to our non-human relatives
- Practicing the laws/ values facilitates balance and harmony

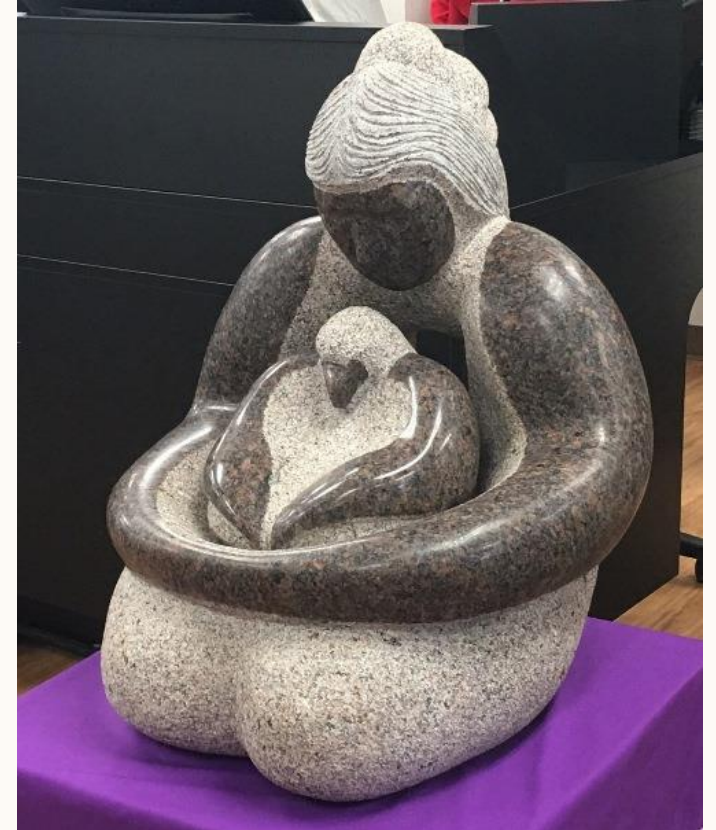
# LEARNING OUR 'PURPOSE'

## Life Questions:

What is my/ your/ our purpose? What is the purpose of life?  
Why are we here?

- “There are many things I don’t understand about myself...how do I know I am taking the right path?”  
Eaglechild
- He travels to all the Cardinal Directions to ask “I want to know who I am, can you tell me? (East/ Eagle, South/ Thunderbird, West/ Bear and North/ Wind)

In learning about ourselves, we learn about our laws and then we ‘live our laws’ – this is where harmony and balance stem from. We know our purpose.



Eagle Child Story  
(Our Purpose in  
Life)

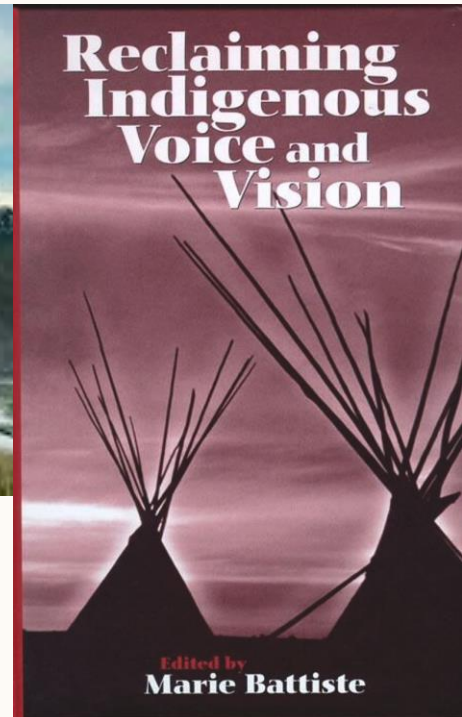
# DISRUPTING COLONIALISM: JAGGED WORLDVIEWS AND RESTORING BALANCE

- How we come to know, understand and live in the world impacts our view of justice
- Challenging colonialism demands we consider the multiple sources of worldviews that contains a societies laws, governance and views of justice
- Restoring balance requires a return to Indigenous teachings, laws and governance structures.
- Colonial laws created disruption to our kinship structures/ families and nations.

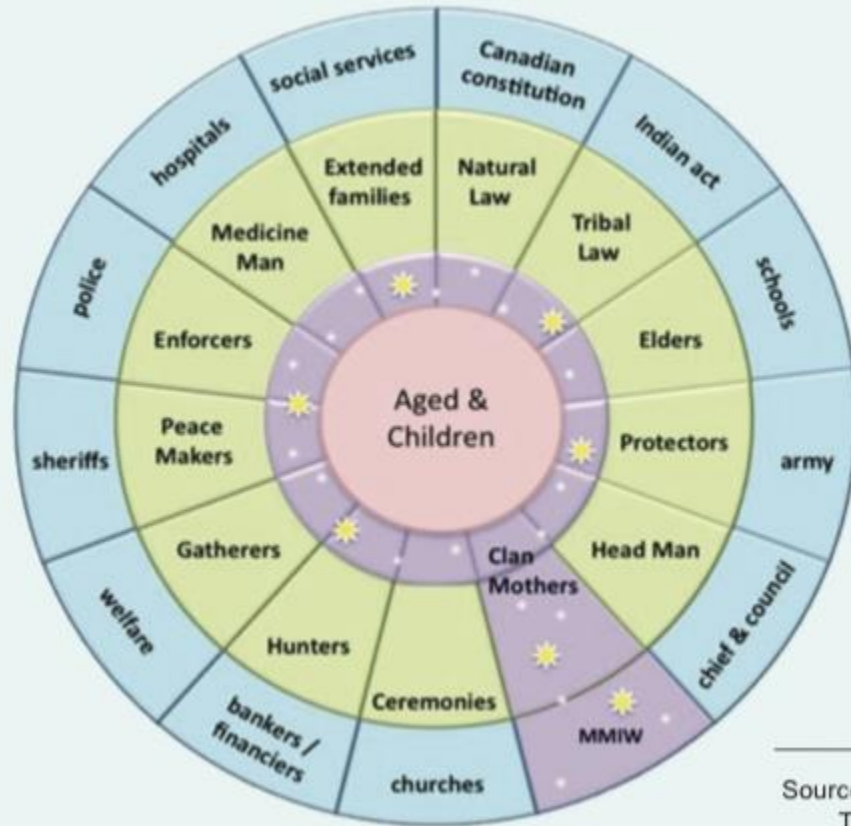
**5**

Jagged Worldviews Colliding

*Leroy Little Bear*



# RETURNING TO INDIGENOUS LAWS AND GOVERNANCE



## Conflicting worldviews

- **Traditional** (inner circles): circular, consensus, shared resources, focus on collective wellbeing
- **Contemporary** (outer circle): hierarchical, competitive, mandated resources, focus on personal achievement

Source: Mike Steinhauer, 2000, Elder teachings, Saddle Lake, Treaty Six Territory. Revised by Vincent Steinhauer, 2018



# **LAW IS LIVED AND KINSHIP IS LAW: RESTORATIVE JUSTICE IS A WAY OF LIFE**

## **Proactive and Preventative Strategies (Law as Social Order):**

- Kinship is multi-directional (human and non-human);
- Kinship implies reciprocal relationship and accountability;
- To be in 'relationship' with a person/ entity (nature/ animal) implies a responsibility to 'care' and 'do no harm';
- As we learn our obligations we are living the law;



# CONVERGENCES: RESTORATIVE JUSTICE, INDIGENOUS LAW AND LEGAL TRADITIONS

- Indigenous legal traditions are distinct and separate from restorative justice practices
- Indigenous laws and structures tied to a sophisticated kinship network interrelated to customary practices, traditions and sources of law(s) (creation stories, oral traditions, earth laws, kinship laws, etc.)
- Indigenous laws kept balance and had checks and balances to address harms
- Restorative justice practices should address harms but also create space where family/ community can learn/ revitalize Indigenous laws to restore colonial disruption by colonial violence.

## A Report on the Relationship between Restorative Justice and Indigenous Legal Traditions in Canada



Kanatase Horn



Larry Chartrand

# COLONIAL JUSTICE, INDIGENOUS JUSTICE AND RESTORATIVE JUSTICE

| State-Based Justice                                               | Indigenous Justice                                                         | Restorative Justice                                                           |
|-------------------------------------------------------------------|----------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| Fairness, equality and accountability                             | Justice is a Healing Process (individual, relationships and natural world) | Combination of both healing and fairness; towards just relationships          |
| Deterrence and Procedural Fairness                                | Relational Worldview (Creator, Mother Earth, creation, humans, etc.)       | A cross cultural dialogue                                                     |
| Justice as Fairness                                               | Holistic Well-Being and Inter-Connectedness                                | A process/ approach to dealing with harm                                      |
| Prevention of Injustice                                           | Being a Good Relative; living the “good life”                              | Empowering those who have been harmed (victims); repairing the harm.          |
| Individualistic                                                   | Collective and Collaborative                                               | Focus on dialogue, reparation and accountability                              |
| Process is procedural with focus on individuals and relationships | Restoring and practicing indigenous laws                                   | Restoration of a person’s balance (spiritual, physical, emotional and mental) |

Source: Indigenous Justice and Restorative Justice: Exploring Convergence and Divergence in British Columbia and Saskatchewan



# RESTORATIVE JUSTICE AS ETHICAL SPACE AND RECONCILIATION

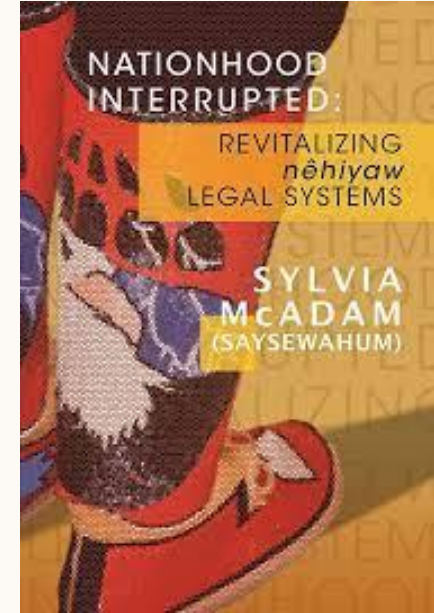
Cree ethicist Willie Ermine wrote about a concept called “Ethical Space” and this idea can be applied to the work being undertaken through Restorative Justice initiatives.

- “**‘Ethical space’** is formed when two societies, with disparate worldviews, are poised to engage each other. It is a thought about diverse societies and the space in between them that contributes to the development of a framework for dialogue between human communities. **The ethical space of engagement proposes a framework as a way of examining the diversity and positioning of Indigenous peoples and Western society** in pursuit of a relevant discussion on Indigenous legal issues and particularly to the fragile intersection of Indigenous law and Canadian legal systems”. (Ermine, 2007, p. 193)



# NEHIYAW LAWS AND LEGAL FRAMEWORK

**kisemanitow otwiyinikewina**  
(Creator's laws/ gifts/ Original Instructions)  
**wisahkecahk**  
(Brings the Laws)  
Cree Women (Law Keepers)



Ethical Space

RESTORATIVE JUSTICE

Re-instating Indigenous Law



**nehiyaw wiyasiwewina**  
Cree Laws:

Mother Earth  
(plants, water, etc.)  
Animal  
Human  
Spiritual

Breaking a Law  
(Stepping Over)

**pastamowin** (what someone said/ think; remain silent)

**pastahowin** (Human actions breaking laws)

**ohcinêwin** (Anything Other Than a Human Being)

**ohcinêmowin** (guides how we speak to Creation, except humans; ex: hunting)

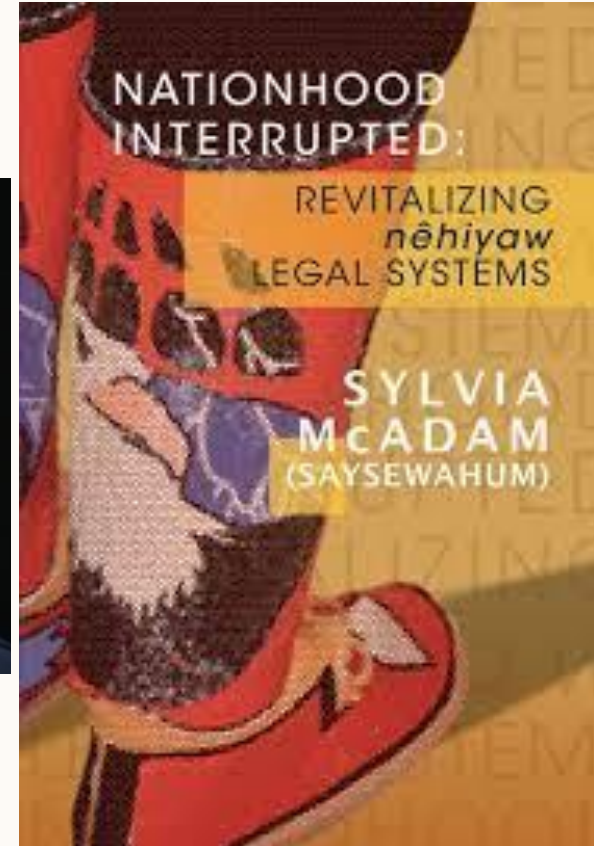
Remedy/ Opportunity to Fix Broken Law (Different remedy's/ processes used depending on Context: restorative justice process(es), reparation, ceremonies, direction through ceremony, etc.)

# OKIH CITÂWISKWÊWAK / (CLAN MOTHERS/ WARRIOR WOMEN)

- Women had an important role in ensuring the Nation/ Clans were peaceful and orderly.
- Women had half of everything.
- They were the guardians and keepers of the laws (similar to judges).
- Women played a key role in the treaty negotiations – ceremonies were done for 4 nights.
- The Chiefs would come back and speak to the okihcitawiskwewak – they had to have their permission to agree to things.
- The women informed the content of what was to go into the treaty during treaty making time.



Elder Juliette McAdam



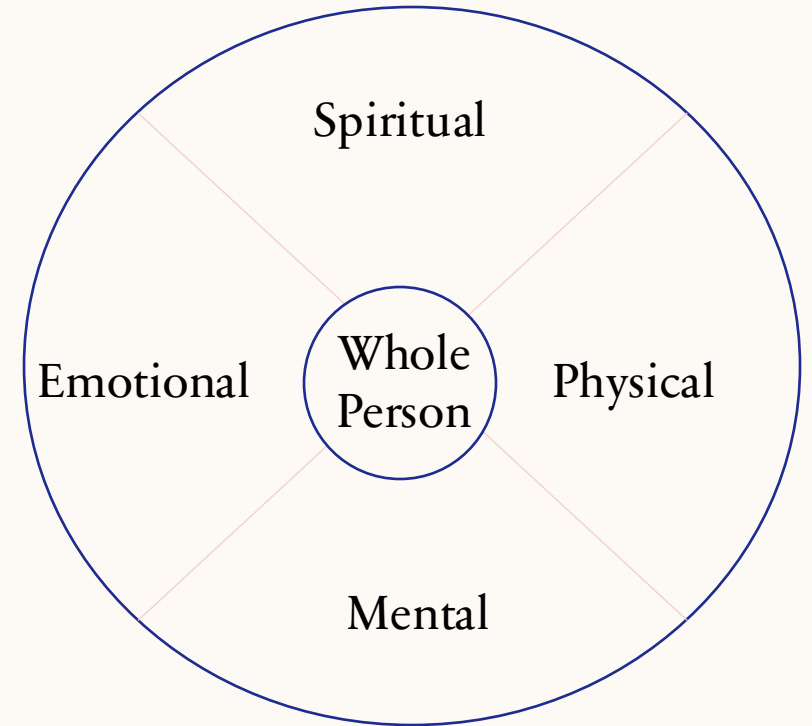
# INDIGENOUS WOMEN: MOBILIZING AGAINST GENDER BASED VIOLENCE

- Roots of colonial violence finds itself in the domination, dehumanization, racism and discrimination of Indigenous peoples
- Colonialism created gender-based laws (Indian Act) directly attacking Indigenous women and introduced patriarchy into our families, nations and governance structures.
- Indigenous women, girls and 2SLGBTQI+ peoples face a greater risk of all forms of gender-based violence (GBV) in Canada
- Disrupting and ending violence against Indigenous women includes calling out the origins of colonial violence, contained in Canada's laws.



# RESTORING THE WHOLE PERSON: RESTORATIVE JUSTICE AND INTER-GENERATIONAL TRAUMA

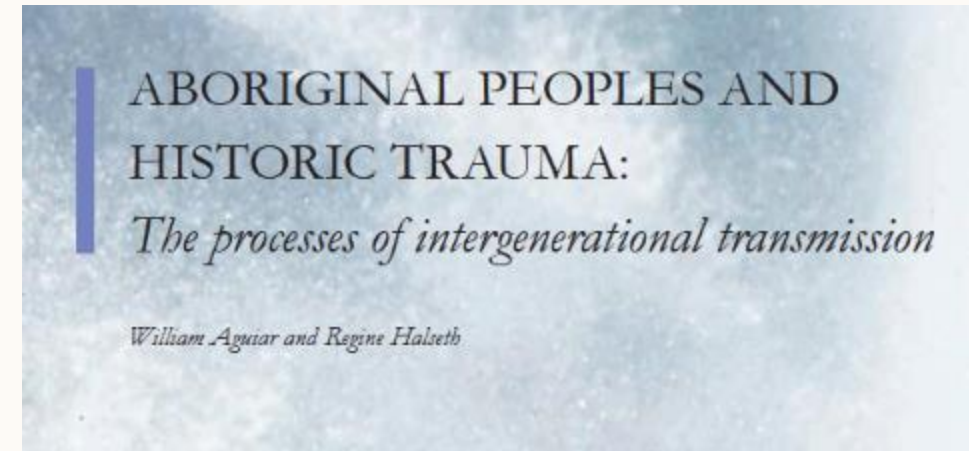
- We learn our purpose through our creation story, teachings of kinship (human/ animal inter-relatedness), laws and we establish a connection (whole person) through our customs/ ceremonies.
- One cannot have joy, love and pride without fully being whole.
- Restoring the whole person comes with understanding the historic harms inflicted on the group of people (families, communities and indigenous tribe/ Nation) you identify with.
- Learning about and providing education to individuals, families and communities on impacts of historic and inter-generational trauma.
- Addressing historic trauma by healing the 'soul wound'



# RESTORING THE WHOLE PERSON: RESTORATIVE JUSTICE AND HEALING FROM INTER-GENERATIONAL TRAUMA

Given the inter-generational effects of Trauma on an individual, their families and a community, its imperative that restorative justice initiatives include interventions to address this:

- Residential schools and legacy of shame (root cases of social problems facing Indigenous communities (Ross, 1996)
- Colonial legacy and historic trauma impacts health, well-being and families. (Aguilar and Halseth, 2015)
- Interventions and strategies must be culturally appropriate to interrupt intergenerational transmission of historic trauma so families/communities can heal. (Aguilar and Halseth, 2015).



# SOURCES

1. Aguiar, W. and Halseth, R. (2015). Aboriginal Peoples and Historic Trauma: The Process of Intergenerational Transmission. National Collaborating Centre for Aboriginal Health
2. Blue Quills First Nations College, (2013). Mobilizing Our Collective Moral Courage: A Framework for Supporting the Health of First Nations Children, Families, and Communities.
3. Blue Quills First Nations College, (2001). 30<sup>th</sup> Anniversary Commemorative Edition.
4. Chartrand, L. and Horn, K. (2016). A Report on the Relationship between Restorative Justice and Indigenous Legal Traditions in Canada.
5. Makokis, Janice, A. (2007). Nehiyaw iskwew kiskinowâtasinahikewina—paminisowin namôya tipeyimisowinlearning Self determination Through the Sacred, *Canadian Women's Studies*, VOLUME 26, NUMBERS 3,4.
6. Mandamin, L. (2021). Naadamaagewin: Indigenous Restorative Justice. Unpublished Thesis



# **THANK YOU**

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