

Gender Inside Indigenous Law Casebook



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Acknowledgments

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Kokum Raven Series: Artist Statement

Indigenous law is in the world and there are many ways to learn about it, teach it, and to represent it. The way I have chosen here is with the raven – a trickster for some Indigenous peoples. She can teach us by being a trouble maker and by upsetting the log jams of unquestioned assumptions. She can also teach us with love, patience, and a wicked sense of humor. She can create spaces for conversations and questions – that is her job as a trickster and a feminist so that nothing is taken for granted and all interpretations are laid bare.

~ Val Napoleon

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Introduction

Background to Project

The *Gender Inside Indigenous Law Casebook* and its accompanying *Gender Inside Indigenous Law Toolkit* are products created for the Indigenous Law Research Unit's (ILRU) Gender Project. ILRU is a dedicated research unit committed to the recovery and revitalization of Indigenous laws housed at the University of Victoria's Faculty of Law. We believe Indigenous laws need to be taken seriously as laws. We partner with and support work by Indigenous peoples and communities to ascertain and articulate their own legal principles and processes, in order to effectively respond to today's complex challenges.

Through ILRU's on-the-ground engagement with Indigenous communities and Indigenous law over the past few years, it has become evident that there is a need for a focused way to practically navigate questions of gender and sexuality. These include critical questions on the relations of power, gender stereotyping and essentializing, constraining gender roles, fairness, and equality, as well as overt oppressions experienced in the form of sexualized and intimate partner violence. The overarching goal of this project is to promote access to justice in an Indigenous context and to identify and address legal needs within Indigenous law in Indigenous communities. Through this Casebook and its corresponding Toolkit of lessons and activities, we aim to support and strengthen healthy communities, create productive legal processes for inclusive discussions and debate, and help create spaces for voices often silenced by family and community power differentials. There is an exciting resurgence of Indigenous law in communities and there is no turning back from the force of this direction. However, with this resurgence there are complex issues that are hard to talk about given the dynamics within certain communities. This project is about exploring ways to engage in these discussions in proactive and positive way.

Using Stories to Engage with Law and Critical Legal Issues

Laws within Indigenous communities can be found in a number of different places. Law's location in the cultural, spiritual, social and economic institutions of communities means there are many different avenues to access Indigenous laws. As many of the legal institutions within Indigenous communities are decentralized, accessing Indigenous legal orders can be a complex and difficult task.

One of the more public methods of accessing legal resources within communities is using stories. Stories, oral narratives, or teachings have always been a source of law for many Indigenous legal orders. Stories offer a way to observe, identify and handle critically norms that we may describe as legal. Community stories often include deliberation and decision-

making that offers an insight into legal processes within a community. The Toolkit and Casebook created for this project invite people to explore Indigenous law and critical legal issues surrounding gender and sexuality through Cree, Dane-zaa and Secwepemc stories.

Although analyzing stories is a way to access the laws and talk about some of the critical issues surrounding the experience and status of women in society, using publicly available stories translated into English carries with it some limitations. Finding *cases* within stories (instances where social decisions, deliberation or action that takes place that could be understood as legal) is not meant to provide a definitive interpretation of a story. It is also not an attempt to remove the story from its contextual background within a constellation of narratives and institutions in a community. Also, we recognize that some meaning has been lost in translation, particularly when the story has been recorded by someone from outside the community. Indeed, some gendered assumptions may exist because of who translated some of these stories and when they were translated.

The Casebook

The Casebook that follows includes all of the stories, or oral narratives, that are used in the Toolkit to teach methods of engaging with stories as law or work with critical legal issues surrounding gender. The Casebook is divided into three sections. The first section includes all the reproduced stories. The second part includes all the case briefs created when developing the toolkit. The third part includes the Indigenous feminist legal analyses of stories created when developing the accompanying Toolkit. The Casebook also includes a thematic index as an appendix. The purpose of the thematic index is to provide a way of engaging with the law and legal questions through the stories themselves. We suggest facilitators read through all sections of the Casebook prior to using the Toolkit.

The case brief and Indigenous feminist legal analysis methods are tools for thinking and engaging with stories – to draw out legal reasoning and critical analysis from them. Please note that the case briefs and analyses in this toolkit are not intended to contain the “right” or definitive answers to the questions we’ve asked these stories. Indeed, every person who engages with these stories using these methods will likely come up with different answers, and may disagree with our conclusions and inferences. We have provided our work, here, to be transparent, demonstrate the process of engaging with these methods, and articulate our own ideas about these stories.



Part One: The Stories

The stories in this Casebook come from three Indigenous legal traditions: the Cree, the Dane-zaa and the Secwepemc. The Cree are one of the largest groups of Indigenous people in North America, and stretch across most of Canada. Plains Cree live along the Rocky Mountains in what is known as Northern British Columbia. The territory of the Dane-zaa is around the Peace River in both Alberta and British Columbia. Secwepemc (Shuswap) territory is within central British Columbia, between the Chilcotin Plateau and the Cariboo Plateau southeast, through the Thompson Country to Kamloops and the Shuswap Country and includes the Selkirk Mountains and Big Bend of the Columbia River, and the northern part of the Columbia Valley region. We selected these three legal traditions to draw on based on their location, our familiarity with the Indigenous communities or their legal traditions, and the power of the stories within those legal traditions for the purpose of analyzing the law.

The stories were reproduced from a number of sources. The Cree stories came from a retelling from Darcy Lindberg, Naomi Adelson's *Being Alive Well: Health and the Politics of Cree Well-Being*,¹ Carl Ray and James Stevens' *Sacred Legends of the Sandy Lake Cree*,² and Robert A. Brightman's *Ācaǎǎhkīwina and ācimōwina: Traditional Narratives of the Rock Cree Indians*.³ The Dane-zaa stories were reproduced from Robin Ridington and Jillian Ridington's *Where the Happiness Dwells: A History of the Dane-zaa First Nations*.⁴ The Secwepemc stories were taken from James Teit's, "The Shuswap," in *The Jesup North Pacific Expedition: Memoir of the America Museum of Natural History and Traditions of the Thompson River Indians of British Columbia*.⁵



¹ Naomi, Adelson, *Being Alive Well: Health and the Politics of Cree Well-Being* (Toronto: University of Toronto Press, 2000).

² Carl Ray and James Stevens, *Sacred Legends of the Sandy Lake Cree* (Toronto: McClelland and Stewart, 1971).

³ Robert A Brightman, *Ācaǎǎhkīwina and ācimōwina: Traditional Narratives of the Rock Cree Indians* (Regina: Canadian Plains Research Center, 2007).

⁴ Robin Ridington and Jillian Ridington, *Where the Happiness Dwells: A History of the Dane-zaa First Nations* (Vancouver: UBC Press, 2013).

⁵ James Teit, "The Shuswap" in Franz Boas, ed. *The Jesup North Pacific Expedition: Memoir of the American Museum of Natural History*. Vol II, Part IV (Leiden: EJ Brill/ New York: GE Stechert, 1909).

Cree Stories

The Starving Uncle

This case is taken from an oral history recounted by a Whapmagoostui Cree elder, living in northern Quebec, to Naomi Adelson and reproduced in Naomi Adelson, *Being Alive Well: Health and the Politics of Cree Well-Being* (Toronto: University of Toronto Press, 2000) 30.

The context of this oral history is a long winter, where everyone was in danger of starvation. The elder's father and uncle, along with their families, were hunting together but no one had eaten in a long time. The uncle decided to separate and hunt elsewhere, "[h]e would take his whole family with him." The elder explains, "My father did not try to stop him. When they had left, we also went somewhere else to hunt. The very first day we moved camp, it was the first time we ate it seemed." After that, the elder describes his families' slow progression to being out of danger of starvation, from rationing ptarmigan wings, to finding fish, porcupines and otters, explaining, "That was the beginning of us to be all right and out of danger of starvation." He also describes his father's luck in killing a bear, and the ample ducks, geese and fish they lived on upon their return to their spring break up campsite.

The elder goes on:

We were never hungry that spring for we caught fish often. But it was a different story for my uncle and his family. They had almost starved to death. Their bad luck with hunting had not changed since they left us as ours had. They only had broth to drink on very few occasions. Soon [around the spring thaw] they were unable to move because of weakness from lack of food. There was a man [and his two sons] who was hunting around that area... He had a lot of food because he had killed some caribou.

The man's sons spotted the Uncle's fishing lines and footprints. From the footprints they "could tell the person was very weak". When they followed the tracks, more signs led them to conclude "that the people were bad off". They showed waited their father the signs and he "right away realized what was happening to the people that that they were in a bad predicament". He found their dwelling and observed more signs of weakness and starvation. He called out. He heard someone inside the dwelling but could not recognize what the person was saying or who it was. The person inside the dwelling was already incoherent. It was the old man of the group.

The man quickly sent his sons for water and started chopping firewood for the dwelling. He "feared that they might not be able to save all the people and maybe some had died already. He did not see anyone of them sitting up and could not tell how many were still alive." Then:

He made a fire within the dwelling and started to make broth. The two youngest sons of the starving family did not recognize him and were totally unconscious. These two boys he tended to first and poured some broth into their mouths. He was able to revive them and everyone was conscious later. He made the dwelling bigger and he moved in with them. He brought in his food and gave food to the old man.



The Hairy-Heart People

This case is taken from two stories: One entitled “*kayanwi* Kills Hairy Hearts at the Beaver Lodge,” narrated by Cornelius Colomb, and the other entitled “The Hairy Heart People,” narrated by Selazie Linklater and translated by Caroline Caribou, in Robert A. Brightman, *Ācađōhkīwina and ācimōwina: Traditional Narratives of the Rock Cree Indians* (Regina: Canadian Plains Research Center, 2007) at 106.

Cornelius Colomb provides some background on the Hairy Hearts, or Hairy-Heart People, who are cannibals:

The nephew was staying with the *mimioitihisiwak* [“hairy heart beings”]. Married to a Hairy Heart woman. Because these Hairy Hearts, they were – kill people whenever they run into them. Kill all the men and take the women. Take all the women for later. He feeds on all the kids and they kill all the men. Because the men were dangerous to them. Might kill them. The women couldn’t kill them.

....

Selazie Linklater tells this story about the Hairy Hearts:

Once then and very long ago this happened. There were then in this country Hairy Hearts. You would say of these that they were without hearts or goodness. Then at this time there are two of these Hairy Hearts: a father and his son. They travel between the camps of the people, and they kill and eat the people. At one camp, there is an old man, a “dreamer” himself, who had spiritual power. He can know before it happens that those Hairy Hearts are coming to his camp. He tells this to the others, his relatives and the people that stay with him. Really, very quickly they then break their camp and travel to a place where the old man intends to hide. They have with them a moosehide. They use this hide by filling it with grass and then just there they hang it on wooden poles. It looks like a living moose. Then I suppose just there they dig a hole under the snow. Over the hole they position this “moose.” The head of the moose faces north from there. “Truly they will not look for us here,” he says, that old man. “Those ones who are coming are not interested in the moose. Only people they intend to eat.” A long time they will stay in that hole so that the Hairy Hearts will not find them.

This Hairy Heart old man owns a staff. Straight up and down he aligns this staff, placing one end in the snow so it stands upright. Then, if he sings, this staff is able to incline toward that place where people are hiding. He sings to his staff, this Hairy Heart. But the human old man, he who hides in the snow, uses his “power.” Then truly that staff inclines the opposite direction. For a long time they hunt the human beings, those Hairy Hearts, and the old man (Hairy Heart) uses always his staff. Always that old man in the snow uses his “power” to overcome them. Finally, then, those Hairy Hearts leave that place there and travel to another lake. When they are gone, those (human) people come out of their place in the snow. They intend to warn the other people around that lake that these Hairy Hearts are going around.

Truly almost starved to death now are those Hairy Hearts. "Near us there are people in a camp," that Hairy Heart old man says to his son. "Go and hunt for us. Bring from that camp two children. Run through them rawhide cordage so I can roast them." Then he catches them, two children who are playing outside of that camp. They scream with fear those two children. He brings them to the old man. Then really that old man roasts them, those two children. The people at the camp hear those children screaming. Greatly they are frightened. Then they break their camp, and move from there, towards where the others stay at the lake.

That old man warns the people that they should stay together in a large camp. "We should not be in small groups," he says to them. They all travel together to a bay just there. Just there they will be able to see what might come towards them from across the lake. That old man is able to know that the Hairy Hearts will again hunt them, that the Hairy Hearts will transform into trees. In this way, they will stalk them (the people), those Hairy Hearts. He (old man) says to the children. "Always watch the ice on the lake. Maybe soon you will see something coming towards us from there. You will see trees. They will be closer to us each time you see them. When you see them, these trees, say loudly, 'Trees on the ice'."

Soon those children see trees on the ice. Each time that they look, they are little closer to the camp inside the lodge. Inside the lodge, they are eating beaver meat. And then really when they come into the lodge, they become human beings. They lose all their powers and the ice in their bodies melts. Truly, those Hairy Hearts would be frightened of fires and heat because it melts the ice in their bodies and they lose their "powers."

They stayed there then with the people in the camp. Always they would eat animal meat like the others. That old man and his son both marry women in that group of families just there. In the winter, the young man goes out hunting with his brothers-in-law. He brings back to the camp every kind of meat. But he stays a long time outside the lodge; seldom does he go in and stay by the fire. Really, he is still wicked, that young man. By staying out in the cold, he is getting "stronger." Again there begins to be ice in his body. He stays out in the bush because he does not want to be warm.

It becomes spring there. Still that young man goes hunting with his brothers-in-law. Then really: "When I hunt with your younger brothers, they resemble animals to me," that young man says to his wife. In the morning, he will go out hunting again with his brothers-in-law. They are preparing, outside the lodge. Then she hides the snowshoes of her brother, the woman. He comes inside the lodge to look for them. "There is something wrong again with my husband," she tells her brother. "Be careful when you hunt with him. Watch out for the welfare of our younger sibling."

They leave and go to hunt animals. Never is that young Hairy Heart staying with his brothers-in-law. He follows behind them, looking at their snowshoes tracks. He talks ahead of them through the bush. Then just there, he jumps out and grabs him. Then just then there, the other one chops off his head.

At the camp, those two old men are sitting in the lodge. Immediately he knows it, that his son has been killed, that old Hairy Heart. Truly he says to all of them there: "You killed my son. Now, if you don't kill me I will destroy all of you." They took sticks and tried to kill that old man. He is too powerful for them, always he overcomes them. One woman stabs him in his arm with a sharp roasting stick. There is bone marrow on the stick. "How does it taste to you? She says to him, that woman. "It is good meat," he says. Then just there, he seizes her with his other arm and kills her. Now the others are frightened that they cannot prevail over him. They run from the lodge. Just then those two men return to the camp. They enter the lodge and see that old Hairy Heart sitting by the fire. With their clubs, they strike him until he is dead. Only because he is near the fire, are those brothers able to kill him.



The Making of Wetaskiwin

This case is taken from the story, "The Making of Wetaskiwin," retold by Darcy Lindberg.

The events that lead to the making of Wetaskiwin occurred during a period of intense conflict between Cree and Blackfoot peoples. As buffalo became even scarcer, Cree people had to venture further south and west, into areas where Blackfoot communities hunted the same herds. Knowing that each was near the other's communities, both Cree and Blackfoot people sent scouts out to see where each other was. Around present day Wetaskiwin, there are low rising hills northwest of the city, this is where the Cree and Blackfoot scout approached from different directions. As the land was mostly level prairie, these hills would allow them to survey the land better.

As it turns out, the Cree man and the Blackfoot man reached the top of a hill at the same time. They startled each other, but both dropped their weapons and decided to fight by hand. Their fight lasted for hours, as neither the Cree man nor Blackfoot man could overpower the other.

The two men fought so long that they decided to take a break from fighting. While they broke from their fight, each reached for their pipes to smoke tobacco. While the Blackfoot man smoked his tobacco, the Cree man found his pipe to be broken in the wrestle with the other man. Seeing that the Cree man's pipe was broken, the Blackfoot man offered his pipe for the Cree man to smoke from. The Cree man accepted this gift. After the Cree man smoked the pipe, both men realized what they had done. The Blackfoot man had offered the Cree man a sacred gift – tobacco – that was accepted. They understood this to be a sacred agreement.

Both the Cree man and Blackfoot man went back to their camps and told their leaders and the people what had happened. Both the Cree camp and Blackfoot camp interpreted the events as a sacred agreement, and later each returned to the place and made a treaty together. Since then the place is called Witsiwin (or Wetaskiwin), which can be interpreted as "the place where we learn to live on the land together" or more commonly known as the Peace Hills.



Rolling Head

This case is taken from "The Legend of the Rolling Head," in Carl Ray and James Stevens, *Sacred Legends of the Sandy Lake Cree* (Toronto: McClelland and Steward, 1971) at 48.

Once a hunter discovered a beautiful woman living by herself in the forest. Because she was an attractive lady, he stayed there at her lodge and became well acquainted with her. After a few days, the hunter asked her to marry him. The woman told him she would be his woman if they could remain living at her lodge in the forest. It was agreed that they would remain in her camp forever.

They stayed together as man and wife and he hunted and trapped, looking after all the needs of their lodge. Over the years they had two children, both boys. The woman was a good wife who looked after the camp cooking, carrying water, chopping wood, sewing and tanning leather.

But one day the father began to notice that the chores around the lodge were being neglected. As time went on the situation became worse. Finally the man asked his two sons what their mother did when he was away all day in the forest. The sons replied that their mother went away during the day and left them alone. They did not know where she went.

One sunny morning the man left to go hunting as usual. Only this day he waited, hidden in the bushes at the edge of the forest watching his camp. He did not have long to wait until he saw his wife leave their hut. Silently he trailed the love of his life through the tall pine and poplar trees until she came to a stony clearing in the forest. In the rock-filled clearing there was a large, black, decaying stump.

The husband watched with amazement as his wife took off all her leather clothing off and approached the rotten stump in the nude. She hit the tree stump with a club and shouted her arrival. "I am here as you requested, master! – O great Matchi Manitou." Then the woman lay prostrate on the ground which became alive with writhing, hissing snakes – genay-big-wok. Black scaly snakes of all sizes crawled over the body of his wife. They entered every opening in his wife's outstretched body. At the edges of the clearing the husband vomited with disgust and repulsion. Now he knew his wife was possessed by some strange master.

The man went hunting, wondering what he could do about the terrible situation. Later in the morning he discovered a small cow moose and it fell under his arrows. Returning to his lodge he told his wife about the kill. She was sent to bring back the fresh meat.

When the woman left, the hunter took a stone axe and birch-bark container and went back to the evil clearing in the forest. He approached the stump and pounded it with his axe. When the snakes crawled out he smashed them into piece. He stayed in the clearing until he had killed all the hideous creatures. Then he picked up their wriggling bodies and

drained their blood into the container. Returning to the camp, he boiled the blood over a roaring fire making broth for his wife.

When the woman returned with the moose meat he offered her some of the broth. After she had gulped a bowl of the brew he asked, "Do you know what you are eating?" The wife replied, "Soup of beaver blood." "No," the husband said angrily, "It is the blood of your lovers!" She dropped her bowl and became hysterical, screaming meaningless words at the husband and her sons. Then she ran off into the forest to see the dead bodies of her lovers.

As soon as she had left, the hunter called his two sons before him. He gave his eldest son some medicine weapons to protect him. Into the hand of the boy he placed a bone drill, a sharp stone, a flint, a beaver tooth and a stone chisel. Then the father spoke, "My sons, you must use this medicine to protect yourselves. Your mother is going to try and kill us all. I will stay behind to face her so you can escape." The two small boys embraced their father for the last time during their lives. As they walked away he called to them. "If the sky turns red this evening you will know that I have left this world, therefore you will have to defend yourselves without help."

The boys ran into the forest all that day. During the night they did not stop travelling even though the way was dangerous.

At the camp, the father awaited the return of his wife. He did not have to wait long before the enraged woman raced into the camp. Her eye aflame with hate, she attacked her husband. He slashed her head off with his axe, but her body kept fighting him. With all his power he knocked the headless body to the ground and cut it in half with his knife. Still the body was not dead. The man called on all the supernatural powers he had gained from the spirits and threw the two parts of the body into the sky where they remain for all to see. The hairy skull of his wife was still alive, however; it attacked him ripping his throat and the man bled to death. Then the head devoured the bloody corpse of her husband.

During the night, the sky turned a violent red colour and the two boys knew that their father had left the world forever. Sobbing, the children hurried onward as quickly as their small moccasined feet could take them. They were in a strange land where they had never travelled before.

Toward morning a weird feeling possessed the two boys. They felt cold and sensed something was close behind them. When geesis, the day sun, began to case his warm rays of light on the forest, the oldest boy looked behind them and saw the hideous rolling skull of his mother. The hairy skull called out to them in a warm pleading voice, "Boys! Boys! Come to your loving mother. I will not hurt you my children."

The two frightened brothers kept running. The older brother took the bone drill he had been given by his father and threw it back at the head. A huge, thick, tangled thorn patch grew from the ground where the drill had fallen. The skull rolled into the patch and caught itself on the thorns. The boys ran on. The oldest boy carried his little brother, but they fell

and the little brother cut his head. However, they were not hurt badly; they kept pushing onwards.

A few hours later a beaver saw the skull on the thorn bush; its curiosity aroused, the beaver went over to take a closer look. The woman's head spoke to the swimmer. "Take me off of this thorn bush and chew a passage through this bramble for me, Amik. For this favour, I will let you make love to me." The beaver was astonished at the request. "How could I make love to you?" the brown animal shuttered. "You have no body." "You can make love to me through my nostrils and my eyes," the head replied sincerely.

Amik freed the hairy skull and chewed a path through the thorns and brambles. When the beaver and the head reached the other side, the head did not stop. It shouted back at the beaver, laughing hideously, "You fool! It was only a trick."

The skull rolled on faster than ever on the trail of the two little brothers. Soon the skull had its prey in sight. The oldest boy saw the head rolling up on them. The hairy skull of the mother cried to them, "Dear boys. Dear boys. Come to your loving mother." The oldest boy threw down a sharp pointed rock and a huge cliff separated them from the rolling head of their mother. The children went onwards trying to make their escape.

At the cliff, the rolling head searched for a way through. It appeared hopeless until she saw a May-may-guay-sih. "May-may-guay-sih," the skull cried. "Take me through the cliff and I will let you make love to me." "Never mind," said the May-may-guay-sih. "I will take you through anyway."

Deep in the shaded dark passages of the cliff May-may-guay-sih led the hideous rolling head. Finally they reached a clearing on the other side and the head went on after its fleeing children. Again the little boys came into sight and again the rolling skull called to them. "Sweet children. Come here to your dear mother."

But the children would not stop. And the elder child threw his flint behind them and a raging wall of flames blazed in the forest behind them. The head rolled into the wall of flames and its hair was singed and flesh seared badly; but it still kept on after the fleeing children.

When it approached again the boy threw down a beaver tooth and a huge field of chewed popular stumps appeared. It took a long time for the rolling head to traverse the field of stumps and wind-fall.

It was now the end of the first day and the boys were getting tired. They knew that they must evade the rolling head soon or perish. They kept running all that night; their clothes had been torn and ripped and their faces were covered with scratches. When the sun came up again they thought they had escaped, so they began to walk for the first time. Suddenly, a limb cracked in the forest behind them, and the head rolled into view.

“My babies. My babies. Come here to your kind mother,” the eyeless head pleaded. The boy threw his last piece of medicine, the chisel, and a torrent of water gushed forth separating them from the ugly head of their mother.

The boys walked downstream, having lost hope of escaping. They knew their mother would capture them by finding a way across the river and they had no medicine left to protect themselves. The skull, with its scorched black hair hanging from it, was stopped on the opposite shore of the rushing river. Soon a grebe came along and the skull called the bird over. “Take me to the other side and I will let you make love to me,” the skull propositioned. “Never mind,” the grebe said. “I will take you across, but I have a sore neck so don’t start moving around when we get out on the stream.”

The head climbed on the feathery back of the grebe and they started out on the river. About half of the way across the white foaming water, the head became restless and began to move around. The grebe struck his wings up and the hairy head fell into the water and was carried away by the current.

On the other shore, the two boys saw the head floating towards them. The skull shouted, “Save me, save me, my dear children!” But the boys responded by throwing rocks at the skull. One of the missiles hit the skull with a thud, splitting it wide open. Suckers spurted out of skull into the water and the skull sank into the depths forever. The threat of the rolling head was ended.



Dane-zaa Stories

Dog Who Peed on Arrow/Girl Who Started Trouble Story

This case is taken from a story entitled “Dog Who Peed on Arrow/Girl Who Started Trouble Story” in Robin Ridington and Jillian Ridington, *Where the Happiness Dwells: A History of the Dane-zaa First Nations*, (Vancouver: UBC Press, 2013) at 72.

This is the story of Aht’uutletahsalats, dog pee on arrow,
way before *Moniyaas* [whiteman] came to this land.
Now, we’re going to tell you a story.
This is the story about dog pee on arrow.

People all gathered together, from down south,
all over the place,
and some of the Dane-zaa there, too. All different tribes.
They wanted to make peace. They wanted to make peace.
People from all over the place,
they gathered together to make peace.
They wanted no more war. After they gathered together there,
they wanted to go far north from where they gathered
to meet some other people from the north.
They wanted to tell those people to make peace.
They all wanted to be one big family, friends.
That’s why they gathered together.
There was one man that told everybody,
“There’s something going to happen here.
Let’s try to go around it.
I think you guys are going to have a war among yourself.”
That’s where it started from.

People were all happy gathered together there on a big prairie.
This is what I heard, what the people said.
That morning, people were all gathered together.
In the morning, they were all happy. They were going to
go hunt.
They told each other which way they were going to hunt,
and still today it’s like that.
Even today, we tell each other where we’re going to hunt.
We really watch out for gun safety.
People tell each other where they are going, still today.
They all gathered together where they were going to go hunt.
They talked about it.
They laid out their bows and arrows outside,
and then one of the dogs peed on the arrows.

That was a good hunting dog,
but he walked around there and peed on one of the arrows.

One woman saw that dog. She said, "What happened to you guys?
Why is it a dog peed on the arrow?"
She said it, but nobody heard her yet.
At the same time, all the other women told her,
"Shut up. Don't say anything." She just said that louder.
"I told you guys, that dog peed on the arrow."

They all looked at their arrows,
and one of those guys found out that the dog
had peed on his arrow.
The owner of the arrow picked up his bow and arrow,
and he shot the dog.
The arrow went right through that dog, and it fell and died.

Then the owner of the dog shot that woman who told on the dog.
The owner of the dog shot that woman, and she died.
That's when they started fighting each other.
When they started that war, some of them ran away.
Some of them jumped in the lake.
They were holding each other from fighting for a long time.
They said, "That woman died, but that's OK. Let's not fight."
But finally, they started fighting anyway.
They just wiped each other out
until there were two people left.
They couldn't kill each other.

There was just one old guy who tried to stop the war.
He just kept pushing people back, "No war. No war."
But one of the more powerful guys
threw the old man down and killed him.
From there on, they just kept fighting.
They tried to stop the fight for a long time, but it didn't work.
If that old man hadn't gotten killed,
they could have made peace.
After that, they wiped all the people out
until there were only two men left to fight.
These men tried to pick up all the bows and arrows,
but they couldn't kill each other.

People split up and went all over the place.
Some went where the sun comes up.
Some went where the sun goes down.
There wasn't any border, that time.

Way long time after, one of the really old women told people,
“I’m the one who survived dog pee on arrow.”
That old lady remembered from a long time ago.
The survivors all split off. That’s the woman who survived.
She went into the water and came out
until her breasts were on the water. That’s how she survived.
One of the men who survived told her,
“Go underneath my arm,” and that’s how she survived.
K’eche mege, Saskatoon Lake north of Beaverlodge, Alberta,
that’s where Aht’uutletahsalats happened.



Swan and Soge

This case is taken from a story entitled "Swan and Soge" in Robin Ridington and Jillian Ridington, *Where the Happiness Dwells: A History of the Dane-zaa First Nations* (Vancouver: UBC Press, 2013) at 29.

This is a story about a boy named Swan.
Swan lived with his mother and father.
His mother was a good woman.
She was a good woman, and she loved her boy.
When Swan was still young, his mother died,
and his father raised him.
Before his mother died, she told Swan's father,
"I like my son.
I want you to find a good woman to look after him.
You should look for a woman from where the sun
is highest in the sky. Sun up women [women from where the
sun comes up] are no good.
Where the sun goes down is no good.
You should just find a woman
from where the sun is at dinner time.
I like my son."

Swan began to get older.
His father wanted to find a new woman to look after him.
He looked for one where the sun was at its highest,
but he could not find one.
Swan's father went to look for a woman where the sun sets.
He took Swan with him and travelled toward the setting sun
until he came to the ocean.
In that country, he found a nice-looking woman.
He told that woman's father, "I need a woman for my boy.
I want to take your daughter back with me."
The woman's father said,
"I've raised lots of daughters to be good women.
I'll give you this one if you look after her well.
That's what I've raised them for."

Then Swan and his father went back to their own country.
Then they took that woman with them.
When they got back, Swan's father made a bow and arrow
for his son to use in shooting rabbits. Swan was a good shot.
When Swan and his father got back to their country
with that woman, Swan's father went hunting.
That woman was wild. She told Swan,

"I'll go out hunting with you." Swan said,
"All right, Soge [Stepmother]." They went out
She told him, "Every time you see rabbits, shoot them in the
head. You're a good shot. You can shoot anything you want.
That boy, Swan, tried to shoot a rabbit in the head.
He got it in the head. The rabbit went down.
That woman picked up the rabbit while it was still kicking.

Then that woman put the rabbit Swan had shot under her dress.
She killed it between her legs.
As it died, the rabbit kicked and scratched her legs.
It splattered blood between their legs. Swan said,
"Soge, why did you do that? We eat that."
His stepmother told Swan,
"Well, I hold him that way with my legs
so that he will die quickly."
When Swan's father got back to camp,
he went to sleep with that woman.
He saw that she was all scratched up
and covered with dried blood.
"What happened?" he asked. "You were not like that before."
Then that woman lied to Swan's father. She told him,
"Well, your boy did that. He threw me down and did that.
He's a big boy now. He is stronger than me."
Swan's father believed what she told him.

Swan's father got mad at his own boy,
He knew he could not kill his own son, so he told Swan,
"Let's go hunting out where the sun goes down in the ocean."
He was planning to leave Swan on an island in the ocean.
He couldn't kill him, but he planned to leave him there to die.
Swan and his father got to the ocean.
"Swan," his father said, "let's look for country out there."
Swan looked. "Yes," he said.
"I see something black way far out."
"OK," his father said, "we go now.
We make a canoe and go out there."
Swan and his father made a canoe.
They paddled far out into the ocean
until they were almost out of sight of land.

Then they came close to the island. Swan's father said,
"Swan, you go around one side of the island.
I'll go around the other.
We'll find out how big this ground is."
As soon as Swan was out of sight,

the old man turned around and went back to the canoe.
He got into the canoe and went out into the ocean.
He waited for Swan there.
Swan went all the way around the island,
but he didn't meet his father.
When he got back to where they had left the canoe,
he saw his father way out in the water.
His father shouted to Swan, "I am leaving you here.
We have both shared the same hole.
We can't both go in the same place.
Now, I am leaving you here.
Swan shouted back to his father.
"Daddy, Daddy. I never did that.
We just went hunting, and when I shot a rabbit in the head,
she put it under her dress."
But Swan's father didn't listen
"Don't lie too much. I'm going back now."
Then he paddled back to the shore
and went back to his own country.

...

One day, he heard someone singing way out the water
and hitting a canoe like a drum. It was his father,
singing as he paddled his canoe toward the island.
"Swan," he sang, "I want to see your head bone."
We shared the same woman,
and now I come to see your bones."
Swan hid himself and watched his father
take the canoe up the shore. He kept on singing.
"Now, Swan, you're smart enough.
You fooled around with my woman
and now I want to see how your head bone sets.
Is it in the water or in the bush? I want to see where it is."
The old man went around one side of the island.
As soon as he was gone from sight, Swan jumped in the boat
and paddled away from the shore.
The old man kept walking around the island.
Soon, the sun came out, and he saw fresh tracks.
Swan had been smart.
He had not left tracks where his father landed the canoe.

The man ran back to his canoe when he saw the fresh track,
but it was too late. He shouted to his son in the canoe.
"Swan, my son! I just wanted to see how tough you were.
That's why I left you here."

But Swan shouted back to him. "Now you are going to live the way that I lived."

He paddled his canoe back to the mainland.

Swan thought to himself,

My dad is crazy, so I will just leave him there for ten days.

He can't die in ten days. Look how long I stayed there.

But when Swan came back in ten days, he found his father dead with a little bit of feathers in his mouth.

He had starved to death and tried to eat feathers.

Then Swan got mad. "It's that bad woman who did this.

Now I'm going to kill her."

He went back to his country and saw that woman.

"Swan," she said, "where's your dad?"

Swan didn't say anything. He got mad.

He took an arrow and shot it in the ground by her feet.

The arrow caught fire when it hit the ground.

The woman started to run away,

and every time Swan shot an arrow at her feet, it caught fire.

Finally, she ran into the water.

Swan shot his arrow into the water after her.

The arrow was so hot the water boiled.

When the woman came out of the water, she was just bones.

That is how Swan killed that bad woman.



Secwepemc Stories

Wolverene and Fisher

This case is taken from a story entitled *Wolverene and Fisher* in James Teit, "The Shuswap" in Franz Boas, ed. *The Jesup North Pacific Expedition: Memoir of the American Museum of Natural History* Vol II, Part IV (Leiden: EJ Brill/ New York: GE Stechert, 1909) at 673.

Wolverene and Fisher lived together in the same house. One day, when Fisher was hunting, he saw a woman pass along in the distance. That night, when he returned home, he told his companion, saying he intended to follow her. Wolverene said, 'It will be useless for you to follow her, she lives too far away.' On the following morning Fisher went to the place where he had seen the woman, and, finding her tracks, he followed them for several days, but did not overtake her. Since he had nothing to eat, he returned to his camp, which he reached in a very exhausted state, emaciated and weak.

Then Wolverene said he would search for the woman, and on the following morning he started out, carrying a woven buckskin bag filled with food. After travelling a long distance, he reached a house in which a number of people lived. At nightfall he crawled up to the house, and discovered the woman lying in a corner by herself, for she was menstruating. She had taken off all her good clothes before menstruating, and had placed them under her pillow. Then Wolverene assumed the form of a dog, entered the lodge, and ran away with the woman's moccasins. The people saw him, and cried out, "Oh! one of the dogs has taken our sister's shoes!" The people chased the dog, but he disappeared in the darkness.

Sometime afterwards Wolverene returned, pulled the woman's leggings from underneath her pillow, and ran off with them also. The people cried, 'Oh! one of the dogs has taken our sister's leggings!' and they pursued him as before. Shortly afterward he ran away with her bag in which she kept; her sinew and sewing-materials; and thus he took her skirt, then her robe, and at last the woman herself. The people chased him each time, but always lost him in the dark.

Then Wolverene resumed his original human form and told the woman that she must be his wife. He put all her belongings into his bag, and they travelled back to the home of Wolverene and Fisher, where the woman henceforth lived with the former, and bore many children to him.



Story of Muskrat

This case is taken from a story entitled *Story of Muskrat* in James Teit, "The Shuswap" in Franz Boas, ed. *The Jesup North Pacific Expedition: Memoir of the American Museum of Natural History* Vol II, Part IV (Leiden: EJ Brill/ New York: GE Stechert, 1909) at 679.

A pubescent girl lived in her lodge near the village. She had nearly finished her training; and several young men, including Muskrat, had asked to marry her. Her parents had spoken to her regarding these, but she had refused them all. Muskrat made up his mind to kill her, and made a number of snowshoes and arrows of different types, in imitation of those used by the surrounding tribes, - the Shuswap, Thompson Indians, Lillooet, Cree, and Chilcotin. He made about twenty kinds of arrows and about ten kinds of snowshoes.

At last one night he killed the girl, shooting one of each of the different kinds of arrows into her body. Then, putting on the snowshoes one after another, he ran around the girl's lodge in all directions. On the following morning the people found the girl dead, with many arrows in her body, and snowshoe-tracks all around the place. They said, 'It is impossible to tell who killed her. There must have been a war-party of many strangers here.'

They took the girl's body into the underground house, and tried to revive her with the help of the shamans. When they had all failed, the people asked Muskrat, who was a young shaman, to try. He answered, 'I will try; but I have not much chance, when all the old, experienced shamans have failed.' Now he began to dance and sing in a different manner from the other shamans. He danced round the body, then towards the ladder and up some steps, and back again. Four times he did this. One time, when halting in his song, he said to himself in a low voice, 'I am the one who killed the girl.' Coyote, who was sitting nearest to him, overheard him, and whispered to the people, 'He killed the girl.' Some of them answered, 'If he does not manage to bring her to life again, we will kill him.' The fourth time, as he danced up the ladder, he cried out in a loud voice, 'I killed the girl!' then bolted for the lake, and dived down the hole in the ice where the people drew their water.

The people pursued him. Coyote was close behind, and nearly caught him. He called to the people, "Hurry up! I am holding him." Now they all stood around the hole with their spears, ready to stab him as soon as Coyote should pull him out. Coyote plucked some grass by the roots from the lake-bottom, and made a great ado, saying it was very hard to pull him up. At last, after telling the people to be ready, he slowly pulled his arms out of the water, and exposed in his hands some grass and mud. "Oh! He must have escaped," he said, laughing.

The people were angry. They left Coyote. Some of them went aboard a bark canoe, and chased Muskrat all around the lake; and others tried to get a shot at him by running round on the ice. Although they chased him until dark, they could not even get within arrow-shot of him, for he was a very fine swimmer and diver. Finally, they had to give up the pursuit, and they went home while he was laughing at them.

Now Beaver joined Muskrat. He said, "We look very much alike, and, as we are friends, we

will sit here for a while and talk." As they sat together, Beaver commenced to admire Muskrat's tail, and wished that his were like it. At that time Muskrat had the tail that Beaver has now, while the latter had the tail we see on the muskrat at the present day. Beaver said, 'I wonder how we should look if we changed tails!' This they did, and Beaver said, 'You look fine with my tail. I will go into the water and try your tail, then afterwards you can try mine.' Beaver dived and swam about, striking his tail on the water, and making a loud noise. He was pleased because he could swim so much better, and gradually swam farther away from the shore.

Now Muskrat became suspicious, and swam out after him; but Beaver caused a strong wind and high waves to come; so Muskrat, finding that he made little headway, and that he could not swim as well as before, gave up the chase. When he came ashore, he was transformed⁶ into the muskrat that we see at the present day, and it was decreed that he should have to live along the shore, and never swim out into the deep water of large lakes, as he had been wont to do.



⁶ The Indians are doubtful as to who transformed him. Some say the people whom he had wronged; others say Old-One or Coyote.

Story of Sna'naz

This case is taken from a story entitled *Story of Sna'naz* in James Teit, "The Shuswap" in Franz Boas, ed. *The Jesup North Pacific Expedition: Memoir of the American Museum of Natural History* Vol II, Part IV (Leiden: EJ Brill/ New York: GE Stechert, 1909) at 703.

Sna'naz was the youngest of four brothers who lived together with their father. Nearby lived many people, including Coyote. Sna'naz was an unassuming youth, and, moreover, was ugly and had very large eyes.

...

Then he went to the house, and informed his friends that he had shot the thief. He asked his brothers to accompany him to the spot where he had seen it alight. He said, 'I dreamed of a hole in the ground. We will take a long rope with us.'

After travelling a long distance, and camping two nights, they reached the place, and found the thief's tracks where he had alighted. They followed these, and came to a chasm in the rocky ground, to which the tracks led. Then the brothers tied a rope around Sna'naz, and lowered him down the hole, promising to pull him up again when he tugged. After he had been lowered a long distance, they felt a tug, and pulled him up again. He told them the hole was very bad, rocky, deep, and dark, but he was determined to reach the bottom. The brothers lowered him again, and he reached the bottom, where he tied the end of the rope to a rock.

He found himself in the Lower World, and saw a wide trail leading away from the hole. On it were the tracks, two or three days old, of a large man. Following these, he soon came to a brush lodge, lifted the mat door, and looked in. Everything inside was covered with soot, and in one corner lay an old man under a robe, which was also soot-covered. He noticed a bullet-wound through the man's shoulder, and he thought to himself, 'This is evidently the thief I shot.'

As soon as he had entered the lodge, the old man asked him whence he had come, and he answered, 'Oh, I am just travelling around to see the country.' Well," said the old man, 'if you continue along the trail, before long you will come to the house of our chief. He is great in magic power, and has two beautiful nieces.' Perhaps he may be pleased to see you."

Sna'naz soon reached the house of the chief, who gave him food to eat, and asked him whence he was bound. Sna'naz answered, 'I am a poor lad, and wander around the country seeking wisdom. I hear you are a great chief, and I desire to learn wisdom from you. I have nothing to eat, and you have much food. I should like to remain with you for a time. If you will give me food, I will fetch wood and water for you.' Sna'naz lived with the chief a long time, and learned much wisdom from him.

At last one day the chief said to him, "You may perhaps like to go to the other world and see your friends. You have worked for me a long time, and I have paid you nothing but your

food. I like you, because you have acted so faithfully, and behaved so well. I give you my two nieces to be your wives. You may take them whenever you wish." Sna'naz said he would like to go to see his friends. Then the chief gave him his nieces and a very light box to carry.

When they arrived at the bottom of the entrance, to the Upper World, Sna'naz tied the box to the end of the rope, and put one of his wives inside. He gave the rope a tug, and his brothers pulled the woman up. Then they lowered the box again, pulled up the other woman, and finally lowered the box for Sna'naz. He climbed into the box, and his brothers began to haul him up; but when he was halfway up, his brothers cut the rope, and he fell to the bottom of the chasm. They wanted to kill Sna'naz because they coveted his wives.

Sna'naz was badly hurt by the fall, but managed to crawl to the old man's lodge. After resting there, he went on to the chief's house, and related what had happened; and the chief invited him to stay until he became well, when he would help him.

...

While all this was happening, his brothers, thinking Sna'naz had been killed, kept the women for themselves, and agreed to say that they had brought them from the Lower World, and that Sna'naz had been killed by their uncle. When they reached the village, the people came to see them; and the chief asked them where they had obtained the women. They answered as they had agreed. The women, however, told the chief the true story, who told the brothers that the girls would remain with him in his house. The brothers said, 'Why act thus?' The women are ours. We went to the Lower World with our brother, and fought the people there. Our brother was killed in the battle, and we took these women from our enemies. They stand as payment for our brother, and, being captives of war, they are our property. We won them by our deeds." The chief answered, "They are the same as belonging to you, yet I will have charge of them for a little while, until they become accustomed to us and to our ways."

The girls staid with the chief, and told him many things about their world, - how the people there had the power of making themselves so small that they could jump or ride through a finger-ring; how they had the power of making themselves invisible; how they could also shorten distances, transport themselves through the air, and run or ride over the sharp edges of knives and up steep cliffs. The chief said, 'I will some time test my people to find out if they are capable of doing these feats.'

Now Sna'naz came to the chief's house, and no one recognized him. He pretended to be very poor, and asked the chief to give him food and rest, saying that, when he got well, he would fetch wood and water for him. Shortly after this, the chief announced that he would give a feast to the people and have games.' First he placed the point of a large knife in the ground, and asked the men to try and run up over the edge of it. Some of them tried on foot, and cut their feet. Others tried to ride up the knife on horseback, and hurt their horses. Coyote managed to get far up the blade, when his horse, his footing, fell, and cut himself right in two. Then the chief placed a finger-ring, with a needle pointing at the middle, and

asked his men to jump or ride through it. They all tried, but the best of them could manage to get only half through. Coyote got farthest through, and stuck on the point of the needle.

Then the chief asked Sna'naz to try; and the people all laughed, saying, 'How can a fellow like him do these feats, when all of us have failed? He does not know anything. If he were wise, he would have a house of his own, and not have to work or beg for his food.' Sna'naz said, 'I am certainly very foolish, and know little. Yet, if you wish, I will try to do the feats.' Then he went to a place where he was out of sight, took out his roll of bark, changed it into a horse, and appeared again among the people. Full speed he rode up to the knife, went up over the edge, and disappeared. After he had accomplished this feat, he rode full speed through the ring, the needle only pricking his leg. The people were astonished; and the chief said, 'He must belong to the Lower World.' The girls, who were looking on, said, "Yes, indeed, he must be one of our people!" Then Sna'naz resumed his natural appearance, and the people all recognized him.

The girls said, "He is our husband." His brothers felt ashamed, and avoided him. The chief returned his wives to him, and he lived with them happily, having many children by them, all of whom became noted for magic.



Story of Porcupine

This case is taken from a story entitled *Story of Porcupine* in James Teit, "The Shuswap" in Franz Boas, ed. *The Jesup North Pacific Expedition: Memoir of the American Museum of Natural History* Vol II, Part IV (Leiden: EJ Brill/ New York: GE Stechert, 1909) at 658.

A large number of people lived together at one place. Their chief was Swan.⁷ At another place, one long day's journey away and beyond a high range of mountains, lived another band of people, who were sometimes called the Deer People.⁸ They consisted of the Deer, Caribou, Moose, Goat, Sheep, and others, and their chief was the Elk.⁹ The two groups of people had been enemies for a long time. Each tried to interfere with the other, and to make their means of procuring a living as difficult as possible. Each people had a different kind of government and lived and worked differently. What one did well, the other did badly. The birds acted in some ways like mammals, and the mammals like birds. The Swan wished to remedy the defects of both parties, and to enable them to live without continual interference. He believed that their troubles all arose from ignorance.

One day in the winter-time, when the snow lay very deep on the mountains, Swan assembled his people, and, after explaining his plans to them, he asked if any one of them would carry his message of invitation to Elk. Whoever would undertake the journey was to receive a large present of dentalia.

Coyote volunteered to go, and prepared for the journey by putting on his finest clothes, embroidered moccasins, and all his dentalia and necklaces. At dusk he left the house, but, not wanting to face the deep snow, he ran around the underground house all night, admiring himself. Coyote was still running in the morning, when the people awoke. The Swan asked him why he had not gone; and Coyote answered, "I was just playing and running around for practice. I will start to-night." When evening came, the people saw him leave, and watched him until he was out of sight. Coyote soon found the snow too deep, returned after dark, and lay down underneath the ladder where he fell asleep. When the people awoke in the morning, they found him fast asleep, and Swan asked him why he had not gone. Coyote answered, "Oh! I was playing, became tired, and lay down to sleep. I will start to-night."

Then Swan asked the people which one of them was best able to undertake the journey, and they all agreed that Porcupine was the fittest person, for he was accustomed to walking in the high mountains where there was much deep snow. Porcupine was selected, and after sewing his moccasins all night, and dressing himself warmly, he left at daybreak. When Coyote saw him leave, he laughed, and said, "When even I could not go, how can such a poor, slow, short-legged creature be able to travel through the deep snow?" That night

⁷ The Swan was noted for his goodness and wisdom.

⁸ The smaller animals and birds all lived together. The other community consisted of all the large animals, but, according to some, was composed of game-animals only (therefore called Deer People). All the big game was hunted by the people including the Buffalo, Antelope, etc. According to some, Bears were not included.

⁹ The Elk was a great chief, but, according to some, sometimes he was inclined to be thick-headed or stupid.

Porcupine reached Elk's house in an exhausted condition, and all covered with ice and snow. After warming himself, he delivered his message to Elk, and asked for sinew and awl with which to sew his moccasins. After he had done so, he left for home, bearing Elk's reply. Elk promised to visit Swan on the following morning together with all his people.

When Elk and his people arrived, Swan feasted them and when the feast was over, he and all his people knelt down before Elk. Swan told him all he knew of the affairs of both people and told him in what way he thought they did wrong. Swan gave Elk all his knowledge and all his advice.

Then Elk and his people all knelt down before Swan, and Elk gave him all his ideas and knowledge. Each people gained full knowledge of the other, and together became able to plan doing what was right. After this they lived much easier and happier than before and the methods of one party did not come into conflict with those of the other.

The laws made at the council are those which govern animals and birds at the present day. Porcupine got his rich present of dentalia, and was much envied by Coyote.



Story of Hu'pken

This case is taken from a story entitled *Story of Hu'pken* in James Teit, "The Shuswap" in Franz Boas, ed. *The Jesup North Pacific Expedition: Memoir of the American Museum of Natural History* Vol II, Part IV (Leiden: EJ Brill/ New York: GE Stechert, 1909) at 710.

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

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

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

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

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

Now Porcupine happened to come along. When he saw the large amount of provisions the lad had collected, he hurried away to the people's camp, and told them that Hu'pken was now a great hunter, and had large stores of meat and fat, and many beautiful robes. The people would not believe Porcupine's story, and sent Crow to verify the report. When Crow arrived, Hu'pken invited him to eat, and asked him how the people fared. Crow said, "We have found very little game, and are all starving." When he returned, Hu'pken gave him a present of fat to carry to the people; but Crow hid it and told the people that Porcupine had lied about the lad, who was just as poor as when they left him. During the night Crow got up

and fed his children with some of the fat. The children quarreled over the food, and made much noise as they ate; and the people, hearing them, said, "Crow is feeding his children secretly."

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



Coyote Makes Women Menstruate

This case is taken from a story entitled *Story of Hu'pken* in James Teit, "The Shuswap" in Franz Boas, ed. *The Jesup North Pacific Expedition: Memoir of the American Museum of Natural History* Vol II, Part IV (Leiden: EJ Brill/ New York: GE Stechert, 1909) at 626.

Formerly the men menstruated, and not the women. When Coyote was working in the world, putting things to rights, he considered this matter, and said to himself, "It is not right that men should menstruate. It is very inconvenient, for they do all the hunting and most of the travelling. Women stay more at home, and therefore it will be better if they menstruate, and not the men." Whereupon he took some of the menstrual fluid from men, and threw it upon the women, saying, "Henceforth women shall menstruate, and not men."



Part Two: Case Briefs

Part two of this Casebook includes all the case briefs that are necessary to facilitate lessons in the accompanying Toolkit. Case briefing is an effective way to analyze and organize information and make visible the legal principles in stories. The case brief method is used in law schools to teach students how to analyze Canadian law decisions or judgments. This approach allows legally-trained people to engage rigorously with judgments and help them draw out legal principles and reasoning in those decisions. Using this same method for stories can also help people rigorously engage with them as legal cases and draw legal principles from them. This method of analysis is a part of the methodology used by the Indigenous Law Research Unit when working with Indigenous communities on research projects involving the re-articulation or revitalization of their laws.¹⁰ This case brief template varies slightly from what many law students might learn in law school, but it asks for the same level of rigor and engagement. The ILRU case brief includes pulling out the following information:

- **Issues:** are the human problems that are raised in a story. These are questions you ask of a story when engaging with it, for example: “what is the proper response to finding another person in dire need?” “How do people collectively respond to a catastrophe?” “What is the proper way to maintain a truce?”
- **Facts:** are the relevant background information to the issue and lead up to the decision made. Not all facts are relevant to an issue and different sub-issues may be relevant depending on the main issue you are focusing on.
- **Resolutions/Decisions:** answer the issue or human problem raised in a story. The decisions should directly answer that question.
- **Reasons:** are why the decision was taken. Sometimes this is said clearly in a story, and sometimes it is unsaid, but it is something you can conclude or infer because of other information in the story. Determining the reasoning is important for drawing out specific principles in law.
- **Bracket:** information that you might have questions about but is not related to the overall issue of the case brief.

¹⁰ For an overview of the methodology employed by ILRU on research projects see Hadley Friedland and Val Napoleon, “Gathering the Threads: Indigenous Legal Methodology” (2015) 1:1 Lakehead LJ at 16, available online at: <https://llj.lakeheadu.ca/issue/view/67/showToc>

Cree Case Briefs

Starving Uncle

Human Issue: How should one respond to finding someone in dire need?

Facts: One particularly long, harsh winter, where everyone faced the risk of starvation, a man and his sons, walking through the woods with plenty of meat from just killing a caribou, discover signs of a family on the brink of starvation.

Decisions/Resolutions: The man decides to stop immediately to do everything he can to save their lives, eventually moving in with them and sharing his meat with them while they recover.

Reasons:

(Said): The man feared that they might not be able to save all the people and maybe some had died already.

(Unsaid): The man had an obligation to help the people who were starving.

(Unsaid): The man moves into the house to ensure their survival. This suggests an obligation to ensure people in harm's way have recovered.

(Unsaid): Being generous of one's time and resources can save lives, and lives are worth saving (this was the narrator's uncle and cousins, whom he would have lost, if not for this stranger's generosity).

(Unsaid): Everyone knows their own survival and the survival of others often depends on sheer luck – any person could just as easily have ended up in the same situation needing someone else to save them.



Hairy-Heart People

Human Issue 1: How do community leaders and community members make the community safe, in the face of an ongoing, external danger?

Facts that matter:

- Hairy Hearts are cannibals. When they come into contact with humans, they kill the men and take the women and children. Hairy Hearts kill the men because they are dangerous to them. The women cannot kill Hairy Hearts.
- A father and a son (Hairy Hearts) are terrorizing camps of people by eating them. They eat two children from a camp.
- The Hairy Hearts eventually find the people at their lodge and become human and marry into the community. Hairy Hearts become more human the closer they sit to the fire.
- The Hairy Heart son remains away from the fire at times and is still wicked. His wife realizes that he is still wicked, and the men kill him, which turns the older Hairy Heart back into a cannibal.

Decisions/Resolutions:

1. Before the Hairy Hearts find the people the old man (leader) acts to protect his people at all times, using his knowledge, skills and power to prevent interactions between people and the Hairy Hearts:
 - saves his family by creating a moose and hiding under it, and diverting their power and then warns the other camps that they should stay together.
 - warns the people that the Hairy Hearts will pretend to be trees, and teaches the children how to warn the people when the Hairy Hearts are coming after the Hairy Hearts capture two children.
2. When the Hairy Hearts (old man and his son) arrive in the community the people remain vigilant of the danger but bring them into the community:
 - The people integrate them into their community through marriage and share their animal meat with them.
 - The Hairy Heart's wife warns her brother that her husband is wicked and they kill him.
3. When the old Hairy Heart turns back into a cannibal, the people act to protect themselves.
 - The women try to kill the Hairy Heart, but are not powerful enough to do it.
 - The men kill him coming back from the hunt.

Reasons:

(Unsaid) The leader had an obligation to protect his community and use all of his knowledge and power to keep the Hairy Hearts away.

(Unsaid) When the Hairy Hearts came into the community, the people allowed them knowing that they could heal the Hairy Hearts by bringing them close to the fire.

(Unsaid) There is an obligation to heal someone if possible, even through integrating them into community

(Said): The sister tells her brother about the Hairy Heart “There is something wrong again with my husband. Be careful when you hunt with him. Watch out for the welfare of our younger sibling.” The sister had an obligation to warn people of the danger, and remain vigilant.

(Said): To the children “Always watch the ice on the lake. Maybe soon you will see something coming towards us from there. You will see trees. They will be closer to us each time you see them. When you see them, these trees, say loudly, ‘Trees on the ice’.” Community members have an obligation to one another to teach each other how to protect one another and be vigilant about outside dangers.

(Unsaid): The women try to kill the cannibal because he posed a threat to them and their community.

(Said): That old man warns the people that they should stay together in a large camp. “We should not be in small groups,” he says to them. They all travel together.

(Unsaid): the community stays together because they stood a better chance against the Hairy Hearts that way.



Hairy-Heart People

Human Issue 2: What are the consequence of creating vulnerable people, in this case women and children?

Facts that matter:

- Hairy Hearts are cannibals. When they come into contact with humans, they kill the men and take the women and children. Hairy Hearts kill the men because they are dangerous to them. The women cannot kill Hairy Hearts.
- A father and a son (Hairy Hearts) are terrorizing camps of people by eating them.
- The people successfully hide from the Hairy Hearts. The Hairy Hearts are starving so the old one tells the young one to hunt some children for them. The Hairy Heart captures some children playing outside.
- The Hairy Hearts eventually find the people at their lodge and become human and marry into the community. Hairy Hearts become more human the closer they sit to the fire.
- The Hairy Heart son remains away from the fire at times and is still wicked. His wife realizes that he is still wicked, and the men kill him while out hunting. This action turns the older Hairy Heart back into a cannibal.

Decisions/Resolutions:

1. The community does its best to keep the Hairy Hearts away and protect one another, particularly the vulnerable. The old man hides his family, and warns people about the Hairy Hearts, and teaches the children how to be vigilant and watch out for Hairy Hearts. The sister warns her brothers that her husband is dangerous.
2. The men kill the Hairy Hearts.
3. The Hairy Hearts target and kill and eat the children and easily kill the women.

Reasons:

(Unsaid): The community knew that to keep each other and the most vulnerable safe, they needed to prevent interactions with the Hairy Hearts and teach the vulnerable how to watch for them.

(Unsaid): The old man teaches the children how to spot Hairy Hearts so they are not as vulnerable to violence.

(Said): The sister says: "There is something wrong again with my husband," she tells her brother. "Be careful when you hunt with him. Watch out for the welfare of our younger sibling."

(Unsaid): Community members have an obligation to protect each other and, especially, the vulnerable.

(Said): The women and children did not pose a danger to the Hairy Hearts, unlike the men.

(Unsaid): When the Hairy Hearts were hungry they targeted children because these were not dangerous to them and easier to catch.

(Unsaid): The women ran away from the Hairy Heart because they knew they would be killed if they fought them.

(Unsaid): The men killed the Hairy Hearts because they posed a danger to their community.

(Unsaid): The men did not know that killing the young Hairy Heart would turn the old man back into a Hairy Heart.



The Making of Wetaskiwin

Human Issue: What are the appropriate responses to ensuring the well-being of both one's community and broader legal obligations in the context of conflict?

Facts that matter:

- Cree and Blackfoot communities are engaged in harmful conflicts including wars
- Two scouts (one Cree and one Blackfoot) come upon each other on a hill where they are sent to see where the other camp is.
- They begin to fight and fight for many hours.
- Neither man is able to overpower the other, so they take a break.
- The Blackfoot man smokes tobacco from a pipe. The Cree man's pipe is broken in the fight so Blackfoot man offers the Cree man a pipe, which he accepts.
- After he smokes the pipe, they both realize they have made a sacred agreement with the sharing of tobacco.

Decisions/Resolutions:

1. They first fight to protect their communities in the face of threats of violence.
2. They go back to their communities to get guidance on the sharing of tobacco.
3. Both leaders in the communities agree a pact has been made and the communities meet and make a formal treaty.

Reasons:

(Said): The two scouts fought as their communities were in conflict.

(Unsaid): People have an obligation to protect their community's interests.

(Said): Once the two scouts share the tobacco, they realized they had to consult with their communities because they had made a sacred agreement.

(Said): The leaders create a formal treaty because they agree a pact has been made between the two scouts.

(Unsaid): Even in the face of violence and conflict, people have an obligation to adhere to other legal obligations, which may, in turn, provide alternatives for dispute resolution.

(Unsaid): The actions of individuals have larger impacts on the broader community, and can bind them to community agreements.

Brackets:

- The Cree and the Blackfoot men serve an important role as scouts. They engage in conflict for protection of their people. Both also recognize and uphold the legal obligations and protocols based on gifting and tobacco.

Dane-zaa Briefs

Dog Who Peed on Arrow/Girl Who Started Trouble

Human issue 1: What are the consequences of creating vulnerable people and beings? In this case women, elderly people, dogs?

Facts that matter:

- Two groups are trying to resolve conflicts with each other. They are lodging together and are about to go hunt. They lay their bows and arrows outside while they are meeting, and a dog from one of the groups pees on the arrows.
- A woman who sees this and says “Why is it a dog peed on the arrow?” No one hears her and other women tell her to shut up and not say anything. She says louder, “I told you guys, that dog peed on the arrows.”
- The owner of the arrows kills the dog, and the owner of the dog kills the woman.
- A large fight breaks among the group.
- One old man tries to stop the war, but is killed by more “powerful guys.” Other people flee the fighting.
- The fighting only stops when there are two people (men) left who cannot kill each other.
- Many years later, an old woman who fled the fighting tells her community she was a survivor of the conflict, and recalls how she fled into the water and was protected by a man who told her “go underneath my arm.”

Decisions/Resolutions:

1. The women tell the other woman to be quiet and not say anything about the dog peeing on the arrow.
2. Death – woman, dog and the old man die.
3. People not fighting flee.
4. One woman survivor hides and finds a man to help her.

Reasons:

(Said) The woman died because she revealed to the men that the dog had peed on the arrows, which led one man to kill the dog and the dog’s owner to kill her.

(Said): The dog dies because it peed on arrows.

(Said): The old man said “no war. No war” and was killed for speaking up against it.

(Unsaid): People who did not want to fight or would likely die in fight had to flee or they would face death. The conflict exacerbated their vulnerability.

(Unsaid): The woman survives only because she hides and has the help of someone.

(Unsaid): The only way to stop the fighting was to run out of powerful men that would and could kill each other. No one else was able to stop the conflict.

(Unsaid): Straying outside of norms or the status quo or speaking up increases vulnerability, particularly for those already vulnerable. In this case, the woman speaking out and the old man opposing the conflict became targets for doing so, exacerbating their vulnerability.

Brackets

- Why does the woman speak up about the dog peeing after the women warn her? Why did the women tell her to shut up?
- Are these proportionate responses? Are these responses gendered?
- Was the woman a “girl who started trouble”? Is she really responsible for the conflict?
- What caused the initial conflict?



Dog Who Peed on Arrow/Girl Who Started Trouble

Human Issue 2: What is the response when a vulnerable member of your community is harmed or is in harm's way?

Facts that matter:

- Two groups are trying to resolve conflicts with each other. They are lodging together and are about to go hunt. They lay their bows and arrows outside while they are meeting, and a dog from one of the groups pees on the arrows.
- A woman who sees this and says "Why is it a dog peed on the arrow?" No one hears her and other women tell her to shut up and not say anything. She says louder, "I told you guys, that dog peed on the arrows."
- The owner of the arrows kills the dog, and the owner of the dog kills the woman.
- A large fight breaks among the group and many people flee.
- The fighting only stops when there are two people (men) left who cannot kill each other.
- Many years later, an old woman who fled the fighting tells her community she was a survivor of the conflict, and recalls how she fled into the water and was protected by a man who told her "go underneath my arm."

Decisions:

1. The women try to warn the woman to be quiet
2. After the woman is killed, the two groups go to war
3. The woman is hidden by a man in the lake

Reasons:

(Unsaid): The women warn the woman because they know that they are in a period of fragile peace and she might (and other people) might be placed in a more vulnerable position for pointing out the dog peed on the arrows. They are concerned about exacerbating vulnerability – either hers, theirs or the whole community's.

(Unsaid): People have an obligation to warn others when their actions may harm themselves, exacerbate vulnerability or the wider community.

(Unsaid): The groups fight because the woman is killed by owner of the dog (other group).

(Unsaid): People may have an obligation to suspend peace negotiations when a member of the community is harmed.

(Unsaid): The woman who survives does so because a man who also survives tells her to "go underneath my arm"; a metaphor for protecting her or simply hiding her.

(Unsaid): People have an obligation to protect community members who are more vulnerable than they are.

Swan and Soge

Human Issues:

- The main problem focuses on the reactions to a series of harms:
 - What is the response to a sexual assault (Swan allegedly on Soge)?
 - What is the response to finding out your son has had sexual intercourse with your wife?
 - What is the response to being left to die?
 - What is the response to harms committed against you?

Facts that matter:

- Swan's mother dies, but before she dies tells Swan's father to find a good woman to look after her son where "the sun is highest in the sky" – telling him that women from the east or the west are no good.
- Swan's father can't find a woman where the sun is the highest, but finds a good-looking from the west. The woman's father gives him his daughter (Soge) to marry.
- Swan and his new step-mother go hunting. She asks him to shoot a rabbit in the neck. He complies. Soge kills the rabbit by placing it between her legs, which causes scratching and bleeding between her legs.
- When they return to camp, Soge tells her husband that Swan sexually assaulted her.
- The father knows that Swan must be punished by death, but he doesn't have the heart to do this. Instead he takes him to an island and leaves him there, expecting him to die.
- Swan's father tells Swan as he paddles away in the canoe "We have both shared the same hole. We can't both go in the same place. Now, I am leaving you here." Swan shouts back that he did not sexually assault Soge.
- Swan survives through help from the land and other beings.
- The father returns expecting Swan to be dead, Swan instead steals his canoe and leaves the father on the island for 10 days.
- The father dies.
- Swan then goes back to Soge and kills her by chasing her with flaming arrows causing her to jump into a lake. He then shoots the arrows in the water, where she is boiled to death.

Decisions/Resolutions:

1. Swan's father decides to abandon Swan in a place to die.
2. Swan then decides to leave his father on the island for ten days.
3. Swan kills Soge.
4. Soge tells Swan's father that Swan sexually assaulted her.

Reasons:

(Said): Swans' father "knew he could not kill his own son, so he told Swan, "Let's go hunting out where the sun goes down in the ocean." He was planning to leave Swan on an island in the ocean. He couldn't kill him, but he planned to leave him there to die."

(Said): His father shouted to Swan, “I am leaving you here. We have both shared the same hole. We can’t both go in the same place. Now, I am leaving you here.”

(Unsaid): Swan’s father saw the harm as being against him, not Soge. He did not interpret Soge’s story as being about sexual assault, but about sex. Swan’s father thus wants to kill Swan for sharing the same woman.

(Said): When Swan leaves his father on the island, he shouts: “Now you are going to live the way that I lived.” He paddled his canoe back to the mainland. Swan thought to himself, “My dad is crazy, so I will just leave him there for ten days. He can’t die in ten days. Look how long I stayed there.”

(Unsaid): Swan did not intend to kill his father

(Said): Swan responds following his father’s death by killing Soge: “It’s that bad woman who did this. Now I’m going to kill her.”

(Unsaid): Swan hold Soge responsible for his estrangement, abandonment and his father’s death.

Brackets

- What are the actual harms?
- Are these proportionate responses? Are these responses gendered?
- Was the man responsible because he chose a “bad” woman? Was Soge responsible because she was from a place that was “no good” and wild?
- Was Soge actually acting out because she was given to an old man to marry and to mother a step son? How did the woman feel being given to Swan’s father for marriage? Is this an invisible harm in the story or the first harm in the story?
- What is the distinction between anger and justice in the responses? For example, were Swan’s actions anger or ‘justice’? In the killing of Soge, Swan is careful not to directly kill her (as this would affect his ability to be a medicine person, which we learn later in the story), showing that he had the ability for restraint.



Secwepemc Briefs

Wolverene and Fisher

Human issue 1: What are the consequences of creating vulnerable people? In this case women?

Facts that matter:

- Wolverene and Fisher live together in the same house. One day, when Fisher sees a woman while hunting. Fisher tells Wolverene he is going to follow her and tries, but cannot overtake her. He returns to camp exhausted, emaciated and weak.
- Wolverene says he will search for woman. He takes provisions with him and finds a house after travelling for a long time.
- At nightfall Wolverene crawls into the house, and discovers the woman lying in a corner by herself because she is menstruating. She has taken off all her good clothes and had placed them under her pillow.
- Then Wolverene turns into a dog, enters the lodge, and steals the woman's moccasins. The people see him and chase him, but he disappears in the darkness.
- Wolverene comes back several times, doing the same thing: he steals her leggings, then her bag of sinew and sewing, then her skirt, then her robe, and then her.
- The people chase him each time, but always lose him in the dark.
- Wolverene resumes his original human form and tells the woman that she must be his wife. He puts all her belongings into his bag, and they travel back to the home of Wolverene and Fisher, where the woman lives with Wolverene and has many children with him.

Decisions/resolutions: Wolverene and Fisher hunted the woman, and Wolverene easily stole the woman's belongings, then kidnapped her and forced her to be his wife.

Reasons:

(Unsaid): Fisher and Wolverene want to follow the woman because they want to kidnap her.

(Unsaid): The woman was menstruating, which meant she was in a corner by herself had taken off all her good clothes and left them available to be stolen. This exacerbated her vulnerability, allowing her to be attacked by Wolverene.

(Unsaid): Women are particularly vulnerable to men who wish to harm them.

(Unsaid): The woman wasn't powerful enough to stop Wolverene's violent actions.

(Said): Wolverene had the power to steal the woman's belongings, kidnap her and force her to be his wife.

(Said): The people tried to stop Wolverene and help the woman once she was taken, but

they did not have the power or skills to do so.

(Said): The woman felt she had no choice but to become Wolverene's wife.

Bracket:

- Did the people continue to look for the woman?
- Why did the woman remove her good clothes for menstruation?
- Why was she in a corner by herself?
- What was the woman's name?
- How would this story be different from her perspective?



Wolverene and Fisher

Human Issue 2: What is the response when a vulnerable woman is being targeted by an outsider for possible harm?

Decisions/Resolutions: The people chased Wolverine to try to stop him from taking their sister's belongings and kidnapping her.

Reasons:

(Said): The people saw him, and cried out, "Oh! one of the dogs has taken our sister's shoes!", then The people cried, 'Oh! one of the dogs has taken our sister's leggings!' The people chased the dog each time, but lost him in the darkness. The people wanted to prevent the thefts and the kidnapping.

(Said): The people kept trying even though they lost the dog in the darkness each time.

(Unsaid): When a community member is targeted and kidnapped, it is the community's responsibility to try to recover her.

Bracket:

- Why after the first attack did she remain in a corner by herself? Why didn't her community protect her once they knew she was being targeted by Wolverine?



Story of Muskrat

Human Issue 1: What is the individual and collective response to gendered violence? What is the proper response to holding violent people to account?

Facts that matter:

- A pubescent girl lives in her lodge near the village. Several young men, including Muskrat, ask to marry her. Her parents speak to her about the proposals, but she refuses all of them.
- Muskrat decides to kill her and creates an elaborate plan that would make it hard to conclude that he had killed her.
- Muskrat kills the girl, and covers it up, by using snowshoes and arrows from many different places.
- The people find the girl dead, but cannot determine who killed her.
- The people try to revive the girl with shamans. When they fail, they asked Muskrat to try, a young shaman.
- Muskrat says he will try, but doubts it would work. He begins to dance and sing. He stops at one point and says to himself "I am the one who killed the girl." Coyote hears him and told the people.
- The people say "if he isn't able to bring her to life again, we will kill him."
- Muskrat then cries out in loud voice, 'I killed the girl!' then bolts for the lake, and dives down the hole in the ice where the people drew their water.

Decisions/Resolutions:

1. The people investigate the girl's killing and try to decipher who killed her.
2. Once the people learn that muskrat killed the girl, they give him a chance to revive her. When he runs, they pursue him around the lake and try to kill him until they have to give up their pursuit.
3. After the people give up their pursuit, Beaver joins Muskrat and asks him to trade tails. When he does, Beaver swims away from Muskrat. Muskrat can't catch Beaver and comes to shore where he is transformed into the muskrat, an animal that can only live along the shore and can never swim out into the deep water of large lakes.

Reasons:

(Said): The people try to decipher who killed the girl so they can find the person responsible to punish them.

(Unsaid): The people give Muskrat the opportunity to redress his wrong once they know he killed the girl.

(Said): The people want to kill Muskrat for killing the girl.

(Said): The people only gave up their pursuit when the hunt was impossible: "Although they chased him until dark, they could not even get within arrow-shot of him, for he was a very fine swimmer and diver."

(Unsaid): People (women and girls) should expect people to attempt to determine who has killed them, make every attempt possible to catch them, and determine the appropriate consequences for the harms perpetrated against them.

(Unsaid): They entire community had an obligation to catch Muskrat.

(Unsaid): Muskrat was transformed into an animal that can only live on the shore so he could no longer escape the consequences of harms perpetrated on land; it is a form of incapacitation.

Bracket:

- Muskrat killed the girl because she wouldn't marry him; this is violence only experienced by women and girls; the violence caused by her refusing a suitor.
- Was beaver sent by the people or part of the community?
- Did the people keep searching for Muskrat?
- Did trapping the Muskrat to the land cause more danger or less danger to people?
- What was the girl's name? How would this story be different from her perspective?
- What about the parents of the girl? What were their responsibilities?



Story of Muskrat

Human Issue 2: What is the consequence of creating vulnerable people, in this case women?

Decision: The girl dies.

Reason:

(Said): Muskrat wanted to marry the girl but she turns him down. He is unhappy about this decision so decides to kill her. This is a specific type of gendered violence.

(Unsaid): Women are specifically vulnerable to violent men who will not take no for an answer. Saying no to men like this exacerbates vulnerability and can lead to serious harms, including death.

(Unsaid): The girl was not powerful enough to fight off Muskrat.

(Unsaid): The community had an obligation to find out what happened to the girl and hold the person responsible for her death accountable.



Story of Porcupine

Human Issues: How do two groups resolve long-standing conflict between their communities? What is the role of leaders in resolving conflicts between communities?

Facts that matter:

- Once there were two groups who had been enemies for a long time. The birds' chief was Swan. The mammals' chief was Elk. The two groups tried to interfere with each other by making their means of procuring a living as difficult as possible.
- Each group had a different type of government and lived and worked differently. What one did well, the other did badly.
- Chief Swan wanted to remedy the defects of both parties and make peace, believing that their troubles arose from ignorance.

Decisions/Resolutions:

1. Swan assembled his people and asked whether someone would volunteer to send a message to Elk. Coyote volunteered, then he failed. Then Swan asked the people who was best placed to undertake the journey, and they chose porcupine. He was successful.
2. Elk and his people visited Swan and they kneeled down before each other to share knowledge and advice. Together they devised a means to resolve the conflict.
3. The two groups thereby were able to live easier and happier than before without coming into conflict with each other.

Reasons:

(Said): Swan took leadership and figured out how to overcome the problems because he thought their difference was caused by mutual ignorance. He asked the people to assist in selecting the right person to obtain their support.

(Unsaid): Elk responded positively to Swan's invitation to meet because he thought this would help solve their differences.

(Unsaid): Leaders are responsible for attempting to resolve conflict between their peoples and others.

(Unsaid): A council was held. Resolving differences requires groups to come together in the spirit of respect and reciprocity. Each treated the other respectfully and each shared with the other everything they knew.

Bracket:

- Porcupine was laughed at by Coyote, however he got the job done. This is a reminder not to discount any creature as insignificant because each has purpose and capacity.

Story of Hu'pken

Human Issue: How does one respond when people leave you behind with almost nothing to survive? What is an individual's obligation to care for community members in need?

Facts that matter:

- Hu'pken was a boy who lived with his parents. He was mischievous, lazy and quarrelsome and would not train himself like other boys. He was a nuisance to the people, so his community deserts him.
- Hu'pken looks in every house. Only Raven and Crow have left some fish-skins and other scraps for him. In the last house he sees a large basket turned over. Angry, he kicks it and is surprised to find his old grandmother hidden underneath. He almost kicks his grandmother, too but she says she will help and teach him.
- The grandmother teaches Hu'pken how to kindle fire, make bows and arrows, and shoot game so they have food and clothing. Eventually Hu'pken becomes a great hunter.
- Porcupine sees boy's great provisions and tells the people Hu'pken has become a great hunter. The people don't believe Porcupine and send Crow to confirm the story. Crow visits Hu'pken and tells him the people are starving. Hu'pken gives Crow fat for the people, but Crow hides it and tells the people that Porcupine is lying.
- Crow secretly feeds the fat to his children in the night, but the children make noise that the people hear them – they investigate and find out Crow has fat.
- The people asked Crow where he got the fat from and Crow told them Hu'pken had given him the fat.
- The people returns to their village, and are feasted by Hu'pken, who fills the houses of Crow and others who had left him food with food and skin.

Decision/Resolution:

1. Hu'pken learned to survive and became a great hunter with the help of his grandmother.
2. Crow and Raven leave Hu'pken some scraps of food. Hu'pken later shares food with Crow when he hears his people are starving. He then feasts the people upon their return and provides additional food and skin to the Crow and Raven, who left him scraps when he was abandoned.

Reasons:

(Unsaid): Crow and Raven left the boy food because they pitied him and knew he would be vulnerable.

(Unsaid): Hu'pken accepted responsibility to learn and to work when he realized his survival depended on it. He realized his grandmother had the knowledge to teach him and he happily learned from her.

(Said): Hu'pken gave fat to Crow to share with his community because they were starving.

(Unsaid): Community members have a responsibility to share resources with the community.

(Unsaid): The boy feasted the people, but did not fill their houses with food/skins because they had not shared food with him like Crow and Raven. Crow and Raven's houses were filled with food and skins because they pitied him.

Bracket

- What happens to Porcupine, who was accused of lying about Hup'ken?
- Crow did falsely accuse Porcupine of lying. Could Porcupine respond to this? What would be the response?
- What consequences did Crow face for lying?
- What would Hu'pken have done if his grandmother didn't tell him she could help him survive?



Story of Hu'pken

Human Issue 2: What is the consequence of creating vulnerable people, in this case Hu'pken's grandmother?

Facts that matter:

- Hu'pken was a boy who lived with his parents. He was mischievous, lazy and quarrelsome and would not train himself like other boys. He was a nuisance to the people, so his community deserts him.
- The community also abandons Hu'pken's grandmother because she is too old to keep up with them when they desert Hu'pken.
- Hu'pken looks in every house. Only Raven and Crow have left some fish-skins and other scraps for him. In the last house he sees a large basket turned over. Angry, he kicks it and is surprised to find his old grandmother hidden underneath. He almost kicks his grandmother too but she says she will help and teach him.
- The grandmother teaches Hu'pken how to kindle fire, make bows and arrows, and shoot game so they have food and clothing. Eventually Hu'pken becomes a great hunter.
- The people returns to their village, and are feasted by Hu'pken, who fills the houses of Crow and others who had left him food with food and skin.

Decisions/Resolutions: The community decides to leave her behind with Hu'pken (to potentially starve); Hu'pken decides to keep her with him and not harm her because she can help him.

Reasons:

(Said): The old woman could not keep up with the people who wanted to abandon Hu'pken.

(Unsaid): Her age exacerbates her vulnerability as a woman.

(Said): Hu'pken did not kick the old woman once she told him she could help him survive.

(Unsaid) The elderly woman would have been harmed by Hu'pken had she not said to him that she could be useful.

(Unsaid): Women, particularly elderly women, are more vulnerable if they are seen as not useful to a community.



Part Three: Indigenous Feminist Legal Analysis

Part three of the casebook includes engagement with the stories using a different method from the case brief. Although case briefing a story to locate potential legal decisions is a valuable exercise, sometimes harmful gender dynamics and the role of women in questions such as governance and authority are not addressed well through this exercise. The Indigenous feminist legal methodology, developed by Dr. Emily Snyder provides another way to engage with the stories, which “encourages analysis that is attentive to gendered power dynamics as they play out in Indigenous legal contexts.”¹¹ The approach asks direct questions to a story to reveal gender dynamics and oppressive norms implicit in the practice and application of law. These questions are:

Questions about legal processes: What are the characteristics of legitimate decision-making processes? Who is included? Is this gendered? Who are the authoritative decision makers?

Legal responses and resolutions: What are the responses? Do these responses have different implications for women and men?

Legal rights: What should people and other beings be able to expect from others? Are any of these expectations gendered? Are certain rights overlooked?

General gender dynamics: Are both women and men present in the material? What are they doing or saying? In what contexts do women and men appear?

The above questions are the first part of the analytical framework employed by Dr. Snyder. Her entire framework is broader, and includes questions about citizenship, gendered representations, and how law is imagined.¹² For the purposes of this project, we focused on questions that direct people to engage specifically with gender, and more specifically the power dynamics that largely exist between people who identify as women and people that identify as men. The first part of the framework is a revision of Dr. Friedland’s legal synthesis method.¹³

¹¹ See Emily Snyder, Val Napoleon and John Borrows, “Gender and Violence: Drawing on Indigenous Legal Resources (2015) 48:2 U.B.C. L. Rev. 593.

¹² See Emily Snyder, Representations of Women in Cree Legal Educational Materials: An Indigenous Feminist Legal Theoretical Analysis (PhD Thesis, University of Alberta Department of Sociology, 2013) [unpublished]; Emily Snyder, “Indigenous Feminist Legal Theory” (2014) 26:2 CJWL 365.

¹³ Hadley Friedland, “Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws” (2012) 11:1 Indigenous LJ 29.

Analysis of Cree Stories

Hairy-Heart People

Legal Process: *What are the characteristics of legitimate decision-making processes? Who is included? Is this gendered? Who are the authoritative decision-makers?*

- The key decision maker in the story is the old man, or leader, who finds ways to prevent interactions with the Hairy Hearts and integrate them when they enter the community. These seem to be unilateral decisions and don't seem to include women.
- When the woman notices that her husband is dangerous, she warns her brother, who then takes action, killing the Hairy Heart. But it is the brother who decides what to do about this situation.

Legal responses and resolutions: *What are the responses? Do these responses have different implications for women and men?*

- Keeping the Hairy Hearts away has different implications for the women, as it is the only way to keep them safe (men can kill the Hairy Hearts)
- Including the Hairy Hearts into the community has implications for the women, as they become those who are married to them – integration of the Hairy Hearts depends on the willingness of women to marry them.
- Noticing the husband is still a Hairy Heart inside has implications for his wife, as she is unable to kill him.
- Killing the young Hairy Heart has implications for the women, as it turns the other man back into a cannibal and he kills the women and scares others away.

Legal rights: *What should people and other beings be able to expect from others? Are any of the expectations gendered? Are certain rights overlooked?*

- There are obligations to protect one another within society – throughout the narrative, we see examples of people warning and protecting one another throughout.
- What were the rights of the women to not include the Hairy Hearts in their community? What were their rights to have protection from the Hairy Hearts while the men were out hunting? What were their rights about marrying the Hairy Hearts?
- Were there expectations for the women to marry the Hairy Hearts?

General Gender Dynamics: *Are both women and men in the material? What are they doing or saying? In what contexts do women and men appear?*

- Men and women both act in the story to protect one another and both fight the Hairy Hearts.
- The old man's (leader) voice is the strongest in the story – he is the one who makes the decisions about how to take care of the community.
- The brothers are the ones who decide to kill the Hairy Heart – the woman tells the brothers about the danger.
- The women appear in contexts where they are vulnerable – the wife when she knows her husband is still wicked; the women when they fight the Hairy Heart.

Analysis of Dane-Zaa Stories

Dog Who Peed on Arrow/Girl Who Started Trouble

Legal Processes: *What are the characteristics of legitimate decision-making processes? Who is Included? Is this gendered? Who are the authoritative decision makers?*

- Decisions are made by the strong against the vulnerable – seemingly unilateral: the man shoots the dog, then the dog owner shoots the woman, then an old man is killed for intervening in the war.
- Why didn't the dog owner shoot the man that shot his dog, rather than the woman?
- The decisions to go to war did not seem to be implicitly made by men. The fighting is by men.
- The decision to end the war by the powerful men (once no one else can fight).

Legal responses and resolutions: *What are the responses? Do these responses have different implications for women and men?*

- Was the woman to blame for the war? Why was the response to kill her and not the person who killed the dog? What happened to the man who killed the dog?
- The vulnerable peoples' responses were to warn, speak out, hide and protect families. The powerful peoples' responses are to fight (men).
- The old man speaks up against the war but is killed – implications for the women are to not speak up.
- Resolution only found as a result of men not being able to kill one another has implications for women. Were the women all killed? Did they fight?
- Were the women warning the other woman that she was in danger or were they worried about her starting a war?
- The woman who survives does so by being told by another survivor to "go underneath my arm" –implication is that she needs the support to survive.

Legal rights: *What should people and other beings be able to expect from others? Are any of these expectations gendered? Are certain rights overlooked?*

- Did the woman have a right to life and be heard? How about the old man?
- People have an obligation to prevent harms from happening (the women telling the other woman to be quiet; the old man preventing the fighting; the women running away)
- What of the dog's life? Did it have the right to be protected?

General Gender Dynamics: *Are both women and men present in the material? What are they doing or saying? In what contexts do women and men appear?*

- Both men and women are present, but they act differently - the women ask the other woman to be quiet, the woman hides and survives (with the help of a man); the men fight until it is no longer possible, except for the old man.
- The women appear together – acting as one telling the other woman to be quiet.
- The old man appears as the only one who tries to stop the fighting.

- The women are the ones that speak, but the men are the ones who act.
- Men public actors – fighting each other, speaking out; women private (telling other woman to be quiet). The one woman who acts publicly is killed.
- The man who protects the woman tells her to “go underneath my arm” as in protect her?



Swan and Soge

Legal Process: *What are the characteristics of legitimate decision-making processes? Who is included? Is this gendered? Who are the authoritative decision-makers?*

- Decisions were made with no consultation (could mean an angry response?); all decision-makers are men: to take a wife, to kill the son, to punish the father, to kill the woman.
- Soge's father decides to "give" Soge to Swan's father.

Legal responses and resolutions: *What are the responses? Do these responses have different implications for women and men?*

- The response in two instances is to kill and in one is to isolate. The father decides to leave his son for dead, but the reasons for doing this are unclear – is it for "sharing" the same woman or for sexual assault? Is it an angry response or a principled legal response? The story suggests the former. In that case, irrespective of the lie told by the woman, the harm in this story is also framed by men as being about their right to women.
- Similarly, Swan returns and kills the woman, but is the harm he faced (being left for dead by his father) exactly caused by her actions, or his father's. In this light is it proportionate (the lie vs. assault? sharing woman vs. abandonment?)
- The decision to kill the woman has implications to women about articulating assault.

Legal rights: *What should people and other beings be able to expect from others? Are any of the expectations gendered? Are certain rights overlooked?*

- Did Swan have a right to have to be heard by his father? Did the woman have the right to bodily integrity and safety? Did she have a right to be heard by her father with respect to who she married?

General Gender Dynamics: *Are both women and men present in the material? What are they doing or saying? In what contexts do women and men appear?*

- The woman only appears in the beginning and the end of the story; the perspectives are all men and the majority of the dialogue is from the perspective of men.
- The husband seems less concerned about a possible assault on his wife than the fact that his son may have had sexual intercourse with his wife.
- The woman is cast as a "bad" woman; but neither the husband nor the son, who actually attempt to kill others are cast as "bad"
- There is extensive talk at the beginning about "good women" and "bad women" from a male voice – she is from a "bad" place and is called "wild" – who is speaking?

Analysis of Secwepemc Stories

Story of Sna'naz

Legal Processes: *What are the characteristics of legitimate decision-making respecting women's lives and who they live with/marry? Who is included? Is this gendered? Who are the authoritative decision-makers?*

- In all situations, the chiefs are the people who make the decision as to where the two women live/marry. First, their uncle (a chief), "gives" them to Sna'naz to marry as a reward for being faithful and behaving well. The second chief, makes the decision to "take charge" of the women when he hears contradictory stories about what happened to Sna'naz and the two women. When Sna'naz returns, the same chief makes the decision that the women will go with Sna'naz rather than his brothers.
- All decisions were made unilaterally by the chief, with no consultation from others, including the two nieces.
- The nieces went with whomever the chief told them to go with or marry.
- The two brothers also had no choice but to follow the chief's decision.

Legal responses and resolutions: *What are the responses? Do these responses have different implications for women and men?*

- The story says that the women told the truth, but they had to stay with the chief.
- The story has implications for authority and power; all responses involved a leader deciding where the women should live and who they should marry, suggesting that women do not have a role in this decision.

Legal rights: *What should people and other beings be able to expect from others? Are any of these expectations gendered? Are certain rights overlooked?*

- The two brothers had the right to be heard by the chief, and were told that the women still "belonged" to them, but would be in his care temporarily.
- The story outright says that the women were telling the truth – did the chief recognize this and act in the interest of their safety by taking them into his care? Is this an obligation?
- What about the women's rights to leave the community? Marry who they want?
- What consequences, if any, did the two brothers face for the kidnapping? Just shame?

General Gender Dynamics: *Are both women and men present in the material? What are they doing or saying? In what contexts do women and men appear?*

- The only time the women are actively doing something in the material is when they tell the chief that they were kidnapped by the brothers and they killed Sna'naz (an inference based on the text of the story – "told the truth), and when they recognized Sna'naz as their husband. Otherwise they are following the directions of the leaders/men without any information on what they think about it.

- The majority of the dialogue is from the perspective of the men; Sna'naz, the brothers, the chiefs.
- The women exist as mostly "belonging" to men in the story:
 - Chief says to Sna'naz: "I like you, because you have acted so faithfully, and behaved so well. I give you my two nieces to be your wives. You may take them whenever you wish."
 - "The brothers said, 'Why act thus?' The women are ours. We went to the Lower World with our brother, and fought the people there. Our brother was killed in the battle, and we took these women from our enemies. They stand as payment for our brother, and, being captives of war, they are our property. We won them by our deeds.'"
 - The chief answered, "They are the same as belonging to you, yet I will have charge of them for a little while, until they become accustomed to us and to our ways."
 - "The chief returned his wives to him, and he lived with them happily, having many children by them, all of whom became noted for magic."



Story of Porcupine

Legal processes: *What are the characteristics of legitimate decision-making in peace making? Who is included? Is this gendered? Who are the authoritative decision-makers?*

- The key decision-makers in this story are the two chiefs, Swan and Elk. Those who carry out the actions of legitimate decision-making processes are porcupine and coyote. All of these authoritative decision makers and actors are male.

Legal responses and resolutions: *What are the responses? Do these responses have different implications for women and men?*

- This is a central governance story, with implications to the forms of institution and decision making about public matters (in this case, to end war between peoples). Without women a part of this story, read in light of where women are in decision-making roles in other stories (within the family), the inference is that women's role is not within the public sphere.

Legal rights: *What should people and other beings be able to expect from others? Are any of these expectations gendered? Are certain rights overlooked?*

- Two men are the ones who carry out Swan's request – it is not clear whether women would have been considered for this job or had the right to be the messenger.

General Gender Dynamics: *Are both women and men present in the material? What are they doing or saying? In what contexts do women and men appear?*

- Although the story says that Swan gathered his people, there is no explicit description of women being a part of the key decision-making process, and no suggestion that women would have been chosen to make the trek to Elk's territory to deliver the message.



Story of Hu'pken

Legal Processes: *What are the characteristics of legitimate decision-making respecting women's lives? Who is included? Is this gendered? Who are the authoritative decision-makers?*

- The people decided to leave behind both Hu'pken and his grandmother. Hu'pken was left behind because he was a nuisance. The grandmother was left behind because she was old to follow the people.
- Hu'pken decides to spare his grandmother's life from harm (kicking her) once she tells him she can be of use to him.
- Once there is a cache of resources, it seems as though Hu'pken who has the authority to decide what happens to them, even though he would not have had any resources without the grandmother's help (ie. Giving food to crow, feasting people, deciding to not give to those who hadn't left him food).

Legal responses and resolutions: *What are the responses? Do these responses have different implications for women and men?*

- The community wanted to abandon Hu'pken for being a nuisance. They couldn't do this without harming his grandmother at the same time.
- The grandmother was at the mercy of Hu'pken and only was saved once Hu'pken realized she could help him.
- Hu'pken only survived because of the knowledge of the grandmother – she teaches him how to survive, which enables him to develop a great cache of resources.

Legal rights: *What should people and other beings be able to expect from others? Are any of these expectations gendered? Are certain rights overlooked?*

- What about the grandmother's rights to life and security? What should be her expectations given that she likely had cared for many people in her life (she had many skills to teach).
- What about her rights to decide whether to share resources with those who abandoned her? The expectation that Hu'pken had the authority to share demonstrates gendered dynamics and expectations.
- There are consequences for being a nuisance here – what about consequences for abandonment for no reason?

General Gender Dynamics: *Are both women and men present in the material? What are they doing or saying? In what contexts do women and men appear?*

- The grandmother is cast as a liability to the community and initially worthless to Hu'pken.
- The grandmother only speaks to tell Hu'pken how she can be of use to him; the story talks about how she can help him.
- Woman is the only one with domestic knowledge (how to sew, make weapons, light a fire, cook, hunt), which is necessary for survival.
- Men are the only ones with authority to use and share these resources (Hu'pken, Raven, Crow).

Appendix I – Thematic Index

Status of Women/Governance and Authority of Women in Society

- *Hairy-Heart People, Dog Who Peed on Arrow/Girl Who Started Trouble, Swan and Soge, Story of Sna'naz, Story of Porcupine, Story of Hu'pken, Coyote Makes Women Menstruate.*

Community Safety, Care and Protection

- *Starving Uncle, Hairy-Heart People, Making of Wetaskiwin, Dog Who Peed on Arrows/Girl Who Started Trouble, Wolverine and Fisher, Story of Muskrat, Story of Hu'pken, Rolling Head.*

Vulnerability

- *Hairy-Heart People, Dog Who Peed on Arrows/Girl Who Started Trouble, Wolverine and Fisher, Story of Muskrat, Story of Hu'pken, Story of Sna'naz, Swan and Soge, Story of Hu'pken, Rolling Head.*

Responses to Individual Harms/Gendered Violence

- *Swan and Soge, Dog Who Peed on Arrows/Girl Who Started Trouble, Wolverine and Fisher, Story of Muskrat, Story of Sna'naz, Story of Hu'pken, Rolling Head.*

Resolving Conflict between Groups

- *Story of Porcupine, Making of Wetaskiwin, Dog Who Peed on Arrows/Girl Who Started Trouble, Hairy-Heart People.*

