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A CONVERSATION PIECE ABOUT IMPLEMENTING INUIT LEGAL ORDERS
INTO THE NUNATSIAVUT GOVERNMENT'S INUIT COURT

by

Elizabeth Zarpa

Submitted in partial fulfillment of the requirements
for the degree of Master of Laws

at

Dalhousie University
Halifax, Nova Scotia
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Dalhousie University is located in Mi'kma'ki, the ancestral and unceded territory of the
Mi'kmaq. We are all Treaty people.

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DEDICATION

I dedicate the workings within this thesis to the generations before me who have worked tirelessly to advance the rights of Inuit and to the future generations ahead.

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ABSTRACT

A majority of Inuit reside above the 55th parallel in 51 communities throughout Nunatsiavut, Nunavik, Nunavut and Inuvialuit. This area is Inuit Nunangat and each of these Inuit regions has their own modern treaty. The political and legal history of the evolution of these modern treaties is under-represented within educational institutions. Breathing life into and contextualizing this history is integral when revitalizing Inuit legal orders. There is space to implement Inuit legal orders into the governing structures throughout Inuit Nunangat. This thesis highlights that published and publicly accessible Inuit stories embodies law. Law from the stories is applicable to governance structures, such as a Declaration of Inuit Laws, applicable to an Inuit Court in Nunatsiavut. This thesis is a conversation piece about the possibilities, challenges and the preparation needed when imagining what an Inuit Court in Nunatsiavut could look like, and how Inuit legal orders can inform that process.

LIST OF ABBREVIATIONS USED

IFA – Inuvialuit Final Agreement.

ILRU – Indigenous Law Research Unit at the University of Victoria.

ITK – Inuit Tapiriit Kanatami.

Inuit Nunangat – in Inuktut refers to the homelands of the Inuit (in Canada that encompasses the four land claim regions colloquially known as Nunatsiavut, Nunavik, Nunavut and Inuvialuit).

IQ - Inuit Qaujimagatuqangit, Inuit knowledge or Inuit law predominantly used in Nunavut.

JBNQA – James Bay and Northern Quebec Agreement.

Kallunâk – Non-Inuk, Caucasian person.

LILCA – Labrador Inuit Land Claims Agreement.

Nunatsiavimmiut – Inuit from Nunatsiavut.

Nunavimmiut – Inuit from Nunavik.

Nunavummiut – Inuit from Nunavut.

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In finding spaces and places where I could continue to learn about Indigenous law and Inuit law more particularly, I came across several barriers. I hit many walls as I continued to search out experiences similar to my experience at the University of Victoria. I thankfully managed to work my way into my Master of Laws program through the support of Naomi Metallic at the Schulich School of Law. I am forever grateful for her support and guidance.

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CHAPTER 1 INTRODUCTION

Indigenous laws are legitimate laws that still exist. Despite the tragic and challenging realities that Indigenous people were forced to endure because of settler colonialism, Indigenous people are still here! As a young child, I was taught that education was a way to ‘fight back against colonialism.’ Perhaps not in that exact wording, but the sentiment was to go to school and to work to advance the rights of Inuit. Therefore, I did that, as a first generation college and university student in my family (both of my parents did not finish high school). At the age of eighteen, I left my family, community and friends to pursue a Bachelor of Arts, Juris Doctor, Master of Arts and now a Master of Laws. I left because getting a bachelor’s degree was not accessible to me in my home community, so like many other Inuit, I had to leave and learn how to live and succeed in the “south.”

In pursuit of ‘becoming educated,’ I began to stumble upon a new movement throughout Canada. A movement within academia to revitalize Indigenous legal orders. This new movement first caught my attention when I was a Juris Doctor candidate, and a summer student at the Indigenous Law Research Unit (ILRU) at the University of Victoria, where I worked alongside scholars who were reading published and publicly accessible Indigenous stories using the ILRU case briefing methodology, also known as the case briefing method. It was the first time in my academic career that I came across this methodology and the first time in my academic career when I worked with people who took Indigenous law seriously, as law.

In that year, and the years ahead, I used the ILRU case briefing methodology in different projects I was involved in as a law student. Although, several of the stories that I

worked with were from First Nations communities, which I am humbled and thankful to have had the opportunity to experience. I sometimes wondered what revitalizing Inuit legal orders in my own territory of Nunatsiavut, could look like. I often realized that I was learning about the diverse Indigenous populations on whose lands I lived and studied. However, I very seldom in my post-secondary educational experiences had the privilege to study about the legal and political history of Inuit Nunangat (the homelands of Inuit and in Canada the regions where a majority of Inuit live).

It has taken me three academic degrees before I got to a place in my academic career, where I could finally take a deep dive into the political and legal history of Inuit Nunangat because, as I said earlier, I did not have that privilege before. The legal and political history of Inuit in Canada is an integral part of the governing institutions that makes up this country, yet it is not taught within mainstream educational institutions.

In taking space to write about the evolution of modern treaty negotiations throughout Inuit Nunangat and how to incorporate Inuit legal orders into these institutions created through modern treaty, I realized it is emotional work. It is emotional because in less than a century my ancestors have undergone tremendous change. In the 1950's my anânsiak (grandmother on my mom's side) and atâtsiak (grandfather) were relocated from Hebron to Nain by the Newfoundland government and the Moravian missionaries. My mom as a young girl, went to Yale Residential School in North West River in the late 1970's into the 1980's. I am now an Inuk woman, who is fluent in English, but cannot speak or understand my mother tongue. The ripple effects of relocation, racism, lateral violence and residential school are felt in my generation. The

burden of undoing that damage while working to advance the interests of Inuit, can at times become too heavy.

This has led me to recognize that working towards revitalizing Inuit legal orders as an Inuk woman, is difficult work. However, it is necessary work, so I pay a law school to write about it. I do that difficult work of writing about the revitalization of Indigenous legal orders, and more specifically, revitalizing Inuit legal orders by finding potential answers to my research question, which is, *how can Inuit laws found within published and publicly accessible Inuit stories inform the process of the creation of an Inuit Court in Nunatsiavut?*

Under chapter 17 of the *Labrador Inuit Land Claims Agreement (LILCA)* the Nunatsiavut Government has the jurisdiction to create an Inuit Court. I advance the argument that a mandatory Declaration of Inuit Laws, enshrined with Inuit legal principles, used by judges in the administration of the Inuit Court is a possibility. This Declaration would be analogous to the Navajo Tribal Courts, *Fundamental Laws of the Dine*,¹ which mandates judges to use Navajo common law in their legal decision-making process. How I have come to this argument will be illustrated in the following chapters of my thesis.

In chapter two, I provide a literature review canvassing the work of scholars who have written about the revitalization of Indigenous legal orders. In chapter three, I go into detail about what the ILRU case briefing methodology is and how others working in the area of Indigenous law revitalization have deployed it. In chapter four, I paint a political and legal picture to capture what movements influenced the modern treaty making

¹ *The Fundamental Laws of the Dine*, Navajo Nation Council, ss. 1-6 (8 November 2002), online: <http://www.nativeweb.org/pages/legal/navajo_law.html> [*Fundamental Laws of the Dine*].

process in Canada and I provide a chronological history of the settlement of Canada's four modern Inuit treaties. In chapter five, I outline the potential challenges and possibilities involved when trying to apply Inuit legal orders to common law legal systems. In chapter six, using the ILRU case briefing methodology, I case brief twenty published and publicly available Inuit stories. Drawing on the legal principles enshrined in each of the stories and bringing the common legal principles to light. In chapter seven, I make my concluding remarks in relation to what I have learnt throughout the long, tedious experience involved in writing my thesis on this topic and what aspirations I have in the area of creating dialogue around the application of Inuit legal orders in an Inuit Court in Nunatsiavut.

CHAPTER 2 LITERATURE REVIEW

This chapter highlights the prevalent themes that have emerged throughout the academic literature relating to Indigenous legal orders, which is commonly also referred to as Indigenous laws. The chapter also highlights the case briefing methodology that I have used to find answers to my research question: *how can Inuit laws found within published and publicly accessible Inuit stories inform the process of the creation of an Inuit Court in Nunatsiavut?*

Throughout the literature review for this thesis, these themes have emerged in scholarly articles relating to Indigenous law revitalization:

- a) The application of common and civil law, also known as dominant settler laws to Indigenous communities have deeply reduced the prevalence of Indigenous laws today;
- b) Indigenous people have largely been defined by laws created by non-Indigenous people which have been introduced within dominant settler laws and Western governance structures;
- c) Indigenous people are transitioning through the process of rapid changes brought on by colonization, racism, lateral violence and globalization, and Indigenous people and their legal orders have also been deeply impacted by this;
- d) Indigenous people are creating spaces and avenues to learn, write, speak and use Indigenous legal orders in a 'post-colonial' framework;
- e) There are challenges to finding and using Indigenous laws and resources within Eurocentric frameworks;
- f) Separate and distinct ways exist outside of the formal legal settings where Indigenous laws can be applied with, for and by Indigenous people;
- g) Despite the damaging effects of colonization, racism, lateral violence and globalization, the difficult work of revitalizing and applying Indigenous legal orders must continue, and
- h) There is a need for this work to be undertaken by Inuit and for Inuit.

Throughout the following sections, each of these emerging themes will be loosely tied together, to show how Indigenous peoples and their laws have been intertwined and challenged throughout dominant settler legal systems. The section will then end by explaining the case briefing methodology that I have adopted. I have used this methodology throughout my thesis to add to the legal literature on revitalizing Indigenous laws in Canada. With a specific focus on how Inuit laws found in published and publicly accessible stories, can be used to create a Declaration of Inuit Laws applicable to an Inuit Court in Nunatsiavut.

2.1 Indigenous people's interaction with Canadian laws

Within the confines of section 35(2) of the *Constitution Act, 1982*, Aboriginal people include First Nations, Inuit and Metis people of Canada.² Prior to the repatriation of Canada's Constitution, and after the repatriation of the Constitution, there have been several legal cases involving Indigenous interests that have infiltrated the different levels of courts throughout the country.

The legal issues have largely focused on understanding how Aboriginal people fit into the colonial legal order, and some of the post-repatriation questions have focused on what section 35(1) means for Indigenous people. Section 35(1) states,

[T]he existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.³

Canadian jurisprudence has sought to define what encompasses Aboriginal and treaty rights, and how the state has to refine its actions to comply with the Constitution when it deals with Indigenous people, their lands, their children, their human rights and

² *Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11 [*Constitution Act*].

³ *Ibid.*

their inherent rights. The flow of this common and civil law jurisprudence is diverse, dynamic, evolving, persuasive, distinguishable and at times, binding on legal issues which influence Indigenous peoples and their lives for generations.

It is important to highlight that this jurisprudence is a different form of law than Indigenous laws. Indigenous laws originate within community, through several avenues such as oral history, song, art, storytelling and these laws are still practiced today in community. Although many of the laws within Indigenous communities are not codified as much as common or civil laws are, they still exist. Their existence has not always been recognized or respected within Canadian society or the systems that govern the state. Yet, these unilateral legal decisions by state actors through legislation or the judiciary are vertically applied to Indigenous communities. This has deeply affected the Indigenous laws of First Nations, Metis and Inuit for well over a century.

An example is the Supreme Court of Canada case in *1939 Re: Indian*,⁴ which determined that for the purposes of section 91(24) of the *Constitution Act, 1867*,⁵ Inuit are “Indians.” This decision reaffirmed that, in the Court’s view that the federal government has jurisdiction over Inuit in Canada. Yet, despite how influential this reference case would be on the lives and lived experiences of Inuit, Inuit were not present in the dialogue regarding the framing of section 91(24) leading up to 1867, nor were they present on the bench in 1939 when the reference question was put to the Supreme Court of Canada.

⁴ *Reference re: British North America Act, 1867* (UK), s 91, [1939] SCR 104 [*Re: Indian*].

⁵ *The Constitution Act, 1867*, 30 & 31 Vict, c 3, s 91(24) states, “Indians and lands reserved for the Indians.” [*Constitution Act 1867*].

Around the same time that this decision was being made by the highest Court in the country, Inuit were experiencing firsthand the consequences of state action on their livelihood, culture and language.

As Dr. Gordon Christie writes [emphasis added]:

...My mom's immediate family found themselves spending a winter in the Mackenzie River delta area in the 1940's, which accounts for my being Canadian. *I am one possible outcome of a rapid transition from traditional ways of living to many and varied sorts of lives.* My grandmother spoke very little English, and I do not speak Inuktitut, which made communication with her very difficult. *My mother's generation was at the crux of the transition, living through several decades of tremendous upheaval.* Now here I find myself, a "southerner", a law professor speaking at a conference in Toronto...⁶

Throughout the late 19th century and into the 20th century Inuit were undergoing rapid transitions from a lifestyle that was in existence for millennia. This lifestyle allowed Inuit to survive in one of the most challenging terrains in Canada, and in the world. Above the 55th parallel is some of the most unforgiving and uninhabited terrain. The environment demands the people who call this place their home be skillful to adapt, as the inability to adapt would mean freezing to death, starving to death or falling prey to wildlife.

All this knowledge of how to live and survive as an Inuk in the north⁷ and the language surrounding that survival was being diminished and altered forever with the introduction of assimilationist, colonial, racist and genocidal mandates⁸ by non-

⁶ Gordon Christie, "Culture, Self-Determination and Colonialism: Issues Around the Revitalization of Indigenous Legal Traditions." (2007) *Indigenous L.J.* 13-29 at 14 [*Christie*].

⁷ Diane Obed, *Illiniaguvut Nunami: Learning from the Land Envisioning an Inuit Centered Educational Future* (Master of Arts Thesis, Saint Mary's University, 2017) [unpublished]. This piece highlights the experience of Inuit from Nunatsiavut (Nunatsiavimiut) who have and continue to partake in outdoor learning/on the land learning as part of their everyday lived experience and how this type of learning can be viewed as a form of accredited education for Inuit.

⁸ Canada, The Truth and Reconciliation Commission of Canada, *The Survivors Speak: A Report of the Truth and Reconciliation Commission of Canada*, (Ottawa: Library and Archives Canada Cataloging in

Indigenous outsiders. This experience of colonization is not unique to only Inuit, it has also affected First Nations and Metis communities across Canada.

As Dr. Christie expressed, his mother was at the crux of the rapid transition happening in her lifetime. Inuit were likely unable to speak English, French or Eurocentric legalese at the interception of the Canadian Constitution or at the time of the *Re: Indian* decision of the Supreme Court in 1939. These barriers, likely along with many others such as racism and ignorance, prohibited Inuit from partaking in conversations about their legal and political futures.

In seeking to revitalize and restore the lifestyles and legal orders of Inuit that have been dismantled throughout these rapid changes, Christie asks:

...How will fractured communities, increasingly peopled with families far removed from the stories of their ancestors, beaten into economic submission after generations of oppression and deprivation, bombarded by endless images of how they “should” think of themselves (as consumers and capitalists, as individuals with rights and interests), be able to initiate the sorts of processes of reclamation necessary to begin the long, slow journey to ‘post-colonial’ times?⁹

In contemplating Christie’s sentiment, concern and statement above, it is worthwhile to elaborate again that Indigenous and Inuit laws did exist prior to the arrival of Europeans, and they still exist despite the challenging and perplexing realities Indigenous people and their laws experienced while living amongst Europeans and their ways of life.

Publication, 2015) [*the Survivors Speak*]; See also, National Inquiry into Missing and Murdered Indigenous Women and Girls (Canada), *A legal analysis of genocide: supplementary report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, (Vancouver: Privy Council, 2019) online: <https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Supplementary-Report_Genocide.pdf>.

⁹ Christie, *supra* note 6 at 29.

2.2 Indigenous laws existed prior to contact with Europeans

From time immemorial Inuit exercised and had a “formal Inuit justice structure in the form of a council that met and exercised justice...”¹⁰ The last traditional Inuit trial took place on the Southwest Baffin Island in 1924.¹¹ It is also notable that Inuit today have negotiated and settled four modern treaties,¹² which could also be considered an exercise of Inuit laws, inherent rights and self-determination.

These more formal approaches such as a justice system, modern treaties and the exercise of government functions is generally how law is summoned within the imagination when thinking of how law functions within community, but Inuit law has historically been and is still applied in less formal ways throughout Inuit communities, too. These laws do not always come written, as highlighted in the quote below:

Inuit legal culture did not exist in written form. According to an Inuit authority Robert Petersen, relationships were regulated by unwritten rules and demand for self-control;¹³ “laws” were mainly elaborated by oral traditions (ie., legends, myths, stories) planted and transferred in people’s minds by shamans, elders, leaders and transmitted from one generation to another; the Inuit also knew how to act on what is “right” or “wrong” from what their parents told them.¹⁴ As the elder Mariano Aupilaarjuk states, “*The maligait* [laws] of the Inuit are not on paper. They are inside people’s head and it will not disappear or be torn to pieces

¹⁰ Natalia Loukacheva, “Indigenous Inuit Law, “Western” Law and Northern Issues” (2012) 3 Arctic Review on Law and Politics, 200 at 205.

¹¹ Norman Hallendy with Osuitok Ipeelee, Annie Manning, Pauta Saila, and Pitaloosie Saila, “The Last Known Traditional Inuit Trial on Southwest Baffin Island in the Canadian Arctic,” August 1991. Background Paper No.2 for Places of Power and Objects of Veneration in the Canadian Arctic. Paper presented at the World Archaeological Congress III, Ottawa, 1994.

¹² These four modern Inuit treaties include the Inuvialuit Final Agreement, Nunavut Land Claims Agreement, James Bay and Northern Quebec Agreement and the Labrador Inuit Land Claims Agreement, all of which will be elaborated on in Chapter 4.

¹³ Robert Petersen, “Administration of Justice in the Traditional Greenlandic Community,” in Gudmundur Alfredsson and Peter Macalister-Smith (eds), *The Living Law of Nations: Essays on Refugees, Minorities, Indigenous Peoples and the Human Rights of Other Vulnerable Groups in Memory of Alte Grahl-Madsen*, (Strasbourg and Arlington, VA: N.P. Engel, 1996) 279 at 279.

¹⁴ Allan L, *Whose Law? Whose Justice? Two Conflicting Systems of Law and Justice in Canada’s Northwest Territories* (BA Honors Thesis, Simon Fraser University, 1989) Burnaby: Simon Fraser University 1989 at 29 [published].

[...] It is part of a person. It is what makes a person strong.”¹⁵ Inuit laws were not codified.”¹⁶

As emphasized above, many Inuit laws were not codified and with the introduction of colonial violence, many of these unwritten laws were deeply dismantled. Throughout the 19th and 20th century Inuit across Canada’s north endured forced relocation,¹⁷ the introduction of residential schools and day schools,¹⁸ the slaughtering of Inuit sled dogs without the consent of the owners¹⁹ and the introduction of Christian missionaries.²⁰ These acts of colonial violence and colonization deeply affected the practices and teachings that maintained Inuit laws and Inuit societies for millennia.

Joanasie Benjamin Arreak who is an Inuit elder from Nunavut did an interview and was asked whether Inuit *Qaujimajatuqangit* values are in danger of fading he replied:

Yes, absolutely. I have made efforts to teach youth [about these values] ... We have to use *Inuit Qaujimajatuqangit* more often... Through writing as well. I have often thought about writing my memories on my own as they occur to me... That would be very useful for our descendants...²¹

¹⁵ Mariano Aupilaarjuk et al, *Interviewing Inuit Elders: Perspectives on Traditional Law*, 2nd ed, (Iqaluit: Nunavut Arctic College, 1999) at 14.

¹⁶ See, Kaj Birket-Smith, *The Caribou Eskimos: Material and Social Life and Their Cultural Position, Report of the fifth Thule Expedition 1921-24*, Vol.5 (Copenhagen: Nordisk Forlag, 1929) at 260-261.

¹⁷ For a thorough review into relocation throughout Inuit territories see, Nunavut, Qikiqtani Inuit Association, *Qikiqtani Truth Commission: Thematic Reports and Special Studies 1950-1975, Nuutauniq: Moves in Inuit Life*, (Iqaluit: Inhabit Media Inc., 2013) online: <https://www.qtcommission.ca/sites/default/files/public/thematic_reports/thematic_reports_english_nuutauniq.pdf>.

¹⁸ *Supra* note 8.

¹⁹ For a more thorough review into relocation throughout Inuit territories see, Qikiqtani Inuit Association, *Qikiqtani Truth Commission: Thematic Reports and Special Studies 1950-1975, Qimmilirniq: Inuit Sled Dogs in Qikiqtaaluk*, (1 October 2020), online: https://www.qtcommission.ca/sites/default/files/public/thematic_reports/thematic_reports_english_qimmilirniq.pdf

²⁰ Alethea Arnaquq-Baril highlights in her film, the damaging consequences on traditional Inuit tattooing caused by Christian missionaries, see: Alethea, Arnaquq-Baril, “Tunniit: Retracing the Lines of Inuit Tattoos,” FILM (Unikkaat Studios Inc., 2011), online: <<http://www.unikkaat.com/projects/tunniit-retracing-the-lines-of-inuit-tattoos/>>.

²¹ Niutaq Cultural Institute, Qikiqtani Inuit Association, *Ilagiinniq: Interviews on Inuit Family Values from the Qikiqtani Region*, Inhabit Media Inc., Canada, 2011 at 112.

The revitalization of Inuit Qaujimagatuqangit values, also known as Inuit law, knowledge, customs or practices is a prevalent theme throughout Inuit communities. One of these practices include the traditional tattooing of Inuit women and men. Kristin Phillips Rothschild's in her 1985 honor's thesis²² writes about Inuit tattooing.

In Rothschild's thesis, she used descriptive and analytical methodologies to gather ethnographic data on Inuit women and men's tattooing from Offshore Alaska, Mainland Alaska, Western Arctic, Central Arctic, Eastern Arctic and Greenland. After the ethnographic data was compiled and compared, she used explanatory and interpretive methods to garner what the tattoos may mean across diverse Inuit styles of tattoo from community to community.

Rothschild's thesis is particularly helpful in garnering a historical ethnographic study on the diverse Inuit tattooing styles across the north. The researcher interprets the meanings of the tattoos. This academic work has relevance because it documents important aspects of Inuit culture, practices and the law that can be derived from the practice of Inuit tattooing. It is also a compilation of data that is not written by Inuit. This is a common experience throughout Inuit Nunangat:

Inuit are among the most studied Indigenous peoples on earth. The primary beneficiaries of Inuit Nunangat research continue to be researchers themselves, in the form of access to funding, data and information, research outcomes, and career advancement. Inuit remain largely marginalized from research governing bodies and in turn experiencing the benefits of research.²³

²² Kristin Phillips Rothschild, *Historical Inuit Tattoo Practises* (Master of Arts Thesis, Carleton University, Ottawa, 1985) [unpublished].

²³ Inuit Tapiriit Kanatami, "National Inuit Strategy on Research," (1 October 2020), online: <https://www.itk.ca/wp-content/uploads/2018/03/National-Inuit-Strategy-on-Research.pdf> at 7.

To address this, Inuit Tapiriit Kanatami, which is the national organization that represents Inuit in Canada has created the *National Inuit Strategy on Research*.²⁴ The academic work such as Rothschild's relating to Inuit has its place within the academy, but Inuit are also seeking to assert jurisdiction over the research that is happening within their communities and their homelands.

As part of that movement in reclaiming jurisdiction over intellectual property, Inuit are continuously working to document the history, meaning and practice of Inuit tattooing outside of the confines of the ivory towers. Hovak Johnson, an Inuk woman from Nunavut has taken it upon herself to work with Inuit and revitalize the practice.

In her book, *Reawakening Our Ancestor's Lines: Revitalizing Inuit Traditional Tattooing*,²⁵ she highlights the history of tattooing along with the colonial violence that contributed to the tradition not being passed down from generation to generation. She also shares the stories along with pictures from Inuit women who are helping to restore the practice by getting traditional Inuit tattoos.

The process of revitalizing Inuit tattoos can also be viewed as restoring Inuit laws, customs and practices because it is a practice that was traditionally incorporated by Inuit prior to the arrival of Christianity. A custom, which allowed Inuit to display their position within society. When Europeans arrived and introduced Christianity, traditional Inuit tattooing became taboo.

²⁴ *Ibid.*

²⁵ Angela Hovak Johnston, *Reawakening Our Ancestor's Lines: Revitalizing Inuit Traditional Tattooing*, (Iqaluit: Inhabit Media Inc, 2017).

Alethea Arnaquq-Baril, an Inuk woman from Nunavut, in her film²⁶ explains how the decision to get facial tattoos in the 21st century created internal and external struggles. These struggles predominantly came from different family and community pressures. In the film, Alethea's mother is uneasy about her choice to get facial tattoos. It is an apparent struggle that is at the centerpiece of the film. What this film beautifully depicts is that information about revitalizing Inuit laws does not always have to fall within the formats of traditional academic literature.

The information in the form of a film is not published in a peer reviewed journal entry or extensive books. Yet the information is invaluable and beneficial because its ethnographic and first-hand experience depicts the barriers and strengths it takes for a person and an entire community to revitalize Inuit laws and the traditional practices that keep Inuit laws alive. Despite the decades of colonial disruption, Inuit women like Hovak and Alethea are continuing to decolonize and carve out ways to revitalize Inuit laws and practices.

Inuit are also exercising their inherent right of self-determination, through more formal avenues, such as the negotiation, settlement and implementation of Inuit specific modern treaties throughout Inuit Nunangat. These examples are just a small fraction of the work that is happening in Canada, where Indigenous people are revitalizing and reclaiming their laws, language, customs and practices. What this thesis aims to do is add to the growing conversation within academia and community relating to the revitalization of Indigenous laws in Canada, with a specific focus on Inuit law.

²⁶ Unikkaat Studios Inc., *Tunniit: Retracing the Lines of Inuit Tattoos*, (2011), online: <<http://www.unikkaat.com/projects/tunniit-retracing-the-lines-of-inuit-tattoos/>>.

2.3 Indigenous populations continue to define themselves

To further answer Christie's question, which was,

How will fractured communities, increasingly peopled with families far removed from the stories of their ancestors, beaten into economic submission after generations of oppression and deprivation, bombarded by endless images of how they "should" think of themselves (as consumers and capitalists, as individuals with rights and interests), be able to initiate the sorts of processes of reclamation necessary to begin the long, slow journey to 'post-colonial' times?²⁷

I will begin to delve briefly into the diverse more formal writings through the scholarship of Dr. John Borrows, Dr. Aaron Mills, Dr. Damien Lee, Hannah Askew, Dr. Hadley Friedland and Dr. Val Napoleon. Each of these scholars have asked similar questions as Christie throughout formal academic publications relating to the potential opportunities and challenges in advancing and restoring Indigenous law within Canada.

To begin, Dr. John Borrows has persuasively written that Indigenous cultures, languages, laws and customs are distinct from one another, but inter-connected.²⁸

Borrows elaborates:

The ceremonies and stories of the different groups varied according to their history, material circumstances, spiritual alignment, and social structure. The diverse customs and conventions which evolved became the foundation for many complex systems of law, and contemporary Canadian law concerning aboriginal peoples partially originates in, and is extracted from, these legal systems.²⁹

Borrows makes the argument that the common law doctrine of *sui generis* (unique) Aboriginal law is potentially a basis for recognizing Indigenous law within Aboriginal rights jurisprudence in Canada.³⁰ A potential resource where these laws can

²⁷ Christie, *supra* note 6 at 29.

²⁸ John Borrows, *Recovering Canada: The Resurgence of Indigenous Law*, (Toronto: University of Toronto, 2002) at 9-12 [*Borrows*].

²⁹ *Ibid* at 4.

³⁰ *Ibid* at 3-4.

be found is through stories and to illustrate this Borrows tells the story of *Nanabush*.³¹ Through the story he identifies the legal principle of honor and respect, and particularly that the relationship between the Anishinabek and the deer should be respectful.³² That the story of *Nanabush* illustrates the Anishinabek legal principle of respectful human and animal relations. Dr. Borrows highlights that Indigenous stories such as *Nanabush* are historic and the legal principles still have application to 21st century legal issues.

The work of sifting through resources such as published and publicly accessible stories to derive legal principles, and then adapting these principles to 21st century contemporary legal issues (and the challenges encountered throughout this entire process), is where several Indigenous law scholars have focused their authorship. The diverse scholarly work highlighting these challenges and opportunities which will be of focus throughout this chapter come from Dr. Aaron Mills, Dr. Damien Lee, Hannah Askew, Dr. Hadley Friedland and Dr. Val Napoleon.

Similar to Borrows storytelling style but slightly different, Dr. Mills does not sift through written legends in his article,³³ and rather the article is written in first-person, as a story. This style of writing stories and then finding the law within that story is radically different for individuals trained in common or civil law traditions.³⁴ Mills challenges the reader to learn a process *for* learning that is radically different. This different style of learning about law through a story told in first person by an Indigenous author is valuable. It is valuable because it gives voice to the lived reality of a population that have

³¹ *Ibid* at 17 to read the story in full.

³² *Ibid* at 17-18.

³³ Aaron Mills, "Driving the Gift Home," (2017) 33: 1 Windsor Yearbook of Access to Justice.

³⁴ As an example of how different it is to read a story and derive the laws from that story refer back to *Nanabush* above. In *Borrows*, *supra* note 28 at 17.

been forced into silence by places and institutions that devalue their lived realities. That devalues their stories. This practice of opening spaces for Indigenous people to share their stories and their laws in their own way is needed. It is important for Canadian institutions of power and privilege to understand that.

Throughout his article, Mills highlights the experiences and learning he encounters within the community he identifies with, the Anishinaabe community of Couchiching First Nation on Treaty 3 territory. The focus is predominantly on the teachings he encounters over several years with his *nokomis* (grandmother) who led him to realize that the process of *how* he learns is significant. This experience of Indigenous scholars learning from their family and community members, such as elders, is a common theme which also came through in Dr. Damien Lee's article.

Lee also begins his article³⁵ writing in first person about the experiences and challenges he encounters as an adoptee of an Anishinaabe family from Fort William First Nation. Lee's piece focuses on the first-hand challenges he experienced when his band was trying to determine whether he, as an adoptee from childhood, could be recognized as a member of the Fort William First Nation band. His father explained the use of customary law in the past to determine membership. However, the Chief of Fort William First Nation determined that membership based on customary adoption was not an option. The Chief's decision was based on a quick internet search, and the decision regarding Lee's membership was deferred indefinitely.³⁶

³⁵ Damien Lee, "Adoption Constitutionalism: Anishinaabe Citizenship Law at Fort William First Nation" (2019) 56:3 Alberta Law Review 785-816 [Lee].

³⁶ *Ibid* at 786

From this experience, Lee found the topic of his doctoral dissertation. This article synthesizes the findings from his dissertation which focuses on how Anishinaabe citizenship law is practiced based on adoption stories from community members. Part of what the article illustrates is that the legal principles relating to the inherent right to determine Anishinaabe citizenship is practiced independently from the *Indian Act*³⁷ and is properly derived from Anishinaabe law.

The first principle Lee discovered is that “families have their own authority to discern who belongs”³⁸ and that “belonging at Fort William is not dependent on blood quantum, Indian status or a band membership.... the community actively engages in discerning belonging as well as an interplay between families, individual adoptees and broader community processes.”³⁹ The practice of Indigenous laws within community, as independent and distinct from settler colonial laws, is a prevalent theme within Indigenous law scholarship. The concerns of how to reconcile Indigenous laws with settler colonial institutions is also a prevalent theme in Hannah Askew’s article.⁴⁰

Askew is a non-Indigenous scholar, who has extensive academic, legal and lived experience with diverse Indigenous communities. She illustrates in her article how the ILRU case briefing methodology can be used to derive Indigenous legal principles from stories. In the process of demonstrating how to find legal principles, Askew recognizes that introducing the case briefing methodology to Indigenous stories within settler colonial institutions has to be done with a certain measure of caution.⁴¹

³⁷ *Indian Act*, RSC 1985, c I-5, LRC 1985, ch I-5 [*Indian Act*].

³⁸ *Lee*, *supra* note 35 at 815.

³⁹ *Ibid.*

⁴⁰ Hannah Askew, “Learning from Bear-Walker: Indigenous Legal Orders and Intercultural Legal Education in Canadian Law Schools” (2016) 33 Windsor Y B Access Just 29-46 [*Askew*].

⁴¹ *Ibid.*

Askew highlights:

Inuit law professor Gordon Christie has suggested that there is a risk that introducing Indigenous legal orders into the curricula of Canadian law schools may distort or harm the revitalization process. One point of tension to which he draws our attention is that while Western legal traditions prioritize the intellectual mastery of the law, Indigenous legal traditions typically balance intellectual aspects of legal practice with physical, spiritual, and emotional aspects.... Indigenous legal traditions are ideally “supposed to be at the heart, they become part of you, and you don’t do bad things.”⁴²

Askew also highlights that Christie is concerned with legal researchers who have been educated through Canadian law schools and who are now researching Indigenous law. Where “... Canadian law schools are trained in the common law system [and they] may filter the Indigenous legal traditions they are studying through the structure of the common law and the categories and issues it emphasizes, potentially distorting their interpretations of Indigenous law.”⁴³ This critique of being cautious when revitalizing Indigenous law through the case briefing method is valid and there has to be checks and balances in place to offset the potential for distorting Indigenous legal principles.

Scholars who have used the case briefing methodology advise that one check and balance is to interview members of the Indigenous community where the stories and the legal principles originate⁴⁴ and through those intentional deliberations build on understandings, but also address the possibility for distortion. Another way in which checks and balances are applied is through bringing the legal synthesis into the

⁴² *Supra* note 40 at 44, explains the writings from Dr. Gordon Christie, “*Inuit Legal Traditions*” (presentation delivered at the Indigenous Bar Association Conference, Winnipeg, October 2012), online: <<http://indigenousbar.ca/indigenoulaw/audiovideo/#conference>>.

⁴³ *Ibid.*

⁴⁴ Hadley Friedland & Val Napoleon, “Gathering the Threads Developing a Research Methodology for Researching and Rebuilding Indigenous Legal Traditions” (2015-2016) 1:1 *Lakehead Law Journal*, at 22-23 [*Gathering the Threads*].

community as Dr. Napoleon and Dr. Friedland did, where there was a rich plethora of information from community involvement with the legal principles:

The substantive results of this collective work of analyzing and synthesizing the legal principles from the stories were, of course, nothing more than the smallest foray into the work needed to fully articulate Cree or Dene legal principles. Much more work would be needed to develop resources that could be used, argued, and applied in practice. However, even this small start revealed the richness, complexity, and clarity of Indigenous legal principles in one specific subject area. (In this case, we focused on the issue of resolving intergroup conflicts and the use of generosity and hospitality.) Importantly, almost everyone involved—Indigenous community members, academics, and professionals—found that working through the legal analysis method and seeing the tentative results of their efforts enabled them to see more clearly the legal principles illustrated within the stories, either for the first time, or in a fresh way.

Each group did produce at least a rough start to a new story about a contemporary issue, even in the short time frame. In doing so, they were creatively and collectively practising the performance and re-creation of Cree or Dene law in a way that was both bounded and dynamic. The new stories were bounded, because they were based on the synthesis of legal principles from the stories; they were dynamic, because they were about contemporary issues and reflected the further, albeit brief, gendered analysis. Like the bannock from the first night, there were common core elements between the new stories, but also many forms and variations among them. This was due to the varied resources, interests, and background knowledge each of the members brought to their group, as well as the claims of authority and group dynamics at play.⁴⁵

It is clear that community involvement in shedding light on Indigenous legal principles is paramount in understanding how these principles can be applied to contemporary settings and that the case briefing methodology does come with critique. But it is also important that this caution does not prevent individuals from working towards advancing Indigenous worldviews and their laws, into 21st century governing institutions.

⁴⁵ Val Napoleon and Hadley Friedland, *An Inside Job: Engaging with Indigenous Legal Traditions through Stories*, 2016 61-4 McGill Law Journal 725, 2016 CanLIIDocs 322, <<https://canlii.ca/t/29qg>>, retrieved on 2022-05-11, at 751 [*An Inside Job*].

Dr. Hadley Friedland and Dr. Val Napoleon are also critical of and concerned with the idea that Indigenous laws are only applicable to situations dealing with rehabilitation or healing. They drive home the point that Indigenous people have a vast array of legal responses to difficult situations. Friedland and Napoleon highlight the need to recognize and identify the other areas of law that exists, such as the more punitive Indigenous laws, in certain circumstances. The laws that go beyond rehabilitation principles within state criminal practices such as sentencing.

The analogous situation in current Canadian society would be if powerful outsiders permitted us to operate parts of our criminal justice system but, regardless of the individual facts, our legal decision-makers could only apply the sentencing principle of rehabilitation... There are clear cases where, based on the facts, sentencing principles other than rehabilitation need to be prioritized in order to maintain individual and community safety. There are equally clear cases, within Indigenous communities, that require responses other than or in addition to healing...⁴⁶

Friedland and Napoleon recognize that Indigenous people have laws that go beyond healing and rehabilitation which in certain circumstances have to be recognized and exercised when required.⁴⁷ These principles, practices and customs each differ greatly from community to community, as was emphasized by Borrows, and breathing life into these legal principles is challenging but necessary work.

As Mills demonstrated within his article, when Indigenous authors are given space to share their stories, individuals are afforded the opportunity for learning in a different way. This adaptable approach to learning is especially valuable when learning

⁴⁶ Val Napoleon and Hadley Friedland, "Indigenous Legal Traditions: Roots to Renaissance" in Marcus D. Dubber & Tatjana Hornole, eds, *The Oxford Handbook of Criminal Law* (New York: Oxford University Press, 2014), 225-247 at 238 [*Roots to Renaissance*].

⁴⁷ *Ibid* at 237.

about Indigenous laws within community. Lee's article also illustrates how Indigenous laws are practiced vastly different from how settler colonial institutions practice law.

Despite this resurgence of Indigenous scholars writing about the revitalization of their ways of knowing in the world, it is relevant to bring to light the caution needed when individuals are working with and learning how to revitalize Indigenous laws and apply it to 21st century institutional realities. With a recognition that caution must be used not to distort the legal traditions. There must be checks and balances in the process of revitalizing Indigenous legal orders when using the case briefing methodology or any method. These checks and balances can include consulting with community in different ways in relation to the stories and the legal orders from those stories. It is also equally important that the potential for distortion, not stop or hinder Indigenous peoples from revitalizing their legal principles and applying them to 21st century governing institutions.

Throughout the 20th century, Inuit have been asserting their inherent right of self-determination by adopting their own laws into governing institutions. These include the negotiation, settlement and implementation of four modern-day constitutionally protected treaties throughout Inuvialuit, Nunavut, Nunavik and Nunatsiavut.⁴⁸ It is striking to me that throughout my experiences within several post-secondary educational institutions across Canada over the course of a decade, I have not had the privilege to take courses on the legal and political evolution of modern treaties throughout Inuit Nunangat.⁴⁹ Those decades of history are foreign to me, yet, it is so relevant, especially in the context of

⁴⁸ In Chapter 4, I discuss these four Inuit treaties in depth.

⁴⁹ Inuit Nunangat is the Inuktut word, which means "homelands of the Inuit", and the territory encompasses four land claim regions known as Inuvialuit, Nunavut, Nunavik and Nunatsiavut.

revitalizing Inuit laws and codifying those laws into 21st century governing institutions which is part of why I discuss these Inuit treaties in depth in Chapter 4.

Inuit also practice law through other relevant but informal ways. I have already discussed methods such as traditional tattooing, and film, and there is also interacting within community, learning from elders and writing non-scholarly articles. What this thesis is attempting to do is to briefly share the decades of work it took for Inuit to negotiate and settle their modern treaties. Now that these modern treaties are settled and implementation of these treaties are underway, I am hopeful that Inuit laws can be creatively applied to the governing structures throughout Inuit Nunangat. I am simply, adding to the more “formal” way of revitalizing Indigenous laws, by focusing on published and publicly accessible Inuit stories, as a way to find Inuit legal principles. I also advance the argument that those principles can inform the creation of an Inuit Court within Nunatsiavut under Chapter 17 of the *Labrador Inuit Land Claims Agreement*.

Throughout my legal post-secondary educational experience, I have begun to realize there is a gap in the legal literature. Inuit are under-represented within Indigenous law pedagogy throughout the legal academy and the work of this thesis is to cautiously read published and publicly accessible Inuit stories, to derive principles that can be applied to the creation of an Inuit Court in Nunatsiavut. I have to reiterate that, published and publicly accessible stories is not the only resource to find Indigenous laws (as will be highlighted below). In addition, it is notable that the ILRU case briefing methodology of sifting through Indigenous stories to find law does not come without criticism, which I will also address in the following sections.

2.4 Potential challenges in utilizing Indigenous law resources

Published and publicly accessible stories is only one source of Indigenous law. Dr. Hadley Friedland highlights several other resources through the scholarship of Dr. John Borrows, Dr. Val Napoleon and Mathew Fletcher. To understand potential places where Indigenous laws could be found and methods for assessing and understanding Indigenous laws⁵⁰ Friedland⁵¹ explains:

The resources identified... [by Borrows, Napoleon and Fletcher] can be separated roughly into three categories based on their general availability: (1) resources that require deep knowledge and full cultural immersion; (2) resources that require some community connection; and (3) resources that are publicly available.⁵²

Friedland recognizes these resources are useful in obtaining Indigenous laws, but these sources do not come without challenges if used within a court setting. Fletcher, who is an American scholar, makes the argument that in a tribal court setting, the parties should be the first source.⁵³ He continues to elaborate that this is “almost never the case”

⁵⁰ Hadley Friedland, “Reflective Frameworks: Methods for Accessing, Understanding and Applying Indigenous Laws” (2013) 11:1 Indigenous L.J. 1-40 [*Reflective Frameworks*].

⁵¹ *Ibid* at 11.

⁵² *Ibid*, for a fuller detailed explanation,

1) resources that require deep knowledge and full cultural immersion: The first category of resources would appear to require something close to full immersion in a specific culture to access. This category would include resources such as specific terms in language, dreams, dances, art, beadwork, pots, petroglyphs, scrolls, songs, natural landscapes, ceremonies, feasts, formal customs and protocols. 2) Resources that require some community connection: The second category of resources would likely require some familiarity with or connection to a particular cultural community to access. These resources include stories, communally owned oral traditions, information from knowledgeable community and family members, including elders, as well as personal knowledge and memories. 3) Resources that are publicly available: The third category of resources requires the least amount of connection to a particular culture or community to access, as it involves publicly available, published resources. This category would include written work, including academic work, and works of fiction by community members, descriptive academic work by outsiders to the community, published court cases, trial transcripts involving Indigenous issues and litigant arguments in tribal court settings.

⁵³ *Ibid* at 9, and Mathew Fletcher, “Rethinking Customary Law in Tribal Court Jurisprudence” (Occasional Paper delivered at Michigan State University College of Law, Indigenous Law and Policy Centre Occasional Paper Series, 2006) at 36, online <www.law.msu.edu/indigenous/papers/2006-04.pdf> [Fletcher].

where attorneys produce Indigenous laws in tribal court settings.⁵⁴ If there are circumstances where litigants make representations it could be an unhelpful situation or a potentially dangerous situation if the Indigenous law is expressed without authority and precedent is created through that decision.⁵⁵

Fletcher recognizes that the second source of Indigenous laws could be the language, and that “the law is encoded right into the language—and the stories generated from the language.”⁵⁶ Although this particular resource is not always available, and there are few judges who are fluent in the Indigenous languages of the community.⁵⁷ In addition, when there are English translations, there may be things lost in translation.⁵⁸

The third source Fletcher highlights are people in the respective community who are elders that may have knowledge of the customs and laws. This also comes with difficulty, as Fletcher acknowledges that it may be challenging to find people who are qualified as elders, and if they are, there is potential for the knowledge shared to come under question or there may be “fundamental differences on family or political lines of what exactly qualifies as Indigenous law.”⁵⁹

The fourth source Fletcher recognizes is literature by secondary resources relating to Indigenous laws or tribal laws because there is a significant level of information relating to this available to individuals who can research it and provide it to a judge in a tribal court setting.⁶⁰ He states that “the legitimacy of a tribal court opinion declaring

⁵⁴ See *Fletcher* *ibid* at 9-10.

⁵⁵ *Reflective Frameworks*, *supra* note 50 at 10 and *Fletcher*, *supra* note 53 at 37-38.

⁵⁶ *Reflective Frameworks*, *ibid* and *Fletcher*, *ibid*.

⁵⁷ *Reflective Frameworks*, *ibid* and *Fletcher*, *ibid*.

⁵⁸ *Reflective Frameworks*, *ibid* and *Fletcher*, *ibid*.

⁵⁹ *Reflective Frameworks*, *ibid* and *Fletcher*, *ibid*.

⁶⁰ *Reflective Frameworks*, *ibid* at 11 and *Fletcher*, *ibid*.

customary law based on the findings of academic work would be in serious doubt much of the time.”⁶¹

Fletcher’s work focuses on the potential issues that arise when Indigenous law or customary law is applied in a tribal court setting, it is important to keep these issues in mind in a tribal court setting or a court setting when Indigenous legal orders are actually being applied within the proceeding. But in this circumstance, the focus of the findings within this thesis is to generate a brief synopsis as one source for legal orders based on published and publicly accessible stories. These stories have legal principles that can be brought back to Nunatsiavut communities to generate more in depth conversations. The legal principles can also inform the creation of a Declaration of Inuit Laws. This Declaration of Inuit Laws would be synonymous to the *Fundamental Laws of the Dine.*’ I return to this below, in my methodology chapter.

2.5 The application of Indigenous laws through different avenues

I now turn to the Canadian context and the broader scholarly projects on Indigenous legal orders. In Dr. Val Napoleon’s writing, she highlights the recent emergence of Indigenous legal orders where, “collaborative research and work [is] being done within and across professional, academic, and Indigenous communities.”⁶² Napoleon then highlights the “Accessing Justice and Reconciliation Project”⁶³ which was a project that evolved in 2012 through the University of Victoria’s Indigenous Law Research Unit, Indigenous Bar Association and the Truth and Reconciliation Commission of Canada.

⁶¹ *Reflective Frameworks*, *supra* note 50 and *Fletcher*, *supra* note 53 at 37.

⁶² *An Inside Job*, *supra* note 45 at 4.

⁶³ See Indigenous Law Research Unit, University of Victoria, Indigenous Bar Association & Truth and Reconciliation Commission of Canada, *Accessing Justice and Reconciliation Project*, (2014), online: <www.indigenousbar.ca/indigenoulaw>.

In mainstream media, there is a lot of focus on the real-time issues that Indigenous people in this country experience. These include the suicide crisis within Indigenous communities, the lack of access to housing, and the colonial legacies that have placed Indigenous women in vulnerable situations where they are going missing or being murdered.⁶⁴ With these realities in mind, projects such as the Accessing Justice and Reconciliation Project, took a different approach in their focus.

This project focused on honoring the internal strengths and resiliencies present in Indigenous societies, which includes the resources within the societies own legal traditions.⁶⁵ This project had less focus on the socio-economic issues Indigenous communities face and more of a focus on the processes and laws that can be applied to these issues in the 21st century. The Accessing Justice and Reconciliation Project in particular collaborated with seven different First Nations across different legal traditions within Canada.

Damien Lee also comments on the emergence of Indigenous legal orders with “law schools and Canadian universities beginning to make space to teach about Indigenous legal orders.”⁶⁶ Lee cites the various ways the 94 Truth and Reconciliation Commission’s *Calls to Action*⁶⁷ are being honored through opportunities where students can learn about Indigenous legal orders rather than viewing Indigenous legal issues through the lens of Canadian law.⁶⁸ He highlights the recent decision in 2018 by the

⁶⁴ Canada, The National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol 1(a) and 1(b), (National Inquiry into Missing and Murdered Indigenous Women and Girls, June 2019), online: <<https://www.mmiwg-ffada.ca/final-report/>>.

⁶⁵ *Supra* note 63.

⁶⁶ *Lee, supra* note 35 at 789.

⁶⁷ Canada, The Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action*, (Ottawa: The Truth and Reconciliation Commission of Canada, 2015).

⁶⁸ *Lee, supra* note 35 at 789.

University of Victoria, Faculty of Law to create and begin the Juris Indigenous Doctor degree.⁶⁹ In this program, students can learn both common and Indigenous law, while simultaneously learning how they both intersect.⁷⁰

As highlighted earlier, from Lee's scholarship, Indigenous laws are "implicit, informal and decentralized" practices of law.⁷¹ Settler colonialism has destroyed and obfuscated some elements of Indigenous legal orders and their continued practice.⁷² Yet despite these detrimental effects, First Nation communities such as Fort William First Nation continues to determine citizenship through Anishinaabe laws outside of codified colonial legislation.⁷³

A separate but connected writing comes from a scholar of Cree ancestry, Matthew Wildcat. Wildcat writes about the application of the Cree/Metis principle of *wahkohtowin*⁷⁴ in the context of a community of six First Nations communities who experience the effects of settler colonialism. Wildcat explains that *wahkohtowin* is "... the belief that all things are related and connected, that all of existence has spirit and that living in a good way requires us to maintain good relationships with each other and other aspects of existence."⁷⁵

⁶⁹ Sean Fine, "University of Victoria to Launch First-of-its-Kind Indigenous Law Program," *The Globe and Mail* (21 March 2018), online: <https://www.theglobeandmail.com/canada/article-university-of-victoria-to-launch-first-of-its-kind-indigenous-law/>; See also, University of Victoria Faculty of Law, *Joint Degree Program in Canadian Common Law and Indigenous Legal Orders JD/JID*, (2018), online:<<https://www.uvic.ca/law/about/indigenous/jid/index.php>>.

⁷⁰ Lee, *supra* note 35 at 789.

⁷¹ *Ibid* at 790, see also Val Napoleon, "Thinking about Indigenous Legal Orders" in Rene Provost & Colleen Sheppard, eds, *Dialogues on Human Rights and Legal Pluralism* (Dordrecht: Springer, 2013) 229.

⁷² Lee, *supra* note 35 at 787.

⁷³ Lee, *supra* note 35 at 790.

⁷⁴ Matthew Wildcat, "Wahkohtowin in Action" (Paper delivered at the Constitutional Forum, 1 January, (2018), Constitutional Forum, vol 27, Number 1 at 14 [*Wildcat*].

⁷⁵ *Ibid* at 20.

In addition, Wildcat explains that, despite the negative realities that emerge in community due to settler colonialism, the community came together to create an educational institution. While interviewing and gathering information from community members to develop this educational institution, the researchers instituted the importance of doing what was best for the children, and the legal concept of *Wahkohtowin*. This legal principle was used “[t]o guide our actions, we...follow[ed] cultural and traditional teachings, in particular *Wahkohtowin*.”⁷⁶ Wildcat expresses the opportunities outside of the formal legal realm such as courtrooms, where legal principles derived from Indigenous people can be used and applied effectively.⁷⁷ To return to Dr. Christie’s concerns, he asked:

...How will fractured communities, increasingly peopled with families far removed from the stories of their ancestors, beaten into economic submission after generations of oppression and deprivation, bombarded by endless images of how they “should” think of themselves (as consumers and capitalists, as individuals with rights and interests), be able to initiate the sorts of processes of reclamation necessary to begin the long, slow journey to ‘post-colonial’ times?⁷⁸

A logical starting point, as highlighted above and within Dr. Hadley Friedland and Dr. Napoleon’s writings⁷⁹ is that,

...Indigenous societies must have faced the inevitable and universal issues of human violence and vulnerability for millennia. Therefore, as a matter of logic alone, the reasonable Cree person’s starting point for any inquiry is that, at some point, and for a very long time, Cree and other Indigenous peoples managed and

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*, While interviewing and gathering information from community members, the researchers instituted the importance of doing what was best for the children, and the legal concept of *Wahkohtowin*, “To guide our actions, we will follow cultural and traditional teachings, in particular *Wahkohtowin*. *Wahkohtowin* is the belief that all things are related and connected, that all of existence has spirit and that living in a good way requires us to maintain good relationships with each other and other aspects of existence.”

⁷⁸ *Christie, supra* note 6 at 29.

⁷⁹ *Roots to Renaissance, supra* note 46 at 237; See also, Hadley Friedland, “Navigating Through Narratives of Despair: Making Space for the Cree Reasonable Person in the Canadian Justice System” (2016) 67 *UNBLJ* 269 - 312, at 272 [*Navigating Through Narratives of Despair*].

responded to these universal human issues successfully enough to maintain civil societies.⁸⁰

Friedland continues:

It feels a bit embarrassing to even have to point this out as a logical starting point, but it is important to do so, because the myth of Indigenous people as lawless -- as people without any internal regulation or intellectual resources for managing their own affairs -- has too often been used as a trope for European theorists and jurists to make claims to property and other rights, with no basis whatsoever.⁸¹

To put it shortly, if academia, legal practitioners and the general population continue to view Indigenous communities as unable and incapable of revitalizing, practicing and implementing their own laws then this in turn also means the continued stereotype of Indigenous peoples as lawless is perpetuated. The work within this thesis, like the work described above, is challenging that idea. Regardless of the difficult realities perpetuated by the legacies of colonialism present in Indigenous communities today, Indigenous people and other trusted folk must be willing to do the challenging work of rebuilding Indigenous languages, stories, lineage, family ties, environmental knowledge and kinship.

This has to continue through both formal settings such as courtrooms, classrooms, governmental spaces, legislative assemblies and other formal avenues. The work also has to continue through informal and more natural ways outside of colonial institutions and ivory towers, such as through community, story, song, dance, language, tattooing, filming and writing. The damage created by colonization does not veto the relevance of the hard

⁸⁰ *Ibid* at 276.

⁸¹ *Ibid* at 80, quoting from Gordon Christie, "Indigenous Legal Theory: Some Initial Considerations" in Benjamin J Richardson, Shin Imai & Kent McNeil, eds, *Indigenous People and the Law: Comparative and Critical Perspectives* (Portland, OR: Hart, 2009) 195 and Lisa Chartand, "Accommodating Indigenous Legal Traditions" (Discussion Paper prepared for the Indigenous Bar Association, 31 March 2005), online: <https://www.indigenousbar.ca/pdf/Indigenous%20Legal%20Traditions.pdf>; and Jeremy Webber, "The Grammar of Customary Law" (2009) 54:4 McGill LJ 579.

work ahead to rebuild and revitalize Indigenous laws within 21st century governing institutions. The work within this thesis is proposing to add to this growing academic field of revitalizing Indigenous law, but with a focus on Inuit legal orders. How I plan to do this work is outlined below in the next chapter on methodology.

CHAPTER 3 METHODOLOGY

To answer my research question: *How can Inuit laws found within published and publicly accessible Inuit stories inform the process of the creation of an Inuit Court in Nunatsiavut?* I have adopted the ILRU case briefing methodology⁸² where I case briefed twenty Inuit stories analyzing how individuals dealt with harm and conflict in community. I then compiled the legal principles I found through asking this question, and drafted a Declaration of Inuit Laws. This Declaration can be applied to the administration of an Inuit Court in Nunatsiavut, in a similar manner that the *Fundamental Laws of the Dine'* is applied throughout the Navajo Nation Courts.

The ILRU case briefing methodology is discussed throughout Dr. Val Napoleon and Dr. Hadley Friedland's article entitled, "*Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions.*"⁸³

Throughout that article, the authors elaborate the scope and rationale for the Accessing Justice and Reconciliation project where the ILRU case briefing method was used extensively:

This extraordinary national and collaborative research project was launched in 2012 by the University of Victoria Faculty of Law's Indigenous Law Research Unit, the Indigenous Bar Association, and the Truth and Reconciliation Commission. It was funded by the Ontario Law Foundation. The vision for the AJR Project was to honour the internal strengths and resiliencies within Indigenous societies, specifically the rich resources within these societies' own legal traditions.

The overarching goal of the AJR Project was to identify how Indigenous societies used their own legal traditions to successfully manage harms and conflicts between and within groups, and to identify and articulate the Indigenous legal principles that could be accessed and applied today for the work of building strong, healthy communities now and in the future. The AJR Project reflects only a small sample of the diversity of

⁸² The acronym stands for the Indigenous Law Research Unit at the University of Victoria.

⁸³ *Gathering the Threads*, *supra* note 44.

Indigenous societies across Canada. There were six legal traditions and seven partner communities represented in the AJR Project. From west to east, they were: Coast Salish (Snuneymuxw First Nation and Tsleil-Waututh First Nation); Tsilhqot'in (Tsilhqot'in National Government); Northern Secwepemc (T'exelc Williams Lake Indian Band); Cree (Aseniwuche Winewak Nation); Anishinabek (Chippewas of Nawash Unceded First Nation #27); and Mi'kmaq (Mi'kmaq Legal Services Network - Eskasoni).⁸⁴

The Accessing Justice and Reconciliation project used the ILRU case briefing method throughout its research and it is what I used in this thesis. In brief, the methodology is:

- a) First, identify a specific research question;
- b) Second, perform a case analysis;
- c) Third, create a legal framework with a primer, synthesis and legal theory;
- d) Fourth, implement the synthesis within the community and perform a critical evaluation⁸⁵

As I highlighted above, the ILRU case briefing methodology does come with critique. As Hannah Askew highlights above,⁸⁶ there is potential for the legal principles derived from Indigenous stories to be distorted when the ILRU case briefing method is employed. There is also room for distortion when it is a person trained in Canadian common law who is case briefing the stories and interpreting them in their own world-view. To ensure there is less distortion and less room for distortion to occur, it is important that the legal principles and the stories are brought to the Indigenous community where the work originates. To ensure that the community's input and the process of revitalizing Indigenous laws is transparent to the community members. Community consultation also provides an opportunity for community members to grapple with and openly discuss the legal orders which have been derived within the stories.

⁸⁴ *Ibid* at 18.

⁸⁵ *Ibid*, "This method was also informed by years groundbreaking work by Dr. John Borrows see, *Borrows, supra* note 28.

⁸⁶ *Askew, supra* note 40.

This firsthand community interaction with the stories and the legal orders is invaluable in the process of revitalizing Indigenous laws. This community consultation was highlighted as something which is a part of the ILRU case briefing methodology in Dr. Hadley Friedland and Dr. Val Napoleon's authorship.⁸⁷ Unfortunately, I have not yet had the opportunity to bring back the legal principles that I have found in the published and publicly accessible Inuit stories to Nunatsiavut communities. It was just not possible because it goes beyond the timeframe and budget of my Masters thesis, unfortunately. Although, there is room in the future for my thesis to help create dialogue within Nunatsiavut communities, and for the findings in this thesis to be shared with the Nunatsiavut Government for their own deliberations. It is mandatory under the Nunatsiavut Government Research Council requirements that I provide a copy of my final thesis to them.

Step 1: My Research Question:

In applying the ILRU case briefing methodology to my own thesis, the research question that I used when I analyzed twenty Inuit stories was “How did the people in the stories address harm or conflict within their communities?” This ILRU case briefing research question allowed me to draw out the principles as it relates to managing harm or conflict through Inuit laws within the stories. I then used these legal principles that I derived from the stories using this research question, to determine, *how can Inuit laws found within published and publicly accessible Inuit stories inform the process of the creation of an Inuit Court in Nunatsiavut?*

⁸⁷ See *Gathering the Threads*, supra note 44; *Roots to Renaissance*, supra note 46; *An Inside Job*, supra note 45.

In finding potential answers to this research question, I elaborate in brief on the procedures the Nunatsiavut Legislative Assembly follows in the creation of Inuit Laws within Nunatsiavut. The legislative process is similar to the process that is followed in the Parliament of Canada, and a copy of the legislative process for passing a Bill into a law⁸⁸ through the Nunatsiavut Assembly is at Appendix B attached. I also illustrate how the legal principles found in Inuit stories could inform the creation of an Inuit Court within Nunatsiavut. I make the argument that a mandatory Declaration of Inuit Laws used by the Inuit Court is one possible avenue where Inuit legal principles can be applied to 21st century governance structures in Nunatsiavut.

Step 2: Case Analysis:

The Accessing Justice and Reconciliation Project cited in “*Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions*” used the ILRU case briefing method. For each research project the researchers read between twenty and forty stories that focused on the legal issue of harm or conflict.⁸⁹ Each of the students then used the ILRU case briefing method to analyze the stories and find the legal principles. The ILRU case briefing method as described in the article includes the following elements:

Case Brief: Name of Story, with full citation(s)

Issue/Problem: What is the main human problem we are looking at within the story?

- What is it that the story is trying to tell you (i.e., the issue)? Is it more effective to frame this as a question that one can then answer through the analysis.

Facts: What facts in the story matter to this particular issue?

⁸⁸ *Nunatsiavut Assembly Act*, IL-2005-09 [*Nunatsiavut Assembly Act*].

⁸⁹ *Gathering the Threads*, *supra* note 44 at 23.

- The issue determines the relevant facts. Different facts will matter depending on the issue identified.

Decision/Resolution: What is decided that resolves the problem? If there is no clear human decision, what action resolves the problem?

- It is important that this be symmetrical with the identified issue. Most stories have many decisions, and the key is discerning what decision or action leads to the resolution to the particular identified issue.

Reason (Ground/Ratio): what is the reason behind the decision or resolution? Is there a stated explanation in the story? If not, what can be inferred as the unstated reason?

- It is the shared and collective reasoning that makes this legal analysis. Sometimes the stories state the reasons explicitly, and at other times the reasons are implicit. In either case, the task is to consider the *why* behind the decision or response.

Bracket: What do you need to bracket for yourself in this story? Some things may be beyond your current frame of reference but are not necessary for the case analysis.

- We will always encounter things that are beyond our own terms of reference or that bother us, but which are not immediately apparent or germane to the analysis at hand. Rather than becoming stymied, we suggest bracketing these aspects, at least until we have looked at many stories. We can always reflect on the kinds of conversations the bracketed content generates – and often, these conversations are another productive engagement with the stories.⁹⁰

With the ILRU case briefing method highlighted above, I analyzed twenty Inuit stories to address the question of how individuals in the stories addressed harm and conflict within their communities. With the legal principles I derived from this research question of managing harm or conflict within the community, I questioned how these principles could inform my larger research question which is, how can Inuit laws found within published and publicly accessible Inuit stories inform the process of the creation

⁹⁰ *Ibid* at 23-24.

of an Inuit Court in Nunatsiavut? I imagined that these principles could inform the creation of a mandatory Declaration of Inuit Laws. This Declaration would be applicable to the administration of the Inuit Court within Nunatsiavut. In a similar fashion as the Navajo Tribal Courts employ the *Fundamental Laws of the Dine'* in their proceedings.

The twenty stories that I cased briefed came from the published and publicly accessible book, *Unikkaaqtuat: An Introduction to Inuit Myths*.⁹¹ Below is a list of the twenty stories:

Quadjaqdjuq⁹²

The Boy Who Harpooned a Whale⁹³

The Artificial Skull that Frightened the People to Death⁹⁴

Papik⁹⁵

Pautusôrssauq, who Murdered his Uncle⁹⁶

The Wife-changers⁹⁷

The Man who did not Observe Taboos⁹⁸

Podluksak⁹⁹

Murdering a Stranger¹⁰⁰

The Emigration of Women¹⁰¹

Lice¹⁰²

Storm Caused by a Loon¹⁰³

Ijimagasukdjukdjuaq¹⁰⁴

Igimagajug, the Cannibal¹⁰⁵

Separated from Camp¹⁰⁶

⁹¹ Neil Christopher, Noel McDermott & Louise Flaherty, *Unikkaaqtuat: An Introduction to Inuit Myths* (Canada: Inhabit Media Inc., 2011) [*Unikkaaqtuat*].

⁹² “*Quadjaqdjuq*” *supra* note 91 at 81-85 [*Quadjaqdjuq*].

⁹³ “*The Boy who Harpooned the Whale*,” *supra* note 91 at 86-88 [*The Boy who Harpooned the Whale*].

⁹⁴ “*The Artificial Skull that Frightened the People to Death*,” *supra* note 91 at 89-90 [*The Artificial Skull that Frightened the People to Death*].

⁹⁵ “*Papik*,” *supra* note 91 at 91-94 [*Papik*].

⁹⁶ “*Pautusôrssauq, who Murdered his Uncle*,” *supra* note 91 at 95-97 [*Pautusôrssauq, who Murdered his Uncle*].

⁹⁷ “*The Wife Changers*,” *supra* note 91 at 98-99 [*The Wife Changers*].

⁹⁸ “*The Man who did not Observe Taboos*,” *supra* note 91 at 100-101 [*The Man who did not Observe Taboos*].

⁹⁹ “*Podluksak*,” *supra* note 91 at 106 [*Podluksak*].

¹⁰⁰ “*Murdering a Stranger*,” *supra* note 91 at 107-109 [*Murdering a Stranger*].

¹⁰¹ “*The Emigration of Women*,” *supra* note 91 at 112-113 [*The Emigration of Women*].

¹⁰² “*Lice*,” *supra* note 91 at 128 [*Lice*].

¹⁰³ “*The Storm Caused by a Loon*,” *supra* note 91 at 129 [*The Storm Caused by a Loon*].

¹⁰⁴ “*Ijimagasukdjukdjuaq*,” *supra* note 91 at 167-169 [*Ijimagasukdjukdjuaq*].

¹⁰⁵ “*Igimagajug, the Cannibal*,” *supra* note 91 at 170-173 [*Igimagajug, the Cannibal*].

¹⁰⁶ “*Separated from Camp*,” *supra* note 91 at 177-178 [*Separated from Camp*].

Kating Saved his Family in Time of Famine¹⁰⁷
Taboos and Starvation¹⁰⁸
The Woman who could not be Satiated¹⁰⁹
Atungait¹¹⁰
The Soul¹¹¹

I applied the ILRU case briefing method above by first reading these twenty stories. As I read the stories, the legal principles became more apparent. I then wrote explicitly how these Inuit legal principles could inform the drafting of a Declaration of Inuit Laws. This Declaration would be applied in a similar fashion as the *Fundamental Laws of the Dine* is applied in the proceedings of the Navajo Tribal Courts. The Nunatsiavut Government has jurisdiction to create an Inuit Court under *Chapter 17* of the *Labrador Inuit Land Claims Agreement*. Although, this jurisdiction has not yet been exercised, I argue that conversations about an Inuit Court are useful to informing the potential of this Inuit Court.

Step 3: Creating a legal framework – primer, synthesis, legal theory

The legal primer, synthesis and legal theory is structured and modelled similarly to the Analysis: Secwépmc Land and Natural Resources Law chapter in the “*Secwépmc: Lands and Resources Law Research Project*” report.¹¹² The focus of the Analysis chapter within the Secwépmc report is specifically on land and natural resources. In this thesis the primer, synthesis and legal theory from the legal principles

¹⁰⁷ “Kating Saved his Family in Time of Famine,” *supra* note 91 at 179-181 [Kating Saved his Family in Time of Famine].

¹⁰⁸ “Taboos and Starvation,” *supra* note 91 at 182 [Taboos and Starvation].

¹⁰⁹ “The Woman who could not be Satiated,” *supra* note 91 at 189-190 [The Woman who could not be Satiated].

¹¹⁰ “Atungait,” *supra* note 91 at 150-156 [Atungait].

¹¹¹ “The Soul,” *supra* note 91 at 157-160 [The Soul].

¹¹² Jessica Asch, Kirsty Broadhead, Georgia Lloyd-Smith, Simon Owen, and directed by Val Napoleon (Indigenous Law Research Unit & Shuswap Nation Tribal Council). *Secwépmc Lands and Resources Law Research Project* (Tk'emlúps: Shuswap Nation Tribal Council, 2016) [Secwépmc].

from the Inuit stories do not focus on that subject matter. The subject matter of interest that the analysis of twenty Inuit stories focused on how individuals in the stories managed harm and conflict within community. The legal principles found with this research question, then informed the drafting of a mandatory Declaration of Inuit Laws. This Declaration would be mandatory in the administration of the Inuit Court when dealing with legal issues within its jurisdiction. In the concluding chapter, I illustrate how the legal principles found within the twenty Inuit stories could be applied to create a Declaration of Inuit Laws.

Step 4: Implementation/Application/Critical Evaluation

At this stage of the ILRU case briefing methodology it “involves applying the principles, law, processes, and procedures from the synthesis to current human and social issues.”¹¹³ Dr. Friedland and Dr. Napoleon also highlight that at this stage of the methodology:

The Access to Justice and Reconciliation Project have taken the completed research and are developing ways to apply it to issues such as child welfare, family law, and criminal court proceedings. Others have expressed interest in using it to develop their own constitutions and governance institutions. There is more potential for this application and testing, of course, and part of what will be important is the critical reflection about the application, how that application is evaluated, whether this process is legitimate or not, and the engagement of collective validation processes. The results and reflections must be fed back into the synthesis on an ongoing basis so the entire process (and Indigenous law, too) is live, tested and challenged, critically legitimized and validated, and where necessary, changed.¹¹⁴

Step 4 is a critical step in the ILRU case briefing methodology, as highlighted above, it involves bringing the findings back to the respective community and engaging in a dialogue in relation to the findings. This community input provides feedback to

¹¹³ *Gathering the Threads*, *supra* note 44 at 32.

¹¹⁴ *Ibid* at 33.

determine how the findings are interpreted by community members and how these legal principles can be applied to real-time issues prevalent in the 21st century. The findings themselves are open for interpretation and re-interpretation by community members, the legal principles are not frozen in time.

I highlighted above that it is unfortunate that this portion of the methodology was not applicable within the workings of my thesis. The opportunity for interaction with the communities throughout Nunatsiavut in relation to the legal principles I found in twenty Inuit stories was not possible because it fell outside of the budget and timelines of my Master's thesis program. Although, there is still space for community engagement with the findings in my thesis because the Nunatsiavut Government has research protocols that have to be respected when researching information related to their population within the land claims area. One of those protocols includes getting approval from the Research Council.

In October 2018, I sent in my proposal for my Master's thesis research. In December 2018, the Research Council accepted my proposal. The Council added a stipulation that includes sharing final written documents related to my research, and to potentially have my final thesis translated into Inuktut (translating my thesis at this point goes outside of the scope and budget of this thesis).

The process of reporting to the Research Council will inform part of the process of the implementation stage of my research. My aim is to have a final thesis that will compile useful information related to Inuit legal orders from the twenty published and publicly accessible stories which I case briefed. It is my hope that the findings within this thesis will at the very least create conversations around how the Nunatsiavut Government

can use these Inuit legal principles to create a mandatory Declaration of Inuit Laws which would be employed in the administration of the Inuit Court in Nunatsiavut.

It is my hope that the findings in my thesis will be a useful example displaying the possibilities involved in revitalizing Inuit legal orders through published and publicly accessible stories, and how these principles can be enshrined into a mandatory Declaration of Inuit Laws used by the Inuit Court in Nunatsiavut. I also hope that it will be useful for starting conversations around how these legal principles can be used in other ways such as the creation of family law legislation or environmental protection. At the very least I hope that it can spark conversations around Inuit law and how these laws can inform the creation of legislation which the Nunatsiavut Government has jurisdiction under Chapter 17 of the *Labrador Inuit Land Claims Agreement*.¹¹⁵

CHAPTER 4 A CHRONOLOGICAL REVIEW OF INUIT TREATIES

¹¹⁵ *Secwépemc*, *supra* note 112, the project went beyond case briefing stories and went into the community to speak with its members. Where feedback was provided regarding the stories and their findings. These interviews were shared as part of the process of implementation, but within this thesis, it is only stories that are case briefed. Taking it into the communities throughout Nunatsiavut goes beyond the scope of this work, at this time, but it is a possibility to engage with community members regarding the stories and the legal principles found. As a future research project.

“Tagak Curley of Nunavut, Sam Raddi from this (Inuvialuit) region, Charlie Watt from northern Quebec, Bill Edmunds from Labrador and many other people, started working to advocate for Inuit in the early 1970’s, and the work isn’t done. Somebody has to carry on this work, and the only time it will be in effect done, will be when you have the same opportunities as the rest of the people in Canada. Only then, when we are at that equal starting point, the same education, the same health care and the same choices as the rest of Canada – we’re not there yet, and we won’t be there for a long time.”¹¹⁶ – Jose A Kusugak, 2002 speech to the National Inuit Youth Committee in Inuvik, Inuvialuit

Inuit did not create the provincial, territorial, or state laws or regulations that forced Indigenous people into Canadian constructs of governance (for example the *Indian Act*, *Criminal Code of Canada*¹¹⁷). The founding legal documents that this country is built upon is not written by or for Inuit specifically. The Inuit way of life is not reflected in the common or civil law. Yet Inuit have had to learn how to abide by jurisprudential, state, provincial and territorial rules to continue to advance their legal and political interests. To live in a country not equal in opportunity. Especially for those who live in rural and northern parts of Canada and people of color.

The disparaging inequity that exists in opportunity for Inuit is because the laws and systems of power in place were not created to benefit Inuit. This country is built on the backs of Indigenous people’s subjugation and oppression that is ongoing today. Yet, despite the intergenerational traumas introduced by Kallunâk legal orders (white people’s legal orders), Inuit have worked tirelessly to advance their interests through the negotiation of land claim agreements (also referred to as modern treaties) and self-

¹¹⁶ Jose A Kusugak, “President’s Greeting,” *Inuktitut Magazine*, Issue 91, (2002) 2 online: <<https://www.itk.ca/inuktitut-issue-91/>>.

¹¹⁷ *Criminal Code*, RSC 1985, c C-46, <<https://canlii.ca/t/55c6m>> retrieved on 2022-02-09 [Criminal Code].

governance for well over forty-years.¹¹⁸ This chapter tries in its best possible way, to shed light on an area of Canadian political and legal history that gets no attention in mainstream educational institutions. Inuit are an integral part of the fabric of this country's history, and it is important to share this because understanding this history in its basic form is intrinsically connected to revitalizing Inuit law. To understand what is possible in the future, it is important to reflect on history.

A historical overview of the legal and political landscape throughout Inuit Nunangat is also important in providing context. As understanding of context is important when analyzing Indigenous legal orders through stories. Dr. Friedland and Dr. Napoleon highlight that:

The analytical work with the stories of a particular Indigenous society must be contextualized by basic information about that society if we are going to be committed to communicating this work within and across communities today. All stories are cut from and reflect the political structure..., the legal order... and the history of a people and this entire context informs the legal analysis. The societal context enables one to see the story's internal logic and get a sense of the ambitions of law as illustrated by the norms contained in the patterns and, very importantly the incongruities that the stories create.¹¹⁹

¹¹⁸ A focus on the historical evolution of Inuit land claim agreements is relevant to my overall thesis because throughout my political science and international development undergraduate degree, I did not have the opportunity to take courses that focused on the governance systems throughout Inuit Nunangat. Nor did I have the opportunity to take courses related to the land claim agreements that create these governance systems. There were courses I did take in law school that focused on Indigenous law, but a majority of the content was related to treaty history as it pertained to First Nations historical and numbered treaties. Inuit political and legal history seemed non-existent within my eight plus years of post-secondary education in Canada. There was little opportunity within my studies to take classes relating to the *Labrador Inuit Land Claims Agreement* within my undergraduate and Juris Doctor Degree. This was a clear gap within the academy.

¹¹⁹ *Gathering the Threads*, *supra* note 44 at 27. Dr. Val Napoleon also highlights that basic information about a society can be viewed as a “primer” for readers, see Valerie R Napoleon, *Ayook: Gitksan Legal Order, Law, and Legal Theory* (PhD Dissertation, University of Victoria, Faculty of Law, 2009) [unpublished] at 4-9.

The aim of this chapter is to provide a high-level overview of Inuit modern treaties in Canada, and a primer into understanding a larger context of Inuit political and legal culture.¹²⁰

Modern Inuit treaties are fairly young in the landscape of Indigenous treaty making in Canada. The oldest modern Inuit treaty in Canada was signed in 1975, but the history of treaty making in this country pre-dates the 1763 *Royal Proclamation*¹²¹ when Indigenous people signed treaties between their individual nations.¹²² There are also post-confederation numbered treaties,¹²³ the Douglas Treaties¹²⁴ and the Peace and Friendship treaties,¹²⁵ to name a few.

In my legal education, I have had the opportunity and privilege to begin to learn about the relevance of First Nation treaties, but I have not had the opportunity to learn about the modern treaty where I come from in northern Labrador (Nunatsiavut). Nor did I have the opportunity to engage with and learn about the modern treaties in Inuvialuit, Nunavut and Nunavik.

In this chapter, I try my best to create space to dissect a history of the political, economic and legal factors that influenced the movement towards negotiating Inuit land claim and self-government agreements in Canada.¹²⁶ I also highlight that land claim and

¹²⁰ *Gathering the Threads*, *supra* note 44 at 26, Dr. Friedland and Dr. Napoleon highlight that a primer is a part of the ILRU case briefing methodology.

¹²¹ *The Royal Proclamation*, 1763, RSC 1985, Appendix II, No 1, October 7, 1763 [*Royal Proclamation*].

¹²² John Borrows, Leonard I. Rotman, *Aboriginal Legal Issues: Cases, Materials and Commentary*, 5th ed (Canada: LexisNexis, June 2018) at 282 [*Aboriginal Legal Issues*].

¹²³ *Ibid* at 285.

¹²⁴ *Ibid* at 300.

¹²⁵ *Ibid* at 284.

¹²⁶ In my research I have found work done in Nunavut where Madeline Redfern has contacted and documented conversations with Inuit who made contributions to the settlement of the *Nunavut Land Claims Agreement*, see; Nunavut, Nunavut Tunngavik, *Nunavut Agreement Oral History Project*, 2004, online: <<https://oralhistory.tunngavik.com/madeleine-redfern-spirit-and-intent/>>.

self-government agreements provide opportunities for Inuit to implement their own laws within their own territories and their own governance regime.

In the process of researching the history of treaty making throughout Inuit Nunangat, I stumbled upon the realization that not all of the regions have settled self-government agreements. The only Inuit region currently with a settled self-government agreement is Nunatsiavut which settled the *Labrador Inuit Land Claims Agreement* in 2005. The reasons why this is the only region that currently has self-government will be explained in greater detail throughout this chapter.

I will begin the chapter first by briefly highlighting the political, legal and economic factors that sparked a movement of Indigenous land claim and self-government negotiations beginning in the early 1970's. I will highlight how First Nations opposition to the 1969 White Paper sparked a civil society uprising which escalated the movement for land claim and self-government negotiations in Canada. I will also highlight how the Supreme Court of Canada's 1973 *Calder*¹²⁷ decision contributed to this movement. Lastly, I will illustrate how the 1995 federal government's Inherent Rights Policy¹²⁸ influenced self-government negotiations within Nunavik, Inuvialuit and Nunatsiavut.

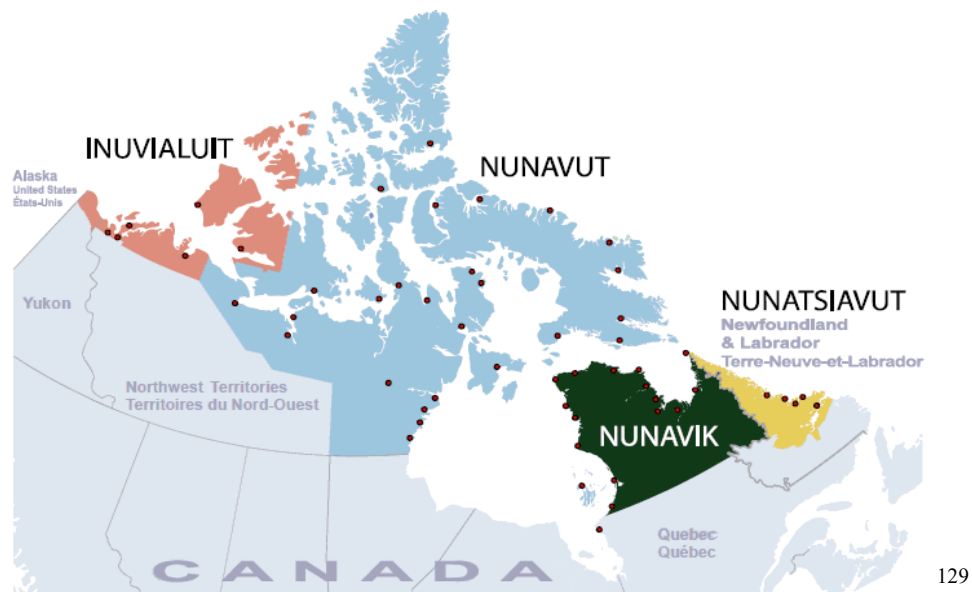
I will then go into a brief history of the four Inuit land claim agreements that have been negotiated, settled and are currently being implemented beginning in chronological order with the *James Bay and Northern Quebec Agreement (JBQNA)* signed and given effect in 1975. The *Inuvialuit Final Agreement (IFA)* signed and given effect in 1984.

¹²⁷ *Calder et al. v. Attorney-General of British Columbia*, [1973] S.C.R. 313, 34 DLR (3d) 145 [*Calder*].

¹²⁸ Canada, Government of Canada, *The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government*, (September 15 2010), online: <<https://www.rcaanc-cirnac.gc.ca/eng/1100100031843/1539869205136>>. [*The Government of Canada's Approach*].

The *Nunavut Land Claims Agreement (NLCA)* signed and given effect in 1993, and the *Labrador Inuit Land Claims Agreement (LILCA)* signed and given effect in 2005.

The location of these land claims agreements is set out in the map below. The geographical territory that these four land claims agreements encompass is Inuit Nunangat. This map depicts the geographical landmass of Inuit Nunangat. This area has 51 communities where a majority of Canada's 65,000 Inuit reside (there is also a large Inuit population living to southern urban centers in Canada).



I will end the chapter by highlighting the possible challenges and opportunities of instituting Indigenous legal principles within modern 21st century legal settings with a focus on the Navajo Tribal Courts and the Inuit of Nunavut. I will focus on the potential challenges ahead, if and when the Nunatsiavut Government institutes Inuit legal principles within an Inuit Court. As the Nunatsiavut Government has jurisdiction within

¹²⁹ Canada, Government of Canada, “The four Regions of Inuit Nunangat”, (November 30 2015), online: <<https://www150.statcan.gc.ca/n1/pub/89-644-x/2010001/m-c/11281/m-c/m-c1-eng.htm>>.

the *Labrador Inuit Land Claims Agreement* to create an Inuit Court.¹³⁰ Within that court, there is a potential opportunity to create a mandatory Declaration of Inuit Laws that judges can use when adjudicating disputes similar to the way the Navajo Tribal Court institutes the *Fundamental Laws of the Dine*¹³¹ into their legal proceedings. The *Fundamental Laws of the Dine*, its relevance and how judges have applied its legal principles will be emphasized later throughout the chapter.

4.1 Decisions that Influenced Inuit Land Claim Negotiations in Canada

This section highlights the factors that influenced the process of land claim and self-government negotiations between Indigenous people and the rest of Canada. Factors that set the stage for negotiating comprehensive land claim agreements in Canada included First Nations' reaction to the 1969 federal "White Paper",¹³² the 1973 Supreme Court of Canada's *Calder* decision and the federal 1995 Inherent Rights Policy.¹³³

In 1969 the federal government under the Pierre Elliott Trudeau Liberals introduced its *Statement of the Government of Canada on Indian Policy*¹³⁴ which is colloquially also referred to as "the White Paper."

This policy paper recommended fundamental changes to the status of Indian people in Canada, notably the end of the distinct status for Indians, the dissolution of Indian Affairs, the repeal of the *Indian Act* and its replacement with an *Indian Lands Act*, with the objective of facilitating First Nations' absorption into mainstream society... Anger towards the White Paper fueled a national First Nations resistance movement... First Nations opposition was so strong that the federal government withdrew the proposal and declared a formal end to its assimilation policy in 1971... in subsequent years we would begin to see First Nations asserting Aboriginal title and Aboriginal treaty rights in the courts,

¹³⁰ *Labrador Inuit Land Claims Agreement*, 22 January 2005, online: <https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/al_ldc_ccl_fagr_labi_labi_1307037470583_eng.pdf>, part 17.31.

¹³¹ *The Fundamental Laws of the Dine*, *supra* note 1 at ss. 1-6.

¹³² Canada, *Statement of the Government of Canada on Indian Policy*, 1969 (Ottawa: Queen's Printer, 1969) [*1969 White Paper*].

¹³³ *The Government of Canada's Approach*, *supra* note 128.

¹³⁴ See *1969 White Paper*, *supra* note 132.

demanded seats at the negotiation table to settle outstanding claims, and calling for self-government.¹³⁵

First Nations opposition to the “White Paper” as well as their push to assert their Aboriginal and treaty rights within the courts, along with the 1973 *Calder*¹³⁶ decision worked together to support the movement towards land claim and self-government negotiations in Canada. In the 1973 Supreme Court of Canada *Calder* decision the Nisga’a argued that the Aboriginal title to their traditional territories was never extinguished. For the first time in history the Supreme Court of Canada ruled that Aboriginal title existed and pre-dated the *Royal Proclamation of 1763*. The Court was split on whether the Nisga’a had title to their territories with three judges ruling that Aboriginal title existed and was not extinguished. Three other judges ruled that Aboriginal title existed but it was extinguished at Confederation and one judge dismissed the case on a technicality.¹³⁷

Although, the Nisga’a did not receive a clear answer in regard to their Aboriginal title claim, the *Calder* decision paved the way for Indigenous people in Canada to begin negotiating land claims agreements with the Crown. In response to the highest court’s decision in *Calder* and the civil society movement sparked by First Nations’ the federal government in 1973 implemented a “comprehensive claims policy”¹³⁸ which opened the

¹³⁵ Naomi Metallic, "The Relationship between Canada and Indigenous Peoples – Where are We?" in Law Society of Upper Canada, ed, *Special Lectures 2017 – Canada at 150: The Charter and the Constitution* (Toronto: Irwin Law, 2018) 431 at 440-441 [*The Relationship between Canada and Indigenous Peoples*].

¹³⁶ *Calder*, *supra* note 127.

¹³⁷ Hamar Foster, Heather Raven & Jeremy Webber, *Let Right Be Done: Aboriginal Title, the Calder Case, and the Future of Indigenous Rights* (Vancouver: UBC Press, 2007).

¹³⁸ John Curry, Han Donker & Richard Krehbiel, “Land Claim and Treaty Negotiations in British Columbia, Canada: Implications for First Nations Land and Self-Governance,” *Canadian Geographer* 58:3 (04 June 2014) 291 at 293.

door for Indigenous populations to formally begin the process of negotiating land claim agreements.¹³⁹

It was also an opportunity for Indigenous people and the rest of Canada to begin hashing out what exercising inherent Aboriginal self-government meant.¹⁴⁰ However, it was not until 1995 that the federal government under the Pierre Elliot Trudeau Liberals formally responded to the advocacy and lobbying of Indigenous groups. These Indigenous groups worked hard to have the inherent right to self-government recognized as a right within section 35 of the *Constitution Act, 1982*.¹⁴¹

The federal government did not explicitly recognize a right to self-government in the 1982 Constitution, nor did it create a legislative framework which recognized Indigenous peoples inherent right to exercise self-government. Despite years of constitutional negotiations where Indigenous peoples were advancing their inherent right to self-government. Indigenous people sought to have their inherent right to self-government recognized in the Canadian Constitution in the 1992 Charlottetown Accord, but this was unsuccessful.¹⁴² Rather than recognize the inherent right for Indigenous people to self-government in the highest legal order in Canada, the federal government instead introduced the 1995 federal Inherent Rights Policy.¹⁴³ Naomi Metallic recognizes

¹³⁹ See, Christopher Alcantara, *Negotiating the Deal: Comprehensive Land Claims Agreements in Canada* (Toronto: University of Toronto Press, 2013) at 15 [*Negotiating the Deal*], this process is still institutes today and is commonly referred to as the comprehensive land claims process where an Indigenous group submits a statement of intent to the federal and provincial governments to establish three things; that its rights to its claimed lands have never been extinguished; that it has historically occupied and used its claimed lands to the exclusion of other groups and it is a clearly identifiable and recognizable Indigenous group.

¹⁴⁰ Canada, Indian and Northern Affairs Canada, *Canada's Relationship with Inuit: A History of Policy and Program Development*, (Ottawa: 2006) at 104 [*Canada's Relationship with Inuit*].

¹⁴¹ *Ibid* at 105.

¹⁴² Thomas Isaac and Mary Sue Maloughney, "Dually Disadvantaged and Historically Forgotten: Aboriginal Women and the Inherent Right of Aboriginal Self-Government", 1992 21-3 *Manitoba Law Journal* 453, 1992 CanLIIDocs 130, <<https://canlii.ca/t/sgfb>>, retrieved on 2022-03-24.

¹⁴³ *The Government of Canada's Approach*, *supra* note 128.

that the practice of introducing policy rather than legislative frameworks to govern jurisdiction over Indigenous services has been a legally problematic practice by the federal government.

Metallic highlights that this is problematic because when a government action has to be challenged, judges are unsure whether a policy can be judicially reviewed in the same manner as a law.¹⁴⁴ Further, she highlights that if there is judicial review of a policy, courts generally give deference to the Crown. This further insulates the federal government from being forced to change how they govern First Nations and arguably other Indigenous populations under s. 91(24) of the *Constitution Act, 1867*.¹⁴⁵

Despite policies not being judicially reviewable, they have been useful tools in advancing reconciliation. The 1995 federal Inherent Rights Policy influenced the evolution of Inuit land claim agreements and self-government in Canada. In 1995, three of the four Inuit land claim agreements were settled and this was before the Inherent Rights Policy was introduced. Therefore, self-government provisions were not included within those three land claim agreements.

This meant that the Inuit region of Nunavik that settled the *James Bay and Northern Quebec Agreement* in 1975, the Inuit region of Inuvialuit that settled the *Inuvialuit Final Agreement* in 1985 and the Inuit region of Nunavut that settled the *Nunavut Final Agreement* in 1993 did not have constitutionally protected self-

¹⁴⁴ Naiomi Metallic, “Deference and Legal Frameworks Not Designed By, For or With Us”, (27 February 2018), *Paul Day Administrative Law Matters* (blog), online: <<https://www.administrativelawmatters.com/blog/2018/02/27/deference-and-legal-frameworks-not-designed-by-for-or-with-us-naiomi-metallic/>>. See also: Janna Promislow and Naiomi Metallic, “Realizing Administrative Aboriginal Law” in Colleen M Flood & Lorne Sossin, eds, *Administrative Law in Context*, 3rd ed (Emond Publishing: Toronto, 2017) at 95-116.

¹⁴⁵ *The Constitution Act 1867*, *supra* note 5 at section 91(24).

government provisions within their agreements. The Inuit region of Nunatsiavut is the only Inuit region with settled self-government provisions in the *Labrador Inuit Land Claims Agreement*.

The governance regimes throughout Inuvialuit, Nunavut and Nunavik are set up as public governments where any non-Inuit member of society can be elected to govern the Inuit territory. The Inuit regions of Inuvialuit and Nunavik have opted to develop and negotiate self-government agreements outside of the public government model, these on-going negotiations will be further highlighted below.

4.2 James Bay and Northern Quebec Agreement - 1975

“A project of this kind involves the destruction and rearrangement of a vast landscape, literally reshaping the geography of the land. This is what I want you to understand: It is not a dam. It is a terrible and vast reduction of our entire world.”¹⁴⁶



¹⁴⁶ Although, the geographical area that encompasses Nunavik is where Inuit live, the Cree who are also signatories of the *James Bay and Northern Quebec Agreement* were also implicated in the creation of massive hydroelectric dams as cited from former Grand Chief of the Cree in; Matthew Coon-Come, “A Reduction of Our World,” in Kurt Russon, ed., *Our People, Our Land: Perspectives on the Columbus Quincentenary* (Bellingham, Wash.: Lummi Tribe and Kluckhohn Center 1992), 82.

¹⁴⁷ Makivik Corporation, *Nunavik Maps*, (2021), online: Makivik Corporation <<https://www.makivik.org/nunavik-maps/>>.

This section focuses on the Nunavik region in northern Quebec which is the second largest Inuit region in Canada (first is Nunavut) and is about the size of France.¹⁴⁸ Nunavik in Inuktitut means “our great land” and is governed by the *James Bay Northern Quebec Agreement*. This section highlights how Nunavimmiut (Inuit from Nunavik) were influenced by political, economic and legal decisions made by non-Inuit, which cumulatively led to the negotiation and settlement of the *JBNQA*. The experience of colonization is a common thread in each of the four regions that encompass the Inuit homelands. Decisions made by non-Inuit governments and other non-Inuit stakeholders that affected Nunavimmiut created an atmosphere where Nunavimmiut had to begin asserting their interests in the political and legal realms. This advocacy contributed to the settlement of the first of four Inuit modern treaties in 1975.

The *James Bay and Northern Quebec Agreement* came into effect on November 11, 1975. Prior to the ratification of the *JBNQA* in 1975, Inuit lived throughout northern Quebec and the Ungava coast for 4000 years.¹⁴⁹ Continuous contact between Nunavimmiut and Kallunâk has been ongoing for only 300 years.¹⁵⁰ Throughout these three centuries, Inuit underwent tremendous cultural, linguistic, economic and political changes.

In the early twentieth century, missionaries, Hudson’s Bay Company managers and the Royal Canadian Mounted Police began permanent settlement in the Arctic. Individuals who worked within these professions were some of the first Kallunâk who

¹⁴⁸ Nadine C. Fabbi, Thierry Rodon & Eric W. Finke, “Makippugut (We are Standing Up): Public Policy and Self-Determination in Nunavik” (2017) 47:2 *American Review of Canadian Studies* 117 at 118.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

settled in the Arctic. It was also a time when both the Quebec government and the federal government were quarrelling over who would finance the Inuit of northern Quebec.¹⁵¹

The 1912 *Quebec Boundaries Extension Act*¹⁵² gave the province the vast territory bound by the Eastmain River, the Labrador coast, and Hudson and Ungava Bays, where a majority of Nunavik's 14 communities reside.¹⁵³ Quebec argued that Inuit were the responsibility of the federal government under section 91(24) of the *Constitution Act, 1867* and the Supreme Court in the 1939 *Reference re: Term "Indians"*¹⁵⁴ judgement decided that Inuit were indeed under federal, not provincial, jurisdiction.

After the 1939 Supreme Court decision the federal government was the only government that provided services to Inuit until the end of the 1950s. However, both the federal and provincial governments were still making decisions that deeply affected Inuit throughout the 20th century. In 1971, a commitment by Quebec to support the James Bay hydroelectric development plan was announced by the Liberal Premier of Quebec, Robert Bourassa.¹⁵⁵

The lands and waterways of the proposed James Bay hydroelectric dam would negatively influence the lives of Indigenous populations that inhabited and survived in northern Quebec for millennia, namely the Cree and Inuit. Mackenzie Kirkey highlights that:

For the Cree and Inuit of eastern James Bay and northern Quebec, the announcement and related implementation of the James Bay project was an

¹⁵¹ Hervé, Caroline. "Wrapped in Two Flags: The Complex Political History of Nunavik" (2017) 47:2 *American Review of Canadian Studies* at 133 [*Wrapped in Two Flags*].

¹⁵² *The Quebec Boundaries Extension Act*, RS, Q 1912, 2 George V, Chapter 45, online: <https://www.solon.org/Constitutions/Canada/English/Misc/qbea_1912.html>.

¹⁵³ *Wrapped in Two Flags*, *supra* note 151 at 133.

¹⁵⁴ *Re: Indian*, *supra* note 4.

¹⁵⁵ Mackenzie Kirkey. "The James Bay Northern Quebec Agreement" (2015) 45 *Journal of Eastern Townships Studies* 85 at 87.

unwelcome development; a development on which they had neither been consulted let alone invited to officially participate in, nor benefit from.¹⁵⁶

With Premier Bourassa's announcement both the Inuit and Cree of northern Quebec were forced to begin advocating and advancing their interests within the political and legal realms. The Cree and Inuit of northern Quebec took the Quebec government to Superior Court in 1972. On May 3, 1972, they jointly filed a legal injunction against the development of the James Bay hydroelectric dam and the fight against the provincial government commenced with the *Kanatewat v. The James Bay Development Corporation*¹⁵⁷ case.¹⁵⁸

The Inuit and Cree had to convince the court that they were entitled to an injunction. This required them to convince the court that their possessory and occupancy rights to the land existed and would be harmed if the dam proceeded. In particular, the court was to determine if the right clearly existed, was doubtful, or was non-existent. If the right were proven to exist, then they would have to prove that an injunction was necessary to avoid serious or irreparable injury.¹⁵⁹

If it was clear that the Cree and Inuit had rights that would face serious or irreparable injury with the development of the James Bay hydroelectric dam, or the hydroelectric dam would render the final judgement ineffectual, then an injunction could be upheld by the court. If it was doubtful a right existed, then the court should consider the balance of convenience and inconvenience in deciding whether an interlocutory

¹⁵⁶ *Ibid* at 88.

¹⁵⁷ *Kanatewat v James Bay Development Corporation*, [1973] QJ No 8 [*Kanatewat 1973*].

¹⁵⁸ J.R Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 2000) at 253.

¹⁵⁹ *Kanatewat c James Bay Development Corp*, [1974] QJ No 14, [1975] CA 166, at paras 12-14 [*Kanatewat Appeal*].

injunction should be granted.¹⁶⁰ If the rights claimed were found to be non-existent then an injunction would not be issued.¹⁶¹

In the Superior Court judgement Justice Malouf, at paragraph 427, found that the Cree and Inuit do have clear rights of possession and occupancy and reinstated the interlocutory injunction:

...It has been amply demonstrated that petitioners have clear rights of possession and occupancy. Their possession, occupancy, and use of the land is measured in terms not of years but of centuries. To use the words found in *Kerr (supra)* this is not a doubtful case "where the question as to the legal right is one on which the Court is not prepared to pass an opinion." Respondents have interfered with and violated the rights which petitioners have been exercising. According to Ashburner a threatened violation of a proprietary right entitles the party injured to an injunction. In the present case there is more than a threat. Interference is presently taking place and furthermore respondents state that they intend to continue carrying out the works necessary to complete the project. Applying the principle enunciated by *High*, since petitioners' right is clear and certain, the injurious interruption of that right must be stopped. The evidence permits me to form an opinion. I do not have the slightest doubt that petitioners have established a strong prima facie case. I am convinced that they have a clear right to an interlocutory order of injunction.¹⁶²

This decision by Justice Malouf was later appealed to the Quebec Court of Appeal where a majority of the judges overturned the decision to grant an interlocutory injunction order. Justice Owen relied on the concurring opinion of Justice Turgeon who demonstrated that there is very serious doubt with respect to the existence of any right or title on the part of the Cree and Inuit with regard to the territory in question that would entitle them to an interlocutory injunction.¹⁶³

Justice Owen went further to say, that it was "doubtful whether the Indians or Eskimos have had any rights in the territory since 1670 when Charles II of England

¹⁶⁰ *Ibid* at 14(b).

¹⁶¹ *Ibid* at 14(c).

¹⁶² *Kanatewat 1973, supra* note 157 at 427.

¹⁶³ *Kanatewat Appeal, supra* note 159 at 22.

granted to the Hudson Bay Company absolute ownership.”¹⁶⁴ Justice Owen concluded that the existence of rights or title was doubtful, and that the Cree and Inuit would not be as inconvenienced by the James Bay hydroelectric dam, as the James Bay Development Corporation would be if an interlocutory injunction were allowed.¹⁶⁵

Justice Kaufman also relying on the findings of Justice Turgeon found that the possessory and occupancy rights to the land and the title of the Cree and Inuit “are far from clear, and indeed there is serious doubt about the existence of any right or title which might give rise to the relief claimed.”¹⁶⁶ Justice Kaufman also decided that the work that was carried out to develop the hydroelectric dam did not constitute an “injury” to the Cree and Inuit. Kaufman J found that the flooding of tracts of land was minimal in comparison to the size of the vast territory being claimed, that flooding was still four years away from the date of the judgement, and the territory would undergo further development in the future such as roads, airports and large influxes of people.¹⁶⁷ Therefore, the appeal was allowed, and the interlocutory injunction order overturned. The Cree and Inuit then filed an appeal application to the Supreme Court of Canada in 1973. It was dismissed with costs.¹⁶⁸

Despite the loss at the Quebec Court of Appeal and an application to appeal dismissed by the Supreme Court of Canada, the Inuit and Cree of northern Quebec continued to seek out other avenues to advocate for their interests outside of the courts. While these issues were being decided upon by the courts, the Cree and Inuit throughout

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid* at 27-28.

¹⁶⁶ *Ibid* at 220. A majority of the five judges in both English and French expressed that the right and title which the Inuit and Cree claimed were doubtful or non-existent therefore the injunction was suspended.

¹⁶⁷ *Ibid* at 220-221.

¹⁶⁸ *Kanatewat v James Bay Development Corp*, [1973] SCJ No 135, [1975] 1 SCR 48 [*Kanatewat SCC*]. Both Justice Martland and Justice Ritchie dissented.

1972-1975 also entered into negotiations with the provincial and federal governments, as well as other corporate entities, to try to have their rights recognized. In November 1975, the *JBNQA* agreement was ratified. The *JBNQA* governs the Inuit of Nunavik and the Grand Council of the Cree of northern Quebec.

The agreement has 31 sections that govern Inuit special rights to land ownership and use, harvesting rights, environmental protection, and the creation of a number of public institutions including regional government and school and hospital boards.¹⁶⁹

The *JBNQA* agreement does not have provisions that recognize and affirm Inuit self-government; instead, there are provisions within the agreement that create a form of public government. Martin Papillon highlights that:

Many of the local and regional structures created under the *JBNQA* also found the scope of their actions was considerably limited by the fact that they were conceived as administrative arms of the federal and provincial governments. The Quebec government, for example, saw the health and education boards not as Cree or Inuit governing structures but as extensions of its own administrative apparatus. Like other government service delivery agencies, the boards had their priorities established in Quebec City, not in the North.¹⁷⁰

As noted above, a major factor that led to the *JBNQA* not including negotiating self-government in their negotiations during the early 1970's is because the agreement was settled in 1975 and the federal government had not yet introduced the 1995 Inherent Rights Policy which recognized Indigenous people's right to self-government.¹⁷¹

Negotiating and settling self-government was not a priority for the federal government in 1975 when the Inuit and Cree were in the process of negotiating and settling the *JBNQA*.

¹⁶⁹ *Aboriginal Legal Issues*, *supra* note 122 at 597.

¹⁷⁰ Martin Papillon, "Aboriginal Quality of Life under a Modern Treaty: Lessons from the Experience of the Cree Nation of Eeyou Istchee and the Inuit of Nunavik" (2008) 14:9 *Institute for Research on Public Policy* 1 at 13 [*Aboriginal Quality of Life under a Modern Treaty*].

¹⁷¹ *The Government of Canada's Approach*, *supra* note 128.

Therefore, the opportunity to negotiate an Inuit specific government had not yet become an option for Nunavimmiut.

Throughout the 1990's Nunavimmiut attempted to negotiate with the federal and provincial government regarding self-government, but due to the political climate in Quebec at the time, the negotiations were never finalized.¹⁷² In 2002, formal negotiations began, and in December 2007, Nunavimmiut, the province of Quebec and the federal government signed an Agreement in Principle to create a new regional public government in Nunavik.¹⁷³

This proposed new public government would amalgamate three governing institutions representing Nunavik,¹⁷⁴ and would have at least 21 representatives from 14 of the communities in a Nunavik Assembly. This new form of government would better represent and serve the interests of Inuit by pooling all human and financial services into one regional government.¹⁷⁵ Voters in a 2011 referendum later rejected this proposed new public government.¹⁷⁶

Eight years later, in 2019, the Makivik Corporation passed a resolution to begin a second round of self-government negotiations.¹⁷⁷ The process of settling self-government in Nunavik is still on-going. It is also almost forty years since land claims negotiations first began in 1972 when both the Cree and Inuit were tasked with fighting governments

¹⁷² Makivik Corporation, *Nunavik Government*, (2021), online: Makivik Corporation <<https://www.makivik.org/nunavik-government/>>.

¹⁷³ *Ibid.*

¹⁷⁴ These three institutions include the Kativik Regional Government, the Katavik Regional School Board and the Regional Board of Health and Social Services, See, *supra* note 172.

¹⁷⁵ *supra* note 172.

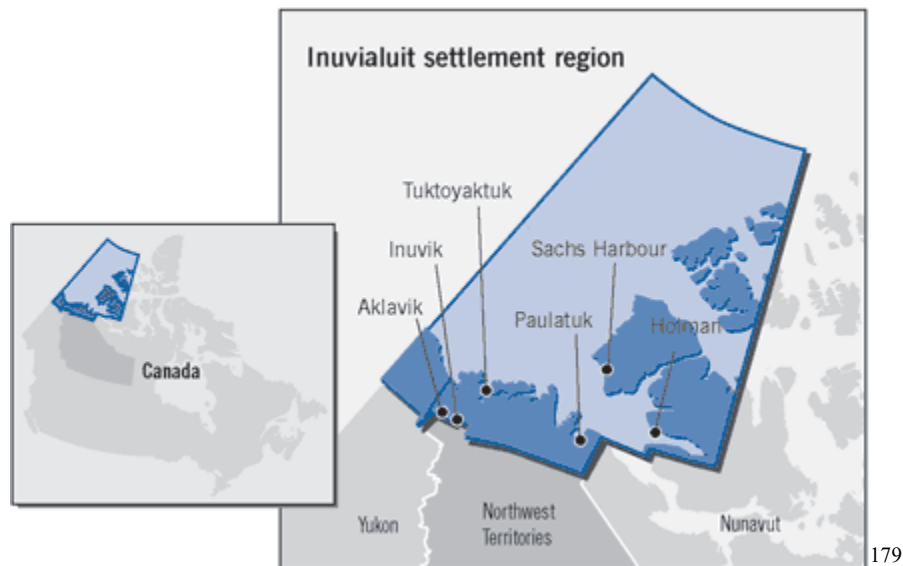
¹⁷⁶ Sarah Rogers, "Nunavik votes "no" in April 27 NRG Referendum", *Nunatsiaq News* (28 April 2011), online: <https://nunatsiaq.com/stories/article/287756_nunavik_says_no_in_NRG_referendum/>.

¹⁷⁷ Sarah Rogers, "Nunavik Inuit to revisit self-government based on Inuit values, heritage and language", *Nunatsiaq News* (25 March 2019), online: <<https://nunatsiaq.com/stories/article/nunavik-inuit-to-revisit-self-government-based-on-inuit-values-heritage-and-language/>>.

and corporations to protect their rights and interests from the James Bay hydroelectric dam.

This experience of natural resource development entering into Inuit traditional territory is not unique to Quebec's northern Indigenous population. In Canada's Western Arctic, Inuit also had a similar experience with natural resource development which also led to the negotiation and settlement of the *Inuvialuit Final Agreement (IFA)* in 1984.¹⁷⁸ The *IFA*, similar to the *JBNQA*, was also settled without self-government provisions. I discuss a brief history of the *IFA* below and start by situating it within economic and political processes that bear some similarities to those that were involved in the negotiations of the *JBNQA*.

4.3 Inuvialuit Final Agreement - 1984



¹⁷⁸ *Inuvialuit Final Agreement*, April 2005, online: <<https://www.irc.inuvialuit.com/sites/default/files/Inuvialuit%20Final%20Agreement%202005.pdf>> [*Inuvialuit Final Agreement*].

¹⁷⁹ Image of Inuvialuit found at, Canada, Office of the Auditor General of Canada, "2007 October Report of the Auditor General of Canada," (2007), online: <http://www.oag-bvg.gc.ca/internet/English/parl_oag_200710_03_e_23827.html>

This section discusses the *Inuvialuit Final Agreement*. It starts by highlighting the common threads that connect the negotiation and settlement of the *James Bay and Northern Quebec Agreement (JBQNA)* with the negotiation and settlement of the *Inuvialuit Final Agreement (IFA)*.

The processes to begin land claim negotiations between Inuit of the Western Arctic and other parties also began against the backdrop of a political climate where First Nations were in opposition to the 1969 federal White Paper, the 1973 *Calder* decision and government and corporate interests in the oil and gas resources located throughout the Arctic.¹⁸⁰

The concept of a pipeline corridor was first introduced to Canada's northwestern Arctic in 1970,¹⁸¹ when the federal government introduced the Pipeline Guidelines. In 1972, the House of Commons amended the Pipeline Guidelines and those Guidelines formed the basis for policy decisions regarding the construction of pipelines in Canada's north.¹⁸²

To assess the potential impacts of a gas and an oil pipeline from Alaska throughout Canada's north then onto the United States, the Liberal government under Prime Minister, Pierre Elliot Trudeau commissioned the Mackenzie Valley Pipeline Inquiry (1974-1977). The Inquiry made a clear recommendation that Indigenous people's land claims should be settled, prior to any pipeline developments:

After travelling over 17, 000 miles to 35 different communities and hearing from roughly 1000 people in eight languages, the head of the Inquiry, Justice Thomas Berger, recommended a ten-year moratorium on the pipeline to allow sufficient

¹⁸⁰ *Negotiating the Deal*, *supra* note 139 at 554.

¹⁸¹ Canada, Indian and Northern Affairs Canada, *Northern Frontier, Northern Homeland: The Report of the Mackenzie Valley Pipeline Inquiry*, vol 1 (Ottawa: Minister of Supply and Services Canada, 1977) at 9, online: <https://www.pwnhc.ca/extras/berger/report/BergerV1_complete_e.pdf>.

¹⁸² *Ibid.*

time for aboriginal peoples to settle outstanding claims.¹⁸³

While the Inquiry was still underway, the Inuit throughout the Northwest Territories submitted their land claim. In 1976, Inuit Tapirisat of Canada¹⁸⁴ [now Inuit Tapiriit Kanatami] submitted a claim on behalf of all Inuit throughout the Northwest Territories. Similar to the experience in northern Quebec the claim was an attempt to resolve underlying conflicts in land and resource management.¹⁸⁵

Several issues arose between the federal government and Inuit Tapirisat of Canada and this halted the negotiations process. Due to these ongoing issues between Inuit Tapirisat of Canada and the federal government, the Committee for Original Peoples' Entitlement (COPE) assumed the responsibility of representing Inuit from the Western Arctic on their land claim.¹⁸⁶

It was ten years of negotiations between all parties before the *Inuvialuit Final Agreement*¹⁸⁷ was signed by the federal government, the Yukon government, the Northwest Territories government and the Inuit of Inuvialuit. Each of the parties signed the agreement on June 5, 1984 and Parliament passed the *Western Arctic (Inuvialuit) Settlement Act*¹⁸⁸ on June 28, 1984.¹⁸⁹

¹⁸³ Angela C. Angell, John R. Parkins, "Resource development and aboriginal culture in the Canadian north" (2011) 47: 240 Cambridge University Press 67 at 69, online: <https://www-cambridge-org.ezproxy.library.dal.ca/core/services/aop-cambridge-core/content/view/E72267A8F6619E7FA0148C731C5B8727/S0032247410000124a.pdf/resource_development_and_aboriginal_culture_in_the_canadian_north.pdf>.

¹⁸⁴ The national organization in Canada that represents all Inuit and it was created in 1971.

¹⁸⁵ James C. Saku & Robert M. Bone, "Modern Treaties in Canada: The case of northern Quebec Agreements and the Inuvialuit Final Agreement" (2000) XX: 2, The Canadian Journal of Native Studies 283 at 290, online: <http://www3.brandonu.ca/cjns/20.2/cjnsv20no1_pg283-308.pdf> [*Modern Treaties in Canada*].

¹⁸⁶ *Ibid.*

¹⁸⁷ *Inuvialuit Final Agreement*, *supra* note 178.

¹⁸⁸ *Western Arctic (Inuvialuit) Claims Settlement Act* (S.C. 1984, c. 24).

¹⁸⁹ *Modern Treaties in Canada*, *supra* note 185 at 290.

Within the *IFA* Inuvialuit, Inuit have surface ownership rights to 90,650 square kilometers of land as well as certain subsurface rights to another 12,950 square kilometers of land. Inuit within the *IFA* also have special harvesting rights, environmental protection, can participate in a number of co-management systems and the *IFA* also establishes a social development fund.¹⁹⁰ Within the *IFA*, there are no self-government provisions, and the federal and territorial governments exercise most of the political functions in the region.¹⁹¹

The Inuit of the Northwestern Arctic have depended on clause 4.3 of the *Inuvialuit Final Agreement* to negotiate self-government.¹⁹² Clause 4.3 states:

Canada agrees that where restructuring of the public institutions of government is considered for the Western Arctic Region, the Inuvialuit shall not be treated as less favorably than any other native groups or native people with respect to the governmental powers and authority conferred upon them.¹⁹³

Clause 4.3 along with the introduction of the 1995 federal Inherent Rights Policy provided the Inuvialuit Regional Corporation and the Gwich'in Tribal Council the opportunity to begin negotiating a joint self-government agreement. These negotiations began in 1996. Although a joint agreement was never reached, the Inuvialuit Regional Corporation continued to negotiate their own self-government agreement with the federal and territorial governments in their region.¹⁹⁴ After more than twenty years, an agreement

¹⁹⁰ *Aboriginal Legal Issues*, *supra* note 169 at 598.

¹⁹¹ Christopher Alcantara, Adrienne Davidson, "Negotiating Aboriginal Self-Government Agreements in Canada: An Analysis of the Inuvialuit Experience" (2016) 48:3 *Canadian Journal of Political Science* at 561.

¹⁹² As of 2015 the Inuvialuit Regional Corporation are negotiating a self-government agreement with the federal government and the territorial governments. Each of the parties have reached an Agreement in Principle and the ratification of this agreement is still on-going; See Inuvialuit Regional Corporation, *Self-Government* (2020), Online: Inuvialuit Regional Corporation <<https://irc.inuvialuit.com/self-government>> [*Inuvialuit Self-Government*].

¹⁹³ *Inuvialuit Final Agreement*, *supra* note 178.

¹⁹⁴ *Inuvialuit Self-Government*, *supra* note 192.

in principle was reached in 2015 and as of 2022 the process of finalizing the self-government provisions, along with funding and implementation plans are still currently underway.¹⁹⁵

The experience of Inuit settling modern treaties, where governance is through public institutions, and then continuing to negotiate self-government in the subsequent years, is common in Inuvialuit and Nunavik. The reality of public institutions governing Inuit territory is also present within Nunavut. However, within the *Nunavut Land Claims Agreement*¹⁹⁶ the terms relating to Inuit participation within governing institutions throughout the territory are slightly different from the other regions. I will delve more into this distinction in the following section.

4.4 Nunavut Land Claims Agreement - 1993



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¹⁹⁵ *Ibid.*

¹⁹⁶ *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada*, 25 May 1993, online:

<https://www.nu.ca/sites/default/files/Nunavut_Land_Claims_Agreement.pdf> [*Nunavut Agreement*].

¹⁹⁷ Wikipedia, *List of Regions of Nunavut*, (2020), online:

<https://en.wikipedia.org/wiki/List_of_regions_of_Nunavut>.

This section gives a brief history of the negotiation of the *Nunavut Land Claims Agreement* that was settled in 1993. While this land claim agreement does not include self-government, the provisions relating to governance are nonetheless distinct from the other three Inuit land claim agreements highlighted above. The section also highlights the potential challenges for Inuit in advancing their interests for Inuit governance in the territory (which are also potential challenges for the other Inuit regions, too).

In 1975 formal negotiations, relating to the *Nunavut Land Claims Agreement*¹⁹⁸ began. Initially, Inuit Tapirisat of Canada [now Inuit Tapiriit Kanatami] represented and negotiated with the territorial and federal governments before Tungavik Federation of Nunavut [now Nunavut Tunngavik Inuit] was created and took over negotiations in 1982.¹⁹⁹ These negotiations lasted nearly two decades before the *Nunavut Land Claims Agreement*²⁰⁰ was signed and ratified in 1993. The agreement is the largest modern treaty in Canadian history²⁰¹ and within the agreement, there are 42 articles providing title to the Inuit of Nunavut to some 352, 240 square kilometers of land in the eastern half of the former Northwest Territories.²⁰² This vast area formally became Nunavut on April 1, 1999.

¹⁹⁸ *Nunavut Agreement*, *supra* note 196.

¹⁹⁹ Terry Fenge & Paul Quassa, “Negotiating and Implementing the Nunavut Land Claims Agreement” (1 July 2009) Institute for Public Policy and Research, online: <https://policyoptions.irpp.org/magazines/canadas-water-challenges/negotiating-and-implementing-the-nunavut-land-claims-agreement/>.

²⁰⁰ *Nunavut Agreement*, *supra* note 196.

²⁰¹ *Aboriginal Legal Issues*, *supra* note 169 at 598.

²⁰² *Ibid.*

Similar to the *James Bay and Northern Quebec Agreement*²⁰³ as well as the *Inuvialuit Final Agreement*,²⁰⁴ the *Nunavut Land Claims Agreement*²⁰⁵ has no self-government provisions. Rather than an explicit Inuit government, Nunavut has its own legislative assembly and public government.²⁰⁶ The total population of Nunavut throughout the past several years is approximately 85 percent Inuit.

When negotiating the *Nunavut Land Claims Agreement* the number of Inuit throughout the territory was taken into consideration in drafting Article 23, Part 23.1.1(b) which establishes that the ratio of the total Inuit population throughout Nunavut will also make up a representative level of all government positions.²⁰⁷ Theoretically, this would lead to 85 percent of Inuit taking up positions within all levels of the public government throughout Nunavut including the legislative assembly.

Thomas Berger in his 2006 report observed that most of the elected members of the Government of Nunavut are Inuit, but that a majority of the higher-level positions in the public service are held by non-Inuit who make up 15 percent of the territory's population.²⁰⁸ In a 2018 census, the total number of Inuit in the Nunavut government workforce was well below 85 percent, it was at 40 percent, while the municipal level workforce in Nunavut was 85 percent Inuit.²⁰⁹ This discrepancy in the number of Inuit

²⁰³ *The James Bay and Northern Quebec Agreement*, (11 November 1975), online: <<http://www.naskapi.ca/documents/documents/JBNQA.pdf>> [JBNQA].

²⁰⁴ *Inuvialuit Final Agreement*, *supra* note 178.

²⁰⁵ *Nunavut Agreement*, *supra* note 196.

²⁰⁶ *Nunavut Agreement*, *supra* note 196 at Article 4, Part 4.1.1.

²⁰⁷ *Nunavut Agreement*, *supra* note 196.

²⁰⁸ Canada, Indian and Northern Affairs Canada, *Nunavut Land Claims Agreement Implementation Contract Negotiations for the Second Planning Period 2003-2013: Conciliator's Final Report, The "Nunavut Project"*, (Ottawa: 2006), online: <<https://www.tunnngavik.com/documents/publications/2006-03-01%20Thomas%20Berger%20Final%20Report%20ENG.pdf>> [Berger Report].

²⁰⁹ Nick Murray, "As Nunavut turns 20, where is it on Inuit hiring goals?", *CBC News* (9 April 2019), online: <<https://www.cbc.ca/news/canada/north/article-23-nunavut-inuit-employment-1.5084889>>

working at the higher level territorial positions compared to the number of Inuit working at the municipal level, illustrates Berger's concern that there were less Inuit working at the higher levels of public service in Nunavut in 2006 has remained unaddressed to this day.

A major contributing factor to the discrepancy that Berger observed in his report was that the number of qualified Inuit were exhausted.²¹⁰ In his report, Berger wrote that only 25 percent of Inuit in Nunavut graduate high school and not all go to post-secondary.²¹¹ In addition, there is no university within Inuit Nunangat, therefore Inuit and northerners have to travel to southern Canada to obtain a higher education. Today's data on education shows improvement but is still shows a significant education gap which Inuit are constantly working to address.²¹²

These social inequities influence the participation of Inuit within governing structures in Nunavut. It will also likely influence the number of Inuit who participate in the governing institutions within Nunavik, Inuvialuit and Nunatsiavut, too. Within each of these four Inuit regions access to social infrastructure, such as housing, hospitals, colleges and universities are in their early stages of development, especially compared to more southern urban centers within Canada.²¹³ The push for Inuit to exercise their inherent political right to govern themselves and to fill the necessary positions within government is a complex and an on-going process throughout Inuit Nunangat.

²¹⁰ *Berger Report*, *supra* note 208 at iii.

²¹¹ *Ibid.*

²¹² Inuit Tapiriit Kanatami, "Inuit Post-Secondary Education Strategy: Raising Education Attainment Rates" (June 2020), online (pdf): *Inuit Tapiriit Kanatami* <https://www.itk.ca/wp-content/uploads/2020/06/ipse-strategy_draft_english.pdf>.

²¹³ Inuit Tapiriit Kanatami, "Social Determinants of Inuit Health in Canada" (September 2014), online: <https://www.itk.ca/wp-content/uploads/2016/07/ITK_Social_Determinants_Report.pdf>

What this teaches us is that the settlement of a land claim agreement does not automatically confer a life in Canada's north where Inuit enjoy the same access to services as those offered in Canada's southern urban centers. Martin Papillon highlights that within the context of public governing structures created by a modern treaty, such as the *JBNQA*, the Inuit and also the Cree were downloaded more administrative responsibilities, then were denied the opportunity to define their own priorities.²¹⁴ Papillon also expresses that modern treaties are no panacea for the issues experienced throughout Indigenous communities in Canada's north.²¹⁵

I would also add that the settlement of a constitutionally protected modern treaty where Inuit have access to 85 percent of the public government positions, such as in Nunavut, does not automatically mean Inuit will make up a majority of those positions. As Berger wrote in his report, there are only 25 percent of Inuit graduating high school and not all go to post-secondary.²¹⁶ In addition, Inuit have some of the highest rates of suicide in the world, there is no university in the North, and there are housing issues throughout Inuit Nunangat (overcrowded housing, inadequate housing).

These are intergenerational issues that are alive and well in community and they stem from colonization. Inuit grapple with the inter-generational effects of these things every day. I argue that addressing these social inequities are front and foremost the area in which Inuit governing institutions will focus their attention. The freedom to imagine what Inuit legal orders are and how they can be applied to the relevant governing

²¹⁴ *Aboriginal Quality of Life under a Modern Treaty*, *supra* note 170 at 9.

²¹⁵ *Ibid.*

²¹⁶ *Berger Report*, *supra* note 208 at 66-67.

institutions throughout Inuit Nunangat, is not the number one priority when there is a housing crisis, food insecurity or a suicide crisis.

Nevertheless, the work of continuing to advance Inuit legal and political rights continues in Nunavut and it also continues within Nunavik, Inuvialuit and Nunatsiavut. Both Inuvialuit and Nunavik are continuing to negotiate self-government and currently the only Inuit land claim agreement that has a self-government chapter is the *Labrador Inuit Land Claims Agreement* and the political and legal work in that region is ongoing. I now turn to the agreement that governs the territory of my ancestors in Nunatsiavut.

4.5 Labrador Inuit Land Claims Agreement - 2005



The purpose of this section is to briefly highlight three decades of negotiations in the settlement of the *Labrador Inuit Land Claims Agreement* and explain why this is the only Inuit modern treaty with a self-government chapter. This section also highlights how a bill becomes Inuit Law once it has been passed through the Nunatsiavut Assembly.

²¹⁷ Map of Nunatsiavut found at, Inuit Tapiriit Kanatami, “About Canadian Inuit” (2019), *Inuit Tapiriit Kanatami*, online: <https://www.itk.ca/about-canadian-inuit/>

The *Labrador Inuit Land Claims Agreement*²¹⁸ is the only Inuit modern treaty with a self-government chapter. Negotiations relating to the agreement took nearly three decades and began in 1977 when the Labrador Inuit Association [now Nunatsiavut Government] submitted their claim, *Our Footprints are Everywhere*.²¹⁹ The proposed claim was shared with the federal and provincial governments.²²⁰

The claim was accepted by the federal government but the Newfoundland and Labrador government were not willing to accept it until two pre-conditions were met. These pre-conditions were that a) negotiations would lead to extinguishment of Aboriginal rights and title and b) the federal and provincial governments had to come to an agreement on cost sharing.²²¹ This initially halted the negotiations process for the Labrador Inuit, but the pre-conditions were set aside and negotiations ensued in 1980.²²² The negotiations were halted again until 1989 because the federal government had a policy of only negotiating with six land claimants at a time.²²³

Throughout these decades federal policy relating to Aboriginal self-government began to change in the 1990's when the 1995 federal Inherent Rights Policy came into effect. It was because of these changes in federal policy that Labrador Inuit were able to insert provisions relating to self-government within the final agreement. On January 22,

²¹⁸ *The Land Claims Agreement Between the Inuit of Labrador and Her Majesty the Queen in Right of Newfoundland and Labrador and Her Majesty the Queen in Right of Canada*, (1 December 2005), online: <https://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/al_ldc_ccl_fagr_labi_labi_1307037470583_eng.pdf> [*LILCA*].

²¹⁹ Canada, Indian Affairs and Northern Development, *Background Paper: The Comprehensive Land Claim Negotiations of the Labrador Inuit, the Government of Newfoundland and Labrador and the Government of Canada*, (Ottawa: Indian and Northern Affairs Development, 1990) at 3, online: <http://publications.gc.ca/collections/collection_2017/aanc-inac/R32-335-1990.pdf>.

²²⁰ Christopher Alcantara, "Explaining Aboriginal Treaty Negotiation Outcomes in Canada: The Cases of the Inuit and the Innu in Labrador" (2007) 40:1 *Canadian Journal of Political Science* 185 at 191 [*Explaining Aboriginal Treaty Negotiation Outcomes in Canada*].

²²¹ *Ibid.*

²²² *Ibid.*

²²³ *Ibid.*

2005 in Nain, all parties signed the *Labrador Inuit Land Claims Agreement*, three decades after negotiations had started!

Chapter 17 of *LILCA* governs the jurisdiction that the Nunatsiavut Government has in exercising self-government and is 47 pages long. It outlines the legal responsibilities, parameters, legislative powers and roles the Nunatsiavut government has in areas such as language and culture, control of alcoholic beverages within the territory, an Inuit court, environmental protection, education, health, social, family, children and youth services, solemnization of marriage, family relationships and housing.²²⁴

The *Labrador Inuit Constitution* also falls within Chapter 17 of *LILCA*. The Constitution sets out the backbone of the Nunatsiavut government's roles and responsibilities to the Nunatsiavut territory and to the Labrador Inuit. The creation of Inuit Law occurs through the Nunatsiavut Legislative process that is similar to the Westminster style of passing laws.

The *Nunatsiavut Constitution Act*,²²⁵ part 4.18.1 allows the Nunatsiavut Assembly to make Inuit Laws in relation to anything that is in the legislative authority of the Nunatsiavut government. Part 4.18.2 of the *Act* highlights that proposed Inuit Laws are bills, and a bill becomes an Inuit Law after it has been read twice by the Nunatsiavut Assembly and has been assented to by the President of the Nunatsiavut government (an

²²⁴ This is not an exhaustive list of the powers and responsibilities the Labrador Inuit government has within its jurisdiction, to view an exhaustive list see, *LILCA*, *supra* note 218 at Chapter 17.

²²⁵ See, *The Nunatsiavut Constitution Act: Schedule A, The Labrador Inuit Constitution*, IL-N 2005, Part 4.18.1, online: <https://www.nunatsiavut.com/wp-content/uploads/2014/03/IL-2005-02-Nunatsiavut-Constitution-Act_.pdf> [*The Nunatsiavut Constitution Act*]. "The Nunatsiavut Assembly may make laws referred to as Inuit law, on any matter that is within the legislative competence of the Nunatsiavut Government. The legislative authority of the Nunatsiavut Government is defined the Labrador Inuit Land Claims Agreement."

emergency bill can be passed only after one reading).²²⁶ Part 4.19.3 of the *Act* establishes that a bill receives assent the day after it is signed by the President of the Nunatsiavut government with the Nunatsiavut seal, where it is then entered into the register of Inuit laws and a copy is forwarded to the Inuit Court.²²⁷

This legislative process within the Nunatsiavut Assembly, as well as the inception of the Nunatsiavut government, is less than two decades old. The Labrador Inuit are continuing to implement the *Labrador Inuit Land Claims Agreement* while also adapting to a fast pace changing world and simultaneously adjusting to the realities brought on by intergenerational traumas. The realities that Berger highlighted that negatively influence the treaty implementation process within Nunavut such as the lack of access to post-secondary education and other socio-economic inequities also permeate other areas of Inuit Nunangat including, Nunatsiavut. These realities pose unique challenges for implementing Inuit legal orders within the legislative process of the Nunatsiavut Assembly.

In the next chapter, I turn to the challenges involved in adapting Inuit legal principles into contemporary governance structures with an emphasis on how these potential issues can be addressed by adapting creative ways to apply Indigenous laws into governance structures like the Navajo Tribal Courts have in their justice system.

²²⁶ *Ibid* at Part 4.18.2. “Proposed Inuit laws are referred to as bills and a bill becomes Inuit law when it has been passed twice by the Nunatsiavut Assembly and has been assented to by the President of Nunatsiavut, except for an emergency bill which, despite the other provisions of this part, maybe made law after only one reading.”

²²⁷ *Ibid* at Part 4.19.3. “The bill receives assent the beginning of the day following the day on which the President of Nunatsiavut signs the bill under the Nunatsiavut seal and the bill, so signed and sealed, is entered in the register of Inuit laws and a duplicate copy is forwarded to the Inuit Court for safe keeping.”

CHAPTER 5 CHALLENGES OF COLONIAL LEGAL SYSTEMS IN INUIT COMMUNITIES

A majority of Inuit live in very remote places in northern regions where a majority of the communities are only accessible by plane or boat; there are no roads that connect the communities to southern urban Canadian cities.²²⁸ This exacerbates the cost of living, limits service delivery such as health care and limits capacity for infrastructure development. These socio-economic realities throughout Inuit Nunangat cannot be separated from the challenges of implementing a land claim and self-government agreement.

Thomas Berger highlights that comprehensive education in the Inuktitut language and implementing the *Nunavut Land Claims Agreement* are intrinsically connected because Inuit who speak Inuktitut and finish high school, along with post-secondary education are then hired within the territory's government. Much of the educational opportunities within Nunavut are taught in English, and many students who pursue post-secondary education have to leave their communities, language and families to travel to southern Canada.²²⁹

²²⁸ For a more in depth perspective on accessing northern regions throughout Canada including Nunatsiavut see, Centre for the North at the Conference Board of Canada, *Study on Addressing the Infrastructure Needs of Northern Aboriginal Communities*, (National Aboriginal Economic Development Board, Working Paper, 2014) online:< <http://www.naedb-cndea.com/reports/northern-infrastructure-report.pdf>>.

²²⁹ *Berger Report*, *supra* note 208 at 23-44.

I make the argument that it is similar in the context of Nunatsiavut, where there is no access to a permanent college or university in the five Inuit communities in Labrador, and students have to leave their home to pursue a formal academic degree. Advancing Inuit law in the formal sense and implementing the *Labrador Inuit Land Claims Agreement* is a challenge when there is no access to post-secondary institutions within Nunatsiavut and no law school within the province of Newfoundland and Labrador. A law school would provide the formal training needed to understand Canadian common law.

It would also create an opportunity for Nunatsiavimmiut to learn about their rights, the *Labrador Inuit Land Claims Agreement* and lastly a law school could also help to revitalize Inuit legal orders. Which would provide a foundation in understanding how Inuit legal orders can be applied to contemporary governance systems that govern Nunatsiavimmiut. However, without a law school within Nunatsiavut and without a law school in the province, this training is not accessible. This leaves a huge educational gap to fill when advancing Inuit legal orders within Nunatsiavut.

With this gap in legal training within Nunatsiavut, where Inuit do not have access to the training needed to become lawyers, many lawyers who enter into Inuit communities to litigate or represent Inuit in different legal capacities are non-Inuit. These individuals have the academic degrees to practice law to work with Inuit, but their worldview is likely very different. The two worlds collide, but the individual who can speak the legal language of the colonial system, has a comparative advantage over Inuit who do not have access to the legal education required to understand these systems and its language.

There are examples worldwide of western legal and governance systems entering into Indigenous populations and systems dysfunction to the disadvantage of Indigenous people.²³⁰ To illustrate the possibilities as well as the complexities involved with western and Indigenous worldviews colliding and working together within legal systems, the next section will highlight how the Navajo are similar but different from Inuit. How the Navajo and Inuit have begun to apply their legal principles within modern 21st century western systems while simultaneously, also navigating the changes brought on by colonization and globalization.

The Navajo Tribal Court applies Navajo common law, along with Anglo-American legal traditions and Indigenous legal traditions from around the world.²³¹ The Navajo judges are mandated by the *Fundamental Laws of the Dine*²³² to apply principles of Navajo values into their decision-making throughout civil and criminal proceedings.²³³

The creation of this system of Navajo courts came about because the Navajo had issues with the existing western style court. Some of these issues included the western system disrupting Navajo justice concepts when it imposed criminal law and

²³⁰ Shelagh Grant, *Arctic Justice: On Trial for Murder, Pond Inlet, 1923* (Montreal: McGill-Queens University Press, 2005) recounts the events that took place in the Eastern High Arctic, where Robert Janes was murdered by Nuqallaq. At the time, there was no criminal law enforcement in the region, but Inuit custom saw the death of Robert Janes as a way to maintain safety and remove a threat from the community. However, Nuqallaq and two other Inuit went to trial and Nuqallaq was convicted of murder and sent to a penitentiary in the south where he later contracted tuberculosis and died. See also, Hadley Friedland et al., “Porcupine and Other Stories: Legal Relations in Secwêpemcúlecw”, (2018) 48 R.G.D. 153 at 157-161, where the Secwêpemcúlecw share their jurispactic (laws that would not recognize or tolerate any other law but themselves) experiences with Canadian common law and the Indian residential schools. Where their laws have been disregarded by the state for decades, to their detriment and the focus of the project is to revitalize and create spaces where Secwêpemcúlecw laws can be dissected and engaged with in the area of natural resource and environmental stewardship.

²³¹ Raymond D Austin, *Navajo Courts and Navajo Common Law: A Tradition of Tribal Self-Governance* (Minnesota: University of Minnesota Press 2009) at 18 [*Navajo Courts and Navajo Common Law*].

²³² US, Navajo Nation 69-02, *Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Dine*, 13 November 2002, New Mex., (enacted), online: <<http://www.navajocourts.org/dine.htm>> [*Amending Title 1 of the Navajo Nation Code*].

²³³ *Ibid.*, See also, *Navajo Courts and Navajo Common Law*, *supra* note 231 at 45.

incarceration as punishment, with police enforcing these laws. The Navajo avoided using these legal systems because it was associated with police, incarceration and jails and the practices were incompatible with traditional Navajo justice. As Raymond Austin explained, “[a]ny system that uses coercive authority is antithetical to traditional Navajo justice procedures and consensual decision making.”²³⁴

To reconcile the complexities and incongruences of a western system of law and court with Navajo principles, Navajo judges incorporate Navajo common law into their decisions, which preserves Navajo culture, language, spirituality and identity for generations.²³⁵ Examples of traditional concepts incorporated by Navajo judges include an apology, forgiveness and restitution by a defendant when sentenced.²³⁶ Judges also have individuals lecture defendants to teach them how to maintain healthy relations within the Navajo community.²³⁷ An example of a Navajo Supreme Court case that incorporated an Indigenous legal principle is *Ben v. Burbank*.²³⁸

The issue in the case was a breach of contract and the parties entered into the contract in accordance with traditional Navajo ways. The appellant argued that the statute of limitations should have barred the defendant’s action.²³⁹ The defendant argued that *k’e*, a Navajo legal principle, should be used rather than the statute of limitations and the judges agreed.²⁴⁰ The judges found that:

Navajo common law is the first law of our courts and we will abide by it whenever possible. Therefore, we agree with Appellee that the Navajo way of *k’e*

²³⁴ *Navajo Courts and Navajo Common Law*, *supra* note 231 at 22.

²³⁵ Raymond D., Austin, *Navajo Courts and Navajo Common Law*, (PhD Dissertation, University of Arizona, 2007), at 8, [unpublished, archived at University of Arizona], online:<<https://turtletalk.files.wordpress.com/2010/05/ray-austin-dissertation.pdf>> [*Austin Dissertation*].

²³⁶ *Ibid* at 44.

²³⁷ *Ibid* at 45.

²³⁸ *Ben v. Burbank* (1996) 7 Navajo Reporter 222 (Navajo SC) [*Burbank*].

²³⁹ *Navajo Courts and Navajo Common Law*, *supra* note 231 at 134.

²⁴⁰ *Ibid*.

is the prevailing law to be applied. *K'e* recognizes “your relations to everything in the universe,” in the sense that Navajos have respect for others and for a decision made by the group. It is a deep feeling for responsibilities to others and the duty to live in harmony with them. It has to do with the importance of relationships to foster consensus and healing. It is a deeply felt emotion which is learned from childhood. To maintain good relations and respect for one another, Navajos must abide by this principle of *k'e*.²⁴¹

The Navajo Supreme Court concluded that the “*k'e* doctrine would be the best option to repair the parties’ damaged clan relationship and restore them to being good relatives...”²⁴² and that this Navajo legal principle of *k'e* would supersede the statute of limitations.

The Navajo Tribal Court is independent from the Navajo government. The practice of incorporating legal principles such as *k'e* within their judicial system is consistent with and codified through the *Fundamental Laws of the Dine* and the Navajo common law.

This practice of looking first to Navajo legal principles to solve legal issues throughout the Navajo Courts, is very different from the approach that criminal courts take in Canada. It is different because judges are not mandated by any Declaration to look first and Indigenous legal principles and how they can be applied to a legal issue that involves an Indigenous person. Therefore, if judges want to apply Indigenous legal principles in their proceedings, they have to find creative ways of doing so. Justice Paul Bychok managed to creatively incorporate Inuit Qaujimajatuqangit [Inuit law or Inuit values] principles within his decision when sentencing an Inuk man in Nunavut.

²⁴¹ *Burbank*, supra note 238 at 224.

²⁴² *Navajo Courts and Navajo Common Law*, supra note 231 at 134.

In the Nunavut Court of Justice case of *R v. Itturiligaq*²⁴³ the issue dealt with a young first-time offender who was Inuk. Throughout Justice Bychok’s decision, he said that Inuit Qaujimajatuqangit principles were to be used in the sentencing of Mr. Itturiligaq because judges all throughout Canada under section 718.2(e) of the *Criminal Code*²⁴⁴ have a constitutional duty to take “judicial notice of the systemic or background factors to sentencing which is relevant to Aboriginal offenders.”²⁴⁵

Unlike in the Navajo Tribal Court context where Navajo judges are mandated by the *Fundamental Law of the Dine* to take Navajo common law into account, Canadian judges are not legislatively mandated to take into account Indigenous legal principles when making decisions regarding Indigenous populations.

Mr. Itturiligaq had offences related to firearms, unlawful confinement and assault with a weapon. The offence specifically relating to the firearm carried a mandatory minimum of four years. If Mr. Itturiligaq was sentenced to the mandatory minimum, he would have to serve his sentence in a federal prison and there is no federal prison in Nunavut. This would mean he would have to travel to southern Canada, away from his family, community, language and culture.

Justice Bychok did not sentence Mr. Itturiligaq to a mandatory minimum of four years because he said it would violate his section 12 Charter right that “everyone has the right not to be subjected to any cruel and unusual treatment or punishment.”²⁴⁶ The reasons he chose to reduce his sentence was partly due to the incorporation of Inuit

²⁴³ *R v Itturiligaq*, [2018] NuJ No 29, 2018 NUCJ 31 [*Itturiligaq I*].

²⁴⁴ *Criminal Code*, RSC 1985, c C-46, <<https://canlii.ca/t/55c9q>> retrieved on 2022-05-10> [*Criminal Code*].

²⁴⁵ *R. v. Gladue*, 1999 CanLII 679 (SCC), [1999] 1 SCR 688, <<https://canlii.ca/t/1fqp2>>, retrieved on 2022-02-16, at 83 and 84 [*Gladue*].

²⁴⁶ *Constitution Act*, *supra* note 2.

Qaujimajatuqangit principles throughout his decision-making process.²⁴⁷ In the judgement, Justice Bychok highlighted the principles of Inuit Qaujimajatuqangit:

To use a rifle to endanger oneself or others is not only a violation of Canadian criminal law; it is contrary to all Inuit societal values -- Inuit Qaujimajatuqangit:

- * Inuuqatigiitsiarniq (respecting others, relationships and caring for people);
- * Tunnganarniq (fostering good spirit by being open, welcoming and inclusive);
- * Pijitsirniq (serving and providing for family or community or both);
- * Aajiiqatigiinni (decision making through discussion and consensus);
- * Pilimmaksarniq or Pijariuqsarniq (development of skills through practice, effort and action);
- * Piliriqatigiinni or Ikajuqtigiinni (working together for a common cause);
- * Qanuqtuurniq (being innovative and resourceful); and
- * Avatittinnik Kamatsiarniq (respect and care for the land, animals and the environment).²⁴⁸

Justice Bychok then applied Inuit Qaujimajatuqangit to the circumstances of the offender:

As I have noted elsewhere, imprisonment is consistent with traditional Inuit justice. When a person threatened the traditional group's safety and well-being, that person could be, and sometimes was, banished. Many were later welcomed back into the group. Forgiveness, reconciliation, reintegration and restitution were, and still are, key aspects of Inuit justice; as they are today in the Nunavut Court of Justice.²⁴⁹

Justice Bychok continues:

Rehabilitation, reconciliation and reintegration continue to be as relevant to Nunavummiut today as they have always been. The Nunavut Court of Justice honours and is mindful of that tradition. More importantly, these Inuit norms *must* be considered by the judge when crafting a just and fit sentence.²⁵⁰

²⁴⁷ *Itturiligaq 1*, *supra* note 243 at 18, 125-126 and 116. Other factors that influenced Justice Bychok's decision include contextualizing the culture and society of Nunavimmiut where the offender grew; the four-year mandatory minimum for the gun-related offence was a breach of Mr. Itturiligaq's section 12 Charter right; and the reality that Mr. Itturiligaq who was a first time offender would be sent thousands of kilometers away to a federal prison because that is the only option for federal sentences which is akin to resettlement and residential schools for Inuit.

²⁴⁸ *Ibid* at 62.

²⁴⁹ *Ibid* at 86.

²⁵⁰ *Ibid* at 108.

Mr. Itturiligaq was sentenced to 303 days in jail, which was in addition to time already served and two years' probation, which meant he would serve time within Nunavut as opposed to being flown to southern Canada to a federal prison.

The decision of Justice Bychok was appealed to the Nunavut Court of Appeal. One of the Crown prosecutor's arguments at the Court of Appeal was that Justice Bychok gave too much weight to Inuit Qaujimajatuqangit where:

[h]e purported to interpret and explain these concepts [of Inuit Qaujimajatuqangit] without any evidence before him as to their meaning. Then he took his own interpretation of [Inuit Qaujimajatuqangit] principles and used them in a manner to elevate them over principles in the Criminal Code of Canada...²⁵¹

At the Court of Appeal the Crown also argued that the firearm related offence was supposed to be given utmost gravity and that the double *mens rea* component for the firearm related offence provided that there was elevated moral blameworthiness. The Court of Appeal agreed, "the Crown is correct that Parliament intended to give primacy to denunciation and deterrence to address pressing and substantial concerns regarding firearm violence in Canada."²⁵² The Crown also argued,

...that in the absence of any evidence, the sentencing judge resorted to untested and unsubstantiated personal conjecture in determining that if Mr. Itturiligaq were to serve a penitentiary sentence outside of Nunavut, it would have a grossly disproportionate negative impact on him as an Inuit offender.

The Court of Appeal agreed with the Crown's argument on this point stating, "[i]t cannot be said that holding Mr. Itturiligaq accountable for his actions by imposing a fit and proportionate sentence for this offence given its gravity and his moral culpability,

²⁵¹ Thomas Rohner, "Nunavut judge gave too much weight to Inuit traditional values: prosecutors", *Nunatsiaq News* (11 September 2019), online: <<https://nunatsiaq.com/stories/article/nunavut-judge-gave-too-much-weight-to-inuit-traditional-values-prosecutors/>>.

²⁵² *R v Itturiligaq*, 2020 NUCA 6 (CanLII), <<https://canlii.ca/t/j858k>>, retrieved on 2022-05-15, at 55-56 [Itturiligaq 2].

becomes an unfit, much less a grossly disproportionate sentence, on the basis that he must serve his penitentiary time in another jurisdiction.”²⁵³ The Court of Appeal also acknowledged that “...we do recognize the double disadvantage when Inuk offenders are removed from their home communities, both physically and culturally.”²⁵⁴ The Court of Appeal also took issue with the statement that the victim forgave Mr. Itturiligaq for his actions, absent any evidence of this.

Therefore, while we agree that neither the harm done to a victim, nor their needs going forward should be ignored in sentencing, placing undue weight on “forgiveness” before determining that this is what the victim actually meant may reveal judicial error which results in a disproportionate sentence.²⁵⁵

Lastly, the Court of Appeal assessed Justice Bychok’s application of Inuit Qaujimajatuqangit and expressed that,

There is undoubtedly an important intersection between Inuit Qaujimajatuqangit and Canadian criminal law rules and processes. However, without any evidentiary record to assess whether the Inuit community’s application of its own Inuit Qaujimajatuqangit would have necessarily or inevitably resulted in a lower sentence, it was not correct to assume that in a domestic dispute where a powerful weapon was fired in anger at an occupied home, the Inuit community itself would have placed any mitigating weight on the victim’s willingness to continue a relationship with Mr. Itturiligaq.²⁵⁶

Due to the reasons above, the Court of Appeal ruled that the “Crown’s appeal [was] allowed. The declaration of unconstitutionality of s. 244.2(3)(b) [was] set aside, the sentence imposed by the sentencing judge [was] set aside, and a four-year penitentiary term [was] substituted.”²⁵⁷

²⁵³ *Ibid* at 55-68.

²⁵⁴ *Ibid* at 70.

²⁵⁵ *Ibid* at 72.

²⁵⁶ *Ibid* at 75.

²⁵⁷ *Ibid* at 98.

The grounds of appeal that resonate in the focus of this thesis are the complexities that are involved with the introduction of Inuit Qaujimajatuqangit in a criminal sentencing. The Court of Appeal expressed concern that Justice Bychok took judicial notice of Inuit Qaujimajatuqangit, but there was no evidentiary record to assess whether the Inuit community's application of its own Inuit laws would have resulted in a lower sentence for Mr. Itturiligaq. The principles within Inuit Qaujimajatuqangit were expressly written into the judgement of Justice Bychok, but without input from the community on those principles, their application was less credible. Therefore it can be inferred that Inuit participation in breathing life into Inuit laws and how these laws can be applied to 21st century institutions of power and privilege such as a criminal sentencing, is integral. It is important to create spaces where western legal systems can find creative ways to work alongside Inuit legal systems, especially in a circumstance where an Inuit Court will be created in the future in Nunatsiavut.

A helpful place to help facilitate the conversation around Inuit laws and their application to 21st century governance systems is to highlight that the Navajo Tribal Court is an example that Inuit in Nunatsiavut could learn from when working towards exercising their inherent right to establish an Inuit Court. The Navajo Tribal Court is home to a nation that is self-governing, but also influenced by United States federal and congressional decisions.²⁵⁸ Provincial and federal laws still govern many aspects of the Nunatsiavut Government. But, the Nunatsiavut Government also exercises jurisdiction over several areas of Inuit life, including the creation of an Inuit Court within Nunatsiavut.

²⁵⁸ William C Canby, *American Indian Law in a Nutshell*, 5th ed. (St. Paul: West Publishers, 2009) at 1-5.

Raymond Austin's authorship provides guiding principles that can be applied by the Nunatsiavut Government when breathing life into provisions of the *Labrador Inuit Land Claims Agreement*. Raymond Austin highlights these guiding principles that the Navajo Supreme Court applies which can also be applicable when creating an Inuit Court under Chapter 17 of the *Labrador Inuit Land Claims Agreement*:

(1) understand the customs and traditions; then decide how they would apply to an issue; (2) customs and traditions may vary from place to place on the Navajo Nation; (3) some customs and traditions may have fallen into desuetude; and (4) parties to a case may not follow customs and traditions.²⁵⁹

Although, a party may not practice customs or traditions throughout any time within the court process, the judges and those litigating can consider the Navajo common law at any time.²⁶⁰ When Navajo common law is being located, or entered into pleadings or being proven within the Navajo Nation Courts, the Supreme Court has set parameters.

Some of these parameters include:

When a party is relying on a Navajo custom, the custom must be alleged and the pleading must generally set out how the custom supports the claim²⁶¹, and this provides the other party notice to challenge the common law claim.²⁶² Later the Navajo Supreme Court expanded this principle after the *Diné Fundamental Law* was passed, by allowing individuals to plead Navajo customs after the initial pleadings,²⁶³ but the other party still has to be given notice.²⁶⁴ Navajo common law can be found within Judicial Branch Solicitor opinions, written Navajo court opinions and literature and studies on Navajo culture, including those by social scientists, attorneys, legal scholars and Navajo judges.²⁶⁵ Navajo common law can be introduced through an expert witness and a witness must be qualified as an expert on the customs and traditions prior to offering evidence in the area of

²⁵⁹ *Navajo Courts and Navajo Common Law*, *supra* note 231 at 46 citing from *Lente v. Notah*, 3 Nav. Rptr. at 72 and 80 (Nav. Sup. Ct. 1982).

²⁶⁰ *Ibid* citing from *In re Estate of Belone*, 5 Nav. Rptr., 161, 163 and 164 (Nav. Sup. Ct. 1987) [*Belone*]; *Judy v. White*, 8 Nav. Rptr., 510, 535 and 536 (Nav. Sup. Ct. 2004) [*Judy*].

²⁶¹ *Navajo Courts and Navajo Common Law*, *supra* note 231 at 47 citing from *Belone*, *supra* note 260 at 161, 164.

²⁶² *Navajo Courts and Navajo Common Law*, *ibid* at 47.

²⁶³ *Ibid* at 47 citing from *Judy*, *supra* note 260 at 510, 535, 536.

²⁶⁴ *Ibid* at 47.

²⁶⁵ *Ibid* citing from *Belone*, *supra* note 260 at 161, 165.

expertise.²⁶⁶ Evidence of an expert witness's credential can come from (1) readings on customs, (2) practicing customs, or (3) understanding of customs derived from oral education, living a traditional lifestyle, long-term interest in and acquisition of traditional knowledge, or reputation as a person well versed in traditional knowledge.²⁶⁷ Lastly, unwritten Navajo customs and norms have been entered into the legal jurisprudence of the Navajo Nation Courts through the legal doctrine of judicial notice.²⁶⁸

This general overview of how the Navajo Courts implement Navajo common law into their jurisprudence and judicial system is a significant source of valuable information as it provides insight into ways that Inuit can incorporate their own laws into contemporary legal settings and governance structures. Such as the case in Nunatsiavut, where there is jurisdiction under the *Labrador Inuit Land Claims Agreement* in Chapter 17 to create an Inuit Court.

The Nunatsiavut Government is a young government in comparison to other Indigenous governments such as the Navajos and the conversation about developing an Inuit Court in Nunatsiavut may be well into the future. However, the conversation has to start somewhere, and the next logical step is to find creative ways to derive Inuit laws from historical and contemporary sources.

This thesis is advancing the argument that a Declaration of Inuit Laws, that is mandatory in Inuit Court proceedings in Nunatsiavut, is a possibility. The Nunatsiavut Government has the jurisdiction under self-government provisions within the *Labrador Inuit Land Claims Agreement*, to do this. This document would operate and have a

²⁶⁶ *Ibid* at 47. See, *Belone, supra* note 260 at 161, 165, for the full guidelines regarding how an expert is qualified by the court.

²⁶⁷ *Ibid*. See, *Belone, ibid* at 167, for the full guidelines regarding how an expert is qualified by the court.

²⁶⁸ *Ibid* at 50. See *Belone, ibid* at 161, 165, for a more in depth look into how the courts apply judicial notice in the context of Navajo common laws.

similar force and effect as the *Fundamental Law of the Dine* in the judicial process of the Navajo Nation Courts.

The Inuit legal principles within this Declaration of Inuit Laws could be found within published and publicly accessible stories. It is important to note that published and publicly accessible stories is not the only source of Inuit law, but it is the source that has been utilized within this thesis. The following chapter sifts through twenty Inuit stories and derives the legal principles within these stories using the ILRU case briefing methodology. These principles could be guiding principles in the drafting of a Declaration of Inuit Laws, to illustrate how this is a possibility in the future if the Nunatsiavut Government sought to institute such a Declaration applicable to an Inuit Court in Nunatsiavut.

CHAPTER 6 SYNTHESIS

As expressed earlier, I carefully analyzed twenty Inuit stories from published and publicly accessible stories using the ILRU case briefing methodology with a view to understanding how individuals in the stories managed harm and conflict in the community. If the reader would like to read the stories in more detail, there are case briefs of each story in Appendix A. In those case briefs I bracket contradictions or questions that came up while reading the stories. Generally, the bracketed section of the case briefs would be brought back to the community for their input, but as stated earlier, this was unfortunately not viable in the workings of my thesis.

Below I have organized my findings into a summary chart which outlines the statements of law that arose throughout the case briefing method. In addition, the stories that support the statement of law or the legal principle(s) are cited. Following each chart, the stories and the relevant facts that illustrate the legal principle from those stories are referenced.

In learning to read and understand any type of law there is a learning curve. In reading through published and publicly accessible Inuit stories in search of the legal principles that govern harm and conflict within an Inuit community, there is also a learning curve. It is important to recognize that these stories are not to be taken literally, rather it would be beneficial to recognize that a story is one method of sharing law. Louis Bird's writings provide insight into this he highlights that:

We take the stories that have actually been brought down for generations because they have value. Even though some of them sound horrible and terrible to

different cultures, for the Omushkego culture it is a necessary type of teaching system. It saves lives. It saves the families. It saves the children.²⁶⁹

Some of the following stories can sound harsh to the reader, but underneath a first glance of their oration, there are laws. These laws that have been shared and passed down amongst Inuit for generations have enabled their survival in some of the harshest and most unforgiving terrain in the world. Understanding the laws and which decisions to make could deeply affect an individual, a family or an entire community. It is important to keep this in mind while sifting through the following section, that beneath the storyline, there are legal principles which helped keep Inuit alive for millennia. The work within this thesis is to try and uncover the legal principles buried within the following stories.

Analytical Framework

1. General underlying principles: *What underlying or recurrent themes emerge in the stories that are important to understanding more specific points of law?*

General Statements of Law
1.1 It is important to respect birds/animals/inanimate/spiritual beings: The proposition that living beings that are not in human form must be respected, otherwise there can be consequences: <i>Storm Caused by a Loon, Taboos and Starvation, Igimagajug, the Cannibal, Lice, The Soul.</i>
1.2. The protection of family/community members is important: The proposition that family/community members collectively work together to protect their loved ones in situations where there is harm or a threat to survival: <i>Qaudjaqduq, Ijimagasukdjukdjuaq, Separated from Camp, The Woman who Could not Be Satiated, The Artificial Skull that Frightened People to Death, Pautusôrssuaq, who Murdered his Uncle, The Wife Changers, Podluksak, Papik, Kating Saved his family in Time of Famine, Igimagajug, the Cannibal, Atungait, The Emigration of Women.</i>

²⁶⁹ *Gathering the Threads*, supra note 44 at 23 citing from Louis Bird, *The Spirit Lives in the Mind: Omushkego Stories, Lives, and Dreams*, ed by Susan Elaine Gray (Montreal: McGill-Queen's University Press, 2007) at 4.

General Statements of Law

1.3. Individuals who pose a threat, or cause harm to an individual or a community, are punished through separation or at times banished from the community: The proposition that people who cause harm face consequences for their acts including being permanently removed from the community in some situations: *The Woman who Could not Be Satiated, Ijimagasukdjukdjuaq, Pautusôrssuaq, who Murdered his Uncle, The Wife Changers, Podluksak, Papik, Igimagajug, the Cannibal, The Emigration of Women.*

1.4. The care and protection of elders/parents is important: The proposition that family members and community members are expected to care for their parents/elders: *The Soul, The Woman who Could not Be Satiated, The Artificial Skull that Frightened People to Death, Kating Saved his family in Time of Famine.*

1.5. Sharing foods and resources is important: The proposition that family and community members are expected to share their resources with others: *Separated from Camp, Taboos and Starvation, The Woman who Could not Be Satiated, The Artificial Skull that Frightened People to Death, Kating Saved his family in Time of Famine, Atungait, The Emigration of Women.*

1.6. Adherence to taboos/customary Inuit laws: The proposition that it is important for members of a community and members of a family to share taboos or customary laws and that these customary laws must be followed: *Taboos and Starvation, The Man who did not Observe Taboos, Papik, Igimagajug, the Cannibal.*

Stories Supporting General Statements of Law:

1.1 It is important to respect birds/animals/inanimate beings/spiritual beings

In stories where birds or animals are mistreated, those animals came back in spirit form and caused great distress to those who inflicted pain upon it. In the story, *Storm Caused by a Loon*,²⁷⁰ the loon's feathers were almost completely plucked by people, and in revenge for that, in the winter, the loon caused a great snowfall and made it difficult for people to reach their meat underneath the snow.²⁷¹ Several people died of starvation. This story reflects that it is important to treat the loon, and other living beings with

²⁷⁰ *The Storm Caused by a Loon*, supra note 103 at 129.

²⁷¹ *Ibid.*

respect. It also highlights the importance of not intentionally inflicting harm onto another being.

Similarly, in *Taboos and Starvation*,²⁷² the hunters did not follow the customary Inuit law of not taking walrus hide with them when they went caribou hunting. After not following the teachings of customary law given to them by the leader, the hunters returned to their community with very little caribou. Other community members, who were also hunting, did not return and that fall they were found, where many had died of starvation.²⁷³ This story reflects that it is important to respect the teachings of a leader and a hunter is not supposed to take walrus hide with them when they go hunting.

In *Igimagajug, the Cannibal*, a woman gave birth to a stillborn child while her husband, Igimagajug, was away hunting ground seals. Igimagajug asked his wife to haul the ground seal inside, but she told Igimagajug that she just gave birth to a still born child and that she did not want to. Then Igimagajug commanded her to haul the ground seal inside, and she did.

This angered Nuliajuk who is the mother of the sea mammals. Due to this Nuliajuk withheld seals from the villagers and they grew hungry.²⁷⁴ Igimagajug then killed and ate his mother and father in law, and others nearby. *Igimagajug, the Cannibal* highlights that there are spiritual beings that are connected to sea mammals. People depend upon these sea mammals for survival and treating their dead bodies with respect

²⁷² *Taboos and Starvation*, *supra* note 108 at 182.

²⁷³ *Ibid.*

²⁷⁴ *Igimagajug, the Cannibal*, *supra* note 105 at 170-173.

is important. It is also important to note that being disrespectful or harmful to other humans can lead to natural and spiritual consequences.²⁷⁵

Spirits can be reincarnated into different birds or animals, and into newborn children. In *The Soul*, a woman's soul is reincarnated into a raven after it was feeding on her dead body. The raven was eaten by a dog, and the woman's soul went into the dog. The dog was later killed by a wolf, and the woman's soul went into the wolf. The wolf was killed by hunters, and the woman's soul went into a caribou. The caribou was killed, and the woman's soul went into a walrus. The walrus was killed, and the woman's soul went into a ground seal. The ground seal was killed, and the woman's soul went into another seal.²⁷⁶

When the seal was being hunted and was having a conversation with another seal about sacrificing itself to a particular hunter, it replied "no, when that hunter was a boy, he was lazy. He would not put snow into his mother's kettle. He does not deserve to have good luck."²⁷⁷ That lazy hunter was not successful in his hunt. The seal with the woman's soul instead went to the hole of the good hunter and sacrificed itself for him.

Thereafter, the dead seal laid next to the harpoon, and asked the harpoon, "why does the woman not come and take the harpoon into the house?"²⁷⁸ Shortly, the woman took the harpoon inside and the soul transferred into the woman. The woman gave birth, and the soul went into the baby. When the child got older, she recognized her old

²⁷⁵ What is unclear from this story is whether it was against customary law to touch a dead seal after touching a dead human corpse. Alternatively, if Nuliajuk was upset because of the way the husband treated his wife after she experienced a miscarriage.

²⁷⁶ *The Soul*, *supra* note 111 at 157-160.

²⁷⁷ *Ibid* at 159.

²⁷⁸ *Ibid*.

companions who she embodied before. After this, it was customary to take the harpoon inside after the seal was brought into the house.

The Soul reflects the interconnection Inuit have with spiritual beings. This story highlights that Inuit believe in the reincarnation of the human soul. That a soul can be reincarnated into animals, birds and humans. It also reflects that it is important for a son to tend to his mother's needs and not doing so can have adverse effects for him.

In the story, *Lice*,²⁷⁹ a woman, when referring to lice on her shoulder, said, "it is strange, that such, tiny, toothless animals can bite so hard!"²⁸⁰ The louse heard what she had said and turned into an angry monster with teeth. This frightened the woman to death and after that women who had just given birth were forbidden to mention lice by their name or complain about them when they caused irritation.

Although, there was no physical harm inflicted on the louse by the woman who complained about them, they were harmful words. Due to those harmful words, the louse punished her. The story reflects that, even small living beings, such as louse must be spoken to and treated with respect.

These stories highlight the laws around different types of relationships between living and spiritual entities. The interconnectedness Inuit have with their world around them and the laws that help keep those connections at an equilibrium. These stories recognize the interconnectedness and the importance of being respectful and not intentionally causing harm to living beings, regardless of if they are humans or not.

1.2 The Protection of Family/Community Members:

²⁷⁹ *Lice*, *supra* note 102 at 128.

²⁸⁰ *Ibid.*

In the stories of *Qaudjaqdjuq*, *Ijimagasukdjukdjuaq*, *Separated from Camp*, *The Woman who Could not Be Satiated*, *The Artificial Skull that Frightened People to Death*, *Pautusôrssuaq, who Murdered his Uncle*, *The Wife Changers*, *Podluksak*, *Papik*, *Kating Saved his Family in Time of Famine*, *Igimagajug, the Cannibal*, *Atungait* and *The Emigration of Women* it was apparent that protecting family and community members is an important legal principle within Inuit society. The stories below illustrate this legal principle. For a full read of the stories, see Appendix A.

Qaudjaqdjuq is a story that highlights that Inuit are spiritual and spiritual connections with the surrounding environment like the man in the moon can be called upon for help or protection when it is needed.²⁸¹ Similarly, a woman who is fleeing an abusive partner can depend on her family and community for support in leaving that relationship,²⁸² as depicted in the story of *Ijimagasukdjukdjuaq*.²⁸³

When an elder or family member is experiencing hunger, it is important to help those in need as depicted in the story of *Kating Saved his Family in Time of Famine*.²⁸⁴ In that story a sudden frost fell, making it unbearable to travel on the ice to get food and people began to starve. Kating the son was responsible for traveling to nearby villages looking for food and he was successful in doing that. It was because of the support of the nearby village and Kating's work that his family did not starve.

This principle of supporting elders in the community and family members helping one another in a time of need was also present in the story *Separated from Camp*.²⁸⁵ In

²⁸¹ *Qaudjaqdjuq*, *supra* note 92 at 81-85.

²⁸² *Ijimagasukdjukdjuaq*, *supra* note 104 at 167-169.

²⁸³ *Ibid.*

²⁸⁴ *Kating Saved his Family in Time of Famine*, *supra* note 107 at 179-181.

²⁸⁵ *Separated from Camp*, *supra* note 106 at 177-178.

that story a large underwater swell came up and broke the igloos of the community. The community decided to move on land and two young grandchildren were left with their grandfather as the grandfather did not want to leave. When the community came across a freshwater pond, they began drinking the water, but were told to leave some for others. Those who drank a lot of the freshwater, later died.

The story of *Separated from Camp* is distinct from *Kating Saved his Family in Time of Famine* because in the former story, the elder and young children were left behind. It is clear that the community did not want to leave the grandfather behind alone. What is unclear from the story is why the grandfather chose to stay on the ice and it is unclear what happened to the child and grandfather because the story is silent on those points.

However, the importance of protecting your elders and respecting them is a common principle that was also present in the story of *The Artificial Skull that Frightened People to Death*. In that story a grandma was given food by neighboring families, but she was mistreated by four of the families and they gave her the worst parts of the meat. She plotted her revenge on the families by placing large skulls on their doorways and eventually the four families left the community and died of fright.²⁸⁶

When there is a community member that is in need, the community provides the person with the essentials such as food. However, when that person becomes dangerous to the community, the community could respond with banishment. Such as the case in the story of, *The Woman who Could not Be Satiated*.²⁸⁷ This story is elaborated on in detail in section 4.1(c) where it addresses the protection of children.

²⁸⁶ *The Artificial Skull that Frightened the People to Death*, *supra* note 94 at 89-90.

²⁸⁷ *The Woman who could not be Satiated*, *supra* note 109 at 189-190.

1.3 Individuals who pose a threat, or cause harm to an individual or a community, are punished through separation or at times banished from the community:

In the stories of *The Woman who Could not Be Satiated*, *Ijimagasukdjukdjuaq*, *Pautusôrssuaq, who Murdered his Uncle*, *The Wife Changers*, *Podluksak*, *Papik*, *Igimagajug*, *the Cannibal*, *Atungait* and *The Emigration of Women*, there are examples where individuals were punished for perpetuating harm on another person or to the surrounding family/community. At times punishment meant banishment or permanent separation from community and family. In some circumstances, a response to harm also meant death. Usually, these circumstances arose when the individual caused harm through a very harmful action (murder) or where they had the potential to cause harm to the family/community (becoming dangerous).

In the story of *The Emigration of Women*²⁸⁸ two parties of men went hunting and one party killed the other. The men went back to the community and the wives of the deceased husbands knew that the men murdered their husbands. In retribution for their actions, two wives of the deceased husbands killed one of the murderers while he was asleep.

Professor John Borrows highlights that it is important to take into consideration proportionality when considering a response to harm.²⁸⁹ In the context of these stories, it is also important to recognize that during those times in history, death or banishment may have been one of the only responses to harm available in a circumstance similar to this.

²⁸⁸ *The Emigration of Women*, *supra* note 101 at 112-113.

²⁸⁹ John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 82-83 [*Canada's Indigenous Constitution*].

Today, in contemporary society it is important to recognize that community members would likely have access to other alternatives outside of death or banishment in response to harm.²⁹⁰

The principle of banishing a harmful individual from the community also arose in the story of *The Woman who Could not Be Satiated*.²⁹¹ Where Teneme exhibited signs of cannibalism including the time when she ate the raw, uncooked dog meat. The men in the community made the decision to lock her into a house and banish both her and her two children.²⁹²

This similar principle of permanently removing a potentially dangerous person from the community and family also arose in the story of in the story of the *The Wife Changers*.²⁹³ In this story Talilarssuaq and Navssarssuaq exchanged wives regularly. Talilarssuaq was a malicious person and one day Navssarssuaq's wife was lying beside Talilarssuaq. Talilarssuaq took a knife and stabbed it into the skin they were both lying of their bed. When Navssarssuaq's wife explained what had happened, Navssarssuaq killed Talilarssuaq.

This same principle of permanent separation from the community also arose in the story *Ijimagasukdjukdjuaq*.²⁹⁴ In this story, the wife was fleeing her husband because he

²⁹⁰ Death was a response to some harms in other Indigenous stories as well, see: Hannah Askew and Lindsay Borrows, "Anishinabek Legal Summary: As part of Anishinabek Legal Traditions Report" (Victoria: Indigenous Law Research Unit, 2014) at 19. Online:

<https://indigenoubar.ca/indigenoulaw/wp-content/uploads/2012/12/anishinabek_summary.pdf>.

²⁹¹ *The Woman who could not be Satiated*, *supra* note 109 at 189-190.

²⁹² *Ibid*, and for another example of a story where a community member becomes harmful to others and how the community collectively responds, see Hadley Friedland, *The Wetiko (Windigo) Legal Principles: Responding to Harmful People in Cree, Anishinabek and Saulteaux Societies – Past, Present and Future Uses, with a Focus on Contemporary Violence and Child Victimization Concerns* (2009) [unpublished, archived at University of Alberta].

at 21-53.

²⁹³ *The Wife Changers*, *supra* note 97 at 98-99.

²⁹⁴ *Ijimagasukdjukdjuaq*, *supra* note 104 at 167-169.

was dangerous (he had killed people before) and she was afraid of him. When she left her husband, he went looking for her and the wife's brother later killed him.

In the story of *Igimagajug, the Cannibal*,²⁹⁵ the principle of permanently separating someone from the community when they become dangerous is present. A distinguishing factor in that story is that a human is not enforcing that principle. It is a spiritual being. Nuliajuk punished Igimagajug because he had forced his wife to take in a dead seal corpse after she gave birth to a stillborn child. This upset Nuliajuk and she then withheld seals from the villagers, and they grew hungry.²⁹⁶ Igimagajug then killed and ate his mother and father-in-law. He was later killed by the community for his actions.²⁹⁷

Igimagajug, the Cannibal illustrates that it is not acceptable for a husband to treat his wife badly and doing so will mean he will be punished. It also illustrates that a husband has to treat his wife with empathy especially when she has endured a difficult experience. The story also highlights that it is customary law not to handle a seal after giving birth to a stillborn baby.

This principle of treating community members and elders with empathy and protection is present in *The Artificial Skull that Frightened People to Death*.²⁹⁸ When this principle was not being followed, the four families who treated the elder poorly were banished and they later died of fright.²⁹⁹

These stories illustrate the legal principle of protecting community, elders and family members from varying forms of harm. When this legal principle is not respected,

²⁹⁵ *Igimagajug, the Cannibal*, *supra* note 105 at 170-173.

²⁹⁶ *Ibid* at 170.

²⁹⁷ *Ibid*.

²⁹⁸ *The Artificial Skull that Frightened the People to Death*, *supra* note 94 at 89-90.

²⁹⁹ *Ibid*.

there are repercussions that could mean permanent separation or banishment or in some circumstances death. The severity of the punishment should be proportionate to the wrongdoing.

1.4 The care and protection of elders/parents

In the *The Artificial Skull that Frightened People to Death*, *The Woman who Could not Be Satiated* and *Kating Saved his family in Time of Famine* elder members of the family and community were cared for. In *The Artificial Skull that Frightened People to Death* and *The Woman who Could not Be Satiated* there were two elderly women, one was a grandma and the other was a widow. Both could not provide for themselves and the nearby neighbors and community members provided them with their necessities such as food.³⁰⁰ This reflects the legal principle of community members helping out their elders in their time of need.

Similarly, in *Kating Saved his family in Time of Famine* the family, including the mother and children were experiencing potential starvation. Kating made sure to travel to a nearby village in search of food and he brought that food back to his family, including his mother. His siblings and mother grew sick, so Kating went hunting for seal meat. His mother wanted caribou so Kating went and hunted caribou for her and shared it with his family.³⁰¹ This story highlights the relevance and importance of the legal principle of taking care of others around in your community such as your elders, family and particularly your mother, especially in difficult times. It also highlights that nearby communities are there to provide support when it is needed.

1.5 Sharing foods and resources

³⁰⁰ See *ibid* and *The Woman who could not be Satiated*, *supra* note 109.

³⁰¹ *Kating Saved his Family in Time of Famine*, *supra* note 107 at 181.

In *The Woman who Could not Be Satiated*³⁰² and *The Artificial Skull that Frightened People to Death*³⁰³ both stories had examples where women who were in difficult situations (a grandmother and a widow) and may not have had the opportunity to get their own food, were taken care of by nearby community members.

In the stories *Separated from Camp* and *Kating Saved his family in Time of Famine* the community and family members worked together during challenging times. In the story of *Kating Saved his family in Time of Famine*, Kating's mother and family were experiencing hunger. Therefore, Kating travelled to a nearby village to ask for food and he was given that food. He shared that food with his family and continued to hunt for them.³⁰⁴

Similarly, in *Separated from Camp* the community members moved from their igloos on the ice to the land. Two children were left behind with the grandfather because he did not want to leave.³⁰⁵ This story illustrates the legal principle of ensuring family members (elders, grandparents) have access to the resources (younger family members) to help them survive.

In the story of *Atungait*, both Atungait and his wife traveled around Baffin Island. As they traveled, they were met with villagers who fed them, sheltered them, and also entertained them through the rabbit game. Atungait and his wife were met with hospitality from other Inuit throughout their travels, but they also had to travel with caution (people tried to harm them).³⁰⁶ This story highlights the legal principle that Inuit

³⁰² *The Woman who could not be Satiated*, *supra* note 107 at 189-190.

³⁰³ *The Artificial Skull that Frightened the People to Death*, *supra* note 94 at 89-90.

³⁰⁴ *Kating Saved his Family in Time of Famine*, *supra* note 107 at 179-181.

³⁰⁵ *Separated from Camp*, *supra* note 106 at 177-178.

³⁰⁶ *Atungait*, *supra* note 110 at 150-156.

help travelers by sharing their resources and spending time with them, as they travel through their community. But that it is important for the travelers to be cautious.

In the story of *The Emigration of Women*, several wives were left widowed because their husbands were murdered. The story says that many of the women had been impregnated by the men who murdered their husbands³⁰⁷ and after the women fled from the men who murdered their husbands, the widowed wives worked together to create a new community. This story highlights the legal principle that women, or a community of people work together during challenging times and share scarce resources to survive.

1.6 Following taboos/customary Inuit Laws

In several of the stories there is mention of taboos which can also be referred to as customary law. If and when those customary laws were not followed, then there were consequences for the individual and/or the entire community.

In *Taboos and Starvation*, a leader warned hunters not to take walrus hide with them when they were going caribou hunting and the hunters did not listen. They later returned hungry and were unsuccessful in their hunt.³⁰⁸

Similar to the story of *Taboos and Starvation* is the story of *The Man who did not Observe Taboos*. In this story, Artuk buried his dead wife under stones but did not follow the taboos/customary law of his forefathers because he did not believe in it. That day he cut meat with a stone axe, he shook his pants free of lice on the ice and he drank from a glacier cliff, all of these things he was not supposed to do because he just handled a dead corpse. Artuk did this in defiance of his forefathers because he believed that the customary law of his forefathers was all lies.

³⁰⁷ *The Emigration of Women*, *supra* note 101 at 112-113.

³⁰⁸ *The Man who did not Observe Taboos*, *supra* note 98 at 100-101.

One day he was going seal hunting, but fear grew upon him, so he asked his son to travel with him. But his son didn't want to, so Artuk tied him onto the sledge. Artuk and his son were later found dead on the ice. It is said by the forefathers that those who do not believe in the traditions of their forefathers are ripped apart by the spirits.³⁰⁹

Similarly, in the story of *Igimagajug, the Cannibal*, Igimagajug's wife gives birth to a stillborn child. Igimagajug comes home to hear this news from his wife, and then he demands that she take in the ground seal he caught. This enrages the mother of sea mammals, Nilajuk, who then withholds seals from the villagers, and many grow hungry.³¹⁰ This story also reflects the legal principle, or customary Inuit law, of not handling meat after handling a dead corpse. It is unspoken in the story, as to why this is a custom.

Also similar to *The Man who did not Observe Taboos* is the story of *Papik*. Both stories reflect the prevalence of being ripped apart by a spiritual being for not following customary law. Aliaq was Papik's brother in law. Papik grew envious of Aliaq. One day Papik came back to the community without Aliaq and Aliaq's mother avenged her son's murder (she always thought that Papik murdered her son Aliaq even though that was not explicitly stated in the story). Papik later in the story was found ripped to pieces on the ice and scalped.³¹¹ In the story it states that "As our father's used to say, when anyone kills a fellow creature without reason, a monster will attack him to death, and not leave a limb of his corpse whole."³¹² It is taboo when someone kills a creature, which includes a

³⁰⁹ *Taboos and Starvation*, *supra* note 108 at 182.

³¹⁰ *Igimagajug, the Cannibal*, *supra* note 105 at 170-173.

³¹¹ *Papik*, *supra* note 95 at 91-94.

³¹² *Ibid* at 94.

human, without good reason and there is punishment when this happens, which is reflected in the stories.

In a different circumstance, a spiritual being (Nilajuk the mother of all sea mammals) made a decision to act after she was harmed. In the story of *Igimagajug, the Cannibal*, Igimagajug came back from seal hunting and his wife informed him that she had just given birth to a stillborn baby. Igimagajug heard this but forced his wife to take the seal into the house and she did. This upset Nilajuk and in retribution for causing harm (making the wife touch a seal after she had given birth to a stillborn baby) she stopped hunters from being able to catch seals and many people began to starve.³¹³ This story highlights that when customary Inuit law is not respected it may impact a spiritual being (Nilajuk the mother of sea mammals) and that spiritual being can address the situation through the spiritual realms.

In the following section I illustrate the final decision-makers in the stories through a chart and I go into greater detail about the final decision makers in different contexts.

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

<p>Final Decision makers: Who had the final say? In relation to what?</p>
<p>2.1 The individual harmed: Whether it was a person, or the spirit of a person, or an animal, the being that was harmed plays a role in addressing the harm: <i>Storm Caused by a Loon, Qaudjaqdjuq, The Artificial Skull that Frightened People to Death, Pautusôrssuaq, who Murdered his Uncle, The Wife Changers, Igimagajug, the Cannibal, Lice, The Emigration of Women.</i></p>
<p>2.2 Family: When a close family member (brother, sister, mom, dad, grandmother, grandfather) experiences difficulty the family steps in to help address the challenge:</p>

³¹³ *Igimagajug, the Cannibal*, *supra* note 105 at 170-173.

Final Decision makers: Who had the final say? In relation to what?
2.3 Collective community: If an individual(s) needs support or protection the community as a collective has a say in that process: <i>Separated from Camp, The Artificial Skull that Frightened People to Death, The Man who did not Observe Taboos, Kating Saved his family in Time of Famine, Igimagajug, the Cannibal, Atungait, The Emigration of Women.</i>
2.4 Leader: An individual who is recognized in the community as a leader has the final say in areas where they have expertise or lived experience: <i>Taboos and Starvation.</i>
2.5 Partner/spouse: A wife/husband or boyfriend/girlfriend protects and supports their partner, if and when there is harm or a threat of harm (this is distinguishable from a situation where a partner is inflicting harm in the relationship): <i>The Woman who Could not Be Satiated, The Wife Changers, Atungait, The Emigration of Women.</i>
2.6 Elder: An individual recognized as an elder in a community can play an active role in mitigating or addressing a situation when there is mistreatment or harm: <i>The Artificial Skull that Frightened People to Death, The Man who did not Observe Taboos, Kating Saved his family in Time of Famine.</i>

2.1 The individual harmed

Throughout several of the stories there were instances where individuals and living beings (animals/birds) were harmed and those who were harmed directly addressed the situation.

In the story of *The Soul* a human soul lives through several diverse animal lives (raven, dog, wolf, walrus, ground seal, back into a human) through reincarnation. In the story, the human soul is transferred back into a human and when that child grows older, she has a connection and empathy for the ravens, dogs, wolves, walrus and ground seals. She respects the animals and shares what she knows with others.³¹⁴ This story highlights the legal principle of having respect for the living things in your surrounding environment. The story also illustrates that Inuit believe in the reincarnation of the soul.

³¹⁴ *The Soul*, *supra* note 111 at 157-160.

The *Storm Caused by a Loon* is also a story that reflects the legal principle of respecting animals. In this story the loon's feathers were almost completely plucked by people, and in revenge for that the loon made it difficult for people to reach their meat underneath the snow that winter. Several people died of starvation.³¹⁵ The legal principle of respecting the life of another being was not respected and in retribution for violating that principle, there were consequences. It was the loon, who was harmed, who addressed the situation.

This legal principle of respecting living things, even the smallest living thing, is also reflected in the story *Lice*. In this story a woman exclaimed that a louse on her shoulder, "... is strange, that such, tiny, toothless animals can bite so hard!"³¹⁶ After hearing what was said, the louse turned into an angry monster with teeth and frightened the woman to death. After that woman died, other women, who had just given birth were forbidden to mention lice by their name or complain about them when they caused irritation.³¹⁷

In the stories of *The Wife Changers*, *The Emigration of Women* and *The Artificial Skull that Frightened People to Death* women were being harmed. These women also directly addressed the harmful situation.

In the story of *The Wife Changers*, Talilarssuaq and Navssarssuaq exchanged wives regularly. Talilarssuaq stabbed a knife into a skin that Navssarssuaq's wife was laying on. Navssarssuaq's told him what happened, and he went to Talilarssuaq and killed

³¹⁵ *The Storm Caused by a Loon*, *supra* note 103 at 129.

³¹⁶ *Lice*, *supra* note 102 at 128.

³¹⁷ *Ibid.*

him.³¹⁸ In this story, the wife directly took action to address the harm and sought help from her husband.

Similarly, in the story of the *Emigration of Women*, it was the widowed women that took direct action and fled from the men who murdered their husbands (removing themselves permanently) and then began their own community.³¹⁹

In *The Artificial Skull that Frightened People to Death*, it was also the woman that was directly harmed that took action to address the harm she experienced. She scared the perpetrators with skulls and those individuals later fled the community. Then died of fright.³²⁰

The story of *Qaudjaqdjuq* is a little different from the stories regarding women who addressed harmful situations that they endured. Qaudjaqdjuq was an orphaned boy that was mistreated by some men in the community and he asked for help from the man in the moon. The man in the moon helped Qaudjaqdjuq become stronger and he went and killed the men who caused him harm.³²¹

In *Pautusôrssuaq, who Murdered his Uncle*, Alattaq was Pautusôrssuaq's uncle and one day Pautusôrssuaq murdered Alattaq and took his wife as his own. In revenge, Alattaq's spirit killed Pautusôrssuaq.³²²

The common legal principles in these stories is not to harm living beings in your surrounding environment and if this legal principle is not followed then there are

³¹⁸ *The Wife Changers*, *supra* note 97 at 98.

³¹⁹ *The Emigration of Women*, *supra* note 101 at 112-113.

³²⁰ *The Artificial Skull that Frightened the People to Death*, *supra* note 94 at 89-90.

³²¹ *Qaudjaqdjuq*, *supra* note 92 at 81-85.

³²² *Pautusôrssuaq, who Murdered his Uncle*, *supra* note 96 at 96-97.

repercussions. Those who experience harm also have the agency to directly address it and determine the severity of the punishment.

In the following section, I outline how members of the family address situations where there is harm or the threat of harm.

2.2 Family

In several of the stories there were instances where family members (mothers, fathers, grandmothers, siblings) made decisions in relation to mitigating and addressing harm.

In *Pautusôrssuaq, who Murdered his Uncle*, when the wife was fleeing her abusive partner (who killed her real husband and stole her away) she sought safety with her brother.³²³ Her brother along with the community members protected her from the husband when he was looking for her, but it was ultimately the brother that permanently removed the abusive man from his family and community (murdered him).³²⁴ This story highlights the relevance of siblings and families when there is a challenge and how those siblings can make decisions regarding how to manage the harm.

This was also present in *Ijimagasukdjukdjuaq*, where the wife was growing afraid of her husband because he had killed and eaten people and she was afraid he was going to do the same to her. So, she fled and sought safety with her brother and family in another community.³²⁵ Her brother later permanently removed the abusive husband from the family and community (death).³²⁶

³²³ *Ibid* at 95-96.

³²⁴ *Ibid*.

³²⁵ *Ijimagasukdjukdjuaq*, *supra* note 104 at 167.

³²⁶ *Ibid*.

In *Podluksak* it was also the family who made decisions regarding how to deal with Podluksak who stole a wife.³²⁷ The father, and two brothers of the man whose wife was stolen sought revenge on Podluksak and tried to permanently remove him from the community (death).

This experience of being permanently removed from the community is also a prevalent theme in the story of *Papik* which illustrates that when a mother experiences harm (her son being murdered) then she can seek retribution and determine how that will be done (in this case permanent removal).³²⁸

In *Kating Saved his family in Time of Famine and Separated from Camp* the family helped in times of distress and emergency. In this story, the son, Kating, was the person who traveled to another village in search of food for his family, who were about to starve to death.³²⁹ Kating was also the one who provided food for his mom and siblings thereafter.³³⁰

It was Kating who decided when and how he was going to manage an emergency and protect his family from going hungry. Similarly, in *Separated from Camp*, the son led the community members from the dangerous ice back inland. The son in the story made the decision to lead his family and community members to safety after their ice houses (igloos) broke up from a large swell at sea.³³¹

³²⁷ *Podluksak*, *supra* note 99 at 106.

³²⁸ *Papik*, *supra* note 95 at 91 and 94.

³²⁹ *Kating Saved his Family in Time of Famine*, *supra* note 107 at 180.

³³⁰ *Ibid.*

³³¹ *Separated from Camp*, *supra* note 106 at 177.

In the following section I illustrate how the community as a collective become the decision makers when there is harm or the threat of harm to individuals or the community as a whole.

2.3 Collective community

In several of the stories, there are circumstances where community members' work together to address harms inflicted on others, or potential threats to a community.

This principle is reflected in the following three stories. In *Kating Saved his family in Time of Famine*, Kating had to travel to another community in search of food for his family and the nearby community provided him with whale meat and an old dog.³³² This legal principle of members of the community helping those in need was present in story, *The Artificial Skull that Frightened*. In that story the community, members provided the grandma with necessities such as food.³³³ Similarly, in *Separated from Camp* community members reminded others that they should only take as much freshwater as needed, so others would also have water.³³⁴

Ensuring that others have the necessities they need and helping others in a time of need are legal principles that are present in the story of *Atugait*. As Atugait and his wife traveled throughout communities in the territory, each community in their own way housed them and provided them with food.³³⁵

If a person goes missing then the community members also take decisive action. In *The Man who did not Observe Taboos*, Artuk went seal hunting with his son and he

³³² *Kating Saved his Family in Time of Famine*, *supra* note 107 at 180.

³³³ *The Artificial Skull that Frightened the People to Death*, *supra* note 94 at 89.

³³⁴ *Separated from Camp*, *supra* note 106 at 178.

³³⁵ *Atugait*, *supra* note 110 at 150-156.

did not return. The community members then went looking for them.³³⁶ This was also the case in *Taboos and Starvation*, when hunters did not return for several months, community members went looking for them.³³⁷

When a person has caused harm or will potentially cause harm, then community members also act to address the situation. In *Igimagajug, the Cannibal*, Igimagajug was a cannibal and his wife fled because she feared her own life. She went to her brother's neighboring community to seek safety and when the husband went looking for her, the community members told him they did not know where she was.³³⁸ The community members understood that she was present, but because Igimagajug was a potential threat, who caused harm, they protected her and said she was not within the community.

The legal principle of protecting community members from harmful people was also present in the story, *The Emigration of Women*. In this story, the widowed women took it upon themselves to murder the men who killed their husbands. The women then left and created their own community.³³⁹

In the following section, I highlight the relevance of a leader in heeding people from experiencing harmful situations.

2.4 Leader

There was just one story I read where an individual was recognized as a "leader" and that person dictated how to manage situations, the story of *Taboos and Starvation*. In this story, the leader told hunters not to go caribou hunting with walrus-hide because it

³³⁶ *The Man who did not Observe Taboos*, *supra* note 98 at 100.

³³⁷ *Taboos and Starvation*, *supra* note 108 at 182.

³³⁸ *Igimagajug, the Cannibal*, *supra* note 105 at 172.

³³⁹ *The Emigration of Women*, *supra* note 101 at 112-113.

was taboo. The hunters did not listen and were not very successful in their caribou hunt and returned home because of hunger and several others died of starvation.³⁴⁰

The legal principle in this story is to listen to the teachings of the leader and to follow customary Inuit law, not to do things that are taboo. If these customary Inuit laws are not followed then there can be severe consequences.

2.5 Partner/spouse

In the stories of *The Woman who Could not be Satiated*, *The Wife Changers* and *Atungait*, it was the spouse who made decisions related to addressing a harm or preventing harm.

In *The Woman who Could not Be Satiated*, Teneme was a widow without a husband and she was conveying behaviors that were cannibalistic to Unaraw. Unaraw told her husband about these behaviors and he decided that he needed to act to protect his wife and other community members.³⁴¹ Teneme and her two children were permanently locked inside of a house and left.

In the story of *The Wife Changers*, the wife was lying beside Talilarssuaq and he took a knife and stabbed it into the skin they were both lying on. The wife explained what had happened to her husband, Navssarssuaq. Navssarssuaq then took action and permanently removed Talilarssuaq.³⁴²

The legal principle of protecting your wife was also present in the story, *Atungait*. The husband in that story made sure that the wife was protected throughout their travels from community to community.³⁴³

³⁴⁰ *Taboos and Starvation*, *supra* note 108 at 182.

³⁴¹ *The Woman who could not be Satiated*, *supra* note 107 at 189-190.

³⁴² *The Wife Changers*, *supra* note 97 at 98.

³⁴³ *Atungait*, *supra* note 110 at 150-156.

In the following section, I outline how elders address harms that are inflicted on them or their community.

2.6 Elder

There are instances within some of the stories where individuals who were elders, addressed a harmful situation. The following stories reflect that elders have an integral role at times, in addressing situations where there is harm.

In *The Artificial Skull that Frightened People to Death*, the grandma, who was being mistreated by some of her neighbors took direct action to address the situation. She decided when and how she would deal with the people who disrespected her.³⁴⁴ A similar experience was conveyed in *Kating Saved his family in Time of Famine*. When Kating's dog went missing, his mother went looking for it. She realized that the dog had been killed and skinned by the neighbors. When she realized this, she took the dog back and ate it with her children to protect them from starvation.³⁴⁵

In *The Man who did not Observe Taboos*, Artuk did not believe in the knowledge or customary Inuit law of his ancestors.³⁴⁶ Rather than following the teachings of his ancestors, he defied the teachings and he later died because of it. This is an example where elders' teachings work as a precautionary teaching, to prevent others from experiencing difficulty or harm.

The legal principles outlined in this section provides a guide as to who decision makers can be in challenging situations throughout a community. Although, some of the punishments (death and permanent banishment) can be viewed as an extreme measure to

³⁴⁴ *The Artificial Skull that Frightened the People to Death*, *supra* note 94 at 89-90.

³⁴⁵ *Kating Saved his Family in Time of Famine*, *supra* note 107 at 179-180.

³⁴⁶ *The Man who did not Observe Taboos*, *supra* note 98 at 100-101.

take in the 21st century, the underlying principle of removing harmful people from a community is something that can be adapted to today's societal norms (example: removing someone to attend rehab or counselling if they are abusive, etc).

In the following section, I outline the steps taken when a community is experiencing harm.

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

<p>Procedural Steps: What were the steps involved in determining a response or action?</p>
<p>3.1 Addressing the situation: Individuals or living beings (including animals and insects) who are harmed or wronged have a role in addressing the situation: <i>Storm Caused by a Loon, Qaudjaqdjuq, The Boy who Harpooned a Whale, The Artificial Skull that Frightened People to Death, Pautusôrssuaq, who Murdered his Uncle, Lice, The Emigration of Women.</i></p>
<p>3.2 Asking for help from friends: Individuals who experience hardship call upon friends for help: <i>Qaudjaqdjuq, The Emigration of Women.</i></p>
<p>3.3 Seeking protection by asking for help from family: Individuals fleeing violence or hardship seek protection by calling on their family: <i>Pautusôrssuaq, who Murdered his Uncle, Igimagajug, the Cannibal, Ijimagasukdjukdjuaq, Podluksak, Papik.</i></p>
<p>3.4 Women leave a violent partner or a potentially harmful situation: When an individual(s) (partner, family member) experiences violence or the threat of violence, they leave the situation: <i>Ijimagasukdjukdjuaq, Pautusôrssuaq, who Murdered his Uncle, Igimagajug, the Cannibal, The Emigration of Women.</i></p>
<p>3.5 Close family members recognize there is an issue and take responsibility to support their family member(s): When a family member is experiencing hardship (lack of access to food, separation from family/community) the family provides for them: <i>Separated from Camp, Kating Saved his family in Time of Famine.</i></p>
<p>3.6 Community members step in to support an individual (elder, fellow community member) when there is hardship: When an individual or community is experiencing hardship (starvation, community member going missing, environmental changes, survival, etc) the community responds: <i>Separated from Camp, Taboos and Starvation, The Woman who Could not Be Satiated, The Artificial Skull that Frightened People to Death, The Man who did not Observe Taboos, Kating Saved his family in Time of Famine, The Emigration of Women.</i></p>

Procedural Steps: What were the steps involved in determining a response or action?
3.7 If there is potential for the threat of harm the community responds: If an individual did not cause harm to a community but may pose a threat of harm, the community preemptively responds or if there is danger in the environment the community shares this information: <i>Murdering a Stranger, Papik, Igimagajug, the Cannibal, The Emigration of Women.</i>
3.8 When harm is perpetuated by an individual the community plays a role in addressing this harm (violence, neglect, theft): When someone acts violently or is neglecting their family members the community responds: <i>The Soul, Ijimagasukdjukdjuq, The Woman who Could not Be Satiated, Pautusôrssuaq, who Murdered his Uncle, Igimagajug, the Cannibal, Atungait, The Emigration of Women.</i>
3.9 When a child needs help the community steps in: If a child does not have their own family or resources the community as a collective steps in to support that child: <i>The Boy who Harpooned a Whale, Papik, Qaudjaqduq.</i>

3.1 Addressing the situation

When an individual or a spiritual being is harmed then they have a role in directly addressing the situation and determining how they will respond to the harm.

In the story of the *Storm Caused by the Loon*, after the loon experienced having all of its feathers ripped off from men, the loon sought revenge on the men.³⁴⁷ In retribution for the harm perpetuated by the men, the loon caused a great storm that led to starvation and death. Similarly, in the story of *Lice*, a woman who recently gave birth to a child offended a louse, and that louse then grew into a large monster, scaring her to death. After that, women were forbidden from mentioning or complaining about lice.³⁴⁸ In both of these stories, the living creatures that experienced harm responded directly to it.

Similarly, in the story of *Quadjaqduq* community members abused an orphaned boy. The boy then grew strong and sought revenge on the men who hurt him.³⁴⁹ *The Boy*

³⁴⁷ *The Storm Caused by a Loon*, *supra* note 103 at 129.

³⁴⁸ *Lice*, *supra* note 102 at 128.

³⁴⁹ *Quadjaqduq*, *supra* note 92 at 81-85.

who Harpooned a Whale is also a story of an orphaned boy who was challenged by a man in the village to harpoon a whale. The young boy went whaling one day and successfully harpooned a whale, which surprised the people in the community.³⁵⁰ In both of these stories the young boys were faced with challenging circumstances and they addressed the situation directly.

At times, it is the spirit of the person who is harmed (murdered) that addresses the situation, like in the story *Pautusôrssuaq, who Murdered his Uncle*. Pautusôrssuaq killed his uncle, Alattaq, because he wanted to steal his wife. Pautusôrssuaq was later killed by the spirit of Alattaq. The spirit of Alattaq went into a fox then it went into a bear. The bear ripped Pautusôrssuaq to pieces.³⁵¹

Elders also address difficult situations directly. In *The Artificial Skull that Frightened People to Death*, an elderly woman was dependent on her neighbor's for the necessities of life. Four of the neighboring families mistreated the elderly woman and in response to that harm, she took it upon herself to address it. She decided to make a skull out of bone and place it into the doorways of those who mistreated her. Those families then began to treat her with more respect, but she continued to build a bigger skull. Those families left the community, and they were frightened to death by this bigger skull.³⁵²

Women in the stories also took steps to address situations where they were enduring hardship or harm. In *The Emigration of Women*, a group of women whose husbands were murdered by other men in the community sought revenge. Two of the women killed one of the men, and the women all fled and created a new community.³⁵³

³⁵⁰ *The Boy who Harpooned the Whale*, *supra* note 93 at 86-88.

³⁵¹ *Pautusôrssuaq, who Murdered his Uncle*, *supra* note 96 at 95-97.

³⁵² *The Artificial Skull that Frightened the People to Death*, *supra* note 94 at 89-90.

³⁵³ *The Emigration of Women*, *supra* note 101 at 112-113.

Whether it is a person, animal or the soul of a person, these stories illustrate that when harm is perpetuated; each of the individuals harmed took responsibility to address the situation directly. In some instances, such as in the story of *The Artificial Skull that Frightened People to Death*, where the elder continued to seek revenge on the perpetrators of harm, it can be viewed as disproportionate to the gravity of the offence. Discussions relating to responses such as that of the elderly woman could be something that community members could be consulted on. As it is unspoken in the story why she acted with so much vengeance and whether a response to elder abuse such as the one depicted here, is acceptable in Inuit law. Although consultations with community members goes beyond the scope of this thesis, at this point, it is still something relevant to highlight.

In the following section, I illustrate that when someone is experiencing harm or difficulty the individual reaches out to friends for support.

3.2 Asking for help from friends

Throughout several stories, individuals sought counsel from their friends when they were experiencing hardship. An example would be the orphaned boy who was being abused in the story, *Qaudjaqdjuq*. The boy had no friends other than the man in the moon. The man in the moon came to help the boy after he had asked for support. The man in the moon helped the boy to become strong, and he went to his transgressors and fought them.³⁵⁴

Similarly, in the story *The Emigration of Women*, the women whose husbands were murdered worked together. Two of the women played a role in killing one of the

³⁵⁴ *Qaudjaqdjuq*, *supra* note 92 at 81-85.

men who murdered their husbands, and each of them then moved to another community together.³⁵⁵

In each of these stories, the individuals who were experiencing harm sought the support of their peers in helping them to overcome the challenge they were encountering.

In the following section, I outline how individuals who are experiencing harm seek the support of their family in challenging times.

3.3 Seeking protection by asking for help from family

In several stories there were situations where individuals were experiencing hardship or harm, and their family members were present to help address the situation at hand, and they also helped make decisions regarding how that situation would be mitigated.

In *Pautusôrssuaq, who Murdered his Uncle*, Pautusôrssuaq murdered Alattaq, his uncle because he wanted to steal his wife. The wife realized that her husband was killed, and she fled the campground and sought refuge with her family in another village. She knew that she could depend on her family to help her in this situation, and her family provided her with a place to stay when fleeing a violent situation with Pautusôrssuaq.³⁵⁶

This also occurred in the story of *Igimagajug, the Cannibal*, where the wife realized that her husband, Igimagajug, had killed and eaten other humans, and she feared he would do the same to her. So, she left the community and sought refuge with her brother. Her brother and other community members later killed Igimagajug because he was a threat to his sister and other community members (Igimagajug killed his mother and father-in-law

³⁵⁵ *The Emigration of Women*, *supra* note 101 at 112-113.

³⁵⁶ *Pautusôrssuaq, who Murdered his Uncle*, *supra* note 96 at 95-97.

and ate them).³⁵⁷ These stories illustrate that a family steps in to protect a woman when she is in a potentially dangerous situation with their spouse, and that the family determines when and how to mitigate the situation. The family plays an active role in addressing the harm.

A similar situation occurred in the story *Ijimagasukdjukdjuaq*, where the husband killed and ate other community members, and the wife grew afraid. She fled and went to live with her brother and later her brother killed the husband because he was a potential threat who created harm within the community.³⁵⁸

In the story of *Podluksak*, Podluksak murdered a man (it is unclear who that man was in the community). The father and two sons of that man decided that they were going to kill Podluksak for killing their family member. The family had a direct say in how and when they were going to address the harm created by Podluksak.³⁵⁹

Similarly, in the story, *Papik*, the mother who lost her child addressed the situation directly. When she realized that her son was missing (and she blamed Papik for murdering him) after going seal hunting with Papik, she took her own life and came back as a bear in order to revenge her son. As a bear, she ripped Papik to pieces.³⁶⁰ Her son was murdered, and she had a direct say in how she was going to address the harm.

Each of these stories highlight the legal principle that family members are there to address situations of harm and to protect family members who encounter harmful situations.

³⁵⁷ *Igimagajug, the Cannibal*, *supra* note 105 at 170-173.

³⁵⁸ *Ijimagasukdjukdjuaq*, *supra* note 104 at 167-169.

³⁵⁹ *Podluksak*, *supra* note 99 at 106.

³⁶⁰ *Papik*, *supra* note 95 at 91-94.

In the following section, I highlight the stories where individuals left a harmful or potentially harmful situation.

3.4 Women leave a violent partner or a potentially harmful situation

In several of the stories, there were instances where a woman who was harmed left and they made the decisions around how and when they would leave. There are also several stories where a woman feared potential harm and made decisions around when and how they would leave.

In the story *Ijimagasukdjukdjuaq*, a wife grew afraid of her husband because he had killed and eaten other community members. One day while he was away hunting, she fled and filled her garments with heather to make it look like it was her. When the husband came to look for her, he stabbed the garments. He began to probe the snow with his knife, trying to find her, but he didn't and when he left, the wife put her garments back on and fled. She found a piece of ice which was a fox trap and got into it, until her brother came along.³⁶¹

In *Pautusôrssuaq, who Murdered his Uncle*, Alattaq was Pautusôrssuaq's uncle. Pautusôrssuaq was very fond of Alattaq's wife. One day Pautusôrssuaq killed Alattaq because he did not want him to take his wife hunting with him for too long. When Alattaq's wife realized Pautusôrssuaq had killed her husband, she fled to Eta to be with her family.³⁶²

Igimagajug, the Cannibal, Igimagajug killed his mother and father in law and ate them. He also killed and ate others. His wife grew afraid of him, so one day when he was out seal hunting she began to prepare for her escape. She stuffed her clothes with moss

³⁶¹ *Ijimagasukdjukdjuaq*, *supra* note 104 at 167-168.

³⁶² *Pautusôrssuaq, who Murdered his Uncle*, *supra* note 96 at 95-96.

and laid it against the back door of the hut. She told it to say “uk uk” if Igimagajug stabbed it with his knife. Meanwhile, she made a small snow house nearby with a peephole. Igimagajug stabbed the figure and it said “uk uk” and he then realized that it was not her. He probed in the snow with his spear, and one time he hit the snow house she was in and the spear went between her fingers. Igimagajug did not find her. Igimagajug went sealing the next day, and the wife fled to a nearby village where her brother lived. Igimagajug saw her footprints in the snow and followed them, but he did not find her. The wife continued to run to her brother’s house and when she reached his house, she explained what had happened.³⁶³

The Emigration of Women, several women were widowed after a group of men killed their husbands. Two of the women decided to kill one of the men who murdered their husbands. The group of widowed women then fled and created their own community.³⁶⁴

In each of these stories, women were the decision makers as to how they would address a violent or harmful situation with men.

In the following section, I outline the stories where family members recognize an issue and take responsibility to address it.

3.5 Close family members recognize there is an issue and take responsibility to support their family member(s)

Family members help their family in times where they lack access to food and if they are going to be separated from the community/family. In *Separated from Camp*, a swell broke up the igloos on the ice and the community decided to move inland. The

³⁶³ *Igimagajug, the Cannibal*, *supra* note 105 at 170-173.

³⁶⁴ *The Emigration of Women*, *supra* note 101 at 112-113.

grandfather did not want to leave, so the daughter-in law took her youngest baby out of her hood and placed it in the hood of her oldest child. She left these two children with the grandfather.³⁶⁵

Similarly, in *Kating Saved his family in Time of Famine*, Kating's mother and siblings were facing starvation. Kating decided that he would travel to a nearby village and get food. When he left, he told his mother to keep his dog, in case they needed to eat it. The mother and siblings did eat the dog when Kating was gone. Upon his return from the nearby village, Kating brought a whale toboggan, an old dog, along with whale meat, whale skin and whale blubber, which he shared with his family. Also, when his family grew ill, he went out to catch seals to help them become stronger. Kating's mother also wanted ptarmigan, and caribou, so he went out and hunted them, then brought it back to his mother.³⁶⁶

These stories are illustrative of the legal principle of taking care of family members in times of need, such as when food is scarce. It is notable that this responsibility in the stories lay with the younger people in the story.

In the following section, I outline that it is also the community as a collective that steps in when there is a hardship.

3.6 Community members step in to support an individual (elder, fellow community member) when there is hardship

In several of the stories when an individual or community experiences hardship (starvation, community member going missing, environmental changes, survival) the community responds and takes steps to address the situation.

³⁶⁵ *Separated from Camp*, *supra* note 106 at 177-178.

³⁶⁶ *Kating Saved his Family in Time of Famine*, *supra* note 107 at 179-181.

In *Separated from Camp*, community members were traveling for a long time and needed water. First, they drank from a saltwater pond, and then they drank from freshwater pond. Several of the community members warned against not drinking too much of the freshwater, and to save some for other community members who were also traveling.³⁶⁷

In *Taboos and Starvation*, there were several community members who traveled to Fox Channel, and they did not return. People went looking for them, and later that fall found the missing community members starving. The only ones who did survive were the ones who ate the bodies of the dead.³⁶⁸ Also, in *The Man who did not Observe Taboos*, Artuck and his son went missing and the next day several sledges went out to look for him. They later found him torn to pieces and his son frightened to death.³⁶⁹

In *The Woman who Could not Be Satiated*, the widowed woman, did not have the means to provide for herself, so she relied on other community members for necessities, such as food. The community members provided her with food.³⁷⁰ Similarly, in *The Artificial Skull that Frightened People to Death*, an elderly woman, also did not have the means to provide for herself, so she depended on her neighbors for food. The neighbors gave her meat and bones that helped her survive.³⁷¹ This was also the case in *Kating Saved his family in Time of Famine*. When Kating had to leave his mother and siblings behind, in search of food in a nearby village, he was met with help from the nearby

³⁶⁷ *Separated from Camp*, *supra* note 106 at 178.

³⁶⁸ *Taboos and Starvation*, *supra* note 108 at 182.

³⁶⁹ *The Man who did not Observe Taboos*, *supra* note 98 at 101.

³⁷⁰ *The Woman who could not be Satiated*, *supra* note 107 at 189-190.

³⁷¹ *The Artificial Skull that Frightened the People to Death*, *supra* note 94 at 89-90.

village. Where they provided him with a whale toboggan, whale meat, whale skin, whale blubber and an old dog.³⁷²

In *The Emigration of Women*, several women were widowed because their husbands were murdered by a group of men while hunting. The women were pregnant from the men who murdered their husbands, and they each worked together to leave the community. They left and eventually began to rebuild their own community through inter-marrying between non-relatives.³⁷³

These stories highlight the legal principle that community members step in to support an individual when they are enduring hardship in their lives.

In the following section I outline the legal principle of collective community members responding to the threat of harm.

3.7 If there is potential for the threat of harm the community responds

A few stories highlight situations where an individual was not directly violent to a person, or to a community but that individual may pose a threat of harm or violence. In these situations, the community preemptively responds or if there is, danger in the environment the community shares this information.

In the story *Murdering a Stranger*, Noodelwa and Ekkomala were moving to camp on ice and they asked Akygerjew to come along. As they were traveling, their dogs caught scent and began to run and led the others to a stranger sitting at the breathing hole of a seal. The stranger then began to run. The men, after some time, shot the stranger in the leg twice with an arrow and he died.³⁷⁴

³⁷² *Kating Saved his Family in Time of Famine*, *supra* note 107 at 180.

³⁷³ *The Emigration of Women*, *supra* note 101 at 112-113.

³⁷⁴ *Murdering a Stranger*, *supra* note 100 at 107-109.

Similarly, in the story *Igimagajug, the Cannibal*, Igimagajug was a cannibal and his wife grew afraid that he was going to one day eat her too. She fled to a nearby village and sought refuge in her brother's house. When Igimagajug went looking for his wife, he went to her brother's village and played a game where his hands were tied. When his hands were tied, his brother and the wife confronted Igimagajug about killing and eating their mother and father. Then the rest of the people who were in the house jumped on Igimagajug, killing him.³⁷⁵

In the story of *Papik*, two men went seal hunting with Papik and then realized that he had been attacked by a monster. The two men then left. While on route back to the community the men encountered others, who were going seal hunting and the men warned them not to go because they may be frightened to death. When the men got back to the village, all the village members went into one home together while the monster approached.³⁷⁶

In each of these stories, there was the potential for harm to the community members and the community members worked together to address the potential harm.

In the following section, I outline that the community as a collective also responds when an individual does cause harm.

3.8 When harm is perpetuated by an individual, the community plays a role in addressing this harm (violence, neglect, theft)

When someone causes harm within the community, then members of the community respond. In the story of *The Soul*, the soul of a woman went into a seal and one day there were seal hunters. The seal with the woman's soul in it would not sacrifice

³⁷⁵ *Igimagajug, the Cannibal*, *supra* note 105 at 173.

³⁷⁶ *Papik*, *supra* note 95 at 91-92.

itself to one hunter because that hunter was lazy, and he did not put snow in his mother's water kettle.³⁷⁷ In other words, he was neglecting some of his responsibilities as a son to take care of his mother and this is harmful. A harmful act of omission that deserved retribution, but the legal principle behind the story is for men to take care of their mother's needs.

In the story *Ijimagasukdjukdjuaq*, a wife grew afraid of her husband, so she fled to a nearby community where her brother lived. When the husband went looking for his wife, the community members lied to him and said that she was not in the community. The community members were protecting the wife from a potentially harmful situation.³⁷⁸

In the story *The Woman who Could not Be Satiated*, Teneme lost her husband and she depended on the village to give her food. Over time she began to reflect signs of potential cannibalism (eating raw uncooked dog food and staring intently at Unaraw). Once Unaraw explained to her husband what had happened, a group of men decided that they would bar her and her two children in the house to permanently separate them from the community.³⁷⁹

In the story *Pautusôrssuaq, who Murdered his Uncle*, Pautusôrssuaq murdered Alattaq and stole his wife. When Alattaq's wife realized that her husband was murdered she fled to Eta to be with her father. When Pautusôrssuaq found out that she had left, he asked the little boy in the tent where she went, and he said he did not know because he was asleep (he was lying out of fear).³⁸⁰ Pautusôrssuaq was later torn to pieces from the

³⁷⁷ *The Soul*, *supra* note 111 at 159.

³⁷⁸ *Ijimagasukdjukdjuaq*, *supra* note 104 at 168.

³⁷⁹ *The Woman who could not be Satiated*, *supra* note 107 at 189-190.

³⁸⁰ *Pautusôrssuaq, who Murdered his Uncle*, *supra* note 96 at 96.

spirit of Alattaq.³⁸¹ The young boy lied to Pautusôrssuaq to protect the woman because he understood it was a dangerous situation for her.

Similarly, in the story *Igimagajug, the Cannibal*, a wife grew afraid of her husband because he had killed and eaten community members (including her mother and father). She fled to a nearby village where her brother was. Igimagajug, her husband, eventually ended up in the same village, but he did not know that his wife was there. One evening the wife's brother, and the wife confronted Igimagajug about eating their mother and father. Then the brother and several other community members killed Igimagajug.³⁸²

In the story of *Atungait*, Atungait and his wife traveled to several communities while they were going around Baffin Island. In the last community, people were playing ajagaq with a rabbit skull and Atungait joined in. On the last day before leaving this community, Atungait stole the rabbit head and the community members ran after him and drove him out of the community.³⁸³

In *The Emigration of Women*, several women were left widowed after a group of men murdered their husbands. After two of the women murdered one of these men, the women as a community left and began their own community in another area of the territory.³⁸⁴

On each of these stories, the legal principle of the community members addressing a harmful situation is present. It is relevant that the community as a whole has a say in how and when to address a harmful situation affecting their community.

³⁸¹ *Ibid* at 97.

³⁸² *Igimagajug, the Cannibal*, *supra* note 105 at 170-173.

³⁸³ *Atungait*, *supra* note 110 at 155-156.

³⁸⁴ *The Emigration of Women*, *supra* note 101 at 112-113.

In the following section, I outline that when there is a child that needs help, then the community steps in.

3.9 When a child needs help the community steps in

In several of the stories if a child does not have their own family or resources the community as a collective step in to support that child. Like in the story of *The Boy who Harpooned a Whale*, the young orphaned boy was cared for and challenged by his fellow Inuit. The community members took care of him and took him whale hunting, where he harpooned his first whale.³⁸⁵

In the story of *Papik*, there was a young orphan boy who was pushed into a tub of blood when a monster was approaching the community, and the members were trying to hide from the monster. Some wanted to kill the orphan boy, but others had compassion for him, and his life was spared.³⁸⁶

Similarly, *Qaudjaqdjuq*, was also an orphaned boy who experienced great hardship from fellow Inuit. He was mistreated and disrespected regularly. He called upon the man in the moon for help, and the man in the moon helped Qaudjaqdjuq fight back against people who mistreated him. The man in the moon made him strong and Qaudjaqdjuq then went on to fight the men who treated him poorly.³⁸⁷

In each of these stories, there is a child that needs support in some type of way. The community takes the steps necessary to help the child. In the following section below, I go into detail about, what responses or resolutions govern raising a child in a family or community. These responses and resolutions come through in the stories.

³⁸⁵ *The Boy who Harpooned the Whale*, *supra* note 93 at 86-88.

³⁸⁶ *Papik*, *supra* note 95 at 93.

³⁸⁷ *Qaudjaqdjuq*, *supra* note 92 at 81-85.

4. Legal Responses and Resolutions: What principles govern appropriate responses to harm and conflicts within community? What fosters child/family/community wellbeing?

General Statements of the Law:
4.1 Raising a child: What responses and resolutions govern raising a child in a family or community?
4.1(a) If a child is orphaned, the community cares for the child: <i>The Boy who Harpooned a Whale, Papik, Qaudjaqdjuq.</i>
4.1(b) Younger children can be placed with elders: <i>Separated from Camp.</i>
4.1(c) Not taking a child out of a potentially dangerous situation can put that child in a potentially violent situation: <i>The Woman who Could not Be Satiated.</i>
4.1(d) Children are taught new skills (which includes cultural skills: hunting, fishing) they will use into their adult life: <i>The Boy who Harpooned a Whale.</i>
4.1(e) Children are to be protected and cared for by their parents: <i>The Wife Changers, The Emigration of Women.</i>
4.1(f) Children are to be well fed and cared for by older adults (not necessarily always their parents): <i>Kating Saved his family in Time of Famine, The Emigration of Women.</i>
4.2 Treatment of individuals who experienced violence/harm/difficulty: What responses and resolutions govern the treatment of hurt or individuals experiencing difficult in a family or community?
4.2(a) A hurt individual has agency to address the perpetrator: <i>Storm Caused by a Loon, Qaudjaqdjuq, The Artificial Skull that Frightened People to Death, Papik, Lice, The Emigration of Women.</i>
4.2(b) An individual experiencing violence has agency to leave: <i>Ijimagasukdjukdjuaq, Pautusôrssuaq, who Murdered his Uncle, Igimagajug, the Cannibal, The Emigration of Women.</i>
4.2(c) An individual experiencing violence is protected: <i>Ijimagasukdjukdjuaq, Igimagajug, the Cannibal, The Emigration of Women.</i>
General Statements of the Law:
4.2(d) An elder or adult who is experiencing difficulty (hunger, shelter, etc) can get support from their community or family: <i>The Artificial Skull that Frightened People to Death, Kating Saved his family in Time of Famine.</i>

<p>4.2(e) An individual experiencing harm or difficulty can ask their partner for help: <i>The Wife Changers, Atungait</i>.</p>
<p>4.2(f) The community/family searches for a loved one who has gone missing: <i>The Man who did not Observe Taboos, Taboos and Starvation</i>.</p>
<p>4.2(g) A community or family facing a potentially harmful situation works together to address it: <i>Papik, Kating Saved his family in Time of Famine, Igimagajug, the Cannibal, The Emigration of Women</i>.</p>
<p>4.3 Treatment of the perpetrator of the harm: What responses and resolutions govern the treatment of the perpetrator (or possible perpetrator) of harm in a family or community?</p>
<p>4.3(a) An adult person who intentionally inflicts harm onto another adult person may face punitive consequences (people can also be considered animals, insects, or birds in this context, too): <i>Storm Caused by a Loon, Ijimagasukdjukdjuaq, The Artificial Skull that Frightened People to Death, Pautusôrssuaq, who Murdered his Uncle, The Wife Changers, Podluksak, Papik, Igimagajug, the Cannibal, Lice, The Emigration of Women</i>.</p>
<p>4.3(b) A person who abuses, or harms a child, may face punitive consequences: <i>Qaudjaqdjuq</i>.</p>
<p>4.3(c) Neglecting or mistreating an elder or parent comes with punitive consequences: <i>The Soul, The Artificial Skull that Frightened People to Death</i>.</p>
<p>4.3(d) An individual who takes too much of a scarce resource and does not leave much for others may face consequences: <i>Separated from Camp</i>.</p>
<p>4.3(e) Individuals that do not abide by community rules may face consequences: <i>Taboos and Starvation, The Man who did not Observe Taboos, Lice</i>.</p>

4.1 Raising a child

Within the stories, there were several different legal responses that arose when it came to raising children and particularly orphaned children.

4.1(a) If a child is orphaned the community cares for the child

In the story *The Boy who Harpooned a Whale*, there was a young orphaned boy who lived and hunted with the community members. The community members helped take care of him and taught him how to hunt for whales.³⁸⁸ Similarly, in the story of

³⁸⁸ *The Boy who Harpooned the Whale*, *supra* note 93 at 86-88.

Papik, an orphaned boy fell into a tub filled with seal blood. Some of the community members wanted to kill the boy, but others had compassion for him, and his life was spared.³⁸⁹

In the story of *Qaudjaqdjuq* there was an orphaned boy whose physical needs were taken care of by community members, but those community members also treated him very badly. Qaudjaqdjuq did not have many friends, and one day he called upon the man in the moon for help. The man in the moon later came and helped him to fight off the men who treated him badly. He also helped Qaudjaqdjuq become stronger so he could fight the men who mistreated him.³⁹⁰

4.1(b) Younger children can be placed with elders

In *Separated from Camp*, a large swell came and broke up the igloos. The people had to move from the ice onto the land, but the grandfather did not want to. The daughter in law left her oldest and youngest children with the grandfather, while the rest of the community went inland.³⁹¹ Similarly, in the story of *Kating who Saved His Family*, Kating had to leave his mother and siblings behind to find food in a nearby village. Kating left his siblings with his mom, instead of taking them with him.³⁹²

4.1(c) Not taking a child out of a potentially dangerous situation can put that child in a potentially violent situation

In the story of *The Woman who Could not Be Satiated*, Teneme was a widowed woman who depended on the nearby community members to help support her with food. She was beginning to show signs of being unwell (eating uncooked dog food and staring

³⁸⁹ *Papik*, *supra* note 95 at 93.

³⁹⁰ *Qaudjaqdjuq*, *supra* note 92 at 81-85.

³⁹¹ *Separated from Camp*, *supra* note 106 at 177.

³⁹² *Kating Saved his Family in Time of Famine*, *supra* note 107 at 179.

at Unaraw intently inside her home). When Unaraw told her husband, her husband and other men decided to lock Teneme into her home with two of her children and abandon them. When they returned to the community Teneme had eaten her children, and they were all dead.³⁹³ In this story, it is unclear why the two children were left with their mother who was becoming dangerous. The rationale for this is unspoken in the story. However, through community consultations, community members could answer questions around this scenario, but this goes beyond the scope of this thesis.

4.1(d) Children are taught new skills (which includes cultural skills: hunting, fishing) they will use into their adult life

In the story of *The Boy who Harpooned a Whale*, a young orphaned boy was teased that he could not harpoon a whale, after a man in the community took offence to what the boy said one day. The boy was then taken out by the men whale hunting and he was forced to harpoon the whale, and he succeeded. In the story the boy speaks well of himself after and takes pride in his accomplishment.³⁹⁴

4.1(e) Children are to be protected and cared for by their parents

In the story of *The Wife Changers*, Talilarssuaq and Navssarssuaq exchanged wives regularly and one day Navssarssuaq killed Talilarssuaq. Navssarssuaq's wife complained about Talilarssuaq's behavior (stabbing a seal skin they were lying on). After Talilarssuaq was stabbed and left on a heap of dung, Navssarssuaq's wife asked whether he was going to kill her now. He said, "No, Pualuna is not big enough yet to do without you."³⁹⁵ Pualuna was their youngest son.

³⁹³ *The Woman who could not be Satiated*, *supra* note 107 at 189-190.

³⁹⁴ *The Boy who Harpooned the Whale*, *supra* note 93 at 86-88.

³⁹⁵ *The Wife Changers*, *supra* note 97 at 99.

In the story of *The Emigration of Women*, there were several widowed wives who were pregnant. They were pregnant by the men who murdered their husbands. One day the women left the community where their murderers lived and traveled to make their own community. The women gave birth to mostly boys and they all intermarried with the women (not family members). This allowed for the new community to continue to populate, but also it meant the boys who were children were cared for by the women.³⁹⁶

4.1(f) Children are to be well fed and cared for by older adults (not necessarily always their parents)

In the story *Kating Saved his Family in a Time of Famine*, Kating was the provider of food to his siblings when they were almost starving. Kating went to a nearby community and got whale meat, blubber and skin, and an old dog and brought it back to his mother and siblings. Also, he continued to hunt seals for his siblings (and mother), ptarmigan and also caribou.³⁹⁷

In the story of the *Emigration of Women*, the women were pregnant by the men who murdered their husbands. Those children were mostly boys, and as the boys grew older, they were married out to women in the new community who were not their relatives. The babies, turned to children and then into men, and throughout that time the women in the community raised them.³⁹⁸

4.2. Treatment of individuals who experienced violence/harm/difficulty: What responses and resolutions govern the treatment of hurt or individuals experiencing difficulty in a family or community?

³⁹⁶ *The Emigration of Women*, *supra* note 101 at 112-113.

³⁹⁷ *Kating Saved his Family in Time of Famine*, *supra* note 107 at 179-181.

³⁹⁸ *The Emigration of Women*, *supra* note 101 at 112-113.

4.2(a) A hurt individual has agency to address the perpetrator

In the story of the *Storm Caused by a Loon*, the loon experienced mistreatment by men in the community who plucked almost all of its feathers out. In revenge for that treatment, the loon inflicted his own revenge on the community members by causing a big snowstorm where people starved to death.³⁹⁹ This is similar to the story of *Lice* where a new mother was tormented by lice on her shoulder one day and said, it is strange, that such, tiny, toothless animals can bite so hard!” A louse heard what she had said and turned into a monster, frightening the woman to death. From then on women were forbidden to complain of lice when they were tormented by them.⁴⁰⁰

In the story of *Qaudjaqdjuq*, Qaudjaqdjuq was an orphaned boy who was taken care of by the community members, but he was also very badly treated by members of the community. He had very few friends, and he asked for help from his one friend, the man in the moon. The man in the moon came and helped Qaudjaqdjuq to fight off some of the people who treated him badly, and also helped make Qaudjaqdjuq strong. Once he grew strong, he went into the community and killed the men who had treated him badly.⁴⁰¹

In the story of *The Artificial Skull that Frightened People to Death*, the grandma depended on five families for support and necessities to live. She was treated badly by four of the five families and one day made a skull from bones and put it in the doorway of the families that treated her badly. Those neighbors nearly died of fright and then they began to treat her better. The grandma later took down that skull and made a bigger one,

³⁹⁹ *The Storm Caused by a Loon*, *supra* note 103 at 129.

⁴⁰⁰ *Lice*, *supra* note 102 at 128.

⁴⁰¹ *Qaudjaqdjuq*, *supra* note 92 at 81-85.

the families began to leave the community and the skull chased them. They died of fright.⁴⁰²

In the story of the *Emigration of Women*, there were several women who were left widowed after their husbands were killed by a group of men. Two of the widowed women killed one of those men, and the remainder of the women fled that community and left to make their own community.⁴⁰³

In the story of *Papik*, Papik used to go seal hunting with Ailaq. Ailaq usually caught more seals than Papik and he grew envious. When they were seal hunting one day, Papik came back to the community without Ailaq. Ailaq's mother accused Papik of killing her son. She then drowned herself and came back as a monster and ripped Papik apart when he was seal hunting.⁴⁰⁴

Each of these stories illustrates that when an individual is experiencing harm, then they have the ability and agency to address the perpetrator of the harm that was either directly or indirectly inflicted on them.

4.2(b) An individual experiencing violence has agency to leave

In the story *Ijimagasukdjukdjuaq*, the husband had killed and eaten other community members and the wife grew afraid of him. So, when he was away hunting, she fled and eventually ended up at her brother's house in a nearby community.⁴⁰⁵ The same thing happened in *Igimagajug, the Cannibal*, when Igimagajug could not catch any seals (because he offended the mother of the sea mammals, Nuliajuk) he killed and ate

⁴⁰² *The Artificial Skull that Frightened the People to Death*, *supra* note 94 at 89-90.

⁴⁰³ *The Emigration of Women*, *supra* note 101 at 112-113.

⁴⁰⁴ *Papik*, *supra* note 95 at 91-94.

⁴⁰⁵ *Ijimagasukdjukdjuaq*, *supra* note 104 at 167-168.

community members (which included his mother and father-in-law).⁴⁰⁶ His wife grew afraid that Igimagajug would do this to her, so she planned her escape and eventually ended up at her brother's house.⁴⁰⁷

In the story of *Pautusôrssuaq, who Murdered his Uncle*, Pautusôrssuaq murdered Allataq. Allataq's wife found out that her husband was murdered and she fled to her family.⁴⁰⁸

In the story of *The Emigration of Women*, several women in a community were widowed after their husbands were murdered by a group of men. Two of the widowed women killed one of the men who murdered their husbands, and all the women who were widowed then fled the community. They went and created their own community.⁴⁰⁹

Each of these stories illustrates that when there is an individual who is experiencing difficulty then that individual has the agency to leave the situation.

4.2(c) An individual experiencing violence is protected

In the story of *Ijimagasukdjukdjuaq*, the wife ran away from her husband because he had begun killing and eating others. She ended up at her brother's house in a nearby village, and when her husband went looking for her, the community members warned the others. The husband asked the community members how they knew, and they said, "the woman in the boat told us so."⁴¹⁰ They did not tell him that she was there.⁴¹¹

Similarly, in the story of *Igimagajug, the Cannibal*, Igimagajug, was also a cannibal. One day Igimagajug was seal hunting, and he was informed that his wife just

⁴⁰⁶ *Igimagajug, the Cannibal*, *supra* note 105 at 177.

⁴⁰⁷ *Ibid* at 171-172.

⁴⁰⁸ *Pautusôrssuaq, who Murdered his Uncle*, *supra* note 96 at 96.

⁴⁰⁹ *The Emigration of Women*, *supra* note 101 at 112-113.

⁴¹⁰ *Ijimagasukdjukdjuaq*, *supra* note 104 at 168.

⁴¹¹ *Ibid* at 167-169.

gave birth to a still born child. He forced his wife to take the seal in the house, and this offended the mother of all sea mammals, Nuliajuk. She then, withheld seals from the villagers, and they became hungry. Igimagajug, then killed his mother and father in law and other community members and ate them. His wife was afraid that he would do the same to her, so when he was hunting, she fled to a nearby village. She ended up at her brother's house, and when her husband came looking for her, her brother and other community members killed him.⁴¹²

In the story of *The Emigration of Women*, several women were widowed because a group of men killed their husbands. Two of the widowed women killed one of the murderers and then all the women left the community together and created their own community.⁴¹³

In each of these stories, when an individual is experiencing violence they were protected by their family or their respective community members.

4.2(d) An elder or adult who is experiencing difficulty (hunger, shelter, etc) can get support from their community or family

In *The Artificial Skull that Frightened People to Death*, there was a grandma, and the neighbors provided her with food because she was unable to get it herself.⁴¹⁴

Similarly, in the story *Kating Saved his family in Time of Famine*, Kating saved his mother's and sibling's life by providing them with food during a famine.⁴¹⁵

4.2(e) An individual experiencing harm or difficulty can ask their partner for help

⁴¹² *Igimagajug, the Cannibal, supra* note 105 at 171-173.

⁴¹³ *The Emigration of Women, supra* note 101 at 112-113.

⁴¹⁴ *The Artificial Skull that Frightened the People to Death, supra* note 94 at 89.

⁴¹⁵ *Kating Saved his Family in Time of Famine, supra* note 107 at 179-181.

In *The Wife Changers*, Talilarssuaq and Navssarssuaq exchanged wives regularly. One day Talilarssuaq stabbed a knife into the skin which him and Navssarssuaq were laying on. The wife then ran to her husband and said, “go in and kill Talilarssuaq! He is lying there pretending to be dangerous.”⁴¹⁶ Navssarssuaq then went to Talilarssuaq and found in the same spot, talking to himself. Navssarssuaq then stabbed him and threw him in a dung heap.⁴¹⁷

In the story of *Atungait*, Atungait and his wife travelled around Baffin Island together. One day Atungait and his wife came across a place where there was no land and they had to climb on a cliff. Atungait helped his wife when they were climbing the cliff.⁴¹⁸

4.2(f) The community/family searches for a loved one who has gone missing

In the story of *The Man who did not Observe Taboos*, Artuck went out on the ice with his son tied to the sledge. He did not return, and the next day several sledges went out looking for Artuck and found him ripped to pieces.⁴¹⁹ Similarly, in the story *Taboos and Starvation*, several community members did not return from hunting. Other community members then went to Fox Channel looking for them that fall.⁴²⁰

4.2(g) A community or family facing a potentially harmful situation works together to address it

In the story of *Papik*, Papik and Ailaq went seal hunting together. Ailaq used to catch more seals than Papik, and Papik grew envious. One day Papik came back without

⁴¹⁶ *The Wife Changers*, *supra* note 97 at 98.

⁴¹⁷ *Ibid* at 98-99.

⁴¹⁸ *Atungait*, *supra* note 110 at 152.

⁴¹⁹ *The Man who did not Observe Taboos*, *supra* note 98 at 101.

⁴²⁰ *Taboos and Starvation*, *supra* note 108 at 182.

Ailaq, and Ailaq's mother decided that she would die to avenge the passing of her son. She told Papik that she would eat him alive. For a long time Papik didn't go seal hunting because he was afraid of the old woman's threat. Until one day he forgot about it and went seal hunting and was attacked by a monster. The other two men who were also seal hunting fled inland and saw others going seal hunting and warned them not to.⁴²¹

In the story of *Kating Saved his family in Time of Famine*, Kating had to go into another village in search of food. When he arrived at the village, he had told people what happened and they provided him with a whale toboggan, an old dog and whale meat, whale skin and whale blubber.⁴²²

Igimagajug, the Cannibal, Igimagajug forced his wife to take a dead seal inside the house after she gave birth to a still born child. This offended the mother of the sea mammals, Nuliajuk. Niliajuk then withheld seals from people in the village and they began to starve. Igimagajug then ate people in the community including his mother and father in law. Igimagajug's wife grew afraid that he would kill her, so she fled to a nearby community with her brother. When Igimagajug went looking for her, her brother and other community members killed him after confronting him about eating his mother and father-in-law.⁴²³

In *The Emigration of Women*, there were several women who were left widowed because their husbands had been murdered by a group of men. Two of the widows killed one of the men, and all of the widowed women left that community and made their own. Each woman was pregnant by the men who murdered their husbands, and they gave birth

⁴²¹ *Papik*, *supra* note 95 at 91-94.

⁴²² *Kating Saved his Family in Time of Famine*, *supra* note 107 at 180.

⁴²³ *Igimagajug, the Cannibal*, *supra* note 105 at 170-173.

to children. These children were later married between community members who were not their relatives.⁴²⁴

4.3 Treatment of the perpetrator of the harm: What responses and resolutions govern the treatment of the perpetrator (or possible perpetrator) of harm in a family or community?

4.3(a) An adult person who intentionally inflicts harm onto another adult person may face punitive consequences (people can also be considered animals, insects, or birds in this context, too)

In the story of *Storm Caused by a Loon*, two men plucked all the feathers out of the loon and left only one on each wing. That winter a lot of snow fell and this prevented people from accessing their food. Several people died of starvation and this was caused by the loon.⁴²⁵ Similarly, in the story of *Lice*, a woman who just gave birth was tormented by lice on her shoulder. She said, “it is strange, that such, tiny, toothless animals can bite so hard!”⁴²⁶ The louse heard what she had said and turned into a monster. She died of fright. From then on women who gave birth were forbidden to mention lice by their name or complain when they caused irritation.⁴²⁷

In the story *Storm Caused by a Loon*, the harmful action was intentionally malicious, and the consequences were more dire (people died of starvation due to the mistreatment of the loon). Whereas, in the story of *Lice*, the woman’s commentary about louse was not malicious or did not harm the louse physically. This is the underlying

⁴²⁴ *The Emigration of Women*, *supra* note 101 at 112-113.

⁴²⁵ *The Storm Caused by a Loon*, *supra* note 103 at 129.

⁴²⁶ *Lice*, *supra* note 102 at 128.

⁴²⁷ *Ibid.*

difference between the two stories, but the legal principle to not cause harm to another physically or verbally is the same.

In the story of *Ijimagasukdjukdjuaq*, the husband was a cannibal and his wife grew afraid of him. So, she fled to a nearby village where her brother lived. When the husband arrived all the people gathered in the dancing house, where the brother killed the husband with a harpoon.⁴²⁸

In the story of *The Artificial Skull that Frightened People to Death*, the grandma was mistreated by neighbors. One day in retaliation for how she was mistreated she made a skull from bones and placed it on the front door of the people who treated her poorly. After that they began to treat her better, but she then made a bigger skull. People began to leave the community, and they died of fright from this bigger skull.⁴²⁹

In the story of *Pautusôrssuaq, who Murdered his Uncle*, Pautusôrssuaq murdered his uncle Alattaq and stole his wife. Pautusôrssuaq did not receive any pleasure from this wife he had stolen. One day while out seal hunting Pautusôrssuaq was attacked by a fox, and then a bear. He was ripped to pieces by the spirit of Alattaq.⁴³⁰

In the story of *The Wife Changers*, Talilarssuaq and Navssarssuaq exchanged wives regularly. Talilarssuaq was a malicious man who enjoyed frightening people. One evening Talilarssuaq was lying by the side of the woman he had borrowed, and he took a knife and drove it into the skin they were laying on. The wife went and told her husband, Navssarssuaq what had happened, and he went and stabbed Talilarssuaq. Then threw him in a heap of dung. After that Navssarssuaq could feel a spirit following him around, but

⁴²⁸ *Ijimagasukdjukdjuaq*, *supra* note 104 at 167-169.

⁴²⁹ *The Artificial Skull that Frightened the People to Death*, *supra* note 94 at 89-90.

⁴³⁰ *Pautusôrssuaq, who Murdered his Uncle*, *supra* note 96 at 95-97.

an illness fell on the village. Navssarssuaq died so Talilarssuaq's spirit had no opportunity to rip him to pieces.⁴³¹

Similarly, in the story of *Papik*, Papik used to go seal hunting with Ailaq. Ailaq would get more seals than Papik and Papik grew envious. One day Papik came back without Aliaq, and Ailaq's mother accused Papik of murdering her son. So, to avenge her son's death, she drowned herself in a bear skin. Then one day when Papik was seal hunting a spirit came and ripped him to pieces on the ice. This was the spirit of Ailaq's mother.⁴³²

In the story of *Podluksak*, Podluksak was a murderer who had stolen the wife of another man and the father and two sons of this man were determined to kill Podluksak. Podluksak ended up killing two of the sons. In retaliation, the father killed Podluksak's son. Podluksak then killed the father for killing his son.⁴³³

In the story of, *Igimagajug, the Cannibal*, forced his wife to take a seal inside the house after she gave birth to a stillborn child. This offended the mother of the sea mammals, Nuliajuk. Niliajuk then withheld seals from people in the village and they began to starve. Igimagajug then ate people in the community including his mother and father in law. Igimagajug's wife grew afraid that he would kill her, so she fled to a nearby community with her brother. When Igimagajug went looking for her, her brother and other community members killed him after confronting him about eating his mother and father-in-law.⁴³⁴

⁴³¹ *The Wife Changers*, *supra* note 97 at 98-99.

⁴³² *Papik*, *supra* note 95 at 91-94.

⁴³³ *Podluksak*, *supra* note 99 at 106.

⁴³⁴ *Igimagajug, the Cannibal*, *supra* note 105 at 171-173.

In *The Emigration of Women*, there were several women left widowed after a group of men killed their husbands. Two of the women killed one of the men who murdered their husbands.⁴³⁵

4.3(b) A person who abuses, or harms a child, may face punitive consequences

In the story of, *Qaudjaqdjuq*, Qaudjaqdjuq was an orphan boy who was abused by community members. He did not have many friends and the only friend he had was the man in the moon. One day he asked the man in the moon to come and help him and he did. The man in the moon asked Qaudjaqdjuq to bring in the seat of his sled. Inside the sled was a dead ermine and the man in the moon used his powers to bring it back to life. The ermine creates a distraction and villagers die. Qaudjaqdjuq and the man in the moon leave the village. The man in the moon makes Qaudjaqdjuq strong. Qaudjaqdjuq then goes back to the village and killed the men who hurt him and mistreated him.⁴³⁶

4.3(c) Neglecting or mistreating an elder or parent comes with punitive consequences

In the story of *The Soul*, there was hunter, and when that hunter was a little boy, he was lazy and did not put snow in his mother's kettle. The seal which had the spirit of a woman inside it, decided that because of his past behavior, it would not sacrifice itself to the hunter.⁴³⁷

In the story of *The Artificial Skull that Frightened People to Death*, a grandma received food from five of her neighbors and four of the neighbors would mistreat her. One day in revenge for being mistreated she placed a skull in the front of the doorways of

⁴³⁵ *The Emigration of Women*, *supra* note 101 at 112-113.

⁴³⁶ *Qaudjaqdjuq*, *supra* note 92 at 81-85.

⁴³⁷ *The Soul*, *supra* note 111 at 159.

the neighbors who mistreated her. They began to treat her with more respect after that. But the grandma decided to take down that skull and build a bigger one. Some of the families began to move away from the village, and the grandma sent the larger skull after them. They died of fright.⁴³⁸

4.3(d) An individual who takes too much of a scarce resource and does not leave much for others may face consequences

In the story *Separated from Camp*, several members of a village had to move from the ice to the land, after a large swell broke their ice houses. On route inland, the traveling village sought drinking water first from a pond that was salty. Then they found a freshwater pond. As the people began to drink the freshwater, travelers came and said, “don’t drink all of the water, leave some for us.”⁴³⁹ Those who drank too much freshwater complained of feeling cold and they died before reaching their old village inland.⁴⁴⁰

4.3(e) Individuals that do not abide by community rules may face consequences

In the story of *Taboos and Starvation*, there was a boat returning from Fox Channel with walrus hide. The leader said, “why do you take walrus hide along? You must not take walrus hide when you go caribou hunting. If you do, you will starve.”⁴⁴¹ The men did not follow his advice and found only a few caribou and had to return because they were hungry. When other community members did not return, other community members went looking for them. That fall they found the crew and they were

⁴³⁸ *The Artificial Skull that Frightened the People to Death*, *supra* note 94 at 89-90.

⁴³⁹ *Separated from Camp*, *supra* note 106 at 178.

⁴⁴⁰ *Ibid.*

⁴⁴¹ *Taboos and Starvation*, *supra* note 108 at 182.

starving. The only ones that were still alive were Okowsecheak and his wife. They survived by eating the bodies of those who died.⁴⁴²

In the story of *The Man who did not Observe Taboos*, Artuk buried his dead wife under stones but did not follow the taboos/customary law imposed on how to handle corpses because he did not believe in the customary laws of his forefathers. He cut meat with an axe, he went onto the ice and shook the lice off his pants, and he went and drank water from an ice cliff. He did all of this even though, it was taboo/customary law not to and he did it in defiance of the knowledge of his forefathers. Exclaiming that all of their knowledge was lies. One day he was preparing to go onto the ice, but a fear came upon him. He forced his son to go with him by tying him onto the sledge. Late that night Artuck's daughter heard the mocking laughter of spirits out on the ice and she realized he had paid the price for not following the taboos/customary laws. When people went out looking for Artuck, they found him ripped to pieces and his son died of fright. Those who do not believe in the traditions of their forefathers are ripped to pieces by the spirits.⁴⁴³

In the story of *Lice*, a new mother was tormented by lice and said, "it is strange, that such, tiny, toothless animals can bite so hard!"⁴⁴⁴ The louse heard what she had said and turned into a monster. The woman died of fright. After that women who just gave birth were forbidden to mention or complain of lice. This happened in the days of the forefathers, when a thoughtless tongue could fashion monsters and brought about great misfortunes.⁴⁴⁵

⁴⁴² *Ibid.*

⁴⁴³ *The Man who did not Observe Taboos*, *supra* note 98 at 100-101.

⁴⁴⁴ *Lice*, *supra* note 102 at 128.

⁴⁴⁵ *Ibid.*

In *Taboos and Starvation*, it was clear that the community members did not abide by the advice of the elder and because they did not abide by this advice, they faced difficult consequences. The story of *The Man who did not Observe Taboos*, is similar to *Taboos and Starvation* but different, in that Artuck knowingly went against the traditions of his forefathers. Due to this, Artuck experienced a very difficult circumstances and he paid the consequences with his life. The story of *Lice* differs from both stories because after a woman had died from complaining of lice, women who were new mothers began to follow the legal principle that no one should use their tongues thoughtlessly against other living-beings⁴⁴⁶, even if it was a louse.

These stories illustrate that the knowledge, which is shared with Inuit, has to be taken into consideration and used once the knowledge is shared, otherwise there may be consequences.

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

General Reinstatements of Law:
5.1 Families and communities work and stay together: The proposition that there is a responsibility for families and communities to stay closely together:
General Reinstatements of Law:
5.1 Families and communities work and stay together: <i>The Emigration of Women, Separated from Camp, Kating Saved his family in Time of Famine, The Woman who Could not Be Satiated, The Artificial Skull that Frightened People to Death, Murdering a Stranger, Podluksak, Atungait, The Emigration of Women</i>
5.2 You should not hurt young children because they can grow up to be harmful adults: The proposition that children who are abused or mistreated can grow into adults that hurt their loved one’s or people within the community: <i>Qaudjaqdjuq,</i>

5.1 Families and communities work and stay together

⁴⁴⁶ *Ibid.*

In *Separated from Camp* a village of people had to move from the ice floe, inland because their snow houses were broken from a large swell. A grandfather did not want to leave, so the daughter in law left her oldest and youngest son behind with him. Also, when the people in the village left, they left together to travel inland.⁴⁴⁷

In *The Woman who Could not Be Satiated*, Teneme was a widow with two children. She had begun to show signs of cannibalism (eating raw, uncooked dogs' food and staring intently at Unaraw in her house). After Unaraw explained what had happened to her husband, the men in the community decided to bar Teneme and her children in their house and abandon them. The people in the family and community left together and returned months later to find Teneme and her children died. Teneme ate her children.⁴⁴⁸

In both of these stories, the communities worked together in an environmentally distressful moment and in a moment when a woman was becoming a threat to the community.

5.2 You should not hurt young children because they can grow up to be harmful adults

In *Qaudjaqdjuq*⁴⁴⁹, Qaudjaqdjuq was an orphaned boy who was mistreated by the villagers who were supposed to care for him. He had no friends, other than the man in the moon. One day Qaudjaqdjuq asked the man in the moon to come and help him and he did.⁴⁵⁰ The man in the moon helped Qaudjaqdjuq become strong. Qaudjaqdjuq then went back to the village and killed the men who mistreated him as a child. He spared two women who he took as wives. He was sometimes abusive to his wives and this results in

⁴⁴⁷ *Separated from Camp*, *supra* note 106 at 177-178.

⁴⁴⁸ *The Woman who could not be Satiated*, *supra* note 107 at 189-190.

⁴⁴⁹ *Qaudjaqdjuq*, *supra* note 92 at 81-85.

⁴⁵⁰ *Ibid* at 81.

one woman having a shoulder slumped and the other woman had a squint eye from anxiously watching her husband in case he becomes angered.⁴⁵¹

This story highlights that it is important for children within a community to be treated with care and compassion because if and when they are mistreated as children, they can grow up to be adults who harm others due to their upbringing and their experiences with abuse themselves. It is a cautionary story which implicitly exposes the effects of childhood abuse and how that abuse has long term effects on others within a family, community or both.

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

Substantive Rights:

General Statements of the Law:
6.1 The right to be protected from harm: <i>Storm Caused by a Loon, Qaudjaqdjuq, Ijimagasukdjukdjuaq, Taboos and Starvation, The Woman who Could not Be Satiated, Separated from Camp, The Artificial Skull that Frightened People to Death, Pautusôrssuaq, who Murdered his Uncle, The Wife Changers, Podluksak,</i>
General Statements of the Law:
6.1 The right to be protected from harm: <i>The Man who did not Observe Taboos, Papik, Kating Saved his family in Time of Famine, Igimagajug, the Cannibal, The Emigration of Women.</i>

In several of the stories, there are examples where individuals caused harm to others and to protect the community and family from further harm, the individual was removed. In the *Storm Caused by a Loon*, the loon experienced having its feathers plucked out, except one on each wing, the loon then caused a big snowstorm because of the way it was mistreated, and several people starved.⁴⁵² Similarly, in the story of

⁴⁵¹ *Ibid* at 82-85.

⁴⁵² *The Storm Caused by a Loon*, *supra* note 103 at 129.

Qaudjaqdjuq community members mistreated the young boy and he grew up to kill the villagers who harmed him as a child. He was not protected as a young boy and grew up to be abusive.⁴⁵³ In *Ijimagasukdjukdjuaq*, the man killed and ate community members, and he was later killed. He was harmful to the community and family, and to protect the community and family, he was removed.⁴⁵⁴

In several of the stories, advice or customary Inuit law was shared to protect people from potential harm. In the story of *Taboos and Starvation*, a leader in the community warned hunters that taking walrus hide with them when going caribou hunting would lead them to starvation. The hunters did not listen, and several people starved to death.⁴⁵⁵ In the story of *The Man who did not Observe Taboos*⁴⁵⁶, Artuk buried his dead wife under stones but did not follow the taboos/customary law imposed on how to handle corpses because he did not believe in the customary laws of his forefathers. Artuck went missing, and when people went out looking for Artuck, they found him ripped to pieces. It was stated in the story that those who do not believe in the traditions of their forefathers are ripped to pieces by the spirits.⁴⁵⁷

Also, there are examples where Inuit were experiencing challenging environmental changes which posed a threat to the survival of people in the community and family. To protect the collective, people had to take action to adjust to the changing circumstances. In *Separated from Camp*⁴⁵⁸ a large swell came one day, and the snow

⁴⁵³ *Qaudjaqdjuq*, *supra* note 92 at 82-85.

⁴⁵⁴ The protection of community and family members from harmful people also occurred within *The Women who Could not be Satiated*, *Pautusôrssuaq, who Murdered his Uncle*, *The Wife Changers*, *Podluksak*, *Papik*, *Igimagajug*, *the Cannibal* and *The Emigration of Women*.

⁴⁵⁵ *Taboos and Starvation*, *supra* note 108 at 182.

⁴⁵⁶ *The Man who did not Observe Taboos*, *supra* note 91 at 100-101.

⁴⁵⁷ *Ibid.*

⁴⁵⁸ *Separated from Camp*, *supra* note 106 at 177-178.

houses were broken up. A man led the people from the ice onto the land, where they could move back to their old village.⁴⁵⁹ Similarly, in the story of *Kating Saved his family in Time of Famine*⁴⁶⁰ a large snow fell, and people could not travel to on the ice to get to camp and they began to starve.⁴⁶¹ To protect his family from starvation Quawallow left his dog with his family and the family later ate it⁴⁶², as he traveled to a nearby community to collect food.⁴⁶³ He also hunted seals and caribou⁴⁶⁴ and each of his family members survived.⁴⁶⁵

7. General Underlying Principles: What underlying or recurrent themes emerge in the stories that might not be captured above?

General Statements of the Law:
7.1 After handling a human’s dead corpse, it is customary law not to handle meat: <i>The Man who did not Observe Taboos, Igimagajug, the Cannibal.</i>
7.2 There was little to no need for outside intervention when dealing with issues within a community: emerges from almost all twenty stories that were reviewed.

7.1 After handling a human’s dead corpse, it is customary not to handle meat

In the story of *The Man who did not Observe Taboos*,⁴⁶⁶ Artuk buried his dead wife under stones but did not follow the taboos/customary law imposed on how to handle corpses because he did not believe in the customary laws of his forefathers. He did this in

⁴⁵⁹ *Ibid.*

⁴⁶⁰ *Kating Saved his Family in Time of Famine, supra* note 107 at 179-181.

⁴⁶¹ *Ibid* at 179.

⁴⁶² *Ibid* at 180.

⁴⁶³ *Ibid.*

⁴⁶⁴ *Ibid* at 181.

⁴⁶⁵ In *The Artificial Skull that Frightened People to Death* the elder woman who could not obtain her own food, was also protect from starvation with the help of the nearby community members.

⁴⁶⁶ *The Man who did not Observe Taboos, supra* note 91 at 100-101.

defiance of the knowledge of his forefathers. Exclaiming that all of their knowledge was lies. One day he was preparing to go onto the ice, but a fear came upon him. He forced his son to go with him. When people went out looking for Artuck, they found him ripped to pieces and his son died of fright. Those who do not believe in the traditions of their forefathers are ripped to pieces by the spirits.⁴⁶⁷

In *Igimagajug, the Cannibal*⁴⁶⁸ a woman gave birth to a still born child while her husband, Igimagajug, was away hunting ground seals. Igimagajug asked his wife to haul the ground seal inside, but she told Igimagajug what had happened and that she did not want to do it. Her husband demanded she do it, so she did. This angered Nuliajuk who is the mother of the sea mammals. So she withheld seals from the villagers who grew hungry. Igimagajug then killed and ate his mother and father and law, and others nearby.⁴⁶⁹

7.2 There was little to no need for outside intervention when dealing with issues within a community

In each of the stories, other than the story of *Kating Saved his family in Time of Famine*,⁴⁷⁰ *Qaudjaqdjuq* and *Igimagajug, the Cannibal* several of the family and community members throughout the rest of the stories worked collectively together in challenging times to overcome or manage the situation at hand. There was little to no interest or need to seek outside intervention to manage a challenging legal or social issue which arose. The Inuit present in the community or family worked together to manage

⁴⁶⁷ *Ibid.*

⁴⁶⁸ *Igimagajug, the Cannibal, supra* note 105 at 170-173.

⁴⁶⁹ *Ibid* at 170.

⁴⁷⁰ *Kating Saved his Family in Time of Famine, supra* note 107 at 179-181.

their own legal issues. Outside intervention only entered into the legal process if it was solicited from the individual(s) in distress.

Concluding thoughts on case briefing Inuit stories

This chapter, although long, provides insight into how the Inuit legal principles are enshrined in the stories teachings. Each of the stories provide their own rationale for the legal principle(s) that was followed. In the concluding chapter, I take the legal principles and I show how they can be applied to the creation of a Declaration of Inuit Laws in the creation of an Inuit Court in Nunatsiavut. I also provide an example on how these Inuit legal principles can be used in drafting Inuit laws within the Nunatsiavut Government's jurisdiction within Chapter 17.

CHAPTER 7 CONCLUSION

The research question that this thesis tried to provide an answer to is *how can Inuit laws found within published and publicly accessible Inuit stories inform the process of the creation of an Inuit Court in Nunatsiavut?* In finding an answer to this question through case briefing twenty Inuit stories using the ILRU methodology, I imagined the creation of a mandatory Declaration of Inuit Laws that would be applicable in the judicial process of an Inuit Court in Nunatsiavut. This Declaration in its application would be

mirrored similar to how the Navajo Nation Courts govern their legal processes through the *Fundamental Laws of the Dine*. In coming to this idea, I learnt a lot.

I have realized throughout the research and writing required in the process of writing my thesis, that Inuit have undergone tremendous change and adversity in the last century. To reiterate Gordon Christie's experience,

...My mom's immediate family found themselves spending a winter in the Mackenzie River delta area in the 1940's, which accounts for my being Canadian. *I am one possible outcome of a rapid transition from traditional ways of living to many and varied sorts of lives.* My grandmother spoke very little English, and I do not speak Inuktitut, which made communication with her very difficult. *My mother's generation was at the crux of the transition, living through several decades of tremendous upheaval.* Now here I find myself, a "southerner", a law professor speaking at a conference in Toronto...⁴⁷¹

This quick move from one mode of life to a completely different mode of survival is commonplace amongst Inuit Nunangat. The social determinants of health such as access to educational institutions in Inuktitut, access to post-secondary institutions above the 55th parallel, over-crowded housing, the highest suicide rate in Canada and the lasting effects of colonial violence are legacies seen and felt in places where Inuit live. These quick changes brought on by Kallunâk legal orders and governance structures, and the damaging systems that perpetuate oppression, racism and lateral violence within Inuit communities are realities Indigenous people all across Canada have also endured.

Yet, despite these very real and difficult circumstances, the emotional and difficult work of revitalizing Indigenous legal orders has continued. Creative people connected to governance and law are writing their ideas into scholarly articles and fancy publications. However, people from the community are also contributing to the

⁴⁷¹ Christie, *supra* note 6 at 14.

revitalization of Indigenous law and ways of knowing through song, dance, tattooing, storytelling and language. As I have learnt, Inuit in each of the regions have been working diligently to protect and advance the interests of Inuit in Canada in many diverse ways.

The historical, political and legal journeys of Nunavik, Inuvialuit, Nunavut and Nunatsiavut may not be taught within mainstream Canadian educational systems from elementary to university, but these aspects of this country's society make up an important part of political and legal history. As I have written about the evolution of modern Inuit land claim and self-government treaty negotiations, I have learnt that understanding history is important in advancing Inuit legal orders, while finding ways to innovatively apply them to contemporary governance structures.

The Inuit of Nunatsiavut worked hard for decades to negotiate the *Labrador Inuit Land Claims Agreement*. It was through the tireless efforts of Inuit and Indigenous people across Canada that opened the ears and eyes of the federal and provincial/territorial governments to begin recognizing and respecting the fact that Indigenous peoples have an inherent right to self-govern that needs to be recognized in the land claims negotiation process.

The *Labrador Inuit Land Claims Agreement* was the latest of the Inuit regions to negotiate and settle their modern treaty and a stroke of luck that the federal and provincial government acknowledged the inherent right for Indigenous people to self-govern. Policy may not be judicially reviewable in a similar fashion as legislation, but the federal Inherent Rights Policy is a policy that opened up the space for the negotiation of Chapter 17 of the *Labrador Inuit Land Claims Agreement*.

Within Chapter 17, the Nunatsiavut Government has jurisdiction and responsibility over its territory and its beneficiaries. One of those areas is the creation of an Inuit Court. This Court has not yet been developed because the Nunatsiavut Government is in its early stages of implementing the land claims agreement. Therefore, it could take several years or decades before this comes to fruition. Especially given that, there are very real socio-economic realities that Nunatsiavimmiut face due to the ongoing effects of inter-generational traumas caused by relocation, residential schools and other acts of colonial violence.

Despite this, it is important to start the conversation about an Inuit Court in Nunatsiavut and that is what this thesis aimed to do. In particular it aimed to start the conversation to show a path where the Inuit legal orders of our ancestors can be applied to contemporary governing structures, specifically in Nunatsiavut, where there is more flexibility to apply Inuit laws because of a settled self-government agreement with jurisdiction to create and Inuit Court.

In this concluding chapter, I draft a Declaration of Inuit Laws from the legal principles I found in twenty of the Inuit stories cased briefed in the previous chapter. The aim of this exercise is to illustrate how this is possible given that the Nunatsiavut Government has jurisdiction to create an Inuit Court within its territory. I conclude with remarks on what I have learnt throughout the journey of writing my thesis on the revitalization of Indigenous laws within academia and what I see are the possibilities of this work and also how this work can be built upon within community.

Below you will find the barebones legal principles from twenty of the Inuit stories that were analyzed in the preceding chapter. In the section that follows, is a draft

Declaration of Inuit Laws derived from these Inuit legal principles. The Declaration is drafted in a way that mirrors how the Navajo Tribal Courts incorporated their legal principles into the *Fundamental Laws of the Dine*.

General underlying principles: What underlying or recurrent themes emerge in the stories that are important to understanding more specific points of law?

- (a) It is important to respect birds/animals/inanimate/spiritual beings: The proposition that living beings that are not in human form must be respected, otherwise there can be consequences.
- (b) The protection of family/community members is important: The proposition that family/community members collectively work together to protect their loved ones in situations where there is harm or a threat to survival.
- (c) Individuals who pose a threat, or cause harm to an individual or a community, are punished through separation or at times banished from the community: The proposition that people who cause harm face consequences for their acts including being permanently removed from the community in some situations.
- (d) The care and protection of elders/parents is important: The proposition that family members and community members are expected to care for their parents/elders.
- (e) Sharing foods and resources is important: The proposition that family and community members are expected to share their resources with others.
- (f) Adherence to taboos/customary Inuit laws: The proposition that it is important for members of a community and members of a family to share taboos or customary laws and that these customary laws must be followed.

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

Final Decision makers: Who had the final say? In relation to what?

- (a) The individual harmed: whether it was a person, or the spirit of a person, or an animal, the being that was harmed plays a role in addressing the harm.
- (b) Family: when a close family member (brother, sister, mom, dad, grandmother, grandfather) experiences difficulty the family steps in to help address the challenge.
- (c) Collective community: If an individual(s) needs support or protection the community as a collective has a say in that process.

- (d) Leader: An individual who is recognized in the community as a leader has the final say in areas where they have expertise or lived experience.
- (e) Partner/spouse: A wife/husband or boyfriend/girlfriend protects and supports their partner, if and when there is harm or a threat of harm (this is distinguishable from a situation where a partner is inflicting harm in the relationship).
- (f) Elder: An individual recognized as an elder in a community can play an active role in mitigating or addressing a situation when there is mistreatment or harm.

What were the steps involved in determining a response or action?

- (a) Addressing the situation: Individuals or living beings (including animals and insects) who are harmed or wronged have a role in addressing the situation.
- (b) Asking for help from friends: Individuals who experience hardship call upon friends for help.
- (c) Seeking protection by asking for help from family: Individuals fleeing violence or hardship seek protection by calling on their family.
- (d) Women leave a violent partner or a potentially harmful situation: When an individual(s) (partner, family member) experiences violence or the threat of violence, they leave the situation.
- (e) Close family members recognize there is an issue and take responsibility to support their family member(s): When a family member is experiencing hardship (lack of access to food, separation from family/community) the family provides for them.
- (f) Community members step in to support an individual (elder, fellow community member) when there is hardship: When an individual or community is experiencing hardship (starvation, community member going missing, environmental changes, survival, etc) the community responds.
- (g) If there is potential for the threat of harm the community responds.
- (h) When harm is perpetuated by an individual the community plays a role in addressing this harm (violence, neglect, theft): When someone acts violently or is neglecting their family members the community responds.
- (i) When a child needs help the community steps in: If a child does not have their own family or resources the community as a collective steps in to support that child.

What principles govern appropriate responses to legal/ human issue?

What principles govern appropriate responses to legal/ human issue?

What fosters child/family/community wellbeing?

Raising a child: What responses and resolutions govern raising a child in a family or community?

- (a) If a child is orphaned, the community cares for the child.
- (b) Younger children can be placed with elders.
- (c) Not taking a child out of a potentially dangerous situation can put that child in a potentially violent situation.
- (d) Children are taught new skills (which includes cultural skills: hunting, fishing) they will use into their adult life.
- (e) Children are to be protected and cared for by their parents.
- (f) Children are to be well fed and cared for by older adults (not necessarily always their parents).

What responses and resolutions govern the treatment of hurt or individuals experiencing difficult in a family or community?

- (a) A hurt individual has agency to address the perpetrator.
- (b) An individual experiencing violence has agency to leave.
- (c) An individual experiencing violence is protected.
- (d) An elder or adult who is experiencing difficulty (hunger, shelter, etc) can get support from their community or family.
- (e) An individual experiencing harm or difficulty can ask their partner for help.
- (f) The community/family searches for a loved one who has gone missing.
- (g) A community or family facing a potentially harmful situation works together to address it.

What responses and resolutions govern the treatment of the perpetrator (or possible perpetrator) of harm in a family or community?

- (a) An adult person who intentionally inflicts harm onto another adult person may face punitive consequences (people can also be considered animals, insects, or birds in this context, too):
- (b) A person who abuses, or harms a child, may face punitive consequences:
- (c) Neglecting or mistreating an elder or parent comes with punitive consequences
- (d) An individual who takes too much of a scarce resource and does not leave much for others may face consequences
- (e) Individuals that do not abide by community rules may face consequences.

What principles govern individual and collective responsibilities? What are the “shoulds”?

(a) Families and communities work and stay together: The proposition that there is a responsibility for families and communities to stay closely together.

(b) You should not hurt young children because they can grow up to be harmful adults: The proposition that children who are abused or mistreated can grow into adults that hurt their loved one's or people within the community.

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

(a) The right to be protected from harm.

What underlying or recurrent themes emerge in the stories that might not be captured above?

(a) After handling a human's dead corpse, it is customary law not to handle meat. There was little to no need for outside intervention when dealing with issues within a community.

In the following section, I further clarify these legal principles found within twenty Inuit stories and re-write it into a mandatory document that can be used by judges in the Nunatsiavut Inuit Court. As I have referenced numerous times earlier, it is a Declaration of Inuit Laws and it is not an exhaustive list. There is room for deliberation and community consultation to understand how Inuit respond to these laws, but that goes outside of the scope of this thesis as mentioned previously.

Declaration of Inuit Laws

We the Inuit of Nunatsiavut, are present because of our ancestors,
We are capable of managing issues that arise within our communities and we must seek intervention from outside of our communities only when it is necessary,
Our families and our communities must work to stay closely together,
The parents protect and care for their own children,
In the raising of Inuit children, we take care of our orphaned children,
We must not mistreat our children because they may grow up to be harmful adults,
Our children who are in potentially dangerous situations must be taken out of that situation,

Older adults or elders, who are not the parents of the children, can care for and feed our children,
We must teach our children new skills that they will use into their adult life,
We must teach our children how to hunt and to fish, to survive on their cultural skills,
As family and as a community, we must protect and care for our parents and our elders,
Inuit share resources such as food amongst one another,
We must learn about and share amongst one another the taboos and customary laws,
Inuit must learn to institute and implement the customary practices of our ancestors,
It is customary Inuit law not to handle meat after handling a human's dead corpse,

We each have the right to be protected from harm,
It is important to respect birds, animals, inanimate, spiritual and human beings,
It is important to protect family and community members,
We the Inuit must work collectively to protect these aspects of our way of life, and when there is harm or the threat of harm especially to the survival of our way of life, it must be punished proportionately through Inuit laws in our Inuit Court, These punishments mean separation from community or banishment if it is warranted by the Inuit Court and Inuit community members who are affected,

In times of challenge and harm or the threat of harm, the family helps one another,
If there is a potential threat of harm, the community responds,
When a community member needs support or protection, the community as a whole has a say in how to address the situation,
When a spouse is experiencing harm or the threat of harm, the spouse steps in to protect and support one another,
A person recognized as a leader or an elder within the community has the final say in areas of their expertise where there is harm,
The individual whether it is a person, the spirit of a person or an animal, plays a key role and has a say in addressing the harm they endured.

Those experiencing hardship call upon their friends, they ask for help from family, and their community, friends and family protects the victim from violence,
The family and community who recognizes an issue supports their family or community member,

A victim of violence shall be supported when they are leaving a violent situation,
The community plays a role in addressing a violent situation,
The community plays a role in addressing a situation where someone is neglecting
their family.

When a person is experiencing hunger or living difficulties, the person can get
support from their community or family, especially an elder,
An Inuk who has experienced harm has the right to address the perpetrator,
An Inuk experiencing violence has agency to leave,
We must protect an Inuk who is experiencing violence,
An Inuk experiencing harm or difficulty may ask their partner for help,
If an Inuk goes missing the family and community goes in search of that person
because when a family or community experiences a potentially harmful situation
they work together to address it,

An adult, animal, insect or bird that intentionally inflicts harm onto another may
face punitive consequences,
An Inuk who abuses, or harms a child, will face punitive consequences,
When someone neglects or mistreats an elder or parent then punitive
consequences will follow,
An Inuk who takes too much of a scarce resource and does not leave much for
others may face punitive consequences,
Inuit that do not abide by community rules may face consequences.

This Declaration of Inuit Laws is derived from twenty Inuit stories through the
ILRU case briefing methodology. It has taken the underlying principles or lessons from
the stories and placed them into a Declaration. This is just one example of how these
Inuit legal principles found within the stories can be applied to governing documents of
the Nunatsiavut Government. The principles once they are derived from a resource and
clarified, can be used in a diverse set of documents such as in policy manuals, legislation,
community by-laws and the drafting of other governance documents. The rationale of
why I chose a mandatory Declaration of Inuit Laws applicable to the Inuit Court is
because when Indigenous law is mentioned in a legal proceeding, it is not taken seriously

as law. So to make sure Inuit laws are taken seriously within Nunatsiavut, it is important to make it mandatorily applicable to the administration of the Inuit Court.

The work within this thesis could also be a starting point for community members to take the case briefed stories and begin to ask Nunatiavut elders, community members, students, youth, politicians and academics, for their interpretation of these Inuit legal principles. This interaction could help facilitate conversations that help educate Nunatsiavimmiut about the *Labrador Inuit Land Claims Agreement* and Inuit legal orders. Although, I know that there are several hurdles that need to be maneuvered before an Inuit Court can become a reality, I think placing a priority on it now, for the future is important.

If the Nunatsiavut Government wants to create an Inuit Court in the future, then it is important to place emphasis on supporting Inuit from Nunatsiavut to pursue a law degree, to train paralegals and to open up opportunities for Inuit youth to begin to learn about law and governance from an academic perspective. The application of Inuit legal principles to an Inuit Court in Nunatsiavut does not have to be led by conversations amongst people who are not from Nunatsiavut, but who have legal degrees. It can be Nunatsiavimmiut leading these conversations about revitalizing Inuit laws within their own communities. It can be Nunatsiavimmiut drafting the laws that govern their homelands and people; it is my hope that this thesis sparks those conversations.

Inuit from Nunatsiavut are strong, resilient and resourceful – for centuries, our ancestors have survived in some of the most unforgiving terrain and have successfully governed. Each season, our ancestors moved and changed with the season, skillfully preparing for the changes ahead. It is the same in this circumstance, if Nunatsiavimmiut

are going to exercise their inherent right to self-govern in the 21st century, then it is important to begin talking about the best way to do that. The work of this thesis is to make the argument that it is time to start conversing and imagining what an Inuit Court in Nunatsiavut could look like and the areas that need to be prioritized to open up opportunities for Inuit from Nunatsiavut to obtain law degrees.

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APPENDIX A Case Briefs

1. CASE BRIEF – *Storm Caused by a Loon*⁴⁷²

A long time ago, some men who were at play caught a loon. For sport they pulled out nearly all its feathers, leaving only one long feather in each wing, and let it go. The following winter a great fall of snow set in and, although the people had stores of walrus meat buried under stones, they were unable to reach the meat due to the depth of the snow. Many died of starvation. This storm was caused by the loon in revenge for the ill treatment it received.

Problem (Issue): *What is the main human problem that the story focuses on?*

- How are Inuit expected to treat animals?

Facts (Relevant): *What facts matter?*

- Men caught a loon and picked all its feathers and left one on each wing, then let it go.

⁴⁷² *Storm Cause by the Loon*, *supra* note 103.

- The following winter a lot of snow fell, and the people were unable to access the walrus meat which they stored under the snow and people died of starvation.
- The loon caused this to happen out of revenge for how it was treated by the men.

Decision/Resolution: *What is decided or how is the issue resolved?*

- The loon sought revenge on the men and others after it was mistreated by causing a great snowstorm. People died of starvation.

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- It is not ok to mistreat a loon, and other birds and animals (unsaid).
- If you mistreat birds and animals, then misfortune will be bestowed upon you (unsaid).
- It is important to treat animals and birds with care and respect (unsaid).

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

- Why did the men mistreat the loon?
- If they ate the loon after mistreating it, then would there be similar consequences?

2. CASE BRIEF – Qaudjaqdjuq⁴⁷³

Problem (Issue): *What is the main human problem that the story focuses on?*

- How do we respond to violence?
- How is neglect and abuse of children to be addressed? By whom?
- How are orphaned children to be treated?
- How do we respond when the victim becomes the aggressor (inter-generational harm)?

Facts (Relevant): *What facts matter?*

- An orphaned boy, Qaudjaqdjuq, is neglected and mistreated by the people in the villages where he lives.
- The man in the moon is Qaudjaqdjuq's only friend.
- He flees one village where they made him fetch water from the shore in a dangerous way without proper clothing, to take refuge in another village, only to find that they also make him do hard labor (empty the chamber pot from the dance hall), sleep outside on the porch, and they hang him from walrus tusks by the nose.

Decision/Resolution: *What is decided or how is the issue resolved?*

⁴⁷³ Qaudjaqdjuq, *supra* note 92.

- Qaudjaqdjuq calls upon the man in the moon to come to him (and help him).
- The man in the moon orchestrated a situation where he and Qaudjaqdjuq are left alone (spills the chamber pot), but they are walled in the dance hall.
- The man in the moon asked Qaudjaqdjuq to bring in the seat of his sled, which a villager gives him, and there is a dead ermine in it.
- The man in the moon uses his power to bring the ermine back to life.
- The ermine escapes the dance hall twice and creates a distraction (which results in deaths of some villagers), which allows Qaudjaqdjuq and the man in the moon to escape from the dance hall and leave the village.
- The man in the moon uses his power and whips Qaudjaqdjuq, who, so long as he says he is not sore, continues to grow into a strong and powerful man.
- Qaudjaqdjuq, as a strong man, returns to the village and, in revenge, kills the men from the village, reminding them of how they abused him.
- Qaudjaqdjuq spares two women from the village that he liked and takes them for his wives.
- Qaudjaqdjuq is sometimes abusive to his wives and this results in one having one shoulder slumped, and the other, a squint in her right eye from anxiously watching her husband in case he becomes angered.

2. CASE BRIEF – *Qaudjaqdjuq*

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- Persons who mistreat children face serious consequences (said).
- The response to mistreatment/abuse may include physical violence (possibly death) (unsaid)
- Mistreating orphans is bad (unsaid)
- Victims may have to reach out for assistance of friends when they require it (unsaid)
- Friends / persons in position of power (man in the moon) are expected to respond and use their power/authority to attempt to resolve the victimization (unsaid)
- Victims need to become strong to confront their abusers (unsaid)
- Personal strength/growth/resiliency may come from exposure to harm/adversity (unsaid)
- Once a victim has become strong, it is important for them to confront their abusers (unsaid)
- Intergenerational harm can be a consequence of violence - those who were abused may in turn abuse those they love (unsaid)

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

- Are there other stories of the man in the moon? Generally, what kind of figure is he in Inuit culture (hero, trickster, monster or caretaker)?
- What is the significance of the ermine in Inuit culture?
- Why is there blood on the ermine's mouth each time he comes back – is he eating the fallen men?
- What is the significance of the whipping (violence) to transform Qaudjaqdjuq from a boy to a man?
- Was polygamy a part of Inuit family law?

3. CASE BRIEF – *The Soul*⁴⁷⁴

Problem (Issue): *What is the main human problem that the story focuses on?*

- What happens to the woman's soul when she dies?
- How are children that do not care for their mother punished?
- How do you care for your harpoon/hunting weapons?

Facts (Relevant): *What facts matter?*

- A raven was eating the body of a dead woman and the soul of the dead woman entered the raven. The raven was killed and fed to a dog and the woman's soul then entered into the dog. A wolf came and killed the dog and the soul of the woman entered the wolf. The wolf was killed by hunters and the soul became a caribou. The caribou was killed by a man, then the soul went into a walrus. The walrus was killed by a man and the soul went into a ground seal. That ground seal was killed, and the soul went into another seal.
- The seal met with another seal and told the seal whose soul it embodied to go to a hole where there were hunters, but she replied "No, when that hunter was a boy, he was lazy. He would not put snow into his mother's kettle. He does not deserve to have good luck."
- The other seal went to the lazy boy's hole and was harpooned but not killed, just wounded. The seal with the woman's soul told the wounded seal to go to the hole of the lazy hunter again but the seal refused because it did not want to give such luck to the lazy boy.

⁴⁷⁴ *The Soul*, *supra* note 111.

- The seal with the woman's soul went to the hole of the good hunter, who harpooned and killed it and took it home.
- The seal stayed close to the harpoon when it arrived at the house, and asked the harpoon, "why does the woman not come and take the harpoon into the house?"
- The hunter's wife took the harpoon into the house and the soul went into her.
- Soon after the hunter's wife gave birth and the soul of the woman was in the child. The child would go out to see what the hunters had caught, and she would recognize her old companions.
- When she got older, she told the people what the animals liked and didn't like.
- On account of this tale it is customary to bring in the harpoon line at once after the seal has been taken into the house.

Decision/Resolution: *What is decided or how is the issue resolved?*

- The woman's soul was reincarnated throughout different animals and mammals.
- If a child does not care for their mother well then, the animals will not sacrifice their life when he goes to hunt.
- The harpoon after it is used to hunt a seal must be taken into the house.

3. CASE BRIEF – *The Soul*

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- To show the human soul can experience the depths of diverse animals who Inuit depended upon for survival and to show empathy to the livelihoods of animals (unsaid).
- Inuit have an inter-connectedness with other living beings (Inuit can be reincarnated into animals) and this helps shape the relationship Inuit have with animals (to treat living beings with respect) (unsaid).
- To treat inanimate objects that are needed to survive (harpoon) with respect (unsaid).
- That souls are reincarnated back into human beings (said).
- That the animals can understand when you are not treating your mother well and this will in turn lead to you not being a successful hunter (unsaid).
- That you don't be lazy, and you take care of your mother/parents (said).
- If the harpoon is not taken into the house after it killed a seal, then this is not good (said).

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

- Why was the taking in of the harpoon significant?
- Is it only men who go hunting?

4. CASE BRIEF – *Ijimagasukdjukdjuaq*⁴⁷⁵

Problem (Issue): *What is the main human problem that the story focuses on?*

- How does the wife escape her cannibal husband who wants to kill her?
- How does the family deal with their sister whose husband is a cannibal who kills and then eats their members?
- How do the community deal with a cannibal?

Facts (Relevant): *What facts matter?*

- The wife grew afraid of her husband because he had killed and eaten other community members, so she fled when he was away hunting.
- The wife filled her garments with heather and made it look as though it was her sitting on the ground and when the husband came to look for her, he stabbed the garments.
- The husband realized it was not her and then he began probe the snow with his knife but did not find her and when he went back to his hut. Then the wife put her clothes back on and ran away.
- She found a piece of ice which was a fox trap and got into it, then came along her brother and they went to his home.
- The husband went looking for his wife and the community members warned the others, and the husband asked how they knew, and they replied, “the woman in a boat told us so.” But they did not tell him his wife was staying with them.

⁴⁷⁵ *Ijimagasukdjukdjuaq*, *supra* note 104.

- In the evening the people went into the dancing house and the husband went in too. Then the brother killed the husband with a harpoon.

Decision/Resolution: *What is decided or how is the issue resolved?*

- The wife sought refuge and escaped her husband by tricking him.
- The brother of the wife helped his sister out of an abusive situation.
- The community members ensured the safety of the wife from her husband when he went looking for her
- The husband was killed by the brother

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- When a woman is in danger then it is the responsibility of the family and the community to protect her (unsaid).
- When a person causes serious harm to others they have to be removed from the community and it may mean permanent removal (unsaid).
- When a woman is in danger then it is the responsibility of the family and the community to protect her (unsaid).

<p>4. CASE BRIEF – Ijimagasukdjukdjuaq</p>

- It is wrong to cause serious harm to other individuals within the community (unsaid).
- It is wrong to hurt your wife and family (unsaid).

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

- Was cannibalism something that happened regularly within Inuit communities?

5. CASE BRIEF – *Separated from Camp*⁴⁷⁶

Problem (Issue): *What is the main human problem that the story focuses on?*

- How does a community that is split apart by a change in environment manage?
- How does a family that was split apart by a change in environment manage?
- How does a community share in scarce resources?

Facts (Relevant): *What facts matter?*

- A heavy swell came one day and broke up the ice houses and the people had to travel to the land.
- One of the houses was split in two, where the grandfather lived. He refused to join the other people who were leaving and stayed (it is unclear what happened to the grandfather after the family left).
- His son who he was living with had a wife with three children. The wife took her youngest baby out of her hood and placed it in the hood of her oldest child. She left them both with their grandfather (it is unclear in the story what happened to the grandfather and the two children after).

Decision/Resolution: *What is decided or how is the issue resolved?*

- The mother left two of her children with the grandfather and travelled to the land.

⁴⁷⁶ *Separated from Camp*, *supra* note 106.

- The son of the old man led the people off the ice onto the land. After five days of traveling they had no water or food to drink. They found one pond, but it was salty, and they found another pond which was fresh water.
- The people began to drink the fresh water and as other travelers came, they said “Don’t drink all the water, leave some for us.”
- Some had drunk too much water and complained of being cold and others who did not drink too much said they felt warm and comfortable.
- Those who had taken too much water died before reaching their old village where they lived before moving to the floe ice.

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- In times of emergency the community works together (unsaid).
- It is not ok to leave a grandparent or family members behind alone, some of the family has to stay behind to support them, even in times of emergency (unsaid).
- Not to take too much resources and to share with your community (unsaid).
- If you take too much of scarce resources, then there will be consequences for that (unsaid).
- Generations of families live together and are expected to support one another (said).

<p>5. CASE BRIEF – Separated from Camp</p>

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

- What happened to the grandfather and the grandchildren?
- Why did the grandfather not want to leave?
- Did people drown because they did not know how to swim?
- Did they move each spring?

6. CASE BRIEF – *Taboos and Starvation*⁴⁷⁷

Problem (Issue): *What is the main human problem that the story focuses on?*

- How are people that break taboos/customary laws punished?
- What happens when a community member(s) goes missing?

Facts (Relevant): *What facts matter?*

- A boat returning from Fox Channel returned one summer with walrus hide.
- Their leader told them, “why do you take walrus hide along? You must not take walrus hide when you go caribou hunting. If you do, you will starve.”

Decision/Resolution: *What is decided or how is the issue resolved?*

- The men did not follow his advice and only found a few caribou and had to return because they were hungry.
- When community members did not return, the other community members went to Fox Channel looking for them.
- That fall they found the crew and they were starving. The only ones that were still alive were Okowsecheak and his wife. They survived by eating the bodies of those who died.

⁴⁷⁷ *Taboos and Starvation*, *supra* note 108.

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- People who do not follow taboos/customary law and the advice of community leaders may experience severe harm or sometimes death (unsaid).
- It is important to know and follow protocols (unsaid).
- It is important to listen to the leader (unsaid).
- If you break taboos/customary law, you will put yourself and others at risk (unsaid).
- When and if someone in your community goes missing you help search for them (unsaid).

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

- Why was carrying walrus hide when caribou hunting a taboo/customary law?
- Was the leader a shaman?

7. CASE BRIEF – *The Woman who Could not Be Satiated*⁴⁷⁸

Problem (Issue): *What is the main human problem that the story focuses on?*

- How does a community help a woman who lost her husband?
- How does a community manage a situation where a woman is becoming unwell/a cannibal?

Facts (Relevant): *What facts matter?*

- Teneme, lost her husband and the village was willing to give her food, but she always pretended that she wished to starve.
- Teneme went to visit Unaraw one day and ate Unaraw's uncooked food that she was cooking for her dogs. Unaraw asked her why she had eaten the food before it was cooked, and Teneme asked for more, but Unaraw did not give her any.
- Teneme went to visit other's and begged for food, but no matter how much she was given she was not happy.
- Unaraw told her husband what Teneme had done.
- Another day Teneme went to visit Unaraw and stared at her intently until Unaraw became frightened that Teneme may eat her.
- A visitor came in and Teneme withdrew from staring at Unaraw.

Decision/Resolution: *What is decided or how is the issue resolved?*

⁴⁷⁸ *The Woman who could not be Satiated*, supra note 107.

- Unaraw told her husband again what had happened, and the men decided to desert Teneme.
- The men got ready to leave and barred the door of Teneme's house with her two children.
- After several months, they went back to the house and saw that Teneme had eaten her two children and they all had died.

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- When a woman is widowed it is the responsibility of the close relatives and community to help feed her and her family (unsaid).
- When a husband finds out that his wife is placed in danger, he takes action to protect her (unsaid).
- When a woman is becoming unwell and a threat to the community the community has to separate her from the community members to protect them and because the harm was serious the separation appears to be permanent (said).
- The entire community takes action to address a situation where a person is unwell and a threat to the community (unsaid)

<p>7. CASE BRIEF – <i>The Woman who Could not Be Satiated</i></p>
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Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

- Why did they leave her children with her?
- Why was she becoming sick/a cannibal?

8. CASE BRIEF – *The Boy who Harpooned a Whale*⁴⁷⁹

Problem (Issue): *What is the main human problem that the story focuses on?*

- How does the older man manage a situation where he felt the orphan boy was making fun of him?
- How does the orphan boy manage a situation where he is forced into harpooning a whale?

Facts (Relevant): *What facts matter?*

- The orphan boy once said, “people say that it is difficult to drive a harpoon through the skin of the whale. It is not tough at all. It is very soft and tender.” He did not know the owner of the house missed a whale that day.
- The man thought that the orphan boy was making fun of him, and told him, “next time we go whaling you will have to be the harpooner,” and the boy replied, “I do not know how to harpoon whales.”

Decision/Resolution: *What is decided or how is the issue resolved?*

- After some time when the weather was fine the man told the orphan boy, “come, we will go whaling today.” The boy replied, “my muscles are not strong enough yet.” But he went whaling anyhow.

⁴⁷⁹ *The Boy who Harpooned the Whale*, *supra* note 93.

- A very large whale arose, and the orphan boy was told to go ahead and throw his harpoon, and he began to look like an old man while he was harpooning the whale.
- After he threw his harpoon, he went to sit back down and looked like a boy again.
- The whale rose up, and it was dead, and the men said, “we have never before seen a boy kill a whale.”
- They went ashore with the whale and talked about how a small boy killed the whale with one thrust of his harpoon.
- Many months later, the boy said, “I use only a whale bone knife when I eat whale meat, because it is so tender.”
- Later in his life he said, “I am still like a woman. I can only go out and sit about. I am not a man yet, although I harpooned a whale when I was a little boy.”

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- It is the responsibility of the man to help teach the orphan boy how to hunt (unsaid).
- It is the responsibility of the community to feed the orphan boy (unsaid).
- The orphan boy does not understand his potential until it is challenged (unsaid.)
- Even weak and small (orphans) can have special powers (unsaid).

<p>8. CASE BRIEF – <i>The Boy who Harpooned a Whale</i></p>
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Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

- Do women hunt whales?
- What happened to the orphan boy’s parents?
- Why are there do many orphans in the stories?
- Why didn’t the orphan boy continue to hunt whales for the community? Was it because they devalued him because he was an orphan?

9. CASE BRIEF – *The Artificial Skull that Frightened People to Death*⁴⁸⁰

Problem (Issue): *What is the main human problem that the story focuses on?*

- How does a village feed an elder?
- How does a grandma manage a situation where she was being mistreated?
- How does the community respond to revenge from the grandma?
- How are people who mistreat elders dealt with?

Facts (Relevant): *What facts matter?*

- There once lived five families in one village, along with a grandmother and her grandchild. Each of them was neighbors, and all of the families were not nice to the grandma except for one family.
- The unkind families would give the grandma the worst parts of the meat and she lived this way for a long time.
- The family that was kind to the grandma would come along with seal sometimes and they would enjoy one another's company over food.

Decision/Resolution: *What is decided or how is the issue resolved?*

- The village helped to feed the grandma.

⁴⁸⁰ *The Artificial Skull that Frightened People to Death*, *supra* note 94.

- The grandma put up with being mistreated for some time, but then she began to plot her revenge on the unkind families.
- The grandma decided to take revenge on the families that were unkind to her and built a skull out of bones. She placed the skull in front of the doorways of the unkind families and they nearly died of fright.
- From that time on the families began to treat her kinder and gave her meat with bones.
- The grandma took down the skull and made a bigger one.
- After some time, the people began to move away, and she sent the bigger skull after them and when they saw it, they all died of fright.
- Her friends did not desert her.

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- It is the responsibility of the community to feed and care for the elderly (unsaid).
- If you mistreat elders there will be consequences (unsaid).
- People must treat their elders with kindness (unsaid).
- If you overly punish people who have hurt, you they can remove themselves (unsaid).

<p>9. CASE BRIEF – <i>The Artificial Skull that Frightened People to Death</i></p>

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

- Why did the people move away from the community?

10. CASE BRIEF – Pautusôrssuaq, who Murdered his Uncle⁴⁸¹

Problem (Issue): *What is the main human problem that the story focuses on?*

- How does a widowed wife seek refuge when her husband is murdered?
- How is murder punished?

Facts (Relevant): *What facts matter?*

- Alattaq had a beautiful wife.
- Alattaq was Pautusôrssuaq's uncle. Pautusôrssuaq was also married but was fonder of Alattaq's wife.
- They both exchanged wives constantly, which was normal.
- Alattaq was getting ready to go on a long seal hunting journey and decided to take his wife with him.
- Pautusôrssuaq came down to see them before they went seal hunting, and Pautusôrssuaq was upset that he would not see Alattaq's wife for a long time and decided to kill Alattaq.

Decision/Resolution: *What is decided or how is the issue resolved?*

- When Alattaq's wife saw that Pautusôrssuaq had killed her husband, she took her needle and thimble and fled to Eta to be with her parents.

⁴⁸¹ *Pautusôrssuaq, who Murdered his Uncle, supra* note 96.

- She left so quickly that she had forgotten about a little boy she was caring for in the tent.
- She found her father in Eta and they went home happily.
- Pautusôrssuaq ran to Alattaq's tent to look for the wife, but only found the little boy sleeping. Pautusôrssuaq asked the boy where she had fled, and he said he did not know because he was asleep. He was lying out of fear.
- Pautusôrssuaq took Alattaq's wife as his own and she gave birth to a monster with a large beard. She was frightened by it and died.
- Pautusôrssuaq had received no pleasure from the woman he had stolen.
- One day while seal hunting, Pautusôrssuaq was attacked by a fox, which was the spirit of Alattaq.
- Pautusôrssuaq was torn to pieces by Alattaq's spirit which turned into a bear.
- Pautusôrssuaq's daughter heard what was happening and saw it, but when she went to tell the other's she had forgotten because the vengeful spirit wished forgetfulness upon her.
- Pautusôrssuaq was torn limb to limb and he tried to defend himself with clumps of ice but was not able to.

<p>10. CASE BRIEF – <i>Pautusôrssuaq, who Murdered his Uncle</i></p>

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- When a woman is in a violent situation then it is the parents who are there to support her (unsaid).
- There is an inter-connection between living beings (animals) and people (unsaid).
- People's spirit can be reincarnated into an animal spirit (unsaid).
- No good can come from an evil act (killing a husband and stealing his wife) (said).
- Evil actions begets evil and can set off a chain of misfortune (unsaid).
- Capital punishment is an acceptable form of consequence for murder (unsaid)

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

- Why did the men exchange wives? And the wives exchange husbands?
- What happened to the little boy who was left in the tent?

11. CASE BRIEF – *The Wife Changers*⁴⁸²

Problem (Issue): *What is the main human problem that the story focuses on?*

- How does a husband manage a situation where his wife’s wellbeing was put at risk?
- How is murder punished?

Facts (Relevant): *What facts matter?*

- Talilarssuaq and Navssarssuaq exchanged wives.
- Talilarssuaq was a malicious man who was very fond of frightening people.
- One evening Talilarssuaq was lying by the side of the woman he had borrowed, and he took a knife and drove it into the skin they were laying on.

Decision/Resolution: *What is decided or how is the issue resolved?*

- The woman ran to her husband and said, “go in and kill Talilarssuaq! He is lying there pretending to be dangerous.”
- Navssarssuaq took his knife and went to Talilarssuaq who was still laying there, talking to himself, and stabbed him until he was half dead and threw him in a dung heap and left.
- On the way home he met his wife, and she asked, “Are you going to kill me too?” She was angry because he had taken Talilarssuaq’s wife as his own.

⁴⁸² *The Wife Changers*, *supra* note 97.

- “No, Pualuna is not big enough yet to do without you.” Pauluna was their youngest son.
- After the murder Navssarsuaq began to realize that he was being followed around by a spirit. It was the avenging spirit.
- Around that time the village fell ill, and the illness killed Navssarsuaq.
- The avenging spirit had no opportunity to tear him to pieces.

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- When a man is becoming unwell or poses a threat to women or the community, then action has to be taken to address the situation (unsaid).
- A husband has to protect his wife (unsaid).
- If you murder someone despite the reason, then the spirit will follow you around (unsaid).
- The consequences of overreacting in a problematic situation will follow you around throughout your life (unsaid).

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

<p>11. CASE BRIEF – <i>The Wife Changers</i></p>

- Why was Navssarsuaq so quick to kill Talilarssuaq? Were there more incidents that evolved where Talilarssuaq’s behavior was threatening?
- Was Talilarssuaq acting oddly because Navssarsuaq had taken his wife as his own?

12. CASE BRIEF – *Murdering a Stranger*⁴⁸³

Problem (Issue): *What is the main human problem that the story focuses on?*

- How do the men deal with a stranger who is visiting within their ice camp area?

Facts (Relevant): *What facts matter?*

- Noodelwa and Ekkomala were moving to camp on ice and they asked Akygerjew to come along.
- Their dogs caught scent and began to run and led the others to a stranger sitting at the breathing hole of a seal. The stranger began to run.

Decision/Resolution: *What is decided or how is the issue resolved?*

- The three men tried to kill the stranger with their arrows but missed.
- Noodelwa jumped off the dog sled and began to run after the stranger with no success.
- Noodelwa said to Akygerjew “jump off the sledge and run after him! If you kill him, we will give you his kayak” and when Akygerjew heard them say this he jumped off the sledge and ran after the stranger.
- Akygerjew got in shooting range of the stranger and shot at him and the stranger said, “stop shooting or I will kill you.”
- The stranger then began to shoot arrows at Akygerjew but missed.

⁴⁸³ *Murdering a Stranger*, *supra* note 100.

- While Akygerjew and the stranger were running after one another the sledge with Noodelwa and Ekkomala came nearer.
- Noodelwa shot an arrow at the stranger and it stuck in his leg but did not kill him. The stranger took it out of his leg and broke it in two.
- The stranger then turned on Noodelwa and tried to kill him and while doing so Ekkomala shot an arrow in the stranger's leg.
- The stranger tried to take the arrow out of his leg but was unable to and he died.
- They found the house of the stranger and Akygerjew took possession of it.

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- It is expected that when a stranger enters into an Inuit territory, they follow the protocols (rather than run away suspiciously) (unsaid).
- The men have to protect their territory from others who may try and enter unwelcomed (unsaid)
- When you say you will provide a reward for doing something then you have to stay by your word (unsaid)

<p>12. CASE BRIEF – Murdering a Stranger</p>

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

- Did they murder this stranger because he was a potential threat to the community?
- Was there more to the story than what is said here?

13. CASE BRIEF – Podluksak⁴⁸⁴

Problem (Issue): *What is the main human problem that the story focuses on?*

- How does a family help their son who is in trouble?
- What are the consequences of unresolved conflict within a community?

Facts (Relevant): *What facts matter?*

- Podluksak was a murderer who had stolen the wife of another man (the story does not elaborate who exactly the man was).
- The father and two sons of this man were determined to kill Podluksak.

Decision/Resolution: *What is decided or how is the issue resolved?*

- Podluksak stuck a knife out in the path of his pursuers and one of the two sons' fell and was killed.
- Podluksak fled on a sledge and the father and son ran after him.
- Podluksak jumped off the sledge and then buried himself in the snow and when the dogs came, he moved his whip to turn the dogs in another direction.
- Podluksak then fled to a distant country.
- When the surviving son reached Podluksak, Podluksak shot him with his arrows killing him.

⁴⁸⁴ Podluksak, *supra* note 99.

- The father came to avenge the death of his sons and when he saw Podluksak's son playing he stabbed him in his stomach.
- Podluksak saw what had happened and killed the murderer of his son.

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- It is the responsibility of the family to help their son/brother when he is facing challenging circumstances (unsaid).
- If harm is not managed in a constructive way, then it can cause more trouble for the families involved (unsaid).
- It is important to resolve conflict in a constructive way (unsaid).
- It is not ok to steal the wife of another man (unsaid).

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

- Was physical violence the only way to manage the situation between the men and Podluksak?

<p>14. CASE BRIEF – <i>The Man who did not Observe Taboos</i>⁴⁸⁵</p>
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Problem (Issue): *What is the main human problem that the story focuses on?*

- How do you deal with individuals who do not follow taboos/customary law?
- How do a family/community manage a situation where a member has gone missing?

Facts (Relevant): *What facts matter?*

- Artuk buried his dead wife under stones but did not follow the taboos/customary law imposed on how to handle corpses because he did not believe in the taboos/customary law of his forefathers.
- He began to cut meat with a stone axe even though he was not supposed to because he had touched a corpse.
- That same day he went on the ice and shook his pants free of lice even though he was not supposed to because he had just handled a corpse.
- He went and drank water from an ice cliff even though was not supposed to.
- He did all this in defiance of the taboos/customary laws which were created by his forefathers exclaiming that all their knowledge was lies.

Decision/Resolution: *What is decided or how is the issue resolved?*

⁴⁸⁵ *The Man who did not Observe Taboos*, supra note 98.

- One day he was preparing to go on the ice, but fear came upon him and he asked his son to go with him, but his son did not want to. He ignored his son's wishes, tied him on the sledge and went.
- He never returned alive from that sledge drive.
- Late that night, Artuck's daughter heard the mocking laughter of two spirits out on the ice and at that moment she realized that he had paid the price for not following the taboos/customary law.
- The next day several sledges went out to look for Artuk and found him torn to pieces.
- Those who do not believe in the traditions of their forefathers are always ripped apart by the spirits.
- The son was found tied to the sledge, but he had died of fright.

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- It is important to follow the taboos/customary laws of forefathers otherwise you will pay the price, possibly with your life (unsaid)
- It is important for the community and family to take care of one another in a time when it is needed (unsaid)
- Do not cut meat after touching the dead corpse of a person (said)

<p>14. CASE BRIEF – <i>The Man who did not Observe Taboos</i>⁴⁸⁶</p>
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- Do not shake your pants free of lice on the ice after touching the body of a dead corpse (said)
- Do not drink water from an ice cliff after handling the corpse of a dead body (said)
- The community and family search for the missing member until they are found (unsaid).

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

- Why do the taboos/customary laws exist to stop people from doing things after touching a corpse?
- Do these taboos/customary burial laws still exist?
- How are taboos/customary laws enforced?

⁴⁸⁶ *The Man who did not Observe Taboos*, *supra* note 98.

15. CASE BRIEF – *Papik*⁴⁸⁷

Problem (Issue): *What is the main human problem that the story focuses on?*

- How does the mother of a murdered son punish the murderer?
- How does a community who recognizes danger protect their community?

Facts (Relevant): *What facts matter?*

- Papik used to go seal hunting with his brother in law, Ailaq and Ailaq used to bring home more seals than Papik.
- Papik grew envious of Ailaq.
- Papik came home one day without Ailaq and Ailaq's mother accused Papik of killing him.
- The woman said to Papik, "you have kept the murder secret. The day will come when I will eat you alive; for it was you who killed Ailaq."

Decision/Resolution: *What is decided or how is the issue resolved?*

- The woman prepared herself to die to revenge Ailaq's death. She drew her bearskin rug over herself and let the waters flood over her until she died.
- For a long time after, Papik did not go seal hunting because he was afraid of the old woman's threat, until one day he forgot about it and went seal hunting as usual.

⁴⁸⁷ *Papik*, *supra* note 95.

- Two men stood by the side of a seal's breathing hole, and Papik was at another hole by himself. A fog grew over the ice and soon they hear shrieks of a terrified man because a monster had attacked Papik.
- The two men fled towards land and saw other's going seal hunting and warned them not to go because they feared they may be freighted to death.
- In the village all went into one home and heard the monster approaching, so everyone pushed at the door in panic.
- An orphan boy was pushed backward into a tub filled with seal blood and when he went outside, he left a trail of blood in the snow.
- A person wanted to kill the orphan boy, but others had compassion for him.
- The evil spirit came to view on the ice and came closer to the village in the form of a bear, but not a single dog barked or attacked the spirit because it was not a real bear.
- An old woman of the village said to the dogs, "see, your cousin has come; bark at him!" and the dogs began barking and surrounded the bear while the men harpooned it (the bear was the spirit of the mother).
- When the bear was cut open, they found the woman's bear rug and human bones.
- The sledges went to the ice to fetch their belongings and discovered Papik was torn to pieces and was scalped.

15. CASE BRIEF – Papik

- This is how the old woman avenged her son's death, Aliaq.
- As our father's used to say, when anyone kills a fellow creature without reason, a monster will attack him to death, and not leave a limb of his corpse whole.

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- To kill a person without a good reason will lead to consequences which could include death (said).
- Do not envy others for their natural talents because it is bad (unsaid).
- When a family member has experienced harm or death then the family can take responsibility to rectify and address the issue (unsaid).
- It is important to have care and empathy for orphaned children (said).
- The community protects one another from potential danger and works together to manage the situation (unsaid).
- When an individual is being punished, the community members follow procedure to stay away to allow punishment to occur (unsaid).

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

- Why was murder so prevalent throughout this story? And so many other stories?

- Why is revenge rather than forgiveness something that was emphasized in this story and other stories?

16. CASE BRIEF – Kating Saved his family in Time of Famine⁴⁸⁸

Problem (Issue): *What is the main human problem that the story focuses on?*

- How do a family who is facing starvation manage the situation?
- How does a nearby village help a starving family?

Facts (Relevant): *What facts matter?*

- People had been hunting caribou and, in the fall, they were preparing to move to camp and the frost set in very suddenly, covering the sea with ice.
- Heavy snow fell and people were unable to leave, many people began to starve.
- Many people died, but in one house an old woman named Quawallow, her three sons, and her daughter all survived.
- Quawallow had a son whose name was Kating and he went to another village to seek help. He left his dog in case they needed to eat it when he was gone.

Decision/Resolution: *What is decided or how is the issue resolved?*

- Kating's dog went missing and Quawallow went to find it at a neighboring hut.
- She thought that the people in the hut were dead, but they were alive.
- She asked the people in the hut if her dog was there, but they denied it, but she saw its tracks going into their hut and insisted that it was indeed there.

⁴⁸⁸ *Kating Saved his family in Time of Famine, supra note 107.*

- She found the dog skinned underneath the heather.
- She became very angry and took the dog home and told her children that the neighbors had killed the dog with the intention of eating it.
- Soon the neighbors were dead and Quawallow's family survived off the dog meat.
- Kating reached the village and explained to them that people from his village were starving.
- The people in the village were very nice to Kating and after a few days he was ready to go back to his family with a whale toboggan and an old dog, along with whale meat, whale skin and blubber.
- They told him to stay explaining that his mother must be dead by now, but he did not listen to them and began his journey back to his family.
- When he reached his family, he gave them whale meat and Quawallow explained that had happened.
- Kating's brothers, sisters and mother became ill, so he went out sealing to strengthen them with the meat he'd catch.
- He found a seal hole, left it for two days and went back and harpooned it.
- He brought the meat back to his brothers and sisters and they were delighted.
- They cooked the meat and ate it and Kating went home.
- Kating's mother did not feel well and wanted a ptarmigan, so he went and caught one and brought it back to her. She felt better but then wanted caribou meat.

<p>16. CASE BRIEF – <i>Kating Saved his family in Time of Famine</i></p>

- Kating went out and hunted a caribou and shared it with his mother and family and she began to feel better.
- When spring came, he was able to kill seals basking on the ice and bring it to his family and they were no longer in need.

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- When a family is experiencing starvation, it is the eldest son who has to supply food for his mother and his family (unsaid).
- It is not ok to steal and lie to others (unsaid).
- Family members may sacrifice their animals to allow their family to survive (unsaid).
- The eldest brother has an obligation to ensure that his family does not starve to death (unsaid).
- The entire family has to work together when they are experiencing starvation/hardship (unsaid).
- Nearby villages have to share with other nearby villages to ensure the survival of their community (unsaid).

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

- Where was the father?
- Was eating dog meat a common experience throughout Inuit families and communities?

17. CASE BRIEF – <i>Igimagajug, the Cannibal</i>⁴⁸⁹

Problem (Issue): *What is the main human problem that the story focuses on?*

- How does the wife of a cannibal who murdered her mother and father find refuge?
- How does a family who lost their mother and father to a cannibal punish the individual responsible?

Facts (Relevant): *What facts matter?*

- Igimagajug caught a ground seal and brought it to his hut. While he was away his wife gave birth to a still born child.
- When he reached the door of his hut, he told her to come outside and haul the seal, but she replied what had happened and that she should stay inside. This made Igimagajug angry and he commanded her to come and haul the seal inside.
- Nuliajuk was offended that Igimagajug forced his wife to haul the seal after she had explained to him what had happened to her.
- Nuliajuk is the mother of the sea mammals. Nuliajuk withheld seals from villagers before and as a result the villagers became very hungry.
- There were no seals to catch so Igimagajug killed his mother and father in law and ate them. He also killed and ate others nearby.

Decision/Resolution: *What is decided or how is the issue resolved?*

⁴⁸⁹ *Igimagajug, the Cannibal, supra* note 105.

- Igimagajug’s wife became afraid that he would want to eat her, so when he was seal hunting one day she prepared for her escape.
- She stuffed her clothes with moss and put its back against the door of the hut. She told it to yell “uk, uk” if Igimagajug stabbed it with his knife.
- The wife made a small snow house nearby with a peephole in the wall.
- When Igimagajug came back he stabbed the figure and it yelled “uk, uk” and he found out that it was nothing but clothing, so he cut a piece out of his leg and ate it.
- The wound hurt him, and he said, “I did not think it hurt other people when I killed and ate them, but I find it hurts me.”
- Igimagajug wondered if his wife had gone far so he cast a spell on a seal line which would be heavier when she was close by, and the line would be lighter she was far.
- He asked, “is my wife nearby?” and the line became heavier.
- He then took his spear and probed the snow with it looking for her. Once he struck the small snow house, she built but the spear went between her fingers and he did not find her.
- The following day, Igimagajug went sealing and while he was gone his wife started back for the village where her brother lived.

<p>17. CASE BRIEF – <i>Igimagajug, the Cannibal</i></p>
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- When Igimagajug came back he saw her tracks and followed them. She saw him coming and hid behind ice. He saw where the tracks ended and kicked the snow away but could not find her.
- She continued to run toward her brother’s house and when she reached his house, she told them what had happened.
- The following day, Igimagajug continued to search for his wife and made it to the village. He found the men at play, swinging a tightrope with a line tied around each wrist.
- He tried it once, and then took a rest and the other men had their hands tied and each swung in his turn.
- Finally, Igimagajug’s turn came and his wrists were tied. When Igimagajug held his hands up, his brother-in-law said, “you killed and ate my father, my mother and other people!” Igimagajug, questioned, “who said so?”
- “Your wife”
- “What is my wife’s name?”
- “Pubelarleyark,” replied her brother. “I don’t see her,” said Igimagajug.
- His wife stepped from her hiding place and when Igimagajug saw her he said, “you ate your father’s and your mother’s hands and feet!” and she replied, “no, I took them out of the kettle. I only pretended to eat them, and I cried very much to lose my father and my mother.”
- When she said that the other people rushed upon Igimagajug and killed him.

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- When a wife is in trouble, she seeks refuge with her family and other trusted members within the community (unsaid).
- When a wife is in danger, she plots her own escape away from the threat (unsaid).
- Individuals who experience harm are resilient (unsaid).
- Individuals who experience harm have agency to address the situation (unsaid).
- It is the responsibility of the brother to protect his sister from harm (unsaid).
- It is important to have empathy for others (unsaid).
- It is the responsibility of the family and the community at large to punish an individual who has committed murder/cannibalism/harm (unsaid).
- The family and community have agency in addressing harms (unsaid).

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

- Why was Igimagajug so angry?

18. CASE BRIEF – *Atungait*⁴⁹⁰

Problem (Issue): *What is the main human problem that the story focuses on?*

- How do community members treat travelers who are passing through their community?
- How does someone traveling throughout the land survive?

Facts (Relevant): *What facts matter?*

- Atungait lived with his siblings and other people when he decided that he was going to travel around Baffin Island.
- He wanted to bring a woman, so he created a contest of scraping seal skin hides amongst the women. The woman who won he chose her to be his wife.
- Atungait and his wife came upon a camp of cannibals. If someone cut themselves then they would be eaten.
- Two young girls were picking some flesh off a recently eaten human corpse and one of the young girls cut herself. The girl told her sister not to say anything, but she blurted it out to the community that she had cut herself, and her sister was eaten.
- Atungait continued onto the next village where they were assigned the middle of their hosts bed, between the hosts.

⁴⁹⁰ *Atungait*, *supra* note 110.

- A little girl was told by her grandmother to go into this place where Atungait was staying to see if there was any food left on the tray on the floor.
- The little girl returned and told Atungait that her grandmother was concocting human and wolf brains and that he was invited. The old woman was planning on poisoning Atungait.
- Atungait ate the mash, and the next day the old woman was found dead from her own poisoned mash.
- Atungait and his wife left this village and entered into a place where there was little land to walk on, it was a cliff. So Atungait and his wife climbed the cliff with their dogs, but Atungait's favorite dog died.
- After making it on top of the cliff they came across another camp, where they stayed. Two old women came towards Atungait and he noticed that they were like ravens, as they pecked at the ground where he had cut up meat earlier.
- One of the women circled Atungait and he cracked his whip to get her away. That night when Atungait and his wife were asleep this same woman appeared at the foot of their bed with a harpoon, and as she was about to harpoon Atungait, his toe moved, and she disappeared.
- Atungait found out the next day, that old woman died during the night.
- Soon after Atungait and his wife left this camp and found another one where people were playing a game of ajagaq with a rabbit skull. Atungait joined in.

18. CASE BRIEF – *Atungait*

- Eventually, Atungait had begun to plan on leaving this camp, and he also planned to steal the rabbit head.
- His wife was ready to leave, and Atungait went to play ajagaq one last time and stole the rabbit head then sped off on his qamutiik.
- The people in the camp tried to catch him on their qamutiik but Atungait had cut the strings so it fell apart.
- One person almost caught up to Atungait but he shot arrows at his pursuers which made the dogs turn quickly in another direction, and the qamutiik fell over.
- Atungait and his wife continued on in their journey around Baffin Island.

Decision/Resolution: *What is decided or how is the issue resolved?*

- The communities which Atungait and his wife passed through were each different, but each provided them with some of the necessities they needed while they were visiting.
- Atungait and his wife survived off the land with their knowledge of how to survive, and also with the support of the people they met throughout the communities.

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- It is important for community members to support travelers who are passing through (unsaid).
- It is important to use caution if you are passing through someone's community (unsaid).
- It is expected that you will receive support from community members if you are passing through their territory (unsaid).
- It is wrong to steal from community members (unsaid).
- If you steal from community members there could be punishments (unsaid).

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary for the case analysis.*]

- Why did Atungait steal the rabbit head? Rather than just asking for it.

19. CASE BRIEF – *Lice*⁴⁹¹

Problem (Issue): *What is the main human problem that the story focuses on?*

- How does to the words of a new mother impact her life and others?

Facts (Relevant): *What facts matter?*

- A new mother was tormented by lice on her shoulder and one day said, “it is strange, that such, tiny, toothless animals can bite so hard!”

Decision/Resolution: *What is decided or how is the issue resolved?*

- A louse heard what she had said and turned into an angry monster with teeth and the woman was so frightened that she died.
- From then on women who had just given birth were forbidden to mention lice by name, or to complain when they caused irritation.
- This happened in the days of the forefathers, when a thoughtless tongue could fashion monsters and brought about great misfortunes.

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- The words that are used can cause great misfortune (unsaid).
- It is important not to complain about creatures, even lice because it can cause misfortune (said).

⁴⁹¹ *Lice*, *supra* note 102.

- Individuals have a connection to creatures and creatures have a connection to individuals (unsaid).
- Animals and insects are to be treated with respect (unsaid).
- It is important to understand that what you say has an effect on the circumstances (unsaid).

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis.*]

- What happened to the newborn child?

<p>20. CASE BRIEF – <i>The Emigration of Women</i>⁴⁹²</p>

Problem (Issue): *What is the main human problem that the story focuses on?*

- How do the wives of murdered husbands manage their husband's death?
- How do the women manage to keep the community alive?

Facts (Relevant): *What facts matter?*

- Two parties went hunting together once and for some reason (the reason is not stated in the story) one party killed another. Then went back to the camp where their wives were.
- The women realized that their husbands had been murdered, so they began to plot their revenge (it is unclear in the story how many husbands were murdered).

Decision/Resolution: *What is decided or how is the issue resolved?*

- There were two women who lived with one of the murderer's and when he was asleep one of the women stabbed him with her knife.
- The women then escaped to another part of the territory, and they were pregnant by the men who murdered their husbands.
- Each of the women gave birth to mostly boys, and each woman married a son of the other women (it is not clear in the story how many women there were).
- One day two men strayed to the community of women because they had been carried off on ice when seal hunting and were lost.

⁴⁹² *The Emigration of Women*, supra 101.

- One of the men entered a hut with only two women, and the other man entered the hut with several women. The latter was smothered to death because all the women pounced on him.
- The other man survived but had to be guarded by the two women he lived with in the hut.

Reason (Ground/ Ratio): *What is the reason behind the decision or resolution? Is there an explanation in the story? Said? Unsaid?*

- When a man murders a woman's husband then she has an obligation to seek revenge to mitigate the situation (unsaid).
- Women have the agency and ability to manage very challenging situations when working together (unsaid).
- Women within a community help one another in times of need or challenge (unsaid).
- Survivors of trauma are very resilient (unsaid).

<p>20. CASE BRIEF – <i>The Emigration of Women</i></p>

Bracket [*What do you need bracket for yourself in the case? Some things will be beyond your terms of reference but are not necessary to the case analysis*]

- What happened to the men that the women abandoned?
- Why did the men murder the husbands?
- How did the women feed themselves and their children without men around to hunt and fish?

APPENDIX B Legislative Process

PART 7: LEGISLATIVE PROCESS⁴⁹³

61. When a Bill is passed by the Assembly, the Clerk shall

- (a) endorse the first page of the official copy of the Bill and enter the date on which the Assembly passed the Bill;
- (b) initial each of the other pages of the Bill; and
- (c) deliver the Bill so endorsed and initiated to the President.

62. The President must assent to a Bill passed by the Assembly or reserve the Bill in terms of section 4.19.1 of the Constitution.

63. When the President assents to a Bill the President must date and sign the Bill under the Nunatsiavut Seal and deliver the Bill for registration. (IL 2018-05)

64. A Bill becomes an Act of the Assembly when the President assents to the Bill.

65. The Act takes effect as an Inuit law immediately when it is entered in the Registry of Inuit Laws unless the Act itself states that it comes into effect at some other time.

66. If a Bill is reserved by the President in terms of Part 4.19 of the Constitution the President shall state the reasons for the reservations and the Clerk shall endorse the official copy of the Bill and indicate on the official copy the following:

- (a) the date on which it was so reserved;
- (b) the reasons stated by the President as to why it was reserved; and

⁴⁹³ *Nunatsiavut Assembly Act*, *supra* note 88.

(c) whether the Bill stands referred by the Assembly for reconsideration or referred to the Inuit Court for judicial opinion.

67. If a Bill is reserved and referred back to the Assembly for reconsideration the First Minister must propose such amendments to the Bill as, in the opinion of the Nunatsiavut Executive Council, will make the Bill constitutional and the Bill, including the proposed amendments will then be debated as if the Bill were in second reading.

68. If a Bill is reserved and referred to the Inuit Court is judged unconstitutional by the Court, the Clerk shall endorse the official copy of the Bill and indicate on the official copy the following:

(a) the date of the judicial decision;

(b) that it has been rejected by the Inuit Court as unconstitutional; and

(c) the citation or proper reference to the decision (IL 2018-05)

69. If a Bill that is reserved and referred to the Inuit Court is judged to be constitutional by the Court the Clerk shall endorse the official copy of the Bill and indicate on the official copy the following:

(a) the date of the judicial decision;

(b) that it has been declared by the Inuit Court to be constitutional; and

(c) the citation or proper reference to the decision and the Clerk shall return the official copy of the Bill to the President for assent in accordance with section 64. (IL 2018-05)

70. An official copy of all Bills passed by the Assembly, including those that are rejected as unconstitutional, shall be kept by the Clerk for reference by the Assembly.