

Conversations on Access to Justice: Aboriginal Legal Needs and Community-Led Policy Making

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Outline

1. Provide an overview of Aboriginal legal needs and the unique barriers to access to justice (A2J) experienced by Aboriginal peoples.
2. Briefly describe community based policy making and its ability to address A2J issues in aboriginal communities.
3. Provide an example that highlights the benefits and challenges of implementing culturally pluralistic policy that address aboriginal legal needs (The Carcross Family Act)



Aboriginal Legal Needs & Access to Justice

- ▶ What do we know about aboriginal legal needs?

A Lot!

- ▶ All of the socio-economic factors that often impact a non-aboriginal person's ability to access justice disproportionately effect aboriginal peoples.
- ▶ Aboriginal people face many unique cultural barriers.
 - ▶ Increased discrimination
 - ▶ A distrust of the legal system
 - ▶ Alternative conceptions of justice
 - ▶ Lack of services and programs that reflect the cultural values of aboriginal peoples.



Alternative values and views of “justice”

- ▶ Alternative conceptions of justice.
- ▶ Lack of policy and programs that reflect the cultural values of aboriginal peoples.
- ▶ Program mandates that had little “sense” to aboriginal communities.
- ▶ Lack of programs developed, implemented and staffed by aboriginal peoples.

▶ See, Mary Stratton, *Balancing the Scales*, Canadian Forum on Civil Justice (2006); Ardith Walem, *Building Bridges: Improving Legal Services for Aboriginal Peoples*, legal Services Society BC (2007)

▶ What is the solution? How can we meet the legal needs of aboriginal communities?

▶ Need to develop respect and appreciation for aboriginal justice norms and customs.

▶ Need make space for legally pluralistic policies programs that are designed and implemented by communities themselves.

▶ **Engage in Community Based Policy Making.**



New Approaches to Law & Policy Making

Community Driven

- ▶ Based on premise of self-determination
- ▶ Designed, implemented and monitored by community (self-governance)
- ▶ Identify own policy needs
- ▶ Place indigenous values at centre of policy
- ▶ Heavy emphasis on process.

Traditional Models

- ▶ Policies remain within institutional framework of the state.
- ▶ Designed and Implemented and by external agencies. (sometimes with indigenous participation/consultation)
- ▶ Address a externally identified 'problem'



The Carcross/Tagish First Nation Family Act

Attempt to regain responsibilities over child welfare that were denied by the Indian Act.

- ▶ Didn't start from bureaucracy (policy goals, models etc)
 - ▶ Started from community: family citizens and children.
 - ▶ Transcribed over 300 traditional stories from elders that related to family
 - ▶ Pulled out virtues
 - ▶ Began to develop legislation around these virtues.
 - ▶ Consulted with elders, children in need
 - ▶ Reviewed of those who had been adopted and those in care.
 - ▶ Worked with Law Commission of Canada
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Thoughts on Significance: Community Based Policy Making & Access to Justice

- ▶ Know the needs – struggling with how to address them.
- ▶ Creation of legally pluralistic policy space is necessary to achieving access to justice in aboriginal communities.
- ▶ Real costs to social fabric and justice system.





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